



Partners in Costs gets first access to the A2J response to the government's whiplash consultation. Martin Coyne, Access to Justice, reports.

as Partners in Costs magazine went to press, MoJ officials managing the whiplash consultation process were contemplating a huge pile of submissions. Personal injury lawyers, defendant lawyers, campaign groups, insurers, credit hire companies and trade associations... In fact, the officials will have to wade through submissions from every part of the claims industry wanting its two-penny halfpenny-worth on this most contentious of issues.

Access to Justice (A2J) hand-delivered its 35-page submission, accompanied by detailed economic reports that take the Government to task on the true level of savings it should expect to achieve and an investigation of the economic impact of the reforms on jobs and the economic value that would be lost if the reforms become law.

A SECTOR WITH CLOUT?

It has become clear from A2J's investigations that the personal injury sector carries considerable economic clout. Legal firms employ 27,800 workers for activity related to personal injury compensation cases. Yet personal injury related work is not just confined to solicitors and law firm employees; it comprises legal firms, claims management companies, medical reporting organisations, insurance claims companies and after-the-event insurers. Overall, Capital Economics, the macroeconomics consultancy that carried out the work, estimates that activity related to personal injury cases directly provides more than 44,000 jobs.

To put this into context, our industry is bigger than the UK beverage industry and is nearly three times the size of Vodafone, one of the biggest blue chips on the FTSE. Economic activity related to personal injury cases is spread across the United Kingdom but there are particularly large clusters around the cities of Manchester, Liverpool and Sheffield.

An additional 40,000 jobs and £2.1 billion of value added to the British economy is supported by the spending of companies on their suppliers and the spending of personal injury employees on goods and services from businesses across the country.

The UK Government flew Business Secretary Sajid Javid to India to plead the case of the steel workers of Port Talbot - all 10,000 of them - but our own minister, Justice Secretary Liz Truss, wants to decimate a legal sector that she's meant to protect and nurture. In the government's analysis of the reforms, signed off by Ms Truss, the Government stated: 'Those providing services (lawyers, medical experts, Claims Management Companies) are assumed to find alternative activities of equal economic value.'

The Justice Secretary makes the egregious assumption that all those people she puts out of work will find another job immediately and at no cost to the taxpayer which is plainly ridiculous.

Those at risk from these reforms are not fat cat lawyers but ordinary people, with kids and a mortgage, who earn an average annual salary of £30K. In other words, just the sort of people who the PM has promised to listen to.

To add insult to injury, it has also become clear that the only beneficiaries of these draconian and ill thought through reforms will be the mighty insurance industry. The insurers already have form: the Government pushed through a raft of legal reforms in 2012 (LASPO) which have saved the insurance industry in excess of £1bn annually. None of those savings have been passed through to customers. Instead, the last two years have seen a rapid rise in motor premiums, which are now higher than at any time since 2012.

Where the current reforms are concerned, less than one per cent of UK motor insurers (two from approximately 300) have pledged to pass on any further savings and neither insurer has said how they will do so. Consumers will be rightly forgiven for suspecting that they will receive little or no benefit at all. A2J found that 77% of the public don't trust insurers to hand back any savings.

In the meantime, insurers remain under investigation by the Financial Conduct Authority for actively seeking arbitrarily to increase their customers' premiums through the renewal process year on year.

Whether these facts cut any ice with the Justice Secretary is moot but notwithstanding the risk to jobs (and there's zero evidence that insurers will keep their word) Ms Truss' proposals drive a coach and horses through important principles of civil justice that have been part of the UK's DNA since the 7th Century.

THE REALITY

The government's proposals discriminate against those injured claimants who have physical or mental disabilities and who require the assistance of a solicitor to help properly calculate and recover their losses. Consumers facing travel delays will be able to obtain hundreds of pounds of compensation and have been encouraged by the government to do so.

However, people who suffer psychological trauma from a non-fault personal injury claim will get £25. And that is all personal injuries, not just RTAs as originally announced.

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The truth is that consumers will get a terrible deal from these reforms:

- The proposed £5,000 small claims limit will create significant financial detriment to all but particularly to lower income groups. As £5,000 represents more than three months' take-home salary for the average worker in England and Wales, it could not reasonably be described as a 'small' claim.
- The removal of the right to compensation for soft tissue injuries and a huge increase in the small claims limit will de facto result in less compensation being paid out. It will also prevent injured people being put into the same financial position they were in immediately before their accidents.
- Injured claimants will have to seek restitution as litigants in person (LiP), something most will be unwilling or fearful about undertaking without appropriate legal advice. This creates a further imbalance of power between the LiP and the insurer in favour of the latter.

A2J is not, however, the party of 'no.' We support the government's desire to reduce the incidence of fraudulent and frivolous claims and get rid of the modern day scourge of cold calling. We just don't believe the government's solution is the right one; it is too skewed to insurer profitability.

OUR FIGHT

We have developed an Alternative Claims Framework (ACF), a better approach that achieves the government's objectives and which can be implemented quickly without the need for legislation. The principal elements incorporate:

1. Raising the small claims limit by CPI from the date of the last increase in 1999 and indexed for the future
2. Reduce the time to process RTA claims through the portal to 12 months
3. Ban pre-meds
4. Adopt the Brady report recommendations
5. Adopt, with one or two provisos, the Insurance Fraud Taskforce recommendations

A2J calls on the Government to establish a working group, independently-chaired, incorporating the leading actors in the claims industry - to bring this reform package to an agreed conclusion which all can buy into.

Martin Coyne is the Chair of A2J.

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