



The Law Society

Campaigner pack
Government consultation on personal injury reform
December 2016



About this campaign

On 17 November, the government published a consultation on reforming the soft tissue injury claims process. The consultation includes proposals on:

- Raising the small claims limit for all personal injury claims from £1,000 to £5,000
- Stopping or radically reducing compensation payments for minor soft tissue injuries, including whiplash, arising from road traffic accidents.

These proposals will have a serious impact on our members, and on access to justice.

How you can help

The Law Society is strongly campaigning against the government's proposals. Please help us make the case to government by taking the following actions:

- Respond to the consultation which closes on **6 January 2017** - we are urging as many members as possible to respond
- Write to your local MP
- Attend your MP's advice surgery
- Tweet about the campaign

This campaigner pack will help you with these actions.

Please keep us informed of your progress by contacting Vicki Butler (vicki.butler@lawsociety.org.uk), campaigns manager.

1) Respond to the consultation

It is important that you make your voice heard and respond to the government's consultation.

We have developed some guidance on answering questions 5, 11, 12, 13 and 14 in the consultation. These questions focus on:

- Stopping or radically reducing compensation payments for minor soft tissue injuries, including whiplash, arising from road traffic accidents
- Raising the small claims limit for personal injury claims from £1,000 to £5,000

You may find this guidance helpful when developing your response to the consultation.

There are a series of other, more specific, questions in the consultation. We would again encourage you to respond to these, **but you do not need to write an answer to every question in order to submit a response.**

The consultation document is available [here](#).

You can respond to the consultation via an online questionnaire [here](#).

Consultation guidance: suggested answers

Part 2 – Reducing the number and cost of minor RTA related soft tissue injury claims

Question 5: Please give your views on whether compensation for pain, suffering and loss of amenity should be removed for minor claims as defined in Part 1 of this consultation? Please explain your reasons.

Answer:

The government should make no limitation on the right to claim general damages for minor soft tissue injuries.

The ability to claim for pain, suffering and loss of amenity is a long standing principle of common law. People should be able to recover damages for injuries caused by the negligence of a third party. Removal of this is a fundamental change to this principle and to the right of individuals.

There are also huge access to justice implications for ordinary people who would no longer be able to pursue a claim for pain, suffering and loss of amenity for genuine injuries. If people suffer an injury through no fault of their own, there should not be obstacles placed in the path of their claiming.

We understand that the government's motivation for introducing these reforms is to tackle exaggerated and fraudulent claims, and that it also wants to address 'high number and cost of minor RTA related soft tissue injury claims'.

Fraudulent claims should be dealt with by targeting the fraudsters and not the vast majority of honest claimants who have been injured and bring genuine claims.

We are also concerned that the government does not appear to have a robust evidential basis for undertaking the reform:

- **Figures quoted by the government have not been independently verified and are out of date** - The Autumn Statement 2015 stated that whiplash claims cost the country £2 billion a year, the equivalent of £90 per motor insurance policy. These are figures quoted by the Association of British Insurers as far back as 2008. In addition to this, although the Government expects insurers to pass savings to consumers, there is no mechanism in place to hold them to account.
- **Government figures have shown a fall in whiplash claims since 2010/11** - Since these figures were calculated, the government's Compensation Recovery Unit (CRU) has stated that the number of whiplash claims has fallen by more than a third since 2010/11.

Part 3 - Introduction of a fixed tariff system for other RTA related soft tissue injury claims

Question 11: The tariff figures have been developed to meet the government's objectives. Do you agree with the figures provided? Please explain your reasons why along with any suggested figures and detail on how they were reached.

Question 12: Should the circumstances where a discretionary uplift can be applied be contained within legislation or should the Judiciary be able to apply a discretionary uplift of up to 20% to the fixed compensation payments in exceptional circumstances? Please explain your reasons why, along with what circumstances you might consider to be exceptional.

Compensation should reflect actual pain suffering and loss of amenity, rather than an arbitrarily determined fixed sum. However, if the government is intent on introducing a tariff system, the tariffs must be set at appropriate levels.

Part 4 – Raising the small claims track limit for personal injury claims

Question 13: Should the small claims track limit be raised for all personal injury or limited to road traffic accident cases only? Please explain your reasoning

Answer:

There should be no increase to the small claims limit for any personal injury claim. If it is to increase, this should only be in line with inflation.

The small claims procedure plays an important role in enabling consumers and businesses to pursue low value claims without the risk of a large bill for legal costs if they lose. However, this system was designed for disputes such as faulty goods and small unpaid invoices, and it is not appropriate for claiming compensation for injuries.

The small claims track is not, and should not become, a forum for disputes which have a higher degree of complexity, such as the vast majority of personal injury claims. Based on Judicial College Guidelines (13th edition, 2015), the following injuries would be categorised as a 'small claim' under the government's proposals:

- A fractured rib (up to £3,300)
- Food poisoning symptoms continuing for weeks (up to £3,300)
- Neck injuries lasting between 3 months and 12 months (Maximum £3,630)
- Back injury lasting up to 3 months (up to £2,050)
- Minor wrist fracture (£3,960 maximum)

It is not appropriate for injuries such as these to be categorised as a 'small claim'.

Disputes related to injuries such as these require the input of advice from solicitors and, in most cases, legal representation. Even relatively small personal injury claims can involve complex issues of liability and causation and, in some cases, complex medical evidence requiring professional legal advice, especially when the defendant is almost always a well-resourced insurance company who have legal advice in defending every claim.

The substantial, five-fold, increase proposed to the current limit, may deny many thousands the right to seek the advice of and representation by a solicitor. Those that do will be faced with having to pay all their own legal costs which will severely reduce their damages award, or they will chose to act as litigant in person, creating further strain on the courts.

The government has stated that its reforms are intended to tackle exaggerated and fraudulent claims in relation to the 'high number and cost of minor RTA related soft tissue injury claims' and reduce car insurance premiums. However, employment

liability and public liability are also included in the government's proposals, which are completely separate areas of law, resulting in arguably more complicated cases clearly requiring the expertise of a solicitor. Raising the small claims limit for these areas will have no impact on car insurance premiums, or on fraudulent whiplash claims.

Question 14: The small claims track limit for personal injury claims has not been raised for 25 years. The limit will therefore be raised to include claims with a pain, suffering and loss of amenity element worth up to £5,000. We would, however, welcome views from stakeholders on whether, why and to what level the small claims limit for personal injury claims should be increased to beyond £5,000?

Answer:

The small claims limit should not increase beyond £5000. If it is to increase, this should only be in line with inflation.

The small claims process was designed to handle low value disputes such as faulty goods or small unpaid invoices, and in most cases the court will not order solicitors' costs to be paid by the losing party to the person claiming compensation. It is not appropriate for more complex claims. If the small claims limit was increased above £5000, it could capture the following injuries, according to the Judicial College Guidelines (13th edition, 2015):

- Immediate unconsciousness and death after six weeks (£7,040 maximum)
- Post-Traumatic Stress Disorder with 'virtually' a full recovery made within one to two years (£6,850 maximum)
- Minor eye injuries (such as being struck in the eye, or exposure to fumes (£7,320 maximum)
- A fractured jaw which leads to a full recovery (£7,320 maximum)

It is entirely inappropriate for conditions such as these to be treated as a 'small claim'.

2) Write to your local MP

Our Public Affairs team are having conversations with MPs on this issue, but we need your support and involvement too. Please write to your local MP to help raise awareness of the campaign.

The easiest way to do this is via our [website](#) where we have a quick and easy online tool enabling you to write to your MP in a couple of minutes.

However, if you would prefer to send a paper letter, a template letter is below. You can find out who your MP is [here](#). If possible, please personalise your letter with an example about how you, and your clients, might be affected. This will help illustrate the issue and provide the local context on a topic your representatives may know very little about.

Please remember to flag if there is any commercially sensitive information that you do not want to be shared, or you would like to have your story anonymised if it is raised publicly.

Suggested letter

<<Name>>

House of Commons
London

SW1A 0AA

<<Date>>

Dear <<Mr/Ms/Sir etc Surname>>,

Government's consultation on personal injury claims reform

I am writing regarding the government's recently published consultation on reforming the soft tissue injury claims process, which closes on 6 January. I am extremely concerned that the proposals will undermine access to justice.

The proposals include:

- Raising the small claims limit for personal injury claims from £1,000 to £5,000
- Stopping or radically reducing compensation payments for minor soft tissue injuries, including whiplash, arising from road traffic accidents.

Raising the small claims limit means that all personal injury claims worth £5,000 and under would be dealt with under the small claims process. This process was actually set up to deal with simple low value disputes such as faulty goods.

However, under the government's plans, injuries such as facial scarring, a broken leg or a fractured rib caused by an accident in the workplace will also be included under the small claims process. Because in the small claims system you cannot claim for your legal costs this means many such claims under these plans will have to be taken by members of the public as litigants in person and without access to legal advice.

This means people will be less likely to seek such legal advice or assistance, resulting in it being much more difficult to receive full and proper compensation from those who have injured them. Given that those defending the claims - often insurance companies - will most often have an experienced litigator representing them this will create an extremely unfair situation.

These proposals completely undermine the right of ordinary people to access justice and are likely to lead to additional pressures on other services (such as the NHS) and, in the absence of other advice, increase calls on MP surgeries.

Given the short consultation period, I would appreciate it if you could raise these concerns with the Ministry of Justice at the earliest opportunity.

Yours sincerely,

<<your name
position
postal address
contact details>>

3) Attend your MP's advice surgery

We would encourage you to attend your local MP's advice surgery to raise your concerns regarding the consultation. Details of these are usually available on your local MP's website.

Before you attend the advice surgery, you should prepare a short list of the issues you wish to raise. Your MP is unlikely to have a long time to speak, so you should be as clear and concise as possible during the meeting .

Some useful tips are as follows:

- **Brief overview of the key points** - be prepared to give them a quick update on the main issues
- **Ask them to write to the Ministry of Justice** - having met you, your MP is likely to agree to at least write to the Ministry of Justice if they have not already done so
- **Suggest a follow up action between yourself and the MP** – this could include them forwarding any response from the Minister; each of you agreeing to update each other on any future developments; and also perhaps meeting again.

4) Template tweets

If you use social media, we also need your help to get our message out. Please tweet about our campaign, or share on facebook. If you do tweet, please use our hashtag **#smallclaims** hashtag which will help us track activity and trends.

Some tweets you may want to use are:

Take action - make your voice heard & respond to the govt's 'whiplash' consultation. Deadline is Friday 6 January. <http://bit.ly/2gLFt05>

Raising the small claims limit will stop injured people getting the compensation they deserve. #smallclaims <http://bit.ly/2gLRFOA>

Most of us would regard a fractured rib as quite serious, yet that's likely to fall below the govt's small claims limit <http://bit.ly/2qjUSHJ>

You can also follow the Law Society's tweets from @TheLawSociety.