

FOIL**Prepared by Kysen PR**

Date 17 November 2016
Publication Solicitors Journal
Type of publication Legal Press



Lawyers condemn 'excessive' personal injury reform

MoJ's 'blunt instrument' proposals criticised as 'a licence for fat cat insurers to print cash'

17 November 2016

In a move described as 'heavy handed, excessive, and disastrous', the Ministry of Justice has today launched a consultation on plans to reduce the 'unacceptably' high number of whiplash claims and supposedly allow insurers to cut insurance premiums.

The paper outlines plans to either scrap the right to compensation or, alternatively, put a cap on the amount people can claim for minor soft-tissue injuries. The cap would see the average for whiplash compensation cut from £1,850 to a maximum of £425.



Other measures include raising the small claims limit from £1,000 to £5,000 and banning offers to settle claims without medical evidence. Compensation would only be paid out if a medical report was provided as proof of injury and all claims would need a report from a MedCo accredited expert.

The announcement delivers on the government's pledge to tackle the number and cost of whiplash claims as made by former chancellor George Osborne in his 2015 autumn statement.

The justice secretary, Liz Truss, said: 'For too long some have exploited a rampant compensation culture and seen whiplash claims an easy payday, driving up costs for millions of law-abiding motorists. These reforms will crack down on minor, exaggerated, and fraudulent claims.'

According to government figures, whiplash claims are 50 per cent higher than a decade ago, with the rise attributed to 'a predatory claims industry'.

Simon Kirby, the economic secretary to the Treasury, said: 'One whiplash claim is paid out every sixty seconds and it is unacceptable that responsible motorists have to pick up the tab. We are tackling the incentives which have created this compensation culture so that all drivers can save money on their motor insurance policies.'

Though insurers have [pledged to pass on £1bn of savings](#) to their policyholders – supposedly cutting premiums by about £40 a year – lawyers will remember how the industry [failed to pass on 'well over' £500m](#) to drivers following the introduction of the RTA portal.

News of the reforms will come as a blow to claimant lawyers, who just a month celebrated news that the [reforms were likely to be shelved](#). When announced last November, the plans were described as '[callous](#)' by the then president of the Association of Personal Injury Lawyers, Jonathan Wheeler.

Brett Dixon, the current vice president of APIL, said the plans would 'take common law back to the dark ages'. Appearing on BBC Radio 4's You and Yours programme yesterday lunchtime, the consultant solicitor at Smith Jones branded the proposals 'heavy handed and excessive' and called on the

government to instead ban cold calling, which he described as a 'perennial problem' and the cause of fraudulent claims.

Asked what impact the proposals would have on claimants, Dixon said they would leave injured people with three options: 'To represent himself and hope to be treated fairly; to pay for legal representation out of his damages; or simply not to proceed when someone has negligently caused you an injury.'

Qamar Anwar, managing director of First4Lawyers, said the reforms were 'far worse than anyone could have anticipated' and only benefitted 'insurance industry fat cats'.

'Far from reducing premiums, reforms to date have only increased insurers' profits and there is no reason to believe that it will be any different this time,' he said. 'The government has no mechanism to monitor and enforce lower premiums. A ban on pre-med offers is welcome, but frankly insurers will not have to make them if the proposals are forced through in their current guise. This is simply a licence for insurers to print cash.'

Anwar said the insurance industry has 'an increasing reputation for ripping off consumers' and questioned how lawyers can trust insurers to offer fair and reasonable settlements. 'Soon they will be complaining when they have to pay out for damage to vehicles,' he added.

Kennedys partner Ian Davies said the boundaries of the consultation appeared to go further than previously proposed and expected an 'outcry' from those dealing with injury claims outside of whiplash but who will nonetheless be affected by an increase in the small claims limit.

'What is clear from the statement is that the government remains determined to continue to tackle fraud and the compensation culture surrounding whiplash claims,' he said. 'What the government must also consider is the potential for unintended consequences.'

Donna Scully, a partner at Carpenters, said the government was embarking on a potentially disastrous course, 'littered with dangers and potential pitfalls' and that more could be achieved with a collaborative approach from sector stakeholders.

'The proposed reforms are short-sighted, unfair, and may have the opposite effect,' she said. 'Previous reforms, such as LASPO, have demonstrated that ill-considered and predominantly one-sided agendas do not achieve their objectives.'

'The focus for reforms should be to tackle fraud. Genuine claimants should not be penalised. The reforms are a very blunt instrument that will attack genuine motor insurance customers instead of dealing with those intent on committing fraud.'

Simon Stanfield, chair of the Motor Association Solicitors Society and a partner at Simpson Millar, agreed, adding that he was disappointed with the proposals as they would fail to protect the interests of most claimants.

'Whilst the banning of pre-medical offers is welcome, raising the small claims limit for all PI claims and capping minor whiplash claims will fall straight into the hands of those who would exploit claimants and the system,' he said.

'It is still not too late for the government to take stock and allow the industry to come forward with a fairer and more proportionate programme to tackle fraudulent claims. Past cross-industry initiatives have demonstrated that so much more can be achieved by dialogue. The sector should be given time to discuss areas of possible common agreement.'

Nigel Teasdale, president of the Forum of Insurance Lawyers, said the MoJ's plans were 'a great opportunity for significant reform'.

'We need to focus on getting the detail right to deliver a workable, effective new process,' he said. 'This offers a real opportunity for a joined-up approach by the MoJ and other interested parties to achieve comprehensive, cohesive reform.'

John van der Luit-Drummond is deputy editor of Solicitors Journal

john.vanderluit@solicitorsjournal.co.uk | [@JvdLD](#)