temple garden
chambers

Mr. Scott Tubbritt
Ministry of Justice
3.50, 3rd Floor
102 Petty France
London SW1H 9AJ

Sent by post and email: whiplashcondoc@justice.gsi.gov.uk

6th January 2017

Dear Mr. Tubbritt,

Re: Reforming the Soft Tissue Injury ('whiplash') Claims Process

Temple Garden Chambers are a leading well established Personal Injury set of barristers' chambers who for many years have been recognised as such by the legal directories. We have 56 members who are Personal Injury specialists. Unlike some other organisations we receive a balanced mix of both claimant and defendant instructions. We are the only chambers in the UK recognised by the legal directories as having a specialist team in the practice area of Motor/RTA fraud. This covers a large variety of RTA incidents, such as staged and contrived accidents, low speed impact, phantom passenger claims, sham credit hire agreements and contempt of court cases. We therefore feel we are very well placed to give a balanced response to the proposed reforms.

We acknowledge that there are, unfortunately, fraudulent claimants in existence. We support efforts to expose such claims and to reduce them. However, it is our overwhelming experience that such fraudulent claims are vastly outnumbered by genuine claimants who have suffered genuine injury, often through no fault of their own. It is our strongly held view that such innocent injury victims should have both fair access to justice and a right of civil redress in respect of the injuries sustained.

We harbour a number of concerns about certain assumptions which underpin the Consultation Paper. In particular:-

a. It is our understanding that information held by the DWP in relation to the number of PI motor claims registered with the Compensation Recovery Unit (CRU) shows a reduction in the number of claims over the last 5 years: from a total of 828,000 in 2011/12 to 770,791 in 2015/16. Such a reduction may well be explained, at least in part, by the various reforms which have been introduced in the area of personal injury litigation, particularly since 2013. These reforms have had a significant impact on reducing the cost of litigating personal injury claims, particularly lower value claims. Insufficient time has been allowed to pass to enable the full impact of these reforms to be assessed.
b. There are numerous factors which may be relevant to understanding an increase in the number of claims, and in particular an increase in the number of whiplash claims.

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Improvements in car safety / technology which reduce the number of serious accidents / fatalities may nonetheless be expected to result in an increase in the number of less serious injury claims. Other relevant factors will include increases in the UK population, increases in vehicle usage (on an already densely used road network) and increases in the number of drivers using the roads. The Consultation Paper does not appear to have made any attempt to assess the impact of such factors.

c. The Consultation Paper proceeds on the assumption that insurers will pass on savings made in consequence of the proposed reforms to consumers. We are deeply sceptical about such promises. It is striking that premiums have continued to rise despite savings achieved as a result of the 2013 reforms. No mechanism has been identified to ensure that savings are in fact passed to consumers. In practice this will likely be impossible to police and/or enforce because of the complexity of factors which affect insurers profits. For example the government is due to announce its review of the discount rate at the end of January 2017. If the discount rate is reduced, insurers will legitimately contend that the cost of personal injury claims will rise.

Our final concern relates to the timescales for this consultation. The proposed reforms could have potentially very significant impacts upon both the victims of accidents and the legal profession. The consultation period was short and was timed to coincide with the Christmas period. This has limited our ability to respond as fully as we might otherwise have done. In the time available, we have decided to focus our reply, in letter form, on the three key areas which we feel best placed to comment on:

- Removal of compensation for PSLA for minor RTA related soft tissue injury claims
- The introduction of a fixed tariff system
- The proposed increase in the small claims limit to £5,000 (or beyond)

Appended to this document is the Additional Impact Assessment Questionnaire which we have completed insofar as we consider we can usefully do so.

Removal of compensation for PSLA for minor RTA related soft tissue injury claims

We set out here our response to questions 1 to 5:

1. We oppose the removal of compensation for PSLA from minor RTA related soft tissue injury claims as being wrong in principle (**Question 5**):
   a. While recognising the problem of exaggerated or fraudulent claims, they represent a small minority of the overall number.
   b. The removal of compensation for PSLA would have a significant and disproportionate adverse impact on a large number of genuine claimants. It would be unjust.
   c. The proposal runs contrary to established principles of English law of tort in which a party may justly be held liable to compensate another for any negligently inflicted non-trivial injury. Existing common law principles are able fairly to delineate between those injuries which can properly be characterised as trivial (such that compensation should be denied) and non-trivial.

d. The proposal would unfairly deny civil rights / remedies to (and thus discriminate unfairly against) one category of injury victim solely by reference to the mechanism of injury.
e. The proposal may also be inconsistent with a person's right to a fair hearing under Article 6 of the Convention.
f. Even if 85% of insurers' savings would be passed on to consumers (which we doubt) it would not justify the removal of civil remedies from a whole class of innocent accident victims who have sustained non-trivial bodily injury as a result of the negligence of a third party.
g. The mischief at which the proposal is aimed (reducing fraudulent claims) would in our view be better addressed by other means including: measures to prevent / reduce 'cold calling' by claims management companies in relation to PI claims; banning 'pre-medical' offers by insurers (as these are likely to encourage fraudulent claims); and ensuring effective criminal sanctions against fraudulent Claimants.

2. We do not support the removal of compensation for PSLA for minor RTA related soft tissue injury claims, nor the establishment of a tariff-based scheme for such claims. On that basis there would be no need to devise a definition. (**Question 1**) However, if a definition is required, we consider that the definition in para 23 is too wide. The mischief at which the proposed reforms are aimed are whiplash claims on the basis that symptoms cannot be objectively verified. We would suggest a definition along the following lines:-

   "a whiplash injury claim means a claim brought by an occupant of a motor vehicle who has suffered soft tissue injury to the neck and/or back and/or shoulder which may be accompanied by psychological symptoms that fall short of the criteria of a recognised psychiatric injury."

3. We do not support extending the definition in paragraph 23 to include psychological trauma claims, where the psychological element is the primary element of a minor road traffic accident related soft tissue injury claim (**Question 2**). There is no evidence of a current problem of fraudulent claims of this type which by their nature tend to involve more complicated issues (e.g. consideration of pre-existing medical history, a requirement for treatment and assessment by an appropriately qualified expert). Existing control mechanisms (in particular the criteria for a recognisable psychiatric injury to have been suffered before compensation is awarded for purely psychological injury) are sufficient to prevent widespread abuse.

4. For the reasons set out above, in our view there is no need to define the duration of "minor injury". However, insofar as it is necessary to do so, we do not support the scope of 'minor injury' being defined either as a duration of six months or less (**Question 3**), or nine months or less (**Question 4**). In our view a more appropriate definition of minor injuries would be for symptoms with a duration of three months or less:-
   a. Defining 'minor injuries' as having a duration of symptoms of less than 3 months would be consistent with the guidance provided in the 13th Edition of the Judicial College Guidelines – see in particular Chapter 13. The Guidelines (which have been independently produced for more than 20 years by the Judicial College under the leadership of a High Court Judge

experienced in dealing with personal injury claims) are the best available guide as to what may properly be characterised as 'minor' injury.

b. Injuries lasting less than six months can have a serious effect on the social, domestic and work life of the injured party. It would be unjust to restrict recovery of compensation for PSLA for such cases.

We set out here our response to questions 8 to 10:

5. If the government decides to proceed with the option of removing compensation for PSLA from minor claims, we do not support the use of the 'Diagnosis' approach (**Question 8**):
   a. Requiring injured parties to put their claim on hold for six months before deciding their entitlement to non-PSLA losses is unfair and undesirable, e.g. it would delay the recovery of valuable compensation for an individual's loss of income.
   b. The 'Diagnosis' approach removes the opportunity for an injured party to receive early treatment / rehabilitation.
   c. Insurers would be unable to settle genuine claims at an early stage. They would be forced to hold reserves for potential claims for longer than is necessary, which may lead to increased premiums.
   d. Such an approach is unlikely to deter fraudulent Claimants who may actually find it easier to present with minimal on-going symptoms at the post-six-month stage.

6. If the government decides to proceed with the option of removing compensation for PSLA from minor claims or introducing a tariff-based system (**Question 9**), we consider that the "Prognosis" approach is preferable, provided of course that Claimants are able to up-date their evidence in appropriate cases if symptoms do not resolve within the predicted recovery period.

7. We are not aware of any significant issue with low value claims being brought at the end of the limitation period (**Question 10**), even less so of such cases being brought without medical evidence. In our experience, low value claims arising from RTAs are most commonly intimated quite shortly after the index accident. The existing protocols (and limited cost recovery) encourage swift progression of such claims. The problem of late issue more commonly arises in other contexts in our experience – typically in EL claims where liability is contested and/or in more complex / serious injury claims where the prognosis remains unclear even at the end of the limitation period.

<u>The introduction of a fixed tariff system</u>

We set out here our response in particular to Questions 6, 7, 11 and 12 of the Consultation Paper. In summary:-

a. We do not support the introduction of a tariff-based scheme for dealing with minor injury claims or other RTA related soft tissue injury claims;
b. <u>If</u> a tariff scheme is introduced, it should be restricted to cases of minor injury, defined as being of a duration of 3 months or less;

c. Any tariff scheme for minor injuries should be more refined than is currently proposed;
d. The figures proposed in the consultation period are significantly too low.

A Tariff System? **(Question 6)**

There are two main reasons which might justify the introduction of a tariff scheme. First, as a device to reduce the level of damages awarded for claims within the tariff, if the existing levels of damages are accepted as being "too high".

We do not accept the proposition that the amount of compensation paid to Claimants for 'minor' claims is currently too high for the amount of pain and suffering endured – at least in those cases where the symptoms complained of are genuine. (For those intent on making fraudulent claims, a tariff scheme is not a solution. It will not act as a deterrent, but will merely reduce the level of reward from such dishonest conduct).

Although difficult objectively to verify, there is no doubt that 'whiplash' injuries do exist and can cause significant levels of pain and discomfort whilst symptoms persist. Putting an economic value on pain and suffering is inevitably a difficult exercise. Assessing the 'appropriate' level of award is a matter on which people could reasonably disagree. However, from our experience, most injured Claimants are surprised at the low level of awards for general damages in this country and very few would willingly swap the damages recovered for the pain endured. We know of no objective research which indicates that consumers / society as a whole regard the current level of awards in this country as in any way "excessive".

The current (13th) edition of the Judicial College Guidelines suggest a figure of between £1,160 and £2,050 for "Minor Injuries" in which symptoms last for between one to three months.[1] These Guidelines are independently produced by the Judicial College to reflect the awards of general damages for PSLA which are typically made by Judges, based on long-established case precedents, accumulated with decades of experience. Moreover, the Guidelines are carefully calibrated to ensure consistency between different types of injury and injuries of different durations / severity. The Guidelines are also up-dated to keep pace with inflation so that the value of such awards is not artificially eroded. In our view, these Guidelines provide a fair (and certainly the best available) assessment of the appropriate valuation of such injuries.

The second justification for a tariff scheme would be to simplify the system of quantifying damages, especially for those who do not have the benefit of legal representation. The consultation paper identifies (para 41) protection against the risk of under-settlement. However the solution proposed would in effect result in the under-valuation of all claims caught by the proposed new tariff. In our experience, determining the quantification of general damages (once appropriate medical evidence has been obtained) is not an aspect which adds significantly to either the cost or complexity of such claims. The Guidelines themselves are widely available to assist Litigants in Person.

Any tariff-based system is inevitably a blunt tool which sacrifices the flexibility inherent in the current system for assessing damages. People are different and react to similar injuries in very

[1] See Chapter 13, allowing for the 10% uplift for general damages in accordance with *Simmons v Castle* [2012] EWCA Civ 1039.

different ways. Duration of symptoms is only one measure of the impact of an injury (and indicates nothing about the severity of symptoms experienced). No tariff scheme can properly take such differences into account. Finally, a simplistic tariff system will struggle to deal adequately with cases of multiple minor injuries. In consequence the damages awarded by a tariff scheme will inevitably not be proportionate to the pain and suffering experienced by individual Claimants. Under the proposed scheme, a Claimant suffering minimal neck symptoms for one week would recover the same amount of damages as someone suffering significant symptoms in the neck, back and leg for 25 weeks. This would be manifestly unfair.

A tariff-based scheme runs the risk of promoting fraud because awards would effectively become automatic, with little or no consideration of the merits of individual cases as happens under the current system. In our experience it is precisely such consideration which enables fraudulent claims to be exposed.

The Scope of any Tariff System

For the reasons set out above, we do not support the introduction of a tariff system. If such a scheme is to be introduced, we consider that it should cover only those cases which can properly be described as "Minor". For the reasons previously given, in our view this should be defined so as to be consistent with the definition of Minor Injuries in the Judicial College Guidelines (i.e. only up to 3 months). This would also be consistent with our view as to the appropriate limit for Small Claims Track cases (up to £2,000). Limiting the scope of any tariff scheme to this level would also afford a proper opportunity to observe and understand the consequences of such a scheme before considering any wider expansion of it.

If a tariff scheme is introduced, we suggest that it should be more refined than currently proposed (even if limited to cases lasting no more than 3 months). We would suggest sub-categories in accordance with those identified in Chapter 13 of the Judicial College Guidelines as being appropriate. Such an approach would mitigate against the unfairness of the proposed scheme (see the one week / 25 week example cited above). It would also reflect the current approach which recognises the particular impact of the initial / acute period of injury when symptoms are at their most severe. This is why the progression of awards over time in the Guidelines does not simply follow a linear pattern.

The amount of award **(Questions 7 and 11)**

In our view the figures of £400 / £425 for injuries lasting up to 6 months is very significantly too low. Indeed we consider that these figures would be too low even if minor claims are defined as having a duration of 3 months or less.

The current bracket for neck injuries suggested by the Judicial College Guidelines (13th Ed) where full recovery takes place between three and 12 months ranges from £2,050 - £3,630. The proposed tariff of £1,100 for symptoms lasting up to 12 months represents only 30% of the current level of award. The proposed tariff of £400 for injuries lasting up to 6 months is less than 20% of the current figure for symptoms lasting for just 3 months.

The proposed tariff figures do not appear to be "evidence based". We are concerned that the figure of £400, stated at paragraph 42 of the Consultation Paper, stems from the erroneous assertion that

the 12th Edition of the Judicial College Guidelines (2013) indicates that compensation for PSLA for minor RTA claims should start at £200. We cannot find the source for this assertion. The Guidelines state that for Minor Injuries where symptoms last for no more than 7 days, damages should be in the range from "a few hundred pounds to £500 / £550". It is immediately striking that the proposed tariff award of £400 for symptoms lasting up to 6 months is less than is currently awarded for cases where symptoms resolve within one week. In our experience, awards of general damages below £500 are currently extremely rare. There are almost no reported cases where damages for PSLA have been awarded in such low sums.

We suspect that the figures which appear in Tables 1 & 2 of the Consultation Paper[2] as representing the "current weighted median compensation payment for PSLA based on industry data" are either out-of-date and/or unreliable. For example the suggested figure for those cases where symptoms last 13 – 15 months is said to be £3,300. This is below the current 'Guidelines' figure of £3,630 for full recovery within 12 months. Reasons for this disparity may include:-

a. Insurance industry figures not taking any / full account of the uplift by 10% of awards for general damages cases in accordance with the Court of Appeal decision in *Simmons v Castle*.
b. The figures taking account of other factors which have influenced the level of settlement (eg risks on liability / contributory negligence, willingness to accept lower sums to achieve a prompt settlement).
c. In our experience, Colussus (which we understand is a tool used by some insurers to determine what offers should be made in settlement of claims) routinely under-estimates the level of awards made by judges in actual cases. We do not know why this is, but in consequence it should not be used as a reliable basis for assessing current awards.

We note also the level of proposed tariff of £400 is significantly lower than the current minimum level of award in the 2012 Criminal Injuries Compensation Scheme of £1,000 and is below the minimum level of award usually made in Employment Tribunal claims for injury to feelings in discrimination cases (+£500).

Insofar as a tariff scheme is to be introduced, regard should still be had to the 13th Edition Judicial College Guidelines brackets for Minor Injuries including the 10% uplift. Recognising the spread of cases that would fall within each bracket, we suggest the appropriate sums should be not less than the following:-

- Complete recovery within 7 days - £400
- Complete recovery within 28 days - £800
- Complete recovery within 3 months - £1,500

We do not provide figures beyond the 3 month period, but any tariff figures beyond this period should continue to reflect current awards and the Judicial College Guidelines. Any failure to do so will result in there being a significant discrepancy between claims falling within and outside the

[2] Pages 21 - 22

tariff. Such a discrepancy would be an obvious incentive to seek to demonstrate that symptoms were persisting beyond the 'tariff' period (whatever that might be).

Discretionary Uplift **(Question 12)**

If (contrary to our submission) a tariff-based scheme is introduced, we would support provision for a discretionary uplift in order to retain some degree of flexibility. Such an uplift could, for example, be deployed to deal (in part) with the problem of multiple injuries. However, to require "exceptional circumstances" would render the provision redundant. It is difficult to conceive of any circumstances which could truly be described as 'exceptional' within the context of a minor RTA soft tissue claim. It would be far better to provide a mechanism which enables judges to apply a more broadly based discretionary uplift *"if the circumstances of the case justify it"*. Non-exhaustive guidance could be given as to the types of situation in which an uplift might be applied (e.g. multiple injuries, particularly severe symptoms etc). The circumstances in which an uplift would be applied would swiftly become clearly established by case precedent.

The proposed increase in the small claims limit to £5,000

We set out here our response to Questions 13 and 14 of the Consultation Paper. In summary we would support an increase in the Small Claims Track limit for all cases up to £2,000 only. Although we oppose any increase beyond this limit, if the government presses ahead with any increase beyond this level, it should apply only to RTA claims.

1. Personal injury litigation is such that it invariably involves individual Claimants advancing a claim against a funded party, typically an insurer, local authority or public body such as the NHSLA. Such organisations do, and will continue to, have access to professional legal advice and representation even to deal with cases that proceed in the Small Claims Track. This includes the ability to engage (and pay for) appropriate expert evidence as may be required. There is therefore a fundamental imbalance of power between injured parties and compensators. Making it uneconomic for legal professionals to be instructed to handle the claims of injured individuals in cases up to £5,000 will exacerbate this imbalance and impede access to justice.

    a. A particular concern is how claimants acting in person would obtain (and pay for) appropriate expert medical evidence, and then, crucially, assess their prospects of success and any potential offers.

    b. The proposed reforms would have a disproportionate impact on the most vulnerable members of society: in particular those with poor literacy skills, with learning disabilities or those for whom English is not the first language.

    c. The proposed reforms would also have a disproportionate impact on both children and the elderly. Both groups are less likely to have subsidiary claims (such as claims for loss of earnings) which might otherwise take claims of comparable severity outside the Small Claims Track limits.

d. An increase in the small claims track limit to £5,000 is likely to hamper the early settlement of claims. Solicitors will be disinclined to take on cases until the proposed claimant has been suffering from his injuries for a period of time which takes the value of his claim outside the ambit of the small claims track. Late notification of claims is therefore likely to become more commonplace.

e. The consultation document suggests that compensation for subsidiary items of loss such as loss of earnings and/or the cost of required treatment will not be affected by the proposed reforms. In order to recover any amount under these heads of loss, a claimant will first have to prove that he suffered injury. This will in turn require litigants to access (and pay for) appropriate expert medical evidence.

2. We acknowledge that raising the small claims track limit for claims to not more than £2,000 would be a proportionate means of correcting for inflation since 1991. However, we do not consider that raising the limit beyond this would be proportionate, necessary or desirable, even for RTA claims.

   a. Based on the current Judicial College Guidelines, we note that raising the threshold to £5,000 would bring within the scope of the SCT a diverse range of more complex injuries including 'acceleration of injury' cases, moderate psychiatric injuries, fractures to upper limbs and permanent facial scarring. This goes considerably further than the Government's objective of reducing 'minor claims' for subjectively reported whiplash injuries.

   b. In relation to RTA claims, while it is correct to say that liability is admitted in the vast majority of cases, such claims already fall within the procedure of the MOJ Portal and therefore be suitable for disposal at a Stage 3 hearing (if not settled before). The raised threshold will therefore most commonly apply to more complex claims where liability is in dispute.

   c. A raft of reforms were introduced in 2013 which directly impact on the cost of litigating low value claims (including the removal of recoverable success fees and ATE premiums and the extension of the fixed cost regime). The full impact of these reforms should be assessed and understood before yet further reforms are implemented.

   d. The current MOJ Portal system is currently not designed to be used by Litigants in Person. The proposed reforms will disrupt a system that currently works efficiently and achieves the government's stated aim of reducing the cost of litigating such claims.

3. We do not consider that the proposed changes will reduce the volume of exaggerated or fraudulent claims.

a. Exaggerated and/ or fraudulent claims are not appropriate to be heard in the informal setting of the small claims track, where oral evidence is invariably heard unsworn and the strict rules of evidence do not apply.

b. The consultation itself acknowledges that claims where (for instance) causation is in issue or other complexities exist may be better suited to another court track. In our view, this would apply equally to claims where there are allegations of a low velocity impact (LVI), which frequently turn on expert evidence and the credibility of claimants, as it would to cases where the Defendant explicitly alleges fraudulent behaviour.

c. Disincentivising solicitors' involvement in such litigation is likely to widen the sphere of influence of claims management companies, who are currently unregulated and have no ethical duties to the court.

4. The proposed increase to the small claims limit goes much further than simply addressing the Government's stated objective of decreasing the volume of minor, exaggerated and fraudulent claims. Raising the limit for all PI claims will penalise genuine claimants with injuries sustained at work or as the result of clinical care, who will face the process of litigation without legal representation.

   The consultation itself accepts that claims involving clinical negligence or Employers' and Public Liability often involve issues which are legally and evidentially more complex than those found in RTA claims. This renders them wholly unsuitable for inclusion within the small claims track.

   a. In the context of EL claims, in consequence of the Enterprise and Regulatory Reform Act 2013, injury victims can no longer rely on breaches of statutory duty (including strict liability provisions) and must instead now prove negligence. These reforms have increased the evidential and legal complexity of such claims. An increase to £5,000 would capture more complex claims such as industrial disease claims.

   b. In the context of PL claims, an increase to £5,000 would capture a large number of more complex claims, such as tripping claims in which highway authorities seek to deny liability on the basis of a "s.58" systems defence.[3]

   c. In relation to EL/ PL claims, we note that the Government "does not have reliable data on the PSLA damages or special damages for low level EL/ PL claims" and has therefore sought further evidence from stakeholders. We consider it cannot be right to proceed until such data is available and the impact of what is proposed can be assessed.

[3] Based on the provisions of s.58 of the Highways Act 1980

Yours sincerely,

Temple Garden Chambers
Personal Injury Team.

Part 10 – Impact Assessment – Additional Impact Assessment Questions

1 – Options

Question 1.1: Do you agree with the range of assumptions made in relation to Option 1.1? If not, please explain why, preferably with supporting evidence.

No. Please see answer to question 1.6 below.

Question 1.2: Do you agree with the range of assumptions made in relation to Option 1.2? If not, please explain why, preferably with supporting evidence

No. Please see answer to question 1.6 below.

Question 1.3: Do you agree with the range of assumptions made in relation to Option 2? If not, please explain why, preferably with supporting evidence.

No. Please see answer to question 1.6 below.

Question 1.4: Do you agree with the range of assumptions made in relation to Option 3? If not, please explain why, preferably with supporting evidence.

No. Please see answer to question 1.6 below.

Question 1.5: Do you agree with the range of assumptions made in relation to Option 4? If not, please explain why, preferably with supporting evidence.

No. The assumption that 7,000 claimants would not pursue their claims because a medical report is required is incompatible with the assumption that many of the existing claims with medical reports are exaggerated or fraudulent. At least one of these two assumptions must be incorrect.

Question 1.6: Do you agree with the range of assumptions made in relation to Option 5.1? If not, please explain why, preferably with supporting evidence.

No. The assumption that "Those providing services (lawyers, medical experts, Claims Management Companies) are assumed to find alternative activities of equal economic value." is incompatible with the assumption that there will be a saving to defendant insurers as a result of lower damages, medical costs and legal fees. If lawyers and medico-legal experts do find alternative activities of equal economic value, that must mean an increase in other casework, resulting in damages, legal costs and related disbursements that will have to be met by insurers. Alternatively, if lawyers and medico-legal experts do not all find alternative activities of equal economic value (intuitively the more likely outcome), there will be a reduction in income tax and VAT revenue to HMRC, which should have been taken into account in the same manner that effects on IPT have been taken into account.

A proper understanding of this aspect of the economic consequences of these proposals is particularly important given that the cost/benefit analysis is relatively finely balanced for this policy option. The deferring of proper consideration of the effect of changes in demand on lawyers and medical experts (and the knock-on effects on HMRC revenue) until the post-consultation IA is not appropriate in such circumstances.

Further, the assumption that, without reform the volume and value of RTA-related soft tissue claims will remain at around current levels fails to take account of the likely future changes in vehicle technology. It is assumed at paragraph 1.5 that the decrease in fatal and serious RTAs is inconsistent with an increase in claims for minor injuries, when in fact one follows logically from the other. If the overall number of accidents has remained relatively stable, then a reduction in serious injuries would be accompanied by a rise in minor injuries, but, as further improvements are made, a gradual reduction in minor injuries would follow. It is notable that the IA does not look at the overall number of RTAs, and whether or how that figure has changed, but focusses instead on RTAs reported to the police. However, RTAs that result in soft tissue injuries only are unlikely to be reported to the police because the onset of such injuries is by their very nature delayed and the symptoms are relatively minor. The use of this figure is therefore unhelpful.

Question 1.7: Do you agree with the range of assumptions made in relation to Option 5.2? If not, please explain why, preferably with supporting evidence.

No. Please see the answer to question 1.6 above.

2 – Pre medical offers

Question 2.1: From your experience in personal injury claims please provide further information on the issues raised on pre-medical offers in the impact assessment. In particular please provide any information you have on the:

i. current and historical average volume of claims;

ii. proportion of claims with legal representation, and separated by type of legal representation (for example the proportion of claimants with BTE funded legal representation, the proportion of claimants with non-BTE legal representation and the proportion of claimants that are litigants in person);

iii. proportion of claims with special damages (and separated by type of special damages); i

iv. current and historical average settlements (total settlement, PSLA element, and special damages element, separately), stratified by claimant injury durations, if possible;

v. current and historical average volume of late claims/how long after the accident the offer is made/accepted and the source/origin of the offers (i.e. offers made by insurer, solicitor etc.);

vi. likely change to the above as a result of the governments intentions detailed in the consultation; and

vii. above for road traffic accidents claims, employer liability claims, public liability claims, and clinical negligence claims.

3 – Non RTA Personal Injury claims

i) Employers Liability

Question 3.1: From your experience in personal injury claims please provide further information on the issues raised on employers' liability claims in the impact assessment. In particular please provide any information you have on the:

i. current and historical average volume and proportion of claimants with BTE insurance;

ii. proportion of claims with legal representation, and separated by type of legal representation (for example the proportion of claimants with BTE funded legal representation, the proportion of claimants with non-BTE legal representation and the proportion of claimants that are litigants in person);

iii. proportion of claims with special damages (and separated by type of special damages);

iv. current and historical average settlements (total settlement, PSLA element, and special damages element, separately), stratified by claimant injury durations, if possible;

v. current and historical average volume of late claims/how long after the accident the claim is issued;

vi. proportion of market that has private insurance and all of the above for claims that currently have medical reports, and currently are pre-medical offers; and

vii. likely change to the above as a result of the governments intentions detailed in the consultation.

ii) Public Liability

Question 3.2: From your experience in personal injury claims please provide further information on the issues raised on public liability claims in the impact assessment. In particular please provide any information you have on the:

i. current and historical average volume and proportion of claimants with BTE insurance;

ii. proportion of claims with legal representation, and separated by type of legal representation (for example the proportion of claimants with BTE funded legal representation, the proportion of claimants with non-BTE legal representation and the proportion of claimants that are litigants in person);

iii. proportion of claims with special damages (and separated by type of special damages);

iv. current and historical average settlements (total settlement, PSLA element, and special damages element, separately), stratified by claimant injury durations, if possible;

v. current and historical average volume of late claims/how long after the accident the claim is issued

vi. proportion of market that has private insurance and all of the above for claims that currently have medical reports, and currently are pre-medical offers; and

vii. likely change to the above as a result of the governments intentions detailed in the consultation.

iii) Clinical Negligence

Question 3.3: From your experience in personal injury claims please provide further information on the issues raised on low value clinical negligence claims in the impact assessment. In particular please provide any information you have on the:

i. current and historical average volume and proportion of claimants with BTE insurance;
ii. proportion of claims with legal representation, and separated by type of legal representation (for example the proportion of claimants with BTE funded legal representation, the proportion of claimants with non-BTE legal representation and the proportion of claimants that are litigants in person);
iii. proportion of claims with special damages (and separated by type of special damages);
iv. current and historical average settlements (total settlement, PSLA element, and special damages element, separately), stratified by claimant injury durations, if possible;
v. current and historical average volume of late claims/how long after the accident the claim is issued
vi. proportion of market that has private insurance and all of the above for claims that currently have medical reports, and currently are pre-medical offers; and
vii. likely change to the above as a result of the governments intentions detailed in the consultation.

4 - BTE

Question 4.1: From your experience in personal injury claims please provide further information on the issues raised on BTE insurance in the impact assessment. In particular information please provide any information you have on the:

i. current and historical average level of take up for RTA claims currently with medical reports;
ii. current and historical average costs of BTE products; and
iii. likely change to the above as a result of the governments intentions detailed in the consultation.

5 – Impact on NHS

Question 5.1: Do you have any information on the injury characteristics of individuals who seek treatment from the NHS with regard to a personal injury claims split by inpatient, outpatient and those requiring an ambulance called out. If so, please provide details such as type of treatment, injury length etc.

6 – Proportion of insurers saving passed onto consumers

Question 6.1: We would also welcome views from respondents on the assumption in the IA that 85% of insurers savings would be passed onto consumers.

We have commented on this within the main body of our submission.

7 – Equalities/Protected Characteristics

Question 7.1: Do you consider that any of these proposals will affect people with protected equality characteristics? If so, please give details.

Yes. The assumption in paragraph 1.17 that "asymmetric information" is a valid reason for removing the availability of compensation for injury sets a dangerous precedent, which could form the basis of a future attempt to restrict the availability of compensation for people with psychological injuries, where exactly the same type of information asymmetry exists. Many such psychological injuries are of sufficient severity and longevity to be defined as disabilities. The equating of injuries that may be difficult to identify and assess with the bringing of fraudulent or exaggerated claims risks further stigmatising people who are suffering from mental illnesses caused by the acts or omissions of others.

Question 7.2: Do you consider that any of these proposals impact on the duty to have due regard to the need to advance equality of opportunity, by minimising disadvantages due to their protected characteristics? If so, please give details.

Question 7.3: Do you have any data to support or disagree with any of the proposals which you would like the government to consider as part of this consultation?

8 – Small and Micro Business Assessment

Question 8.1: Is your business a small, micro or medium sized business which undertakes work in England and Wales in support of personal injury claims road traffic accidents, employer's liability, public liability or clinical negligence claims?

Yes. Temple Garden Chambers Limited is a small business, as defined (namely a business with between 9 and 49 employees). In addition, the 67 barristers who practise from Temple Garden Chambers are sole traders and therefore constitute 67 micro businesses. The provision of legal advice and advocacy services in respect of a wide range of personal injury and clinical negligence claims is a core aspect of Chambers' business.

Question 8.2: What is your assessment of the impact on your business from the reforms included in this consultation? Where possible please provide evidence in support of your comments.