

**FOIL****Prepared by Kysen PR**

<b>Date</b>	15 December 2016
<b>Publication</b>	Solicitors Journal
<b>Type of publication</b>	Legal



## PI practices brace for change

Lawyers hope marketplace reforms in 2017 aren't 'done deals', despite evidence to the contrary

15 December 2016



Add comment

In the last leg of 2016, much lawyer energy is being spent trying to influence the government's whiplash and small claims reform, as well as Lord Justice Jackson's ideas about extending multi-track fixed costs – two critical consultations with very challenging deadlines – while also awaiting the Department of Health's [consultation](#) on fixed fees for medical negligence claims.

The last year has seen claimant practices contend with government rhetoric about the UK's 'compensation culture' and prepare for consultations aimed at cutting their costs. Yet one by one these plans were seemingly kicked into the political long grass.



In October, however, the health secretary, Jeremy Hunt, called time on the '[litigation culture](#)' against the NHS. A month later the Ministry of Justice announced a reintroduction of its whiplash reforms, taking many practitioners by complete surprise, particularly as the [announcement](#) came just weeks after it was believed the ministry had put its controversial plans on the backburner.

For claimant firms, the proposals, as they stand, are far worse than previously anticipated. The plans will either scrap the right to compensation for soft-tissue injuries, or, alternatively, place a £425 cap on damages. Other measures include raising the small claims limit to £5,000 and banning offers to settle without a medical report from a MedCo-accredited expert. It is estimated that between 65 and 80 per cent of claimant lawyers' work will be affected, leading to fears that some firms, particularly those in the [north of England](#), may be forced to close.

Just how could George Osborne's seemingly dead-in-the-water policy from the 2015 Autumn Statement have been resurrected so suddenly? Some may point to an under-pressure Lord Chancellor looking for a few easy headlines at a time when her department was facing criticism over prison riots, escaped inmates, and a high-profile pension dispute with members of the judiciary, not to mention Liz Truss' failure to curb press attacks on senior judges.

Regardless of any internal political manoeuvres, however, hard lobbying by the Association of British Insurers was likely instrumental in the U-turn, but the industry's promise to pass on £1bn worth of savings to policyholders has already begun to unravel. The government's impact assessment accepts that only 85 per cent of the savings will be passed on to consumers. Moreover, motorists will most likely bear the brunt of the chancellor's plans to raise insurance premium tax for the third time in 18 months.

A narrative is now emerging of 'insurance industry fat cats' saving money at the expense of innocent accident victims, which makes a change from 'ambulance chasing' lawyers hiking up the price of motor insurance. Moreover, they will be doing so when evidence suggests that the scourge of whiplash is actually decreasing.

As highlighted in a letter from [Hodge Jones & Allen](#) to the secretary of state for justice, figures from the Department for Work and Pensions' compensation recovery unit show the total number of registered whiplash cases has fallen from a high of 1,048,309 in 2012/13 to 981,324 in 2015/16. Registered settlements peaked in 2013/14 with 1,049,017 cases, but the latest figures show another drop, with 963,771 settlements this year. Yet this alone is unlikely to change minds at the MoJ.

### **Short timetable**

If recent evidence is anything to go by, then the outcome of the ministry's consultation is a foregone conclusion, especially given Philip Hammond's announcement that legislation will be introduced next year aimed at ending the 'compensation culture'. Moreover, the extremely short timetable provided for consultation – the deadline is 6 January 2017 – seems designed to limit the number of responses the MoJ will receive.

Nevertheless, the Law Society remains hopeful that if enough evidence is provided, and with responses built around the impact on individual cases and risk of unintended consequences, then the scope of the reforms could be narrowed to exclude areas such as employers' liability claims. What no one wants to see is the government announcing a U-turn long after the damage has already been done, such as with its recent volte-face on immigration tribunal fees.

Speaking to Solicitors Journal, the Law Society's president, Robert Bourns, said: 'It might be easy to characterise whiplash injuries as a "vexatious and rampant claims culture", but the proposed changes will impact the people the prime minister has described as "just about managing". When you have something that is so obviously a real risk to the rule of law and to the cohesion of society then you have to push back against it.'

For Qamar Anwar, managing director of First4Lawyers, the next 12 months will likely be business as usual for many firms, although some might consider this an opportunity. 'Despite the announcement of the consultation throwing up more questions than answers, all the signs point to legislation not coming into force until April 2018,' Anwar said. 'This gives firms time to look at how they will adapt to the changes but also, as with LASPO, ensure they have a healthy supply of work in progress. We sincerely hope that this will be a real consultation and that it isn't a "done deal".'

### **Defendant work**

While those in the claimant market will feel they have every right to be aggrieved at the raft of reforms heading their way, what of defendant practices? 'In some ways 2016 has been a year in waiting,' [Nigel Teasdale](#), the president of the Forum of Insurance Lawyers, told Solicitors Journal, 'for the now published consultation on whiplash claims and the still awaited consultation on clinical negligence fixed costs.'

Other highlights of 2016, according to Teasdale, include the strides made by MedCo to establish itself and the Supreme Court decisions in *Moreno v MIB* and *Hayward v Zurich*, which were also both 'very welcome', he added.

The last year also saw the first finding of fundamental dishonesty under the Criminal Justice and Courts Act. [Horwich Farrelly](#) has secured around 150 findings of fundamental dishonesty to date, in what is clearly a fast-growing niche for insurance practices. Other defendant firms may do well to follow Horwich Farrelly's lead in the year ahead.

## **2017 and beyond**

Although opinion on the whiplash reforms are split, all market stakeholders seem to agree that cold calling is a problem that needs to be decisively tackled, particularly as such calls generate a perception that injury compensation is 'easy money', remarked the president of APIL, Neil Sugarman. 'We want an entire ban on calls and texts by CMCs in 2017. We need a decisive move away from injured people being made to be scapegoats for the insurance industry's inability to keep premiums under control.'

In more positive news, the Lord Chancellor will soon publish the long-awaited review on the [PI discount rate](#). The only reasonable outcome, claimant lawyers hope, will be for a substantial reduction in the rate, although defendant firms such as Kennedys have already come out strongly against such a change by arguing that there is good evidence claimants have achieved real rates of return, net of tax, of up to and above 2.5 per cent.

Meanwhile, FOIL's Teasdale predicted that 'the seeds for future development' have been sown with landmark reports from Lord Justice Briggs, but 2017's 'game-changer' may not come from the government or the judiciary, but from motor manufacturers' R&D, with the impending consultation on autonomous vehicles set to 'start a process that will transform motoring, insurance, and claims'.

Also, following government support for Jackson LJ's proposed extension of fixed costs up to £250,000, lawyers start 2017 with the prospect of 'a new regime for low-value claims and extended fixed costs' and 'a good deal of work to do on both reforms to make sure they deliver effectively', added the DWF partner.

However, Vidisha Joshi, head of personal injury at Hodge Jones & Allen, believes the cost proposals pose a huge risk to access to justice. 'Using the value of a case to determine costs is not always appropriate as low-value cases can be legally complex,' she told Solicitors Journal. 'Lawyers may not take on complicated low-value cases, which will result in legitimate claims not being pursued.'

'This will have a long-term impact on patient safety and could mean public bodies not being held to account for failings,' she continued. 'The implementation of fixed costs at this level erodes the overriding objective of seeking to ensure that all parties are on an equal footing.'

To say the next 12 months will be eventful would be an understatement. Change, including the introduction of online courts, fixed costs, and claim limits, looks inevitable. This publication would reiterate its suggestion that claimant and defendant lawyers, as key stakeholders, [cross the ideological divide](#) and move to clean up the industry for their clients, if not for their own interests.

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

<https://www.solicitorsjournal.com/news/201612/pi-practices-brace-change>