

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Courts and Tribunals

Civil proceedings relating to personal injury

Section 57: Personal injury claims: cases of fundamental dishonesty

502. *Section 57* provides that in any personal injury claim where the court finds that the claimant is entitled to damages, but on an application by the defendant for dismissal is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to either the claim itself (the primary claim) or a related claim, it must dismiss the primary claim entirely unless it is satisfied that the claimant would suffer substantial injustice as a result. A related claim is defined in *subsection (8)* as one which is made by another person in connection with the same incident or series of incidents in connection with which the primary claim is made. *Subsection (3)* makes clear that the requirement to dismiss the claim includes the dismissal of any element of the primary claim in respect of which the claimant has not been dishonest.
503. *Subsection (4)* requires the court to record in the order for dismissal the amount of damages that it would otherwise have awarded. This will be relevant in the event of an appeal and in determining what the claimant should pay the defendant in costs. It will also be relevant for the purposes of any criminal proceedings or proceedings for contempt of court which may be brought against the claimant in relation to the same behaviour.
504. *Subsection (5)* provides that when assessing costs in the proceedings, a court which dismisses a claim under this section must deduct the amount recorded in the order under *subsection (4)* from the amount which it would otherwise order the claimant to pay in respect of costs incurred by the defendant. For example, if the amount of damages which the court records that it would have awarded but for the dismissal of the claim were £50,000, and the amount that the court would otherwise order the claimant to pay in respect of the defendant's costs was £100,000, the claimant could not be ordered to pay the defendant more than £50,000 in total.
505. *Subsections (6) and (7)* deal with the relationship between an order dismissing the claim and any subsequent proceedings against the claimant for contempt of court or criminal prosecution, and provide for the court hearing the latter proceedings to have regard to the order dismissing the claim when sentencing the claimant or otherwise disposing of the proceedings. It is intended that this will enable the court to ensure that any punishment imposed in those proceedings is proportionate.
506. In addition to defining a related claim, *subsection (8)* defines "personal injury" for the purposes of the section as including any disease and any other impairment of a person's physical or mental condition, and provides for the definition of "claim" and related terms to cover counter-claims.

507. *Subsection (9)* provides that the section does not apply to proceedings started by the issue of a claim form before the date on which the section comes into force.

Section 58: Rules against inducements to make personal injury claims

508. **Section 58** bans the offer of a benefit by a regulated person (as defined in section 60) to a potential claimant where the benefit offered is an inducement in respect of a personal injury claim and is not related to the provision of legal services in connection with the claim. *Subsection (2)* provides that the offer of a benefit is an inducement if that benefit is intended to encourage, or is likely to have the effect of encouraging, a person either to make a personal injury claim or to seek advice from a legal service provider with a view to making such a claim. *Subsection (4)* provides for offers of benefits routed via a third party to be treated as having been offered by the regulated person. Section 60 defines “benefit” as any benefit, whether or not in money or other property and whether temporary or permanent, and any opportunity to obtain a benefit (for example, the offer to be entered in a draw for a prize).

Section 59: Effect of rules against inducements

509. **Section 59** requires relevant regulators to have arrangements in place to monitor and enforce the ban on offering inducements to make personal injury claims. *Subsections (2) and (3)* permit regulators to make rules and to use existing powers to enable them to monitor and enforce the ban. *Subsection (4)* provides that a breach of the ban would not make a person guilty of an offence or give rise to a right of action for breach of statutory duty.
510. Under *subsection (6)*, rules are able to provide for the offer of a benefit to be treated as an inducement to make a claim unless the regulated person can show that the benefit was not offered as an inducement, either because it was offered for a reason other than encouraging the person to make a claim or to seek advice from the regulated person about making a claim, or because the benefit offered was related to the provision of legal services in connection with the claim. *Subsection (5)* defines the circumstances in which *subsection (6)* applies.

Section 60: Inducements: interpretation

511. **Section 60, subsection (1)** lists both the regulators who are required to monitor and enforce the ban on offering inducements to potential claimants in respect of personal injury claims (including the General Council of the Bar, the Law Society and the Chartered Institute of Legal Executives) and those legal service providers to whom the ban would apply (“regulated persons”, namely barristers, legal executives, solicitors and alternative business structures). The Lord Chancellor has the power by regulation to extend to other regulators and regulated persons both the prohibition and the duty to monitor and enforce it. *Subsection (2)* provides relevant definitions.

Section 61: Inducements: regulations

512. **Section 61** provides that regulations made under sections 58 and 60 would be made by statutory instrument. Regulations made under section 58 are subject to the affirmative procedure and regulations made under section 60 are subject to the negative procedure.