



Ministry
of Justice

Government Response to the Justice Committee's Seventh Report of Session 2017–19: Small Claims Limit for Personal Injury

July 2018

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

July 2018



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**Government Response to the Justice Committee's Seventh Report of Session 2017-19:
Small Claims Limit for Personal Injury**

Introduction

1. The consultation document 'Reforming the Soft Tissue Injury ('whiplash') Claims Process' was published in November 2016. The consultation ran for 6 weeks and it sought views from stakeholders on proposals to tackle the continuing high number and cost of whiplash claims. The Government considered the views and evidence submitted in response to this consultation, and published its response on 23 February 2017. This included details of the measures the Government was committed to taking forward, including primary legislation to:
 - introduce a tariff of fixed compensation for pain, suffering and loss of amenity (PSLA) for whiplash claims with a duration of up to two years; and
 - ban offering to settle whiplash claims (to include making, or soliciting or accepting such an offer) without medical evidence.
2. In addition, the Government also confirmed that it would increase the small claims track (SCT) limit for road traffic accident (RTA) related personal injury (PI) claims to £5,000 and for all other PI claims to £2,000. This would be achieved through amendments to the Civil Procedure Rules. The primary legislative measures were subsequently included in Part 5 of the Prisons and Courts Bill, which was also introduced in the House of Commons on 23 February.
3. On 17 March 2017, the Justice Committee launched an inquiry entitled 'Personal injury: whiplash and the small claims limits', and the Government submitted written evidence to this inquiry on 25 April 2017. However, due to the calling of a General Election in April 2017 the Prisons and Courts Bill fell and the Justice Committee inquiry was closed.
4. The Government reaffirmed its commitment in the Queen's speech on 21 June 2017 to bring forward the measures on whiplash claims in a Civil Liability Bill. The Justice Committee subsequently announced a new focussed inquiry into the secondary legislative measure to increase the SCT limit for PI claims. The Government provided oral evidence to the Committee on 16 January 2018 and further written evidence was submitted on 7 March 2018.
5. The Justice Committee published its inquiry report *Small Claims Limit for Personal Injury*¹ on 17 May 2018. The Government thanks the Committee for their detailed consideration of the issues in relation to increasing the SCT limit for PI claims.
6. The Civil Liability Bill was introduced in the House of Lords on 20 March 2018. It completed its third reading in the House of Lords on 27 June 2018 and was introduced in the House of Commons on 28 June 2018.

¹ Seventh Report of Session 2017-19 HC659.

Response to recommendations

1. The Government has long been committed to reducing the number and cost of whiplash claims and the resulting impact this has on the price of motor insurance premiums. This is why, following consultation, the Government is taking forward a number of measures designed to take control of the PI claims process and further reduce the costs of civil litigation, particularly in relation to whiplash claims.
2. This reform programme includes a mix of primary and secondary legislative measures, including an increase in the SCT limit for RTA related PI claims to £5,000 and for all other claims to £2,000. The Justice Committee's report focusses on these increases to the SCT limit, although we do note that the Committee also touched upon the related measures being taken forward in the Civil Liability Bill.
3. The Committee have made a number of recommendations in relation to the setting of the SCT limit for these claims, the impact on access to justice of increasing the limit, the implementation timetable and the impact on claimants and those organisations who assist them. The Government in particular welcomes the Committee's recommendation on delaying the implementation timeline for these reforms and the online platform intended to support the pre-action stages of claims. The Committee's views here accord with the Government's approach that it is important to get the introduction of these important reforms right rather than strive for an early deadline which does not allow us to work carefully with litigant in person, consumer and industry stakeholders to ensure that the reforms are brought online in the most efficient and effective manner, taking account of genuine concerns of access to justice. Our conclusions here are set out at paragraph 36.
4. The Government is grateful to the Committee for its careful consideration and detailed report on this and other issues relating to the small claims limit for personal injury. This document sets out the Government's response to the Committee's recommendations.

i. Reforms to the personal injury claim processes

5. The Committee queried the volume of claims and noted that there has been an overall decline in the volume of RTA related claims in recent years.
6. The Compensation Recovery Unit (CRU) data shows that, following a decrease in the two years following 2012/13, claims volumes steadily increased for three years to 2016/17. There has been a welcome drop in the last year, but it is too early to say whether this is a trend or a one-off occurrence. It should also be noted that the PI sector has seen a growth in other types of claim (such as holiday sickness) over the last year, which may be indicative of a claims shift. The table below shows the number of motor claims registered over the last six years.

| DWP CRU Data on the Number of Registered Motor Claims | |
|--|---------|
| 2017/18 | 650,019 |
| 2016/17 | 780,324 |
| 2015/16 | 770,791 |
| 2014/15 | 761,878 |
| 2013/14 | 772,843 |
| 2012/13 | 818,334 |

7. The Government's proposed reforms are addressing concerns about the continued high cost and number of whiplash claims. The Government is committed to control the reducing the number and costs of whiplash claims. These reforms ensure genuine claimants will continue to receive proportionate compensation for their injury and importantly will also dis-incentivise and control unmeritorious claims.
8. The Committee expressed concern about conflating fraudulent behaviour with legitimate consumer behaviour. They recommended that:
"We recommend that, in the interests of accuracy, the Government work with the ABI to develop a more nuanced approach to avoid conflating innocent – if unexpected – consumer behaviour with fraudulent activity"
9. The Government fully agrees with the Committee that it is important to ensure fraudulent and unmeritorious claims are distinguished from honest claims. The Government's reform programme will address issues related to fraud. As the Government explained to the Committee on 7 March 2018, fraud is by its very nature varied and is difficult to detect. This makes developing a reliable measure to identify when behaviour is fraudulent, or merely exaggerated or speculative, very difficult. The Government takes this issue seriously, which is why we set up an insurance fraud taskforce (IFT) in December 2014.
10. The IFT's remit was to look at all types of insurance fraud with the aim of making recommendations to reduce the level of fraudulent claims, which would reduce costs and protect the interest of honest customers. The IFT published its report in January 2016 and the Government announced in May 2016 that it accepted all the recommendations and would set out implementation plans in due course.
11. The Government is currently working closely with stakeholders including from the insurance industry to take forward the IFT's recommendations. Detail will be included in Part Two of the response to the whiplash consultation, which will be published shortly.
12. The Government also took action in 2015 by supporting a joint industry initiative to tackle fraudulent claims at source. The RTA pre-action protocol was amended to make a data sharing agreement between claimant lawyers and insurers a mandatory part of the pre-action process. This requires solicitors to carry out a previous-claims check on all potential claimants before accepting the claim.

13. The ABI has provided substantive information on the activities by insurers to fight fraudulent claims. The industry adopts a collaborative approach to tackling financial crime, detecting fraud valued at around £1.3 billion a year. It is conservatively estimated that ABI members spend at least £250 million each year on measures to combat fraud which focus on prevention, detection and enforcement and include initiatives such as the Insurance Fraud Bureau (IFB) and the Insurance Fraud Enforcement Department (IFED). There have been 340 IFED insurance fraud convictions in six years and there are 350 live IFED insurance fraud cases with 186 live IFB operations valued at more than £100 million involving more than 6,500 claims.
14. In addition, the Government introduced measures through the Criminal Justice and Courts Act 2015 to:
- ban solicitors from offering cash and other inducements to claimants to bring personal injury claims; and
 - introduce requirements for the Court to dismiss a claim in its entirety if any element is shown to be 'fundamentally dishonest'.
15. The Government notes the recommendation of the Committee in this area, and will continue to work closely with the ABI and other wider stakeholders from all parts of the PI sector to identify and take action against fraudulent and unmeritorious claims.
16. The Committee expressed concern about the expected savings resulting from these reforms and recommended that:
- "We recommend that, if the reforms are implemented, the Government work with the ABI and either the Prudential Regulation Authority or the Financial Conduct Authority to monitor the extent to which any premium reductions can be attributed to these measures and report back to us after 12 months."*
17. The Government would like to thank the Committee for their scrutiny on the impact of RTA PI claims on motor insurance premiums and welcomes the Committee's recommendation to monitor the extent to which a reduction in motor insurance premiums can be attributed to these reforms.
18. The Government believes that the estimated savings from the reforms are realistic. The highly competitive nature of the motor insurance sector will mean that insurers will have little or no choice but to pass on savings to consumers or risk being priced out of the market. An in-depth investigation by the Competition and Markets Authority in 2012 found that the motor insurance market is highly price sensitive; driven by low levels of market concentration and high levels of penetration by price comparison websites. Resulting estimates indicate that 85% of insurance savings from whiplash measures will be passed on to the consumer. Motor insurer providers covering 84% of UK market have already written to the Lord Chancellor to make the welcome commitment that they will pass on any savings.
19. However, the Government has listened to the views of the Committee and those of Peers raised on this issue during the passage of the Civil Liability Bill through the House of Lords. During the Report stage of the Bill on 12 June, Lord Keen stated that the Government will develop an amendment to be tabled in the House of Commons that provides an effective means for reporting on the public commitment made by the insurance sector to pass on to consumers savings made by these reforms (Hansard,

House of Lords, column 1633).² PI claims have a limitation period of three years, which means that claims where the cause of action (i.e. the date of the accident) occurs before the date the reform measures come into force can be brought up to three years later. The average time for a claim to be resolved is currently 12 months. Although we expect to see savings starting from the implementation of these measures, the full estimated savings will take some time to realise.

ii. Setting the small claims limit and the impact of raising the small claims limit

20. The Committee expressed concern about the rise of the SCT limit and made the following recommendations:

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

“We recommend that the Government does not proceed with plans to increase the limit for all RTA PI claims to £5,000.”

“Given the potential complexity of these claims [employer liability and public liability] for self represented claimants and evidence of the role of litigation in maintaining safe and healthy workplaces, we recommend that they continue to be subject to the lowest small claims threshold—which we have recommended should be set at around £1,500 to take account of inflation since 1999.”

21. The Government considers it appropriate to increase the SCT limit for PI claims to £2,000 and RTA PI claims to £5,000. The limit for PI claims has been set at £1,000 since 1991 and, as compensation levels have risen, the SCT no longer covers the same breadth of claims as it once did. The limit for most other claims has now risen to £10,000. The Government has consulted on the limit of the SCT three times in the past ten years and in 2013 committed to keeping the issue under consideration for implementation when appropriate. The Government believes it is right to return to this proportionate and appropriate measure now.

22. The Government is satisfied that increasing the limit for PI claims to £2,000 is in line with inflation. It is the Government’s view that the more complex employer and public liability cases should remain in the fast track. The Government believes the Retail Price Index is the most appropriate measure of inflation to increase the SCT limit for this category of PI claims as this is the index used to update damage awards in the Judicial College Guidelines. The proposed limit of £2,000 for non-RTA PI claims reflects the effect of inflation since the limit was last set in 1991.

23. The Government believes that increasing the limit for RTA PI claims to £5,000 is proportionate. Around 85% of RTA PI claims are whiplash related claims and a SCT limit of £5,000 will facilitate early and expedited settlement under the proposed tariff structure, and will encourage insurers to challenge unmeritorious claims. It is the Government’s view that minor low value RTA PI claims are suitable to be heard in the SCT. Claims under £5,000 are relatively minor and straightforward and are not so

² Hansard, House of Lords, column 1633, available via [https://hansard.parliament.uk/Lords/2018-06-12/debates/BAD8CBC4-5E52-48F1-93D8-6992453ABFFB/CivilLiabilityBill\(HL\)](https://hansard.parliament.uk/Lords/2018-06-12/debates/BAD8CBC4-5E52-48F1-93D8-6992453ABFFB/CivilLiabilityBill(HL))

complex as to routinely require a lawyer. Under the proposed system a doctor will assess each whiplash claim and their assessment will be linked to a clear fixed tariff for whiplash injuries of less than two years duration. The SCT is suitable for such claims and is designed to be accessible to litigants in person. Handling these claims in the SCT will reduce the cost of these claims for all motorists.

24. Leaving more claims in the fast track is unlikely to result in claimants receiving better settlements or increased compensation. This would undermine the Government's reforms in this area and deprive ordinary consumers of much of the savings which insurers have committed to pass on.

25. The Committee also considered the inclusion of vulnerable road users in these reforms and recommended that:

"We recommend that vulnerable road users be excluded from any higher small claims limit that is imposed on other RTA PI claims."

26. The Government has carefully considered the recommendation made by the Committee and points made by Peers during the Civil Liability Bill debates regarding the exclusion of vulnerable road users. As Lord Keen noted during the debate in Report stage of the Bill on 12 June, the Government is sympathetic to the argument. The Government needs to ensure that any exemptions are justified, particularly with regard to those claimants to whom the increase will still apply. The Government is further considering this matter and will return to it in due course.

27. The Committee also turned its attention to the recent reforms in holiday sickness claims and recommended that:

"We recommend that the Government evaluate the impact of the new cost rules after 12 months and consider the evidence received in response to its recent consultation before consulting further on whether any additional action is needed to curb the number of fraudulent holiday sickness claims, to ensure that any proposed measures are proportionate to the problems that may remain."

28. The Government has been concerned about the recent increases in package holiday sickness claims and its potential implication for holidaymakers, tour operators and the UK's overall reputation with overseas providers. Previously the legal costs of people in England and Wales making compensation claims against tour operators for gastric illness suffered while on holiday abroad were not controlled. The Government has taken robust action to tackle the cost of holiday sickness claims by bringing forward measures that fix the cost of these claims from 7 May 2018, in advance of the holiday season. This follows the then Justice Secretary's announcement on 9 July 2017 and the Call for Evidence which followed on 13 October.

29. On 12 July the Government published the response on the way forward on package holiday sickness claims. This balances the interests of all in a fair and proportionate way and is based on evidence received from stakeholders which has helped inform the way forward. The Government will keep the measures under review and is prepared to take further action if necessary.

30. The Committee have recommended that:

"If the small claims limit is to be increased by more than the rate of inflation, we recommend that the Ministry of Justice and HM Courts and Tribunal Service work with the senior judiciary to agree in advance a framework for monitoring the impact on the

judiciary and the courts, so that monitoring can commence immediately after introduction of the new limit[s] and urgent steps taken to address any adverse impact identified.”

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

31. The Government will work closely with HMCTS and the senior judiciary to monitor the impact of these reforms on the judiciary and the courts.
32. The Government would like to reassure the Committee that it will work closely with the Civil Procedure Rule Committee (CPRC) regarding any necessary changes to the Civil Procedure Rules in consequence of these reforms and in particular their understanding by litigants in person.

iii. Implementing the small claims reforms

33. The Committee have recommended that:

“Before introducing further changes, we recommend that the Ministry of Justice consider the learning from its review of Part 2 of LASPO, once completed, to determine whether any adjustments should be made to the current package of reforms, including proposals for the small claims limit.”

34. The post-implementation review of Part 2 of the LASPO Act is being undertaken this year. This will examine whether Part 2 has met its objectives and whether there are unintended consequences that need addressing. The report will be published in due course. The Government will be continuing with its reforms to tackle the compensation culture that has grown up around whiplash claims in parallel.

35. The Committee made the following recommendations on the timeline:

“We therefore recommend that the national roll-out of the new platform—and hence any changes to the small claims limit for PI claims—be delayed at least a further year until April 2020, and that the new claims process, including the support and guidance available to claimants, be subject to independent evaluation after three years.”

“We therefore recommend that the Ministry give a central focus to these issues during the pilot phase of the project, both to secure financial help for claimants who cannot meet the cost of disbursements and to ensure that online decision trees give effective support to claimants pursuing valid claims in the face of defendant resistance.”

“To avoid discriminatory impact, we recommend that the Ministry closely monitor the effect on different groups of claimants during the pilot phase of the electronic platform, and take steps to mitigate any adverse impacts that it identifies, for instance by providing targeted face-to-face support.”

“The Ministry should commit to producing, as soon as practicably possible after the working group has reported, a stage by stage plan, with costings, for how it will fund and implement support and guidance to assist individuals to access the new platform, including any face-to-face support that the group recommends. This plan should be sent to us so that we can consider whether it meets the recommendations of the working group and the needs of users.”

36. The Government has previously set out its intention to implement the reform measures as a package on 1 April 2019. The Government welcomes the Committee's views on the importance of appropriate and suitable guidance and support for both claimants and defendants, something which the Government has also discussed with stakeholders. The Government is acutely aware that the proposed approach will fundamentally transform how whiplash claims are handled and that any concerns around access to justice have to be addressed promptly. There will need to be extensive user testing in order to ensure that the system is easy to use for all user groups and that the guidance is clear. We agree with the Committee and our stakeholders that it is crucial that these reforms and the implementation of the online platform is done right rather than quickly. This is why the Government is now proposing for the platform to be ready for large-scale testing by October 2019 with the view to implementing the whiplash measures, including the rise in the small claims limit to £5,000, fully in April 2020.
37. During the testing phase the focus will be on evaluating the quality of the product and customer satisfaction to ensure its release readiness. Issues will be smoothed out, the processes will be re-iterated and improved as necessary and the use of the platform by litigants in person will be scrutinised. The Government will also work closely with Digital colleagues and HM Courts and Tribunal Services to monitor the impact the online platform has on different user groups, mitigate any adverse impacts it identifies and adapt its services so that all user groups can efficiently use the platform. The Government will also ensure that there will be an 'assisted digital' route so that users that are digitally disenfranchised will be able to submit their claims. We would like to reassure the Committee that employer liability and public liability claims will not be in scope of the new online platform.
38. The Government welcomes the Committee's views on the necessity of appropriate guidance in order to support both claimants and defendants. The Government is aware of the importance of such appropriate guidance and support, especially for litigants in person, to use the online system. We are working closely with stakeholders from different industries, such as insurers, claimant solicitors, defendant solicitors, the Law society and third sector providers, to ensure that the necessary guidance and support will be in place when the platform goes live. The Government will update the Committee with a more detailed plan on how it seeks to ensure the appropriate guidance and support for users in due course.

iv. Impact on organisations assisting claimants

39. The Committee showed concerns about CMCs and cold calling. The Committee made the following recommendations:

"We recommend that the Financial Conduct Authority impose a cap of no less than 20% and that this should be done as soon as possible after it assumes its new role as regulator of claims management services."

"In the meantime, we recommend that the Government monitor the effectiveness of the proposed restrictions, particularly on calls from overseas, and that technical remedies are urgently explored to tackle any loopholes that might be exploited by overseas operators to circumvent the restrictions; we ask that the Government report to us on progress with this within a year of the proposed restrictions being implemented."

40. The Government certainly agrees with the Committee that the issue of cold calling needs to be monitored as it is causing a nuisance for people being called and fuels a claims culture. The Government has already taken significant steps regarding cold calling through the Financial Guidance and Claims Act (FGCA) 2018, which takes steps to ban the practice of cold calling in relation to a much broader spectrum of claims. The FGCA has introduced a ban on any person making cold calls in relation to claims management services, except where the customer has consented to such calls. We expect the provision in this new legislation to reduce the number of nuisance calls received by individuals in the UK. The Information Commissioners Office will enforce this ban, and these proposals, together with the new rules imposed by the General Data Protection Regulation and the Data Protection Act 2018 should mean that consumers will receive far fewer unwanted calls from CMCs than they currently do. In addition to Government action in this area to curb cold calling in relation to claims management services, lawyers are already banned by the Solicitors Regulation Authority's Code of Conduct from undertaking cold calling.
41. The Financial Conduct Authority has recently published a consultation, which spells out in detail, the rigorous steps they propose to take in future in relation to regulating CMCs. The Government recently published a consultation on taking action against company directors for breaches of nuisance calls laws, which presents the option of fining directors and businesses up to £500,000 for flouting the e-marketing rules.
42. Whilst not making a formal recommendation in this area the Committee were concerned about the impact of these reforms on the PI legal sector. Following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act in 2013, there is no hard evidence of wholesale job losses in the sector. Although the Government expects that some consolidation in the sector can be seen in the future, the PI legal sector has consistently shown itself to be both innovative and adaptable to when faced with changing markets. We expect lawyers to continue to adapt and be fully capable of providing cost-effective services to genuinely injured claimants following the implementation of these reforms.
43. The Committee also expressed concern regarding paid McKenzie friends and recommended that:
- “We recommend that the senior judiciary seek to conclude its examination of this issue as soon as possible.”*
44. The Government will work with the judiciary to make sure that their concerns will be addressed.

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