

**HOUSE OF COMMONS JUSTICE SELECT COMMITTEE INQUIRY:**

**Small claims limit for personal injury**



**Written evidence from the Association of Personal Injury Lawyers**

**December 2017**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for more than 25 years to help injured people gain the access to justice they need and to which they are entitled. We have around 3,400 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

We welcome the opportunity to provide further written evidence about the small claims limit for personal injury to the Justice Committee. In our written and oral evidence to the committee earlier this year we spoke extensively about the premise for reform, the potential impact on injured people, and the implications in relation to claims management companies. We maintain our argument that an increase in the small claims limit will benefit defendants and their insurers, to the detriment of injured people.

Any enquiries in respect of this response should be addressed, in the first instance, to:

Lorraine Gwinnutt

Head of Public Affairs

APIL

3, Alder Court, Rennie Hogg Road, Nottingham NG2 1RX

Tel: 0115 943 5404

Email: [lorraine.gwinnutt@apil.org.uk](mailto:lorraine.gwinnutt@apil.org.uk)

## **The premise of reform to the small claims court limit**

1. In its original consultation on reform, the Government's stated aim was 'to crack down on minor, exaggerated and fraudulent soft tissue injury ('whiplash') claims'<sup>1</sup>. Its approach was both to increase the small claims limit and to introduce a fixed tariff scheme, divided into bands, for whiplash injuries lasting up to two years. APIL has long voiced its opposition to both courses of action.

2. The Ministry of Justice appears to remain intent on tackling perceptions about whiplash claims through the introduction of a tariff system specifically for such claims. The details of any such scheme will be subject to the full parliamentary procedure through the Civil Liability Bill announced in the Queen's Speech. This course of action, however, exceeds the Government's stated aim and makes a wholesale increase in the small claims limit for all road traffic injuries completely unnecessary, as well as unfair.

3. We recognise that the small claims limit for personal injury has not been increased for many years and therefore we accept the argument that an increase to reflect the rate of inflation could be justified. The proposal to increase the limit for all road traffic claims to £5,000 will, however, affect the vast majority of motor claims, forcing people with a wide range of injuries into a small claims system which was never designed to accommodate them. This move, especially in the context of proposed specific reform to whiplash claims, is certainly not justified.

4. Nor is reform justified on the basis of cost. Outside the small claims track, a 'polluter pays' system operates in personal injury, which effectively means that the insurer of the motorist responsible for causing the injury pays damages and the majority of the legal fee. The cost to motor insurers of settled bodily injury claims has continued to fall: according to figures from the Association of British Insurers (ABI) quarter three of 2017 was the second lowest of any quarter since the ABI started to produce data in 2013. Comparing the first three quarters of this year with the first three quarters of 2016, the cost to motor insurers of settled bodily injury claims has fallen by ten per cent (£263 million).

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<sup>1</sup> *Reforming the Soft Tissue Injury ('whiplash') Claims Process*, Ministry of Justice consultation, November 2016, foreword.

5. The Government has yet to publish a review of the impact of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act which implemented far-reaching reforms to personal injury in April 2013. Pending the result of that review, however, it would appear that the reforms have had a significant impact on the cost of personal injury claims.

### **Litigants in person – research**

6. If the Government increases the small claims limit to £5,000 for all road traffic claims, around 600,000 people<sup>2</sup> who have been injured through no fault of their own will be forced to bring their road traffic claims through this process. This leaves injured people with some very difficult choices:

- to represent themselves without legal help;
- to seek legal assistance from a solicitor but then be unable to claim back the costs from the losing defendant. This is a feature of the small claims track which is unique among all the different processes available for people who need to pursue claims for personal injury;
- to abandon their claims altogether because they cannot afford legal help.

7. Results from the YouGov personal injury report<sup>3</sup> suggest that injured people would find it difficult to claim compensation successfully without help from a legal professional. Of those who have experience of making personal injury claims ('claimants') 66 per cent thought it would be difficult to negotiate a fair settlement without legal help. Half of claimants thought they would find it difficult to prepare the required court forms, and more than half (53 per cent) of claimants thought it would be difficult to find, appoint and instruct a medical expert. More than two thirds (68 per cent) of claimants said they would always use solicitors and legal professionals to represent them in court.

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<sup>2</sup> In 2016/17, 780,324 motor claims were registered with the Compensation Recovery Unit; according to YouGov polling undertaken between April and May 2017, 75 per cent of successful personal injury claimants received compensation of under £5,000.

<sup>3</sup> YouGov Reports: Personal Injury 2017. Specific data is available on request.

8. The difficulty of appointing a medical expert for an unrepresented litigant was underlined in the findings of the Annual Expert Witness Survey Report 2017, conducted by Bond Solon in collaboration with The Times. According to the survey:

“The small claims track regularly sees claims by litigants in person where the case might need to be supported by an expert’s report. However, our report shows that most of the experts surveyed who work in personal injury claims are medical experts and, of these experts surveyed, 76% would not accept instructions from a litigant in person.”<sup>4</sup>

### **Small claims and the online portal**

9. Currently, almost all personal injury road traffic claims valued between £1,000 and £25,000 are required to go through the online personal injury claims portal, which was introduced in 2010 as a way of streamlining the system and ensuring the costs of bringing claims are proportionate.

10. This simplified, electronic portal process currently only applies, however, to cases where liability is admitted. Where liability is not admitted, claims become subject to the normal litigation process because the complexities involved (such as the gathering of evidence, witness statements and arguments about the cause of the injury) mean claims are unsuitable for the streamlined processes and procedures of the portal.

11. We understand that, if the small claims limit is increased, injured people will be required to use a version of the online portal which will be adapted for use by ‘litigants in person’, and which will include provisions for dealing with cases where liability is not admitted. There is considerable doubt about whether such a complex situation as a dispute about liability could ever be suitable for the portal.

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<sup>4</sup> <https://www.bondsolon.com/media/169301/the-times-bond-solon-annual-expert-witness-survey-report-2017.pdf>; page 9

12. If it is not possible to create such an all-encompassing portal, vulnerable people will then leave the online system to become litigants in the small claims track. Even if it is possible to create such a portal, huge complexities will remain, particularly in employers' liability and public liability cases where the presence of multiple defendants and arguments about (for example) liability and causation are often very difficult. An electronic portal will never be able to address these complexities, which means litigants will need legal advice.

13. As discussed in paragraph six, many of these people will not be able to afford such legal advice as they will not be able to recover their costs from losing defendants, leaving them either to struggle to bring their claims on their own, or forced to give up their claims altogether. As discussed in paragraph seven, almost 70 per cent of people who have experience of bringing a personal injury claim would not do so without legal representation. In the small claims track, they would be unable to recover the costs of securing that legal representation.

14. It may be that the claimant happens to have before-the-event (BTE) insurance, which may provide enough funds to cover this cost, depending on the terms of the policy. There is currently some discussion about whether the BTE market will evolve to meet these funding needs if the small claims limit is raised. At this stage, it is impossible to tell. In any event, BTE insurance is voluntary and many motorists will be justifiably reluctant to pay for it on top of their compulsory (and ever increasing) motor insurance.

15. There is also a concern that many injured people will not have the technical knowledge or capacity to deal with the online procedures, automatically putting them at a fundamental disadvantage.

- Ends -

## **Association of Personal Injury Lawyers**

▶ 3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX