Kennedys

Claims Handling Law and Practice

A Practitioner’s Guide
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To Fred and Kieron
with thanks for your wisdom and guidance.
Claims Handling Law and Practice

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Claims Handling Law and Practice
A Practitioner’s Guide

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Foreword

Kennedys is proud to work for so many clients within the insurance industry right across the globe. Many thousands of claims handlers work in partnership with our lawyers, and turn to our lawyers for clear, concise legal advice in black and white.

Kennedys’ objective in all that we do is to help our clients to become more independent from, and not more reliant, on their lawyers. This second edition of our claims handling guide is written with that objective very much in mind.

This edition of the book has been expanded to cover new areas, and demonstrates the wide range of assistance that Kennedys provides within the insurance industry. For the first time we have covered issues relevant to claims handlers in the fields of professional indemnity, periodical payments, catastrophic injuries, the RTA and EL/PL MOJ Portals, jurisdictional issues and abuse claims. We have also provided guidance on coverage and indemnity issues and all other chapters have been comprehensively revised and updated.

The aim of this book is to continue to be of help to claims handlers on a day-to-day basis. It continues to be both an “aide memoire” for the experienced and a training aid for the novice. The first edition proved itself to be a valuable one-stop addition to a claims handler’s working day. It is our objective that this edition will prove to be even more helpful.

My thanks to all of those within Kennedys who have contributed to, and supported the lead authors in helping to create, the second edition of this book.

We continue to welcome any and all suggestions that you may have as to how the book may be improved.

Richard West
Partner, Head of Liability
Kennedys
Foreword

(Reproduced from first edition)

Too often Lawyers are guilty of clouding issues whilst attempting to provide explanations. That is something that we try not to do at Kennedys and in many ways I feel this book exemplifies our approach to providing legal services to our clients.

I am sure that all involved in claims have from time to time wished for access to a simple guide to the areas of law with which we most commonly deal, to ideally refer to one book only and not have to trek to a law library or open a number of tomes to find the answer. The practitioners’ guide, written by a number of my partners at Kennedys, seeks to deliver such a book covering a wide variety of disciplines within one pair of covers.

This user-friendly guide covers fields as diverse as clinical negligence, health and safety, occupiers’ liability, child abuse, manual handling, the Road Traffic Act, disease and highways law. In addition, reflecting the trend of insurers to turn to external cost providers to advise on the issue of third party costs, there are two chapters on funding.

The book’s aim is to assist claims handlers with those areas of law with which they have to deal on a day-to-day basis. It is an “aide memoire” for the experienced but also sets out the basics for the novice. Our clients have told us that it is a helpful core text for in-house training.

The authors of this book are all leaders in their own fields but they and I would welcome any and all suggestions that you may have as to how the book may be improved for the Second edition.

Nick Thomas
Senior Partner
Kennedys

September 2008
Introduction

This book is achingly useful. Anyone handling claims needs to be aware of two utterly different matters, namely the relevant law and the procedural considerations that underpin the process for dealing with that type of case. The gulf between, say, road traffic and disease cases is enormous. The only similarity is that we have a claimant and a defendant.

Why this guide stands out is that it is approachable and pragmatic. For example, the explanation of the treacherous principles which regulate policy coverage in employers’ and public liability claims is superb. Of course, the labyrinthine complexities which can be thrown up are rightly beyond the scope of this work.

My ultimate test is to ask whether such a guide helps me see the wood for the trees. Can I turn to a chapter and, within minutes, identify the core considerations? My unequivocal answer here is yes.

In the dark, distant past I practised and was frustrated by the absence then of a punchy guide to the nitty gritty of the subject. Reading this edition I discovered the distinction between the statutory duty to maintain the highway and the different power applicable to lighting a highway. One is never too old to learn.

Since the last edition, injury law has undergone seismic reform. Portals and fixed costs, albeit of limited application, have brought about an enormous shift in the process and indeed economics of claims handling. Road traffic work, and not just the dreaded whiplash, has been singled out for root and branch upheaval.

The disappearance of the claim for breach of statutory duty will resurrect classic negligence principles. A generation of authorities, like *Stark v The Post Office*, will become dust.

continued...
I attended a Kennedys’ event at Lloyd’s of London where a packed house was told that it would probably be unwise to allege contributory negligence in most portal cases. An audience trained to sniff out ‘contrib’ and argue it with vigour was suitably impressed. The game has changed.

On top of those injury reforms we also had the Jackson upheaval too. More changes in the last four years than in the previous 100.

There will always be claims. Who knows what new subjects will emerge as others like RSI decline?

The ever constant of best practice is to gather evidence whilst it is fresh and then to make an informed decision upon liability. Some things never change.

Dominic Regan
Professor of Law and adviser to Lord Justice Jackson
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