 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Reforming medical examination and reporting in motor accident soft tissue injury claims	
Lead Department/Agency	Ministry of Justice	
Stage	Final	
IA number	MOJ 163	
Origin	Domestic	
Expected date of implementation	1 October 2014 (SNR 8)	
Date submitted to RPC	16 September 2014	
RPC Opinion date and reference	29 September 2014	RPC14-MOJ-2141(2)
<i>Departmental Assessment</i>		
One-in, Two-out status	IN	
Estimate of the Equivalent Annual Net Cost to Business (EANCB)	£11.89 million	
RPC Overall Assessment	GREEN	
<p>RPC comments</p> <p>The IA is fit for purpose. The Department has addressed the points raised by the RPC in its previous opinion (1 August 2014). The Department has provided a much clearer assessment of the costs and benefits associated with the revised proposal. The Department estimates that the proposal will result in approximately £190 million per year in indirect benefits to business. This benefit comes from anticipated lower compensation payments to claimants, primarily from a reduction in claims. The RPC considers the Department's assessment of the direct impacts on business, reflected in an equivalent annual net cost to business of £11.89 million in each year, to be reasonable.</p>		
<p>Background (extracts from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <p><i>“In recent years the number of personal injury claims made for whiplash cases has increased significantly whilst, over the same period, the number of road traffic accidents has been falling. Government intervention is required as the proposed changes require court rule changes. In addition, concerns have been raised that the current processes for claiming for personal injuries relating to whiplash following a road traffic accident (RTA) may enable exaggerated and less meritorious claims. The</i></p>		

costs of dealing with these claims are pushing up the cost of motor insurance for all drivers.”

What are the policy objectives and the intended effects?

“The policy objectives and intended effects are:

- *To ensure that RTA personal injury claims, especially in relation to whiplash, are founded upon credible medical reports.*
- *To ensure that the cost of such medical reports is proportionate.*

In turn this should lead to fewer exaggerated claims and to fewer less meritorious claims, without having an adverse impact on meritorious claims.”

Comments on the robustness of the OITO assessment

The Department explains in its impact assessment that this is a regulatory proposal that would impose a net cost to business (an ‘IN’) with an estimated equivalent annual net cost to business (EANCB) of £11.89 million. The impact assessment appears to provide a reasonable assessment of the likely impacts and is consistent with the Better Regulation Framework Manual (paragraph 1.9.10). We explain the basis for the EANCB below.

Comments on the robustness of the Small & Micro Business Assessment (SaMBA)

The proposals increase the scope of regulation on business. A SaMBA is, therefore, required. The SaMBA is sufficient.

The Department explains that the main stakeholders affected by the proposals are claimant lawyers, defendant insurers and medical practitioners. Defendant insurers tend to be large businesses. The Department therefore concentrates its assessment on claimant lawyers and medical experts.

The Department explains that data from the Law Society (market assessment from 2012 / 2013) suggest that the majority of solicitor firms are small. In 2013, approximately 55% of firms undertaking personal injury work had up to five solicitors, and around 40% had between six and forty solicitors. The Department does not have as reliable data on the size of firms in the medico-legal report-writing sector. For the purposes of this SaMBA, the Department has assumed that the majority of medical reports are produced by small businesses on the basis that expert practitioners are likely to be self-employed, such as doctors providing reports on a private basis, or part of a medical reporting organisation (MRO).

The impacts of the reforms for medical practitioners include the requirement to have a medical report, a fixed fee income per report and additional resource to assess information passed on by defendant insurers. Following consultation and discussions with trade bodies and individual providers within the industry, including

claimant lawyers and medical practitioners, the fixed cost is seen as a fair reflection of the costs involved. On the basis of these discussions, the Government has concluded that an exemption would not be applicable as the proposals would not achieve the stated objectives of credible medical reports and ensuring the cost of medical reports is proportionate.

The Department has considered other actions to mitigate the impact on small and micro businesses. For example, the Department considered varying requirements by type or size of business. However, the Department's assessment is that such an approach would not align with the policy objective of requiring a medical report by an accredited expert. The credibility of having a medical report from an accredited expert requires that all medical experts and organisations comply with the minimum standards regardless of size.

The Department also considered a voluntary opt-in solution. However, as a key element of the policy is to require medical reports from an accredited expert, an opt-in approach would undermine the ability to secure the intended objectives.

Quality of the analysis and evidence presented in the IA

The Department is proposing to introduce four measures to reduce the number of fraudulent whiplash claims. These measures will:

1. require medical experts conducting the medical reports to be independent and accredited;
2. require claimant lawyers to undertake previous claims checks on new claimants;
3. allow defendants to pass on their version of events to the medical expert; and
4. set a fixed cost for the medical reports.

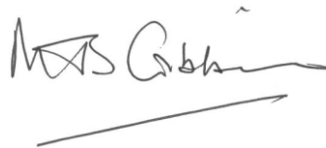
The proposals will affect the legal profession representing claimants, medical experts that produce medical reports in support of claims, and insurance companies (defendants). The Department estimates that the proposed reforms will generate on-going direct costs to business of £14.87 million per year. This consists mainly of £9.1 million in relation to accreditation (90% of which falls on insurance companies, as defendants, and 10% on claimant lawyers). The remainder consists mainly of additional costs to claimant lawyers in selecting a medical expert to conduct a report (£3.35 million) and in conducting checks on their claimants (£2.23 million). There is also a one-off cost of £1.5 million in setting up the accreditation system (borne by defendants). These costs translate to an EANCB of £11.89 million (2009 prices). This appears to be a reasonable estimate.

Drawing on the explanation of costs and benefits in the Department's impact assessment, the proposals will generate approximately £190 million per year in benefits to business, resulting from lower compensation payments to claimants. The Department assesses these benefits as indirect because they stem from assumed responses to the reforms, principally by claimants, for example in making fewer or less exaggerated claims. This assessment appears to be reasonable.

There are some areas where the Department could strengthen the impact assessment further. These are listed below.

- *Evidence base.* The Department has provided sufficient explanation of the key assumptions used in the IA and includes sensitivity analysis on these. However, the Department could strengthen the impact assessment by providing more details on how the consultation supported the assumptions made, in particular the 10% reduction in claims (paragraph 2.9, page 12).
- *Existence of supernormal profit.* The impact assessment provides an explanation for why the current price of medical reports exceeds a 'fair price' (paragraphs 1.32-1.34, pages 9-10). This explanation seems reasonable. However, the Department could strengthen the impact assessment by providing further evidence, and explanation to support this, in particular how the reference to a "ban on referral fees" supports the arguments presented.
- *Summary tables.* The Department should, where possible, fill out more of the boxes on page 2 of the IA, using the figures in the text boxes and the summary table on page 25.

Signed

A handwritten signature in black ink, appearing to read "Michael Gibbons", with a long horizontal line extending to the right below the signature.

Michael Gibbons, Chairman