

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

### CIVIL LIABILITY BILL [*LORDS*]

*First Sitting*

*Tuesday 11 September 2018*

*(Morning)*

---

#### CONTENTS

Programme motion agreed to.

Written evidence (Reporting to the House) motion agreed to.

CLAUSES 1 TO 5 agreed to, one with an amendment.

CLAUSE 6 under consideration when the Committee adjourned till this day at Two o'clock.

---

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Saturday 15 September 2018**

© Parliamentary Copyright House of Commons 2018

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:**

*Chairs:* SIR HENRY BELLINGHAM, †GRAHAM STRINGER

- |  |   |
|--|---|
| † Brereton, Jack ( <i>Stoke-on-Trent South</i> ) (Con)     | † Onasanya, Fiona ( <i>Peterborough</i> ) (Lab)                       |
| † Charalambous, Bambos ( <i>Enfield, Southgate</i> ) (Lab) | † Reeves, Ellie ( <i>Lewisham West and Penge</i> ) (Lab)              |
| † Courts, Robert ( <i>Witney</i> ) (Con)                   | † Russell-Moyle, Lloyd ( <i>Brighton, Kemptown</i> ) (Lab/<br>Co-op)  |
| † Davies, Chris ( <i>Brecon and Radnorshire</i> ) (Con)    | † Stevens, Jo ( <i>Cardiff Central</i> ) (Lab)                        |
| † De Piero, Gloria ( <i>Ashfield</i> ) (Lab)               | † Stewart, Rory ( <i>Minister of State, Ministry of<br/>Justice</i> ) |
| † George, Ruth ( <i>High Peak</i> ) (Lab)                  | † Tracey, Craig ( <i>North Warwickshire</i> ) (Con)                   |
| † Green, Chris ( <i>Bolton West</i> ) (Con)                | David Weir, Kenneth Fox, <i>Committee Clerks</i>                      |
| † Hanson, David ( <i>Delyn</i> ) (Lab)                     | † <b>attended the Committee</b>                                       |
| † Heaton-Jones, Peter ( <i>North Devon</i> ) (Con)         |   |
| † Mann, Scott ( <i>North Cornwall</i> ) (Con)              |   |
| † Milling, Amanda ( <i>Cannock Chase</i> ) (Con)           |   |

# Public Bill Committee

Tuesday 11 September 2018

(Morning)

[GRAHAM STRINGER *in the Chair*]

## Civil Liability Bill [Lords]

9.25 am

**The Chair:** If they wish, hon. Members may remove their jackets. It is warm in here and we are trying to open a window. Please ensure that electronic devices are turned off or switched to silent. Tea and coffee are not allowed during sittings. We will first consider the programme motion on the amendment paper, which was agreed by the Programming Sub-Committee yesterday. If there are any matters of interest to declare, we will do that afterwards. We will then consider a motion to enable the reporting of written evidence for publication. In view of the limited time available, I hope we can take those motions without too much debate.

*Ordered,*

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 11 September) meet—

- (a) at 2.00 pm on Tuesday 11 September;
- (b) at 11.30 am and 2.00 pm on Thursday 13 September;
- (c) at 4.30 pm and 7.00 pm on Tuesday 9 October;

(2) the proceedings shall be taken in the following order: Clauses 1 to 10; new Clauses; new Schedules; Clauses 11 to 14; remaining proceedings on the Bill;

(3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 10.00 pm on Tuesday 9 October.—  
(*Rory Stewart.*)

**Jo Stevens** (Cardiff Central) (Lab): On a point of order, Mr Stringer. It is a pleasure to serve under your chairmanship. I refer the Committee to my entry in the Register of Members' Financial Interests. My partner is a solicitor and a chief executive of a personal injury law firm, which is relevant to the matters under consideration.

**Robert Courts** (Witney) (Con): Further to that point of order, Mr Stringer. I would like to make a similar declaration, because I used to practise as a personal injury barrister.

**Gloria De Piero** (Ashfield) (Lab): Further to that point of order, Mr Stringer. I declare the advice that I have received from Thompsons Solicitors, which will be entered in the register.

**Craig Tracey** (North Warwickshire) (Con): Further to that point of order, Mr Stringer. I declare an interest as chair of the all-party parliamentary group on insurance and financial services, and as a former insurance broker.

**The Chair:** Are there any other declarations of interest?

**David Hanson** (Delyn) (Lab): Just to be on the safe side, I am sponsored by the union USDAW, which has made representations to the Committee, and which I may speak on in due course.

*Resolved,*

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(*Rory Stewart.*)

**The Chair:** Copies of the written evidence that the Committee receives will be made available in the Committee Room. The selection list for today's sitting is also available in the room.

### Clause 1

“WHIPLASH INJURY” ETC

**Gloria De Piero:** I beg to move amendment 8, in page 1, line 4, leave out clause 1 and insert—

“Definition of whiplash injury

(1) In this Part ‘whiplash injury’ means an injury, or set of injuries, of soft tissue in the neck, back or shoulder that is of a description specified by the Chief Medical Officer of the Department of Health.

(2) For the purposes of this Part a person suffers a whiplash injury because of driver negligence if—

(a) when the person suffers the injury, the person—

- (i) is using a motor vehicle other than a motor cycle on a road or other public place in England or Wales, or
- (ii) is being carried in or on a motor vehicle other than a motor cycle while another uses the vehicle on a road or other public place in England or Wales,

(b) the injury is caused—

- (i) by the negligence of one or more other persons, or
- (ii) partly by the negligence of one or more other persons and partly by the negligence of the person who suffers the injury, and

(c) where the negligence of the other person or persons consists in an act or acts done by the person or persons while using a motor vehicle on a road or other public place in England or Wales.

(3) The fact that the act or acts constituting the negligence of the other person or persons is or are also sufficient to establish another cause of action does not prevent subsection (2)(b) being satisfied.

(4) For the purposes of this section references to a person being carried in or on a vehicle include references to a person entering or getting on to, or alighting from, the vehicle.

(5) In this section—

‘act’ includes omission;

‘motor cycle’ has the meaning given by section 185(1) of the Road Traffic Act 1988;

‘motor vehicle’ means a mechanically propelled vehicle intended or adapted for use on roads;

‘road’ means a highway or other road to which the public has access, and includes bridges over which a road passes.”

*This amendment would require the Chief Medical Officer to define “whiplash injury”.*

**The Chair:** With this it will be convenient to discuss the following:

Amendment 9, in clause 1, page 2, line 3, at end insert—

“(iii) unless in respect of 4(a)(i) or (ii) the person is in a motor vehicle during the course of their employment, in which case Clause 1 shall not apply.”

*This amendment would exempt people suffering a whiplash injury during the course of their employment from this definition.*

New clause 9—*Exemption for vulnerable road users and people injured during the course of their employment—*

“(1) Nothing in Part 1 of this Act other than Clauses 6 and 7 shall apply to a claim made by—

- (a) a pedestrian, cyclist or horse rider; or
- (b) a person injured in the course of their employment.”

*This new clause would exempt vulnerable road users and people injured in the course of their employment from the provisions of Part 1 of the Bill, except Clauses 6 and 7.*

Clause stand part.

**Gloria De Piero:** It is a pleasure to serve under your chairmanship, Mr Stringer. With amendment 8, we seek to address the Government’s perplexing lack of faith in experts and their overweening belief that their own judgment is right. In the Bill, the Government have chosen to sideline doctors and, as we will see later, judges—two groups rightly held in high esteem in our society. Apparently, the Government know better than them. Quite simply, with this amendment, we say, “This is a medical issue, so ask a doctor.”

Although we have seen the same arrogance that the Government know best and a lack of respect in other areas of policy in recent years, this is the most gratuitous and egregious example I can recall. The only explanation that I can think of as to why they do not want experts involved is that they think that their knowledge is greater and better—or perhaps this is an example of the nanny state that they say they do not believe in.

The Government have chosen not to ban all compensation for whiplash, which indicates that they accept its validity as a medical condition, but they attempt to define it themselves. If they accept that it exists as a medical condition, surely it needs a medical definition. The Minister may tell me that the definition in the Bill comes from doctors. If so, might I ask who? They make no mention of any input from medical experts. Could it be that they have not mentioned their sources because the adviser in this case was all too familiar from almost every other aspect of this Bill? And might the definition of a medical condition in this Bill possibly have come from the insurers, who stand to profit enormously from this huge shift in the law?

On Second Reading in the Commons, the Chair of the Justice Committee, the hon. Member for Bromley and Chislehurst (Robert Neill), alluded to the possibility that in certain parts of the Bill the Lord Chancellor might be acting in a quasi-judicial capacity, although I note that the Minister did not respond to that suggestion. However, even if that were the case, although he might be required to act independently he would not be transformed into a medical expert, which is what is required here.

Before I talk about amendment 9 and new clause 9, can the Minister confirm that vulnerable road users will be exempted from the Bill and from the small claims limit? Also, will he define who a vulnerable road user is?

**The Minister of State, Ministry of Justice (Rory Stewart):** Vulnerable road users will be excluded from the Bill and from secondary measures on the small claims court limit. A vulnerable road user is anybody who is neither driving a motor vehicle nor a passenger in one; in other words, the definition includes pedestrians, horse riders, motorcyclists or anyone else on the road who is not in a motor vehicle.

**Gloria De Piero:** I thank the Minister for putting that on the record.

We absolutely agree that there is a need to act against insurance cheats; no one supports fraudsters. The amendment would not affect the pursuit of those who are claiming fraudulently. By accepting this amendment, the Government can still hit their target. Through this amendment, we simply want to protect those who are injured in the course of their work through no fault of their own. Before it is suggested that this somehow drives a coach and horses through the Government’s intentions, we are not talking about huge numbers of cases.

Thompsons Solicitors deals with workers’ injuries day in and day out. The majority of its work is for the trade unions. Just 16% of its case load consists of injuries from road traffic accidents, and of that number whiplash cases comprise less than 20% of the total. Once we eliminate the large number of these claims that are not work-related, we are left with a tiny percentage of claims related to whiplash that people have suffered in the course of their work.

I have seen no complaint of fraud levelled by the Government against workers nor any suggestion that they are anything to do with the compensation culture of which there has been so much talk, although notably Lord Young said in his report, “Common Sense, Common Safety”, that in any case that view was a perception and not a reality. The Association of British Insurers, which has been very active around this Bill, has produced no examples of fraudulent claims by workers.

This amendment is an opportunity for the Government to exempt employers’ liability claims from the Bill and at the same time exclude them from the small claims limit. If the Government refuse to exempt workers, are they saying that any whiplash claim is evidence of fraud, whoever it is made by? If so, why have they not banned all whiplash claims? If they refuse to exempt workers, are they saying that the police officer, the paramedic, the school bus driver or the firefighter who suffers whiplash while working hard for our communities is scamming it?

Given that the Government have exempted vulnerable road users—horse riders, pedestrians and cyclists—from both the Bill and the associated small claims changes, what is their justification for not exempting workers? Are they saying that vulnerable road users are worthy of more protection than workers? Perhaps the justification is that the cyclist, the pedestrian and the horse rider do not take out motor insurance for their road use, but neither does the professional driver. If the justification for the exemption of vulnerable road users is that they are uniquely exposed, surely the professional driver is, too? For instance, there is the police officer in a high-speed chase or the HGV driver who is on the road for eight hours a day. The reality is that the Government have exempted vulnerable road users because including them would be politically untenable.

**Craig Tracey:** I just do not see any reason why someone who drives as part of their employment should recover a different sum to somebody else—one of our constituents, for example—who is driving in the normal daily course of their life, because they can still claim loss of earnings. The Bill does not change that, so they can still be compensated if they lose money as a result of being unable to work.

**Gloria De Piero:** It would be grotesque nonsense for a cyclist or a pedestrian injured through no fault of their own to find themselves subject to a tariff and a £2,000, let alone a £1,000, small claims limit when the target is whiplash and, in turn, apparently fraud. The same applies to workers. What on earth have they to do with whiplash for the purposes of fraud? If the Government will not move on this point, the only conclusion one can draw is that there is one rule for the small number of those wealthy enough to own a horse and another for the tens of thousands who drive for a living, many of them not in well-paid jobs—say, the paramedic or the refuse collector—who run the risk of whiplash when going about their jobs.

It is deeply disappointing that the Government are sneaking through crucial parts of their changes via a statutory instrument in order to avoid this sort of scrutiny. I wish to make perfectly clear today where the Opposition stands on workers for the entire package of measures. Workers, like vulnerable road users, should be excluded from both the Bill and the small claims increases.

**Rory Stewart:** It is a great privilege to serve under your chairmanship, Mr Stringer. Thank you again for the serious involvement that has gone into the debate. It has been a real privilege, as somebody who is not a legal specialist, to see how many well informed and distinguished colleagues we have on both sides of the House contributing to these interesting questions of definition.

Many of the amendments we are dealing with today reflect the work of the House of Lords and, in fact, of Opposition Members of the House of Lords—Labour Members, Liberal Democrat Members and Cross Benchers—who introduced many of the clauses into this Bill, which were not originally there and which we are now discussing. With your permission, Mr Chair, I will move quickly through amendments 8 and 9 and new clause 9 and then discuss why we feel clause 1 should stand part of the Bill.

The definition of whiplash, which is dealt with in amendment 8, was placed in the Bill after extensive debate pushed by the Delegated Powers and Regulatory Reform Committee of the House of Lords. In the initial version of this Bill, we had not sought to define whiplash. The DPRRC argued carefully and at great length that it felt strongly that it was inappropriate to have legislation of this sort if a definition was not in the Bill. The Committee felt it was not appropriate for any individual, whether a Minister or a chief medical officer, to make this definition on their own. It should be made by Parliament as a whole and it should be made fully explicit.

After a great deal of debate in the House of Lords, we conceded this point. The clause was inserted and everybody—Cross Benchers, Opposition Members of

the House of Lords—nodded the amendment through. It was then inserted. The reasons for this are both those brought forward by the DPRRC and, I would add, to assuage some of the concerns put forward by the Opposition. Clause 2 also allows for a review of the definition by the chief medical officer, along with others, every three years to make sure it remains in touch with medical science and medical expertise. The definition is in the Bill and not purely provided by medical experts because, as the House of Lords argued, this is a medico-legal definition. In other words, it is not simply a question for medical specialists; it relates to the operation of law and the way in which the law of tort would operate.

The final reason for which I ask that amendment 8 be withdrawn is that I am afraid it refers only to the chief medical officer for England, whereas, of course, the legislation applies to England and Wales. That is why we feel strongly that clause 2, which refers to the chief medical officer for England and the chief medical officer for Wales and, indeed, the Lord Chief Justice and the Law Society in consulting on the definition of whiplash every three years, is the appropriate way to proceed. On that basis, I respectfully ask that amendment 8 be withdrawn.

It is easy to understand why amendment 9 was tabled and that the Opposition would be concerned. Again, we would respectfully argue that the key point is that the injury has occurred and not why the individual is in the car. The question of why they are in the car would be a distinction without a difference. There are many pressing reasons why somebody might be in a car. I, like many Members here, represent a rural area. Somebody might be in a motor car, for example, because they were having to drive their child urgently to a hospital. They might be in a motor car for any number of reasons that left them with little choice but to be in the car. It would seem invidious to distinguish between them and somebody else who is in the car for the purpose of employment, purely on the basis of the injury. The key is the injury and the fact that the third party who is liable for that injury is held liable.

**Jo Stevens:** The Minister mentioned choice. The fact is that if somebody is driving in the course of their employment, they do not have a choice because they are doing so on the instruction of their employer. Does the Minister accept that his argument on choice is not relevant when talking about an employer liability claim?

**Rory Stewart:** The argument I am trying to make is that, in many ways, travelling in a motor car in a rural area is, in effect, not a choice. If you were heavily pregnant and had to get to a hospital, you would have to get into that motor car. You would have no more choice than an individual who was in a car for employment purposes. In my constituency, very sadly, there are simply not the public transport links. People are obliged to be in a motor car, whether or not they are travelling in the course of their employment. Were they to suffer a whiplash injury, travelling in a rural area through no choice of their own, because they were suffering some kind of emergency or they were having to respond, it would seem invidious that they would receive different treatment from an individual who is, for example, driving a postal van.

**Ruth George** (High Peak) (Lab): I, too, live in a very rural area with a great scarcity of public transport in recent years. However, the difference between a lot of drivers who drive for a living and those of us who have to drive to get around near where we live, is that drivers who drive for a living are often doing so for eight or even more hours a day. If they are in traffic, it is more likely that they will be involved in a collision with a rear shunt of the sort that creates whiplash. If they accumulate different incidents of minor whiplash, it can cause a much greater injury on the neck than a single incident. People who work for a living put themselves in this situation every day because of their employment. Often, that is their only source of employment and what they feel able to do. Will the Minister reconsider in the light of that point?

**The Chair:** Order. Before I call the Minister, I remind hon. and right hon. Members that interventions should be short and to the point. We can be relatively relaxed, but not too relaxed.

**Rory Stewart:** Thank you very much, Mr Stringer. Those two arguments were based on the question of frequency of travel and probability of an accident. Again, the key point in any form of injury claim is the nature of the injury and the liability of the third party that caused it, not the reason someone is in a car. It would be difficult to argue that somebody who travels in the course of their employment is necessarily travelling more frequently than somebody who is not. Somebody in a rural area might, for example, be commuting 5 miles to work in the morning and 5 miles back in the evening. A farmer in my constituency could be travelling between one field and another. There is no necessary reason to feel that they would be travelling more frequently than, for example, a parent taking their child to school in exactly the same area.

Arguments based on frequency or probability of impact should not be relevant. A more fundamental reason is that, in the end, the law is about the injury and the obligation that the third party who caused the injury owes to the injured person, regardless of how frequently that individual is in a car or why they are in a car in the first place. To be blunt, they could simply have gone to the car to get something from it, and could not be driving anywhere, and be struck and suffer whiplash. They would be entitled to exactly the same compensation as an individual driving that car.

**Jack Brereton** (Stoke-on-Trent South) (Con): Does the Minister agree that the numbers applicable to amendment 9 would be negligible because most of the claims would be against a third party, not the employer?

**Rory Stewart:** Yes, I agree, but the key point is the injury, not why someone is in the car. This is a distinction without a difference.

**Bambos Charalambous** (Enfield, Southgate) (Lab): The Minister mentioned children. I am conscious that children are not regarded as vulnerable road users. They would still need to go to court and have infant settlements made in their name. What consideration has been given

to children who are injured in an accident through no fault of their own, obviously, and who have to go to court for a settlement?

**Rory Stewart:** In this regard, it is correct that the age of the individual within the motor car is not relevant within the law in assessing the injury, except in so far as the injury is specific to the age of the individual.

9.45 am

**Scott Mann** (North Cornwall) (Con): The Minister makes an excellent point about rural areas. Many of my constituents have to travel for at least two hours to visit a GP or a hospital. The point I make is about the frequency of travel. I used to work for Royal Mail, driving for eight hours a day. My driving skill was much higher than currently. Surely, such a person is less likely to have an accident because they are on the road more?

**Rory Stewart:** The key point, which goes against both Government and Opposition Members, is not the likelihood of having an accident. That should not affect the level of compensation that someone receives. That should be relative to one thing only: the nature of the injury and the prognosis. It should not be relative to why someone is in the car, how well or how frequently they drive or why they are driving. On that basis, I politely ask that amendment 9 be withdrawn.

New clause 9 reiterates some of the arguments in amendment 9; in other words, it focuses on the question of people injured during the course of their employment. However, it also references vulnerable road users. I have attempted to argue the relevance of someone driving a vehicle in the course of their employment in our discussion on amendment 9. On vulnerable road users, we respectfully request that new clause 9 be withdrawn for the reason I gave in my intervention on the hon. Member for Ashfield—vulnerable road users are already exempted by the Bill, so new clause 9 will be otiose.

On that basis, I respectfully ask that clause 1 stand part. This was a good and serious reform introduced with strong cross-party support by the House of Lords, driven by the DPRRC, which provides a much more accountable, transparent and predictable definition of whiplash to guide the legislation. We owe the Lords a huge debt of gratitude for that. We ask, on the basis that Members of the House of Lords from the Labour party, the Lib Dems, the Cross Benches and the Conservative party all agreed to it, that clause 1 stand part of the Bill.

**Gloria De Piero:** I have listened to the Government's arguments, but do not accept them. The Bill's objective is to reduce fraud. I have not heard anybody suggest that workers injured in the course of their employment are scammers. However, I have heard from Labour Back Benchers that workers drive all day and do not have a choice about whether to drive. I will divide the Committee on the amendments.

**The Chair:** Before the hon. Lady concludes, does she wish to divide the Committee on amendments 8 and 9?

**Gloria De Piero:** Yes.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 6, Noes 9.*

**Division No. 1]**

**AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

*Amendment proposed: 9, in clause 1, page 2, line 3, at end insert—*

‘(iii) unless in respect of 4(a)(i) or (ii) the person is in a motor vehicle during the course of their employment, in which case Clause 1 shall not apply.’—(*Gloria De Piero.*)

*This amendment would exempt people suffering a whiplash injury during the course of their employment from this definition.*

*Question put, That the amendment be made.*

*The Committee divided: Ayes 6, Noes 9.*

**Division No. 2]**

**AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

*Question put, That the clause stand part of the Bill.*

*The Committee divided: Ayes 9, Noes 7.*

**Division No. 3]**

**AYES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

**NOES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Stevens, Jo
Hanson, rh David	

*Question accordingly agreed to.*

*Clause 2 ordered to stand part of the Bill.*

**Clause 3**

**DAMAGES FOR WHIPLASH INJURIES**

**Gloria De Piero:** I beg to move amendment 10, in clause 3, page 3, line 21, leave out “two years” and insert “twelve months”.

*This amendment would limit the tariff to injuries lasting less than one year.*

**The Chair:** With this it will be convenient to discuss amendment 11, in clause 3, page 3, line 22, leave out “two years” and insert “twelve months”.

*This amendment would limit the tariff to injuries lasting less than 1 year.*

**Gloria De Piero:** The Bill says that if someone’s whiplash injury goes on for up to two years, or if it is thought that it might go on for up to two years, or if it goes on for up to two years because of their failure to “mitigate” their loss—that is, act to get themselves better by taking up an offer of physio, for example—they are eligible for fixed-tariff damages only.

Since 1999, special damages have been exempted from the calculation of whether a claim falls within the small claims limit. I will take this opportunity to nail down the ongoing argument about when the last increase in the small claims limit was. The Government say 1991, which is disingenuous and borders on the dishonest. I can provide quotes from the White Book if the Minister would like to see them. The limit has remained at £1,000 since 1991 but the method of calculating whether a claim falls within that limit changed in 1999 after the Woolf report. If any doubt remains, the evidence can be found in extracts from the White Book before and after the change.

From 1999, a definition of what was included in the £1,000 limit excluded special damages. It contains a helpful example that leaves no doubt that only general damages should be considered to see if a case is within the limit, and special damages are exempted from that time. I am told that special damages in a case add 20% to a claim on average, which means that the change in 1999 increased the limit by 20%. I shall assume that we have now laid that matter to rest and that any calculation from now on will be from 1999, not 1991. We may argue about the appropriate inflation index, or even the percentage increase from the changes made, but there should be no argument about the date from which it applies.

The impact of the clause is that someone could be off sick and losing wages, or having to work reduced hours, because of their whiplash complaint for up to two years before they are taken out of tariff damages. The Office for National Statistics says that the average wage in the UK was £27,200 in 2016-17, so an injured worker could lose more than £50,000 in earnings and still be subject to tariff damages. Someone on the minimum wage of £7.38 who works 35 hours a week for 48 weeks a year might earn £12,400, so they could have no income at all to support themselves and their family for up to two years.

**Ruth George:** Does my hon. Friend agree that the proposed tariff takes no account of victims’ circumstances? A whiplash injury will have a greater effect on someone

in a manual job, who is less likely to be able to perform that job, than someone in a sedentary position, who is more likely to be able to continue to work through minor injury. Someone in a manual job is also likely to have lower wages and be less able to sustain a certain level of loss.

**Gloria De Piero:** My hon. Friend is completely in touch with the reality of life for working people. That is the argument that we seek to make. In tabling amendments 10 and 11, which bring that two years down to 12 months, we concede that people recover and that that can take time. We are not suggesting a short period, but a reasonable one, and we hope that the Government will concede that it is fair and proportionate.

On amendments 12 to 16, it is proposed that the Lord Chancellor should set the tariffs for pain, suffering and loss—

**The Chair:** Order. Those are amendments to the next clause—sorry.

10 am

**Bambos Charalambous:** The issue of tariffs has been set out in an arbitrary way in the Bill. The criminal injuries compensation scheme was set up in 1991. Since 1995, the scheme has set the damages received for a criminal injury at £1,000 for whiplash that lasts from six to 13 weeks. That was the same figure in 2001, when the scheme was updated, and again in 2008 when the scheme was updated, and even in the current scheme which has not been updated since 2012: the damage for whiplash is £1,000 for more than 13 weeks. That compares unfavourably with the tariff that has been set—£470 for whiplash—so there are two inconsistent schemes operating under Government auspices. Someone is better off if they are injured by another person in criminal activity—for example, during dangerous or careless driving—and then receiving money from the Government. If they are injured negligently in a car accident they would receive far less. It should not be the case that someone receives far less if someone else commits a criminal offence against them than they would as the result of an incident that has occurred through negligence.

**Jo Stevens:** Does my hon. Friend agree that the Bill is creating tiers of victims of personal injury, so there will be different rates for people injured in Scotland, the workplace and road traffic accidents, and as a result of a criminal act?

**Bambos Charalambous:** My hon. Friend makes an excellent point. This leads to my next point: the way damages are calculated by judges has evolved over time through the judicial colleges. They have years of experience, yet what we have here is the Lord Chancellor plucking figures out of the air just to make things fit and to satisfy the insurance companies. That is not right. There has to be consistency, and a consistent approach. The measure makes no sense at all, and we should not be in a situation in which tariffs are set arbitrarily by the Lord Chancellor that are inconsistent with other parts of the law and even other schemes within the Ministry of Justice.

**Ellie Reeves (Lewisham West and Penge) (Lab):** I shall speak to amendments 10 and 11, which have been tabled by Opposition Mems. I stated on Second Reading that Opposition Members had expressed deep concern about the implications of the Bill and the policy agenda that the Government were operating under the cover of cracking down on fraudulent claims. Fraudulent claims are wrong, but we are not in the midst of an epidemic of fraudulent claims as Ministers would have us believe. In fact, insurance industry data show that of all motor claims, 0.17% were proven to be fraudulent in 2016. This is an extremely low percentage.

**Craig Tracey:** Does the hon. Lady accept that the figure of 0.17% relates to all motor claims, not just those relating to personal injury?

**Ellie Reeves:** The point about fraudulent claimants is that it is a very low percentage, and the insurance industry has reporting duties. No insurance company has stated that fraud is a material risk. It is not correct to suggest that there is an epidemic of fraudulent claims. Such claims should be tackled, but the way to do that is to go after those who commit fraud rather than innocent victims of road traffic accidents. The implementation of the Government's package of measures in this Bill and the forthcoming changes to the small claims limit would eviscerate access to justice for many people with genuine injuries. In its current form, the Bill would replace the long-standing and established Judicial Studies Board guidelines with a rigid tariff that would undermine judicial discretion and leave injured claimants worse off.

I agree with the conclusions of the Access to Justice group in its written submissions to the Committee, which state that the increase in the small claims limit and the introduction of a tariff system is punitive and arbitrary. The draft tariff system presented by the Ministry has shown an overwhelming reduction in payments for pain, suffering and loss of amenity for whiplash injuries. In comparison with the 2015 average pay-outs under the existing guidelines, injuries lasting 19 to 24 months would be compensated 13% less, and those lasting 16 to 18 months would be compensated 29% less, while injuries lasting 13 to 15 months would be compensated 45% less. I note that Government amendment 4 would ensure the Lord Chancellor consulted the Lord Chief Justice before proceeding with regulation changes, but it is not satisfactory and would not see access to justice delivered for injured claimants. It misses the point of what is damaging about the move from judicial guidelines.

The Bill classifies injuries dealt with by the proposed tariff scheme as minor. I am not sure by whose definition a minor injury is one that can last up to two years. By most standards, it is surely a significant injury, and I welcome the shadow Front-Bench amendments that would see injuries of more than a year removed from the scope of the tariff system. To grade an injury of up to 15 months as minor and restrict damages to nearly 50% of what they are currently is a clear, ideologically-driven assault on access to justice.

Moreover, the evidence submitted to the Committee by the Carpenters Group showed that 15% of road traffic accident injuries lasted for more than 12 months. We cannot insist that the punitive measures invoked by a move to a tariff system affect the ability of a substantial number of people to access justice. Further, on the

[Ellie Reeves]

secondary legislation changes to the small claims track from £1,000 to £5,000 for road traffic-related personal injury claims and to £2,000 for all other types of personal injury claim, the package of measures, of which this Bill forms part, will see thousands of injured people fall out of scope for free legal advice and potentially denied justice. Current predictions are that around 350,000 injured people will be put off pursuing a claim for an injury that was not their fault. Access to justice is on the line for thousands of genuinely injured people.

**Jo Stevens:** Does my hon. Friend agree that the impact of the Bill will mean that we are likely to see what happened in the employment tribunals when fees were introduced and there was a drop-off of 90%?

**Ellie Reeves:** That is absolutely right. If the changes go through, hundreds of thousands of people will simply not be able to pursue claims with legal representation and will be deterred from doing so. The Government's introduction of employment tribunal fees was found by the Supreme Court to be illegal because they denied people access to justice, and we seem to be going down the same route with the Bill's further attacks on access to justice and with the related small claims measures. Amendments 10 and 11 should be adopted as they provide much needed strength to the legislation and will help protect access to justice for victims of accidents.

**The Chair:** Order. Minister, as you will have noticed, we have strayed into a stand part debate, so I do not intend to have a separate one. If the Minister wishes to say anything in response, now is the time.

**Rory Stewart:** I shall focus narrowly on amendments 10 and 11, which focus on the question of reducing the period from two years to 12 months. Perhaps when we move on to amendments 12 to 15, we can talk a little more about the Judicial College guidelines and the question of tariffs.

The hon. Member for Lewisham West and Penge questioned where the word "minor" came from, which is important. It comes from the Judicial College guidelines. The idea that injuries under two years rather than under one year should be separated reflects the process within the Judicial College guidelines and its definition of what constitutes a minor injury. Clearly, that is a legal definition; in no way does the Judicial College intend to suggest that somebody suffering two years of injury is not suffering considerable pain, distress and loss of amenity. It is simply used to make a distinction between an injury that passes over time and an injury that is catastrophic and lasts throughout one's life. In no way is it intended to denigrate the experience during the two years.

We feel strongly that it is important for the Bill to remain consistent with the definitions within the Judicial College guidelines. In the absence of that, there would be the first problem of imposing a very unfair pressure, which could inflate, on GPs to push through the one-year barrier, but there is a more fundamental problem. Were we to accept the amendments, they would not only take

about 11% of cases out, but mean that the provisions on the requirement for a pre-medical offer would then be removed for the one to two-year period. We would suddenly end up with people able to proceed without medical reports for the one to two-year period, which would undermine a lot of the purpose of the Bill.

**Ruth George:** Surely it is up to insurance companies whether they choose to make pre-medical offers. It is entirely in their hands whether to do so. Whether or not it can be done is for the applicant but the decision is in the hands of the insurance companies; it should not be in the hands of legislation.

**Rory Stewart:** The hon. Lady puts her finger exactly on the current situation. Currently, the decision is in the hands of the insurance companies. The argument in the legislation is to take that decision away from the insurance companies; it will prohibit them from making an offer without a medical report. That was supported by the Opposition as well as the Government, and that is exactly the intention of the legislation. That is another reason why we will resist amendments 10 and 11.

**Gloria De Piero:** Does the Minister accept that, although the small claims limit has remained at £1,000, the way that was calculated changed in 1999?

**The Chair:** Order. Can I just say to the hon. Lady that the Minister had sat down? It is appropriate to intervene when the Minister is on his feet. If the Minister wishes to make a statement in response, I will take it.

**Rory Stewart:** This is a good challenge. It is not, respectfully, relevant to amendments 10 and 11, but relates to the question of something that will be done by the Procedure Committee, if it were to proceed through secondary legislation—a proposal to raise the limit from £1,000 to £2,000. The hon. Lady is correct that in 1999, changes were made to how the £1,000 limit was calculated, which adds an extra level of complication.

There is also a debate between us on whether CPI or RPI should be used to move that initial 1991 definition and, if so, to what amount. Should the hon. Lady wish to proceed, that is appropriate—not for this amendment or the Bill, but for subsequent measures.

**Gloria De Piero:** We do not intend to divide on this but we will raise these issues again on Report and Third Reading.

**The Chair:** Does that apply to amendments 10 and 11?

**Gloria De Piero:** It does, and I thank you for your advice. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Gloria De Piero:** I beg to move amendment 12, in clause 3, page 3, line 26, leave out from "amount" to end of line 5 on page 4 and insert

"determined in accordance with the 14th edition of the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases or any subsequent revision to these guidelines."

**The Chair:** With this it will be convenient to discuss the following:

Amendment 13, in clause 3, page 3, line 33, leave out subsections (3) to (7).

*This amendment, together with Amendments 14 to 16, would replace the tariff with the Judicial College Guidelines for the assessment of damages.*

Amendment 14, in clause 3, page 4, line 7, leave out “to which regulations under this section apply”.

*See the explanatory statement for Amendment 13.*

Amendment 15, in clause 3, page 4, line 9, leave out “(subject to the limits imposed by regulations under this section)”.

*See the explanatory statement for Amendment 13.*

Government amendment 4.

Amendment 16, in clause 3, page 4, line 18, leave out subsection (11).

*See the explanatory statement for Amendment 13.*

**Gloria De Piero:** The Bill proposes that the Lord Chancellor, rather than judges, should set the tariffs for pain, suffering and loss of amenities. In view of the opposition from those who are judicially qualified and the upholders of the law, can the Minister not see the sense in the point that no politician should be making decisions for which the judiciary is rightly responsible?

To go down that path sets a dangerous precedent. It may be justified by Government when they are the paymasters in the criminal injuries compensation scheme, for example, but in any other sphere of injury compensation it takes away an integral role of the judiciary and introduces another layer of bureaucracy.

The current calculation of damages by both sides—claimant and defendant—is made using the Judicial Studies Board guidelines. Those are based on what judges have awarded in the past—on what is fair. They are used by the parties to guide settlement out of court and by judges in court at trial. That makes the JSB the best guide to what is just and proper in terms of damages awarded. The Government are throwing all that out in favour of the Lord Chancellor—someone with far less expertise and a political agenda.

A lot of people would say that the JSB guidelines are what is just, or that they represent justice for the victim, although I have my doubts about that. After all, although special damages for losses and expenses can put someone back in a position financially, as if the injury had never occurred, general damages can only apologise for what someone has been through and may continue to suffer; they cannot make anyone better. That is at least, for now, something that the courts decide is appropriate; it is not a figure plucked out of the air.

The Government’s attitude is, “What would experts know? It might be a basic tenet of English common law that people are compensated fairly and judges are best placed to assess that but, so what? Let’s rip it up!” That is to ignore Lord Woolf, who said:

“The effect of whiplash injuries, with which we are concerned, can vary substantially according to the physical and mental sturdiness of the victim. This means that the appropriate amount of damages for a whiplash injury can vary substantially... I suggest they are not suited to a fixed cap, as proposed by the Government.”—*[Official Report, House of Lords, 12 June 2018; Vol. 791, c. 1593.]*

10.15 am

They are also ignoring another former Law Lord, Lord Hailsham, who said:

“it seems admirable that we should put into statute a requirement that the Lord Chief Justice be consulted. If the Minister says, ‘but of course he will be’, all I can say is that Ministers sometimes have a curious habit of forgetting the obvious and their obligations.”—*[Official Report, House of Lords, 12 June 2018; Vol. 791, c. 1598.]*

What did experienced practitioners from the Government’s own Back Benches, such as Baroness Berridge, say?

“I have met many a claimant for whom the difference in damages now proposed by the introduction of the tariff, taking some damages from four figures—£1,200 or £1,400—down to the likes of £470 is a significant matter for many people’s incomes up and down the country. I cannot have it portrayed that this might not make a great deal of difference to many ordinary people in the country.”—*[Official Report, House of Lords, 12 June 2018; Vol. 791, c. 1611.]*

“Oh,” say the Government, “and we will ignore the Justice Committee too.” The Justice Committee could not have been clearer in its criticism regarding access to justice through this and any number of other measures in the Bill. The JSB guidelines allow for an appropriate degree of flexibility and are, as the name suggests, simply a guide. The Judicial College regularly revises the guidelines, with the latest having been published just last year. The Bill removes the judicial responsibility for the assessment of damages and reduces the damages that will be received by honest claimants, because of the activities of a tiny proportion of dishonest ones. That goes against our fundamental principles of justice but, as we know, this is not really about justice—it is simply about saving insurers money.

**Ruth George:** As someone who has suffered whiplash, I can speak about the amount of pain and suffering it causes and its impact on a victim’s life. As my hon. Friend said, those things can vary from person to person and from accident to accident, but an injury to the ligaments at the bottom of one’s neck, which carry the head all day long, can have a profound effect on someone’s being able to lift anything at all.

At the time of my injury, I found it very difficult to lift my young baby. When I did so, I was in considerable pain for a long time thereafter, and the problem has continued. I am no longer able to lift very much because it gives me a severe migraine. That is the issue we are considering for people with whiplash.

**Rory Stewart:** If an injury continued, with migraines more than two years after the incident had occurred, it would not be classified as a minor one under the Bill and would not be subject to the tariffs. It would go through the normal court procedures, via a fast track, and the award would be made by judges.

**Ruth George:** Absolutely, but what I was going to say was that my injury was then exacerbated by physio. It might have cleared up within two years—I had hoped that it would and for most people it does—but it takes a long time and a lot of suffering to get to that point.

For the vast majority of people who suffer whiplash, and particularly when it is of longer duration where there is significant medical evidence—MRI scans and extended x-rays—the Bill, as the Minister said, will prevent pre-medical offers from being made. There will have to be medical reports showing what has been happening to someone’s neck and the impact on them.

[Ruth George]

It does not make sense that we are considering introducing a one-size-fits-all tariff at a very low rate that takes no account whatever of the amount of pain and suffering, only its duration. It takes no account of the impact on the victim's life, including on their work and home life. If someone is a carer, works in a nursery or has another manual job, the impact on them will be far greater than on someone with a similar injury who does not have to perform such tasks.

**Rory Stewart:** This is an important and serious issue, so I wish to clarify something that I am sure all hon. Members on both sides of the House already understand. The legislation purely relates to general damages, which cover pain and loss of amenity. All the examples that were given, such as loss of earnings or being unable to perform a particular job because of whiplash, would be covered by special damages and are not affected by the legislation.

If an individual had an injury that prevented them from going to work, that loss of earnings would be covered under a separate special damages claim. The legislation relates purely to the subjective judgment on the pain experienced—not the physio costs or the loss of earnings. That is all unaffected by the legislation.

**Ruth George:** Those of us who have worked in the trade union movement will know that compensation for loss of earnings does not always equate to the amount that somebody loses and the impact on their job. Many employers have schemes whereby anyone who is off sick for more than a certain number of days is unable to return, or suffers some other detriment. With many schemes, people have to survive on sick pay. Even if the difference comes to a significant amount, it takes a long time for that to come through. That feeds into the impact not just on somebody's work, but on their life. The judiciary can take account of that when they set an award, but this tariff takes no account of the amount of pain and suffering—only the duration—or of the impact on a person's life at the time of the injury.

**Bambos Charalambous:** Is my hon. Friend aware that under the criminal injuries compensation scheme, which the Lord Chancellor sets the tariff for, there has been no increase for whiplash claims since 1995? I fear that that is what would happen if the tariff scheme for whiplash was set by the Lord Chancellor.

**Ruth George:** My hon. Friend makes an excellent point. I was dismayed by the huge cuts in 2012 to the criminal injuries compensation scheme, but the amount for whiplash remained at £1,000. Even this Government, who were looking to remove a vast proportion of the costs of the criminal injuries compensation scheme, did not seek to change the tariff for whiplash, because they accepted that £1,000 for a 13-week injury was a fair amount of compensation, even under the criminal injuries scheme paid for by the Government.

However, the Government are now proposing that insurance companies that receive far more than the amount of tariffs per year from many motorists should have to pay out less, and that for a six-month injury

someone would receive perhaps £450. For many motorists an insurance premium for six months is more than £450, begging the question: what will they pay insurance for? Where is the value for money, and where is the fairness to victims of accidents in today's proposals?

**Rory Stewart:** I thank the hon. Members for Ashfield and for High Peak for their powerful speeches. Before I move on to amendments 12 to 15 and Government new clause 4, I will clarify some points raised by the hon. Member for High Peak.

Many things are covered by insurance besides the ability to get compensation for whiplash. It would be absurd if the entire purpose of an insurance scheme was simply to give someone an annual pay-out for whiplash, and they paid £450 for that insurance when such claims were capped at £450. The hon. Member for High Peak is right that that would be an absurd system, but insurance covers many things besides whiplash claims. In fact, we are trying to move to a world in which the majority of someone's insurance would cover things other than their whiplash claim.

This goes to the heart of the discussion so far, and to a point made by the hon. Member for Lewisham West and Penge. Fundamentally, the number of road traffic accidents has decreased by 30% since 2005. At the same time, cars have become considerably safer: headrests and other forms of restraints have made it much safer to be in a motor car than it was in 2005. During that same period, whiplash claims have increased by 40%. Whether we define these as fraudulent or simply exaggerated, there is no doubt of the trend. There are fewer road traffic accidents and cars are safer, yet whiplash claims are going up.

**David Hanson:** We heard a number times in the Justice Committee, when taking evidence from the Minister's colleague, Lord Keen, the question of the word "fraudulent". Can the Minister quantify for this Committee how many fraudulent claims he expects there to be on an annual basis?

**Rory Stewart:** The answer is that judging fraud in whiplash is almost impossible except statistically through the measures that I have used, because for minor whiplash claims of the sort that are covered in the tariff—not the type of whiplash injury that the hon. Member for High Peak experienced—there is no way of proving whether an injury has occurred. That is why *The New England Journal of Medicine* has done research on this.

There has been interesting research on what happens if someone sits in a motor vehicle with a simulated accident and a curtain behind them, so that they are unable to tell whether the accident has occurred or not. It shows that 20% of people experienced whiplash without the collision actually occurring. This is clearly a complex medico-social phenomenon. The polite way of putting it is that there is an asymmetry of information. It is close to impossible for an insurance company to prove that an individual did not experience whiplash, particularly at the three-month rate.

**David Hanson:** Could the record show, Mr Stringer, that the Minister, like his colleague in the House of Lords, could not indicate how many claims per annum are fraudulent?

**Rory Stewart:** I am very happy for the record to say exactly that, provided we explain why that is the case. The nature of this injury is such that it is impossible to know, in most cases, whether the individual is making a fraudulent claim. In the case of the kind of injury experienced by the hon. Member for High Peak—a much more serious injury—it is possible to detect things through MRI scans, but for the majority of injuries that we will be talking about in the three-month to six-month period, no physical evidence can be adduced one way or the other.

In the end, the qualified GP has to sit down and reach some kind of judgment, through discussion with the individual and gathering the evidence of injury, that the balance of probabilities holds that the individual is experiencing subjective pain, but it is impossible to prove that through the kinds of medical evidence that one would adduce in a normal medical case.

**Ruth George:** An MRI scan will identify where there is soft-tissue injury. At any stage, the point is whether it is worth going for an MRI scan. By reducing the tariff to such a small amount, GPs in many instances, particularly up to 12 months, may well deduce that it is not worth referring a patient for an MRI scan to produce that medical evidence. The tariffs proposed will reduce the amount of medical evidence produced and may well increase the number of fraudulent claims, because there will be less requirement for medical evidence such as an MRI scan.

**Rory Stewart:** Many whiplash injuries are not detectable on an MRI scan. Many people are currently receiving compensation for whiplash and have experienced whiplash injury, which cannot be caught on an MRI scan. The GPs who will be asked to decide whether someone has had a whiplash injury will not be holding them to the standards of an MRI scan. Were they to do so, we believe that the number of whiplash injuries would decrease very dramatically. Nothing like 550,000 injuries a year would be recorded on an MRI scan, particularly in the three-month to six-month period.

**Jo Stevens:** I practiced in this area for nearly 30 years. Every day, I saw the impact of motor accidents and soft-tissue injuries on young and old people from all sorts of backgrounds. What the Minister is saying is absolute nonsense. GPs are able to determine whether someone has suffered an injury—they have been doing so for many years and will continue to do so for many years. This is simply an excuse to increase insurance companies' profits.

10.30 am

**Rory Stewart:** There is a fundamental issue—we may get on to it later in the debate—about the different understanding of insurance companies on opposite sides of the House. Two arguments are put forward. The hon. Member for Jarrow (Mr Hepburn), for example, suggested in his speech in the House that the insurance industry worked on a binary basis—that the objective of the insurance industry was simply to increase the premiums as much as possible to sky-high levels, and reduce payouts.

We would argue, as does the Competition and Markets Authority, that there is a third crucial factor—competition—in understanding the impact of the legislation. What prevents premiums endlessly going up and an insurance companies never paying out is that people simply would not go to that insurance company and would go elsewhere. The insurance markets were very carefully studied by the Financial Services Authority and the Competition and Markets Authority. They are confident that 80% of the associated savings in costs will be passed on to consumers through the mechanism of competition and agencies advertising to get customers.

One way in which we seek to demonstrate that point publicly is through inserting an amendment to get the insurance companies to come forward with clear information on the amount of money they have received and the amount they have paid out. We can then have an open debate in Parliament to discover which of us is right—whether the Competition and Markets Authority is right or whether, as the hon. Member for High Peak and the hon. Member for Jarrow argue, it is a purely binary process.

**Bambos Charalambous:** Is the Minister aware that the insurance companies settle the vast majority of whiplash claims without going to court and pay up without even trying to fight the claims? If the Minister is correct that the claims are hard to detect, why are the insurance companies not fighting more of them and taking people to court?

**Rory Stewart:** The answer is exactly for that reason. Because they are so hard to detect, they are almost impossible to fight, and therefore insurance companies have historically made that decision. They often do not even get a medical report because it hardly seems worth while to do so. When somebody comes forward with a whiplash claim, the procedure has often been to settle without going to court in order to reduce the legal fees and the associated costs, exactly because it is incredibly difficult.

Whiplash claims are extremely controversial medically. A lot of articles are written about this—I quoted the *New England Journal of Medicine* in the House, which is particularly stark. Cassidy's article argues very strongly that the absence of compensation for pain and loss of amenity is associated with a much improved prognosis and reduced duration in the whiplash injury itself. In other words, the *New England Journal of Medicine* points to the fact that this is not purely a medical phenomenon. It has social and legal dimensions, of which compensation is a part.

**Gloria De Piero:** Is the Minister familiar with the quote from the head of the City of London police insurance fraud enforcement department? He said in the *Insurance Post*:

“It would be wrong to say that I believe there is a compensation culture or an insurance fraud culture in general.”

Another expert denied?

**Rory Stewart:** Such arguments would be more powerful if Opposition Members could explain why the number of whiplash claims has gone up by 40% since 2005, when the number of motor vehicle accidents has declined by 30% and cars have got much safer? A lot of things

[Rory Stewart]

have been introduced in cars since 2005. Nearly 85% now have the safety features specifically designed to reduce whiplash that only 15% had in 2005. There are fewer accidents and much better protection around the individual.

**Ruth George:** Will the Minister give way? Does he want an answer?

**Rory Stewart:** Absolutely. Let me just articulate the question and the hon. Lady can perhaps answer it exactly. Why has the number of road traffic accidents reduced dramatically—cars have got safer so people are much less likely to experience injury, and there are fewer accidents—yet the number of claims has gone up by 40%? Why is she confident that the operation of claims management companies is not associated with the extraordinary increase in whiplash claims? Presumably, we have all received calls from claims management companies. An average of 600,000 claims are made a year—almost one in 100 citizens in the United Kingdom make a whiplash claim. How can that be possible when the number of road traffic accidents is reducing?

**Ruth George:** The Minister makes an excellent argument for regulating claims management companies properly. He has made no argument for blaming and making innocent victims of road traffic accidents. On Second Reading, we heard that many people are phoned by claims management companies. In many instances, their details are given out by the insurance companies to whom they make an honest claim. The insurance companies, which are linked to those claims management companies, give those details. If the Minister wants to act on the problem of whiplash, he should look at those claims management companies and their tactics of cold calling, as the Bill does in banning pre-medical offers, and end the links between insurance companies and claims management companies, rather than making innocent victims suffer.

**Rory Stewart:** With permission, I will proceed. There is still no answer to why the number of claims has risen, particularly when the number of road traffic accidents has dropped. The hon. Lady suggested that she would answer the question but did not. I look forward to someone answering that question, but I would like to make progress.

**David Hanson:** In Committee, it is normal to take interventions. As a Minister I never refused an intervention in Committee. I hope the Minister will accept this intervention. He mentioned the increase in claims being made. How many of those claims does he expect are fraudulent? That is the key. If they are not fraudulent, they are genuine claims, whether they are through a claims management company or from an individual.

**Rory Stewart:** The statistics suggest very strongly that what happened to an individual in a motor car in 2005 would, on average, have been much more severe than what happens to an individual in a motor car in 2018. A 30% reduction in the number of road traffic accidents, combined with the improvement in safety procedures, would suggest that an individual having a motor vehicle accident today would be considerably less likely to

suffer whiplash than would have been the case in 2005. Therefore, the fact that the number of claims has increased by 40% is a very peculiar anomaly that requires explanation, which nobody has produced so far. Will somebody please explain why the number of claims has increased by 40% when there has been no physiological change in the human body since 2005 and motor cars have, if anything, got safer?

**David Hanson:** The Minister still has not answered the question. How many of those additional claims does he suggest are fraudulent? If a claims management company takes forward a claim, there might be issues about the claims management company but, ultimately, if the claim is not correct it will not be approved. Therefore, how many of those extra claims are fraudulent? He needs to tell the Committee.

**Rory Stewart:** In 2016, there were 7,572 confirmed fraudulent motor claims and 58,576 suspected claims, resulting in 66,147 detected motor fraud claims. However, my point goes much wider. Because of the asymmetry of information and because it is impossible to prove whether the injury has occurred—particularly at the three to six-month period—it is impossible to put a precise number on it. We can be confident, through the soaring inflation in the number of these claims, that many are exaggerated, to put it mildly, even though we cannot prove the exact number beyond the 66,147 that are actually fraudulent.

**Craig Tracey:** I spent 20-odd years on the frontline dealing with these types of claims and acting on behalf of the client rather than the insurance company. For genuinely injured people, we found that financial compensation was a minor consideration in the overall claim. They wanted to feel better and get put right. Is it not right that insurance companies should focus on rehabilitation, treatment and proper diagnosis rather than worrying so much about value?

**Rory Stewart:** I absolutely agree. It is very important to keep reminding the House that we are focusing on general damages, not special damages. In other words, we are focusing on what ultimately must be a difficult, subjective judgment about the level of pain that an individual experiences, and not loss of earnings or other forms of treatment.

**Robert Courts:** I repeat my declaration that I practised in this area until I was elected two years ago, and I remain a door tenant at my chambers. Having practised in this area for more than 10 years, I too have experience. Does the Minister accept that there is a danger that the Committee is confusing two issues? According to the guidance notes, the manifesto gave a commitment to “reduce insurance costs for ordinary motorists by tackling the continuing high number and cost of whiplash claims.”

This is not solely about fraud. It is also about perfectly genuine claims where the costs have become very expensive. Are the Government seeking to provide redress for those who have been injured, but to do so in a cost-proportionate manner?

**Rory Stewart:** Fundamental to decisions that the Ministry of Justice has to make under any Government is the need to think seriously about balancing different

types of interest—in this case the interests of the claimant, the third party and the taxpayer, as well as those of road users and people who take out motor insurance. It is therefore appropriate for us to question the overall cost of the system, and—particularly for motorists in rural areas—the fact that the premium could be as much as £35 a year extra, and considerably more for a young driver, because of the hundreds of thousands of people each year who make whiplash claims.

**Gloria De Piero:** Insurers have never mentioned fraud as a material risk in their financial report. If it were such a serious concern, would they not be required to report it to the Financial Reporting Council?

**Rory Stewart:** The question of what constitutes a material risk in a financial report is driven primarily by the financial stability of the company, so the question of whether fraud is defined in that way relates purely to the cost of the fraud. The question is a financial one, not one of honesty.

Amendments 12, 13, 14 and 15 relate to the Judicial College guidelines. This debate has had quite a long consultation period—it has been going on for more than three years. We are grateful to the Association of Personal Injury Lawyers and many others, including the Law Society, who have fed in to this consultation, and we have arrived at a compromise. The Opposition were extremely uncomfortable with the initial proposals, and we have made a lot of concessions—that is why I will be asking hon. Members to withdraw their amendments.

The initial proposals by the Chancellor of Exchequer in his Budget speech were to remove general damages entirely, and for no compensation to be offered for pain, suffering and loss of amenity. There was also a proposal to have no judicial involvement whatsoever in setting levels of compensation, and the third element of controversy was about whether it was appropriate to have tariffs at all.

We have made significant concessions on the first two points—in the House of Lords for the second proposal, and before that stage for the first proposal. Under pressure from many people, including Opposition Members, we have accepted that there should be general damages, and that principle has been reinserted. Secondly—this is why I will ask for support for clause 4—we will push ahead with the proposal that the Lord Chief Justice should be consulted on the level of the tariffs. That brings in the judiciary so that it will not be done purely by the Lord Chancellor, which brings us to the question of whether there should be tariffs at all.

A tariff system is relatively unusual in English common law although, as the hon. Member for Enfield, Southgate pointed out, an equivalent exists for criminal injury compensation cases, which creates some paradoxes and contradictions. At the moment, someone who suffers a criminal injury could receive a different level of compensation than if they suffer exactly the same injury without a criminal act. The same is true if someone in a motor vehicle suffers from a terrorist attack. The Government could give someone considerably more compensation if they are the victim of a terrorist attack than if they suffer the injury in a different way.

However, tariffs are not unusual: they have been introduced very successfully in Italy, France and many other European jurisdictions. Under the proposals in

the Bill, there will be judicial discretion on the tariffs. That is judicial discretion that we have consulted on closely and will return to under later amendments. It is in line with what the European Court of Justice believes should be the appropriate degree of judicial flexibility when applied to a tariff system.

10.45 am

**Bambos Charalambous:** Let us assume for a moment that we accept that the tariff system is the right one. Does the Minister not agree that the inconsistencies are just unacceptable and that there needs to be a review of the levels that have been set out, because there seems to be no rhyme or reason to them? Can he explain to me how the levels have been arrived at? I cannot see where they have come from.

**Rory Stewart:** This goes to the heart of the concerns that the judiciary raised when the first criminal injury compensation schemes were introduced and, indeed, when compensation for a terrorist act was introduced. As the hon. Gentleman suggests, it is perfectly legitimate to question whether, within the tradition of tort in the English common law, it is appropriate to distinguish between an injury suffered at the hands of a criminal or a terrorist and an injury simply suffered at the hands of another third party who is liable, but that is a much deeper philosophical jurisprudential debate than I think we can proceed with here. With that, I respectfully request that the amendments be withdrawn or not pressed and I ask the Committee to support Government amendment 4.

**Gloria De Piero:** I am afraid that I am going to disappoint the Minister. We feel so strongly, because we are led by the independent experts, by the Select Committee on Justice and by some people in the Minister's own party, whom I quoted earlier, that we believe that the Committee needs to divide on amendments 12 to 16.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 7, Noes 9.*

#### Division No. 4]

##### AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	
Hanson, rh David	Stevens, Jo

##### NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

*Amendment proposed: 13, in clause 3, page 3, line 33, leave out subsections (3) to (7).—(Gloria De Piero.)*

*This amendment, together with I 14 to 16, would replace the tariff with the Judicial College Guidelines for the assessment of damages.*

*Question put, That the amendment be made.*

*The Committee divided: Ayes 7, Noes 9.*

**Division No. 5]****AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Stevens, Jo
Hanson, rh David	

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

*Amendment proposed:* 14, in clause 3, page 4, line 7, leave out:

‘to which regulations under this section apply’.—(*Gloria De Piero.*)

*See the explanatory statement for Amendment 13.*

*Question put, That the amendment be made.*

*The Committee divided: Ayes 8, Noes 9.*

**Division No. 6]****AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

*Amendment proposed:* 15, in clause 3, page 4, line 9, leave out

‘(subject to the limits imposed by regulations under this section)’.—(*Gloria De Piero.*)

*See the explanatory statement for Amendment 13.*

*Question put, That the amendment be made.*

*The Committee divided: Ayes 8, Noes 9.*

**Division No. 7]****AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

*Amendment made:* 4, in clause 3, page 4, line 17, at end insert—

‘( ) The Lord Chancellor must consult the Lord Chief Justice before making regulations under this section.’.—(*Rory Stewart.*)

*This amendment requires the Lord Chancellor to consult the Lord Chief Justice before making regulations about the amount of damages for whiplash injuries and minor psychological injuries suffered on the same occasion.*

*Amendment proposed:* 16, in clause 3, page 4, line 18, leave out subsection (11).—(*Gloria De Piero.*)

*See the explanatory statement for Amendment 13.*

*Question put, That the amendment be made.*

*The Committee divided: Ayes 8, Noes 9.*

**Division No. 8]****AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

**The Chair:** As I indicated, we have debated clause 3 sufficiently not to require any separate stand part debate.

*Clause 3, as amended, ordered to stand part of the Bill.*

*Clause 4 ordered to stand part of the Bill.*

**Clause 5**

## UPLIFT IN EXCEPTIONAL CIRCUMSTANCES

**Gloria De Piero:** I beg to move amendment 18, in page 4, line 30, leave out Clause 5 and insert—

“Power of court to uplift the amount of damages payable

(1) A court may—

(a) determine that the amount of damages payable for pain, suffering and loss of amenity in respect of a whiplash injury or a minor psychological injury is an amount greater than the tariff amount relating to that injury;

(b) determine that the amount of damages payable for pain, suffering and loss of amenity in respect of a whiplash injury and one or more minor psychological injuries, taken together, is an amount greater than the tariff amount relating to those injuries;

(c) in a case where the court considers the combined effect of—

(i) an injury or injuries in respect of which a tariff amount is specified by regulations under section 3(2) or (4), and

(ii) one or more other injuries, determine that an amount greater than the tariff amount is to be taken into account when deciding the amount of damages payable for pain, suffering and loss of amenity in respect of those injuries.

(2) In this section ‘tariff amount’ means—

(a) in relation to a whiplash injury, the amount specified in respect of the injury by regulations under section 3(2);

- (b) in relation to a whiplash injury and one or more minor psychological injuries, the amount specified in respect of the injuries by regulations under section 3(4).”

*This amendment would allow judges to increase the amount of damages payable where they determine the tariff amount to be insufficient compensation, rather than capping judges' ability to increase compensation awards to a percentage specified by the Lord Chancellor as the Bill currently does.*

**The Chair:** With this it will be convenient to discuss clause stand part.

**Gloria De Piero:** This amendment would allow judges to increase the amount of damages payable where they determine the tariff amount to be insufficient compensation, rather than capping judges' ability to increase compensation awards to a percentage specified by the Lord Chancellor, as the Bill currently does. Once again, I want to point out the long-standing tradition of trusting judges, rather than having politicians interfere with the discretion of the courts—a tradition that the Government are inexplicably undermining with this Bill.

Clause 5(3) states that if the court thinks there should be an uplift from the tariff because of the severity of the injury, the amount by which the court can increase the payment is limited according to a cap set by the Lord Chancellor. Not only are the courts being fettered by a tariff, but when they consider the tariff to be inappropriate, they will get their judicial wings clipped again. This reduces judges to little more than errand boys for the Lord Chancellor.

Many Lord Chancellors these days are not lawyers. They will rely on the advice of their officials, who need not have legal training either. If the Tories do not trust the judges, who do they trust? What are they scared of? What evidence do they have that judges will behave badly and award huge sums? What court cases can they point to in which that has happened? I can find none at all, and nor can the experts whom my team and I have consulted.

I suspect the insurers fear that without a cap, every tariff award will be taken to court, where judges will apply an uplift and blow up their tariff. If that is what they fear, it suggests that they secretly accept that the proposed tariffs are too low. Perhaps the reason for all these restrictions—all these fetters on what a judge can decide for themselves—is that the Government and the insurance industry are running scared that judges will, indeed, rebel against them. Not because judges are intrinsically rebellious—far from it, some would say; they are conservative with a big and a small c—but because they have a duty to be impartial and deliver justice, and the Government's proposed tariff does not even remotely do that. Amendment 18 would restore judges' lost autonomy.

**Rory Stewart:** I thank the hon. Lady for her speech. This amendment relates to the fundamental question of the tariff system and the relationship between the judiciary and the tariff system. Clause 5 provides a pragmatic compromise between a strict tariff system and judicial discretion by allowing the judges to lift that tariff in exceptional circumstances. However, as the European Court of Justice accepted in the arguments made in the Italian case, there needs to be a limit. If there were no limit to judges' discretion, the tariff system would become unworkable.

In so far as we disagree about whether there should be a tariff system in the first place, I completely understand where Opposition Committee members are coming from. However, given that the fundamental cornerstone of the Bill is that there should be a tariff, we need to strike a pragmatic compromise between the tariff and giving some discretion to judges. Therefore, we propose that the Lord Chancellor will set a percentage of discretion for judges to uplift the tariff. We also propose that he will consult the Lord Chief Justice on the appropriate level of discretion. We will look carefully at the rulings of the European Court of Justice and the decisions that it has made in other countries where tariffs exist to arrive at that figure.

**Bambos Charalambous:** The tariffs range from £235 to £3,910, which are incredibly small amounts in the great scheme of things. To try to fetter the judges' discretion on such small amounts, for exceptional circumstances that have yet to be defined, is to use a sledgehammer to crack a nut. We just accepted an amendment to the effect that the Lord Chancellor must consult the Lord Chief Justice. Does the Minister not think that it would be better to use that mechanism, rather than “exceptional circumstances”, to set the tariffs?

11 am

**Rory Stewart:** We certainly will move to introduce an amendment exactly in relation the hon. Gentleman's question—he has campaigned well on this, as have other hon. Members—setting out that we should consult the Lord Chief Justice on the level of tariffs as well as on the percentage uplift for judicial discretion. Those are two important concessions that I hope will reassure the Opposition.

**David Hanson:** Before the Minister sits down, can he give some further detail about how he intends to consult the Lord Chief Justice on making the regulations? How much notice will he give the Lord Chief Justice? Will the Lord Chief Justice's comments be public? Will they be published so that other hon. Members can see them prior to any decision being taken? What happens if the Lord Chief Justice disagrees with the Government's suggestions? Could the Minister give some outline of those circumstances?

**Rory Stewart:** As the right hon. Gentleman is aware, clause 5(5) merely states:

“The Lord Chancellor must consult the Lord Chief Justice before making regulations under this section.”

We intend that to be done in an accountable, responsible, transparent and predictable fashion that would give the Lord Chief Justice a serious amount of time to consider and respond, but, ultimately, it is a consultation and the power of decision rests with the Lord Chancellor, as is implied in the legislation.

**David Hanson:** Will the Lord Chief Justice's comments on the consultation be public? Will other people apart from those two parties be able to see both their comments?

**Rory Stewart:** That remains to be determined by regulations introduced by the Lord Chancellor and is not included in the Bill.

**Jo Stevens:** Why not take the pragmatic approach and just leave it to the judges to decide? They are the experts. Why should a politician influence what is happening?

**Rory Stewart:** The answer goes to the core of the entire legislation. The proposed tariff recognises that what we are dealing with—or at least, what we believe we are dealing with—in relation to whiplash, with the peculiar anomalies since 2005 and the increase in whiplash claims, is not exclusively medical or legal, but has strong social and political dimensions in terms of insurance premiums and the cost to the public purse, which is why quite a lot of part 2 of the Bill deals with the NHS. The introduction of the tariffs is designed precisely to reduce the amount paid out in the specific case of general damages for minor whiplash injuries. Simply to stick with the judicial college guidelines would obviate the entire purpose of the Bill and undermine the medical, legal, social and political arguments that underlie the legislation.

**Ellie Reeves:** Under the proposals, an uplift would be allowed only if the whiplash injury was exceptionally severe or the circumstances were exceptional. Does that not hugely undermine the principle of judicial discretion and take away judges' ability to assess cases and make appropriate awards for damages? The threshold in these proposals has to be far too high.

**Rory Stewart:** Clearly, a system of the sort we propose, which is modelled on the existing tariff systems in places such as France and Italy, is designed to set in law, through the actions of an accountable Minister, the level of the tariff. The argument is absolutely right. As the hon. Lady suggests, that will remove discretion from judges except in exceptional circumstances. The reasons for that are to do with our policy objective of dealing with the whiplash claim culture. Our intention is to reduce the damages paid for minor whiplash injuries, which are defined in the Judicial College guidelines as those that last less than two years. That will result in general damage payments lower than those currently awarded by judges. However, in exceptional circumstances, judges will be able to increase the award.

**Gloria De Piero:** What is the fear here? Is it that judges will make awards above the tariff set?

**Rory Stewart:** The Judicial College guidelines are simply a historical record of awards by the courts. It is a fact that those awards to date have been higher than the awards we propose in the tariff. The policy intention is to reduce the general damages paid, particularly for people at the three-to-six-month level. As we get closer to the two-year level, awards under the tariff come closer to the Judicial College guidelines, but at the lower end, as was suggested, there is a disagreement between the Government and the current practice of judges about the appropriate award for pain, suffering and loss of amenity.

There has been a lot of discussion about experts, but right hon. and hon. Members must remember that we are discussing general damages, not money for loss of earnings or to pay for physiotherapy. We are discussing a judgment of exactly how many pounds and pence someone should receive for a whiplash injury—for the

subjective experience of pain in their neck or shoulder. It is difficult to argue that there is particular expertise on the question of the subjective experience of pain. Indeed, as the hon. Member for Enfield, Southgate suggested, it is impossible for anyone—whether they are a Minister, a judge or a doctor—to suggest that the money that is paid can remove the pain. The pain remains. Money paid in general damages is intended simply as an acknowledgement of the existence of pain, suffering or loss of amenity. It cannot, as would be the case with special damages, remove the pain itself. On that basis, I politely request that the amendments be withdrawn and the clause be accepted.

**Gloria De Piero:** We do not accept the Minister's arguments, so will divide the Committee.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 7, Noes 9.*

#### Division No. 9]

#### AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Stevens, Jo
Hanson, rh David	

#### NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negatived.*

*Clause 5 ordered to stand part of the Bill.*

#### Clause 6

##### RULES AGAINST SETTLEMENT BEFORE MEDICAL REPORT

**Gloria De Piero:** I beg to move amendment 19, in clause 6, page 5, line 37, after “injuries” insert—  
“provided by an accredited medical expert selected via the MedCo Portal”.

*This amendment, together with Amendments 20 and 21, would ensure that any medical evidence of a whiplash injury must in all cases be provided by a person registered on the MedCo portal website.*

**The Chair:** With this it will be convenient to discuss the following:

Amendment 20, in clause 6, page 6, line 1, leave out subsection (3)

*See explanatory statement for Amendment 19.*

Amendment 21, in clause 6, page 6, line 22, at end insert—

‘(7) In this section, the “MedCo Portal” means the website operated by Medco Registration Solutions (company number 09295557) which provides a system for the accreditation of medical experts.’

*See explanatory statement for Amendment 19.*

New clause 3—“*Recoverability of costs in respect of advice on medical report, etc.*—

‘(1) For the purposes of civil procedure rules, the costs recoverable by a claimant who recovers damages in a claim for a relevant injury which is (or would be if proceedings were issued) allocated to the small claims track include the costs of the items set out in subsection (2).

(2) The items are—

- (a) legal advice and assistance (including in respect of an act referred to in paragraph (a) or (d) of section 6(2)) in relation to the quantum of damages in the light of a medical report or other appropriate evidence of injury; and
- (b) in a case where liability for the injury is not admitted within the time allowed by any relevant protocol, legal advice and representation in relation to establishing liability.

(3) For the purpose of ascertaining the amounts recoverable in respect of those items, the claim is to be treated as if it were allocated to the fast track.

(4) In this section “relevant injury” means an injury which is an injury of soft tissue in the neck, back, or shoulder, and which is caused as described in paragraphs (b) and (c) of section 1(4) (negligence while using a motor vehicle on a road, etc.), but does not include an injury in respect of which a tariff amount is for the time being prescribed under section 2.’

*This new clause would ensure that a successful claimant is able to recover costs incurred for legal costs in respect of advice sought in relation to determining the quantum of damages following a medical report or the establishment of liability where it is in dispute.*

**Gloria De Piero:** The amendments would ensure that any medical evidence of a whiplash injury must in all cases be provided by a person registered on the MedCo portal website. The Government say in clause 6 that cases should never be settled until the claimant has been medically examined. We fully agree, but amendments 19 to 21 would go even further. The Government say that the Lord Chancellor can decide what constitutes appropriate evidence, but it is very simple. The only form of appropriate evidence must come from a proper doctor registered as such on the portal website of MedCo, the umbrella organisation through which doctors in all personal injury cases are currently chosen. Why on earth would the Government not go through the currently accepted route for all other personal injury cases and the same process that insurers accept in every other case? The only people to gain from offers without a medical are defendant insurers who get cases off their books at an undervalue.

Lawyers for the claimant are obliged to put any offer to the client. Reputable lawyers will always advise against acceptance until there is a medical, but some clients are desperate and reject their advice. Unsurprisingly, and heartbreakingly, it tends to happen when a client’s sick pay runs out or perhaps near Christmas when people have been off sick and are desperate. Any downgrading of the requirement for a medical certificate by a medical registered doctor—this is the risk without the amendments—is just another way that vulnerable workers who have to take time off because of their injuries could be harmed by insurers who make record profits.

We suspect that the vagueness about what qualifies as proper medical advice might be an attempt to allow the use of physiotherapists for the evidence. Insurers have long pushed for that. Physiotherapists are great people doing wonderful work in an extremely important part of post-accident rehabilitation, but they are not doctors and are not able to assess and provide a long-term prognosis.

We fear that if we do not specify in the Bill who should provide the medical reports we will have injured people being prescribed a couple of sessions of physiotherapy and then being described by the insurers as malingering when they are not back to full health

following the limited treatment, when in reality their condition might require far more intense rehabilitation efforts over a longer period. In some cases, the insurers might see a financial gain to employing a physiotherapist or owning a rehabilitation company. Without the amendments, that would suggest the insurers control not only the payment of damages, but the medical process leading to the award. Let us avoid that conflict. Let us trust doctors and specify where a medical report should come from. Any deviation from the gold standard of a medical doctor would negate the good that is done by effectively banning the settlement of whiplash claims without medical evidence, as this part of the Bill attempts to do.

On new clause 3, the Government say that the cases they intend to sweep into the small claims track are minor, straightforward and simple. We do not think that that is so, or that the injured claimant left on their own to fight insurance companies—let us be in no doubt that insurers will fight—will think that their cases are either small or simple. The new clause would ensure that, at the very least, when the injured person gets a medical report, as the Government in clause 6 rightly say they should, they can get independent legal advice on what the report means in terms of the value of their claim, so that, if they remain fighting on their own, they settle at an appropriate sum. How else would they know what their case is worth?

The Government might say that insurers will not rip people off and that they always pay what is fair. If that is the case, they have nothing to fear in ensuring that the injured get advice paid for that reassures them that that is the case. There is a societal benefit. If people settle at an undervalue or their conditions are not properly recognised, they will fall back on the state—the NHS or the benefits system—and the taxpayer will foot the bill that should properly have been met by the negligent party. The polluter will end up not paying and we will all pay through our taxes.

The same principle applies to cases where the insurers do not admit liability. The Government think that, when a claimant chooses to fight a case, the injured person will have the confidence to fight on. Facing a denial of liability, the claimant will, the Government think, be equipped to fight on, but, without help, we do not think they will be.

11.15 am

We therefore propose—this effectively happens now in a fast track case, where the defendant fights on liability and the case falls out of the fast track—that the claimant should get help to fight on. The costs will be fixed, as they are now in the fast track, but at least the claimant will have someone to hold their hand who is on their side. Perhaps the Government think that injured people, possibly claiming sums that exceed their monthly pay cheque, should be left on their own, assess quantum on their own and fight well-funded insurers on their own.

**Rory Stewart:** I very strongly support the basic principles and philosophy of amendments 19 to 21. I have huge respect for MedCo—right hon. and hon. Members will be aware that it is a non-profit portal designed to select at random an expert witness in order to testify in whiplash injury claims. I can reassure them that the intention is for MedCo to be the appropriate channel through which advice is sought.

[Rory Stewart]

The only reason we have not put MedCo on the face of the Bill is to provide for the eventuality that, in 20 or 30 years' time, an entity other than Medico might exist—as hon. Members will see in clause 6(4), we are specifying the form of evidence, the person, the accreditation and the regulations. That was on the advice of counsel, which has had strong experience over the last century, that defining a non-profit on the face of the Bill could cause massive challenges if something unforeseen happens to it. We absolutely agree that MedCo is the appropriate body to use at the moment. All the arguments made by the Opposition are accepted, but on counsel advice, we respectfully advise that it would be better to allow flexibility rather than defining MedCo on the face of the Bill, and therefore ask them to withdraw those amendments.

New clause 3 argues for an individual to be able to reclaim their legal costs while pursuing their whiplash claim. This is a fundamental point of debate and disagreement, and goes against the fundamental principle of the small claims court, the idea of which is that an individual should be a litigant in person and not in a position to recover their legal costs. The argument made is that, under the level proposed—which in the case of certain kinds of damages is £10,000, in relation to whiplash would be £5,000 and in relation to personal injury could be as much as £2,000—we believe that the nature of the claims, particularly with a medical report in place, should be relatively straightforward. We have made some concessions about the online portal and the roll-out, all of which, we think, makes it inappropriate to ask for the reclaim of legal costs.

**Ellie Reeves:** Are we not going to be in exactly the same situation we were with employment tribunal fees? For people pursuing claims, fees, whether they are court fees, legal fees or medical costs, will put people off pursuing claims and therefore undermine their access to justice. The Government were called out on this by the Supreme Court regarding employment tribunal fees and we seem to be going back down the same route.

**Rory Stewart:** This will be entirely different. The disagreement is only about whether one can employ a lawyer and recover the cost of the lawyer. The individual will be able to recover from the insurer the medical costs on the report they got—for example if they spent £140 going through the MedCo portal. The small claims court cost of registering the claim would also be recoverable. However, in the vast majority of cases at the moment—we consider that this will be true in the future—cases do not go to court at all. In the vast majority of cases, a claimant will get a medical certificate, follow the path of the online portal and the settlement will come without them having to proceed to court.

**Jo Stevens:** The Minister's impact assessment, which I referred to on Second Reading, explicitly states that the measure will affect the number of people who will bring cases, and that the number of cases will go down. Will he comment on that please?

**Rory Stewart:** Absolutely. The Government's contention is that some of the cases currently being brought forward are fraudulent or exaggerated claims motivated by a desire to get a payout when either an injury has not been experienced or the injury experienced was considerably

less than claimed in court. We believe that, by reducing the level of tariffs that paid out and by removing the industry of lawyers whose costs can currently be reclaimed through the process, it will be less likely that an individual who has not suffered an injury will go through the inconvenience of seeking a medical report, and less likely that they will proceed to the small claims court or go through the online portal to receive payment for an injury that did not occur. They would not be supported and encouraged by the legal profession or, more likely, claims management companies in proceeding down that path.

**Jo Stevens:** Will the Minister clarify? Is he saying that, although his impact assessment states that the number of cases will go down, the measure will apply only to fraudulent cases? Is he saying that no genuine victim of injury will not pursue a claim because they are not able to recover their costs?

**Rory Stewart:** The impact assessment, which is based on an enormous amount of expert evidence and discussion, boils down to a pretty straightforward assumption about human behaviour. Under the proposed new system, if someone has a car crash and injures themselves, they will proceed to their insurance company, register the fact that they have genuinely injured themselves, be directed towards MedCo, which would provide a report, go to the online portal and, in an effective, efficient and transparent fashion, proceed towards a predictable tariff based on their medical reports. If the medical reports say that the prognosis is six months, a fixed tariff would be paid out.

The experts' contention is that, if someone has a car crash and genuinely nothing happens to them, it would be unlikely, in the absence of a claims management company encouraging them to do so, that they will tell the insurance company that they have a whiplash injury, or be coached to mislead a doctor in the MedCo process to get some kind of report suggesting they have a whiplash injury. Therefore, somebody who either did not experience an injury or experienced an injury so minor that they were not interested in pursuing compensation would not proceed. We believe that, under the current system, the practice of some claims management companies is to encourage people who either have not experienced an injury or have experienced a considerably more minor injury to make a fraudulent or exaggerated claim. We believe that those claims will be not entirely excluded but reduced.

**Bambos Charalambous:** Does the Minister accept that there has to be a hearing to settle children's claims, and that infant settlements require representation? Children often sue their parents if there has been a road traffic accident that is no fault of their own. Will he consider exempting them from the scope of the Bill? They require solicitors, because there has to be a hearing for there to be a settlement.

**Rory Stewart:** Perhaps we can return to that very interesting point on Report. It has not been raised in any of the amendments tabled so far, but I would be very interested to see an amendment tabled and to discuss the matter outside this Committee.

On the basis of the arguments I have made about MedCo, I respectfully request that the Opposition withdraw amendments 19, 20 and 21.

**Gloria De Piero:** Will the Minister say a bit more about the advice he has received from counsel and about why he will not accept the amendments?

**Rory Stewart:** It is pretty straightforward. MedCo is a non-profit organisation set up relatively recently as a portal funded by the insurance industry. We intend the Bill, like any law we pass, to have sustainability and resilience. Potentially, it will last 50 or 100 years. It is very difficult, looking forward over that period, to be

confident that the exact portal or organisation by which doctors qualify to provide an assessment of whiplash will be called MedCo—it may be called something else. The measure provides the flexibility, through regulations from the Lord Chancellor, to define the form of evidence, the person, the accreditation and the regulation necessary to proceed. We think it would give a hostage to fortune to put the brand name of a specific non-profit on the face of the Bill. On that basis, I request that amendments 19, 20 and 21, and new clause 3, be withdrawn.

11.25 am

*The Chair adjourned the Committee without Question put (Standing Order No. 88).*

*Adjourned till this day at Two o'clock.*







# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## CIVIL LIABILITY BILL [*LORDS*]

*Second Sitting*

*Tuesday 11 September 2018*

*(Afternoon)*

---

### CONTENTS

CLAUSES 6 TO 14 agreed to, one with an amendment.  
New clauses considered.  
Bill, as amended, to be reported.  
Written evidence reported to the House.

---

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Saturday 15 September 2018**

© Parliamentary Copyright House of Commons 2018

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:**

*Chairs:* † SIR HENRY BELLINGHAM, GRAHAM STRINGER

- |  |   |
|--|---|
| † Brereton, Jack ( <i>Stoke-on-Trent South</i> ) (Con)     | † Onasanya, Fiona ( <i>Peterborough</i> ) (Lab)                       |
| † Charalambous, Bambos ( <i>Enfield, Southgate</i> ) (Lab) | † Reeves, Ellie ( <i>Lewisham West and Penge</i> ) (Lab)              |
| † Courts, Robert ( <i>Witney</i> ) (Con)                   | † Russell-Moyle, Lloyd ( <i>Brighton, Kemptown</i> ) (Lab/<br>Co-op)  |
| † Davies, Chris ( <i>Brecon and Radnorshire</i> ) (Con)    | † Stevens, Jo ( <i>Cardiff Central</i> ) (Lab)                        |
| † De Piero, Gloria ( <i>Ashfield</i> ) (Lab)               | † Stewart, Rory ( <i>Minister of State, Ministry of<br/>Justice</i> ) |
| † George, Ruth ( <i>High Peak</i> ) (Lab)                  | † Tracey, Craig ( <i>North Warwickshire</i> ) (Con)                   |
| † Green, Chris ( <i>Bolton West</i> ) (Con)                |   |
| † Hanson, David ( <i>Delyn</i> ) (Lab)                     | David Weir, Kenneth Fox, <i>Committee Clerks</i>                      |
| † Heaton-Jones, Peter ( <i>North Devon</i> ) (Con)         |   |
| † Mann, Scott ( <i>North Cornwall</i> ) (Con)              |   |
| † Milling, Amanda ( <i>Cannock Chase</i> ) (Con)           | † <b>attended the Committee</b>                                       |

## Public Bill Committee

Tuesday 11 September 2018

(Afternoon)

[SIR HENRY BELLINGHAM *in the Chair*]

### Civil Liability Bill [Lords]

**The Chair:** Members may remove their jackets if they wish. Will everyone ensure that their telephones are switched to silent? Tea and coffee are not allowed during sittings.

#### Clause 6

##### RULES AGAINST SETTLEMENT BEFORE MEDICAL REPORT

*Amendment proposed (this day):* 19, in clause 6, page 5, line 37, after “injuries” insert—

‘provided by an accredited medical expert selected via the MedCo Portal’.—(*Gloria De Piero.*)

*This amendment, together with Amendments 20 and 21, would ensure that any medical evidence of a whiplash injury must in all cases be provided by a person registered on the MedCo portal website.*

2 pm

*Question again proposed,* That the amendment be made.

**The Chair:** I remind the Committee that with this we are discussing the following:

Amendment 20, in clause 6, page 6, line 1, leave out subsection (3).

*See explanatory statement for Amendment 19.*

Amendment 21, in clause 6, page 6, line 22, at end insert—

‘(7) In this section, the “MedCo Portal” means the website operated by Medco Registration Solutions (company number 09295557) which provides a system for the accreditation of medical experts.’

*See explanatory statement for Amendment 19.*

New clause 3—*Recoverability of costs in respect of advice on medical report, etc.*—

‘(1) For the purposes of civil procedure rules, the costs recoverable by a claimant who recovers damages in a claim for a relevant injury which is (or would be if proceedings were issued) allocated to the small claims track include the costs of the items set out in subsection (2).

(2) The items are—

- (a) legal advice and assistance (including in respect of an act referred to in paragraph (a) or (d) of section 6(2)) in relation to the quantum of damages in the light of a medical report or other appropriate evidence of injury; and
- (b) in a case where liability for the injury is not admitted within the time allowed by any relevant protocol, legal advice and representation in relation to establishing liability.

(3) For the purpose of ascertaining the amounts recoverable in respect of those items, the claim is to be treated as if it were allocated to the fast track.

(4) In this section “relevant injury” means an injury which is an injury of soft tissue in the neck, back, or shoulder, and which is caused as described in paragraphs (b) and (c) of section 1(4)

(negligence while using a motor vehicle on a road, etc.), but does not include an injury in respect of which a tariff amount is for the time being prescribed under section 2.’

*This new clause would ensure that a successful claimant is able to recover costs incurred for legal costs in respect of advice sought in relation to determining the quantum of damages following a medical report or the establishment of liability where it is in dispute.*

**Gloria De Piero** (Ashfield) (Lab): It is a pleasure to serve under your chairmanship, Sir Henry. The Minister had just concluded his remarks, and I had started to say that we would press the amendments in the group to a Division.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 6, Noes 9.

#### Division No. 10]

##### AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
Hanson, rh David	Stevens, Jo

##### NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

*Amendment proposed:* 20, in clause 6, page 6, line 1, leave out subsection (3).—(*Gloria De Piero.*)

*See explanatory statement for Amendment 19.*

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 6, Noes 9.

#### Division No. 11]

##### AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
Hanson, rh David	Stevens, Jo

##### NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

*Amendment proposed:* 21, in clause 6, page 6, line 22, at end insert—

‘(7) In this section, the “MedCo Portal” means the website operated by Medco Registration Solutions (company number 09295557) which provides a system for the accreditation of medical experts.’

*See explanatory statement for Amendment 19.*—(*Gloria De Piero.*)

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 6, Noes 9.

#### Division No. 12]

##### AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
Hanson, rh David	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negatived.*

*Clause 6 ordered to stand part of the Bill.*

*Clause 7 ordered to stand part of the Bill.*

**Clause 8**REGULATION BY THE FINANCIAL CONDUCT  
AUTHORITY

**Gloria De Piero:** I beg to move amendment 17, in clause 8, page 7, line 15, at end insert—

‘(4A) The Treasury must, within one month of the passing of this Act, make regulations specifying that the Financial Conduct Authority is to require all insurers holding a licence to offer UK motor insurance to publish a report—

- (a) on the loss cost savings achieved as a result of the provisions of Part 1 of this Act; and
- (b) how, and the extent to which, such savings have been applied to reduce motor insurance premiums.

(4B) The first such report from insurers must cover the period of 12 months beginning with the first day of the month immediately after the commencement of Part 1 of this Act and must be sent to the Financial Conduct Authority by the end of the period of 15 months beginning with the commencement of Part 1 of this Act.

(4C) The Financial Conduct Authority will require further annual reports.

(4D) The Financial Conduct Authority, within the period of 18 months after the commencement of Part 1 of this Act, must make and publish a reasoned assessment of whether it is satisfied that every insurer covered by this section is passing on to customers any loss cost savings made by those insurers arising from Part 1 of this Act.

(4E) Regulations made under subsection (4A) must make provision for the Treasury to grant powers to the Financial Conduct Authority to enforce a requirement for insurers to pass on loss cost savings, achieved as a result of the provisions of Part 1, from insurers to consumers through a reduction in the cost of premiums if, after the period of 30 months following the commencement of this section, the Financial Conduct Authority advises the Treasury that such powers are necessary.”

*This amendment would require the Financial Conduct Authority to require insurers to report on the savings they have made as a result of this Bill and the extent to which such savings have been passed on to insurance consumers.*

**The Chair:** With this it will be convenient to discuss the following:

Government new clause 2—*Report on Effects of Parts 1 and 2.*

New clause 6—*Passing on savings made by insurers.*

‘(1) Any savings made by any insurer as a result of anything in this Act or associated changes by regulation shall be passed to policyholders by way of reduced premium.

(2) The Financial Conduct Authority shall require all such insurers to submit an annual report detailing the savings they have made and how all those savings have been used to reduce policyholder premiums.

(3) In this section—

“savings” means any reduction in an insurer’s outlays in damages or costs paid in personal injury claims from the time this Act receives Royal Assent;

“insurer” means any insurer holding a licence to offer UK motor insurance;

“policyholder” means the holder of a policy of motor insurance with the insurer;

“premium reduction” means a reduction in the annual cost of a policy of motor insurance taken out by a policyholder.”

*This new clause would require insurers to pass on to insurance consumers all savings made as a result of these changes.*

Government amendments 5 and 6.

**Gloria De Piero:** Amendment 17 would require insurers to report on whether savings have been passed on to consumers. New clause 6 would require insurers to pass on all savings as a result of the changes to consumers. Unlike the Government’s over-wordy, over-complicated new clause 2, which I will discuss shortly, amendment 17 and new clause 6 are straightforward. They would require the Financial Conduct Authority to insist that insurers report on the savings they have made as a result of the Bill, and the extent to which such savings have been passed on to policy holders. There are no caveats, no get-outs—it is a straight-line requirement to do the right thing.

The Bill is the latest in a long line of Government handouts to the insurance industry. Back in 2012 in a closed-door meeting at No. 10, the insurers—in return for being able to set the fixed costs in the new fast track that the new Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced—promised to reduce insurance premiums. Since then, insurers have saved more than £11 billion; those are Association of British Insurers figures, not my own. As the Minister must concede, motor insurance premiums are higher now than they were then. So much for those promises.

In the Bill, the Government have, again, swallowed hook, line and sinker the insurers’ promises that they will reduce premiums. History is repeating itself. Insurers are making record profits: Direct Line’s profits in 2017 jumped by 52% to £570 million and Aviva recorded a profit of £1.6 billion. No, that is not all motor related, but in the case of Direct Line it will largely be so.

Meanwhile, insurer CEOs are on multimillion pound packages—Paul Geddes from Direct Line and Mark Wilson from Aviva made more than £4.3 million each in 2017. We are now discussing measures that will save the insurers £1.3 billion a year. Of that, the insurers might—if the wind is blowing in the right direction and none of the ludicrously large get-out clauses in new clause 2 apply—hand across up to 80%. Notably, the cuts to insurance premiums of £35 a year, which insurers are promising now, are much lower than the previous estimates of £50 per year promised in the Prisons and Courts Bill. The Government represent a party that claims to oppose red tape: here is a chance for them to avoid it. Let us have a simple clause that does what it says on the tin.

That leads me to Government new clause 2, which is as full of red tape as it is holes. Perhaps my most fundamental question to the Minister is this: what is wrong with the word “will”? The new clause is peppered with the word “may”. If the Government are genuinely committed to ensuring that savings are passed to consumers, why do they not insist that that happens? Paragraph 3 includes provision for all kinds of ways in which, by regulation, insurers should provide information. Is there any reason why that information should not be made publicly available?

[Gloria De Piero]

Paragraph 4 is a catalogue of reasons why insurers could wheedle out of being transparent and evade passing on the very substantial savings that the Government's impact assessment makes clear they will be making. The truth is that all the Government have managed to extract from the insurers, who stand to gain massively from this Bill, is a vague promise that they will pass on savings.

Embarrassed by the lack of hard evidence for a commitment, the Government have tabled this new clause, which is riddled with get-outs and opportunities for insurers to worm their way out of the flimsy commitments they have made. We know—and if the Government are honest, so do they—that insurers will seek to avoid paying the savings that they make back to policy holders. That is what happened when they last made promises in 2012. Given the weakness of the new clause, that is what will happen again.

In truth, the Government have rolled over and the new clause is simply a fig leaf to cover their embarrassment. The answer, I suggest, is to include a simple clause that—and I use a phrase from Conservative Back Benchers on Second Reading—will

“hold the insurance industry's feet to the fire.”—[*Official Report*, 4 September 2018; Vol. 646, c. 111.]

Our new clause would mean that any savings made by any insurer as a result of anything in this Act, or associated regulation, will be passed to policy holders by way of reduced premiums. What could be simpler? The Minister may notice that our proposed new clause quite deliberately refers to

“savings made...as a result”

of changes by this regulation.

The Government have refused to include in the Bill the small claims changes that they propose; we will come back to that issue later in our other amendments. What is crucially different between the Government's new clause 2 and our new clause 6 is that our new clause is not only simpler but mentions the savings that insurers will make from the small claims changes.

In calculating the £1.3 billion in savings that the insurers will make every year, the Government's impact assessment includes the savings created by the increase in the small claims limit as a result of the so-called wider package of measures. For the Government not to include the savings made from the small claims limit changes in their new clause 2 renders it virtually worthless, and undermines their much-vaunted and fundamental promise that motor insurance premiums will drop by £35 a year.

**David Hanson (Delyn) (Lab):** It is a pleasure to serve under your chairmanship today, Sir Henry.

I know it is a long time ago, but I will take the Committee back, if I may, to 25 November 2015, when George Osborne, as he is now known, was the Member for Tatton and serving as Chancellor of the Exchequer. At that time, he said—it was recorded in *Hansard*:

“We will bring forward reforms to the compensation culture around minor motor accident injuries, which will remove...£1 billion from the cost of providing motor insurance.”

And here is the crucial bit:

“We expect the industry to pass on this saving, so that motorists see an average saving of £40 to £50 per year off their insurance bills.”—[*Official Report*, 25 November 2015; Vol. 602, c. 1367.]

When this Bill was introduced to the House of Lords and subsequently to this place, the Ministry of Justice's impact assessment indicated at first that the figure would now be £40, not £50—not between £40 and £50, but £40. However, when the general election was fought last year, the figure had miraculously gone from £40 to £35.

In October last year, one of the insurance companies that the Minister in another place, Lord Keen of Elie, has been fond of quoting—Liverpool Victoria or LV=—spoke. Caroline Johnson, director of third party and technical claims at LV=, spoke at the Motor Accident Solicitors Society's annual conference in Sheffield, which must have been an important place to say this; it was not just said off the cuff, but at the conference. She said, “The £35 may or may not be achievable”.

I ask my first question today in support of the new clause tabled by my hon. Friend the Member for Ashfield and to start the testing of the Minister's new clause. In his response, can the Minister give the latest Government assessment of what the £50/£40/£35/possibly-not-achievable £35 is as of today? We are expected to take on trust the figures that he has given.

There is no doubt that the insurance companies will save £1.3 billion a year. That figure has been accepted by the Government and the insurance companies, and I suspect that it will be cited again—not only by my hon. Friend the Member for Ashfield, but by others who will say that it is the saving, the prize, that the Government seek. My concern is not the insurance companies and the £1.3 billion; my concern is how much, if there are savings to be made in the areas we are concerned about, of that £1.3 billion will land in the pockets of those individuals who would then have lower premiums as a result.

I am very pleased to sit on the Justice Committee, just as I was very pleased to sit coterminously this morning with this Committee; I have to say that was very interesting. The Justice Committee carried out an investigation into this area and came to a conclusion as a whole—it was not just the Labour members of that Committee. It is chaired by the hon. Member for Beckenham (Bob Stewart), who is a Conservative; it has a Conservative majority; and it has unanimous support for the recommendations it made in this very area. The Committee said:

“As obtaining insurance involves a commercial transaction with a private sector body...there is little that the Government can do to enforce lower premium rates without significant change to present policies.”

My question to the Minister is about his proposed new clause 2. There is something I cannot find in it—it may be hidden in there within the legalese—but, if it is, could he please put it in simple language for the Committee? What happens if this investigation proves that the insurance companies have made a saving of anything between nothing and £1.3 billion? What steps will the Government take at that stage to enforce their policy objective of ensuring that £50/£40/£35/possibly £35 goes into the pockets of individuals who pay the insurance companies?

2.15 pm

Government new clause 2 says the assessment will be made on 1 April 2024. Half this Committee might be dead by then—that is just under five and half years

from now, and I hope we are all here to see it. I have been round the goldfish bowl a couple of times already this year on Bill Committees; I cannot remember what I did last year on some Committees because we are busy people in this House. Who is going to hold the Government to account on 1 April 2024 when it comes to the report produced by the Financial Conduct Authority, put into effect by the Government's proposed new clause 2?

I want the Government today to say not just that they will publish that report, but that they will put that report forward for debate in the House, whoever is in the House on 1 April 2024, and agree some mechanism. The Minister could outline that now because he has six years to find out how to work it before this report comes out. Will he outline to the Committee today what mechanism he is going to put in place to force the insurance companies to give back any premiums that they might be making as a result of these savings?

We are talking about the Parliament after next, in 2024. I do not want to turn up at some future Parliament when, if everything in proposed new clause 2 goes hunky-dory, an insurance company comes along and says to the Financial Conduct Authority, "We've made £300 million or £500 million; we've saved £1.3 billion." What are the Government going to do or say when that figure comes out? I cannot find it. It might be in here hidden away, but I would like the Minister to tell me what the Government are going to do if a figure of surplus, as a result of these savings, is made, and it has not been returned to consumers.

I would like to know what rigour the Government are going to put in place with the Financial Conduct Authority, to ensure that it is rigorously examining the costs and services. If I were a smart insurance company, I would find some costs to show that actually, although I may have saved £1.3 billion on this, I have had difficult challenges such as renewed claims, and this and that. I am not involved in the insurance industry. I could probably, if I spent the next week thinking about it, find 10 reasons why my costs had increased and that £1.3 billion had been subsumed.

The Minister has a duty to tell the House, with regard to proposed new clause 2, what he expects the Financial Conduct Authority to do. The whole premise of the Government's proposal has been that this is going to stop insurance companies from having extra costs, and those extra costs are going to be passed on to us—to everybody who has a car—in saved premiums.

The Government's figure, with which I started my contribution, has gone from £50 in November to £15 to £35 now, with the insurance companies themselves saying that £35 may or may not be achievable. "May or may not" is quite a loose phrase; "may or may not" means we do not yet know what the figure is. I would like to know from the Minister not just what we are going to find out on 1 April 2024: whenever this legislation is enacted, there will be a period between then and 1 April 2024. My hon. Friend the Member for Ashfield's proposal says we should look at the figures earlier than 2024. I would like to know what the insurance companies are saving in 2019, 2020, 2021, 2022 or 2023—and, indeed, in 2024.

**Lloyd Russell-Moyle** (Brighton, Kemptown) (Lab/Co-op): Is it not the case that the best time for an assessment to be made would be in the first year following the changes—not years down the line?

**David Hanson:** My hon. Friend makes a valid point; it is one I had not thought of and I am grateful to him for bringing that to the Committee's attention. If this saving is going to be made, it would be sensible to say whether it is made early on, because downstream, as my hon. Friend indicated, there will no doubt be a tapering.

To be honest with the Committee, the Minister is only proposing new clause 2 because he got done over in the other place by Members of the House of Lords and could not get the Bill through the House of Lords without this new clause. He got done over in the other place because the Justice Committee unanimously called for

"the Financial Conduct Authority to monitor the extent to which any premium reductions can be attributed to these measures and report back to us after 12 months."

I go back to the all-party Justice Committee, chaired by a Conservative MP, with a Conservative majority, which said in its report on this Bill that there should be a report within 12 months. We have been helpfully reminded by my hon. Friend the Member for Brighton, Kemptown why we suggested that at the time: because we wanted to see the impact within 12 months.

On the amendment tabled by Lord Sharkey in the House of Lords, Lord Keen, the Minister dealing with this in the other place, said on Report:

"the Government are not unsympathetic to the underlying intention of Amendment 46, as tabled by the noble Lord, Lord Sharkey. The point is that having made a firm commitment, insurers should be accountable for meeting it."—[*Official Report, House of Lords*, 12 June 2018; Vol. 791, c. 1632.]

That is what this Minister's colleague said in the House of Lords, and I do not disagree with it. I only say to the Minister that April 2024 seems a tad far in the future to secure the proposals that he is putting to the Committee today.

The Minister needs to say firmly to the Committee what he anticipates the savings to be now, how he will monitor what the insurance companies are making—not just now, but in the next five years—and how he will hold the insurance companies to account. How will he ensure that, whatever date we end up with—be it 1 April 2024 or, if the amendment of my hon. Friend the Member for Ashfield is accepted, as I hope it will be, an earlier date—they meet their obligations and give the money back to the people who are funding it in the first place?

**The Minister of State, Ministry of Justice (Rory Stewart):** It is a great honour to serve under your chairmanship, Sir Henry. I am grateful to right hon. and hon. Members for bringing proposing the amendments and new clauses.

Effectively, as the right hon. Member for Delyn has pointed out, new clause 2 was introduced with a lot of influence from the House of Lords—it was driven by Opposition Members of the House of Lords to meet exactly the concerns raised by right hon. and hon. Members. Therefore, I am tempted to argue in my brief argument that amendment 17 and new clause 6 are, in fact, unnecessary. The noble Lords did a good job in new clause 2 of addressing many of the concerns raised in the debate, which is why the Government are keen to ask for the Committee's support.

At the heart of this, the Committee will discover, is a fundamental disagreement about the nature of markets, which will be difficult to resolve simply through legislation.

[Rory Stewart]

There are profoundly different views on both sides of the House about what exactly is going on in a market. Again and again, all the arguments—from the hon. Member for Jarrow (Mr Hepburn) right the way through to the eloquent speech by the right hon. Member for Delyn—rest on the fundamental assumption that every company, insurance or otherwise, in the country is simply involved in trying to charge their consumers as much as possible and provide as few services as possible, and that there is nothing to prevent their doing that.

Of course, what prevents companies from doing that ought to be competition. It does not matter whether that is the insurance industry or, to take a more straightforward question, why Tesco's does not charge £50 for a loaf of bread and try to produce one slice. In the end, the decision on what premiums are charged will be driven by competition between different insurance companies. All the arguments, whether in relation to these or other amendments, are based on that fundamental misunderstanding. The Labour party is again effectively pushing for a prices and incomes policy. They are trying to get the Government to fix the prices of premiums and control the prices that insurance companies charge because they simply do not trust the Competition and Markets Authority, the FCA, the insurance industry or any other business to pass on savings to consumers.

**David Hanson:** With respect to the Minister, in this case the Labour party is just asking for confirmation of what the Government want to do. They said that they want to save £1.3 billion, and in November 2015 said that they would give back £50 as premiums. That figure has changed. All I am asking is this: what is their estimate of the figure today? The Minister should be able to give an estimate because he has done so on two previous occasions—in an assessment of the Bill's financial implications in the Conservative party manifesto, and in the Chancellor's statement to the House of Commons.

**Rory Stewart:** Unfortunately, something is being missed in the way the right hon. Gentleman is framing his arguments. He is suggesting that there is a fixed, stable situation—the Chancellor of the Exchequer offered £50, nothing changed, and now it is £35. If that were true, it would indeed be a disgrace, but the reality is that, following the negotiations that took place in the consultation and in the House of Lords, the savings that the insurance companies will realise and will be in a position to pass on to the man or woman paying the premium have been considerably reduced.

When the Chancellor of the Exchequer—[*Interruption.*] The right hon. Gentleman might be interested in listening to the answer rather than talking to somebody else. When the Chancellor of the Exchequer spoke, he of course suggested that all general damages would be entirely removed. His proposal was that there would be no general damages at all. It is therefore perfectly reasonable. If no general damages at all were paid, the insurance company's savings would be considerably larger, and the savings passed on to the consumer might indeed have been £50.

Due to the very good work that the Opposition and the noble Lords put in, there have been a number of compromises to the Bill, which mean that the savings

passed on to the insurers, and from the insurers in the form of premiums, will be considerably reduced. One of those compromises is that, whereas in the past there were going to be no general damages paid to anybody getting a whiplash injury of under two years, there is now a tariff for money to be paid out. As it gets closer to two years, the tariffs paid out will be much closer to the existing Judicial College guidelines, so the savings will be considerably less.

**Bambos Charalambous** (Enfield, Southgate) (Lab): We have been here before with the Domestic Gas and Electricity (Tariff Cap) Act 2018, in which the Government fixed the energy price cap and said that the big energy companies would give money back to the consumers, even though the money is not as high as we expected. Then it was £100, and now it is about £70. Why does the Minister not want to do that with insurance companies?

**Rory Stewart:** That is a very good question. The hon. Gentleman and the right hon. Member for Delyn are essentially asking the same question. Indeed, that is what this whole debate is about. The question is about the extent to which the Government wish to interfere in the market to fix prices. As the hon. Member for Enfield, Southgate suggested, a very, very unusual and unprecedented decision was made about the energy companies following a suggestion originally made by the Labour party that we should get involved in fixing prices. That is something about which, from a policy point of view, we generally disagree with Labour because—this deep ideological division between our two parties goes back nearly 100 years—we are a party that fundamentally trusts the market.

The Financial Conduct Authority and the Competition and Markets Authority argue that the insurance companies are operating in a highly competitive market. The reason why we did not initially suggest that we need to introduce anything equivalent to new clause 2 is precisely that we believe that the market is operating well, and that the savings passed on to the insurance companies will be passed on to the consumers, as happens in every other aspect of the market. I have not yet heard a strong argument from the Opposition about why they believe that not to be the case. Logically, Opposition Members can be making only one argument: they must somehow be implying that the insurance companies are operating in an illegal cartel.

**Jo Stevens** (Cardiff Central) (Lab) *rose*—

**Rory Stewart:** I give way to hear why the Opposition believe that is not the case.

**Jo Stevens:** The Minister has said that the Opposition want to fix the market and prices. He also mentioned trust, which is exactly what this is about, because we have been in this situation before. Previously, insurers promised to return savings to consumers and did not. Why is it different this time? Why does the Minister think we can take insurers at their word this time when they have not returned savings previously?

**Rory Stewart:** Recent evidence on the cost of motor premiums shows that, after the implementation of the last set of reforms, there was a flattening off in the increase in the insurance premiums that was lower than

inflation. The reason we believe this mechanism works—this was all part of the evidence put forward by the Competition and Markets Authority—is that it is a very mobile market. Currently, 72% of policyholders have switched their motor insurance provider—it is not a static market where people do not move between providers, which gives a very strong incentive to compete on the premiums. Fifty per cent. of insurance customers are going to comparison websites to compare the premium prices.

2.30 pm

That is part of the reason why we believe insurers will pass on the savings to consumers. However, we concede that there is an issue of trust—from the public, the Opposition and the House of Lords—which is why we believe we have come forward with the correct new clause 2, which will allow right hon. and hon. Members on both sides of the House to hold the insurers to account. In the very detailed amendment put forward by the Government, which the right hon. Member for Delyn suggested was too detailed, we have specified all the information we expect insurers to provide, so that we are in a position to work out exactly what savings they derive. That will allow the Treasury, working with the Financial Conduct Authority, to come to a view on whether insurers are passing on the savings to the customers.

The right hon. Member for Delyn asked what the point is of the new clause and why we do not propose a compulsory mechanism to pass savings on. The answer is that it all depends on competition and market law. If at the end of the reporting period there is clear evidence that the companies have significantly increased their revenues without passing on savings to customers, that will raise very considerable questions about the operations of markets and competition. That may indeed imply, as Opposition Members seem to imply, that some form of legal cartel is in operation. At the moment, there is no evidence that that is happening.

**Gloria De Piero:** Does the Minister accept that, since the changes made in 2012, insurance companies have saved £11 billion?

**Rory Stewart:** I am not in a position to accept or reject that figure—I am not familiar with that figure and I am not clear how it has been arrived at. I am happy to look at that in more detail before Report stage of the Bill.

**Craig Tracey (North Warwickshire) (Con):** The Minister mentioned the reforms of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, but is it not right that, in the two years following those reforms, insurers passed on £1.1 billion of savings, and that average premiums dropped by £50?

**Rory Stewart:** Again, the Competition and Markets Authority is our best guide. Its job is to look very closely at the operations of its industry. It believes that this is a very competitive industry, which is why it is confident that the reforms introduced led to savings that were passed on to customers and why it believes that the current reforms will lead to the same. If that does not happen, it would be interesting to hear Labour

Members' theories about why competition is not operating in this market and why they believe there is a cartel. If that is the argument they wish to make, they will be assisted and not impeded by the Government new clause, which will enable them to gather the information with the Treasury and the Financial Conduct Authority in order to make precisely that case.

**Jo Stevens:** Perhaps I can help the Minister on the figure that my hon. Friend the Member for Ashfield mentioned—the £11 billion of savings after the 2012 changes. That is an Association of British Insurers figure. That figure was saved in claims costs over six years, according to its evidence, but premiums are now higher than ever.

**Rory Stewart:** I will return to the fundamental disagreement between right hon. and hon. Members. We can all agree that there were significant savings to the insurance industry. We can all agree that some of those savings were passed on to customers and that premiums ceased to rise at the rate at which they had been. There is some disagreement between the two sides of the House about whether enough of those savings were passed on—we argue that the industry passed on sufficient savings—and whether premiums went up more than they should. However, without Government new clause 2, the evidence or information will not be available to people in order to make such arguments.

It is not enough to produce a general figure, saying, “Here is £11 billion, and this is how much was passed on in premiums.” That is why the new clause has no less than 11 subsections that detail the kind of data that would need to be extracted from the insurance industry by the date recommended in order to prove that case. I was asked why reporting would not be done annually. The answer, of course, is that a claim can be brought any time within three years of an accident. The date takes into account that the law is due to come into effect in 2020. We add three years to that for the claim, and then time for the data and evidence gathering in order to report in 2024.

**David Hanson:** If the Bill comes into effect in 2020 and we add three years, that is 2023. However, new clause 2(7) says:

“Before the end of a period of one year beginning with 1 April 2024”.

That means that the report may not be done until the end of March or April 2025. It may be published by the Government after that, and then there will be discussion. Therefore, even on the Minister's timetable, we are talking about three years past the 2023 deadline that he indicated to the Committee a moment ago. He should reflect on that and table an amendment to his new clause on Report that brings forward the proposed date considerably.

**Rory Stewart:** The reason why I respectfully request that the Government amendments are supported and the Opposition amendments are withdrawn is that pushing for one-year rather than three-year reviews and attempting to price fix the result would leave the opposition amendments open to judicial review and create an enormous, unnecessary burden on the market. Our

[Rory Stewart]

contention is that the market already operates—we have the Competition and Markets Authority to argue that that is the case—and, by introducing our new clause, we will be able to demonstrate that over time. It is a very serious thing.

I remain confident that, if insurance companies are compelled to produce such a degree of detail and information to the Financial Conduct Authority and the Treasury, they will pass on those savings to consumers because, were they not to, they would be taking a considerable legal risk. The industry initially resisted this move, and understands that it is a serious obligation.

**Ruth George** (High Peak) (Lab): As the Minister said, the insurance companies have said that they will pass savings on to consumers, and the Government have been actively engaged in trying to ensure that all insurance companies sign up to a pledge to reduce premiums, which in itself is a way of fixing the market. However, if it will take insurance companies seven years from now to produce the information, from what date will premiums be reduced? When will consumers see payback from the policy?

**Rory Stewart**: We would expect, because of the nature of competition, for premiums to begin to reduce soon—almost immediately—as insurance companies anticipate the nature of the changes and move to drop premiums to compete with each other and attract new customers. In fact, following legislation in 2012, premiums dropped from £442 in 2012 to £388 in 2015.

**Ruth George**: If the Minister expects premiums to drop so soon, why can the Government not report to the House on those premiums dropping?

**Rory Stewart**: The premiums dropping will be assessed and published in the normal fashion. The requirement in new clause 2 is much more complex. The new clause requires a prodigious amount of information about all forms of income streams, the number of claims and the number of premium holders so the Treasury and the Financial Conduct Authority can develop a sophisticated and detailed picture in order accurately to address the concerns of Opposition Members that, over the period—particularly the three-year period that will be affected by the introduction of the Bill—insurance companies will not pass on savings to consumers. We believe they will, which is why we are comfortable pushing for this unprecedented step of gathering that information to demonstrate that the market works.

On that basis, I politely request that the Opposition withdraw their amendments and support Government new clause 2, which after all was brought together by Opposition Members of the House of Lords and others, and which achieves exactly the objectives that the Opposition have set out.

**Gloria De Piero**: The Minister talked a lot about where the Committee disagrees, but there are things we can all accept as fact—the facts that insurance profits are up massively and that these changes will save insurance companies £1.3 billion, for instance—and we all want

premiums to come down. We believe only amendment 17 and new clause 6 will deliver that, so we seek to divide the Committee.

*Question put*, That the amendment be made.

*The Committee divided*: Ayes 8, Noes 9.

#### Division No. 13]

#### AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

#### NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

*Clause 8 ordered to stand part of the Bill.*

*Clause 9 ordered to stand part of the Bill.*

#### Clause 10

##### ASSUMED RATE OF RETURN ON INVESTMENT OF DAMAGES

**Ellie Reeves** (Lewisham West and Penge) (Lab): I beg to move amendment 24, in clause 10, page 9, line 20, leave out from “SCHEDULE A1” to end of page 14, and insert—

“SCHEDULE A1

ASSUMED RATE OF RETURN ON INVESTMENT OF DAMAGES: ENGLAND AND WALES

*Periodic reviews of the rate of return*

1 (1) The Lord Chancellor must instruct the expert panel to review the rate of return periodically in accordance with this paragraph.

(2) The first review of the rate of return must be started within the 90 day period following commencement.

(3) Each subsequent review of the rate of return must be started within the 5 year period following the last review.

(4) It is for the Lord Chancellor to decide—

(a) when, within the 90 day period following commencement, a review under sub-paragraph (2) is to be started;

(b) when, within the 5 year period following the last review, a review under sub-paragraph (3) is to be started.

(5) In this paragraph—

‘90 day period following commencement’ means the period of 90 days beginning with the day on which this paragraph comes into force;

‘5 year period following the last review’ means the period of five years beginning with the day on which the last review under this paragraph is concluded.

(6) For the purposes of this paragraph a review is concluded on the day when the Lord Chancellor makes a determination under paragraph 2 as a result of the review.

*Conducting the review*

2 (1) This paragraph applies when the Lord Chancellor is required by paragraph 1(2) or (3) to instruct the expert panel to conduct a review of the rate of return.

(2) The Lord Chancellor must instruct the expert panel to review the rate of return and determine whether it should be—

- (a) changed to a different rate, or
- (b) kept unchanged.

(3) The expert panel must conduct that review and make that determination within the 140 day review period.

(4) When deciding what response to give to the Lord Chancellor under this paragraph, the expert panel must take into account the duties imposed on the Lord Chancellor by paragraph 3.

(5) During any period when the office of Government Actuary is vacant, a reference in this paragraph to the Government Actuary is to be read as a reference to the Deputy Government Actuary.

(6) In this paragraph ‘140 day review period’ means the period of 140 days beginning with the day which the Lord Chancellor decides (under paragraph 1) should be the day on which the review is to start.

#### *Determining the rate of return*

3 (1) The expert panel must comply with this paragraph when determining under paragraph 2 whether the rate of return should be changed or kept unchanged (‘the rate determination’).

(2) The expert panel must make the rate determination on the basis that the rate of return should be the rate that, in the opinion of the expert panel, a recipient of relevant damages could reasonably be expected to achieve if the recipient invested the relevant damages for the purpose of securing that—

- (a) the relevant damages would meet the losses and costs for which they are awarded;
- (b) the relevant damages would meet those losses and costs at the time or times when they fall to be met by the relevant damages; and
- (c) the relevant damages would be exhausted at the end of the period for which they are awarded.

(3) In making the rate determination as required by sub-paragraph (2), the expert panel must make the following assumptions—

- (a) the assumption that the relevant damages are payable in a lump sum (rather than under an order for periodical payments);
- (b) the assumption that the recipient of the relevant damages is properly advised on the investment of the relevant damages;
- (c) the assumption that the recipient of the relevant damages invests the relevant damages in a diversified portfolio of investments;
- (d) the assumption that the relevant damages are invested using an approach that involves—
  - (i) more risk than a very low level of risk, but
  - (ii) less risk than would ordinarily be accepted by a prudent and properly advised individual investor who has different financial aims.

(4) That does not limit the assumptions which the expert panel may make.

(5) In making the rate determination as required by sub-paragraph (2), the expert panel must—

- (a) have regard to the actual returns that are available to investors;
- (b) have regard to the actual investments made by investors of relevant damages; and
- (c) make such allowances for taxation, inflation and investment management costs as the expert panel thinks appropriate.

(6) That does not limit the factors which may inform the expert panel when making the rate determination.

(7) In this paragraph ‘relevant damages’ means a sum awarded as damages for future pecuniary loss in an action for personal injury.

#### *Determination*

4 When the expert panel makes a rate determination, the expert panel must give reasons for the rate determination made.

#### *Expert panel*

5 (1) For each review of a rate of return, the Lord Chancellor is to establish a panel (referred to in this Schedule as an ‘expert panel’) consisting of—

- (a) the Government Actuary, who is to chair the panel; and
- (b) four other members appointed by the Lord Chancellor.

(2) The Lord Chancellor must exercise the power to appoint the appointed members to secure that—

- (a) one appointed member has experience as an actuary;
- (b) one appointed member has experience of managing investments;
- (c) one appointed member has experience as an economist;
- (d) one appointed member has experience in consumer matters as relating to investments.

(3) An expert panel established for a review of a rate of return ceases to exist once it has responded to the consultation relating to the review.

(4) A person may be a member of more than one expert panel at any one time.

(5) A person may not become an appointed member if the person is ineligible for membership.

(6) A person who is an appointed member ceases to be a member if the person becomes ineligible for membership.

(7) The Lord Chancellor may end an appointed member’s membership of the panel if the Lord Chancellor is satisfied that—

- (a) the person is unable or unwilling to take part in the panel’s activities on a review conducted under paragraph 1;
- (b) it is no longer appropriate for the person to be a member of the panel because of gross misconduct or impropriety;
- (c) the person has become bankrupt, a debt relief order (under Part 7A of the Insolvency Act 1986) has been made in respect of the person, the person’s estate has been sequestrated or the person has made an arrangement with or granted a trust deed for creditors.

(8) During any period when the office of Government Actuary is vacant the Deputy Government Actuary is to be a member of the panel and is to chair it.

(9) A person is ‘ineligible for membership’ of an expert panel if the person is—

- (a) a Minister of the Crown, or
- (b) a person serving in a government department in employment in respect of which remuneration is payable out of money provided by Parliament.

(10) In this paragraph ‘appointed member’ means a person appointed by the Lord Chancellor to be a member of an expert panel.

#### *Proceedings, powers and funding of an expert panel*

6 (1) The quorum of an expert panel is four members, one of whom must be the Government Actuary (or the Deputy Government Actuary when the office of Government Actuary is vacant).

(2) In the event of a tied vote on any decision, the person chairing the panel is to have a second casting vote.

(3) The panel may—

- (a) invite other persons to attend, or to attend and speak at, any meeting of the panel;
- (b) when exercising any function, take into account information submitted by, or obtained from, any other person (whether or not the production of the information has been commissioned by the panel).

(4) The Lord Chancellor must make arrangements for an expert panel to be provided with the resources which the Lord Chancellor considers to be appropriate for the panel to exercise its functions.

(5) The Government Actuary’s Department, or any other government department, may enter into arrangements made by the Lord Chancellor under sub-paragraph (4).

(6) The Lord Chancellor must make arrangements for the appointed members of an expert panel to be paid any remuneration and expenses which the Lord Chancellor considers to be appropriate.

*Application of this Schedule where there are several rates of return*

7 (1) This paragraph applies if two or more rates of return are prescribed under section A1.

(2) The requirements—

- (a) under paragraph 1 for a review to be conducted, and
- (b) under paragraph 2 relating to how a review is conducted, apply separately in relation to each rate of return.

(3) As respects a review relating to a particular rate of return, a reference in this Schedule to the last review conducted under a particular provision is to be read as a reference to the last review relating to that rate of return.

*Interpretation*

8 (1) In this Schedule—

- ‘expert panel’ means a panel established in accordance with paragraph 5;
- ‘rate determination’ has the meaning given by paragraph 3;
- ‘rate of return’ means a rate of return for the purposes of section A1.

(2) A provision of this Schedule that refers to the rate of return being changed is to be read as also referring to—

- (a) the existing rate of return being replaced with no rate;
- (b) a rate of return being introduced where there is no existing rate;
- (c) the existing rate of return for a particular class of case being replaced with no rate;
- (d) a rate of return being introduced for a particular class of case for which there is no existing rate.

(3) A provision of this Schedule that refers to the rate of return being kept unchanged is to be read as also referring to—

- (a) the position that there is no rate of return being kept unchanged;
- (b) the position that there is no rate of return for a particular class of case being kept unchanged.

(4) A provision of this Schedule that refers to a review of the rate of return is to be read as also referring to—

- (a) a review of the position that no rate of return is prescribed;
- (b) a review of the position that no rate of return is prescribed for a particular class of case.”

*This amendment would require that the discount rate was set by the expert panel, not the Lord Chancellor.*

**The Chair:** With this it will be convenient to discuss the following:

Amendment 22, in clause 10, page 10, line 13, at end insert—

“( ) the expert panel established for the review;”

*This amendment, together with Amendment 23, would require the Lord Chancellor to consult the expert panel before the initial discount rate determination, rather than just the subsequent ones as currently required.*

Amendment 23, in clause 10, page 10, line 21, at end insert—

“( ) The expert panel must respond to the consultation within the period of 90 days beginning with the day on which its response to the consultation is requested.”

*See explanatory statement for Amendment 22.*

**New clause 5—Review of assumptions on which calculation of the personal injury discount rate is based—**

“(1) Within 3 years from the date on which this Schedule comes into force, the Lord Chancellor must arrange for the expert panel to review the assumptions on which the personal injury discount rate is based, and review how investors of relevant damages are investing such damages.

(2) The review must report to the Lord Chancellor whether the assumptions on which the personal injury discount rate is based should be changed and set out recommendations.”

*This new clause would require the Lord Chancellor to arrange for the expert panel to conduct a review of the assumptions on which the discount rate is based in light of how claimants are in practice investing their compensation.*

Clause stand part.

**Ellie Reeves:** The personal injury discount rate is a pivotal part of the compensation process. It must be carefully reviewed, calculated and set. The rate is critical as it helps to determine what an injured person receives following what can often be life-changing injuries. Damages are paid to individuals, usually as a lump sum, to account for the losses caused by an injury. The level at which the personal injury discount rate is set is based on assumptions about the risk of the recipient’s investment of the damages they are awarded, which helps to ensure that any future market fluctuations are accounted for. The rate ensures that recipients ultimately receive the level of compensation that was intended and do not enter a state of extreme over or under-compensation.

The need for the rate to be set correctly is clear. An individual involved in a major car crash who breaks their back and may as a result never work again might need to adapt their home and pay for care, and might have loss of earnings. When they receive their compensation as a lump sum, they would need to invest it. At present, injured individuals are treated as very risk-averse investors, rightly so given the impact that a major injury would likely have on one’s perception of risk. Also, they are not investors looking at the stock market. Their future quality of life depends on ensuring that they have enough money to live on and to provide important care. It is therefore imperative that the rate is set at the correct level to ensure that compensation awards are delivered as intended—based on the risk of the investments that the sums are put in.

2.45 pm

The amendment would replace schedule A1 as drafted with a far more appropriate means of setting the discount rate—allowing it to be set by an expert panel, rather than it being politicised as a decision by the Lord Chancellor. Amendments 22 and 23 would ensure that the expert panel set the rate right from the beginning and not just in subsequent reviews. Throughout the Bill there are too many instances of handing power from experts to Ministers without sufficient checks and balances. That is not right, and the concessions offered by the Government—for Ministers to liaise with some experts—do not go far enough. Our amendment would shift the emphasis from the Lord Chancellor to the independent expert panel.

Furthermore, the Justice Committee recommended in its pre-legislative report on the draft personal injury discount rate that the panel should advise on the first review and, if the Lord Chancellor chose not to follow the panel’s advice in setting the rate, that information should be made public, along with his or her reasons for so doing. The requirement to consult a panel appeared in the original Bill, but unfortunately it was removed from the Bill in the House of Lords. Opposition amendments seek to address that, and they would add much-needed clarity and transparency on how the rate

is set initially and in future, avoiding politically or ideologically driven decisions by shifting the balance in favour of experts.

Paragraph 5 of proposed new schedule A1 in the amendment clearly outlines the necessary credentials of members of the expert panel, whether as experienced actuaries, investment managers or economists. Transparency and independence, and external expertise are vital in setting the rate, and they should be welcomed. To hand decision making over to the Lord Chancellor, as the Bill does in many places, will remove independence from a process that helps to deliver access to justice. Confidence in politicians is at a low, and we cannot allow confidence in the justice system—or our constituents' faith in their ability to access justice—fall to equally low levels.

New clause 5 would see the expert panel conduct a review of the assumptions on which the rate is set within three years of the legislation coming into force. That is set to be within three years of the date of the schedule coming into force so, although both the existing schedule A1 and the alternative proposed in amendment 24 maintain the period of review for the rate as being within five years, as amended in the House of the Lords, I hope that the Minister will give us assurances that should it be found during the review of the assumptions that the most prevalent investments by injured claimants are determined to be very low risk—as such, people would not be receiving appropriate compensation payments—the rate would be changed sooner rather than later during that period.

It is imperative that the vast changes to be introduced by the Bill have sufficient checks and balances in place to ensure that they work as intended, so that injured claimants are not left suffering further in the pursuit of justice. As I outlined in my speech on Second Reading, the changes to be introduced by the Bill have the potential to be a textbook example of a change in the law with ramifications that we will not truly know until much further down the line, at which point it will be too late, with the damage done and access to justice eviscerated for many.

For that reason, it is important that we should ensure that the correct checks and balances, regular reviews and expert-led setting of the rate form part of the Bill. I hope that by implementing those measures we will not see a repeat of the access-to-justice crisis caused by LASPO, employment tribunal fees and—an anticipated impact—changes to the small claims limit. The Government should take the time to implement the amendments to part 2 of the Bill.

**Bambos Charalambous:** Let us be clear what we are talking about with the discount rate: damages for people who have suffered catastrophic, life-changing injuries. The lump sum they receive is to last them their entire life and is to pay for urgent treatments, care, support, adaptations—a whole host of things. We need to be very careful how we deal with this, as very small variations in the discount rate can have serious impacts.

As an example, I have been advised by a leading law firm that it settled a claim in 2015 for a client in her 30s who suffered cardiac arrest and irreparable brain damage due to negligence. She was awarded £9.95 million when the discount rate was 2.5%. That award was to pay for extensive medical treatments, childcare and live-in carers

for the rest of her life. Had the claim been settled in 2017, when the discount rate was changed to -0.75%, it would have resulted in a settlement of £20 million.

Such cases are relatively few in number, but when they do occur, we must make sure that they are dealt with as precisely as possible, without leaving such large fluctuations to chance. We would all agree that the time between the setting of the two discount rates was far too long. I very much support a shorter period of time for that to take place. Someone who receives such a lump sum would surely choose to invest it in as low risk a manner as possible—they would not want any risk if possible—because it has to last them their entire life. The discount rate should be set on the basis that the investment will be very low risk.

In setting the discount rate, the Lord Chancellor is given wide-ranging discretion. That opens up potential for other factors to influence the Lord Chancellor, which could adversely impact the compensation received by someone who has suffered catastrophic injuries. We need to be clear about the reasons why the Lord Chancellor will be setting the rate. As my hon. Friend the Member for Lewisham West and Penge mentioned, the Justice Committee recommended setting up an independent panel of experts to advise the Lord Chancellor on setting the rate. It also recommended that the panel's advice be published in full. The Bill has removed that transparency. I have grave concerns about the reasons for that and how the rate will be set. We need to know how the rate has been set. When the Bank of England sets interest rates, it has a panel of experts and it gives reasons why. A similar system should apply here.

I support the amendments and new clause. It would be right and proper for the power to be taken away from the Lord Chancellor and for the rate to be set by an independent panel of experts, at regular periods.

**Rory Stewart:** I have enormous sympathy for the amendments, in particular the arguments on amendments 24, 22 and 23. As the hon. Member for Lewisham West and Penge and the hon. Member for Enfield, Southgate have clarified, we are dealing here with people who have suffered catastrophic, life-changing injuries and we have a very particular responsibility, particularly since some of those people can be immensely vulnerable. They can include children who have catastrophic, life-changing injuries. We all have an obligation to ensure that the principle of 100% compensation is met.

The discount rate can seem a slightly technical mathematical formula. It is there to try to hedge effectively against inflation and the expected rate of investment returns in setting an award. As the hon. Member for Enfield, Southgate pointed out, a shift in the discount rate could mean a difference between an award of £10 million and an award of £20 million—a very significant difference.

In setting the discount rate, our first obligation has to be to the very vulnerable individuals who have suffered a catastrophic or life-changing injury. We need to ensure that they are able to make an investment that does not carry substantial risk. We cannot guarantee everything because inflation and markets can move. Insofar as we can do so in advance, we should attempt to arrive at a rate that fairly reflects the likelihood of their getting the compensation that it was anticipated they would receive

[Rory Stewart]

from the judge. That means that we should not aim to chase a median rate. We should aim to chase a rate on the basis of advice from the Government Actuary and later from the expert panel, to determine the fair rate of return.

In that case, why are the Government challenging amendments 24, 22 and 23? The answer is that amendments 22 and 23 reflect the original position of the Government on the Bill, so we are slightly going round in circles. We had originally suggested in the version of the Bill that we presented to the House of Lords that the Lord Chancellor should consult the expert panel before setting the rate. Under pressure from Opposition Members in the House of Lords, in particular Lord Sharkey, the Lords pushed us into a position where we agreed that, instead of an expert panel, it should be the Government Actuary, working with the Lord Chancellor, who set the first rate.

The argument made by the Lib Dem peer and backed by others, including Lord Beecham, was that the problems for the NHS caused by the discount rate are so extreme and the costs on the public purse so extreme, that the first change in the discount rate should happen relatively rapidly, on the advice of the Government Actuary. Were we now to reject that amendment, which we accepted after long negotiation in the House of Lords, we would have to go back to the drawing board and set up the expert panel again, leading to a very significant delay, which would impose costs on the NHS.

We are in the ironic position that the Opposition are now proposing as amendments the original Government position, which the Opposition struck down in the House of Lords. We are slightly in danger of going round in circles. We are where we are and, given the problems of time, I suggest that the pragmatic compromise is that the Government Actuary, who is an independent individual with enormous expertise, works with the Lord Chancellor on the first setting of the rate, and that for subsequent settings of the rate, the expert panel comes in, as the House of Lords recommended.

That brings us to the lengthy amendment 24, which the hon. Member for Lewisham West and Penge introduced with great eloquence. That essentially argues that the rate should be set by the expert panel alone and not by the Lord Chancellor. We disagree fundamentally with that because the expert panel and the Government Actuary would argue that it is not their position to set the rate. It is their position to provide actuarial advice on different investment decisions that could be made, the likely rates of inflation and the likely rates of return.

Ultimately, a Minister accountable to Parliament should set that rate, because they have to balance some very different issues: our obligation towards vulnerable people who have suffered catastrophic life-changing injuries and our obligation on the costs to the national health service, which run into billions of pounds, and balancing these different public goods.

It simply would not be fair to expect an actuary to make those kinds of political and social decisions. It is entirely appropriate to expect actuarial experts to provide the expert advice on what the range of options would be, and to reassure individuals that the Lord Chancellor

is not likely to make a decision that would have a significant negative impact. It is only necessary to look at what the Lord Chancellor did two years ago in setting the rate of -0.75%. If it had been the case that the Lord Chancellor was fundamentally driven by Treasury calculations and was not interested in defending the vulnerable individual, they would not have moved the rate from 2.5% to -0.75%, effectively doubling the compensation paid. The Lord Chancellor, in setting this rate, on the advice of the expert panel, will be acting as the Lord Chancellor, not as the Secretary of State for Justice.

**Bambos Charalambous:** The Minister said there was a big change when a previous Lord Chancellor set the rate at -0.75%. I wonder what advice and from whom she received in setting that rate. Clearly, she would have had some advice, rather than plucking that figure out of the air. I wonder what the situation is now.

**Rory Stewart:** At the moment, the advice received would be from actuaries. Ultimately, we commission the Government Actuary's Department voluntarily to provide the best advice on what the rate should be. It then arrives at a gilt rate, which drove us towards -0.75%. The Bill puts the role of the Government Actuary into law, so it is no longer voluntary but compulsory. It will be obligatory for the Lord Chancellor to consult, and in future there will be a broader expert panel around the Government Actuary.

3 pm

The Government will publish the Government Actuary's report, the panel's report and later reviews. I am happy to make that commitment to the hon. Gentleman, who asked about transparency. I respectfully ask that the Opposition amendment be withdrawn, and that the Government amendment be accepted.

**Gloria De Piero:** My learned and experienced colleagues have spoken in great detail about our issues with the amendments, so I do not anticipate making a long speech. I wholeheartedly concur with the comments that my hon. Friend the Member for Lewisham West and Penge made about the importance of periodical payment orders and a proper, timely review of the personal injury discount rate. As everybody who has contributed has said, we are talking about the most seriously injured. They cannot and must not be let down by our playing politics or by insurers seeking to save money.

In amendments 22 and 23, we say that, if an expert panel is appropriate for subsequent reviews, why should not expert opinion from the panel be appropriate for the initial determination of the rate of return? That is why we will press them to a Division.

**Ellie Reeves:** I thank the Minister for his response to the points that I made. For the reasons that I and my hon. Friend the Member for Enfield, Southgate set out, I want to press amendment 24 and new clause 5 to a Division.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 8, Noes 9.*

**Division No. 14]****AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

*Question put, That the clause stand part of the Bill.*

*The Committee divided: Ayes 9, Noes 8.*

**Division No. 15]****AYES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

**NOES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

*Question accordingly agreed to.*

*Clause 10 ordered to stand part of the Bill.*

**New Clause 2****REPORT ON EFFECT OF PARTS 1 AND 2**

(1) Regulations made by the Treasury may require an insurer to provide information to the FCA about the effect of Parts 1 and 2 of this Act on individuals who hold policies of insurance with the insurer.

(2) The regulations may provide that an insurer is required to provide information only if it has issued third party personal injury policies of insurance on or after 1 April 2020 to individuals domiciled in England and Wales.

(3) The regulations may—

- specify the information or descriptions of information to be provided;
- specify how information is to be provided;
- specify when information is to be provided;
- require that information or specified descriptions of information be audited by a qualified auditor before being provided;
- make provision about the audit;
- require that details of the auditor be provided to the FCA.

(4) Regulations under subsection (3)(a) may in particular require an insurer to provide information, by reference to each of the report years, about—

- the amount paid by the insurer during the report period under its relevant third party personal injury policies of insurance in respect of personal injuries

sustained by third parties, where the amount of damages for the injury is governed by the law of England and Wales;

- the amount that the insurer might reasonably have been expected to pay in respect of those injuries if this Act had not been passed;
- the mean of the amounts paid during the report period under those policies in respect of those injuries;
- what might reasonably have been expected to be the mean of the amounts paid in respect of those injuries if this Act had not been passed;
- the amounts described in paragraphs (a) to (d), determined by reference only to cases where—
  - the amount paid by an insurer under a policy, or
  - the amount that an insurer might reasonably have been expected to pay under a policy,
 falls within one of the bands specified in the regulations;
- the amount charged by the insurer by way of premiums for relevant third party personal injury policies of insurance where the cover starts in the report period;
- the amount that the insurer might reasonably have been expected to charge by way of premiums for those policies if this Act had not been passed;
- the mean of the premiums charged for those policies;
- what might reasonably have been expected to be the mean of the premiums charged for those policies if this Act had not been passed;
- the amounts described in paragraphs (f) to (i), determined as if the references to a premium charged for a relevant third party personal injury policy of insurance were references to so much of the premium as is charged in order to cover the risk of causing a third party to sustain personal injury;
- if any reduction in the amounts referred to in paragraph (a) has been used to confer benefits other than reduced premiums on individuals, information about those benefits.

(5) The regulations may make provision about the methods to be used in determining the amounts described in subsection (4)(b), (d), (g) and (i), including provision about factors to be taken into account.

(6) The regulations may provide for exceptions, including but not limited to—

- exceptions relating to policies of insurance obtained wholly or partly for purposes relating to a business, trade or profession;
- exceptions relating to policies of insurance of a specified description;
- exceptions for cases where the value or number of policies of insurance issued by an insurer is below a level specified by or determined in accordance with the regulations, and
- exceptions relating to insurers who, during the report period, issue policies of insurance only within a period that does not exceed a specified duration.

(7) Before the end of a period of one year beginning with 1 April 2024, the Treasury must prepare and lay before Parliament a report that—

- summarises the information provided about the effect of Parts 1 and 2 of this Act, and
- gives a view on whether and how individuals who are policy holders have benefited from any reductions in costs for insurers.

(8) If insurers provide additional information to the FCA about the effect of Parts 1 and 2 of this Act, the report may relate also to that information.

(9) The FCA must assist the Treasury in the preparation of the report.

(10) In the Financial Services and Markets Act 2000—

- (a) in section 1A (functions of the Financial Conduct Authority), in subsection (6), after paragraph (cza) insert—

“(czb) the Civil Liability Act 2018;”;

- (b) in section 204A (meaning of “relevant requirement” and “appropriate regulator”)—

(i) in subsection (2), after paragraph (a) insert—

“(aa) by regulations under section (Report on effect of Parts 1 and 2) of the Civil Liability Act 2018;”;

(ii) in subsection (6), after paragraph (a) insert—

“(aa) by regulations under section (Report on effect of Parts 1 and 2) of the Civil Liability Act 2018;”.

(11) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure.

(12) In this section—

“the FCA” means the Financial Conduct Authority;

“insurer” means an institution which is authorised under the Financial Services and Markets Act 2000 to carry on the regulated activity of—

- (a) effecting or carrying out contracts of insurance as principal, or
- (b) managing the underwriting capacity of a Lloyd’s syndicate as a managing agent at Lloyd’s;

“qualified auditor” means a person who is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006;

“relevant third party personal injury policy of insurance” means a third party personal injury policy of insurance issued by an insurer to an individual domiciled in England and Wales;

“report period” means the period of three years beginning with 1 April 2020;

“report year” means a year beginning with 1 April 2020, 2021 or 2022;

“third party personal injury policy of insurance” means a policy of insurance issued by an insurer which provides cover against the risk, or risks that include the risk, of causing a third party to sustain personal injury.’

*This new clause provides for regulations requiring insurers to supply information about the effect of Parts 1 and 2 of the Bill and requires a report based on that information to be provided to Parliament.—(Rory Stewart.)*

*Brought up, read the First time and Second time, and added to the Bill.*

### New Clause 1

#### RESTRICTION ON INCREASE IN SMALL CLAIMS LIMIT FOR RELEVANT PERSONAL INJURIES

(1) In this section, the “PI small claims limit” refers to the maximum value (currently £1,000) of a claim for damages for personal injuries for which, in accordance with Civil Procedure Rules, the small claims track is the normal track.

(2) Civil Procedure Rules may not increase the PI small claims limit in respect of relevant injury claims to an amount above £1,000 for the first time unless—

- (a) the Lord Chancellor is satisfied, and has certified in writing, that on the day the rules are to come into force, the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to CPI, would be at least £1,500, and
- (b) the rules increase the PI small claims limit to no more than £1,500.

(3) Civil Procedure Rules may not increase the PI small claims limit in respect of relevant injury claims on any subsequent occasion unless—

- (a) the Lord Chancellor is satisfied, and has certified in writing, that on the day the rules are to come into force, the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to CPI, would be at least £500 greater than on the day on which the rules effecting the previous increase were made, and

- (b) the rules increase the PI small claims limit by no more than £500.

(4) In this section—

“CPI” means the all items consumer prices index published by the Statistics Board;

“relevant injury” means an injury which is an injury of soft tissue in the neck, back, or shoulder and which is caused as described in paragraphs (b) and (c) of section 1(4) (negligence while using a motor vehicle on a road, etc.);

“relevant injury claim” means a claim for personal injury that consists only of, or so much of a claim for personal injury as consists of, a claim for damages for pain, suffering and loss of amenity caused by a relevant injury, and which is not a claim for an injury in respect of which a tariff amount is for the time being prescribed under section 2.’

*This new clause would limit increases in the whiplash small claims limit to inflation (CPI), and allow the limit to increase only when inflation had increased the existing rate by £500 since it was last set.—(Gloria De Piero.)*

*Brought up, and read the First time.*

**Gloria De Piero:** I beg to move, That the clause be read a Second time.

New clause 1 deals with one of the most important effects of this package of measures. It says that the whiplash small claims limit can increase only in line with inflation based on the consumer prices index. It specifies that the limit can increase only when inflation has increased the existing rate by £500 since it was last set.

The Government have been disingenuous in trying to sneak through these changes to the small claims track limit by using delegated legislation, which restricts the proper scrutiny that such significant changes deserve. With the new clause, we ask the Government to do the right thing and to put it on the face of the Bill, enshrining the terms that a plethora of experts agree on: the use of CPI over the retail prices index when it, and using 1999 as a start date for any recalculation of the limit for a small claims track.

The White Book that I showed the Minister shows that there was a 20% increase in the small claims limit in 1999 when special damages were removed from the *calculation* of the limit. Lord Justice Jackson, in his “Review of Civil Litigation Costs: Final Report” said that the only reason to increase the personal injury small claims limit would be to

“reflect inflation since 1999. As series of small rises in the limit would be confusing for practitioners and judges alike.”

He made it crystal clear that the limit should remain at £1,000 until inflation warrants an increase to £1,500.

The Government admitted to me this morning that there is a difference of opinion in their own ranks about which of these years should be the benchmark. We say again that they must listen to the Lord Justice Jackson and the Justice Committee chaired by one of their own, the hon. Member for Bromley and Chislehurst (Robert Neill), who agrees with him. We should state on the face

of the Bill that 1999 must be the start date for any recalculation of the small claims limit, not 1991. The Government accepted all the key recommendations in the Jackson report save the recommendation that there should be an increase in the small claims limit to £1,500 only when inflation justifies it.

To turn to another aspect—the Government have admitted that it has caused a dispute among Ministers—I want to make the case, as I have done before, that CPI and not the RPI is the correct measure to apply for inflation. It seems that the Government use RPI when it suits and use CPI when it suits. CPI is what we use for the pensions and benefits paid to injured workers while they are pursuing justice for that injury through the claim. Even the Chief Secretary to the Treasury agrees with me. When asked at the House of Lords Economic Affairs Committee whether she agreed that RPI was an inadequate measure, she said:

“We certainly agree that it is not the preferred measure of inflation. CPI is a much better measure of inflation... we agree that it is not the preferred method, and we are seeking to move away from RPI”.

Why are we moving towards it here? The Government say they wish to apply RPI to the small claims limit because RPI is applied to updating damages—the same damages that they are taking an axe to with the new tariff.

Perhaps some in the Conservative party are persuaded, like me, that CPI is the best option, because of yet another expert who has lined up to say so. On 30 January 2018, the Governor of the Bank of England, Mark Carney, said:

“At the moment, we have RPI, which most would acknowledge has known errors. We have CPI, which is what virtually everyone recognises and is in our remit.”

It is perfectly clear that we need to enshrine CPI as the key measure on the face of the Bill. The amount of £1,000 from 1999 would now be worth either £1,440 if CPI is applied, or £1,620 if RPI is applied. Lord Jackson said that it should not go up to £2,000, as the Government suggests, until inflation warrants it.

I trust the Minister will not be as dismissive as Lord Keen was when he said in his evidence to the Justice Committee:

“We do not feel that there is a material difference between setting it at £1,700 today and seeing it drop behind inflation next year, and setting it at £2,000 without the need to review it again for a number of years.”

Try telling the nurse, the caretaker or the bus driver that there is no material difference between £1,700 and £2,000. For those on real wages, that has a real impact.

**Rory Stewart:** Relatively rapidly, I would say that we have five types of disagreement with the amendments. Broadly speaking, those are political, philosophical, economic, financial and constitutional. The political disagreement is that the amendment would go to the heart of the Bill. The entire concept of the Bill is to try to effect a change in the current practice and process around whiplash claims by moving the claim limit to £5,000. That is part of the entire package—the tariffs and small claims limits are related to that.

Philosophically and fundamentally, we are not arguing that the shift to £5,000 is fundamentally a question of inflation. There are many other reasons why the small

claims limit has been moved in the past. Indeed, in relation to some types of claim, as you will be aware Sir Henry, as one of our learned friends, some of the claims have been moved to £10,000, which goes a long way beyond inflation.

Largely, the driver of whether or not something is on a small claims track is to do with the nature of the claim, not the nature of inflation. However, if we worked on the narrow question of inflation, the Judicial College guidelines are currently on RPI as opposed to CPI. I respect the arguments that the hon. Member for Ashfield made but that is not the fundamental argument the Government are making.

The amendment would have curious financial implications. It would create a strange syncopated rhythm, whereby movements in CPI are not necessarily reflected in the triennial review except in £500 increments which, over time, mathematically will lead to peculiar results.

The fundamental reason we oppose the amendment is the final argument I mentioned, which is constitutional. This is business for the Civil Procedure Rule Committee, as it always has been, and it is not suitable to put in the Bill. On the basis of those political, philosophical, economic, financial and constitutional arguments, I respectfully request that the amendments be withdrawn.

**Robert Courts (Witney) (Con):** I want to make a few brief comments. I entirely understand the force of the comments made. As someone who started his practice in the small claims court before progressing to other courts, I have seen how they work. I have a couple of pertinent points—the Minister alluded to the first. For some very complicated cases, particularly commercial ones, there are already limits of £10,000. As other Members who have practised will realise, the fact that someone is in a small claims court and not represented does not mean that they are completely unassisted. The district judges who hear those claims are solicitors or barristers and are extremely competent and experienced in their own right. Therefore, there is every reason to believe that they will be able to hear those claims, which will have justice as their case is heard.

**Jo Stevens:** I take the hon. Gentleman's point but judges are not there to represent in that case, whereas a solicitor would be there to represent. Does he agree that he is comparing apples with pears?

**Robert Courts:** The hon. Lady is absolutely right. I know she has a long history of practising, as do I. That is, of course, absolutely correct, but it does not mean that they are simply left to sink or swim on their own. I have seen countless cases in my practice where a district judge, although not representing someone, clearly points out arguments that may wish to be made. District judges frequently bend over backwards to ensure that the correct points are made by claimants. Although that is true and I accept the force of the hon. Lady's point, I suggest that the overall thrust of enabling justice, but at a reasonable and proportionate cost, is being addressed.

**Ellie Reeves:** Is it not the fact that district judges increasingly have to assist litigants in person when people cannot get legal representation, and that that is putting a huge burden on the courts and district judges?

[Ellie Reeves]

That is not their role but they are increasingly having to do that, which puts an extra burden on them and increases court costs.

**Robert Courts:** The hon. Lady makes an excellent point. Clearly, cases where judges have to assist claimants are likely to take longer. However, this comes down to ensuring that claimants in cases at the lower end of the scale—I do not for a moment downplay the seriousness of people having been hurt in this way—can be heard at proportionate cost, and that the court’s resources, particularly for the payment of costs, go to cases at the higher end. Ultimately, the costs burden is what denies access to justice.

3.15 pm

**Ruth George:** Is it not the case that the district judges set out in their response to the Government consultation back in 2015 that courts would become clogged with litigants in person if this change were made? It simply will not be possible for district judges to support those litigants given the number of claims. Have Government Members read that powerful submission and listened to the arguments of those judges?

**Robert Courts:** Although I understand the arguments made by district judges, I have faith in their ability to deal with cases efficiently, because I have seen that happen so often. In an ideal world, I would of course prefer everyone to be legally represented. That would be more efficient and would mean that people had someone to argue for them. However, it is not practical within the costs regime under which we live.

**Ruth George:** I spent more than 20 years working for the Union of Shop, Distributive and Allied Workers. In many claims involving road traffic accidents and workplace injuries, claimants were referred by their union to a solicitor who gave them the support they needed to bring a case. As the hon. Gentleman set out, lawyers are experienced and often give claimants the advice they need about whether they can take a claim forward or whether that is not worth doing, and therefore protect district judges and the court system. Projections show that there will be an extra 36,000 cases a year in the small claims court. With the best will in the world, district judges, who are already struggling, will not be able to cope with that additional workload. That is what the district judges themselves said in response to the consultation. [Interruption.] They said it whether the Minister chooses to shake his head or not.

Many younger claimants and those who do not have experience of dealing with the legal system will find it much harder to bring a case themselves. This is not just a question of compensation up to the level we are discussing for minor cases. We have debated the figure for general damages but, as the Minister said, there are exceptional circumstances payments and compensation for loss of wages on the back of that, so an individual’s total claim may be much higher than the limit on small claims. I note that even someone with a claim for a whiplash injury that lasted up to two years will fall under the £5,000 small claims limit. Even someone who

suffered an injury that prevented them from working for two years will not be able to take their case to the general court, but will have to represent themselves in the small claims court. The associated loss of wages may have a huge impact on their life and wellbeing.

I hope the Minister looks again at this measure, which will severely disadvantage people who are not able to take claims through themselves. People often need a lawyer to support them. That would make the system more efficient and effective, and that is what we argue for.

*Question put, That the clause be read a Second time.*

*The Committee divided: Ayes 8, Noes 9.*

#### Division No. 16]

#### AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

#### NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negatived.*

#### New Clause 3

##### RECOVERABILITY OF COSTS IN RESPECT OF ADVICE ON MEDICAL REPORT, ETC.

‘(1) For the purposes of civil procedure rules, the costs recoverable by a claimant who recovers damages in a claim for a relevant injury which is (or would be if proceedings were issued) allocated to the small claims track include the costs of the items set out in subsection (2).

(2) The items are—

- legal advice and assistance (including in respect of an act referred to in paragraph (a) or (d) of section 6(2)) in relation to the quantum of damages in the light of a medical report or other appropriate evidence of injury; and
- in a case where liability for the injury is not admitted within the time allowed by any relevant protocol, legal advice and representation in relation to establishing liability.

(3) For the purpose of ascertaining the amounts recoverable in respect of those items, the claim is to be treated as if it were allocated to the fast track.

(4) In this section “relevant injury” means an injury which is an injury of soft tissue in the neck, back, or shoulder, and which is caused as described in paragraphs (b) and (c) of section 1(4) (negligence while using a motor vehicle on a road, etc.), but does not include an injury in respect of which a tariff amount is for the time being prescribed under section 2.—(Gloria De Piero.)

*This new clause would ensure that a successful claimant is able to recover costs incurred for legal costs in respect of advice sought in relation to determining the quantum of damages following a medical report or the establishment of liability where it is in dispute.*

*Brought up, and read the First time.*

*Question put, That the clause be read a Second time.*

*The Committee divided: Ayes 8, Noes 9.*

**Division No. 17]****AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

**New Clause 4****PERIODICAL PAYMENT ORDERS**

(1) Within 18 months from the coming into force of this Act, the Civil Justice Council must undertake a review of the impact of Part 2 and the setting of a new rate of return on the extent to which periodical payment orders are made by the courts in personal injury actions.

(2) A report setting out the results of the review must be laid before each House of Parliament by the Civil Justice Council within two years of the coming into force of this Act.—(Ellie Reeves.)

*This new clause would require the Civil Justice Council to undertake a review and report to Parliament on the impact that the changes this Bill makes to the Discount Rate assumptions and mechanism has on the use of periodic payment orders.*

*Brought up, and read the First time.*

**Ellie Reeves:** I beg to move, That the clause be read a Second time.

To understand the importance of new clause 4, we must understand the significance of the use of periodical payments to compensate those who have been injured through negligence, often catastrophically, with little or no capacity for work and with considerable care costs.

More often than not, successful claimants are paid a lump sum, which is intended to compensate them for the rest of their life. However, the benefits of periodical payments, rather than a lump sum, are threefold. First, periodical payments are index-linked so they go up in accordance with rising costs of living or care. Secondly, in such cases, there are often arguments about life expectancy. If the court accepts that a victim of a catastrophic injury is likely to live until 42 but medical advances mean that they actually live until 80, a lump sum will run out many years earlier. With periodical payments, the injured person is compensated every year for the rest of their life. Thirdly, receiving an annual periodical payment rather than a lump sum means that injured people do not have to make difficult investment decisions and, equally, it removes the risk that they will spend the money all at once.

The setting of the discount rate is highly relevant to periodical payments. When the rate stood at 2.5%, it was far more attractive for defendants to pay a lump sum that was discounted by 2.5% than to pay index-linked annual payments. That meant that in all but the most serious cases, periodical payments often met huge resistance from defendants. A rate that assumes a much lower

level of investment risk by injured people may well result in an increase in the use of periodical payments, particularly in cases not at the most catastrophic level where resistance from defendants has been greatest. The benefits to the injured person are clear, and the benefits to the state of not having to pick up the bill for care or housing, if and when the money runs out, are obvious.

On Second Reading, the Minister said that he welcomed the use of periodical payments. Can he tell us the percentage of personal injury claims in which they are used? It is my understanding that the figures are astoundingly low, often due to resistance from defendant insurers. New clause 4 makes it incumbent on the Civil Justice Council, with its expert knowledge, to review the impact of part 2 and the discount rate on the prevalence of periodical payments being awarded. If we agree that periodical payments are a good thing, surely we can agree that their use must be monitored so that appropriate and evidence-based action can be taken where necessary. This would benefit injured people and the Treasury alike.

**Rory Stewart:** Once again, I want to take this opportunity to praise the hon. Member for Lewisham West and Penge. The arguments for PPO are very strong. It is absolutely correct that the ideal thing is to give someone a PPO. The problem at the moment with receiving a large sum with a discount rate is that one could end up overcompensated or undercompensated. Overcompensation means a huge cost to the NHS and the taxpayer. Undercompensation can be catastrophic for one's lifetime care costs. Rather than taking a lump sum, the PPO ensures that one gets the amount of money required to look after one's costs. Therefore, we agree with the nature of this argument.

The disagreements with this amendment are technical. The 18-month period from Royal Assent is too short to take real effect. Regarding the basic question the hon. Lady has raised—whether the Civil Justice Council should look at the use of PPOs and the impact of discount rates on PPOs—we have written directly to the Master of the Rolls to request that the Civil Justice Council look at the use of PPOs. We remain open to doing that again, once the new review of discount rate is introduced.

It is absolutely right that we should encourage more uptake and challenge the insurance companies, which have said publicly that they want more use of PPOs, to ensure that more PPOs are given out. That is the best way to protect an injured person. There are some narrow cases where it is not appropriate—somebody may not have sufficient insurance or the financial weight to deliver a PPO—but when it is paid out, it ought to be paid and that is why we are grateful that, for example, the NHS continues to use the PPOs in the case of catastrophically injured children. I request that the hon. Lady withdraw the amendment.

**Ellie Reeves:** I thank the Minister for that response and, to some extent, his assurances. However, given that the Bill seeks to make big changes, if we are committed to periodical payments and their use, there should be a mechanism for review built into the legislation. I shall press the new clause to a Division.

*Question put, That the clause be read a Second time.*

*The Committee divided: Ayes 8, Noes 9.*

**Division No. 18]****AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

**New Clause 5**

**REVIEW OF ASSUMPTIONS ON WHICH CALCULATION OF  
THE PERSONAL INJURY DISCOUNT RATE IS BASED**

‘(1) Within 3 years from the date on which this Schedule comes into force, the Lord Chancellor must arrange for the expert panel to review the assumptions on which the personal injury discount rate is based, and review how investors of relevant damages are investing such damages.

(2) The review must report to the Lord Chancellor whether the assumptions on which the personal injury discount rate is based should be changed and set out recommendations.’—(*Gloria De Piero.*)

*This new clause would require the Lord Chancellor to arrange for the expert panel to conduct a review of the assumptions on which the discount rate is based in light of how claimants are in practice investing their compensation.*

*Brought up, and read the First time.*

*Question put, That the clause be read a Second time.*

*The Committee divided: Ayes 8, Noes 9.*

**Division No. 19]****AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

**New Clause 6**

**PASSING ON SAVINGS MADE BY INSURERS**

‘(1) Any savings made by any insurer as a result of anything in this Act or associated changes by regulation shall be passed to policyholders by way of reduced premium.

(2) The Financial Conduct Authority shall require all such insurers to submit an annual report detailing the savings they have made and how all those savings have been used to reduce policyholder premiums.

(3) In this section—

“savings” means any reduction in an insurer’s outlays in damages or costs paid in personal injury claims from the time this Act receives Royal Assent;

“insurer” means any insurer holding a licence to offer UK motor insurance;

“policyholder” means the holder of a policy of motor insurance with the insurer;

“premium reduction” means a reduction in the annual cost of a policy of motor insurance taken out by a policyholder.’—(*Gloria De Piero.*)

*This new clause would require insurers to pass on to insurance consumers all savings made as a result of these changes.*

*Brought up, and read the First time.*

*Question put, That the clause be read a Second time.*

*The Committee divided: Ayes 8, Noes 9.*

**Division No. 20]****AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

**New Clause 7**

**SMALL CLAIMS TRACK: VULNERABLE ROAD USERS**

‘(1) The Small Claims Track Limit in relation to claims made by vulnerable road users for whiplash injuries may not be increased unless the increase is to an amount which is not more than the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to the consumer prices index.

(2) In subsection (1)—

“vulnerable road users” means any person other than a person—

(a) using a motor vehicle other than a motor cycle on a road or other public place in England or Wales, or

(b) being carried in or on a motor vehicle other than a motor cycle while another uses the vehicle on a road or other public place in England or Wales.’—(*Gloria De Piero.*)

*This new clause would limit increases in the small claims track limit in relation to vulnerable road users (cyclists, pedestrians, horse riders, etc) suffering whiplash injuries to inflationary rises only.*

*Brought up, and read the First time.*

**Gloria De Piero:** I beg to move, That the clause be read a Second time.

**The Chair:** With this it will be convenient to discuss new clause 8—*Restriction on increase in small claims limit for relevant personal injuries suffered by people during the course of employment—*

‘(1) In this section, the “PI small claims limit” refers to the maximum value (currently £1,000) of a claim for damages for personal injuries, specifically general damages, for which, in accordance with Civil Procedure Rules, the small claims track is the normal track.

(2) Civil Procedure Rules may not increase the PI small claims limit in respect of relevant injury claims to an amount above £1,000 for the first time unless—

(a) the Lord Chancellor is satisfied, and has certified in writing, that on the day the rules are to come into force, the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to CPI, would be at least £1,500, and

(b) the rules increase the PI small claims limit to no more than £1,500.

(3) Civil Procedure Rules may not increase the PI small claims limit in respect of relevant injury claims on any subsequent occasion unless—

(a) the Lord Chancellor is satisfied, and has certified in writing, that on the day the rules are to come into force, the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to CPI, would be at least £500 greater than on the day on which the rules affecting the previous increase were made, and

(b) the rules increase the PI small claims limit by no more than £500.

(4) In this section—

“CPI” means the all items consumer prices index published by the Statistics Board;

“relevant injury” means an injury which is an injury of soft tissue in the neck, back, or shoulder suffered during the course of employment which is caused as described in paragraphs (b) and (c) of section 1(4) (negligence while using a motor vehicle on a road, etc.);

“relevant injury claim” means a claim for personal injury that consists only of, or so much of a claim for personal injury as consists of, a claim for damages for pain, suffering and loss of amenity caused by a relevant injury, and which is not a claim for an injury in respect of which a tariff amount is for the time being prescribed under section 2;

“general damages” shall mean damages for pain, suffering and loss of amenity.”

*This new clause would limit increases in the small claims track limit in relation to people who have suffered a whiplash injury during the course of their employment to inflationary rises in increments of £500 only.*

**Gloria De Piero:** The Government have refused to allow the small claims changes, which will have a fundamental impact on access to justice for hundreds and thousands of injured people every year, into the Bill. New clause 7 is designed to ensure that vulnerable road users are exempted as the Minister has promised. New clause 8 would do little more than reflect the recommendations of Lord Justice Jackson in his civil justice review. The Minister agreed this morning that there had been a change to the small claims limit in 1999. New clause 8 says that 1999 is the date from which any change to the small claims limit should be calculated and that the increase should be by no more than £500 at any one time. As I have said, that reflects the recommendations of Lord Justice Jackson.

There is a difference between us on the appropriate level of inflation. We say CPI—the consumer prices index. There is absolute logic in that because that is the inflation rate applied by the Government to benefits paid to injured people. It is also, of course, the rate that the Governor of the Bank of England recommends.

**Rory Stewart:** Given that we are coming towards the end of the proceedings, I again pay tribute to right hon. and hon. Members on both sides of the Committee for the quality of debate. It has been quite testing personally: a lot of very learned friends have asked a lot of fundamental

questions, ranging from inflation rates to the good challenges from my friend the right hon. Member for Delyn (David Hanson), who keeps me on my toes. I thank them very much for their various contributions.

With the final group of amendments, we come to questions that relate to some of the debates that we have had already, in different forms. This in effect is a subset of the arguments made on new clause 1. As right hon. and hon. Members will remember, new clause 1 involved an argument that the reductions should be made in relation to all personal injury claims. These proposals take the same arguments and apply them to two subsets of people who are injured: vulnerable road users and people injured in the course of employment. On both those things, there are some differences between us, again, on the correct level at which to set the rate, but there are also some important concessions that are worth bearing in mind. They were made in the House of Lords and in the subsequent process.

In relation, first, to people injured in the course of employment, personal injury claims that are not as a result of whiplash, we have listened very carefully to right hon. and hon. Members. They will remember that in the initial consultations there were suggestions about raising the limit to £10,000 or £5,000. The agreement has been that for non-whiplash-related injuries, it is kept at £2,000.

There is some discussion about whether it is correct to see that in terms of CPI or RPI—the retail prices index—but broadly speaking, it is not very significantly different from the rates that were set in the 1990s when inflation was applied, although there is some disagreement between the two sides of the House, to the extent of a few hundred pounds, on the extent of headroom put on top of inflation. There could be a broader argument, which was raised earlier, about the fundamental principle that compensation should be paid for the injury rather than on the basis of why somebody was present on the scene, whether in the course of employment or another activity. However, that goes beyond the scope of the amendment.

The real concession has been made in relation to vulnerable road users, which I hope hon. Members on both sides of the House will welcome. We listened carefully to representations made primarily not by people who own horses—although I remind hon. Members that there are more than a million horses in the United Kingdom, so it is not quite as much of a minority pursuit as some might like—but by cyclists, who led a strong campaign arguing that they are particularly vulnerable on the roads. They are: they are not encased in a sheet of metal. We accept that the same argument also applies in spades to pedestrians—as a proud pedestrian, I feel that very strongly—and to people on motorcycles, who are not encased in metal either.

We are delighted to confirm that vulnerable road users will be excluded in respect of the small claims limit and the Bill. On that basis, with many thanks to everybody for their prodigious and learned contributions, I politely ask that the amendment be withdrawn.

**Gloria De Piero:** I will disquiet the Minister one more time and press the new clause to a Division.

*Question put, That the clause be read a Second time.*

*The Committee divided: Ayes 8, Noes 9.*

**Division No. 21]****AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

**New Clause 8**

**RESTRICTION ON INCREASE IN SMALL CLAIMS LIMIT FOR  
RELEVANT PERSONAL INJURIES SUFFERED BY PEOPLE  
DURING THE COURSE OF EMPLOYMENT**

“(1) In this section, the “PI small claims limit” refers to the maximum value (currently £1,000) of a claim for damages for personal injuries, specifically general damages, for which, in accordance with Civil Procedure Rules, the small claims track is the normal track.

(2) Civil Procedure Rules may not increase the PI small claims limit in respect of relevant injury claims to an amount above £1,000 for the first time unless—

- (a) the Lord Chancellor is satisfied, and has certified in writing, that on the day the rules are to come into force, the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to CPI, would be at least £1,500, and
- (b) the rules increase the PI small claims limit to no more than £1,500.

(3) Civil Procedure Rules may not increase the PI small claims limit in respect of relevant injury claims on any subsequent occasion unless—

- (a) the Lord Chancellor is satisfied, and has certified in writing, that on the day the rules are to come into force, the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to CPI, would be at least £500 greater than on the day on which the rules affecting the previous increase were made, and
- (b) the rules increase the PI small claims limit by no more than £500.

(4) In this section—

“CPI” means the all items consumer prices index published by the Statistics Board;

“relevant injury” means an injury which is an injury of soft tissue in the neck, back, or shoulder suffered during the course of employment which is caused as described in paragraphs (b) and (c) of section 1(4) (negligence while using a motor vehicle on a road, etc.);

“relevant injury claim” means a claim for personal injury that consists only of, or so much of a claim for personal injury as consists of, a claim for damages for pain, suffering and loss of amenity caused by a relevant injury, and which is not a claim for an injury in respect of which a tariff amount is for the time being prescribed under section 2;

“general damages” shall mean damages for pain, suffering and loss of amenity.—(*Gloria De Piero.*)

*This new clause would limit increases in the small claims track limit in relation to people who have suffered a whiplash injury during the course of their employment to inflationary rises in increments of £500 only.*

*Brought up, and read the First time.*

*Question put, That the clause be read a Second time.*

*The Committee divided: Ayes 8, Noes 9.*

**Division No. 22]****AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

**New Clause 9**

**EXEMPTION FOR VULNERABLE ROAD USERS AND PEOPLE  
INJURED DURING THE COURSE OF THEIR EMPLOYMENT**

“(1) Nothing in Part 1 of this Act other than Clauses 6 and 7 shall apply to a claim made by—

- (a) a pedestrian, cyclist or horse rider; or
- (b) a person injured in the course of their employment.’.—(*Gloria De Piero.*)

*This new clause would exempt vulnerable road users and people injured in the course of their employment from the provisions of Part 1 of the Bill, except Clauses 6 and 7.*

*Brought up, and read the First time.*

*Question put, That the clause be read a Second time.*

*The Committee divided: Ayes 8, Noes 9.*

**Division No. 23]****AYES**

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

**NOES**

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

*Question accordingly negated.*

*Clause 11 ordered to stand part of the Bill.*

*Amendments made: 5, in clause 12, page 15, line 30, leave out subsection (1) and insert—*

“( ) This Act extends to England and Wales only, subject to the following subsections.”

*This amendment and Amendment 6 provide for NC2 to have England and Wales extent.*

*Amendment 6, in clause 12, page 15, line 35, leave out “This Part extends” and insert*

“Sections (Report on effect of Parts 1 and 2)(13) and 11 to 14 extend”.—(*Rory Stewart.*)

*See the explanatory statement for Amendment 5.*

*Clauses 12 and 13 ordered to stand part of the Bill.*

**Clause 14**

## SHORT TITLE

**Rory Stewart:** I beg to move amendment 7, in clause 14, page 16, line 6, leave out subsection (2).

*This amendment removes the privilege amendment inserted by the Lords.*

The amendment is procedural. It is a privilege amendment that changes subsection (2) of the short title. The House of Lords has said that nothing in the Act shall impose any charge on the people or on the public funds. Bringing it to the House of Commons

means the Ministry of Justice should be liable for any charges to the funds. The House of Commons is able to take on the terms of the fund. This is a normal procedural amendment for when something comes from the House of Lords to the House of Commons, so we ask that Government amendment 7 is accepted.

*Amendment 7 agreed to.*

*Clause 14, as amended, ordered to stand part of the Bill.*

*Bill, as amended, to be reported.*

3.42 pm

*Committee rose.*

**Written evidence to be reported  
to the House**

CLB01 Joanne Ali

CLB02 Access to Justice (A2J)

CLB03 Irwin Mitchell LLP

CLB04 Carpenters Group

CLB05 Motor Accident Solicitors Society (MASS)