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COMMENT PERSONAL INJURY

A compensation culture for Scotland?



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The rules on costs in Scottish personal injury claims are about to change, but unless lessons are learned from similar reforms in England and Wales, there are likely to be unintended consequences.

The Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill is currently being considered by the Scottish Parliament's Justice Committee. The Bill will introduce qualified one-way costs shifting into **Scotland** and allow solicitors to enforce damages-based agreements.

The Bill is intended to address the supposed 'David v Goliath' relationship between claimants and insurance-backed defendants in Scotland. Surprisingly, the Scottish government has not produced any

evidence to demonstrate how many claimants in Scotland are unable to find a lawyer, nor has it modelled the likely increase in claims or the cost of those claims.

Recent data obtained by DWF via a freedom of information request demonstrates that there has been a 16.6 per cent increase in personal injury claims in Scotland since 2011, at a time when the number of claims in England has decreased. The rationale for introducing QOCs into Scotland is unclear.

The reason for the increase in claims volumes in Scotland is straightforward. LASPO pushed claims management companies to move their activities into Scotland. In England, claims management companies are regulated, claimant

costs have been capped, and referrals fees are banned. None of those steps are included in this Bill, and that makes Scotland an even more attractive destination for claims farming.

The regulation of claims management companies is, the Scottish government says, currently under review. That will leave a gap of at least two years without any regulation at all. The Scottish government should (as a minimum) allow the Financial Conduct Authority to regulate claims management companies operating in Scotland, pending a wider review. That way Scots will be protected from the worst effects of the Bill.

The spectre hanging over these reforms is organised fraud. Because claimants' costs in Scotland are so much higher than they are in England, the incentive to generate false claims is also much higher. Fraudulent claims are not a victimless crime. The costs are borne by taxpayers, by insurance

policyholders, and by genuine claimants who find their settlements delayed. The proceeds of fraud are used to fund other criminal activities.

The Bill does nothing to address fraud and simply increases the incentive to generate claims. Add QOCs to higher income streams from referral fees, higher legal costs, and an absence of regulation, and you have a perfect storm. Proposing these substantial changes without understanding the financial incentives in the claims industry, and without regulating a key sector of that industry, is dangerous.

The Scottish government says that the Bill "might lead to an increase in the number of personal injury claims". That is not in any doubt. We will certainly see a significant increase in the number of personal injury claims in Scotland if the Bill is passed. But the Scottish government has no idea how many, and (given the size of the public sector in Scotland) it seems it has no idea how they will be paid for. **SJ**