

Title: Reducing the number and costs of personal injury claims IA No: MoJ 163 Lead department or agency: Ministry of Justice Other departments or agencies: Department of Health	Impact Assessment (IA)		
	Date: 30/07/2012		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure:		
Contact for enquiries:			
Summary: Intervention and Options			RPC Opinion: Amber

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out? Measure qualifies as zero net cost
£0 million	£0 million	£0 million	Yes

What is the problem under consideration? Why is government intervention necessary?
 Concerns have been raised about the current processes for claiming for whiplash injuries following a road traffic accident (RTA) as it may encourage a large number of unnecessary and less meritorious claims. In turn this may be pushing up the cost of motor insurance for all drivers. In recent years the number of personal injury claims made for whiplash cases has increased significantly whilst, over the same period, the number of road traffic accidents has been falling. Government intervention is required as the proposed changes require court rule changes.

What are the policy objectives and the intended effects?
 The policy objectives and intended effects are:

- To reduce the cost of contesting RTA personal injury claims through court.
- To discourage people from bringing less meritorious RTA personal injury claims or from making exaggerated claims.
- Overall, to lower the overall cost of RTA personal injury claims to insurers, which, given insurers' commitment to pass on savings to policy holders, would result in downward pressure on the cost of motor insurance.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following options have been considered:

Option 0 – Do nothing (base case)

Option 1 – Introduce independent medical panels to assess whiplash injuries

Option 2 – Increase the small claims track limit of the county court for RTA personal injury claims from £1,000 to a maximum of £5,000.

Option 3 – Implement Options 1 and Option 2 together.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: £0m	Non-traded: £0m	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date: 22/11/12

Summary: Analysis and Evidence

Policy Option 1

Description: Introduce 'independent medical panels' to assess whiplash injuries

FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
Year	Year	Years	Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to quantify the costs associated with this proposal.

Other key non-monetised costs by 'main affected groups'

A one-off cost associated with establishing 'independent medical panels' and the ongoing costs of operating the new arrangements. The cost per medical assessment may be greater. Legal services providers and claims management companies may face lower demand for their services. There would be distributional impacts on medical practitioners and experts, with some undertaking more work and others undertaking less, and there may be a reduced overall volume of medical assessments. Claimants would lose from receiving reduced overall compensation, though this might relate to fewer unmeritorious or exaggerated claims. Claimants would lose from increased exposure to legal services costs and medical assessment costs as a result of there being fewer successful claims (and this might manifest itself in terms of higher claimant BTE insurance premia).

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to quantify the benefits associated with this proposal.

Other key non-monetised benefits by 'main affected groups'

Defendants (insurers) would benefit from lower overall compensation payments, and from lower legal costs and lower medical assessment costs as a result of there being fewer claims and fewer successful claims. There would be distributional impacts on medical practitioners and experts, with some undertaking more work and others undertaking less work, and there may be an increase in levels of business from each medical assessment being more thorough and subject to more quality assurance. Peer review might also improve medical assessment skills.

Key assumptions/sensitivities/risks

Discount rate (%)

It is assumed that there would be a reduction in the number of claims and that there would be a fall in the size of settlements and possibly in the proportion of claims which are successful. It is assumed that there might be an increase in the cost per medical assessment. There is a risk that the changes to the direct and indirect incentives applying to medical practitioners and experts will have a smaller than expected, and possibly limited, impact on the proportion of positive diagnoses and a smaller, and possibly limited reduction on the volume of claims, the reduction in settlements and the proportion of successful claims.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	Yes	Zero net cost

Summary: Analysis and Evidence

Policy Option 2 (Group 'A')

Description: Increase the small claims track limit for RTA personal injury claims from £1k to £5k

CONTESTED CLAIMS WHICH MOVE TO THE SMALL CLAIMS TRACK (CLAIMANTS HAVE BTE INSURANCE)

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to quantify the costs associated with this proposal.

Other key non-monetised costs by 'main affected groups'

Successful claimants and defendants would have to pay their own costs in the small claims track. Claimant costs would be covered by BTE insurance.

Legal services providers, after the event insurers and claims management companies may face a reduction in demand for their services as the small claims track requires fewer legal resources than the fast track.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to quantify the benefits associated with this proposal.

Other key non-monetised benefits by 'main affected groups'

Successful claimants would benefit from quicker case resolution.

Unsuccessful claimants and defendants would no longer be liable for their opponent's costs and would also benefit from lower legal costs per case as cases in the small claims track require fewer legal resources on average. For claimants these benefits would accrue to their BTE insurer. There would also be benefits to unsuccessful parties through lower court fees.

Key assumptions/sensitivities/risks

Discount rate (%)

There is no change in volume for this group of claims.

There is no change in case outcomes and compensation when cases move from the fast track to the small claims track.

Legal costs are lower in the small claims track limit than in the fast track.

The impact on HMCTS is assumed to be neutral due to full cost recovery in civil cases.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	Yes	Zero net cost

Summary: Analysis and Evidence

Policy Option 2 (Group 'B')

Description: Increase the small claims track limit for RTA personal injury claims from £1k to £5k
 UNCONTESTED CLAIMS WHICH MAY BE CONTESTED IN THE SMALL CLAIMS TRACK (CLAIMANTS HAVE BTE INSURANCE)

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to quantify the costs associated with this proposal.

Other key non-monetised costs by 'main affected groups'

Defendants would face greater legal costs for their own defence for cases that they contest.
 BTE insurers would face greater legal costs for cases that are contested.
 Claimants whose claims are successfully contested would lose compensation. However, this cost would represent compensation that was previously unnecessarily paid.
 Claimants whose claims are unsuccessfully contested would have longer waiting times for compensation.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to quantify the benefits associated with this proposal.

Other key non-monetised benefits by 'main affected groups'

Defendants would benefit from lower compensation where they successfully contest claims.
 Defendants would benefit from lower claimant legal costs where they unsuccessfully contest claims.
 Legal services providers would benefit from an increase in demand for their services.
 Consumers in wider society would benefit if insurance premiums are reduced due to lower insurer costs.

Key assumptions/sensitivities/risks

Discount rate (%)

There is no change in the volume of claims for this group.
 Defendants would choose to contest more claims.
 The impact on HMCTS is assumed to be neutral due to full cost recovery in civil cases.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m		

Summary: Analysis and Evidence

Policy Option 2 (Group 'C')

Description: Increase the small claims track limit for RTA personal injury claims from £1k to £5k

CONTESTED CLAIMS WHICH MOVE TO THE SMALL CLAIMS TRACK (CLAIMANTS DON'T HAVE BTE INSURANCE)

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to quantify the costs associated with this proposal.

Other key non-monetised costs by 'main affected groups'

Successful claimants and defendants would be liable for their own legal costs for cases that move to the small claims track.

Legal services providers, after the event insurers and claims management companies may face a reduction in demand for their services as the small claims track requires fewer legal resources than the fast track.

There would be a reduction in demand for ATE insurance which may previously have been taken out to cover legal costs in the fast track.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to quantify the benefits associated with this proposal.

Other key non-monetised benefits by 'main affected groups'

Successful claimants would benefit from quicker case resolution.

Unsuccessful claimants and defendants would no longer be liable for their opponent's costs and would also benefit from lower legal costs per case in the small claims track. There would also be benefits to unsuccessful parties through lower court fees.

Key assumptions/sensitivities/risks

Discount rate (%)

There is no change in volume for this group of claims.

There is no change in case outcomes and compensation when cases move from the fast track to the small claims track.

Legal costs are lower in the small claims track limit than in the fast track.

Claimants enter damages based agreements (DBAs) or act as litigants in person for their claims.

The impact on HMCTS is assumed to be neutral due to full cost recovery in civil cases.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	Yes	Zero net cost

Summary: Analysis and Evidence

Policy Option 2 (Group 'D')

Description: Increase the small claims track limit for RTA personal injury claims from £1k to £5k

UNCONTESTED CLAIMS WHICH MAY BE CONTESTED IN THE SMALL CLAIMS TRACK (CLAIMANTS DO NOT HAVE BTE INSURANCE)

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
	Low	High		
Low				
High				
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to quantify the costs associated with this proposal.

Other key non-monetised costs by 'main affected groups'

Defendants would face greater legal costs for their own defence for contested cases.
 Claimants whose claims are successfully contested would lose compensation.
 Claimants whose claims are unsuccessfully contested would face legal costs associated either with a DBA or acting as a litigant in person.
 Claimants whose claims are unsuccessfully contested would have longer waiting times for compensation.
 There would be lower demand for legal services if fewer claims are taken forward.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
	Low	High		
Low				
High				
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to quantify the benefits associated with this proposal.

Other key non-monetised benefits by 'main affected groups'

Defendants would benefit from lower compensation where they successfully contest claims.
 Defendants would benefit from lower claimant legal costs where they unsuccessfully contest claims.
 Legal services providers would benefit from an increase in demand for their services if more claims are contested.
 Consumers in wider society may benefit if insurance premiums are reduced due to lower insurer costs.

Key assumptions/sensitivities/risks

Discount rate (%)

Claimants enter damages based agreements (DBAs) or act as litigants in person for their claims.
 There would be a reduction in the number of claims lodged as the expected return for claimants would reduce.
 Defendants would choose to contest more claims.
 Claimants would not previously have taken out ATE insurance for this group of claims.
 The impact on HMCTS is assumed to be neutral due to full cost recovery in civil cases.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m		

Summary: Analysis and Evidence

Policy Option 3

Description: Introduce independent medical panels and increase the small claims track limit together

FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
Year	Year	Years	Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to quantify the costs associated with this proposal.

Other key non-monetised costs by 'main affected groups'

Defendants (insurers) would face greater legal costs for their own defence if more claims are contested.
 Defendants (insurers) would face a cost for setting up medical panels and may face greater costs per assessment.
 Claimants whose claims are successfully contested would lose compensation.
 Successful claimants would receive lower compensation. There would be lower demand for legal services.
 Some medical practitioners and experts might do more work, others might do less, and there might be a reduction in the number of assessments.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to quantify the benefits associated with this proposal.

Other key non-monetised benefits by 'main affected groups'

Defendants (insurers) would benefit from fewer and lower compensation payments.
 Defendants (insurers) would benefit from lower claimant legal costs.
 Some medical practitioners and experts might do more work, others might do less, and there might be an increase in levels of business as a result of assessments being more thorough and subject to greater quality assurance.
 Consumers in wider society may benefit if insurance premiums are reduced due to lower insurer costs (this double counts the benefit to insurers).

Key assumptions/sensitivities/risks

Discount rate (%)

Assume there are fewer claims brought overall and also fewer claims are successful.
 Assume legal costs are lower for claims allocated to the small claims track rather than the fast track.
 Assume there is an increase in the number of claims contested by defendants (insurers).
 The impact on HMCTS is assumed to be neutral due to full cost recovery in civil cases.
 There is a risk that the changes to the direct and indirect incentives applying to medical practitioners and experts will have a smaller than expected, and possibly limited, impact on the proportion of positive diagnoses and a smaller, and possibly limited reduction on the volume of claims, the reduction in settlements and the proportion of successful claims.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	Yes	Zero net cost

Evidence Base (for summary sheets)

1. Introduction

Background

- 1.1 Over recent years the number of road traffic accident (RTA) personal injury (PI) claims has risen significantly from around 520,000 in 2006/07 to around 830,000 in 2011/12¹. In 2011/12 around 540,000 of these claims were described as being for whiplash injuries². This increase in claims has coincided with a decrease in the number of RTAs reported to the police; between 2006 and 2011/12 they decreased from around 190,000 to around 150,000³, although trends in unreported accidents are unknown.
- 1.2 Whiplash is the term used to describe the neck pain which occurs after the soft tissue in the spine has been stretched and strained when the body is thrown in a sudden, forceful jerk. Whiplash is often caused in road traffic accidents; especially those involving rear-end motor collisions. As a soft tissue injury it is difficult to prove as there may be no visible signs. Evidence is often a medical practitioner's or experts' opinion based on the claimant's description of the accident and the pain or discomfort. That opinion might only be requested some time after the injury was alleged to have occurred. Diagnosing whiplash is inherently difficult.
- 1.3 On 14 February 2012, the Prime Minister hosted an 'Insurance Summit' to discuss the issue of the increasing costs of motor insurance premiums. Following the summit the Government and the insurance industry publicly committed to a number of actions designed to help reduce the rising costs of motor insurance. Insurers also committed to pass on to consumers and businesses any savings that could come from Government reforms to reduce costs to the industry.
- 1.4 The Ministry of Justice (MoJ) have been progressing work in a number of areas since the Prime Minister's summit and the follow up Insurance Summit hosted by the Secretary of State for Transport, some of which was already in train. This work includes implementing the main recommendations from Lord Justice Jackson's Review of Civil Litigation Costs. These reforms include the banning of referral fees in personal injury cases and fundamental reform of 'no win no fee' conditional fee arrangements.
- 1.5 These reforms are being taken forward through Part Two of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and will be implemented alongside Part One of the Act in April 2013. The Government believes that Lord Justice Jackson's reforms may have a beneficial impact on the volume of unmeritorious and exaggerated whiplash claims.
- 1.6 The Government also intends to reduce the fixed legal costs payable under the Road Traffic Accident (RTA) personal injury protocol for claims where liability has been admitted. MoJ officials have engaged with stakeholders to gather evidence on the appropriate level for these fixed legal costs. In addition to this we are working to determine how the RTA personal injury protocol can be extended to cover Employers Liability and Public Liability accident cases as well as raising the threshold for claims from £10,000 to £25,000 by April 2013.
- 1.7 Additionally, the Ministry of Justice have committed to investigate and identify options and implement changes to reduce the number and cost of unmeritorious and/or exaggerated whiplash claims. It is consulting on two options and working to identify further options. The Government is also committed to ensuring that people who have suffered a genuine neck injury should continue to be able to get appropriate compensation.
- 1.8 Under current arrangements, a person who wishes to make a claim for a whiplash injury as a result of a car accident can go to any registered medical practitioner and ask them to certify that they have sustained an injury. Many go to their own GP (as a private, non-NHS transaction), others to a GP or a doctor employed by a Medical Reporting Organisation recommended by their legal service providers or claims management company (CMC). A recommended standard fee of £195 for this has been agreed by the private fees committee of the British Medical Association, though the

¹ Data on number of cases registered from the Compensation Recovery Unit (part of DWP). www.dwp.gov.uk/other-specialists/compensation-recovery-unit/performance-and-statistics/

² Data from Compensation Recovery Unit.

³ Data on road traffic accidents from Department for Transport assets.dft.gov.uk/statistics/tables/ras40007.xls
assets.dft.gov.uk/statistics/tables/ras45009.xls

- 1.9 Compensation for whiplash claims varies according to the severity of injuries but various sources suggest that the average claim is around £2,500⁴. There is evidence that suggests the majority of claims are less than £5,000⁵. The cost of litigation in relation to these claims appears to be high relative to the compensation paid. An Association of British Insurers (ABI) report indicates that in motor claims of less than £5,000 for every £1 paid in compensation around 88p is paid to claimant lawyers⁶. The ABI also estimates that the total cost of whiplash claims is around £2 billion per annum in compensation and legal fees and that this adds around £90 to the average car insurance premium. These figures have not been verified by the Government.
- 1.10 A large number of whiplash claims are resolved via the RTA fixed costs protocol. Many protocol claims are processed under the RTA Portal, an electronic system which was introduced in 2010 to streamline the process for making RTA PI claims. This system allows legal service providers to lodge PI claims valued between £1,000 and £10,000 on behalf of individual claimants against insurance companies. Claims are settled within the system if liability is admitted by the defendant insurer and the claim is agreed to fall within the value thresholds. When claims are settled under the protocol insurers pay fixed costs to claimant lawyers. £400 is currently paid at the “notification” stage if liability is admitted and £800 is currently paid at the “valuation” stage although the Government has committed to reducing these costs. In addition “success fees” may be paid for lawyers operating on conditional fee arrangements (CFAs or “no win, no fee”) and many claims are submitted by CFAs.
- 1.11 Detailed management information on the usage of the protocol is not available but between 30 April 2010 and 31 March 2012 around 1.4 million claims were sent to insurers using the system. This large number includes an unquantified amount of duplicate claims and claims sent to insurers in error.
- 1.12 Claims may drop out of the protocol if they are contested by insurers, are not deemed to fall within the valuation threshold at the “valuation stage” or because they are not actioned quickly enough by defendants. Contested claims then enter the court system although many of these settle before they reach a court hearing. Once out of the protocol, legal costs are determined through a “fixed recoverable costs scheme” which generally pays claimant lawyers a fixed fee of £800 plus 20% of the total compensation awarded if claimants are successful.
- 1.13 The court procedures for contested whiplash claims are determined by the Civil Procedure Rules (CPR) which provides a single set of rules that apply to claims both in the High Court and the County Courts. The CPR specifies a system of three case management tracks, all of which have different rules that apply to them. These tracks ensure that cases are dealt with in a manner appropriate to their value and complexity.
- 1.14 All defended civil claims are allocated to one of these tracks, the multi-track, the fast track or the small claims track. There are several factors that the court can take into account when allocating a claim to a certain track, for example, the views of the parties and the nature and complexity of the claim. However, the most straightforward way for the courts to distinguish between cases is on the basis of monetary value, so each different track has a financial limit. These limits determine what the normal track for a claim will be. Highest value claims tend to be allocated to the multi-track, lower value claims to the fast track, and the lowest value claims to the small claims track, though allocation will also depend on other factors, such as complexity of case.

⁴ Written evidence from AA motor insurance to the Transport Committee. The Cost of Motor Insurance, Volume I (March 2011). Written evidence page 62.

Data for a sample of RTA personal injury claims from one commercial source indicates that the median claim is for around £2,600. These data relate to three types of case only and only to a very small proportion of the total number of cases. Whether the data is representative of wider cases brought has not been verified.

⁵ Written evidence from Saga group to the Transport Committee. The Cost of Motor Insurance, Volume II (March 2011). Written evidence page 19.

Data from the same commercial source as for footnote ‘4’ indicates that more than 75% of claims are valued at less than £5,000.

⁶ ABI, Tackling whiplash Prevention, Care, Compensation. November 2008

- 1.15 Currently the small claims track monetary threshold is £5,000 (or less), though the Government intends to increase this to £10,000 from April 2013. There are some exceptions to this general rule including for personal injury claims where the limit of £1,000 applies (this relates to the damages awarded for pain, suffering and loss of amenity only and excludes any other damages claimed). In the small claims track the costs that can be recovered from the other side are strictly limited. The usual rule is that the court may only award fixed costs attributable to issuing a claim, any courts fees, reasonable travelling expenses for a witness or party and limited costs for loss of earnings for a party or a witness (up to £50 per day per person). In addition fees of any permitted experts (currently limited at £200 per expert) can be claimed and an amount up to £260 can be claimed for legal advice and assistance in claims including an injunction or specific performance. No costs can be claimed for legal representation or for the services of a lay representative. In contrast to the fast and multi tracks claimants are more likely to appear as litigants in person.
- 1.16 The standard value of claims under the fast track is between the small claims track threshold and £15,000. This includes most contested whiplash claims. Fast track cases have to be dealt with within a timetable provided for in the CPR and the trial can last no longer than one day. The use of expert witnesses is limited and there is fixed trial costs. Claims which are not allocated to either the small claims or fast track are allocated to the multi-track and are typically higher in value and complexity.
- 1.17 In relation to motor insurance many policy holders might possess Before The Event (BTE) insurance which covers future possible legal costs which might arise in the event of an accident. BTE cover is taken out before an accident occurs, usually at the same time that the motor insurance itself is taken out. It covers both the legal costs of pursuing a claim and the defendant's legal costs if the claim is unsuccessful (and where the defendant's costs are passed to the claimant).
- 1.18 Where BTE insurance has not been taken out it might be possible for a claimant to take out After The Event (ATE) insurance against future possible legal costs. ATE cover is taken out after an accident has occurred. It covers the claimant's exposure to the defendant's legal costs in cases where the claimant is unsuccessful (and where the defendant's legal costs would be passed to the claimant).

Problem under consideration

- 1.19 The Government is concerned that that the growth in RTA claims for whiplash at a time when the number of reported RTAs has fallen might be indicative of too many unmeritorious or exaggerated claims, and that increasing costs on insurers might lead to upward pressure on motor insurance premiums. Data received by the OFT and Transport Select Committee suggests that there might be significant costs associated with fraudulent personal injury claims for motor accidents. It is difficult to measure the costs of fraud or determine recent trends but the Insurance Fraud Bureau estimates that there were over 30,000 fraudulent motor accident claims in 2009 and that fraudulent motor insurance claims cost the industry around £350 million per year. These figures have not been verified by the Government. It is possible that the current process for making claims may be contributing to the level of unmeritorious or exaggerated claims.
- 1.20 As outlined above, the difficulty inherent in diagnosing a whiplash claim makes it difficult for insurers to contest claims. There is no standard, objective diagnostic test in normal use. Diagnosis tends to be based on symptoms reported by the claimant which are difficult for the doctor to verify or disprove. In many cases the doctor is asked to assess the alleged injury some time after the accident, making it even more difficult to assess whether and to what extent the symptoms exist, and if so whether they are the result of the accident or are due to other causes. As there is no standard reporting form, the information reported by doctors can be variable, potentially making it more difficult for insurance companies to challenge a claim.
- 1.21 There is anecdotal evidence that some existing arrangements for selecting and commissioning medical practitioners and experts, and for paying for their assessments, could generate financial incentives which could be associated with the existence of exaggerated or unmeritorious claims. Furthermore existing clinical governance arrangements suggest that there is scope to improve current levels of feedback and clinical audit and peer review in relation to medical assessment.
- 1.22 Furthermore where the legal costs of contesting a case are higher than the size of the claim there might be a financial incentive for a defendant to settle that claim rather than to challenge it, especially if this was a one-off occurrence. This might be balanced against other, non-financial,

incentives to challenge the claim all the same, e.g. reputational incentives. If, however, an expectation develops amongst claimants that smaller claims are, in general, always unlikely to be challenged this might lead to a higher volume of smaller claims being made, including less meritorious claims.

- 1.23 The costs generated through increased levels of compensation have been cited by insurers as a reason behind growth in motor insurance premiums in recent years. The AA's British Insurance Premium index reports that average quoted premiums for comprehensive cover have increased significantly since 2009; in the year to October 2011 these premiums increased by between 15% and 20% on average. Other measures of the cost of insurance premiums show similar increases⁷.
- 1.24 Increasing motor insurance costs might conceivably lead to increasing numbers of people driving illegally without insurance and may also increase the propensity to make a claim (the so-called 'moral hazard' issue). Increasing insurance costs may also increase travel costs and may deter some people from driving. On the other hand if increasing insurance costs relate to increased compensation payments then successful claimants, who might also be motorists, would benefit from recent trends, though that benefit might come from exaggerated and/or fraudulent claims.

Policy objectives

1.25 The main policy objectives are:

- a. **To discourage people from bringing unmeritorious personal injury claims for whiplash or from making exaggerated claims.** This would be a desired result from clearer and more consistent diagnoses for whiplash and the creation of the 'independent medical panels'. Increased incentives (derived from lower own cost and a reduced risk of paying the other sides' costs) for insurers to contest claims in the court might also contribute, not least through a deterrent effect on those who might otherwise bring an unmeritorious or an exaggerated claim.
- b. **To reduce the cost of contesting RTA personal injury cases through the court.** Currently high costs may arise from the use of the fast track for contesting personal injury claims, this currently being the only alternative to not contesting the claim if it exceeds £1,000. This makes it inherently less likely that an insurance company would challenge to a possibly exaggerated or fraudulent claim than if that challenge were to proceed on the small claims track.

In addition to fewer fraudulent or exaggerated claims, one key desired outcome from these changes would be to lower the overall cost of RTA personal injury claims to insurers, which might bring downward pressure on the cost of motor insurance premiums (given insurers' commitment to pass on savings to policy holders), without having an adverse impact on meritorious claims which are not exaggerated.

Policy options under consideration

1.26 The policy options under consideration are:

- a. **Option 1: The introduction of 'independent medical panels' and guidance to assess the severity of whiplash injuries.** This proposal would seek to ensure that all whiplash claims are subject to more consistent and more independent medical evaluation. The proposals might also have a deterrent effect on individuals who might otherwise have brought an unmeritorious or exaggerated claim.
- b. **Option 2: Increasing the small claims track limit for relevant RTA claims from £1,000 to a maximum of £5,000.** This proposal would mean that a number of contested personal injury or whiplash RTA claims that are currently heard in the fast track would move to the small claims track. In addition some uncontested cases currently processed through the RTA personal injury protocol might be contested in the small claims track in

⁷ The Confused.com/EMB insurance price index has reported similarly increases in premiums.

future. Under the small claims track, the winning side would be far more likely to pay its legal costs. This proposal would also result in lower fees for court users in the cases that move to the small claims track, and a more efficient use of court and judicial resources. As judicial discretion will continue to apply, it is assumed that only those cases for which the small claims track is appropriate would be allocated to that track: more complex cases would continue to be allocated to higher value tracks using existing judicial powers.

- c. **Option 3: The introduction of Option 1 and Option 2 together.** Together these proposals might deliver a more significant reduction in unmeritorious and/or exaggerated claims, including the potential for a stronger deterrent effect.

1.27 At this stage the government's preferred option is option 3.

Economic rationale

1.28 The conventional economic approach to Government intervention is based on efficiency or equity arguments. Government intervenes if there is a perceived failure in the way a market operates ("market failures") or if it would like to correct existing institutional distortions ("government failures"). Government also intervenes for equity ("fairness") reasons. In this case, intervention would be justified primarily on efficiency grounds.

1.29 The proposals considered in this Impact Assessment are primarily justified on efficiency grounds. Lowering the aggregate costs of making valid claims and discouraging unnecessary and less meritorious claims would free up resources for more productive economic activity. It is unlikely that the market would be able to reduce the costs of claims and the number of unnecessary and less meritorious claims without government intervention. This is because the costs and incentives that currently exist are, in part, dependent on court procedures and on the current framework for diagnosis.

Affected stakeholder groups, organisations and sectors

1.30 The following groups are expected to be affected by the proposals:

- a. Claimants, usually individuals;
- b. Defendants, usually insurers;
- c. HMCTS;
- d. Legal service providers and claims management companies;
- e. Medical practitioners;
- f. BTE insurers and ATE insurers; and
- g. Third sector advice agencies.

A separate Equalities Impact Assessment will accompany the consultation. It is likely to identify that further analysis of whether there would be a disproportionate impact on protected groups is warranted.

2. Costs and benefits

2.1 This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly and proportionately be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

2.2 In this case a qualitative assessment has been provided for most of the costs and benefits. An indication of costs and benefits has been provided where possible but it has not been possible to quantify other costs and benefits. The key assumptions underpinning this assessment have been highlighted for each option.

- 2.3 For Option 1, a quantitative assessment would require information on the number of claims which are currently subject to medical assessment and the time and costs devoted to these assessments. Information would also be required on claimants' and medical practitioners' changes in behaviour as a result of this proposal. This information is either unknown or commercially sensitive and therefore it has not been possible at this stage to quantify the impacts of this proposal.
- 2.4 For Option 2, a quantitative assessment would require data on the number of claims that would move to the small claims track and the costs associated with these claims for different parties. Some illustrative figures are provided for the current number of cases under this option but it is not known how many additional cases may be contested as a result of this proposal. In addition, other government reforms are likely to change the baseline number of cases in the future and the size of this impact is not known. Data is also not currently available on the legal costs and compensation paid for personal injury claims. This data is either unknown or commercially sensitive. Even where data is available there may be issues with data from samples being representative of the whole industry and self-reported data reflecting bias.
- 2.5 It should be noted that MoJ is planning to implement a number of other reforms in April 2013 which will affect the "base case" against which these further reforms will impact. This includes measures implemented through Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which are expected to reduce the overall number of PI claims being made, (including a ban on referral fees).
- 2.6 The Government also intends to reduce the fixed legal costs payable under the Road Traffic Accident (RTA) personal injury protocol for claims where liability has been admitted. In addition to this MoJ is working to determine how the RTA personal injury protocol can be extended to cover Employers Liability and Public Liability accident cases as well as raising the threshold for claims from £10,000 to £25,000 by April 2013.
- 2.7 As such, the current number, costs and outcomes of claims is not representative of the future "do nothing" baseline against which these further proposals will impact. Where it is available data has been provided on the current number of claims to provide some indication of the scale of potential impacts but this should be considered indicative only because of the impact of the further reforms mentioned whose impacts are largely unquantifiable at this stage.
- 2.8 This impact assessment therefore provides some anecdotal evidence from various sources including research reports from industry bodies. These data are provided for indicative purposes to inform this impact assessment and we will seek further information as part of the consultation exercise. If additional data is available, we will undertake further analysis to inform future impact assessments.

Option 0: Base case (do nothing)

- 2.9 Under the "do nothing" base case, the current system would continue to apply.
- 2.10 Because the do nothing option is compared against itself its costs and benefits and necessarily zero, as is its Net Present Value (NPV).⁸

Option 1 – 'Independent medical panels' to assess whiplash injuries

Description

- 2.11 This option involves the introduction of 'independent medical panels' to assess whiplash injuries alongside the dissemination of guidance on diagnostic methods.
- 2.12 Development of guidance on diagnostic methods – and in the longer term, development of better diagnostic tools – may mitigate some of the problems around diagnostic uncertainty although initially, it is likely that whiplash diagnoses will remain largely uncertain. The Department of Health (DH) will be taking forward work with the appropriate professional organisations to develop clinical

⁸ The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

guidance and to assess the scope for further research. In addition, 'independent medical panels' would assess claims for whiplash injury and give advice to claimants, insurers and the courts.

2.13 There are broadly two key approaches to setting up 'independent medical panels':

- a. **An accreditation scheme:** The Government would establish standards for accrediting providers of medical assessment services and would appoint an organisation by competitive tender to run an accreditation scheme. Individual doctors, groups of doctors or Medical Reporting Organisations could apply for accreditation. Only reports from accredited doctors or organisations, submitted using a standard pro-forma, would be accepted as evidence in disputed claims;
- b. **A national call-off contract:** Government would work with the insurance industry and representatives of claimants' legal service providers to develop the criteria for a national framework (call-off) contract. Medical organisations would be invited to bid to be placed on the list of approved suppliers under the contract, possibly with separate lists for different regions. An independent board, with representatives from the court service, claimants' organisations and insurance companies, would tender for contracts with organisations on the appropriate list to assess whiplash claims and to supply reports, again using the standard pro-forma.

Further possible approaches might be suggested in replies to the consultation.

- 2.14 On either approach, a key feature would be the use of a standardised medical report for the assessment of claims. This would be based on best practice guidance in the diagnosis of injury and would contain information on the date of the accident, the medical notes of any consultation with the claimant's GP or specialist immediately after the accident, the claimant's reported symptoms, the date of the medical assessment, the nature of the medical examination and the diagnostic tests performed at the assessment, and the evidence supporting the conclusion. Where the medical practitioner or expert performing the assessment was in significant doubt over the presence or absence of a whiplash injury or over the likelihood of significant lasting damage, they would be invited to express the degree of uncertainty through appropriate probabilistic measures. The medical report would be made available equally to the claimant, the insurer, and (for disputed claims) to the courts.
- 2.15 Another key element of either approach may be to monitor for each medical practitioner or expert what proportion of cases receive a positive diagnosis and what level of damages is awarded. This might be part of a broader monitoring or performance management framework.
- 2.16 In addition to diagnosis, processes around prognosis might also be improved in a similar way, giving an improved evidential basis for the purpose of agreeing a settlement (which could affect exaggerated claims in particular).
- 2.17 Medical assessments in future might not necessarily be undertaken by a number of doctors or experts sitting in a panel. Instead an assessment might normally be carried out by a single medical practitioner or expert, but a proportion of cases would be subject to peer review and/or audit. Or two medical practitioners or experts could independently examine the patient and then compare their findings in order to produce a single consensus report. Any of these options would increase costs, although they should also increase the degree of confidence in the findings. Whichever option is chosen, we consider that a sample of assessments should be peer reviewed for audit purposes; this could form part of the accreditation process under variant (i), or could be a condition for allowing organisations to participate in the scheme under variant (ii).
- 2.18 The Government considers that it would be inappropriate for the costs, on either variant, to fall on the taxpayer. The benefits will accrue – if as intended, the result is to reduce the number of unnecessary and less meritorious or exaggerated claims – to the insurance companies in the first instance, and indirectly to motorists via reduced premiums. The funding model remains subject to further consideration, and views have been sought on this over the consultation period. Depending upon the outcome of these considerations, it is possible that the initial costs of obtaining a medical assessment could be met by the claimant, or by the defendant (insurer), or by a combination of both.

- 2.19 It is possible that the financial incentives facing the medical practitioner or expert in relation to their medical assessment may be affected by who commissions and (initially) pays for the assessment, including in relation to whether and how repeat business relationships might develop, and in relation to how particular individual medical practitioners and experts might be selected. The impacts identified in this Impact Assessment are contingent upon the funding model and commissioning and selection arrangements supporting an outcome whereby fewer exaggerated and unmeritorious claims are made.
- 2.20 Whichever variant is chosen the reforms would amount to establishing increased gatekeeping compared to now in relation to who might provide a medical assessment in future, and enhanced standards and quality assurance in relation to the content of medical assessments. This might send a signal to claimants and claims management companies about the need for claims to be fully justified. It is anticipated that the peer review elements of the proposals may improve assessment standards. It remains the case that there will be no objective test in relation to the diagnosis of whiplash.
- 2.21 Depending upon how the reforms operate in practice, the details of which are still being worked up, it is likely that claimants and claims management companies might have less choice in who provides their expert assessment. If the ability to generate repeat business relationships is weakened it is likely that this might weaken the financial relationship between particular claims management companies and particular experts and medical practitioners. Even so, the body of experts and medical practitioners would still have a financial interest in the total volume of claims, and hence assessments, not falling. There is therefore a risk that 'independent medical panels' will try to maintain the volume of claims by giving a higher proportion of favourable diagnoses than the clinical facts would justify. However this is likely to be mitigated to some extent by the peer review proposals.
- 2.22 As a result of these factors it has provisionally been assumed that in future there might be a reduced volume of initial claims and also that there might be a reduced proportion of positive diagnoses in relation to claims which are still made, including diagnoses which are associated with exaggerated claims. The extent of any reductions is unknown. This will be considered further over the consultation period and also in light of consultation responses.
- 2.23 The cost of securing a medical assessment might be greater in future. This is because whilst the diagnosis techniques would remain similar to current practices increased costs might be associated with establishing and operating the accreditation scheme or the call-off contract. Increased costs might also be associated with the introduction of peer reviews and joint assessments, and with greater guidance and the use of a new consistent assessment template.

Costs

- 2.24 There may be some one-off familiarisation costs for all affected parties. These costs are not expected to be significant.
- 2.25 The Government intends to consult on how such 'independent medical panels' would be funded, subject to the costs not falling on the public purse.

Defendants (insurers)

- 2.26 Defendants would face one-off set up costs associated with establishing 'independent medical panels'. The scale of these costs is unknown.
- 2.27 Defendants would face increased costs for medical assessments where liability is admitted or where they unsuccessfully challenge a claim. The costs per medical assessment might be greater than now, depending upon the extent of peer reviews and joint reviews in future. Use of the new consistent assessment template might also raise the costs of each medical assessment.

Claimants

- 2.28 Claimants who would previously have received compensation for unmeritorious claims would lose out if they no longer succeed with such claims in future. A similar change would happen if there were a reduction in exaggerated claims.

- 2.29 Claimants who no longer receive a positive diagnosis and are no longer successful in their claim would face a cost for their medical assessment and for the legal services. It has been assumed that more claimants might be unsuccessful in future. It is also possible that the cost of a medical assessment might be higher in future.
- 2.30 Some claimants may have before the event (BTE) insurance that covers these costs for them. However if these costs rise in aggregate then BTE insurance premia might also be expected to rise in line with this.
- 2.31 Claimants may face additional administrative costs as a result of this proposal depending on where and when medical panels were heard. It is possible that a more concentrated process for assessing whiplash injuries would mean that claimants have to travel further on average to undergo medical assessment.

HM Courts and Tribunal Service (HMCTS)

- 2.32 It is anticipated that this proposal would result in fewer whiplash claims being lodged by claimants. This may result in a reduction in the number of claims that are contested and enter the courts system which would result in a reduction in court fee income.
- 2.33 However, this reduction in fee income would be accompanied by a reduction in court resources required and, as HMCTS operates on a full cost recovery basis, it is assumed that the financial impact on HMCTS would be neutral.

Medical practitioners and experts

- 2.34 There might be distributional changes in relation to which doctors and experts undertake medical assessments in future. Some who currently undertake this work might no longer do so in future, or might receive less work, though the converse might be true for others.
- 2.35 It has been assumed that the volume of medical assessments would fall in future as a result of the assumed reduction in claims volumes.

Legal services providers and claims management companies

- 2.36 It has been assumed that the volume of claims would fall in future. This aggregate reduction in business volumes would constitute a cost for legal services providers and claims management companies.

Benefits

Defendants (insurers)

- 2.37 Defendants would benefit from the assumed reduction in the number of claims brought as a result of this proposal and from the assumed reduction in the proportion of successful claims. Defendants would gain from reduced compensation payments.
- 2.38 Defendants would also gain from reduced expenditure on medical assessments and on legal services associated with reduced claim volumes. This would constitute a cost in terms of reduced business for medical practitioners, experts, legal services providers and claims management companies. .

Medical practitioners and experts

- 2.39 There might be distributional changes in relation to which doctors and experts undertake medical assessments in future. Some who currently do not undertake this work might do so in future, or some existing doctors and experts might take on more work.
- 2.40 It is possible that the amount of work required per medical assessment might rise, especially with peer reviews and joint reviews. The new consistent assessment template might also require more work per case. These impacts would generate more business for medical practitioners and experts.

HMCTS

- 2.41 As explained in the costs section above, it is expected that the proposal would lead to a net reduction in the HMCTS resources required. Overall, it is assumed that the financial impact on

HMCTS would be neutral as HMCTS operates on a cost recovery basis with fee income balancing operating costs.

Wider social and economic benefits

2.42 Savings from reduced overall costs to insurers may be passed on to consumers in the form of lower motor insurance premiums as a result of this proposal.

Overall impact of Option 1

2.43 The impact on medical practitioners and on experts is ambiguous, in terms of overall business levels. The volume of medical assessments might fall, but more work might be required for each assessment.

2.44 Claimants (individuals) are considered to lose out as a result of the assumed reduction in claims made and the assumed reduction in successful claims. They would receive less compensation and also be liable to cover more legal costs and costs of expert assessments (or would face increased BTE insurance costs).

2.45 Defendants (insurers) would gain to the extent that claimants lose. On the other hand, defendants would lose from covering any increased costs of medical assessments and from the costs of establishing and operating the new arrangements. Given that the overall impact on medical practitioners and experts is ambiguous, so too would be the associated impact on defendants (insurers)

Summary of key assumptions option 1

2.46 The following provisional assumptions have been made. These will be reviewed further over the consultation period and in light of consultation responses:

- the overall volume of whiplash claims would decrease, with the reduction primarily in the number and cost of unmeritorious claims and exaggerated claims.
- the proportion of successful claims would fall.
- the new arrangements might generate set-up costs and ongoing operating costs which might not be insignificant and which would be met other than by the public purse.
- the costs of providing medical assessment could rise, though this will depend on various factors, including the design of any final approach.

2.47 There is a risk that the changes to the direct and indirect incentives applying to medical practitioners and experts will have a smaller than expected, and possibly limited, impact on the proportion of positive diagnoses and a smaller, and possibly limited reduction on the volume of claims, the reduction in settlements and the proportion of successful claims. Whether this risk materialises, and to what extent, may depend in part upon the funding model chosen for 'independent medical panels', which has not yet been determined.

Option 2 – Increase the small claims track limit for personal injury or whiplash claims

Description

2.48 Under this option, the small claims track limit would be increased from £1,000 to £5,000 for relevant RTA cases. In future, it is expected that contested personal injury claims under this limit would proceed as small claims rather than through the fast track. The increase in the small claims track limit may be applied for all RTA PI cases or just for those relating to whiplash. Whether it applies to either of these groups of cases will affect the scope of the impacts although the type of impacts would be common across each group. This impact assessment considers the type of impacts for different parties qualitatively.

2.49 In theory, there is an optimal small claims track limit. If the limit is set too low and cases go to the fast track instead of the small claims track, too many court, judicial, and legal resources would be used in relation to the value of cases, which could be resolved adequately using simpler processes and fewer resources. However, if the limit is set too high, and higher value and more complex

cases fall into the small claims track as a result, this might be inappropriate and lead to worse case outcomes (e.g. in terms of perceived justice) and lower levels of court user satisfaction.

2.50 In addition these cases might be subject to appeal and hence require additional judicial system resources at a higher court. This may have the impact of removing savings and could even generate net costs. It is assumed that judicial discretion will continue to be used to allocate complex low value cases to higher value tracks, and hence that these potential negative consequences of raising the limit would be mitigated to some extent in practice.

2.51 The impact of raising the small claims track limit is largely driven by the rules around the recoverability of costs in the small claims track which differ greatly from those of the fast track. In the fast track the successful party is generally able to recover their costs, including the cost of legal representation, from the unsuccessful party. In the small claims track the costs that can be recovered from the other side are strictly limited. The proposal is likely, therefore, to lead to an increase in the proportion of parties paying their own legal costs, and this is anticipated to incentivise defendants to contest a larger proportion of cases than they would under the fast track. However, the legal costs that claimants will bear depends on the arrangements they are able to make with legal service providers and whether they have taken out before the event (BTE) insurance which would provide cover for any legal costs incurred.

2.52 Bearing these two factors in mind – the change in incentives for defendants and the costs faced by claimants – it is useful to consider the impacts of this proposal across four separate sub-groups of cases. These sub-groups make up the total number of claims currently lodged but the incentives, costs and benefits for each party vary according the characteristics of each group:

- a. currently contested cases moving from the fast track to the small claims track and where claimants have BTE insurance;
- b. currently uncontested claims which could in future be contested in the small claims track and where claimants have BTE insurance;
- c. currently contested cases moving from the fast track to the small claims track and where claimants do not have BTE insurance; and
- d. currently uncontested claims which may now be contested in the small claims track and where claimants do not have BTE insurance.

2.53 For groups ‘a’ and ‘c’, it is not possible to identify all of the personal injury claims which are currently heard in fast track because information is not recorded to this degree of detail. However, the large majority of personal injuries claims are understood to be recorded as “unspecified money claims” in county court statistics and, of all unspecified money claims the large majority of these are thought to relate to personal injuries⁹. Table 1 provides information on the number of unspecified money claims of different values which were allocated to track in 2009 and 2010.

Table 1: Number of unspecified money claims allocated to track by value of claim , 2009-2010

Year	Allocation type	£0 to £500	£5,00 to £1,000	£1,000 to £1,500	£1,500 to £3,000	£3,000 to £5,000	£5,000 to £15,000	>£15,000	Other ¹
2009	Small claims	252	344	269	675	1,223	710	46	449
	Fast track	36	9	466	7,151	14,401	21,772	3,078	1,089
	Multi track	30	3	54	274	902	3,118	10,896	1,392
2010	Small claims	135	259	236	733	943	684	55	429
	Fast track	50	40	398	7,872	15,578	22,490	5,030	823
	Multi track	30	5	40	369	999	3,090	10,146	784

Notes

1. Includes claims with no recorded values

⁹ Research undertaken on case allocation between 1999 and 2001 suggested that 95% of personal injury claims were recorded as unspecified money claims and that 83% of all unspecified money claims related to personal injuries.

- 2.54 Based on 2010 data it is estimated that around 20,000¹⁰ personal injury claims valued between £1,000 and £5,000 were allocated to the fast track in that year. These estimates should be considered illustrative, because the government is introducing other policies which may reduce the number of cases, and because the figures in table 1 represent a mix of cases and it is not known whether unspecified money claims of different types (i.e. personal injury claims and other claims) are distributed similarly across values. Moreover, judicial discretion would still apply to track allocation which means that some cases valued less than the new limit which are deemed to be too complex for the small claims track would be allocated to the fast or multi tracks.
- 2.55 For groups 'b' and 'd' the number of claims that are contested as a result of this proposal would depend on a change in the behaviour of defendants. It is anticipated that increasing the small claims track limit for relevant RTA cases might encourage insurers to contest more cases than currently because there would no longer be the same degree of risk of bearing the claimant's legal costs if unsuccessful. An increase in the number of contested claims would move claims which are currently settled before they reach court (including some whiplash claims initiated through the RTA protocol) into the small claims track. The Government's intention is that many such cases might be unmeritorious or exaggerated.
- 2.56 The extent to which previously uncontested claims would now be contested is unknown and insurers may vary in their approach to contesting claims. However, the total number of claims which are currently uncontested is large; in 2010/11 660,000 RTA personal injury settlements were recorded by the CRU whilst in 2010 190,000 unspecified money claims (of which over 50% might be for RTA PI claims) were issued by the county court.
- 2.57 It is assumed that some substitution from early settlement to court will occur because of the change in incentives and this is outlined under groups 'b' and 'd' below. However, it is unlikely that all contested cases would progress to court hearings as most claims of this type are typically settled before a court hearing; in 2010 190,000 unspecified money claims were issued by the county court whilst there were only around 16,000 hearings across all tracks for these types of claims¹¹. In addition, in 2010 only 54% of all claims allocated to the small claims track resulted in hearings.
- 2.58 The Government has identified that there is a potential interaction with the RTA protocol and portal, delivered by a private company. In broad terms, the Option 2 changes could lead to a reduction in the volumes of cases being dealt with under the protocol and via the portal. The Protocol currently excludes claims which are suitable for the small claims track. In practice, therefore, it applies only to cases above the current small claims PI limit of £1,000. If this limit is increased, therefore, the number of cases which could be processed within the Protocol would fall. It would be possible to mitigate this impact by removing the exclusion of cases which are suitable for the small claims track. However, defendant insurers may then decide to opt out of the protocol once a claim has been initiated as the fixed costs regime which applies to the protocol, do not apply in the small claims track. This may have implications for the viability of the portal.
- 2.59 In addition, if all suitable claims were initiated in the Protocol, there would also be an impact for self-funded litigants who cannot (mainly for technical IT reasons) currently access the RTA Portal, raising a potential risk of access to justice issues. Responses to the consultation are expected to consider the link between the small claims limit and the RTA protocol and portal.
- 2.60 The following sections outline the costs and benefits associated with each of the groups ('a' to 'd') identified above.

Group A: Contested cases moving from the fast track to the small claims track where claimants have BTE insurance

- 2.61 For claimants with BTE insurance, there is likely to be no change in incentives as a result of cases being allocated to the small claims track instead of the fast track. This is because their legal and experts costs are covered by the insurance they took out before the event which triggered their claim. These types of claimants are, therefore, not liable for any additional costs as a result of cases moving from the fast track to the small claims track.

¹⁰ Based on 80% of the total number of claims allocated to the fast track valued between £1,000 and £5,000.

¹¹ Note that these figures do not represent the same cohort of cases because of the time lag between a claim being issued and a hearing.

- 2.62 As a result, it is assumed that there is no reduction in the number of this type of claim. The other key assumptions made for this sub-group of claims are outlined below.
- 2.63 It is assumed that case outcomes and compensation amounts do not change for this group of cases as a result of this proposal.
- 2.64 It is assumed that legal costs for all parties are lower in the small claims track compared to the fast track; the small claims track was designed to be less formal and allow people to resolve disputes themselves without professional legal representation and with little or no recoverable costs. Cases in the small claims track are also resolved more quickly, on average, than cases in the fast track and hearings are considerably shorter on average. In 2010 the average case duration in the small claims track was 31 weeks compared to an average of 54 weeks in the fast and multi-tracks. The average small claims hearing lasts around 80 minutes whilst the fast track hearing average is nearly four hours.

Costs

- 2.65 There may be some minor one-off adjustment costs for all affected parties. These costs are not expected to be significant.

Defendants

- 2.66 The rules around recoverability of costs in the small claims track mean that defendants would be required to bear their own legal costs. Compared to cases previously resolved in the fast track, this would represent a cost to successful defendants as their costs would previously have fallen on claimants.
- 2.67 Unsuccessful defendants would also be required to pay compensation more quickly than in the fast track. This would represent a cost as defendants may lose investment income if they are required to pay compensation more quickly.

Claimants

- 2.68 No additional costs are anticipated for these types of claimants because claimants with BTE insurance would not be liable for any legal costs in the small claims track. This would be the case regardless of the outcome. In effect, claimants have pre-paid legal costs through their BTE insurance premium.

HMCTS

- 2.69 Court fees are lower in the small claims track than the fast track and the shift in cases under this proposal would therefore result in a reduction in court income.
- 2.70 However, this reduction in income would be accompanied by a reduction in court resources required as the small claims track is has simpler procedures and cases are resolved more quickly on average. HMCTS operates on a full cost recovery basis for civil cases and it is therefore assumed that the financial impact on HMCTS would be neutral as fee income would adjust to reflect any change in operating costs.

Legal services providers and claims management companies

- 2.71 Legal services providers and claims management companies could face costs because cases allocated to the small claims track would require less legal resource than those allocated to the fast track. As a result, on average, there would be lower input required from them for each case they take forward which would equate to an overall reduction in demand for their services.
- 2.72 In general, any costs to legal service providers from reduced levels of demand would be associated with gains to claimants and defendants who use, and pay for, these services. However, it is possible that legal service providers would respond to any reduction in business by finding other types of work of a broadly equivalent value.

Before the event (BTE) insurers

2.73 BTE insurers are responsible for paying claimants' legal costs and the impacts on BTE insurers of moving cases from the fast track to the small claims track are similar to those for defendants. The rules around recoverability of costs in the small claims track mean that BTE insurers would be required to bear their own legal costs and, compared to the fast track, this would represent a cost for BTE insurers covering successful claimants as these costs would previously have been paid by defendants.

Benefits

Defendants

2.74 As highlighted in the cost section, the rules around recoverability of costs would impact on defendants for these cases. Unsuccessful defendants would benefit because they would no longer be liable for claimants' legal costs in the small claims track. These defendants would also benefit from lower court fees¹² in the small claims track compared to the fast track.

2.75 Defendants would also benefit from the lower level of legal resources required in the small claims track compared to the fast track. This would mean that their own legal costs would be lower for all cases which move to the small claims track.

2.76 The net impact for defendants would depend on the proportion of cases in which they are successful. This is because they would now bear their own legal costs in these cases but this may be offset by lower legal costs in all cases. However, for this group of cases any net benefit to defendants (which would occur if they were successful in a relatively low proportion of cases) would represent a net cost to BTE insurers. The relative success rates for claimants and defendants in these cases is unknown.

Claimants

2.77 Claimants would benefit from quicker case resolution in the small claims track compared to the fast track. They would also benefit from shorter hearings.

2.78 As their legal costs are covered by BTE insurance, claimants would not benefit from lower legal costs as a result of cases moving to the small claims track.

HMCTS

2.79 As explained in the costs section above, it is expected that the proposal would lead to a net reduction in the HMCTS resources required. Overall, it is assumed that the financial impact on HMCTS would be neutral as fee income would adjust to reflect any change in operating costs.

BTE insurers

2.80 As highlighted in the cost section, the rules around recoverability of costs would impact on BTE insurers for these cases. BTE insurers covering unsuccessful claimants would benefit because they would no longer be liable for defendants' legal costs in the small claims track. These insurers would also benefit from lower court fees in the small claims track compared to the fast track.

2.81 BTE insurers would also benefit from the lower level of legal resources required in the small claims track compared to the fast track. This would mean that their own legal costs would be lower for all cases which move to the small claims track.

2.82 The net impact for BTE insurers would depend on the proportion of cases in which the claimants they cover are successful. This is because they would now bear these claimants' legal costs in these cases but this may be offset by lower legal costs in all cases. However, for this group of cases any net benefit to BTE insurers (which would occur if they were successful in a relatively low proportion of cases) would represent a net cost to defendants. The relative success rates for claimants and defendants in these cases are unknown.

¹² Court fees are generally paid by the unsuccessful party in the small claims track.

Group B: Uncontested claims which may now be contested in the small claims track where claimants have BTE insurance

- 2.83 As for the cases discussed under 'group A' above, it is assumed that there would be no direct change in incentives for claimants with BTE insurance cover. This is because claimants would not face any legal costs associated with their claim and when initially lodging a claim they will not know whether it will be contested or not. However, for this group of cases, which were previously uncontested, the incentives for defendants would change as a result of the increase in the small claims track limit.
- 2.84 It is assumed that defendants would chose to contest more cases under this proposal because they would no longer be required to bear claimants legal costs if they were unsuccessful in the small claims track. This compares to a situation where, for RTA claims which enter the RTA protocol, defendants would currently face claimant legal costs of around £1,200 if liability is admitted however these costs are subject to review and are likely to be lower in the future which may dampen the incentive to contest claims. Defendants would also benefit from lower compensation payments if they were successful in the small claims track.
- 2.85 However, the benefit of reduced claimant legal costs and potential benefit of lower compensation payouts would have to be weighed up against an expected increase in their own legal costs as a result of contesting a claim. This is because it is assumed that insurers' own legal fees would be higher is they contest a case than if they settle. It is anticipated, therefore, that defendants would challenge claims in which the expected benefits in terms of claimant legal costs and lower compensation are greater than any increase in their own legal costs. The greatest incentive will be to contest unnecessary and less meritorious claims that defendants are more likely to successfully contest.

Costs

- 2.86 There may be some minor one-off adjustment costs for all affected parties. These costs are not expected to be significant.

Defendants

- 2.87 Defendants will face greater legal costs for their own defence in those cases that are contested as a result of this proposal. This is because the legal resources required to contest a case are likely to be greater than those for admitting liability.

Claimants

- 2.88 No additional legal costs are anticipated for these types of claimants because claimants with BTE insurance would not be liable for any legal costs in the small claims track. This would be the case regardless of the outcome. In effect, claimants have pre-paid legal costs through their BTE insurance premium.
- 2.89 Claimants whose claims would previously have been uncontested and are now contested successfully would lose compensation payments as a result of this proposal. However, in these instances the compensation that they would have previously received would have been unnecessary.
- 2.90 Claimants whose claims would previously have been uncontested and are now contested unsuccessfully by defendants (i.e. the claim is successful) would face costs due to slower payouts and may also face costs associated with attending hearings if cases reach this stage.

HMCTS

- 2.91 If more cases are contested as a result of this proposal, HMCTS would require greater resources if current waiting times and quality of service is maintained.
- 2.92 However, this increase in resource requirement would be accompanied by an increase in fee income. HMCTS operates on a full cost recovery basis for civil cases and it is therefore assumed that the financial impact on HMCTS would be neutral as fee income would adjust to reflect any change in operating costs.

Before the event (BTE) insurers

- 2.93 BTE insurers would face additional costs if more cases are contested as a result of this proposal. This is because claimants would require more legal resources for contested cases than they would for uncontested cases. BTE insurers would also be required to cover any court fees payable by claimants.
- 2.94 Any increase in costs for BTE insurers may be passed on to consumers through higher BTE insurance premiums although this impact should be considered secondary.

Benefits

Defendants

- 2.95 Defendants would benefit where they successfully contest claims. This would result in fewer compensation payments and lower claimant legal costs.
- 2.96 For claims where defendants unsuccessfully challenge, they would also benefit from not paying claimants legal costs in the small claims track and slower compensation payments as they may be able to make investment income from these funds.
- 2.97 It is assumed that, on average, defendants are net beneficiaries for this group of claims. This is because the average cost of this type of claim is reduced (through lower claimant legal costs and reduced compensation).

HMCTS

- 2.98 As explained in the costs section above, it is expected that the proposal would lead to higher fee income as a result of more claims being contested. However, there would also be an increase in HMCTS resources required. It is assumed that the overall financial impact on HMCTS would be neutral as HMCTS operate on a full cost recovery basis for civil cases and any increase in costs would be covered by greater fee income.

Legal services providers

- 2.99 Legal services providers would benefit from increased demand for their services if more of this group of claims are contested. This is because it is assumed that more legal resources are required for contested claims than uncontested claims.

Wider social and economic benefits

- 2.100 Savings from reduced overall costs to defendant insurers may be passed on to consumers in the form of lower motor insurance premiums as a result of this proposal. In response to the government's recent summits on motor insurance costs, the ABI has stated that "Insurers will pass any savings on to customers that result from unnecessary and excessive costs being removed from the system".

Group C: Contested cases moving from the fast track to the small claims track where claimants do not have BTE insurance

- 2.101 For claimants without BTE insurance the increase in the small claims track limit means that they will be required to bear their own legal costs, even if their claim is successful. It is assumed that the majority of claimants for this group of cases would previously have entered Conditional Fee Arrangements with legal services providers to support their claims in the fast track and would have taken out after the event (ATE) insurance to cover defendant's legal costs and any experts fees if they were unsuccessful. However, other reforms being introduced through government¹³ mean that, in the future, these claimants would be unable to recover CFA success fees and ATE insurance premiums in the fast track if they were successful. As a result of this, the overall impact on claimant incentives is ambiguous because in either track claimants would have to bear some cost for their claims if they were successful.

¹³ Proposals from the Jackson Review introduced as part of the Legal aid, sentencing and punishment of offenders act.

2.102 As a result of the shift of this group of cases from the fast track to the small claims track it is assumed that claimants would no longer enter CFAs as the costs payable if successful would no longer be recoverable from defendants. Instead, it is assumed that claimants would either enter a Damages Based Agreement (DBA), in which legal services providers would recover fees as a proportion of damages if the claimant is successful, or would make their claims as litigants in person. It is assumed that for those cases where a CFA is available currently a DBA will equally be available in future. However, as mentioned above, the overall effect on claimants' incentives is ambiguous and, as a simplifying assumption, it is assumed that there would be no change in the number of claims lodged for this group as a result of this proposal. The other key assumptions made for this sub-group of claims are outlined below:

2.103 It is assumed that case outcomes and compensation amounts do not change for this group of cases as a result of this proposal.

2.104 It is assumed that legal costs for all parties are lower in the small claims track compared to the fast track; the small claims track was designed to be less formal and allow people to resolve disputes themselves without professional legal representation and with little or no recoverable costs. Cases in the small claims track are also resolved more quickly, on average, than cases in the fast track and hearings are considerably shorter on average.

Costs

2.105 There may be some minor one-off adjustment costs for all affected parties. These costs are not expected to be significant.

Defendants

2.106 The rules around recoverability of costs in the small claims track mean that defendants would be required to bear their own legal costs. Compared to cases previously resolved in the fast track, this would represent a cost to successful defendants as their costs would previously have fallen on claimants.

2.107 Unsuccessful defendants would also be required to pay compensation more quickly than in the fast track. This would represent a cost as defendants may lose investment income if they are required to pay compensation more quickly.

Claimants

2.108 Compared to contesting their claim in the fast track, successful claimants would face additional costs in the small claims track as their legal costs would no longer be recoverable from defendants. For claimants entering a DBA this cost would be an agreed proportion of their compensation settlement.

2.109 However, the small claims track is designed so that parties are able to represent themselves and it is assumed that some proportion of claimants would choose to do so. For this proportion of claimants they may face time and financial costs associated with preparing their own case.

HMCTS

2.110 Court fees are lower in the small claims track than the fast track and the shift in cases under this proposal would therefore result in a reduction in court income.

2.111 However, this reduction in income would be accompanied by a reduction in court resources required as the small claims track has simpler procedures and cases are resolved more quickly on average. HMCTS operates on a full cost recovery basis for civil cases and it is therefore assumed that the financial impact on HMCTS would be neutral as fee income would adjust to reflect any change in operating costs.

Legal services providers and claims management companies

2.112 Legal services providers and claims management companies would face costs because cases allocated to the small claims track would require less legal resources than those allocated to the fast track. As a result, on average, there would be lower input required from them for each case they take forward which would equate to an overall reduction in demand for their services.

2.113 In addition, some claimants may choose to represent themselves as litigants in person which would result in a further reduction in demand for legal services providers.

2.114 In general, any costs to legal service providers from reduced levels of demand would be associated with gains to claimants and defendants who use, and pay for, these services. However, it is possible that legal service providers would respond to any reduction in business by finding other types of work of a broadly equivalent value.

After the event (ATE) insurers

2.115 ATE insurance is taken out to cover the cost of defendant's legal costs and experts fees if the claimant is unsuccessful. However, in the small claims track claimants are not liable for these costs if they are unsuccessful and, therefore, the movement of this group of claims from the fast track to the small claims track would result in a reduction in demand for ATE insurance. This would represent a cost to ATE insurers.

Benefits

Defendants

2.116 As highlighted in the cost section, the rules around recoverability of costs would impact on defendants for these cases. Unsuccessful defendants would benefit because they would no longer be liable for claimants' legal costs in the small claims track. These defendants would also benefit from lower court fees in the small claims track compared to the fast track.

2.117 Defendants would also benefit from the lower level of legal resources required in the small claims track compared to the fast track. This would mean that their own legal costs would be lower for all cases which move to the small claims track.

2.118 The net impact for defendants would depend on the proportion of cases in which they are successful. This is because they would now bear their own legal costs when successful but this may be offset by a reduction in their legal costs across all cases. The relative success rates for claimants and defendants in these cases are unknown.

Claimants

2.119 Claimants would benefit from quicker case resolution in the small claims track compared to the fast track. They would also benefit from shorter hearings.

2.120 Claimants would also benefit from not having to pay CFA success fees (if they were successful) or ATE insurance premiums if their claims shift to the small claims track and are taken forward through a DBA or as a litigant in person.

2.121 The net impact on claimants is ambiguous as it depends on the relative size of their costs in the fast track (ATE insurance premiums and CFA success fees) and in the small claims track (a proportion of their damages under a DBA, or costs associated with self representation). Information is not available on the relative size of these costs.

HMCTS

2.122 As explained in the costs section above, it is expected that the proposal would lead to a net reduction in the HMCTS resources required. Overall, it is assumed that the financial impact on HMCTS would be neutral as fee income would adjust to reflect any change in operating costs.

Group D: Uncontested claims which may now be contested in the small claims track where claimants do not have BTE insurance

2.123 As for claimants in group C, it is assumed that the majority of claimants for this group of cases would previously have entered Conditional Fee Arrangements with legal services providers to support their claims. It is assumed that claimants would find it more difficult to enter CFAs because the fees payable under a CFA would no longer be recoverable from defendants if successful. Instead, it is assumed that claimants would either enter a Damages Based Agreement (DBA), in which legal services providers would recover fees as a proportion of damages if the claimant is

successful, or would make their claims as litigants in person. It is assumed that for those cases where a CFA is available currently a DBA will equally be available in future.

2.124 It is also assumed that defendants would choose to contest more cases under this proposal because they would no longer be required to bear claimants' legal costs if they were unsuccessful in the small claims track. This compares to a situation where, for RTA claims which enter the RTA protocol, defendants would currently face claimant legal costs of around £1,200 if liability is admitted however these costs are subject to review and are likely to be lower in the future. Defendants would also benefit from lower compensation payments if they successfully contested claims rather than settling them uncontested. However, the benefit of reduce claimant legal costs and potential benefit of lower compensation payouts would have to be weighed up against an expected increase in their own legal costs as a result of contesting a claim.

2.125 It is anticipated, therefore, that defendants would now challenge claims in which the expected benefits in terms of claimant legal costs and lower compensation are greater than any increase in their own legal costs. The greatest incentive will be to contest unnecessary and less meritorious claims that defendants are more likely to successfully contest.

2.126 The effect on an increase in the number of contested cases, some of which are assumed to be contested successfully, would result in a lower expected return for claims in this group and, as a result, this is likely to reduce the number of claims lodged. This is because of both a loss in compensation for those claims which are contested successfully by defendants, and also because claims which are unsuccessfully contested (i.e. the claim is successful) would now face costs associated with the DBA or as a litigant in person. The other key assumptions made for this sub-group of claims are outlined below:

2.127 It is assumed that claimants in this group of claims would not have taken out after the event (ATE) insurance as their claims would previously have been uncontested and they would therefore not have been liable for defendants' legal costs and experts' fees if their claim was unsuccessful.

Costs

2.128 There may be some minor one-off adjustment costs for all affected parties. These costs are not expected to be significant.

Defendants

2.129 Defendants will face greater legal costs for their own defence in those cases that are contested as a result of this proposal. This is because the legal resources required to contest a case are likely to be greater than those for admitting liability.

Claimants

2.130 Claimants whose claims would previously have been uncontested and are now contested successfully would lose compensation payments as a result of this proposal. However, in these instances the compensation that they would have previously received would have been unnecessary.

2.131 Claimants whose claims would previously have been uncontested and are now contested unsuccessfully by the defendant (i.e. the claim is successful) would face costs associated with making their claim. For claimants that bring their claim through a DBA this cost would be an agreed proportion of their compensation settlement and for those that choose to act as litigants in person this may represent time and financial costs associated with preparing their case.

2.132 Claimants whose claims would previously have been uncontested and are now contested unsuccessfully by defendants (i.e. the claim is successful) would also face costs due to slower payouts and may face costs associated with attending hearings if cases reach this stage.

HMCTS

2.133 If more cases are contested as a result of this proposal, HMCTS would require greater resources if current waiting times and quality of service is maintained.

2.134 However, this increase in resource requirement would be accompanied by an increase in fee income. HMCTS operates on a full cost recovery basis for civil cases and it is therefore assumed that the financial impact on HMCTS would be neutral as fee income would adjust to reflect any change in operating costs.

Legal services providers and claims management companies

2.135 There will be a lower demand for legal and claims management services if fewer cases are pursued in future. However, we would expect legal service providers to adjust to a changing pattern of demand, leading to adjustment costs only. In any case, these costs should be treated as secondary.

Benefits

Defendants

2.136 Defendants would benefit where they successfully contest claims. This would result in fewer compensation payments and lower claimant legal costs.

2.137 Defendants would also benefit from a reduction in the number of claims lodged as a result of this proposal. This would result in fewer compensation payments and lower claimant and defendant legal costs.

2.138 For claims where defendants unsuccessfully challenge, they would also benefit from not paying claimants legal costs in the small claims track and slower compensation payments as they may be able to make investment income from these funds.

2.139 It is assumed that, on average, defendants are net beneficiaries for this group of claims. This is because the average cost of this type of claim is reduced (through lower claimant legal costs and reduced compensation) and fewer claims are lodged overall.

HMCTS

2.140 As explained in the costs section above, it is expected that the proposal would lead to higher fee income as a result of more claims being contested. However, there would also be an increase in HMCTS resources required. It is assumed that the overall financial impact on HMCTS would be neutral as HMCTS operate on a full cost recovery basis for civil cases and any increase in costs would be covered by greater fee income.

Legal services providers

2.141 Legal services providers would benefit from increased demand for their services if more of this group of claims are contested. This is because it is assumed that more legal resources are required for contested claims than uncontested claims.

2.142 The net impact on legal services providers is ambiguous as they would benefit from more claims being contested but face costs if fewer claims are lodged in the first instance.

Wider social and economic benefits

2.143 Savings from reduced overall costs to defendant insurers may be passed on to consumers in the form of lower motor insurance premiums as a result of this proposal. In response to the government's recent summits on motor insurance costs, the ABI has stated that "Insurers will pass any savings on to customers that result from unnecessary and excessive costs being removed from the system".

Overall impact for option 2

2.144 The impacts of this proposal vary across the four groups of claims identified above and for clarity are summarised in the table below:

Table 2: Net benefits of option 2 to different groups

Groups	A	B	C	D	Cumulative
Defendants	Ambiguous	Benefit from lower compensation and costs	Ambiguous	Benefit of lower compensation and costs	Net benefit
Claimants	Small benefit from faster resolution	Small cost from slower resolution and hearings	Ambiguous	Cost of lower compensation and higher costs	Net cost
HMCTS	Neutral impact	Neutral impact	Neutral impact	Neutral impact	Neutral impact
Legal services and CMCs	Cost of lower demand	Benefit of increased demand	Cost of lower demand	Ambiguous	Ambiguous
BTE insurers	Ambiguous	Cost of more pay outs against insurance	No impact	No impact	Net cost
ATE insurers	No impact	No impact	Cost of reduced demand	No impact	Net cost
Wider society and economy	No impact	Benefit	No impact	Benefit	Net benefit

2.145 Overall, the impact of this proposal would be a reduction in the number of successful PI claims, given the assumptions used. This would largely represent a transfer from claimants to defendants.

2.146 As a result of the impacts highlighted above, it might be expected that claimants and defendants change their behaviour further. The proposal could therefore generate the additional second round impacts outlined below, which themselves may have interactions.

2.147 There may be an increase in the number of drivers that take out before the event insurance as a result of this proposal. This is because drivers may wish to obtain cover against the legal costs that they would incur if a claim is contested in the small claims track. The impact on BTE insurance premiums would depend on the extent to which this insurance was claimed against which is likely to be affected by the second potential change in behaviour which is outlined below.

2.148 If the number of claims that are contested by insurers increases, claimants may be more willing to accept offers of compensation earlier and for potentially for lower amounts. This may arise because claimants wish to avoid their claim entering the court system and the time and potential financial costs associated with this.

Summary of key assumptions and risks for option 2

2.149 The key assumptions regarding case volumes and outcomes are outlined for each of the groups identified above.

2.150 There is a risk that raising the small claims track limit for RTA PI claims may reduce access to justice for some claimants. In addition to higher costs faced for some claimants, if victims of whiplash do not have legal advice they may not pursue valid claims or may not challenge insurers if valid claims are rejected. Victims may also significantly undervalue their claims and be disadvantaged in negotiations with defendants who may continue to utilise professional legal representation resulting in an “inequality of arms” between claimants and defendants. As

mentioned above, this may result in claimants receiving less compensation than is fair given their injuries.

- 2.151 There is a risk that increasing the small claims track limit would result in some specialist legal service providers lose a significant proportion of their business. These firms may need to make significant staff reductions or close down their businesses. The extent to which these firms would be able to replace this business with other sources of work is unknown and further information will be sought during the consultation.
- 2.152 It is assumed that the value of claims lodged would not change as a result of these reforms. However, there is a risk of “claims inflation” as claimants may benefit if their claim was above the small claims track limit. As well as benefiting from higher compensation, claimants whose cases are contested would be subject to the cost recovery rules in the fast track rather than the small claims tracks. Any claims inflation would be to the detriment of insurers.
- 2.153 It is assumed that HMCTS can redeploy resources flexibly between tracks with minimal transitional costs and that total HMCTS resources saved by some cases shifting to the small claims track from other tracks will be redeployed to addressing waiting times and backlogs in all tracks. It is also assumed that the HMCTS operating costs per case in each of the tracks will remain the same as now, hence court fees per case would remain the same. Related to this it is assumed that court fees are set to recover court costs. The combination of these assumptions is that HMCTS overall cost recovery should remain the same.
- 2.154 At allocation, judges would continue to have the power to allocate complex low value cases to higher value tracks. It is assumed that this discretion means cases valued between £1,000 and £5,000 will continue to be allocated to the fast and multi tracks where appropriate. It is therefore assumed that there would be no impact on case outcomes. No changes to allocation costs are assumed to result from the proposal.
- 2.155 It is unclear how many cases will move to the small claims track as a result of the proposal, given judicial discretion will continue to apply and complex cases will continue to be allocated to higher value tracks where appropriate. The volume of cases moving to the small claims track that will require a hearing is also unknown. These factors will determine the magnitude of the impacts identified. The impacts may also be affected by future HMCTS fee changes.
- 2.156 The analysis assumes that small claims track cases would be subject to the same rate of appeals as they are now.
- 2.157 It is assumed that the court and judicial resources allocated to a case are primarily driven by the track in which the case is proceeding under, rather than the nature of the case itself. This means that cases moving into the small claims track would require fewer court and judicial resources. Fees are set to cover costs, and are lower in the small claims track reflecting the lower level of court and judicial resources required to process and resolve small claims.

Option 3 – Implement options 1 and 2 together

Description

- 2.158 Under this option, independent medical panels and an increase to the small claims track limit for personal injury claims would be implemented concurrently. The costs and benefits under option 3 would largely be as per those outlined in options 1 and 2 although there may be additional interactions from the two proposals which are outlined below.
- 2.159 Proposals 1 and 2 are complementary insofar as together they are anticipated to reduce the number unnecessary and less meritorious claims being lodged by claimants. This is because the expected return to speculative claims would be reduced under option 3. The reasons for this are outlined in more detail under option 1 and for group D of option 2.
- 2.160 As with options 1 and 2, it is not possible to estimate the size of these impacts and further information will be sought from stakeholders as part of the consultation process. The costs and benefits to different groups are outlined below. These are presented as net costs or benefits where the impacts of different options (and groups within option 2) act in different directions.

Costs

2.161 There may be some minor one-off adjustment costs for all affected parties. These costs are not expected to be significant.

Defendants (insurers)

2.162 Defendants would face one-off set up costs associated with establishing medical panels and subsequent ongoing costs from operating the new arrangements. The cost per medical assessment might be greater than now for claims which insurers pay out for.

2.163 The overall impact on defendant's legal costs is ambiguous but may be a reduction. Defendants would face fewer claims, lower claimant legal costs and a reduction in their own legal costs per case for cases contested in the fast track. However, defendants are assumed to contest more cases under these proposals which are assumed to increase their legal costs compared to uncontested claims.

Claimants

2.164 Claimants would face an overall increase in costs as a result of these proposals. As outlined in the options above, this would result from fewer and lower compensation payments, higher legal costs and medical assessment costs in some cases and some additional administrative costs. (Where claimants take out BTE insurance they might face higher BTE premiums in future rather than higher legal services costs and higher medical assessment costs).

HMCTS

2.165 The overall impact of options 1 and 2 on HMCTS costs is ambiguous. Fewer overall claims would reduce the number of cases being contested in the courts but as highlighted above more claims may be contested as a result of option 2.

2.166 However, it is assumed that the overall financial impact on HMCTS is neutral as HMCTS operates on a full cost recovery basis for civil cases. This means that any increase in operating costs would be met by an increase in fee income.

Legal services providers and claims management companies

2.167 Under option 3, legal services providers and claims management companies would face costs associated with lower demand a reduction in the resources required per claim in the small claims track compared to the fast track.

Medical practitioners and experts

2.168 There would be some distributional impact amongst medical practitioners and experts following the introduction of medical panels as outlined under option 1 as some would undertake more work and others would undertake less work. Medical practitioners may also face costs if there is a reduction in the overall volume of assessments under option 1.

Before the event (BTE) insurers

2.169 BTE insurers would face additional costs as a result of these proposals because more cases are likely to be contested. Any increase in costs for BTE insurers may be passed on to consumers through higher BTE insurance premiums although this impact should be considered secondary.

After the event (ATE) insurers

2.170 ATE insurers would face a cost associated with a reduction in demand as outlined under option 2.

Benefits

Defendants (insurers)

- 2.171 Defendants (insurers) would benefit from fewer and lower compensation payments as a result of these proposals.
- 2.172 The overall impact on defendants (insurers) is likely to be a net benefit as reduced compensation costs would outweigh any net change in legal costs. If the legal costs of contesting claims outweighed the benefits then it is assumed that defendants would not choose to contest additional claims.

HMCTS

- 2.173 As explained in the costs section above, the net impact on HMCTS is assumed to be neutral as a result of these proposals.

Medical practitioners and experts

- 2.174 There would be some distributional impact amongst medical practitioners and experts following the introduction of medical panels as outlined under option 1 with some undertaking more work and some undertaking less work. It is possible that the amount of work required per medical assessment might rise, especially with peer reviews and joint reviews. The new consistent assessment template might also require more work per case. These impacts would generate more business for medical practitioners and experts.

Wider social and economic benefits

- 2.175 Savings from reduced overall costs to defendant insurers may be passed on to consumers in the form of lower motor insurance premiums as a result of this proposal. In response to the government's recent summits on motor insurance costs, the ABI has stated that "Insurers will pass any savings on to customers that result from unnecessary and excessive costs being removed from the system".

Summary of key assumptions and risks for option 3

- 2.176 The key assumptions and risks are as outlined under options 1 and 2 with the exception of those highlighted below.
- 2.177 It is assumed that the combined introduction of options 1 and 2 would help to mitigate the risk of reduced access to justice for valid claimants as highlighted under option 2. This is because an independent medical panel may make it easier for claimants to demonstrate the validity of their claim. Clearer and more consistent medical evidence may also make it easier for claimants to value their claim appropriately. However, this would depend on claimants being able to afford the up front cost of a medical assessment which may be covered through BTE insurance or a DBA with a legal services provider.
- 2.178 Option 3 may also mitigate the risk of claims inflation raised under option 1 as the medical evidence presented to support claims may be clearer and more consistent. This may prevent claimants from overstating their injuries to ensure that their claims are above the small claims track limit.

Summary of One In One Out position

- 2.179 Defendants (insurers) would benefit from a reduction in compensation paid for previously uncontested cases that they successfully contest in future, and would also benefit from a reduction in the number of claims made, a reduction in the proportion of successful claims, and a reduction in exaggerated claims. Insurers may also face an overall reduction in legal costs. Insurers might face a one-off cost associated with setting up 'independent medical panels' and ongoing costs from operating the new arrangements and may face greater unit costs for medical assessments. Overall, the impact on defendants (insurers) is ambiguous.

- 2.180 Some medical practitioners and experts would benefit from selection to 'independent medical panels' whilst others would lose out as a result. There may be an overall reduction in the number of medical assessments made if some claimants are deterred from lodging claims as a result of this proposal. However, it is possible that the amount of work required per assessment might rise which would benefit medical practitioners and experts. The net OIOO impact for medical practitioners is ambiguous and for the purposes of OIOO is considered to be broadly neutral. Furthermore any net gain to medical practitioners and experts would also amount to a net cost to defendants (insurers) or to claimants (according to which side meets these costs).
- 2.181 Legal service providers may face a reduction in demand for their services because cases allocated to the small claims track require fewer legal resources than those allocated to the fast track, and some claimants may choose to act as litigants in person. Legal services providers and claims management companies would also face a cost if fewer claims are lodged as a result of these proposals. However, in the case of legal services providers this may be offset by an increase in the number of cases contested as a result of these reforms, which were previously uncontested, which would increase demand for legal services (legal costs in uncontested cases are assumed to be lower than legal costs in the small claims track). The net effect of these reforms on legal services providers is ambiguous.
- 2.182 Any direct costs and benefits to before the event (BTE) insurers would represent a transfer between the BTE insurer and legal services providers and therefore the intra-business impact would be ZERO NET COST.
- 2.183 Although the aggregate impacts have not been quantified, given the assumptions used, it is considered that the benefits to business of these proposals would overall outweigh the costs. In general, these reforms would result in a shift in resource from claimants (individuals) to defendants (insurers). To the extent that defendants (insurers) incur increased costs, these would in turn represent benefits for other businesses (legal services providers and experts). In conclusion, given the assumptions used, the overall one in one out impact has been assessed as ZERO NET COST.

Micro business waiver exemption

- 2.184 The proposals in this impact assessment would affect micro businesses, especially smaller legal firms and medical practitioners. They may be less able to absorb the impacts of the change or redirect resources to other areas.
- 2.185 If the proposals were not applied to micro businesses then it is unlikely that they would be applied at all. This is because partial application to part of the industry would not meet the policy objectives, and would also generate competition issues. Partial application might also lead to some businesses reconfiguring and becoming micro businesses.

3. Enforcement and Implementation

- 3.1 The Department for Health would be responsible for introducing and enforcing medical standards associated with independent medical panels. HMCTS would be responsible for implementing and enforcing changes to court procedures.

4. Specific Impact Tests

- 4.1 A preliminary assessment has taken place in regard to all of the specific impact tests and we are satisfied that more detailed assessment does not need to take place in regard to any of these tests.

Competition Assessment

- 4.2 The proposals should have no influence on competition within the legal services or insurance sectors.

Justice Impact Test

- 4.3 The justice impacts are set out in the main body of this impact assessment.

Sustainable Development/Carbon Assessment/Other Environment

4.4 The proposals should have no bearing on sustainable development, carbon emissions or other environmental concerns.

Health Impact Assessment

4.5 We do not anticipate any direct health impact from these proposals. It is possible that claimants who do not pursue cases in future may incur a loss of well being. These claimants would continue to get treatment for injuries from the NHS although this may differ from the private treatment they may have received if the claim had been successful. This could also increase NHS waiting times for treatment.

Equality Impact Assessment

4.6 An Equality Impact Assessment screening has been completed as a separate document.

Human Rights

4.7 The reforms are considered to be compatible with Convention Rights.

Rural proofing

4.8 There are no issues with rural proofing related to these regulations.

Annex 1: Post Implementation Review (PIR) Plan

Basis of the review:

To assess whether the proposals have had the intended effect of reducing the number of unnecessary and less meritorious whiplash claims and reduce the costs of contesting these claims.

Review objective:

The post implementation review will analyse the impact of the proposals in terms of the total number of RTA PI claims lodged and their costs to stakeholders.

Review approach and rationale:

Qualitative and quantitative data will be obtained from HMCTS, DH, the Compensation Recovery Unit and claimant and defendant organisations. This will be used to assess the impact of the changes on total claim volumes and the cost of contesting claims.

Baseline:

The current position is that there may be a large number of unnecessary and less meritorious whiplash claims because of the procedures and incentives which govern such claims. As outlined in this impact assessment, the data currently available is limited and any further information gathered as part of the consultation will be used to inform the baseline position further.

Success criteria:

A reduction in the number of unnecessary and less meritorious whiplash claims lodged against insurers and the costs of contesting such claims. As a second round impact, a reduction in the cost of vehicle insurance. There may be a number of other factors - in addition to the proposals considered in this IA - that affect the number of claims and costs of insurance. To the extent that quantitative and qualitative information is available, these factors will be taken into consideration when assessing the impact of these proposals so that their impact is not over or understated.

Monitoring information arrangements:

As well as government collected information, we rely on data provided by stakeholders, as there is no routine collection of data covering the costs insurance, compensation and litigation in privately funded cases. However, we will continue working with claimant and defendant representative groups to help collate the relevant data to evaluate the impact of our policy proposals in future.

Reasons for not planning a PIR:

N/A