HODGE JONES & ALLEN LLP

Our response follows to the Ministry of Justice consultation on:

Reforming the Soft Tissue Injury ('whiplash') Claims Process (November 2016)

Hodge Jones and Allen is one of the UK's most progressive law firms, renowned for doing things differently and fighting injustice. For almost 40 years' the firm has been at the centre of many of the UK's landmark legal cases that have changed the lives and rights of many people.

The firm's team of specialists have been operating across: Personal Injury, Medical Negligence, Industrial Disease, Civil Liberties, Criminal Defence, Court of Protection, Dispute Resolution, Employment, Family Law, Military Claims, Serious Fraud, Social Housing, Wills & Probate and Property Disputes.

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1. Introduction

Hodge Jones & Allen is gravely concerned about the proposals outlined within the consultation paper and wrote on 7 December 2016 to the Lord Chancellor to urgently voice those concerns and to invite the Chancellor and her colleagues to our offices to provide a closer insight into the negligence our clients have encountered and the injuries sustained as a result. For ease of reference a copy of the letter is appended.

1. The proposals included within the consultation paper are based on alleged fraud and exaggeration but, offer no agreed evidence to substantiate these claims. Instead what we have seen over the years is a wild range of estimates. Finally, the ABI have accepted that fraud levels are minimal (as slow as 1%) against the volume of motor claims.

2. There is no evidence of fraud for personal injury on all other claims i.e. accidents at work, trips and slips, dental negligence, clinical negligence.

3. Exaggeration is a highly contentious term. From our experiences, claimants are individuals who have experienced a negligent act and as a result their day to day life changes for a few weeks, months, years, dependent on their injuries and their recovery. Explaining their situation, their injuries in order to seek redress is not exaggeration.

4. Our clients may accept a discount for settlement - that does not mean their claim was exaggerated. A settlement is negotiated as the insurers fight back to reduce amount they pay to injured people.

5. The proposals as set out are not targeted dealing with the small number of fraudulent claims but, at all claims, the vast majority (99.8%) of which are legitimate.

6. Our clients know that whiplash does exist and causes real suffering. Within our response we provide examples of our some of those experiences and the challenges they have faced.

7. The real causes of whiplash are:
   7.1 Congested road leading to low velocity impacts
   7.2 The stiffer frames of modern cars
   7.3 Seatbelt compliance (more neck injuries).

   The ABI have themselves reported that whiplash is caused by tailgating and incorrect head restraints.

8. Whiplash claims are reported all over the world and, for example, in the United States apparently 65% of motor claims involve whiplash injury but, we have seen no fraud hysteria from the insurance industry or others in America or, in fact, in any other countries.

9. In the United Kingdom, the Transport Select Committee have confirmed that total whiplash claims are actually falling.

10. It is our view that rather than once again penalising those who have been injured, the Government, insurers and car manufacturers should focus their energies and attention on:
    - dealing with ever increasing congestion which is causing riskier driving conditions and greater pollution

- bringing about further improvements to our modern cars and seatbelts to achieve further protection for drivers and passengers
- Introducing an effective accident prevention strategy for example, adopting more variable speed limits on our motorways allowing smoother traffic flow. The Association of Personal Injury Lawyers (APIL) has campaigned for the prevention of tailgating on dual carriageways and motorways which would also prevent accidents.

11. The proposal to raise the small claims limit will mean the removal of legal representation for a huge proportion of individuals in our society who find themselves injured by someone else's negligence and, as a result may be unable to go to work, support their families. Rather than being able to seek legal representation, it is our view that huge they will no longer be able to claim.

12. Whilst all defendants will retain their experienced legal representation, the individual, who has been injured, will be on their own to:
    - Apply law of liability, causation, quantum to their case
    - Obtain witness statements
    - Buy police report
    - Instruct a medical expert and pay for the report
    - Draft the claim
    - Quantify damages
    - Calculate past and future loss, for example for care and loss of earnings
    - Use multipliers for future loss
    - Make interest calculations
    - Pay court fee or, apply using the Portal
    - Negotiate
    - Attend court, make submissions, bring witnesses to court.

13. Those injured are already in a vulnerable state, working to recover from their injuries, deal with the trauma of the accident, often still needing to support their family too. The most disadvantaged will be, the elderly, mentally incapacitated, those with special physical and educational needs, English not their first language or do not have access to a computer.

14. In addition to this are minors who are represented by litigation friends during any claims process. Personal injury settlements are subject to infant approval hearings so that the Courts can ensure the child interests have been properly represented and the funds are subsequently invested in court to ensure they are preserved until the child reaches majority. How would a child's damages be safeguarded under these proposals?

15. The individual will be facing defendants who will all be represented by experienced claims handlers or lawyers. From our experience, insurers will always deny where possible and make low initial offers. As we know their first duty is to their shareholders. These proposals will place individuals in an even more vulnerable position as they face up to organised legal teams, alone.

16. Judges will not be able to assist claimants as if they fail to bring all the evidence to the court then it is too late to obtain it. In addition, as we know very few cases ever get to a hearing. Once again the individual is on their own.

17. Ignoring the vulnerability of claimants is wrong. The proposals suggest Claims Management Company's as McKenzie friends are the answer – they are not. They are not trained regulated or insured.

18. The proposed damages for soft tissue injury are derisory and clearly designed to make it not worthwhile for those injured to claim. As a result, insurers will save billions, if the changes go ahead, due to drop in claims and no costs.

19. History shows us that insures will not pass on any savings as they have suggested in the press. Since 2013, premiums have gone up and so have the profits and dividends for all the major insurers

20. What is being proposed means that money will be taken from accident victims and given to insurers and motorists – this is scandalous.

21. The tort system is there to keep people safe and bring about improvements which will keep others safer. Reducing claims will lead to a drop in standards and more accidents.

22. It is our view that the impact assessment is flawed for the following main reasons:
    - It makes increasing insurance profits a policy aim.
    - Lost solicitors fees are not counted as a loss which says there is no benefit to society in helping to make a successful claim
    - Insurers get to keep £200 million (MoJ's own figures)
    - Every policy options succeeds in this impact assessment as claim costs are discounted completely.

23. The tariff proposed is wrong as it is lower than Judicial Studies Board Guidelines. The figures take no account of age or special disabilities. Most will get less.

24. The portal is not suitable for Litigants in Person and, it our view that the Courts would not be able to handle the influx of claims.

25. Not only will the injured person suffer but, there will be a significant impact on a number of other areas. The National Health Service will lose millions in treatment costs currently recovered. The State will lose millions in benefits currently recovered. If insurance premiums should go down, there would be a loss in IPT and ATE policies will not be taken out. VAT and income tax on solicitors' fees will drop. We also question what would happen to Before the Event Insurance - the market could collapse.

26. Other potential impacts on the economy would, in our view, include:
    - Victims not being compensated for loss or earnings or receiving rehabilitation so, return to work will be slower.
    - Money will be removed from the economy- money in the hands of victims will be spent.
    - Money in the hands of insurers will go to wealthy executives and wealthy dividend receivers – less likely to spend but save.
    - The economy will lose output and productivity.
    - The rule of law will be undermined.

2. Our response to questions posed

Part 1 – Identifying the issues and defining RTA related soft tissue injuries

Question 1: Should the definition in paragraph 23 be used to identify the claims to be affected by changes to the level of compensation paid for pain, suffering and loss of amenity from minor road traffic accident related soft tissue injury claims, and the introduction of a fixed tariff of proportionate compensation payments for all other such claims?

We believe the current definition of a soft tissue injury as stated in paragraph 23 to be clear. However the proposals are directed at whiplash injuries and therefore the scope of the definition should be limited to those injuries only.

Question 2: Should the definition at paragraph 23 be extended to include psychological trauma claims, where the psychological element is the primary element of a minor road traffic accident related soft tissue injury claim? Please provide further information in support of your answer, including if relevant, how this definition could be amended to effectively capture this classification of claim.

No, the definition should not be extended to include a psychological injury as there is nothing to support the assertion that claims of this nature will increase should the reforms go ahead

Psychological trauma claims may be very serious with many complicating factors dependent on the nature of the incident and the individual involved.

Diagnosis of psychological symptoms provides early signposting for the correct treatment. It is well documented that early intervention can ensure a more positive outcome for the individual concerned, including an expedited recovery. Without the correct diagnosis many people will go untreated which we know does lead to more complicated conditions later on.

HJA case study 1

Our client was a soldier in the army. She was a passenger in the back of an Army Land Rover which had suffered a tyre blow out and had stopped on the dual carriageway. The defendant driver collided with the Land Rover, causing the claimant to be ejected from the rear of the vehicle. Our client's colleague died in the accident.

Our client sustained a soft tissue injury to her left leg, a sprained left ankle and whiplash to her neck. Initially it appeared to be a straightforward whiplash case, however, she also sustained psychological injuries and had to leave the army as a result of her injuries. This only became apparent when speaking to our client in depth. The case was taken into the RTA portal based on general damages which initially were less than £5,000. The case settled for £33,000.

HJA case study 2

Our client was injured when the Defendant driver collided with the side of his vehicle. The claim was put through the RTA portal and medical evidence was obtained.

During our investigations we found that our client had not been in a car since the accident. He also sustained whiplash injuries to his neck, back and shoulders. He was a car mechanic by trade so, was therefore unable to work for approximately 6 months and found it unbearable to continue when he did return. The matter settled for £13,250.

Question 3: The government is bringing forward two options to reduce or remove the amount of compensation for pain, suffering and loss of amenity from minor road traffic accident related soft tissue injury claims Should the scope of minor injury be defined as a duration of six months or less? Please explain your reasons, along with any alternative suggestions for defining the scope.

Question 4: Alternatively, should the government consider applying these reforms to claims covering nine months' duration or less? Please explain your reasons along with any alternative suggestions for defining the scope.

We cannot see any reason for reducing the compensation received for pain, suffering and loss of amenity. The JC Guidelines published by the Judicial College is a useful guide to the amounts to be awarded.

Now in its 13th edition the guidelines are designed to provide a clear and logical framework or the assessment of damages in personal injury cases. It first appeared in 1996 and have since become an invaluable tool for all personal injury practitioners. It ought to be noted that that the brackets within the guidelines are wide because it has long been accepted that valuing cases requires scrutiny of evidence.

To determine the correct level of damages it is imperative that the nature and extent of the injuries and the impact on the individual are assessed. This should not become a tick box exercise as there are so many individual factors that need to be taken into consideration.

A meaningful valuation of general damages depends upon many variables such as age, sex, pre accident health. The tariff method proposed would not take any of these factors into account leaving genuinely injured victims under compensated.

An unexpected whiplash injury caused by another's negligence will affect people differently dependent on their personal circumstances - all of which should be taken into account.

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.

We strongly disagree with the proposal that compensation should be removed for pain, suffering and loss of amenity for "minor" claims.

Removing the right to claim damages or limiting the amount that can be claimed will result in claimants not being effectively restored to the position they were in but for the tort taking place.

Compensation is vital in paying for rehabilitation and replacing earnings lost as a result of time away from work. Even greater hardships would be incurred for those in our society who are in the lower income bracket.

The consultation document stresses the Government's aim and driving force behind their proposals is to reduce the number and cost of minor RTA related soft tissue injury claims. The removal of damages as proposed is disproportionate to this aim. As stated in our introduction, the Government needs to target the real issues of congestion, car design and seatbelts, accident prevention rather than penalising every single injured person.

<u>Question 6:</u> Please give your views on whether a fixed sum should be introduced to cover minor claims as defined in Part 1 of this consultation? Please explain your reasons.

<u>Question 7:</u> Please give your views on the government's proposal to fix the amount of compensation for pain, suffering and loss of amenity for minor claims at £400 and at £425 if the claim contains a psychological element. Please explain your reasons

The introduction of a fixed sum is not necessary - the Judicial College Guidelines is a useful guide to the amounts to be awarded. We would also highlight that the figures within the consultation document are taken from an out of date edition of the guidelines. Within the current 2015 version, used by practitioners and the judiciary, there is an uplift on damages.

If the aim of these proposals is to eradicate fraud then this response is once again entirely disproportionate to that aim.

The sums proposed are ridiculously low amounts and are an insult to those in our society who find themselves injured, as a result of someone else's negligence. The proposed award of £25 for a proven psychological element is absurdly low and out of all proportion to the cost of making such a claim (court fees, police report, medical report), it also unclear how this figure was arrived at.

These proposals damage the rights of claimants and are wholly disproportionate to the extent of the issue they are seeking to address. We know from our own experience of running these claims, for almost 40 years, that the overwhelming majority of personal injury claims are genuine.

The Association of British Insurers (ABI) own statistics have shown that only 0.25% of claims are ultimately proven to be fraudulent and research by Capital Economics demonstrated that detected fraud has only added £4 to each motor policy.

The suggested removal of the long-standing legal principle of provision of compensation for pain, suffering and loss of amenity will cause serious harm to people's ability to be restored to the circumstances in which they were prior to the accident taking place.

This proposal would also create inequality for those who suffer a soft tissue injury against those who suffer similar injuries at work or in a public place.

<u>Question 8:</u> If the option to remove compensation for pain, suffering and loss of amenity from minor road traffic accident related soft tissue injury claims is pursued, please give your views on whether the 'Diagnosis' approach should be used. Please explain your reasons.

Question 9: If either option to tackle minor claims (see Part 2 of the consultation document) is pursued, please give your views on whether the 'Prognosis' approach should be used. Please explain your reasons.

Question 10: Would the introduction of the 'diagnosis' model help to control the practice of claimants bringing their claim late in the limitation period? Please explain your reasons and if you disagree, provide views on how the issue of late notified claims should be tackled.

The present approach ensures the claimant is assessed by an appropriate medical expert and this often leads to early intervention and rehabilitation and it is well known that this leads to a better outcome for the injured person in that recovery can be expedited. The advantage of this approach is that access to rehabilitation services removes the burden from an already under strain NHS and reduces the final damages award.

All accidents are different and impact each individual differently, for example an 80 year old gentleman's body will not react the same as that of a 15 year old female, therefore it is vital for a claimant to see a doctor for a medical report close to the time of their accident as this enables a contemporaneous account to be recorded of their injuries and symptoms**.**

We do not agree with the so called diagnosis approach and we do not see the correlation between the diagnosis approach and claimant's bringing claims late. We are not aware that this is a significant problem, nor one that requires tackling.

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.

No – the figures would lead to significant under compensation, for some claimants losing 50% of the current damages.

The tariff is made of single figures rather than brackets, which makes the assumption that everybody is affected in exactly the same way for an injury which is simply not the case. Under the current proposals, however, a claimant would obtain a medical report (a question of who bears the cost remains unanswered) which will consider the soft tissue injury aspect. It is unlikely that a claimant will have the requisite knowledge to assess the report to enable them to establish firstly whether further evidence is needed and if it is obtain permission to commission such evidence. This would almost certainly lead to claimant being undercompensated.

The tariff approach prevents the injury from being investigated fully and correctly as evidenced by the CICA scheme. Only the first 3 injuries, which are then heavily discounted, are taken into account. As costs are not awarded under the scheme it is not viable for solicitors to assist claimants through this process unless there is an agreement to pay legal fees from the damages. We have undertaken a number of cases where in the first instance the offer put forward to the individual was low and we agreed to pursue the review on their behalf. See the case study below.

HJA case study 3

In 2011 our client was a young man studying for his A levels when he was assaulted with a meat cleaver by a group of 20 men. Two years later, the CICA awarded £4,275 as compensation for scarring to the head, skull fracture and brain injury. Without guidance from an experienced and qualified professional our client would not have been able to tackle the appeal process alone. The process took 2 years and a large amount of evidence gathering. Our client eventually received £94,361.22.

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.

In our experience, very few claims are heard by a judge – this provision might encourage many cases going to a hearing which is not something the claimants we represent would want. Nor would there be any costs for the extra delay and expense of going to a hearing.

What would the definition of exceptional be? Would this be at an individual judges' discretion? How would a claimant set about proving their case fell into this category of being exceptional? We represent individuals who find themselves injured and working to recover. To them their case is exceptional and quite rightly they seek rehabilitation, redress and to be put back into the position they were in before the accident occurred.

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.

The small claims track is not suitable for PI claims and the proposal to increase the small claims track will do significant harm to individuals' rights to access to justice.

While the proposals do not remove the legal right to bring a claim as costs are not awarded in the small claims court individuals will not be in a position to access the required legal advice and support on account of it not being financially viable.

Individuals will be at a real disadvantage and be facing opponents who will ultimately be represented by lawyers or claims handlers who have experience in an area of law that is complex in terms of evidence and procedure. Unrepresented claimants will be daunted by the process.

Using the value of general damages as a benchmark for the complexity of the case is completely flawed. We disagree that minor personal injury cases are straightforward and that legal representation is not required.

Employers and Public Liability claims require far more work than straightforward RTA claims and can often include:

1. Obtaining a proper statement from the claimant to assess the merits and mechanics of the accident. This is often because each accident is different or involves use of equipment or occurred on a unique site.

2. Identifying the defendant and taking steps to ensure there is a policy of insurance in place and that the defendant is solvent.

3. Issues regarding causation of injury as the mechanism of injury is almost always different, particularly in Employers Liability claims and contributory negligence an argument that is often raised.

4. Disclosure in these cases is vital when assessing merits. It is often the case defendants do not disclose and application to the courts must be made. Once the evidence is received it must be assessed critically. Documents are often simply printouts from computer.

How will a lay person navigate this process?

For example an accident on a building site causing an uncomplicated Colles' fracture of the wrist. Potential defendants could include, an agency, a subcontractor, the main contractor and the company who control the site.

A claimant would need to primarily identify the correct defendant. How would they go about identifying all these parties? Once the parties were ascertained how would the claimant set about establishing liability? What if the defendants refuse to disclose documents? What safeguards will be in place to ensure defendants comply with the process?

What about the claimant's personal circumstance for example if the injury has led to time off work how will they be paying rent and bills? With that as a concern, particularly if they have dependents, how will the claimant fund the basic fees which will include a medical report, issue fee and hearing fee especially when the proposal does not appear to guarantee recovery of these upfront costs.

HJA case study 4

Our client was employed by an agency as a steel contractor. He sustained an injury to his ankle and was unable to work for 4 weeks, during which he was unpaid. Although he was employed by the agency he was contracted to another company who were undertaking work for an engineering company, based in Australia. In the first instance CNF forms were sent to the agency who redirected to the subcontractor. Upon receipt of the claim they denied liability. We then pursued the engineering company who also denied liability. Pre-action disclosure applications were made against the 2 potential defendants and eventually the engineering company conceded liability and the claim settled for £5000 after their initial offer of £2000.

The risk of under-settlement is huge for a number of reasons:

1. A claimant is unlikely to appreciate all the potential heads of loss that are recoverable, for example contractual sick pay or private healthcare which if not claimed they would become liable for.

2. If made an offer to settle will a claimant be in a position to assess the merits of that offer. Defendants are aware that for those on a low income who have been unable to work as a result of their injuries an offer to settle becomes very attractive and often will be accepted despite it not being adequate. Claimants are unlikely to have the confidence to negotiate with an experienced opponent.

The proposed increase will deny thousands of individuals the right to seek proper legal advice and to do so will involve either paying all their own legal costs or damages being subject to huge deductions in the event damages are awarded. The alternative would be for them to act as a litigants in person which will no doubt strain an already under pressure court system.

HJA case study 5

Our client received a crush injury to his finger following an accident at work where inadequate protective gloves were provided and the job of lifting heavy wooden blocks was done manually when it ought to have been done using equipment. Liability was strenuously denied and as a result proceedings issued. Our client continued to work as he had to pay rent and bills however his crush injury developed into nerve damage affecting his arm and shoulder. Additional medical evidence was obtained and, 2 months before trial, the matter settled for £14,000.

An interesting point in this case is that once the case was brought the claimant and his witness were both put under disciplinary proceedings. There were no findings made but both found it impossible to continue employment and left their employment. In our experience this is not uncommon and legal representatives in addition to legal advice provide claimants with a huge amount of support through what can be a very stressful and difficult time.

If the proposals are aimed at stamping out fraudulent low value RTA claims why have legitimate employers and public liability claims been included within the proposals? There is no evidence to suggest there is a compensation culture for Employer Liability and Public Liability claims. The evidence actually show claims are falling. (Official data from the CRU show that claims have dropped since 2013 from, 208869 to 179204 in 2015/16).

Additionally, we do not see any correlation between EL/PL claims and car insurance premiums and whiplash which we are told the focus of these proposals.

<u>Question 14:</u> 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?

The small claims limit for personal injury claims should not be increased.

The small claims track is designed to handle low value and/or simple disputes hence costs not being recoverable.

Cases up to £5,000 are more complex and are unsuitable for an individual to run without legal representation. At the very outset of a case it is difficult to assess the value based on simply a description of injuries, it is only once medical evidence is available that a full assessment of the injuries can be made and valued. With the majority of claims being settled by negotiation how will a claimant be guided to know how much their case is worth and that it is in fact more appropriate for the fast track.

<u>Question 15:</u> Please provide your views on any suggested improvements that could be made to provide further help to litigants in person using the Small Claims Track.

People injured by as a result of negligence must be able to seek justice and gain full and fair compensation. We have set out our reasons to Q13 and 14 as to why the small claims court is not suitable for Litigants in Person.

HJA case study 6

Our client was an elderly man who spoke limited English. He was hit by a car when crossing the road. He suffered soft tissue injuries to his abdomen, right elbow and right wrist and recovered within 9 months. His claim settled for £4,000. Our client found the claim process quite difficult to understand and we had to spend of time with him going through everything to make sure he understood. He also did not have access to the internet or a computer. This gentleman is an example of those who although injured by someone else's negligence would struggle to gain justice and under the proposed reforms would receive significantly less in compensation.

<u>Question 16</u>: Do you think any specific measures should be put in place in relation to claims management companies and paid McKenzie Friends operating in the PI sector? Please explain your reasons why.

We do not wish to see any specific measures put in place in relation to claims management companies and paid McKenzie Friends operating in the personal injury sector. Professional McKenzie friends as we have seen in other areas of law pose a real risk to litigants in person especially those that are vulnerable.

Claims Management company's process information using a tick box method which stops the full facts of a case being obtained. Advising anybody when you have limited facts is inherently dangerous as the quality of advice will inevitably be poor and inaccurate. This will mean not only potential heads of loss being missed but injuries too.

Neither are trained, insured, or regulated for doing personal injury work. They are unaccountable and have no place in any legal system for giving advice and representation. We are astounded that the government has suggested this.

Part 5 – Introducing a prohibition on pre-medical offers to settle

Question 17: Should the ban on pre-medical offers only apply to road traffic accident related soft tissue injuries? Please explain your reasons why.

Question 18: Should there be any exemptions to the ban, if so, what should they be and why?

Question 19: How should the ban be enforced? Please explain your reasoning.

There should be a ban on all pre-medical offers.

Injured victims at the time of an accident go through a great deal of stress a lot of which is to do with financial pressure which can sway them into accepting an offer to help them through in the short term. This can and often does lead to under settlement of the claim. Cases cannot be assessed without medical evidence as this ensures that the correct level of compensation is paid.

We also feel that this can create scenarios whereby potentially fraudulent claims could be settled having not had to go through the scrutiny of a medical examination.

The penalty for breaching such a ban needs to be strict and we would suggest it goes further than a monetary fine.

Part 6 – Implementing the recommendations of the Insurance

Fraud Task Force

Question 20: Should the Claims Notification Form be amended to include the source of referral of claim? Please give reasons.

The source of the referral is privileged and confidential commercial information and therefore cannot be disclosed.

Question 21: Should the Qualified One-way Costs Shifting provisions be amended so that a claimant is required to seek the court's permission to discontinue less than 28 days before trial (Part 38.4 of CPR)? Please state your reasons.

No, a claimant should always be allowed to discontinue if the evidence no longer supports their claim.

We do not agree that the QOCS provisions should be amended so that the claimant is required to seek the court's permission to discontinue less than 28 days before trial. This is an unnecessary amendment as the defendant already has the power to apply for finding a fundamental dishonesty and their ability to force a trial already exists

APPENDIX ONE

Below Patrick Allen's letter to Ms Truss dated 8th December 2016. The invitation made to Ms Truss still stands and we do hope she will take time to hear the stories that matter most – those from people injured by others negligence.

"Some 25 years ago, the Conservative government of the day rethought its idea of forcing low-value personal injury claims into the small claims track. Gratifyingly, in doing so the then Lord Chancellor's Department cited an article I had written about the dangers such a proposal posed as influencing its thinking.

Times may have changed since 1991, but the arguments still hold good, and I would urge you to follow the example of your predecessor, Lord Mackay of Clashfern, and call a halt to the damaging proposals the Ministry of Justice published recently.

It should never be forgotten that we are talking about ordinary people who have been injured and suffered loss due to the negligence of another. The law has not changed to make it easier to claim; rather people now have a greater awareness that the law allows them to make good the loss they have suffered. This is a fundamental principle of our legal system.

If the law itself remains sound, and you are making no proposal to change it, then there is no rational argument to make it harder for people to exercise their rights under it. The sums may seem small but to individuals they can be very significant – it could be a loss that tips them over the edge from 'just about managing' to 'not managing'.

Claimant lawyers are well aware of the risk of fraud and indeed have a crucial role as gatekeepers in sifting out cases with no merit – so you must appreciate our frustration that reform is being introduced with no evidence that insurance fraud is a problem of such magnitude that fundamental legal principles should be thrown to the wind.

As the Transport Select Committee put it in 2013: "It is surprising that the government has brought forward measures to reduce the number of fraudulent or exaggerated whiplash claims without giving even an estimate of the comparative scale of the problem." Nothing has changed since.

The basic point is that if you deny claimants the right to recover legal fees, then many will not be able to face bringing perfectly valid claims themselves, while those that do will be faced with experienced legal representation on the other side. Equality of arms will be a distant memory.

A case may be low value but that does not make it simple. How many of your constituents would be able to navigate health and safety regulations, for example, to determine liability? Or find witnesses of fact and bring them to court? Or brief medical or expert witnesses and get them to court too? Or pay for medical and other reports? Or value damages and calculate interest?

Frankly, I read with incredulity the consultation paper's suggestion that claims management companies – long identified by the Ministry of Justice as a major cause of the so-called

compensation culture – and paid McKenzie Friends could instead help claimants. These people are untrained, uninsured and unaccountable – they could scarcely be less suitable for the role. If people need help, then they should have proper help.

More remarkable still was the admission in the impact assessment that even the government does not expect insurers to return all of the 'savings' from these reforms to policyholders – rather, they will enjoy a £200m windfall. Further, lower insurance premiums are the justification for these reforms, and the government's inability to guarantee that this will happen should ring alarm bells with you. If the ministry is prepared to interfere in the operation of the legal market, there is no reason not to do the same with the insurance market.

I would also point out that widening the reforms to stifle claims by, say, elderly people who trip over pavements or slip in shops will have no effect on motor insurance whatsoever.

The personal injury market has undergone wave after wave of reform in recent years. You need to give it time to settle down so we can judge the full impact of changes like the Jackson reforms, which are just three years old. Insurance premiums are not a remotely reliable measure – unlike the DWP's Compensation Recovery Unit, whose figures show how whiplash claims have been falling for some years now.

Insurers are not the victims here, as their rising salaries, bonuses and share prices show. Motorists who cause the accidents in the first place are not the victims either. The victims is put them first and decide not to take these reforms forward.

I invite you to visit our offices in Euston to discuss these issues with those of us on the front line and meet first-hand clients who are bringing claims of the type under review, to understand their stories and what their cases mean to them."

APPENDIX TWO – MORE HJA CASE STUDIES

1. Our client suffered a road traffic accident when the defendant changed lanes and collided with his vehicle. He suffered whiplash injuries to his neck, back and shoulders and recovered at around 18 months post-accident. On the medical evidence our valuation was under £5,000. After negotiations the claim settled for £5,926.97 (£5,400 general damages).

2. Our client suffered whiplash injuries to her neck and shoulders and soft tissue injuries to her left arm and leg. The Defendant's insurers made a pre medical offer of £1,375 which we advised client against accepting. After obtaining medical evidence her injury claim settled for £6,900.

3. Our client was a cyclist who suffered 4 to 5 month soft tissue injury to chest and minor cuts and bruising. He was later diagnosed with 18 months PTSD and his claim settled for £5,386.97 (£4,500 for general damages).

4. Our client suffered whiplash injuries to his neck and back and travel anxiety as a result of a road traffic accident (12 month recovery). The client could not read or write and would therefore have been at a distinct disadvantage under the new proposals as he would have been unable to understand the scheme or work an online portal without advice. His claim settled for £3,600.

5. Our client suffered whiplash type injuries to her neck, back and shoulders and a soft tissue injury to her knee. The defendant's insurers made a pre medical offer of £2,000. After obtaining medical evidence the claim settled for £7,500.

6. Our client boarded a bus which suddenly jolted forwards causing the claimant to fall backwards, hit her head and fall to the ground. She sustained soft tissue injuries to her shoulder, lower back and a bump to the head. The claim went into the portal on the basis the case was worth less than £5,000. Our client was elderly and as a result of the accident was then afraid of using buses and a pre-existing condition was exacerbated. Over time we realised she had ongoing physical injuries and lasting psychological injuries. The case settled for £11,000.

7. Our client was elderly and was travelling on a bus when another vehicle lost control of a large bin which was being emptied. The bin hit the window where our client was sitting, the glass shattered and she was thrown forward. She suffered whiplash injuries to her back, right shoulder and neck pain. Both the bus driver and the Council denied liability for the accident. Our solicitor had to issue and serve court proceedings against the Council who then agreed to settle the claim quite close to the trial. Our client received £4750.

8. Our client was injured when a driver collided with the side of their vehicle. The claim was put through the RTA portal and medical evidence obtained. Our client sustained whiplash injuries to his neck, back and shoulders and had not travelled in a car since the accident. He was a car mechanic by trade and was unable to work for approximately 6 months and found it unbearable to continue when he did return. The matter settled for £13,250.

9. Our client was a child travelling in her parent's vehicle when their car was hit from behind. The child suffered a whiplash injury to her neck and underwent a course of physiotherapy treatment to resolve her symptoms. The young child excelled in dance and sports but, these had to be put on hold until she recovered. The matter settled for £3,000.