



May 2018

**Justice Select Committee's seventh report -
Small Claims Limit for Personal Injury):
A brief for Parliamentarians from Access to Justice (A2J)**

Summary

The Justice Select Committee (JSC) published its whiplash report on 17 May. The report strongly criticises the MoJ's personal injury reform package, including measures within the Civil Liability Bill, which is currently awaiting the Report Stage in the House of Lords.

The report takes issue with the government's evidence base, and the implications for civil justice, both in respect of protection for genuinely injured people, and the operation of our justice system in an online world.

The report (which follows an earlier inquiry by the Transport Select Committee in 2013 that made broadly similar recommendations) makes clear the need for ministers to re-think their personal injury strategy and instead sponsor an industry-led solution that makes sure genuine claimants are protected, if they wish to access the civil justice system.

The ten key conclusions from the Justice Committee report (with A2J comment) follow:

1. The Government should not propose further reforms to the PI claims process before its review of Part 2 of the LASPO Act has considered the effectiveness of the earlier 2013 reforms.'

A2J comment: LASPO has delivered a significant and accelerating drop in whiplash claims and insurance savings in the cost of claims, including a 10% fall in volume in the last twelve months. The Justice Secretary announced a review in March 2018, and is due to report later in 2018.

2. 'There is compelling evidence of the obstacles that would be faced by self-represented claimants navigating the current personal injury claims process...this would represent an unacceptable barrier to access to justice.'

A2J comment: No advocate of the reforms has yet answered the question, 'How would the interests of the vast majority of genuinely injured people be protected if these reforms became law?'

3. 'We remain to be convinced that the electronic platform will overcome the underlying inequality of arms between professionally represented insurers and self-represented claimants, particularly with regard to disputes on liability and quantum.'

A2J comment: The insurance industry has said it will fund the electronic platform, which raises serious concerns about a conflict of interest and whether it is right for insurers to administer civil justice given they are a key party.

4. This ambitious project (an electronic platform for litigants in person) risks falling short of creating a claims process that guarantees ‘unimpeded access to the courts,’ as indicated by the Supreme Court’s judgment in the Unison case.’

A2J comment: it is essential that the appropriate independent bodies design and test this potentially far-reaching process before it is released on the unsuspecting public.

5. ‘It is regrettable that the MOJ concluded that it was not relevant to estimate the potentially substantial impact on the PI legal sector, particularly in the North West. It is also unclear to us why the MOJ has assumed that the sector will be able to replace PI legal work with work of equivalent value.’

A2J comment: In its 2016 report, ‘Boosting Insurers Profits’, Capital Economics estimated that over 30,000 jobs could be lost under government plans for personal injury reform. The personal injury sector generates nearly £900m annually for the Exchequer through personal injury casework.

Total remuneration for the 28,000 FTEs working in personal injury is £830m. Firms conducting personal injury and all related activity spend £1.85bn annually on suppliers, supporting nearly 26,000 UK jobs and adding £1.4bn into the UK economy

6. ‘There is no policy justification for including vulnerable road users within the reforms proposed for other RTA PI claimants.’

A2J comment: Vulnerable road users (VRUs) include horse riders, motorcyclists, cyclists and pedestrians. They seldom sustain whiplash injuries and there is no evidence from government or any other source that they commit fraud. VRUs should be protected on our roads, but the government wants to take their rights away.

7. ‘The absence of reliable data on fraudulent claims...weakens the evidence base.’

A2J Comment: In 2013, the Transport Select Committee made exactly the same point in its whiplash report (fourth report July 2013). The Committee noted: “It is surprising that the Government has brought forward measures to reduce the number of fraudulent or exaggerated whiplash claims without giving even an estimate of the comparative scale of the problem.

There is no authoritative data publicly available about the prevalence of fraudulent or exaggerated claims for whiplash injuries and no consensus about what constitutes fraud.” The government cannot give any figures for the number of successful prosecutions for whiplash-related fraud, and the insurance industry talks of a ‘fraud epidemic, provides no reliable data, but yet pays out in 99% of all claims.

8. ‘The small claims limit for PI should only be increased to reflect inflation...and £1,500 might be appropriate.’

A2J comment: A2J has published the Alternative Claims Framework (ACF), a series of recommendations that will tackle the concerns raised by ministers (for example on cold calling) but ensure that genuinely injured people are protected in our courts. In our ACF, we propose a small claims limit of £2000 across the board, for injuries sustained in minor road traffic accidents, as well as for public liability claims and employer liability claims, generating a level playing field for personal injury and giving certainty to the public and the market.

9. ‘We conclude that the Government’s estimate of the pass-through rate may be over-optimistic...given the lack of robust evidence and the unenforceable nature of insurers’ promises to reduce premiums.’

A2J comment: According to Capital Economics [Boosting Insurers’ Profits, 2018] the headline net benefit is a mere £3 per household in the best-case scenario and possibly as low as a £17 loss per household.

The clear beneficiary from the reforms is the motor insurance industry, which will see profits increased by between £190m and up to £630m annually. This boost to profits equates to between £9 and £31 per household with motor insurance.

Table 1: Estimated net benefits of the proposed reforms under alternative pass-through assumptions

| | Optimistic | More favourable for insurers |
|--------------------------------------|------------|------------------------------|
| Net benefits (£ millions) to: | | |
| Insurers | 190 | 630 |
| Households: | 80 | -410 |
| <i>Claimants</i> | -980 | -980 |
| <i>Policy holders</i> | 1,060 | 570 |
| Net benefit per household (£) | 3 | -17 |

Source: Capital Economics, Ministry of Justice Impact Assessment. The ‘optimistic’ assumption is an 85 per cent pass through of cost savings to policy holders, which the Ministry of Justice uses in its baseline estimates. The ‘more favourable for insurers’ assumption is a 50 per cent pass through, which the Ministry of Justice uses in its sensitivity analysis.

Poorer families would bear the brunt. A typical car-owning, lower-income household will receive between half and one-third of the cash benefit of any reduction in premiums that do result from the Bill compared to higher-income households. Lower-income households benefit far less both because of lower car ownership and because of the older average age of their vehicles.

10. ‘The Government’s current package of reforms creates a risk of increasing cold calling by, or on behalf of, CMCs...and an outright ban should be introduced.’

A2J comment: The general public cites cold calling as a major irritation, and this is where the government should be focusing its attention. We concur with the Committee’s conclusions and argue that a revised package of measures should better reflect the public’s desire to see CMCs controlled and cold calling banned altogether. The risk is that, with these reforms, CMCs will fill the vacuum left behind by legal professionals losing their livelihoods and exiting the sector.

Legal professionals currently filter frivolous claims out of the system, so ensuring these never end up in the courts. CMCs and paid McKenzie Friends will offer no such filtering system, further clogging up the courts with unnecessary cases.

Conclusion

The Justice Select Committee report is a damning assessment of the government’s personal injury reform programme, but it is not too late for parliamentarians to step in and urge a balanced change of direction.

A2J has always maintained that some sensible further reform is necessary. But the government is firing at the wrong targets, and genuinely injured people will lose their legal rights as a result. There is time now for Parliament to take note of this important report and urge ministers to change their direction of travel.

This is the second independent and highly critical challenge to government, following a robust report from the House of Lords Delegated Powers and Regulatory Reform Committee. The JSC report reflects the extensive, grave concerns both respected committees have of the proposed reform agenda. Impartial parliamentary inquiries (including the Transport Committee in 2013) have consistently found against the government's policy agenda, as it is not founded on reliable evidence.

We urge Parliamentarians to lobby ministers to sponsor new talks between claimants and defendants to find an alternative approach to the current proposals, which have been roundly rejected by the Justice Committee.

About the measures

The reform measures, which have changed since they were first announced in 2015, would see those making motor-related PI claims worth up to £5,000 typically being unable to recoup the cost of any legal advice. In addition, a new tariff system is proposed to provide compensation for pain and suffering at a level enormously reduced from the current judicial awards.

These two factors, when combined, will result in the vast majority of injured persons being unable to secure legal representation; however, non-fault claimants will still be able to claim for physiotherapy and loss of earnings.

The Civil Liability Bill in particular will ban insurers from offering pre-medical offers, which A2J supports, and it will enable the creation of the new tariff system for future PI payments for minor RTA injuries. The increase in the Small Claims Limit to £5K can be done by ministerial decree and doesn't need primary legislation, thereby taking this important access to justice decision out of the control of parliament and the courts.

About Access to Justice

A2J represents the interests of the public and is supported by the broader personal injury (PI) sector. Its prime focus is to respond to the government's proposed road traffic accident compensation reforms.

A2J provides a cohesive voice to fight these proposed draconian measures; it will work with the government and other interested parties to create sensible, balanced alternatives which protect individuals' rights, while addressing the government's concerns, particularly in relation to claims fraud.

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