National Audit Office enquiry into vulnerable consumers in regulated industries

Thompsons Solicitors' response

November 2016

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SOLICITORS

STANDING UP FOR YOU

Evidence from Thompsons Solicitors

Introduction

Thompsons is a UK-wide law firm specialising in personal injury and employment law. At any one time we will, as a firm, be handling over 10,000 employment cases and we run over 35,000 personal injury cases every year.

Thompsons will only work for claimants and, unlike most other solicitors, will never work for defendants, employers or insurance companies. We therefore have a wealth of experience in supporting claimants dealing with the regulated insurance industry and the effects some of its behaviour has on victims of accidents that were not their fault or mistreatment by an employer – people who are inherently vulnerable.

In our evidence we set out some of our concerns about the way the insurance industry works to the detriment of consumers, whether those consumers, being injured, are manifestly in a state of vulnerability or whether through the treatment of consumers (their policy holders) generally.

Regulation

Given that the motor insurance industry sells a compulsory purchase product and there are five companies that control 52% of that market, one might expect it to be subject to a high level of independent scrutiny. However, in our experience the fact that (or perhaps because of the fact that) there are five organisations[1] with responsibility over regulation and standards in insurance, none takes on the necessary overall responsibility to provide a genuine level of consumer protection or see it as their responsibility to drive up standards across the industry. Working with Richard Burden MP to have the profits being made from motor insurance by Axa and Aviva published, we found that the Financial Reporting Council was not willing or able to take action regarding concerns about the way insurers were

[1] These include:

1. CMA www.gov.uk/government/organisations/competition-and-markets-authority
2. Financial Ombudsman Service www.financial-ombudsman.org.uk
3. FCA www.fca.org.uk
4. FRC www.frc.org.uk
5. Trading Standards www.tradingstandards.uk/policy/consumerinsurancelaw.cfm

Rising premiums and high profits

If a market is 'intensely competitive'[2] (as the minister described it as in Hansard on 18 January 2016) then you would expect the cost of the product or service to be kept low and driven down.

In car insurance – a £15bn a year market in the UK – despite protestations about the rising costs of doing business said to be related to various trends including so-called 'fraud' and increasingly complexity of motor cars, many providers are registering high profits and paying out sizeable dividends to their shareholders.

Direct Line increased its UK motor insurance operating profit by 14% to £338m (2014: £297m). In the first six months of 2016, Direct Line's motor profits fell 7% to £169m, but this did not deter the company from increasing its half-year dividend by 6.5% and awarding a special dividend at a combined cost of £204m. Admiral increased its UK motor insurance profit before tax by 11% to £443m (2014: £398m). In the first six-months of 2016 Admiral's profits from the UK motor market rose on the back of a substantial increase in market share. Compared to the same period in 2015, half-year profits rose 2% to £223m, while revenue and customer numbers were up 16% and 11% respectively. Admiral increased its half-year dividend by 23%, taking the pay out to £175m. On claims, it said the UK had seen "positive claims cost development in the first half of 2016".

The Association of British Insurers (ABI) figures show that from 2010 to 2015, government reforms have given the insurers a £2.5bn windfall (on the back of a fall in claims pay-outs of 30%).

The insurers claim they have passed on £1m in savings to consumers since 2010 yet premiums have continued to rise – they rose in the 12 months to the end of September 2015 by 9.2%.

Contrary, therefore, to what one might expect to see in a market with strong levels of competition between providers, the motor insurance sector with 52% of policies being written by five large companies is benefiting from flat competition where all ships rise thanks, in great part, to its compulsory purchase status, as well as government changes to legislation – not least the latest proposal to increase the small claims limit on victims of road traffic accidents. Perhaps the motor insurance market is not as competitive as the minister suggests and the consumer is suffering as a result.

[2] http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-12-16/20373/

The claims process

In 2010 the government accepted all the recommendations for reform of the personal injury claims market in a report from Jackson LJ. The only change to his recommendations was (following a private meeting between the prime minister and the chancellor of the exchequer and the insurance industry at Number 10 Downing Street) an effective halving of the suggested fixed amounts payable by insurers to injury victims for their legal costs.

The impact of those changes can be seen in ABI figures that show the net cost of claims fell again last year for the fifth consecutive year meaning a saving to the insurers of £2.5bn since 2010.

Not satisfied with the immense savings already achieved the insurers are now seeking further reform with potentially seismic implications for vulnerable consumers.

In 2015's Autumn Statement the government used whiplash claims and concerns with supposed levels of fraud to propose an increase in the small claims limit, a quintupling to £5,000.

The 'grounds' for £5,000 being proposed as the new limit are that it was the old limit for small claims if you had say a dispute over a washing machine (the limit for that is now £10,000).

The insurers, in pushing for the change, have chosen to ignore that there has always been a distinction between injury claims and other civil claims for many reasons including the asymmetric relationship between injury victims and large insurers, the need for expert medical evidence whilst injury claims affect people's livelihoods and have an impact on society – there is a cost to the NHS, society wants people productively back at work as soon as possible and, for workplace injuries, a long drawn out dispute or an individual left feeling 'short changed' does nothing for industrial harmony. This distinction was recognised in the report from Jackson LJ referred to and he recommended no change to the £1,000 limit.

The insurers, in threatening to remove legal cover from injured consumers, have conveniently ignored that if you applied RPI or CPI to the current small claims limit of £1,000 since it was last changed in 1999 it wouldn't be anything near £5,000. And the insurers have produced not a shred of independent evidence to show that an increase is justified.

The insurers have talked of 'fraud'. But there is no agreed definition of fraud and even on their figures it's only 5% of policy holders and yet 100% would be impacted by a rise. It is noticeable that the simple solution to fraud – not paying out – is being ignored. And it is interesting that no insurer despite publicly commenting on fraud has reported it as a problem in their annual returns.

Whilst the Ministry of Justice announced on the 13th of October 2016 that it was to review these proposals the fact that the insurance industry continues to publicly call for them, relying on highly questionable and self-generated figures and claims, suggests that the consumer made vulnerable by injury remains under threat.

If the small claims limit was increased to £5,000, the vast majority of all personal injury claims would fall within the new limit. Accident victims would either be at the mercy of the insurance companies who would dictate their entitlement, if any, or subject to targeting by aggressive claims management companies who often do not act in their client's best interests.

We have dealt with many people who, following their accident, have been pestered by third party claims management companies with multiple letters each week and unsolicited phone calls. These are sales techniques that prey on people at their most vulnerable.

Until now successive governments have resisted the pressure from the insurance industry to increase the small claims limit, which prevents victims of accidents accessing free and independent legal advice unless they are prepared to pay for that out of compensation meant for their injuries and losses. Instead they have accepted the recommendations of evidence based inquiries such as the comprehensive report from Jackson LJ. The net effect of retaining the limit has produced a market where consumers are made more vulnerable following accidents only in the small number of cases where their claim falls below £1,000.

Any increase in the small claims limit – whether limited to a sector of the market such as road traffic claims or more widely across all injury claims – would detrimentally affect people in a highly vulnerable state, having recently been injured.

The government (and the insurance industry) has described injuries which would be in the proposed new small claims track as 'minor' but our experience shows that in reality, injuries which may receive relatively small amounts of compensation may nevertheless have severe, painful consequences for victims which can last well beyond the period of their physical injury.

Case Study:

We secured compensation for a 73-year-old woman after she was knocked over by a van in a supermarket car park in Bath, knocking her to the ground and cutting the back of her head open. The woman was left with bruising on her face for a month after the incident as well as acute pain to the back of her head from the cut for almost two months. Her physical injuries healed, but she still suffers psychologically and has visited a therapist to manage her post-accident anxiety. Because she received less than £5,000 in damages, under the proposed increase in small claims, this client would have had to face the insurers without any legal help.

Any change in the small claims limit would leave people who are already vulnerable made more so by losing their ability to procure free or affordable independent, expert legal representation.

In the absence of proper legal advice consumers will be made vulnerable through their lack of knowledge regarding how much their case may be worth. We find that injured people will often accept settlements that insurers deem appropriate or not pursue a claim at all. They may also decide to continue with their action, but do so alone. Being a litigant in person, up against a highly resourced insurance-backed legal team, has obvious implications for the quality of outcome for the injured party.

We understand that an insurer will want either for their insured and in order to deliver a profit to their shareholders – to ensure that any payment is as low as possible. Without a lawyer to support them, it is likely that the injured consumer will succumb to the natural advantage the well-equipped insurer holds. Going to court is a highly stressful and difficult experience. Sensibly, therefore, many accident victims seek opportunities to settle their case before it gets to court. However, outside the courtroom and throughout the claims process, the insurance industry exhibits behaviours which are not always in the interest of the vulnerable claimant.

Pre-Medical Offers

As a firm we regularly have to advise clients on 'pre-medical' offers. Taking advantage of many injury victims' natural instinct to 'get things over with', insurance companies make low-ball settlement offers which do not reflect the true value of the injury sustained. Often these offers are made before any medical reporting is carried out hoping that the claimant may be tempted to accept them without being aware of the extent of their injury and the financial implications of it.

Pre-med offers are another example of how insurance company behaviour can be to the clear detriment of vulnerable consumers.

Case Study:

In 2012, Enid and Donald Winterbottom were badly injured in a car crash. Their legal expense insurer's solicitors, Cogents, started a claim without consulting the couple, projecting that they would recover in seven months. However, Cogents failed to take proper instruction, missed the long-term effects of Enid's injuries and were unhelpful in explaining the process to the couple. Donald was made aware of Unite's Legal Service and Thompsons Solicitors, who pursued a claim of compensation on their behalf. Thompsons secured a settlement of £8,000 – four times the amount estimated by the other firm.

Consumers living in Black and Minority Ethnic areas

Earlier this year, Thompsons commissioned independent research company Webber Phillips to examine whether people living in multi-ethnic districts pay higher than average car insurance premiums, and therefore whether consumers are made vulnerable by virtue of their ethnic background. The result of the analysis found that there is an ethnic penalty for all consumers who live in multi-ethnic districts varying from £50 per annum up to £458.

The variations cannot be accounted for by prevalence of crime, fear of crime, available claims data, or by relative affluence. In certain subsets, the correspondence between high premium levels and postcode areas with a high ethnic minority prevalence rises to 90%, meaning that the penalty in these areas is almost entirely accounted for by ethnicity.

Car insurance premiums are calculated by car insurance providers and this calculation is not made transparent. Following the report from Webber Phillips we believe it is important that insurers are open about how premiums are costed in order to demonstrate that consumers are not subject to higher charges due to protected characteristics.

The process of premium setting has definitely produced an inequality of outcome to the detriment of BME groups. Insurance providers need to urgently examine their procedures to demonstrate that they are not imposing an ethnic penalty. Other companies and sectors have, when faced with evidence of this kind, carried out investigations and made changes to procedures[3], the ABI has simply dismissed the report out of hand. We have shared this research with the Equality and Human Rights Commission.

The consumer group Which? also found that being born overseas can add as much as £227 to a car insurance premium[4]. Motorists who were born overseas, and whose first language isn't English, may be vulnerable to being charged higher premiums by insurers.

Auto-renewals

Aside from concerns about opacity in how insurers cost their premiums – where there is often a lack of logic in how a policy-holder's circumstances translate into a particular premium – motor insurers have also been accused of taking advantage of existing customers through the auto-renewals process.

The law – the legal requirement for drivers to have car insurance – encourages policy holders to sign up to auto-renewal agreements given the serious potential consequences of mistakenly allowing a policy to lapse. However, it is also well known that insurers often charge customers with auto-renewal policies a higher premium than those without. Repeat, loyal, customers are therefore losing out financially.

This is not a dynamic unique to motor insurance. Yet it is a worrying one – particularly as it may often be elderly policy holders who don't have the know-how or energy to change their provider, or negotiate with their existing one, on a yearly basis.

[3] https://www.newscientist.com/article/mg23130842-200-is-tech-racist-the-fight-against-software-that-discriminatesis-tech-racist-the-fightback-against-digital-discrimination/
[4] http://www.which.co.uk/news/2016/09/insurers-in-breach-of-equality-law-says-which-451531/?cmp=RSS-NEWS_451531

Employment Tribunals (ET)

Employees who lose their jobs or are subject to discrimination must, by definition, be vulnerable. Given that their only remedy, in the absence of employer contrition, is a claim in the Employment Tribunal, the vulnerable have been hugely adversely impacted by the decision of the last government to introduce fees in Industrial Tribunals.

The House of Commons' Justice Committee published a report in June 2016 which was highly critical of the level of ET fees introduced, and concluded that they had led to an undisputed drop in claims – which, in turn, has had a "significant adverse impact on access to justice". The figures are startling: there has been between 60% to 70% drop in claims in the ET since fees were introduced. The drop in claims from the disabled and in discrimination has been particularly marked: 63% fewer disability discrimination cases were heard at employment tribunals between the second quarter of 2013/14 (pre-fees) and the second quarter of 2014/15 (post-fees)[5].

Tribunals were originally intended to provide a relatively cheap, speedy and informal means of settling employment disputes between employees and employers. However over the years tribunals have become more legalistic and complex. Employers, taking advantage of their inbuilt superiority in resources, have always been far better placed to defend ET claims than the vulnerable and disadvantaged are to pursue them. That imbalance is now even starker after the introduction of fees.

Conclusion

We believe there are a number of ways in which the insurance industry and employers are deliberately or unconsciously producing bad outcomes for vulnerable people in the UK and they are pressing the government to make changes that will make this much worse.

We have also found through experience that the regulatory bodies – designed to protect vulnerable consumers – are simply not doing enough to prevent insurance companies from behaving in a manner that is unacceptable, and strongly recommend that the motor insurance industry is placed under much more rigorous scrutiny.

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[5] https://www.tuc.org.uk/equality-issues/workplace-issues/employment-rights/tribunal-fees-denying-harassed-and-abused-workers