

suining the council - helping the citizen or harming the community?

a summary of a survey of local authorities on conditional fee arrangements

February 2004



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executive summary

Key issues

This research report highlights the results of a survey of local authorities carried out by RBA Research for the LGA and Zurich Municipal. We would also like to thank the officers and members of ALARM (The National Forum for Risk Management in the Public Sector) for their assistance with this research. The key issues which arise from the research from the perspectives of the LGA and Zurich Municipal are:

- 95 per cent of councils believe that there is an increasing tendency for residents to think about making insurance claims and 96 per cent believe there is an increasing tendency for lawyers and other advisers to encourage people to make compensation claims;
- 87 per cent believe that the introduction of conditional fee arrangements (CFAs) has increased the number of claims for compensation being made against the council;
- 68 per cent of councils report an increase in the number of tenuous or fraudulent claims for compensation. Half of all councils report an increase in both the number and the average value of claims. Nevertheless, officers believe elected members remain unaware of this growing problem;
- 85 per cent of councils agree that "The introduction of CFAs has increased the annual cost to my authority of handling compensation claims";
- councils recognise that CFAs can provide better access to justice to those who would not otherwise be able to afford legal advice. In addition, CFAs have obliged councils to introduce more proactive monitoring of services and preventative action than might otherwise have been the case;
- conversely, councils believe that time spent on dealing with spurious or tenuous claims means lengthy delays for genuine claimants. Eventually paying higher premiums means scarce resources are devoted from other areas or else tax payers face increased council tax bills. Councils believe that unscrupulous advisers see CFAs as an opportunity to make money;
- councils point out that, while individual claims may seem trivial collectively, a tremendous amount of resources is absorbed in dealing with these claims. Fraudulent claims may well be designed to test the accuracy of a council's records system or simply a test of alertness - an extreme claim involved a claim for an accident in a play area which did not exist at the time of the alleged incident; and
- ALARM (the National Forum for Risk Management in the Public Sector) is recognised as a good source of advice and guidance but it is recognised that ultimately it is the responsibility of the local authority to plan its services and systems in such a way that there is a minimal cause for compensation claims.

Detailed summary of key results from the survey

The problem

- 81 per cent of authorities say they have seen an increase in either the number of claims or the average value of each claim (including 95 per cent of metropolitan authorities and 94 per cent of county councils). Half of all authorities are reporting an increase in *both* the number and average value of claims, including around seven in 10 councils in the north of England.
- 73 per cent of authorities witnessed an increase in claims and say this has been due to the increasing publicity from claims companies, with 40 per cent saying the increase has been a direct result of the introduction of CFAs.

- 79 per cent of education authorities say that school-related claims are increasing. 52 per cent of the councils with responsibility for housing are reporting an increasing trend for housing/disrepair claims. Across all councils, 76 per cent are experiencing an upward trend for the number of claims related to trips and slips.
- 95 per cent of authorities endorse the proposition that "There is an increasing tendency for residents to think about making claims", including 54 per cent strongly agreeing, and 96 per cent agree that "There is an increasing tendency for lawyers and other advisers to encourage people to make compensation claims", including 71 per cent agreeing strongly.
- 87 per cent of authorities believe that the introduction of CFAs has increased the number of claims for compensation being made against the authority, with one in six (17 per cent) experiencing a substantial increase (including 43 per cent of metropolitan authorities).
- 68 per cent of authorities report an increase in the number of tenuous or fraudulent claims (including 81 per cent of metropolitan councils and 85 per cent of authorities in the north west). The case studies appended to this report illustrate some of the extreme cases of claims that authorities are receiving, such as a claim for an accident in a play area that did not exist at the time of the alleged claim.
- 85 per cent of councils agree that "The introduction of CFAs has increased the annual cost to my authority of handling compensation claims" (48 per cent strongly agree, including 65 per cent of county councils, 76 per cent of metropolitan authorities, and 81 per cent of councils in the north west).
- The case studies accompanying the survey include a metropolitan council in the North West (the most badly-affected area it seems) seeing the number of claims doubling year-on-year for the past three years. Even district councils further south are

reporting that costs have increased two-three times since CFAs were introduced. A number of authorities mentioned an average value of claims rising from around £2,500 three years ago to around £5,500 now, and many more of them.

- Despite the scale of the problem and the rising trend identified, a majority of the officers surveyed say that their councillors 'probably wouldn't even know what CFAs are' so there is a job to be done in raising awareness of the problem nationally and locally. Only one in five authorities surveyed can recall a report going to councillors on the subject of CFAs and there is a lot of scope for improvement in terms of regular analysis, reporting and action planning, as only a minority of councils do this (effectively) and 'hard data' is thin-on-the-ground.

Advice and guidance

- 84 per cent of authorities have received advice or guidance from insurance companies, with 71 per cent of these saying that it was good advice or guidance. 74 per cent have received advice or guidance from the insurance press/media, although relatively few (37 per cent) say this was good advice or guidance.
- 85 per cent of risk managers say they have received advice or guidance from ALARM, and it is fair to say that, during the period of the research, ALARM representatives have been the best source of 'hard data' on claims activity and trends.

Perceived benefits and drawbacks

- Authorities are conscious of the fact that CFAs were introduced to provide access to justice and when asked to identify the main benefits from the introduction of CFAs, the top answer is clearly "Better access to justice for those who would not otherwise be able to afford legal advice".
- Significant numbers also see benefits from the introduction of CFAs in "More proactive monitoring of services and preventative action as

councils try to avoid claims" and "Improved service standards as councils try to minimise compensation claims". In the course of carrying out the research, we have had comments from both within and outside local government emphasising that local authorities should be, and are, putting more effort into 'sharpening up' their systems and services to reduce the risks of a claim and the need for anyone to claim. CFAs are thought to have acted as a catalyst.

- Asked to identify the top three drawbacks from the introduction of CFAs, authorities are clear that these key drawbacks are "Higher premiums eventually get passed on in higher taxes", "Unscrupulous people/advisors will exploit the opportunity to make money" and "Resources spent dealing with claims could be devoted to improving front-line services".
- In addition, significant numbers say that there is a downside in terms of "Genuine claims being pushed out by increased number of spurious or tenuous claims" and "Staff afraid to or not able to provide certain services due to a high risk of a compensation claim".

Action taken

- Three in 10 authorities report that the introduction of CFAs has caused them to make significant changes to the way their authority handles claims for compensation (including 43 per cent of metropolitan councils and 50 per cent of authorities in the north west).
- Of these changes, 56 per cent relate to improved recording of claims or verification of authenticity of claims, and 33 per cent involve more proactivity in the way claims handling is approached. The evidence suggests that councils have been pushed into rapidly up-dating recording and monitoring systems. Some were already moving in this direction as part of a general 'modernisation' process, but many have realised that the threat

posed by CFAs means they have to move quicker and that it enhances the business case for the investment they have to make in knowledge management systems.

- Some authorities are clearly 'leading edge' and may not be reporting 'significant changes' because they have long-established, robust procedures in place. It is equally clear from the research, however, that some authorities are not adopting good practice and putting themselves at risk as a result.
- It is encouraging that 42 per cent of authorities say that they are in the process of developing detailed risk management procedures, supported by staff training, in addition to the 25 per cent which say this is long-established practice and the 20 per cent which have recently introduced such a policy.
- It is also encouraging that 92 per cent say they have a complaints policy/system in operation (although 22 per cent of councils in the north east say they do not) and they have effective policies on access to the council.
- 78 per cent of authorities say they have developed clear customer standards for all services, which obviously helps to manage customer expectations and claims activity. 67 per cent of councils say they have tried to reduce the impact of CFAs via more effective monitoring of problem areas such as broken pavements, although the research shows that authorities need to do this at a macro and micro level (the former to check on trends and patterns, the latter to take action).
- The survey also shows, however, that only a minority of councils have specialist staff or a specialist team dedicated to proactive investigation of fraud, including only one in four authorities which have experienced a big increase in the number of tenuous or fraudulent claims. It is clear that many councils would benefit from such a team (the evidence suggests it could be self-financing) and they also need to have effective

information management systems to be able to detect fraud by linking related claims together.

Additional resources allocated/needed

- 34 per cent of authorities say that they have increased the hours that existing staff spend dealing with compensation claims, and 27 per cent say they have increased the amount of training for staff in how to deal with compensation claims, but relatively few have increased the number of staff (13 per cent) or the budget allocated (eight per cent). In authorities reporting a big increase in the number of tenuous or fraudulent claims, only 18 per cent have extra staff and only 12 per cent have more budget.
- 40 per cent of councils say they do not have enough resources to deal with the claims they receive. In metropolitan authorities, where there has been a significant increase in resources allocated - 43 per cent with more staff and 29 per cent with a higher budget - half (52 per cent), still say that they do not have enough resources to be able to deal with the claims they receive.

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