



Ministry
of Justice

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

February 2017



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A consultation on arrangements concerning personal injury claims in England and Wales

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

February 2017



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Introduction and contact details

This document is part one of the post-consultation report for the consultation paper, 'Reforming the Soft Tissue Injury ('whiplash') Claims Process – A consultation on arrangements concerning personal injury claims in England and Wales'.

The Government response to the consultation will be published in two parts. This, the first part, covers the Government's priority whiplash reform programme. In particular, this document provides information on the responses received in relation to parts one to five of the consultation document and how they influenced the final policy decisions. The document sets out:

- the background to the reform programme;
- a summary of the responses received;
- specific analysis of the responses to the questions asked in parts one to five of the consultation;
- Parliamentary and implementation timetables and next steps.

Part two of the Government response is currently being prepared and will be published in due course. It will cover the issues set out in Parts 6 and 7 of the consultation related to implementing the recommendations from the Insurance Fraud Taskforce and the 'call for evidence'.

Further copies of this response, the consultation paper and impact assessment which accompanied it can be obtained by contacting:

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This report is also available at <https://consult.justice.gov.uk/digital-communications/reforming-soft-tissue-injury-claims/> Alternative format versions of this publication can be requested from:

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Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

A list of respondents is included at Annex A of this document.

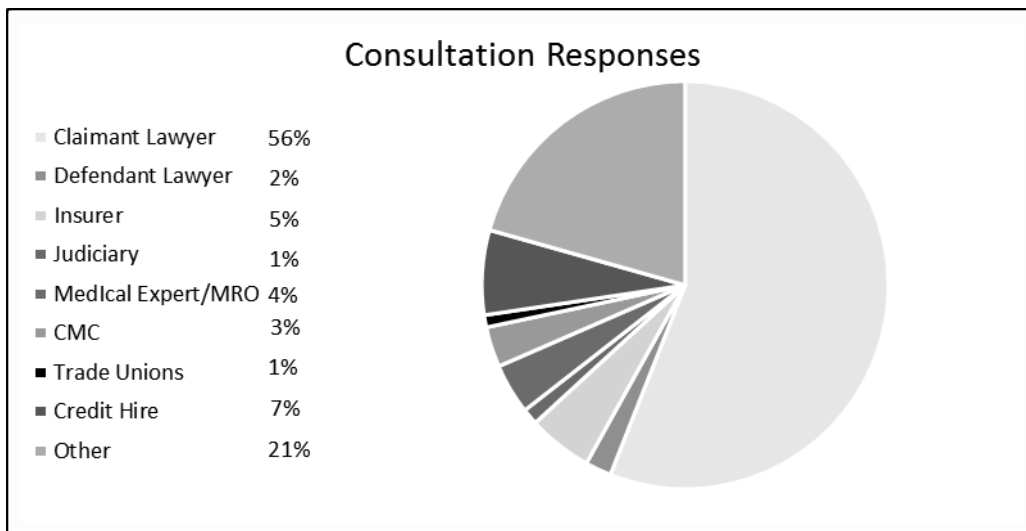
Background

1. The Government is committed to tackling the continuing high number and cost of whiplash claims. Previous reforms to reduce the costs associated with civil litigation were introduced in April 2013 through the Legal Aid, Sentencing and Punishment of Offenders Act 2013. Further measures to tackle fraud and fix the cost of initial whiplash medical reports and to improve both the independence and quality of medical evidence were introduced between October 2014 and June 2015.
2. The Government's whiplash reform programme builds on those earlier reforms, and the consultation paper and impact assessment 'Reforming the Soft Tissue Injury ('whiplash') Claims Process' were published on 17 November 2016. The consultation ran for seven weeks and closed on 6 January 2017.
3. The consultation invited comments on a package of measures designed to reform the personal injury claims process and disincentivise minor, exaggerated and fraudulent road traffic accident (RTA) related soft tissue injury claims, commonly known as whiplash claims. The continuing high number and cost of these claims contribute significantly to the price of motor insurance premiums paid by motorists.
4. Two of the measures in the consultation, namely removing compensation for pain, suffering and loss of amenity (PSLA) for minor whiplash claims and raising the small claims limit for personal injury claims to £5,000, were first announced in November 2015 as part of the then Chancellor's Autumn Statement. In addition to these reforms, the Government consulted on:
 - an alternative option to the measure to remove compensation for PSLA for minor whiplash claims, by providing a fixed sum of compensation for such claims;
 - the introduction of a tariff of compensation payments for PSLA for those claimants with more significant whiplash injuries; and
 - a prohibition on settling whiplash claims without medical evidence from an accredited medical expert.
5. The Government's reform package will benefit motorists by reducing the number and cost of minor, exaggerated and fraudulent claims. A large proportion of these costs are passed on to motorists through increased motor insurance premiums. The impact assessment which accompanied the consultation document estimated that the reforms, on implementation, would lead to savings of around £1bn (or on average £40 per policy). The final stage impact assessment will be published shortly and will contain a revised estimate of the expected savings in light of evidence received through the consultation process. The Government fully expects these savings to be passed on by insurers to consumers and we will be monitoring the impact of these reforms on the cost of motor insurance.

Summary of responses

1. Number of responses received

6. A total of 625 responses to the consultation paper were received. Of these, 56% of responses were from claimant lawyers, 7% were from representative/campaign groups, 7% were from credit hire companies, 6% were from private individuals, and 5% were from insurers. The remainder included claims management companies, defendant lawyers, the judiciary, medical experts, trade unions and transport/travel organisations.



7. The majority of responses were unique, however some duplicate responses have been identified, including:
- 8 identical responses from a single firm of claimant solicitors;
 - 61 identical responses from a group of linked companies under the umbrella of an alternative business structure;
 - 5,995 identical campaign letters from cyclists focussed solely on the single issue of raising the small claims limit and the impact of this on cyclists and pedestrians; and
 - One response from Access to Justice, which was supported by 57 claimant solicitor law firms. Some of these firms also submitted individual responses.
8. The consultation document asked a number of questions on the reform package. Around 60% of the responses to each question came from claimant solicitors. The following section provides a snapshot of the responses received with further information provided in parts one to six of this response document. In making its final decisions on the reform package, the Government considered views from all parts of the industry.

2. Definition of RTA related soft tissue injuries

9. As set out in the consultation, clarity on the exact scope of these reforms is vital. The Government therefore sought views on whether the cross-industry agreed definition of a soft tissue injury,¹ which was established for MedCo and set out in the RTA Pre-Action Protocol, would be a suitable definition. Consideration was also given as to whether it was necessary to guard against attempts to circumvent the rules and take forward claims outside of the definition with unnecessarily expensive medical reports.
10. The majority of those who responded did not support the consultation proposal to use the 'MedCo' definition for these reforms. Most respondents to this question were from the claimant sector. The majority of those who disagreed with the definition argued that it had been developed for a specific purpose, and that the 'MedCo' definition was broader than just whiplash claims so would be inappropriate for use in these reforms.
11. Others, mainly insurers, who disagreed with the definition, argued it should be extended to cover minor psychological claims regardless of whether the psychological claim was of primary or secondary significance to the whiplash claim, as per question 2 of the consultation document. Those that agreed with the definition, mainly drawn from the insurance sector, argued it had been used successfully for MedCo and that it would be sensible to continue to use the definition to ensure consistency of approach.
12. The consultation also asked whether the definition of claims affected by the reforms should be extended to cover claims where a psychological injury is the primary element of the claim. There was some support for this proposal from insurers, but the majority, mainly from the claimant sector, were against including psychological claims as a primary injury in the definition, arguing that such claims were not minor and including them in the reforms would trivialise psychological injury.

3. Defining 'minor' RTA related soft tissue injuries

13. The consultation document asked questions relating to what length of injury would be considered to be 'minor', setting out options of up to and including six months and up to and including nine months of injury duration. This was particularly relevant if the option to remove compensation for minor claims were to be pursued. The majority of responses, mainly from the claimant sector, were opposed to 'minor' injuries being defined as 'six' months, arguing that six months was a significant amount of time to be injured. These respondents largely felt that the maximum period an injury could be considered to be minor would be three months, which would be consistent with the latest version of the Judicial College Guidelines, published in September 2015.
14. Generally there was support from insurers for minor claims being those up to and including six months of injury duration. There was very limited support, largely from insurers, for the proposal that the definition should be extended to injuries of a duration of up to and including nine months.

¹ 'RTA PAP 16(A) soft tissue injury claim' means 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'.

4. Removing compensation for pain, suffering and loss of amenity (PSLA) for minor RTA related soft tissue injury claims

15. The majority of respondents, largely from the claimant sector, were against this measure. There was general, but not universal, support for this measure from insurers.

5. Introducing a fixed compensation payment for PSLA for minor RTA related soft tissue injuries

16. The Government recognises that whilst the amount of compensation paid to claimants for these minor claims is currently too high for the amount of pain and suffering endured, there may be a case that those with genuine injuries (albeit minor ones) should receive some compensation for PSLA. This led to the development of an alternative option to introduce a fixed sum of compensation instead of complete removal.
17. There was some support from the insurance sector for this proposal, but the majority of respondents, largely from the claimant sector, disagreed with both this option and with the indicative amount contained in the consultation. The majority of those that were against this option argued that the level of proposed compensation for PSLA was too low and that it was important to recognise the uniqueness of individuals' injuries. There was agreement from across the sector that if this option were taken forward, it would need to be broken down into more than one payment.

6. Process for assessing injury duration for minor claims

18. Following the implementation of these reforms, good quality medical evidence to support a claim will be important in assessing how the claim will be handled. The consultation sought feedback on two approaches as to how the process for obtaining such medical evidence could proceed. These can be described as the 'prognosis' and 'diagnosis' approaches. The majority of respondents were in favour of the prognosis approach. Concerns were raised in relation to the potential for the diagnosis approach to encourage late claims and the impact such an approach would have on claimants' ability to claim for loss of earnings or necessary rehabilitation in a timely manner.

7. Introduction of a fixed tariff of damages for more serious whiplash claims

19. In order to simplify the process for claimants, the Government announced as part of the consultation its intention to introduce a new compensation system based around the introduction of a fixed tariff for claimants with more serious injuries. The consultation requested views on a number of areas related to this tariff, including the proposed compensation levels and whether the judiciary should have a discretionary power to increase the amount set by the tariff in exceptional circumstances by up to 20%.
20. The majority of respondents, mainly from the claimant sector, did not agree with the indicative values for the tariff included in the consultation document. The majority of those who disagreed argued the amounts were too low and, in particular, that they were considerably lower than the figures in the latest version of the Judicial College Guidelines. However, a small number of respondents, mainly from the insurance sector, argued the indicative amounts could be lower still.

21. The majority of respondents also did not believe there should be judicial discretion to uplift the figures by up to 20% in exceptional circumstances. Claimants argued that there shouldn't be a tariff at all and that the judiciary should have complete discretion. Insurers largely argued that this proposal would over-complicate the reforms.

8. Raising the small claims limit for personal injury (PI) claims

22. The question of whether to raise the small claims limit for PI claims has been considered by this Government and its predecessors on a number of occasions since it was set at £1,000 in 1991 (the limit for all other claims except PI and housing disrepair was increased to £10,000 in 2012). In October 2014 the coalition Government announced it was deferring a decision on increasing the limit in order to concentrate on reforms to improve the medical evidence process. Now that those reforms have all been implemented the time is right to return to the issue of the small claims limit for PI claims.
23. A number of questions relating to the scope of the increase to the small claims limit were asked, including whether it should be limited to RTA claims or should include all PI. Views were also requested on whether the limit should be higher than the proposed £5,000. The majority of respondents, mainly from the claimant sector, were against the small claims limit rising for any type of personal injury claim. Of those that supported a rise the majority thought it should be limited to whiplash claims only, at least in the short-term, whilst work was undertaken to ensure successful implementation. Nearly all were against the small claims limit rising above £5,000 with many claimant lawyers arguing that the rise, if there were to be one, should be limited to an inflation level increase.

9. Improvements to help litigants in person use the small claims track

24. Increasing the small claims limit is likely to mean that some claimants will in future choose to act as litigants in person. In order to support this, the consultation asked for suggestions on ways to improve the process and support litigants in person in the small claims track. The majority of responses offered useful examples of improvements that could be made to provide further help to litigants in person using the small claims track. Further detail on these is set out later in this document.
25. It is the Government's view that low value RTA related PI claims are not so complex that claimants routinely require legal representation to pursue them. Claimants are not, and will not be, precluded from seeking such representation if they wish to do so. However, we recognise that there is potential to see a growth of claims management companies and 'paid' McKenzie Friends wishing to offer support to litigants in person. The consultation therefore requested views, and suggestions for managing this effectively. Around half of respondents provided helpful examples and suggestions of specific measures that could be put in place in relation to the operation of claims management companies and paid McKenzie Friends in the personal injury sector. Further detail is set out later in this document.

10. Banning pre-medical offers to settle

26. The proposal to introduce a prohibition on settling a whiplash claim without medical evidence received strong support from across the PI sector. Just over half of respondents were against the ban on pre-medical offers being limited to RTA claims. Of these the majority, mainly from the claimant sector, argued that the ban should be applied to all personal injury claims. The majority of respondents were also against any exemptions to the ban on pre-medical offers and a considerable number of these provided examples of how the ban should be enforced.

11. Stakeholder meetings

27. In addition to the responses received to the consultation, the views of interested parties were sought through a series of meetings with key stakeholders. Lord Keen QC hosted a roundtable meeting with leading representative groups from across the whole of the personal injury sector to discuss the issues raised in the consultation document.
28. MoJ officials held a number of meetings with stakeholders from both the claimant and defendant sector, as well as with credit hire firms, cross sector organisations and regulators. Points raised at these meetings were taken into account in making final policy decisions detailed in this document.

Part 1 – Identifying the issues and defining RTA related Soft tissue injury claims

29. This Government, like its predecessor, is committed to tackling the continuing high number and cost of low value RTA related soft tissue injury claims, the vast majority of which are whiplash claims. Despite the implementation of various reforms the volume of RTA related personal injury claims in the UK registered with the Department for Work and Pensions Claims Recovery Unit (CRU) has remained static over the last three years and is over 50% higher than 10 years ago (around 460,000 claims registered in 2005/06 compared with around 770,000 registered in 2015/16).
30. Many respondents from the claimant lawyer community have indicated their belief that the numbers of whiplash claims registered with the CRU are decreasing. However, further study of the CRU statistics suggests this is not the case and that differences in claims labelling may be behind this belief.
31. When soft tissue injury claims labelled as 'neck' and 'back' are considered together with those labelled as 'whiplash' the figure increases significantly. The number of such claims has remained steady over the last three years at around 680,000 claims, which is around 90% of all RTA related personal injury claims made.
32. There have also been significant recent advances in vehicle safety, with an increasing number of new vehicles featuring integrated seat and head restraints. Research undertaken by Thatcham² reports that, in 2006, 19% of new vehicles had seats with a safety rating of 'good', but by 2012, 88% of new vehicles had a 'good' rating. Given that such seats are specifically designed to minimise injuries from low speed RTAs, this would suggest the number of whiplash injuries should be declining, as they have been in other jurisdictions which have seen the same safety improvements.
33. There are currently substantial financial incentives for claimants to bring cases regarding relatively minor injury, or to exaggerate the severity of their injury, and Government intervention is required to tackle this issue. The reform programme included in the consultation document will build on previous Government reforms in this area to address the ongoing issue of the number and cost of these claims. They are targeted in particular at RTA whiplash claims, where it has become culturally acceptable for claims to be made for very low level injuries.
34. The level of compensation and costs paid as a result of the high number of soft tissue injury claims has a wider cost to motorists through increased motor insurance premiums. Since motor insurance is compulsory, this has an impact on all motorists in England and Wales. It is right for the Government to take firm action to control costs and benefit consumers.

² Thatcham Research is an insurance funded not for profit research centre, which tests the safety of all new production vehicles, and which has been a member of the European New Car Assessment Programme (Euro NCAP) since 2004.

Definition of RTA related soft tissue injury claims

35. It is important to be clear which group of claims will be affected by these measures. The Government was keen to hear the views of interested parties on the proposal to use the industry agreed 'MedCo' definition³ as the starting point in developing an effective definition for RTA related soft tissue injury claims. In 2014, the Government worked closely with a group of expert stakeholders from across the personal injury sector to develop this definition for inclusion in the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents⁴ (RTA PAP). The definition was specifically designed to identify the relevant low value RTA related soft tissue injuries requiring a medical report to be sourced from the MedCo IT Portal.
36. This definition has proved effective in identifying relevant claims for the purposes of MedCo and the Government therefore proposed to use the framework it provided as the starting point for these reforms. Using this existing definition appeared to be a sensible and pragmatic approach, which would provide consistency with other reforms. However, consideration had to be given as to whether such a definition taken from a pre-action protocol would also be suitable for use in primary legislation.

Question 1: Should the definition in paragraph 23 be used to identify the claims to be affected by changes to the level of compensation paid for pain, suffering and loss of amenity from minor road traffic accident related soft tissue injury claims, and the introduction of a fixed tariff of proportionate compensation payments for all other such claims?

Please give your reasons why, and any alternative definition that should be considered.

37. This question was answered by 515 respondents. The majority of the respondents, largely from the claimant sector, disagreed with the proposed 'MedCo' definition. Disagreement generally focused on a perception that the definition was either too vague or too broad to be effective. Respondents noted that the title of the consultation focused on whiplash claims, recognising that such injuries are largely related to damage to the neck and upper torso. They suggested that the 'MedCo' definition could arguably include any form of soft tissue injury, such as damage to ligaments or tendons, or skin lacerations in other parts of the body.
38. Such respondents also warned that such a potentially wide definition could lead to 'satellite' litigation. It is, however, worth noting that such satellite litigation was also predicted for MedCo when the original definition was published, but is yet to materialise.

³ 'RTA PAP 16(A) soft tissue injury claim' means 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'.

⁴ <https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-low-value-personal-injury-claims-in-road-traffic-accidents-31-july-2013#1.1>

39. Some respondents noted that whiplash injuries can be more painful than some fracture injuries, for example, which could lead to greater loss of amenity in certain circumstances. Others stated that as the 'MedCo' definition only covered occupants of motor vehicles, this would leave them with reduced rights in comparison to pedestrians, motor cyclists or cyclists suffering similar injuries in a RTA.
40. Some respondents, mainly from the insurance sector, were supportive of the idea of using the 'MedCo' definition. Of these many supported the proposal on the basis that the definition had been effective in its existing use by MedCo, is widely used and understood in the industry, and that a harmonised definition would make sense. Some respondents who agreed with the definition of soft tissue injuries commented that a more specific definition would be needed if the focus is to be solely on whiplash claims.

Extension of definition to include psychological claims as a primary injury

41. In addition to asking respondents about the suitability of the 'MedCo' definition, a further question was asked as to its scope in relation to claims with a psychological element. The 'MedCo' definition covers claims for minor psychological injury if that injury is secondary in significance to the physical injury sustained, but does not cover psychological injury where this injury is considered to be the primary injury.
42. Some respondents stated that the number of such claims has been rising in recent years. The Government has been monitoring the number of claims which include a 'psychological' element: between 2012 and 2015, data from Claims Outcome Advisor⁵ suggests that the number of claims where psychological injuries were included as a secondary injury increased by around 5%. Consideration of further anecdotal evidence from the insurance sector has indicated that there are not many claims currently made where the psychological injury is considered to be the primary issue. This has, however, been identified as an area where we may see claims inflation / displacement in the future following the implementation of the new reforms, so the consultation asked respondents the following question.

Question 2: Should the definition at paragraph 23 be extended to include psychological trauma claims, where the psychological element is the primary element of a minor road traffic accident related soft tissue injury claim?

Please provide further information in support of your answer, including if relevant, how this definition could be amended to effectively capture this classification of claim.

⁵ COA data captures part of 20 different insurer's claims data, at least 5 of which are one of the top 20 leading insurers based on gross written domestic premiums in 2014.

43. 512 respondents answered this question. The majority, largely claimant solicitors, opposed the extension of the 'MedCo' definition. A small number, mainly insurers, supported the extension. When giving reasons as to why the definition should not be extended, respondents cited the increased complexity of psychological injury compared to physical injury, both in terms of identifying such injuries and how they are treated. Some respondents also stated that the wide range of possible psychological injuries makes placing them in one category problematic.
44. There was some disagreement with the inclusion of "minor psychological injury" particularly as a primary injury, as such injuries are qualitatively different and can be just as harmful to victims as whiplash injuries. It was also suggested that the small number of road traffic injuries where the primary injury is psychological means that the area is less in need of reform than is the case with soft tissue injuries.
45. Those that agreed with the extension noted that, if the definition did not encompass minor psychological claims, claimants could be incentivised to exaggerate the state of their psychological harm or duration of such harm – even where actual physical harm was more severe – in order to avoid being captured by the definition. This could result in making psychological injury claims "the new whiplash". It is however worth noting that the 13th edition of the Judicial College Guidelines indicates that minor psychological claims, e.g. those that relate to 'travel anxiety' with no other injury lasting for less than three months, should not receive a compensation award.

Government Action: *following consideration of the issues highlighted in stakeholder responses to the consultation, the Government has decided that these reforms will cover RTA related whiplash claims and minor psychological claims.*

A definition will be developed to reduce the scope for affected claims to be displaced into other categories of claim. The Government accepts that the definition should not cover more serious psychological illnesses, for example, depression and post-traumatic stress disorder, which are diagnosable using international standards. The Government therefore proposes to limit the scope of this measure to minor psychological injuries, such as 'travel anxiety' and 'shock.'

Definition of 'minor' claims

46. The value of a claim is largely (although not entirely) determined by the initial diagnosis and the likely prognosis as to how long the claimant is likely to be affected by symptoms associated with their accident. So as well as defining the scope of RTA related soft tissue injuries that will be affected by the Government's reforms, it was also important to decide what was meant by 'minor', given that one of the Government's proposals was to remove compensation for PSLA for minor claims.
47. In considering this issue, the Government looked at two options on which we sought the input of stakeholders. These related to injuries with a duration of up to and including:
- i. six months; or
 - ii. nine months.

48. The Government indicated in its consultation document that the preferred option for a definition of a 'minor' claim was a prognosis period of up to and including six months and asked respondents two questions.

Question 3: The Government is bringing forward two options to reduce or remove the amount of compensation for pain, suffering and loss of amenity from minor road traffic accident related soft tissue injury claims. Should the scope of minor injury be defined as a duration of six months or less?

Please explain your reasons, along with any alternative suggestions for defining the scope.

Question 4: Alternatively, should the Government consider applying these reforms to claims covering nine months' duration or less?

Please explain your reasons along with any alternative suggestions for defining the scope.

49. There were 518 responses to question 3, with 508 responses received to question 4. Many of those who responded, largely from the claimant lawyer sector, did not support either option. A number felt that six months was too long a duration for defining a minor injury. The majority of respondents also argued that nine months was too long, although, a limited number of respondents felt that 'minor' could be defined as at least nine months.
50. Those who disagreed with any removal of compensation mostly came from the claimant sector. They generally argued that soft tissue injuries cannot be accurately categorised as minor or severe, stating that different individuals can experience differing amounts of pain and suffering from these injuries. A number also argued that injury duration alone should not be the only consideration as there were other relevant factors, including whether the claimant required treatment or time off work.
51. There were a number of responses which supported the proposal in principle but argued six months was too long a duration and noted that the current cut-off for a minor injury, introduced for the first time in the 13th edition of the Judicial College Guidelines, is three months. Several respondents suggested three months would be a reasonable time frame for a 'minor' injury, but it was also argued that setting thresholds could lead to some claimants exaggerating their injury duration to fall into the bracket above and therefore receive greater compensation.

Government Action: *Given the Government's decision to extend the tariff to cover all claims with an injury duration of from 0–24 months, there is no longer a need to set a definition of what is considered to be a 'minor' claim. The tariff will provide two bands for injuries with a duration of up to and including six months. Further detail on the tariff is set out below.*

Part 2 – Reducing the number and cost of minor RTA related soft tissue injury claims

52. The Government consulted on two options these were:

Option 1: Removal of compensation for PSLA for all minor RTA related soft tissue claims – this option would remove compensation from low level whiplash claims, although all claimants would retain the right to claim for monetary losses such as rehabilitation costs and loss of earnings; and

Option 2: Introduction of a fixed sum of compensation for minor RTA related soft tissue injury claims – the Government recognised that whilst the amount of compensation paid to claimants for low level claims is still too high, there may be a case that those with genuine injuries (albeit minor ones) should receive some compensation for PSLA.

53. Both options would control costs by providing more certainty to claimants and defendants alike as to the value of the claim. Option two would also support the use of the small claims track if claimants choose to progress their claim themselves, by making claimants aware in advance of the appropriate level of compensation they were due.

Question 5: Please give your views on whether compensation for pain, suffering and loss of amenity should be removed for minor claims as defined in Part 1 of this consultation?

Please explain your reasons.

54. There were 523 responses to this question, with the majority of respondents, mainly from the claimant sector, disagreeing that compensation for PSLA should be removed from minor claims.

55. Negative responses generally tended to focus on the fact that these reforms would be a major change to Tort Law, as the legal system in England and Wales currently seeks to compensate those who have suffered injury due to the negligence of another, and argued that cases of soft tissue injury caused by road traffic accidents should not be treated differently from other claims. Respondents also expressed concern that there is too high a risk of genuine claimants losing out on the compensation that they are currently entitled to for their pain, suffering and loss of amenity.

56. A small number of respondents, largely insurers, supported the removal of compensation for minor whiplash claims. They argued that the removal of compensation was necessary in order to remove the bulk of whiplash claims from the system and reduce insurance premiums. A number of those who supported the removal of compensation also indicated that they would be content with the introduction of a fixed tariff.

**Question 6: Please give your views on whether a fixed sum should be introduced to cover minor claims as defined in Part 1 of this consultation?
Please explain your reasons.**

57. 516 respondents answered this question, with the majority, largely from the claimant sector, disagreeing with the introduction of a fixed tariff. Such respondents generally claimed that all injuries are different and that there can be a variance in the pain and suffering caused by injuries lasting for six months or less. This, it was argued, makes it difficult or impossible to set a level of compensation that is fair for all claimants and creates a risk of both over and under-compensation. The majority of respondents argued that the current system, based on a negotiated settlement using the Judicial College Guidelines, was effective and should continue.
58. A small number of respondents from the insurance sector opposed such a tariff on the basis that they favoured a total ban on compensation, for reasons outlined in the summary of responses to question 5 above. There was a suggestion that the introduction of a fixed tariff covering a period of 0 to 6 months could incentivise those who suffered injury for only a few days to make a claim, and further steps should be introduced to tackle this.
59. A small number of respondents, mainly but not entirely from the insurance sector, agreed with the introduction of a tariff. Those that supported the proposal felt that it offered an appropriate compromise between the current system and the removal of compensation for injuries, as it would disincentivise fraudulent claimants without unduly punishing those with genuine injuries. Respondents also noted that a fixed tariff would simplify the process, increase transparency and provide a greater degree of certainty than the current system.

**Question 7: Please give your views on the Government's proposal to fix the amount of compensation for pain, suffering and loss of amenity for minor claims at £400 and at £425 if the claim contains a psychological element.
Please explain your reasons.**

60. There were 516 responses to this question. Just under half of the responses received, mainly from the claimant sector, opposed the setting of any fixed tariff at all, for reasons outlined in the summary of responses to question 6.
61. The consultation document included tables providing indicative figures for compensation under the new tariff. These figures reflected the Government's policy objectives to reduce costs and to provide certainty as to the value of the claim. A number of respondents, again mainly from the claimant sector, felt that the indicative compensation figures provided were too low. These respondents stated that the figures included were much lower than the suggested compensation for minor injuries in the Judicial College Guidelines.⁶ The consultation provided two figures. One covered claims where the whiplash element was the sole injury being claimed, and the second

⁶ The 13th Edition of the Judicial College Guidelines (published September 2015) states that Minor Neck injuries (defined as full recovery within three months) should receive between a few hundred pounds and £2,050.

included an added element to cover minor psychological injuries. A number of respondents from the claimant sector suggested that additional sum proposed was too low for a secondary psychological injury.

62. A limited number of respondents, from the insurance sector, thought the proposed figures were too high, arguing that the proposed figures would still allow claimant representatives to generate large profit margins from volume claims, which would mean the reforms would have little or no impact on claims volumes. A small number felt the figures were appropriate for these minor injuries.
63. Some respondents disagreed with a separate rate for claims with a psychological element, arguing it would create a new 'head of claim' and incentivise the pursuit of a psychological element to claims.

Government Action: *Following consideration of the arguments put forward by respondents the Government has decided not to pursue the option to remove PSLA for minor claims and instead intends to pursue a tariff for claims with an injury duration of between 0 and 24 months. The Government is of the view that pursuing this option will meet the Government's objectives as stated above and still allow genuine claimants to claim a more proportionate amount of compensation for pain, suffering and loss of amenity for these claims.*

Process for assessing injury duration

64. Since 2013, the Government has worked closely with interested parties to enhance the independence and quality of medical reporting in support of whiplash claims. This work resulted in the industry owned and operated 'MedCo' system which is responsible for implementing the Government's policy in this regard, including running an accreditation scheme for all medical experts that wish to carry out such medical reports.
65. We consulted on two approaches as to how the process for obtaining medical evidence could proceed. Views were sought on whether the process should be via a prognosis approach, i.e. where the injury duration was based on a prognosis period as considered by an accredited medical expert, or a diagnosis approach, whereby the claimant would have to wait six months to be able to have a medical report completed to determine whether symptoms remained. If this latter approach were to be adopted, only the cost of a report obtained at this point would be recoverable.

Question 8: If the option to remove compensation for pain, suffering and loss of amenity from minor road traffic accident related soft tissue injury claims is pursued, please give your views on whether the 'Diagnosis' approach should be used.

Please explain your reasons.

Question 9: If either option to tackle minor claims (see Part 2 of the consultation document) is pursued, please give your views on whether the 'Prognosis' approach should be used.

Please explain your reasons.

66. 509 responses were received to question 8, of which the majority, from across all sectors, argued against the Diagnosis approach being used. Those that felt the diagnosis approach was inappropriate argued:
- that it would be better to conduct medical reports earlier in the process in order to determine the scope of the injury and what treatment or rehabilitation is necessary. Delaying the medical report for six months could delay necessary treatment;
 - that the Diagnosis approach would incentivise uninjured claimants to approach medical professionals many months after the accident and claim an injury with exaggerated symptoms, from which (they would claim) they had now made a full recovery. The Diagnosis approach would therefore increase the risk of fraud; and
 - that the Diagnosis approach would do little to remove uncertainty or the potential for fraud from the process as it would still rely on claimants' subjective description of their suffering.
67. A small number of respondents supported the Diagnosis approach. These respondents said that it was easier for medical professionals to offer an accurate opinion on an injury after a degree of time had elapsed and that the Diagnosis approach would allow medical experts to identify cases where the claimant had suffered for six months or less.
68. 499 respondents answered question 9. The majority, from across all sectors, argued that the Prognosis approach should be used. Respondents noted:
- an early medical examination would ensure that claimants quickly receive any necessary treatment or rehabilitation;
 - that genuine claimants would be encouraged to bring their claims without delay, speeding up the process;
 - the increased likelihood of symptoms being present at the time of examination would reduce the prospect for fraudulent or exaggerated cases; and
 - that Prognosis is the current approach and is well understood by the industry.
69. Those that felt the Prognosis approach should not be used suggested:
- there was a risk of "prognosis inflation", in which medical experts are pressured to place their prognosis just beyond the threshold for a minor injury; and
 - that experts cannot reach an accurate prognosis too soon after an injury is suffered.
70. Some respondents suggested that problems with the system will exist whether the Prognosis or Diagnosis models are used, due to questions about the quality of medical reporting for these claims.
71. In addition to the two questions on Diagnosis or Prognosis, the consultation also asked for views on whether a requirement to have a medical examination at a specific point after the accident may have a positive impact on the practice of claims being brought at the end of the limitation period.

Question 10: Would the introduction of the 'diagnosis' model help to control the practice of claimants bringing their claim late in the limitation period?

Please explain your reasons and if you disagree, provide views on how the issue of late notified claims should be tackled.

72. 487 respondents answered this question. In particular, respondents argued:

- late claims are driven by factors that the Diagnosis approach would not impact on. For example, that claimants are generally unaware of the statutory limitation period so changing to a Diagnosis approach would not alter the number of claims brought close to the end of that period; and
- the introduction of the Diagnosis approach could actually lead to an increase in claimants bringing late claims, because of the necessary waiting period before a medical examination can be conducted.

73. A small number of respondents said that the introduction of the Diagnosis approach would help to control late claims, but only if there was a requirement that medical examinations are conducted in a timely fashion.

Government Action: *The Government supports the continued use of the 'prognosis' approach. This allows claimants to be able to seek any rehabilitation / treatment in a timely manner so as to be as effective as possible. The Government is also of the view that MedCo will continue to play an important role in this area. MedCo can, and will, continue to identify bad behaviour through analysis of its management information, and take the necessary robust enforcement action.*

Part 3 – Introduction of a fixed tariff system for other RTA related soft tissue injury claims

74. The second measure covered in the consultation document was the introduction of a new tariff of predictable damages. This is not a new idea – such an approach was recommended by Lord Justice Jackson in his 2010 report 'Review of Civil Litigation Costs: Final Report'.⁷ It also features as a recommendation in the Insurance Fraud Task Force report published in January 2016.⁸
75. In addition, many European jurisdictions – such as Italy, France, Spain, Sweden, Norway and Finland – feature similar systems as part of their processes for dealing with low value personal injury claims. It is the Government's view that the introduction of a fixed tariff of compensation for minor RTA related soft tissue injuries provides a proportionate approach to compensating PSLA for soft tissue injuries in RTA cases and a fair balance against the interests of consumers paying motor insurance.
76. A system which provides certainty as to the value of a claim would also help support the increase in the small claims limit, as it would provide claimants with the information they need to value their claim. The consultation document set out the Government's views on how such a system would work in practice – including indicative new compensation levels – and sought views from respondents on how best such a system should be implemented.

Question 11: The tariff figures have been developed to meet the Government's objectives. Do you agree with the figures provided?

Please explain your reasons why along with any suggested figures and detail on how they were reached.

77. 515 respondents answered question 11, with most of the responses coming from the claimant sector, who were mostly against the proposal. Views provided by respondents included that the figures were:
- **too low** – a majority of respondents, largely from the claimant sector, argued that the figures included in the Judicial College Guidelines, which have been used up until now, are considerably higher and are fairer for claimants as they take into account the unique circumstances of each claim;
 - **too high** – a small number of respondents argued the proposed figures were too high as they would continue to incentivise claims;
 - **too complex** – a number of respondents, mainly insurers, argued that splitting the tariff to cover psychological injuries made the system unnecessarily complex and would incentivise claimants to always allege psychological harm; and

⁷ <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Reports/jackson-final-report-140110.pdf>

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/494105/PU1817_Insurance_Fraud_Taskforce.pdf

- **appropriate** – a small number of respondents thought the proposed figures offered a reasonable level of compensation.

A number of respondents argued that a tariff based on injury prognosis alone would not take account of other relevant factors, in terms of determining the severity of an injury. Other relevant factors included whether a claimant needed to have time off work or treatment for the injury.

78. However, respondents who generally agreed with the figures also opposed a separate tariff for psychological injuries. They argued that it would make the system unnecessarily complex and encourage bad behaviour.

Government action: *The Government has decided to introduce a single tariff that will cover both whiplash claims and minor psychological claims. This decision takes account of the views of respondents to the consultation and the guidance included in the most recent Judicial College Guidelines.*

The figures in the tariff have been updated taking into account the uplift provided for in the most recent version of the Judicial College Guidelines. It was suggested in the consultation document that the lowest bracket should be 0–6 months, but this has now been broken down further into two bands, namely 0–3 months and 4–6 months. The Government has decided that the levels of compensation available under the new tariff will be as follows:

Injury Duration	2015 average payment for PSLA – uplifted to take account of JCG uplift (industry data)	Judicial College Guideline (JCG) amounts (13 th edition) Published September 2015	New tariff amounts
0–3 months	£1,750	A few hundred pounds to £2,050	£225
4–6 months	£2,150	£2,050 to £3,630	£450
7–9 months	£2,600	£2,050 to £3,630	£765
10–12 months	£3,100	£2,050 to £3,630	£1,190
13–15 months	£3,500	£3,630 to £6,600	£1,820
16–18 months	£3,950	£3,630 to £6,600	£2,660
19–24 months	£4,500	£3,630 to £6,600	£3,725

79. The consultation document also sought views on whether an exceptionality provision should be included in relation to the tariff. Such a provision would allow the judiciary, upon application, to apply an uplift to the amount payable to a claimant by up to 20% in exceptional circumstances.

Question 12: Should the circumstances where a discretionary uplift can be applied be contained within legislation or should the Judiciary be able to apply a discretionary uplift of up to 20% to the fixed compensation payments in exceptional circumstances?

Please explain your reasons why, along with what circumstances you might consider to be exceptional.

80. 496 respondents answered this question. The majority of respondents, from all sectors of the industry, opposed a discretionary uplift, but for differing reasons. A number of those, largely insurers, opposed the concept of an uplift arguing it would undermine the advantages and simplicity of a tariff. Others, mainly claimant solicitors, opposed the discretionary uplift arguing that the Judiciary should maintain full discretion in awarding compensation for PSLA. Some respondents supported the introduction of a discretionary uplift, arguing it provided added flexibility.
81. The following examples of what could be considered exceptional circumstances were given:
- where fraud, fundamental dishonesty or low velocity impact is alleged;
 - where liability is disputed;
 - where the individual's loss of amenity is higher than usual (avid sports players, for example); and
 - where the victim is elderly, has a disability and their ability to live independently is hampered.

Government Action: *Good arguments both for and against including a judicial uplift of 20% were given in response to the question asked in the consultation. The Government has decided on balance that is appropriate to include such an uplift and will be taking this forward as part of the reform programme. However, having noted suggestions of what could be considered exceptional circumstances, such as those listed above, the Government does not intend to define such exceptional circumstances in primary legislation. Instead we believe it is more appropriate to leave consideration of when a claim is exceptional to the discretion of the courts.*

Part 4 – Raising the small claims track limit for personal injury claims

82. To further reduce the costs of litigation in relation to low value personal injury claims. The Government consulted on increasing the small claims limit for personal injury claims – by reference to the value of the PSLA element of the claim – from £1,000 to £5,000.
83. As set out in the consultation document, there are a number of reasons the government thinks it is appropriate to increase the small claims limit for personal injury claims. This included the fact that the limit for such claims was originally set at £1,000 in 1991, and an increase in long overdue. Raising the small claims limit would mean both sides would become responsible for their own legal costs, even if the claimant is awarded compensation for PSLA for their injuries.

Scope of the increase

84. The consultation document outlined the options for raising the small claims limit in terms of its scope and sought views from respondents on whether this measure should cover all personal injury claims or just RTA claims, and whether there was a case for extending the limit beyond £5,000.

Question 13: Should the small claims track limit be raised for all personal injury or limited to road traffic accident cases only?

Please explain your reasoning.

85. 544 respondents answered question 13. The majority of these were claimant solicitors who were generally opposed to any increase to the current personal injury small claims limit of £1,000. Trade unions, Claims Management Companies and cyclists were also opposed to the proposed rise in the limit. Responses were also received from members of the Judiciary who highlighted concerns about the potential impact of this reform on court and judicial resources. A number of these respondents also acknowledged the limit had not been raised for some time, but argued that if it is to be raised, the limit should be increased by an inflationary amount only.
86. 5,995 identical campaign letters were received in response to this question from cyclists. The key point made in these letters was that claims made by cyclists following an accident were more complex than in whiplash claims as there was often a dispute as to liability and/or an accusation of contributory negligence.
87. Trade Unions were generally concerned that raising the limit for all PI claims would unfairly bring work related claims into scope. They argued these claims were generally more complex than RTA claims, due to causation and liability issues. This view was also supported by a number of claimant solicitors.

88. The main reasons given by respondents for not increasing the small claims limit for all personal injury claims were:
- the impacts of previous reforms such as the provisions in Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2013 need to be fully assessed before further reforms are introduced;
 - an increase in the limit only benefits the insurance industry and limits access to justice for claimants;
 - difficulties litigants in person may encounter in running their own claim without legal representation, which could cause delays, require increased judicial resource and prevent access to justice;
 - defendant insurers will still have legal representation, but claimants will not, creating an inequality of arms;
 - the other reforms would reduce the levels of PSLA available, so there is no need to increase the small claims limit;
 - there would be a proliferation of CMCs and McKenzie friends in this market; and
 - increasing the limit to £5,000 for all personal injury claims would mean some very serious injuries would have to be dealt with in the small claims court. Many respondents provided examples of injuries that would potentially be covered if the limit was raised as proposed.
89. In addition, concerns were raised by claimant lawyers in particular, about the impact the increase would have on personal injury practices, with the potential for large job losses in the sector. Other potential impacts on the courts, NHS and income to the Government were also raised.
90. Of those that supported the increase, the majority, mainly from the insurance sector, argued that any increase should be limited to RTA claims, at least in the short-term. The main reason given in support of an increase was that the limit had not kept pace with inflation and increases in compensation payment levels. Reasons for limiting an increase to RTA claims centred on the fact that this is the main area of harm identified in the consultation and that it is important to focus efforts on implementation for these claims before extending the increase more broadly to other personal injury claims. There was also a recognition that non-RTA personal injury claims can be more complex as there were often more issues related to liability and causation.
91. A number of respondents highlighted the need to develop a review mechanism in relation to both the small claims limit and the tariff of predictable damages for PSLA payments for whiplash claims.
92. As well as considering whether the small claims limit should be increased for all personal injury or just limited to RTA related claims, the consultation asked for views on whether the limit should be increased beyond the proposed level of £5,000. This question was asked in the context of the small claims limit currently being set at £10,000 for all types of claim other than personal injury and housing disrepair.

Question 14: The small claims track limit for personal injury claims has not been raised for 25 years. The limit will therefore be raised to include claims with a pain, suffering and loss of amenity element worth up to £5,000. We would, however, welcome views from stakeholders on whether, why and to what level the small claims limit for personal injury claims should be increased to beyond £5,000?

93. 523 respondents answered question 14. The majority, from across the industry, were against increasing the limit beyond £5,000. The main reasons given for not raising the limit higher were the same as those given in response to question 13. Of the small number of respondents who supported an increase above £5,000, the main reason given was that it should increase to £10,000 to match the small claims limit for other types of claim.

Government Action: *In line with the reasons given in the consultation document, and having taken note of the responses received, the Government has decided to increase the small claims limit for RTA related claims to £5,000. In addition, having considered the submissions of stakeholders in relation to non RTA PI claims, the small claims limit for all other types of PI claims will be increased to £2,000 in line with inflation.*

The Government will work closely with interested parties to ensure these increases are implemented effectively and bed in fully. We will keep the small claims limit for all PI claims under review and will consider whether a further increase to £5,000 for all PI claims is required in the future.

Litigants in Person

94. In responding to this consultation many claimant lawyers argued that claimants would not be able to issue court proceedings without legal help and it is unfair to ask them to pay for this help if such is required. The Government is of the view that low value personal injury claims are not so complex as to routinely require a lawyer. Raising the small claims limit to cover PSLA claims of up to £5,000 will not preclude claimants from engaging legal representation, but would mean that they would in future be responsible for paying for their own legal costs if they so choose.
95. The Government accepts that some claimants may not fully understand the process, but this is mitigated by the significant amount of help and support available to all claimants who act in person. For example, specific guidance for litigants in person and for making small claims has been published by both the Civil Justice Council and the Bar Council. These documents can be found here:
- <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/CJC/Publications/Other+papers/Small+Claims+Guide+for+web+FINAL.pdf>
 - http://www.barcouncil.org.uk/media/203109/srl_guide_final_for_online_use.pdf
96. As well as the guidance mentioned above, there are also further Government leaflets and web based guidance available from www.gov.uk which have been specifically designed with litigants in person in mind. They give a step by step overview of the small claims track and the requirements of each party, with advice on eligibility of cases for the small claims track and how to prepare for a hearing.

97. The Government also highlighted the possibility of increased numbers of claims management companies (CMC) and paid McKenzie Friends⁹ re-entering the PI market to offer cheap support to claimants. We were interested in respondents' views in relation to whether or not this would be helpful in providing support to otherwise unrepresented litigants.

Question 15: Please provide your views on any suggested improvements that could be made to provide further help to litigants in person using the Small Claims Track.

Question 16: Do you think any specific measures should be put in place in relation to claims management companies and paid McKenzie Friends operating in the PI sector?

Please explain your reasons why.

98. The majority of respondents to question 15 provided examples of improvements that could be made to the small claims track to help litigants in person. Suggestions were made from respondents across the personal injury sector. Suggestions included:
- providing free legal advice/representation to claimants and improving access to and the provision of advice from support agencies such as Citizens Advice;
 - changing the current adversarial system and using an independent arbitration system instead to settle disputes;
 - making Alternative Dispute Resolution compulsory before issuing court proceedings;
 - simplifying the claims forms and providing example templates;
 - simplifying the court procedure, providing standardised defences and conducting more hearings on paper;
 - providing an online system for claimants to issue claims and obtain medical reports or extending MedCo and the claims portal for use by litigants in person;
 - providing a system similar to MedCo to appoint someone to provide fixed price legal advice/representation to litigants in person;
 - providing flowcharts showing the process and guidance on the various stages such as how to obtain a medical report and how to prepare for hearings;
 - defendants arranging medical reports;
 - introducing a mandatory code of conduct for insurers and increase general awareness of Before The Event insurance;
 - introducing clear tariffs across the board so claimants know the value of their claim; and
 - excluding claims where liability is denied from the small claims track.

⁹ A McKenzie friend assists a litigant in person in a court of law in England and Wales. They don't need to be legally qualified and tend to be lay advisors who provide moral support for litigants, take notes, help with case papers and give advice on the conduct of a case. McKenzie friends cannot conduct litigation, address the court or sign court documents, their services are usually free, but paid McKenzie Friends are becoming more common.

99. Around half of the respondents provided examples of specific measures that could be put in place regarding CMCs and paid McKenzie friends who operate in this sector. A number of respondents suggested CMCs and McKenzie friends should be banned from the market altogether. The main suggestions were:

- introducing a ban on cold calling for personal injury claims;
- a complete ban on referral fees between CMCs, solicitors and insurers with better enforcement;
- providing clear codes of practice for all involved in the industry that must be adhered to;
- ensuring McKenzie friends are registered and regulated;
- providing information to claimants on CMCs and McKenzie friends, including what to expect from them and the fees involved;
- training for McKenzie friends;
- requiring McKenzie friends to have indemnity insurance;
- capping fees that can be charged by McKenzie friends and CMCs or stopping them from being able to charge fees;
- regulating CMCs and McKenzie Friends to the same level as solicitors;
- requiring CMCs to 'vet' potential clients sufficiently in the same way as claimant solicitors to ensure there is no contradictory evidence to filter out unwarranted claims; and
- changing the name of McKenzie friends to 'court supporter'.

Government action: *The Government will consider further the suggestions made in response to questions 15 and 16, and will work with stakeholders from across the industry to develop appropriate support mechanisms to underpin the increase in the small claims limit. The Government will also discuss the potential impacts on the courts and judicial resource with the judiciary and other interested parties. The Government is also committed to working closely with both MedCo and Claims Portal Limited on this issue, taking into account the need for Litigants in Person with genuine injuries to be able to quickly and simply access these services in support of their claims.*

Part 5 – Introducing a prohibition on pre-medical offers to settle RTA related soft tissue injury claims

100. The final measure of the reform programme on which we consulted was to ban offers to settle RTA related soft tissue injury claims without a medical report, a practice which is also known as making 'pre-medical offers'. It has been argued that some insurers do this to control costs. There is also some evidence that a proportion of claimant solicitors also request such offers. This enables them to close the claim quickly with minimal costs to be deducted from the fixed amount available for processing a claim. This is unhelpful to genuine claimants as it can lead to under-settlement for claimants and in some serious cases possible future litigation.
101. However, the Government's particular concern is that the use of pre-medical offers by insurers can encourage minor, or even fraudulent claims to be made, and lead to the perception that minor soft tissue injury claims, represent "easy money". The Government believes therefore that this practice must be stopped. In terms of scope, the Government proposed that a ban on pre-medical offers should apply only to RTA related soft tissue injuries and sought views on whether there should be any exemptions to such a ban. We therefore sought views on the scope of a ban, whether there should be any exemptions and on how such a ban should be enforced.

Question 17: Should the ban on pre-medical offers only apply to road traffic accident related soft tissue injuries?

Please explain your reasons why.

102. 496 respondents answered question 17. The majority of respondents, mainly from the claimant sector, argued that the ban should cover all personal injury claims. Some respondents, mainly from the insurance sector, argued that the ban should only cover RTA related whiplash claims. A small number of respondents were against any sort of ban and argued that pre-medical offers speed up the process and reduce costs.

Question 18: Should there be any exemptions to the ban, if so, what should they be and why?

103. 492 respondents answered question 18 with the majority, from across the industry, arguing there should be no exemptions to the ban. Of the small number of respondents who thought there should be exemptions, most suggested that non-RTA related personal injury claims should be exempt, and that claimants should be free to accept such offers if they wished to do so.

Question 19: How should the ban be enforced?

Please explain your reasoning.

104. 488 respondents answered question 19. The majority of respondents were of the view that the enforcement of the ban should be carried out by the relevant regulators, for example, the Financial Conduct Authority, Solicitors Regulation Authority and Claims Management Regulator. Other suggestions included:

- internal industry regulation by insurers;
- setting down in law that any pre-medical offer shall be null and void and unenforceable; and
- the introduction of financial sanctions to those who flout the ban.

Government Action: *The Government has considered the responses to the consultation and has decided to bring forward legislation to ban offers to settle without medical evidence in RTA related whiplash claims only. The ban will, though, include the making, soliciting, accepting and receiving of such an offer. There will be no exemptions to the ban and it will be a regulatory ban enforced through the relevant regulators as identified in the legislation.*

Part 6 – Implementing the recommendations of the Insurance Fraud Taskforce and 'Call for Evidence' on related issues

105. The Government also took the opportunity, through the consultation, to gather views from stakeholders on a number of other related issues affecting the personal injury sector. These were:

- i. Implementation of certain recommendations made by the Insurance Fraud Taskforce;
- ii. Credit hire;
- iii. Early notification of claims;
- iv. Rehabilitation;
- v. Recoverability of disbursements; and
- vi. Introduction of a Barème type system.

106. Respondents to the consultation provided submissions on the issues shown above. It is not the Government's intention to address these issues in this response document. Rather, there will be a second response document to be issued in due course which will look at these proposals in more detail and which will outline the way forward.

Part 7 – Impact Assessment

The Impact Assessment accompanying the consultation is being updated to take account of evidence provided by stakeholders during the consultation period. The updated Impact Assessment will be published in due course.

A Welsh language response paper will be published shortly at:
<https://consult.justice.gov.uk/digital-communications/reforming-soft-tissue-injury-claims/>

Conclusion and next steps

107. The Government has carefully considered the responses to the 'Reforming the Soft Tissue Injury ('whiplash') Claims Process' consultation to inform its final policy decisions for the new whiplash reform programme. The following measures will be taken forward by the Government, through a mix of primary and secondary legislation.

Part 1 – Identifying the issues and defining RTA related soft tissue injuries

Definition of soft tissue injury claims

108. The reform programme will be targeted at RTA related whiplash claims and minor psychological claims. These will be defined as part of the legislative process.

Definition of 'minor' claims

109. There is no longer a need to define what is considered to be a 'minor' claim because of the Government's decision on the tariff of predictable damages.

Part 2 – Reducing the number and cost of minor RTA related soft tissue injury claims

110. The Government has decided not to remove payment of PSLA for minor RTA related soft tissue injury claims nor to have a single payment for minor claims. Instead, the tariff of predictive damages will have two extra bands covering claims with an injury duration of from 0 to 3 months and from 4 to 6.

Process for assessing injury duration

111. The Government intends to pursue the prognosis approach for assessing injury duration.

Part 3 – Introduction of a fixed tariff system for other RTA related soft tissue injury claims

112. The Government intends to pursue a fixed tariff for all claims with an injury duration of between 0 and 24 months as set out in the table at paragraph 78. The proposed figures in the tariff have been uplifted to take into account the latest version of the Judicial College Guidelines. The Government is also providing the judiciary with the facility to both decrease the amount awarded under the tariff in cases where there may be contributory negligence or to increase the award (with increases capped at no more than 20%) in exceptional circumstances.

Part 4 – Raising the small claims track limit for personal injury claims

113. The Government intends to raise the small claims track from £1,000 to £5,000 for RTA related personal injury claims and will raise the small claims track in line with inflation from £1,000 to £2,000 for other personal injury claims.
114. The Government will work with interested parties from across the industry on the implementation of this measure, including developing support for Litigants in Person and making the necessary changes to the Claims Portal, MedCo and the Pre-Action Protocols.

Part 5 – Introducing a prohibition of pre-medial offers to settle RTA related soft tissue injury claims

115. The Government intends to ban offers to settle RTA related whiplash claims without medical evidence. The ban will cover both the offering and requesting of such settlements, and there will not be any exceptions to the ban. The intention is that there will be a regulatory ban enforced through the relevant regulators.

Conclusion

116. The Government will bring forward clauses in the Prisons and Courts Bill to set a tariff of predictable damages for RTA related whiplash claims and minor psychological injuries, whether they are of primary or secondary significance to the whiplash claim. The tariff will cover injuries with a duration of between 0 and 24 months.
117. The Government will also bring forward clauses in the Prisons and Courts Bill to ban offers to settle RTA related whiplash claims without medical evidence.
118. The Government will bring forward proposed changes to the Civil Procedure Rules, to be considered by the Civil Procedure Rule Committee, to raise the small claims limit to £5,000 for RTA related personal injury claims and £2,000 for other personal injury claims.
119. The Government intends to work with stakeholders from across the sector to implement these changes effectively.

Implementation

120. The Government proposes these measures will be implemented on 1 October 2018.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/Government/publications/consultation-principles-guidance>

Equalities

As part of the consultation exercise, a number of questions were asked in Part 10 of the consultation document relating to questions specific to the impact assessment. The impact assessment will provide further consideration of these issues.

Annex A – List of respondents

Breakdown by sector

Types of respondent	Total
Claimant Lawyer	349
CMC	20
Credit Hire	43
Defendant Lawyer	12
Individual	38
Insurer	30
Judiciary	6
Local Authority	2
Medical Expert	23
MP/Parliamentary Group	2
MRO	4
Rehabilitation company	2
Representative Group	43
Trade Union	7
Transport/Travel	15
Other	26
No name given	3

List of organisations that responded:

9 Gough Square

12 Kings Bench Walk

360Globalnet

A2 Solicitors LLP

A2J Group (response supported by 57 organisations)

ABI

ABTA – The Travel Association

Accident Lawyers

Accident Management Company

Accident Rehab

Accidents Direct

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

Aegis Legal

Aequitas Legal

Affinity Law

Ageas Insurance Ltd

AIG Insurance

Aioi Nissay Dowa Insurance Europe

Alarm, Member Organisation representing the public sector

Allianz Insurance

All Party Parliamentary Group for Insurance and Financial Services

Allweis & Co Solicitors

Alyson France & Co Solicitors

Amanda Cunliffe Solicitors

Anything Legal Ltd

APIL

ARAG

Armstrong Solicitors

Arriva plc

Asda

Ashfords LLP – Solicitors

Ashtons Legal

ASLEF

Association of District Judges

Atlantic Chambers

Auto Claims UK Ltd

Automotive and Insurance Solutions Group PLC

AutoResolutions Ltd

Auxillis

Aviva Insurance

Axa Insurance

Bailoran Solicitors

Bar Council

Barcan & Kirby

Barretts Solicitors

Bartletts Solicitors Ltd

Bates Wells and Brathwaite Solicitors

Beacon Independent Medical Examiners Ltd

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

Beecham Peacock Solicitors
BG Solicitors LLP
BLM Law
Box Legal Limited
Brian Barr Solicitors
Bridge McFarland
British Cycling Federation
British Insurance Brokers Association
British Medical Organisation
British Motor Cyclists Federation
Broadgate Legal
Brokeraide Limited – Own Company
Browne Jacobson LLP
Bryan & Armstrong Solicitors
Canter Levin & Berg Solicitors
Carpenters Law
Chartered Society of Physiotherapy
Chief Rentals
Cilex
Civil justice Council (General)
Civil justice Council (Judiciary)
Claims Portal Ltd
Cleggs Solicitors
Clerksroom
Cloisters
Clyde & Co
Cobden House Chambers
Compass Costs Solutions
Co-Operative Group
Co-Operative Insurance
Cordell & Co
Cornish Mutual
Covea Insurance
Credit Hire Organisation (CHO)
Cunningham Lindsey (Loss Adjusters)
Curtis Law Solicitors

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Cycling UK

David J Miller Insurance Brokers Ltd

DCA Beachcroft

DDJ and mediator

Deans Court Chambers

Devon & Somerset Law Society

Devonalds Solicitors

DGM Solicitors

Direct Line Group

DLS Assessors Limited

dnata Travel

Doctors Chambers (UK) Ltd

Dowse & Co

DPP Law Ltd

Driscoll Kingston Solicitors

Dunne & Gray Solicitors

DWF LLP

EAD Solicitors

Easi Drive

Easthams Solicitors Ltd

Edam Group

Elite Insurance Company

Emsleys Solicitors

Enterprise Rent-A-Car

esure

Exchange Partners

Express Solicitors

Fairweather Solicitors LLP

First4Lawyers

FirstGroup plc

Fletchers Solicitors (Motorbike accident specialists)

FMG Legal

Forbes Solicitors

Forum of Insurance Lawyers

Furley Page Solicitors

Garvins Solicitors

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Gary Williams Solicitors
Gotelee Solicitors
Gowing Law Solicitors
Graham & Rosen, solicitors
Graham Coffey & Co Solicitors
Graham M Riley & Co Solicitors Ltd
Graysons Solicitors
Green Law Solicitors
Hansells Solicitors
Hertz Accident Support
Hesling Henriques
Hill Dickson
Hodge Jones & Allen LLP
Holmes & Hills LLP
Horwich Cohen Coghlan Ltd
Hudgell Solicitors
Hull and East Yorkshire Law society
Ibotson Brady Solicitors Ltd
Imperium Law
Institute of Paralegals
Insurance Fraud Bureau
InterResolve
Irwin Mitchell LLP
Jackson Canter Limited
Jefferies Solicitors
Jet2Holidays
Jigsaw Law
JNPLEGAL
Joe Egan Solicitors
Kaizen Law Solicitors
Kennedys
Keoghs Solicitors
Keystone Legal Benefits Ltd (After The Event Legal Expenses Insurer)
Kindertons Accident management
Kiteleys Solicitors
Knightsbridge Solicitors

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Lambert Taylor & Gregory
Lansdale and Holdsworth solicitors
Law Society
Lawson West Solicitors Ltd
Leeds Law Society
Legal Costs Expert
Legal HD Ltd
Legal Solutions Partnership
Leicestershire Law society
Leigh Day
Liverpool Law Society
Lloyds Market Association
Lupton Fawcett
LV= General Insurance
Mackrell & Thomas Solicitors
Magna Accident Services
Manchester law Society
Manufacturing Company
Mark Thompson Law
Marsons Solicitors LLP
Martin Kaye Injury LLP
Medical Legal Doctor UK
Michael Bakers Solicitors Limited t/as Bakers Solicitors
Michael Lewin Solicitors
Milne Moser Solicitors
MJL Law Limited
Monarch Travel
Monmouthshire Incorporated Law Society
Mooney Everett Solicitors
Morecrofts LLP
Morris Law Ltd
Morrish Solicitors LLP
Motability Operations Group Plc
Motor Accident Protection Services Ltd
Motor Accident Solicitors Society (MASS)
Motor Cycle Industry Association of Great Britain

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Motor Insurers Bureau (MIB)
Motorplus Ltd
MPS
MSL Group
Mulderrigs Solicitors Ltd
MunichRE UK
NASUWT
National Accident Helpline
National Express UK
New Law
Newcastle upon Tyne Law Society
Next Gen Physiotherapy
NFU Mutual
NHSLA
Nicholls Brimble
NIG
North Bristol NHS Trust
O'Connors LLP
Oliver & Co Solicitors Ltd
On Hire Ltd
On Medical
O'Neill Morgan Solicitors
Oriel Chambers, Liverpool and Preston
Parklane Plowden Chambers
Pattinson & Brewer
PCS Union
Peter Kneale Solicitor Ltd
PIBA
PM Law
PR Scully & Co Solicitors
Premex
Premier Medical
QBE European Operations
RAC Motoring Services
Re: Liability (Oxford) Ltd
Real Law Solicitors Limited

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Rehabilitation Working Party
Richard J Knaggs & Co
RoadPeace
Ross Aldridge Solicitors Limited
Rothera Sharp
Rowley Dickinson
Royal Mail
Royds Withy King LLP
RSA Group
RSW Medico Legal Ltd
Rushton Hinchy
Scott Rees & Co
Shacklocks LLP
Sheffield and District Law Society
Simpson Millar LLP
Skyfire Insurance
Slater and Gordon Group
Smith Jones, SJ law group
Society of Clinical Injury Lawyers
South Herts CTC
Specter Partnership
Speed Medical
Spencers Solicitors
spinecare uk ltd
St Johns Buldings Barristers Chambers
Stagecoach Group plc
Stephensons Solicitors LLP
Stone Rowe Brewer LLP Solicitors
SX3 Claims Ltd
Taxisure Ltd
Temple Garden Chambers
The Integated Care Clinics
The Mindworks
Thomas Cook
Thompsons Solicitors
Thornycroft Solicitors Ltd

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TJL Solicitors
Trade Union Legal LLP (Trading as unionline)
Trades Union Congress
Tranter Cleere
True Solicitors
Truth Legal Limited
TUI Group
Udrive Bolton
UK Association of Fee Paid Judges
UK Law Solicitors
Unison
Unite
University of Bristol Law School
University/NHS Trust
Usdaw union
Validus-IVC
Verisk Insurance Solutions
Vocational Rehabilitation Association
Wace Morgan Ltd Solicitors
Walkers Solicitors Ltd
Ward & Rider Solicitors
Wards Solicitors
Warrington law Society
Watsons Solicitors
Weightmans
Welsh Government
Williamsons Solicitors
Winn Solicitors
Zurich Insurance plc

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