



*All Party Parliamentary Group on*

---

**Insurance &**

---

**Financial Services**

**Report of an  
enquiry into the  
Compensation Bill  
and the  
Compensation  
Culture**

**November 2005**

[www.appgifs.org.uk](http://www.appgifs.org.uk)

## Introduction

**John Greenway MP**

**Chairman, All Party Parliamentary Group on Insurance and Financial Services**



There is a serious debate about whether we are in the grip of a compensation culture. Those on the receiving end of claims – insurers, local authorities and businesses – believe we are. Others, especially those who represent claimants, challenge the assertion that an American style compensation culture is sweeping the UK. We heard both views during our enquiry and can see both sides.

We are probably some way short of seeing a real compensation culture in this country but there are a lot of danger signs and certainly the fear of being sued is proving very damaging, especially in the education and voluntary sectors. Many of the claims that grab the headlines, however, are entirely spurious, promoted by claims farmers and others who operate in an unregulated environment.

Many of these firms offer poor service, charge exorbitant fees and often get in the way of genuine claimants who need access to expert advice and support. There are too many reports of horror stories of ambulance chasing, people being encouraged to submit dubious claims and then being left with debts for this sector to go on being unregulated which is why we welcome the sections of the Compensation Bill that propose regulating the claims management sector. This needs to be tough and all-embracing.

We are not so convinced of the need to create new statutory definitions of negligence as this could cause more problems than it solves.

The group is grateful to everyone who helped with this enquiry and we hope this report serves as a useful contribution to the debate as the Compensation Bill embarks on its Parliamentary passage.

## Contents

Background	.....page 3
Key Recommendations	.....page 3
The Compensation Issue	.....page 3
Referral Fees	.....page 3
Rehabilitation	.....page 4
The Compensation Bill, Part 1: negligence	.....page 4
Public Liability Insurance	.....page 5
The Compensation Bill, Part 2: regulation	.....page 5
Conclusion	.....page 6
List of those who presented evidence	.....page 7
Officers and contacts; Background on APPG	.....page 7

# Report of an enquiry into the Compensation Bill and the Compensation Culture

July – November 2005

## Background

The All Party Parliamentary Group on Insurance & Financial Services (APPGIFS) has been able to examine the subject of claims and compensation in more depth than any similar body in Parliament. We, as a committee, have decided that urgent action needs to be taken to address the problems surrounding the cost and administration of negligence claims which have emerged in recent years, and which have encouraged the compensation culture.

Some months ago – with the promise from government of a Compensation Bill this autumn – the group decided to take evidence from a range of organisations, both within the insurance industry and the legal profession, in preparation for the Bill when it eventually appeared.

We took evidence from various witnesses; insurers, lawyer trade associations, litigation funding and claims management organisations and other interested parties. We want to summarise briefly what the group has been told by the expert witnesses and offer an initial assessment of the Bill's provisions, including some observations on what issues may need to be raised during the Bill's Parliamentary scrutiny.

## Key Points

- Drop Part 1 on negligence
- Introduce immediate enabling powers to crack down on worst abuses
- Identify and fund an independent regulator as a matter of urgency
- Ensure that all entities offering claims management services and advice are regulated consistently
- Ensure that the relevant provisions of the Legal Services Bill are aligned with the Compensation Bill
- The Law Society should act now
  - i) to enforce the disclosure of referral fees to clients;
  - ii) prohibit its members from accepting referrals from any firm not currently regulated by the Claims Management Council; and
  - iii) draw up a strong Code of Conduct with the Claims Management Council

## The Compensation Issue

There are differences of opinion and emphasis within the legal profession about claims issues. These were highlighted during evidence.

However, insurers and organisations such as the Claims Standards Council (CSC) and Litigation Protection presented a united front on the scale of abuse within the claims services market and the need to confront the many unacceptable practices of some claims management companies (CMCs).

For example, the CSC drew attention to firms handling endowment mis-selling cases for which the firm takes a staggering 25% of the policy holder's compensation plus VAT. All this, of course, for an entitlement which is free to the policy holder and non-negotiable. Similar problems are now emerging in pensions mis-selling cases.

It was alleged that one CMC, in just three months after launching an advertising campaign, was now handling as many as 1000 endowment claims a week at an average value of £5500. The rewards for CMC involvement in this area are extremely lucrative and have triggered a feeding frenzy which the group believes is now out of control.

This scandal must be addressed with the utmost urgency. It is bad enough that other policy holders are, in effect, funding the compensation payments. For policy holders

to line the pockets of people exploiting this problem for their own personal gain, when they have made no effective contribution to the compensation entitlement, is completely unacceptable.

It is time that government and Parliament woke up to the fact that society as a whole is paying for such abuses, because insurers only have the money we pay in premiums. Yet judging by the way some of the CMCs operate you would think there was a bottomless pit just waiting for them to tap. All they need is a prospective client with a possible claim.

The many criticisms made to us included the nature of advertisements and leaflets, many of which promote "no win, no fee" services, seemingly designed to persuade potential claimants that they cannot lose. This has the effect of encouraging spurious claims.

## Referral Fees

We have received evidence of several situations where referral fees have been paid routinely to people such as breakdown truck drivers and others able to report accidents likely to have resulted in personal injury.

Among the lurid examples of bad practice was a company that was found to have removed NHS pamphlets from

a hospital, only to superimpose their logo and contact details onto them and return them to the hospital waiting rooms. Another bought an old ambulance and parked it outside a hospital entrance adorned with personal injury advertisements. Another company went so far as to advertise “Cash for Christmas” on their promotional material, offering £500 claims money up front.

Despite the grim nature of these examples the worst claims farmers are those which burden their clients with debts; firms have been offering accident victims “no win, no fee” deals but have then persuaded them to take out high interest loans to fund the costs of having to pay the other side’s costs in the event of a loss in court. If the claim is worthless, claimants are left with crippling loans. Even when some claimants have won their cases, such loans outweigh any compensation: one victim won £1200 compensation but ended up £2400 in debt.

The introduction of a claim is often made by a third party who deliberately solicits potential claimants at A&E departments, with the sole intention of receiving a referral fee. Some insurers complained of introductions having been made without the consent or knowledge of the injured party. Similarly, we were told that CMCs are regularly intervening in claims, at considerable cost to the insurer, which required no third party involvement for the claim to be met or, indeed, before an insurer had any opportunity to settle.

All these practices are eventually linked to the involvement of a legal firm. So the group is clear that solicitors are not absolved of blame, especially in the inappropriate payment of referral fees, or in the endorsement of leaflets offering claims management services. We had several complaints that the Law Society is incapable of regulating such activity or the unhealthy association of some solicitors with what were described to us as some very dodgy and ruthless people.

To quote from a letter to *Post Magazine* from Danny Fulton of Britannia Accident Assist, “If anyone was to blame for promoting a ‘compensation culture’ and for the rise in frivolous claims, it is the unethical solicitor – for it was they who administered or presented these claims and they were the route to this evil”.

## Rehabilitation

Another abuse drawn to our attention was the growing practice of farming out rehabilitation cases in return for a referral fee. The emergence of credit rehabilitation has given rise to fresh concern as people can be persuaded to borrow money on the expectation that they will be reimbursed by the insurer. All this is done without a proper assessment of the claimant’s needs or indeed whether the rehabilitation offered is even appropriate.

The group has been a strong advocate of the value of rehabilitation in getting injured parties back to work more quickly and in reducing claims costs. Where appropriate,

and provided there is proper individual assessment, it can be a win-win situation. Our concern is that this valuable development could be undermined by unscrupulous claims farmers intent on milking any potential claim for as much money as they can. This must be addressed in the appropriate statutory structure outlined in the draft Bill.

## The Compensation Bill – Part 1, negligence

The publication of the draft Bill and explanatory notes on clauses enable the debate to move on to a thorough examination of the legislative proposals both within and outside Parliament.

The Bill is in two distinct and unconnected parts. First there is a new legal definition to guide courts when considering a claim in negligence. The provision reflects existing law and approach as expressed in recent judgements of the higher courts. There is no better way of describing the intention of the provision than to read the Explanatory Notes; Commentary on Sections: part 1, section 1, paragraph 11.

*“11. Section 1 provides that in considering a claim in negligence, a court may, in determining whether the defendant should have taken particular steps to meet the standard of care (whether by taking precautions or otherwise), have regard to whether a requirement to take those steps might prevent an activity which is desirable from taking place (either at all, to a particular extent, or in a particular way), or might discourage persons from undertaking functions in connection with the activity.”*

This is not a new definition of negligence. So we ask what is the government hoping to achieve? Is it an attempt to deter frivolous claims? We are sceptical that it will have this effect because if it leads to more activity or fewer precautions or both, more claims could result. Perhaps it is meant to encourage organisers of public events or school trips to be less fearful of possible legal action if something goes wrong. Certainly that does appear to be the political thinking behind the Bill as evidenced by ministerial comment.

This is a view apparently supported by Julian Brazier MP who has been campaigning to make it easier for volunteers to organise events involving young people and physical activity, which involves a degree of danger. The Bill’s key clause was to introduce a “statement of inherent risk” which organisers could ask users to sign to ensure shared responsibility for the safe conduct of the planned activity. Mr Brazier has warned of the effects the threat of litigation has had on popular and legitimate sports bodies, recreational groups and importantly volunteers that help run them.

This may explain what the phrase “desirable activity” is intended to mean. But will it be assessed by a subjective or an objective test? A clearer definition might be sensible.

We can certainly anticipate that Parliament will analyse the issues in depth. It is also the case that the Bill's long title, "to specify certain factors that may be taken into account by a court in determining negligence", could leave open the possibility of significant addition to the draft clauses.

These might include clarification of what is meant by "precautions against" – does it imply that if the precautions are too expensive you do not have to take them if it would mean the activity would not take place?

Or what is meant by the concept of "whether a requirement to take steps might discourage persons from undertaking functions"? Does it refer just to the discouragement of volunteers resulting from the cost of taking precautions, or might it also include discouragement caused by the likely cost of potential litigation or the cost and availability of public liability insurance which many think is the single biggest deterrent.

And what is meant by the concept of preventing a desirable activity from being undertaken at all, to a particular extent, or in a particular way? Would this provide a defence in negligence where for example, teenagers on an outward bound course are asked to climb a rock face which may prove to be too challenging?

Another possible amendment might relate to a differentiation between the rights of trespassers as opposed to bona fide visitors.

Parliamentarians are certain to question whether the courts should be required always take these issues into account. So an amendment to change "may" to "shall" is certain to be proposed.

There is a very serious danger of expensive and time consuming litigation being launched to clarify the purpose of the Bill if Part 1 of the bill stands as proposed.

On balance, while there are ways of strengthening Part 1, the APPGIFS believes it serves little useful purpose: it should be dropped

## **Public Liability Insurance?**

We have already mentioned the suggestion that many public events or activities sponsored by both public authorities and private clubs do not take place because of the cost and availability of public liability insurance. So, in the first instance the decision as to whether this new provision will make any meaningful difference probably rests with underwriters. They are unlikely to change their opinion until courts have ruled on claims after the introduction of the new Act.

If all that the new provision does is reflect the existing law and approach of the courts we are left wondering what really is the point. Has anything really changed?

## **The Compensation Bill – Part 2, Regulation of Claims Management Companies**

We are much more positive about the second part of the Bill and the proposals for statutory regulation of claims management companies. This is the real focus of the draft legislation and we think it essential that the proposed framework works and achieves the desired outcome.

The Bill establishes a statutory framework for the regulation of CMCs. However the Bill does not in itself create the new regulator. It merely allows the Secretary of State to designate an appropriate person. He can only create a new body if he thinks that no existing body is suitable for designation.

It may be that this arrangement is intended to allow the existing Claims Standards Council to put itself forward for nomination as the regulator. We do not believe this is remotely good enough. The CSC has done a fantastic job in trying to bring order to the chaos of the claims services industry. But the CSC has no money and relies entirely on volunteers.

If the government wants the CSC to be the new regulator it should say so now. We think the better option is to create a new statutory body in the Bill and provide the resources needed for it to succeed. The Gambling Act 2005 created a new Gambling Commission and government provided resources for it to begin preparation for its work immediately after second reading. The same should happen here otherwise it will be years before the provisions of this Bill take effect and numerous consumers and insurers will be ripped off in the meantime.

We need to speed up the timetable for the commencement of the new regime to achieve what the DCA press release promised, to "clamp down on cowboy claims companies".

We are deeply sceptical about the prospect that Trade Unions and Citizens Advice Bureaux might be exempted.

Either way, exemption should only apply where there is an equivalent or better regulatory body supervising the firms concerned. For example, exempting insurance companies who currently think they are caught by the provisions might be appropriate as they are already regulated by the FSA. Similarly, TUC affiliated trades unions could be exempted if, say, the Certification Officer, can demonstrate an acceptable level of competence and an ability to deliver a strictly comparable level of regulation.

There must be a level playing field and, for the regulation to be comprehensive in its bite, we probably need a wide definition of claims services, so that all possible activity in this sector is caught by the Bill. This point may seem obvious but what is obvious is not always what the law provides.

We also want to see the regulator have proactive powers to supervise and police claims services properly and not merely follow up complaints received from the public or insurers.

There are other issues which the Bill might address.

Conditional fee agreements have fuelled the “have a go” culture. Arguably spurious and unfounded claims might be deterred if a claimant had to make a contribution, such as a risk excess payment. The Legal Aid Board used to sift claims. Ideally, we need a similar mechanism to stop silly claims being pursued which are so costly to insurers in time and money.

With legal fees now taking 40% or more of average claims costs maybe there is a case for limiting fees in a greater number of cases. At the same time that Parliament is being asked to approve the Compensation Bill to get a firm grip on the “non-lawyer” claims farmers, the Legal Services Bill proposes to allow “non-lawyers” to manage and promote the services of legal firms. This opens up the possibility of CMCs masquerading as lawyers, with the potential both for further abuse and the prospect of undermining the new regulatory regime.

This prospective loophole must be closed by ensuring that the two Bills work in tandem and not with the provisions of one Bill set firmly against the aims of the other.

There is also much more that can be done by the Law Society. We would like to see the Law Society issue an edict that solicitors must only deal with people offering claims services that are supervised by the CSC and, in turn, regulated by the new statutory body.

There is in any event the prospect of a criminal offence to cover such eventualities. More importantly, immediate stronger intervention from the Law Society would help to address and prepare the ground for the new statutory scheme.

We would like to see the Law Society and CSC produce a joint code of conduct for claims farmers as a matter of urgency, again with the aim of preventing abuse whilst the Bill is being passed. In keeping with rule 15, relating to the client care document, the code of conduct should perhaps include a requirement for solicitors to declare any referral fees paid by them to introducers. Some have suggested that this would be preferable to a prohibition on referral fees, as a prohibition would be difficult to police and could prove counter productive. Others think referral fees are unethical and should be stopped altogether.

Turning to the claims services companies themselves, there are several other trends which are a cause for alarm. We have been told that even since the Bill has been published, some CMCs have moved offshore to escape the eventual regulatory net while taking advantage of advertising and promotion opportunities before the statutory scheme takes effect. Similarly it is alleged that one CMC has created a trade union, though not one affiliated with the TUC. The ingenuity of these characters knows no bounds.

So it is vital that as well as dealing with current problems, the new regulatory framework must have the flexibility to tackle practices yet to emerge such as offshore internet sites.

But despite the gloom and the uncompromising nature of

much of what we have reported, there are many CMCs who want to change. While some insurers might choose not to agree, we think that they have to accept that there is a proper role for claimant representatives, not least because injured people have a right to pursue a valid claim in negligence and to be both compensated and helped back to health and fitness wherever possible. Often, people are at their most vulnerable when they have been injured and many find traditional law firms intimidating. Therefore, there will be a role for responsible and well regulated claims management companies in ensuring that claimants get proper representation and appropriate compensation.

## In conclusion

The claims record of insurers is not perfect. However, it is only to be expected that on occasions insurers will want to defend some claims and reduce the cost of claims paid. How else can the insurance industry ever hope to discourage spurious and fraudulent claims?

But if there is a proper role for claims management firms, then the people who offer claims management services should have nothing to fear and everything to gain from operating their businesses in a professional and transparent manner. They need to work with both insurers and the legal profession to establish and conform to regulatory standards which protect consumers, public authorities and insurers alike from the sharp and doubtful practices which characterise today’s claims services market.

The legitimate claims management companies themselves know that there are some ruthless and unscrupulous people out there who are in it for the money and nothing else; happy to sell the introduction of a victim – often an unwitting accomplice to their deception – to a firm of lawyers for cash, while contributing precious little else towards the process of handling the claim.

Are these the real ambulance chasers? We believe they are and it is time to put them out of business. The Compensation Bill presents us with a golden opportunity to do so.

*Published by Incisive Media plc on behalf of the All Party Parliamentary Group on Insurance and Financial Services. Haymarket House, 28-29 Haymarket, London SW1Y 4RX. November 2005.*

## List of those who presented evidence to the group

12 July 2005

David Marshall, former President, Association of Personal Injury Lawyers

Colin Ettinger, Immediate Past President, Association of Personal Injury Lawyers

12 October 2005

David Roberts, Managing Director, Aon Risk Management Services

Sebastian St John-Clarke, Media Relations Manager, Aon Risk Management Services

Dominic Clayden, Director of Technical Claims Services, Norwich Union

1 November 2005

Matthew Scott, Head of Liability Claims, Axa Insurance  
Brian Raincock, Managing Director, Litigation Protection Ltd

15 November 2005

Tony Burns-Howell, Chief Executive of the Claims Standards Council

Andrew Wigmore, (CSC) Policy Director

Andrew Underwood, President of the Federation of Insurance Lawyers

Laura Wilkin, Federation of Insurance Lawyers

Summary minutes of all meetings can be found on the group's website [www.appgifs.org.uk](http://www.appgifs.org.uk)

## Officers and contacts

**Chairman:** John Greenway MP, 020 7219 5483

**Deputies:** Baroness Turner of Camden

Vince Cable MP

Rt Hon Lord Hunt of Wirral

**Hon Secs:** Sir John Butterfill MP

Jim Cousins MP

Edward Leigh MP

### Technical Consultants

**PRICEWATERHOUSECOOPERS** 

**Contact:** David Morey, 020 7804 2684  
[david.morey@uk.pwc.com](mailto:david.morey@uk.pwc.com)

### Administration



**Contact:** David Worsfold,  
Group Editorial Services Director, Incisive Media  
020 7484 9752  
[david.worsfold@incisivemedia.com](mailto:david.worsfold@incisivemedia.com)

## The Group

The group was formed in January 1991 following an initiative by *Post Magazine*, the leading weekly magazine for the insurance industry.

As part of its 150th anniversary celebrations in 1990, the magazine set out to improve communications between the insurance industry and Parliament which were then at a low ebb. A series of major pieces of legislation has gone through

over the previous three or four years that had adversely impacted on the insurance industry and it was frequently the target of unjustified criticism by MPs and ministers.

Consultation with interested MPs led to the proposal to form an All Party Group and potential members from both the House of Commons and House of Lords were approached during the autumn of 1990 and sufficient numbers had signed up by the end of November for the formation of the group to be announced at *Post Magazine's* 2nd Parliamentary Reception. It held its inaugural meeting in January 1991.

The late Sir Robert McCrindle, who was the British Insurance Brokers' Association's Parliamentary advisor at the time, was the first chairman of the group. When he stood down from Parliament in 1992, another of the group's founder members, John Greenway, was elected chairman. Labour Peer Baroness Turner of Camden was elected as deputy chairman at the inaugural meeting, a post she still holds today.

In 1992 the group appointed Price Waterhouse as its technical advisers to provide briefings for its meetings and additional technical support, especially when representations have been made to the Treasury or other Government departments.

The group has tackled a wide range of issues over the years and has played a significant part in the formation of Pool Re, the introduction of equalisation reserves, securing compensation for people miss-sold home reversion plans and getting tougher action on uninsured driving. It meets frequently with the Financial Services Authority and a wide range of organisations representing interests in the insurance and wider financial services sector.

Its brief now ranges across the entire financial services sector, although the administrative and secretarial support is still provided by *Post Magazine's* publishers, Incisive Media.

All full list of members can be found on the group's website [www.appgifs.org.uk](http://www.appgifs.org.uk)