

Stop the Small Claims limit rise

James Maxey shares his views on why a rise in the Small Claims limit will fail to achieve the government's objectives, and will only serve to block access to justice for genuine claimants.



The Doctors Chambers Modern Claims Conference 2016 took place on 15th June 2016. Readers will be universally aware of the Government proposals to end the right of individuals to claim compensation for what they define as minor whiplash injuries and increasing the Small Claims limit for personal injury matters to £5,000. The Modern Claims Conference was one of the first opportunities that both sides of the debate had come face to face in open discussion on the topic.

The morning session started with a keynote address from the Rt. Hon Jack Straw who provided a scathing attack on Claimants in personal injury cases and their solicitors. The former Justice Secretary quipped that, "whiplash is an innovation of fertile legal minds which has no real foundation in medical knowledge. Everybody knows that the vast majority of whiplash claims are completely unjustified. I support any measures to eliminate soft tissue injuries".

I find Mr Straw's claims that whiplash is essentially the brethren of Claimant personal injury practitioners to be quite preposterous. A whiplash injury is defined in the World Health Organisation's International Statistical Classification of Disease and The Related Health Problems 10th Revision (ICD-10) as a sprain and strain of the cervical spine. It is a well-recognised medical injury, certainly not one born by lawyers.

Mr Straw continued that he would "ban whiplash as a basis of claims unless the Claimant was able to positively prove that they had sustained serious injuries". I would suggest to Mr Straw that this is exactly what Claimants who sustain whiplash injuries do when they present medical evidence from a neutral medical expert to Defendants, their Insurers/Solicitors and the Court. Mr Straw's comments did nothing but show how out of touch he is with the current legal market, but probably earned him a few pints from his mates at the Association of British Insurers (ABI).

I use the rest of this article to analyse these arguments and question the evidence put forward by the ABI.

Fraud

One of the principle arguments put forward by the Conservative Government and the ABI for the proposals to increase the Small Claims limit and remove the right to general damages for minor whiplash claims is that they say it will cut fraudulent claims. By the ABI's own admission, they suggest that 7% of motor claims in 2011 were fraudulent. The Government proposals of a blanket ban on claims for general damages in minor whiplash claims would affect 93% of genuine Claimants who had been injured as a result of an accident that wasn't their fault.

The above figure of 7% of cases being fraudulent quoted by the ABI is flawed to say the least. The ABI include what they define

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as suspected fraud within this figure, even if no proof is ever produced that an individual case is fraudulent. The Access To Justice Group, recently established to fight the Government's changes, believe quite rightly that cases should only be defined as fraud where there is a conviction, Police caution or a Judge has so ruled when adjudicating on a claim in Court.

One of the biggest problems in relation to fraud is the insurance industry's use of pre-medical offers. The only way for a Claimant to prove their injuries is through medical evidence and the use of pre-medical offers stops a Claimant from fully being able to prove their case. If the insurance industry is serious about combating fraud then they should test a Claimant's allegation of injury in every single case.

There are of course robust measures in place within the Court process, most recently involving the introduction of the terms "fundamental dishonesty" and its ability to trump QOCS provisions in personal injury cases. The Courts are therefore well equipped to deal with fraudulent cases and the current system of testing the evidence at trial could be better utilised by the insurance industry if they suspect fraud rather than settling cases without testing the evidence and later labelling it as suspected fraud.

Cost

One of the major attempts by the ABI to garner public support for these proposals is that both they and the Government say that it will reduce car insurance premiums by £40 to £50 per policy. In fact, this figure that the Government often quote is taken directly from an ABI's consultation documents, hardly to be considered neutral.

Readers will recall the ABI hailing that LASPO would cut the cost of motor insurance significantly. However, using the ABI's own figures, since the introduction of LASPO in the second quarter of 2013 average motor insurance premiums have in fact increased from £412 to £427 in the fourth quarter of 2015. No doubt there will be a similar effect if the Government's proposals are brought in.

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Number of claims

An oft sighted suggested effect of the Government's changes is that it will cut the number of personal injury claims made to stem what the ABI believe to be constantly increasing pool of personal injury claims that needs to be stopped in its tracks before it swells even further out of control. This is nothing but nonsensical and completely against current trends in relation to the number of personal injury cases being brought. Despite the ABI's assertion that personal injury cases are on the rise, between 2012 and 2014 the number of personal injury claims made fell by 1.3%.

The changes created by LASPO are still bedding in and I would suspect that claims will continue to fall year on year for the foreseeable future, as the changes properly affect the market.

Small Claims Limit Rise to £5,000

Unsurprisingly the ABI are entirely supportive of the Government's plans to increase the Small Claims Limit in personal injury cases to £5,000, even commenting that they believe that the limit should be increased to £10,000 but can "accept" the £5,000 suggested by the Government. The main argument they forward in relation to this is that the limit was set in 1991 and hasn't been revisited to take into account inflation since.

Claimant personal injury practitioners are not oblivious to this argument. It is of course understandable that there may well be a good reason to increase the Small Claims limit to take into account inflation. However, the ABI and Government's proposals for a 500% increase have been nothing more than cherry picked from thin air with no independent thought as to what a reasonable and sensible approach to increasing the limit would be.

Since 1991 inflation has increased prices by 105.12%. This means that in relation to the Small Claims limit, a fee set at £1,000 in 1991 should now increase to £2,051.22. The Government proposals are 5 times this level and no-one proposing or supporting this level of increase has provided any justifiable reason for the proposal.

Politicians and the ABI seem to be forgetting exactly why the Small Claims limit for personal injuries was set below that of other types of money claims. Personal injury cases are inherently more difficult to prove and a Claimant is required to present expert evidence to comment on the injuries that they have suffered. A Litigant in Person cannot possibly be expected to understand and draft the intricacies of a letter of instruction to a medical expert. Further, I find it highly unlikely that medical experts across the country will open their doors to instructions from Litigants in Person and many Litigants in Person will simply not have the upfront cash to fund an appointment with a medical expert and the cost involved in him drafting a report. This will effectively stop access to justice to millions of people who are injured across the country.

Brexit and the Future

With the vote that took place on 23rd June 2016, it brought about the demise of the main champions of these changes, David Cameron and George Osborne.

Theresa May seems to have signalled that going forwards the Government will place greater value on what's important for ordinary people rather than just the corporates and I hope that her Government will honour that commitment. The delay in this process caused by Brexit may just have given an opportunity for further debate and perhaps a bit of compromise on both sides of the debate so that the interests of genuinely injured Claimants can be looked after.

Conclusion

The Government and the insurance industry's proposals brought in through the back door, to remove the ability for innocent injured parties to claim compensation for "minor" soft tissue injuries, together with the proposals to increase the Small Claims limit for personal injury claims to £5,000, is a real threat to ordinary people up and down the country.

The type of case we typically see below £5,000 might involve, say a couple of weeks off work and soft tissue injuries giving pain over anything up to a couple of years or so. To be honest I can see how to some people with secure jobs, perhaps with long periods of sick pay allowed for under their contracts, could categorise this as minor. In the real world though what I see is clients who are told by the agency if they're ill not to come back. Even a couple of weeks or so out of work can put them behind with the rent and snowball into them having to leave their flat and put pressure on their family relationships. In the real world for the average Joe, £5,000 is not small.

Practitioners who deal day in day out for the rights of injured people will continue to campaign for the changes to be dropped. The campaign group Access to Justice (A2J) has done a fantastic job at collating the evidence to show that the reasons provided by the Government and the insurance industry for the changes is nothing more than farcical. The information collated by A2J can be found at accesstojusticeactiongroup.co.uk and I would encourage readers to visit the website and support the campaign. ●

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