Title: Civil Liability Bill: Reforming the Soft Tissue Injury ('whiplash') Claims Process

IA No: MoJ015/2016
RPC reference Number: RPC-3432-(3)-MoJ
Lead department or agency: Ministry of Justice
Other departments or agencies: N/A

Summary: Intervention and Options

<table>
<thead>
<tr>
<th>Total Net Present Value</th>
<th>Business Net Present Value</th>
<th>Net cost to business per year (EANCB on 2014 prices)</th>
<th>In scope of One-In, Three-Out?</th>
<th>Measure qualifies as</th>
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</thead>
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<td>£620m</td>
<td>N/A</td>
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</tr>
</tbody>
</table>

Impact Assessment (IA)

Date: March 2018
Stage: Legislative
Source of intervention: Domestic
Type of measure: Primary legislation
Contact for enquiries: general.queries@justice.gsi.gov.uk

What is the problem under consideration? Why is government intervention necessary?
The Government is concerned about the continuing high number and cost of road traffic accident (RTA) whiplash related claims, many of which are minor, exaggerated or fraudulent, and the impact these claims have on motorists through increased motor insurance premiums. The Government is of the view that the amount of compensation currently paid to claimants for these claims is out of all proportion to the level of injury suffered. Government action is needed to provide a more proportionate approach to the payment of compensation for Pain Suffering and Loss of Amenity (PSLA) and ensure all claims are supported by medical evidence, which will reduce costs for motorists. The Government is also concerned about the costs associated with other personal injury claims.

What are the policy objectives and the intended effects?
The policy objectives and intended effects are to disincentivise minor, exaggerated and fraudulent claims so as to tackle the continuing high number and cost of claims. Following implementation genuinely injured claimants will continue to receive a proportionate amount of compensation which will be supported by a requirement to obtain good quality medical evidence from an accredited medical expert. This will lead to savings, which insurers can pass back to policy holders in the form of reduced motor insurance premiums.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- **Option 0**: Base case (do nothing)
- **Option 1**: Reforming the whiplash related claims and Personal Injury (PI) processes, including:
  - Introducing a fixed tariff system for PSLA compensation amounts up to an injury duration of 24 months for RTA whiplash related claims
  - Raising the small claims limit to £2k (from £1k) for all PI claims and £5k for RTA claims
  - Requiring medical reports to be produced for every RTA whiplash related claim.

Based on the available evidence, the Government’s preferred option is Option 1 as this best meets the policy objectives.

Will the policy be reviewed? These measures will be subject to ongoing monitoring.

- **Does implementation go beyond minimum EU requirements?** N/A
- **Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.**
  - Micro: Yes
  - < 20: Yes
  - Small: Yes
  - Medium: N/A
  - Large: N/A

- **What is the CO2 equivalent change in greenhouse gas emissions?** (Million tonnes CO2 equivalent)
  - Traded: N/A
  - Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: [Signature]

Date: 12/03/18
**Summary: Analysis & Evidence**

**Policy Option 1**

**Description:** Reforming the soft tissue ('whiplash') claims process and PI

**FULL ECONOMIC ASSESSMENT**

<table>
<thead>
<tr>
<th>Price Base Year 2014</th>
<th>PV Base Year 2019</th>
<th>Time Period Years 10</th>
<th>Net Benefit (Present Value (PV)) (£m)</th>
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<tr>
<td></td>
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<table>
<thead>
<tr>
<th>COSTS (£m)</th>
<th>Total Transition (Constant Price)</th>
<th>Average Annual (excl. Transition) (Constant Price)</th>
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</table>

**Description and scale of key monetised costs by 'main affected groups'**

- Claimants would incur around £990m in costs resulting from (i) claims that no longer receive PSLA damages (ii) claims that receive reduced PSLA damages (iii) claims that no longer receive special damages (iv) having to pay their own legal costs and associated VAT.
- The gross costs to defendants (insurers) would be around £19m from the requirement for all claims to have a medical report. These costs are assumed to be passed onto consumers.
- Motor premium holders would incur around £120m cost in increased BTE premiums.

**Other key non-monetised costs by 'main affected groups'**

There may be a reduction in the number of non RTA PI claims pursued.

<table>
<thead>
<tr>
<th>BENEFITS (£m)</th>
<th>Total Transition (Constant Price)</th>
<th>Average Annual (excl. Transition) (Constant Price)</th>
<th>Total Benefit (Present Value)</th>
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<tr>
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**Description and scale of key monetised benefits by 'main affected groups'**

- Defendant insurers would save around £1.3bn (gross) mainly as a result of: (i) PSLA damages being reduced, (ii) unclaimed special damages, (iii) savings in medical reports costs from a reduction in claims with medical reports, (iv) legal costs not being recoverable. It is assumed around £1.1bn of these savings would be passed onto consumers in the form of lower premiums, leaving a net benefit for insurers of around £190m. Reduced premiums would give an insurance premium tax (IPT) benefit to motor premium holders of around £110m, giving a net benefit to motor premium holders of around £1.2bn.

**Other key non-monetised benefits by ‘main affected groups’**

- Non RTA PI defendants would benefit, as they would no longer have to pay out recoverable legal fees.

**Key assumptions/sensitivities/risks**

- 85% of savings to defendant insurers will be passed onto consumers.
- Without reform, the volume and value of RTA whiplash related claims will remain at around current levels.
- Those providing services (lawyers, medical experts, Claims Management Companies) are assumed to find alternative activities of equal economic value.

**Discount rate (%)** 3.5

**BUSINESS ASSESSMENT (Option 1)**

<table>
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<tr>
<th>Direct impact on business (Equivalent Annual) £m:</th>
<th>In scope of OITO?</th>
<th>Measure qualifies as</th>
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<tr>
<td>Benefits: £730m</td>
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<td></td>
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<td>Net: £620m</td>
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A. Background

Controlling the Costs of Personal Injury Litigation

1.1 Since 2013, the Government has implemented a number of reforms to control the costs of civil, and in particular personal injury (PI) litigation. The Jackson reforms, which were implemented through provisions in part two of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), introduced a raft of measures to streamline costs, ban the payment and receipt of referral fees in PI cases and rebalance the system of 'no win no fee' conditional fee agreements (CFAs) used in PI cases. Those reforms were supported by further measures to reduce the fixed recoverable costs available to lawyers from £1,200 to £500 and to ban Claims Management Companies (CMCs) from offering financial and other inducements in return for claims.

1.2 Following these initial reforms the Government committed to take action to reduce the number and cost of soft tissue injury claims resulting from low speed road traffic accidents (RTA). The first phase of the Government's whiplash reform programme was introduced in October 2014 through measures to:

- reduce and fix the cost of initial RTA related soft tissue medical reports at £180;
- allow defendants to give their account to the expert;
- discourage insurers from making pre-med offers to settle; and
- ban experts who write medical reports from also treating the claimant.

1.3 The second phase of this reform programme followed on 6 April 2015, with the introduction of the MedCo IT Portal for sourcing medical reports used in support of initial RTA related soft tissue claims, the aim being to improve the quality and independence of medical reporting. This meant that from 6 April 2015, solicitors wanting medical reports for these claims, and the experts and medical reporting organisations providing them were required to be registered on and use the new MedCo IT Portal. The final phase of this programme was implemented on 1 June 2016 when an accreditation scheme for medical experts came into force.

1.4 To support the MedCo reforms a definition was formulated - set out below - for inclusion in the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (RTA PAP). This definition enabled the appropriate tranche of claims to be identified for the purposes of MedCo and it has also been used to inform the analysis included in this Impact Assessment (IA). The definition of a 'soft tissue injury claim' as set out in the RTA PAP is:

'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'.

1.5 Whiplash related injuries\(^1\) are the most common form of soft tissue injury, and the majority of the new reform programme is targeted at these claims. Consideration has been given as to the suitability of using the above definition in respect of these reform proposals. However, following consideration of the responses to the earlier consultation on this issue, the Government has decided to develop a new definition in legislation to ensure the scope of the claims affected by the tariff and the ban on offers to settle without medical evidence, is restricted to whiplash related

\(^1\) The term 'whiplash related injuries' refers to that group of injuries to the torso, neck and back that are registered with the Department of Work and Pensions Compensation Recovery Unit as whiplash and whiplash related soft tissue injuries and which are referred to as 'whiplash' injuries. Further information on the Government's position on the term 'whiplash' can be found in paras 30 and 31 of Part 1 of the Government's consultation response document: https://consult.justice.gov.uk/digital-communications/reforming-soft-tissue-injury-claims/results/part-1-response-to-reforming-soft-tissue-injury-claims.pdf
claims. The primary data used in this IA is broken down into soft tissue and non-soft tissue claims, with soft tissue claims being used as a proxy for whiplash related claims. We expect this soft tissue data to be highly representative of such claims, given the majority of RTA soft tissue injuries are whiplash related.

**International Comparisons**

1.6 Despite previous Government action, the volume of RTA related PI claims registered with CRU has remained fairly static over the last three years and remains at a level 50% higher than 10 years ago (in 2006/07). This is despite research by the Insurance Fraud Taskforce showing that, although there are on average 79% more cars per kilometre on our roads than in other EU countries, there are proportionately fewer fatal or serious accidents, making the UK one of the safest places to drive in Europe.

1.7 Over this same period there have been significant advances in vehicle safety, with an increasing number of vehicles introduced which feature integrated seat and headrests specifically designed to minimise injuries from low speed road traffic accidents. Research undertaken by Thatcham reports that, in 2006, 19% of new vehicles had seats with a safety rating of 'good', but by 2012, 88% of new vehicles had integrated seats with a 'good' rating. Further advances in safety in the last few years include energy absorbing car design and the introduction of automatic collision detection systems which can take control of a vehicle's steering and braking systems to avoid low speed impacts. These advances in safety should therefore lead to lower overall claim volumes in England and Wales, particularly as the number of cars with these safety features increases. The volume of soft tissue claims registered on CRU has remained relatively stable in recent years, despite UK being one of the safest places to drive in Europe and these recent advances in vehicular safety.

1.8 In addition to the volume of claims, the Government is also concerned about the current levels of compensation payments for whiplash related claims, given their impact on the cost of motor insurance policies. The concern about the role of RTA whiplash related/soft tissue injury compensation in increasing motor insurance premiums is also an international one with several jurisdictions (e.g., France, Germany, Norway, Spain, Sweden, Canada and Italy) having introduced, or are considering introducing, reforms to control the volume of claims and limit the value of any compensation awarded. These schemes often include one or more of the following reforms:

- A ban on referral fees;
- Low recoverable fixed costs;
- Prohibitions or restrictions on ‘no win, no fee’/contingency fee’ arrangements;
- A higher monetary small claims threshold to disincentivise the use of lawyers and other intermediaries in the claims process;
- Placing the onus of proof on the claimant to show they have suffered an injury;
- Fixed tariff systems for the payment of compensation (with compensation unavailable for minor injuries or where there are no physical signs of a soft tissue injury);
- The need to submit medical evidence within a short period of the accident;
- The use of independent medical examiners with specialist training.

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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.
1.9 The Government has already implemented reforms in some of the above areas. However, given the continued high level of RTA related soft tissue injuries, the measures discussed in this IA seek to further control the number of such claims and the associated compensation payments to reduce the costs which are ultimately passed back onto to the holders of motor insurance.

Consultation

1.10 The Government consulted on a set of measures to reduce the volume and value of minor, exaggerated and fraudulent soft tissue claims in November 2016. Based on the results of the consultation and the evidence received during it, the final package of measures the Government is taking forward can be summarised as follows:

- A tariff of fixed compensation payments for pain, suffering and loss of amenity (PSLA) for whiplash related claims with an injury duration of between 0 and 24 months;
- Banning all offers or requests to settle whiplash related claims without medical evidence; and
- Raising the small claims limit to £5,000 (from £1,000) for RTA related PI claims and to £2,000 for all other personal injury claims.

1.11 The IA which accompanied that consultation also set out a number of assumptions that were used in the detailed analysis. As part of the consultation process the Government sought feedback and further data from respondents on these assumptions. In the responses to the consultation, we received a lot of qualitative views on the assumptions but only a limited amount of robust data to support these views.

1.12 In developing this final stage IA, the Government has reviewed the information received and has made a number of changes to the assumptions to reflect information received as part of the consultation process. A later section of this IA provides further detail on the assumptions that have changed as a result of the consultation.

1.13 This final stage IA considers the final policy option as decided upon by Government. Therefore, and unlike the consultation stage IA, it does not break down each of the individual parts, but considers the issues as a whole package. Our consideration of the assumptions used in this final stage IA follows the same approach.

1.14 All the costs and benefits outlined below have been estimated based on the injury prognosis approach. The consultation requested views on the two approaches for obtaining medical evidence. There were the ‘prognosis’ and ‘diagnosis’ approaches. Following consideration of stakeholder responses the ‘prognosis’ approach has been adopted by Government.

B. Policy Rationale and Objectives

Economic rationale

2.1 The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more needy groups in society).

2.2 The proposals considered in this IA are primarily justified on efficiency grounds. This is that the current system in England and Wales contains three key market failures which interact with one another to increase the number of soft tissue RTA claims compared to other jurisdictions.
2.3 **Asymmetric information:** A whiplash injury is a soft tissue injury which is inherently difficult to identify and assess, particularly in comparison to the majority of other personal injuries. The majority of whiplash related claims will not show up in a medical scan, as a fracture sustained in workplace accident, for example, would. This means that claimants will usually know more about whether there is an injury and how severe it is compared to defendants. This makes it difficult for insurers to assess whether individual claims have merit and provides an opportunity for claimants to falsify claims or exaggerate their severity. As the current availability of PSLA compensation provides incentives for claimants to exploit this information asymmetry, reducing the availability of such compensation should reduce these incentives.

2.4 **Perverse Incentives:** Under the current arrangements, claimants do not bear the cost of bringing a successful claim which, instead, are paid by losing defendants. But, because it is very hard to disprove whiplash related claims (due to the asymmetric information issue described above) defendants who contest such claims are likely to simply increase their total costs without substantially increasing their chances of success. In such circumstances, and especially for lower value claims, it may be cheaper for defendants to accept liability without contesting the claim and to pass the costs involved to motor policy insurance holders. If legal fees for making soft tissue claims were not, or less, recoverable, claimants would bear more of the cost of bringing such claims which would help bring their volume toward a level which is optimal for society as a whole.

2.5 The ability to shift costs onto the losing party is not available where claims are allocated to the small claims track (SCT). However, due to the relatively high levels of compensation available and the relatively low value threshold in the SCT, this does not affect the majority of claims. This incentivises claimants to engage lawyers and other intermediaries (e.g., CMCs) to pursue their claims (other than for those for the smallest amounts) whose costs will also be borne by the defendant in cases that they lose. This further increases the incentive for defendants to settle claims outside the court. Furthermore, where these intermediaries are paid on the basis of a contingent/no win, no fee basis there are incentivises for them to solicit such claims, further increasing their volume.

2.6 **Negative externality:** Currently claimants can receive compensation for whiplash and whiplash related claims without presenting medical proof of their injury to the defendant. Furthermore, the inefficiencies and costs described above can incentivise defendants to settle claims without this information, as this may be a more commercial viable option. There are two problems associated with this behaviour. The first is that claimants with little or no injury are encouraged to exaggerate or make fraudulent claims while genuinely injured claimants may accept a settlement without knowing the full extent of their actual injuries, leading to further satellite litigation in the future.

2.7 The second problem is that the ability for individual insurers to settle claims in this way may further increase the volume of whiplash related claims, leading to the creation of a wider ‘claims culture’ where making exaggerated or fraudulent claims become normalised. The Government believes that the creation of such a culture is a negative externality, both for the insurance sector as a whole and for the holders of motor insurance, and that the associated costs to society, can be best addressed by mandating that there can be no settlement without the production of a medical report by an accredited medical expert, so increasing the evidential requirements needed for whiplash claims.

2.8 The Government believes that the above market failures also contribute to an increase in the value of the claims made and settled. It also believes that it is unlikely that the market would be able to reduce the costs of claims and the number of unnecessary claims without government intervention because the current costs and incentives, in part, are a function of current court procedures and framework for diagnosis which only government can address.
2.9 The costs of the above market failures (including both the increased number and value of compensation claims and the costs of the services used by claimants to pursue unmeritorious claims) are met by insurers and, ultimately, by motor insurance policy holders. Because motor insurance is compulsory and so cannot be avoided, this provides an equity justification for the policy proposals. The proposals would help prevent the costs of minor, exaggerated or fraudulent soft tissue claims from being borne by the broad mass of policy holders.

2.10 In summary, the measures assessed in this IA will tackle the incentives on both sides (claimant and defendant) in order to reduce the significant costs associated with all PI claims, which are passed back to the consumer in the form of increased insurance premium costs. The measures will also disincentivise fraudulent and exaggerated claims by encouraging greater challenge from defendants/compensators. In summary, the proposals should ensure there are fewer minor claims, and that, where valid, any compensation is more proportionate to the injury suffered.

Policy rationale

2.11 The overall policy objective is to create a new simplified system which ensures that where compensation is paid for PSLA following an RTA resulting in a whiplash related injury claim the amount paid to the claimant is proportionate to the injury suffered and only for genuine injuries, supported by good quality medical evidence from a properly accredited medical expert.

2.12 The more specific policy objectives are:

- To create a balanced, predictable and proportionate system for the payment of compensation for PSLA for whiplash related claims.
- To reduce the incentives to bring forward minor, exaggerated and fraudulent whiplash related claims and therefore reduce the overall cost to motorists through lower motor insurance premiums.

C. Affected stakeholder groups, organisations and sectors

3.1 The following groups are expected to be most affected by all or some of the proposed reforms in the costs and benefits assessment if a particular group is considered to be unaffected by a particular reform, they have not been included. A brief description is included below outlining the role of each group in this area:

- **Claimants:** For the majority of the reforms these are individuals who are seeking to make a claim for damages due to a RTA whiplash related injury. This also includes individuals who suffer an accident/injury in the workplace or a public place, and those with low value injuries resulting from medical negligence.

- **Claimant lawyers:** These are lawyers who are instructed by claimants to assist them with pursuing a claim. If the defendant admits liability, or if the claim reaches court and their client wins, claimant lawyers can recover the legal fees from the defendant. If their client loses, the claimant lawyer tends to absorb the cost as part of the CFA³. In some cases claimants enter in damages-based agreements (DBA) whereby legal fees are paid out of any damages received.

- **Defendants (mainly insurance companies):** In RTA claims this will mainly be insurers, although a number of Employer Liability/Public Liability/Clinical Negligence defendants will not have private insurance and will pay any damages themselves. The proposed reforms

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³ These are the funding agreements that are commonly used in personal injury claims where the claimant only pays for the solicitor’s work if they win the case. Under the current system if a claimant has a CFA, if they win the case they can recover the legal fees from the defendant, and if they lose they do not have to pay legal fees as part of the agreement.
would affect defendants as they currently pay PSLA damage awards and the claimant’s legal costs in cases where they admit liability and for those claims that they lose in court.

- **Before The Event (BTE) providers**: BTE insurance is typically purchased as part of an add-on to a motor insurance policy, and provides the policy holder with an indemnity against any legal costs incurred in pursuing a claim for damages. Panel law firms are a subset of claimant lawyers who represent claimants under BTE policies. They are those that are favoured by defendants (insurers), and also provide a claims screening service for insurers.

- **HM Courts and Tribunals Service (HMCTS)**: Only a minority of PI cases proceed to court, for example, if liability is not admitted and the defendant chooses to contest the claim.

- **HM Revenue and Customs (HMRC)**: HMRC receives revenue from VAT from legal service providers and from Insurance Premium Tax (IPT) which is set at 12 per cent of a premium’s value.

- **Department for Work and Pensions (DWP)**: DWP can recover any benefits a claimant receives, relating to their accident, from the at fault insurer.

- **National Health Service (NHS)**: The NHS can recover the cost from the at-fault insurer where an individual with a settled soft tissue injury claim required an ambulance called out, or hospital treatment for both in-patients and out-patients.

- **Claims Management Companies (CMCs)**: CMCs offer services to claimants in respect of their claims. They advertise for business and often work with claimant lawyers.

- **Medical Reporting Organisations/Medical experts (MROs/MEs)**: MROs/MEs provide medical reports for claimants to assess whether an injury has been sustained and, if so, its severity, prognosis and whether other treatments, such as physiotherapy, are required. Claimants and defendants use these reports to agree an appropriate level of compensation for any injury suffered. Claims which are settled without such reports are referred to as ‘pre-med offers’.

- **Rehabilitation providers**: Rehabilitation in PI cases can include physical treatments, such as physiotherapy, or psychological treatments to address anxiety following an RTA. Rehabilitation is an accepted treatment for neck/back pain and a claimant can often receive and have to pay for such treatment before the claim has progressed to a settlement. This is a form of special damages – these relate to actual expenses accrued by the claimant. Although claimants would still be able to receive special damages under all of these proposals, there may be behavioural impacts such as a change in take-up, which are described below.

- **MedCo Registration Solutions Limited (MedCo)**: MedCo is an industry owned ‘not for profit’ company which oversees the accreditation of medical experts and operates an IT Portal which is used to independently source the initial medical reports used in support of soft tissue injury claims.

- **Claims Portal Limited (CPL)**: The CPL is an industry owned ‘not for profit’ company which oversees the operation of an electronic portal for processing low value PI claims in line with the RTA PAP. Most of these claim types must begin on this online portal.

- **Third sector advice providers**: The third sector can be a source of information and advice for claimants, particularly those who do not have legal representation. Similarly ‘McKenzie friends’

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4 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.
(who can be paid) are sometimes used by unrepresented litigants requiring help and advice in the small claims track.

- Wider social and economic benefits: The costs and benefits are split by:
  
  (i) Motor Insurance Policy Holders: Compensation that insurers pay out to claimants in PSLA awards and legal costs are ultimately paid by motor insurance policy holders so raising their premiums. The proposed reforms should reduce these costs for consumers.
  
  (ii) Wider society: The proposed reforms would also tackle the wider compensation culture which has grown up surrounding RTA-related soft tissue injuries, thus benefiting wider society.

D. Description of options considered

4.1 To meet the Government’s policy objectives, the following options are considered in this IA:

- Option 0: Base case (do nothing)
- Option 1: Reforming the whiplash claims process and PI, including:

4.2 Option 1 consists of three main elements, these are:

- introducing a fixed tariff system for PSLA compensation payments for whiplash related injuries up to a duration of 24 months;
- raising the small claims limit to £2k (from £1k) for all PI claims and to £5k (from £1k) for all RTA related personal injury claims;
- introducing a ban of both the making and requesting of pre-med offers to settle RTA whiplash related injury claims.

4.3 The Governments preferred option is Option 1 as this best meets the policy objectives.

Option 0: Base case (do nothing)

4.4 Under “do nothing” base case, the current system would continue to apply, e.g. PSLA compensation would remain unchanged for whiplash related injuries resulting from an RTA, the SCT limit would remain at £1,000 for PI claims and offers for claims without medical reports would continue to be made. This would result in no incentives for behavioural change to help control/reduce the number and cost of RTA whiplash related claims.

Option 1: Reforming the whiplash related injury and other PI claims process

Introduce a fixed tariff system for PSLA compensation payments for whiplash related injuries up to a duration of 24 months

4.5 Option 1 will involve the introduction of a tariff of fixed compensation payments for PSLA for whiplash related RTA claims with an injury duration of up to 24 months. Payments under the tariff will be fixed, providing a more proportionate level of compensation for PSLA and providing certainty to both claimants and defendants as to the value of a claim. Such a tariff will also protect the claimant from under-settlement, reduce the time needed to settle the claim and therefore reduce the overall costs of dealing with the claim. In addition, if there are multiple injuries the compensation will reflect the most serious injury suffered, often with additional
smaller payments for less serious injuries. Therefore, this option would not impact on claimants with more serious non RTA injuries.

4.6 The judiciary will, if required, be able to either reduce the amount awarded via the tariff, if there is evidence of contributory negligence by the claimant, or increase it in exceptional circumstances (with increases limited to no more than 20% of the available tariff amount). All whiplash related RTA claims will receive revised PSLA compensation in line with the proposed tariff system shown in Table 1 below. The figures proposed below for the tariff will also be subject to periodic review by the Government.

Table 1: PSLA awards available under the fixed rate tariff system

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</tr>
<tr>
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<td>No revision</td>
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</table>

Raise the small claims limit to £2k (from £1k) for all PI claims and to £5k (from £1k) for all RTA related personal injury claims

4.7 The current SCT limit for PI claims of £1,000 has remained unchanged since 1991, whilst the small claims limit for most other types of claim has increased steadily to the current level of £10,000. Under Option 1, the Small Claims Track (SCT) PSLA limit will be increased from £1,000 to £2,000 for relevant PI cases and to £5,000 for all RTA cases. It is expected that the majority of claims will continue to follow a revised pre-action protocol and could proceed on the industry owned Claims Portal. With the change being that this would be aligned with the SCT cost provisions (as opposed to currently where fast track cost provisions apply). Contested PI claims under this limit will proceed as small claims rather than through the fast track (FT). The majority of whiplash related claims are straightforward in nature, particularly when liability is admitted and the value of the claim is known. Therefore such claims are suitable for the SCT.

4.8 The impact of this option is largely driven by the rules around the recoverability of costs in the SCT which differ greatly from those in the FT. In the FT the successful party is generally able to recover their costs, including the cost of legal representation, from the unsuccessful party. In the SCT the costs that can be recovered from the other side are strictly limited. The proposal therefore will result in claimants being largely responsible for their own legal costs of making a claim which should reduce the incentive to bring trivial claims.

4.9 An increase in the SCT limit will be applied to all PI cases (£2k) or for all RTA PI cases (£5k). In addition to RTA, PI claims include Employer Liability (EL), Public Liability (PL) and Clinical negligence (CN) claims.

4.10 CN claims have not been analysed in the costs and benefits below due to data constraints. However, the overall impact is not expected to be significant as CN claims only make up around 2% of PI claims. In addition, it is unlikely that these reforms would apply to many CN cases, as the value of these are often much higher than RTA, EL, or PL claims, and are often more
complex, and so many would likely continue to qualify for FT cost provisions. Data received from the NHS Litigation Authority shows that in 2014 less than 60% of CN claims would qualify for the SCT after the proposed increase in the PSLA limit.

4.11 Similarly, described below, it has not been possible to quantify the impacts of raising the SCT limit from £1,000 to £2,000 for EL and PL claims, due to a lack of available data.

Introduce a ban of both the making and requesting of pre-med offers to settle RTA whiplash related injury claims.

4.12 All low value RTA whiplash related claims will need to be supported by a medical report provided by a MedCo accredited medical expert. There are broadly 3 types of claims that are currently settled without a medical report (referred to as pre-med offers):

- The majority are offers that are made directly from insurers to claimants in order to obtain a quick and straightforward settlement in order to minimise costs.
- In a minority of cases some claimant lawyer firms will request such offers from insurers in order to minimise the impact on the £500 fixed cost available to them for handling the claim.
- In a minority of cases pre-med offers are made towards the end of the limitation period of three years, where a medical report is generally just a report containing a list of dictated symptoms.

4.13 The requirement to make sure that a medical report is completed before any RTA whiplash related claim can be settled will provide more certainty to the costs of the settlement process and will provide both parties with information as to the severity of the injury, an accurate assessment of the treatment required and/or duration of the injury so as to be able to assess their position on the tariff and identify the compensation payable to settle the claim.

4.14 This will mean an end to the practice of pre-med offers to settle, which can lead to unmeritorious, minor or exaggerated claims being made by some claimants, including fraudulent claims by uninjured claimants. This will also reduce the risk of under-settlement as this option would ensure that claimants with genuine injuries are properly assessed by accredited medical experts and receive compensation appropriate to the level of pain and suffering they have endured.

Other Options Considered

4.15 Consideration has also been given to whether the same objectives could be achieved through non-regulatory means. Such an approach could include working with claimant and defendant representative groups to discourage minor, exaggerated or fraudulent claims through, for example, wider communications campaigns. However, such an approach would not meet the policy objectives as well as Option 1 because, as described above, the Government believes that the problem results, in part, from the incentives created by the current structure of the regulatory regime which cannot be addressed through non-regulatory interventions.

4.16 The Government also believes these failures have contributed to a wider environment where it has become culturally acceptable in some quarters to make minor, exaggerated or fraudulent soft tissue injury claims. In addition, a substantial industry has developed to encourage such claims whose existence largely rests upon the maintenance of the current regulatory arrangements.

4.17 In the Government's view it is therefore very unlikely that voluntary/non-regulatory initiatives through a non-regulatory approach would have any discernible impact on reducing the current incentives and costs in the market. Such an approach is unlikely to meet the Government's objectives to reduce the wider costs of whiplash related claims for motorists through reduced motor insurance premiums. In implementing the reforms described in this IA the Government will
work with all interested parties to develop the support necessary for Litigants in Person/
claimants without legal representation.

E. Cost and Benefit Analysis

5.1 This IA identifies impacts on individuals, groups and businesses in the UK, with the aim of
understanding what the overall impact to society might be from implementing these options. The
costs and benefits of each option are compared to the ‘do nothing’ option. IAs place a strong
emphasis on valuing the costs and benefits in monetary terms (including estimating the value of
goods and services that are not traded). However there are important aspects that cannot
sensibly and proportionately be monetised. These include how the proposal impacts differently
on particular groups of society or changes in equity and fairness, either positive or negative.

5.2 Because this ‘do nothing’ option is compared against itself, its costs and benefits are necessarily
zero, as is its Net Present Value (NPV)\(^6\). All other options are measured relative to the base
case.

5.3 Before assessing the costs and benefits of the preferred option, this section provides an overview
of the approach adopted. This includes the definitions and conventions used, the baseline
volumes and the assumptions made to facilitate the analysis. This includes a discussion of the
assumptions made in the consultation IA and how these have been amended based on the
information received.

Definitions

5.4 In this IA, RTA financially settled claims\(^6\) supported by a medical report are referred to as ‘with
med claims’. Subsets of these claims can include whiplash related with med claims, or non-
whiplash related with med claims, which will be specified if relevant.

5.5 Similarly, RTA financially settled claims not supported by a medical report are referred to as ‘pre-
med claims’ in the IA. 100% of pre-med claims are assumed to be whiplash related claims, as it
is assumed that claimants would obtain medical reports if the injuries were more significant.
Therefore any reference to a pre-med claim refers to whiplash related injuries.

5.6 We are only interested in claims where insurers have settled (paid costs to claimants), rather
than other types of CRU ‘settled’ claims, which can include claims that were later withdrawn or
found in favour of defendants, as consumers would only realise savings due to these proposals
in claims where insurers are currently paying out costs to claimants.

Rounding

5.7 The following rounding conventions have been applied to the figures in this IA:

- Percentages quoted are rounded to the nearest 1%.
- Case volumes below 100,000 have been rounded to the nearest 1,000.
- Case volumes greater than 100,000 have been rounded to the nearest 5,000.
- Figures greater than £500 have been rounded to the nearest £50 and figures below £500
  have been rounded to the nearest £10.
- Costs and benefits have been rounded as follows:
  a. below £1 million have been rounded to the nearest £0.1 million

\(^6\) The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV
are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits
provided in the future. Similarly, people prefer to pay costs later rather than in the present.
\(^6\) Insurers have paid costs to claimants.
b. over £1 million and below £100m are rounded to the nearest £1 million

c. over £100 million and below £1 billion rounded to the nearest £10 million

d. over £1 billion rounded to the nearest £100 million

Data sources: All Options

5.8 The data in this IA comes from the following key sources:

- DWP’s Compensation Recovery Unit (CRU), which records personal injury claims in order to recover social security benefits;
- The Claims Outcome Advisor (COA/ISO) and Collosus (CSC), who are companies that advise insurance claims handlers on how much they should pay out for personal injury claims.

5.9 The COA/CSC data captures represents soft tissue and non-soft tissue claims. The definition of whiplash related injuries will not be as wide as covering all soft tissue claims, however we expect this data to be highly representative of RTA whiplash related claims, given that whiplash-related injuries constitute the majority of RTA soft tissue claims.

5.10 It should be noted that it has not been possible to update the COA and CSC datasets from those considered in the consultation stage IA, which represents claims from January – December 2015, due to time constraints; it took many months to receive the COA/CSC data and there was a substantial amount of analysis required once the data was received.

5.11 However, this data should still be highly representative of whiplash related claims, and steps have been taken to ensure the IA makes use of the most recent data available in key areas: the estimates of the PSLA damages currently awarded to soft tissue claimants have been uplifted to reflect the 14th edition judicial college guidelines, released in September 2017, the baseline claim volumes has been updated to account for the most recent 2016/17 CRU data (discussed further below), and recent MRO data has been incorporated to update the estimate of the current claimant injury duration distribution.

Baseline data

Claim volumes

5.12 The volume of settled RTA claims in England and Wales was 705,000 in 2016/17\(^7\), of which:

- 540,000 received a financial settlement\(^6\).
- We have estimated 520,000 related to soft tissue injury RTA accidents that received a financial settlement\(^6\).

5.13 CRU has been able to provide data on the number of financially settled RTA claims from 2012/13 until 2016/17. This data is presented in Table 2.

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\(^7\) Based on data we received from DWP’s CRU, snapshot taken on 13/08/2017.

\(^6\) Based on DWP CRU. By financial settlement, we mean any claims that result in compensation being paid out, either where claims/damages are settled (i.e. by agreement, where liability is admitted/damages agreed) or won (i.e. where liability/damages are denied/disputed).

\(^9\) Based on combining CRU data above and the COA and CSC databases used by insurers, see annex A for more information on these databases.
Table 2: Volume of settled RTA claims where the claimant received a financial settlement since 2012/13

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Settled claims where the claimant received a financial settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/13</td>
<td>615,000</td>
</tr>
<tr>
<td>13/14</td>
<td>610,000</td>
</tr>
<tr>
<td>14/15</td>
<td>545,000</td>
</tr>
<tr>
<td>15/16</td>
<td>525,000</td>
</tr>
<tr>
<td>16/17</td>
<td>540,000</td>
</tr>
</tbody>
</table>

5.14 Table 2 shows that there was a decrease in financially settled RTA claims following LASPO reforms, enacted in April 2013. COA data has indicated that the mean life cycle of a soft tissue claim is roughly around a year. Therefore we would expect to see the impact of the LASPO reforms on volumes from 2014/15. From the CRU data there appears to have been a reduction in financially settled claim volume in 2014/15.

5.15 In April 2015 the Medco portal was introduced and, in June 2016, the accreditation of medical experts became an enacted policy. In the IA that preceded these reforms, it was estimated that these reforms could cause 10% of claims to no longer be pursued at the outset, which was informed by consultation with industry stakeholders. We may have witnessed a reduction/fluctuation in claims in 2015/16 due to these reforms. However, it is unclear if the fluctuations are driven by these recent reforms, if there are still some LASPO impacts filtering through, or whether there are other contextual factors such as the natural variance of settled claims, which we are unable to estimate. Given the uncertainty, but considering that recent data should include some impacts from the most recent reforms, it has been assumed that baseline volumes may decrease by a further 5% as the recent reforms continue to bed in. This would lead to a volume of around 515,000 financially settled RTA claims.

5.16 Following consideration of consultation evidence\(^{10}\), we have assumed that 10% of the CRU claims are likely to be pre-med claims (around 51,000) and around half of pre-med claims are not included in the CRU figures (around 26,000). It follows that the baseline volume of claims with medical reports is assumed to be around 485,000, and the baseline volume without medical reports is assumed to be around 51,000. In summary, this IA assumes there would be a steady state baseline volume of around 515,000 financially settled RTA PI claims per annum in the future, if the options in this IA were not taken forward.

5.17 There are respective impacts from the different policy options that are assumed to change this baseline volume. These are described in the sections below. Sensitivity analysis considers the impact of an increase and decrease in the baseline volumes.

5.18 Data from the COA and CSC datasets suggest that around 96% of RTA financially settled claims are soft tissue. The proposed reforms relating to the reduction of PSLA damages applies to whiplash related claims only (to be defined in primary legislation supported by regulations), where for the purposes of the analysis we assume soft tissue represents whiplash related claims. Therefore it will impact around 520,000 claims: 470,000 (96%) of the 485,000 baseline with med claims, and 100% of the 51,000 baseline pre-med claims (as claims without medical reports are assumed to all be soft tissue claims\(^{11}\)). Note, the DWP CRU data considers soft tissue claims to account for only around 90% of total claims, but this is not as reliable because it excludes claims where the injury is categorised as ‘other’.

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\(^{10}\) Discussed further below.

\(^{11}\) We assume all claims currently without medical reports are soft tissue claims, as claims involving breaks, fractures, or lacerations are serious enough to warrant medical reports.
Legal and medical report fees

5.19 To estimate the mean fixed recoverable legal costs (FRC) defendant insurers would no longer be responsible for due to claims dropping out with legal representation or qualifying for SCT provisions where legal fees are no longer recoverable from defendants (in claims that the defendants settle), we have used the FRC applicable depending on which stage the claim settled. These fixed costs are published in the Pre-Action Protocols for Low Value Personal Injury Claims in Road traffic accidents or Injury (EL and PL claims) and are the fixed amounts that the claimant can recover for legal expenses if they are successful.

5.20 Table 3 below sets out the legal costs that we have applied, which are standard for RTA claims that have a total settlement of greater than £1k and up to £10k. This table suggests a weighted average FRC for legal fees per RTA claim of £547:

Table 3: FRCs for RTA claims (from a leading panel law firm)

<table>
<thead>
<tr>
<th>Claims</th>
<th>% of Claims</th>
<th>FRCs for RTA claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>Settled by the end of stage 2</td>
<td>59%</td>
<td>£500</td>
</tr>
<tr>
<td>Settled by the end of stage 3</td>
<td>6%</td>
<td>£1000</td>
</tr>
<tr>
<td>Fall out of portal</td>
<td>35%</td>
<td>£550</td>
</tr>
</tbody>
</table>

5.21 This details the proportion of claims that settle or fall out of the claims portal process, and the fixed recoverable legal fees available at each stage, sourced from a leading panel law firm. The FRC can be higher for claims that fall out of the portal and issue at court: (increased to £1,160 + 20% of damages), but we have assumed the majority that fall out settle pre-court, where the FRC are £550. This means we may be slightly underestimating the mean FRC insurers would no longer be responsible for, as some that drop out of the portal process and issue may qualify for the SCT post reform, where insurers would no longer pay these increased costs.

5.22 On the other hand, this potential underestimate may be mitigated by the fact that not all current stage 3 claims would likely be suitable (e.g. if they too complex) for the SCT post reforms, such as current stage 3 claims involving minors. If these claims remain in the FT insurers would still be responsible for the £1,000 FRC for those with legal representation, post reforms. On balance, given the uncertainty over these behavioural impacts post reform, it seems reasonable to estimate the mean FRC legal fees insurers would no longer responsible for per claim as the weighted average of the figures provided above (£547).

5.23 Combining data from a leading panel law firm with the fixed recoverable costs set out in the pre-action protocol suggests that the mean legal fees for RTA cases is £550. Medical reports have a fixed cost of £180, as set out in the pre-action protocol.

5.24 VAT of 20% is owed on both medical reports and legal fees, adding an additional VAT cost of around £110 and £35 for legal fees and medical reports, respectively.
Currently there is an IPT of 12%. It has been assumed that all insurer costs will be passed on to premium holders in the IA.

There are some groups (lawyers, medical experts, CMCs) who will likely experience changes in demand as a result of the proposed reforms. Throughout this IA their estimated loss or gain in revenue is included in the costs and benefits sections for each option, but is not included in the NPV calculations. Similarly, this same approach is applied in the costs to business section, where any costs to these groups have not been considered as a cost to business.

The reason for this approach is because, while the Governments reform package will lead to a reduction in demand for such services, it is legitimate to assume for the purposes of this IA (and in line with the standard practice for calculating the effects of changing demand on suppliers) that those affected will replace the lost work with other legal work of an equivalent economic value.

The loss of tax revenue mentioned in the costs and benefits sections is for steady-state purposes, to estimate the impact once the reform proposal has had time to bed in. This estimate does not take account of any behavioural changes in insurance purchasing (aside from those already included in the assumptions, such as a certain proportion of claims no longer proceeding as a result of the reforms). It assumes that premiums decrease in direct proportion to the estimated savings made by insurers that are passed on to premium holders, and that steady state savings occur immediately after implementation. These calculations of Exchequer impacts are based on a detailed assessment of the five year accounting period for the Public Finances, and they take account of behavioural impacts, therefore the figures presented in these sections make use of different data sources and methodology, resulting in different figures.

It is assumed that the PSLA compensation received for with med whiplash related claims in COA and CSC data is £2,500\(^{12}\) and the mean pre-meds is £1,800\(^{12}\). It has been assumed that the injury duration of pre-med claims is the same distribution as those with a medical report, in the absence of other data.

Assumptions

As mentioned above, as part of the consultation process further information was sought concerning the assumptions used to construct the IA. In the following paragraphs we provide a summary of the information and data received during the consultation period, and the consequent impacts on modelling assumptions.

Baseline volumes

For this final stage IA, baseline volumes are based on RTA financially settled CRU volumes for 2016/17 with a reduction of 5% applied to these volumes to reflect the MedCo reforms, which commenced in April 2015\(^{14}\). Some respondents from the claimant and insurer sector agreed that settled claims were more reliable than registered claims.

Consultation responses reported that claims volumes have been falling in recent years, although there were differences in the figures depending on the labelling of the claim, for example, if the claim is specifically labelled whiplash, or neck and back. Whilst the Government notes that the effects of MedCo reforms are still being embedded, it remains cautious on the overall claims volumes, as the most recent data for 2016/17 shows that the volume of settled RTA claims has increased slightly compared to 2015/16.

\(^{12}\) COA and CSC databases used by insurers. This data represents Jan 15 to Dec 15, so the current with med award may be slightly higher now, given the updated JCG.

\(^{13}\) Evidence submitted by the insurer AXA to the Transport Select Committee in 2013 suggest the PSLA amounts are between £1,600 and £2,000. Evidence submitted as part of the consultation process, discussed further below, has not led us to increase this estimate.

\(^{14}\) This is discussed in more detail further down.
5.33 For this final IA, the Government has not changed the definition of soft tissue claims to include only ‘whiplash’ (as recorded in CRU data) claims, as suggested by consultation responses. This is because whilst claims recorded as ‘whiplash’ in CRU data have been falling, claims recorded ‘neck’ or ‘back’ in CRU data have been increasing, so that overall all soft tissue claims in CRU data have remained relatively stable at around 90% of total motor claims in recent years. The definition of whiplash that these new reforms will apply to is narrower than soft tissue but potentially wider than what users of CRU would classify as ‘whiplash’.

5.34 For this final stage IA we assume that 10% of claims are pre-med claims based on those where there is a financial settlement rather than total registered claims. This means that the total pre-med claims estimated in this IA is 51,000, a decrease from the consultation stage estimate of 70,000. This change in which claims numbers we have used for this assumption has been informed by feedback from the consultation. Whilst several representative organisations from the claimant and insurance sector reported anecdotally that there are fewer than 10% pre-med offers in the settled claims, we received evidence from a large law firm that the percentage is higher.

5.35 We received conflicting anecdotal information on whether CRU volumes contain some pre-med claims. After consideration of the responses, for this final stage IA we have assumed that 50% of pre-med claims are included in CRU settled claims data, which is a change from the 0% figure used in the consultation\(^{15}\) stage IA. This reduces the total baseline volume of RTA financially settled claims that was considered at the consultation stage, and means that we could be slightly underestimating insurer savings if less than 50% of the total pre-meds are recorded in CRU data.

Post reform volumes

5.36 Views were sought on the individual options contained in the IA. Responses varied, with some insurers suggesting that all whiplash claims up to and including an injury duration of six months would proceed as a result of the tariff, because potentially there would be more claims as CMCs move into the market. Claimant representatives suggested that more claims would not proceed as a result of the change in the small claims threshold.

5.37 For this final stage IA we are considering this assumption in view of the final policy package (Option 1), which includes a tariff of compensation payable for pain, suffering and loss of amenity for these low value claims. The tariff will include a band from 0-3 months and one from 4-6 months. On the basis of the information received and the change in policy, we are assuming in this IA that 50% of claims in both brackets 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.

5.38 However, we recognise that there could be a variance between the different bands, i.e. between claims in the 0-3 month duration band and those in the 4-6 month duration band. As we have no further data to support this behavioural assumption, we have carried out sensitivity analysis, on the basis on 0% of claims in these bands proceeding, and 100% of claims in these bands proceeding.

Injury duration distribution

5.39 Data was received from a leading MRO containing the prognosis periods recorded on medical reports sourced in support of whiplash claims (on Medco), from January 2015 to December 2016\(^{16}\). This data paints a slightly different picture to the COA/CSC data, as a higher proportion

\(^{15}\) The Government was of the understanding at consultation stage that pre-med claims were not recorded in CRU data.

\(^{16}\) Medco data is comprised of medical reports sourced in support of soft tissue claims.
of claims in the MRO data have injury durations at the lower end. Medco is quite well established now, so it seems prudent to take account of this data.

5.40 To account for the differences witnessed in the data sets, the midpoint between the proportions for each injury duration have been taken to estimate the proportion of whiplash related claims that currently sit within each respective injury duration tranche (see Table 4 below). We have retained the assumption that 96% of baseline claims are soft tissue claims, and scaled the MRO data accordingly so that is sums to 96% (accounting for the fact that the vast majority of the MRO’s medical reports should represent whiplash related claims).

**Table 4: Injury duration distribution of soft tissue\(^7\) RTA financially settled claims**

<table>
<thead>
<tr>
<th>Injury duration (ID) in months</th>
<th>Consultation stage estimate (COA/CSC data)</th>
<th>MRO data(^8)</th>
<th>Final stage estimate (Midpoint)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 Months &lt; ID &lt;= 3 Months</td>
<td>13%</td>
<td>17%</td>
<td>15%</td>
</tr>
<tr>
<td>3 Months &lt; ID &lt;= 6 Months</td>
<td>23%</td>
<td>45%</td>
<td>34%</td>
</tr>
<tr>
<td>6 Months &lt; ID &lt;= 9 Months</td>
<td>23%</td>
<td>25%</td>
<td>24%</td>
</tr>
<tr>
<td>9 Months &lt; ID &lt;=12 Months</td>
<td>18%</td>
<td>5%</td>
<td>11%</td>
</tr>
<tr>
<td>12 Months &lt; ID &lt;= 15 Months</td>
<td>11%</td>
<td>1%</td>
<td>6%</td>
</tr>
<tr>
<td>15 Months &lt; ID &lt;=18 Months</td>
<td>4%</td>
<td>1%</td>
<td>2%</td>
</tr>
<tr>
<td>18 Months &lt; ID &lt;=24 Months</td>
<td>3%</td>
<td>0.4%</td>
<td>2%</td>
</tr>
<tr>
<td>ID &gt; 24 Months</td>
<td>2%</td>
<td>0.3%</td>
<td>1%</td>
</tr>
<tr>
<td>Total</td>
<td>96%</td>
<td>96%</td>
<td>96%</td>
</tr>
</tbody>
</table>

**Legal representation**

**Legal fees for claims with medical reports**

5.41 The consultation stage IA assumed that 99% of with med claims currently have legal costs. The original assumption was based on the fact that claimants without legal representation are unable to use the Claims Portal as it is currently set up, and through considering HMCTS data.

5.42 As part of the consultation process, we received limited evidence on this issue. While some respondents argued that the proportion of claimants with legal representation is lower than 99%, it has not possible to substantiate these assertions. The statements made in response come from stakeholders whose firms operate under differing business models, therefore, without detailed data, it is difficult to support a significant reduction in our earlier assumption.

\(^7\) As described further below, the COA/CSC and MRO data received represents RTA soft tissue and non-soft tissue claims, which may include some claims that would be out of scope of the whiplash definition. However, we expect the majority of soft tissue injuries in the data to be whiplash injuries.

\(^8\) Scaled to sum to 96%.
Therefore, given the lack of reliable data with which to fuller reconsider the Government’s original assumption in this area, but taking account of a number of consultation responses which indicated that the figure is likely to be lower than 99%, this final stage IA assumes that 95% of with med claims currently have legal representation. Therefore, around 5% would currently be claimants without legal representation. This revision acknowledges the responses made in this area, but a greater change to the assumption cannot be justified without actual data to back up the suggestions made. Particularly, since those responding to this point came from differing backgrounds with differing viewpoints on the make-up of the sector.

The Judiciary and claimant representatives suggested that there could be more litigants in person (LiPs) post reform, and so taking into account stakeholder views, it is assumed that with med claimants without legal representation would increase from 5% to 30% post reform.

In terms of the percentage of claims with BTE insurance, several respondents argued that following the 2016 FCA investigation into insurance add-ons, which concluded tick boxes for add on insurance should be banned, the number of claimants with BTE funded legal representation is likely to be lower than the consultation stage estimate of 70%. We received conflicting views on whether there would be more or less BTE premiums post reforms.

The evidence received was largely qualitative but it suggests that, for the final package of reforms, the assumption that 70% of RTA claimants with lawyers have BTE funded legal representation is too high. We have therefore amended this assumption to 50% of RTA claimants with lawyers are funded by a BTE product. We also think there is good reason to believe that BTE products will continue post reforms and remain a popular product. Therefore, we have assumed BTE take up will remain at 50% post reforms, although we do recognise BTE may be more expensive, but 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. In addition, we have not changed the assumption that BTE would continue to provide claimants in the SCT with legal representation, given that RTA BTE products appear to be predominately aimed at whiplash related type claims and the majority of whiplash related claims would qualify for SCT cost provisions.

On the basis of the above, our assumptions in this area can be summarised as follows:

- Of the total 485,000 with med baseline claims, currently 50% are assumed to have BTE funded legal representation, 5% are assumed to be claimants without legal representation, leaving 45% that are assumed to have non-BTE funded legal representation.

- Of the claims that proceed post reforms it has been assumed that the proportion with BTE would remain the same (50%), and the proportion of claimants without legal representation would increase to 30% (from 5%), decreasing claims with non BTE funded legal representation to 20% (from 45%).

Legal fees for claims without medical reports

As part of the consultation process we received no robust evidence on this point. However, we received feedback from both sides of the industry that the proportion of pre-med claims with legal representation would be higher in practice, with insurers arguing that claimant solicitors will seek pre-med offers and that the proportion with legal representation could currently be as high as 100%. Claimant lawyers also argued that most claims have legal representation, and therefore legal fees, but legal firms are less likely to encounter claims where a claimant lawyer has not been engaged.

For this final stage IA, however, we believe there is enough evidence to increase the figure from 20% to 50%. The Government believes that some claims are captured by insurers before a legal representative is engaged.
5.50 The assumption on the proportion of pre-med claims with BTE funded legal representation is determined by the proportion of pre-med offer claims that have legal fees (given we assume that pre-med claims with legal representation have the same distribution of BTE/non-BTE legal representation as with medics, both pre and post reform). We have therefore amended this assumption for this final stage IA to state that 25% of such claims have BTE funded legal representation\(^\text{19}\) and 25%\(^\text{20}\) have non BTE funded legal representation.

**RTA Claims that would qualify for SCT provisions**

5.51 In this IA, it has been assumed that 91% of with med claims (both whiplash related and non-whiplash related, as the SCT rise applies to all claims) that proceed would qualify for SCT provisions post reforms. This is estimated by considering:

- Of the 365,000 with med claims that would proceed (485,000 baseline – 120,000 that no longer proceed), 95% are assumed to currently have legal fees (350,000) and a subset of these would qualify for SCT provisions, where insurers would no longer pay fixed recoverable legal fees.

- Under the proposed tariff 99% of RTA whiplash related\(^\text{21}\) claims would have PSLA damages up to £5,000 (suggesting that 99%\(^\text{22}\) of RTA whiplash related claims that proceed could be captured by the rise), and in the COA data around 63% of RTA non-soft tissue claims would qualify for the proposed rise (bearing in mind that the tariff only applies to whiplash related claims). Given the volume of claims that would proceed, then based on the value of the claim alone it suggests defendant insurers could no longer be responsible for recoverable legal fees in around 97% of the 365,000 claims that proceed. However, track allocation is based on complexity as well as the value of the claim, so not all of these claims would likely be captured by the rise. It is difficult to estimate what further proportion would not qualify for the SCT rise, but this proportion is likely to be lower.

- It has been assumed that claims involving minors would still qualify for FT cost provisions, where legal fees remain recoverable from defendants. Some claims that currently drop out of the portal process that issue may or may not be captured, and some liability denied claims may or may not be captured by the rise. As a proxy, it has been assumed that all of the estimated minors assumed to proceed are assumed to remain in the FT. Around 5% of the 365,000 that proceed are estimated to be minors, suggesting that the SCT rise could apply to around 91% of total with med claims.

5.52 Therefore, of the 350,000\(^\text{23}\) financially settled with med claims that proceed and currently have legal fees, 91% are assumed to qualify for SCT provisions (320,000), where defendant insurers would no longer be responsible for paying fixed recoverable legal fees and associated VAT.

5.53 All of the current pre-med claims are assumed to qualify for SCT provisions post reforms, as these are simpler claims that are unlikely to be complex enough or expensive enough to qualify for FT provisions post reform. Of the 38,000 pre-med claims assumed to proceed, 50% are assumed to have legal representation, meaning legal fees and associated VAT would no longer be recoverable in around 19,000 pre-med claims.

\(^{19}\) Of the 50% with legal representation, 50% of these are assumed to be BTE funded legal representation.

\(^{20}\) As 50% are assumed to have legal representation, and 25% are assumed to have BTE funded legal representation, this leaves 25% that would have non BTE funded legal representation.

\(^{21}\) The claims in the COA/CSC data that are soft tissue rather than non-soft tissue.

\(^{22}\) This can be seen in the table provided in the cost to claimants section.

\(^{23}\) 485,000 baseline with med claims, minus the 120,000 that no longer proceed, multiplied by 90%.
5.54 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. The impact of the SCT rise on other PI claims has not been quantified in the IA, due to the lack of data.

Special damages

5.55 Special damages are paid to claimants to recover any direct financial loss as a result of their injury, such as loss of earnings. The consultation stage IA suggested that around 70% of RTA claims with medical reports had special damages based on COA/CSC data. Several claimant representations suggested the proportion was higher, however, in the absence of representative data across the industry, and given that the COA data is quite robust, we are keeping the assumption for this final stage IA.

5.56 For the consultation stage IA we assumed that only 5% of pre-med offers also included payments for special damages. As part of the consultation we received qualitative feedback from both insurers and claimant solicitors that this figure should be higher. As before, we received no robust data, but both sides of the industry consistently suggested the figure should be higher. This included submissions from insurers, claimants and legal expenses insurers, so we have therefore decided that it is appropriate to increase this percentage to 30%.

5.57 The consultation indicated to Government that a more proportionate approach to the tariff system was needed. This has been achieved by including a separate tariff for awards for claims with injuries of 0-3 months duration and another for 4-6 months duration. At the consultation stage, special damages awarded for claims up to 6 months were estimated to be £100, based on COA/CSC data. However, once the 6 months duration group is split into separate 0-3 months and 4-6 months duration groups, the COA/CSC data suggests the specials awarded for 0-3 months would be around £100, and for 4-6 months around £250. Therefore, for the final stage these minor special damages are assumed to apply to current with med and pre-med claims.

PSLA damages

5.58 The consultation IA suggested that the average pre-med award is £1,800. Several claimant representatives claimed 2016 pre-med PSLA awards are slightly lower than this, whilst insurers argued that some awards are the same as claims with medical reports. In the absence of representative data, we are keeping the average award of £1,800.

5.59 The consultation IA assumed that the current pre-med claims may receive lower than the tariff in future. We received conflicting views on this assumption. Based on the responses, the Government accepts that the tariff is likely to be widely publicised and all claims will receive the same award post reform.

5.60 Comments were received in the consultation that the most up to date version of the judicial college guidelines had not been accounted for in the consultation document. Since these

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24 Based on the weighted average PSLA award for claims with injury duration up to 6 months.
25 The weighted average special damages awarded in COA/CSC data for a claim with PSLA damages between £1000 & £2000 is around £100, whilst the weighted average special awarded for PSLA damages between £2000 & £3000 is around £400. (The special damages dataset - also COA/CSC data - is separate to the dataset used to estimate the mean PSLA awarded for different injury durations. It can be used to calculate the average special damages awarded for claims that have PSLA awards within a range of £1,000 - in incremental £1,000 spans). The weighted average PSLA awarded for claims with injury duration between 0-3 months & 3-6 months is around £1,400 and £2,100, respectively. (These PSLA awards do not contain the uplift for the most recent JCG, which is appropriate as the special damages data is taken from Jan 15 to Dec 15 and is more reflective of the specials awarded for claims with PSLA awards prior to when the 13th edition of the guidelines were released in September 15). Claims with injury durations between 6-9 months & 9-12 months have mean PSLA awards of around £2,500 and £3,000 respectively, and would likely be claims awarded higher special damages than those with 3-6 months injury duration to account for the longer injury duration. These claims are likely increasing the mean special damages awarded for claims with PSLA between £2,000 and £3,000. To account for this, we have estimated the special damages awarded for claims with 3-6 months injury duration as £250, which is the difference.
26 Evidence submitted by the insurer AXA to the Transport Select Committee in 2013 suggest the PSLA amounts are between £1,600 to £2,000. We have taken the mid-point.
comments were received, the 14th edition of the Judicial College Guidelines (JCG) has been released and has been included into the final stage IA assumptions.

5.61 The weighted PSLA damages per whiplash related RTA claim are estimated using COA/CSC datasets, which cover the period January 2015 – December 2015. The 14th edition of the Judicial College Guidelines (JCG) was released in September 2017, and contains a 26% increase in the guideline awards for soft tissue injuries with prognosis duration of 0 – 3 months and around 8% guideline increase for all other soft tissue injuries, when compared to the 12th edition of the JCG. There is likely to be a causal relationship between the guidelines and the PSLA awarded to claimants. Therefore, these uplifts have been applied to our latest estimates of the PSLA currently awarded for given injury durations, to reflect the impact of the new JCG. This has also been accounted for in the revised tariff system, as described below.

5.62 The PSLA damages currently awarded to whiplash related with med and pre-med claimants are contained in the costs and benefits section, below, where the proposed tariff is detailed and the volume of claims assumed to proceed within each injury duration post reform.

Pass through

5.63 The consultation IA used the mid-point of the Competition and Markets Authority (CMA) assumption that 85% of savings would be passed through to premium holders, due to the competitiveness of the motor insurance market. Many respondents argued that previous savings due to the LASPO reforms had not been passed through to premium holders. Insurer data has shown that claim costs have reduced, and while premiums reduced for a while, they have since increased. In addition, although several insurers have said they will pass on the savings, several since have become more cautious (although this may be due to some insurers becoming more cautious due to concerns over other related Government reforms). However in this IA we are specifically referring to the savings obtained due to whiplash related reforms, regardless of any other policy proposals which impact on premium prices. We have not received robust evidence of what the pass through could be, although it has generally been noted that many factors feed into motor premiums and this policy cannot be considered in isolation.

5.64 After careful consideration of the evidence, the government considers that 85% of insurer savings could be passed through to consumers. This is considered independently to the Government’s proposed reforms to the personal injury discount rate, or any other wider changes to the market. In other words, it is the reduction in premiums we expect to occur solely due to these reforms and we expect there to be a discrete change in premiums following their implementation. However, and to acknowledge the evidence suggesting it could be lower and the consultation responses, sensitivity analysis has been conducted for pass through rates of 50% and 70%.

27 The percentage uplift for claims greater than 0-3 months was calculated by finding the difference in the percentage increase in the upper amount awarded for different types of soft tissue injuries from the 12th to the 14th JC guidelines
28 As can be seen in the COA/CSC data following a 10% uplift in PSLA damages in the JCG following LASPO reforms.
29 This assumption is in line with a report published by the CMA, where they applied an assumption of 80-90% pass through of revenue from insurers to lower premiums. Upon publication this assumption was not contentious (other assumptions did receive considerable feedback).
30 The Office of Fair Trading launched a calls for evidence in the Private Motor Insurance market in 2011. Page 15: “There has been a reasonable degree of consensus amongst respondents in our call for evidence that the private motor insurance market is strongly competitive https://assets.digital.cabinet-office.gov.uk/media/532ad729e5274a226b00030bMotor_Insurance_1_.pdf
HMCTS impact

5.65 The consultation IA assumed that the SCT operated on a cost recovery basis. Respondents argued that the courts would become clogged with LiPs, meaning cases would take longer and claimants would receive lower awards.

5.66 The Pre-action protocols (PAPs) for RTA, EL, PL, and CN will be adjusted to make it easier for claimants without legal representation to proceed their claims to avoid over burdening the small claims courts. Court fees are lower in the SCT to reflect reduced resources required for SCT claims. After considering the responses, and the changes that would be made to the PAPs, the government considers that in the long term the courts would operate at cost recovery.

NHS Impact

5.67 After consulting with DH on the responses received as part of the consultation process, we have agreed that there is no need to change the methodology that was presented in the consultation stage IA. The NHS outpatient cost has been updated from 2014/2015 to 2015/2016 data, which indicates that the total cost to outpatients was around £62m.

DWP Impact

5.68 Similarly, after consulting with DWP on the responses received as part of the consultation process, it has been agreed that there is no need to change the consultation stage methodology, i.e. that the impact on DWP would be negligible33.

Summary of key assumptions for Option 1

5.69 The key assumptions for Option 1 are set out in Table 5 below, which are the assumptions that are most applicable for reaching the key figures set out in the costs and benefits section. It should be noted that the costs and benefits in that section may not always sum to their given totals due to rounding.

Table 5: Summary of key assumptions for assessing the impact of Option 1

<table>
<thead>
<tr>
<th>Assumption</th>
<th>Main figures and assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RTA claims - volume</strong></td>
<td>50% of whiplash related claims with an injury duration up to 6 months would continue post reform, and all claims with injury duration over 6 months would proceed.</td>
</tr>
<tr>
<td></td>
<td>This assumption applies to both med and pre-med claims.</td>
</tr>
<tr>
<td></td>
<td>Of the 485,000 baseline with med (RTA financially settled) claims, around 240,000 are whiplash related34 claims with injury duration up to 6 months. Therefore, around 120,000 would no longer proceed, and 365,000 would proceed, per annum post reforms.</td>
</tr>
<tr>
<td></td>
<td>Of the 51,000 baseline pre-med (RTA financially settled) claims, all of which are assumed to currently be whiplash related claims, around 26,000 have injury duration up to 6 months. Therefore, around 13,000 are assumed to no longer proceed and around 38,000 are assumed to proceed per annum post reforms.</td>
</tr>
<tr>
<td><strong>RTA claims - damages</strong></td>
<td>All RTA whiplash related claims post reform would receive PSLA damages in line with the tariff. Exceptional circumstances could result in a 20% uplift, however, this is assumed to be extremely rare and of negligible impact.</td>
</tr>
</tbody>
</table>

33 Discussed further below.
34 i.e. they are soft tissue claims in the COA/CSC data.
<table>
<thead>
<tr>
<th>Assumption</th>
<th>Main figures and assumptions</th>
</tr>
</thead>
</table>
|            | The with med claims that no longer proceed would be for less serious whiplash related injuries, where the median gross PSLA damages currently awarded is around £1,800 for claims with injury duration 0-3 months, and around £2,250 for claims with injury duration 3-6 months.  
In the absence of data to inform the pre-med claims PSLA awards for different injury durations, all pre-med claims are assumed to be awarded £1,800 PSLA damages, including the claims that are assumed would no longer proceed.  
For the pre-med claims that are assumed to still proceed following the reforms, it is assumed the insurers would owe special damages for 40% of these claims, of £350 per claim that proceeds. |
| RTA Legal representation | Of the 120,000 with med claims assumed to no longer proceed, around 60,000 (50%) would have BTE funded legal representation, 54,000 (45%) would have non-BTE funded legal representation, and 6,000 (5%) would be claimants without legal representation.  
Of the 13,000 pre-med claims assumed to no longer proceed, around 3,000 (25%) would have BTE funded legal representation, 3,000 (25%) would have non-BTE funded legal representation, and 7,000 (50%) would be claimants without legal representation.  
Insurers would no longer pay legal fees and associated VAT in around 340,000 RTA claims that would qualify for SCT provisions. This accounts for 91% of the with med and pre-med claims that currently have legal representation (around 320,000 and 19,000 claims, respectively).  
Of the 335,000 with med claims that proceed & qualify for the SCT rise, around 170,000 (50%) are assumed would have BTE funded legal representation, 67,000 (20%) would have non-BTE funded legal representation, 84,000 (25%) would be new claimants without legal representation, and 17,000 (5%) would be the current claimants without legal representation assumed to remain claimants without representation post reform.  
Of the 38,000 pre-med claims that proceed (and qualify for the SCT rise) around 10,000 (25%) are assumed would have BTE funded legal representation, 4,000 (11%) would have non-BTE funded legal representation, 5,000 (14%) would be new claimants without legal representation, and 19,000 (50%) would be the current claimants without legal representation assumed to remain claimants without legal representation post reform. |

35 By considering the weighted average PSLA awarded for soft tissue claims in the COA/CSC data that have injury duration 0-3 months and 3-6 months and uplifting to reflect the latest Judicial College Guidelines.  
36 Given it's assumed 30% of current pre-med claims have special damages and it's assumed they would have the same distribution as with med claims post reforms (70% of which have special damages in COA data), then insurers would owe special damages for 40% of the current pre-med claims that proceed post reforms.  
37 The median special damages paid out for all soft tissue RTA claims is around £350.  
38 It has been assumed that of the claims assumed to no longer proceed, the proportion with BTE funded legal representation, non BTE funded legal representation, and no legal representation matches the current distribution of these claimants, i.e. a claimant no longer proceeding is not dependent on the type of existence of legal representation they may have.  
39 365,000 with med claims proceed (48,000 – 120,000 that drop out). Given that 91% are assumed to qualify for SCT provisions, 335,000 (365,000 x 91%) would qualify.  
40 Who are assumed to currently be claimants with non-BTE funded legal representation.  
41 5% of with med claims are assumed to currently be claimants without legal representation.  
42 As mentioned previously, all of the pre-med claims that proceed post reform are assumed to qualify for the SCT rise.
<table>
<thead>
<tr>
<th>Assumption</th>
<th>Main figures and assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical reports</td>
<td>It is assumed that as a result of the proposal to introduce mandatory medical reports there will be an increase of around 38,000 medical reports required.</td>
</tr>
</tbody>
</table>

Costs of Option 1

Claimants

5.70 **There would be a total cost to claimants of around £990m per annum.** This is made up of total PSLA costs of around £920m, total special damages costs of around £17m, and total legal fee costs of around £47m, per annum. These estimates are described below:

Damages

5.71 For RTA with med and pre-med whiplash related claims **assumed to no longer proceed**, the costs to claimants would be as follows:

- There would be PSLA and special damages costs to claimants for the 120,000 whiplash related med and the 13,000 pre-med claims that would no longer proceed.

- Of the 120,000 with med claims, 37,000 are assumed to have an injury duration of between 0-3 months and 83,000 between 3-6 months. Given claims with injury duration 0-3 months and 3-6 months are estimated to currently receive on average around £1,800 and £2,250 in PSLA damages per claim, respectively, there would be a cost to claimants of around £250m per annum in lost PSLA damages.

- The pre-meds that no longer proceed are assumed to be awarded around £1,800 in PSLA damages per claim. The loss in PSLA damages to claimants as a result of this drop out would be around £24m per annum.

- The estimated special damages currently awarded for with med and pre-med claims is around £100 for claims with injury duration 0-3 months, and £240 for claims with injury duration 3-6 months. This means there would be a special damages cost to claimants of around £17m per annum due to the with med claims, and around £0.8m for the pre-med claims, that are assumed would no longer proceed.

5.72 For the RTA with med and pre-med whiplash related claims **assumed to proceed**, the costs to claimants would consist of:

- Claimants would receive reduced PSLA damages in line with the difference between the estimated PSLA currently awarded to with med and pre-med claimants, and what would be available under the tariff post reform. This suggests there would be a cost to claimants of around £610m in reduced PSLA damages for claims that are currently with meds, and £35m for claims that are currently pre-meds, per annum.

- The volume of claims estimated to proceed within each injury duration and the estimated PSLA currently awarded are contained in the tables below, which can be used to see how these estimated claimant costs are reached\(^{43}\). The table detailing the pre-med PSLA savings only goes as far as 12 months, as past this point the tariff awards are higher than the estimated pre-med PSLA currently awarded (which results in a benefit for pre-meds with injury durations greater than 12 months assumed to proceed post reform).

\(^{43}\) There will be a slight discrepancy if calculated from the table as some of the figures in the table have been rounded.
Table 6: Insurer PSLA damages savings per RTA whiplash related with med claim that proceeds

<table>
<thead>
<tr>
<th>Injury duration (ID) in months</th>
<th>Volume of claims that proceed post reform</th>
<th>Fixed tariff PSLA available per claim post reform</th>
<th>Current weighted average PSLA awarded per with med claim</th>
<th>Insurer PSLA saving per claim that proceeds post reforms</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 &lt; ID &lt;= 3</td>
<td>37,000</td>
<td>£235</td>
<td>£1,800</td>
<td>£1,600</td>
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<td>3 &lt; ID &lt;= 6</td>
<td>83,000</td>
<td>£470</td>
<td>£2,250</td>
<td>£2,175</td>
</tr>
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<td>6 &lt; ID &lt;= 9</td>
<td>116,000</td>
<td>£805</td>
<td>£2,700</td>
<td>£1,900</td>
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<tr>
<td>9 &lt; ID &lt;= 12</td>
<td>56,000</td>
<td>£1,250</td>
<td>£3,250</td>
<td>£2,000</td>
</tr>
<tr>
<td>12 &lt; ID &lt;= 15</td>
<td>30,000</td>
<td>£1,910</td>
<td>£3,650</td>
<td>£1,750</td>
</tr>
<tr>
<td>15 &lt; ID &lt;= 18</td>
<td>11,000</td>
<td>£2,790</td>
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<td>18 &lt; ID &lt;= 24</td>
<td>7,000</td>
<td>£3,910</td>
<td>£4,750</td>
<td>£850</td>
</tr>
<tr>
<td>ID &gt; 24</td>
<td>5,000</td>
<td>No revision</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Table 7: Insurer PSLA damages savings per RTA whiplash related pre-med claim that proceeds

<table>
<thead>
<tr>
<th>Injury duration (ID) in months</th>
<th>Volumes of claims that proceed post reform</th>
<th>Fixed tariff PSLA available per claim post reform</th>
<th>Current weighted average PSLA award per pre-med claim</th>
<th>Insurer PSLA saving per claim that proceeds post reforms</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 &lt; ID &lt;= 3</td>
<td>4,000</td>
<td>£235</td>
<td>£1,800</td>
<td>£1,550</td>
</tr>
<tr>
<td>3 &lt; ID &lt;= 6</td>
<td>9,000</td>
<td>£470</td>
<td>£1,800</td>
<td>£1,350</td>
</tr>
<tr>
<td>6 &lt; ID &lt;= 9</td>
<td>13,000</td>
<td>£805</td>
<td>£1,800</td>
<td>£1,000</td>
</tr>
<tr>
<td>9 &lt; ID &lt;= 12</td>
<td>6,000</td>
<td>£1,250</td>
<td>£1,800</td>
<td>£550</td>
</tr>
</tbody>
</table>

Legal fees

5.73 The increase in the SCT means claimants would no longer be able to recover the legal fees they would have otherwise obtained in successful FT cases. The legal costs that claimants would bear will depend on the arrangements they are able to make with legal service providers, whether they have taken out BTE insurance or, alternatively, whether they decide to pursue a claim as a LiP.

5.74 For those without BTE insurance that proceed post reforms and qualify for SCT provisions, claimants may decide to pay for legal representation out of their damages. For the 67,000 with med claimants assumed to pay for legal representation and associated VAT out of their damages post reform, there would be a total cost of around £44m per annum.

5.75 For the 4,000 current pre-med claimants assumed to pay for legal representation and associated VAT out of their damages post reform, they would have a cost of around £2m per annum.

5.76 As insurers would no longer be liable to pay for the legal fees, they would have had to pay in the FT, if the claimant wins they might be incentivised to contest more claims. This could potentially lead to a further reduction in settled claims or lower settlement values for claimants.

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44 Volumes have been rounded to the nearest 1,000, savings have been estimated to the nearest £50.
45 Volumes have been rounded to the nearest 1,000, savings have been estimated to the nearest £50.
46 For these cases, it is assumed that claimants would no longer enter 'no win no fee' conditional fee agreements (CFAs) because the legal costs payable if successful would no longer be recoverable from defendants. Instead, it could cause an increase in other types of 'no win no fee' agreement, such as Damages Based Agreements (DBA), where clients pay a proportion of their damages to lawyers to pay for legal representation.
5.77 The increase in the SCT threshold from £1,000 to £2,000 for all personal injury claims that are not RTA could lead to a reduction in the number of claims proceeding to court. It has not been possible to estimate the impact of the reform, because the proportion of claimants who currently have legal representation is unknown.

Claimants without legal representation.

5.78 It has been assumed that there would be an increase in the number of RTA claimants with medics who would proceed as a claimant without legal representation, as a result of non-recoverable legal costs. Such claimants would incur additional legal costs and they would have to spend time familiarising themselves with the claims process and the necessary legal points. However, amendments to the RTA pre-action protocol should ensure there is a system in place that makes it easier for claimants to proceed their claims without legal representation, in order to avoid the small claims courts becoming overburdened with whiplash related claims.

Claimant lawyers

5.79 Under this option, it has been assumed claimants would be more likely to bring claims as a claimant without legal representation and that some claimants may be deterred from making a claim altogether. This is likely to reduce demand for claimant lawyers.

5.80 Claimant lawyers could experience a total loss in legal fee income of around £80m per annum. This is made up of:

- £30m and £2m from the 54,000 with med and 3,000 pre-med claims that currently have non-BTE funded legal representation that are assumed would no longer proceed.

- Around £46m from the 84,000 with med and £3m for the 5,000 pre-med claims that are currently claimants with non-BTE funded legal representation that are assumed to qualify for the SCT rise and proceed as claimants without legal representation post reform. As these are claims that currently have legal representation but would not have legal representation post reform, there would be a cost to claimant lawyers.

5.81 If there is a decrease in the number of cases proceeding to court legal fee income could reduce, as currently there are higher legal fees associated with cases that fall out of the portal compared to those that proceed to court.

5.82 As is standard practice in an IA, it has been assumed that the loss in revenue will be offset by a reduction in the work conducted. Therefore it has been assumed that claimant lawyers would be able to redirect their resources for productive uses elsewhere in the economy of equal or next best economic value. Therefore this cost is not included in the NPV of Option 1.

Defendants (Insurers)

5.83 There would be a total cost to defendant insurers of around £19m per annum, which we assume would be passed onto consumers in the form of higher motor premiums. This cost is estimated by considering the impacts below:

- Defendant insurers will pay for around 38,000 more expert reports per annum\(^{47}\) for pre-med claims that would proceed as with med claims post reform, at £180 per report. This will result in a cost of around £7m per annum.

\(^{47}\) 51,000 baseline pre-meds minus the 13,000 pre-meds assumed to no longer proceed post reforms.
Insurers will also be responsible for paying VAT on these medical reports, at £36 per report. This will be a cost of around £1m per annum. This assumes that all medical experts and MROs are VAT registered, so this estimate is a maxima.

Insurers will incur increases in PSLA compensation costs as settlements with medical reports are generally higher than those without a medical report. This amounts to around £5m per annum. A breakdown of these costs is given in Table 8 below. The PSLA damages available under the tariff system for whiplash related claims with injuries greater than 12 months will be greater than the mean PSLA currently awarded to claimants without medical reports.

Table 8: Insurer PSLA damages costs per whiplash related pre-med claim that proceeds

<table>
<thead>
<tr>
<th>Injury duration (ID) in months</th>
<th>Volume of claims that proceed post reform</th>
<th>Fixed tariff PSLA available per claim post reform</th>
<th>Current weighted average PSLA award per pre-med claim</th>
<th>Insurer PSLA costs per claim that proceeds post reform</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 &lt; ID &lt;= 15</td>
<td>3,000</td>
<td>£1,910</td>
<td>£1,800</td>
<td>£100</td>
</tr>
<tr>
<td>15 &lt; ID &lt;= 18</td>
<td>1,000</td>
<td>£2,790</td>
<td>£1,800</td>
<td>£1,000</td>
</tr>
<tr>
<td>18 &lt; ID &lt;= 24</td>
<td>1,000</td>
<td>£3,910</td>
<td>£1,800</td>
<td>£2,100</td>
</tr>
<tr>
<td>ID &gt; 24</td>
<td>500</td>
<td>£5,600</td>
<td>£1,800</td>
<td>£3,800</td>
</tr>
</tbody>
</table>

Insurers will pay additional special damages for the pre-med claims assumed to proceed as with med claims post reform. It has been assumed that 30% of pre-med claims currently have special damages, and it is assumed 70% of the pre-meds that proceed as with med claims would claim for special damages post reforms. This will be a cost to insurers of around £5m per annum, for around 15,000 claims.

5.84 In addition, the costs to defendant insurers of resolving claims may be higher where claims include a medical report, due to increased costs associated with considering the report contents. It has not been possible to quantify any additional administrative costs although, overall, it is expected to be marginal.

BTE providers

RTA whiplash related with med and pre-med claims that would no longer proceed:

5.85 BTE providers would experience a loss in legal fee revenue of around £35m from the 60,000 with med and 3,000 claims currently with BTE that would no longer proceed post reforms. They would no longer receive fixed recoverable legal fees in these claims of around £547 per claim. This cost is assumed to be cost neutral to BTE providers in NPV calculations.

48 Volumes have been rounded to the nearest 1,000, savings have been estimated to the nearest £50.
49 There is no tariff for claims with an injury duration greater than 24 months, but due to the requirement to have a medical report, we expect PSLA damages to increase for these claims. This amount is based on the average PSLA damages for claims with an injury duration greater than 24 months that have a medical report.
50 As we have assumed pre-meds that become with medds have the same special damages distribution as current with med claims – e.g. that 70% would claim for special damages.
51 Insurers would pay mean special damages of around £350 in around 40% (given that 30% of pre-med claims are assumed to currently have special damages, and 70% of the claims that proceed are assumed to require special damages post reform) of the 38,000 pre-meds that proceed as with med claims post reforms.
Claims that proceed:

5.86 BTE providers will no longer be able to recover legal fees and associated VAT from defendant insurers in the 170,000 with med and 10,000 pre-med claims assumed to proceed, qualify for SCT provisions, and to have BTE funded legal representation post reforms. It has been assumed that they would pass on their estimated costs (legal fees and legal fee VAT) of around £120m per annum to consumers, in the form of increased BTE premium prices.

HMCTS

5.87 Insurers might be likely to defend more cases if they no longer have to pay claimant's legal costs if they lose, which could lead to an increase in cases issued at court and an associated increase in court fee income. This will be accompanied by an increase in court resources required.

5.88 There could be an increase in the number of claims in the SCT, offset by a decrease in claims that would have previously been in the FT. As hearing fees are lower in the SCT, HMCTS will receive lower court fee income after the reforms. This will, however, be accompanied by a decrease in court resources needed for each case.

5.89 Alternatively, claimants may be encouraged to settle through the claims portal to avoid the higher legal costs in the SCT, which could lead to a decrease in cases issued at court and an associated decrease in court fee income. This will, however, be matched by a decrease in court resources required.

5.90 As a result of the changes to the SCT threshold, there may be a behavioural impact if more claimants decide to issue at small claims court as a LiP. This could result in an increase in the operational resources required for each case and an increase in the average time of a court hearing.

5.91 All of these impacts, will have cost implications in terms of court resources and operating costs. However, as HMCTS operates on a cost recovery basis for PI claims worth less than £10,000, any increase in workload will be offset by an increase in court fee income. Therefore, it is assumed that the financial impact on HMCTS would be neutral.

HMRC

5.92 If there is a reduction in claims and an increase in claimants without legal representation, there will be a revenue loss to HMRC through reduced VAT payments from legal costs and medical reports. The total cost to HMRC will be around £140m. This is calculated from the constituent costs below.

5.93 RTA whiplash related with med and pre-med claims assumed would no longer proceed:

5.94 HMRC will experience a loss of legal fee VAT income of around £13m per annum. This is made up of a loss of around £12m for 115,000£53 with med claims currently with legal representation assumed would no longer proceed and around £0.7m for 7,000£54 pre-med claims currently with legal representation assumed would no longer proceed, with mean legal fee VAT costs of £109 per claim.

5.95 There will be a fall in medical report VAT income of £4m per annum for the 120,000 with med claims that no longer proceed.

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62 This should be considered alongside Qualified One Way Cost Shifting, which was introduced as part of the LASPO reforms. Defendants that successfully challenge claims cannot recover their costs from the other side, so their expected costs of settling a claim pre-court would likely need to exceed their expected cost of challenging a claim.

53 95% of the 120,000 with med claims assumed to no longer proceed.

54 50% of the 13,000 pre-med claims assumed to no longer proceed.
Claims that proceed:

5.96 There will be a fall in legal fee VAT income to HMRC for the increase in claims that proceed without legal representation, of around £10m per annum. This comes from the 84,000 additional with medics and 5,000 additional pre-medics that are assumed to currently have non-BTE funded legal representation but are assumed to proceed without legal representation post reforms.

5.97 For EL, PI, and CN claims, it has not been possible to estimate the impact to HMRC due to the lack of reliable data available to estimate the impacts. We have been unable to receive data on the proportion of EL, PL and CN claims that have private insurance to estimate any potential IPT tax reductions from the SCT increase to £2k for all PI, and we are unable to estimate the proportion of such claimants currently with legal representation to estimate any potential legal fee VAT reductions if less EL, PL and CN claims proceeded due to the SCT rise. There could be savings to HMRC, although given the relatively small SCT rise from £1k to £2k these are unlikely to be significant.

5.98 There will also be a cost to HMRC in reduced IPT income. Both motor premiums and BTE insurance products will be subject to IPT of 12% once these reforms are enacted. The total motor premium benefits passed on by defendant insurers is around £1.1bn (discussed further below), whilst the total BTE premium increased costs passed on to consumers is around £120m meaning there will be an overall reduction of around £950m in the price of products that would owe 12% tax to HMRC. The total cost to HMRC will be around £110m\(^{55}\) per annum.

NHS

5.99 If there is a reduction in the number of RTA claims, the NHS/DH will no longer be able to recover the costs of any treatment supplied from the at fault insurer. Data from the Department of Health (DH) shows that in 2015/16, the NHS recovered around £62m\(^{56}\) from insurance companies for outpatient care.

5.100 It has been assumed that 20% of outpatient cases have an injury duration of up to 6 months. Given 50% of whiplash related claims up to 6 months are assumed would no longer be claims, the NHS will no longer be able to recover costs from the at-fault insurer for 10% of these outpatient cases (50%*20%). This could result in a cost to the NHS of around £6m\(^{57}\) per annum.

5.101 This loss may be mitigated if many claimants currently only attend A&E for the purposes of making a claim, and not because they have any significant injury. It has been assumed that the RTA claims which no longer proceed, will be for low level whiplash related injuries. A drop in the number of these type of claims may lead to a drop off in the number of people attending hospital.

DWP

5.102 The vast majority of individuals who claim for PSLA damages for soft tissue motor accidents do not claim DWP benefits which are recoverable under the Social Security (Recovery of Benefits) Act 1997\(^{58}\). For those cases in 2014/15 where DWP benefits were recovered, the majority were Disability Living Allowance and Employment and Support Allowance. It has therefore been assumed these are the more severe soft tissue injury cases which would not be affected by this option. The effects on DWP are therefore assumed to be minimal. These assumptions have been agreed with DWP.

\(^{55}\) 12% of the £950m saving.
\(^{56}\) As provided by DWP.
\(^{57}\) 10%*£62m.
\(^{58}\) Analysis of DWP CRU claims data for 2014/15 indicates that only around 1% of Whiplash, Neck and Back claims had a recoverable benefit.
CMCs

5.103 The reduction in claims may lead to a fall in the number of cases eligible for their services. As this will be associated with a decrease in the workload, and therefore resources being available for other productive activity elsewhere in the economy, this is assumed to be cost neutral in the NPV. On the other hand, there may be an increase in CMC activity following the SCT rise which may partially offset or outweigh this drop. This has not been quantified, but if it had it would be considered cost neutral in the NPV as CMCs would have to allocate more resources to the task.

Medical experts/MROs

5.104 If there is a reduction in the number of RTA claims, there may be a decrease in the number of medical reports that are required. MEs/MROs could experience a cost of around £22m in revenue for the 120,000 with med claims that would not proceed. As this would be associated with a decrease in the workload, this impact has been assumed to be cost neutral in the NPV.

Rehabilitation providers

5.105 There may be a decrease in rehabilitation services required as a result of the reduction in RTA claims. As this would be associated with a decrease in the workload, this impact has been assumed to be cost neutral in the NPV.

Medco

5.106 If there is additional demand for medical reports, there will be an increased use of the MedCo IT portal to obtain them. There could potentially be some administrative costs for managing these additional claims but these are unlikely to be substantial.

5.107 The MedCo IT portal user interface is a web based system which will need to be amended to allow claimants without legal representation to become users of MedCo in order to obtain a medical report. There could be an administrative cost to MedCo of making this amendment.

Claims Portal Limited

5.108 There could be administrative costs for CPL as it will need to be amended so that it aligns with the SCT cost provisions. While it has not been possible to quantify the cost of these changes, they are not expected to be substantial.

5.109 A reduction in claims volumes will mean CPL would have less claims to process. However, the effect is expected to be cost neutral as CPL is an automated service.

Third sector advice providers

5.110 If, as a result of the SCT changes, there were a reduction in the number of claimants with legal representation, this could lead to an increase in demand for advice from third sector providers.

Benefits of Option 1

Claimants

5.111 As outlined in the cost to defendants section:

- Current pre-med claimants with an injury duration of greater than 12 months are estimated to see an increase in PSLA compensation paid out, equating to a total of around £5m per annum.
• Current pre-med claimants will benefit from around £5m per annum in special damages for the 15,000 current pre-med claims assumed to require special damages post reforms.

Claimant lawyers

5.112 The fixed tariff system may minimise any disputes about quantum and reduce negotiation times for claimant lawyers due to damage awards being set at fixed levels.

5.113 Assuming that claimant lawyers continue to charge clients the fixed recoverable costs currently associated with soft tissue claims and the success rate remains the same, legal fee income may increase if insurers contest more cases after the reforms. This is because higher legal fees are associated with cases that proceed to court.

5.114 As is standard practice in an IA, it is assumed that any increase in revenue is offset by an increase in the work conducted, so this impact is cost neutral in the NPV of this option.

Defendants (mainly insurers)

5.115 Defendant insurers are estimated to have total benefits of around £1.3bn per annum (without 85% being passed onto consumers). The savings are expected to arise from the following impacts which are described in the paragraphs below.

Damages

5.116 As detailed in the claimant’s costs section, there will be a benefit to insurers for the PSLA and special damages no longer owed on the claims that no longer proceed, as well as further PSLA benefits for claims that do proceed and have a reduced PSLA payments as a result of the new tariff.

5.117 Insurers will have total PSLA benefits of around £920m per annum. This comprises of around £250m for the with-med and £24m for the pre-med claims that no longer proceed, and around £610m for current with-med and £35m for current pre-med claims that proceed and receive reduced PSLA payments in line with the fixed rate tariff.

5.118 Similarly, defendant insurers will no longer be responsible for special damages of around £17m for the with-med claims and £0.8m for the pre-med claims that no longer proceed.

5.119 These benefits are described in more detail in the claimant cost section above.

Legal fees

5.120 There will be legal fee benefits to insurers from claims that no longer proceed, and from the claims that proceed and qualify for the SCT cost provisions, where FRC are non-recoverable. These equate to a total benefit of around £300m per annum, described below:

• £75m for the 115,000 with med claims that currently have legal representation and would no longer proceed (£62m in legal fees and £12m in associated VAT savings).
• £4m for the 7,000 pre-med claims that currently have legal representation and would no longer proceed (£4m in legal fees and £0.7m in legal fee VAT savings).
• £210m for the 320,000 with med claims currently with legal fees that would proceed post reforms and qualify for SCT cost provisions (£170m in legal fees and £35m in legal fee VAT savings).
• £12m for the 19,000 pre-med claims currently with legal fees that would proceed post reforms and qualify for SCT cost provisions (£10m in legal fees and £2m in legal fee VAT savings).

59 For 40% of the 38,000 claims that are currently pre-med claims that would proceed post reforms.
Medical reports

5.121 Insurers will have savings for the 120,000 medical reports they would no longer be responsible for of around £22m per annum, and associated medical report VAT of around £4m per annum.

NHS

5.122 The decrease in volumes as a result of the proposed reforms are estimated to lead to a reduction in outpatients in the NHS. Therefore, the NHS can no longer recover these costs from insurance companies. Therefore this should result in an estimated savings of £6m in outpatient fees for insurance companies.

5.123 This amounts to RTA savings for defendant insurers of around £1.3bn per annum. Deducting the £19m estimated costs gives a total gross benefit of around £1.3bn. Assuming that 85% of these will be passed onto consumers, this gives a net benefit to insurers of around £190m per annum.

Wider impacts

5.124 Insurers will benefit if the claims in which they currently pay FT hearing/allocation fees became SCT claims post reform, where allocation/hearing fees are lower, or if there was a reduction in issue fees/commencement fees owed by insurers, due to a decrease in the volume of claims that issue at court. Overall, we estimate current whiplash related court volume to be around 53,000 claims\(^{60}\) per annum. We have been unable to source reliable data to determine what proportion represent claims where the defendant has paid a settlement to the claimant but we believe the majority would.

5.125 We could expect to see a reduction in disputes at court, as the fixed rate tariff removes the need to debate quantum, or alternatively we may see some claims dropping out altogether. On the other hand, we may witness an increase in the volume of hearings if claimants without lawyers bring more successful hearings post reform. Given the behavioural uncertainties, it is not possible to reliably estimate this potential impact, which means we could be slightly underestimating the savings to insurers/motor premium holders if there are court savings to insurers. If there were savings, they would be a short term cost to HMCTS, as HMCTS operate at cost recovery in the long term.

EL, PL, and CN Defendants (such as Local Authorities, and Government Departments)

5.126 There could be additional savings for EL, PL and CN defendants in PSLA damages, special damages, medical reports, legal fees, and associated VAT, if any claims containing these elements no longer proceed due to the SCT rise to £2,000 for all PI. We have been unable to source reliable data to inform whether any claims would no longer proceed, however it is unlikely that increasing the limit would cause many claims to no longer proceed given the relatively small increase, especially for CN claims which are understood to generally be quite high value.

5.127 There could be a reduction in EL, PL and CN insurance premiums, which will result in a reduction in IPT for defendants with private insurance. However we have been unable to receive reliable data on the proportion of EL, PL and CN claims with private insurance (against those that defend themselves and pay for claims out of their profits or budgets) so this saving cannot be quantified.

\(^{60}\) Based on the volume of personal injury claims issued in the county and magistrates courts in England and Wales for 2015, taken from HMCTS Caseman, (143,000), the proportion of PI claims that are RTA in CRU data in 2016/17 (76%), and the proportion of claims in Caseman settled with a value between £1,000 & £5,000 (46%)
Medical experts and MROs

5.128 Medical experts will benefit from producing additional medical reports for current pre-med claims that would become with med claims post reform, of around £7m per annum. For the reasons explained above, this is considered to be cost neutral in the NPV calculation.

CMCs

5.129 There may be the potential for a rise in CMCs seeking to enter the market to support claimants without legal representation.

Third sector advice providers

5.130 There is the potential for a rise in the number of ‘McKenzie Friends’ (who can be paid) offering to represent claimants without legal representation. Whilst many of these are former lawyers with reasonable legal knowledge, others are not and this sector is currently unregulated.

Rehabilitation providers

5.131 If there is a decrease in low value and less serious rehabilitation claims, rehabilitation providers will have more capacity to treat more serious cases. There may be increased rehabilitation sessions for the current pre-meds that would become with med claims post reform.

HMCTS

5.132 The fixed tariff system may minimise any disputes about quantum and reduce the burden these cases place on HMCTS. This could lead to a reduction in the court resources required for a case.

5.133 Insurers might be likely to defend more cases if they will no longer have to pay claimant’s legal costs if they lose, which could lead to an increase in cases issued and heard at court and associated increase in court fee income61.

5.134 These impacts would have cost implications in terms of court resources and operating costs. However, as HMCTS operates on a cost recovery basis for PI claims less than £10,000, any decrease in workload would be offset by a decrease in court fee income. There could be a short term impact as it may take HMCTS a short period of time to shift resources, however the financial impact on HMCTS has been considered as cost neutral in the IA.

HMRC

5.135 HMRC would benefit by around £1m in medical report VAT income from the additional 38,000 claims that would require a medical report.

NHS

5.136 Removing the incentives to make minor claims could lead to a drop in the number of people attending hospital as outpatients, so freeing up doctors time to spend on other medical concerns.

Wider social and economic benefits

Motor insurance policy holders:

5.137 The net benefit to insurers was estimated to be around £1.3bn. Assuming that insurers pass on 85% of their net benefit, this results in benefits to consumers of around £1.1bn.

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61 This should be considered alongside Qualified One-Way Cost Shifting, which was introduced as part of the LASPO reforms. Defendants that successfully challenge claims cannot recover their costs from the other side, so their expected costs of settling a claim pre-court would likely need to exceed their expected cost of challenging a claim.
5.138 Motor premium holders would also benefit from the decrease in IPT owed to HMRC, of around £110m per annum (explained in the HMRC cost section). This amounts to total benefits of around £1.2bn.

5.139 These benefits need to be considered alongside the expected rise in BTE premium prices. Assuming BTE providers would pass on their increased costs of around £120m per annum (explained in the BTE provider costs section above) to consumers, which would result in higher BTE insurance premiums of around £120m per annum. This would give an overall net benefit to motor premium holders of around £1.1bn per annum.

5.140 It has not been possible to quantify savings to EL, PL and CN defendants that would be passed onto consumers, however it is expected that both local and national Government authorities would re-invest any savings in public services of benefit to consumers.

**Wider Society:**

5.141 This proposal would benefit society by creating a more balanced, predictable and proportionate system for the payment of compensation for PSLA for whiplash related injury claims.

5.142 Genuine claimants would receive a proper examination and medical report by an accredited medical expert ensuring that they receive, where applicable, the appropriate compensation payment and if required any appropriate treatment.

5.143 Moreover, there would be wider benefits to society insofar as requiring potential claimants to submit medial reports would send a signal that could help dis-incentivise minor, exaggerated and fraudulent claims. This could lead to reduced costs to motorists through reduced motor insurance premiums.

**Option 1: Summary of Costs and Benefits**

5.144 The monetised costs and benefits of Option 1 are summarised in the table below.

5.145 The cost and benefits may not match the net exactly due to rounding.
<table>
<thead>
<tr>
<th>Defendants (insurers)</th>
<th>Costs*</th>
<th>Benefits</th>
<th>Net</th>
</tr>
</thead>
<tbody>
<tr>
<td>£0.8m in pre-med PSLA costs for claims with injury duration greater than 12 months (15% of cost)</td>
<td>£42m in PSLA damages no longer owed for 120,000 with med and 13,000 pre-med whiplash related claims that would no longer proceed</td>
<td>£190m net benefit</td>
<td></td>
</tr>
<tr>
<td>£1m for the 38,000 additional med reports required and the associated VAT owed on these reports (15% of cost)</td>
<td>£97m in reduced PSLA damages for the 365,000 with med and 38,000 pre-med whiplash related claims that would proceed and receive reduced PSLA damages in line with the fixed rate tariff</td>
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<tr>
<td>£0.8m for the 15,000 current pre-med claims that require special damages post reform (15% of cost).</td>
<td>£3m benefit for the 84,000 with med and 4,000 pre-med claims with specials that no longer proceed</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>£4m benefit from 120,000 medical reports and associated VAT no longer paid by insurers.</td>
<td></td>
<td></td>
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<td></td>
<td>£12m benefit from no longer paying legal fees and associated VAT for the 115,000 with med and 7,000 pre-med claims that drop out with legal representation.</td>
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<tr>
<td></td>
<td>£33m benefit from no longer paying legal fees and associated Vat for 320,000 with med and 19,000 pre-med claims that would qualify for SCT provisions post reforms.</td>
<td></td>
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<tr>
<td></td>
<td>£0.9m in NHS outpatient fees no longer paid by insurers.</td>
<td></td>
<td></td>
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<tr>
<td>Claimants</td>
<td>£280m in PSLA damages due to 120,000 with med and 13,000 pre-med whiplash related claims that no longer proceed.</td>
<td>£5m PSLA benefits for pre-med claims with injury duration &gt; 12 months (Where the tariff PSLA award would be higher than the mean pre-med PSLA currently awarded)</td>
<td>£980m net cost</td>
</tr>
<tr>
<td></td>
<td>£650m in reduced PSLA damages available under the fixed rate tariff for the 365,000 with med and 38,000 pre-med whiplash related claims that proceed.</td>
<td>£5m for the 15,000 current pre-med claims that require special damages post reform</td>
<td></td>
</tr>
<tr>
<td>Costs*</td>
<td>Benefits</td>
<td>Net</td>
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<tr>
<td>4,000 pre-med whiplash related claims that currently have special damages that are assumed would no longer proceed.</td>
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<tr>
<td>£47m legal fees and associated VAT for the 67,000 with med and 4,000 pre-med that proceed with non-BTE funded legal representation post reforms and pay for their own legal fee and associated VAT costs.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>BTE Providers</td>
<td>BTE providers will face higher costs as legal fees are no longer recoverable from defendant insurers. These costs are passed onto BTE premium holders in the form of higher premiums.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NHS</td>
<td>£6m in outpatient fees they no longer recover</td>
<td>£6m net cost</td>
<td></td>
</tr>
<tr>
<td>HMRC</td>
<td>£4m VAT cost for the 120,000 medical reports no longer required.</td>
<td>£1m benefit in VAT income for the 38,000 additional medical reports required</td>
<td>£140m net cost</td>
</tr>
<tr>
<td></td>
<td>£13m legal fee VAT cost for the 115,000 with med and 7,000 pre-med claims that drop out and have legal representation.</td>
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<td></td>
<td>£10m legal fee VAT cost for the 84,000 with med and 5,000 pre-med claims assumed to no longer have legal representation post reforms.</td>
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<td></td>
<td>£110m in reduced IPT revenue</td>
<td></td>
<td></td>
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<tr>
<td>Motor premium holders</td>
<td>£120m passed on from BTE providers as increased BTE premiums.</td>
<td>£240m passed on from insurers in PSLA damages no longer owed for 120,000 with med and 13,000 pre-med whiplash related claims that would no longer proceed</td>
<td>£1.1bn net benefit</td>
</tr>
<tr>
<td></td>
<td>£4m in PSLA costs for pre-med claims with injury duration greater than 12 month (85% cost passed on)</td>
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<td></td>
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<td></td>
<td>£7m for the 38,000 additional med reports required and the associated VAT owed for these reports.</td>
<td>£550m passed on from insurers in reduced PSLA damages for the 345,000 with med and 38,000 pre-med whiplash related claims that would proceed and receive reduced PSLA damages in line with the fixed rate tariff</td>
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<tr>
<td>Costs*</td>
<td>Benefits</td>
<td>Net</td>
<td></td>
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<td>-----------------------------------------------------</td>
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<tr>
<td>(85% cost passed on)</td>
<td>£15m passed on from insurers for the 84,000 with med and 4,000 pre-med claims with specials that no longer proceed</td>
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</tr>
<tr>
<td>£4m for the 15,000 current pre-med claims that would require special damages post reform (85% cost passed on)</td>
<td>£22m passed on from insurers for 120,000 medical reports and associated VAT no longer paid by insurers.</td>
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<td></td>
<td>£67m passed on from insurers for no longer paying legal fees and associated VAT for the 115,000 with med and 7,000 pre-med claims that drop out with legal representation.</td>
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<tr>
<td></td>
<td>£190m passed on from insurers for no longer paying legal fees and associated VAT for 320,000 with med and 19,000 pre-med claims that would qualify for SCT provisions post reforms.</td>
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<tr>
<td></td>
<td>£5m passed on from insurers in outpatient fees no longer owed.</td>
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<tr>
<td></td>
<td>£110m in reduced IPT owed to HMRC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total costs and benefits</td>
<td>£1.3bn</td>
<td>£1.4bn net benefit</td>
<td>£130m net benefit</td>
</tr>
</tbody>
</table>

*Costs classified as direct costs for the purposes of the One In Three Out assessment (section 4) have been marked in bold

In conclusion, the total costs and benefits (including direct, indirect and transfers) are as follows:

- Motor premium holders would benefit by around £1.1 billion per annum overall.
- Defendants would benefit by around £190 million per annum overall.
- Claimants would have costs of around £980 million per annum overall.
- NHS would have costs of around £6 million per annum overall.
F. Risks and sensitivity analysis

Risks:

- The above assessment of the preferred option is based on a number of assumptions. As a result, there are a number of risks associated with the assessment. The main ones are described below.

- As a result of these proposals, there is a risk of claims inflation as claimants seek to reach a higher tariff or offset reduced PSLA compensation. However, this may not be a higher risk than the current scheme where compensation would be higher for more severe claims.

- By introducing within injury bands, there is a risk of unfairness if two claimants with relatively similar injuries receive different PSLA compensation if the duration of the injury fell into two different injury bands (e.g. just less than 3 months and just over 3 months). The government considers that the intervention is proportionate to meet the policy objectives.

- There is a risk that there will be under-settlement if a claimant chooses to be a LiP and the defendant (normally an insurer) is able to afford a representative. This risk would be mitigated by the fixed tariff providing certainty over PSLA damages available.

- There is a risk that CMCs pursue a greater volume of unmeritorious claims to offset the reduction in claims pursued as a result of these policies.

- It is assumed that exceptional cases with a 20% uplift would be rare. There is a risk that insurers have to pay out more in PSLA damages as a result of exceptional cases, and claimants receive more compensation.

- The main data used to inform the analysis in this IA breaks down injuries into soft tissue and non-soft tissue injuries, although the definition of whiplash related claims that these reforms will apply to is not as broad as soft tissue. However we still expect the data to be highly representative of RTA whiplash related claims, given that whiplash related is understood to be the most frequent type of soft tissue injury claimed.

- There could be an increase in soft tissue claims that would not be directly covered by these reforms, in an attempt by some parties to circumvent the tariff system. However, this would be dependent on judges accepting that the types of soft tissue claims not directly covered by these reforms were the most serious soft tissue injury sustained in accidents, which should reduce this risk.

Sensitivity:

6.1 In this section we have not included sensitivity analysis around all assumptions but instead focused on the following areas as these that have the biggest cost implications. The sensitivity analysis only considers the impacts on the main groups affected.

Sensitivity 1: The proportion of cases that would proceed

6.2 This final IA makes the assumption that 50% of whiplash related claims with an injury duration of up to 6 months would proceed. Because this is a behavioural impact that is unknown, sensitivity analysis has been conducted assuming using a range between 0% (1.a) and 100%, (1.b) such claims proceed i.e. there is a huge impact and all RTA whiplash related claims with an injury duration up to 6 months do not proceed for 1.a, and there is no impact and all claims proceed for 1.b.

6.3 The base case assumes around 120,000 with meds and 13,000 pre-med whiplash related claims with an injury duration of up to 6 months would proceed. Sensitivity 1.a assumes that no with meds or pre-med up to 6 months would proceed, whilst 1.b. assumes that around 240,000 with med and 26,000 pre-med whiplash related claims up to 6 months would proceed.

6.4 Table A summarises the results. The difference in net benefits to insurers is an increase of around £15m for 1.a and a decrease of around £15m for 1.b. The difference in net benefits to consumers is an increase and decrease of around £140m per annum for sensitivity 1.a and 1.b respectively. This illustrates that the benefits are proportional to claim volume.

6.5 The key components of this savings for 1.a. are given below:
6.6 Insurer’s medical report savings (reports and VAT) and special damages savings would be increased for the additional claims that would no longer proceed. There would be fewer claims where BTE premium holders would become responsible for legal costs, increasing consumer savings, because if fewer claims proceed there would be less legal costs for BTE providers to absorb and pass on. The additional legal costs (fees and VAT) that insurers would save on are marginal, because 91% of claims that do not drop out are subject to SCT provisions anyway, removing insurer’s responsibility for these costs.

6.7 Consumers would face decreased IPT revenue required on their premiums in line with the expected fall in premium prices.

6.8 Claimants would receive less special damages, HMRC would no longer recover as much medical report VAT, and there would be an increased loss in BTE providers, claimant lawyer’s, and medical experts/MROs revenue.

6.9 The impacted groups are the same for sensitivity 1.b, but in the opposite direction relative to the base case.

### Table 9: The costs and benefits of sensitivity analysis 1

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Net benefit to RTA Insurers</th>
<th>Gross benefit to consumers</th>
<th>consumer costs</th>
<th>Net benefit to consumers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base case (Option 1)</td>
<td>£190m</td>
<td>£1.2bn</td>
<td>£130m</td>
<td>£1.1bn</td>
</tr>
<tr>
<td>0% up to 6 months proceed – Sensitivity 1.a</td>
<td>£200m</td>
<td>£1.3bn</td>
<td>£93m</td>
<td>£1.2bn</td>
</tr>
<tr>
<td>100% up to 6 months proceed (no impact) - Sensitivity 1.b</td>
<td>£170m</td>
<td>£1.1bn</td>
<td>£170m</td>
<td>£930m</td>
</tr>
</tbody>
</table>

### Sensitivity 2: RTA steady state claim volumes are 10% higher or lower

6.10 It is also assumed in this IA that there is a baseline volume of around 540,000 claims at steady state. This assumption is also considered here, by considering the impacts of there being either a 10% higher (around 590,000) or 10% lower (around 485,000) volume of RTA claims.

6.11 Table B summarises the results. The difference in net benefits to insurers is an increase of around £19m for 2.a and a decrease of around £19m for 2.b. The difference in net benefits to consumers is an increase and decrease of around £110m million per annum for sensitivity 2.a and 2.b respectively. This illustrates that the benefits are proportional to claim volume.

6.12 All impacted groups as described in the main body of the analysis would be around 10% higher for 2.a., and 10% lower for 2.b, as the impacts are proportional to claim volume.

### Table 10: The costs and benefits of sensitivity analysis 2

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Net benefit to RTA Insurers</th>
<th>Gross benefit to consumers</th>
<th>Consumer costs</th>
<th>Net benefit to consumers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base case</td>
<td>£190m</td>
<td>£1.2bn</td>
<td>£130m</td>
<td>£1.1bn</td>
</tr>
<tr>
<td>Sensitivity 2.a – RTA steady state claim volumes are 10% higher</td>
<td>£210m</td>
<td>£1.3bn</td>
<td>£150m</td>
<td>£1.2bn</td>
</tr>
<tr>
<td>Sensitivity 2.b – RTA steady state claim volumes are 10% lower</td>
<td>£170m</td>
<td>£1.1bn</td>
<td>£120m</td>
<td>£960m</td>
</tr>
</tbody>
</table>
Sensitivity 3: Pass through assumption

6.13 It was also assumed in the baseline that 85% of insurers' savings would be passed through to consumers. This is a behavioural impact using CMA analysis and could vary. For the purposes of sensitivity analysis, we have conducted the analysis with 50% and 70% pass through.

6.14 Table 11 summarises the results. The difference in net benefits to motor premium holders is a decrease of around £490m and £210m per annum for sensitivity 3.a and 3.b respectively.

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Net benefit to RTA insurers</th>
<th>Gross benefit to consumers</th>
<th>Consumer costs</th>
<th>Net benefit to consumers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base case</td>
<td>£190m</td>
<td>£1.2bn</td>
<td>£130m</td>
<td>£1.1bn</td>
</tr>
<tr>
<td>Sensitivity 3.a –</td>
<td>£630m</td>
<td>£700m</td>
<td>£130m</td>
<td>£570m</td>
</tr>
<tr>
<td>Pass through 50%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sensitivity 3.b –</td>
<td>£380m</td>
<td>£980m</td>
<td>£130m</td>
<td>£850m</td>
</tr>
<tr>
<td>Pass through 70%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6.15 As a result of these proposals, there is a risk of claims inflation as claimants seek to reach a higher tariff or offset reduced PSLA compensation. However, this may not be a greater risk than the current scheme where compensation would be higher for more severe claims.

G. Business Impact Target

7.1 Businesses are estimated to experience a direct net benefit of around £740m as a result of implementing the preferred option. This is made up of £870m in benefits and £130m in costs.

7.2 Businesses (Insurers) would experience a gross direct benefit of around £870m a year which consists of:

- £650m for introducing a fixed tariff for PSLA damages for claims that currently have and do not have medical reports. If the claim currently has a medical report, then all claims that would proceed create a direct benefit, which includes 50% of the claims with injury duration up to 6 months, and the remaining claims greater than 6 months. If the claim currently does not have a medical report, then all claims up to 12 months injury duration are considered to create a direct benefit. These are treated as direct benefits to business because the policy proposal mandates compulsory medical reports and reduced average level of PSLA payments.

- £180m in reduced recoverable legal fees owed as a result of the SCT proposal removing cost recovery and increasing the number of claims covered by SCT rules. This covers all claims assumed to proceed and qualify for SCT provisions, where legal costs are no longer recoverable. This is a direct benefit to business as the proposal directly captures more cases under SCT rules which reduces the recoverable legal costs faced by insurers.

- £37m in reduced VAT payments due on the recoverable legal costs that would no longer need paying (as noted above). For the same reasons as outlined above, this is considered a direct benefit to business.

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62 PSLA impacts for claimants above 12 months injury duration currently without medical reports are considered as direct costs to business, described below.

63 The remaining 50% of cases with an injury duration of less than 6 months are assumed to drop out and therefore no longer claim PSLA damages. This is assumed to be an indirect benefit to insurers as PSLA damages are still available in these cases under the new fixed tariff system, however claimants are choosing not to proceed with a claim. This is a behavioural choice and therefore an indirect impact which is not included in the EANDCB.
7.3 Businesses would experience a gross direct cost of around £130m a year, which consists of direct costs to insurers and BTE providers:

- £120m would be incurred by BTE providers due to increased legal costs and VAT in claims that proceed. This is due to an increased number of claims going through the SCT where legal costs are not recoverable and therefore BTE insurers no longer being able to recover legal costs from defendants. Although BTE providers are assumed to pass on this cost to consumers, this is considered a secondary impact.

- £5m to insurers from paying out higher PSLA damages where the injury duration was higher than 12 months and the claimant does not currently have a medical report. PSLA damages available under the tariff for current pre-med claims with an injury duration of greater than 12 months would be higher than the current average awarded.

- £7m to insurers from paying for medical reports in claims that currently do not have a medical report but are estimated to after reforms. This is considered a direct cost as the reform mandates that these claimants must have a medical report.

- £1m to insurers from VAT owed on these additional medical reports.

7.4 As with the benefits in the main body of the IA it is assumed 85% of this £130m cost is passed on to consumers. Whilst this is a coherent assumption for the main body of the IA, for the purpose of OI30 this is deemed to be a voluntary action and thus 100% of this direct cost, rather than only 15%, is estimated to be incurred by insurers.

7.5 Similarly, it is assumed in the main body of the IA that 100% of the £120m BTE provider’s costs for claims assumed to proceed (legal fees and legal fee VAT) is passed onto consumers in the form of increased BTE premiums. As this is also a voluntary action, in the OI30 assessment this cost is borne by BTE providers rather than BTE premium holders.

7.6 Medical practitioners and experts would have fewer reports to produce, due to a fall in the number of claims. This is considered to be an indirect impact on business as the fall in the number of reports being produced is due to consumers changing their behaviour and choosing to drop out despite PSLA damages still being available to them under the fixed tariff system. Therefore it is not included in the EANDCB. Medical practitioners would produce additional medical reports due to the banning of pre-med offers. This is not considered a direct benefit to business because their additional income would be offset by the additional resource required. Similarly, BTE providers may face a loss in revenue due to the claims that no longer proceed. This would also stem from the behavioural impact of claimants choosing to no longer proceed with their claims, so it is also classified as an indirect cost in the EANDCB.

7.7 Legal service providers may face a reduction in demand for their services due to fewer claims being lodged as a result of these proposals, or from an increase in claimants without legal representation. This is considered to be an indirect impact on business as the fall in claim volume would stem from a behavioural impact of claimants choosing to no longer proceed with their claims, or no longer seeking legal representation, as discussed earlier in the IA. Similarly, claims management companies could possibly face an increase or decrease in demand for their services, depending how the market reacts to the reforms, but again this would stem from a behavioural impact and as such it is not included in the EANDCB assessment.

7.8 Insurers would pay increased special damages for claimants currently without medical reports that would become claims with medical reports. These are considered as indirect costs or benefits to business (costs to insurers, benefits to rehabilitation providers) as the reforms do not mandate that 70% of claimants must have special damages if they have a medical report, this is a behavioural assumption made for the purposes of the analysis.

7.9 Similarly, insurers would pay other reduced costs (such as PSLA and special damages) for the claims with injury duration up to 6 months assumed to no longer proceed. As above, these are considered as indirect benefits to business as this would stem from the behavioural impact of claimants deciding to no longer proceed with their claims, given claimants could claim for the PSLA damages available under the tariff, and their special damages.
7.10 Overall the reforms are assessed as being a net benefit because the direct economic benefits to business exceeds the direct economic costs. They generate net direct business benefits of around £730m per year. For the purposes of the business impact target assessment this is a deregulatory net benefit with a figure of £620m (2014 prices).

H. Specific Impact Tests

Competition Assessment

8.1 The proposals should have no influence on competition within the insurance sector. The impact of these proposals is likely to increase competition between service providers in the legal sector, as there will be a reduction in demand for their services. The proposals could make small legal firms less able to compete with larger firms that have greater economies of scale and can provide services on mass as cheaply as possible.

Justice Impact Test

8.2 The justice impacts are set out in the main body of this impact assessment.

Equalities Statement

8.3 Please see the separate equalities statement for more information.

Family Impact test

8.4 There will be no impact on strong and stable family relationships as a result of this proposal.

Environmental Impact

8.5 There will be no environmental impact as a result of this proposal.

I. Small and Micro Business Assessment

9.1 The main business stakeholders affected by the proposals are claimant lawyers, CMCs, and defendant insurers. Defendant insurers tend to be large businesses and are not considered further in the small and micro business assessment. Discussions with stakeholders, such as the ABI, have confirmed that a large majority of insurer market activity is captured by a small number of large firms.

9.2 Data from the Law Society suggests that the majority of solicitor firms are small. The latest available data from the Law Society shows out of the 2,600 firms undertaking PI work, around 1,400 (55%) had up to five solicitors and around 1,000 (40%) had between six and forty solicitors. It is not known how many of these firms employ between 40 and 50 employees as the data is not broken down at this level.

9.3 CMCs operating in the PI sector make up around 54% of the total number of CMCs currently in operation. The majority of CMCs operating in the personal injury sector are classed as micro-businesses with 708 (91%) CMCs employing fewer than 10 staff. 58 (7%) CMCs in the PI sector are classed as small businesses employing between 10 and 49 staff. 15 (2%) CMCs in the PI sector employ 50 or more staff.

9.4 This suggests that at least 95% of law firms undertaking PI work and around 98% of CMCs are considered small or micro businesses.

9.5 The consultation attempted to strengthen these assumptions by asking respondents if they were responding on behalf of a small or micro business, in order to assess the proportion of the market that is made up of small or micro businesses. Out of the 351 responses submitted via the online portal, 208 (59%) respondents did not answer the question. Only one respondent answered the question and identified as a CMC, and only one respondent answered the question and identified

64 Source: Data provided by the Law Society, count of firms at October 2016 that did any PI work in 2014/15 (most recent data available).
65 Source: MoJ compliance team through regulatory reporting by the CMCs, snapshot figures as at April 2016.
66 Including only responses submitted via the online portal and with duplicated responses removed.
as a MRO. This means the data collected from the consultation could not be used to assess how many CMC or MRO small or micro businesses would be affected by the policy.

9.6 In total out of the 114 legal respondents\(^\text{67}\) who answered the question, 41 (36%) were responding on behalf of a small or micro business. However it's difficult to conclude these responses are reflective of the legal services market given the relatively low number of overall responses, compared to the 2,600 firms undertaking PI work in the market according to the Law Society data. It is possible that bigger firms may have been more engaged with the consultation process than the small businesses. The Law society data is likely to be more representative of the proportion of legal providers that are small or micro businesses.

9.7 As a result of the proposals, legal services providers and claims management companies may face a reduction in demand for their services as the number of soft tissue RTA claims is reduced. Changes to the SCT limit may also have an impact with claimants potentially deciding to no longer seek legal representation, meaning lower overall profits. Small organisations may be less able to absorb the impacts of the change or redirect resources to other areas. Potentially solicitors will no longer find it financially viable to operate in this market.

9.8 The consultation responses from many legal service providers support this statement, with many small and micro businesses agreeing that they may no longer find the market profitable and may be unable to operate in it if the reforms went ahead. This is due to many small and micro businesses stating that the majority of the work they currently undertake is on claims for less than £5,000 and therefore, after the SCT rise, there could be less demand for their services. They argue this could either affect the whole or part of their business and could lead to either a number of redundancies or the complete closure of the business. The responses largely argue that the legal services market is already saturated so they disagree with the assumption that firms will be able to redirect their resources to other areas of equal economic value. They also argue that many experienced members of staff may find it impossible to find alternative work unless they retrain.

9.9 However the above evidence shows that the majority of law firms and CMCs are small or micro businesses and therefore exempting them from the policy would negate the majority of the benefits of the policy.

Full Exemption

9.10 If the proposals were not applied to small and micro businesses then it is unlikely that they would be applied at all, as small and micro businesses account for a significant proportion of the industry. Non application to any part of the industry would not meet policy objectives and would generate competition issues. Claimants would be able to go to a small or micro business which has been exempt from the policy, and continue with the type of claims that are against the objectives of the policy. Including small and micro businesses is a proportionate means of achieving the desired benefits and outcomes. Full exemption of small and micro businesses might lead to some large businesses reconfiguring in order to become small or micro businesses so that they can avoid the impact of the reform programme.

Partial Exemption

9.11 A partial exemption will lead to the same issues above. It is likely to substantially affect the overall benefits and a partial exemption will lead to even more complicated competition issues. Claimants are likely to forum shop in order to find firms who are exempt from parts of the reforms. Firms who are not exempt will receive very low to no demand for their services as it is more beneficial for claimants to find a firm not subject to the new reforms. Partial application might also lead to some businesses reconfiguring in order to become small or micro businesses so that they can avoid the full impact of the reform programme.

Extended Transition Period

9.12 In order to address the concerns with the way the personal injury process currently works, it is the Government's intention to implement this reform programme as quickly as Parliamentary time allows. It is therefore not possible to utilise an extended transition period.

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\(^{67}\) Includes responses from claimant lawyers and defendant lawyers.
9.13 However, the Government's intention to introduce these reforms and the likely implementation timetable have already been publicly announced, which provides affected small and micro businesses with adequate time to consider whether amended business practices/models are required in order to conform with the policy intention of these reforms.

Temporary Exemption

9.14 A temporary exemption would have a similar issue to a partial exemption. There would be a spike in demand for the services of exempt businesses as claimants try and secure their claim with a legal service providers who has more favourable terms before the new rules come into force. These exempt firms may have to quickly scale up resources for a short time to deal with an increase in demand. Large firms may set up small shell companies to sign up clients on the more favourable terms.

Varying Requirements by Type and/or Size of Business

9.15 The same issues apply of claimants picking exempt firms which operate under vastly more favourable rules. This would lead to a shift in demand away from non-exempt businesses to exempt ones and potentially lead larger companies to reconfigure into smaller firms to gain the exemption.

Specific Information Campaigns or User Guides

9.16 There are a number of publications that explain the Small Claims Track process and provide support to litigants in person. These include guidance published by both the Civil Justice Council and the Bar Council. These documents can be found here:
   - http://www.barncouncil.org.uk/media/203109/srl_guide_final_for_online_use.pdf

9.17 We will work with representative groups and the Civil Procedure Rules Committee to provide any additional guidance, if required.

Direct Financial Aid for Smaller Business

9.18 Offering financial aid for smaller businesses is likely to undermine the objective of the policy and muffle the incentive structure the reforms are aiming to create. The government believes there needs to be substantial reform in this area and part of this is changes to the configuration of relevant industries.

Opt-in and Voluntary Solutions

9.19 Opt-in would create the same problems as exemptions on transitional agreements.

9.20 Voluntary solutions would not work as it is not in the interest of several relevant industry to self-implement these reforms and therefore the government needs to legislate to ensure the policy objective is met through a consistent approach.

J. Annex A – Key data from stakeholders

10.1 An overview of the key data provided by stakeholders is provided below.

10.2 A number of direct and indirect impacts of the reforms are anticipated. Some of the indirect impacts may result from behavioural changes which stem from the reforms, or they may otherwise be an indirect consequence of the reforms. The Ministry of Justice has engaged with a range of key business stakeholders (including insurance and medical expert trade bodies, a leading claimant panel law firm, and individual insurers) to gather evidence and better understand all direct and indirect impacts.

Key data sources

10.3 Much of the data considered in this IA is derived from the Claims Outcome Advisor (COA/ISO) and Collosus (CSC). They have developed systems for insurance companies to input details
about personal injury claims, to evaluate what the settlement should be, by drawing on a company's previous settlements, to minimise pay-out variance.

10.4 There is no overlap between insurers using COA and CSC so we have combined findings from these datasets, using weighted averages.

10.5 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. CSC's data captures part of 5 different insurers' claims data, at least 3 of which are one of the top 20 insurers based gross written domestic premiums in 2014. These databases do not record details of pre-med offers or complex cases, because these claims tend to go to specialist teams to be assessed, rather than using the specialist software. This data covers around 35% of all motor claims for 2015.

10.6 The analysis related to raising the SCT is restricted to a smaller subset of data, as a number of different datasets were merged to create a matched file containing the PSLA damages and total settlements of claimants (including special damages). CSC data on total settlement amount has not been used as it is not reliable (it is entered by a claims handler and they cannot guarantee total settlement values include special damages as well as PSLA damages). COA have a rich data source for total settlement data that is linked to PSLA amounts, containing an automated interface with the Claims Portal. This captures details for around 5,000 claims per month. This reduces the market coverage to an estimated 10%, however COA still retains a wide client base (that encompass a variety of business practices due to the varying sizes and business models of each insurer) and so this is deemed representative of the insurance market and reliable for analysis.

10.7 As part of the verification process, data has been sought from other stakeholders, such as solicitor firms and trade organisations. Data was received from a market leading MRO, which has been included into the analysis.

Non RTA PI claims

10.8 Option 1 proposes raising the SCT limit for RTA claims only from £1k to £5k and for all other PI claims from £1k to £2k. All other PI claims which will include Employer Liability (EL), Public Liability (PL) and Clinical Negligence (CN) claims. The CRU data shows that in 2016/17 there were around 46,000 EL claims, around 40,000 PL claims and around 11,000 CN claims with a financial settlement in England and Wales.

10.9 Raising the PSLA small claims limit from £1k to £2k for non RTA PI will reduce costs for PI defendants, as claimants will not be able to recover their legal costs.

10.10 We have received data from COA and CSC (14/15 data) on EL and PL claims; this is limited to a small proportion of defendants. Due to the lack of reliable data available on these types of claims it has not been possible to quantify potential impacts of raising the SCT limit from £1k to £2k.

10.11 There will be some EL/PL/CN claims that are too complex for the SCT and will continue to be allocated to the fast or multi tracks, cost recovery rules will not change for these cases. It has not been possible to obtain data on the proportion of claims that would be too complex for the small claims track.

10.12 The NHS LA, who deal with CN cases against the NHS in England provided data. The NHS LA IT system does not record the split between damages for PSLA and special damages, so it has not been possible to determine the proportion of cases which will be affected by raising the SCT limit. The data shows that in 2014 around 60% of CN claims had a total settlement (including PSLA damages and special damages) of less than £10,000. Therefore, based on costs alone 40% of CN claims would not be subject to SCT provisions. It is likely that the impact on CN claims would be minimal because of they are low volume and tend to have a higher value.

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68 Rather than commercial policies.

69 This has been estimated by taking the claims volumes from the COA/CSC data as a proportion of all claims recorded on the CRU with a financial settlement.

70 By comparing the total number of settlements in the data with the claims volumes from the COA/CSC data as a proportion of all claims recorded on the CRU with a financial settlement.
Estimates have been made of the VAT owed on medical reports and legal fees. This assumes all medical experts and PI firms are VAT registered, which may slightly overestimate the VAT costs and benefits that apply to defendant insurers, HMRC, and any groups that become responsible for paying these VAT costs in the analysis. There will be some VAT owed on the special damages, but these have not been considered in the analysis.\footnote{Special damages constitutes loss of earnings and medical expenses. There will be some VAT owed on the medical expenses.}

The loss of IPT revenue mentioned in the costs and benefits sections is for steady-state purposes, to estimate the impact once each reform proposal has had time to bed in. This estimate does not take account of any behavioural changes in insurance purchasing; It assumes that premiums decrease in direct proportion to the estimated savings made by insurers that are passed on to premium holders, and that these savings have had time to reach steady state. Calculations of Exchequer impacts are based on a detailed assessment of the five year accounting period for Public Finances, and they take account of behavioural impacts, therefore the figures presented in these sections make use of different data sources and methodology, resulting in different figures.

The claims process for low value RTA/EL/PL claims

It is helpful to understand the context of the claims process before considering the costs that are recoverable in successful claims (legal fees), this is covered in the next section.

Under the Pre-Action Protocols for Low Value Personal Injury Claims in Road Traffic Accidents or Injury (the RTA and EL/PL Protocols), PI claims are started through the Claims Portal. It has three stages. As an overview: Stage one requires the defendant to admit or deny liability. If liability is denied the claim will exit the Pre-Action Protocol at that stage. If liability is admitted, the claim will proceed to Stage two, where the two parties negotiate a final settlement. If a settlement is reached, the claim ends at that stage. If a settlement cannot be reached the claim will proceed to Stage three, where the court will determine the damages to be awarded.

At any stage, a claim can exit the Pre-Action Protocol for a variety of reasons. If the claim does exit the Protocol for Low Value Personal Injury Claims it may enter the Pre-Action Protocol for Personal Injury Claims, with the possibility of Part 7 proceedings being issued. Whether the claim is subsequently settled or proceedings are issued, the costs recoverable by the claimant will depend upon the stage the proceedings reach before settlement, or the court finds in the claimant’s favour and will be significantly higher than those payable had the claim remained in the RTA Protocol. The claimant is at risk of recovering no more by way of costs than those available had the claim remained within the RTA Protocol if held to have acted unreasonably in causing the claim to exit the RTA Protocol. Based on data received from a leading panel law firm we believe that around a third of claims exit the Protocol, and that when they do so the majority settle without going to court.

Each stage of the RTA Protocol includes fixed recoverable legal costs (FRCs) for claimant’s legal representatives, which are considered in the next section.

The majority of whiplash related PI claims are expected to be shifted to the Small Claims track cost provisions, meaning there will be no fixed recoverable legal costs for claimants with legal representation. Claims Portal is currently only set up to be used by lawyers and insurers. It has been assumed that these claims will continue to proceed on Claims Portal (which would require suitable restructuring to the Claims Portal and the Pre-Action Protocol for low value Injury claims for RTA, EL, PL and CN), but with SCT cost provisions (no fixed recoverable legal costs) so that the small claims courts do not become clogged with claims.

K. Annex B – Glossary of key acronyms used in the IA

- CFA: Conditional Fee Agreement

These are the funding agreements that are commonly used in personal injury claims where the claimant only pays for the solicitor’s work if they win the case. Under the current system if a claimant has a CFA, if
they win the case they can recover the legal fees from the defendant, and if they lose they do not have to pay legal fees as part of the agreement.

- **CMCs: Claims Management Companies**
CMCs offer services to claimants in respect of their claims. They advertise for business and often work with lawyers.

- **CN: Clinical Negligence**
Claims for damages related to injury resulting from medical negligence

- **CRU: Compensation Recovery Unit**
When a claimant is awarded compensation, the compensator (the person or organisation likely to be paying the compensation) must inform CRU before any payment is made.

- **COA (Claims Outcome Advisor/ISO) and CSC (Colossus)**
These are systems developed for insurance companies to input details about personal injury claims, to evaluate what the settlement should be, by drawing on a company's previous settlements, to minimise pay-out variance.

- **DBA: Damage-based agreements**
DBAs are an option for funding litigation – if the case is successful, the lawyer's fee is calculated as a percentage of the damages obtained; if the case is lost, no fee is payable to the lawyer.

- **EL: Employer liability**
Claims for damages related to accidents or injury in the workplace

- **IPT: Insurance Premium Tax**
This is a tax on general insurance premiums, including car insurance, which, from October 2016, will be set at 10 per cent of a premium's value.

- **LIPs: Litigants in Persons**
This relates to individuals who do not have legal representation.

- **MROs/ MEs: Medical Reporting Organisations/Medical experts**
MROs/MEs provide medical reports for claimants who undergo a medical examination to assess whether an injury has been sustained, and if so its severity, prognosis and whether treatment is required.

- **PI claims: Personal Injury**
Claims for damages relating to Road Traffic Accidents, Employer Liability, Public Liability and Clinical negligence

- **PSLA: Pain, Suffering and Loss of Amenity**
An award for PSLA compensates the claimant for the distress or frustration caused by the injury and the general impact of the accident upon their lifestyle.

- **PL: Public Liability**
Claims for damages related to accidents or injury in a public place such as slips and trips

- **RTA claims: Road Traffic Accidents**
This refers to individuals who are involved in a RTA who are seeking to make a claim for damages as a result of the accident.

- **RTA PAP: Road Traffic Accident Pre-Action Protocol**

  This outlines the steps the courts would usually expect parties of a RTA dispute to take before court proceedings are issued, this includes the legal fees which are recoverable.

- **SCT: Small Claims Track**

  A court will usually allocate a personal injury case to the SCT if the PSLA compensation being claimed is no more than £1,000 (and total settlement is under £10,000).