Public Affairs

MoJ Whiplash consultation – summary & questions
Response date: 6th January 2017

RAC Response QUESTIONS

Question 1: Should the definition in paragraph 17 be used to identify the claims to be affected by removal of compensation for pain, suffering and loss of amenity from minor road traffic accident related soft tissue injury claims, and introduction of a fixed tariff of proportionate compensation payments for all other such claims?

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

The RAC would encourage the Government to consider a 'scale of severity' to compliment the definition. It seems entirely reasonable that at a time when the Government wishes to clamp down on bogus whiplash claims, a more rounded, prescriptive definition would be appropriate that is very specific to whiplash claims

The Government should also understand that 'soft tissue' injuries can be caused by a whole host of other non-road related incidents and the definition needs to be sufficiently specific to cover this.

Question 2: *Should the definition at paragraph 17 be extended to include psychological trauma claims, where the psychological element is the primary element of a minor road traffic accident related soft tissue injury claim?*

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

The RAC supports the aim of removing bogus claims regardless of type, however, psychological injury is unlike soft tissue injury and the two should not be banded together in this way.

If the government wishes to deter any perverse practices by medico-legal practitioners who may evidence unsubstantiated claims, then the way to do this is not by attempting to trivialise the psychological impacts of victims of negligence. Moreover this approach seems out of step with the government's usual approaches both to victims of crime and regarding the impact of psychological trauma, which it has said wants to be seen as being on a par with physical injuries.

Question 3: *The government is bringing forward two options to reduce or remove the amount of compensation for pain, suffering and loss of amenity from minor road traffic accident related soft tissue injury claims. Should the scope of minor injury be defined as aduration of six months or less?*
Please explain your reasons, along with any alternative suggestions for defining the scope.

The RAC believes that six months strikes the right balance. Anything more than six months would arguably not be construed as a minor injury. Anything less may mean genuine claims by motorists are overlooked.

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

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

Please refer to our answer to question 3.

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

Compensation for pain, suffering and loss of amenity should not be removed for minor claims as defined in Part 1 of this consultation. Its removal would severely restrict access to justice and undermine a fundamental principle of the law of tort.

There is a danger of removing the rights of motorists who would receive such compensation in other circumstances.

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

A single fixed sum could not be expected to take into account the range of injuries or their impact which could be included here. Judicial College Guidelines which the government elsewhere relies on are predicated on there being a range of awards for general damages, with loss of amenity awards varying between claimants and depending upon individual circumstances. This would be impossible under a single fixed sum.

Treating claimants identically is not fair and the sums suggested in the consultation document are in any event out of date with Judicial Studies Board guidelines. We oppose any form of tariff as contrary to common law. Any concept of bracketing should be calculated according to current case law by representatives of all sides of the industry and represent the best interest of the motorist.

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

As set out in answer to Question 6 above, we belief any tariff would have to be bracket based and reflect current awards in the Judicial College Guidelines. The guidelines used should be the 13th version and not the older, 12th version referred to in the consultation document.

It is not made clear under what basis £400 is an "appropriate level of compensation" (paragraph 42) for an injury lasting up to nine months or why an additional £25 compensation for psychological injury is seen to be an appropriate amount when it appears to trivialise serious mental conditions.

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

The RAC's preference is for a 'Diagnosis' approach to be followed. We believe that waiting 6 months and then proceeding with a medical report will be sufficient evidence to pursue a claim. Additionally, waiting 6 months allows motorists who may have been affected a clear understanding of the injury that may have occurred.

It also brings it in line with the 6 month deadline we prefer in question 4.

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

The RAC prefers the Diagnosis approach for the reasons described in our response to question 8.

Question 10: Would the introduction of the 'diagnosis' model help to control the practice of claimants bringing their claim late in the limitation period?
Please explain your reasons and if you disagree, provide views on how the issue of late notified claims should be tackled.

While it might have this effect, an alternative would involve lodging Claims Notification Forms (CNFs) on the Portal within 12 months of the date of the accident, after which time no costs can be recovered. This would discourage older claims which are more open to fraud and help reduce the aggressive marketing approaches used by some claims management companies.

Question 11: The tariff figures have been developed to meet the government's objectives. Do you agree with the figures provided?
Please explain your reasons why along with any suggested figures and detail on how they were reached.

The tariff figures have been developed using out-of-date JSB guidelines and as a result are too low. The guidelines have been refined over many years as the basis to determine general damages on a bracket-based approach and the latest version should as a minimum be adhered to.

Question 12: Should the circumstances where a discretionary uplift can be applied be contained within legislation or should the Judiciary be able to apply a discretionary uplift of up to 20% to the fixed compensation payments in exceptional circumstances?
Please explain your reasons why, along with what circumstances you might consider to be exceptional.

There is inadequate detail within the consultation documents to how any new system would work in practice - we would require more detail to be able to make a full response.

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

The RAC has no preference when answering this as our interests lie in road-related incidents.

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

The RAC welcomes proposals to raise the small claims track limit given the long period that it has remained at the current level. We believe, however, that raising in line with inflation since 1991 would be the most appropriate solution. A figure of around £2,000 would bring the UK more in line with other European countries. Anything beyond this could restrict access to justice.

It is entirely appropriate that motorists have the right level of support to pursue more complex claims and improved reporting and fixed levels of compensation may encourage this.

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

The RAC believes that the Court system is already overloaded and litigants in Person will severely clog up the already overloaded Court system.

Lawyers are familiar with the system, however litigants in person are usually guided by the judge.

The Government could consider an online portal which would manage the entire claims administrative process throughout which would provide better clarity for the claimant.

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

The RAC believes Paid McKenzie Friends will be the same as advocates provided by Law Firms, although they are unregulated and unqualified.

There is a possibility that Claims Management Companies will be seen as a potential source of support and advice in the absence of legal advice. The RAC feels this raises a real concern around the quality of the advice as this replaces law firms with largely unregulated organisations. . CMCs have proven effective on administering claims in areas such as PPI, so the risk is the same in small claims.

Imbalance of representation may also need to be factored, where the claimant may be up against an insurer who has arranged legal representation in a complex area.

Question 17: Should the ban on pre-medical offers only apply to road traffic accident related soft tissue injuries?
Please explain your reasons why.

The RAC agrees with banning pre-medical offers on road traffic accidents because at present some insurance companies offer low cost pay outs without any medical reports, which only serves to increase premiums to other motorists. Additionally, they put unnecessary pressure on a claimant at a time when they are vulnerable and may not be working and without income. There is

also the risk that a claimant may be tempted to settle soon after an injury, even though the full impact of their injury may not be known for some time.

We have no comment on extending the ban beyond RTAs.

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

The RAC believes there should be not be any exemptions.

Question 19: How should the ban be enforced?
Please explain your reasoning.

The RAC does not have any specific preference except to ask that any enforcement agency be given the necessary powers.

Question 20: Should the Claims Notification Form be amended to include the source of referral of claim?
Please give reasons.

Yes, the RAC agrees with this as we believe this will discourage spurious or even fraudulent claims management companies from contacting consumers.

Question 21: Should the Qualified One-way Costs Shifting provisions be amended so that a claimant is required to seek the court's permission to discontinue less than 28 days before trial (Part 38.4 of CPR)?
Please state your reasons.

Adding a blanket QOCS "drop out" clause so that QOCS was reversed where a claim was discontinued changes the scope of the advice and protections as well as the insurable risk on premiums for claimants.

The problem with the Government's proposal is it assumes insurers share with claimant representatives' evidence that has been assembled which serves to undermine the claim, as made. This doesn't happen. As such, we feel that QOCS provision shouldn't be amended in this way.

Question 22:
Which model for reform in the way credit hire agreements are dealt with in the future do you support?
a) First Party Model
b) Regulatory Model
c) Industry Code of Conduct
d) Competitive Offer Model
e) Other
Please provide supporting evidence/reasoning for your view (this can be based on either the models outlined above or alternative models not discussed here).

The RAC is not in a position to give a preference here.

Question 23: What (if any) further suggestions for reform would help the credit hire sector, in particular, to address the behaviours exhibited by participants in the market?
Please provide the factors that should be considered and why.

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The RAC believes transparency may be a problem for consumers within the credit hire sector. Please see our answer to question 24 for further comment.

Question 24. What would be the best way to improve the way consumers are educated with regards to securing appropriate credit hire vehicles?

The RAC believes the Government should focus also on transparency of the process. Sometimes, a motorist may believe they are in courtesy cars when they are in a credit hire vehicle. Perhaps clearer information packs would minimise this.

Question 25: Do you think a system of early notification of claims should be introduced to England and Wales?
Please provide reasons and/or evidence in support of your view.

The RAC believes that reducing the statutory limit to 12 months would remove most of the need for this and may be a better solution should the Government wish to reduce regulation.

Question 26: Please give your views on the option of requiring claimants to seek medical treatment within a set period of time and whether, if treatment is not sought within this time, the claim should be presumed to be 'minor'.
Please explain your reasons.

The RAC believes that reducing the statutory limit to 12 months would remove most of the need for this and may be a better solution should the Government wish to reduce regulation.

Question 27: Which of the options to tackle the developing issues in the rehabilitation sector do you agree with (select 1 or more from the list below)?
Option 1: Rehabilitation vouchers
Option 2: All rehabilitation arranged and paid for by the defendant
Option 3: No compensation payment made towards rehabilitation in low value claims
Option 4: MedCo to be expanded to include rehabilitation
Option 5: Introducing fixed recoverable damages for rehabilitation treatment
Other:
Please give your reasons.

The RAC is not in a position to comment on these specific proposals.

Question 28: Do you have any other suggestions which would help prevent potential exaggerated or fraudulent rehabilitation claims?

The RAC is not in a position to comment on these specific proposals.

Question 29: Do you agree or disagree that the government explore the further option of restricting the recoverability of disbursements, e.g. for medical reports?
Please explain your reasons.

The RAC believes that removal or restricting of the recovery of the medical claim fee could make the process uneconomic for those motorists who are economically disadvantaged. This would deter claimants from pursuing a claim, especially if they are not represented.
Should the Government wish to negate this, it could look at using End of Treatment Reports rather than a GP report should this be the case.

Question 30: A new scheme based on the 'Barème' approach, could be integrated with the new reforms to remove compensation from minor road traffic accident related soft tissue injury claims and introduce a fixed tariff of compensation for all other road traffic accident related soft tissue injury claims. What are the advantages and disadvantages of such a scheme?
Please give reasons for your answer and state which elements, if any, should be considered in its development.

The RAC is not in a position to comment on these specific proposals.

Question 31: Please provide details of any other suggestions where further government reform could help control the costs of civil litigation.

Data sharing: The Government may wish to look at proposals to increase the data flow between insurers both at point of sale and point of claim - effectively creating a ' PI CUE' detailing previous PI claims, circumstances and witnesses. This may be most effective with the Government working with insurers to reach an agreement where insurers are comfortable with the level of data and information that they are willing to share with competitors.

The Government may wish to ban ABS's set up largely by large insurance companies whose primary purpose is to get around the referral fee ban implemented as part of LASPOA. For example, any ABS set up by an insurer where more than 50% of claims are RTA PI's.

The Government may also wish to look at streamlining the regulatory environment to reduce overlap between the SRA, FCA and MOJ.

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A summary of the proposals for reference

- The government is bringing forward a new reform programme to tackle the high number and cost of personal injury claims, and in particular RTA related soft tissue injury claims, the vast majority of which are whiplash claims. The package includes four measures to:
- **a)** tackle the high numbers of minor RTA related soft tissue injury claims by either:

  i. removing compensation for PSLA; 1 or

  ii. reducing compensation for PSLA by setting a fixed amount payable (£400 or £425 if there is a psychological element) for these types of claim.

- **b)** reduce compensation for PSLA for other RTA related soft tissue injury claims where recovery takes longer than for those covered by measure (a) above through the introduction of a set tariff of compensation;

- **c)** raise the small claims limit for all personal injury claims to £5,000, (by reference to the value of the PSLA element of the claim). This would have the effect that the legal costs of such claims would no longer be recoverable from defendants in the majority of soft tissue injury claims, although certain costs arising from litigation (for example the costs of issuing the claim) and a number of disbursements (for example the cost of the medical report) could still be claimed by a successful claimant; and

- **d)** ban pre-medical offers to settle RTA related soft tissue injury claims, so in future claims could not be settled without medical evidence provided by MedCo2 accredited practitioners.

- The government is also taking the opportunity, through this consultation, to gather views from stakeholders on a number of other related issues affecting the personal injury sector as set out in detail in Parts 6 and 7 of this document. These are: i. Implementation of certain recommendations made by the Insurance Fraud Taskforce; ii. Credit hire; iii. Early notification of claims; iv. Rehabilitation; v. Recoverability of disbursements; and vi. Introduction of a Barème type system

Other points & details

- In lower value cases, shifting cases to the small claims track where legal fees are not recoverable – as is the government's intention – would mean that claimants would now have a direct financial interest in decisions about pursuing their claim in that they would be responsible for their own costs. It is also worth noting that under the new proposed tariff (see Parts 2 and 3 of this document for further detail) all claims with a prognosis period of 12 months or under would automatically transfer to the small claims track, regardless of whether the measure to increase the small claims limit was implemented at the same time.
- The current system also allows the parties to settle RTA related soft tissue injury claims without the claimant presenting medical evidence to the defendant. Costs of investigating the claim (and challenging it in court) can often incentivise defendants to settle without this information, with a settlement being seen as a more commercially viable option.
- The definition was specifically designed to identify the relevant low value RTA related soft tissue injury claims to be used in the MedCo IT Portal for sourcing initial medical reports. The vast majority of RTA related soft tissue injury claims are whiplash claims The definition has proved effective in identifying the relevant claims for the purposes of MedCo and the government proposes to also use it for these reforms. It is: *'RTA PAP 16(A) soft tissue injury claim' means a claim brought by an occupant of a motor vehicle where the significant physical injury caused is a soft tissue injury and includes claims*

where there is a minor psychological injury secondary in significance to the physical injury'. 24. It is our view that, subject to the point below regarding psychological injury, using the existing definition is a sensible and pragmatic approach, and that developing a new definition would only cause unnecessary confusion

- Extending the definition of claims affected by the reforms to those claims where the psychological injury is the primary element of a RTA related soft tissue injury claim, which can be done via changes to the RTA PAP, is consistent with the government's aim to cut the costs of low value claims.

Definition of minor claims:

- In the government's view the most appropriate way to assess the nature of the injuries to be encompassed by these measures is to look at and make judgements according to the length of time the claimant is likely to be injured. 30. In considering this issue, the government has looked at two options on which we are seeking the input of stakeholders. They are:
- i. Injury duration of up to and including six months. This is the government's preferred option. The government believes this option provides the most proportionate balance between limiting the compensation payable to individuals versus the costs to motorists. The average amount of compensation awarded for a RTA related soft tissue injury of up to and including six months (with or without psychological claims) is around £1,800.
- ii. Injury duration of up to and including nine months. The government has considered whether the definition of minor claims should be up to and including nine months. The average amount of compensation awarded for RTA related soft tissue injury claims of less than or equal to nine months (with or without psychological claims) is around £2,100.

Options

- As part of its package of reforms to tackle the continuing high number and cost of RTA related soft tissue injury claims, the government is considering two options to deal with minor claims as defined in Part 1 of this consultation document. The details of these options are set out below:

- Option 1: Removal of compensation for PSLA for all minor RTA related soft tissue claims
- Option 2: Introduction of a fixed sum of compensation for minor RTA related soft tissue injury claims

- **Process for assessing injury duration – Diagnosis approach**: The 'diagnosis approach' could be used if the government decided to proceed with the option of removing compensation for PSLA from minor claims. This option would require claimants to wait until the end of the prescribed period (e.g. six months) before obtaining a supporting medical report through the MedCo Portal. An examination at this point would enable the medical expert to assess whether the claimant was still suffering from pain or other symptoms related to injuries sustained in their earlier RTA. The medical report would then be used to decide whether the claimant was entitled only to claim for non-PSLA losses, or was alternatively eligible for the new fixed tariff compensation scheme for more significant injuries.

- **Prognosis approach:** The second option is based on a 'prognosis' approach to medical evidence. This would be similar to the approach currently used for obtaining medical evidence in support of RTA related soft tissue injury claims. This option could work with both the introduction of the new tariff system for minor (and more significant) RTA related

soft tissue injury claims and with the option to remove compensation for PSLA from minor claims

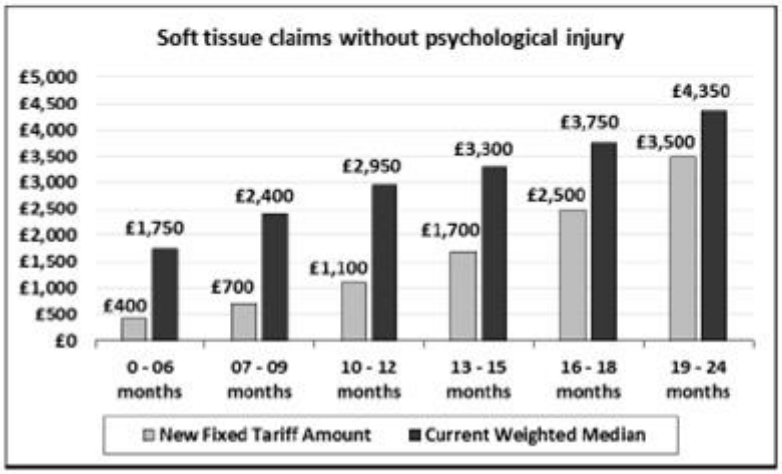
Introduction of a fixed tariff system for other RTA related soft tissue injury claims

- The introduction of a tariff system is also consistent with how a number of other jurisdictions, such as Italy, France, Spain, Sweden, Norway and Finland have approached the issue of RTA related soft tissue injury claims.

- The following tables and charts provide further detail on the new tariff for more significant RTA related soft tissue injury claims. The first line of injury duration of up to and including six months relates to the policy in Part 2 of this consultation document to remove the payment of compensation for PSLA for RTA related soft tissue injuries with a duration of up to and including six months. By way of context the tables provide information on the median for compensation currently paid out in relation to claims which are solely for RTA related soft tissue injuries, and also information on claims for RTA related soft tissue injuries which have psychological damage included as a secondary element of the claim.

Table/Chart 1 – RTA related soft tissue injury claims without psychological injury:

Injury Duration	Current weighted median compensation payment for PSLA, without psychological injury (based on industry data)	Judicial college guidelines amounts (12th edition)	New Tariff amounts
0–6 months	£1,750	£200 to £3,520	£400
7–9 months	£2,400	£1,705 to £3,520	£700
10–12 months	£2,950	£1,705 to £3,520	£1,100
13–15 months	£3,300	£1,705 to £6,380	£1,700
16–18 months	£3,750	£1,705 to £6,380	£2,500
19–24 months	£4,350	£1,705 to £6,380	£3,500



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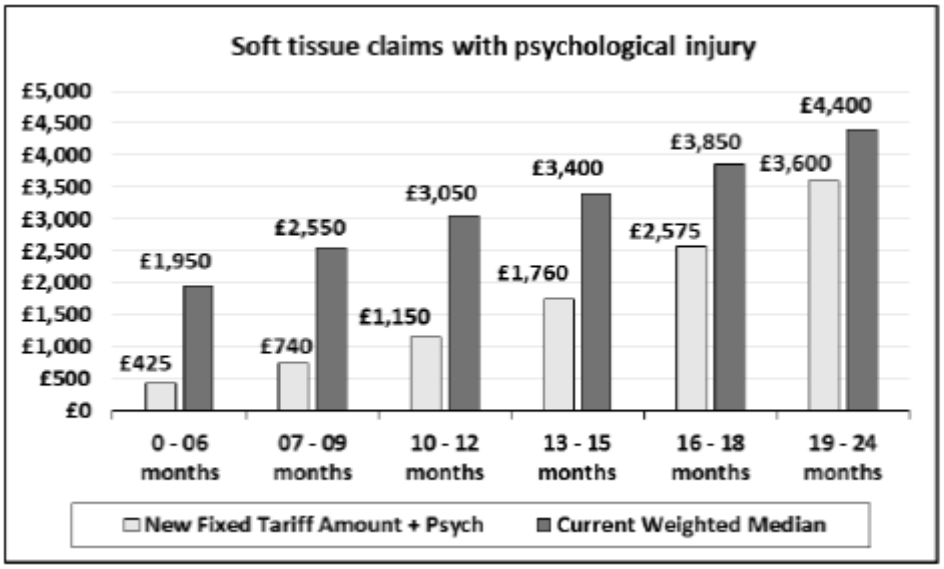
Table/Chart 2 – RTA related soft tissue injury claims with psychological injury:

Injury Duration	Current average payment for PSLA, with psychological injury (based on industry data)	Judicial college guidelines amount (12th edition)	New Tariff amounts		
			New tariff amount	Psych damages awarded	Tariff with psych
0–6 months	**£1,950**	£200 to £3,520	£400	£25	£425
7–9 months	**£2,550**	£1,705 to £3,520	£700	£40	£740
10–12 months	**£3,050**	£1,705 to £3,520	£1,100	£50	£1,150
13–15 months	**£3,400**	£1,705 to £6,380	£1,700	£60	£1,760
16–18 months	**£3,850**	£1,705 to £6,380	£2,500	£75	£2,575
19–24 months	**£4,400**	£1,705 to £6,380	£3,500	£100	£3,600



The amount of compensation available under the new system curves upwards in a series of fixed increments which enable the system to move proportionately from £400 for minor injuries (or £0, if the option to remove PSLA from minor claims is pursued) to £3,500, (£3,600 with a psychological element to the claim) for more serious injuries.

Raising the small claims track limit for personal injury claims

- The third measure in the reform programme, and the second of the two announced by the then Chancellor in his 2015 Autumn Statement, is to raise the small claims track limit for personal injury (PI) claims to at least £5,000, by reference to the value of the PSLA element of the claim. The aim of this measure is to reduce the costs of litigation in relation to low value personal injury claims.
- Raising the small claims limit to cover PSLA claims of at least £5,000 will not preclude claimants from engaging legal representation, but would mean that they would in future be responsible for paying for their own legal costs if they choose to seek legal

representation. The government is of the view that there is increasingly more information available to claimants to take forward claims without necessarily needing to seek legal representation

- In light of the announcement made in the 2015 Autumn Statement the government has considered the level of the small claims limit, and in particular whether the increase should be to £5,000 or higher. In addition, we have considered whether the limit should be raised for all PI claims in addition to RTA related soft tissue claims.

- The government is considering two options for raising the small claims limit, its preference being to raise the limit for all PI claims. Option 1 – raising the limit for all PI claims and Option 2 – raising the small claims limit for RTA related PI claims only

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

- The final measure of the reform programme is to ban defendants from making offers to settle RTA related soft tissue injury claims without a medical report, a practice which is also known as making 'pre-medical offers'. This measure builds on changes to the Civil Procedure Rules introduced in 2014 to discourage the use of such offers in RTA related soft tissue injury cases.

- In introducing a ban it is important to be clear on the scope of such a ban. The government proposes that a ban on pre-medical offers should apply only to RTA related soft tissue injuries. We have considered whether the ban should be extended to all PI claims, partly to ensure consistency in approach, but we believe it is debatable how much extra benefit there would be in such an extension.

Implementing the recommendations of the Insurance Fraud Task Force

- One of these recommendations, for action to be taken in relation to nuisance calls, is being taken forward by the Department for Culture, Media and Sport, while the recommendations in relation to Claims Management Regulation are being taken forward by HM Treasury and the Ministry of Justice as part of their response to the Brady review of claims management company regulation.

- Of the remaining five recommendations, two (Recommendations 10 and 17) are being considered in this consultation document, as well as a recommendation from the IFT's Personal Injury Working Group in relation to Qualified One Way Costs Shifting (QOCS) and the late withdrawal of claims.

- Recommendation 10 concerned 'late exaggerated or fraudulent claims', including a proposal for introducing predictable damages. That recommendation is being addressed by proposals elsewhere in this consultation, including Part 3 on predictable damages. Recommendation 17 (mandatory notification of referral sources) and the QOCS recommendation are addressed below.

Other related issues

The government is interested in the views of respondents to this consultation on a number of options to control costs within the credit hire market. These are:

a) First Party Model – under the first party model, the provision of a TRV would be provided by the policy holder's own insurer, regardless of who is at fault for the accident. The policy holder would therefore be required to use their own insurance cover. Such a change would require

primary legislation and would remove the separation of cost control and cost liability. In addition, the CMA noted that such a model may result in increased premium costs in the future to cover the routine use of the policy, although price competition between insurers may mitigate this risk.

b) Regulatory Model – a regulatory model would involve the introduction of formal regulation of TRV providers. It would provide effective controls for the behaviours which cause frictional costs (i.e. direct and indirect costs associated with financial transactions); permit the capping of rates for TRV provision; and enable a ban on referral fees for TRV claims to be introduced. Many argue that regulation is the minimum solution required to help tackle the problem of credit hire as it would provide the right level of power to control costs. This model would introduce objectivity into the process but it would take time to prepare the necessary primary and secondary legislation.

c) Industry Code of Conduct – the industry owned code of conduct would be reinforced to set out values, ethics, objectives and responsibilities for the sector. 'The code' could build on action already taken by the industry e.g. the ABI's General Terms of Agreement (GTA). The code would allow businesses to regulate themselves and each other through the establishment of clearly defined and agreed guidance for interactions that can be used alongside the industry's own ethical guidelines. The government believes that if such an approach is taken the core principles to be embedded into the code would include elements based on behaviour, honesty, impartiality and reporting. This may help to cut costs, for example it could help to ensure that non-fault drivers only use a TRV for as long as they need one rather than using a TRV that is substantially beyond their requirements for a longer period of time. This model may allow the at-fault insurer to challenge the non-fault insurer's costs to make sure the final cost is reasonable and justified. This would need cross industry support if taken forward, and the government would need to continue to monitor adherence to the code, with a view to further action if required.

d) **Competitive Offer Model** – this model would allow the at-fault insurer in effect to get their own quote, which could be used to challenge the cost of the TRV from the non-fault insurer. This would help to keep costs at a minimum by reducing the period in which the non-fault driver's vehicle is off the road and could also give the at-fault insurer the opportunity to provide a suitable replacement vehicle at a more competitive cost than under current credit hire terms. However, there may be issues around the time it would take for at-fault insurers to turn this around, especially since credit hire claims are time sensitive. There are also questions around how much the non-fault claimant would have to be involved in the process which may lead to unnecessary stress and could result in poor customer satisfaction.

Early notification of injury/intention to claim

Closely aligned to the issue of early notification is the question of whether claimants should seek medical treatment within a set period of time after the accident. It is generally agreed that the onset of symptoms from a RTA related soft tissue injury will be within the first week and there have been suggestions that claimants should have to make contact with a medical professional within the first few weeks, for example within four weeks of the accident, with the aim of reducing the number of fraudulent and exaggerated claims made. There could then be a rebuttable presumption that the claim would be 'minor' if no medical treatment was sought in that time. The benefit of this approach would be to maximise the availability of contemporaneous medical evidence to support a claim.

Recovery of disbursements

The government is committed to reducing the overall costs associated with low value RTA related soft tissue injury claims. Raising the small claims limit for personal injury claims will go some way towards achieving this aim. However, even in the small claims court some disbursements remain recoverable from the defendant, increasing the costs of the claim.

Therefore consideration could also be given to whether further restrictions could be put in place in this area

A potential future option – a points-based / Barème approach

We are seeking stakeholder views as to whether a system similar to the ones used in other jurisdictions such as France, Spain and Italy, which are commonly known as points based or 'Barème' type systems, could potentially be developed in the UK to handle these types of claim. It is important to note that the government is not intending to introduce such a system for England and Wales at this time, and that the purpose of this section is to act as a 'call for evidence' to seek input from respondents on such a proposal.