Keoghs

Financial Guidance and Claims Bill:

House of Commons Committee Stage

Submission from Keoghs LLP

1 February 2018

INTRODUCTION

1. Keoghs is the only top 100 law firm to focus exclusively on handling and defending both mainstream and specialist insurance claims. We offer an end-to-end claims service to insurers, public sector bodies and self-insured companies which includes pre-litigation, litigation and costs negotiation activities. Keoghs acts for nine out of the top ten UK general insurers, and with 1700 dedicated staff, is a recognised leader in its field. In the last 12 months we handled approximately 90,000 claims across all classes of personal injury claim.

EXTEND THE INTERIM CAP TO PERSONAL INJURY CLAIMS

2. As the Committee will be aware, the original Bill, as introduced in the House of Lords, has been amended through Clause 27 to allow an interim cap to be imposed in advance of the Financial Conduct Authority (FCA) taking over responsibility for claims management regulation.

3. This interim cap will remain in place until the FCA exercises its own fee-capping duty under Clause 25 of the Bill.

4. The interim fee cap will be enforced by the Claims Management Regulator (CMR) in respect of CMCs and the legal service regulators in respect of law firms.

5. We believe, given the Government has accepted the need for an interim cap on how much CMCs can claim from PPI claimants, that a similar cap should be introduced for Personal Injury (PI) claims and that the Bill should be amended to effect this change.

6. Our belief is based on consumer detriment. We have real concerns that a potential unintended consequence of proposed Government reform in the personal injury space will be a growth in CMC activity which, if unfettered, could drive an increase in claims frequency and cost. This will be at the expense of genuine claimants and those who pay for the compensation process, and will likely be

borne by everyone because it affects not only insurers but self-insured companies and local authorities too. We can, therefore, expect these costs to be passed onto the public by way of increased insurance premiums, higher tax bills, and more expensive goods and services.

7. Responsible, regulated and fee capped CMCs may be able to support access to justice. However, a fee cap must be set in place to control the excessive behaviours demonstrated by firms who see injured people simply as a valuable commodity and the claims process as a means to make excessive profits at the public's expense.

8. It is particularly important that this be introduced - as a matter of priority - for two reasons:

    a. The impending cap on PPI claims will result in CMCs looking at other areas to generate business, most likely in the PI arena. We would cite holiday sickness claims as a prime example of CMCs diversifying their activities with devastating effect and creating new and lucrative markets in a very short time span. This behaviour will be further exacerbated by the now announced Government deadline on submitting PPI claims of 29th August 2019.

    b. The impending increase in the small claims limit for PI will mean that CMCs will have more of a potential market to target because more claims will be taken forward without legal advice. This is dependent upon the timing of the implementation of the reforms, which, although officially stated to be October 2018, remains unconfirmed and unclear. The Government may consider that the personal injury claims portal is sufficiently straightforward for claimants to bring their own claims but history teaches us that in a very simple PPI claims process, more than 85% of claimants used a CMC[1].

9. We welcome the transfer of regulation of CMCs to the Financial Conduct Authority, but tighter regulation is not enough. The claims management industry is driven by economics and therefore imposing a limit on fees paid to and charged by claimants to CMCs is crucial to protect claimants. We would also say that:

    a. CMCs often provide little value to claimants; the work that they carry out doesn't require professional training and is limited in scope.

    b. CMCs are not and should not be viewed as a necessary part of the claims process.

    c. CMCs consistently overcharge for the work that they do carry out.

10. As it currently stands, a CMC can take any agreed percentage of damages away from their client - it is not uncommon to see CMCs charge 35% - 40% of sums recovered in PPI claims. These are not

[1] According to its Annual Review 2016/17, 85% of all the PPI complaints to the Financial Ombudsman Service were brought by CMCs.

Damages Based Agreements (DBAs) for which there already exists a cap; solicitors and CMCs use other forms of agreement to circumvent these regulations.

11. This model will likely be migrated to PI claims. Even after the Government's proposed introduction of tariffed damages, the opportunity to integrate credit hire and credit repair elements can mean that claims are worth pursuing by CMCs particularly in the absence of a percentage fee cap.

12. We believe that it is crucial to extend the fee cap for CMCs to PI claims (which should include noise induced hearing loss and holiday sickness claims). If this doesn't happen, the absence of a cap will fuel frequency and will drive severity – it is easy to see how CMCs, on a 40% fee of damages recovered, would be incentivised to maximise damages which in turn could lead to more fraudulent behaviour in the personal injury compensation arena. This could serve to undo much of what has already been done in this area by recent Governments and would be to the detriment of everyone affected. This would include claimants, the premium paying public, UK consumers through costs passed onto UK PLC and local authority taxpayers.

Keoghs LLP
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