

**Scottish Government**  
**Information gathering exercise on the process**  
**for low value personal injury claims resulting from**  
**road traffic accidents.**



**December 2023**

**Introduction**

The current rules in Scotland for processing lower value RTA claims are working well. Whilst APIL can often see potential advantages with digitisation namely increased efficiency, and better outcomes for clients to name just two, it must not be assumed that digitisation makes obtaining compensation easy. It can often help with the processing but the issues that arise in individual cases, such as causation, calculation of loss and liability disputes, are not always straightforward. Every claimant's injury, treatment, recovery and related losses are different.

Digital reform in England and Wales should not be treated as a blueprint for digital reform elsewhere. Many of the digital reforms have been fraught with problems, in fact the low value RTA portal launch was marked by issues<sup>1</sup>, including many solicitors not receiving access codes. Delayed computer testing also meant that some solicitors could not take a claim from start to finish using the portal. The more recent reforms to introduce the Official Injury Claims Portal has also been plagued with problems disadvantaging individual consumers. The maturing data in relation to the OICP is now starting to evidence a reduced proportion of claims settling, claim delays, and fewer claims reaching court. The OICP implementation process has meant that consumers have had their claims delayed. Delay denies justice as it leads to consumers accepting under-settlement of their claims, to avoid waiting for the claim to run through the process to secure the correct award.

Independent evidence shows that the RTA portal reform, in particular, has had some significant unintended consequences, namely the driving down of damages, the driving out of specialist lawyers in the market and considerable financial overheads for firms.

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<sup>1</sup> Please read Law Society Gazette "*RTA portal launch runs into trouble*"  
<https://www.lawgazette.co.uk/news/rta-portal-launch-runs-into-trouble/55348.article>  
Law Society Gazette "*Technical problems continue to dog RTA claims portal*"  
<https://www.lawgazette.co.uk/news/technical-problems-continue-to-dog-rta-claims-portal/55444.article>

There has been no concrete evidence produced to date supporting the need for change in Scotland. This is simply an exercise by the insurance lobby to justify arguments for cutting recoverable costs for pursuers. We would encourage the Scottish Government to look at the evidence included in this paper which supports the contrary position. Costs in Scotland are not high and pre-litigation RTA costs are already governed by a strict process contained within a compulsory protocol and subject to a fixed costs regime. The landscape in Scotland is significantly different to that in England and Wales pre 2010. The current number of RTA claims in Scotland is a fraction of those in England and Wales.

### **No evidence for change**

The similarities being drawn between the system in England and Wales and that in Scotland are erroneous. The legal landscape in England and Wales prior to the 2010 reforms were significantly different from that in Scotland now. There were high volumes of low value RTA claims in England and Wales around the time the low value RTA claims portal (Claims Portal) was introduced. This is not an issue in Scotland, the current number of claims are a fraction of those in England and Wales. During its first few years of operation, the Claims Portal dealt with 774,00-872,00 RTA claims per annum.<sup>2</sup> This is 23 to 26 times higher than the current number of all motor injury claims made in Scotland, which currently stands at around 33,000 per annum.<sup>3</sup> Not all these 33,000 claims would be captured by a portal, some will be valued above the £25,000 threshold proposed, others will not be caught due to liability disputes or complexity.

Only a small percentage of claims submitted through the Claims Portal actually settle in it. Of the 8.3 million RTA claims submitted since the portal's introduction in 2010, only 26% have settled in the portal<sup>4</sup>. Furthermore, claims portal and CRU data shows that, pre-covid and pre-Official Injury Claims portal<sup>5</sup>, only c.32% of all successful motor injury claims settled in the portal. The rest settled outside the portal system.

These figures suggest that, if a claims portal was introduced in Scotland, you would still expect in the region of 70% of claims to be ultimately dealt with outside the portal process.

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<sup>2</sup> Analysis of Claims Portal Executive dashboard, available at <https://www.claimsportal.org.uk/about/executive-dashboard/>

<sup>3</sup> Information gathered following a Freedom of Information (FOI) request submitted by APIL to the Compensation Recovery Unit (CRU).

<sup>4</sup> Analysis of Claims Portal Executive dashboard, available at <https://www.claimsportal.org.uk/about/executive-dashboard/>

<sup>5</sup> <https://www.officialinjuryclaim.org.uk/>

Based on current claim volumes in Scotland, that would still leave over 20,000 claims + per annum being ultimately dealt with outside a portal. The exact figure would depend on several variables, including future claim volumes and the number of claims which are abandoned before a settlement is reached. However, what it does demonstrate is that the volume of claims that might be caught under such proposals is very small. Given the current processes in Scotland are already governed by a pre-action protocol and fixed costs associated with that, it is hard to see how the expense and time of reform is warranted. Any reforms come with significant cost to the profession as they require substantial changes internally for law firms. Internal IT systems must be changed, teams retrained and restructured. There is also an impact on injured people, see below re erosion of damages.

It is also instructive to look at the number of RTA cases that proceed to litigation each year. Since 2012-13, the number of RTA cases that have been litigated range from 3716 to 5492, representing between 12 and 16% of all RTA cases. Consequently well over 80% of RTA cases currently are resolved with the existing compulsory protocol system.

Further we caution against arguments to follow the general direction of travel in England and Wales towards removal of recoverable costs for lower value claims. The introduction of the Civil Liability Act 2018 and associated reforms has introduced a justice gap for victims of negligence. Reported road casualties are up, but the number of motor claims by injured people are down. The right to full and fair compensation was removed with the introduction of a tariff award system along with the introduction of the Official Injury Claims Portal intended for use by litigants in person. This was delivered on the promise of savings for car insurance policyholder which has not been delivered. Insurance costs continue to rise showing that restricting access to justice does not result in the savings to policyholders<sup>6</sup>.

## **Other points raised within the paper but not raised in the questions**

### **1 Unmeritorious and fraudulent claims (including cash for crash)**

Only those who are genuinely injured deserve to be compensated, however, a portal system and associated fixed costs will not stamp out unmeritorious claims. There is nothing contained within this proposal that tackles genuine fraud and unmeritorious claims. Nor will it deal with cash for crash, another issue highlighted within the paper. Those fraudulent cases that do slip through the already rigorous checks undertaken by both sides of the profession

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<sup>6</sup> For further information see APIL's response to the Justice Committee <https://committees.parliament.uk/writtenevidence/119326/pdf/>

get further weeded either at the liability stage of the process or medical report stage of the process under the protocol, now.

We are not aware of any data specifically for Scotland which confirms the instances of proven fraud in this jurisdiction. If this is available, we would be interested to see it. The ABI does produce annual data on the frequency of fraud in motor-related personal injury claims in the UK. This continues to show that occurrences are very low. In 2022, only 2.31% (6,456 claims) of all motor-related personal injury claims in the UK were confirmed as fraudulent, down from 2.52% (8,255 claims) in 2021.

Whilst the data does not go back far enough to look at what happened following the introduction of the RTA Claims Portal it is evident that the level of fraud seems to have been impacted very little by the introduction of the more recent 'whiplash reforms' in 2021<sup>7</sup>. Indeed, the level of PI fraud in 2022, while low, was above levels seen prior to the introduction of those reforms in England and Wales.

Instances of fraud need to be tackled thorough the appropriate procedure, regulators, where necessary the police and the Insurance Fraud Bureau. It is difficult to see how a portal would assist with this. Certainly, there was nothing specific in the building of the RTA portal to tackle fraud. In Scotland there is already the benefit of Qualified One Way Costs Shifting. Any significant reduction in costs coupled with changes to the way in which claims are pursued simply drives firms out of the market and increases consolidation in the number of firms offering access to legal advice. This has been seen in England and Wales. Data provided to APIL by the Solicitors Regulation Authority shows that the number of personal injury firms in England and Wales fell by 33% between 2016 and 2023, from 772 to 514. Whilst the data provided by the Law Society of England & Wales also shows that the number of solicitors undertaking PI work has fallen significantly over recent years – from 13,094 in 2010 to 10,912 in 2022. This is a drop of 17%.

## **2 The cost of injury claims**

The data provided in Annex A in support of reform is extremely vague we would ask for further clarity around the figures so they can be better understood. It is unclear from the paper whether the data relates to motor injury claims that might be caught by the proposed

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<sup>7</sup> *Motor insurance – detected fraud*, Association of British Insurers, accessed at <https://www.abi.org.uk/account/my-statistics/> (data is behind a paywall)

changes or motor claims in general. There is no clarity whether the data is for pre-litigated cases or also includes litigated cases. The figures would suggest that litigated cases have been included, which is outside the scope of this information gathering exercise. However, if we look at 104 litigated cases handled by Alex Quinn and Partners Limited<sup>8</sup>, Law Accountants, over the last 6 months they show that the majority of cases under £25,000 are proportionate to damages with the costs to damages ratio of 0.87<sup>9</sup>. Those cases where the costs to damages ratio is higher than the average will involve additional complexities, such as further investigation due to a denial of liability, requests for disclosure of evidence by court order, requirements to instruct expert reports, defenders putting the pursuer to proof, or additional investigations related to quantum, for example loss of earnings or pension loss.

It is worth noting that in all of the cases that form the basis of the data, either a settlement was reached between the parties, or a court made an award in favour of the pursuer. The rationale for raising a court action is either because the defender/insurer denied liability, or made an inadequate offer to resolve the claim. In each situation, the person bringing the claim to court has been vindicated in doing so. Any associated expenses essentially have been caused by the actions of the defender/insurer.

The data included in annex A of the information gathering exercise also suggests significant volatility across both damages and costs, with some worrying impacts on damages. It suggests that average damages were lower in 2022 than in 2015, we would question if that is in fact accurate. If it is, you would have to question the impact fixed costs is already having on these low value claims.

We know from research requested by the Ministry of Justice in 2012<sup>10</sup>, conducted by Professor Fenn, that fixed costs affect the level of damages recovered. This effect is not good news for the injured person. The post portal review found that there were statistically significant reductions in mean damages that amounted to a reduction of around 6%.

What we also know is that costs in England and Wales have generally been higher than those in Scotland. Therefore, there will be a natural disparity between the two jurisdictions.

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<sup>8</sup> See appendix to this paper

<sup>9</sup> There is an argument to suggest that the VAT element of the costs should be disregarded, if this were the case then the ratio would be 0.72.

<sup>10</sup> Evaluating the low value Road Traffic Accident process, Professor Fenn, Nottingham University Business School. Ministry of Justice Research series 13/12 July 2012

#### **4 Other costs**

The paper also refers to the increase in 'other costs' but does not evidence what this is. What is worthy of note is the significant increase in the non-injury element of RTA claims. The following issues will have an impact on the overall cost of claims which are not injury related.

1. The parts supply chain post Brexit and covid is driving up the cost of parts.
2. The increased value of second-hand cars, which in turn will impact on the total loss value.
3. Increase in technology in cars and the costs associated with repairing those.
4. The ABI has reported that labour costs have increased by 40%<sup>11</sup>.

These factors have accordingly led to significant increases in other costs associated with a motor claim. These costs will not however, be taken into account when calculating the fixed costs solicitors are entitled to. Between 2013 and 2020, the cost of these claims increased by 24%. Over the same period, the cost of injury claims settled by car insurers fell by 24% in the UK. Whilst there is no specific data for Scotland and the tariff reforms in England and Wales will have some bearing on the injury element figures, it demonstrates the real problem in this area. Long before the pandemic and the introduction of the reforms, the cost of repair claims far exceeded the cost of injury claims. In 2017, for example, repair claims cost insurers £769 million more than injury claims. By 2020, they were costing insurers £1.1 billion more than injury claims<sup>12</sup>.

Given these long-term trends in repair costs, it is reform in this area that needs considering rather than affecting an injured person's ability to claim where they have been genuinely injured.

#### **5 Disproportionate costs at lower end of system**

It is also worth observing that there is an irreducible minimum amount of work that is involved in any personal injury case regardless of value. Therefore, in lower value cases,

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<sup>11</sup> <https://www.abi.org.uk/news/news-articles/2023/8/sustained-cost-pressures-on-insurers-push-the-average-price-of-motor-insurance-to-a-record-high/>

<sup>12</sup> *Motor Insurance - Claims - 2023Q2*, Association of British Insurers, accessed at <https://www.abi.org.uk/account/my-statistics/> (data is behind a paywall)

that are remunerated fairly to reflect the work involved, the costs will not be significantly lower than damages recovered. Regulators require lawyers to know their clients and provide advice on funding from the outset of the claim. They are also required to carry out ID checks and a conflict-of-interest check. There is also an ongoing duty to advise the client, keep them updated on their case and manage their expectations.

## Questions

### Digital Claims Portal

**1. Do you agree that introducing an online portal dealing with low value claims (similar to the one described above) will provide a more timely and cost-effective system? If not, please say why and set out any alternative proposals.**

No. Whilst the introduction of digital changes can lead to an improvement with onboarding of initial information and form filling at the start of a claim, what we have seen through reform in England and Wales is that that is not the full picture. Many of the perceived improvements around speed of settlement and response times are simply due to the change in timings in the protocol and the sanctions imposed.

Professor Fenn in his 2012 report confirmed that there had been a mean reduction of around 5-7% settlement time<sup>13</sup>. However, the reduction is not surprising given the cut in timeframes and procedures imposed by the protocol. Whilst the tighter timeframes within the protocol may result in a reduction in the time taken to reach swifter settlement, not all claims that commence in the portal stay in it, see evidence above.

Any system will only be cost effective if costed fairly. The current fees in England and Wales will of course also have introduced saving for insurers as they are a fraction of the costs recoverable pre-2012 (see comments below in this section at question 6 regarding the costs position in England and Wales). However, they have not been costed efficiently for injured claimants or their lawyer. They have resulted in substantial financial burdens for injured people and the firms pursuing those claims on their behalf. Since reforms were introduced in 2009 injured people have seen their damages eroded both through damages being

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<sup>13</sup> Evaluating the low value Road Traffic Accident process, Professor Fenn, Nottingham University Business School. Ministry of Justice Research series 13/12 July 2012

reduced by 6% (more than the reduction seen in costs at the time of Professor Fenn's review<sup>14</sup>. However, the impact on damages has continued as claimants have had to use damages to fund their legal costs. It is highly unsatisfactory that claimants in E and W have their damages eroded by costs. However, firms had to adapt to the changes imposed upon them in the low value RTA market. As a result of change clients have had to contribute or top up the shortfall in fees recoverable from the at fault party. This is to cover the work completed to process their claim. This is a problem that has been further compounded by the Government's failure to uprate the portal fees.

It is therefore clear from the evidence available that the reforms have not been successful for those wishing to pursue a claim. An injured person should be able to access a solicitor of their choice to pursue a genuine RTA on their behalf. They should also be able to recover reasonable costs to cover the work undertaken to pursue their claim, this cost should be borne by the at fault party.

We emphasise once again that there is an existing compulsory pre-action protocol in Scotland for RTA claims valued under £25,000 which contains strict timeframes on liability decisions, disclosure of medical evidence and offers. There are also fixed costs associated with that.

**2. If a claims portal was introduced, do you agree there should be an upper limit set for the value of claim entering the portal? If so, what do you envisage being the most appropriate limit?**

We do not believe that a portal is justified. However, if one were to be introduced there would need to be discussions with stakeholders around scope.

We know from experience that in cases over £10,000 additional complexities arise relating to losses associated with the injury. For example, more than one medical report, ongoing medical conditions, and rehabilitation to name a few. The higher the threshold the greater the injury resulting in higher damages. The higher the threshold, the more significant the wage loss, the time of work and the longer the period of time it will take for the injured person to recover from the effects of their injury, or reach a significant enough plateau in their recovery to settle the claim. There will also be a need for additional evidence such as for example, future loss of earning, future treatment costs etc.

In our experience low value cases are not necessarily straightforward.

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<sup>14</sup> Ibid page i.



There should also be other exclusions, namely an exclusion for an injury caused wholly or in part by a breach by the defendant of one or more of the relevant statutory provisions<sup>15</sup> as defined by section 53 of the Health and Safety at Work etc Act 1974. Along with exclusions in respect of a breach of duty owed to a road user by a person who is not a road user; claims made to the MIB pursuant to the Untraced Drivers' Agreement 2003 or any subsequent or supplementary Untraced Drivers' Agreements. Claims where the claimant or defendant acts as personal representative of a deceased person, or where the defendant is a protected party, the claimant is bankrupt; or where the defendant's vehicle is registered outside the United Kingdom.

### **3. Do you have any experience of using the online claims portal currently in place in England and Wales? If so, what advantages have you seen in terms of reduced timescales for the claimant journey?**

APIL has been involved in the claim's portal since inception. The organisation and its members have significant experience of the claim's portal. During its development time savings were written into the protocol and built into the IT system for injured people. Those variations included no routine need for medical notes, changes to the process for obtaining a medical report and the requirement for interim payments. These have been welcome, however the unintended consequences of the reforms including erosion of damages to the detriment of injured people, fees not properly costed or increased have caused immense damage to that sector of the civil justice system. Also see question 4 and 5 in this section below.

### **4. Can you provide any comparative data that supports those views?**

In July 2012 two years after the Claims Portal was developed and before the original industry agreed fees were slashed, Professor Fenn undertook a review of the RTA claims portal at the request of the MoJ<sup>16</sup>. The results showed a statistically significant reduction in mean general damages, against a fall in costs and improvement in settlement times. The

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<sup>15</sup> Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677)  
Lifting Operations and Lifting Equipment Regulations 1998 (S.I. 1998/2307)  
Management of Health and Safety at Work Regulations 1999 (S.I. 1999/3242)  
Manual Handling Operations Regulations 1992 (S.I. 1992/2793)  
Personal Protective Equipment at Work Regulations 1992 (S.I. 1992/2966)  
Provision and Use of Work Equipment Regulations 1998 (S.I. 1998/2306)  
Work at Height Regulations 2005 (S.I. 2005/735)  
Workplace (Health, Safety and Welfare) Regulations 1992 (S.I. 1992/3004)  
The Construction (Design and Management) Regulations 2007 (S.I. 2007/320)

<sup>16</sup> Evaluating the low value Road Traffic Accident process, Professor Fenn, Nottingham University Business School. Ministry of Justice Research series 13/12 July 2012

reduction in damages was unintended and worrying to those, such as APIL, representing injured people. The latter two measures were inevitable, as the portal costs were less than those previously recoverable from the fault party and the timeframes were significantly reduced with costs penalties attached.

## **5. Have you experienced any issues or encountered additional cost or savings to your business?**

The additional costs to businesses are significant, the costs of IT changes, ongoing upgrades, ongoing training on IT and audits by Claims Portal Limited (CPL)<sup>17</sup> create ongoing financial burdens on firms that must be borne internally. There have been no financial savings for solicitors' businesses, overheads have increased. This coupled with the inadequate fees and failure by Government to update what fees there are, has driven businesses out of the market. See earlier comment with evidence from the SRA and Law Society of England and Wales. There have also been high profile examples of firms exiting the market, one such example is Irwin Mitchell<sup>18</sup>.

In addition to these pressures already evident in the market, CPL is shortly to introduce a user pays model to fund the on-going cost of the IT solution and its management of the portal. In written evidence to the Justice Committee's Inquiry into whiplash reform and official injury claims service, CPL<sup>19</sup> confirmed its intention to move to user pays in the next 12 months. Our understanding is that this will be an annual licencing fee based on volume usage, however full details have not yet been provided to users. Claimants' and software houses will pay 50% of the running costs of CPL. This will be another overhead for firms. From discussions that we have had with members this is likely to be passed on to claimants, reducing their compensation further.

## **6. Can you provide any comparative data that supports those views?**

The number of firms conducting this work has reduced significantly over the last ten years due to the reduction of costs in 2012 and the failure by the Government to update costs in line with inflation. Lawyers cannot and should not be expected to work for free, it should be

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<sup>17</sup> Porta Co is the company that runs the RTA claims portal in England and Wales.

<sup>18</sup> <https://www.lawgazette.co.uk/news/irwin-mitchell-sells-low-value-pi-business-as-80-staff-switch-firms/5109987.article#:~:text=Yorkshire%20firm%20Minster%20Law%20has,of%20the%20year%20to%20date.>

<sup>19</sup> The call for evidence was launched by the committee in February 2023, with a deadline of 17 March 2023. All evidence was published on 13 September 2023. It can be found <https://committees.parliament.uk/work/7288/whiplash-reform-and-the-official-injury-claim-service/publications/>

reasonable to expect an adequate income for processing these claims. They must have fees set at a fair rate to allow them to remain profitable. When the rates for the portal were originally set, they were costed from the bottom up for the reasonable amount of work that was expected to be undertaken for the steps prescribed in the protocol. In 2012 the fees were slashed to remove a referral fee element; the Government saw this as a way to ban referral fees. This was not a fair way of introducing a ban. Not all claimant solicitors paid referral fees, solicitors at the time obtained business in many different ways, advertising, marketing collectives etc. What we have seen from the reforms in England and Wales is that most PI firms have been driven out of the low value RTA market. (See earlier comments) In most instances, the firms now left processing the majority of these claims are those with financial business arrangements with insurers. This is the only way firms can ensure their overall RTA business remains profitable. The reforms have impacted claimants in two ways, reduced their access to lawyers and reduced their damages. Damages, calculated to compensate them for their pain and suffering, are having to be used to pay for their lawyers' fees despite the accident not being their fault.

The data available also indicated that further reforms introduced through the Civil Liability Act 2018 have had a further impact. IRN research commissioned by first4lawyers in 2022<sup>20</sup> found that only 19% of PI firms surveyed expected to continue to deal with low-value RTA claims, and that a quarter had already exited the low-value RTA sector. The sample of 100 firms is pretty significant, particularly given recent consolidation. These exits from the low-value sector come on top of the already significant decline in firms prior to 2021. See earlier comments in other points section 1 above.

CPL will hold data on the number of firms processing low value RTA both pre and post the introduction of the Official Injury Claims Portal, this will provide information on the reduction of firms in this space over the years. They will also be able to provide information on the proposed fees for user pays.

**7. If you have not had direct experience of the claims portal do you foresee any issues or additional costs or savings to your business?**

Not applicable, see comments above.

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<sup>20</sup> See page 12 at <https://jointhepanel.first4lawyers.com/media/3844/trust-me-i-m-a-lawyer-marketing-legal-services-in-2023.pdf>.

**8. Is there any further information or data you would want the Scottish Government to consider?**

No.

**Fixed Costs**

**1. If a claims portal was introduced, do you agree that fixed recoverable costs should be introduced for portal claims?**

No. Firstly, we challenge the premise that 'costs are not proportionate to the value of the claim'. Pre-litigation solicitors' costs currently imposed under the current pre-action protocol, are less than damages recovered. For example, where damages of £1,000 are recovered, £831 plus vat is recovered in costs. Where a claim successfully settles for £5,000 in damages, solicitors' costs of £1,771.00 plus vat are recovered. The fees are annexed to the protocol. Costs should always be properly costed for the work that the legal representative is required to undertake, both in terms of the professional obligations and advising their client. Solicitors must comply with the obligations imposed on them by their regulators and the requirement under the existing pre action protocol. As explained above, there is an irreducible minimum amount of work that is involved in any personal injury case regardless of value. Costs should also always be uprated for inflation to ensure they keep pace with rising costs in other parts of the sector. We know that the costs currently annexed to the protocol are out of date. They have not been uprated since their introduction, therefore have decreased in real terms due to inflationary pressure, whilst the unit rate for litigated cases was recently increase this was not replicated for protocol costs, therefore any suggestion that the rate is too high is unfair. Salary guides taken from Frasia Wright Associates<sup>21</sup> for solicitors in civil litigation indicate it is an area of lower salaries compared with other sectors. Any further reduction on fees could have a significant impact on salary growth.

APIL has never been opposed to fixed costs in principle if they are attached to a defined process and costed fairly for the work needed. However, experience has been that this is never the case, even where APIL has engaged on reform the goal posts have been moved and injured people have found themselves disadvantaged by changes to the system. We

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<sup>21</sup> [Salary Guide - Frasia Wright Associates](#)

would therefore oppose introduction of a portal and fixed costs in Scotland similar to those in England and Wales as suggested by the paper.

**2. If a claims portal was not introduced, should fixed recoverable costs for low value personal injury claims still be put in place?**

No. As we have said earlier, there are already fixed costs in place for claims that progress under the personal injury protocol. This will include the majority of cases that would be caught by an IT portal. The process in Scotland is currently working well. Costs were fixed by the Scottish Government in 2016<sup>22</sup> following recommendations by Lord Gill<sup>23</sup> and subsequent work by Civil Justice Council for Scotland. The latest CRU and Scottish Government data<sup>24</sup> suggests that no more than 16% of RTA-related personal injury claims in Scotland result in the commencement of court proceedings. In 2021-22, 4,222 RTA cases were initiated in the Scottish civil courts. In comparison, during roughly the same period, a total of 27,235 motor injury claims were registered with the CRU in Scotland.

This shows that the vast majority of lower value RTA cases are caught by pre-litigation fixed costs suggesting that the current protocol is working well. If a breach of the protocol is identified then the court will step in to deal with it. There is no prejudice to the defenders in the current process. Our members' experience is that cases of expenses arguments for breach of the protocol are few and far between, again highlighting the efficiency in the current system.

**3. If fixed costs were introduced, do you foresee any impact on the claimant?**

The introduction of fixed costs associated with low value RTA cases in England and Wales has led to a reduction in claimants damages. See above. This was never a stated aim of the original low value RTA reforms. This Government should be committed to a principle of full compensation.

**4. If fixed costs were introduced, what impact on your business model do you anticipate?**

Following the changes in England and Wales we know that the impact on business can be significant. We have already raised above the impact that fixed costs can have on the sector

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<sup>22</sup> The Act of Sederunt (Sheriff Court Rules Amendment) (Personal Injury Pre-Action Protocol) 2016 came into force on 28 November 2016.

<sup>23</sup> Report of the Scottish Civil Courts Review 2009

<sup>24</sup> Data obtained through Freedom of Information Requests from CRU and Civil justice statistics

and the lack of access to lawyers it has created at the lower end of the RTA market, see Digital Claims section question 6 above.

**5. Are you able to identify any unintended consequences of fixing recoverable costs? If so, please state your reasons why and provide any data.**

When the RTA reforms were introduced in England and Wales no one predicted the impact that these reforms would have on the injured persons access to lawyers, their damages, or the market more widely. See Digital Claims section question 6 above on the impact on the market generally.

**6. Please share any further information you feel should be considered.**

Low Value RTA case are already subject to FRC in Scotland. Whilst it may not be the same regime that is currently in place in England and Wales there are FRC non the less. These costs have not been uprated since their introduction in 2013. Whilst it may be argued that where fixed costs include an element of costs linked to a percentage of damages recovered there has already been an inflationary increase due to damages increasing, this is unfounded. Firstly, there is an element of costs that are not linked to damages. Secondly, we question if damages have risen in line with inflation. We know that the Judicial College increase the recommended bandings for damages but do we know what claimants are actually able to recover? There are other issues that need further thought here too, not all heads of loss will have increased with inflation and this too will have an impact on the rise or otherwise of costs where they are linked to damages.

**Pre-Action Protocols**

**1. In your experience, are the pre-action protocols working as intended? If not, please state why not and what might be done differently?**

In our experience the compulsory pre-action protocols are working well. Members report that cases settle in a fair, timely and just manner, as was intended. See section fixed costs question 2 above. The proportion of RTA cases that are currently litigated, between 12 and 16%, demonstrates this.

**2. In your experience, are the time limits contained in the protocol allowing claims to be settled in a timely manner? If not, please state why not and what might be done differently e.g. reduced time limits for each stage?**

The timeframes in Scotland are working well, a digital process can have a number of cost implications for firms, but there is also the added downside that a process can become too rigid. The current protocol in Scotland provides the times frames but allows for flexibility when necessary. The current procedure in Scotland provides a define process for claims but with some flexibility for communication and resolution of issue where necessary. The process defined within the protocol was reviewed in 2014 by the Civil Justice Council Scotland who consulted upon the usefulness of the voluntary protocol which has been operating since 2006 and this engagement resulted in the protocol currently in place.

See comments above at section fixed costs question 2 on the success of the current process.

**3. Please share any further information you feel should be considered.**

There needs to be a revaluation of the fees that are paid under the protocol, they have not been revisited for some time, have not risen in line with inflation when other costs have.

## Appendix A: Low Value RTA cases with damages up to £25,000

Account No	Forum	Fees	Vat	Total	Damages	Ratio (fees to damages)
1	ASPIC	£3,992.43	£798.49	£4,790.92	£6,255.00	0.76593
2	ASPIC	£6,710.98	£1,342.20	£8,053.18	£14,808.52	0.54382
3	SC (Ord)	£7,957.00	£1,591.40	£9,548.40	£18,500.00	0.51613
4	ASPIC	£6,426.50	£1,285.30	£7,711.80	£13,000.00	0.59322
5	ASPIC	£6,216.90	£1,243.38	£7,460.28	£3,500.00	2.13151
6	SC	£5,964.70	£1,192.94	£7,157.64	£2,200.00	3.25347
7	ASPIC	£5,568.00	£1,113.60	£6,681.60	£2,700.00	2.47467
8	SC (Ord)	£3,928.00	£785.60	£4,713.60	£2,500.00	1.88544
9	ASPIC	£5,407.50	£1,081.50	£6,489.00	£11,000.00	0.58991
10	ASPIC	£9,798.70	£1,959.74	£11,758.44	£18,500.00	0.63559
11	ASPIC	£5,203.00	£1,040.60	£6,243.60	£7,500.00	0.83248
12	ASPIC	£6,988.90	£1,397.78	£8,386.68	£5,500.00	1.52485
13	SC (Ord)	£4,408.00	£881.60	£5,289.60	£5,000.00	1.05792
14	SC (Ord)	£6,909.20	£1,381.84	£8,291.04	£15,000.00	0.55274
15	SC	£2,593.30	£518.66	£3,111.96	£2,695.00	1.15472
16	SC (Ord)	£4,883.50	£976.70	£5,860.20	£12,200.00	0.48034
17	ASPIC	£4,251.50	£850.30	£5,101.80	£4,000.00	1.27545
18	ASPIC	£5,279.45	£1,055.89	£6,335.34	£12,370.00	0.51215
19	SC (Ord)	£7,147.00	£1,429.40	£8,576.40	£6,800.00	1.26124
20	ASPIC	£3,638.75	£727.75	£4,366.50	£4,750.00	0.91926
21	ASPIC	£5,747.00	£1,149.40	£6,896.40	£12,500.00	0.55171
22	ASPIC	£8,327.60	£1,665.52	£9,993.12	£10,000.00	0.99931
23	SC (Ord)	£7,137.00	£1,427.40	£8,564.40	£11,800.00	0.7258
24	SC	£2,975.55	£595.11	£3,570.66	£4,100.00	0.87089
25	ASPIC	£6,693.33	£1,338.67	£8,032.00	£14,235.00	0.56424
26	SC	£2,517.25	£503.45	£3,020.70	£4,250.00	0.71075
27	SC (Ord)	£4,727.40	£945.48	£5,672.88	£6,000.00	0.94548
28	SC (Ord)	£4,570.20	£914.04	£5,484.24	£5,000.00	1.09685
29	ASPIC	£4,546.75	£909.35	£5,456.10	£7,200.00	0.75779
30	SC (Ord)	£6,145.50	£1,229.10	£7,374.60	£11,000.00	0.67042
31	ASPIC	£6,233.60	£1,246.72	£7,480.32	£17,500.00	0.42745
32	ASPIC	£5,977.40	£1,195.48	£7,172.88	£11,000.00	0.65208
33	ASPIC	£7,466.20	£1,493.24	£8,959.44	£7,500.00	1.19459
34	SC (Ord)	£6,608.75	£1,321.75	£7,930.50	£7,250.00	1.09386



35	SC (Ord)	£8,208.00	£1,641.60	£9,849.60	£5,500.00	1.79084
36	ASPIC	£6,247.00	£1,249.40	£7,496.40	£18,000.00	0.41647
37	SC (Ord)	£3,083.40	£616.68	£3,700.08	£4,340.00	0.85255
38	ASPIC	£4,711.10	£942.22	£5,653.32	£15,000.00	0.37689
39	SC (Ord)	£4,082.00	£816.40	£4,898.40	£3,000.00	1.6328
40	SC (Ord)	£7,045.50	£1,409.10	£8,454.60	£4,500.00	1.8788
41	ASPIC	£5,548.50	£1,109.70	£6,658.20	£8,000.00	0.83228
42	ASPIC	£6,849.00	£1,369.80	£8,218.80	£6,500.00	1.26443
43	ASPIC	£8,477.30	£1,695.46	£10,172.76	£25,000.00	0.40691
44	SC	£6,767.65	£1,353.53	£8,121.18	£4,300.00	1.88865
45	SC (Ord)	£4,215.00	£843.00	£5,058.00	£7,500.00	0.6744
46	SC	£2,573.70	£514.74	£3,088.44	£1,600.00	1.93028
47	SC (Ord)	£3,696.50	£739.30	£4,435.80	£3,000.00	1.4786
48	ASPIC	£7,797.90	£1,559.58	£9,357.48	£6,000.00	1.55958
49	ASPIC	£7,143.50	£1,428.70	£8,572.20	£10,000.00	0.85722
50	SC	£4,350.80	£870.16	£5,220.96	£3,500.00	1.4917
51	SC	£3,441.90	£688.38	£4,130.28	£4,000.00	1.03257
52	SC (Ord)	£4,035.40	£807.08	£4,842.48	£3,400.00	1.42426
53	ASPIC	£6,268.00	£1,253.60	£7,521.60	£14,500.00	0.51873
54	SC	£2,228.40	£445.68	£2,674.08	£1,100.00	2.43098
55	ASPIC	£8,907.54	£1,781.51	£10,689.05	£18,932.50	0.56459
56	ASPIC	£10,200.50	£2,040.10	£12,240.60	£21,000.00	0.58289
57	SC (Ord)	£5,645.18	£1,129.04	£6,774.22	£15,805.00	0.42861
58	ASPIC	£6,645.00	£1,329.00	£7,974.00	£10,000.00	0.7974
59	ASPIC	£4,658.73	£931.75	£5,590.48	£8,395.00	0.66593
60	ASPIC	£4,041.05	£808.21	£4,849.26	£3,500.00	1.3855
61	SC (Ord)	£4,374.50	£874.90	£5,249.40	£4,650.00	1.1289
62	SC (Ord)	£3,910.50	£782.10	£4,692.60	£9,000.00	0.5214
63	SC (Ord)	£9,233.00	£1,846.60	£11,079.60	£5,500.00	2.01447
64	ASPIC	£12,584.02	£2,516.80	£15,100.82	£25,000.00	0.60403
65	SC	£2,969.76	£593.95	£3,563.71	£1,000.00	3.56371
66	SC (Ord)	£9,276.70	£1,855.34	£11,132.04	£4,000.00	2.78301
67	SC (Ord)	£3,798.00	£759.60	£4,557.60	£4,500.00	1.0128
68	SC (Ord)	£6,069.28	£1,213.86	£7,283.14	£19,525.00	0.37302
69	ASPIC	£8,431.00	£1,686.20	£10,117.20	£9,000.00	1.12413

70	SC (Ord)	£10,909.35	£2,181.87	£13,091.22	£8,250.00	1.58681
71	SC (Ord)	£4,423.98	£884.80	£5,308.78	£4,985.00	1.06495
72	ASPIC	£5,558.00	£1,111.60	£6,669.60	£9,400.00	0.70953
73	ASPIC	£9,823.65	£1,964.73	£11,788.38	£17,000.00	0.69343
74	SC	£3,421.25	£684.25	£4,105.50	£3,750.00	1.0948
75	SC (Ord)	£4,928.00	£985.60	£5,913.60	£3,500.00	1.6896
76	ASPIC	£4,980.50	£996.10	£5,976.60	£15,000.00	0.39844
77	SC (Ord)	£9,813.70	£1,962.74	£11,776.44	£4,000.00	2.94411
78	SC (Ord)	£10,542.90	£2,108.58	£12,651.48	£5,000.00	2.5303
79	ASPIC	£6,087.70	£1,217.54	£7,305.24	£20,000.00	0.36526
80	ASPIC	£4,239.00	£847.80	£5,086.80	£2,500.00	2.03472
81	SC	£4,499.15	£899.83	£5,398.98	£3,250.00	1.66122
82	SC	£4,767.35	£953.47	£5,720.82	£3,750.00	1.52555
83	ASPIC	£6,845.40	£1,369.08	£8,214.48	£2,500.00	3.28579
84	ASPIC	£4,863.63	£972.73	£5,836.36	£8,375.00	0.69688
85	ASPIC	£4,740.50	£948.10	£5,688.60	£8,100.00	0.7023
86	SC (Ord)	£7,238.50	£1,447.70	£8,686.20	£5,000.00	1.73724
87	ASPIC	£5,238.79	£1,047.76	£6,286.55	£11,250.00	0.5588
88	ASPIC	£6,861.25	£1,372.25	£8,233.50	£4,750.00	1.73337
89	ASPIC	£5,281.38	£1,056.28	£6,337.66	£7,125.00	0.8895
90	ASPIC	£6,178.75	£1,235.75	£7,414.50	£11,250.00	0.65907
91	SC	£4,357.05	£871.41	£5,228.46	£1,630.00	3.20764
92	ASPIC	£6,798.60	£1,359.72	£8,158.32	£5,000.00	1.63166
93	ASPIC	£5,243.30	£1,048.66	£6,291.96	£12,000.00	0.52433
94	ASPIC	£6,520.00	£1,304.00	£7,824.00	£11,000.00	0.71127
95	ASPIC	£7,390.30	£1,478.06	£8,868.36	£7,500.00	1.18245
96	SC(Ord)	£7,955.40	£1,591.08	£9,546.48	£6,000.00	1.59108
97	ASPIC	£8,061.90	£1,612.38	£9,674.28	£7,000.00	1.38204
98	ASPIC	£7,265.50	£1,453.10	£8,718.60	£6,000.00	1.4531
99	SC	£2,710.90	£542.18	£3,253.08	£1,500.00	2.16872
100	SC(Ord)	£3,995.75	£799.15	£4,794.90	£3,650.00	1.31367
101	ASPIC	£7,761.50	£1,552.30	£9,313.80	£12,000.00	0.77615
102	SC(Ord)	£7,503.50	£1,500.70	£9,004.20	£4,000.00	2.25105
103	SC(Ord)	£6,154.50	£1,230.90	£7,385.40	£9,000.00	0.8206
104	SC(Ord)	£3,974.50	£794.90	£4,769.40	£3,200.00	1.49044
<b>All cases</b>		<b>£617,397.58</b>	<b>£123,479.52</b>	<b>£740,877.10</b>	<b>£854,876.02</b>	<b>0.86665</b>

The Abbreviation of forums is as follows:

ASPIC – All Scotland Personal Injury Court

SC (Ord) – Cases raised in the local Sheriff Court where Ordinary Cause expenses were awarded.

SC – Summary Cause.