

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT LEGAL SERVICES ACT 2007 (CLAIMS
MANAGEMENT COMPLAINTS) (FEES)
(AMENDMENT) REGULATIONS 2017

Tuesday 13 December 2016

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The Committee consisted of the following Members:

Chair: GERAINT DAVIES

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| † Adams, Nigel (<i>Selby and Ainsty</i>) (Con) | † Paterson, Mr Owen (<i>North Shropshire</i>) (Con) |
| † Allen, Heidi (<i>South Cambridgeshire</i>) (Con) | † Rees, Christina (<i>Neath</i>) (Lab/Co-op) |
| † Carmichael, Neil (<i>Stroud</i>) (Con) | † Smeeth, Ruth (<i>Stoke-on-Trent North</i>) (Lab) |
| † Drummond, Mrs Flick (<i>Portsmouth South</i>) (Con) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Eagle, Maria (<i>Garston and Halewood</i>) (Lab) | Spellar, Mr John (<i>Warley</i>) (Lab) |
| † Elphicke, Charlie (<i>Dover</i>) (Con) | † Whittingdale, Mr John (<i>Maldon</i>) (Con) |
| † Heald, Sir Oliver (<i>Minister for Courts and Justice</i>) | |
| † Jenrick, Robert (<i>Newark</i>) (Con) | Jennifer Burch, <i>Committee Clerk</i> |
| † McCarthy, Kerry (<i>Bristol East</i>) (Lab) | |
| † Opperman, Guy (<i>Lord Commissioner of Her Majesty's Treasury</i>) | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 13 December 2016

[GERAINT DAVIES *in the Chair*]

Draft Legal Services Act 2007 (Claims Management Complaints) (Fees) (Amendment) Regulations 2017

2.30 pm

The Minister for Courts and Justice (Sir Oliver Heald): I beg to move,

That the Committee has considered the draft Legal Services Act 2007 (Claims Management Complaints) (Fees) (Amendment) Regulations 2017.

May I say what a pleasure it is to serve under your chairmanship today, Mr Davies? I notice that you are wearing a Cubs scarf and woggle. I believe that that is in honour of the 50th anniversary of the Cubs—

The Chair: The 100th anniversary, so be prepared.

Sir Oliver Heald: The 100th anniversary, which as a Cubs ambassador I should have known. Anyway, I thought it was right to mention that, in the Christmas spirit.

As background to the regulations, the Legal Services Act 2007 (Claims Management Complaints) (Fees) Regulations 2014 allowed the Lord Chancellor to charge fees to regulated claims management companies to recoup the costs of the legal ombudsman's work handling complaints from consumers about claims management companies. It is right that the costs of handling such complaints fall on the claims management services sector, not the taxpayer.

The 2017 regulations will amend the level of fees set out in the 2014 regulations for the financial year beginning 1 April 2017 and for subsequent years. Revising the level of fees will ensure that the Lord Chancellor can accurately recover the costs of the legal ombudsman dealing with complaints about the claims management services industry in the 2017-18 financial year. In addition to the legal ombudsman's expected costs for that year, we need to take into account an over-recovery by the end of 2016-17. Taking both elements into account, the total cost of approximately £1.6 million—the exact figure is in the regulations—to be recovered from the market for 2017-18 is lower than last year's figure of £2.3 million. There has been a reduction in the size of the market since last year, but the assumptions about future market change that are used in our fee model are still valid. Taking into account the total to be recovered and the current market, the fees need to be reduced.

Hon. Members will be aware that we intend to move the regulation of the claims management services sector to the Financial Conduct Authority. In tandem, we intend to transfer complaints handling to the Financial Ombudsman Service. Until that happens, it remains appropriate for the legal ombudsman to deal with complaints in the sector. Hon. Members will welcome

the fact that the legal ombudsman's costs related to complaints about regulated claims management companies continue to be met by the claims management services sector, in the same way that the costs related to complaints about legal services are met by the legal sector. However, fees need to be reduced where appropriate, to ensure that the fees charged mirror the actual cost of the legal ombudsman handling the complaints as closely as possible.

I commend the draft regulations to the Committee.

2.33 pm

Christina Rees (Neath) (Lab/Co-op): It is always a pleasure to serve under your chairmanship, Mr Davies. May I say how splendid you look?

I thank the Minister for his explanation of the regulations. I confirm that we do not oppose them, but I should like to make some observations and ask some questions. As he said and as the explanatory notes state, the Legal Services Act 2007 extended the complaints handling remit of the legal ombudsman to claims management companies. There is currently no designated claims management companies regulator, so under section 5(9) of the Compensation Act 2006, that role falls to the Secretary of State for Justice. The 2007 Act treats the designated regulator as an approved regulator.

Last year, the then Chancellor announced an independent review of claims management regulation. It was published in March this year, and it was announced that the Financial Conduct Authority would assume regulatory responsibilities. Will the Minister indicate when that will be done? The Brady report said:

“Despite incremental reforms and improvements to the regulator's powers and rules since its creation, there is a widely held perception among stakeholders and government that there is widespread misconduct among Claims Management Companies (CMCs).”

The report found that many stakeholders felt that the current arrangements lacked the powers and resources to supervise CMCs properly. They believed that many CMCs took speculative cases. Many ordinary consumers did not understand precisely what CMCs offered; they did not know what alternatives existed. There is a lack of transparency in the way in which CMCs conduct their business and market themselves to people. Many people who contacted them or were contacted by CMCs were concerned about the mis-selling of payment protection insurance, and consumers were left confused about the PPI complaints process.

The Brady report also said:

“CMCs deterred many potential future complainants from pursuing complaints...through their persistent phone calls and encouragement to complain.”

Nuisance calls and text messages were common conduct complaints identified by the review, and were the result of unenforced data protection breaches. That is the type of behaviour that other professionals in the industry have called to be banned.

In June this year, the Association of Personal Injury Lawyers launched its “Can the Spam” campaign. As it pointed out, solicitors are not allowed to cold call, but CMCs are allowed to do so, within the rules and guidelines that apply. APIL says that the rules are difficult to navigate, and it has called on the Government to ban cold calling and spam texting for personal injury claims. I would be grateful if the Minister looked at that issue again.

What is the difference between authorised and non-authorised CMCs, and what is the incentive to become an authorised CMC? I am concerned that the claims management regulator cannot pay compensation, nor order a CMC to compensate a claimant if they have had poor service. Does that apply both to authorised and to unauthorised CMCs? The claims management regulator report for July to September 2016 states that for April and June 2016 it started 12 investigations into authorised CMCs and 13 into unauthorised businesses. Are those businesses all CMCs? It cancelled 74 licences, issued two financial penalties and 50 warnings, and conducted 100 audits and 245 visits. Will the Minister confirm whether those enforcements apply to authorised or unauthorised CMCs or unauthorised businesses?

The claims management regulator found that when the ban on referral fees came into effect in April 2013, the number of CMCs fell from 1,900 to 803 by the end of September 2016. Are those authorised or unauthorised CMCs, or unauthorised businesses? During the last quarter, the claims management regulator issued non-compliance notices to 53 CMCs and 13 warnings to CMCs continuing to operate the referral fee practice. Will the Minister confirm what further action the claims management regulator can take to stop that practice?

The 2013 inquiry by the Select Committee on Transport argued that an increase in the small claims limit could create a bigger gap in the market for CMCs to operate in. The November 2016 consultation document entitled “Reforming the Soft Tissue (Whiplash) Claims Process” is mindful of this risk at paragraph 103:

“The government is considering the issue of the potential for claims management companies (CMC) and paid McKenzie Friends to re-enter the PI market in response to these reforms in general, and the increase in the small claims limit in particular. These types of organisation can offer services to claimants whilst operating with lower overheads than many PI lawyers.”

Elsewhere in the consultation document, option 3, which raises the small claims limit to £5,000 from £1,000, with the total settlement remaining at £10,000, for all personal injury claims and all road traffic accident claims, is deemed to have a positive impact on CMCs. Paragraph 2.135 of the consultation’s impact assessment states:

“There may be the potential for a rise in CMCs seeking to enter the market to support LIPs”—

—litigants in person. Has the Minister taken into account the potential rise in CMCs and in complaints against CMCs, following the introduction of the increase of the small claims limit, which may happen before the 2017-18 fees are due to be recovered on 31 March 2017?

Based on the latest data from the claims management regulation unit, it is estimated that a total of about 1,450 CMCs will be authorised at the time of renewal of authorisation in February 2017 and that about 20% will exit the market before paying their regulatory fees and fees related to the complaints handling function of the legal ombudsman. There is a risk that the Lord Chancellor will be unable to recover the full costs incurred if additional CMCs fail to pay the annual fee. If that occurred, the Lord Chancellor would have to meet the shortfall.

What action can the claims management regulator take to enforce recovery of annual fees for CMCs and unauthorised businesses? What was the percentage of unrecovered fees in 2015-16? Was that taken into account

when the calculation of over-recovered fees was made? I thank the Minister for presenting the statutory instrument to the Committee and look forward to his response.

2.41 pm

Sir Oliver Heald: I thank the hon. Lady for her speech and will certainly try to answer all her points. I will examine the record, and if I have missed any I will write to her.

The regulations apply to authorised CMCs. Unauthorised CMCs can be tackled in other ways, and there are even criminal sanctions for not being authorised. We are talking today about the authorised ones. Companies left the market last year, so there was an under-recovery of £500,000 in 2015-16. This year, we have made an adjustment that takes account of the under-recovery and therefore in 2016-17 there has been an over-recovery. In essence, each year an adjustment is made to ensure that if there is an under-recovery, it is recovered in the next year, and if there is an over-recovery, the fees go down. That is what we are doing today.

We aim to transfer complaints from the legal ombudsman to the Financial Ombudsman Service because the transfer of the regulation of claims management companies from the claims management regulation unit to the Financial Conduct Authority means it would be better placed there. The transfer will not take place before April 2018, and we are currently working with the legal ombudsman, the Financial Ombudsman Service, the Treasury and the Financial Conduct Authority on the detail of the transfer, which may require some legislation.

The hon. Lady asked how the claims management regulation unit has been getting on. Overall, it has done a good job. The unit has made concerted efforts to crack down on rogue behaviour. Some 1,400 licences have been removed. Fines of more than £2 million have been issued since obtaining the power to impose financial penalties at the beginning of 2015. Proposals are being developed to cap the fees that regulated claims management companies providing financial claims services can charge to consumers. All that action is designed to better protect consumers, to deter CMCs from predatory marketing and to help organisations that are on the receiving end of unsubstantiated claims.

Maria Eagle (Garston and Halewood) (Lab): I am interested to hear those numbers. Is it the Minister’s understanding that that is what has led to the unexpected amount of activity from claims management companies, or does that just that happen year to year anyway?

Sir Oliver Heald: It does happen year to year, but there is no doubt that the market is changing and seems to be contracting. That is the overall picture, but there are yearly fluctuations.

It is obvious that regulation should be moved to the FCA. The idea is to have a more effective regime that drives out bad practice. As I mentioned, we have consulted on proposals to cap the level of fees; this is another step to help consumers. The Government aim to establish a tougher regulatory regime by transferring the responsibility to the FCA, re-authorising all the CMCs under the new regime and holding their managers to account for the

[Sir Oliver Heald]

actions of their businesses. That will mean more individual responsibility in the system, but it will take a little time to work through the issues.

On whiplash reform, which the hon. Member for Neath mentioned, the fee model considered whether the proposed changes to whiplash would have a material impact on the market for 2017. We are still consulting on that and we are not yet entirely clear that we have taken all views on board, but the proposed changes may not be in force for that year and we have gauged that they are likely to have minimal effect. Clearly there is

the power every year to go through the exercise of seeing whether there is an over or an under-recovery, so there should be no question of the taxpayer losing out. In fact, that is a very important part of this scheme: the payments should come from the sector, not from the taxpayer.

I hope that I have covered all the hon. Lady's points, but I will check the record and write to her if I have missed any. I hope that that is acceptable.

Question put and agreed to.

2.47 pm

Committee rose.