

Legal Aid, Sentencing and Punishment of Offenders Bill

Thompsons Solicitors' evidence to Public Bill Committee

About Thompsons

Thompsons is the UK's most experienced personal injury law firm. It has a network of 28 offices across the UK. At any one time we will be running 70,000 claims on behalf of people who have been injured at or away from work, through no fault of their own.

The impact of The Legal Aid, Sentencing and Punishment of Offenders Bill on justice for injured people:

The end of Polluter Pays

- The reforms end the principle of “polluter pays”, which is the cornerstone of access to justice.

25% of good but difficult cases pursued today won't be in future

- Thompsons' criteria for fighting a case is that it has to have a 50/50 chance of success.
- In some accidents, such as a rear end shunt car accident, working out liability is straightforward as it is obvious who was at fault. In other cases liability is not so clear cut. Some, such as disease cases or a claim with more than one defendant or today's test cases that make new law for thousands of tomorrow's victims, may fail altogether or merit investigation but are ultimately turned down.
- There is a cost to investigate but turn down a claim and a cost where a case is lost. The reforms remove any funding in those circumstances.
- Thompsons calculates that if the reforms are introduced as proposed, the lack of a success fee will mean 25% of people injured through no fault of their own who would currently pursue a claim and be awarded compensation will not find a lawyer willing to take on their case.

The end of success fees that were agreed by all parties

- Success fees were agreed by all sides in the industry through Civil Justice Council mediation. They were fixed in 80% of PI claims using extensive data and a “basket of cases” collected by Professor Paul Fenn from industry stakeholders.

- The success fee in successful cases creates a “pot” that currently covers the costs of cases lost or turned down after investigation.

End of success fees means no funds for difficult or lost cases

- The reforms proposed will reduce the success fee “pot” by almost 50% making it unviable to take on a case with any substantial risk of losing or to fight a case with less than 75/25 prospects.
- Those who lose out will be those whose cases have any kind of complication. It will be business as usual for the victim of a rear end shunt car accident and bad news for the most vulnerable.

Upfront payments a barrier to access

- At present the costs of incurring disbursements can be insured against and the premium recovered from the defendants. That ends under the reforms.
- In future claimants would have to pay for disbursements such as medical reports up front. Those payments would be a barrier to most working people. An expert’s report in an asbestos case would cost around £1,580 and follow up reports are often needed.

Enforced proportionality ignores the facts

- Costs are almost always higher than damages in industrial disease cases contested throughout by insurers. Enforced proportionality simply between costs and damages and ignoring the complexity of the claim would mean that the chances of success would have to be even higher than 75/25.

Reforms hit the wrong target and would mean more road traffic accident claims

- RTA claims are rising year on year¹, while employer liability (EL) claims are falling. The reforms will exacerbate that trend.
- Datamonitor, which uses CRU and insurance industry statistics, says that by far the greater number of PI claims are motor related² and they contribute the highest level of costs to the PI market, while EL claims costs are decreasing.
- The proposals hit the wrong target offering extra damages to claimants where there is an issue of increased claims (RTA claimants with existing insurance cover) and thereby

¹ 2007 – 2011 CRU stats – Motor claims increase from 551,905 to 790,999 (43% increase); EL 87,198 to 81,470 (6.6% decrease).

² Datamonitor: UK Personal Injury Litigation 2011

exacerbating the issue of increased RTA cases whilst hitting those whose claims and claims costs are falling (EL claimants) who require a system of recoverable success fees and ATE.

Less money for the NHS

- A reduction of claims by 25% overall will impact on CRU and NHS recovery. On 2009/10 figures there would be £39 million (25% of £154.7m) less recovered by the CRU.

Less money for the Treasury

- There would be a significant impact on VAT recovery with elimination of the VAT on recoverable success fees and because there would be fewer experts instructed and fewer lawyers' bills submitted. Similarly there will be a reduction in income and corporation tax in the legal sector and a significant reduction in Insurance Premium Tax paid by the ATE sector. This will add up to a significant loss to the Treasury.

Less money for the courts

- Civil courts are meant to be self financing and the reforms would change that as court fee income will drop dramatically. The cases that will not be fought are the ones most likely to be issued and incur court fees.

More demand on the State

- The cost of treatment for injuries and lost wages can be claimed from the defendants in successful claims. Those disenfranchised by the reforms and unable to make a claim will become reliant on the state for benefits and treatment.
- This will mean an increased burden on the NHS as claims for private medical treatment paid by insurers will be reduced in line with the reduction in case numbers.
- Where experts agree it is needed, insurers currently pay for private care and assistance and home adaptations. That burden will now fall on local authorities in successful claims. There will be reduced repayment to public sector employers of sick pay advanced to claimants pursuing cases against third parties.
- In employers liability cases the government's aim of early return to productive work and rehabilitation where possible will increasingly not be met.

More litigants in person

- Some of those who cannot have the benefit of legal representation will serve to swell the number of litigants in person. The judiciary have expressed serious concerns on their

behalf and at the prospect of the further burden on a court system that will have reduced income from court fees.

Thompsons' clients have criticised the reforms. Their comments include:

- *Cath O'Neill: dinner lady exposed to carbon dioxide at work, left with permanent breathing difficulties:* "Under the new government proposals my case may not have been taken up by a lawyer because it is difficult. If that happened I would have had no where else to turn, my employers would have got away with poisoning me and I would have got nothing. Even if I had found a lawyer willing to take my case on I would, under the government proposals, have got much less than 100% of my compensation even though I wasn't to blame for what happened."
- *Robin Gutsall: quarry worker with repetitive strain injury:* When I was injured a few years ago I was ignored like so many others. I was bullied into a corner and I had to keep working to try and make ends meet but my health problems become debilitating. Eventually I was thrown on the scrap heap 13 years before retirement and left in unrelenting pain. Financially I am in trouble as disability benefit and a reduced pension barely pays the mortgage. The reason I am injured was down to my employers. The current rules mean that I have a solicitor prepared to challenge them employer and I will get 100% of my compensation. Under the government proposals I would not have the hope of justice that I have now. I would have been viewed as falling below the bar between the cost of pursuing a case and the chance of success. The worst of the government proposals is that the company would have been immune.
- *Rosemary McLoughlin: fell on steps at work:* The stairs I had to walk up for years were dangerous and an accident waiting to happen. This was known to the employer but ignored because the bottom line was cost. After I fell down the stairs instead of changing anything I was bullied and my only way out was to go to law. I wasn't to blame. My case isn't worth much money to any solicitor but it is worth a tremendous amount to me. It means those responsible will have to admit their fault and it means better safety for the people I work with. Under the government proposals cases like mine will be cut out as too difficult or too costly. People like me will be silenced for all the wrong reasons.
- *Gary Corcoran: BMW worker who suffered a head injury caused by unsafe machinery:* My injury will affect me and the people that I hold dear for the rest of my life. I will forever be a different man after an accident that was not my fault. Pursuing my case was justice for me. Thankfully I had the support of my union and a solicitor in facing a big business that denied responsibility from the very beginning and tried to silence my voice. Without professional help I would not have been able to get justice and my employer would not have introduced the safety precautions in my workplace that they did. Under the government proposals the next person injured will not get justice.

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