



The Scottish Parliament  
Pàrlamaid na h-Alba

## Justice Committee

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By email

12 January 2017

Dear Gordon

### **Legislative consent memorandum on the Financial Guidance and Claims Bill**

I understand that the Economy, Jobs and Fair Work Committee is currently undertaking scrutiny of the legislative consent memorandum on the Financial Guidance and Claims Bill.

Part 2 of that Bill provides for claims management companies to be regulated by the Financial Conduct Authority (FCA). The relevant provisions were amended by the House of Lords, at the request of the Scottish Government, with the effect that regulation by the FCA will be extended to claims management companies in Scotland.

These amendments were welcomed by the Justice Committee in its recent [Stage 1 report on the Civil Litigation \(Expenses and Group Proceedings\) \(Scotland\) Bill](#). I thought it would be helpful to provide some further information as to why the Committee reached this conclusion, and therefore considered it appropriate for the UK Government to legislate in this area.

The [Civil Litigation Bill](#) makes various provision aimed at improving access to civil justice by increasing the funding options available to people bringing a civil court action and by making the costs of bringing such an action more predictable. While, on balance, the Committee considered that the changes in the Bill would improve access to justice, it also concluded that those changes needed to be balanced by other safeguards to prevent a rise in unmeritorious or fraudulent claims.

During its evidence-taking on the Civil Litigation Bill, the Committee heard that one vital safeguard would be to regulate claims management companies in Scotland.

The Committee was also told of the negative impact that the practices of some companies had on consumers, particularly through the use of cold calling.

Claims managements companies are currently a central part of the civil litigation landscape in Scotland. Nonetheless, such companies are not regulated in Scotland. This contrasts with the position in England and Wales, where claims management companies have been regulated by the Ministry of Justice (via the Claims Management Regulator) since 2007.

From the outset of the Committee's scrutiny of the Civil Litigation Bill at Stage 1, it was clear that there was significant concern about the continuing lack of regulation of claims management companies in Scotland. In particular, evidence from defender and insurer representatives argued that there would be considerable risk in proceeding with the Civil Litigation Bill in the absence of such regulation. They considered that the Bill would make Scotland a more attractive market for claims management companies. This would lead to an increase use of practices detrimental to consumers, such as cold calling.

In the [Policy Memorandum](#) accompanying the Civil Litigation Bill, the Scottish Government had stated that the regulation of claims management companies was being considered as part of an ongoing review of the regulation of legal services. This review, which is being chaired by Esther Robertson<sup>1</sup> is due to report in summer 2018.

The Committee heard that any delay in regulating claims management companies, for example while awaiting the outcome of Esther Robertson's review and any subsequent legislation, would disadvantage Scottish consumers.

At the same time as the Committee was undertaking its scrutiny of the Civil Litigation Bill, the Financial Guidance and Claims Bill was being considered by the UK Parliament. As introduced, the Financial Guidance and Claims Bill aimed to strengthen the regulatory regime for claims management companies in England and Wales, by transferring responsibility for regulation to the Financial Conduct Authority (FCA).

The Committee heard that the strengthening of claims management company regulation in England and Wales made the concerns about the absence of regulation in Scotland even more pertinent.

As a result of the evidence it had received, the Committee [wrote](#) to the Minister for Community Safety and Legal Affairs to ask whether the Scottish Government would consider an amendment to the Financial Guidance and Claims Bill which would extend regulation by the FCA to claims management companies in Scotland.

On 16 October 2017, the Minister [replied](#) stating that the Scottish Government now believed that it should pursue the possibility that regulation might be achieved, "at least on an interim basis", through an appropriate amendment to the Financial Guidance and Claims Bill.

On 20 November 2017, the Minister [informed](#) the Committee that amendments to the Financial Guidance and Claims Bill, as agreed with the Scottish Government, were laid on 14 November 2017 which would extend regulation of claims

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<sup>1</sup> Esther Robertson is current chair of NHS 24.

management companies by the FCA to Scotland. These amendments were agreed to in the House of Lords on 21 November 2017.

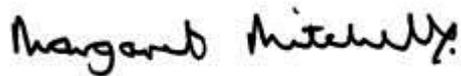
The Committee subsequently heard strong support for these developments. It also heard support for a UK-wide approach to regulation.

Given the above, the Committee considered that it was appropriate for the UK Parliament to legislate to provide for the regulation of claims management companies in Scotland and its report welcomed the amendments that had been made to the Financial Guidance and Claims Bill.

The Committee has sought clarity from the Scottish Government as to whether it intends this regulation to be on an interim or longer term basis. In its [response](#) to the Committee's Stage 1 Report, the Scottish Government states that "this is a matter on which the Government expects to be guided by the forthcoming report of the Review of the Regulation of Legal Services in Scotland".

I hope the above information is helpful for your Committee's scrutiny of the legislative consent memorandum for the Financial Guidance and Claims Bill.

Best wishes

A handwritten signature in black ink that reads "Margaret Mitchell". The signature is written in a cursive style.

Margaret Mitchell MSP  
Convener, Justice Committee