



House of Commons
Justice Committee

Small claims limit for personal injury

Seventh Report of Session 2017–19

*Report, together with formal minutes
relating to the report*

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Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Summary

In this report we consider the impact of raising the small claims limit for personal injury (PI) from £1,000 to £2,000, and to £5,000 for RTA-related PI claims—part of a package of reforms that includes separate measures contained in the Civil Liability Bill. We look at the reforms that have already been made to the claims process for personal injury; the Government and industry response to insurance fraud; the potential impact of raising the small claims limit on different types of personal injury claim; and the impact of doing so on the judiciary and the courts. We also examine the Ministry of Justice’s proposals for implementing the small claims reforms, and consider the impact of increasing the small claims limit on different organisations that assist claimants.

A central consideration is that claimants in the Small Claims track are unlikely to have legal representation, as they cannot recover their legal costs incurred in bringing their claim from the other side, if the claim is successful. We conclude that increasing the small claims limit for PI creates significant access to justice concerns. While the Ministry of Justice is making laudable efforts to develop an electronic platform supplemented by guidance and support for unrepresented claimants, we conclude that this ambitious project risks falling short of creating a claims process that guarantees “unimpeded access to the courts”, a principle upheld by the Supreme Court in its judgment in the *Unison* case.

Our other principal conclusions and recommendations—many of which relate to our concerns about the impact on access to justice—can be summarised as follows:

- We are troubled by the absence of reliable data on insurance fraud and we recommend that the Government work with the Association of British Insurers (ABI) to develop a more nuanced approach that avoids conflating unexpected consumer behaviour with fraudulent activity. The Government should also work with the ABI and the Prudential Regulation Authority or the Financial Conduct Authority to monitor the extent to which any reduction in insurance premiums can be attributed to these reforms, if they are implemented, and report back to us after 12 months.
- We agree that the £1,000 small claims limit for PI should be increased to reflect inflation, calculated from 1999. Applying the Consumer Prices Index, an increase to around £1,500 might be appropriate in April 2019.
- While fraudulent and exaggerated claims must be prevented, the common law right to compensation for negligence applies regardless of the value of the claim. We recommend that the Government should not increase the small claims limit for RTA PI claims to £5,000.
- We conclude that there is no policy justification for including vulnerable road users within the reforms proposed for RTA PI claimants and we recommend that they be excluded from any higher small claims limit that is imposed on other RTA PI claims.
- We are deeply unimpressed by the inability of the Ministry of Justice to quantify the impact of raising to £2,000 the small claims limit for employer liability

(EL) and public liability (PL) claims; given the potential complexity of these claims and the role of litigation in maintaining safe and healthy workplaces, we recommend that they be subject to a small claims threshold of £1,500.

- The senior judiciary has reasonable concerns about the consequences for judges and the courts system of increasing the small claims limit and “wait and see” is not an adequate Government response. If the small claims limit is to be increased by more than the rate of inflation, then we recommend that the Ministry of Justice and HM Courts and Tribunals Service work with the senior judiciary to agree a framework for monitoring this impact so that monitoring can commence immediately and urgent steps taken to address any adverse impact.
- We recommend that, before introducing further changes to the PI claims process, the Ministry of Justice consider the learning from its post-legislative review of Part 2 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012.
- While we commend the Ministry of Justice’s decision to work with expert stakeholders in developing the new electronic platform, a more realistic approach should be taken to the technical challenges that may be faced. We recommend that the national roll-out of the platform—and hence any changes to the small claims limit for PI claims—be delayed until at least April 2020, with EL and PL claims excluded. The new claims process should be independently evaluated after three years.
- We remain to be convinced that the electronic platform can overcome the inequality of arms between represented insurers and self-represented claimants. We recommend that, during its pilot phase, the Ministry of Justice give a central focus to securing financial help for claimants who cannot meet the cost of disbursements and ensure that online decision trees give effective support to claimants encountering defendant resistance.
- We are concerned about the potential deterrent effect of introducing online-only applications on particular population groups, together with the risk of discriminatory impact. We recommend that the Ministry of Justice closely monitor the effect on groups of claimants during the pilot phase and take steps to address any adverse impact—for example, by providing targeted face-to-face support.
- Availability of support and guidance, including face-to-face advice, is central to the success of the proposed electronic platform. As soon as its working group on support and guidance has reported, the Ministry of Justice should produce a stage-by-stage, costed plan for how it will fund and implement support and guidance, including any face-to-face support that the working group recommends.
- We conclude that the Government has under-estimated the impact of raising the small claims limit on providers of before the event insurance, with potentially adverse consequences for access to justice.

- We welcome the reforms to the regulation of claims management companies (CMCs) in the Financial Guidance and Claims Act, and we recommend that the Financial Conduct Authority impose a cap of no less than 20% on the proportion of compensation that CMCs can levy from PI claimants. We also recommend that the Government monitor the effectiveness of the Act's restrictions on cold calling, and report to us within a year of the restrictions taking effect on progress made in using technical remedies to tackle loopholes that might be exploited by overseas operators. We think that an outright ban would be more effective.
- Given the risk of greater use of paid McKenzie friends by CMCs as a result of raising the small claims limit, we recommend that the senior judiciary conclude its examination of McKenzie friends as soon as possible.
- We regret that the Ministry of Justice did not consider it relevant at the consultation stage to estimate the potentially substantial impact of its proposals on the PI legal sector, and it is unclear to us why its final stage Impact Assessment has assumed that the sector will be able to replace PI work with work of equivalent value. We draw the Ministry's attention to these important issues.

1 Background to this inquiry

The inquiry of the previous Justice Committee

1. On 17 March 2017, our predecessor Committee launched what was intended to be a short inquiry into Part 5 of the Prisons and Courts Bill on road traffic accident (RTA) related “whiplash” claims and on related plans to raise the small claims limit for personal injury (PI) by secondary legislation. The decision to launch this inquiry was informed by that Committee’s oral evidence session on 7 February 2017, which heard from the Association of Personal Injury Lawyers and the Association of British Insurers and also received written evidence from those two organisations. Submissions to the inquiry were invited on the following questions:

- The definition of whiplash and the prevalence of RTA-related whiplash claims
- Whether or not fraudulent whiplash claims represent a significant problem and, if so, whether the proposed reforms would tackle this effectively
- The provisions in Part 5 of the Bill introducing a tariff to regulate damages for RTA-related whiplash claims, with an uplift in exceptional circumstances; and banning the settlement of claims without medical evidence
- The impact of raising the small claims limit to £5,000 for RTA-related whiplash claims, and of raising the small claims limit to £2,000 for personal injury claims more generally, taking account of the planned move towards online court procedures
- The role of claims management companies in respect of these matters.

The inquiry received 68 submissions that were published on the Committee’s website, but owing to the dissolution of Parliament on 3 May 2017, no oral evidence could be taken and no report could be produced. Likewise, the Prisons and Courts Bill fell on Parliament’s dissolution.

2. On 21 June 2017, the Queen’s Speech announced the incoming Government’s intention to introduce a Civil Liability Bill containing provisions similar to those in Part 5 of the Prisons and Courts Bill. When giving evidence to us on the work of his Department on 25 October 2017, the then Secretary of State for Justice, the Rt Hon David Lidington MP, confirmed that the Civil Liability Bill would appear during the current session of Parliament¹ and informed us that the Government still intended to raise the small claims limit to £5,000 for RTA PI claims and to £2,000 for other types of PI claim.²

Our inquiry

3. Mindful of Mr Lidington’s statement of the Government’s intentions, we decided to launch an inquiry into the decision to raise the small claims limit for personal injury; we considered that an inquiry focusing on this issue would assist Parliament’s scrutiny of a proposal that might otherwise receive less attention than it merited, owing to its introduction via secondary legislation effecting a change to the Civil Procedure Rules.

1 [Justice Committee Oral evidence: The Work of the Ministry of Justice, HC 418. 25 October 2017: Q23](#)

2 [Ibid, Q20](#)

4. When launching the inquiry on 23 October 2017, we explained that we would take account of published written evidence that had been submitted to our predecessor Committee's unfinished inquiry into personal injury: whiplash and the small claims limit, and of the oral evidence on this topic that had been taken on 7 February 2017 before that inquiry had been launched. We invited further written submissions that raised new points on the following topics:

- The impact of raising the small claims limit to £5,000 for RTA-related whiplash claims [and other RTA personal injury claims] and of raising the small claims limit to £2,000 for personal injury claims more generally, taking account of the planned move towards online court procedures
- The potential impact of this policy on the role of claims management companies and on the operation of the market for 'before the event' legal expenses insurance.

5. In the course of our inquiry we received 34 submissions that we agreed to publish, and held one oral evidence session which took place on 16 January 2018. Witnesses at this session were Jason Tripp, Operations Director, Coplus; Steve Mitchell, Deputy Head of Legal Services, Union of Shop, Distributive and Allied Workers (Usdaw); Nigel Teasdale, former President, and Shirley Denyer, Technical Director, Forum of Insurance Lawyers; Mrs Justice Simler, and His Honour Judge Nigel Bird; the Rt Hon Lord Keen of Elie QC, Ministry of Justice Spokesperson in the House of Lords, Ministry of Justice; and David Parkin, Deputy Director for Civil Justice and Law, Ministry of Justice. We are grateful to all those who provided oral and written evidence to our inquiry, as well as to those who made submissions to the inquiry of our predecessor Committee.

6. We would particularly like to record our appreciation to the two senior members of the judiciary who agreed to give evidence representing the views of the Civil Executive Team; this team supports the work of the Master of the Rolls as head of the civil judiciary and provides him with judicial oversight over the current reform programme.

7. Since we launched our inquiry, the Civil Liability Bill was introduced in the House of Lords, where it had its second reading on 24 April 2018, and completed its Committee stage on 15 April 2018. The Government has not indicated when it intends to introduce the secondary legislation required to raise the small claims limit, although it has confirmed that it aims to introduce the package of reforms by April 2019.³

8. In the following Chapter of our report, we consider the legal basis for personal injury claims; reforms already implemented to the claims process; the most recent proposals for reform; the Government and industry response to insurance fraud; and the impact of personal injury claims on insurance premiums. In Chapter 3 we then examine the small claims limit for personal injury, and consider whether and how this limit should be inflation-proofed. In Chapter 4, our report turns to the potential impact of raising the small claims limit—on RTA personal injury claims, including claims by vulnerable road users; and on non-RTA PI claims, including employer liability and public liability claims. The possible impact on the judiciary and the courts is also considered. This is followed, in Chapter 5, by an examination of the Ministry of Justice's proposals for implementing the small claims reforms. Chapter 6 considers the impact on organisations assisting

claimants: before the event insurance providers, claims management companies, and solicitors' firms. We also look at the potential impact on cold calling and paid McKenzie friends. We set out some concluding remarks in Chapter 7.

2 Reforms to personal injury claim processes

Under the Civil Procedure Rules, the court allocates claims to one of three tracks: the Multitrack, the Fast track or the Small Claims track, taking into account factors such as the value and complexity of the claim. Generally, claims worth no more than £10,000 are allocated to the Small Claims track—but for personal injury claims, the limit is £1,000 (based on the estimated level of compensation for the injury itself, excluding any additional damages for financial loss). The small claims procedure is designed to provide an informal environment for the resolution of straightforward disputes, where strict rules of evidence do not apply and the losing party is not at risk of paying the legal costs of the other side. In contrast, claims worth over £10,000 and up to £25,000 are generally allocated to the Fast track, which involves more formal court procedures and pre-trial directions to set a timetable for the management of claims. Because the successful party can usually expect the court to order the other party to pay their reasonable legal costs, in most Fast track personal injury claims the parties have legal representation.

The Annex to this Report provides more information on the small claims process.

The basis of personal injury claims

9. The law of personal injury (PI) is underpinned by the long-established principles of tort law. A tort is a breach of a civil duty to another person, including any negligent act or omission in breach of a duty of care to the other person that causes that person to suffer a loss—that is, personal injury or loss/damage to their property. Under the law of negligence, losses are shifted from the claimant to a defendant who was at fault; the aim of an award of damages is to put the affected party in the same position as they would have been in if the negligence had not occurred.

10. For PI, damages can be separated into pecuniary and non-pecuniary losses. The former is usually relatively straightforward to assess as the damages are simply designed to compensate for any financial loss that can be attributed to the negligence—for example, loss of earnings. Non-pecuniary losses include pain, suffering, and loss of amenity (PSLA). PSLA is not readily quantifiable and thus more difficult to assess; the level of compensation is the subject of guidance published by the Judicial College, updated on a regular basis.⁴

11. The insurance industry has a central involvement in the majority of personal injury claims. Under Part VI of the Road Traffic Act 1988, motorists in Britain are legally required to insure their vehicles against the risk of damaging a third party's property or causing death or bodily injury to others. Motor insurance is provided under a fault-based scheme, whereby the company insuring the party who was at fault for a motor accident compensates the non-fault party for any personal injury, and meets the cost of vehicle repair, as well as legal costs and any other associated costs such as the provision of a replacement vehicle. If an insurance company disputes the liability for an accident, the question may need to be resolved in court.

⁴ The 14th Edition of the Judicial College Guidelines was published in September 2017, just over two years after the previous edition.

12. Similarly, in relation to the workplace, the Employers' Liability (Compulsory Insurance) Act 1969 requires employers to have insurance cover to meet potential claims by their employees for injuries at work or for any illness or disease resulting from their employment. The insurance policy must cover the employer for at least £5 million and be provided by an authorised insurer. Many businesses and other organisations also opt to protect themselves with public liability insurance, which covers compensation awarded to members of the public as a result of injury, or damage to their property, caused by the organisation's activities or defects to its premises. Larger organisations such as Government departments and local authorities may be self-insured for risks that they face, meaning that they set aside sufficient money to remedy any unexpected loss.

Impact on clinical negligence claims

13. Claims of clinical negligence (also called medical negligence) differ from PI in that they require the claimant to prove that there were serious errors in the medical treatment they received that a competent doctor would not have made, and that these errors played a part in the injury which is being claimed for. The draft Impact Assessment that accompanied the MoJ's November 2016 consultation on reforming the soft tissue injury claims process sought further information on the potential impact of the reform proposals on low value clinical negligence claims.⁵ The final stage Impact Assessment concluded that the impact was not expected to be significant, because of the relatively low volume of such claims (2% of all PI claims) and their complexity, meaning that many would be likely to qualify for Fast track costs provisions.⁶ As our inquiry did not receive any evidence on the impact of raising the small claims limit on clinical negligence claims, we do not discuss this issue further.

Recent reforms to PI claims processes

14. Successive governments have been concerned to reduce “the high number and cost of low value soft tissue injury claims, and in particular RTA related soft tissue injury claims”;⁷ the majority of these claims are described as “whiplash”, considered to be the most common form of RTA soft tissue injury. There is no single definition of whiplash. In a 2012 consultation paper, the Ministry of Justice described it as “neck pain which occurs after the soft tissue in the spine has been stretched and strained when the body is thrown in a sudden, forceful jerk”.⁸ Clause 1(1) of the Civil Liability Bill adopts a wider approach, defining whiplash as injury/ies, in the neck, back or shoulder, of a description specified in regulations.

15. Over the past few years, several measures have been introduced to contain the overall cost of personal injury claims, particularly for whiplash—however defined—and to regulate the PI claims market. These measures, many introduced under Part 2 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, are summarised in the Annex to this report.

5 [Reforming the Soft Tissue Injury \('whiplash'\) Claims Process, Impact Assessment MoJ 015/2016](#). November 2016; question 3.3, page 77. The 2016 consultation paper is discussed in more detail below.

6 [Whiplash impact assessment \(Civil Liability Bill: reforming the soft Tissue injury \('whiplash'\) claims process\)](#). Ministry of Justice, March 2018, paragraph 4.10

7 [Reforming the Soft Tissue injury \('whiplash'\) claims process - a consultation on arrangements concerning personal injury claims in England and Wales](#). Ministry of Justice, November 2016. Paragraph 32.

8 [Reducing the number and costs of whiplash claims: a consultation on arrangements concerning whiplash injuries in England and Wales](#). Ministry of Justice, December 2012. Paragraph 19.

The prevalence of RTA personal injury claims

16. The Compensation Recovery Unit (CRU) is an important source of data on the volume of RTA PI claims, as all such claims must be registered there. This unit works with insurance companies, solicitors and the Department for Work and Pensions to recover from PI awards any social security benefits paid as a result of an accident, injury or disease, and costs incurred by NHS hospitals and Ambulance Trusts for treatment of injuries. In 2017–18, the number of motor liability claims registered to CRU was 650,019, representing a drop of around 17% from the claims registered in 2016–17 (780,324). Claims registered to CRU in 2015–16 and 2014–15 were 770,791 and 761,878 respectively. In 2011–2012, prior to the implementation of the 2013 reforms to PI claim processes under the LASPO Act 2012, motor liability claims registered to CRU stood at 828,489.⁹

Year	Employer liability	Motor liability	Public liability
2017/18	69,230	650,019	96,067
2016/17	73,355	780,324	85,504
2015/16	86,495	770,791	92,709
2014/15	103,401	761,878	100,072
2013/14	105,291	772,843	103,578
2012/13	91,115	818,334	102,984
2011/12	87,350	828,489	104,863
2010/11	81,470	790,999	94,872

Source: Compensation Recovery Unit Performance Data.

17. Another source of data on RTA PI claims is the claim notification forms (CNFs) submitted by claimant representatives to the RTA electronic portal.¹⁰ According to the portal’s RTA management information, there were 776,185 CNFs created and sent to the compensator in 2016–17. The portal aims to achieve a high rate of settlement of claims and, in 2016–17, a failure to settle led to court proceedings being initiated in 71,884 cases.¹¹ Based on insurance industry and CRU data, the MoJ’s 2018 Impact Assessment¹² estimates that 520,000 of the 540,000 RTA cases that received a financial settlement in 2016/17 related to soft tissue injuries (as defined by the Road Traffic Accident Pre-Action Protocol).

18. Submissions to our predecessor Committee’s inquiry offered conflicting evidence on the prevalence of RTA PI claims, in particular claims that could be categorised as “whiplash”—an injury for which, as noted above, there is no agreed definition. Witnesses representing the views of the insurance industry, including the Association of British Insurers, argued that while the number of claims described as whiplash has decreased in recent years, there has been a corresponding increase in soft tissue injury claims for neck

⁹ [Compensation Recovery Unit performance data, April 2018](#)

¹⁰ This is a secure portal available only to insurance companies and claimant representatives which must be used for the transfer between parties of documents relating to RTA PI claims. It was extended to employer liability/public liability claims in 2013. See also paragraph 5 of the Annex to this report.

¹¹ [Claims Portal RTA Management Information](#)

¹² [Reforming the Soft Tissue Injury \('whiplash'\) Claims Process; Impact Assessment](#). Ministry of Justice, November 2016

and back injuries—indicating a degree of claims displacement;¹³ and that, as whiplash is an “invisible injury” which cannot be proved or disproved by any medical test, claimants need do no more than describe their symptoms in order to be compensated.¹⁴

19. It was suggested by one insurer that the volume and nature of claims is out of proportion to the number of accidents, especially in the light of recent improvements to vehicle safety.¹⁵ On the other hand, witnesses representing the claimant sector argued that increased car ownership has led to UK roads having a higher density of motor traffic than the European average; this congestion is linked to lower speed accidents, with fewer serious/fatal injuries but more soft tissue injuries.¹⁶ The Association of Personal Injury Lawyers drew attention to OECD data on road traffic accidents: this source indicates that, in 2015, there were 146,203 accidents in the UK involving casualties, compared to 56,603 in France and 97,756 in Spain.¹⁷ Witness also maintained that many accidents are not reported to the police or, if reported, they are not necessarily recorded.¹⁸ In addition, it was suggested that it was not possible to determine whether the number of RTA PI claims was “too high” without agreeing a benchmark to establish a “reasonable” level of claims.¹⁹

20. Whether or not the number of RTA PI claims—in particular for soft tissue injuries—is reasonable falls outside the scope of this inquiry and so we draw no conclusion on this question, save to note the marked divergence between the views of the insurance and claimant sectors and the problems of quantification owing to difficulties in the medical assessment of whiplash. We also note the fall in the overall number of motor liability claims in the past few years.

The response to insurance fraud

21. Motor insurance fraud can be opportunistic, such as making an exaggerated claim or understating a history of previous claims in an application for insurance; it can also be premeditated, as in “crash for cash” scams operated by criminal gangs, where an accident is deliberately staged in the hope of profiting from a claim.

22. The insurance industry has adopted various measures to deal with fraud. In 2006, it set up the Insurance Fraud Bureau, a not-for-profit company, to lead the industry’s collective efforts to reduce fraud. It describes itself as “a central hub for sharing insurance fraud data and intelligence, using our unique position at the heart of the industry and unrivalled access to data to detect and disrupt organised fraud networks.”²⁰ The Bureau operates a “Cheatline” to allow members of the public to report suspected fraud.

13 [Association of British Insurers, letter to the Chair, 8 March 2018](#); Ageas Insurance [[WHP0058](#)]; Direct Line Group [[WHP0056](#)]; DWF LLP [[WHP0047](#)]; esure [[WHP0052](#)]; RSA [[WHP0025](#)]

14 Allianz Insurance [[WHP0013](#)]; Forum of Insurance Lawyers [[WHP0076](#)]

15 Ageas Insurance [[WHP0058](#)]

16 Including [Association of Personal Injury Lawyers, Further written evidence](#) (published 15 March 2018); DGM Solicitors [[WHP0069](#)]; Nicola Dickinson [[WHP0041](#)]; Cilex [[WHP0060](#)]; Scott Rees & Co [[WHP0078](#)]; Thorneycroft Solicitors [[WHP0040](#)]; Motorplus Ltd [[WHP0043](#)].

17 [OECD data on road traffic accidents involving injuries and deaths for 2015](#)

18 Including Access to Justice [[WHP0063](#)]; Horwich Cohen Coughlan Solicitors [[WHP0020](#)]; Motor Accident Solicitors’ Society [[WHP0031](#)]; New Law Solicitors [[WHP004](#)]; Keith Teare, solicitor [[WHP0014](#)]; Auxilis [[WHP003](#)].

19 DGM Solicitors [[WHP0069](#)].

20 <https://www.insurancefraudbureau.org/about-us/>

23. Another initiative is the Insurance Fraud Enforcement Department (IFED), a specialist unit within the City of London Police funded by the insurance industry, which is dedicated to tackling insurance fraud in England and Wales.²¹ In addition, the insurance industry has set up various data sets to help identify and tackle fraud, including the Insurance Fraud Register, which records details of known insurance fraudsters; and the CUE database of reported incidents designed to prevent multiple claims fraud and the misrepresentation of claims histories.²² In January 2015, the Government set up an Insurance Fraud Taskforce, with membership drawn from the insurance sector and consumer organisations, which reported a year later. The report remarked that “fraudsters have placed much focus on personal injury claims”,²³ but accepted that measuring the scale of insurance fraud is not simple, as much of it goes undetected and not all fraud is clear cut. Appendix C to the report explains how the Association of British Insurers (ABI) collates its annual fraud statistics: the ABI has determined a list of scenarios where it is believed that fraud is likely or is suspected to have taken place—for example, because of a tip-off or system-generated “high risk” referral—and asks its members to submit the numbers of cases falling within these categories. Suspected fraud includes situations where an applicant for insurance or would-be claimant is required to provide more information, and subsequently fails to co-operate; withdraws their application without explanation; allows communication with the insurer to lapse in spite of the insurer’s efforts; or accepts without credible explanation either a substantially reduced claim settlement or a substantially increased premium (in respect of an application for insurance). On this basis, for 2014 the ABI estimated a value of £2.1 billion for undetected insurance fraud; for detected fraud, the value was calculated at £1.32 billion (it should be noted that both these figures relate to *all insurance fraud*, not just to RTA PI claims).

24. The Taskforce made a range of recommendations aimed at government, the insurance industry, regulators and others.²⁴ It called for improved data sharing within the insurance industry; a more robust approach to defending claims, including by discouraging the inappropriate use of pre-medical offers of settlement; further consideration of possible legal changes to reduce exaggerated and fraudulent claims; and improving communication both within the insurance sector, and between the sector and regulators. The Taskforce also recommended a stronger regulatory regime for claims management companies (CMCs), which are currently regulated by a unit within the Ministry of Justice; and taking steps to prevent nuisance callers that encourage fraudulent claims.

25. The report of the Insurance Fraud Taskforce was followed, in March 2016, by the final report of Carol Brady’s Independent Review of claims management, commissioned by HM Treasury and the Ministry of Justice.²⁵ Echoing the recommendations of the Taskforce, the review called for strengthened regulation of CMCs, including by re-authorising all regulated bodies under a robust new process, with a “fit and proper persons test” for those wishing to perform controlled functions. Under the Financial Guidance and Claims Act, responsibility for regulating CMCs will be transferred to the Financial Conduct Authority

21 [City of London Police Insurance Fraud Enforcement Department](#)

22 The CUE database home page can be seen [here](#).

23 [Insurance Fraud Taskforce: final report. January 2016](#)

24 [Insurance Fraud Taskforce: final report, January 2016. Chapter 4](#)

25 [Independent review of claims management: final report. Carol Brady. March 2016](#)

(FCA).²⁶ The FCA is expected to confirm that, in keeping with the recommendations of the Brady review, it will pro-actively re-authorise every CMC and impose a “fit and proper persons” test.²⁷

26. Evidence to our predecessor Committee and to our own inquiry expressed unanimous condemnation of insurance fraud, which was recognised as a crime. But the extent of the problem, and the most effective responses to it, were contested issues. Some witnesses from the claimant sector considered that the extent of fraud was exaggerated and thought it was wrong to conflate whiplash injury with fraud;²⁸ and the Association of Personal Injury Lawyers and the Personal Injury Bar Association emphasised the importance of distinguishing genuine, but modest claims from those that are fraudulent.²⁹ There was criticism of the ABI’s wide definition of fraud that includes suspected fraudulent activity, on the basis that it could allow genuine claims to be categorised as fraudulent.³⁰ We were told that claims might be dropped for a wide range of reasons—for example, a lack of corroborative evidence, or a claimant failing to notify their solicitor of a change of address.³¹ According to Access to Justice, a campaign group, insurers currently pay out on 99% of claims³² and witnesses pointed out that insurers had the power to refuse to settle a claim and/or defend it at trial, and could report any suspicions of fraud to the police.³³

27. Our predecessor Committee asked James Dalton from the Association of British Insurers (ABI) whether he could identify a pattern as to when fraudulent claims occurred within the [three-year] limitation period for making a personal injury claims. In response, he said:

...about 90% of cases are notified to the insurer within the first 12 months. For me, the question goes back to [...] why it takes some people so long to file a claim from the date of the accident. Most people will know, albeit not the extent of the injury, that they have in fact been injured [...] [W]hen you have not filed a claim, you are the target of an industry that is going to try to make you make a claim [...]³⁴

Mr Dalton also recognised that the recent introduction of court powers to dismiss personal injury claims where the claimant has been “fundamentally dishonest” has provided a useful tool for insurers to tackle claims that are fraudulent or exaggerated.³⁵ However, in defending claims, some insurance companies considered that they needed greater support from members of the judiciary, whom they thought were often disinclined to challenge the claimant’s evidence in court.³⁶

26 The Financial Guidance and Claims Act received Royal Assent on 10 May 2018.

27 [Article in Law Society Gazette: Budget 2016: Osborne backs ‘fit and proper test’ for CMCs. 16 March 2016](#)

28 Including Motor Insurance Solicitors’ Society [[WHP0031](#)], Horwich Cohen Coughlan Solicitors [[WHP0020](#)], Dowse & Co Solicitors [[WHP0011](#)]

29 [Association of Personal Injury Lawyers, written evidence to the Justice Committee, 7 February 2017](#); Personal Injuries Bar Association [[WHP0015](#)]

30 DGM Solicitors [[WHP0069](#)]; True Solicitors [[WHP0021](#)]

31 Canter, Levin & Berg Ltd [[WHP0064](#)]

32 [CLM008](#)

33 Thompsons Solicitors [[WHP0070](#)]; Thorneycroft Solicitors [[WHP0040](#)]

34 [Q79](#), oral evidence to Justice Committee, 7 February 2017

35 ABI, oral evidence to Justice Committee, 7 February 2017, [Q84 and Q85](#)

36 Esure [[WHP0052](#)]; Ageas [[WHP0058](#)];

28. In oral evidence to us, the Minister, the Rt Hon Lord Keen of Elie QC, asserted that many RTA soft tissue injury claims were fraudulent.³⁷ When we asked him to state how many claims were fraudulent, he responded: “We do not know exactly.” Pressed on this point, he said that the Government had an indication from data: “You have to make qualitative assessments in this context.”³⁸ He referred to “clear evidence”: data relating to improvements in vehicle safety, the fall in reported road traffic accidents and the continuing high level of whiplash claims, he told us, were all indicative of a claims culture, part of this culture being fraudulent, exaggerated and set-up claims.³⁹ In addition, the Association of British Insurers had data that he considered to be reliable.⁴⁰

29. Subsequently, Lord Keen wrote to us, confirming that the Government did not collate data on fraudulent claims; moreover, the nature of fraud made it difficult accurately to identify “the number of unmeritorious claims taken forward”. His letter continued by quoting insurance industry data indicating that there were around 69,000 detected cases of motor insurance fraud in 2016, worth £780 million [this information appears to relate to motor insurance in general, rather than RTA PI in particular], and told us that the Insurance Fraud Enforcement Department has secured over 350 convictions since its inception in 2012.⁴¹

30. We endorse the steps taken by the Government and the insurance industry to tackle insurance fraud. Nonetheless we are troubled by the absence of reliable data on fraudulent claims and we find surprising the wide definition of suspected fraud that is used to collate the ABI’s statistics. In particular, the failure by the ABI to break down their figures by the nature and type of claim, and to isolate RTA PI claims broken down by type of road user, is a significant and regrettable omission that weakens their evidence base. We recommend that, in the interests of accuracy, the Government work with the ABI to develop a more nuanced approach to avoid conflating innocent—if unexpected—consumer behaviour with fraudulent activity.

The most recent proposals for reform

31. On 17 November 2016, the MoJ published a consultation paper setting out a package of further reforms to the claims process for PI, in particular for RTA-related soft tissue injuries. The package of measures was designed “to crack down on minor, exaggerated and fraudulent soft tissue injury (‘whiplash’) claims stemming from road traffic accidents (RTAs).”⁴² A central proposal was either to remove altogether the right to compensation for pain, suffering and loss of amenity (PSLA) in RTA whiplash claims, or to introduce a fixed tariff, replacing the more generous compensation levels currently set by the Judicial College Guidelines for the assessment of general damages in personal injury claims. The MoJ also proposed that the Civil Procedure Rules be amended (by secondary legislation under existing statutory powers) to raise the small claims limit for PI claims.

37 [Q111](#)

38 [Q113](#)

39 [Q114](#)

40 [Q116 - Q117](#)

41 [CLM0041](#)

42 [Reforming the Soft Tissue Injury \(‘whiplash’\) Claims Process: A consultation on arrangements concerning personal injury claims in England and Wales](#). Ministry of Justice, November 2016: Foreword by Lord Keen of Elie QC

32. In its response to the consultation, the MoJ stated that it had received 625 responses, including 349 (56%) from claimant lawyers, 30 (5%) from insurers and 12 (2%) from defendant lawyers. Half of the responses, mainly from the claimant sector, disagreed with the introduction of a tariff and most respondents, predominantly claimant solicitors, opposed the raising of the small claims limit other than by an amount for inflation. However, the MoJ announced that it would proceed with the tariff and would raise the small claims limit from £1,000 to £5,000 for the PSLA element of RTA-related PI claims, and from £1,000 to £2,000 for other personal injury claims “in line with inflation”.⁴³ The measures requiring primary legislation appeared as Part 5 of the Prisons and Courts Bill, which was introduced in the House of Commons in February 2017.

33. As noted above, this Bill fell because of the General Election, but the Queen’s Speech on 21 June 2017 promised similar measures in a new Civil Liability Bill. The Bill was introduced in the House of Lords on 20 March 2018. Part 1 of the Bill, containing measures to reform the whiplash claims process that are very similar to those in Part 5 of the Prisons and Courts Bill, can be summarised as follows (it should be noted that, other than for Clause 7 which sets out a list of regulators and regulated persons, all regulations would be subject to the affirmative resolution procedure):

Clause 1: defines a “whiplash injury” as a soft tissue injury (or set of injuries) of the neck, back or shoulder, of a description specified in regulations made by the Lord Chancellor. Relevant injuries are those caused by a driver’s negligence to another driver or to a passenger of a motor vehicle other than a motor cycle. Related minor psychological injuries are also included.

Clause 2: further regulations can introduce a tariff to set out the amount that a court may award for pain, suffering and loss of amenity for RTA whiplash injuries of up to two years’ duration. The tariff sum may be reduced for contributory negligence by the injured person.

Clause 3: allows regulations to provide that in exceptional circumstances the court may exercise discretion to increase the prescribed tariff sum up to a maximum percentage. The Lord Chancellor must consult with the Lord Chief Justice before making such regulations.

Clause 4: bans regulated persons—including solicitors, barristers and insurance companies—from making/accepting a payment in settlement of an RTA-related whiplash claim, or offering or inviting a settlement, without having appropriate medical evidence. The Lord Chancellor may specify in regulations what medical evidence is appropriate and who can provide it.

Clauses 5, 6 and 7: set out a list of the regulators and the requirements on them to monitor and enforce compliance with the ban under Clause 4.

34. Evidence to our predecessor’s inquiry indicated widespread support for a ban on pre-medical offers of settlement, which was also endorsed by a majority of respondents to the MoJ’s consultation. However, the evidence to that inquiry indicated a divergence of views on the proposal for a tariff to limit damages for PSLA in whiplash claims. In broad terms, the insurance sector and its representatives were supportive, considering that a

43 [Part 1 of the Government Response to: Reforming the Soft Tissue Injury \(‘whiplash’\) Claims Process; a consultation on arrangements concerning personal injury claims in England and Wales. Ministry of Justice, February 2017. Paragraph 113](#)

tariff would deliver certainty and simplicity, that it would avoid under-settlement to the disadvantage of claimants and that it would deter fraudsters.⁴⁴ However, some witnesses from this sector expressed doubts about the idea of an uplift for exceptional cases, taking the view that this would undermine certainty, and lead to confusion—unless supported by clear guidance—and could generate satellite litigation and claims displacement.⁴⁵

35. In contrast, witnesses from the claimant sector were strongly opposed to the idea of a tariff, arguing that whiplash injuries affected people differently, something recognised in the approach taken by the Judicial College guidelines;⁴⁶ a single tariff rate based on injury duration could not take into account the intensity of pain, the extent of treatment required or the claimant’s ability to function, for example.⁴⁷

36. Comparing tariff figures suggested in the MoJ’s consultation paper with the rates set in the Judicial College guidelines, many in the claimant sector thought that victims of whiplash injury would be significantly under-compensated under the new proposals.⁴⁸ The Personal Injury Bar Association commented that whether the number of claims had increased or decreased “is *not* a good reason for the imposition of a tariff that fundamentally changes the law of England and Wales established in the nineteenth century that a claimant is entitled to full compensation.”⁴⁹

The impact of RTA PI claims on insurance premiums

37. Potential savings to consumers by way of reduced insurance premiums were presented by the MoJ as one of the main justifications for its proposed package of reforms. The Impact Assessment that accompanied the November 2016 consultation paper estimated that the proposed measures would lead to reductions in motor insurance premiums equivalent to approximately £40 per customer per year; however, we received evidence that the reduction in premiums arising from the reforms is likely to be significantly lower than that forecast by the Government in the Impact Assessment.⁵⁰ As noted below, the average motor premium at the end of the third quarter of 2017 was £485.⁵¹

38. In oral evidence to our predecessor Committee, James Dalton from the Association of British Insurers (ABI) argued forcefully that whiplash claims had a significant impact on motor insurance premiums.

Over 750,000 claims for whiplash are made in this country every year. The cost of that to car insurance premium payers is very significant. The question that the Ministry of Justice and the Government are asking is whether consumers [...] want to continue paying for whiplash claims in

44 For example, Ageas [[WHP0068](#)]; Direct Line [[WHP0056](#)]; LV= [[WHP0045](#)]; Weightmans [[WHP0042](#)]; DWF LLP [[WHP0047](#)]

45 For example, Forum of Insurance Lawyers [[WHP0076](#)]; Kennedys Law LLP [[WHP0068](#)]; Axa UK [[WHP0065](#)]; Association of British Insurers [[WHP0077](#)]; RSA [[WHP0025](#)]

46 For example, Bates, Wells and Braithwaite [[WHP0044](#)]; David Calvert [[WHP001](#)]; Doves & Co Solicitors [[WHP0011](#)]; New Law Solicitors [[WHP004](#)]

47 Keystone Legal Benefits Ltd [[WHP009](#)]; Association of Personal Injury Lawyers, written submission to Justice Committee, 15 March 2017

48 For example, Hodge Jones & Allen, Solicitors [[WHP0059](#)]; McHale & Co Solicitors [[WHP0024](#)]; Irwin Mitchell [[WHP0067](#)]; Robin Torr [[WHP0012](#)].

49 [WHP0015](#)

50 True Solicitors [[CLM0036](#)]; Irwin Mitchell [[CLM0030](#)]

51 [UK Insurance and Long-Term Savings: The state of the market. Association of British Insurers, February 2018.](#)

the way they currently do [...] or whether they want a society in which people are paid either nothing or less for whiplash claims and therefore get lower car insurance premiums.⁵²

In a subsequent letter to the Chair, Mr Dalton explained that motor insurance premiums are directly influenced by the frequency and cost of claims, which represent around 81% of costs that insurers take into account when calculating premiums (the three lesser factors being expenses incurred by the insurer; solvency capital provisions; and the insurer's targeted profit margin). His letter sets out the components of motor claims costs in 2015: the most significant of these was bodily injury, accounting for 46% of costs to insurers; accidental damage to the insured's own vehicle and damage to another person's car or property each accounted for 22%; and the cost of replacement vehicles represented 5% of claims costs.⁵³

39. We note that the ABI's state of the market report covering motor insurance claims in 2016⁵⁴ indicates that bodily injury claims fell to 41% of claims costs, whereas accidental damage to the insured's own vehicle increased to 25%, and damage to another person's car/other property increased to 23% of claims costs. The same report states that, towards the end of 2017, the average motor premium reached £485—a record high, and £57 more than the average premium at the beginning of 2016. This is attributed in the report partly to rising repair costs: repairing cars with increasingly sophisticated technology is more costly, often requiring expensive spare parts—which, when imported, have been made more costly by the weakening of the pound in the currency market. In addition, the report states that premiums have been affected by successive increases in Insurance Premium Tax, and by the insurance industry anticipating changes in the Personal Injury Discount Rate.⁵⁵ The Discount rate was the subject of a Justice Committee report published in November 2017.⁵⁶

40. The MoJ's 2018 Impact Assessment (IA) estimated that defendant insurers would derive benefits of around £1.3 billion per annum from the package of reforms.⁵⁷ The IA acknowledged that “many factors feed into motor premiums” and that the effect of the whiplash reforms could not be considered in isolation; there was no robust evidence to indicate their likely “pass through rate”—that is, the proportion of insurers' savings that would be passed on to consumers by way of reduced premiums. After consideration of the evidence received, the IA conducted sensitivity analysis⁵⁸ for pass through rates arising from these reforms of 50% and 70%.⁵⁹

52 [Q9](#)

53 [Written submission to the Committee from the Association of British Insurers, 8 March 2017](#)

54 [UK Insurance and Long-Term Savings: The state of the market. Association of British Insurers, February 2018.](#)

55 The personal injury discount rate is a percentage applied by the court when assessing lump sum damages for severely injured people, which discounts from their award for future losses an amount that they can expect to earn by investing their damages. The current rate is minus 0.75%.

56 [House of Commons Justice Committee: Pre-legislative scrutiny - draft personal injury discount rate clause. Third Report of Session 2017–19, November 2017](#)

57 Paragraph 5.115

58 Sensitivity analysis is a tool used in financial modelling to analyse how the different values of an independent variable affect a specific dependent variable under certain specific conditions.

59 Paragraphs 5.63 and 5.64

41. As obtaining insurance involves a commercial transaction with a private sector body, it could be argued there is little that the Government can do to enforce lower premium rates without significant change to present policies. We asked Lord Keen whether the ABI had given the Government assurances that premiums would be reduced as a result of the reforms, and he responded:

Two of the major motor insurers, Aviva and LV=, have said publicly that they will reflect any savings in reductions in insurance premiums. The motor insurance industry in the UK is highly competitive, and, if such leading players in the market reflect those reductions in their premiums, we anticipate that others will follow, simply to maintain competitiveness in that market.⁶⁰

When we pressed Lord Keen on what would happen if insurers did not reduce premiums, he said: “We would have to look at that, but we have received public statements from major insurers [...] and we are prepared to accept those public assurances.”⁶¹ On 20 March 2018, the day of the Civil Liability Bill’s first reading in the House of Lords, the Association of British Insurers published a letter to the Lord Chancellor, David Gauke MP, signed by leaders of 26 insurance companies setting out their commitment to pass cost benefits on to customers.⁶²

42. Potential savings to motor insurance customers are central to the policy justification for these reforms, but we conclude that the Government’s estimate of the pass-through rate may be over-optimistic, given the lack of robust evidence and the unenforceable nature of insurers’ promises to reduce premiums. We recommend that, if the reforms are implemented, the Government work with the ABI and either the Prudential Regulation Authority or 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.

60 [Q125](#)

61 [Q126](#)

62 [Letter to Rt Hon David Gauke MP, Lord Chancellor and Secretary of State for Justice, March 2018](#)

3 Setting the small claims limit

43. In this Chapter, we look at whether the small claims limit should be increased to take into account the effect of inflation. We also consider the justification that Government has offered for introducing a significantly higher limit for RTA PI claims, and the potential relevance of the Judicial College Guidelines.

The effect of inflation on the PI small claims limit

44. As explained in the Annex to this report, the small claims limit was set in 1991 at £1,000 for all types of claim. When it was raised to £3,000 in 1996, the £1,000 limit was retained for PI and housing disrepair claims. An adjustment to the PI small claims limit was made in 1999, when the £1,000 cap was restricted to damages for PSLA; additional compensation for so-called “special damages” covering loss of earnings, medical expenses, damage to property and other out-of-pocket expenses could be claimed up to a maximum of £10,000 for the whole claim. As summarised in our Annex, successive governments have consulted on proposals to increase the small claims limit for PI but—so far—have opted not to do so. In addition, Lord Justice Jackson’s review of civil litigation costs recommended in 2009 that the limit for PI stay at £1,000 until the time when inflation justified an increase to £1,500, concluding that a series of smaller increases could be confusing.⁶³

45. Many submissions to our inquiry recognised that the small claims limit for PI had not been raised for many years, and considered that an increase would be justifiable. Several witnesses, including the Association of Personal Injury Lawyers, thought that any increase should be linked to the rate of inflation.⁶⁴ According to Access to Justice⁶⁵ and Horwich Cohen Coghlan Solicitors,⁶⁶ inflation should be calculated from 1991 when this limit was first established—a view shared by the Minister, Lord Keen of Elie QC:

The level for personal injury has not changed since 1991. There are various views about the inflation-linked result. We say that it is about £2,000. Others have said that it is about £1,700. 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.⁶⁷

On the other hand, Usdaw thought this approach was “disingenuous”.⁶⁸ Steve Mitchell from Usdaw told us:

In 1999, there was the removal of special damages from the small claims limit. Most commentators accept that in real terms that represented a 25% increase in the small claims limit at that time. That is the date Lord Justice Jackson used when he was discussing the civil reforms. He went from 1999 instead of 1991.⁶⁹

63 [Review of Civil Litigation Costs: Final Report, December 2009](#). Paragraph 3.3

64 [CLM0020](#)

65 [CLM008](#)

66 [CLM0012](#)

67 [Q109](#)

68 [CLM0037](#)

69 [Q3](#). In his report, Lord Justice Jackson simply stated: “There has been no increase to the small claims limit since 1999.” (Chapter 18, paragraph 1.)

46. In its supplementary written evidence, Usdaw calculated that, using the Consumer Prices Index (CPI), the £1,000 limit set in 1999 is now worth £1,440, or £1,620 if the Retail Prices Index (RPI)⁷⁰ is used as a measure of inflation.⁷¹ Similar calculations were presented by Thompsons Solicitors⁷² who argued that, taking account of Lord Justice Jackson’s recommendation on avoiding small and potentially confusing increases to the small claims limit,⁷³ applying RPI to the current limit would justify an increase to £1,500, whereas applying CPI would not justify an increase at this stage. While accepting that the Government now commonly uses CPI as a standard measure of inflation, the Forum of Insurance Lawyers (FOIL) considered that it was more appropriate to use RPI in relation to compensation for PI as this measure is used to update the Judicial College Guidelines on the assessment of general damages in personal injury claims. Notwithstanding Lord Keen’s remarks quoted above, our own calculations indicate that £1,000 would be worth £1,454 in March 2018, using a starting point of April 1999 and CPI as a measure of inflation. Assuming CPI remains at 2.5%, it would take a further 13 years for this to be worth £2,000—or eight years if inflation is assumed to be 4%. Using RPI as a measure of inflation, £1,000 in April 1999 would be worth £1,712 in March 2018.

47. We agree that the small claims limit for PI should be increased to reflect inflation. We recommend that April 1999 be used as the starting point for calculations, this being the date of the most recent adjustment to the limit, and that CPI—now the Government’s preferred measure—should be used to calculate inflation; our calculations suggest that an inflationary increase to March 2018 would be in the region of £1,454, indicating that £1,500 might be appropriate in April 2019.

Justification for raising the small claims limit for RTA PI claims

48. As noted above, the MoJ has sought to justify the £2,000 small claims limit for non-RTA claims by suggesting that the increase would be “in line with inflation”. The policy justification for the increase to £5,000 for RTA-related PI claims is somewhat different. The MoJ has cited continuing concerns about the “compensation culture” believed to have developed around whiplash claims in recent years, fuelled by cold calling and targeted advertising, and it maintains that this has led to motorists in general paying disproportionately high premiums to meet the insurance industry’s costs in relation to such claims. The Ministry’s stated intention is to reduce the number of claims, not only those that are fraudulent or exaggerated but also those that are “minor”.⁷⁴ It argues that raising the small claims limit would encourage defendants to give better consideration to the merits of their claims:

70 CPI and RPI are both measures of inflation, which is the rate of increase in prices for goods and services. They both measure the changes in the cost of purchasing a basket of different goods and services. The CPI is produced in line with international standards and is the measure used for the Bank of England’s inflation target. The Retail Prices Index (RPI) is no longer classified by the ONS as a National Statistic as the way it is calculated does not meet international standards. However, it is well-known and is the longest running measure of inflation. Because of the way it calculates averages, the RPI will generally be higher than the CPI.

71 [CLM0037](#)

72 [CLM0032](#)

73 See Annex, paragraph 13

74 [Reforming the Soft Tissue Injury \(‘whiplash’\) Claims Process: A consultation on arrangements concerning personal injury claims in England and Wales. Ministry of Justice, November 2016](#), including paragraph 5 of the Executive Summary

...in lower value cases, shifting cases to the small claims track where legal fees are not recoverable—as is the government’s intention—would mean that claimants would now have a direct financial interest in decisions about pursuing their claim in that they would be responsible for their own costs.⁷⁵

49. The Government has yet to confirm what definition of “road traffic accident” would be used to determine which PI claims would be subject to the proposed £5,000 small claims limit. It can perhaps be assumed that the definition that would be used would be similar to the one in the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents, which defines a ‘road traffic accident’ as an accident arising out of the use of any motor vehicle in a public place. The definition is a broad one, which includes accidents involving motorbikes, cyclists and pedestrians:

...an accident resulting in bodily injury to any person caused by, or arising out of, the use of a motor vehicle on a road or other public place in England and Wales unless the injury was caused wholly or in part by a breach by the defendant of one or more of the relevant statutory provisions as defined by section 53 of the Health and Safety at Work etc Act 1974.⁷⁶

The Judicial College Guidelines

50. In considering a potential increase to the small claims limit for RTA PI, several submissions to our inquiry, and to that of our predecessor Committee, suggested it was relevant to consider the benchmarks for compensation for different types of injury set by Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases. In its supplementary written evidence, the Forum of Insurance Lawyers (FOIL) pointed out that the Guidelines take into account not only the effects of inflation but also recent court decisions on quantum (that is, the level of damages), which have led to recommended awards that are “significantly in excess of inflation”. FOIL thought it was difficult to give an overall view of the increase in damages since 1999, because the changing classification of injuries over time makes it hard to draw direct comparisons across different editions of the Guidelines. In addition, a 10% increase in damages had been introduced as part of the Jackson reforms in 2013 and “it could be argued that that part of the increases [the 10% increase] should be disregarded”.

51. Usdaw’s supplementary written evidence drew our attention to compensation levels for minor neck injuries with a recovery period of up to two years, tracked through each edition of the Judicial College Guidelines published from 1998 onwards (disregarding the 10% increase in damages that followed the Jackson reforms). In 1998, the recommended upper limit for compensation was £3,500, slowly increasing over the following two decades to “£3,470 to £6,290” under the 14th Edition of the Guidelines (2017). This appears to correlate roughly with the rate of inflation using RPI.⁷⁷

52. The 14th Edition of the Judicial College Guidelines also indicate which types of injury—other than soft tissue injuries—would fall under the proposed £5,000 small claims limit for RTA PI claims. For example, compensation for minor brain or head injury

75 Ibid, paragraph 17

76 [Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents, July 2013](#), Section 1.1 (16)

77 [ONS RPI All Items Index](#)

is valued as being upwards from £1,760; loss of part of a finger, fractured nose with surgery and significant hip/pelvis injury up to two years are all valued as upwards from £3,150; and slight hearing loss or tinnitus as up to £5,550.

4 The impact of raising the small claims limit

53. We now consider the possible impact of raising the small claims limit, in particular on claimants. We first look at how an increased limit might affect RTA-related PI claims, including the impact on access to justice for those with genuine, but modest claims, and the impact on claims by vulnerable road users, such as pedestrians and cyclists. We then look at the potential effect of raising the small claims limit for employer liability (EL) and public liability (PL) claims and we also consider the issue of holiday sickness claims. Finally, we look at the potential impact on the judiciary and the courts.

54. When the then Secretary of State for Justice, the Right Hon David Lidington MP, gave oral evidence us on the work of his Department, we asked him whether raising the small claims limit would mean more people being unable to get representation for personal injury claims, leading to more litigants in person or an increase in under-settlement of claims. The Secretary of State expressed confidence that most unrepresented claimants would be able to pursue their cases without difficulty:

For under £5,000, [these cases] are not so complex as to always require a lawyer. There is nothing to stop a claimant from seeking representation, and it is true that they would not be able to claim back their legal costs if they were successful, but, again, for a relatively simple claim, it is a reasonable policy to say that it is the sort of thing where people, for the most part—there will be exceptions—should be able to do it without the need for representation.⁷⁸

On the same occasion, Mr Lidington assured us that the £2,000 limit for non-RTA claims would “still make it perfectly possible for people to pursue, for example, industrial injury claims against employers.”⁷⁹ We now consider whether or not this confidence in claimants’ ability to represent themselves in both RTA and non-RTA PI small claims is justified.

Impact on RTA-related PI claims

55. In broad terms, the insurance sector and its representatives supported the Government’s view that RTA PI claimants would be able to deal with the small claims process if the limit were to be raised; for example, DAC Beachcroft thought that RTA whiplash claims under £5,000 are “by definition simple claims”.⁸⁰ However, some witnesses from this sector thought that adjustments would be needed. The ABI recognised the need for safeguards to protect genuine claimants, including improved guidance and “a consumer friendly way of settling liability disputes”; it also thought that a compensation tariff would provide transparency and certainty in determining a claim’s value.⁸¹

78 Oral evidence: The Work of the Ministry of Justice, HC 418. Wednesday 25 October 2017. [Q22](#)

79 *Ibid*, [Q21](#)

80 [CLM0016](#)

81 [CLM0028](#)

56. DWF, a legal business, observed that small claim hearings are carried out with “a relative air of informality”, but supported an accessible online process that allowed individuals to submit their claims.⁸² The submission of the insurers Zurich to our predecessor Committee’s inquiry thought that “genuinely injured victims who want to bring a claim must be safeguarded from those who seek to take a share of damages” [that is, claims management companies].⁸³

57. Another insurance company, LV=, suggested a mandatory code of conduct for insurers to protect litigants in person (LIPs) from “sharp practices” on the part of insurers⁸⁴ and Axa went further by suggesting that the ABI’s code of practice for insurers dealing with unrepresented claimants could become a regulatory requirement enforced by the Financial Conduct Authority.

58. In its response to the Ministry of Justice’s 2016 consultation, the Civil Executive Team⁸⁵ considered that raising the small claims limit made it “obvious [...] that there are serious Access to Justice issues for those with genuine but modest personal injury claims” and that this would “thereby cause many claimants to be self-represented when bringing claims against parties backed by insurers who are able to engage the services of experienced lawyers.”⁸⁶ Likewise, many witnesses to our inquiry had significant concerns about the potential impact of this change on access to justice; some, including solicitors Hodge Jones and Allen,⁸⁷ drew our attention to the Supreme Court’s judgment in the *Unison* case on Employment Tribunal fees, which emphasised the centrality of the rule of law and the importance of ensuring access to the courts as part of a constitutional right of access to justice.⁸⁸

59. Jason Tripp from Coplus, a provider of before the event insurance, considered there was very little distinction to be made between the complexity of a claim valued at £1,500 and one valued at £5,000.⁸⁹ He told us:

...we survey our customers regularly, and they tell us very clearly that they want and need legal representation. They do not understand the operation of the insurance market. [...] In the absence of legal representation and advice, they would be left very unclear as to how to proceed.⁹⁰

The Law Society agreed that low value claims can be as complex as those of higher value. Its submission included a detailed flow chart explaining how PI claims must progress to settlement, or alternatively to trial. We have reproduced this chart as an Appendix, below. It also provided a list of some of the commonly encountered issues and obstacles, including: obtaining details of the defendant and their insurer; obtaining interim payments to fund medical treatment; responding to allegations of contributory negligence; valuing general damages (ie, for PSLA); providing evidence of financial losses; knowing what

82 [CLM0031](#)

83 [WHP0054](#)

84 [WHP0045](#)

85 The Civil Executive Team is a team of four civil judges, charged by the Master of the Rolls with responsibility for judicial oversight of proposed reforms and change in civil procedure.

86 [Reforming the soft tissue \(“whiplash”\) claims process: consultation response by the Civil Executive Team](#). January 2017

87 [CLM0039](#); also Horwich Cohen Coghlan Solicitors [[CLM0012](#)]; Usdaw [[CLM0014](#)].

88 [R \(on the application of UNISON\) \(Appellant\) v Lord Chancellor \(Respondent\) \[2017\] UKSC 51](#)

89 [Q12](#). National Accident Helpline reported similar results from a survey of its own customers ([CLM007](#))

90 [Q11](#)

should be included in a witness statement; and dealing with the DWP’s Compensation Recovery Unit (CRU) with respect to recoverable benefits.⁹¹ The Association of Personal Injury Lawyers (APIL) drew attention to survey evidence indicating that over three quarters of medical experts working in the PI field would not accept instructions from an unrepresented litigant.⁹² Irwin Mitchell Solicitors had specific concerns about the ability of an ordinary consumer to interpret a medical report, or understand the law on liability (should the insurer deny liability or delay admitting it), or the law on vehicle hire costs and lost earnings. They also commented:

Allegations of “fundamental dishonesty” are regularly raised but dropped quickly when challenged by the Claimant’s solicitor. An allegation of dishonesty made direct to an innocent accident victim is likely to be very intimidating.⁹³

60. Several submissions to the previous Committee’s inquiry questioned how poorer claimants would be able to meet upfront costs of their claim such as court fees and fees for medical reports and police reports; these are typically met by the claimant’s solicitor in the first place, as is the cost of rehabilitation in some cases, and the money for these fees and disbursements recovered from the defendant if the case succeeds.⁹⁴

61. Many argued that the Small Claims track was designed for equal parties, and that unrepresented claimants would be disadvantaged by facing defendant insurers with legal representation.⁹⁵ The Motor Accident Solicitors Society had similar concerns about inequality of arms,⁹⁶ suggesting to us that financial obstacles to justice would be compounded by unrepresented claimants having to navigate barriers that included applications to the Motor Insurers Bureau⁹⁷ should the at-fault driver be uninsured, untraced or driving a foreign-registered vehicle; obtaining evidence to resolve a liability dispute, such as witness evidence, photographs/plans and CCTV footage; and dealing with disputes over causation, which might involve obtaining expert engineering evidence.⁹⁸

62. Some of these problems were illustrated by an RTA PI case history described by Minster Law, involving a defendant who denied any involvement in the accident; the claim took over two years before it finally settled.⁹⁹ True Solicitors foresaw practical difficulties for solicitors advising PI clients on their liability for costs and disbursements because this would be determined by the value of the claim—that is, whether it is above or below the £5,000 threshold, an assessment that may not be possible until after evidence is obtained.¹⁰⁰

91 [CLM0003](#)

92 [CLM0020](#). The survey, [Annual Expert Witness Survey Report 2017](#), was undertaken by Bond Solon in collaboration with the Times.

93 [CLM0030](#)

94 Including Carpenters [[WHP0027](#)], DGM Solicitors [[WHP0069](#)], Excel Legal [[WHP0026](#)], Hodge Jones & Allen [[WHP059](#)]

95 Including Principia Law Ltd [[WHP0035](#)], Platinum Partnership Solicitors [[WHP0066](#)], New Law Solicitors [[WHP0004](#)], Easthams Solicitors [[WHP0022](#)], Rowley Dickinson Solicitors [[WHP0019](#)]

96 Concerns were also raised by Coyne Learmouth Solicitors [[CLM0010](#)]

97 [The Motor Insurers’ Bureau](#) (MIB) is the mechanism in the UK through which compensation is provided for victims of accidents caused by uninsured and untraced drivers and by foreign motorists, which is funded by an estimated £30 a year from every insured driver’s premiums.

98 [CLM0017](#)

99 [CLM0018](#)

100 [CLM0036](#)

63. Inevitably, there are difficulties in estimating the volume of RTA PI claims after the introduction of the Government's reform package, including the increase in the small claims limit to £5,000 and the introduction of a tariff for compensation. Modelling the impact on potential claimants would involve assumptions about behavioural change which may not prove to be accurate. We have not carried out a modelling exercise. However, we note that the MoJ's final stage Impact Assessment (March 2018) draws the following conclusions on post reform claim volumes after introduction of the package of reforms, setting out what it considers would be deterrent factors:

On the basis of the information received and the change in policy, we are assuming in this IA that 50% of claims [for injuries up to six months in duration] would proceed post-reform. This is based on the reduced amount of compensation payable, as per the new tariff, and also due to the fact these claims would be pursued under the rules of court applicable to the SCT and therefore legal costs would no longer be recoverable.¹⁰¹

The IA also estimates that the total cost to claimants would be around £990 million per annum; this sum is made up of loss of PSLA damages, special damages, and legal fee costs.¹⁰²

64. As we will discuss in Chapter 5 below, the Ministry of Justice accepts that much work remains to be done to prepare for changes to the small claims limit and implementation of the other PI reforms, including the development of a new electronic platform that will be accessible to self-represented litigants. The MoJ has set up five expert working groups to consider specific aspects of the reform programme: a steering group considering the funding and governance of the overall project; an IT subgroup; a legal subgroup; a subgroup to consider the key issues in resolving liability disputes; and a subgroup that is considering advice and support.¹⁰³

65. We received compelling evidence of the obstacles that would be faced by self-represented claimants navigating the current personal injury claims process in the Small Claims track, regardless of the value of their claim, and we conclude that this would represent an unacceptable barrier to access to justice.

66. While fraudulent and exaggerated claims must be prevented, given that the common law right to compensation for negligence applies regardless of the value of the claim, we conclude that more convincing justification is needed for the Government's policy of reducing a large proportion of claims, including for non-whiplash RTA injuries, by means of raising the small claims limit, simply because the claims are minor. We recommend that the Government does not proceed with plans to increase the limit for all RTA PI claims to £5,000.

101 [Whiplash impact assessment \(Civil Liability Bill: reforming the soft Tissue injury \('whiplash'\) claims process\)](#). Ministry of Justice, March 2018, paragraph 5.37

102 [Ibid](#) paragraph 5.70

103 [CLM0041](#)

Impact on claims by vulnerable road users

67. The Civil Liability Bill will introduce a definition of whiplash injuries applying only to claims by occupants of motor vehicles; injuries incurred by other road users would be excluded. As noted above, the Government has not yet confirmed what definition of “road traffic accident” would apply to the proposed small claims limit of £5,000. We received a submission from the British Insurance Brokers’ Association (BIBA)¹⁰⁴ and the Vulnerable Road User Group¹⁰⁵ opposing the idea of including claims by pedestrians, cyclists and motorcyclists—often referred to collectively as “vulnerable road users” (VRUs)—within the proposal to raise the small claims limit to £5,000. Our predecessor Committee received similar submissions from Cycling UK¹⁰⁶ and from Roadpeace, who commented as follows:

These proposals assume all road users pose a risk of false whiplash claims or fraudulent claims. This is not correct. Pedestrians and cyclists very rarely make whiplash claims.¹⁰⁷

In relation to the MoJ’s consultation on the whiplash reforms, Cycling UK pointed out to our predecessor Committee:

Within the consultation documents no reference was made to VRU. The focus was upon whiplash, fraudulent claims and motorists, without consideration of the complexity of VRU PI claims, the different nature of the injuries typically sustained and claimed for, or their vulnerable status.¹⁰⁸

68. Cycling UK estimated that 70% of cyclists’ PI claims involve a PSLA element of less than £5,000; these claims may involve substantial injuries such as a fractured collarbone, broken wrist or fractured ribs. According to the organisation, liability is often contested in claims brought by VRUs and/or claims of contributory negligence are made—for example, by suggesting that the VRU was not visible or did not take sufficient care of their own safety; in contrast, many other European jurisdictions have a system of presumed liability insurance, where a larger vehicle takes responsibility for a collision unless the contrary is proved.¹⁰⁹

69. We note that the MoJ’s response to the consultation acknowledges that nearly 6,000 responses were submitted by cyclists, all focussing on the impact of raising the small claims limit on cyclists and pedestrians. However, the MoJ’s response does not discuss the concerns raised, or suggest that RTA PI claims by VRUs should be handled differently than claims by other road users.¹¹⁰

104 [BIBA \[CLM0022\]](#)

105 [CLM0015](#)

106 [WHP0033](#)

107 [WHP0061](#)

108 [WHP0033](#)

109 [WHP0033](#)

110 [Part 1 of the Government Response to Reforming the Soft Tissue Injury \(‘whiplash’\) Claims Process. Ministry of Justice, February 2017. Paragraphs 7 and 86.](#)

70. The Vulnerable Road User Group argued that, for the purposes of any increase to small claims limit, the definition of RTA should exclude VRUs. Access to Justice proposed that pedestrian, cyclist and motorbike claims be excluded from the whole package of PI reforms, on the basis that:

The reforms are targeted at low value RTA PI claims sustained in a motor vehicle. The nature of injuries sustained in a pedestrian, cyclist or motor bike accident are very different to a typical whiplash injury, more complex in nature and not open to fraud.¹¹¹

71. Our inquiry did not receive any evidence to challenge this view, nor did any witnesses put forward positive arguments in favour of including vulnerable road users within a new small claims limit for RTA PI claims. We also note that the MoJ’s final stage impact assessment gives no consideration to the impact of including these road users within the new limit.

72. Taking into account the evidence submitted to this inquiry and to that of our predecessor, we conclude that there is no policy justification for including vulnerable road users within the reforms proposed for other RTA PI claimants. We recommend that vulnerable road users be excluded from any higher small claims limit that is imposed on other RTA PI claims.

Impact on non-RTA PI claims

73. Both our own inquiry and that of the previous Committee received some evidence indicating support for the Government’s proposal to increase the small claims limit to £2,000 for non-RTA cases—primarily from the insurance sector. For example, Ageas asserted:

[The increase] will have minimal impact on claims in that area as only the most minor injuries will fall within the £2,000 limit, ensuring that the more complex claims will continue to have necessary legal representation.¹¹²

Similar views were expressed by Weightmans, a national law firm, who considered that the increase would be unlikely to have any significant impact on claim volumes and costs, “as the average general damages in these cases exceeds the £2,000 limit”.¹¹³ Others, including Horwich Cohen Coghlan Solicitors, expressed support for an across-the-board increase in the limit to £2,000 for all types of PI claim,¹¹⁴ as did Access to Justice (as part of its proposals for an “Alternative Claims Framework”).¹¹⁵ The Association of British Insurers thought that consideration should be given to delaying the increase for non-RTA PI claims by 12 to 18 months after the increase for RTA claims—similar to the phased approach that was taken when the online claims portal was introduced.¹¹⁶ Delaying the increase to £2,000 for non-RTA claims was also advocated by Access to Justice.¹¹⁷

111 [CLM008](#)
 112 [WHP0058](#)
 113 [WHP0042](#)
 114 [CLM0012](#)
 115 [CLM0008](#)
 116 [CLM0028](#)
 117 [CLM0008](#)

Impact on employer liability and public liability claims

74. However, specific concerns were raised by some witnesses about the impact of raising the small claims limit for employer liability (EL) and public liability (PL) cases. Unison pointed out that “[t]here has been no argument presented by the Government or defendants/insurers that EL claims are subject to a compensation culture,”¹¹⁸ a view that was shared by the Public and Commercial Services Union (PCS), who observed: “[t]here is no suggestion of fake claims by injured workers”.¹¹⁹ Thompsons Solicitors drew attention to CRU statistics, indicating that EL claims had fallen by 30% in the last four years—from 105,291 in 2013/14 to 73,355 in 2016/17.¹²⁰ It was also suggested to us that these claims were less likely to settle: compared to RTA claims, Unison reported that a higher proportion of its own EL claims submitted to the online claims portal¹²¹ had initially received no response from the defendant or had liability denied.¹²²

75. Some witnesses emphasised the potential complexity of EL and PL claims. In its submission to the previous Committee’s inquiry, Bates Wells & Braithwaite gave examples of two of its own EL and PL cases to illustrate this point. One case involved a PL claim against a contract cleaner at the client’s workplace, who could not be identified without considerable efforts by the solicitor; the case was only settled after obtaining evidence from an independent witness. In the other case, the client was injured by a PVC strip curtain in her workplace, a supermarket. Liability was denied until two months before a Fast track trial was due to begin. On the question of complexity, Bates Welles Braithwaite commented:

It would be beyond the capability of most members/laymen generally to deal with the procedural requirements of the [electronic claims] portal, let alone court proceedings involving medical evidence, pleadings, directions, discovery, witness statements, schedule of loss etc.

76. Usdaw’s supplementary written evidence included two recent cases that would have been issued in the SCT had the increased limit of £2,000 been in place and which the union thought would not have been pursued without legal support because of their complexity. One involved a contact cleaner who was operating a motorised ride-on cleaning machine when the accelerator jammed, causing him to crash. Under the statutory provisions, the claimant had to prove negligence, which involved obtaining disclosure of repair records and witness evidence from a repair contractor who confirmed that the equipment had been persistently faulty. The employer defended the claim until the point when this evidence became available. The case settled for £1,500 in compensation. In the other case, two defendants attempted to blame each other for a workplace accident, and one of them attempted to advance an invalid defence. The case eventually settled for £2,000, including special damages of £400. In oral evidence, Mr Mitchell gave further examples of complex EL and PL cases that Usdaw members had encountered—for example, those involving dog bite injuries, which require an understanding of the complexities of the Animals Act 1971; and tripping accidents, which demand knowledge of case law under the Highways Act 1980.

118 [CLM0029](#)

119 [CLM0026](#)

120 [CLM0032](#), citing [Compensation Recovery Unit Performance Data](#), updated May 2017. The recently published data for 2017/18 show that EL claims have fallen further to 69,230.

121 See footnote 10 and paragraph 5 of Annex

122 [CLM0029](#)

77. Several witnesses emphasised the importance of the threat of litigation in maintaining health and safety standards in the workplace, including Thompsons Solicitors¹²³ and the PCS.¹²⁴ Similar views were expressed in several submissions to our predecessor’s inquiry, many of which pointed to the inherent imbalance in the relationship between an employee and their employer, who is likely to have legal representation.¹²⁵ Steve Mitchell thought that increasing the small claims limit would remove the ability of injured workers to pursue claims against their employers, and considered that litigation was:

...the main driver for maintaining health and safety in the workplace. That is with cuts to the [Health and Safety Executive] and lack of local government inspections. It will be particularly bad for low-paid workers with unscrupulous employers, working in non-unionised premises. We believe the changes will render low-paid workers more vulnerable to injury because in times of austerity there will be less focus by employers on health and safety.¹²⁶

However, when we asked the Minister, Lord Keen of Elie QC, whether a reduction in low level EL and PL claims would undermine health and safety legislation in the workplace, he denied this without hesitation, simply responding “No”.¹²⁷

78. There was some evidence indicating the increased proportion of EL and PL cases that would have to be issued as small claims in future. For example, the submission of Bates Wells & Braithwaite to our predecessor’s inquiry suggested that around 30% of its own EL and PL caseload had a PSLA value of less than £2,000. Steve Mitchell from Usdaw told us that his union’s legal service currently took on very few EL/PL cases that were issued in the Small Claims track or settled for less than £1,000, but that:

If the small claims limit was increased from £1,000 to £2,000, we estimate that a fivefold increase in our members’ claims would be captured by the small claims limit.¹²⁸

79. Witnesses suggested that would-be claimants without representation could be deterred from bringing EL and PL claims.¹²⁹ Lord Keen was not able to quantify any potential reduction in the volume of claims, suggesting that this was “a qualitative assessment, not a quantitative assessment”.¹³⁰ He added that people may take a different view as to their prospects of success, and so may not bring a claim.¹³¹

80. Some two months after the Minister gave oral evidence to us, his Department published its final stage Impact Assessment on the package of reforms, which confirmed that the MoJ has been unable to obtain baseline data on the current number of non-RTA claims of the size that would be affected by the planned increase in the small claims limit.

123 [CLM0032](#)

124 [CLM0026](#)

125 Including TUC [\[WHP0018\]](#), Unite [\[WHP0036\]](#), Unison [\[WHP0051\]](#), Bates Wells & Braithwaite [\[WHP0044\]](#)

126 [Q27](#)

127 [Q66](#)

128 [Q12](#)

129 Unison [\[WHP0051\]](#), TUC [\[WHP0018\]](#),

130 [Q63](#), [Q64](#)

131 [Q67](#)

We have been unable to gather robust information on the number of PI claims that are not RTA that currently claim PSLA damages to the value of between £1,000 and £2,000, although we assume this number to be relatively small.¹³²

The IA goes on to acknowledge that the absence of reliable data on EL and PL claims means it has not been possible to quantify the potential impact of raising the small claims limit from £1,000 to £2,000.¹³³

81. We are deeply unimpressed by the Ministry of Justice’s inability to quantify the potential impact of raising to £2,000 the small claims limit for employer liability and public liability claims. Given the potential complexity of these claims for self-represented claimants and evidence of the role of litigation in maintaining safe and healthy workplaces, we recommend that they continue to be subject to the lowest small claims threshold—which we have recommended should be set at around £1,500 to take account of inflation since 1999.

Impact on claims for holiday sickness

82. We received evidence from Thomas Cook Group¹³⁴ and from ABTA, the Travel Association,¹³⁵ expressing concerns about what they described as a significant increase of holiday illness-related compensation claims, in particular for gastric illness. According to ABTA, the number of claims has grown by over 500% since 2013. ABTA maintains that this increase has been triggered by a blanket exclusion of overseas claims from a fixed recoverable costs regime,¹³⁶ even where proceedings are issued in the courts of England and Wales; it considers this to be a “regulatory oversight” which has left travel companies vulnerable to the activities of claims management companies.

83. ABTA argued that there are similarities between holiday sickness claims and claims for whiplash injury, particularly as diagnosis tends to be based on self-reporting of symptoms in both cases. Both Thomas Cook and ABTA called for holiday sickness claims to be subject to a small claims limit of £5,000, as with RTA-related PI claims. Our inquiry did not receive any evidence that argued against this.

84. In July 2017, the MoJ announced measures “to tackle the apparent increase in package holiday sickness claims”, including asking the Civil Procedure Rule Committee to consider proposals to amend the Pre-Action Protocol for Low Value Personal Injury Claims,¹³⁷ to bring these claims within the fixed recoverable costs regime—an amendment that the Committee agreed and which took effect on 16 April 2018.¹³⁸ The MoJ also asked the

132 [Whiplash impact assessment \(Civil Liability Bill: reforming the soft Tissue injury \('whiplash'\) claims process\)](#). Ministry of Justice, March 2018, paragraph 5.54

133 *Ibid*, paragraph 10.10

134 [CLM0027](#)

135 [CLM0023](#)

136 Fixed recoverable costs, also known as predictable costs, have been introduced for PI cases up to the value of £25,000. This regime provides more certainty for both parties and avoids lengthy disputes about the level of legal costs after the substantive case has concluded. See also Annex, paragraph 5.

137 Pre-action protocols explain the conduct and set out the steps the court would normally expect parties to take before commencing proceedings for particular types of civil claims. They are approved by the Master of the Rolls and are annexed to the Civil Procedure Rules (CPR).

138 [Ministry of Justice Press Release: New curbs on bogus holiday sickness claims](#), 13 April 2018

Civil Justice Council¹³⁹ to look at the rules and processes for handling low value personal injury claims, both for gastric illness and more generally, a matter on which it has not yet reported.¹⁴⁰ On 13 October 2017, MoJ issued a call for evidence on holiday sickness claims, seeking information on the extent of unmeritorious claims and views on the actions that the Government might take. The consultation closed on 10 November 2017 and the results are currently being analysed.¹⁴¹

85. We welcome the decision to bring claims for holiday sickness within the fixed recoverable costs regime, as this would provide consistency with other PI claims. We recommend that the Government evaluate the impact of the new cost rules after 12 months and consider the evidence received in response to its recent consultation before consulting further on whether any additional action is needed to curb the number of fraudulent holiday sickness claims, to ensure that any proposed measures are proportionate to the problems that may remain.

Impact on the judiciary and the courts

86. Both inquiries received written evidence expressing concerns about the impact of raising the small claims limit on the courts and the judiciary. As noted above (at paragraph 17), a high proportion of PI cases currently settle through the electronic portal, avoiding the need for a court hearing. Kennedys Law LLP thought that switching more cases to the Small Claims track would also lose the incentive to avoid a trial that is seen as a feature of the Fast track, where litigants carry the risk of paying costs if their case loses.

Assuming that the cost awarded to parties in the small claims arena remain limited claimant and defendant alike may well decide to run more cases to trial. At present running a low value injury case to trial in the Fast track is commercially unappealing to many parties. However, if the costs remain proportionate more parties may decide to “have their day in court”.¹⁴²

87. The Motor Accident Solicitors Society thought that increasing the small claims limit “would probably lead to increased burdens on the court service and judiciary, equating to longer hearings, delays in justice, longer waiting lists and higher costs.”¹⁴³ Devon and Somerset Law Society observed that, following court closures in their area, the remaining court centres “are stretched to breaking point.”^{144,145} In its published submission to the MoJ consultation of November 2016, the Association of Personal Injury Lawyers raised concerns about the possible unintended consequences for the court system arising from a higher small claims limit:

The small claims track is simply unsuitable for personal injury litigants. Various sections of the [Civil Procedure Rules, which govern the conduct of civil litigation] are excluded from the small claims track to simplify the procedure. These include disclosure and inspection [of documents], evidence

139 The CJC is an advising non-departmental public body responsible for overseeing and co-ordination of the civil justice system.

140 [Ministry of Justice Press Release: Crackdown on fake holiday sickness claims](#), 9 July 2017

141 [Personal injury claims arising from package holidays: Call for evidence](#). Ministry of Justice, 13 October 2017

142 [WHP0068](#)

143 [CLM0017](#)

144 [CLM0002](#)

145 From April 2011 to March 2017, over 70 county courts were closed in England and Wales. [Answer to House of Commons Written Question 136450, 18 April 2018](#).

(apart from at the court’s discretion), experts (again, subject to discretion), part 18 further information requests, Part 36 offers to settle, general rules about hearings (Part 39). These rules help to incentivise settlement and if personal injury claims are forced into a system without these rules, cases that would not have gone to court in the current system will inevitably end up there.¹⁴⁶

88. In our oral evidence session, we asked Mrs Justice Simler to explain why the Civil Executive Team had indicated “a serious level of dismay” about the impact of on the courts of raising the small claims limit. She explained that the current pre-action protocols are “not easily understood by litigants in person” and that PI claimants with claims valued up to the new limit of £5,000—likely to be litigants in person (LIPs)—would not be permitted to access the existing electronic portal, which can only be used by solicitors and insurers. Even if the electronic portal is redesigned, “there is no evidence to support the assumption that future settlement rates would at least be maintained at the high rate that is being achieved through the portal.” She continued:

Some of the things we worried about were that litigants in person with no legal advice about their prospects of success, or the likely level of quantum, would be unlikely to trust insurers and would have less incentive to settle through a redesigned portal.¹⁴⁷

89. Mrs Justice Simler referred to the Civil Executive Team’s (CET) response to the Ministry of Justice’s November 2016 consultation, which explained how the greater burden on the courts was likely to play out in practice.¹⁴⁸ In addition to lower rates of settlement, both before and after the issue of proceedings, the following anticipated factors were among those identified by the CET:

- A greater level of pre-trial case management by judges, to assist LIP claimants getting their claims ready for trial
- More time taken by court staff assembling bundles of documents and chasing LIPs for missing documents
- A higher level of adjournments owing to cases not being sufficiently well prepared to go to trial on the listed hearing date
- A longer trial, for reasons including the need for the judge to assist the LIP by questioning witnesses, and the unlikelihood of pre-trial admissions of fact/the narrowing of issues
- A greater likelihood of appeal, because LIPs will not have access to advice on the prospect of a successful appeal [which might discourage appeals lacking merit] and because trials without lawyers to assist the court are “inherently less likely to lead to reliable judgments.”

146 [Response by the Association of Personal Injury Lawyers to Ministry of Justice consultation on Reforming the soft tissue injury \(“whiplash”\) claims process](#). January 2017, paragraph 8.11

147 [Q44](#)

148 [Reforming the soft tissue \(“whiplash”\) claims process: consultation response by the Civil Executive Team](#). January 2017

As explained by Mrs Justice Simler, the Civil Executive Team had estimated the burden on the judiciary of a case on the Small Claims track to be at least double, if not treble or quadruple, the burden of a case on the Fast track. Echoing a point made to us by Shirley Denyer from FOIL,¹⁴⁹ she explained that small claims “are very ad hoc, things go wrong and papers are missing”. Mrs Justice Simler estimated that trials of Fast track cases generally take 15 minutes, but a small claims trial can take one to two hours or more—assuming that no adjournment is needed to obtain more information “with all the resources consequent on that”.¹⁵⁰

90. When we questioned the Minister, Lord Keen of Elie QC, on whether there had been any research into the role of lawyers in achieving greater volumes of claim settlement, he said he was not aware of any.¹⁵¹ He went on to say that a case that is complex in causation and liability is not likely to remain in the Small Claims track; that is, it could be allocated to the Fast track.¹⁵² While he understood concerns about the poor state of preparation of many cases that come to the small claims court, he considered that this indicated a need to simplify the small claims process and that “it may require judges to take a rather more proactive approach to the determination of cases than they have done historically.” When asked whether this might run the risk of increasing the burden on judicial time rather than reducing it, and about the implications for the MoJ’s budget, he responded:

We will have to see the extent to which it does impact on judicial time. As I say, the primary mover is to simplify the claims process and the pre-action protocol.¹⁵³

91. We conclude that the senior judiciary has reasonable concerns about the consequences for judges, and for the courts system, of increasing the small claims limit and we do not consider that “wait and see” is an adequate Government response to these concerns. If the small claims limit is to be increased by more than the rate of inflation, we recommend that the Ministry of Justice and HM Courts and Tribunal Service work with the senior judiciary to agree in advance a framework for monitoring the impact on the judiciary and the courts, so that monitoring can commence immediately after introduction of the new limit[s] and urgent steps taken to address any adverse impact identified.

92. We further recommend that the Ministry of Justice ask the Civil Procedure Rule Committee to consider whether the Civil Procedure Rules need to be changed to facilitate applications by self-represented claimants on the Small Claims track to have their case transferred to the Fast track.

149 [Q28](#)

150 [Q45](#)

151 [Q81](#)

152 [Q83](#). Under Rule 26.8 of the Civil Procedure Rules, when allocating a case to a track the court must have regard to a range of factors including the financial value of the claim, the likely complexity of the facts, law or evidence and the amount of oral evidence that may be required.

153 [Q95](#)

5 Implementing the small claims reforms

93. This Chapter considers the relevance to these reforms of the promised post-legislative review of Part 2 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. We then assess the Ministry of Justice proposals for implementing the reforms, including the introduction of an electronic platform to support PI claimants once the small claims has been increased. We consider, in particular, the issue of digital exclusion.

Post-legislative review of Part 2 of the LASPO Act 2012

94. As we have already noted, the Ministry of Justice aims to implement its reforms, including the changes to the small claims limit, in April 2019—subject to parliamentary time and approval. On 30 October 2017, the post-legislative Memorandum for the LASPO Act¹⁵⁴ was laid before Parliament and presented to the Justice Committee, with a Written Statement by the then Secretary of State for Justice, the Right Hon David Lidington MP, on the same day.¹⁵⁵

95. Part 2 of the LASPO Act 2012, which took effect in April 2013, introduced reforms to civil litigation funding and costs, including abolishing the right of successful claimants to recover from the other side their solicitor’s “success fee” under a conditional fee agreement (CFA); and banning the practice of solicitors paying referral fees to third parties.¹⁵⁶ Compared to the Government’s detailed assessment of Part 1 (which deals with civil and family legal aid), the Memorandum only has a brief, preliminary assessment of Part 2, also listing the additional measures to control civil litigation costs that were introduced alongside or shortly after the Part 2 reforms.

96. The Memorandum confirms the Government’s commitment to undertaking a review towards the end of the three to five-year post-implementation period, and claims that “there has not been any body of opinion calling for an early review, or for the amendment of the statutory provisions ... ”¹⁵⁷

97. The Ministry of Justice has now confirmed that it is carrying out a post-implementation review of Part 2 this year; this will assess the impact of the reforms on civil litigation funding and costs, and the extent to which they have achieved the Government’s aims: to reduce civil litigation costs overall and to rebalance the costs liabilities between claimants and defendants, while ensuring that valid claims can still be brought. Feedback will be sought from all interested stakeholders, including through a conference hosted by the Civil Justice Council.¹⁵⁸

98. The Association of Personal Injury Lawyers (APIL) pointed out to us that Part 2 of LASPO would appear to have had a significant impact on the cost of PI claims.¹⁵⁹ This view was supported by Minister Law, who considered that the LASPO Act had “presided over a reduction in claims volumes and claims costs” and hoped that the LASPO review would lead to the conclusion “that the further PI/whiplash reforms are intended to remedy a

154 [Legal Aid, Sentencing and Punishment of Offenders Act 2012: Post-Legislative Memorandum Submitted to the Justice Select Committee on 30 October 2017](#). Cm 9486

155 [HCWS204](#)

156 See paragraph 4 of Annex

157 Post-Legislative Memorandum, paragraph 48

158 [Speech by Lord Keen of Elie QC to the APIL conference](#), 17 April 2018

159 [CLM0020](#)

perceived problem that is already being fixed.”¹⁶⁰ The Law Society went further by arguing that “[f]urther reform should not be considered until the impact of the existing reforms has been fully assessed.”¹⁶¹ As noted above (paragraph 16), a reduction in the number of PI claims has been recorded by the Compensation Recovery Unit (CRU). A summary of the measures introduced to reduce legal costs in PI claims is set out in the Annex to our report.

99. We conclude that it was illogical for the Government to propose further reforms to the PI claims process before its review of Part 2 of the LASPO Act has considered the effectiveness of the earlier reforms. Before introducing further changes, we recommend that the Ministry of Justice consider the learning from its review of Part 2 of LASPO, once completed, to determine whether any adjustments should be made to the current package of reforms, including proposals for the small claims limit.

The Ministry of Justice’s proposals for implementing the reforms

100. Ahead of our oral evidence session, Lord Keen helpfully wrote to let us know of the work that the MoJ had begun “to underpin the increases in the small claims limit”¹⁶² and wrote again after the session to provide us with an update.¹⁶³ In summary, the Government has set up five expert working groups to consider specific aspects of the reform programme, as follows:

- **The steering group**, which includes senior representatives from the Association of Personal Injury Lawyers, the Association of British Insurers (ABI), the Forum of Insurance Lawyers, the Law Society and the Motor Accident Solicitors Society. The group has discussed key issues related to the development of the new “accessible IT platform” underpinning the new system, which will deal with the pre-action stages of claims “with the aim that the majority of claims will continue to settle before they reach the small claims court.” The funding and governance of the overall project has been split into a “build phase”—for which the Government has accepted, in principle, an offer of funding from the ABI¹⁶⁴—and the operational phase, which will involve “Board level representation” from all sectors. The group is also considering whether alternative dispute resolution (ADR)¹⁶⁵ can be part of the new process.
- **The IT sub-group**, which is working closely with the Motor Insurers Bureau to develop accessible IT infrastructure that enables all users, including litigants in person, to navigate the new process, including by mapping a “user centred journey to highlight issues, questions and solutions.” This group consists of experts with both legal and technical expertise, including representatives from MedCo and Claims Portal Ltd.

160 [CLM0018](#)

161 [CLM0003](#)

162 [CLM0035](#)

163 [CLM0041](#)

164 The MoJ explains that this is similar to funding arrangements for the claims portal and MedCo systems

165 Alternative dispute resolution (ADR) refers to a range of techniques for resolving disputes without seeking redress from the courts. Examples of ADR include arbitration, mediation, conciliation and early neutral evaluation.

- **The legal sub-group**, which is considering the details of a new pre-action protocol for use in the Small Claims track, underpinning the pre-action IT system. Its remit also includes reviewing the existing court rules and practice directions.¹⁶⁶
- **The liability sub-group**, which has identified the key issues linked to resolving liability, has considered the potential role of ADR in resolving liability disputes and is developing guidance on liability for litigants in person.
- **Support and guidance sub-group**, which includes representatives from the claimant, defendant and consumer sectors, is assessing what sources of guidance and support are currently available to users of the small claims court, identifying best practice. It has considered what makes guidance accessible, including the need for language that is easily understood.¹⁶⁷

101. The potential for an electronic platform to create barriers for certain user groups—so-called “digital exclusion”—was raised by several witnesses.¹⁶⁸ During our oral evidence session, we asked the Minister, Lord Keen of Elie QC, what solutions the working groups had found for dealing with medical reports, liability disputes and settlements. In response, he said:

We are working, through those five groups, to identify the most appropriate way forward on all these issues, including access with regard to MedCo and independent medical reports, and the question of how those who are not digitally inclined can make sure that they can access the pre-action protocol and the claims process. We would be happy to report further to the Committee once that work has been completed, but at the moment it is a work in progress.¹⁶⁹

102. When pressed further on his Department’s plans for dealing with digital exclusion, Lord Keen accepted that this was “a very real question that we need to address”. He explained that the Good Things Foundation, which is supported by Government funding, has a network of over 5,000 community helpers who are available to assist.¹⁷⁰ However, the provision and funding of advice and support was “work in progress”.¹⁷¹ Confirming that the new IT system would be piloted, David Parkin, Deputy Director for Civil Justice and the Law at the Ministry of Justice, went on to tell us:

...the particular sectors of the population, particularly the elderly, who may be digitally excluded, is something we are particularly concerned about. We are discussing it with all areas of the industry to see whether we can offer certain support to certain groups.¹⁷²

166 In English law, a practice direction is a supplemental protocol to rules of civil and criminal procedure in the courts, used to regulate minor procedural matters. The Civil Procedure Rules contain a large number of practice directions which give practical advice on how to interpret the rules themselves.

167 [CLM0041](#)

168 Irwin Mitchell Solicitors [[CLM0030](#)]; Motor Accident Solicitors Society [[CLM0017](#)]; Devon and Somerset Law Society [[CLM0002](#)].

169 [Q84](#)

170 [Q85](#)

171 [Q96](#)

172 [Q89](#)

Mr Parkin was not able to provide any more specific details or to suggest how people would know that they could get digital support, explaining that “[i]t is something we will have to work through with those who represent those groups; they will put their concerns to us ...”¹⁷³

103. It is relevant to note that Ofcom figures for 2017 indicate that significant proportions of vulnerable groups are still classified as “non-users” of the internet: 14% of adults in the UK are non-users of the internet, 35% of adults aged 65–74 are non-users, as are a majority (56%) of those aged 75 and over. A quarter of adults in DE households (27%) are non-users.¹⁷⁴ Similarly, the 2016 Impact Assessment for the Government’s Assisted Digital Court Reform Programme¹⁷⁵ acknowledges that, when engaging with government services, only 30% of the UK population are “digital self-servers” [that is, people who need no assistance in using the internet], with the remaining 70% needing some degree of support.¹⁷⁶

104. It is relevant to note that the MoJ’s Equalities Statement for the Whiplash Reform Programme does not specifically consider the impact of introducing an electronic platform for PI RTA claims on people with protected characteristics.¹⁷⁷ The Statement concludes that the package of reforms is neither directly nor indirectly discriminatory, and suggests that the MoJ “will continue to make reasonable adjustments to ensure access to justice for claimants and court users with disabilities.”¹⁷⁸

105. The MoJ’s commitment to working with stakeholder groups to understand their particular support needs in relation to the new online platform is an approach reinforced by legal needs research, which has examined the prevalence of legal problems and what people do about them. As Professor Dame Hazel Genn has observed:

We have two decades of legal needs studies that have explored how ordinary people deal with the most common everyday legal problems [...] We know that vulnerable groups experience everyday legal problems more often and do less about them. People’s objectives and approach vary depending on the issue at stake and the ability to obtain advice and assistance. It also depends on whether they are a potential claimant or defendant and who the opponent is. Put simply, people want different things depending on their problem and we need a system that is sensitive to that.¹⁷⁹

173 [Q90](#)

174 [Adults’ media use and attitudes - report 2017](#). Ofcom.

175 “Assisted digital refers to the support arrangements we will put in place to help users to interact with us in the digital channel. It means that where Her Majesty’s Courts and Tribunals Service (HMCTS) services have moved online, support will be available for people who have difficulty using technology. Assisted digital services are designed to meet the needs of the end user of a digital service, mainly unrepresented appellants, litigants in person (LIP) and professional users.” ([Transforming our justice system: assisted digital strategy, automatic online conviction and statutory standard penalty, and panel composition in tribunals: Government response, February 2017](#), paragraph 5)

176 [Assisted Digital: court reform - Impact Assessment](#). Ministry of Justice, September 2016.

177 [Equality Act 2010, Chapter 1](#)

178 [Ministry of Justice, Whiplash reform programme equalities statement](#). March 2018. Paragraph 7.1

179 [Online courts and the future of justice; Birkenhead lecture 2017](#). Professor Dame Hazel Genn, Director of University College London Centre for Access to Justice.

106. We had evidence from other witnesses expressing enthusiasm for the proposed electronic platform. Shirley Denyer from FOIL told us:

We have looked at that in detail, and we believe that an electronic platform can be developed to make it work, so that individuals will not need legal representation for relatively low value claims. We think that can deliver access to justice in a modern way, which recognises the way people live. You do not need to go to court.¹⁸⁰

However, in its written evidence to the inquiry, FOIL conceded that delivering the requirements of an effective electronic process “would create a significant development challenge.”

107. The ABI, which—like FOIL—is represented on the MoJ’s steering group, was similarly enthusiastic about the electronic platform, describing it as “the most important feature to support the increase in the SCT limit”. ABI also thought that the new system “will be an easy, accessible and consumer-friendly process for LIPs to use”, and was confident that effective guidance for litigants in person could be developed; it drew attention to material produced for the Intellectual Property Enterprise Court as “a good example of clear accessible guidance”. The ABI also considered the potential for the new system to resolve disputes between the parties about liability for an RTA, and was optimistic about the ability of the new system to resolve them:

Liability is only disputed in the minority of claims and for those it would be of benefit to develop an online decision-making tool that provides a provisional decision. Where liability is not accepted by the defendant, a simple dispute resolution process is likely to be required. The MoJ is currently working with stakeholders to explore the potential role for some form of Alternative Dispute Resolution (ADR) in the process.¹⁸¹

108. In its response to the Ministry of Justice consultation of November 2016, the Civil Executive Team (CET) accepted that the online solutions court (OSC)—a recommendation of the Briggs Review on the Civil Courts Structure¹⁸²—might have a role in partly replacing lawyers so as to enable PI claimants to navigate the court system. However, “it should not be assumed that the OSC will entirely succeed in fulfilling that role, let alone in sufficient time”.¹⁸³ The response also observed:

Nonetheless PI claims by LIPs against experienced professional opposition funded by insurers are not an ideal type of claim for the OSC in its infancy, both because of the inherent imbalance in the playing field (by comparison with many small money claims) and because of the difficulties and pitfalls likely to face LIPs in obtaining the requisite expert evidence [...]

180 [Q28](#)

181 [CLM0028](#)

182 [Civil Courts Structure Review: Final Report](#). Lord Justice Briggs, July 2016. LJ Briggs recommended that an online court be created to resolve disputes up to £25,000 subject to “substantial exclusions”. The three stages of the court would be: an automated online triage stage, to allow articulation of the claim and uploading of documents and evidence; a conciliation stage, handled by a case officer; and a determination stage, handled by a judge via a face-to-face trial, video or telephone hearing or determination on the documents alone.

183 [Reforming the soft tissue \(“whiplash”\) claims process: consultation response by the Civil Executive Team](#). January 2017

In oral evidence HH Judge Bird explained that the online solutions court was currently being piloted, with various elements undergoing development and testing; the court was not intended to be a “lawyer-free zone”, and there would be some element of cost shifting.¹⁸⁴ Creating online guidance for PI claims, in the form of a decision tree, remained a relatively complex procedure, but the work needed to prepare online guidance for EL and PL claims “will be much more pronounced”. It was unclear how the electronic portal under discussion for smaller PI claims would interface with the OSC, but in his view “the interaction will have to be thought through very carefully” and, from an access to justice point of view, the online method “must always allow for a fallout into the courts system.”¹⁸⁵

109. We also asked HH Judge Bird about face-to-face support for people who cannot cope with the online system. He responded:

...you can rest assured that the judicial engagement group and other engagement groups—a litigant in person engagement group is also actively involved—realise that without adequate support for those who are, as some people say, digitally disenfranchised, or even those who choose not to trust a digital way of approaching the courts, the whole high idea of access to justice clearly goes out of the window.¹⁸⁶

He confirmed that the judiciary was working with HMCTS on the Assisted Digital project, and that HMCTS had entered into an agreement with the Good Things Foundation. In his view, the MoJ was “paying attention” to what the CET and the judges had to say, as evidenced by the collaborative efforts being made to create the new electronic portal.¹⁸⁷

110. There were other witnesses who were less convinced about the potential for a new online portal or thought that the approach should be modified. The Association of Personal Injury Lawyers (APIL) doubted whether litigants in person using the new portal would be able to deal with the complexities of disputed claims, such as gathering evidence and witness statements and dealing with arguments about the cause of the injury. Caution was urged by Unison, who thought the roll-out of the system should begin with a small pilot focussing on low value RTA cases where liability is admitted, and that EL claims should be excluded altogether.¹⁸⁸

111. Referring to the staggered implementation of the RTA portal, the Association of British Insurers considered that a staged approach should be taken to the small claims changes, with EL and PL claims being introduced 12 to 18 months after the new limit is put in place for RTA claims.¹⁸⁹ APIL agreed that EL and PL claims would create particular challenges, as multiple defendants and difficult issues of liability and causation are encountered more often: “[a]n electronic portal will never be able to address these complexities, which means litigants will need legal advice”.¹⁹⁰

184 “Cost shifting” refers to the process by which the successful party in a case can recover all or part of the costs of litigation, including the cost of legal representation, from the losing party.

185 [Q50](#)

186 [Q51](#)

187 [Q52](#)

188 [CLM0029](#)

189 [CLM0028](#)

190 [CLM0020](#). Similar views were expressed by True Solicitors [[CLM0036](#)].

112. The submission of Irwin Mitchell Solicitors posed a series of questions about the proposal for a new online process—for example, how consumers would know about it; how vulnerable groups including child claimants would be safeguarded; how abusive practices by insurance companies would be policed; and how medical reports would be funded.¹⁹¹ Horwich Cohen Coghlan Solicitors asked if it was not:

...surely premature to amend the thresholds [for small claims] unless and until the online Court process has been implemented and tested satisfactorily, or at the very least until we have a confirmed and reliable launch date for it?¹⁹²

113. The need for continuous testing and evaluation of all aspects of the Government's Assisted Digital court reform programme has been emphasised by Professor Dame Hazel Genn:

Testing and development has to be a continuous and iterative process involving a wide range of potential claimants and defendants and those who advise. And the objective of testing and evaluation should go beyond usability and address questions of perceptions of procedural fairness, comprehension of the significance of procedural steps, and substantive outcome.¹⁹³

114. **We commend the decision of the Ministry of Justice to work with expert stakeholders in developing an electronic platform to handle the pre-action stages of lower value PI claims, and its commitment to piloting the new IT system that this platform will require. However, in the light of the evidence we received, we consider that the Ministry should take a more realistic approach to the technical challenges that may be faced in developing a fully functional electronic platform that has been properly tested with a wide range of users. *We therefore recommend that the national roll-out of the new platform—and hence any changes to the small claims limit for PI claims—be delayed at least a further year until April 2020, and that the new claims process, including the support and guidance available to claimants, be subject to independent evaluation after three years. We conclude that the complexity of employer liability and public liability claims distinguishes them from RTA and that it is therefore not appropriate to bring them within the scope of the new online platform.***

115. **We remain to be convinced that the electronic platform will be capable of overcoming the underlying inequality of arms between professionally represented insurers and self-represented claimants, particularly with regard to disputes on liability and quantum (the amount of compensation). Similarly, we conclude that the Government has not done enough to explain how claimants of limited means with legitimate claims are expected to finance court fees and expert reports. *We therefore recommend that the Ministry give a central focus to these issues during the pilot phase of the project, both to secure financial help for claimants who cannot meet the cost of disbursements and to ensure that online decision trees give effective support to claimants pursuing valid claims in the face of defendant resistance.***

191 [CLM0030](#)

192 [CLM0012](#)

193 [Online courts and the future of justice; Birkenhead lecture 2017](#). Professor Dame Hazel Genn, Director of University College London Centre for Access to Justice.

116. Notwithstanding the Ministry of Justice's welcome commitment to overcoming digital exclusion, we remain concerned about the potential deterrent effect on particular population groups of introducing online-only applications, with the risk of introducing a discriminatory element into the pattern of claims. *To avoid discriminatory impact, we recommend that the Ministry closely monitor the effect on different groups of claimants during the pilot phase of the electronic platform, and take steps to mitigate any adverse impacts that it identifies, for instance by providing targeted face-to-face support.*

117. We consider the availability of support and guidance, including face-to-face advice, is central to the success of the electronic platform for lower value PI claims and we welcome the Minister's reassurance that this is the focus of a dedicated working group. *The Ministry should commit to producing, as soon as practicably possible after the working group has reported, a stage by stage plan, with costings, for how it will fund and implement support and guidance to assist individuals to access the new platform, including any face-to-face support that the group recommends. This plan should be sent to us so that we can consider whether it meets the recommendations of the working group and the needs of users.*

6 Impact on organisations assisting claimants

118. In this Chapter, we look at the potential impact of raising the small claims limit on the availability of before the event insurance, on the operation of claims management companies and on the PI legal sector. In addition, we consider the issues of cold calling and paid McKenzie friends.

Impact on before the event insurance

119. Before the event (BTE) insurance allows the insured to purchase a low-price legal expenses insurance product prior to any legal claim arising. Although the scope of coverage varies, BTE policies typically give access to a free legal helpline and, where litigation is indicated, referral to a solicitor on the insurer’s panel without cost to the insured person. The insurance may also cover some or all of the insured’s potential costs liabilities in legal proceedings. Many BTE policies are sold as “add-ons” to motor or household insurance. Echoing the evidence from James Dalton of the ABI to our predecessor Committee,¹⁹⁴ Jason Tripp from Coplus, a provider of BTE motor legal expenses insurance, explained the distinction between the BTE insurance market and claims management companies (CMCs):

The primary market is characterised by before-the-event legal expenses insurance. These are personal injury claims that arise from accidents when first reported by the driver to their motor insurer. That is quite a different market from what I like to call the secondary market, which is the after-the-event market, where personal injury claims are procured by CMCs marketing for PI claims months, often years, after the date of the accident.¹⁹⁵

120. Mr Tripp thought that the Government’s PI reforms were intended to tackle characteristics of the secondary market, where the risks of exaggerated and fraudulent claims are more prevalent. In his view, the “one-size-fits-all” approach taken by the reforms would lead to “an unintended detrimental effect on the primary legal expenses market,”¹⁹⁶ even though the primary market “is much better behaved.” He described BTE insurance as “the primary method of access to legal services for motorists in the UK and, more importantly, access to legal representation”.¹⁹⁷

121. The written evidence from Coplus estimated that BTE insurance provides access to legal services free at the point of need for some 10 million motorists. The level of premiums—typically in the region of £25 to £30 per year—is achievable because the current costs rules for PI litigation mean that legal costs (including fees payable to the claimant’s solicitor) are paid by the losing party in successful cases; this limits the claim costs for BTE insurers to the costs of litigation that is unsuccessful. When PI claims arise, BTE providers refer their policyholders to solicitors on their panel who have been selected

194 See paragraph 27

195 [Q11](#)

196 [Q11](#)

197 [Q11](#)

for their expertise and have agreed to work on a tariff of fees in exchange for volume of work. Coplus explained what it thought would be the impact of moving such a high proportion of PI claims to the SCT.

This would remove solicitors' right to recover legal costs in successful cases in all but the highest value and most serious cases. This would transform 95% of successful claims from zero cost (paid by the losing party) into cost centres. Solicitors would have to either seek payment of their costs from BTE [motor legal expenses insurance] providers or step away from the motor accident PI market.¹⁹⁸

122. Coplus suggested in its written evidence that—assuming BTE motor legal expenses insurance providers had sufficient notice—they would be faced with a number of options in response to raising the small claims limit: (a) excluding PI claims from BTE policies or (b) restricting them by value or type to keep costs down; (c) including advice on PI claims but leaving customers to handle them alone in the Small Claims track; (d) finding other organisations that can handle PI claims at a lower cost; or (e) maintaining a similar quality of service, increasing premiums accordingly. In Coplus' view, options (a) to (c) would not operate to the benefit of the customer. Option (d) could deliver a solution but “it is plain that an unregulated service provider is unlikely to operate to the same standards as a panel solicitor”. As for the final option, Coplus thought that the higher premiums would erode the Government's forecast savings to motorists arising from the PI reforms. In his oral evidence, Jason Tripp reflected on the potential consequences for motorists of increasing BTE premiums:

[BTE insurers] could fund small claims work with legal representation, which would make the product more expensive. That again leads to a stark choice for the consumer at the point of renewal of their legal expenses insurance. Do they purchase the cover at much higher cost or do they look for a product with lower coverage or lower value because that is less expensive? Neither of those choices is good for the consumer. On the one hand, you have customers paying more for access to legal representation when they need it, or they are left without legal representation at the point of claim.¹⁹⁹

123. Evidence from other witnesses supported this view about the impact of raising the small claims limit on the BTE insurance market.²⁰⁰ The Motor Accident Solicitors Society feared that the market could take “many years” to put together a new product that was financially viable.²⁰¹ Carpenters, a motor injury law firm working in partnership with insurers and brokers, thought that the BTE model would be disrupted, and that this would affect customers without injuries who are seeking reimbursement for financial losses relating to motor accidents, such as repair costs and travel expenses; Carpenters thought that these claims represent over 30% of motor insurance claims, and explained that for panel solicitors the cost of taking them on is currently subsidised by PI claims.²⁰² Both

198 [CLM0034](#)

199 [Q31](#)

200 Including Carpenters [\[CLM0021\]](#); Thompsons Solicitors [\[CLM0032\]](#); Horwich Cohen Coghlan Solicitors [\[CLM0012\]](#); Steve Mitchell, Usdaw [\[Q33\]](#)

201 [CLM0017](#)

202 [CLM0021](#)

Carpenters and Coyne Learmonth Solicitors drew attention to the disbursements relating to a PI case, such as court fees, medical reports and other expert reports—which, under a BTE policy, would be initially funded by the solicitor taking on the case.^{203 204}

124. Other witnesses were less certain of the significance of BTE cover, pointing out that there was low consumer awareness of these products²⁰⁵ and that take-up of BTE as an add-on to other insurance cover was declining, which they thought was partly because of aggregator websites making consumers' decisions more price sensitive in a highly sensitive market.²⁰⁶ Some thought that the market might well adapt, but that it was too soon to know.²⁰⁷ In November 2018, an expert Working Group of the Civil Justice Council published a report on BTE legal expenses insurance, which considered that the proposed increases to the small claims limit may increase the need for BTE, as lawyers would not be willing to take PI small claims under a conditional fee agreement (CFA). The Working Group recognised that a rise in the small claims limit might increase BTE premiums, as BTE insurers would no longer be able recover costs in claims under the new small claims limit; they thought that this impact “may however be counterbalanced, at least to some extent, by a reduction in claim numbers following the whiplash reforms.” However, the Working Group did not consider it possible to anticipate precisely how these factors would play out until the reforms were introduced and the market had had a chance to react to them.²⁰⁸

125. The Impact Assessment (IA) that accompanied the Ministry of Justice consultation paper in November 2016 recognised that BTE providers would face higher costs as legal fees would no longer be recoverable from defendant insurers. These costs would be passed onto BTE premium holders in the form of higher premiums.²⁰⁹ The IA estimated that 70% of RTA claimants currently have BTE insurance and that this proportion would remain the same after the reforms:

Future take up is uncertain; on the one hand, demand may go up because claimants will have to pay the legal fees for any claims they make, but on the other hand premiums could go up (to cover the increased costs to BTE insurers) which may make demand go down. It is therefore reasonable to assume take up will remain the same.²¹⁰

Based on evidence that it received, the MoJ's final stage Impact Assessment assumed that 50% of claimants, rather than 70% as previously assumed, currently have BTE-funded representation. Once again an assumption was made that this proportion would remain the same after the reforms are introduced.²¹¹ The IA acknowledges that BTE may become

203 [CLM0021](#), [CLM0010](#)

204 Similar concerns were expressed in evidence to our predecessor's inquiry, including by Ageas Insurance [[WHO0058](#)], Auxilis Ltd [[WHP0030](#)] and True Solicitors [[WHP0021](#)].

205 This was a finding of the CJC report - see footnote 208 below

206 Access to Justice [[CLM0008](#)], Minister Law [[CLM0018](#)], True Solicitors LLP [[CLM0036](#)]. The introduction of the FCA's ban on BTE insurance as an opt-out purchase was seen as an additional factor.

207 Including Shirley Denyer, FOIL [[Q32](#)]; DWF Law [[CLM0031](#)]; DAC Beachcroft [[CLM0016](#)]; National Accident Helpline [[CLM0007](#)].

208 [The law and practicalities of BTE insurance: an information study](#). Civil Justice Council, November 2017. Page 150

209 [Reforming the Soft Tissue Injury \('whiplash'\) Claims Process: consultation stage Impact Assessment](#). Ministry of Justice, November 2016. Paragraphs 2.112 and 2.113

210 *Ibid*, page 40

211 [Whiplash impact assessment \(Civil Liability Bill: reforming the soft Tissue injury \('whiplash'\) claims process\)](#). Ministry of Justice, March 2018. Paragraph 5.47

more expensive under the proposals, but “we do not believe it would be prohibitively so, given our understanding of the profitable nature of the product and insurers’ view that the product will likely adapt.”²¹²

126. We conclude that the Government has under-estimated both the role of BTE insurance in securing legal representation for PI claimants, and the impact of raising the small claims limit on BTE providers’ current business model, with potentially adverse consequences for access to justice.

Impact on claims management companies

127. Several witnesses suggested that, if BTE insurance were to become too costly, claimants would turn to claims management companies (CMCs) for assistance in bringing PI claims. Some drew an analogy with CMCs’ history of involvement in Payment Protection Insurance [PPI] claims.^{213,214} Keoghs thought that CMCs would have a greater potential market to target, pointing out that “history teaches us that in a very simple PPI claims process, more than 85% of claimants used a CMC”²¹⁵ and Carpenters thought that CMCs would be one of the main beneficiaries of raising the small claims limit.²¹⁶ Similar views were expressed by Jason Tripp from Coplus, who told us:

If we take some learning from the experience in PPI claims, it has always been the case that individuals can bring their own claims, yet they continue to use CMCs. I think that will be the likely outcome were you to remove legal assistance from the majority of personal injury claims. They will turn to CMCs because it is just easier.²¹⁷

The written evidence from Coplus explained that, after the PI reforms, CMCs’ income stream would be switched from the legal costs generated by solicitors in successful cases (that is, costs paid by the defendant), to deductions from customers’ compensation. Steve Mitchell from Usdaw thought that CMCs were “inherently flawed” because, unlike solicitors, they are not required to represent the best interests of their clients.²¹⁸ FOIL referred to CMCs’ “dexterity in the market”, allowing them to find new streams of income as others dried up;²¹⁹ and RSA Insurance pointed out that a CMC can take any agreed percentage of a client’s damages; “it is not uncommon to see CMCs charge 35% to 40% of sums recovered in PPI claims.”²²⁰ Based on existing concerns about the conduct of CMCs, the National Accident Helpline, a provider of personal injury advice and support, speculated that raising the small claims limit could create a risk that “unscrupulous CMCs

212 Ibid, paragraph 5.46`

213 Including National Accident Helpline [CLM0007]; Forum of Insurance Lawyers [CLM0033]

214 Payment protection insurance (PPI) is a product that enables consumers to ensure repayment of credit if the borrower dies, becomes ill or disabled, loses a job, or faces other adverse circumstances. As many as 64 million PPI policies have been sold in the UK, mostly between 1990 and 2010. The Financial Conduct Authority has found that many PPI policies were mis-sold, for example because consumers did not have the product explained to them or were falsely told that it was compulsory.

215 [CLM0011](#)

216 [CLM0021](#)

217 [Q30](#)

218 [Q34](#)

219 [CLM003](#)

220 [CLM0024](#). See also [Complaints in focus: Claims management companies. Legal Ombudsman, November 2015](#)

would seek to exploit the absence of legal advice from lawyers, increasing the number of litigants in person, rogue marketing practices and spurious claims.” The organisation expanded on the type of tactics that it thought “rogue” CMCs might use:

...deluging the system with high volumes of claims, abandoning more difficult cases and exploiting maximum revenue from straightforward claims. It will become uneconomical for CMCs and lawyers alike to pursue more difficult claims (e.g. where liability is denied or where the injury or losses are not straightforward), within the small claims track. Such adverse consequences are contrary to the interests of injured people, insurers and the legal system.²²¹

The British Insurance Brokers’ Association (BIBA) went further, suggesting that too often CMCs had been “enablers of fraud” whilst adding little to the claims process. BIBA also drew attention to reports that some CMCs had “evaded punishment” by closing the company down, only to open a “phoenix” company shortly afterwards.²²²

128. On the other hand, witnesses accepted that some CMCs operated to better standards. Nigel Teasdale from FOIL told us that he “[did] not think we should necessarily tar every CMC with the same brush”,²²³ a point accepted by Jason Tripp, who said:

There are many fine, large, nationally operating CMCs that provide legal services under the current rules to people without before-the-event legal expenses insurance. The problems are confined to cold calling and the promotion and exaggeration of certain claims.²²⁴

When we asked the Minister, Lord Keen of Elie QC, whether it might not be preferable to support the BTE market rather than CMCs, he responded:

I would not make that binary judgment. Good CMCs look after their customers, and if the claims management companies move into this market it could be beneficial. Of course, we are extremely concerned about the behaviour of some rogue CMCs, and we are increasing regulation in that area. But there is no reason to suppose that substituting CMCs for BTE insurance is a bad thing.²²⁵

129. As has been noted above, the Financial Guidance and Claims Act will transfer responsibility for regulating CMCs to the Financial Conduct Authority (FCA), which is expected to pro-actively re-authorise every CMC and impose a “fit and proper persons” test on owners. Section 28 of the Act gives power to the FCA to make rules to provide “an appropriate degree of protection against excessive charges” by CMCs, and Section 29 provides for an interim cap of 20% on fees that CMCs can charge claimants for their services in relation to PPI claims in the period before transfer of regulation to the FCA. Many witnesses supported the introduction of caps on CMC charges for PI claims.²²⁶ Lord Keen explained:

221 [CLM0007](#)

222 [CLM0022](#)

223 [Q35](#)

224 [Q37](#)

225 [Q100](#)

226 Including Aviva [[CLM0025](#)]; DAC Beachcroft [[CLM0016](#)]; Keoghs [[CLM0011](#)]; RSA Insurance Group [[CLM0024](#)]; Zurich Insurance Plc [[CLM0009](#)]

We want to see how the changes with regard to road traffic injury cases and personal injury cases bed in before we decide whether or not to encourage the idea of such a limit being introduced. The Financial Conduct Authority would be in a position to do that [...]²²⁷

130. We welcome the reforms to the regulation of CMCs in the Financial Guidance and Claims Act, which will mitigate the risk of any unscrupulous activity on the part of CMCs if the small claims limit is changed. Evidence to our inquiry suggests that a cap on the proportion of compensation that CMCs can levy from a claimant in a PI claims is strongly desirable. We recommend that the Financial Conduct Authority impose a cap of no less than 20% and that this should be done as soon as possible after it assumes its new role as regulator of claims management services.

Cold calling

131. Another area of concern is cold calling by CMCs. Nuisance calls in general are covered by the Privacy and Electronic Communications Regulations 2003 which are enforced by the Information Commissioner's Office. The Telephone Preference Service operates a central service enabling individuals to register their objection to receiving direct marketing calls. A Parliamentary Question in 2015 to the Secretary of State for Culture, Media and Sport about the scope of the Telephone Preference Service elicited the following answer:

[The Regulations] already prevent international nuisance marketing calls being made on behalf of UK companies. Callers are legally required to ensure they do not call a number that is registered with the Telephone Preference Service (TPS). UK consumers are also protected if they have previously notified the caller that they do not wish to receive such calls. Callers can be subject to fines of up to £500,000 for breaching the regulations. International marketing calls on behalf of non-UK companies are outside of the UK's jurisdiction.²²⁸

One of the "Frequently Asked Questions" (FAQs) on the TPS website concerning overseas calls goes further, explaining that the TPS makes its file available to overseas based companies under licence, so they know whom not to telephone, but many overseas companies who telephone the UK on their own account from overseas do so to avoid legal and self-regulatory restrictions.²²⁹

132. The problem of cold calling by CMCs was identified by witnesses, including the National Accident Helpline²³⁰ and Steve Mitchell from Usdaw, who feared that the reforms would lead to "an epidemic" of this practice.²³¹ Concerns were also raised in evidence to our predecessor Committee, including by Neil Sugarman, then President of

227 [Q108](#)

228 [PQ219749, 9 January 2015](#)

229 [Telephone Preference Service, Frequently Asked Questions: "Does registration with the TPS stop calls from overseas?"](#)

230 [CLM0007](#)

231 [Q37](#)

the Association of Personal Injury Lawyers.²³² Although Lord Keen confirmed that a ban on cold calling was included in the Financial Guidance and Claims Bill, he explained that the Government did not have a complete answer to this problem:

Actually, effectively stopping cold calling is an immensely complex process, because cold calling nowadays is carried out by unregulated entities from outwith the United Kingdom [...] They then spoof their telephone numbers—as it is termed—so that it is impossible to trace the origins of the call. Therefore, it is a problem that we are looking at and constantly monitoring. We are legislating to try to control it.²³³

133. We conclude that the Government’s current package of reforms creates a risk of increasing cold calling by, or on behalf of, CMCs; we welcome the restrictions on cold calling in the Financial Guidance and Claims Act, but believe they do not go far enough and that an outright ban should be introduced. *In the meantime, we recommend that the Government monitor the effectiveness of the proposed restrictions, particularly on calls from overseas, and that technical remedies are urgently explored to tackle any loopholes that might be exploited by overseas operators to circumvent the restrictions; we ask that the Government report to us on progress with this within a year of the proposed restrictions being implemented.*

Paid McKenzie friends

134. A McKenzie friend is someone who assists a litigant in person (LIP) in a court of law in England and Wales; the person does not need to be legally qualified. This assistance may be in the form of moral support, or—with the court’s permission—may involve conducting the litigation or acting as an advocate on the LIP’s behalf, either with or without payment. At the court’s discretion, a McKenzie Friend may be granted permission to address the court to help the LIP present their case; it has become increasingly common for such permission to be granted. A noted increase in the number of ‘professional McKenzie friends’, who provide their services to LIPs on a fee-paid basis, was the focus of a consultation conducted by the Lord Chief Justice in 2016,²³⁴ which attracted a large number of responses. The judiciary’s most recent update on this project, in September 2017, explained that the Judicial Executive Board had decided to establish a further judicial working group to review the original proposals in the consultation paper in the light of consultation responses received.²³⁵

135. Witnesses from the insurance and claimant sectors expressed fears that an increased role for CMCs in relation to smaller PI claims might lead to an increase in the use of paid McKenzie friends in the PI sector.²³⁶ The Association of British Insurers summarised its own response to the Lord Chief Justice’s 2016 consultation:

232 [Justice Committee Oral evidence: Government consultation on soft tissue injury claims, HC 922, Tuesday 7 February 2017. Q3](#)

233 [Q106](#)

234 [Reforming the courts’ approach to McKenzie Friends: A Consultation](#). Lord Chief Justice of England and Wales, February 2016.

235 <https://www.judiciary.gov.uk/publications/consultation-reforming-the-courts-approach-to-mckenzie-friends/>

236 Including Motor Accident Solicitors’ Society [[CLM0017](#)]; DWF Solicitors [[CLM0031](#)]; Forum of Insurance Lawyers [[CLM0033](#)].

...we set out our concerns about the potential for McKenzie Friends to receive payments for services to consumers despite the fact that they are unregulated, lack any requirement for indemnity insurance or even training, and have no applicable professional standards for the protection of consumers. McKenzie Friends should also be subject either to the same fee caps as lawyers providing similar services to consumers, or they should be prevented from charging for their services.

The Motor Accident Solicitors Society questioned “how an unqualified individual can provide the same standard of advice and support [...] without having any legal qualification, professional insurance or significant experience of handling claims.” The Society was also aware of anecdotal evidence that McKenzie friends were being hired on a self-employed basis by CMCs ahead of the proposed reforms.²³⁷ When we put these concerns to Lord Keen, he responded:

It is an interesting point. Of course, McKenzie friends can play an important role in helping and supporting litigants in person. The judiciary are currently looking at this, as I understand it, and the judiciary can control the level of engagement that McKenzie friends have with the court [...] There is room for abuse—let’s be clear. Effectively you can have, as you say, a paid McKenzie friend who is, to all intents and purposes, operating as a claims manager without regulation.²³⁸

136. We conclude that, as a result of changing the small claims limit for PI claims, there is a real risk of paid McKenzie friends being used by CMCs to sidestep the regulatory requirements that apply to advocacy provided by members of the legal professions. We recommend that the senior judiciary seek to conclude its examination of this issue as soon as possible.

The impact of raising the small claims limit on claimant lawyers

137. The MoJ’s consultation stage Impact Assessment did not consider the impact of the package of PI reforms on claimant lawyers within its Net Present Value (NPV) analysis—something that attracted comment from the Regulatory Policy Committee, who considered that this should be justified.²³⁹ The MoJ’s 2018 Impact Assessment recognised that claimant lawyers are among the groups likely to experience changes in demand as a result of the proposed reforms and it estimated that they could experience a total loss in legal fee income of around £80 million per annum. However, these estimates are not included in the NPV calculations because an assumption is made “that those affected will replace the lost work with other legal work of an equivalent economic value.”²⁴⁰ This assumption is not justified, however.

138. Access to Justice, a campaign group, drew our attention to a report that it had commissioned from the consultancy Capital Economics, which concluded that the PI legal sector provides an estimated 28,000 full time jobs, with the greatest concentration in the North West of England; an additional 40,000 jobs are supported by the spending of the

237 [CLM0017](#)

238 [Q102](#)

239 [Reforming the soft tissue injury \(whiplash\) claims process. Regulatory Policy Committee, 13 December 2016.](#) NPV is the difference between the present value of a stream of costs and a stream of benefits.

240 Paragraph 5.26

PI legal sector on its suppliers and the spending of its employees on goods and services. Data from the survey indicated that 46% of PI legal firms derive more than 60% of their income from PI cases with a value of less than £5,000. According to the report, the loss of PI activity will push profit margins in many legal firms to unsustainable levels, with 70% of jobs related to PI cases at high risk of being lost.²⁴¹ Evidence to our predecessor's inquiry from a number of solicitors' firms raised similar concerns about the risk to jobs in the PI legal sector arising from the reforms, particularly in the North West.²⁴² The law firm Canter Levin and Berg Ltd observed:

The notion that law firms will find other areas in which to practice is nonsensical as while everyone can retrain, the market for other types of legal advice will not expand simply because the personal injury market has been culled.²⁴³

In addition, Minster Law told us that a growing number of large and smaller claimant law firms was already going out of business.

139. We consider it regrettable that, at the consultation stage of these proposals, the Ministry of Justice concluded that it was not relevant to estimate the potentially substantial impact on the PI legal sector, particularly in the North West. It is also unclear to us why the Ministry's final stage Impact Assessment has assumed that the sector will be able to replace PI legal work with work of equivalent value. While our inquiry did not focus on this issue, we nonetheless draw the Ministry's attention to the impact of the reforms on the PI legal sector and the potential for this sector to replace PI work that it loses, both of which we consider to be important questions.

241 [Economic value of personal injury claims - a report for Access to Justice](#). Capital Economics, January 2017.

242 Including McHale & Co Solicitors [[WHP0024](#)]; Thorneycroft Solicitors [[WHP0040](#)]; Nicola Dickinson [[WHP0041](#)]; Keith Teare, solicitor [[WHP0014](#)].

243 [WHP0064](#)

7 Concluding remarks

140. Access to justice, including the constitutional right of access to the courts, is a cornerstone of the rule of law; this principle was placed beyond doubt by the Supreme Court in its judgment in the *Unison* case on Employment Tribunal (ET) fees.²⁴⁴ As the Supreme Court pointed out, society is governed by law, and courts exist to ensure that laws, including the common law created by the courts themselves, are applied and enforced; the courts do not merely provide a public service like any other, and people must in principle have unimpeded access to them. The Court observed that the knowledge that rights and obligations would be upheld by the courts underpins everyday economic and social relations—even if, in practice, disputes are often resolved without judicial involvement.²⁴⁵

141. Many submissions to our inquiry argued that the Government’s proposals for increasing the small claims limit would deter meritorious PI claims of lower value and argued that this raised significant access to justice concerns; some drew attention to the *Unison* judgment. Witnesses pointed out that unrepresented claimants would face an uneven playing field, litigating against defendant insurers with experienced legal representatives, and struggling to overcome pre-trial barriers such as obtaining—and paying for—expert evidence to resolve liability and causation disputes. When responding to the Ministry of Justice’s 2016 consultation on these reforms, the Civil Executive Team, who provide judicial oversight of civil justice reforms, communicated their own concerns about “serious access to justice issues for those with genuine but modest personal injury claims.”

142. We share these concerns about the access to justice implications of increasing the small claims limit for PI, including the financial barriers that claimants might face. While we recognise the laudable efforts of the Ministry of Justice to develop an electronic platform supplemented by guidance and support to compensate for claimants’ anticipated lack of legal representation, we conclude that this ambitious project risks falling short of creating a claims process that guarantees “unimpeded access to the courts”, as indicated by the Supreme Court’s judgment in the *Unison* case. We consider this to be an important point of principle on which the Government should reflect; reform should not proceed unless the Government can explain how it will make sure that access to justice is not affected.

244 [R \(on the application of UNISON\) \(Appellant\) v Lord Chancellor \(Respondent\) \[2017\] UKSC 51](#)

245 [Ibid](#) paragraph 68

Conclusions and recommendations

Reforms to personal injury claim processes

1. Whether or not the number of RTA PI claims—in particular for soft tissue injuries—is reasonable falls outside the scope of this inquiry and so we draw no conclusion on this question, save to note the marked divergence between the views of the insurance and claimant sectors and the problems of quantification owing to difficulties in the medical assessment of whiplash. We also note the fall in the overall number of motor liability claims in the past few years. (Paragraph 20)
2. We endorse the steps taken by the Government and the insurance industry to tackle insurance fraud. Nonetheless we are troubled by the absence of reliable data on fraudulent claims and we find surprising the wide definition of suspected fraud that is used to collate the ABI's statistics. In particular, the failure by the ABI to break down their figures by the nature and type of claim, and to isolate RTA PI claims broken down by type of road user, is a significant and regrettable omission that weakens their evidence base. *We recommend that, in the interests of accuracy, the Government work with the ABI to develop a more nuanced approach to avoid conflating innocent—if unexpected—consumer behaviour with fraudulent activity.* (Paragraph 30)
3. Potential savings to motor insurance customers are central to the policy justification for these reforms, but we conclude that the Government's estimate of the pass-through rate may be over-optimistic, given the lack of robust evidence and the unenforceable nature of insurers' promises to reduce premiums. *We recommend that, if the reforms are implemented, the Government work with the ABI and either the Prudential Regulation Authority or 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.* (Paragraph 42)

Setting the small claims limit

4. We agree that the small claims limit for PI should be increased to reflect inflation. *We recommend that April 1999 be used as the starting point for calculations, this being the date of the most recent adjustment to the limit, and that CPI—now the Government's preferred measure—should be used to calculate inflation; our calculations suggest that an inflationary increase to March 2018 would be in the region of £1,454, indicating that £1,500 might be appropriate in April 2019.* (Paragraph 47)

The impact of raising the small claims limit

5. We received compelling evidence of the obstacles that would be faced by self-represented claimants navigating the current personal injury claims process in the Small Claims track, regardless of the value of their claim, and we conclude that this would represent an unacceptable barrier to access to justice. (Paragraph 65)

6. While fraudulent and exaggerated claims must be prevented, given that the common law right to compensation for negligence applies regardless of the value of the claim, we conclude that more convincing justification is needed for the Government's policy of reducing a large proportion of claims, including for non-whiplash RTA injuries, by means of raising the small claims limit, simply because the claims are minor. *We recommend that the Government does not proceed with plans to increase the limit for all RTA PI claims to £5,000.* (Paragraph 66)
7. Taking into account the evidence submitted to this inquiry and to that of our predecessor, we conclude that there is no policy justification for including vulnerable road users within the reforms proposed for other RTA PI claimants. *We recommend that vulnerable road users be excluded from any higher small claims limit that is imposed on other RTA PI claims.* (Paragraph 72)
8. We are deeply unimpressed by the Ministry of Justice's inability to quantify the potential impact of raising to £2,000 the small claims limit for employer liability and public liability claims. *Given the potential complexity of these claims for self-represented claimants and evidence of the role of litigation in maintaining safe and healthy workplaces, we recommend that they continue to be subject to the lowest small claims threshold—which we have recommended should be set at around £1,500 to take account of inflation since 1999.* (Paragraph 81)
9. We welcome the decision to bring claims for holiday sickness within the fixed recoverable costs regime, as this would provide consistency with other PI claims. *We recommend that the Government evaluate the impact of the new cost rules after 12 months and consider the evidence received in response to its recent consultation before consulting further on whether any additional action is needed to curb the number of fraudulent holiday sickness claims, to ensure that any proposed measures are proportionate to the problems that may remain.* (Paragraph 85)
10. We conclude that the senior judiciary has reasonable concerns about the consequences for judges, and for the courts system, of increasing the small claims limit and we do not consider that “wait and see” is an adequate Government response to these concerns. *If the small claims limit is to be increased by more than the rate of inflation, we recommend that the Ministry of Justice and HM Courts and Tribunal Service work with the senior judiciary to agree in advance a framework for monitoring the impact on the judiciary and the courts, so that monitoring can commence immediately after introduction of the new limit[s] and urgent steps taken to address any adverse impact identified.* (Paragraph 91)
11. *We further recommend that the Ministry of Justice ask the Civil Procedure Rule Committee to consider whether the Civil Procedure Rules need to be changed to facilitate applications by self-represented claimants on the Small Claims track to have their case transferred to the Fast track.* (Paragraph 92)

Implementing the small claims reforms

12. We conclude that it was illogical for the Government to propose further reforms to the PI claims process before its review of Part 2 of the LASPO Act has considered the effectiveness of the earlier reforms. *Before introducing further changes, we recommend that the Ministry of Justice consider the learning from its review of Part 2 of LASPO, once completed, to determine whether any adjustments should be made to the current package of reforms, including proposals for the small claims limit.* (Paragraph 99)
13. We commend the decision of the Ministry of Justice to work with expert stakeholders in developing an electronic platform to handle the pre-action stages of lower value PI claims, and its commitment to piloting the new IT system that this platform will require. However, in the light of the evidence we received, we consider that the Ministry should take a more realistic approach to the technical challenges that may be faced in developing a fully functional electronic platform that has been properly tested with a wide range of users. *We therefore recommend that the national roll-out of the new platform—and hence any changes to the small claims limit for PI claims—be delayed at least a further year until April 2020, and that the new claims process, including the support and guidance available to claimants, be subject to independent evaluation after three years.* We conclude that the complexity of employer liability and public liability claims distinguishes them from RTA and that it is therefore not appropriate to bring them within the scope of the new online platform. (Paragraph 114)
14. We remain to be convinced that the electronic platform will be capable of overcoming the underlying inequality of arms between professionally represented insurers and self-represented claimants, particularly with regard to disputes on liability and quantum (the amount of compensation). Similarly, we conclude that the Government has not done enough to explain how claimants of limited means with legitimate claims are expected to finance court fees and expert reports. *We therefore recommend that the Ministry give a central focus to these issues during the pilot phase of the project, both to secure financial help for claimants who cannot meet the cost of disbursements and to ensure that online decision trees give effective support to claimants pursuing valid claims in the face of defendant resistance.* (Paragraph 115)
15. Notwithstanding the Ministry of Justice's welcome commitment to overcoming digital exclusion, we remain concerned about the potential deterrent effect on particular population groups of introducing online-only applications, with the risk of introducing a discriminatory element into the pattern of claims. *To avoid discriminatory impact, we recommend that the Ministry closely monitor the effect on different groups of claimants during the pilot phase of the electronic platform, and take steps to mitigate any adverse impacts that it identifies, for instance by providing targeted face-to-face support.* (Paragraph 116)

16. We consider the availability of support and guidance, including face-to-face advice, is central to the success of the electronic platform for lower value PI claims and we welcome the Minister's reassurance that this is the focus of a dedicated working group. *The Ministry should commit to producing, as soon as practicably possible after the working group has reported, a stage by stage plan, with costings, for how it will fund and implement support and guidance to assist individuals to access the new platform, including any face-to-face support that the group recommends. This plan should be sent to us so that we can consider whether it meets the recommendations of the working group and the needs of users.* (Paragraph 117)

Impact on organisations assisting claimants

17. We conclude that the Government has under-estimated both the role of BTE insurance in securing legal representation for PI claimants, and the impact of raising the small claims limit on BTE providers' current business model, with potentially adverse consequences for access to justice. (Paragraph 126)
18. We welcome the reforms to the regulation of CMCs in the Financial Guidance and Claims Act, which will mitigate the risk of any unscrupulous activity on the part of CMCs if the small claims limit is changed. Evidence to our inquiry suggests that a cap on the proportion of compensation that CMCs can levy from a claimant in a PI claims is strongly desirable. *We recommend that the Financial Conduct Authority impose a cap of no less than 20% and that this should be done as soon as possible after it assumes its new role as regulator of claims management services.* (Paragraph 130)
19. We conclude that the Government's current package of reforms creates a risk of increasing cold calling by, or on behalf of, CMCs; we welcome the restrictions on cold calling in the Financial Guidance and Claims Act, but believe they do not go far enough and that an outright ban should be introduced. *In the meantime, we recommend that the Government monitor the effectiveness of the proposed restrictions, particularly on calls from overseas, and that technical remedies are urgently explored to tackle any loopholes that might be exploited by overseas operators to circumvent the restrictions; we ask that the Government report to us on progress with this within a year of the proposed restrictions being implemented.* (Paragraph 133)
20. We conclude that, as a result of changing the small claims limit for PI claims, there is a real risk of paid McKenzie friends being used by CMCs to sidestep the regulatory requirements that apply to advocacy provided by members of the legal professions. *We recommend that the senior judiciary seek to conclude its examination of this issue as soon as possible.* (Paragraph 136)
21. We consider it regrettable that, at the consultation stage of these proposals, the Ministry of Justice concluded that it was not relevant to estimate the potentially substantial impact on the PI legal sector, particularly in the North West. It is also unclear to us why the Ministry's final stage Impact Assessment has assumed that the sector will be able to replace PI legal work with work of equivalent value. While our inquiry did not focus on this issue, we nonetheless draw the Ministry's attention to the impact of the reforms on the PI legal sector and the potential for this sector to replace PI work that it loses, both of which we consider to be important questions. (Paragraph 139)

Concluding remarks

22. We share concerns about the access to justice implications of increasing the small claims limit for PI, including the financial barriers that claimants might face. While we recognise the laudable efforts of the Ministry of Justice to develop an electronic platform supplemented by guidance and support to compensate for claimants' anticipated lack of legal representation, we conclude that this ambitious project risks falling short of creating a claims process that guarantees "unimpeded access to the courts", as indicated by the Supreme Court's judgment in the Unison case. We consider this to be an important point of principle on which the Government should reflect; reform should not proceed unless the Government can explain how it will make sure that access to justice is not affected. (Paragraph 142)

Annex: Background to the current reforms

Reforms to the personal injury claims process

- 1) Over the past few years, several measures have been introduced to contain the costs of PI claims and to regulate the PI claims market, particularly RTA claims involving soft tissue injuries, or “whiplash”. Most of these reforms have focused on the activities of claimant representatives.
- 2) The so-called Jackson reforms to civil litigation costs were brought into effect by Part 2 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. Proposed by Lord Justice Jackson in his review of civil litigation costs, with effect from 1 April 2013 these reforms abolished the successful claimant’s right to recover so called “after the event” (ATE) insurance premiums and success fees payable to the claimant’s lawyer under a conditional fee agreement (CFA);²⁴⁶ these costs had previously been paid by the losing defendant in addition to damages due under the claim itself.
- 3) To offset the impact of the additional costs to claimants arising from these reforms, simultaneous changes to the Civil Procedure rules introduced qualified one-way costs shifting (QOCS) for PI cases. Under QOCS, an unsuccessful PI claimant generally does not have to pay the defendant’s legal costs, thus reducing the need for ATE insurance. From the same date, the courts introduced a 10% increase in general damages for non-pecuniary loss—that is, pain and suffering, loss of amenity, physical inconvenience or distress.²⁴⁷
- 4) Part 2 of LASPO also introduced a ban on the common practice of solicitors paying referral fees to third parties—primarily claims management companies—in exchange for personal injury claims referred to them. The ban is enforced by regulators, including the Solicitors Regulation Authority, the Financial Conduct Authority and the Claims Management Regulator.
- 5) In 2010, a fixed recoverable costs regime was introduced for RTA PI claims up to the value of £10,000, together with a requirement for documents relating to such claims to be transferred between the parties by means of a secure electronic portal which is available only to registered users—that is, insurance companies and claimant representatives. As part of the Jackson reforms, the Civil Procedure Rules were amended to bring RTA claims up to the value of £25,000 notified on or after 31 July 2013 within the portal regime, along with employer’s liability (EL) or public liability (PL) claims up to this value. At the same time, there was a corresponding extension of the fixed recoverable costs regime.

246 Conditional Fee Agreements (CFAs) are a form of “no win, no fee” agreement, which allow a solicitor to take a case on the understanding that if the case is lost the client will not be charged. However, if the case is successful, the solicitor can charge a success fee on top of the normal fee. CFAs were modified by the Access to Justice Act 1999 to allow the solicitor’s success fee to be recovered from the losing side. The same Act removed most personal injury cases from the scope of civil legal aid.

247 The Court of Appeal in [Simmons v Castle \[2012\] EWCA Civ 1039](#) declared that: “...with effect from 1 April 2013, the proper level of general damages in all civil claims for (i) pain and suffering, (ii) loss of amenity, (iii) physical inconvenience and discomfort, (iv) social discredit, or (v) mental distress, will be 10% higher than previously...”

6) Section 57 of the Criminal Justice and Courts Act 2015, which took effect on 13 April 2015, requires a court to dismiss the whole of a personal injury claim if it is satisfied, on the balance of probabilities, that the claimant has been “fundamentally dishonest” in relation to the primary claim or a related claim—unless the claimant would suffer substantial injustice if the claim were dismissed. “Fundamental dishonesty” is not defined by the legislation, but one example might be significant misrepresentation of the extent of medical symptoms.

7) From 6 April 2015, amendments to the Pre-Action Protocol for low value PI claims in RTA cases required soft tissue injury claims to be supported by a fixed cost medical report commissioned via the MedCo Portal from one of a randomly generated list of medical experts or medical reporting organisations. The Protocol contains the following definition of soft tissue injury:

...a claim brought by an occupant of a motor vehicle where the significant physical injury caused is a soft tissue injury and includes claims where there is a minor psychological injury secondary in significance to the physical injury.

The MedCo portal was introduced to remove the possibility of any financial link between those making a claim and those supporting it. MedCo—an industry-owned not for profit company—operates an accreditation scheme for medical experts and medical reporting organisations as well as operating the MedCo portal.

8) A further amendment to the Pre-Action Protocol provides for solicitors’ firms, with client consent, to check their client’s records held on what is known as the askCUE PI database. These records relate to personal injury/industrial illness incidents reported to insurance companies in the past five years, whether or not giving rise to a PI claim, which are held on the insurance industry’s Claims and Underwriting Exchange (CUE), a central database. Claims notified through the RTA portal from 1 June 2015 must contain a search reference number generated by the askCUE PI service.

The Small Claims track

9) Under the Civil Procedure Rules, all defended civil claims are allocated to one of three tracks: the Multi-track, the Fast track or the Small Claims track. When allocating a claim to a particular track, the court can take into account factors such as the views of the parties and the nature and complexity of the claim. Generally, however, the court distinguishes between cases on the basis of monetary value.

10) In general, cases allocated to the Small Claims track are those with a financial value of no more than £10,000. For personal injury (PI), there is a lower small claims limit of £1,000 that applies to damages for pain, suffering and loss of amenity (PSLA); additional damages may be recovered, such as for loss of earnings, damage to property and medical expenses, although to remain on the Small Claims track the total value of the whole

claim must not exceed £10,000.²⁴⁸ Claims allocated to the Fast track are generally those with a value over the small claims limit but no more than £25,000. The Multi-track is predominantly for claims exceeding £25,000.²⁴⁹

11) The Small Claims procedure is designed to provide an informal environment for the resolution of straightforward, low value disputes, where strict rules of evidence do not apply; cases are often resolved without a hearing, on the papers alone. In contrast to the costs rules in Fast track and Multi-track cases, which generally allow the successful party to recover their costs (including costs of legal representation) from the losing party, the Small Claims track restricts the costs that can be recovered to the following:

- fixed costs involved in issuing the claim
- loss of earnings and travel costs of the party or witnesses attending the hearing (up to a limit of £95 per day)
- expert's fees (up to £750 per expert)
- court fees.²⁵⁰

History of the small claims limit

12) The small claims procedure was introduced in 1973. The limit for small claims was set at £1,000 in 1991; in 1996, for most small claims²⁵¹ the limit was raised to £3,000 although for PI it remained at £1,000. When the general small claims limit was again increased (to £5,000) in April 1999, a Government review of the limit for PI concluded that £1,000 should only apply to general damages for pain, suffering and loss of amenity (PSLA) rather than to the value of the entire claim, thus effectively raising the limit for claims involving special damages (that is, damages for financial loss). In July 2008, following a consultation by its predecessor department (the Department for Constitutional Affairs),²⁵² the Ministry of Justice published a post-consultation report²⁵³ which noted the view of the majority of respondents that the Small Claims track limit for all categories of claim should remain unchanged.

13) Lord Justice Jackson's comprehensive review of civil litigation costs concluded, in 2009, that the small claims limit for PI should stay at £1,000 "until such time as inflation warrants an increase to £1,500" to avoid potential confusion arising from a series of small increases.²⁵⁴ A further consultation by the Coalition Government led to the general small claims limit being increased from £5,000 to £10,000 from April 2013, but no changes were made to the £1,000 limits for PI and housing disrepair.²⁵⁵

248 Housing disrepair cases are also allocated to the Small Claims track where the cost of works and the value of any damages claimed is not more than £1,000.

249 [Rule 26 Civil Procedure Rules](#)

250 [Rule 27 Civil Procedure Rules - Small Claims track](#) and [Practice Direction 27 - Small Claims track](#)

251 Apart from claims for housing disrepair - see footnote 248 above

252 [Department for Constitutional Affairs: Case track limits and the claims process for personal injury claims \[CP 8/07\]](#), April 2007

253 CP(R) 8/07

254 [Review of Civil Litigation Costs: Final Report, December 2009, Paragraph 3.3](#)

255 [Solving disputes in the county courts: creating a simpler, quicker and more proportionate system A consultation on reforming civil justice in England and Wales: The Government Response](#), February 2012

14) Only a few months later, the Coalition Government again consulted on the small claims limit. In December 2012, it sought views on increasing it for RTA whiplash claims to £5,000,²⁵⁶ asserting that many small value whiplash claims were relatively straightforward and could be resolved within the Small Claims track. It also suggested that this change would provide a better framework for the challenge of fraudulent or exaggerated claims. However, the consultation document recognised potential risks arising from the proposal:

- Reduced access to justice resulting from injured parties either not claiming in the first place or not challenging the rejection of a valid claim; this could be an unintended consequence of claimants being less likely to obtain legal representation.
- Inequality of arms between self-represented claimants and professionally represented defendants, creating a risk that claims would not be presented with equal skill.
- An increased risk of unrepresented individuals with valid claims settling for less than the amount which would provide fair compensation for the injury they suffered.

15) In the event, the Coalition Government opted not to change the limit; its response²⁵⁷ took into account the consultation responses it received, together with the House of Commons Transport Committee's report on its inquiry into the cost of motor insurance: whiplash.²⁵⁸ The Committee had expressed surprise about there being “no authoritative data publicly available about the prevalence of fraudulent or exaggerated claims for whiplash injuries and no consensus about what constitutes fraud”. In relation to raising the small claims limit, the Committee on balance had not supported the proposal, concluding that “access to justice is likely to be impaired, particularly for people who do not feel confident to represent themselves in what will seem to some to be a complex and intimidating process.”

16) The Transport Committee returned to this topic the following year in a further report²⁵⁹ which welcomed the Government's willingness to change its position on the small claims limit in the light of the arguments put to it, and noted its intention to develop safeguards for genuine claimants. The Committee recommended that the Government “inform us of what work is underway or planned to develop adequate safeguards to protect claimants from adverse consequences of raising the threshold for using the small claims procedure for personal injury cases.”²⁶⁰

256 [Reducing the number and costs of whiplash claims: A consultation on arrangements concerning whiplash injuries in England and Wales, Ministry of Justice, December 2012](#)

257 [Reducing the number and costs of whiplash claims: A Government response to consultation on arrangements concerning whiplash injuries in England and Wales/Cost of motor insurance – whiplash: A Government response to the House of Commons Transport Committee. Ministry of Justice, October 2013](#)

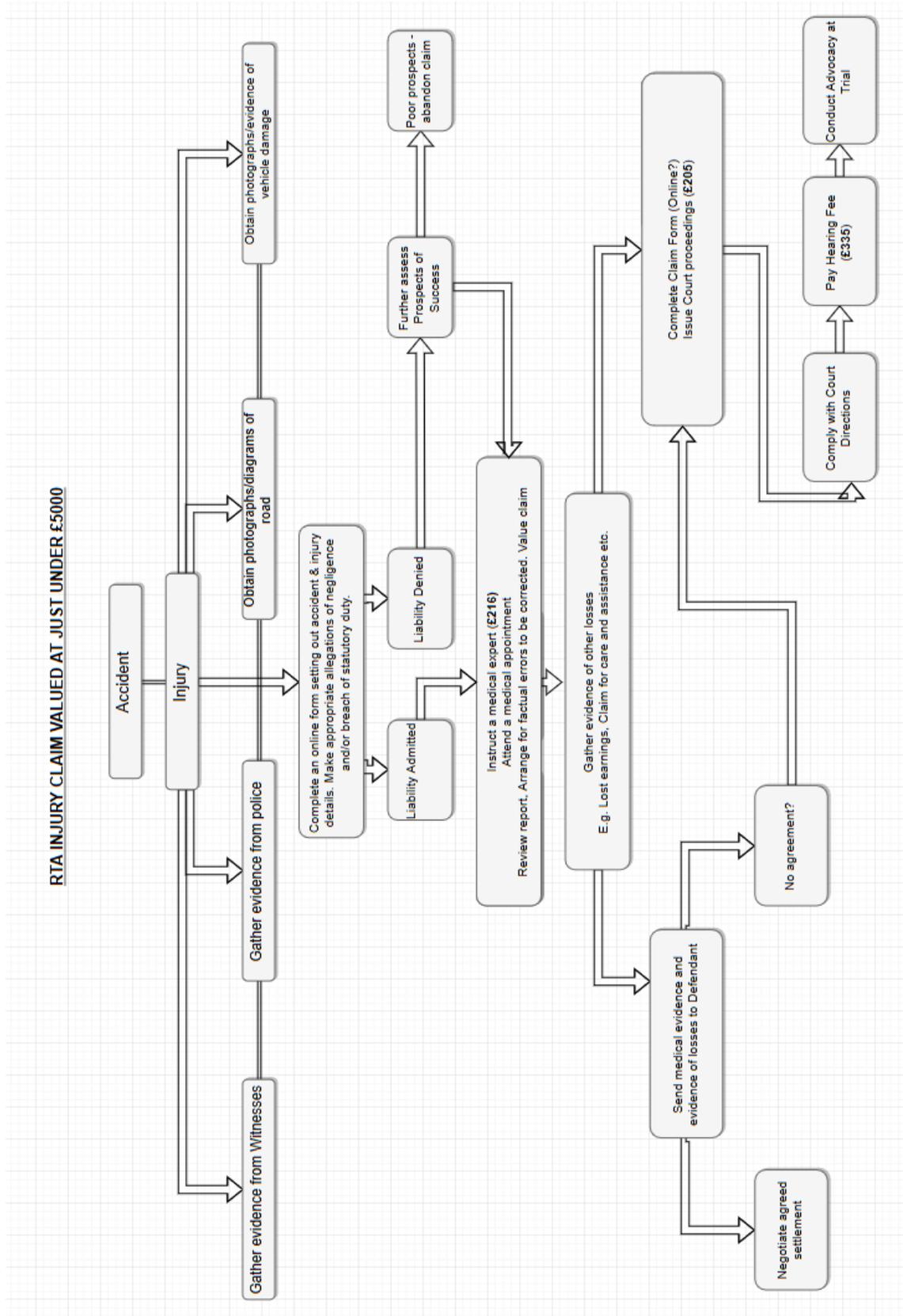
258 House of Commons Transport Committee: [Cost of motor insurance: whiplash. Fourth Report of Session 2013–14, July 2013.](#)

259 House of Commons Transport Committee: [Driving premiums down: fraud and the cost of motor insurance. First Report of Session 2014–15, June 2014](#)

260 Paragraph 11. The report's other recommendations included a call for better data gathering/data sharing within the insurance sector; a ban on pre-medical offers; a robust accreditation system for medical reporting organisations; and clarification of the government's plans for measures requiring the courts to throw out claims involving fundamental dishonesty.

Appendix: Flow chart showing RTA PI claims process

Source: evidence from The Law Society (CLM0003)



Formal minutes

Tuesday 15 May 2018

Members present:

Robert Neill, in the Chair

Mrs Kemi Badenoch	Gavin Newlands
Bambos Charalambous	Victoria Prentis
Ruth Cadbury	Ellie Reeves
David Hanson	Ms Marie Rimmer
John Howell	

Draft Report (*Small claims limit for personal injury*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 142 read and agreed to.

Annex and summary agreed to.

A paper was appended to the Report as Appendix 1.

Resolved, that the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Tuesday 22 May at 9.30am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 16 January 2018

Question number

Jason Tripp, Operations Director, Coplus; **Steve Mitchell**, Deputy Head of Legal Services, Union of Shop, Distributive and Allied Workers; **Nigel Teasdale**, former President, Forum of Insurance Lawyers; and **Shirley Denyer**, Technical Director, Forum of Insurance Lawyers.

[Q1–42](#)

Mrs Justice Simler; and **His Honour Judge Nigel Bird**.

[Q43–52](#)

Rt Hon Lord Keen of Elie QC, Ministry of Justice Spokesperson in the House of Lords; and **David Parkin**, Deputy Director for Civil Justice and Law, Ministry of Justice.

[Q53–128](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

clm numbers are generated by the evidence processing system and so may not be complete.

- 1 ABTA - The Travel Association ([clm0023](#))
- 2 Access to Justice (A2J) ([clm0008](#))
- 3 Association of British Insurers ([clm0028](#))
- 4 Association of Personal Injury Lawyers (APIL) ([clm0020](#))
- 5 Aviva ([clm0025](#))
- 6 British insurance Brokers' Association ([clm0022](#))
- 7 Carpenters ([clm0021](#))
- 8 Coplus ([clm0034](#), [clm0038](#))
- 9 Coyne Learmonth ([clm0010](#))
- 10 Credit Hire Organisation ([clm0019](#))
- 11 DAC Beachcroft Claims Limited ([clm0016](#))
- 12 Devon and Somerset Law Society ([clm0002](#))
- 13 DWF LLP ([clm0031](#))
- 14 FOIL ([clm0033](#), [clm0040](#))
- 15 Hodge Jones & Allen ([clm0039](#))
- 16 Horwich Cohen Coghlan Solicitors ([clm0012](#))
- 17 Irwin Mitchell ([clm0030](#))
- 18 Keoghs LLP ([clm0011](#))
- 19 Ministry of Justice ([clm0035](#), [clm0041](#))
- 20 Minster Law Ltd ([clm0018](#))
- 21 Motor Accident Solicitors Society ([clm0017](#))
- 22 National Accident Helpline Ltd ([clm0007](#))
- 23 PCS ([clm0026](#))
- 24 RoadPeace ([clm0013](#))
- 25 RSA ([clm0024](#))
- 26 The Law Society ([clm0003](#))
- 27 Thomas Cook Group ([clm0027](#))
- 28 Thompsons Solicitors ([clm0032](#))
- 29 True Solicitors LLP ([clm0036](#))
- 30 UNISON ([clm0029](#))
- 31 Usdaw ([clm0014](#), [clm0037](#))
- 32 Vulnerable Road User Group ([clm0015](#))
- 33 Zurich Insurance Plc ([clm0009](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Disclosure of youth criminal records	HC 416 (Cm 9559)
Second Report	Draft Sentencing Council guidelines on intimidatory offences and domestic abuse	HC 417
Third Report	Pre-legislative scrutiny: draft personal injury discount rate clause	HC 374
Fourth Report	Draft Sentencing Council guidelines on manslaughter	HC 658
Fifth Report	HM Inspectorate of Prisons report on HMP Liverpool	HC 751
Sixth Report	Draft Sentencing guideline on terrorism	HC 746
First Special Report	The implications of Brexit for the Crown Dependencies: Government Response to the Committee's Tenth Report of Session 2016–17	HC 423
Second Special Report	Government Responses to the Committee's Reports of Session 2016–17 on (a) Prison reform: governor empowerment and prison performance (b) Prison reform: Part 1 of the Prisons and Courts Bill	HC 491
Third Special Report	The implications of Brexit for the justice system: Government Response to the Committee's Ninth Report of Session 2016–17	HC 651