

Tackling unjustified personal injury claims

Personal injury claims involving fundamental dishonesty

1. This clause reflects the Government's concern at the increase in the number of fraudulent and grossly exaggerated personal injury claims and the effect that this has on motor insurance premiums and the resources of local and public authorities and employers. The Government wishes to take action to deter dishonest behaviour and give a greater incentive to defendants and their insurers to investigate and challenge dubious claims for compensation.
2. This will supplement the work being undertaken by the insurance industry to tackle fraud, through initiatives such as the Insurance Fraud Enforcement Department (a specialist police unit dedicated to tackling insurance fraud) and the Insurance Fraud Bureau (created in 2006 specifically to tackle organised cross-industry motor insurance scams). Precise levels of fraud are unknown. The Association of British Insurers have recently published figures (not verified by Government) showing that 59,900 dishonest motor insurance claims were uncovered in 2013, an increase of 34% on 2012, with a value of £811 million (up 32% on 2012). These dishonest claims represent around 8% of all motor claims registered with the Compensation Recovery Unit in 2013.
3. There were around 775,000 motor personal injury claims registered to the DWP Compensation Recovery Unit in 2013/14, compared to around 520,000 claims in 2006/07, representing an increase of around 50% in claims. This increase has coincided with a 23% decrease in the number of road traffic accidents reported to the police - between 2006 and 2012 they decreased from 190,000 to 145,000, although trends in unreported accidents are unknown. Public liability claims such as for "trips and slips" have risen from around 95,000 in 2010/11 to around 104,000 in 2013/14 and employers' liability claims have risen from around 81,000 to around 105,000 over the same period.

What is the current position?

4. The current law, confirmed by the Supreme Court in the 2012 case of *Summers v Fairclough Homes*, gives the court the power to strike out the entirety of the claim where the claimant grossly exaggerates the extent of his or her injury, including any award for a genuine injury. Following this decision, a similar position would now apply in cases where the claimant is injured, typically as a car driver, and does not exaggerate his own claim but colludes with fraudulent "phantom passengers" who dishonestly claim they were in the vehicle and also injured.
5. However, the Supreme Court indicated that the power to strike out should only be exercised in very exceptional circumstances. In the *Summers* case the claimant was genuinely injured but fabricated the extent of his injury and claimed around £840k damages. The court held that damages of around £88k were appropriate for the genuine element of the claim. The Supreme Court held that the facts were not sufficiently exceptional to warrant strike out.

What are the proposed changes?

6. This clause provides that in any personal injury claim where the court finds that the claimant is entitled to damages, but is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the claim taken as a whole, it must dismiss the claim entirely unless it is satisfied that the claimant would suffer substantial injustice as a result.
7. This provision applies in both “primary” claims (for example where the claimant grossly exaggerates his or her own claim) and “related” claims (for example where the claimant colludes in a fraudulent claim brought by another person in connection with the same incident or series of incidents in connection with which the primary claim is made).
8. The clause also contains supplementary provisions:
 - to require the court to record in the order dismissing the claim the amount of damages that it would otherwise have awarded. This will assist if the order is appealed; in relation to working out what the claimant should pay the defendant in costs; and in the event of any subsequent proceedings being brought against the claimant for contempt of court or a criminal prosecution regarding the same behaviour;
 - to provide that where an order for dismissal is made, the court may only require the claimant to pay the defendant’s costs to the extent that they exceed the amount of damages recorded in the order. This is to ensure that the sanctions against the claimant are proportionate, and to prevent the defendant – who has in fact been negligent notwithstanding the claimant’s behaviour – from receiving a disproportionate windfall as a result of the case being dismissed;
 - to provide for the order for dismissal to be taken into account in relation to the disposal of any proceedings relating to the same dishonest conduct against the claimant for contempt of court or criminal prosecution. This will enable the court to ensure that any punishment imposed in those proceedings is proportionate.

BANNING INDUCEMENTS TO ISSUE PERSONAL INJURY CLAIMS

Introduction and current position

9. In addition to the provisions addressing fundamentally dishonest claims, the Government is also concerned that some law firms are helping to encourage exaggerated or fraudulent personal injury claims to be made by offering inducements to potential claimants. There is evidence that a number of lawyers offer money or gifts to those who issue a personal injury claim regardless of the strength of the claim. For example –

“If you bring a successful claim to X Solicitors you will be eligible for a free ipad”

*“On acceptance of your case we will pay you an upfront ‘welcome’ payment.
This payment is on top of your eventual compensation payment”*

10. This can encourage weak claims to be made which can in turn waste time and money. The Government is concerned about the impact such claims could have on motor insurance premiums.
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12. The Government therefore believes that solicitors and other legal services providers should be banned from offering such inducements; Claims Management Companies are already subject to a similar ban.

What are the proposed changes?

13. Provisions in part 3 of this Bill will therefore prohibit legal services providers from offering benefits to potential clients as an incentive to make a personal injury claim. The clauses will:
 - define what is considered to be an inducement; and
 - require regulators to monitor and enforce the ban as breaches of the ban will not be considered as a criminal offence.