



## **Association of Personal Injury Lawyers**

### **Briefing: Government proposals to reform low value personal injury claims**

**January 2017**

#### **Introduction**

Almost half a million injured people are to have their legal rights restricted under proposals which were first announced by the Government in the 2015 Autumn Statement. The proposals include -

- Increasing the small claims court limit for all personal injury claims to £5,000.
- Removing or fixing compensation for pain and suffering for “minor” soft tissue injuries caused by road accidents.
- A tariff system of compensation payments for pain and suffering for other soft tissue injuries caused by road accidents.

With these proposals the Government is –

- Restricting the legal rights of almost half a million injured people.
- Failing to recognise that the same injury can affect different people in different ways.
- Equating minor whiplash claims with exaggerated and fraudulent claims. The three are not the same. People with minor whiplash claims are not fraudulent.
- Failing to tackle the real mischief in the personal injury sector – cold calling for personal injury claims.

## **Restricting the legal rights of almost half a million people**

No one asks to be injured. Suffering an injury as a result of someone else's negligence can have lasting consequences, even if the injury may appear to be a "minor" one. It can leave someone feeling vulnerable, and he may have lasting physical or mental scars for the rest of his life. Last year almost half a million people in England and Wales who were injured through no fault of their own received compensation of £5,000 or less for their pain and suffering<sup>1</sup>. This compensation, paid by the negligent defendant (usually the defendant's insurance company) recognises the affect that the avoidable injury has had on a person's life. The majority of these people will have received support from a qualified solicitor who will have dealt with every stage of the claim.

Under the Government's proposals all these people would have had to pursue their claim through the small claims court, a court which is not designed for injured people, but which is more suited to claims for faulty goods or services. The small claims court is unique in personal injury in that an injured person is unable to claim his legal fees, meaning he would have to pay for any legal advice out of his own pocket. This may not always be affordable, especially if the injury has resulted in time off work.

In the small claims court an injured person will still have to prove that he has been injured, and that the injury was caused by someone else's negligence. He will still have to produce evidence, including medical reports and witness statements, and more importantly he will have to know how much his injury is worth. Only this time he may have to do it all alone without the support of a qualified solicitor. APIL commissioned research in 2012 which revealed that, of 4000 people surveyed, 70 per cent would not know how much to claim for a whiplash injury. This means that they literally would not know where to start. Nothing has happened since then to suggest that this situation has changed.

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<sup>1</sup> The YouGov publication Personal Injury 2016 shows that more than two-thirds of successful claimants (68 per cent) received compensation of £5,000.

An injured person will be left with three choices –

1. He can pursue his claim without a solicitor, but he would be alone against the defendant's insurance company which will almost certainly be legally represented.
2. He can sacrifice part of his compensation to pay for legal advice. The purpose of compensation, however, is not to pay for legal fees, but to help put the injured person's life back to how it would have been had it not been for the injury.
3. He may abandon his claim altogether, which means he will not receive the compensation he deserves, and to which he has a right.

At the same time as forcing injured people into the small claims court, the Government is proposing to restrict, or even remove, the right to compensation which people could receive for pain and suffering from a "minor" soft tissue injury with symptoms which last up to nine months, and which was caused by a road accident. The options being considered by the Government could result in an injured person receiving no compensation for his pain and suffering, or receiving just £400, or £425 if the claim involves a psychological element. The Government is also proposing the introduction of a set tariff of compensation for people suffering with other soft tissue injuries caused by a road accident.

The Government fails to recognise that the same injury affects different people in different ways. The effects of an injury can be varied. Someone may be particularly affected by a "minor" injury if he lives in a block of flats, and his injury means that leaving and coming back home via stairs causes him pain and discomfort. A "minor" injury may also result in a mother being unable to pick up her child. This is why there is already flexible guidance as to how much compensation should be awarded. This guidance has been drawn up by the Judicial College, and allows judges to use their individual discretion when deciding on an appropriate amount of compensation for pain and suffering, based on the merits of the case<sup>2</sup>.

In most "minor" cases, £400 or £425 will not be anywhere near an appropriate level of compensation. Someone could receive almost the same amount if he was travelling from London to Glasgow and the train was delayed by two hours. A train delayed by two hours is an inconvenience, but it is nothing compared to six months of pain, six months of sleepless nights, or six months of not being able to look after young children properly.

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<sup>2</sup> Judicial College Guidelines for the assessment of general damages in personal injury cases 13<sup>th</sup> edition, page ix

## **False promises and the need for independent evidence**

The Government claims that legal reforms will result in lower insurance premiums for motorists, but this flies in the face of the fact the insurance industry has failed to pass previous savings to motorists. Figures obtained by APIL reveal that the insurance industry has saved £500 million a year since the introduction of legal reforms in 2013. Motor insurance premiums should, therefore, have come down, but the Association of British Insurers' (ABI) own figures show that the average motor insurance premium has, in fact, increased by eight per cent since 2013<sup>3</sup>. The insurance industry promised that any savings from those reforms would be passed to motorists. It did not happen then, and there is no reason to believe it will happen as a result of these reforms.

If the Government is so concerned about the cost of motor insurance premiums, why has it announced that insurance premium tax will increase by 20 per cent in June? If the Government is so concerned about the costs which arise from motor accident claims, why isn't it tackling inflated storage and recovery charges, car hire charges, sky high component costs, and hiked up repair bills? It is common knowledge that insurers are engaged in deals with hire companies and repairers which allow such companies deliberately to over-inflate costs payable by the at fault party. It used to be the case that insurers would provide a courtesy car to drivers at the insurer's expense, but now it is common practice automatically to refer drivers to expensive credit hire companies in return for a referral fee. The high costs of this then have to be paid by the at fault insurer. This has increased motor insurance premiums, and the Competition & Markets Authority estimates that the net detriment to consumers from credit hire amounts to £84 million each year<sup>4</sup>.

This is what the Government should be tackling. In a report commissioned jointly by APIL, the Law Society, and the Motor Accident Solicitors Society to review the impact assessment published alongside the Government's consultation on the proposals, the economics firm Compass Lexecon found that in 2015 the number of whiplash claims and the net cost of motor claims fell by 12 per cent and three per cent respectively, compared to 2014.

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<sup>3</sup> ABI data on average motor insurance premiums (private car) published in October 2016 <https://www.abi.org.uk/Insurance-and-savings/Industry-data/Industry-data-downloads>.

<sup>4</sup> Private motor insurance market investigation: final report, Competition & Markets Authority (CMA), September 2014

At the same time, however, the average motor insurance premium increased by four per cent<sup>5</sup>. Compass Lexecon concluded that since premiums have increased while the number of whiplash claims and the net cost of claims have decreased, there is a lack of evidence of a link between the cost of claims or the number of whiplash claims, and the cost of motor insurance premiums. Despite this, injured people have once again become an easy target.

## **Fraud**

Another reason given by the Government for its proposals is the need to tackle fraudulent claims. The term “fraudulent claims” appears in the Government’s consultation document on the proposals 14 times, but at no point is any evidence provided as to the number of fraudulent personal injury claims. That is because there is no reliable data about the number of fraudulent claims.

In 2013 the Government repeated a claim made by the ABI in 2012 that seven per cent of motor claims were fraudulent, but the ABI’s own statistics clearly show that this figure of seven per cent includes both proven fraud and what it is calls ‘suspected’ fraud. (ie, what the ABI thinks is fraud but which cannot be proven as a fraud). When the ABI separated the figures for proven and suspected fraud for the first time in 2014 it became clear that proven fraud was just 0.25 per cent of all motor claims. That includes policy-holders over-egging their own claims, or making false declarations in applications for insurance. Personal injury fraud will be a fraction of that 0.25 per cent, and fraudulent whiplash claims will be an even smaller fraction of that.

To restrict the legal rights of half a million injured people based on the activities of what may only be a very small number of people is unjust, unfair, and inhuman. These people have suffered once already, and they should not be scapegoats for something which is not their fault. While there are no reliable figures on fraud, there are reliable figures from the Government which show that the number of whiplash claims has fallen by 41 per cent since 2010/2011. It is the insurers’ own practices which are increasing motor insurance premiums, and it is the Government’s own policy on the insurance premium tax which is increasing motor insurance premiums.

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<sup>5 5</sup> Proposed reforms to the soft tissue injury claims process and increase in the small claims court limit: comments on the Government’s impact assessment, Compass Lexecon, December 2016, page 9 <https://www.apil.org.uk/files/pdf/ConsultationDocuments/3345.pdf>

## **The real mischief in the personal injury sector**

The real mischief in the personal injury sector is cold calling.

Cold calling for personal injury claims exploits vulnerable people, and it should be banned. It is tasteless and intrusive. It generates the false perception that obtaining compensation for whiplash injuries is easy, even when there is no injury. It brings the whole sector into disrepute. Solicitors are banned from cold calling for personal injury claims, and APIL fully supports this. Unfortunately the opposite is true of claims management companies (CMCs) which are free to contact people provided they adhere to certain rules. The problem is that the rules are often ambiguous and difficult to navigate. Recent attempts to curtail the worst excesses of CMCs appear to have had limited impact.

The number of cold calls encouraging us to make a personal injury claim is only going to rise if the Government increases the small claims limit. CMCs will see an increase in the limit as a business opportunity, and will use cold calls and text messages to tout for business from those injured people who may be unable to afford the support of a qualified solicitor.

Instead of the Government banning cold calls, a vulnerable group of people is being singled out for special treatment because another group representing commercial interests says the law should be changed. Government proposals will do nothing but treat genuinely injured people as objects and restrict their legal rights.

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