1. Introduction

The Ministry of Justice (MoJ) has published a consultation proposing significant changes to personal injury law, including an increase to the small claims limit.

The Law Society believes that these proposals would undermine the right of ordinary people to receive full and proper compensation from those that have injured them through negligence, including accidents in the workplace, claims against public bodies and the NHS, and road traffic accident (RTA) injuries. An increase in the small claims limit would also have the unintended consequence of raising the costs for the justice system by increasing the number of litigants in person.

We are calling for the Government to:

- Not implement the small claims limit for personal injury. Any increase to the limit - if it is raised at all - should be in line with inflation.
- Make no limitation on the right to claim general damages for minor soft tissue injuries.

2. Overview

The consultation includes the following proposals:

- Raise the small claims limit from £1,000 to £5,000 for
  - RTA personal injury cases
  - all personal injury (PI) claims (which include accidents in the workplace, claims against public bodies and the NHS)
- Remove, or replace by a low fixed sum, compensation for pain, suffering and loss of amenity (PSLA) for minor whiplash claims
- Introduce a tariff of payments for PSLA in more significant claims. Damages for injuries lasting longer than six or nine months should be graded and fixed according to duration
- Ban the settling of whiplash claims without a medical report from an accredited medical expert

The Government has stated that the reform would reduce the number of claims and car insurance premiums. However, the reform will have an impact on people who have been injured in an accident with no car involved.

3. Impact of the reform

Small claims limit

The Government's reforms are going well beyond removing compensation payments for minor soft tissue injuries, including whiplash, arising from road traffic accidents. Raising the small claims limit means that it will affect people who have suffered serious injuries through negligence, impinging on their right to seek compensation.

As a result, all personal injury claims worth up to £5,000 will be processed under the small claims track. This was designed to handle low value disputes such as faulty goods or small unpaid invoices, not serious injuries such as a facial scarring.
Currently, if a claim is successful, legal costs are paid by the defendant's insurers. Under the new proposals, anyone with such an injury will have to pay their own legal costs or deal with their claim themselves. Examples of injuries worth less than £5,000 include:

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

This means that people injured through no fault of their own will not be able to recover legal costs from their opponents. This would be the case, for example, for cyclists hurt by a car driver or people injured by a negligent employer.

As a result, most claimants would have to deal with these injuries without legal help or decide not to pursue the claim altogether, which could have widespread implications for their physical and mental health, and for their finances.

**Whiplash claims**

We reject the proposal to remove general damages for minor soft tissue injuries. 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.

Whilst it is critical that fraud is tackled, stopping people from making legitimate, meritorious claims is not the answer. We also agree with the Fraud Task Force's recommendation that cold calling should be subject to a complete ban².

4. **Implications for access to justice**

As recently as 2013, the Transport Select Committee recommended that the small claims limit should not be raised because of the unintended consequences on access to justice for claimants who are genuinely injured³.

The reform would deny ordinary people the right to seek compensation for being injured through no fault of their own and deter them from making a genuine claim. Because legal costs would no longer be recoverable, genuine claimants will be left with no choice but to:

- Pay for a solicitor themselves, losing part of their damages
- Represent themselves in a complex legal environment, at risk of being undercompensated
- Drop the claim altogether, being denied compensation they are entitled to under the law

The Government's proposals would therefore create a David and Goliath situation where people recovering from their injuries would have to fight their case usually against insurance companies, who will always have an experienced litigator representing them.

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¹ From the Judicial College Guidelines.
5. What you can do

- Write to the MoJ spokesperson for the Lords, Lord Keen of Elie QC, to highlight the detrimental impact of the reform on honest claimants and its implications for access to justice.

- Table Parliamentary Questions to bring the issue to the Minister's attention. Please find here some suggested questions:
  
  o To ask the Secretary of State for Justice, for what reason the government is consulting on raising the small claims limit from £1,000 to £5,000 for i) employer liability ii) public liability and iii) clinical negligence?

  o To ask the Secretary of State for Justice what steps the Government is taking to ensure that savings arising from raising the small claims limits for the following areas will be passed on to customers: i) public liability ii) employer liability?

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