



**NORWICH
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A Modern Compensation System: Moving from Concept to Reality

Executive Summary

A report by Norwich Union Insurance

Introduction

Building on research findings and consultations.

Norwich Union Insurance has been a key contributor to debate on Compensation Seeking in the UK and participated in a range of Government consultations and workshops.

This report develops mechanisms for delivering significant and sustained changes to the UK system for helping those that suffer personal injury as a result of another person's negligent act.

It also provides a structure for ensuring that resources are engaged in a way that maintains efficiency and delivers a service that is responsive to claimants needs.

The problem with the UK's compensation system.

Since the appearance of Access to Justice on our statute books in 1999 the "cracks" in its market for delivery have been apparent.

As the Institute of Actuaries put it in their report *The Cost of Compensation Culture 2003*:

"A Practice Direction describing the procedures around CFAs came into effect from 3rd July 2000. However, much of the detail of how the new scheme should operate has been left to be established by test cases. For example, at point in legal proceedings is it reasonable to pursue a case on a "no win no fee" basis? If the party who is being sued agrees straight away that he is liable and happy to pay damages, is it fair that they have to pay a success fee uplift and the cost of an ATE (After the Event) premium?"

Claims management companies and solicitors have exploited claimant expectations in terms of what is compensatable and the amounts that might be achieved.

The inevitable consequences have been an increase in frivolous and vexatious claims and an explosion of claimant costs. The latter now represents 40% of all payouts. This has spawned much satellite litigation.

Different groups are working on the problem.

There are a number of government initiatives that are looking to address a range of issues but they need to join up and work together.

The main ones are:

- Employers Liability Review
- Better Regulation Task Force report
- Department of Work and Pensions consultation on Rehabilitation
- Civil Justice Council work on costs
- Health and Safety Executive – “Securing Health Together” targeting reduction in working days lost
- Chief Medical Officer’s report “Making Amends” reforming reparation in medical negligence and care.

Implication of the Woolf reforms.

Have the Woolf reforms speeded up the process of settlement? Many certainly feel they have, but looking at real cases revealed that the actual time to settlement was largely unchanged; the shortening of the delay from receiving a medical report to settling the case being cancelled out by the increase in the time for claimant solicitors to make their first contact with defendants and to instruct a medical expert.

Has Woolf reduced costs? Again the evidence is inconclusive. For every saving made in one part of the process there appears to be additional cost somewhere else that offsets the saving. Whilst the evidence is that personal injury claims costs have continued to rise faster than retail inflation it is by no means clear how much of this, if any, is due to a failure of the Woolf reforms.

Has Woolf simplified matters? It is virtually impossible to isolate the impact of Woolf from the abolition of legal aid for most personal injury litigation and the growing use of CFAs. Several surveys have shown that the Woolf reforms are seen as making the litigation culture less adversarial, although all involved in the Law Society study said that far too much time is now spent arguing about costs. There is a view held by many within the legal profession and elsewhere, that the positive benefits of the Woolf regime have been undermined and possibly negated by the growing use of CFAs and continued uncertainty over the workings of the CFA regime.

(Source Institute of Actuaries report 2003)

Change must happen.

So, attitudinally Woolf has probably created change, but there is no evidence that delivery for stakeholders has changed.

Changing our compensation system would be disruptive, but the current financial dynamics, together with the lack of claimant focus, suggests that continuing presenting the current way is not a responsible option.

It is becoming clear that the public will not support significant increases in insurance premiums and taxes (central and local) because of compensation claims. Equally it is recognised that there are implications for employment within the legal sector.

Statistics suggest that there is significant scope for change.

Access:

- An estimated 1:3 do not claim when injured
- Almost 50% of those eligible to claim who chose not to blamed their ignorance and "not having a clue how to go about it".¹

Support:

- Compared to most other developed countries the UK has a poor record in rehabilitation.

Cost:

- According to the Institute of Actuaries the compensation bill for the UK is £10bn
- Legal costs account for £4bn, equating to £16m for every working day
- Inflation on personal injury claims is running at 12% per annum.²

Behaviour:

- So called "low-level" compensation cases rose from 101,000 in 2002 to 110,000 in 2003 (9%)
- An estimated 1:10 of those are alleged to be bogus.³

¹Claims Standards Federation Survey 2003

²The Institute of Actuaries 2003

³Lord Phillips, Master of the Rolls 2004

What should be changed?

The key features of a transformed compensation system are:

- The wrongdoer should have the first, and unfettered, opportunity to resolve the claimant's problem. This should be timebound
- No legal costs are payable where there is no dispute – legal costs are only payable for legal advice not for claims handling
- There should be complete transparency of the process, how damages are calculated, and, in particular, the damages for pain suffering and loss of amenity for the most common injuries
- Help first and cash later. Rehabilitation has to be a first consideration and failure on the part of either the compensator or claimant to embrace this should be reflected in the settlement
- Shorter accident to restoration times. Compensation takes too long to be delivered. Fault lies with both claimants and compensators
- Broader, and more proportionate medical reporting. Consultants should be the exception
- Breakdowns in the process, whether about responsibility or amount, should be mediated before litigated
- Managers of workplaces and public places should evidence the learning from accidents in future reduction of risk. Penalties should apply if they do not.

Executive summary

The rise of the so called 'have a go culture'.

Recent research carried out by Norwich Union reveals that 96% of people believe claiming compensation is more prevalent now than 10 years ago.⁴ The research also shows that people believe that family values and community spirit have decreased whilst greed and individualism have increased.

This confirms that, whilst as a society we now have better access to justice, the desire to seek compensation is in danger of becoming an outlet for an 'every man for himself' or 'have a go culture'.⁵ It is, however, the community that has to foot the bill in the end.

Access to Justice.

The Access to Justice Act was a positive step towards a fairer, more democratic system, offering the right to justice through representation for everyone. It also sought to cut the Legal Aid bill of approximately £60 million paid from the public purse and transfer this to the private sector. Although this has been successful, costs have escalated by as much as ten-fold. Even the most uncontested cases we deal with (where liability and the sum to be paid are rarely questioned) incur costs of up to 65% of the damages paid.

No win, no fee.

These escalating costs are mainly due to the introduction of the no-win no-fee approach, under which if lawyers are successful in a case, they claim their fees from the losing side, via a success fee and from the hours undertaken to win the case.

No win no fee means solicitors are more likely to take cases they think are easy to win and are unlikely to take on cases that are difficult. The danger is that more complex cases, requiring a large amount of both serious legal input and time, could be rejected for the quick win cases that would guarantee a good success fee and would not require a large amount of work.

Changing the blame culture.

Norwich Union maintains that the challenge of access to justice is to maintain parity of access across society whilst limiting the "take" mentality. We need to move away from a culture of blame and encourage people to resort to non-legal means when they have cause for redress.

⁴Edgar-galek Research for Norwich Union May 2004

⁵Better Regulation Task Force: Better Routes to Redress May 2004

We want to find a way of settling straightforward claims direct with the claimant. We recognise this requires implicit trust from the public that they will get a fair deal, and that as an insurer, we might be charged with self-interest. We accept, therefore, that we must be better and quicker at dealing with claims, and where we are not, are financially punished for it.

Government must also play its part by reinstating our ability to take responsibility and by sponsoring legal reform that concentrates on swifter conclusions, fairer payouts and introduces a non-monetary angle in the shape of rehabilitation.

Six steps to implement change.

Norwich Union's paper sets out some specific ways in which that system can be created, and how it can be delivered. This is based on the following six principles:

1. Putting the claimant first by reducing the adversarial nature of the system
2. Placing rehabilitation at the centre of compensation
3. Reducing the cost of transaction for redress
4. Shortening of the investigation process for liability to deliver swift compensation
5. Delivery of care. We have to wrestle with public/private provision and competitive cost as challenged by the Chief Medical Officer
6. Staged (Periodic) payments, or the delivery of compensation for those seriously injured over their lifetime as opposed to in an up-front lump sum.

The issues surrounding the reform of compensation are complex and need joined up thinking by insurers, lawyers and government. If we create this modern compensation system however, the whole community will feel the benefits.



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