

Compensation Culture

Note of meeting

Attendees:

Claims Standards Council / Forum of Insurance Lawyers	APPG	Others
Tony Burns-Howell, Chief Executive of the Claims Standards Council and Andrew Wigmore, (CSC) Policy Director Andrew Underwood, President of FOIL, and Laura Wilkin	John Greenway Baroness Turner Lord Hunt	David Worsfold David Morey (PwC)

Each of the CSC and FOIL expressed thoughts and views relevant to the publication of the Compensation Bill on 2 November:

1. Claims Standards Council (CSC)

- The CSC, as an independent organisation, set itself up to test the appetite for self regulation
- Voluntary regulation has not succeeded since Claims Management Companies (CMCs) have not collectively taken up CSC membership / code of conduct
- Accordingly, it became apparent that statutory regulation was desirable
- Some CMCs are keen for change brought about by regulation on a level playing field basis
- Based on its role over the last two years, CSC is now helping to shape the type of regulation that is appropriate to the CMC sector. In this context, CSC believes:
 - Care is needed in defining a 'claims farmer' – the Act should be flexible enough to respond to extensions in the scope of activities undertaken by CMCs, as well as their geographical location (some CMCs are exploring offshore locations)
 - No exemptions should be permitted – all organisations involved in the chain of CMC activities need to be caught by regulation, as the current chains allow scope for layering
 - The conduct rules need to apply equally throughout the chain, creating a level playing field across the marketplace
- In response to a question, CSC confirmed that it might be worth the new Regulator looking at the basis by which fees may be charged
- CSC interested in participating in the new regulatory model, either in a sharing capacity or as the Regulator
- CSC currently separating its membership / trade association role to allow it to take on a regulatory capability (if required by the Secretary of State)

- CSC is only interested in a role as Regulator if it is empowered to act pro-actively in identifying market problems and detecting non compliance.

2. FOIL

- FOIL welcomes the Compensation Bill and the desire to avoid the costs arising from the handling of spurious / frivolous claims
- It is believed that some 80% of claims made against certain Local Authorities are dropped / withdrawn, giving rise to a massive wasted administrative cost on those Authorities
- The challenge is to decrease the public perception of the potential to bring claims that are not properly supported and justified
- On the Bill, FOIL made a number of observations and recommendations:
 - Section one of the Act, whilst well intentioned, did little more than restate the law as established over many years. There is no flood of spurious decisions on frivolous claims. The Courts have a good track record of rejecting such claims. FOIL doubt that primary legislation will materially affect this pattern
 - The term 'desirable activity' needs better definition / clarity – at present, it is felt that this might increase the scope for satellite litigation; also to clarify whether there is an objective test or a subjective one; also to avoid the potential of a lighter touch risk assessment which itself might increase the number of claims; also suggest that a court 'must' rather than 'may' ...have regard to ... (in Section 1 of the Bill)
 - FOIL also believe that the definition of 'claims services' needs to be wide enough to capture the new / growing CMC activities, as well as manifestations of those activities going forward
 - FOIL feel that the Bill might be used to develop the law concerning trespassers and their right to claim. Such reform of the occupiers liability act should have widespread support and deter such claims
 - FOIL have suggested consideration be given to reform that might attack the root of the "compensation culture", or rather the "have a go" culture that has developed since the introduction of CMCs and the spread of referral fees providing an income stream to those seeking to encourage claims for personal profit. One concept might be the development of a "risk excess". This would be a sum of money, not equivalent to the investigation cost, but a material sum that the claimant would have to pay personally if the claim were dropped or dismissed without litigation. The funding of this liability would have to be banded and a mechanism developed for those on low income or benefits. The intention however is to reintroduce personal liability for the decision to bring a claim
 - Bill does not encourage the issuance of an apology without it being automatically construed as an admission of liability
 - Bill does not include the need for claimants to declare their previous claims record. This might serve to deter repeat claimants if required under a statement of truth, and identify repeat claimants
- FOIL believes the new regulatory implementation timetable should be shorter rather than longer and should embrace all parts of the CMC sector, including the Credit Rehabilitation market

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- Regulation should not extend to include activity provided by outsourcers (as this can be effectively regulated through the outsourcer).

Each of the CSC and FOIL has agreed to provide their respective proposed draft amendments to the Bill next week.

DL Morey

15 November 2005