HOUSE OF COMMONS

Justice Committee

Oral evidence: Government consultation on soft tissue injury claims, HC 922

Tuesday 7 February 2017

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Watch the meeting

Members present: Robert Neill (Chair); Alex Chalk; Alberto Costa; Kate Green; Mr David Hanson; Keith Vaz.

Questions 1 - 142

Witnesses

I: James Dalton, Director of General Insurance Policy, Association of British Insurers, and Neil Sugarman, President, Association of Personal Injury Lawyers.

Written evidence from witnesses:

– Association of Personal Injury Lawyers

Examination of witnesses

Witnesses: James Dalton and Neil Sugarman.

Q1 **Chair:** Good morning, everyone. Welcome, gentlemen, and thank you for coming to give evidence to us. This is a one-off evidence session that we are doing today because a large consultation is going on—very significant. The Government have closed that consultation and will come to a view, but we wanted as a Select Committee to highlight certain issues of principle. You may recall that the Transport Committee in the previous Parliament did a lot of work on the detail. That is not what we are minded to go into, but the consultation raises some issues of broad principle around access to justice and how we approach damages and so forth. That is the area I particularly want to concentrate on, if we may. The consultation paper makes an assumption that fraudulent claims are a really big issue.

I will do the interests before we go any further. We stopped wearing wigs, but we still have to declare interests, I am afraid. That is the way of this place. I am a non-practising barrister and consultant to a law firm.

Alberto Costa: I am a practising English solicitor, a non-practising Scottish solicitor and I was involved a long time ago in personal injury on both sides.

Chair: Those are the only relevant ones. I might have done a running-down case years ago in the county court, but I do not think it will make too much difference. At all events, what is the evidence behind the fundamental assumption that there is a prevalence of fraudulent claims?

James Dalton: Fraud is an issue that cuts across all general insurance lines—property insurance, but in particular motor insurance—and in 2015 we as an industry detected 70,000 cases of fraud worth £800 million. You are right to ask about the fundamental assumptions of the consultation being around fraud, but the consultation is much more than just about fraud and fraudulent personal injury claims. It is about the type of society that we want to live in. It asks fundamental questions about the way we deal with minor, low-value road traffic accidents, and whether the claims culture in the UK has become too prevalent and there are in fact too many whiplash claims relative to other jurisdictions. The consultation seeks to draw out from stakeholders from across the spectrum some of the answers to those very fundamental high-level questions.

Q2 **Chair:** Mr Sugarman, what is your take on it?

Neil Sugarman: The fundamental assumption about fraud, we say, is a misconception. That is the difficulty. We say there are many reasons why there are misconceptions about fraud. Perhaps at some stage during the day I could go into the reasons for that.

Q3 **Chair:** Let's do it now.

Neil Sugarman: Okay. One of the principal reasons for the misconception is cold calling. We have probably all experienced it. We say that the cold calling, the unwanted phone calls, the unwanted text messages, the badgering that is going on creates a perception that it is easy to claim compensation. We say that something should be done precisely about that, and we recommend ways in which it can be dealt with. We also say that what the ABI is telling us is not entirely correct, in that there are suspicions of fraud, but in terms of proven fraud, the figures that are being bandied around are wrong, because there is a great difference between suspicion of fraud and proven fraud. Proven fraud means going through the courts and proving that somebody was fraudulent.

Q4 **Chair:** Can you help me, Mr Dalton? How many people have been prosecuted successfully for insurance fraud?

Neil Sugarman: I cannot answer that.

Q5 **Chair:** Mr Dalton, can you answer for the ABI?

James Dalton: I do not have those figures in front of me.

Q6 **Chair:** It is anecdotal, isn't it? You have no hard evidence.

James Dalton: You will be able to gather evidence from the Courts Service about the number of prosecutions for insurance fraud.

Q7 **Chair:** In the overall scheme of things, it is not very many, is it?

James Dalton: No, and that is a very important point. The fundamental issue is that, if an insurance company is going to accuse someone of committing insurance fraud, the burden of proof shifts from a civil standard to a criminal one.

Chair: Rightly so.

James Dalton: Quite rightly so, but it means that the burden of proof on the insurer is much more significant. As an industry, we have collected data on detected and suspicious fraudulent cases, and put them into the public domain. The way we collect that information from our members is also put on our website.

Q8 **Chair:** Do you think we should be changing the law on the basis of suspicion?

James Dalton: What Parliament should be considering is whether, as a country, we have a claims culture, and, if the answer to that question is yes, what, if anything, can be done about it.

Q9 **Chair:** Where is your evidence for the claims culture?

James Dalton: Over 750,000 claims for whiplash are made in this country every year. The cost of that to car insurance premium payers is very significant. The question that the Ministry of Justice and the Government are asking is whether consumers, in the widest sense of that

term, want to continue paying for whiplash claims in the way they currently do, and therefore pay higher car insurance premiums, or whether they want a society in which people are paid either nothing or less for whiplash claims and therefore get lower car insurance premiums. That is a fundamental question for society and you as lawmakers to address.

Q10 **Chair:** Are you telling me that this is going to feed through into lower car insurance premiums?

James Dalton: If the personal injury reforms as outlined in the consultation are implemented, yes, because insurance companies operate in a highly competitive market. If one insurance company fails to pass on those savings to consumers and their competitor does, people will switch. Consumers are very price sensitive. They have access to all the price comparison websites. They know what the price is and they will switch for extremely low amounts of money. If an insurer fails to pass on those savings, it is game over for them.

Q11 **Alberto Costa:** Mr Dalton, do you believe in the duty of care that is owed in society by one citizen to another?

James Dalton: Yes, I do.

Q12 **Alberto Costa:** Do you understand that your industry is founded on the basis that, as a society, we insure against risks, such as one member of society owing a duty of care to another? Do you accept that?

James Dalton: Yes.

Q13 **Alberto Costa:** In fact, your business is on the basis of promoting the fact that we have a duty of care in society and that you can insure against that. You clearly understand that.

James Dalton: Yes.

Q14 **Alberto Costa:** Your organisation has used the word "epidemic" in the past to talk about whiplash claims. Is that correct?

James Dalton: Yes.

Q15 **Alberto Costa:** You mentioned to the Chair and this Committee that there are 750,000 whiplash claims every year. Is that correct?

James Dalton: The vast majority of those are for whiplash; they are for low-value personal injury.

Q16 **Alberto Costa:** You also said that the cost of insurance premiums is very significant, so you can link them together—the figure of 750,000 and the cost of insurance premiums. You have linked that together. Is that correct?

James Dalton: Yes.

Q17 **Alberto Costa:** Is it also correct that whiplash claims have come down

significantly over the last few years?

James Dalton: The number of whiplash claims registered with the Compensation Recovery Unit has reduced. At the same time—

Q18 **Alberto Costa:** By what percentage has it reduced?

James Dalton: I can come back to you with the numbers; I have them somewhere.

Q19 **Alberto Costa:** Can I suggest to you that it has been reduced significantly, on your own figures that I have seen in the past?

James Dalton: I can accept that the number of whiplash claims has been reduced, but I can also say that the number of neck and back injuries in the same period has increased significantly as well.

Q20 **Alberto Costa:** Why have we not seen a reduction in insurance premiums even though the so-called epidemic of whiplash has reduced over the last few years?

James Dalton: Car insurance premiums are made up of a number of factors.

Q21 **Alberto Costa:** I am sorry, but you made that link directly to the Chair in answer to his question. You said there are 750,000 whiplash claims every year and the cost to insurance premiums was very significant. You accepted in answer to my question that direct link. Why has there not been a reduction in insurance premiums given that there has been a significant reduction of whiplash claims?

James Dalton: There was a significant reduction in insurance premiums in the immediate period post the Legal Aid, Sentencing and Punishment of Offenders Act.

Q22 **Alberto Costa:** By what percentage?

James Dalton: I have the numbers here and can find them if you want.

Q23 **Alberto Costa:** Could you at least write to the Committee later with the numbers?

James Dalton: Absolutely. What happened in the immediate period of time post the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act was that insurance premiums went down. It is fair to say—you may disagree—that the claims industry got much better and much more efficient at filing low-value personal injury claims. There was significant consolidation in the claimant legal sector, and the number of personal injury claims rose in the immediate post LASPO period and has continued to rise, such that there are now more personal injury claims than there were before LASPO.

Q24 **Alberto Costa:** You must have done something correctly as an insurance industry to help bring down whiplash claims. You accepted before this Committee that whiplash claims have come down, but we keep hearing

the phrase "an epidemic of whiplash claims," notwithstanding the fact that you have just admitted that whiplash claims have been coming down significantly. Is it not time to stop using that emotive phrase when you are referring to whiplash claims?

James Dalton: There is a lot of emotion in the debate around personal injury reform. We as an organisation have used emotive language, as has Mr Sugarman's organisation.

Q25 **Alberto Costa:** I will ask questions of the other witness in a moment. I am asking questions of you.

James Dalton: Your comment is well made, and I am trying to be less pejorative and less emotional in the evidence I am giving you now, so that you can make some informed decisions, hopefully based on fact and evidence.

Q26 **Mr Hanson:** Mr Dalton, how many members does your organisation have? Can you remind the Committee?

James Dalton: There are around 300 members of the ABI but not all are what I would call general insurers—motor insurers. There are a lot of pension providers and long-term savings providers.

Q27 **Mr Hanson:** We are being asked to take on trust that premiums will fall as a result of actions the Government might take. Could you perhaps indicate to the Committee how many of your members have already, up front, committed to reduce premiums based on the consultation's potential outcome?

James Dalton: I am not asking you to take it on trust. I am asking you to take it on the economics of a competitive market and the evidence that was demonstrated in the post LASPO period.

Q28 **Mr Hanson:** Of your 300 and something members, how many have committed to reduce premiums if the Government go ahead with the proposal?

James Dalton: I do not have those numbers. I can write to you with the number of firms that have made public commitments. There are major UK car insurers that have given that undertaking.

Q29 **Mr Hanson:** How many?

James Dalton: There are major car insurers, and I can come back to you with the exact names and numbers of those firms.

Q30 **Chair:** Give us the names then.

James Dalton: Aviva has certainly come out in the public domain.

Q31 **Mr Hanson:** That leaves 320-odd members. How many of those have fully committed?

James Dalton: Some of those members do not write car insurance, so it would be very difficult for them to give that commitment.

Q32 **Mr Hanson:** From my constituents' point of view, we are being asked, potentially, to have a trade-off between a reduced right to have claims on injuries versus the potential cost and reduction to constituents who have car insurance. On what basis can I invest trust in the insurance companies to reduce premiums based on potential Government policy? It would be reassuring to me if companies said up front that they would reduce by £40, £30 or £20—the cost to them of their business—if the proposal goes ahead. I have no idea at the moment how it would work out in practice.

James Dalton: I have undertaken to write to you with the names of the firms that have made public commitments to pass on premium savings to consumers through lower car insurance premiums, and I will write to you with that information.

Q33 **Mr Hanson:** What would you expect the average saving to be to a consumer?

James Dalton: We have estimated somewhere between £40 and £50. There is a Government impact assessment attached to the consultation that puts the number in that broad domain.

Q34 **Mr Hanson:** How can you assess that figure when you cannot tell me how many of the companies are going to pass it on?

James Dalton: Part of the important accountability that we have as an industry is for you to work with us to establish a baseline of what the premiums are and what the numbers of whiplash claims are, so that you can make judgments and hold us to account as an industry about the result of interventions from a policy perspective in terms of premiums to your constituents. What we need to do collectively, by which I mean Government, Parliament, the personal injury sector and insurers, is have an agreed baseline. What you need is some evidence of what has happened post those interventions, but you need to know what the baseline is to start with.

Q35 **Mr Hanson:** Just to give me some reassurance, is there any evidence you can give us where a Government policy has been proposed that would potentially lead to a reduction in premiums that the insurance companies would pass on, and insurance companies have passed it on?

James Dalton: In the immediate period after the Legal Aid, Sentencing and Punishment of Offenders Act, insurers passed on around £1.2 billion in savings to consumers through lower car insurance premiums. You do not have to take my word for that. You can look at any of the independent evidence produced by a range of organisations that monitor what the average car insurance premium is on a quarterly basis. All the trends point to a significant reduction in the average car insurance premium in the immediate post LASPO environment.

Q36 **Alberto Costa:** Chair, I would like to have that in writing from Mr Dalton. I have not seen that evidence and I have been looking carefully at the market. I want to go back to the points about fraud, because I think there is a disingenuous link between soft tissue injury claims, a duty of care in society and the question of fraud. We have seen in the last five to 10 years insurers making a link between fraudulent claims and legitimate soft tissue injury claims. Mr Dalton, you asked what type of society we want to see. Over decades the courts have developed the duty of care that we owe to one another. Would you agree that the insurance industry, say up to 20 years ago, was happily promoting through advertising and marketing, "Come to us. Take out a premium to reduce the risk of not having any compensation for whiplash"? Whiplash was, I remember, often advertised on television, by the very companies you represent, as a reason to take out an insurance product. Now you are saying that there is an epidemic when clearly figures show that it is going down, that there is a link with the cost of insurance premiums, which you made yourself in the 750,000 whiplash cases. We have not seen any evidence of money coming down even though whiplash has come down. What faith can we have as a Committee in the credibility of your industry when it is making a link between fraudulent claims, which we would all agree are wrong, and legitimate claims for soft tissue injury matters?

James Dalton: There are a number of assumptions that you made in your question, which I have sought to address. The question of credibility is one that I think your colleague has just been asking me about—how I can provide an assurance to you that premiums will come down. My answer to that is what I said earlier: in a highly competitive market, if one insurer fails to pass on those savings to consumers in the form of lower car insurance premiums and their competitor does, the first firm will simply go out of business. The nature of the economics of a highly competitive motor insurance market means that insurers simply have to pass on those savings for reasons of business continuity and being able to continue to operate a successful business.

Q37 **Kate Green:** Mr Sugarman, one of the things that the Government are clearly keen to do is to remove minor injuries from the ambit of compensation. Where would you draw the line in defining a minor injury?

Neil Sugarman: I have great difficulty with this. The concern about the premises in the consultation is defining "minor" around timescales. Various timescales are bandied around, the primary one being an injury perhaps lasting up to six months. The real difficulty about that is that it is not just the time for which the injury lasts; it is the impact of the injury on any given individual—the severity of the symptoms, the impact on that person's individual circumstances and how it affects them as an individual. I use the example of a young mother, an active sportsman or a person who has to undertake certain activities during the day. The existing way in which compensation is assessed, through the Judicial College, sets out a number of factors to be taken into account that address the particular impact on the individual. Merely saying, "If it's six

months, it's so much," is an inappropriate way do it. You have to look at individual circumstances.

Q38 **Kate Green:** What is the problem with that, Mr Dalton?

James Dalton: I think the question is around—

Q39 **Kate Green:** The question is the question I asked.

James Dalton: Quite, and what the Government have set out in their consultation paper is a set of proposals around how to define what a minor injury is. The way they have proposed to do it, and the way we think is sensible, is to define it by the period of injury prognosis. They have suggested that an injury period of six months would be a minor injury.

Q40 **Kate Green:** What is your response to Mr Sugarman's suggestion that six months is a blunt instrument, and that different individuals may experience injury in different ways?

James Dalton: Different individuals will inevitably experience injury in different ways. The challenge from a public policy setting perspective is where you draw the line.

Q41 **Kate Green:** That is exactly the question I asked.

James Dalton: Six months is an injury period that is used in other settings.

Q42 **Kate Green:** Like what?

James Dalton: In personal injury compensation reform, there are a number of guidelines, which Mr Sugarman alluded to, that currently use six months as a timescale in which to assess damages. The issue is that, wherever the threshold is set, you need to make sure that there are options available to customers who have been affected by whiplash, and the really important point—

Q43 **Kate Green:** I don't understand. What do you mean by that?

James Dalton: The really important point about the six months—we draw the line at six months—is that people will still be able to claim for rehabilitation and loss of earnings. What the Government have set out as a policy proposal is that at six months' duration you would not be able to get any general damages.

Q44 **Kate Green:** Is that fair?

James Dalton: That is a question for you to decide.

Q45 **Kate Green:** What is your view?

James Dalton: If the Government's objective is to reduce car insurance premiums for consumers, that is a good point at which to draw the line. Six months' injury duration is a period in which you will almost inevitably

have experienced symptoms. You would almost inevitably have had the opportunity to get a medical report, and indeed start rehabilitation. Part of the important point about the six-month time horizon is that people will get the help and support from insurers that they need to get their life back on track, but that does not necessarily need to be a cash payment.

Q46 **Kate Green:** Have you done any analysis of the nature of people who would now be excluded by a six-month cut-off? Do we know anything about their characteristics?

James Dalton: I do not have that information and I do not recall seeing it in the Ministry of Justice's impact assessment, no.

Q47 **Kate Green:** We do not know who would be the losers from such a policy.

James Dalton: Car accidents affect everyone, and the nature and characteristics of those experiencing whiplash will be the spectrum of society, so I cannot answer your question in terms of particular characteristics, or whether there is a particular impact on a particular demographic.

Q48 **Chair:** We are, gentlemen, in a situation where it is suggested that one particular group of tortfeasors should be placed in a different position from others, that somehow general damages are not available for one type of tort rather than any other. Doesn't that require a much more compelling justification to change the law of tort than simply a reduction of premiums, Mr Dalton?

James Dalton: That goes to the fundamental questions point that you set out at the beginning, Chair. It is a change in tort law; there is no doubt about that. The question for you as a Committee and for Parliament as a whole is to determine whether you as lawmakers want to put in place a framework that says to judges that people who have those types of injuries are not to receive compensation. At the moment, judges make that determination.

Q49 **Alberto Costa:** Is it not the case that the issue is a mix-up between fraudulent claims and, as we will get to later on claims management companies, the duty of care that is owed in tort? I am sorry that I seem to be asking questions simply of Mr Dalton at present. Should we not be seeking as a society to enforce existing laws to minimise fraud rather than attempting to change duties of care that have grown up over decades under a common law system? Is not the problem fraudulent claims rather than whiplash injuries, by their nature?

James Dalton: The problem—this goes back to the high-level question point again—is what type of environment you want. Do you want a society where there is a system in civil law where low-value minor whiplash injuries are compensated, and compensated in very large numbers, or do you want to change the law such that those injuries are no longer compensated? The question the Government have asked is

exactly that. They have said that car insurance premiums will reduce as a result of that policy intervention. I can provide you, as I have done, the assurance that that will happen. Whether it should happen is a question for you as lawmakers.

Q50 **Chair:** There is the risk though, Mr Sugarman, that this has been a nice little earner for an awful lot of the legal profession as well. Isn't it sensible, for example, that we move to something like a tariff system and get rid of all the arguments about how much particular cases are worth? If there is an issue about a society that has a duty of care, equally you can over-egg the thing and over-engineer things, can't you?

Neil Sugarman: I adopt the point about duty of care. One goes back to the fundamental question as to why we have compulsory insurance, both in relation to road accidents and in the employment context. It is because the primary aim is to compensate people where that duty of care has been broken. At the end of the day, the duty of a lawyer is to help people to enforce their rights when they are broken and when they end up injured in that way. If we have systems that require you to navigate through the law, against a well-resourced insurance company, it takes skill and legal expertise to be able to do that.

The other aspect of it, and the concern of my association, is that the focus seems to be on fraud, as we said. We think that is an incorrect focus, because we are talking about perhaps suspected fraud as opposed to proven fraud—that is my first point. It is also about the fact that nowhere—but nowhere—in the consultation do we see the Government looking at why these road accidents are happening. Nowhere is there a focus on safety or on the eradication of these accidents. My organisation, for example, is a campaigning organisation as well. We run a campaign against tailgating. The job of a lawyer is to campaign as well—my particular organisation campaigns—and to help people to enforce their rights when they are broken and when they end up with the sort of injuries I was talking about a few minutes ago.

Q51 **Chair:** Some people might say the growth of contingency fees does not have a lot to do with road safety. It is just very convenient for the industry, isn't it—for your profession?

Neil Sugarman: The growth of contingency fees—I have been around long enough to remember how that happened—or conditional fees, as such, goes back to 1999. The then Government introduced conditional fee arrangements because legal aid was removed for personal injury and it was meant to be the way in which access to justice was made available to injured people. Some of us hark back to a different day when legal aid was available for people on low incomes who could not bring a claim by themselves, but that era has gone. Conditional fee agreements were meant to open up access to justice, and that is the system.

Q52 **Chair:** At the end of the day, isn't the sensible thing to go on to something like some sort of fixed sum—£400, or something of the kind

we have been talking about? What is wrong with that where it is proven that it is a genuine claim?

Neil Sugarman: Chair, I have the benefit of having practised quite widely for people who have been victims of crime. The criminal injuries compensation scheme operates under a tariff system. My experience of the criminal injuries compensation tariff system is that it is very much a blunt instrument. It tries to pigeonhole people into awards within the tariffs set out by the scheme that are entirely inappropriate for their injury. There is no flexibility and no discretion. As to the discretion we were talking about that is available through the judicial guidelines, we know the judiciary themselves have been commenting on the fact that they are unhappy that it is proposed to withdraw from them the discretion to make the appropriate award for the appropriate type of injury and the appropriate impact on somebody. You are pigeonholed into something that is not appropriate for the impact that the injury had on you. That is what the criminal injuries compensation scheme does, and what a tariff would do in this particular scenario.

Q53 **Alberto Costa:** You mentioned, Mr Sugarman, that the duty of lawyers is to enforce their clients' rights. You are president of the Association of Personal Injury Lawyers. "Lawyer," of course, is not a defined statutory term. I wonder whether part of the problem that we have seen arise in the phrase "epidemic of whiplash claims" from the insurance industry is that there have been a great many players in the last 15 or so years who are not what you and I might understand as a lawyer, that is, a regulated professional such as a solicitor, barrister or licensed executive, and so on, who practises in the reserved areas. I wonder whether the fraud, if indeed there is fraud, has arisen as a result of that, and the changes we have seen in society have allowed what I would term as non-lawyers—but given that lawyer is not a statutory term, non-regulated, authorised persons—within the reserved activities. Do you have any comments about that? Has there been a problem, in your opinion, over the last 15 years, of cowboys perhaps coming into this area and making or attempting to broker fraudulent claims?

Neil Sugarman: Most definitely; I share that view. The difficulty is that there are far too many players around the periphery of personal injury who have caused a problem and, again, it causes the perception that personal injury is something different from what it actually is. There is a massive claims management industry. My organisation takes the view that claims management companies are unnecessary. If somebody has their rights broken, we feel they ought to go to a regulated, insured solicitor with proper professional recommendations. I know people might say there is a vested interest, but we have to study, pass exams and learn to do the job properly. My organisation has specific accreditations to practise at different levels of personal injury law. We think there are far too many people around the periphery. We think that has the ongoing consequence, as I mentioned before, of the difficulty about unsolicited telephone calls.

Lawyers are not allowed to make unsolicited phone calls and send unsolicited texts. We are not allowed to do it; it is an offence. We have been calling for a ban on it. We are very strongly of the view that the Government ought to ban it. The appetite, sadly, does not seem to be there. Sir Oliver Heald, answering a parliamentary question the other day, rather indicated that there was no appetite to do that. There have been recommendations made by the Brady report about tightening up on regulations around the claims management industry. Our view is that when one looks at the recommendations of the Brady report, frankly, it is tinkering around the edges. We think that the evil—I am going to call it an evil—of unwanted texts and phone calls, which is creating that illusion around personal injury, should be the target of Government. We think Government should start there, and that will make real inroads into the false perceptions and false expectations. Leaving it to people who are regulated and insured as opposed to the unregulated sector will make a major impact in the area.

Q54 **Alberto Costa:** Mr Dalton, do you have any comments about that?

James Dalton: This is one area where Mr Sugarman and I are in complete agreement. There is an evil of claims management companies that is a scourge on society. For similar reasons to Mr Sugarman, we think it is completely unnecessary for the vast majority of people to go to a claims management company. Indeed, my preference would be that people go to a qualified and insured personal injury lawyer for the support they need when they need it. I completely agree with Mr Sugarman's comments about the need for better regulation of claims management companies. The recommendations of the Brady review cannot come soon enough in terms of being implemented and the transfer of regulation from the Claims Management Regulator to the Financial Conduct Authority.

The reason why claims management companies exist, and the reason why they text-message and spam-call people, is that there is money in the system. They do not do it for charitable purposes. They do it because they can make money. The challenge is to take out of the system financial incentives for companies to operate in that way. Part of the way you can do that is what the Government have proposed. Taking the money out of the system to encourage people to make personal injury claims when they might otherwise not make them is one way of addressing that problem.

As I said, I agree with Mr Sugarman in terms of the issue of claims management companies, but most of their activity is already illegal. There are regulations about not being able to phone people through the telephone preference service. A lot of the activity that is most egregious comes from outside the European Union. There is already a regulatory framework around claims management companies and their cold calling. The challenge is to make that regime even stricter in terms of regulated persons. In the same way that lawyers and insurance executives are

regulated persons, we would say that the people who run claims management companies should also be regulated persons, such that they can be prosecuted for criminal offences that their organisations undertake.

Q55 **Alberto Costa:** Correct me if I am wrong, but I have been in a meeting with you where it was expressed as cold callers, claims management companies and terrible ambulance-chasing lawyers. The implication there was that they were lawyers—solicitors and barristers, as the term is generally understood, although, of course, there is no statutory definition, as I mentioned. Is it not the case, and I put it again to you, that your industry really ought to be focusing its full efforts on presenting to this Committee and to the Government that we should do our utmost to stamp out fraud and fraudulent claims, and perhaps assess the legal services environment where people can call themselves lawyers who are not regulated persons under the Legal Services Act? Do you not think that is where more of your focus ought to be, rather than saying that we should consider changing a tort?

James Dalton: The two are not mutually exclusive. It is important to recognise that there are some deficiencies in the overall regulatory framework for people who operate in the periphery of the space. There is a question in the consultation about McKenzie friends, for example. That is an extremely important issue that I think the Committee should look at very seriously indeed, because part of the challenge will be that people may end up in the hands of unregulated people who potentially hold themselves out as providing legal advice. That is a very serious concern indeed. I do not think it is mutually exclusive from asking some fundamental questions about how one removes the financial incentives from the overall claims environment that drive people to make claims.

Q56 **Chair:** I get a sense that the real problem is that the Ministry of Justice is firing in entirely the wrong direction; it is seeking to limit the ability to get general damages for a particular type of tort, whereas in reality it should be knocking these claims companies out of business completely and it has ducked it. Isn't that the reality? It has failed to have the guts to stand up and tackle the claims management industry.

James Dalton: That might be a little unfair, if I may be so bold as to say it. The Claims Management Regulator's powers have been significantly enhanced in recent years. We have seen a much more interventionist and activist regulator in terms of knocking down doors, arresting people, shutting companies down and imposing significant fines on those companies. That is all very good and we welcome it. I think Mr Sugarman would agree with that. I would then go on to say that you have to remove the incentives from a system that encourages those firms to behave in the way they do in the first place.

Q57 **Chair:** We have talked about the £400 limit and the tariffisation and so on. I assume that your view, Mr Sugarman, would be that restriction of general damages is not a good thing; if you are going to limit, it is better

to do it on a tariff rather than with blanket bans.

Neil Sugarman: We are fundamentally opposed to the restriction of general damages for the reasons that have already been expressed today: it is a fundamental right in law. I go back to my basic principle. That is the primary reason why we have compulsory insurance. It was set up to recognise the fact that people who have been injured are entitled to compensation. I hear Mr Dalton's point about the philosophical arguments for society around what we want to pay, and so on, but one asks whether you would have a different view if you were the person who had been injured, and you have the symptoms and have to put up with the symptoms compared with somebody who has not been in that situation. My view is that anybody who has suffered one of those injuries would probably say, "I understand why we have to pay the insurance premiums now, and I think it's right that general damages remain."

Q58 **Chair:** Maybe both of you can help me on this and then we will move on. We have various fee levels fixed. Where does £25 for psychological injury come from?

Neil Sugarman: I have absolutely no idea where that came from. I understand the Government's rationale for the proposal in the text in the consultation. It seems to be predicated on the concern that some new industry will suddenly grow up around psychological injury as a way to get money because you cannot recover compensation for whiplash. I found that pretty astounding, to be honest with you, but my response would be this. Many people who have had an accident and have had that type of injury have some sort of psychological damage. Some of them have no damage, but some have fairly severe damage; some have relatively minor psychological damage. It might be that for a period of time they no longer want to drive past the scene of the accident, or let's say, for argument's sake, that they were taking their child to school and that is when the accident happened so they are bit wary about putting the child in the same seat in the car, and things of that nature. It has a different impact on different people, but £25—

Q59 **Chair:** Giving £25 for that seems a bit bizarre, doesn't it?

Neil Sugarman: We are in a society where we are talking about getting substantially more than £25 if your train is delayed for a few minutes or your flight is delayed, so I cannot come to terms with the rationale for putting a price like that on what might be very real psychological damage to somebody.

Q60 **Chair:** I do not get the impression, Mr Dalton, that the industry particularly came up with this figure either. Do you have any idea where it came from?

James Dalton: No. I share Mr Sugarman's concern around the price, at £25.

Q61 **Chair:** It seems bizarre, doesn't it?

James Dalton: It is important, for the regulatory intervention you make, to envisage what might happen if you get it wrong, and one of the things we have seen in the past is claims displacement; you squeeze the balloon in one place and it pops up somewhere else. Psychological claims are one of the areas where that has the potential to happen in this instance. It is very important, therefore, for the definition of soft tissue injury to include psychological claims, and then that those claims are compensated under the tariff framework set out in the consultation.

Q62 **Chair:** Where it comes in, the £25 comes out—

James Dalton: Where the price is is a different matter, but the inclusion of psych claims is trying to achieve potential claims displacement to other sectors.

Neil Sugarman: My concern about these arguments is that they are all predicated on an assumption that society in general is going to find a way to make sure they get money out of accidents and compensation claims. That is my concern about the thinking. We are looking down the wrong end of the telescope, and assuming that society in general is out to make money out of compensation claims. We share the concern to eradicate fraudulent claims. In fact, the sectors have worked quite well together. We have devised systems—something called askCUE—to check whether people have made claims in the past. There has been collaboration to do that already, but to predicate a consultation on the assumption that, one way or another, society as a whole will find a way to continue to make fraudulent claims is the wrong way to approach the whole subject.

Q63 **Chair:** Why do there seem to be significantly more whiplash claims in this country than other comparable countries?

Neil Sugarman: We take issue with that, Chair. We say that is not right. I am very reluctant to get bogged down in data, but, according to our research from the Compensation Recovery Unit, only 34% of the claims made in the last year were whiplash claims. We think it is that label "epidemic." We do not share that view or the view that it is any different from the rest of Europe.

Q64 **Chair:** Can you give us more detail as to why that is the case? What is included in this country that you think is not included elsewhere? Why don't you think it is a valid comparison?

Neil Sugarman: If we are asked why we have whiplash claims in this country—if that is your question, Chair—apart from anything else, we need to recognise the fact that the roads in this country are extremely congested. My understanding from the research we have carried out is that our roads are probably 50% more congested than the rest of Europe, for a start. There has been a massive increase in the number of people who have taken out driving licences in the last few years, so we have very congested roads. I talked about our tailgating campaign. These accidents will happen. The incidents will happen, but that does not mean we should penalise people who have had genuine injuries.

Q65 **Alberto Costa:** Mr Sugarman, can you explain what you mean by tailgating?

Neil Sugarman: Tailgating is driving too close to the vehicle in front—poor driving habits—which then causes an accident.

Q66 **Alex Chalk:** Are we worse drivers than our continental friends?

Neil Sugarman: No, I am not saying we are worse. We have more congested roads, so the likelihood of accidents happening might be greater. I am not sure to what degree research has been done, for example, on people using mobile phones and things like that. I am not an expert in that field.

James Dalton: The Department for Transport produces statistics on road safety and does some international comparisons. The UK's roads are probably some of the safest in Europe, if not the world. As an industry, we still cannot understand why the number of road accidents in this country continues to go down at the same time as the number of personal injury claims goes up. "Something is rotten in the state of Denmark," if you will excuse the—

Q67 **Chair:** It seems to me, Mr Sugarman, that all the evidence I ever see is that our roads are significantly safer, for example, than in France or Germany. I do not see the logic of your argument at all on that one.

Neil Sugarman: The fact of the matter is, first, that we do not know how many accidents are not reported, as in captured within the reporting mechanisms through the police, and so on, because not all accidents are reported. My argument is that we have extremely congested roads and that is getting worse.

Chair: There are congested roads around Paris and Frankfurt. I do not see any difference in the totality of conurbations.

Alberto Costa: Chair, even Palermo has issues with congestion.

Q68 **Chair:** Why is it that our congested roads produce more claims than anyone else's congested roads?

Neil Sugarman: We do not accept that that is the case. Again, as Mr Dalton has offered to do, I can arrange to write to the Committee afterwards with the justification for that.

Q69 **Alberto Costa:** As regards APIL itself, can you tell the Committee how many members of that organisation you have today and how many you had, say, 15 years ago?

Neil Sugarman: We have roughly 3,500 members today, primarily solicitors and barristers.

Q70 **Alberto Costa:** Are they law firms or individual lawyers?

Neil Sugarman: The primary membership is as an individual, so it is individual solicitors and barristers. I could not tell you for definite the number 15 years ago. It was probably in the order of—I am guessing—5,000 to 6,000, but it may have been slightly less.

Q71 **Alberto Costa:** It has actually gone down.

Neil Sugarman: It has gone down.

Q72 **Alberto Costa:** My experience as a practising solicitor is that I am finding fewer and fewer people going into the personal injury market, which leads me back to the point and the question I have for both of you, gentlemen: is it not the case that we have a problem with non-regulated individuals who are fraudulently issuing claims, and the real issue that both organisations should be looking at is how you encourage Government and Parliament, and the judiciary for that matter, effectively to enforce existing law to tackle fraud and to change the law to help reduce non-regulated authorised professionals under the Legal Services Act making these claims?

Neil Sugarman: I will deal with that in two ways, if I may. First, if I am not mistaken, as long ago as 1999 the Blackwell commission—I think it was called—was the first commission that ever looked into the activities of claims management companies, because the first companies were established as long ago as 1995. It gave a warning to the then Government to take a look at the possibility of regulating the claims management sector. It did not happen. There have been a number of warnings to Government over the years since then. There have been some high-profile casualties in the claims management sector, notably Claims Direct and The Accident Group.

I adopt my point from earlier: there is a big problem, the claims management sector is unnecessary, it needs properly regulating and we have great concern about the apparent lack of appetite from the Government to do that in a much stricter way. We understand that the Government are prepared to do it, but we would like to see it done in a much stricter way.

In relation to enforcement through the courts, the judiciary and the systems we have, the starting point is that as a result of LASPO, and after LASPO, we have something called MedCo, which is the accredited system set up for medical examinations where there has been this type of injury. It is a very good starting point, because it requires the medical experts assessing the industry to be accredited to be able to specify whether or not it is a genuine whiplash-type claim. One of our concerns is that the mechanism for that was 2012. The system is only really bedding in now; the accreditation systems were only completed within the last year or 18 months. Having put that framework in, so that one can measure the damage done, the Government have done what we regard as an about turn and said, "Notwithstanding that, we will just remove general damages for injury in any event." There are mechanisms in the

court and the legislation to deal with people who are found to have fraudulently brought claims. It is all there.

There is another element. Insurance companies have for a very long time, within a very short period of an accident happening, been making direct contact with injured people and offering them an amount of money, without a medical report and often specifically requiring somebody not to get a medical report. We have long called for that practice to be banned. We welcome the recommendation that it is banned. It is one of the points in the consultation we are very strongly in favour of. We feel that that in itself fuels the perception that this is easy money to get, and, if you marry that to the cold calling and the text messaging, that is the other limb of what we would like to see happen. We are very strong proponents of a complete ban on that, in relation to both this and any other type of injury.

Q73 **Alberto Costa:** Is that not just a commercially sensible approach being taken by insurers to say that they recognise that there is a duty of care? They recognise that there might be a claim, and in order to maintain a profitable business, and maintain the comfort of their clients and their relationship with their clients, they make them a quick offer without the need to go through litigation or the threat of litigation.

Neil Sugarman: Mr Dalton will know that there are one or two insurers whose business model is founded on that approach, but I do not share the rationale as to why it is that approach. I am rather more sceptical as to why they adopt that approach. It might work in certain circumstances. The danger is that, if the offer to somebody who has an injury is made very early, it is far too early to say whether the injury might be rather worse. Without the time for the symptoms to unfold, without a proper independent examination of their injury, there is a real danger that the person will be undercompensated because their injuries may be far worse. There is lots of evidence of that happening. That would be a disaster.

Q74 **Alberto Costa:** We see that in other commercial environments. It is often welcome when a business makes a gesture of good will and says, "We will give you X," and the customer or client might say, "Actually, you know what, I'll just take X. It might not be the full value of the goods or service I paid for, but it is a resolution and I welcome the way the company is dealing with it." Is that not something to be welcomed?

Neil Sugarman: No, because that same person might accept that amount of money and then, nine months later, when they still have the problem with their neck, back or shoulders and they go to see a consultant, they find they have chipped a disc in their back and need an operation on it, which they did not know about at the time.

Q75 **Alberto Costa:** That is a risk. It is a commercial risk. If you get double glazing done, a new conservatory or anything, and a company, as a gesture of good will, says, "We'll give you back X," that is a risk that a

consumer might wish to take. Why would we want to stop that?

Neil Sugarman: Because we are talking about vulnerable injured people who may not know and appreciate that once they have accepted that offer they forgo the opportunity to revisit the problems, and the impact on their life. This is all about protection of vulnerable people and advising them that those possibilities might arise. We are fundamentally opposed to anything that encourages such offers to be made.

Q76 **Alberto Costa:** I do not think everyone who has been injured is a vulnerable person, particularly not with minor injuries, certainly not the ones I recall dealing with. Some people are capable of making up their own mind on a gesture made by their insurer, and they might think it is an insurer they want to continue business with. I would have thought it was a good thing.

Neil Sugarman: If I can put it this way, in legislation in other arenas we try to put in protections for people who have for one reason or another found themselves in a vulnerable position. It does not matter what their position is in life. In an employment law scenario, we have a situation where if you bring an employment law claim, that claim cannot be finalised without being signed off, as it were, by an independent lawyer. Leaving aside any suggestion that it is just to make work for lawyers, that is to protect that person. When Parliament has decided that that is appropriate for people with an employment difficulty, where they are in a potentially vulnerable situation in relation to their employer, why should somebody who has been injured be in a worse position?

Q77 **Chair:** Okay. Help me about one other thing on that, Mr Sugarman. There is a limitation period. I appreciate it may take a lot of time for the total extent of the injury and, therefore the damages, to be quantified, but you know pretty soon whether or not you have had a whiplash injury. It seems a bit bizarre that somebody would hang on a couple of years or something before they bring a claim. Isn't there a logic in saying that, if you have a genuine claim, bring it quickly and then you can start talking about the quantification? Should we not be looking more around that?

Neil Sugarman: I understand the argument, Chair. The difficulty is this. Wide experience and many years of experience tell you that it is not quite that simple, for this reason. There are cases where sometimes the impact of the injury does genuinely take time to develop. I had a situation only towards the end of last year when I was consulted by somebody who had had an injury. She was a brave young lady, because she said, "Actually, I thought I would just let it go at the time," and she persevered for a few months. She started to get worse symptoms, so she went to see a consultant who said, "You may need this operating on at some point, but you might be all right. Leave it a few more months." She left it a few more months and then it came to the fact that she needed an operation.

I am not saying that happens with every type of injury—of course, it does not—but that is a good example of somebody who did not want to bring a

claim at the time. She said, "I don't want to bring a claim. I know about all this publicity about people bringing claims and I don't think I really want to do that." It was only when it became clear that it was going to have an impact on her lifestyle and she was going to have to take time off work that she decided it was important to her to do so. There is a real danger of just assuming that every claim is immediately apparent and you have to bring your claim within a few days.

Q78 **Chair:** I understand that the extent of the claim is not immediately apparent, but you know if you have had an accident and if you have been injured.

Neil Sugarman: But we have a principle of law. Our principle on the current limitation period and the law around it has been established for literally hundreds of years. My concern again is that we seem to have a section of society who are being—I am going to use the words—picked on by the insurance industry for different treatment simply because of the perceptions that are being created around suspected fraudulent claims and unnecessary claims. What we are perhaps getting away from—we have not had time to explore it yet, but we may still have time—are the reasons for the cost of insurance. Is whiplash the sole reason why insurance costs so much? We would say no, there are lots of other reasons why insurance costs so much, so why pick on or blame whiplash and force people down that route? There are other reasons.

Q79 **Chair:** Mr Dalton, have you done any research as an industry? Can you identify a pattern, or is there a pattern, as to when fraudulent claims occur, for example, within the limitation period?

James Dalton: From memory—I can write to you with exact figures—I think about 90% of cases are notified to the insurer within the first 12 months. For me, the question goes back to the question you asked, Chair, about why it takes some people so long to file a claim from the date of the accident. Most people will know, albeit not the extent of the injury, that they have in fact been injured. Part of the answer goes back to what we were talking about earlier, which is that, when you have not filed a claim, you are the target of an industry that is going to try to make you make a claim, and you get to the cold calling, the text messaging and the targeted type of activity that we all want to see addressed. If I might go back to Mr Costa's questioning of Mr Sugarman about insurance companies and the use of medical reporting, the reason why insurers sometimes make settlement offers without a medical report is, quite frankly, that we do not have any faith in the medico-legal reporting system.

Q80 **Chair:** Can you elaborate on that? Why is that?

James Dalton: Sure. It is because, until recently, there were unregulated medical reporting organisations, which are an industry in and of themselves, producing medical reports in support of whiplash claims. Mr Sugarman, in his evidence earlier, alluded to the fact that both the

claimant and defendant industries have worked together on the establishment of an organisation called MedCo. MedCo is specifically designed to try to put in place better disciplines on both the doctors who write medical reports, so that there is an accreditation framework underpinning them, and the companies they work for. To be perfectly frank, that is not a regulatory framework. It is a company, set up with directors, including from both the ABI and APIL, that is trying to help the system, supported by some civil procedure rules, but it is not a regulatory framework.

For me, it goes back to a question that we were having a conversation about earlier. There are a multitude of people in the broader claims environment who are not subject to a regulatory framework. Medical reporting organisations are one; garages are another, and they add significantly to repair costs. We have talked a lot about claims management companies. Insurers and solicitors are regulated entities. There is a plethora of other institutions in that orbit, as it were, that are not subject to regulation, including McKenzie friends, and it is a very important point.

Q81 **Alberto Costa:** You have raised a very interesting point, and one that I have not heard before. Are you aware that for experts who give reports in litigious matters their first duty is to the court?

James Dalton: Yes.

Q82 **Alberto Costa:** You are suggesting that regulated professional doctors who are in the private business of producing medical reports are not producing them on an objective, non-biased basis, not fulfilling their role to the court. That is what you are saying.

James Dalton: There are cases that are public where regulated doctors have been—

Q83 **Alberto Costa:** There is a difference in saying "there are cases." Is it your organisation's view that this is a major problem or a minor problem?

James Dalton: Until recently, it was quite a major problem. The establishment of MedCo, which both Mr Sugarman and I worked on getting up and running and in practice, is helping to put more discipline on the organisations that produce medical reports. That is a good thing both for lawyers and for insurers.

Q84 **Kate Green:** Can I ask one more thing of Mr Dalton? To what degree is the industry suspicious of individual claims but feels unable to challenge them?

James Dalton: One of the things that was recently passed in legislation was a thing called fundamental dishonesty. That is where an insurer can apply to the court to say that the claimant is so fundamentally dishonest that they should not be entitled to any compensation at all, as opposed to the amount that was exaggerated as part of their fraudulent claim. That

is a very welcome intervention by Parliament and has helped insurers hold people to account, in that, if they are producing and filing fundamentally dishonest fraudulent claims, they receive nothing, and that is sanctioned by the courts.

Q85 **Kate Green:** To what degree do insurers make use of that?

James Dalton: They have made significant use of it. I can give you some specific examples. I do not have data on the number of fundamental dishonesty cases, but there are some very well-publicised cases where insurers have had cases thrown out of court using the fundamental dishonesty provision.

Q86 **Kate Green:** That is a useful card in the insurers' hands. Could its use be extended? Could insurers say, "We're getting all these claims coming in via X claims management company. We're suspicious and we don't think we should be paying out on them"?

James Dalton: The answer to your question is no, because I think that provision goes far enough. If you were to lower the burden, it would endanger people having the protection of the court, and I do not think that would be the right thing to do. Having said that, the consultation paper from the Ministry proposes that a solicitor filing a personal injury claim who received the claim from a claims management company should note on the claims notification form the name of that referrer. That is, for me, a very important point, because an honest solicitor who is getting their claims from legitimate sources should not have any fear about disclosing to the insurer who the referring source is. What we would do with that information is run it through our fraud checks. We know the claims management companies that are of concern to us and we know the law firms that are of concern to us. If the law firms provide us with the name of the referrer of their claim, we can do a very quick and easy check and those claims proceed much more quickly, without going through laborious fraud checking; but there is a lot of resistance from the claimant legal sector about disclosing the source of their referrer.

Kate Green: Let me ask Mr Sugarman about that.

Q87 **Alberto Costa:** If they are acting in a way that is improper, are you reporting the firms you have concerns about to the Solicitors Regulation Authority?

James Dalton: Yes. We have organisations called the Insurance Fraud Bureau and the Insurance Fraud Enforcement Department, which the industry invests significantly in financing and resourcing. Solicitors and medical professionals that we have concerns about, to the point where we think there is a criminal case, we refer to the Insurance Fraud Enforcement Department and they take action.

Q88 **Alberto Costa:** In the last year, how many of those solicitors, of the ones that you referred to, have been referred to the Solicitors Disciplinary Tribunal and struck off?

James Dalton: I do not have that information in front of me.

Q89 **Alberto Costa:** Can that be supplied, because there are over 180,000 solicitors in England and Wales? I would be very grateful if you could tell me how many have been reported by your organisation and have been struck off as a result of this alleged fraud.

James Dalton: The Insurance Fraud Bureau will be able to give you that information. I will ask them to write to you on that.

Q90 **Kate Green:** Mr Sugarman, would you like to comment on the referral obligation, and then I have one other question, Chair?

Neil Sugarman: I would far rather that people did not approach a claims management company to deal with their personal injury claim and went to an accredited solicitor.

Q91 **Kate Green:** But if they have, what is the objection to declaring it?

Neil Sugarman: In our response to the consultation, APIL said we accept that it would be an appropriate thing for that to happen, for it to be specified who the claim came from.

Q92 **Kate Green:** There is one other thing I want to ask about, going back to the discussion about the fixed tariff system. Proposals have been made for non-minor injury claims in relation to what that fixed tariff should look like. I notice that at every duration of injury the proposal is significantly below the weighted median. For example, for soft tissue claims over a period of seven to nine months, the proposal is for a £700 fixed tariff payment as opposed to a weighted median figure of £2,400. What is the justification for that, Mr Dalton?

James Dalton: You would have to ask the Ministry of Justice.

Q93 **Kate Green:** Does it sound fair to you? Would it be better to have a tariff that reflected the weighted median?

James Dalton: That is a question for the Ministry of Justice to answer. What I think is important in the tariff schedule is that the curve goes up as it does, because you want to provide more compensation and support to people who have a longer duration of injury. A question worth having a discussion about is whether at the low end you have the numbers right in terms of the bands. From memory, all the bands are in three-month intervals except the first, which is zero to six months. There is a question that one might ask about whether you split that band into two—zero to three and three to six. What you want to do is ensure that the curve continues along that line to provide more compensation to those who have suffered longer injuries.

Q94 **Kate Green:** Are you saying six months would not be the definition of minor injury, but something shorter?

James Dalton: That is a conversation to have as part of the process. The proposal is to remove compensation. If you don't do that, you want

to have a conversation about splitting the zero to six-month band into two. What you do not want to achieve is that someone who has a very minor injury with a couple of days of niggling neck pain gets £400, so you have that zero to three band and then potentially move it up after that. That is a conversation that I think the Committee and the Ministry of Justice can have.

Chair: If members do not mind, I will let Mr Costa ask one more question as he has to go to another Committee, and then we will move on to Mr Hanson.

Q95 **Alberto Costa:** Thank you very much, Chair. I have a final question for Mr Dalton. You represent the insurance industry. At the very outset, you used the phrase "epidemic of whiplash claims," and so on. Could you perhaps tell this Committee by how much money or percentage of profitability your industry has declined over the last 10 years?

James Dalton: Do you mean in terms of the amount of money that the insurance companies declare as profits?

Q96 **Alberto Costa:** We hear insurance companies talk about this "claims epidemic," whiplash and other claims, so you must be losing money. What is your profit? How much has it decreased over the last 10 years, since we have been hearing these terms—these epidemics of personal injury claims?

James Dalton: One of the measures the insurance industry uses of profitability in the motor business is what is called a combined operating ratio. Basically, that is the amount of premium you take in divided by the amount of claims you pay. There is a lot of information in the public domain, and I am happy to write to you about what the combined operating ratio of the combined UK motor market is over recent years. It has only made a profit on a combined operating ratio once in the last 20 years.

Q97 **Alberto Costa:** Do you have a healthy insurance market in the United Kingdom at present?

James Dalton: Yes, there is a healthy insurance market, but there are parts of the market that could be improved and helped, and premiums for consumers could be lower.

Chair: You are going to write to us with the detail. We are grateful to you for that.

Q98 **Mr Hanson:** Can I look at the small claims limit for personal injury claims? The Government's proposal is to raise the claims limit from £1,000 to £5,000. Could you both give me an indication of your initial assessment of the value or otherwise of that proposal?

Neil Sugarman: We are opposed to it, and I will explain the reasons why. The small claims limit—colloquially, it is known as the small claims court—is a section of the county court designed primarily for dealing with

things like disputes over faulty goods or parking fines that are being challenged; it is for small consumer disputes and litigation of that nature. It was never designed for dealing with cases that involved personal injury, where somebody's bodily integrity has been interfered with. The difficulty about it is that, despite the ease with which one might think that those claims could be conducted, they are not easy.

There are two parts to dealing with a claim in a small claims court. We should never forget the fact that you have to establish liability. You have to prove the fact that the defendant is at fault and has to pay you compensation. In some cases, that is not a big argument, but it is not a given that the insurance company will limit liability. Most insurance companies look at whether or not they can pass any blame back to the person injured—contributory negligence—so that they can reduce the amount they have to pay. Most insurance companies look at whether or not they can accuse the claimant of not mitigating their loss, doing something to minimise their loss. There are legal arguments even around establishing whether you have a claim. Once you have done that, you have to know how to value your claim—how to go about proving your injury, obtaining the correct medical evidence to prove the extent to which you have been injured and then producing evidence about your other losses, your loss of earnings, whether you have to pay anything back to your medical insurers, such as medical expenses and physiotherapy, and any financial losses that you have suffered.

It is very different from a dispute about the fact that your refrigerator has broken down or your train has been late, or you are challenging a parking fine. The skills around it are quite difficult. In that arena, the likelihood is that an insurance company will have either skilled legal representation or skilled internal representation—people who do that all the time. The insurance company's duty is to its shareholders, to minimise the loss, so there is no equality of arms, if you like. For that reason, we are fundamentally opposed to the rise in the limit, because the consequence will be that people will not recover the costs of being represented. They will have had two insults, if you like—the insult of the original injury and then the insult of having to go through that process and paying for the privilege of doing so.

Q99 **Mr Hanson:** Mr Dalton, are there any benefits in the proposal?

James Dalton: The benefits are set out as the Ministry has calculated them in the regulatory impact assessment. There are a couple of important points to make on the increase to the small claims court limit. This has been under consideration for many years. The Better Regulation Task Force, the Constitutional Affairs Select Committee and the Ministry of Justice have all looked at the issue in the past, and have in various ways decided that the limit should in fact be increased.

The important point to note is that road traffic accident claims are not complex at the low end. Mr Sugarman will make a lot of the fact that there are disputes around liability, and issues that claimants and insurers

will argue about in terms of who is at fault for the accident. Most people when they have had a car accident know who was at fault. Yes, there will be some cases where that is not the case, but in the vast majority of cases liability is relatively easy to determine. In the proposed model there is a tariff system for damages, so there is now no longer an argument between lawyers, claimants and insurance companies as to how much someone should be paid, because it is prescribed by the new system, if it were to be implemented. There are no issues around liability and there are no issues around quantum. The question is what the lawyer is bringing to the table in terms of the small claims court. A number of types of claim that are dealt with in the small claims court have £10,000 limits. They are quite complex cases—neighbour disputes, contractual disputes and so on. The small claims court works perfectly well for those types of cases, so what I fail to understand is—

Q100 **Mr Hanson:** What would you say to Mr Sugarman's point, which, in essence, is that Mr Jones of Flint in my constituency is involved in a road traffic accident; he works in a business not related in any way, shape or form to the courts and has never been to a court in his life; he turns up and now cannot have legal representation because of the changes in the proposal and he faces the might of the insurance companies. What would you say to that?

James Dalton: There are two responses. If your question is whether there is more we need to do to help consumers through the court process, if they are going through the court process, in terms of providing them with useful and consumer-friendly information on how the process works, the answer is absolutely, we definitely need to do that. The second point is that there is nothing stopping your constituent getting legal representation and going through the small claims court as a result of these proposals. They are absolutely still able to use a solicitor; it is just that the cost of using that solicitor is not recoverable from the at-fault insurer.

Q101 **Mr Hanson:** Someone on a minimum wage working in a factory in my constituency who is involved in a car accident is not going to think about shelling out up front on the off chance they might take on an insurance company and get a claim, are they?

James Dalton: All I am saying is that the argument that Mr Sugarman is quite ingeniously trying to put to you is that no one will have access to legal advice, and that access to justice is going to be completely eroded by these proposals, which is just false.

Q102 **Mr Hanson:** Do you both have a view as to whether litigants in person will increase or decrease as a result of the proposals?

James Dalton: There are likely to be more litigants in person in the courts. They will need help and support going through the court process, but I do not think there will be a flood of people banging down the door of the court to try to file their claim. We as an industry, by which I mean

lawyers and insurers working together, can develop some really ingenious IT solutions to help consumers. At the moment, all personal injury claims need to be filed through a claims portal. Solicitors currently do that. There is nothing that would prevent us putting a consumer/user-friendly IT portal on the front of that that will self-populate, so that you, I, or my grandmother could easily file a personal injury claim.

Q103 **Mr Hanson:** Mr Sugarman, do you think that litigants in person will increase in number and will that increase access to justice or reduce it?

Neil Sugarman: I have no doubt that the number of litigants in person will increase. There are other concerns around that. I can only tell you what I have read in the legal press. There is an article in—I think —*Legal Futures*. I have not seen the Association of District Judges' own response to the consultation, so I am afraid this is anecdotal from the legal press, but the Association of District Judges has expressed concerns, first, about the fact that the opportunity to assess compensation will be taken away from them, because they think that will lead to injustice. They have also expressed grave concerns about having to deal with the numbers of litigants in person. Their view, as expressed in the article, is that the court system will grind to a halt. Recently, an Appeal Court judge expressed similar concerns, having had litigants in person in the Appeal Court and been bombarded by emails.

The other aspect is that, of course, not only will there be litigants in person, there will be a preponderance of McKenzie friends. The judiciary themselves have expressed a number of concerns about the activities of McKenzie friends in recent times. There is another difficulty, which I think is of equal concern. We have heard a number of concerns expressed today about the activities of claims management companies. Our view is that, were this to happen, it would be seen as an open goal for claims management companies. At the moment, claims management companies do not and cannot operate within the small claims court itself. This will be seen as an opportunity by claims management companies to operate within that arena, so they will want to represent litigants in the small claims court. They will then charge litigants for doing that. They will not necessarily bring the same skills to the job. They will continue to be unregulated, in terms of how solicitors are regulated, and uninsured. They will probably be in for a quick kill as well, so they may overlook items such as subrogated claims, where an injured person has to get the money to pay back their medical insurer, or money they owe their employer because they have had an advance of wages, so there will be mistakes made in the conduct of claims as well.

Q104 **Mr Hanson:** What would you say to those who say this is the first opening of a door that will include further aspects of personal injury following road traffic accidents in due course, and do you support that?

James Dalton: I am sorry, can you repeat the question?

Q105 **Mr Hanson:** There are a number of organisations who have made

representations to members of this Committee saying this is the first stage of a widening of the process beyond road traffic accidents to all other areas of personal injury within the next 12 to 18 months.

Alex Chalk: That is what they want.

Mr Hanson: I am asking what is your view on that and why?

James Dalton: The Ministry's consultation paper has proposed increasing the small claims track court limit for road traffic accident claims as well as employment liability—employers' liability and public liability claims. At the moment, I would support increasing the small claims track limit for road traffic accident cases only.

Q106 **Mr Hanson:** Let's be clear on this, because we are making legislation that is potentially impacting on a whole range of areas in the long term, and you say "at the moment." Rather like the claims you made earlier that compensation will be given back to constituents in reduced premiums later, when you say "at the moment," are we opening a door that is going to lead to a range of other potential areas in future?

James Dalton: No. My argument to you is that you should agree to increase the small claims track limit for road traffic accident, employers' liability and public liability cases now, but you should only implement for road traffic accident at the moment. The reason I say that is that what you want to see, and what consumers need, is safeguards—the tariff system is an important safeguard—and you need an information campaign developed so that consumers understand how to file a claim in this new environment. That will be easier and quicker for road traffic accident claims than for employers' liability and public liability cases. My argument to you is that you should agree to increase the limit for all three types of claims but implement for RTA first.

Q107 **Mr Hanson:** Essentially, that means, downstream, the second and third areas will be implemented at some point and, therefore, the arguments about, potentially, access to justice for people injured at work will have to be made at that stage.

James Dalton: My argument to you is that you should agree to implement the small claims track limit for all cases now, and that implementation of those should be delayed until such time as there are safeguards in place.

Q108 **Mr Hanson:** What would you say to people who say the only beneficiaries of those changes will be the insurance companies, and there will not be access to justice for people who are injured at work, in road traffic accidents or elsewhere?

James Dalton: We have had that conversation—the arguments—around road traffic accident claimants.

Q109 **Mr Hanson:** How many fraudulent claims are there for people who currently are taking personal injury claims for accidents at work?

James Dalton: I do not have that information.

Q110 **Mr Hanson:** That is the logic you are giving in relation to road traffic accidents, so what is the logic otherwise for potentially extending further?

James Dalton: The logic is set out in the Ministry's consultation paper.

Q111 **Mr Hanson:** I am asking for your view. I know what the Ministry thinks. What do the insurance companies think of that?

James Dalton: For similar reasons, we think there are efficiencies that you can gain from the system, and there are some costs that you can remove from the system, by increasing the small claims court limit for all three types of cases. There are important safeguards that need to be put in place to protect consumers where the small claims track limit has been increased. There are absolutely important safeguards that need to be put in place. We think that—

Q112 **Mr Hanson:** What are those important safeguards? Again, we are being asked in this proposal to look at a range of issues and, essentially, we are opening a door on a wider series of claims being raised accordingly. I am interested in what your view is of the safeguards to ensure that, downstream, if changes are made, my constituents are not disadvantaged.

James Dalton: One of the important safeguards is the predictable damages framework. We were talking earlier about the tariff schedule for road traffic accident claims. That is a very important part of the safeguards that need to be put in place, so that consumers can turn up to an insurance company and not have a debate about what they should be entitled to for a particular injury. That is prescribed. On the inequality of arms between an insurance company and an accident victim, whether a road traffic accident victim or someone who has been injured at work, the argument at the moment from Mr Sugarman is, "I don't know what my claim is worth. I cannot realistically go to this insurance company and have a conversation about what my claim is worth." If you take that away, and there is a prescribed level of compensation, that equality becomes much greater.

Q113 **Mr Hanson:** I do not want to put Mr Sugarman's arguments for him, but Mr Sugarman, I suspect, would say that to navigate that minefield requires a bit more expertise than potentially having your first accident at work or a first road traffic accident.

James Dalton: The point you make about the navigation of the process is an important one, which is why I said that if the small claims court limit is raised, which I support, one of the important safeguards is not just the removal of the arguments around compensations, and that there is a tariff, but that consumers have better information. At the moment, they do not have the information they need to file a claim in the small claims court because they cannot. As a Parliament, as a Ministry and as a

sector, we need to provide claimants with the information they need to go through that process.

Mr Hanson: Time is pressing, so I am going to speed through. I would like to explore that one further.

Chair: Before you do, can I bring Mr Chalk in on that one point? You need to declare your interests first, Mr Chalk.

Q114 **Alex Chalk:** I declare an interest as a barrister. Picking up the points that have been made, I have a couple of quick questions. Do you agree with this—it is on page 26 if anyone is following: "The ABI supports the MoJ's proposal to raise the small claims limit - initially for RTA cases, with a firm commitment to raising the limit to all other areas of PI within a further 12 to 18 months"? Does that accurately represent your position?

James Dalton: Yes.

Q115 **Alex Chalk:** Just so that we are clear, "all other areas of PI" could include an accident at work—right?

James Dalton: Yes.

Q116 **Alex Chalk:** That might include someone who is on minimum wage who incurs injuries worth, or valued at general damages, £4,000, yes?

James Dalton: Yes.

Q117 **Alex Chalk:** That is a significant sum of money for that individual—yes?

James Dalton: It is a significant sum of money for many people.

Q118 **Alex Chalk:** You are right to say that there is nothing that precludes someone from taking legal advice and having legal representation, but, if that is going to cost him £3,000, it would represent a significant barrier to access to justice, wouldn't it?

James Dalton: That is part of the debate that is being held in this Committee about road traffic accident cases.

Q119 **Chair:** But that is a fact, isn't it? It's not a debate.

Alex Chalk: Just answer the question.

James Dalton: At the moment, under the proposals, you would have the small claims track limit increased and people would be able to use a lawyer if they so chose, but the point of the proposal is that they will not need a lawyer. They will be able to file a claim themselves without the support of a lawyer because the lawyer is really only providing information to the claimant around liability and quantum.

Q120 **Alex Chalk:** This is the last point, and forgive me because time is pressing, but I will give you an opportunity to speak at the end. You said that establishing liability in road traffic accident claims can be straightforward.

James Dalton: It is mostly straightforward.

Q121 **Alex Chalk:** Would you accept in a workplace case, which might involve issues of health and safety regulations, or issues of employee contract, that it can be altogether a more complex proposition? Do you agree?

James Dalton: Yes, I do. That is why I think it is important to agree in principle now that the small claims track limit should be increased for EL cases and PL cases but not implemented now, as I think I have clearly explained. There are more important safeguards that are required in the context of EL and PL cases.

Q122 **Mr Hanson:** One issue in the consultation paper, paragraph 147, is that the costs of covering the medical report, which are currently £180—the take-home pay of a lot of my constituents in a week—is not to be claimed back. Isn't it a deterrent to pursuing a claim in the first place if you cannot get adequate medical reports, because you cannot claim back the cost of the report?

James Dalton: Yes, it is and that is why—

Q123 **Mr Hanson:** Would you support—

James Dalton: Let me finish. What I put to the Ministry as a counter-proposal is that the insurance company should pay for the medical report for a claim that is notified within the first month post accident. The reason why I suggested that is the very reason you articulated; £180 is a lot of money for some people to pay for a medical report. But we are going back to the conversation that we were having earlier, that a lot of people should know within the first month that they have had an injury. They can go and see a doctor and they can go and get a medical report. I will pay for that as an insurance company. I will pay for that regardless of whether you choose to file a claim or not.

Q124 **Chair:** Why one month? Why not three months, say?

James Dalton: Going back to the discussion we were having earlier, almost everyone will know within one month whether they are injured as a result of a road traffic accident. I just cannot accept an argument that people will not know they are injured.

Q125 **Chair:** I am sympathetic with you up to a year or so—a couple of months, two to three months, to get yourself together; you have been shaken up by it and you are not in a good way.

James Dalton: It is just about paying for the medical report. The point of the medical report is that the doctor will assess the nature and extent of the injuries. What I, as an insurance industry, am saying to you is that I will pay for that medical report if you do it within one month. The purpose of that medical report is that then you have some better information about the nature and extent of your injury.

Q126 **Chair:** I am going to bring Mr Hanson back, but I am trying to get at why

you pick on one month as a magic figure. I can see your point about a long time, and I might be quite sympathetic to that, but one month seems a very arbitrary and extraordinarily tight amount.

James Dalton: You could choose any number of months. I am suggesting one month because I think, as I said, that the vast majority of people will know that they have been injured, and it is not that difficult to go to see a doctor.

Q127 **Chair:** One month is a figure; it is negotiable.

James Dalton: I am not entering into a negotiation. What I am saying is that the vast majority of people should know that they have been injured, and they can get to a doctor within one month, and I will pay for that medical report.

Q128 **Mr Hanson:** Time is definitely pressing, so I am going to try to pull together two points with Mr Sugarman. We have the potential issue of the introduction of online courts. Is there a view as to whether that would help to simplify the process and make life slightly easier, particularly with regard to personal injury claims as a whole? I would welcome a view from both of you as to whether or not the idea of before the event legal insurance would assist in the process, if the changes are brought forward as currently proposed?

Neil Sugarman: Lord Justice Briggs, as part of his overview of the digitisation of courts, has had a look at online courts. He reached the preliminary conclusion that online courts are not appropriate for personal injury cases for the time being, although he has suggested that the sector may want to look at taking that forward for itself. As things stand at the moment, he says not. We already have a degree of digitisation in terms of interim processing of claims. There is a part to play in the way the Courts Service can adopt computerisation and the interim processing of claims rather than live hearings, so there is some scope in the claims process. Whether litigants in person can navigate their way around that, I doubt very much indeed. The concern about an online approach is that live hearings, when it comes to the substantive hearing of a case, are extremely important; people having the opportunity to appear and give live evidence is extremely important, particularly when describing the impact of their injury, if that is in dispute. That would be my view of that. What was the second question?

Q129 **Mr Hanson:** The second question relates to insurance, effectively before the event insurance, and whether that would help.

Neil Sugarman: My concern about before the event insurance is this. It has been around, historically, for a very long time and, of course, the insurance industry itself created the market for before the event insurance. My own experience of it is that historically it was almost a dysfunctional adjunct to the insurance industry, and—for reasons that I am happy to go into but I suspect time will not allow—it became an

opportunity to make money for the insurance industry, which is a bit ironic, and I am not sure it has a part to play going forward.

Q130 **Mr Hanson:** Mr Dalton, what do you have to say on either or both?

James Dalton: On the Briggs review, time will tell. The Briggs review has not, as far as I am aware, concluded, and there are some important questions about the extent or otherwise that personal injury claims should be included within the context of Lord Justice Briggs's review of online courts. Going back to the conversation we were having about the small claims track, at the moment all personal injury claims worth less than £25,000 are filed through an electronic claims portal, and I do not think it is beyond the wit of man to enable and extend that claims process in the court environment, or indeed to extend the claims process to enable litigants in person to file their own claims. Online and digitisation has a really important role to play in the future of personal injury.

Q131 **Mr Hanson:** To help me again with the longer-term, wider issues, how much did the online claims portal save the insurance companies?

James Dalton: The portal itself did not save the insurance companies money. The portal was implemented in conjunction with a reduction in the fixed legal fees that solicitors can charge for filing personal injury claims.

Q132 **Mr Hanson:** What is your estimate of that?

James Dalton: It was hundreds of millions of pounds.

Q133 **Mr Hanson:** Exactly. How much of that was then put back in reduced premiums to constituents of mine?

James Dalton: It was introduced in 2010, I think, and you have seen premiums reduce.

Q134 **Mr Hanson:** I have not noticed mine go down, and I haven't had any crashes in the last 10 years.

James Dalton: All I am saying is that the market average premium has reduced in recent years. It is going up now, and I am not making any bones about that: average premiums are absolutely going up and may in fact go up even further if Liz Truss decides to reduce the discount rate, which is something—

Q135 **Mr Hanson:** The only reason I mentioned it in that context is, again going back to our first questions, that there was an implicit promise that premiums to my constituents would fall in the event of the Government's proposals being accepted.

James Dalton: Civil litigation reform is not done in isolation from the wider economy and the wider market.

Q136 **Mr Hanson:** Neither, presumably, is this in due course. I am trying to pin

you down to the promise.

James Dalton: I know you are trying to pin me down. What I am saying to you is that personal injury compensation reform in the proposals that are put out in the Ministry of Justice's consultation will reduce premiums. I have said that, and I have said that consumers will be the beneficiaries of that, but it is not in isolation from what is going on in the rest of the market. You have seen a devaluation in the pound, you have seen increased repair bills in the context of increasingly technologically advanced vehicles, with laser systems and so on, and you have a proposal from Mr Sugarman that the discount rate should be reduced, which will cost insurance companies billions of pounds. Those costs will be passed on to consumers through higher car insurance premiums. What I can say is that premiums will not go up as much if these personal injury reforms are implemented, but you cannot view personal injury compensation reform in isolation from the wider market and economy. Things just do not work that way.

Q137 **Mr Hanson:** I appreciate there are other pressures, but I am trying to get some sort of commitment, in the event of these proposals being passed, that, before the end of this Parliament, we could revisit and say what the impact was in relation to your profits, your chief executive's salary and my constituents' premiums.

James Dalton: All other things being equal, if these reforms are implemented, insurance premiums will go down.

Q138 **Chair:** We talked about the small claims track limit and so on. That was set in 1999. If you add inflation, that takes it to about £1,600, or something like that. Do either of you know where £5,000 comes from?

James Dalton: One issue with the limit is that you have had inflation, and that might get you to about £1,600.

Q139 **Chair:** It is well beyond inflation, this proposal.

James Dalton: Indeed, but what you have also had is damages inflation. Damages inflation has increased by about 500% in the same time horizon. That is the reason why I think £5,000 is the appropriate limit. Inflation is one measure—RPI or CPI inflation—that you could think about, but damages inflation is the real reason why you would put a limit at £5,000.

Q140 **Chair:** Mr Sugarman, is that a proper measure to use?

Neil Sugarman: I would say most definitely not. We have to look at the work that has to be done, and I have described the work that has to be done. One can see some rationale for an inflation-proof increase. I do not agree with it, but I can see the rationale. Plucking a figure of £5,000 out of the air, which bears no relation to the amount of work that has to be done, is illogical, to my view.

Q141 **Chair:** Access to Justice suggests a different approach, the alternative

claims framework. What is your view, gentlemen, on that general question? Is there merit in it or not?

Neil Sugarman: My view is this. I have made it clear that there are two fundamental steps that APIL feels need to be taken: an outright ban on cold calling, with the Government firmly committed to it rather than being—I am going to call it—half-hearted about it; and the entire banning of premedical offers. We say that will address the false perceptions around compensation. It will address the problems we are having with the claims management sector coming into the arena. We think that should be the starting point. We do not think that the spectre of fraudulent claims is anything like it is portrayed, so we think we should start with that rather than doing anything else, and see where we get to.

James Dalton: The proposed alternative claims framework is too little, too late. It has come on the back of some proposals from the Ministry of Justice that a bunch of claimant lawyers do not like and now they are desperately trying to come up with an alternative claims framework that, frankly, will deliver very little in practice.

Q142 **Chair:** In terms of trying to get unanimity at the end, is there any place for paid McKenzie friends in our system?

James Dalton: No.

Neil Sugarman: No.

Chair: You are agreed on one thing. On that unified note, I am grateful to you, gentlemen, for your evidence and your time. It has been a very robust exchange, but none the worse for that because it is an important issue. I am grateful to both of you for your frankness in the evidence you have given us. The session is concluded. Thank you for your time.