Ministry of JUSTICE

Case track limits and the claims process for personal injury claims

Response to Consultation

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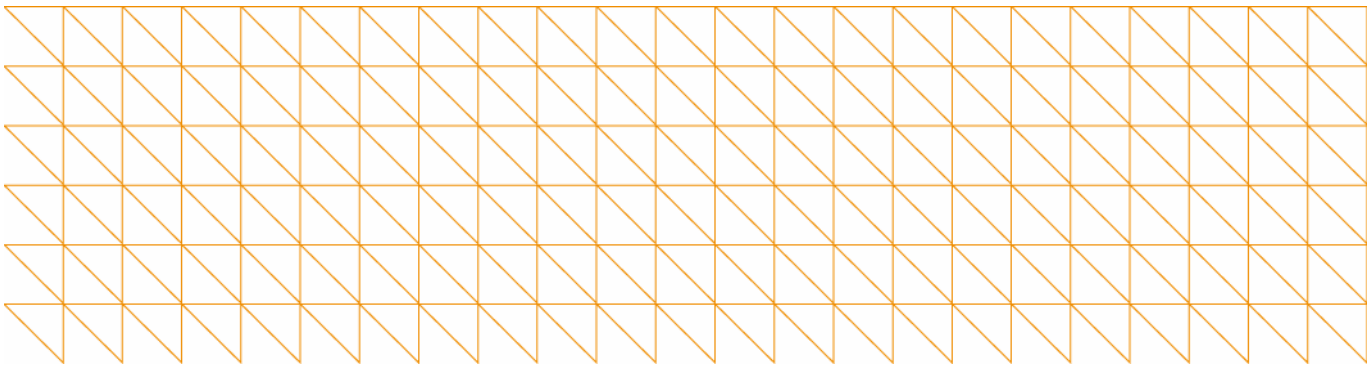

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Case track limits and the claims process for personal injury claims

Response to consultation carried out by the Ministry of Justice.

This information is also available on the Ministry of Justice website: www.justice.gov.uk

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Introduction/Contact details

This document is the post-consultation report for the consultation paper: 'Case tracks limits and the claims process for personal injury claims'.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

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This report is also available on the Ministry's website: www.justice.gov.uk.

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Background

The consultation paper: ‘Case track limits and the claims process for personal injury claims was published on 20 April 2007. The first part of the paper invited comments on proposals on the case management track limits as provided for in Part 26.6 of the Civil Procedure Rules. In relation to the case track limits, the paper first examined the small claims limit for personal injury claims and considered the arguments for and against raising the current limit of £1000. It concluded that the limit should not be changed on the basis that a better option would be to improve the claims process.

The paper considered the small claims limit for housing disrepair claims. It proposed that the limit should remain at the current level of £1000 for disrepair and £1000 for damages. It also sought views on whether the process for dealing with these claims could be improved and simplified.

In relation to the small claims limit for all other claims, the paper recommended that it should remain at the current level of £5000.

The paper recommended increasing the fast track limit from £15,000 to £25,000. In addition, following recommendation 54 of the Gowers Review of Intellectual Property, views were sought on whether intellectual property claims could be dealt with in a more efficient and cost-effective way.

The second part of the paper invited comments on proposals which were very much aimed at improving the claims process so that the injured person could receive their rightful compensation more quickly. A key focus was on the need to reduce unnecessary costs and delay in the system. The proposed new claims process targeted key areas which stakeholders had helped us to identify, including:

- providing early notification of a claim to defendants/insurers
- promoting early admissions of liability and settlements and
- removing duplication of work from the process.

The paper also made proposals in relation to fixed recoverable costs, fixed time periods, and the recovery of After The Event (ATE) insurance premiums.

The proposals were developed over an extensive period of time, with significant input from a diverse stakeholder working group. The group included representatives from the legal profession, insurers, local authorities, consumer groups, trade unions and employer’ organisations. In addition, a number of workshops involving a wide range of stakeholders were held to discuss specific aspects of the claims process. Meetings were also held with representative organisations and individuals. Following publication of the consultation paper meetings continued with stakeholders to discuss issues arising from the

consultation. This report summarises the responses and indicates how the Government proposes to take this work forward.

A list of respondents is at Annex A.

Summary of responses

1. A total of 271 responses to the consultation paper were received. Of these, the largest sector of respondents was the legal profession who made up 46%. This consisted of responses from 118 individual solicitors or solicitors' organisations and eight individual members of the Bar or barristers' organisations.

2. The insurance industry accounted for 20% of respondents. Responses were received from insurance brokers as well as liability-only insurers, legal expense insurers and companies that specialise in both. Local authorities accounted for 13% of respondents, which included police and fire authorities, local councils and regional housing officers. Eight defendant organisations responded, including two supermarkets and travel companies.

3. Five responses were received from the judiciary. In total nine trade unions responded. Responses were received from two Members of Parliament and two Ombudsmen. Five claims management companies or claims management organisations also responded. Two organisations that promote mediation and three private businesses that process personal injury claims responded. One response was received from a statutory non-departmental public body. Three organisations that promote the rights of employers responded. In addition responses were received from individuals and companies such as medical experts, a car rental business, an academic, and a sports federation.

4. None of the responses answered every question. The majority of respondents answered the questions on the case track limits and on the proposed changes to the claims process. A smaller number answered the intellectual property or the housing disrepair questions only. Question 9, which asked about the claims process and question 18, which asked about the proposals in relation to fixed recoverable costs received the highest number of responses.

5. In summary the responses were as follows:

    - The majority of respondents agreed that the small claims limit for personal injury claims should remain at £1000. A minority stated that they would prefer to see the limit increased.

    - A very large majority of respondents agreed that the small claims limit for housing disrepair claims should also remain at the same level.

    - An overwhelming majority of respondents agreed that the small claims limit for general claims should remain at £5000.

- Respondents were largely in favour of increasing the fast track limit from £15,000 to £25,000.

- Respondents suggested a number of ways to make the handling of intellectual property (IP) claims more efficient. A small number of respondents commented on what the difficulties were with IP claims and put forward proposals as to how they could be resolved. Some respondents stated different measures would be appropriate for different types of IP claims.

- Around 30 per cent of respondents stated clearly that they agreed with the proposals for the new claims process. Around 50 per cent commented on the process and made suggestions as to how it could be improved. 20 per cent stated that they did not agree with the proposals.

- In relation to the proposed claim forms, respondents mostly commented on the drafts rather than stating explicitly whether they were in favour of their introduction.

- The majority of respondents agreed with the principle of fixed time limits but expressed concerns about those proposed in the paper.

- A significant number of respondents agreed with the proposal for an application for a simple hearing to assess damages where they could not be agreed.

- The responses contained a range of ideas on how the claims process could be improved for claims where liability is denied.

- Overall respondents were in favour of the schedule of special damages set out in Appendix 7 of the paper.

- The question seeking views on the development of a tool for the assessment of damages split the respondents.

- A large number of respondents were opposed to standardising levels of contributory negligence.

- In response to whether the use of ATE insurance could be justified in the new claims process, approximately the same number of respondents argued that it could as those who argued it could not. Respondents gave a range of answers as to what the effects of the proposals would be on the ATE market. The majority considered that there would be significant increases in premiums for the remaining cases, which could cause difficulties in relation to access to justice.

- In relation to the scope of the proposed claims process, while the majority of respondents agreed with the process, many suggested that either the proposed limit of £25,000 was too high or that certain types of

claims were unsuitable for a streamlined procedure and should be excluded.

Responses to specific questions

1. Do you agree that the small claims limit for personal injuries should remain at £1000 in view of the proposals to improve the claims process? If not, please set out your reasons why and state what you consider the appropriate level would be.

There were 225 responses to this question. Of these,129 respondents answered with a straightforward 'yes'. 26 responses agreed that the limit should remain but only on the condition that the proposals to improve the claims process were taken forward. 16 respondents agreed that the limit should remain but did not consider any improvements to the process were needed. 50 respondents argued that the limit should be increased and two stated the limit should be removed altogether. The remaining two respondents answered 'maybe'.

The responses that answered with a straightforward 'yes' were from a cross section of interest groups, however, claimant solicitors accounted for the most responses. In addition, responses from members of the Bar, trade unions, claims management companies and insurers also agreed that the limit should remain.

The 26 responses that considered that the £1000 limit should remain on condition that the claims process was improved were from defendant solicitors, insurers, local authorities, and defendant and employer organisations. They cited the major reason as being the lack of proportionality of costs in personal injury claims. It was argued that the introduction of a streamlined process and realistic fixed costs was essential to tackle this problem. For example a local council stated that the proposals must prevent the front-loading of work, which could lead to the build up of costs very early on in a case. These respondents made it clear that if the claims process was not improved the limit should increase.

The 16 responses that explicitly stated that there should be no change to the limit or to the claims process were largely from claimant solicitors, trade unions, a claims management company and insurers. Responses from trade unions explained that raising the small claims limit would have a great impact on the number of claims that they would be able to bring on behalf of their members.

The responses that disagreed that the limit should remain at £1000 were largely from local authorities (20 out of the 35 local authority responses). Others included insurers, defendant and employer organisations and the judiciary. Respondents suggested various alternatives, including raising the limit in line with inflation; raising it to £2500; or raising it to £5000.

The most frequently cited reason as to why the limit should be raised was the issue of disproportionate costs. A response from a local authority

highlighted this problem and provided an example where a claimant received damages of £1400 with legal costs at £12,000. Another example cited was a case that settled well before trial for £1400. However, the costs claimed were £11,774, plus £1355 for preparing and checking the bill.

In addition, it was suggested that raising the limit would dissuade claimants from bringing spurious claims.

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2. Do you agree that the small claims limit for housing disrepair should remain at £1000 for disrepair and £1000 for damages? If not, please set out your reasons why and state what you consider the appropriate level would be.

In total, 88 respondents answered this question. Of those, 77 agreed that the small claims limits for housing disrepair claims should remain at the current level and 11 respondents disagreed.

Those respondents who agreed that the level should remain as it is now were largely claimant solicitors but also included members of the Bar, the judiciary and insurers.

Respondents stated that housing disrepair is a social problem and there remains a real need to protect the disadvantaged and vulnerable groups in society, for example, black and minority ethnic communities who do not speak English as their first language. It was argued that tenants are subject to economic and educational deprivation and are therefore reliant on legal representation through public funding. Raising the limit would mean such claimants would no longer be entitled to this. This would have an impact on access to justice. This was supported by one respondent who commented that 'housing disrepair claims are usually bought by tenants in Social Housing and are thus in a lower social economic bracket. They tend to be vulnerable and dependent on state benefits. They are thus unable to move to alternative property in better repair, as they do not have the financial resources to do so'.

The 11 respondents who were not in favour of the limit remaining at the same level were largely local authorities or defendant solicitor firms. Over a quarter of these responses stated that the limit should be increased to £5000, others suggested £1500 or £2500. It was argued that housing disrepair claims were not complicated and therefore there was no need for either party to have legal representation.

Respondents stated that an increase was overdue and that landlords should be protected from claims from nuisance tenants funded by Legal Aid. Several respondents stated that they had experience of dealing with claims with a value just over the small claims limit where costs equalled or exceeded the amount of damages that were awarded. Two respondents suggested legal representation could be completely removed from the

process altogether by utilising independent surveyors who could report to the court.

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3. Your views are sought on whether the process for dealing with housing disrepair cases can be improved and simplified, and if so, how this could be achieved.

There were 38 responses to this question from a wide range of stakeholders, including insurance officers from local authorities, the judiciary, solicitors that act for both claimants and defendants, members of the Bar, and a trade union.

Over a quarter of the responses to this question stated that the process for dealing with these cases does not need to be improved as the pre-action protocol is working well. Comments were made that the protocol had encouraged more claims to settle pre-issue, with lower costs. As this was a relatively new system it should be allowed to bed down before any other changes were made.

One respondent stated that it is 'difficult to see how the process can be, or needs to be, improved and simplified'.

Some responses from insurers and defendant solicitors were critical of the pre-action protocol. They stated that it promoted the use of expert evidence in claims that did not require it. It was suggested that the protocol could contain more vigorous requirements to assess whether the problem was one of disrepair or a need for improvement. Respondents also stated that the claim form could be simplified.

The remaining respondents commented on improvements that could be made to the process for dealing with housing disrepair claims. One suggestion made by several stakeholders, including local authorities and solicitors, was that a simple, non-adversarial arbitration procedure could be introduced, where each side would bear their own costs. It was stated that this would be quicker and cheaper than the current litigation process. In addition, it was suggested that simple Alternative Dispute Resolution (ADR), specifically mediation, could play a greater role, by being encouraged as early in the process as possible. Respondents suggested that telephone mediation might be a proportionate way of dealing with these claims.

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4. Do you agree that the small claims limit for other claims should remain at £5000? If not, please set out your reasons why and state what you consider the appropriate level would be.

Of the 189 respondents who answered this question, 94 per cent agreed that the small claims limit, for all claims except personal injury and housing disrepair, should remain at £5000. The majority of these responses were from solicitors but insurers, local authorities, trade unions, defendant organisations, claims management companies and members of the Bar and judiciary all stated that the limit should remain as it was.

The respondents who argued that the current limit should remain cited a number of reasons for this. The most frequent was that £5000 was a large amount of money for most of the population. It was also argued that the limit was very high in comparison with other EU countries and world-wide. In addition, it was contended that the limit caught complicated claims, such as misrepresentation in contract law, which could be difficult for claimants in person to understand. It was argued that if the limit was raised further individuals might be deterred from pursuing claims, which would have an impact on access to justice.

A minority of those who agreed that the current limit should remain stated that they would prefer to see a reduction but were content, as long as the limit was not raised further.

Of the 11 respondents who were opposed to the limit remaining at £5000, seven favoured an increase, arguing that it should be increased to £7500 or £10,000. These respondents largely consisted of insurers. It was argued that an increase would bring relatively straightforward claims, such as vehicle damage into the small claims track. This would result in these claims not incurring the legal costs of the fast track.

Four respondents, who were members of the legal profession, were opposed to the limit remaining at £5000 and wanted a reduction. It was argued that £5000 was too high and the limit should be £2500, £1000 or abolished altogether. One respondent contended that the parties were often on an unequal footing, for example, in a defective product claim where the claimant was a consumer and the defendant a private business.

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5. Do you agree that the fast track limit should be increased to £25,000? If not, please set out your reasons why and state what you consider the appropriate level would be.

Of the 204 respondents who answered this question, 147 were in favour of increasing the fast track from £15,000 to £25,000, while 57 were against an increase.

Of those who responded in favour, the majority did so with a straightforward 'yes'. Respondents believed that there was no technical difference between claims worth £15,000 and £25,000. It was argued that standard employers' liability (EL) and public liability (PL) claims could be heard within this track without the need for utilising the full resources of the multi-track and that cases should have the benefit of procedures that ensured claims were resolved sooner. Respondents also argued that increasing the limit would allow for greater flexibility and for more claims to be heard within the appropriate track. Other suggestions were that the limit should be regularly reviewed and increased further at a later date; increased to £30,000; and there should be an opt-in for all cases up to £50,000.

However, a number of respondents suggested that if the limit was raised it would be necessary to put certain safeguards in place. In particular there was a need for stringent case management to ensure that district judges considered every aspect of a claim, rather than simply the value of the claim. This would ensure complex claims were allocated to the multi-track. Some respondents also stated that certain types of claims, primarily clinical negligence and industrial disease, should be excluded from the fast track.

There was disagreement between respondents as to the cost rules that should apply to the fast track if the limit was raised. Some respondents stated that it would be important to introduce a fixed fee system for all claims up to the fast track limit, whilst others stated that they could only agree to the increase if the current fee regime remained.

72 per cent of the responses that opposed an increase were from claimant solicitors. The remaining responses were from insurers, defendant organisations, trade unions and members of the Bar. They argued that cases with a value between £15,000 and £25,000 were too complex to fit the tight rules imposed by the fast track regime and that cases could be prejudiced by the limitations on evidence.

In addition, it was suggested that a 67 per cent increase to £25,000 was too steep, and the limit should be raised more gradually. Respondents expressed fears that judges would simply allocate cases according to their value instead of ensuring that complex cases were heard in the multi-track. Some respondents argued that there were few cases that fall within the £15,000 to £25,000 bracket so that any increase would have a limited effect on court administrative efficiency. Whereas others contended that a great number of claims would fall within this bracket.

6. Are there any measures that would make the handling of intellectual property claims more efficient and effective? If so, please tell us what those measures are.

Out of the 30 responses to this question, 29 put forward a range of suggestions as to what improvements could be made to the handling of IP claims. Many respondents indicated support for existing arrangements, with one respondent arguing that no improvements to the system were needed. Respondents considered that the system was already flexible enough to deal with claims in an effective and efficient way. Some considered that different measures were not appropriate for different categories of case, others took the opposite view.

The majority of respondents focused on the issue of the judiciary. It was argued that IP claims required a specialist judiciary with experience in handling these types of claims. In particular, it was argued that patent and registered design cases should continue to be heard by specially appointed judges. There was limited interest in having facilities to hear cases outside London, for example in the North of England. There was significant support for vigorous or robust case-management, leading to tighter control of cases and costs that were proportionate. Some focused on the need to ensure that only relevant evidence was produced and a few respondents argued that restrictions or limitations on disclosure were necessary. One respondent observed that currently judges routinely order general disclosure at the case management stage, which can be disproportionate to the matter in question.

One quarter of respondents stated that there should be increased use of mediation. Reference was made to the mediation scheme operating at the Patent Court. It was suggested that this could be rolled out to other IP claims. It was argued that it should be compulsory for parties to attend mediation before proceedings began although one response disagreed with this approach.

Around 10 per cent of respondents suggested that the procedure for handling IP claims should be streamlined to make it more efficient. In contrast other respondents argued that the procedures for streamlining the process already exist. However, they stated that these were not utilised because many IP cases, and in particular patent cases, were unsuitable. It was stated that this was because of the technically complex nature of the claims and the need for highly specialised expert advice.

Some respondents expressed concerns about the costs involved in bringing a claim. It was suggested that the procedure should take account of the value of the claim and the injunctive relief sought so as to be proportionate. It should be focused on keeping the costs down. Respondents stated that the current system was too expensive and time-consuming and therefore small and medium size businesses were discouraged from bringing claims. It also suggested that a fixed fee regime could be introduced in lower value IP claims.

Two respondents stated that a quarterly small claims court should be set up to deal with low value copyright claims. It was argued that claimants were being deterred from bringing these claims, due to the potentially high legal costs of the defendant. In contrast one respondent stated that none of the IP cases were suitable for the small claims track.

Other suggestions included raising the fast track limit to £50,000, a dedicated IP court, and introducing an obligation for the claimant to serve full expert evidence prior to proceedings in copyright cases.

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7. If the difficulty of dealing with intellectual property cases is not the court process, what are the difficulties and how could they be resolved?

Ten responses were received to this question.

Three respondents echoed what was said in answer to question 6, that the process could benefit from the increased use of mediation.

Three respondents commented that the difficulties in dealing with IP claims stemmed from their unusual nature and this made standardisation difficult. For example, the determination of IP rights and whether they have been infringed can be complex. Three respondents suggested that the process could be made more efficient if a preliminary view was obtained from a single joint expert or in the form of a non-binding opinion from the United Kingdom Intellectual Property Office. This would narrow the areas of dispute, which one respondent stated was key.

One respondent stated that the process of dealing with IP claims could be improved if proving a breach of rights was more straightforward. This would affect what evidence would be necessary to prove a claim. Another noted that there was no credible alternative to litigation. It was stated that cheaper insurance would improve the handling of IP claims. It was also considered that the Patent County Court could develop into a stand-alone county court with adequate administrative resources. A further suggestion was that better use could be made of technology within the courtroom. One respondent commented that delays could be caused by guidance being required on European Union law from the European Court of Justice (ECJ).

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8. You may consider that different measures would be appropriate for different kinds of intellectual property – for instance because patent cases involve questions of technology. If you have a response directed to a particular kind of intellectual property only, please say so.

This question received 13 responses. Seven of these stated that different measures would be appropriate for different kinds of IP claims. Two responses stated that different measures were not appropriate. The remaining four respondents made general comments.

In addition to the suggestion that the fast track should be raised to £50,000 it was stated that other measures such as compulsory mediation and restrictions on evidence would be appropriate. In particular it was suggested that there should be split hearings for validity /infringement and quantum. Another respondent argued that patent claims were not suitable for a fast track procedure and that instead they should all be allocated to the multi-track.

Another respondent, who commented that patent cases should be dealt with separately, stated that judges should make better use of their case management powers for these claims. One respondent suggested that a dedicated IP court should be set up to deal with trademark, copyright and unregistered design claims. This would ensure judges dealing with these claims had the specialist knowledge to understand the technical aspects.

The argument against different measures being introduced for different types of claims focused on the fact that, as with patent claims, all kinds of IP cases can involve substantial problems concerning the scope and interpretation of intellectual rights.

One respondent argued that other types of IP cases were not necessarily as technically complex as patent cases. However, they could be expensive claims to bring because of the need to gather a large amount of factual evidence. In addition, there could be delay in trademark claims, as these often needed to be referred to the ECJ.

Other comments made by respondents included the need to set up a specialist unit to give advice on copyright registration. It was stated that better use could be made of professionals within the separate fields who could provide advice to judges. One respondent argued that litigation between large companies was expensive and it would be wrong to attempt to interfere with that.

9. Do you agree that these proposals set out a procedure for dealing with claims which will provide fair compensation in a more timely and cost-effective way? If not, please say why and set out any alternative proposals

This question received 232 responses. Around half of the respondents answered with a clear 'yes' or 'no,' as to whether they agreed with the question. Of these, approximately 30 per cent of respondents stated clearly that they agreed with the proposals, whilst approximately 20 per cent stated that they did not. The remaining 50 per cent of respondents commented on the process and made suggestions as to how it could be improved.

The responses that agreed with this question were from a range of respondents. An almost equal number of insurers, claimant solicitors and local authorities responded in this way, as did defendant solicitors, claims management companies, members of the Bar, the judiciary and employer organisations.

Many of the respondents in agreement with the proposals simply answered 'yes' or 'I agree'. Others stated that they welcomed the proposed changes to the system describing them as sensible, reasonable, pragmatic, and an improvement. It was considered that they were capable of delivering fair compensation. It was suggested that clear rules would be needed as to what claims were included in the process and what would happen if claims left the process. Several responses stated that it would be vital for all parties to adhere to the rules of the process for it to be successful.

A significant number of the responses that disagreed with the proposals were from claimant solicitors but also included insurers and local authorities, along with trade unions and members of the Bar.

Some respondents described the proposals as flawed and badly thought out. Others commented that the proposed changes were too drastic and argued that the system was not in need of such a major overhaul. Respondents stated that the pre-action protocols were designed to reduce the delay and cost of claims, but that they had not been successful, as they were incapable of being enforced. It was argued that the current process worked well. Respondents commented that it would be inappropriate for claimants to hand over investigating claims to insurers as the law stated that claimants had to prove their claim. This provision would also mean that claimant solicitors could not carry out an assessment of claims to filter out claims without a reasonable prospect of success. This could lead to an increase in the volume of claims.

Other respondents were not wholly opposed to the proposed claims process but indicated that there were certain aspects of it that they disagreed with. In particular, concerns were raised about the time limits for decision on liability and the proposals for removing ATE (see questions 11 and 19 for further details).

Respondents put forward a wide range of helpful suggestions as to which areas of the proposals could be further developed to ensure that the system was effective. It was noted that clarity of detail would be essential. Responses stated that fixed fees would be needed for all stages of the claim. These would need to be fixed in a transparent way and regularly reviewed (for further details see question 18).

Several respondents indicated that they were disappointed that provisions for greater use of ADR, and in particular mediation, had not been included in the proposals. It was argued that this could offer an alternative, proportionate and effective solution to litigation in lower value claims.

Points of detail that were raised included the need for careful wording for admissions of liability, given that issues of causation may only be identified once the insurer has seen the medical report. It was contended that the process should refer to 'an admission of breach of duty' rather than 'liability'. It was also suggested that it should be good practice for the claimant to make the first offer but not compulsory and that there should be regular reviews to identify problems once the process was implemented. Questions were raised about the effect of contributory negligence on claims within the scheme.

Other points of detail that concerned respondents included the obtaining of a medical report. It was argued that the claimant solicitors should be able to choose the level of expertise that they considered appropriate, regardless of the injury, and that a cap could not be imposed on expert fees because a report may be required in unusual areas of expertise. In addition, it was contended that in claims with a value of up to £25,000, it was likely that more than one medical report would be required. It was noted that there were no provisions for the defendants to raise questions about the medical report.

A small number of respondents commented that there was insufficient detail in the paper to decide whether the proposals would be effective.

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10. Do you have any comments or suggested amendments in relation to the draft forms?

In total 165 respondents commented on the draft forms proposed by the consultation paper. Some of the responses were very clearly either in favour of, or against the draft forms. However, the majority of respondents simply commented on their content and made suggestions as to how to improve them.

Respondents in favour of the forms described them as an improvement, comprehensive and containing all the relevant information.

The respondents who disagreed with the draft forms in principle cited a range of reasons. It was stated that the forms were inappropriate, limiting and unnecessarily prescriptive. The forms were described as a re-invention of a well drafted letter of claim and therefore not necessary.

A number of suggested amendments were made in relation to the content of the forms. Respondents considered that the forms should be called ‘claim notification forms’ rather than ‘claim form’. A number of respondents thought it might be confusing to potential claimants to have four different forms and it would therefore be better to combine them into one.

A significant number of respondents commented that to prevent identity theft, claimants should not be required to provide personal details when sending the form to defendants. It was suggested that the requirements for claimants to put their national identity number and date of birth should be removed. This would be in line with the current pre-action protocol for personal injury claims.

In addition, responses stated that the forms should have more space for details of any NHS charges, and any hospital treatment, including dates and locations.

It was suggested that the forms should be in a tabular style so that defendants could tick whether facts were agreed or disagreed with.

Responses from defendant organisations stated that the form should provide authorities for the release of medical and occupational health records.

There were a number of specific suggestions made for the different appendices. Respondents suggested that Appendix 1 should contain the details of any potential witnesses; Appendix 2 should have a section asking the claimant why they thought that the defendant was at fault; Appendix 3 should request details of the number of passengers in the car; ‘occupation’ at Appendix 4 should be altered to read ‘employment details’; and in Appendix 6 the issue of future treatment and rehabilitation should be dealt with separately.

Requests were made from trade unions for the wording on the claimant in person forms to be strengthened. The following wording was suggested: ‘a person should be strongly encouraged to seek independent legal advice and notified that failure to do so could lead to a considerable reduction in the damages they receive’.

Some respondents stated that the amount of information required was excessive, especially for RTA claims, in that it would take longer to fill in than it would to draft a letter. Others thought the forms unsuitable for EL and PL claims due to the amount of detail that needed to be collected for these types of claims.

11. Do you agree with the above time periods? If not, please state why not and what they should be.

In total 224 respondents answered this question. Out of these responses, approximately one quarter agreed with the time limits proposed by the consultation paper. Most of the remaining respondents agreed with the principle of fixed time limits but expressed concerns about the actual limits proposed.

The largest group of stakeholders in agreement were solicitors, but also included insurers, some trade unions, barristers and local authorities. Respondents contended that shortening the time periods would speed up the claims process, although some were concerned that insurers would be unable to meet them.

Many of the solicitors in agreement with the time periods stated that it would be essential to have sanctions for non-compliance with the time limits and that no extensions should be allowed. It was argued that this would bring certainty and avoid satellite litigation over whether a claimant solicitor was unreasonable to disallow an extension.

The responses that raised concerns about the time limits proposed were also from a cross-sector of respondents. Approximately 85 per cent of local authorities considered that the time limits were too short. In addition insurers, some members of the Bar, trade unions, and the judiciary, claims management companies and an MP responded this way. Around 70 per cent of claimant solicitors stated that some of the various time limits proposed were unworkable. In relation to the 5-day time limit for the initial interview and the time limit for the settlement pack, it was argued that there would be insufficient time for the claimant solicitor to carry out all the necessary steps.

Claimant solicitors commented that it was highly unlikely insurers would respond within the time proposed when they struggled to comply with the current 90 day limit. Approximately ten per cent of these respondents put forward an alternative solution that the current 90 day limit for decisions on liability should remain, but that stronger sanctions should be put in place to ensure compliance.

Responses indicated that the 15 working day time period for RTA claims was less problematic than the 30 working day period for EL and PL claims, except in relation to commercial fleets of vehicles for which some respondents argued there should be special allowance. However, the three organisations that represented employers described the time limit for decisions on liability as challenging but achievable.

More respondents argued that PL claims were unsuitable for the proposed time periods, particularly as the claim notification form would often be the first notice that the authority would have that a claim was being brought. This could be some considerable time after the accident had taken place

and it was often not clear who were the correct defendant and insurers, leading to claimant solicitors sending claims to the incorrect address. It was reasoned that claims could arise out of a range of scenarios, which required varying investigation techniques. These claims could often involve multiple defendants, and identifying and contacting defendants could be problematic. In addition, there were other extraneous factors that could cause delay, for example claims could be made against schools during the holidays. Respondents from local authorities were also concerned that the shorter time limits could lead to an increase in fraudulent claims, as local authorities would not have enough time to carry out full investigations, and may admit claims just to save money. Particular reference was made to the need to investigate any potentially staged accidents.

A variety of alternative limits were put forward by respondents. A number of respondents consisting of insurers, local authorities and defendant solicitors suggested an alternative time frame. This would consist of 25 days for decisions on liability for RTA claims, 45 days for EL claims and 60 days for PL claims. Some of these respondents also argued that the 21-day acknowledgement period should be retained.

Some responses from insurers stated that they should have 15 working days to consider the settlement pack and prepare a counter-offer, as opposed to the 10 working days proposed by the paper. This would mirror the 15 working days the claimant solicitor had in which to send off the settlement pack and make the first offer.

A small minority of respondents disagreed with the time limits on the basis that they were too long.

Respondents who both agreed and disagreed with the time limits stated that it would be essential that the process was clear as to when time started to run. Similarly, requests were made that the rules over whether extensions were allowed were clear. This would help to avoid satellite litigation over whether the refusal of an extension was ‘reasonable’.

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12. Do you agree that where the amount of damages cannot be agreed there should be an application to the court through the simplest procedure possible? Please comment on what that procedure should cover.

Out of the 212 respondents that answered this question 174 were in agreement that there should be an application to the court through the simplest procedure possible. 38 respondents disagreed.

Of those that agreed with the principle, many disagreed or commented on certain elements of the proposal. One area where views were divided was in relation to which cases should be included in the new procedure. It was suggested that claims with a value of up to £2500, £5000, £10,000, or all cases up to the new proposed fast track limit should be included. The £2500 threshold in relation to the quantum hearing and ATE and costs was described as arbitrary and unnecessary and raised queries as to who would evaluate the claim to decide whether it was over the threshold.

There were contrasting views as to how the hearings should be conducted. Some responses stated that it would be easier, quicker and cheaper if the default position was for hearings to be on paper. Other respondents were strongly of the view that it was very important for the claimant to have the opportunity to appear in front of a judge. Respondents also questioned whether there would be any route of appeal, particularly in relation to paper based hearings.

A number of respondents made it clear that parties should make a real effort to negotiate and agree quantum, and that making an application to the court should be a last resort. A small number of respondents suggested that more emphasis should be placed on ADR, either in the form of mediation or by simply encouraging parties to hold more meetings with each other. They considered that in order to be effective, mediation should be made compulsory. It was described as a less expensive and more convenient option, especially as mediation could be carried out by telephone.

The responses that disagreed with this question were primarily from claimant solicitors, although claims management companies, members of the Bar and a number of trade unions also responded in this way. A number of respondents argued that the fast track already had a streamlined procedure for dealing with quantum in the form of disposal hearings and the proposed system did not add anything new.

Respondents stated that quantum was a complex issue and the variations of individual cases should not be lost for the sake of simplicity. It was suggested that the courts do not have the resources to deal with the potentially large volume of claims.

One proposal that was criticised by respondents who agreed and disagreed with the procedure was the proposal relating to Part 36 offers. The paper proposed that the claimant solicitor would not be awarded the fixed recoverable costs for the quantum hearing unless they beat their own Part 36 offer. This was described as ‘unreasonable and dangerous as the solicitor may become risk-averse and undersettle to the detriment of the claimant’.

13. Your views are sought on whether additional measures could be introduced that would help improve the process where liability is not admitted, or is denied.

There were 191 responses to this question and respondents suggested a range of measures to improve the process where liability was not admitted. Many respondents stated that the key to improving the process was simply for parties to narrow the issues between each other, and so avoid unnecessary investigation. A suggestion put forward by a large number of respondents was that defendants should be required to give detailed reasons as to why they did not admit, or denied liability. It was suggested that, as provided for in the current pre-action protocol, these reasons should be accompanied by full disclosure of all relevant documentation. This would ensure that there was no duplication of work.

Responses from claimant solicitors cited pre-action disclosure applications as a useful tool to force defendants to disclose all such material. It was suggested that claimant solicitors should have to file a simple form at court for an automatic pre-action disclosure order to be made. However, in contrast some respondents, for example local authorities, argued that the current disclosure requirements were too onerous on defendants and added needless costs to claims. They suggested that stricter rules should be in place to prevent claimant solicitors requesting any documents that were not fully relevant to the case.

Respondents argued that the courts should make better use of existing measures to penalise parties and of their case management powers. A large number of respondents requested the introduction of stronger cost-penalties for non-compliance with time limits and the strict enforcement of existing sanctions for other behavioural reasons. Other respondents argued that there should be more rigorous penalties if defendants failed to admit liability early when there was clear evidence of breach of duty. Also, no response from insurers should be considered a ‘deemed admission’.

Another idea put forward was the increased use of proportionate ADR, in particular mediation. It was contended that this was most effective when used as early in the process as possible. Mediation was described as cost-effective and even if unsuccessful, able to narrow the issues between the parties.

Several respondents requested that if a decision on liability was made when the claim was outside the process, a mechanism could be put in place for the claim to re-enter at the quantum stage. One response expressed fears that if this mechanism was not in place ‘there [would be] a danger of strategic behaviour from solicitors to get claims out of the process’. It was also contended that there would need to be an interface between the new process and the current pre-action protocol to avoid unnecessary delay and repetition of work.

Other measures suggested included preliminary hearings on liability; increased use of telephone calls by parties to discuss 'grey' areas; and promotion of the use of Part 36 for liability disputes including contributory negligence.

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14. Do you agree with the proposals set out in Appendix 7? If not, please say why and set out any alternative proposals.

Unfortunately due to an error on the web page there was some confusion over this question. The question on the web page read 'Do you agree with the proposals set out in Appendix 6?'. Although the consultation paper made it clear that the question related to the schedule of special damages and not the template medical report, the error inevitably led to some misunderstanding.

In total 191 responses were received to this question. Of these, 109 made it clear that they were commenting on Appendix 7. The remaining either commented on the medical template or did not indicate which document their answer related to.

73 per cent of those who answered in relation to Appendix 7 were in favour of the proposals, many describing them as 'sensible'. Claimant solicitors formed the largest group of supporters, but support also came from insurers, trade unions, defendant organisations and local authorities. Many of these respondents considered that the proposals would reduce time spent arguing over small value special damages, as well as reducing duplication of work and therefore cost. Moreover the proposals were described as being in line with existing good practice.

However, some respondents answered the question with a qualified 'yes'. For example, it was contended that the figures would have to be regularly and transparently reviewed and updated. Some respondents stated that it was important that the claimant should be able to obtain higher amounts than those at Appendix 7 by producing documentary evidence. It was also suggested that the excess of £250 would be too low and could penalise claimants. Some respondents considered that the schedule was only suitable for claims involving RTAs or those with a value under a certain limit, for example £10,000.

The respondents who did not agree with the proposals were largely insurers and solicitors, as well as trade unions and defendant organisations. The most frequently cited reason was that this system would be difficult to police (therefore open to abuse) and could encourage claim inflation, or fraudulent claims. One defendant organisation considered that the costs in the schedule were excessive as, for example, painkillers are rarely prescribed and are instead available at very low cost in the supermarkets. It was also stated that an allowance of 35p per mile for petrol was too high and that 25p would be more reasonable.

Others argued that collating receipts was not difficult and the various heads of loss could be easily proved. Several respondents opposed the proposal because it imposed a cap on the amount that a claimant could receive. One claimant solicitor expressed fear that claimants would be under-compensated and gave an example of a claimant in an industrial deafness claim seeking the full cost of a high quality digital hearing aid not available on the NHS. Another respondent stated 'Claimants should be able to recover the sums that they have actually incurred or lost as a result of injury. To propose that an injured person should receive some lesser amount because it is cheaper is unacceptable'.

Respondents who agreed and disagreed with Appendix 7 raised concerns that the figures would become the standard amount for all claims rather than a maximum. Similarly, respondents queried what would happen if an insurer routinely breached the procedure and always called for evidence.

Several respondents suggested that the 'care' and 'services' sections would need to be clearly defined or even removed altogether to avoid spurious care claims in low value cases, where they were not appropriate.

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15. Do you agree that regional hourly rates should be set and, if so, how should they be set?

There was some confusion about this question. Within the consultation paper it was included in the section on 'Special Damages', as the question related to hourly rates for care and help provided for the claimant at home. Unfortunately some respondents mistakenly believed the question was asking about setting hourly rates for solicitors. Some respondents simply answered 'yes' or 'no' and it is not clear whether they understood that the question related to care rates. These answers have therefore been discounted.

Of the 183 responses received to this question, 79 clearly stated that they were answering in relation to care. Of these approximately 60 per cent agreed that regional hourly care rates should be set and 40 per cent disagreed.

The responses that agreed with this question were from a variety of interest groups, mainly claimant solicitors but also insurers, trade unions, local authorities, defendant organisations, claims management companies and a member of the Bar. Nearly half of these respondents suggested that the rates should be set in line with the British Nursing Association (BNA) rates, which already take account of regional variations. Two respondents considered that the Whitley rates could be combined with the BNA rates. Some respondents commented that the level and type of care would have to be considered, for example, these rates might not be reasonable for a domestic helper carrying out housekeeping duties. There should be a distinction between claims for professional care and claims for gratuitous

care. A small number of respondents considered that setting rates would reduce arguments and therefore delays for claims.

The responses that disagreed with this question were primarily from insurers, but also from defendant and claimant solicitors, local authorities, a medical expert and a defendant organisation. The most frequently cited argument against setting hourly rates was that it might encourage spurious care claims in low value cases. Respondents argued that care claims did not usually occur in claims under £25,000 and to make a provision for this would be inappropriate. One defendant solicitor summarised this view by stating that setting rates 'would risk creating a charter for inappropriate care claims'.

Some responses from solicitors were opposed to regional rates and argued instead that the National Joint Council spine point 8 rate should be adopted. It was argued that gratuitous care was not regional and that there should be one standard national rate for this.

Respondents stated that if an hourly rate was adopted there should be a mechanism for an annual uplift.

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16. Your views are sought on the development of an assessment tool for general damages.

In total 202 responses were received to this question. 50 per cent of respondents were opposed to the development of an assessment tool, 47 per cent were supportive and three per cent did not give a clear answer to the question.

The overwhelming majority of responses opposed to an assessment tool were from claimant solicitors, although members of the Bar, some local authorities and some insurers were also opposed to this.

There was a range of arguments as to why respondents were against the development of an assessment tool. It was described as inappropriate, unnecessary and likely to be of benefit only to insurers. One of the most frequently cited arguments was that the current method of assessing damage using the Judicial Studies Board (JSB) guidelines was fair, effective and swift. Respondents also argued that it would be impossible to set a tariff that would take account of all the variables that could be present in a personal injury claim. They argued that the current system of using a variety of tools including the JSB guidelines, case law and *Kemp and Kemp* allowed a greater number of variables to be considered. The assessment of damages was described as a very subjective task and respondents considered that it would be unfair to the claimant to try and standardise this.

One respondent summarised this view by stating that 'to impose a 'one-size-fits-all' system on the complex area of assessing the correct damages for an

injured party – this is inappropriate for personal injuries where there are often specific sets of circumstances, which affect the amount which would represent a fair settlement'.

Criticisms were made of the computer systems used by the insurance industry, which it was alleged, routinely undervalued injuries.

The majority of responses in favour of an assessment tool were from insurers, although some local authorities and solicitors also answered in this way. A significant number of respondents were in favour of a more sophisticated version of the JSB guidelines, with narrower bands for the injuries. A number of respondents commented that it would be essential to carry out the collection of evidence in a transparent way. Insurers considered that their computer systems had proved successful and could be adapted to be more transparent.

A number of respondents stated that it would be important to maintain judicial discretion for exceptional cases. Criticisms were made of the current system, which was described as being inefficient and inconsistent. It was argued that a tool would reduce the amount of time spent arguing over general damages.

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17. Do you agree that there is little scope for standardising contributory negligence? If not, please set out how it might be done.

There were 203 responses to this question. Approximately 80 per cent of respondents agreed that there was little scope for standardising contributory negligence, 19 per cent disagreed and one per cent did not give a clear answer.

Respondents who agreed with the question came from a cross-section of all interest groups.

The most frequent argument put forward was that to standardise contributory negligence would be unfair to the claimant. Respondents described contributory negligence as a fact sensitive issue that was unique to each claim and so standardising it would be extremely difficult because of the range of scenarios that could occur in each case. It was acknowledged there was a form of standardisation in relation to seat belt issues in RTA claims that had developed through case law. However, respondents stated that they did not believe that there was scope for expanding this further. Respondents considered it a complex part of a claim that should be left to the court and judicial discretion to decide.

Respondents who stated that there was scope to standardise contributory negligence considered that it would introduce certainty to the process. The example of seatbelts in RTA claims was described as proof that standardisation could be successful and it was suggested that this could be

extended to other types of claims. Some respondents suggested it might be possible to set percentage bands for certain types of contributory negligence or produce a table of the most commonly occurring set of circumstances.

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18. Do you agree with the proposals in relation to costs? If not, please give your reasons and set out any alternative proposals.

Out of the 232 responses to this question, the majority view, 44 per cent, agreed with the proposals in relation to fixed recoverable costs. Approximately 20 per cent did not agree with the proposals. A number of respondents, around 12 per cent, indicated that they could not answer the question because there was insufficient detail about how the costs would be fixed and at what level. The remaining respondents did not give a clear answer.

The respondents in favour consisted of an almost equal number of solicitors, local authorities and insurers. In addition, members of the judiciary, employer and defendant organisations and members of the Bar agreed with the proposals. Some of those who agreed with the introduction of fixed recoverable costs did so on certain conditions being met. The most frequently cited was that costs should be fixed at a 'reasonable' level.

Those in favour of the proposals argued that a Fixed Recoverable Cost Scheme (FRCS) for the different stages of the claim would bring certainty to the process and remove further grounds for dispute. It would ensure that legal costs were proportionate to the work carried out on a claim. Several respondents stated that for a FRCS to succeed they needed to reflect accurately the quality and quantity of legal work necessary and the level of fee earner who would carry it out. This would ensure that solicitors were adequately remunerated for the work done.

Some considered that any body responsible for fixing the costs would need to be independent of the legal profession to ensure fairness and that consideration should be given to marketing, advertising and profit costs. Respondents also stated that it would be essential to review regularly the FRCS (comparisons were made with the Part 45 Fixed Recoverable Costs for road traffic accidents, which were introduced in October 2003 and have not been reviewed since).

The majority of the respondents who did not agree with the proposals were claimant solicitors, but insurers, trade unions and members of the Bar were also opposed. Many opposed on principle. Some respondents did not believe that the current system needed changing and argued that claimant solicitors should be able to recover costs as they do now. Responses from claimant solicitors stated that there were already mechanisms in place within the Civil Procedure Rules to ensure that solicitors only recovered fair and reasonable costs.

A number of respondents stated that the RTA predictable costs regime was relatively new and working well and should be left to bed down before any new scheme was introduced.

Other criticisms of the FRCS were that it would prevent claimants from properly investigating claims and lead to an inequality of arms. Some respondents considered that defendants would deliberately prolong cases, as they would no longer have the incentive of settling them as quickly as possible.

The responses that stated that they could not answer the question were from solicitors, insurers, trade unions, claims management companies, defendant organisations and a professional body. These respondents argued that there was not enough detail in the paper about how the costs would be fixed and without seeing the suggested levels of costs they could not comment. Respondents expressed concern that as the scheme was new, there would be no empirical data on which to base the costs.

Several respondents stated that they believed the costs of referral fees should be included in the FRCS. One claimant solicitor stated it was an 'outrageous suggestion that payment of referral fees is inappropriate'. They were described as a legitimate business cost covering the acquisition of claims. In contrast other responses were opposed to the use of referral fees, one insurer stated that they 'increase costs, restrict consumer choice and drive many of the negative behaviours in the current process'.

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19. Do you agree that ATE insurance cannot be justified in the circumstances set out above? If not, please give your reasons, identifying the risk that is being insured, and set out any alternative proposals.

This question split respondents with approximately 45 per cent of respondents agreeing that ATE insurance could not be justified in the circumstances set out in the paper and approximately 45 per cent disagreeing. The remaining ten per cent did not give a clear answer.

A cross section of interest groups agreed ATE insurance could not be justified. The majority of responses were from insurers and local authorities (25 out of 35 local authorities answered in this way), but also included a significant number of defendant solicitors, a small number of claimant solicitors, defendant organisations, claims management companies and a member of the judiciary. Respondents commented that where ATE insurance could not be justified it should not be recoverable and in a fixed costs system where the defendant's costs were not recoverable, then it was not justified.

It was argued that the current system encouraged claimants to take out ATE insurance unnecessarily where there was little actual risk, which increased legal costs considerably. Respondents stated that only a small amount of claims actually end up in court and, as such, ATE should only be taken out when in contemplation of litigation. Comments were made that premiums were disproportionately high, and that providers frequently attempted to 'get out of paying' for claims. Responses suggested that if the proposals were implemented premiums would be underwritten on a case-by-case basis. This would mean that costs may be higher but they would reflect the individual risk of each case.

Respondents also considered that taking out ATE insurance did not encourage early resolution of the claim, but rather extended the process. One respondent from a local authority described it as a 'major factor in proliferation of claims and delays'.

The overwhelming majority of responses who disagreed and considered that ATE insurance could be justified were from claimant solicitors. All seven trade unions that answered questions relating to the claims process also responded in this way. In addition, a group of insurers, who were largely legal expense insurers, some members of the Bar, a member of the judiciary and various other respondents disagreed.

It was argued that ATE insurance had to be taken out early to cover the cost of disbursements. In a RTA claim disbursements could include the police accident report and searches on the Motor Insurance Bureau database; for EL claims the claimant may need the health and safety report; and in PL claims it may be necessary to carry out a Land Registry search to find the right defendant. Without ATE insurance a claimant might have to take out a loan to cover these costs, which would be an unfair burden on claimants.

One argument raised in a number of responses was that claimants would not know at the outset whether liability would be admitted. Respondents stated that it was difficult to obtain ATE insurance for a claim once it was underway and it was much more expensive. Therefore, to ensure that the claimant pays the lowest price possible for the premium, policies must be taken out at the beginning of a claim.

It was also argued that the proposals for claimants to take out ATE at the quantum only stage could be unworkable. One response from ATE brokers explained that providers might not supply these policies. 'This is because, following negotiation, it is very likely the parties will be only a small amount apart, and it will inevitably be a fine decision as to which party is likely to succeed. The assessment of such cases will therefore be a lengthy and detailed task, with a high risk of failure attached to such cases'.

As an alternative to the proposals, some respondents suggested that staged premiums could be developed further. This would ensure 'that the ATE insurers are getting the same premium in the common pool, which would offset the higher risks at the next stage of the legal action'.

20. What would be the impact on the ATE market of these proposals?

A full spectrum of answers was given to this question. The majority of respondents, around 40 per cent stated that if implemented, the proposals would have the effect of causing the cost of premiums to increase significantly. Approximately 20 per cent of respondents argued that the market would collapse, with a similar number claiming that the market would adapt. The remaining respondents made various comments.

A wide range of respondents held the view that the proposals would cause premiums to rise, the largest group of which was claimant solicitors but also included legal expense insurers, liability insurers, local authorities and the judiciary.

Respondents argued that the ATE market had always operated on the basis that 'the many claims pay for the few'. If the proposals were implemented then the pool of low value cases that currently existed would be removed. Claimants would only take out ATE insurance where liability had not been admitted, or had been denied. Therefore, as one respondent stated 'if the system were to remove the option of obtaining ATE cover at the outset, the provision of ATE insurance will inevitably become more risk based and is likely to be less attractive to insurers and therefore less readily available. Premiums would increase dramatically'.

Concern was expressed that if the market became unattractive to providers then they might withdraw, reducing competitiveness, which again would cause premiums to rise. This could lead to claimants being unable to afford premiums, particularly on higher value claims and could deter them from bringing their claims, in particular those in lower income brackets who were often the most vulnerable. Several respondents also stated that if premiums increased significantly then it was likely that there would be an increase in satellite litigation over whether the premiums were reasonable. In addition, insurers might 'cherry pick' which cases they would cover, leaving the more risky cases without any insurance or with very expensive insurance.

The respondents who stated that the effect of the proposals on the ATE market would be to cause it to collapse described them as calamitous and disastrous. The overwhelming majority of respondents who held this view were claimant solicitors although a small number of insurers, local authorities, trade unions and defendant solicitors also responded this way. Many of these respondents commented that the ATE market had taken seven years, and some significant case law decisions, to stabilise. Respondents expressed dismay that there were any proposals for more change.

One argument cited by a significant number of respondents was that the Government had a duty to protect the ATE market, since it was introduced when legal aid for personal injury cases was removed. The vast majority of personal injury claims were funded by way of conditional fee agreements, together with ATE insurance. Respondents suggested that there were strong social policy reasons for ensuring that claimants have access to

affordable insurance. Without it claimants may not bring personal injury claims for fear of having to pay high legal costs. This would have a serious impact on access to justice.

The responses that suggested that the ATE market would adapt to the proposed changes were from a range of interest groups in almost equal numbers including insurers, local authorities, defendant organisations, and claimant and defendant solicitors. Some welcomed these proposals stating that the market could benefit from these changes. The ATE market was described as sustainable and respondents stated that the products would evolve to meet the demands of the new process.

These respondents argued that ATE premiums would be based on the individual risk of the claim so premiums would become more realistic and relevant. This was described as a fairer system as claims with low risk would not have to pay for the higher risk ones. One respondent stated that 'modern insurance is more focused on risk identification and mitigation, rather than 'many paying for the few'. Individual ATE premiums will reflect the risk in individual cases'.

A small number of responses stated that there was insufficient evidence to comment on what the effect would be. These responses made it clear however, that they believed the Government should be cautious about making any radical changes.

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21. Do you agree that the new claims process should apply to all claims for personal injury, except clinical negligence, with a value of less than the fast track limit? If not, please give your reasons and identify which cases should use the proposed system.

Out of the 209 respondents who answered this question approximately 30 per cent agreed that the new claims process should apply to all claims except clinical negligence. Approximately 50 per cent of respondents stated either that the limit for the process should be lower than £25,000 or that certain types of claims were unsuitable and should be excluded. A small group of respondents, approximately 15 per cent, stated that the claims process should not apply to any claims. Five per cent did not give a clear answer.

Support for the new claims process came from a cross-sector of respondents including insurers, claimant solicitors, local authorities and defendant organisations. The majority of claimants who answered this question in a positive way, did so with a straightforward 'yes'. Some respondents suggested that the process should extend further, for example by making it possible for cases over £25,000 to opt-in to the scheme and by eventually applying it to clinical negligence cases. Others contended that the proposed process would be suitable for both higher and lower value claims because the same principles applied and the court would have the powers

to allocate cases to the multi-track where they were unsuitable for the streamlined procedure.

50 per cent of respondents agreed with the proposals, but with various caveats. Of these, roughly the same number argued that disease and a range of other types of claims should be excluded; that the limit for the process should be lower than £25,000; and that the proposals should apply to RTA claims only.

Respondents argued that the nature of disease claims rendered them unsuitable for a streamlined claims process. In particular it was stated that the time limits would be unworkable, due to the additional investigation that was often required before a letter of claim could be sent. Respondents indicated that these claims could involve complex causation issues and difficulties could arise out of having multiple defendants. Respondents also argued that dyslexia, sexual abuse claims, cases involving minors, product liability and complex claims generally should be excluded. It was argued that these should be allocated to the multi-track.

Some of the respondents who argued that the limit should be lower than £25,000 put forward alternative limits. Suggested limits ranged from £2500 to £15,000. Lower value claims were described as more straightforward and therefore more suitable for the streamlined process and fixed recoverable costs. It was also stated that it was largely in these cases where there was an issue of proportionality of costs. The arguments for applying the claims process to RTA claims only focused on the fact that they accounted for 75 per cent of the personal injury caseload. It was also suggested that quick decisions on liability were more likely with these cases.

Some described EL and PL cases as complex and therefore unsuitable for a streamlined procedure. For example with a ‘slip and trip’ claim there could be difficulties in identifying who owned the land and how long the defect had been present. There could also be difficulties arising from school closures for holidays, which could limit access to properties and witnesses. Respondents raised concerns that the financial pressure on local authorities may lead them to accept unmeritorious claims, which could potentially lead to the development of a compensation culture.

Problems with the inclusion of EL claims were largely centred on the issue of admissions of liability. Respondents stated that in EL claims liability was often denied at the outset, with full admissions of liability being very rare. Respondents also expressed concern that as the defendants / insurers would be carrying out the investigations into liability, witnesses could potentially feel intimidated by employers' interests.

It was requested by a small number of respondents that the process should clearly state that it does not apply to all clinical negligence claims. The consultation paper proposed that the process would not apply to clinical negligence claims as these were covered by the NHS Redress Act 2006. However, several respondents commented that the Act applied only to claims involving the NHS and not private treatment.

Those respondents who argued against the proposed changes did so for a variety of reasons. It was stated that the present system only allowed parties to recover necessary and proportionate costs; that the proposed process would be open to abuse from insurers; and that rather than making changes the market should be allowed to stabilise. In addition, it was stated that it would be sufficient simply to introduce fixed fees and that the current pre-action protocol could be tightened up with extra sanctions for insurers. Concerns were raised as to whether the proposed process would lead to an increase in fraudulent claims. Some respondents were unable to answer the question at this stage because of the lack of detail about the process and the fixed recoverable costs.

Conclusion and next steps

Case track limits

The small claims limit for personal injury claims

1. The responses to the consultation demonstrated that some respondents were strongly of the view that increasing the limit would remove the high legal costs that they argued were currently paid out in low value claims. However, there were also real concerns that raising the limit would deny claimants access to legal advice to assist them with their claims.

2. Having considered the arguments raised in the responses to consultation, the Government remains of the view that the small claims limit for personal injury claims should remain at the current level of £1000.

The small claims limit for housing disrepair claims

3. Having considered the responses to the consultation the Government has concluded that the limit for housing disrepair claims should remain at the current level, which is £1000 for the cost of the disrepair and £1000 for other damages arising from the disrepair. The Government will consider the handling of housing disrepair claims, but there are no current plans to undertake any reviews in this area as the responses to consultation confirmed that current procedures appear to be working effectively.

The general small claims limit

4. In relation to the small claims limit for other claims, respondents argued that £5000 remained a significant amount of money for most of the population and was high in comparison with other EU countries. Approximately 95 per cent of respondents on this issue agreed that there should be no change to this limit. The Government has therefore concluded that the general small claims limit should remain at the current level of £5000.

The fast track limit

5. The majority of respondents who commented on the fast track limit were in favour of an increase to £25,000. Some of those who opposed an increase expressed concern that certain claims with a value of £15,000 to £25,000 would be unsuitable as they would be too complex, or the trial would last more than one day. However, the Government does not consider that these are reasons not to increase the limit as the courts' case management powers enable judges to allocate these cases to the multi-track. On the issue of allocation, respondents commented that if the limit were to be

increased, it would be even more important for judges to consider all aspects of a claim before allocating it to a track, rather than considering just the value.

6. The Government remains of the view that raising the limit will provide greater flexibility and will result in more cases being heard in the appropriate track. We have therefore concluded that the fast track limit should be increased to £25,000.

The handling of Intellectual Property claims

7. The Government welcomes the range of suggestions made by the respondents, particularly the support for increased use of mediation, which we fully endorse. In response to the comments from respondents that claimants are being deterred from bringing low value IP claims due to high legal costs, we will consider with the judiciary whether all IP claims need to be allocated to the multi-track.

Improving the claims process for personal injury claims

8. Since the consultation period closed, careful analysis of the detailed responses has taken place. In addition, we have held a large number of meetings with a range of stakeholders to discuss in more detail issues arising out of those responses. These meetings have been very helpful, and we are grateful to those who have contributed to this process.

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9. The paper proposed changes to the recoverability of ATE insurance premiums. It proposed that premiums for insurance taken out at the beginning of the claim should not be recoverable. Instead it was suggested that the premium should only be recoverable on ATE insurance taken out where liability was denied or where no admission was made within the relevant time period. The paper reasoned that where an insurer admitted liability in the early stages of the claim, there was no risk as to costs for the claimant and therefore there was no need for ATE insurance. In addition, the paper proposed that for cases under £2500, where a quantum hearing was needed there would be no need to take out ATE insurance. This was because the only risk would be that the claimant solicitor would not recover their fixed profit costs for the quantum stage of the claim.

10. The Government appreciates that the arguments on this issue are particularly finely balanced. Many stakeholders expressed apprehension about the potential impact these proposals might have on the ATE market. Some respondents described the market as fragile and were concerned that further changes could damage it irreparably. They stated that since the Government had abolished legal aid for personal injury claims, it had a

responsibility to ensure that there was a healthy ATE market so that access to justice was preserved.

11. Others predicted that the market would adapt and products would evolve. They considered that the proposals would lead to premiums that were more realistic and were based on the individual risk of the claims. The market would be more transparent and risk based. Some asked on what basis insurance could be sold where there was no risk to cover.

12. It was generally recognised that ATE providers would need to increase the costs of some premiums significantly to counteract the losses of the premiums on lower value cases. There were concerns that people would not be able to afford the premiums, or that they could lead to satellite litigation, as defendants might challenge expensive premiums on the ground that they were unreasonable.

13. The Government has considered the various points made by respondents to the consultation and has concluded that it will not take forward these proposals. This will ensure that the introduction of the new claims process will not damage the ATE market, but will allow it to adapt to the new process.

Claims covered by the new claims process

The limit

14. The paper proposed that the new claims process would apply to all claims with a value of up to £25,000, except clinical negligence claims.

15. Some respondents argued that claims of £25,000 could consist of quite serious injuries, which may need extensive medical reports, or a low value injury with a complicated special damages claim. Instead they suggested various limits between £2500 and £15,000. The Government considers that £2500 is too low. In addition, many claims occur around the £2500 and £5000 mark and if the limit were set at either of these levels then there could be potential difficulties with claims inflation, or assessing which side of the line a claim fell. However, having considered all the arguments we accept that £25,000 is too high a limit for the new process. The Government has therefore concluded that the most appropriate limit for the new claims process is £10,000.

Types of claims covered

16. The responses demonstrated a wide range of views as to what type of claims the new claims process should apply to.

17. As stated above, the paper proposed that the claims process would not apply to clinical negligence claims, as these would be covered by the NHS Redress Act 2006. Respondents commented that the Act only applied to claims involving the NHS and did not cover those arising from private treatment. The Government has concluded that the new process will not apply to any clinical negligence claims.

18. Respondents were strongly of the view that disease claims should also be excluded from the new process. It was argued that these claims could be complex, due to the difficulties with identifying the defendants involved and the work that had to be carried out before the letter of claim could be sent. The Government has considered these arguments and concluded that disease claims should be excluded from the new claims process.

19. Some respondents considered that EL and PL claims were more complex than RTAs and should not therefore be included in the new process. In PL claims, respondents pointed to the difficulties in identifying the correct defendant and in investigating claims where the alleged accident often happened some time ago. There were also concerns that the proposed time periods would prevent the detection of fraudulent claims. In EL claims, there were concerns about the insurers carrying out investigations into liability and the potential difficulties in witnesses feeling intimidated by employers' interests.

20. Other respondents considered that EL and PL cases should be included and that the new process should apply to as many cases as possible. Respondents emphasised that disproportionately high legal costs continued to be a problem, which needed to be dealt with effectively.

21. The Government recognises that there are strong arguments on both sides. However, the Government considers that RTA cases tend by their nature to involve fewer complexities than EL and PL cases and therefore lend themselves to the new claims process more immediately than the others.

22. The Government considers that EL cases in particular involve a different dynamic in terms of the economic and power relationship that exists between an injured employee making a personal injury claim against their employer, and two parties contesting a road traffic accident.

23. The Government has therefore decided not to include EL and PL cases in the new process, as currently constructed, but to restrict it to RTA cases, which constitute around 70-75% of personal injury claims.

Claim Notification Forms

24. The Government has concluded that there should be a claim notification form for the new claims process. The form will ensure that it is clear what information is required. In addition there will be a form for claimants in person, with appropriate information about obtaining legal advice. The draft forms will be amended in light of the helpful comments that we received and in further discussions with the relevant stakeholders.

5 day time limit for Claim Notification Form

25. Many respondents commented that it was not clear from when the five day period commenced and argued that the five days from the first meeting between a solicitor and claimant was unrealistic given the requirements for carrying out certain investigations. For example, claimant solicitors have a duty to establish whether a claimant has a Before The Event insurance policy, as part of their home or motor insurance. Their client may be entitled to the benefits of membership of a trade union. In addition, claimants do not necessarily live near their solicitors so often documents have to be sent back and forth via the post, which can be time consuming.

26. It is recognised that it would be unrealistic to expect the claimant solicitor to have completed all the required steps in five days. It is therefore intended that the five-day time limit should start to run as soon as the claimant solicitor has gathered all the required information to complete the claim notification form. The Government intends to work with relevant stakeholders to ascertain exactly what needs to be done before the notification form can be sent.

Time limits for decisions on liability

27. The Government is aware that a balance needs to be struck to ensure that the time limits for decisions on liability are reasonable for both parties. They have to be long enough for insurers to carry out necessary investigations and to give proper consideration to liability, but not too long given that the claimant solicitor will not carry out further investigations during that period.

28. Some of the concerns about the limits stemmed from the time that it can take for a claim to reach the insurer after it has been sent to the defendant. In discussions with the insurance industry as to how notification might be made more timely, it was suggested that each insurer should have one central email address for personal injury claims. A central post-box for each insurer has also been suggested where emails may not be appropriate, for example, the settlement pack. This would allow immediate notification of claims to them and proof of date notified. We are also aware that some insurers have recognised the need to change their processes and are

already planning changes to their working practices to ensure that they can meet the shorter time limits.

29. In these circumstances the Government has concluded that, as proposed in the consultation paper, insurers will have 15 working days in which to respond on liability.

Extension of time periods for decisions on liability

30. The consultation paper stated that where an insurer cannot respond within the set time period 'they should respond with an explanation, for example, indicating they need more time to investigate'. Respondents criticised this approach, as it was not clear whether this meant that insurers should be entitled to extensions on decisions on liability. There was concern that this uncertainty could lead to satellite litigation about whether claimant solicitors were reasonable in refusing extensions. This problem would be compounded by the fact that the claimant solicitors would not have carried out their own investigation into the claim.

31. In discussions with stakeholders it was suggested that there could be a list of situations where it would be deemed unreasonable to refuse an extension, for example where a defendant was on holiday. However, we have concluded that due to the varied nature of claims, this would be unworkable, as it would be impossible to draw up a finite list of circumstances where an extension would be unreasonable. A further suggestion was that there could be one fixed time period for extensions, for example, five days. However, stakeholders expressed concern that it would become the norm for insurers to ask for this extension in every claim. Some responses argued that the more flexible the time limits, the easier it would be for defendants to carry out full investigations and give decisions on liability. However, the intention of this process is to deal with the straightforward claims where relatively quick decisions on liability can be made. There is also a need to reduce the opportunities for satellite litigation.

32. The Government has therefore concluded that there should be no extensions for decisions on liability.

Admission of liability

33. The paper proposed that defendants/insurers should make binding admissions of liability (except in cases of fraud) within the fixed timed period, which would be before the medical report has been commissioned. Stakeholders commented that issues of causation are not usually identified in claims before parties have seen the medical report. They reasoned it would be unfair for an insurer to admit liability and causation before this point. Both the responses and our discussions have highlighted the

importance of the wording of an admission of liability. It should be clear that when an insurer admits liability they are making an admission of a breach of duty of care, leaving it open to raise issues of causation once the medical report has been obtained.

Causation

34. As stated above, issues of causation will not usually arise until after the defendant/insurer has seen the medical report. If, once the settlement pack has been received, the defendant/insurer wishes to allege causation we have concluded that the claim will no longer follow the new procedure and the fixed recoverable costs will not apply from that point. In our discussions with stakeholders we considered how issues of causation might be addressed within the process, but there were concerns that this would be too complicated. However, some respondents suggested that once the issue of causation has been resolved the claim should then return to the new process for settlement or a quantum hearing. We will be working with stakeholders to see how this might work.

Contributory Negligence

35. Respondents indicated that they did not believe there was any scope for trying to standardise contributory negligence. The Government therefore remains of the view that it will not take any such proposals forward.

36. The Government has also concluded that where an insurer alleges contributory negligence the claim will no longer follow the new procedure and the fixed recoverable costs will not apply from this point. Insurers should provide the claimant solicitor with all the documentation upon which they are basing their decision. This will narrow the issues between the parties. The claimant solicitor will carry out an investigation into the disputed areas of the claim. As with causation, it may be that once the issue of contributory negligence has been resolved the claim can return to the new process for settlement or a quantum hearing. We will be working with stakeholders to see how this might work.

Fixed costs

37. The Government has considered the various views put forward on fixed recoverable costs. Some argued that the current cost regime was not in need of any alteration as there were already mechanisms in place to ensure that only reasonable costs were recovered. Others argued that disproportionate costs continued to be a problem on lower value claims. Members of the judiciary have more recently expressed concern about costs and stated that it is an issue that needs to be addressed.

38. Concerns were raised that fixed costs would be set at a low level, driving down the quality of legal representation. Those in favour argued they would need to be set at a reasonable level, but once introduced would bring certainty to the process.

39. We have concluded that fixed recoverable costs will bring certainty and predictability to the new claims process.

40. Respondents both for and against fixed costs agreed that it was vital that the costs were fixed in an independent and transparent way and regularly reviewed and/or increased. The Government agrees with this approach.

41. Following a recommendation from the Civil Justice Council, in September 2007 the Government announced the establishment of the Advisory Committee on Civil Costs. Part of the Committee's programme of work is to provide advice on what the fixed recoverable costs should be. We will work with relevant stakeholders to identify the processes that need to be followed, the level of fee earner that should carry out the work and the amount of time it should take. This will inform the Committee's work, and ensure that the costs reasonably reflect the work that needs to be done. The Committee will also seek evidence, in the form of data or submissions from a range of stakeholders as appropriate.

42. The consultation paper stated that the fixed costs would not include 'the cost of referral fees'. Some respondents understood this to mean that the Government intended to ban referral fees. This is not the case, as any decision on whether or not referral fees should be allowed is not one for Government to make. However, the intention was that referral fees would not automatically be added to any fixed costs. Some respondents argued that referral fees were legitimate costs of the acquisition of cases, some referring to them as marketing costs. Consideration of issues such as solicitors' overheads, marketing and acquisition of cases can be considered by the Advisory Committee on Civil Costs.

43. The Committee will also consider the arrangements for reviewing or increasing the fixed recoverable costs on a regular basis.

An assessment tool for general damages

44. The responses indicated that there was some opposition to the development of an assessment tool for general damages with respondents arguing that the current system works well. In particular concerns were raised about how any tool would take account of the range of variables that can be present in a claim. Others considered that it would save time and bring certainty to the process. The Government has concluded that it is important to focus on

implementing a new claims process and the development of an assessment tool would therefore not be appropriate at this stage.

Standardising special damages

45. The responses demonstrated that there was support for the idea of standardising special damages as proposed in Appendix 7 of the consultation paper. The Government will work with stakeholders to take this suggestion forward.

Regional hourly rates for care

46. There was support for the proposal of regional hourly rates for care. However, we are mindful that the limit for the claims process is lower than that proposed in the paper and care claims are not likely to be so prevalent in claims with a value of under £10,000. However, further consideration will be given to this issue in our discussions with stakeholders.

Medical reports

47. Some respondents incorrectly assumed that the process would limit the parties to obtaining one medical report only. As the limit for the claims process will be lower than that proposed in the consultation paper, it is envisaged that there will be fewer cases where more than one medical report will be required. However, the process will allow for the provision of additional medical reports where necessary.

48. Where a medical report identifies that more time is needed before a full prognosis can be reached the claimant/solicitor and defendant/insurer should agree to stay the claim for the required period of time. No substantial work should be carried out during this period, although for client care reasons the solicitor will need to maintain contact with the claimant and answer their queries.

Application for a hearing to determine quantum

49. The paper proposed that where the negotiation period has not led to the settlement of the claim, at the end of the fixed time period (or sooner if the parties agree) there should be a simple procedure for the parties to refer cases to the court. The intention behind this was to prevent claimant solicitors from having to issue claims forms and go through the full court procedure, which can be time-consuming and expensive where only quantum is in dispute. The majority of respondents were in favour of this proposal, although some expressed concern about the detail, in particular the proposals in relation to Part 36 of the CPR and the £2500 limit.

50. The Government has concluded that as proposed in the paper, where settlement cannot be reached, the district judge should decide the damages at a hearing, unless both parties agree that it should be dealt with on paper. The assessment should be primarily based on the existing documentation in the settlement pack. However, where further evidence is required, directions can be given.

Part 36 – claimant to beat own offer

51. In the paper it was proposed that the claimant solicitor would only be entitled to their costs for the third stage of the process, if the claimant beat their own Part 36 offer. The intention behind this proposal was to ensure all parties made realistic offers. However, we agree that this would provide no incentive for the insurer to make a realistic offer. Moreover, respondents highlighted that there might be a conflict of interest for claimant solicitors if they have to advise their clients to accept lower offers to ensure that they do not run the risk of losing their costs.

52. Through meetings with stakeholders we examined the system of Part 36 offers to attempt to find a way that encourages both parties to make realistic offers. We have concluded that Part 36 type provisions should remain but that more emphasis should be placed on judicial discretion. If a party has made an unrealistic offer that has unnecessarily caused the need for a quantum hearing then they should be penalised.

The £2500 threshold for costs

53. The paper proposed that there should be a £2500 threshold for determining how the costs of a quantum hearing should be dealt with, in particular the recoverability of ATE premiums.

54. However, as ATE insurance will continue to be recoverable this proposal is no longer relevant. If a judge decides that any claim needs further evidence, such as a second medical report, this can be ordered at a directions hearing, regardless of its value.

Alternative dispute resolution (ADR)

55. Many respondents referred to ADR, for example mediation, as a proportionate and effective way to settle claims. The Government endorses the use of mediation in the settlement of claims; it can be a cheaper, quicker and less stressful alternative to litigation. However, it is envisaged that as the process will be focused on straightforward claims, with fixed time periods, the majority will settle without the need for recourse to ADR.

Claims where liability cannot be admitted or is denied

56. The Government will be working with stakeholders to consider the interface between the new claims process and the current pre-action protocol for personal injury claims to avoid any duplication when claims fall out of the new system.

57. Respondents put forward a range of suggestions as to how the claims process could be improved where liability is not admitted, or is denied. The Government's priority at this stage is to work with stakeholders to ensure that the proposed changes to the claims process for RTA claims are successfully implemented. However, claims where liability is not admitted can be given further consideration at a later stage.

Next Steps

58. The Civil Procedure Rule Committee will be asked to consider draft rules, practice directions and pre-action protocols as appropriate, to implement the new claims process. As mentioned above, the Advisory Committee on Civil Costs will also be asked to make recommendations on the fixed recoverable costs.

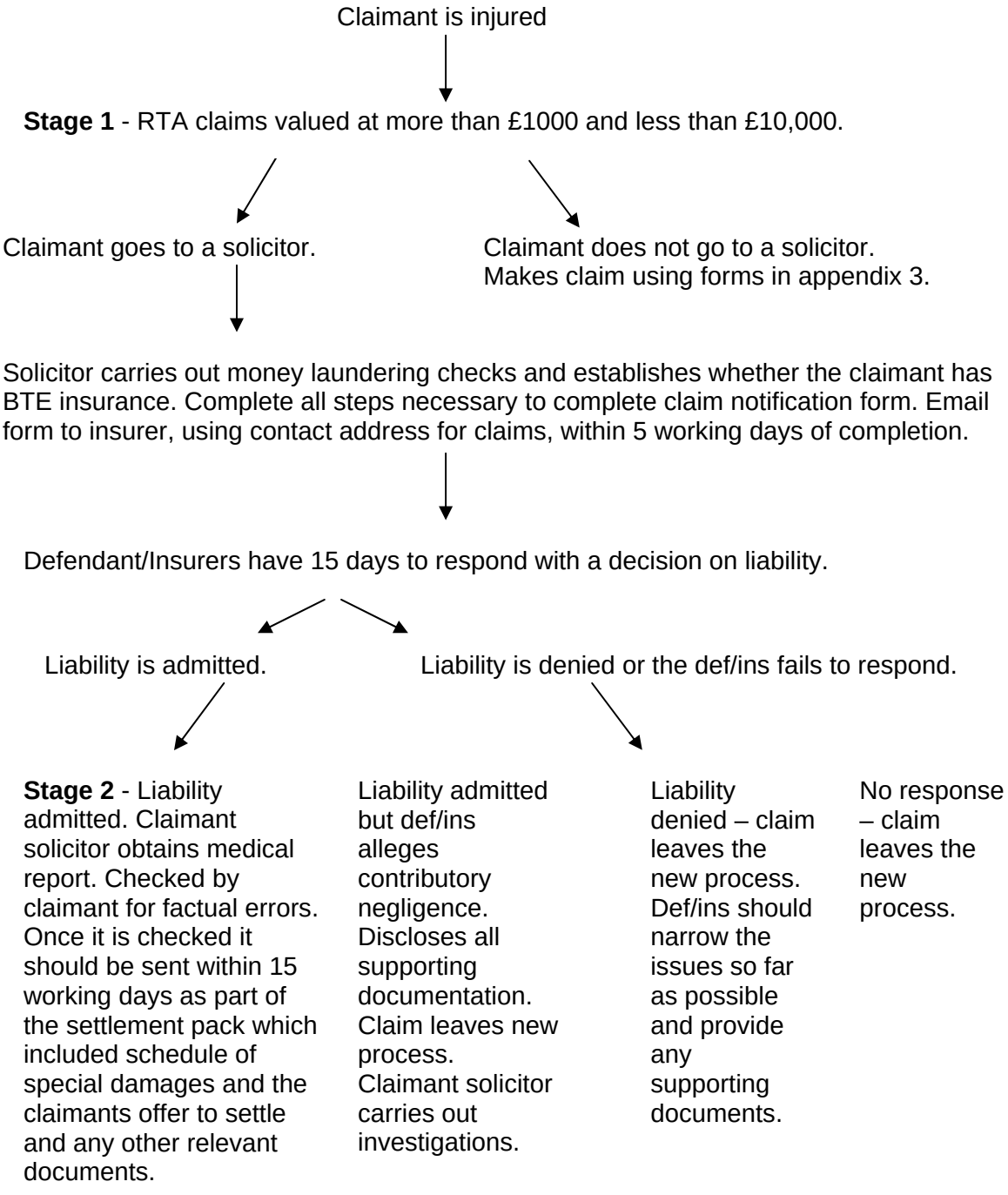
59. Throughout this process we will continue to work closely with stakeholders. This will ensure that we continue the detailed discussions on the areas identified and that we take account of all views in the final process. We also recognise that stakeholders will need to adapt working practices and we will focus on how we can assist the different sectors with their preparations for implementation.

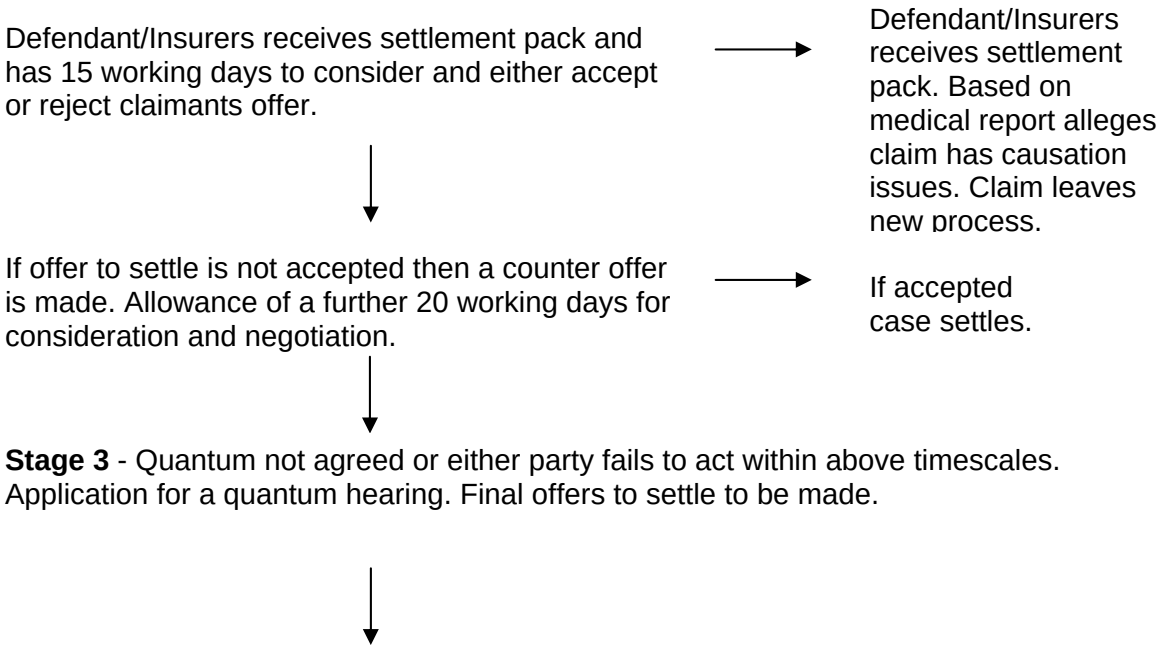
60. The Government intends to review the operation of the system in due course to see how it might be developed.

61. The Government would like to thank all those who took the time to respond to this consultation paper.

Map of Process

The process has three stages. There will be fixed recoverable costs for each stage.





Stage 3 - Quantum not agreed or either party fails to act within above timescales. Application for a quantum hearing. Final offers to settle to be made.

Quantum hearing. Judge decides amount of compensation to be awarded. Can be decided on paper if both parties agree. Judicial discretion to take account of unreasonable final offer to settle. Judge may order further evidence if necessary.

Consultation Co-ordinator contact details

If you have any complaints or comments about the **consultation process** rather than about the topic covered by this paper, you should contact, Gabrielle Kann, Ministry of Justice Consultation Co-ordinator, on 020 7210 1326 or email her at consultation@justice.gsi.gov.uk

Alternatively, you may wish to write to the address below:

Gabrielle Kann

Consultation Co-ordinator
Ministry of Justice
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 3.

The consultation criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

3. Ensure that your consultation is clear, concise and widely accessible.

4. Give feedback regarding the responses received and how the consultation process influenced the policy.

5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.

6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Annex A – List of respondents

The legal profession and representative organisations

- Access to Justice Group
- Alan Curtis
- Ali Brown
- Amelans Solicitors
- Andrew Jeffries
- Andrew Sharp
- Association of Personal Injury Lawyers
- Aubrey Isaacson, Solicitors
- Augustines Injury Law
- Awdry Bailey & Douglas, Solicitors
- Beachcroft LLP
- Berrymans Lace Mawer
- Bobbets Solicitors
- Bond Pearce LLP
- Brachers
- Bristol Law Society
- Browell Smith & Co
- Browne Jacobson LLP
- Chancery Bar Association
- Chancery House Chambers
- City of London and Law Society IP Committee (Joint response)

- Cobden House Chambers
- Cogent Solicitors
- Colin Billing
- Colman Coyle LLP
- Croftons Solicitors
- Darek Raymond Louw
- Delta Legal Solicitors
- Derrick Harris
- DWF Solicitors
- Elsby Solicitors
- Emma Barrett
- Fairchild Greig
- Field Fisher Waterhouse
- Flanagan Solicitors
- Forum of Complex Injury Solicitors
- Forum of Insurance Lawyers
- Glaisyers
- Greenwoods Solicitors
- Harding Evans Solicitors
- Harris Fowler
- Heringtons Solicitors
- Herrington Carmichael LLP
- Hodge Jones Allen
- Housing Law Practitioners

- Howlett Clarke Solicitors
- Humphries Kirk Solicitors
- Ingram Winter Green
- Irwin Mitchell
- Jeremy Sutcliffe
- John Foley
- John Pickering and Partners
- John Wardley
- Jonathan Dingle
- Julian Evitts
- Keoghs LLP
- Institute of Legal Executives
- Law Society's Intellectual Property Working Party
- Lawrence Hamblin Solicitors
- Lawyers at Work Ltd
- Leanne Newport
- Kings Legal
- Kremers
- Lisa Sheldon
- Liverpool Law Society – Civil Litigation
- Manchester Law Society
- Mark Johnson
- Morgan Cole Solicitors
- Moriarty Stone

- Morrish & Co. Solicitors
- Motor Accident Solicitors Society
- MWR Solicitors
- Nick Hind
- Nick Patterson
- Nikki Hughes
- Nockolds Solicitors
- Osbornes Solicitors
- Owen Sheldon
- P R Scully & Co. Solicitors
- Pannone LLP
- Pattinson Brewer Solicitors
- Paul Aberdein
- Paul Drabble
- Personal Injury Bar Association
- Pinto Potts LLP
- Potter Rees Serious Injury Solicitors
- Rees Page Solicitors
- Richard Newstead
- Rowley Ashworth
- Rushton Hinchy Solicitors
- Russell & Russell Bolton
- Russell & Russell Bury
- Russell Jones & Walker

- Ryan Law
- SBW Lawyers
- Sheldon Davidson Solicitors
- Shoosmiths
- Simon Graham
- Simon Jenkins
- Simpson Millar LLP
- Sintons LLP
- Smith Jones Solicitors
- Social Housing Law Association
- Society of Labour Lawyers
- South Eastern Circuit of Barristers
- Stella Woodward
- Stephen Hattersley
- Stephensons LLP Solicitors
- Stewarts Solicitors
- The Bar Council
- Thomas & Meighen Solicitors
- Thompsons Solicitors
- Thorneycroft Solicitors
- Thring Townsend
- Tina Hughes
- Trade Marks, Patents & Designs Federation Trades, and Technicians
- Tollers Solicitors

- Vicky Wood
- Walker Smith Way Solicitors
- Watmores
- Weightmans
- Whittles Solicitors
- Wilsons Solicitors
- Winn Solicitors
- Young Barristers' Committee of the Bar Council
- The Law Society

Judiciary

- Manchester Group Civil Judiciary
- Sir Henry Brooke
- Senior Costs Judge Hurst
- Rt. Hon Sir Andrew Morritt
- The Association of District Judges

Insurers and representative organisations

- Abbey Legal Protection
- Ace European Group Ltd.
- AIG Europe
- Alliance & Leicester Litigation Team
- Allianz Insurance PLC
- Amlin Insurance Services
- ARAG PLC

- Association of British Insurers
- Association of Insurance & Risk Managers
- AXA Corporate Solutions
- AXA Insurance
- Box Legal Ltd.
- British Insurance Brokers' Association
- Broker Direct PLC
- Cavalry Legal Protection Ltd
- Crawford & Company Loss Adjusters
- DAS
- Ecclesiastical Insurance Group
- Electrical Contractors' Insurance Co. Ltd
- Enterprise Insurance Co. PLC
- FirstAssist
- Fortis Insurance Ltd
- Funding and Insurance Solutions ltd
- Garwyn Ltd
- GHL Insurance Services UK Ltd
- Great Lakes Reinsurance (UK) PLC
- Groupama Insurance
- Highway Insurance Co.
- HSBC Insurance Ltd
- IGI Insurance Co Ltd
- Insurance Services Office Ltd

- Keystone Legal Benefits
- LAMP Group Ltd
- LawAlliance
- Legal Expenses Insurance Group
- Link Insurance PLC
- Litcomp PLC/Elite Insurance Co Ltd
- Litigation Protection Ltd/LawAssist
- Liverpool and Victoria Friendly Society Ltd
- Lloyd's Market Association
- MARSH insurance brokers
- Munich Re Group
- NFU Mutual
- Norwich Union
- Oxygen Insurance
- QBE Insurance
- RBS Insurance
- Red Sands Insurance Co (Europe)
- Risk Management Partners Ltd
- Royal & Sun Alliance Insurance PLC
- Temple Legal Protection Ltd
- The Co-operative Group
- The Judge Ltd
- Tradex Insurance Co Ltd
- Zenith Insurance PLC

- Zurich Financial Services

Members of Parliament

- Dave Anderson MP
- Philip Hollobone MP

Local Authorities and other organisations

- ALARM
- Andrew Dunn, Oxfordshire County Council
- Bridgend County Borough Council
- Bury Metropolitan Borough Council
- Caerphilly County Borough Council
- Cumbria County Council
- Darlington Borough Council
- Dawn Jones-Norris, Cardiff Council
- Debbie Stamp, City & Council of Swansea
- Devon & Somerset Fire & Rescue Service
- East Hertfordshire Council
- Eric Brodie, Southwark Council
- Essex County Council
- Essex Police Authority
- Greater Manchester Fire & Rescue Service
- Hampshire County Council
- Hertfordshire Constabulary
- Ian Best, Borough Council of Gateshead and Northumbria Police Authority

- Ian Southwood, Greater Manchester Police
- Jenna Smith, Powys County Council
- Kirklees Metropolitan Council
- Knowsley Council
- Leeds City Council
- Mark Stephens, Rhondda Cynon Taf County Borough Council
- Metropolitan Housing Partnership
- Metropolitan Police
- Nottinghamshire Fire and Rescue Service
- Sheffield City Council
- South East and Eastern Region Police Insurance Consortium
- Stephen Thomas, Cardiff Council
- Stoke-on-Trent City Council
- Sunderland City Council
- Welwyn Hatfield Borough Council
- Wigan Metropolitan Borough Council
- Wirral Metropolitan Borough Council

Defendant organisations

- ASDA Stores Ltd
- British Medical Association
- Medical Defence Union
- Motor Insurance Bureau
- National Express Group PLC

- Network Rail
- NHS Litigation Authority
- Tesco Stores Ltd

Trade unions

- AMICUS & TGWU
- Communication Workers Union
- NASUWT
- National Union of Journalists
- National Union of Teachers
- TUC
- Union of Construction, Allied Trades and Technicians (UCATT)
- UNISON
- USDAW

Ombudsman

- Financial Ombudsman Service
- Parliamentary and Health Service Ombudsman

Claims Management Companies and representative organisations

- Accident Advice Helpline
- Claims Standards Council
- Elision Ltd
- Integrity Claims Management
- National Accident Helpline

Statutory Non-Departmental Government Body

- Civil Justice Council

Organisations that promote mediation

- Centre for Effective Dispute Resolution
- Civil Mediation Council

Claims process businesses

- Cyber settle
- InterResolve
- The Mediation Room

Medical experts & reporting organisations

- Association of Medical Reporting
- MacBeal Ltd
- Michael Kelly
- Moving Minds - Psychological Management & Rehab Ltd
- Richard Slee

Other respondents

- Accident Management Association
- Action against Medical Accidents
- Advice Services Alliance
- Association of Law Costs Draftsmen

- British Cycling and The British Triathlon Federation
- Civil Court Users Association
- Confederation of British Industry
- David Chalk
- EEF
- Enterprise Rent-a-Car UK Ltd
- Euro Environmental Containers Ltd
- Federation of Small Businesses

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