

HEALTH AND SAFETY EXECUTIVE EVENT

'Compensation Culture'

Speech by Lord Falconer 22 March 2005

Good afternoon. Thank you for the introduction.

Let me start by thanking the Health and Safety Executive for organising today's conference. Compensation culture is an important issue – left unchecked it could stifle the normal activities of business, charities, schools and local authorities, and put them off from taking proper health and safety precautions. So I'm delighted that the HSE is addressing the issue with today's event and a real programme of action for the months ahead.

There are three areas I want to touch on today:

- First, compensation culture feeds off confusion. So I'll say what I think it is and what impact it's having;
- Second, I'll say what we've done about it already, and what we will be doing in the future;
- And, finally, a few words on the important role of organisations such as the HSE.

So first – what's the problem?

'Compensation culture' is a catch-all expression. It means different things to different people.

It's the idea that for every accident someone is at fault. For every injury, someone to blame. And, perhaps most damaging, for every accident, there is someone to pay.

This, of course, is not the law.

But the problem is not about legal niceties: the notion that people can 'have a go' is hindering organisations from going about their normal business. Some people, wrongly, think the law has shifted into a new territory – a territory that favours spurious claims. This is a misperception and a very damaging one at that.

In reality, the way the courts look at claims is well-established and broadly consistent. The Better Regulation Task Force report last November was quite clear on this point.

But the consequence of people thinking the courts are awarding compensation in new ways is causing problems and that can certainly drown out the impact of good, sound, sensible health and safety advice and risk assessment.

Action across Government

The second part of the equation is what we, in Government, are going to do about it.

The response is not for Government alone, but we are determined to act.

Our response form two sides of a coin:

- on one side, we need to tackle the practices that help to spread these misperceptions and encourage the false expectation of compensation;
- and, on the other, we need to improve the effectiveness and efficiency of the system for those who have a genuine claim.

So on the compensation culture, our position is clear. Yes to real claims dealing with genuine problems. No to misplaced claims on wrongheaded issues.

There isn't a quick-fix. We can't turn this round overnight. We need careful planning, consultation and development. And, the commitment and determination to deal with these issues in the long-run.

It's vital we have leadership on this issue in Whitehall. That's why I set up a Ministerial Steering Group and an Action Group to support it. These two groups are not talking shops – their aim is to drive work forward and make an impact in a co-ordinated way.

The Action Group in particular will dig down into the detail, making use of the expertise of the members – looking at risk management, advertising, rehabilitation and the claims process. I'm very grateful to the individuals and organisations that have so far supported the Action Group.

And across Government, and across many public agencies, we are seeing words matched with action.

Take the example of schools. We need to keep on developing a common-sense culture, so that schools continue to expand the range of school trips and activities outside the classroom.

OFSTED, late last year, sent out a clear message: if teachers follow recognised safety procedures and guidance, they have nothing to fear from the law.

And the Government will respond shortly to the recent select committee report on education outside the classroom. We expect to welcome the committee's conclusions that mishaps on school visits are rare, and serious ones even more so. Safe school trips depend on good risk management by those in charge, supported by good behaviour by pupils and co-operation by parents.

Ruth Kelly recently announced new guidance to make clear to school staff that, by carrying out straightforward compulsory safety checks, they not only protect pupils from harm, but also protect themselves. In the event of an accident, the law protects staff who have taken reasonable care, and followed employer guidelines.

This should re-assure the dedicated school staff who already make sure that school visits and activities for thousands of pupils every week are both stimulating and safe. We are pleased that NASUWT expect to respond positively to Ruth Kelly's new guidance.

And the Department for Education and Skills is also looking at school insurance. While premises are a much greater insurance cost to schools than pupil injuries, a feasibility study looked at how to deliver benefits and savings to over 24,000 schools.

Working with local authorities, schools and insurers, the Department is now testing the most promising opportunities for savings. We'll know more in the summer when we have the findings.

Many of the principles behind safety in schools apply equally to the voluntary and community sector.

In particular, the idea of a compensation culture can impact on volunteers – by discouraging people to give their time or by organisations restricting the activities people can do for fear – often a misplaced fear – of a claim.

High quality voluntary activities are important to the sort of society we want to shape in the years to come. And, in this year - The Year of the Volunteer - there could be no better time for government to help break down the barriers to volunteering.

The Home Office is working to address risk and insurance issues in the Voluntary and Community Sector. It includes:

- research to find out how compensation culture affects the sector;
- setting up a forum for interested parties;;
- a strategy to communicate with the sector and general public, to allay fears and provide reassurance that issues are being addressed;
- working with governing bodies and umbrella bodies, such as Association of British Insurers; and
- working with the sector to look at initiatives such as bulk purchase of insurance, mentoring arrangements and production of training materials.

The Home Office is currently commissioning a national Voluntary and Community Sector led body to advance this work.

And the Office of the Deputy Prime Minister is supporting CAGE Space to raise the profile of risk issues in the public realm - looking at the right balance between risk and risk management. And how we give local authorities and others confidence and support in creating and maintaining interesting, and safe public spaces.

So it's clear that across Government there is a real consensus to take action to deal with the problem wherever it surfaces.

Advertising

So what else fuels the perception of a compensation culture?

Undoubtedly, I think advertising can.

There is no place for advertising that raises false hopes of unrealistic or unachievable personal injury compensation awards. Practices which basically encourage people to 'have a go' are distasteful and pernicious.

For example, it is unnecessary to include in such advertising that the benefits of making a successful claim could be "... a relaxing sunshine holiday ...", "... buying a new home".

In our response to the BRTF report new guidance has already been issued about personal injury claims advertising in hospitals. It may be that such guidance needs to go to other public bodies. This morning I was shown an advert for a personal injury firm of solicitors on a police accident report form – there is no place for this. It is wholly unacceptable.

There is a place for legitimate advertising – it can provide a means for people with genuine claims to find the help they need.

But some of the advertising oversteps the mark. I do not want to see public services – whether that's a poster in a hospital waiting room or an advert on a police accident form - used as a means to encourage spurious claims

And this goes beyond public services. The quantity and quality of much of the personal injury advertising we see on our TV screens, hear on the radio and read in the newspapers is, quite simply, unacceptable.

Much is now from solicitors, some is from claims management companies, but it's not always clear to the consumer which is which and what they are entitled to.

Touting for personal injury business on our TV screens doesn't serve any public good, let alone helps people secure access to justice.

I will be looking at how we can bring the claims companies in line. The advertising codes must be strictly adhered to.

But, I am prepared to go further. We need to look closely at the practicality and the process for how we could do this, but we may need to take legal powers to stop some of this advertising.

Claims management

Let me say a few words too, specifically about claims farmers.

I said in November that the claims management sector must be properly regulated. I said that high pressure selling, sharp practices and targeting vulnerable people must stop.

Some companies raise expectations of claims when, in reality, there are none. We hear about people encouraged to claim for tripping over the same paving slab or driving over the same pothole. We hear about people receiving unsolicited mail shots asking them if they have had an injury and to make a claim.

We hear of people being stopped in the high street and being asked to make a claim, harassed to sign agreements which they may not understand. Others receive persistent phone calls pushing them to make a claim. Some are visited again and again until, finally, they are persuaded to pursue a claim.

In the coalfield areas there is an excellent scheme in place to compensate people who have had health problems caused by working in the mines. It costs legitimate claimants nothing. But unregulated intermediaries have got in on the act. Some claimants have not had the benefit of 'best advice' and have lost some of their compensation in unnecessary charges.

I have urged claims managers to take action to improve the service they provide. I want better quality control over claims submitted.

There has been progress. The Claims Standards Council is trying to respond to these issues. The Council has sought to try to close the regulatory gap.

The opportunities to join the CSC initiative have been plentiful. At a national conference last month the CSC set a deadline for companies to apply for membership. That deadline expired on 28 February.

Even for those with the most selfish interests, it must be obvious that consumers are more likely to go to a business that is quality marked.

Yet, despite signs of broad support for the CSC, only a small proportion of claims management companies have joined the Council. This is disappointing - bad news for consumers and bad news for society.

Voluntary self-regulation has a role, but obviously we cannot rely on it. Some statutory teeth are needed. Existing regulators have an important part to play.

The relationship between solicitors and intermediaries is a key regulatory challenge. Solicitors are in an absolutely pivotal position in the claim process and can do a great deal to ensure only good claims are brought, consumers are protected and clients get best advice.

I am pleased the Law Society has indicated that, if the OFT approve the CSC's consumer code, it would consider requiring solicitors to deal only with intermediaries who operate by that code. This would be significant progress.

I also welcome the Law Society's review of the impact of last year's changes to the professional conduct provisions on referrals. I hope further progress can be made to ensure solicitors only obtain business from sources that comply with this strict code.

The Law Society's move to separate representational and regulatory functions will also improve even more the Society's ability to tackle abuses quickly and effectively. I hope the Society will think further about other ways they could tighten the net on claims management companies via the solicitors' relationship with these intermediaries.

The FSA also have a very important role to play in respect of those claims management companies who handle insurance. I will be interested to see how widely the FSA interprets the scope and practice of its regulatory role.

Overall, I think we have a real opportunity to ensure consumers get a better deal - through more rigorous use of existing protections, the introduction of compulsory insurance regulation and the voluntary regulation initiative.

We must seize this opportunity to make a difference now. But I do not believe that this will be sufficient for the future legal and associated services regime we wish to build in the future.

The CSC has made good progress but the claims management companies have failed to demonstrate anything like the commitment that I would hoped to have seen by now. I must consider how best to safeguard consumer interests now and for the future.

I believe the time has come to take clear and firm action. So I can announce today that we will legislate on claims managers. We will use the law to regulate their activities.

I announced yesterday my commitment to a White Paper and then to legislation on reforming the market for legal services. We will include in that legislation new provisions specifically to bring the claims management sector within the regulatory net.

For claims management companies, I envisage a front-line regulator with oversight by the Legal Services Board.

That front line regulator could be the Claims Standards Council, if it can make sufficient progress and is judged fit for purpose by the Legal Services Board.

There is an opportunity for all stakeholders to help shape the precise form of the compulsory regulatory regime of tomorrow. But now is the last chance for the claims management sector to prove it does have something positive to offer to this process

I would welcome proposals from the CSC on how it intends to develop its current role and what it can do now to help deliver the watertight regulatory mechanism that we all want for tomorrow.

Improving the system for the genuine claimant

Let me now turn to the genuine claimant. How can we make the system work better for them?

Earlier and better rehabilitation is very important. But the size of this task must not be underestimated. It is challenging and it will take time.

The Department for Work and Pensions has held a workshop, bringing together insurance, legal and health organisations to encourage access to rehabilitation. There was a general level of agreement between insurers and the legal profession about the potential role of rehabilitation in providing an additional route to redress.

The DWP report is nearing completion and through its Framework for Vocational Rehabilitation, DWP has already committed to take forward many of the issues highlighted by the workshop, such as the importance of standards and accreditation, as well as research.

The Department of Health has also started a scoping study of current NHS and social care provision of rehabilitation services. The study will map current levels of provision and models of service and, where possible, cost-effectiveness of rehabilitative services.

It will identify any gaps in service and identify good practice and opportunities to improve NHS-funded services

There will be a consultation exercise and it is intended that the project will report and make recommendations in the early summer.

In addition the pre-action protocol for personal injuries has been amended to deal with the need to consider rehabilitation. I welcome other initiatives such as the work on rehabilitation by the Civil Justice Council, the guidance on rehabilitation issued by the Association of Personal Injury Lawyers and various insurer-led schemes.

The Ministerial Steering Group and Action Group will help bring together those involved in this work.

We are also encouraging Alternative Dispute Resolution.

Earlier this month David Lammy launched the National Mediation Helpline, developed by my Department in conjunction with the Civil Mediation Council. It will give information about the mediation process and will put people in touch with an organisation that can help.

And a range of alternative dispute resolution pilots is now underway in courts – in Birmingham, Central London, Exeter, Guildford and Manchester.

The Rules Committee is also considering amendments to all the pre-action protocols to make their message on Alternative Dispute Resolution consistent.

So we are looking for new ways to make the system more proportionate and cost-effective for the genuine claimant. I have no wish to interfere with sensible and genuine claims.

Where people act responsibly we will find ways to support them. But compensation cannot be achieved at any price, whether to the consumer or society as a whole. The process must be fair, proportionate and cost-effective.

And it is in the lower value cases where processes and costs often seem the most disproportionate. This can lead to perceptions of a compensation culture, particularly where legal costs can be considerably more than the compensation. Or where weak cases are settled because of the fear of costs.

That is not to say that lawyers are running up costs unnecessarily and irresponsibly. But if the processes we have in place are not as efficient as they might be, then it follows that costs will be higher than they should be. The BRTF expressed concern about smaller claims. So did the Government's report on Employer's Liability Compulsory Insurance.

Employers' Liability claims are a good example of where I can foresee real difficulties and injustices in withdrawing appropriate legal support. Trade union legal services have an important role to play in this regard.

Unions act as a filter for bad claims and bring forward just claims - attracting compensation for those who deserve it and promoting good health and safety. I can't envisage taking action that would damage these good and beneficial union activities.

Around two thirds of these claims are below £5000, are valid claims, and the victims are entitled to compensation. The defendant can be a large organisation backed up by insurers. And there are issues of liability, medical and expert reports to sort out.

So we need research to tell us what would be lost by increasing the small claims limit for personal injury. Would withdrawing legal support from those who want it make the system less efficient, unfair?

I have to say that I am not at all convinced that raising the small claims limit for personal injury is the answer. We will have to wait to see what the research says, but simply raising the limit will do nothing to address the underlying costs and may give rise to new problems. Although it might deter claims farmers and solicitors from taking on spurious claims, they would not take the genuine claims either.

And a genuine claim can help identify where changes might need to be made, perhaps because proper health and safety measures were not in place or poor risk assessments had been carried out. Lessons learned can drive better health and safety in the workplace and elsewhere - and so prevent other accidents taking place.

That is not to say that I think nothing needs to be done.

For example, some unions have gone further and have set up claims companies which act more widely than in the interests of their members. I'm less convinced that this is the sort of activity we should support or protect.

And as I have said compensation cannot come at any cost.

So I want to explore whether, without choking off good claims we can make it more proportionate and cost-effective while ensuring that genuine claimants receive fair compensation and their legal representatives can recover their appropriate and reasonable costs.

To do this I need the legal profession, trade unions, insurers and other stakeholders to work with us constructively, with the shared aim of improving the compensation system.

I hope that what I have set out today reassures you that Government is determined to take this work forward and is making real progress.

It is a wide programme of work and we need to be patient and determined to see it through. While there will be helpful measures that can be implemented quickly – as I have demonstrated today – others will take longer if we are to get them right. But we in Government are committed to seeing this through.

And, you too have an important role to play.

I know the Health and Safety Executive has already met its commitment to give more information on its website.

And with events like today we can help spread the message. They provide an opportunity to share good practice, raise concerns, start people thinking about what we can do as individuals and jointly.

Your focus has been health and safety, and risk management.

Effective and sensible health and safety measures and appropriate and proportionate risk management procedures, give people confidence. They also put the risks in context; benefiting those responsible for the activity and those taking part – whether in the workplace, on school trips or going about daily life.

Conclusion

Government cannot provide answers to these problems alone. This isn't a problem that fits neatly into administrative silos. It's not for one Government Department, or for a single sector to respond. But I hope today I have set out how seriously we in Government are taking this issue.

Fundamentally, this is about access to justice. Doing more for people who need the full protection of the law. And, clamping down hard on the practices and the people whose sole aim is to milk the system for all they can.

Thank you very much.