

Subject: the Compensation Bill

Note of key matters and actions agreed:

Attendees:

ABI / Law Society	APPG	Others
Presenting: Nick Starling, Director of General Insurance (ABI) Russell Wallman (Law Society)	John Greenway Baroness Turner Lord Davies Vince Cable	David Worsfold (plus an Incisive Media rep) David Morey (PwC) Lord Hunt's Special Adviser representative, Michael McManus

Each of Nick Starling and Russell Allman presented and responded to questions.

1. Key matters

a) Nick Starling - ABI

- ABI feel that the Compensation Bill is a good first step, but that more needs to be done
- Clause 1 is seen as problematic; content to see regulation of Claims Management Companies, which needs to be risk-based and proportionate (not just licensing)
- More generally, the current personal injury compensation system is too slow (e.g. on average it takes three years to settlement for an employer's liability claim), too expensive (for each £100 paid as a claim, another £40 is spent on costs) and too adversarial. It also encourages a level of exaggerated claims and deters some legitimate claimants due to a lack of information on how to pursue a claim (based on TUC evidence)
- Where liability exists, insurers believe compensation should be prompt
- ABI agreed with the view (expressed by Lord Davies) that whilst genuine claims should be compensated, care is needed to ensure the system doesn't encourage frivolous claims
- ABI proposals are set out in its publication 'Care and Compensation' (December 2005); these include (for claims under £25,000, which constitute 90% of the total) the establishment of a prescribed compensation tariff set by Government / the Courts; early notification; standard claims forms; insurer to agree on liability within a three month timeline and to then agree the quantum within another three months; at the time of the offer of compensation, the availability of a free legal helpline; mediation; and involvement of the court only as a last resort
- ABI believe these proposals require further legislation (e.g. to effect the tariff); although think that it may be too ambitious to seek to reflect these in the current Bill

b) Russell Wallman – Law Society

- Agrees with much of the ABI analysis
- Two key issues require dealing with 1) the perception of a compensation culture and 2) the need for a more proportionate process to ensure easy access to compensation, where appropriate, and without unnecessary cost

- Believes the perception issue exists not least as a result of advertising by CMCs; society needs to determine what sort of advertising is beneficial and what is not
- The Law Society is bound by the Advertising Standards Authority (ASA) Code; a key question is how should the ASA Code deal with advertising by CMCs – the key seems to be the need to articulate the availability of appropriate advice without generating false expectations by the prospective claimant; in this sense, there is a need to control adverts that suggest there is ‘something for nothing’ and to confirm that there is a right to compensation only where there is genuine negligence
- Given that lawyers are paid on a no win no fee basis, it is not in their interest to run a case where the merits are doubtful; insurers should certainly not settle (out of court) on doubtful cases
- On the Bill, Clause 1 is felt to be misconceived; the one thing it will do is ensure a number of cases go to court to test its meaning
- On Part 2 of the Bill, the Law Society strongly supports regulation of CMCs; it believes that there is certainly a need for the elimination of cold calling / canvassing by CMCs
- The Law Society’s preferred model (for the regulator) is something akin to that within the conveyancing market, where the Council of Licensing Conveyancers has been established under statute; this Council comprises industry and independent representation
- The Claims Standards Council may be capable of being turned into an appropriate body, although the key is that the regulation itself is effective [it is understood that the Government are assessing the appropriateness of the CSC in this context]
- It would be possible to widen the definition of litigation to include advice given in contemplation of litigation, which would stop much of the activity of CMCs; however, the Law Society recognises that in reality we are already past this decision point; in addition, there needs to be regulation over the sourcing and referral of prospects
- Law Society is in a position to specify the basis by which lawyers uses CMCs – if they comply with an appropriate prospecting/referrals code, then the lawyer could be allowed not to carry out fuller ethical checks on inwards referrals which would otherwise be necessary; however, this will need the development of the appropriate code to prohibit cold calling / canvassing
- Although the Law Society supports much of the ABI analysis concerning the need to provide early rehabilitation, deal with claims more rapidly and reduce transactional costs, the Law Society believes it essential to ensure there is no reduction in the accessibility to claimants of independent lawyers both at the start and at the settlement of their claim.

2. APPG’s view

- The Group has requested suggestions for amendments of Clause 1 of the Bill
- The Group will seek to meet with the ASA to determine how it might regulate the content of CMC advertisements – likely to ask the ASA to attend a joint meeting of the Group with the separate Media group