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Defendant PI lawyers 'defeating mediation' Thursday 31 May 2007

By Rupert White

Defendant personal injury (PI) lawyers are to blame for continuing high court caseloads by opting out of mediation as a matter of course, according to a government report.

After studying voluntary and automatic referral mediation schemes from 1994, a team led by the highly respected Professor Dame Hazel Genn concluded that lawyers' strategies in personal injury cases were defeating mediation schemes.

The report, *Twisting arms*, is damning about how much PI lawyers have held back the growth of mediation. In one analysis of a London-based automatic referral scheme, around 90% of PI cases were pulled out of mediation.

'Unless the defence side of the personal injury equation changes its strategy,' the report stated, 'it is hard to see how a large proportion of the current caseload of the county courts can be encouraged to embrace mediation.'

The report found that PI cases in automatic referral schemes suffered from 'persistent rejection of mediation,' and called the 'lack of interest' in mediation 'intriguing, given the potential for reducing overall costs'.

Solicitor Jeremy Ferguson, founder of the Exeter County Court small claims mediation scheme, said defence PI lawyers opted out of mediation because otherwise they would lose out on costs. He said schemes must more tightly restrict opt-outs and be better publicised.

The Association of British Insurers said it wants to see much more use of mediation. 'We believe too many straightforward PI cases go through the courts,' said a spokesman.

Lea Brocklebank, president of the Forum of Insurance Lawyers, denied defence lawyers opt out as a strategic move but admitted there is still 'reluctance' to use mediation, which she found 'surprising'.

Law Society chief executive Des Hudson added that while solicitors should always consider mediation, 'a change in direction by insurers' is the key to improving take-up.