



The

RAG

News bulletin from ARAG UK

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# Insurance should be a matter of conscience

Lord Chancellor Liz Truss certainly set the front pages alight when she announced that insurers would have to pay more compensation to seriously injured accident victims. Headlines predictably followed the ABI line and screamed about rises in premiums. A few days earlier, there had been almost no mention of the Ministry of Justice's (MoJ's) decision to 'fix' whiplash claims and raise the small claims court limit so high that legal representation would be either unavailable or unaffordable in a large proportion of cases.

Some of the details are still a little sketchy but if we have the motor accident threshold set at £5,000, some 90% of road accident injury claims will be 'small' claims where legal costs cannot be recovered and around 80% of these will have the whiplash component standardised, with a cap on fees for medical reports. Motor ATE is the most affected in terms of sales potential but BTE premiums will progressively have to rise to pay for irrecoverable costs. The insurance principle of many people paying the claims of a few becomes more difficult to apply if fewer motorists are willing to stump up the extra, taking typical add-on premiums to between £35 and £50.

In respect of clinical negligence and accident cases, are these insurers

bemoaning having to pay damages in full the same ones who promised whiplash reforms would actually cut motor premiums? Are they really so callous about the most vulnerable people in society having their life-long care funded adequately – those children who have been injured at birth or motorists maimed and brain-damaged through no fault of their own? The fuss about correcting a long overdue adjustment to the Ogden Tables is shameful: changes are long overdue.

Changes to serious injury rates were talked about over a period of years, with consultation concluded nearly five years ago, while the whiplash consultation was concertinaed into just 6 weeks, over Christmas 2016.

It looks to us like a story is being spun about higher premiums while the victims have no voice. This mood is wrong and reflects badly on society in general.



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MD Tony Buss

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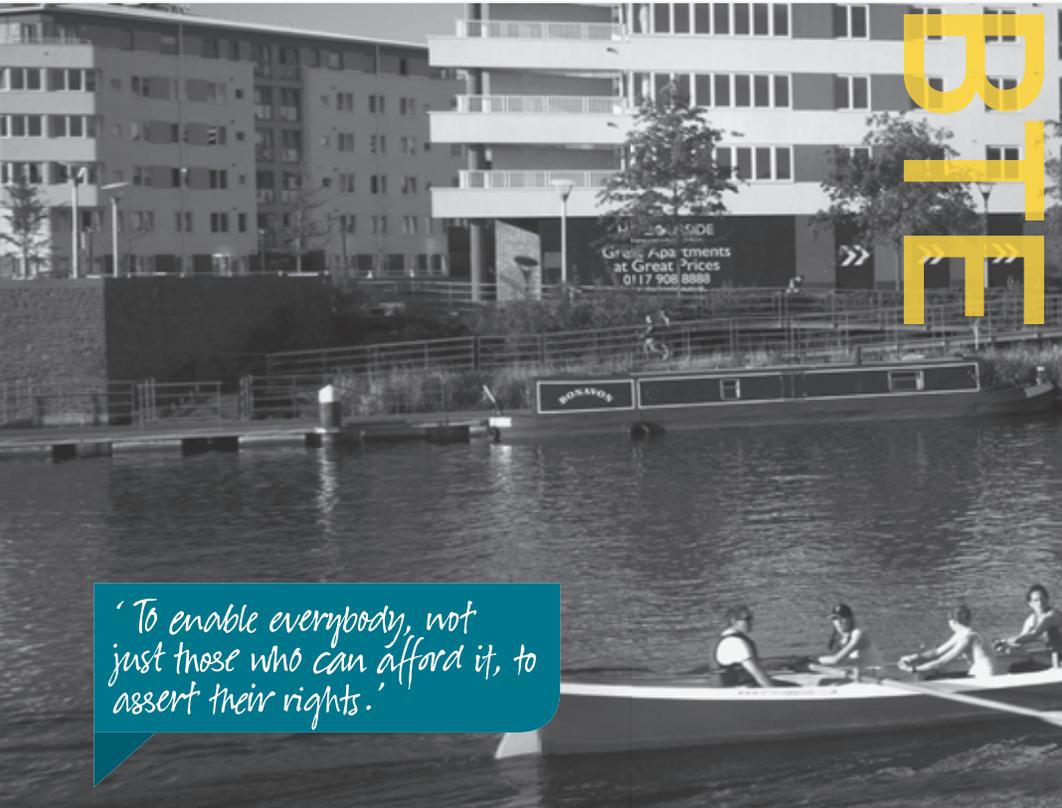
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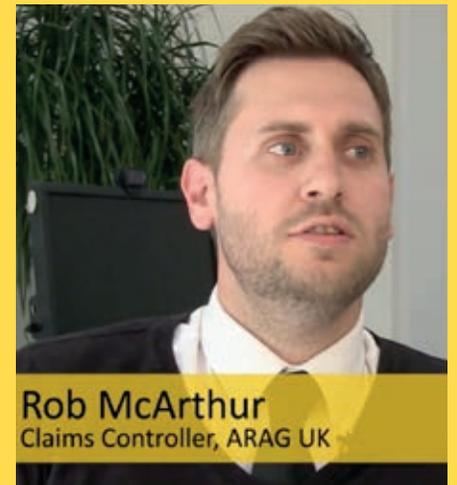


## Extra help for policyholders making claims

ARAG has launched a series of new videos that help potential claimants understand what happens when they make use of their legal expenses policy. Three videos are now available on YouTube or under the 'News & Press' section of the ARAG website. They cover various aspects of the claims process in a concise, yet information-packed format, that is very easy to follow.

The explanatory videos were shot in our Bristol offices, featuring members of the claims team. They explain the process of making a legal expenses claim, how suitable solicitors are selected and take the mystery out of mediation. The bonus of the videos are that they can be viewed again at any time and shared with your clients.

This latest focus on customers comes at a time when use of ARAG services is rapidly rising as consumers become more familiar with policy benefits. It is becoming more important to demonstrate the company's brand values and yet maintain the policyholder's primary point of contact with the intermediary that sold them the cover.



**Rob McArthur**  
Claims Controller, ARAG UK

*'To enable everybody, not just those who can afford it, to assert their rights.'*

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Many insurers' websites have promises about their social conscience and about treating people fairly. Fine words but little evidence to substantiate them. At ARAG, we are justified in taking the high moral ground. We stand by our mantra, defined by our founder, **Heinrich Fassbender**, in 1935: *"To enable everybody, not just those who can afford it, to assert their rights. We remain committed to equal opportunities for all."*

### Which way for ATE and BTE?

We will shortly announce positive results for our trading and profitability over 2016, a new balance to our ATE and BTE exposure, and strategies to both consolidate existing business and build new areas of expertise.

It is clear that the legal framework favours BTE at the expense of ATE solutions. The future ATE focus will be on EL, PL and non-personal injury cases. We are also more clearly identifying good schemes – we now have three full time auditors visiting law firms around

the country – with special attention to clinical negligence cases.

On the BTE side, we have to ensure we are not giving away too much for free: 'extras' in home emergency, helpline and online services all come at a cost to us and we must ensure our commitment to quality products and service cannot be compromised by concerns over competitiveness of premiums. At the same time, our London office has opened many new doors for commercial BTE schemes because so many businesses fear ever more complex employment tribunal claims.

In all our dealings, we remain committed to ensuring that customers receive excellent value and service, knowing, at all times, that the cover is fit for their purpose. Management information such as the monitoring of claims declinatures and complaints enables powerful root cause analysis that constantly shapes our future policies. This allows us to repeatedly improve the customer experience to maintain ARAG's reputation for making affordable access to justice available to everyone.



## Good news for independents

ARAG has teamed up with the NFRN to provide legal advice and support to the association's UK independent retailer members.



The NFRN represents more than 15,000 independent news retailers and convenience stores across the UK and Ireland, helping them to thrive in a highly competitive sector.

The new arrangement gives members telephone legal advice, a comprehensive suite of digital legal documents, and insurance against common legal disputes.

ARAG tailored the policy to meet the NFRN membership's specific needs, particularly around the areas of cover for criminal prosecutions, regulatory and licencing matters.

## Tribunal Review: Fees are here to stay

The government has reviewed the effect that fees have made on employment tribunal applications, since they were introduced in 2013, and decided that they are here to stay.

The Ministry of Justice (MoJ) has decided that, while there is clear evidence that people have been "discouraged" from pursuing claims against employers, it is not conclusive that any have been "prevented" from doing so by the scale of the fees.

This finding from the review is somewhat surprising given the drastic drop in claims that have been brought since fees were introduced, which the MoJ itself described as "significantly greater than was estimated".

The government has faced strong criticism from unions for putting justice beyond the reach of working people, to the benefit of bad employers.

The fees come in two stages. The first fee, to lodge a claim, is either £160 or £250 depending on the type of claim. If the claim then proceeds to a hearing, an additional fee of £230 or £950 is charged. So, for unfair dismissal, discrimination, equal pay and whistleblowing claims, the employee would have to find £1,200 to have their case heard. Only those who satisfy means-tested eligibility can hope for relief from paying the fees.

The introduction of tribunal fees highlights

the increasing value and importance of Before-the-Event (BTE) legal protection. The financial barriers to accessing the justice system have grown in many areas, as legal aid has been withdrawn and the prospect of increases to the small claims court limit looms.

Employment law has always been a key area of cover and advice for ARAG policyholders, who have the benefit of legal advice, digital resources and insurance against the legal

costs, if they do need to bring a claim.

The government may have forced down the number of claims that are heard at tribunal, but the people who face some sort of problem at work still number in the hundreds of thousands.

ARAG's Family Legal Solutions covers householders in the event of employment disputes and we will pay the tribunal fees and provide the legal muscle to secure a just outcome.





## Tailored cover gives competitive edge

The demographics underlying the continuing growth of care providers are becoming so familiar that many brokers are in active competition for this business. ARAG has just introduced Care Provider Legal Solutions\*, an expertly designed product to give specialist brokers the edge over conventional commercial legal expenses policies. The new product has been built around ARAG's own claims experience over the past decade and extensive consultation with specialist agents.

Care providers come in all shapes and sizes and any of them can be subject to rigorous investigation. The new policy acknowledges this, whether assistance is given on a residential or nursing home basis, or through other registered premises including where cared-for individuals live in their own homes.

ARAG can now offer representation for care providers at coroners' courts or fatal accident inquiries, Quality Care Commission investigations and registration disputes, Charity Commissioner appeals (plus Scottish and NI equivalents), and even 24/7 in the case of interviews under caution. Additional legal defence is available for allegations of dishonesty or violent acts. All this on top of what might be expected under the ARAG Essential Business Legal policy.

A further benefit recognises that care providers can suffer significant long-term damage to their reputation, so the crisis communications aspect of cover has been substantially increased, to £25,000.

The background to this burgeoning market is that the greater part of 10 million people aged 65+ have a long-term illness that affects their activities. Of the 1.3 million aged over 85, more than 70% have a long-term illness. During the past 25 years, the number of people in this latter category has doubled, and is expected to more than double again to 3.1 million in a similar time frame. Around a million older people and those with disabilities already live in care homes or have care provided in their own homes.

\* Care Provider Legal Solutions is available under delegated authority arrangements. Where LEI is bundled as a mandatory cover the wider features may be given under the Absolute Business Legal policy.

## General Insurance value measures

In January, the Financial Conduct Authority published "scorecards" for 38 insurers with the aim of informing consumer organisations which add-ons deliver the best value. The scorecards covered four products: home insurance, home emergency, personal accident and key cover, for both stand-alone and add-on products.

The scorecards show:

- the claims frequency ratio against policy volumes,
- the percentage of notified claims that are accepted, and
- the average sum paid out

Personal accident has a reasonable acceptance rate but the claims frequency is very low, with the majority of insurers disclosing sales of thousands of policies to yield a single claim. Average pay-outs varied greatly between insurers. This is probably due to products having different levels of indemnity, which would have been reflected in the premium charged. Consumers may not appreciate the impact that differently-priced product features have on the scorecard outcomes.

Unlike a "pure cash" product such as personal accident, home emergency is a service-led product which promises convenience to policyholders around the clock. The cost of delivering the product includes not only the charges paid to contractors, but the operational costs of a call centre and maintaining the contractor network. Policyholders enjoy peace of mind and they value the convenience of a

single call to reach help from a quality-checked contractor.

### Home Emergency scores

- The claims frequency for stand-alone home emergency was greater than for most add-ons, which would be reflected in the premium.
- Add-on frequencies varied with the mode figure being 2.5% - 4.9%. Only one insurer disclosed a lower frequency than this with four having higher frequencies.
- The claims acceptance rate was over 90% for most insurers.
- Average pay-outs were low as insurers engage contractors at significantly lower rates than an uninsured customer would pay, especially if an emergency same-day service is sought by the customer.
- The scorecard does not reflect what an uninsured consumer would pay to get help for their emergency.

You can see the data yourself:

<https://www.fca.org.uk/publication/data/gi-value-measures-data-august-2016.xls>

We maintain that home emergency add-ons provide great value to consumers compared to the premiums paid for stand-alone products. Home emergency delivers reliable, rapid attendance 24/7 by a quality-assured contractor. These aspects are valued by the consumer despite being invisible to scorecard-readers, so it is important to ensure that customers are made fully aware of the benefits when buying home emergency insurance.

# What the whiplash proposals mean for LEI

Those outside the legal and insurance worlds would be forgiven for knowing nothing about the government's plans to reform the claims process. Whisked through 'consultation' in just a few weeks, the MoJ's plans went from launch in mid-November to inclusion in the Prison and Courts Bill, published on February 23<sup>rd</sup> 2017.

The changes will increase the Small Claims Court limit for all motor personal injury claims to £5,000 and double the limit for all other injuries to £2,000, as well as introducing low, fixed payments for all but the most serious 'whiplash' injuries. They represent some fundamental changes to the justice system and are likely to have a major impact on injured parties, the courts and some law firms, but what do they mean for the legal expenses sector?



**Andy Talbot,  
Head of Sales**

Successive governments have backed LEI as a means of delivering access to justice, as legal aid has been withdrawn, especially since Lord Justice Jackson floated the idea, back in 2010. But I'm not sure politicians fully understand how it works.

The problem is always that those who struggle to access justice are less likely to have a legal expenses insurance policy. They are the same people who will suffer most from these changes.

An increase in the Small Claims Court limit has been talked about for years, and is probably overdue. Doubling it will have some impact on non-motor claims costs but it shouldn't be too dramatic. This is where most of ARAG's BTE business is, so we'll be watching with interest and keeping customers informed as the change approaches.

The impact on the market for motor legal protection will be much more significant. It's estimated that the changes will bring about 90% of motor claims into the Small Claims Court jurisdiction, where costs are not recoverable. These costs will inevitably increase motor legal expenses insurance premiums.

Whatever the rights and wrongs of the status quo, it is difficult to overstate how significantly the reform will disadvantage people genuinely injured in accidents. They will have to trust the third-party insurer to admit liability as, even with the legal knowledge to do so, the cost of challenging an insurer's denial would quickly exceed the potential award.

This will obviously make motor legal protection much more valuable, but also a bit more expensive, as the costs of challenging a contested claim will no longer be recoverable. Whether consumers will appreciate the increased value that LEI policies offer, because there will be no other means to pursue a claim, remains to be seen.

It is at times like these that ARAG's focus on service and innovation serves us well. Whatever the finer detail of the reforms and however consumers respond, I know that my colleagues in our Product Development team will build the most attractive proposition available, that will add great value to our partners' products.

As Head of Sales, I must admit to being slightly relieved that ARAG doesn't have too many eggs in the motor LEI basket, as it is shaken up,

yet again. On the other hand, I'm also excited at the opportunity the latest reform will present.

Throughout the world, ARAG is still very much driven by its founding principle of providing affordable access to justice, and equally committed to our belief that investment in innovation and offering the very best service, is the most effective way of achieving that.



**Paul Hurley,  
Director & Head of ATE**

The ATE industry has become so accustomed to perpetual changes to the legal landscape, it's hard to be surprised by anything the MoJ has come up with in recent years. While the details of this particular reform are important, it's also worth looking at the wider picture, because it simply isn't possible to judge what changes may be needed, if we haven't yet seen the results of the previous reforms.

Almost everyone outside the insurers' lobby, accepted that the

so-called "whiplash culture" was in decline and the Justice Select Committee highlighted this in February, when its chair, Conservative MP Bob Neill, said the MoJ was "firing in entirely the wrong direction". What was needed, of course, was a more robust approach to genuinely fraudulent claims and some strict policing of the cold-calling industry.

Instead, what we have is yet another huge impediment to accessing the justice system, whipped through a "consultation" that frankly wasn't worthy of the name.

As usual, it is the poorest in our society who will suffer the most. £5,000 may seem like a "small" claim to politicians and those who have lobbied so hard for this reform, but it's almost half the year's take-home pay for many.

For the self-employed and those in relatively low-paid jobs with few benefits and limited employment protection, a serious whiplash injury isn't just a painful inconvenience. It could cost them their livelihood and much more. Once again, those people have been forgotten.

The reforms will probably hit their intended target too, but the fraudsters, the cold-callers and the less-scrupled "professionals" who abetted them will move quickly on to greener pastures.

After the Event insurers who write most of their business for motor claims will also feel the impact. Estimates for the proportion of motor claims affected are as high as 90% so, as we've seen after previous reforms, providers may exit the market, through choice or otherwise. Policymakers can sometimes be excused for not fully understanding how insurance markets work, but many of those who have lobbied hard for this legislation are well aware that uncertainty and a diminishing pool of risk are two things guaranteed to increase premiums.

As always, ARAG will adapt and deliver products that our solicitor partners can depend on, at least until the next set of reforms. Access to our justice system may be getting harder, but our commitment to enabling it remains as strong as ever.

## What's next in ATE?

### Commercial ATE gets underwriting boost

A dedicated new underwriting team, a clear emphasis on service standards and a host of fresh ideas to assist major legal firms in adjusting to a changing yet well-established market sector, ARAG is well placed to challenge in the commercial ATE sector.

With a clear focus on new business opportunities in the range of £100,000 to £500,000 indemnity limits, ARAG has committed the resources to deliver a first class service in this competitive marketplace.

Underpinning the push for growth is the development of products under the Recourse umbrella. As always, the underwriting team is happy to discuss bespoke options to tailor cover to the needs of both the legal practice and to the specific type of case. The objective is to make ARAG a first, and automatic, choice of insurer partner.

Increasing activities in this sector is part of the company's plan to accelerate its GWP in this area of the market. With further proposed legislation changes on the horizon, legal practices are similarly taking a new look at how they will affect their businesses over the coming years. The ARAG team is poised to respond.



There are currently two distinct core policy types: Recourse Complete is the well-known policy for personal injury claims – accidents at work, slips & trips, clinical negligence, industrial diseases and RTAs. It is Recourse Options, designed for non-injury cases such as commercial and personal contract disputes, that is causing the latest interest. This also covers professional negligence, wills & probate, as well as insolvency claims.

### Housing disrepair

Whilst some firms may not fully diversify into commercial claims, they are likely to be looking at the areas such as housing disrepair. Since the boom in buy-to-let

investment, there has been a startling increase in the number of 'rogue' landlords who are not looking after either their properties or their tenants.

Having seen the shortage of rental properties and very little enforcement of regulatory requirements, these landlords have been ignoring 'due care' and putting tenants into substandard accommodation, then failing to carry out even the most basic repairs such as dealing with damp. Often, it will be tenants housed by local councils; people who have very little in the way of funds or legal expertise who are left to pursue claims without help. There has been a substantial amount of litigation already, and it is growing all the time.

### Practice policy

For legal practices committed to personal injury claims, the ARAG Practice Policy is attracting increased interest. Developed in conjunction with a major practice, the policy provides extremely competitive premiums across the range of PI cases conducted by the practice.

Effectively a mandatory scheme, premiums are based on a firm's experience and appetite for risk. The policy also has the added benefit of minimal administration, as it covers the practice and not individual clients.





*'Defendants and their insurers are invariably in a stronger financial position than claimants.'*



## Consultation on fixed costs in clinical negligence claims

Yet another consultation is underway, which could see the scales of justice tipped further towards defendants and their insurers and away from vulnerable people injured by medical malpractice.

Most people would agree that there is little wrong with the concept of fixed costs, in theory.

The latest consultation to address them, Introducing Fixed Recoverable Costs in Lower Value Clinical Negligence Claims, is being conducted by the Department of Health.

Fixed costs would provide certainty to all parties and should preserve the principle that the losing party pays while ensuring that the decision to settle or fight is made from an informed position, without the uncertainty of a large unquantified legal bill.

A predictable scheme of fixed costs might also help both the BTE and ATE insurance markets to provide simple, affordable products for solicitors and the public to purchase.

From the government's point of view, by far and away the single largest payer of legal costs and damages in such cases, fixing the state's costs' liability would be very attractive. It should also encourage efficiency on the part of those bringing the claims.

However, there are inevitably issues that will have to be resolved, such as the level at which costs are initially set, how often they will be reviewed and how any adjustments, such as inflation, will be calculated.

Where fixed costs have already been established, such as RTA and portal claims, the prescribed amounts are not subject to periodic review, so their value is being eroded by inflation and market changes. This will reduce the number and suitability of solicitors willing to take on the work.

Imagine how liability insurers would react to being told premiums would also have to remain static, to match the lack of review for fixed costs.

Defendants and their insurers are invariably in a stronger financial position than claimants, and often use this to their advantage. They are not limited by fixed fees, as their solicitors are paid by their insurers, regardless of success.

In contrast, claimants cannot pay more than the fixed amount unless the case is won, when a success fee (up to 25% of damages) can be added. However, solicitors can be reluctant to take a share of the claimant's damages, so often forego this potential entitlement.

Defendants know that the claimant's solicitor can only do so much work under a fixed fee scheme, or face making a loss and risking the firm's future.

In some cases, such as low-value injury claims, defendants are known to exploit this advantage by forcing claimant solicitors to spend additional time on a case by denying liability, not responding promptly, raising unnecessary technical points, intimidating fraud without actual allegation or providing too little or too much disclosure.

The fixed costs recoverable for experts' fees, such as medical reports, are also typically low, creating further disparity. Defendant insurers can use their buying power and deeper pockets to instruct more experienced, better qualified experts. Individual claimants must rely on cheaper, more junior experts, putting them at a further disadvantage.

The same will be true of legal expertise as claimant firms may be forced to use more junior fee earners, if rates are too low to cover the cost of experienced solicitors.

This goes to the very heart of access to justice. Unless laws designed to protect and compensate innocent victims can be applied and easily accessed in the courts, then we might question whether there is any point in having such laws at all.

**OUR ACHIEVEMENTS**

## Best Employer

We pride ourselves on being a quality insurer. But what defines quality? Sure, we know our products are some of the best in the market, and our prices offer great value for the money. It's the people of ARAG that deliver the service which our customers have come to expect and we believe it's this that separates us from the rest; it's this that makes us a quality business.

Quality service comes from those who are motivated, happy and engaged. Best Companies is the gold standard when attempting to gauge the engagement of your people; it's the benchmark that underpins the Times Top 100 Companies to Work For.



We're proud, for the second year running, to have been awarded outstanding employer status (two-star). We therefore know that we're doing things right in terms of Leadership, Teamwork, Personal Growth and Giving Something Back to name a few. Being outstanding reaffirms our belief that we're on the right track.

But we want to do more; our drive makes us look for continuous improvement. We have aspirations to be a three-star company within two years and to compete against those in the Times Top 100 list. We want to have engaged, motivated, inspired, happy, learning people who can not only deliver against our customers' expectations, but go beyond them.

## Where you can find us

10-11 May 2017

**BIBA Conference & Exhibition, Manchester - Stand C70**

23-24 June 2017

**AvMA Clin Neg Conference & Exhibition, Leeds**

28-29 June 2017

**APIL Advanced Brain and Spinal Cord Injury Conference & Exhibition**

15 September 2017

**UK Broker Awards**

21 September 2017

**Broker Expo, Leeds**

9 November 2017

**Broker Expo, Coventry**



## Celebrating diversity

Fairness is one of the principles that underpins all ARAG activities, whether in the UK or worldwide. Bringing together the 14 nationalities of staff in Bristol helps share and explore diversities of culture and, by embracing differences, encourages us all to make better use of our potential.

So, last year we marked Bastille Day on 14 July on behalf of the French. This year, it was the Greek National Day on 25 March where we celebrated freedom.

Landmarks like this focus our thoughts on core objectives in life, and the fun part – dressing in national colours, flying the appropriate flag and enjoying traditional food – are a good way to make sure we remember them. Incidentally, most Greeks eat salt cod with garlic



potatoes for lunch on their National Day and, for the record, our Greek members of staff are In-House Counsel, Hector Stamboulieh and Software Development Manager, Kostas Tsarouchis.

The lengthy war for Greek independence, starting in 1821, was by no means the first uprising against four centuries of rule from the Ottoman empire but this time it was successful. By 1832 a treaty was agreed. It is not the only date regarded as a national day in Greece: 'Ochi' Day on 28 October commemorates rejection – 'No' – of an ultimatum delivered by the Italian ambassador to Greek Prime Minister Metaxas in 1940, demanding that Italian troops be allowed into Greece.



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