

Scant compensation



Kerry Underwood says the Compensation Bill is a good idea, but points out that claims managers will be able to run law firms

THE COMPENSATION BILL WAS LAID BEFORE

Parliament on 2 November 2005 and in spite of its title the only clause dealing with compensation is Clause 1. The rest of the Bill deals with the regulation of claims management companies. It is expected to become law next year.

Nuts and bolts

Clause 1 reads:

"1. A court considering a claim in negligence may, in determining whether the defendant should have taken particular steps to meet the standard of care (whether by taking precautions against a risk or otherwise), have regard to whether a requirement to take those steps might – (a) prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or (b) discourage persons from undertaking functions in connection with a desirable activity."

This provision is unlikely to change any court's approach to anything and is presumably just spin to make it look as though something is being done about the so-called "compensation culture".

No change?

Indeed the Department for Constitutional Affairs' Explanatory Notes state:

"This provision reflects the existing law and approach of the courts as expressed in recent judgments of the higher courts."

Quite.

Far more interesting is Part 2 of the Bill which deals with claims management services and goes way beyond what was expected both in terms of the severity of punishment and the extent of the activities and organisations caught by its provision.

Put very simply, anyone dealing in claims management services without being an authorised person, an exempt person or without having a waiver is liable to a maximum of two years' imprisonment and an unlimited fine.

Individuals acting otherwise than in the course of a business are excluded from the provisions of the Bill, (Clause 2(1)(d)), but this is a very narrow exclusion indeed, as Clause 2(4) defines anyone acting in the course of employment as acting in the course of a business and anyone who receives or hopes to receive money or money's worth as acting in the course of a business.

Thus any organisation is caught, whether or not charging a referral fee and whether or not a profit-making body.

Any individual acting in the course of employment is caught whether or not a referral fee is being charged and any individual receiving or hoping to receive money or money's worth is caught, although authorisation for an organisation will cover all of its employees. So the web is enormous, but exactly what activities are caught? Again the answer is surprising.

What is claims management?

Clause 2(2)(b) defines "claims management services" as meaning advice or other services in relation to the making of a claim and by 2(2)(c) "claim" means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage, whether the claim is or could be made:

- (i) by way of legal proceedings;
- (ii) in accordance with a scheme of regulation (whether voluntary or compulsory); or
- (iii) in pursuance of a voluntary undertaking.

By Clause 2(3), services specifically include financial services, financial assistance, services by way of or in relation to legal representation, referring or introducing and making inquiries.

The only exclusion is that of the giving of evidence by an expert or lay witness.

Thus those caught include barristers and their clerks, solicitors and their staff, Citizens Advice Bureaux, trades unions, law centres, student advice bodies, women's refuges, women's advice centres, mediation groups, inquiry agents, process-servers and any

charity dealing with any legal rights, for example, Mencap, Victim Support etc.

The DCA's commentary recognises that saying that the Bill does "apply to voluntary or not-for-profit organisations", and that the waiver could be exercised in relation to "for example, student unions or young persons' advice centres".

The commentary also makes it clear that employment tribunals and the Criminal Injuries Compensation Scheme are covered, so the end of non-lawyers in employment tribunals may be near.

I have little problem with any of this, but find it strange that the criminalisation of such activities and organisations, unless licensed, comes at the same time as the government proposes allowing anyone to run a law firm.

The Compensation Bill will become law before the Supermarket Solicitors' Bill. If you become licensed under the Compensation Act, surely you will be a "fit and proper body" to own a law firm.

Claims Direct plc, a stock-exchange quoted company, would undoubtedly have received a licence and would have been able to own a law firm. Likewise The Accident Group.

Would the public interest really have been served by such developments?

● Do you agree?

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