

Weightmans

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Claims Management Landscape

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Bavita Rai
Partner
Market Affairs Group
DDI: 0121 200 3499
bavita.ra@weightmans.com



Introduction

The personal injury sector has and is still going through unprecedented change. It has seen the implementation of the Jackson reforms, banning of referral fees and featured in the 2015 Chancellor’s Autumn Statement with more reforms to come. These proposed government reforms, if implemented in their entirety, will have a game-changing impact on the sector. The Judiciary are leading reforms, commissioning the recently published report into Civil Courts Structure Review by Lord Justice Briggs. It is another driver of change in our sector – providing some innovative and radical thoughts on the way civil claims could be settled in the future.

This paper summarises and considers the Claims Management Regulation (“CMR”) annual report 2015/16 as well as ABS activity focussing on the personal injury landscape.

1. Claims Management Regulation – Summary of the annual report 2015/16

Background

Since 2007 the Ministry of Justice (“MOJ”) has been responsible for directly regulating the activities of business providing claims management services. Regulation of claims management is delivered by the MOJ’s CMR unit which is responsible for managing policy and delivery of the regulatory systems which includes handling applications, monitoring compliance, investigating malpractice and tasking enforcement action.

Weightmans, through its Markets Affairs Group, has maintained regular dialogue with the CMR unit to address numerous concerns and issues surrounding the behaviours of some of the claims management companies (“CMC’s”).

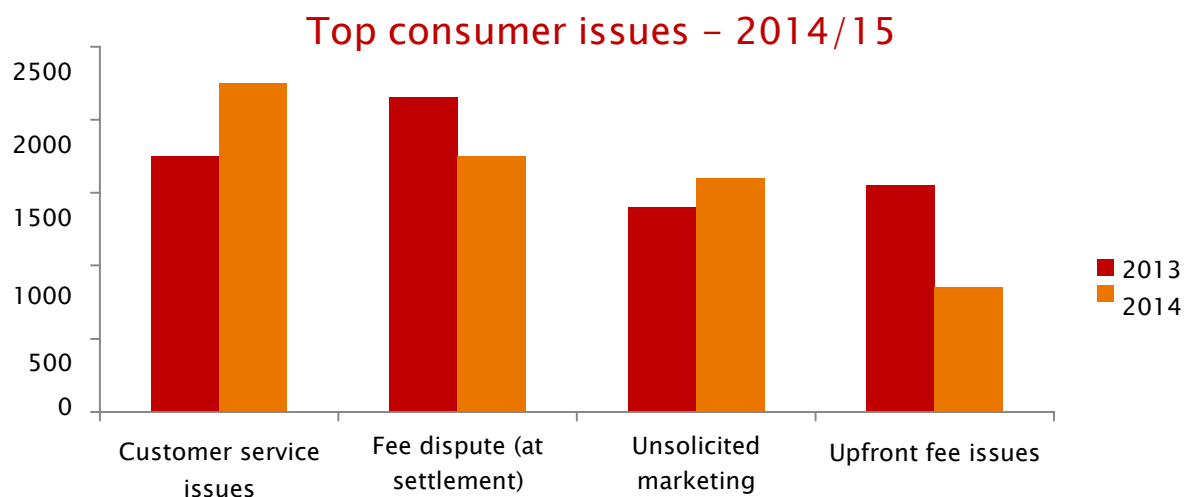
Progress against CMR’s priorities

The CMR unit set out a number of priorities for 2015/16, as addressed below:

1. Nuisance calls and texts

Nuisance calls, texts and emails remain a compliance priority for the CMR unit. Most nuisance calls relate to potential personal injury or mis-sold PPI claims.

An analysis of customer contact with the CMR unit as published in its previous report for 2014/15, showed an upwards trend in the number of complaints that it received from members of the public in relation to cold calling:



(From MOJ’s Claims Management Regulation Annual Report – 2014/15).

That trend has clearly impacted on the allocation of CMR unit resource and where it has focused its efforts over the last year, as reflected in the summary of actions taken during the 2015/16 period:

- Large financial fines have been imposed on three CMCs;
- The CMR has carried out 111 audits and issued 48 warnings for direct marketing breaches;
- The CMR has expanded its team in this area so as to allow for effective targeted action;
- The team continues to work in partnership with other regulators to take enforcement action.

Nonetheless, the number of nuisance calls it seems, is on the increase and is an area where concern has been expressed by our clients. Whilst it is reassuring to see the steps being taken to eradicate unscrupulous behaviours it does appear that more needs to be done. It is clear that those undertaking such activity are finding new ways to get around being found out and tackling this behaviour will continue to be an uphill struggle. It is reassuring that since the CMR unit has been able to impose financial fines, they have exercised that power.

2. Personal Injury claims

The CMR unit in conjunction with the Information Commissioner's Office ("ICO") has taken enforcement action against three CMCs responsible for millions of nuisance calls that encouraged consumers to make claims about noise induced hearing loss (NIHL). Two of these CMCs were issued with financial penalties and the third had its authorisation cancelled.

- The CMR unit has carried out 1,044 visits, 177 audits and issued 53 warnings where breaches have been identified;
- The CMR continues to contribute to the fight against fraud and other illegal activities by working with stakeholders, sharing intelligence and identifying targets for multi-agency enforcement;
- Evidence has been provided in a number of criminal investigations where convictions have been secured.

The report confirms that as a result of the CMR's enforcement action, nuisance calls about NIHL claims have been significantly reduced. Jim Byard, Head of Disease at Weightmans, comments "This action has undoubtedly played a significant role in reducing the frequency of new NIHL claims intimated to the marked in recent months. We have seen volumes reduced by over 50% in the latter part of 2015 and calendar year 2016 to date, compared to the same period last year".

It is clear that enforcement activity has increased with the MOJ, ICO and other enforcement agencies working in partnership to eradicate this behaviour.

3. Unauthorised activity

The CMR unit has increased its capacity to identify, investigate and take enforcement action against unauthorised CMC's. In the past year this has led to:

- Four raids being carried out;
- CMR taking part in joint operations with other enforcement agencies.

We are seeing an increase of activity from unauthorised CMC's and so this will remain an area that the industry needs to be vigilant about and share, where they can, as much intel and information so that details can be passed on to the MOJ and ICO to try and track these unauthorised companies.

4. Financial Claims

The CMR unit continues to work closely with the financial sector and regulators to pro-actively address industry-wide issues. This has led to:

- 133 CMC's being audited;
- 39 warnings issued;
- Financial penalty imposed on one CMC.

Claims Management Landscape

There has been a steady decline in the size of the claims management industry. The CMCs operating in the financial sector have generated more than twice the turnover of the personal injury sector for the first time. This is the fourth consecutive year that the financial claims sector has out-earned the personal injury sector, largely on the back of PPI claims.

The turnover for the PI sector decreased by almost a third:

- £238m in 2013/14;
- £310m in 2014/15;
- £215m in 2015/16.

The number of CMCs fell by 12% and there are now just over 850 CMCs operating in the PI sector. At its peak there were 2,316 CMCs just prior to the implementation of the referral fee ban in 2013. The market contraction continues but at a much slower rate during 2015/16.

Notwithstanding that referral fees have long since been banned, market stakeholders continue to contrive to find ways around that ban. Strategies to circumvent the ban have included profit sharing joint ventures, the payment of 'marketing' (as opposed to 'referral') fees and solicitor recommendations, are mechanisms falling short of an outright referral.

Government proposals to remove the right to claim for cash compensation for minor whiplash claims and to raise the small claims track ("SCT") limit for personal injury claims are likely to impact the sector in a significant way, detailed in our [Market Affairs Group Update](#), December 2015.

If the SCT limit is increased then we could potentially see an increase in the number of CMCs coming back into this sector. There is a suggestion that as part of the negotiations CMCs should not be allowed to enter the market. This will no doubt raise access to justice arguments. If CMCs are allowed to enter the low value PI market then they are likely to capture a greater share of the market. As it is, many CMCs operating in the PI space have either direct or indirect links with law firms.

The CMC sector is also facing further radical structural change with regulation transferring to the FCA and may well be a deciding factor for those wishing to enter the market. In a market valued at £2.5bn (NAHL PLC), the top-grossing CMC firms are:

- National Accident Helpline – £45.1m revenues, profit of £15.6m;
- Injury Lawyers 4U – £11.8m, £.33m gross profit;
- First for lawyers – undisclosed.

Conclusion

It is clear that regardless of efforts to drive cost from the system, there remains a significant level of profit to be made in the operation of a CMC, with claims volumes having returned to their pre-LASPO levels.

Anecdotal media reports suggest that larger CMCs view the future of the personal injury market as positive, even in the face of substantial reforms, although some concede that a different business model may well be required for smaller value claims. Given the fragmented state of the sector, it seems that the market will favour larger or niche players who have the ability to truly recover a reasonable level of income through economies of scale. If the proposed increase in the SCT limit comes to fruition, there may be an increased demand for the services of CMCs, who could rush to fill the void in the event of Claimant lawyers abandoning the lower value claims market, although a ban on the recovering of general damages in minor whiplash cases could potentially serve to offset some of that growth.

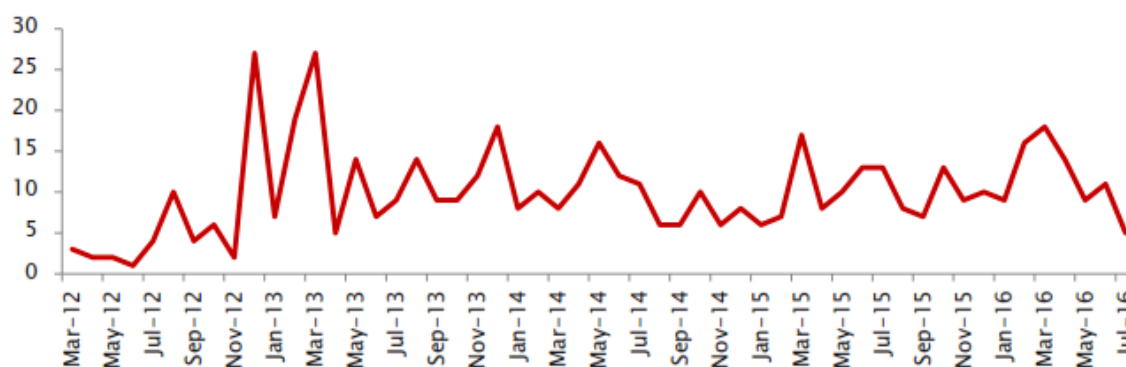
It must be regarded as a positive that the CMR unit is not afraid to tackle dysfunctional behaviour exhibited by CMCs seriously and we await with interest how the levels of enforcement activity will compare following the transfer of regulatory oversight to the FCA in 2018.

2. Alternative Business Structures (“ABS”)

It will also be interesting to see the impact of the reforms on existing ABS models in the PI sector. ABS’s are no longer a new concept and have become well established in this sector. The number of ABS registrations peaked in 2012/2013 and since then we have seen a steady number of registrations. As an illustration of what the market now looks like:

- 526 Solicitors Regulation Authority (“SRA”) regulated ABSs;
- 53 Council for Licensed Conveyancers (“CLC”) regulated ABSs;
- Other legal regulators have not yet adopted ABS regulation, with its associated costs;
- Interestingly, an additional 40 SRA regulated ABSs have “ceased to practice”, including Parabis Law. This is not as dramatic as it sounds, with a number of these organisations appearing to have closed for branding/business name issues, and remain practicing under a different name – e.g. Gateley LLP became Gateley PLC, Knights Solicitors LLP became Knights Professional Services Limited.

Monthly ABS Registrations (SRA)



Accountancy

The big accountancy firms have set up their own law firms as ABSs, and some have multiple ABSs for different purposes.

Certainly, for some time, there has been a desire by the large accountancy firms to enter the legal services market and utilising ABS vehicles to compliment their existing business would appear to be a natural progression. Examples of such firms include:

- Ernst & Young LLP
- KPMG LLP
- PricewaterhouseCoopers Legal LLP.

Brokers/Loss Adjuster

ABSs created by brokers and claims agents are still significant constituents of the ABS market. Examples include:

- | | |
|---|--|
| ▪ Carole Nash Legal Services LLP | ▪ Principia Law Limited (Redde, formerly Helphire) |
| ▪ FMG Legal LLP | ▪ Thomas Miller Law Limited |
| ▪ Lyons ABS Limited (SAGA) | ▪ WNS Legal Assistance LLP |
| ▪ NewLaw Legal Limited (Redde, formerly Helphire) | ▪ Crawford. |

Insurers

Speculation about insurers establishing their own law firms has not come to fruition, though certainly there are a number of examples of joint ventures entered into by motor insurers and law firms. We've then also seen legal expenses insurers setting up ABSs, examples including:

- Abbey Protection Group Limited;
- DAS Law Limited;
- Elite Legal Services London Limited;
- LEI Legal Services Limited (ULR Additions).

There is a sentiment amongst some insurers that the reforms will fuel an increase in those consumers taking out BTE legal expenses policies. We may even see policies written that specifically provide for representation by a lawyer ensuring that LEI customers receive a higher level of representation than those without it. This could well be a very positive unique selling point for these policies.

Corporates

There are some large businesses with their own firms:

- BT Law (BT);
- One Legal Services (Trading as One Legal) Limited (Stobart Group).

Membership organisations

Trade associations or membership bodies have often been a conduit for providing legal services to their members, although usually it is through preferred suppliers/partners. Some have formed their own ABSs:

- AA Law (The AA and Lyons Davidson);
- BPIF Legal (British Printing Industries Federation);
- Co-operative Legal Services.

The result has been mixed. The AA announced that no new claimants have been accepted since 5 November 2015 as the ABS was not viable as a separate entity. The timing of this announcement pre-dated the Chancellor's Autumn Statement which sent shockwaves through the PI legal sector.

Local authorities

A final innovation has come from local authorities, where in-house legal teams undertake work for other organisations via an ABS. This has seen grouping of several authorities' services under the shared services initiative. We now have four local authority ABSs:

- Buckinghamshire Law Plus Limited (Buckinghamshire CC, Buckinghamshire Fire & Rescue Service);
- Essex Legal Services Limited (Essex CC);
- HB Public Law Limited (London Borough of Harrow & London Borough of Barnet);
- LGSS Law Ltd (Cambridgeshire, Northamptonshire county councils and Milton Keynes Council).

Conclusion

The proposals in the Chancellor's Autumn Statement on 25 November 2015 caused a great shock to the sector, evidenced by the share prices of major players; Slater & Gordon halved and NAHL slid 27% in one day.

The decision of the UK to leave the EU and the resultant changes in Government have brought into question whether all of the proposed reforms of the UK PI market will go ahead but our understanding is that there are still reasonable prospect of a proportion, if not all of those reforms ultimately going through, albeit rather later than initially anticipated.

We are also alert to the SRA's consultation "Looking to the Future" which was launched on 1 June 2016. The proposals include unregulated firms being able to employ solicitors with practising certificates. The solicitors would be regulated but the firm would not. In house solicitors would also be able, for the first time, to provide legal services to the public



without having to establish an ABS. This could well boost further activity within the PI arena. The consultation is inviting responses by 21 September 2016, with the SRA report due in December 2016/January 2017.

The future of the personal injury market remains uncertain with the potential for a period of significant change ahead, particularly in the small claims arena. As set out above, there are clear opportunities for CMCs to focus in that arena, perhaps to the detriment of lawyers. There is also likely to be an increase in the volumes of claims brought without the benefit of legal representation, which again may lend itself to CMC service providers.

Can we help?

Weightmans Market Affairs Group undertakes strategic market activity encompassing influencing, steering and advising upon legislative, process and market reform, devising innovative products for clients that assist them in fully leveraging their position in the market.

Should you wish to discuss the contents of this report, or would like assistance with any other matter, please do not hesitate to get in touch.



Political Affairs

David Johnson

Partner

DD: 0207 822 7146

marketaffairs@weightmans.com



Innovation & Client Affairs

Bavita Rai

Partner

DD: 0121 200 3499

marketaffairs@weightmans.com



Market Affairs

Kurt Rowe

Associate

DD: 0207 822 7132

marketaffairs@weightmans.com



Scottish Affairs

Doug Keir

Partner

DD: 0141 375 0869

marketaffairs@weightmans.com

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