Department for Constitutional Affairs
Justice, rights and democracy

Case track limits and the claims process for personal injury claims

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Case track limits and the claims process for personal injury claims

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Contents

Executive Summary

The first part of this consultation paper reviews and makes proposals on the case management track limits for civil claims as provided for in Part 26.6 of the Civil Procedure Rules. Several reports have examined this issue, including the Better Regulation Task Force report, *Better Routes to Redress*; the Civil Justice Council report, *Improved Access to Justice – Funding Options and Proportionate Costs;* the Constitutional Affairs Select Committee report, *The courts: small claims;* and the *Gowers Review of Intellectual Property*.

The second part of the paper makes proposals to improve the claims process for personal injury cases to make it more timely, proportionate and cost-effective.

Case Track Limits

This consultation paper considers the arguments that have been put forward by stakeholders for and against raising the small claims track limit in relation in personal injury cases. These include the issue of disproportionately high costs for personal injury claims with a relatively low value and concerns that an increase in the limit would mean that claimants would be denied legal representation. The paper concludes that the current limit of £1000 should remain, on the basis that the claims process can be improved to provide for fair compensation in a more efficient and cost-effective way. It is considered that this approach provides a better balance between the rights of claimants and defendants.

The arguments for and against raising the limit for housing disrepair claims are also examined and the paper concludes that the housing disrepair limit should also remain at the level it is now. Increasing the limit might deny vulnerable people access to justice.

It is proposed that the small claims limit for all other cases should remain at £5000.

It is recommended that the fast track limit should be raised to £25,000 for all types of claims. This will increase the flexibility of this track. If a case is unsuitable for the fast track then judges can use their case management powers to allocate claims to the multi-track.

Gowers Review

In considering the fast track limit, the paper also addresses the issues raised by Recommendation 54 of the Gowers Review, which asked the Department for Constitutional Affairs to 'review the issues in relation to intellectual property cases and the fast track'. The paper concludes that the fast track limit for intellectual property should not be different to other areas of litigation. However the paper asks for views on how these cases could be dealt with in a more efficient and cost-effective way.

Claims Process for Personal Injury Cases

This part of the consultation paper considers how the claims process for personal injury cases could be streamlined to make it more efficient and cost-effective. It sets out proposals for a new system based around the principles of early notification of a claim, the promotion of early admissions of liability and the removal of duplication of work from the process. The proposals aim to remove the frontloading of costs that can currently occur. The paper also includes draft claim forms, which detail all the relevant information needed for an insurer to make a quick but informed decision on liability. It is proposed that there will be fixed time periods, for example in which to send the claim form, for the insurer to respond, and for the negotiation of quantum.

Where liability is admitted but the parties cannot reach an agreement over quantum, it is proposed that a simple procedure will be adopted to enable district judges to decide quantum.

The paper proposes that there should be fixed recoverable costs for different stages of the claim. The paper also considers at what point it would be appropriate to take out an after the event insurance policy.

Other proposals in the paper are aimed at reducing the scope for argument and so reduce delay and costs. Issues considered include a template for medical reports; standardising some special damages; and a system for assessing general damages.

It is proposed that the new claims process will apply to all personal injury claims with a value of less than the fast track limit, other than clinical negligence claims, which are provided for in the Redress Act 2006.

A partial Regulatory Impact Assessment is at Annex A of the consultation paper, and information is sought to inform the full assessment.

Introduction

This paper sets out for consultation proposals on the case management track limits for civil claims and on improving the claims process for personal injury cases. The consultation is aimed at parties involved in civil claims and their representatives in England and Wales.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The Consultation Criteria, which are set out on page 87, have been followed.

The partial regulatory impact assessment indicates that the legal profession, insurers and parties making claims for personal injury are likely to be particularly affected. The proposals are not likely to lead to additional costs or savings for businesses, charities or the voluntary sector, or on the public sector. A partial regulatory impact assessment is attached at Annex A, page 72. Comments on the partial impact assessment are particularly welcome.

Copies of the consultation paper are being sent to various stakeholders, including:

Access to Justice Group

Association of British Insurers

Association of District Judges

ALARM – National Forum for Risk Management in the Public Sector

AMICUS – the Union

Association of Personal Injury Lawyers

Better Regulation Commission

British Brands Group and Anti Counterfeiting Group

British Medical Association

Citizens Advice Bureaux

Chartered Institute of Patent Attorneys

Claimsense

Confederation of British Industry

Civil Justice Council

Elysium Ltd

Engineering Employers Federation

Field Fisher Waterhouse

Forum of Insurance Lawyers

Institute of Trade Mark Attorneys

Intellect

InterResolve

The Law Society

Legal Services Commission

Motor Accident Solicitors Society

Motor Insurers' Bureau

Norwich Union

NHS Litigation Authority

Russell Jones & Walker

Social Housing Law Association

Thompsons Solicitors

The Trades Union Congress

Which?

Zurich Insurance

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subjects covered by this paper.

The proposals

Case Track Limits

Background

1. The Civil Procedure Rules (CPR), implemented following Lord Woolf's report, *Access to Justice*, provide a single set of rules that apply to claims both in the High Court and the county courts. Their purpose is to ensure that cases are dealt with in a way that upholds the principles of 'equality, proportionality and expedition.'[1] They provide for a system of case management tracks that have different rules to ensure that cases are dealt with in a manner appropriate to their value and complexity.

2. All defended civil claims are allocated to one of three tracks: the multi-track, the fast track or the small claims track. The courts' powers in relation to the allocation of claims to tracks can be found in Part 26 of the CPR. There are several factors that the court can take into account when allocating a claim to a certain track, for example, the views of the parties and the nature and complexity of the claim. However, the most straightforward way for the courts to distinguish between cases is on the basis of monetary value, so each different track has a financial limit, which determines what the normal track for a claim will be.

3. Currently cases allocated to the small claims track are those with a monetary value of less than £5000. There are two exceptions to this general rule. The first is personal injury claims where a limit of £1000 applies (this amount relates to the damages awarded for pain, suffering and loss of amenity (PSLA) only and excludes any other damages claimed). The second exception is housing disrepair where the limit of £1000 applies for the cost of the disrepair and £1000 for any other damages arising from the disrepair. Claims that are allocated to the fast track are those with a value that exceeds the limit of the

[1] "Access to Justice" By The Right Honourable the Lord Woolf, Master of the Rolls July 1996 www.dca.gov.uk/civil/final/overview.htm

small claims track, but is less than £15,000. The multi-track is the normal track for any claim that does not fall within the scope of the small claims or fast track (i.e. predominantly with a value exceeding £15,000).

4. The purpose of the small claims procedure has always been to provide an informal environment in which disputes can be resolved in a simple, straightforward way that is accessible and proportionate to their low value. This means that the normal procedural rules and the strict rules of evidence do not apply (for example witnesses do not have to give evidence on oath). The presence of expert witnesses is subject to the agreement of the court and hearings are conducted in an informal manner, often with parties sitting around a table.

5. The cost rules relating to recoverable costs for the small claims differ greatly from those of the fast track and multi-track. In the latter two tracks the successful party is generally able to recover their costs, including the cost of legal representation, from the unsuccessful party. In the small claims track the costs that can be recovered from the other side are strictly limited. The usual rule is that the court may only award fixed costs attributable to issuing a claim, any courts fees, reasonable travelling expenses for a witness or party and limited costs for loss of earnings for a party or a witness (up to £50 per day per person). In addition fees of any permitted experts (currently limited at £200 per expert) can be claimed and an amount up to £260 can be claimed for legal advice and assistance in claims including an injunction or specific performance. No costs can be claimed for legal representation or for the services of a lay representative.

6. This part of the consultation paper considers all the case track limits.

The Financial Limit of the Small Claims Track

7. The small claims procedure was first introduced in 1973, and evolved out of a judge's statutory power to refer a case to arbitration. The limit was originally set at £75 but this has increased over time. In 1991 it was set at £1000. In 1995 Lord Woolf published his Interim Report and the following year the limit was raised to £3000.

8. It was at this time that the system of differential limits was introduced. Some groups, including lawyers who specialised in personal injury claims, argued forcibly that the complexity of these claims meant they could not be dealt with

within the small claims procedure. In particular, attention was drawn to the difficulty claimants have in assessing the value of their claims and the worry that they may substantially underestimate the value of their claim. The then Lord Chancellor felt that claims with a value below £1000 were being dealt with fairly but decided that the limit should not be raised further for this type of claim. Similar arguments were raised in relation to housing disrepair cases. This initially led to specialist cost provisions (to reflect the fact that these cases involve bringing an injunction) but later to the different limits of £1000 for the disrepair and £1000 for any other damages claimed.

9. In April 1999 the track limits for small claims were examined again. Research had indicated that the rise to £3000 was generally considered to have been successful and the decision was taken to raise that limit again to £5000. At the same time the limits for personal injury and housing disrepair claims were reviewed. The limit for personal injury claims remained at £1000, but it was decided that it should apply to general damages only (i.e. the money awarded for PSLA) rather than the value of the entire claim.

10. In May 2004 the Better Regulation Task Force (BRTF) published the report, *Better Routes to Redress*. As part of their report they examined the small claims procedure. They concluded that the costs rules mean that claimants in person have the ability to bring claims against represented defendants, as they know they will not have to pay their costs if a claim is unsuccessful. The BRTF considered that there was an argument for raising the current limit for the small claims track for personal injury claims. They recommended that the Department for Constitutional Affairs (DCA) should carry out research into what the small claims limit for personal injury claims should be 'but justify any limit lower than £5000.'[2]

11. The BRTF stated that research carried out on the rise to the limit from £3000 to £5000[3] demonstrated two positive and significant points. The first was that the rise did not result in a dramatic increase in the number of cases being litigated in the small claims track, as was feared before the limit went up. The second was that both litigants and the judiciary expressed approval in the small claims process. The BRTF cited this approval as supporting the idea that raising the

[2] "Better Routes to Redress" Better Regulation Task Force, May 2004, Page 9
[3] "Lay and Judicial Perspectives on the Expansion of the Small Claims Regime" John Baldwin, Research Series 8/02, September 2002

track limit for personal injury claims would improve 'access to justice for many as it will be less expensive, less adversarial and less stressful.'[4]

12. The Civil Justice Council (CJC) considered the matter of raising the track limit for personal injury claims in the report *Improved Access to Justice – Funding Options and Proportionate Costs* (published in August 2005). The CJC stated it was necessary to focus on achieving proportionality of costs within every track and cited as a positive example the fixed costs for fast track road traffic accidents (RTAs). They recommended developing fixed costs for a wider range of cases.

13. The CJC did not agree with the BRTF that the track limit for personal injury claims should be raised. They expressed concerns that raising the limit would mean that claims would be dealt with either by claimants in person who may find the complexities of personal injury law difficult to grasp, or by unregulated claims management companies. On the latter point the Compensation Act 2006 provides for the regulation of these companies.

14. The Constitutional Affairs Select Committee (CASC) considered the small claims limit in *The courts: small claims (*published in December 2005). This report stated that the central issue was whether legal representation was necessary for those personal injury claims with a value at the higher end of the scale. There was a wide range of evidence put forward from the organisations whose views were sought. CASC was concerned that many of the injuries originally intended to fall within the small claims bracket (minor injuries with no long-term effects) no longer do so, due to inflation in damages. It was on this basis that the Committee recommended that the limit be raised to £2500. The report also recommended that in order to ensure consistency of approach, it would be sensible if the limit for housing disrepair cases was raised by the same amount. It added that when considering the housing disrepair limit, however, it would be essential to ensure that vulnerable tenants were not unduly disadvantaged by any change.

Small Claims Limit for Personal Injury Claims

15. In its response to the BRTF report the Government recognised that there are concerns that the processes and costs in lower value cases are often the most

[4] "Better Routes to Redress" Better Regulation Task Force, May 2004, Page 26

disproportionate. Raising the limit for the small claims track would be a way of resolving this problem. However, the Government also recognised concerns about the potential lack of legal representation for claimants if the small claims limit for personal injury claims was raised to £5000. The Government therefore undertook to consider other options for dealing with these claims in a more timely, proportionate and cost-effective way. These options have been considered and proposals for improving the system are set out in the second part of this paper. First we consider whether the small claims limit for personal injury cases should be raised.

16. Following the various recommendations on this subject, the Government has received a considerable number of submissions and correspondence from stakeholders, the majority of which have strongly opposed any increase in the limit. Various organisations have also published their proposals. The arguments for and against raising the limit are summarised below.

Arguments in favour of an increase in the limit

- Insurers are concerned that the fast track system is not working well for personal injury claims with a value at the lower end of the scale. They cite the disproportionately high costs that have been recorded as proof of this. It has been contended that rather than the fast track, the proper forum for hearing low value personal injury claims is the small claims track, which is viewed as a more efficient system. If the limit on the small claims track was raised it would lead to a more predictable process.

- An increase in the limit would lead to a decrease in the amount of money paid out by insurers (as they would not be burdened with paying the claimant's legal costs) which in turn may lead to a decrease in insurance premiums. Raising the limit is a simple way of solving the issue of disproportionately high costs as it would mean that the majority of personal injury claims would be taken out of the fast track.

- Since 1991 there have been developments in the type of lower value injuries, which are the focus of many personal injury claims, For example, there has been a large increase in claims for injuries such as whiplash. These injuries are considered simple and straightforward for a claimant in person to understand. It is argued that these injuries should fall within the remit of the small claims track but do not do so because the limit was set so long ago.

- There is a blanket assumption put forward by claimant lawyers that personal injury cases are more complicated than other types of claims. Insurers believe that this is an assumption that needs testing.

- Although claimants may find it difficult to bring a claim without legal representation, it has been pointed out that there is already support and assistance available to them. For example, there are leaflets published by Her Majesty's Courts Service, specifically designed for the claimant in person, which contain information about the small claims track. These contain advice on the eligibility of cases for the small claims track and preparation for a hearing. It has been suggested that if the limit was raised, an increase in this type of literature could be very helpful to claimants.

- CASC stated that raising the limit to £2500 would be a reasonable compromise between no change at all and a dramatic increase to £5000. They stated that an increase to £2500 would bring the minor claims that Lord Woolf had in mind back into the scope of the small claims jurisdiction (this issue is examined later in the paper).

- An increasing number of claimants now have the benefit of Before The Event insurance (BTE) which is often purchased as an addition to a motor or household insurance policy. These policies can give assistance in a variety of ways such as offering legal advice or help with paying disbursements. If a claimant already has BTE as part of an insurance package then they may be able to bring a claim without engaging a solicitor.

- Unrepresented parties are not necessarily disadvantaged when against a party with legal representation as often the majority of work in establishing a claim is carried out before the hearing takes place. In addition, to level the playing field greater use could be made of opportunities for unrepresented parties to obtain advice prior to hearings through the voluntary sector. CASC considered that any disadvantage to claimants in raising the limit could be ameliorated by better provision of advice and support before the parties attended court.

- District judges have the responsibility of equalising the uneven playing field in claims not involving personal injury where one party is unrepresented. This is often achieved by adopting a more interventionist approach. They should be able to carry out the same function in relation to personal injury claims.

- The impact of inflation should be taken into account and that raising the limit to £2500, or £5000 would make allowances for inflation proofing.

Arguments against raising the limit

- Claimant representatives indicate that personal injury claims are complex and often require independent legal guidance and expert evidence, the cost of which would be prohibitive if the limit were raised. The substantive law involved in a personal injury claim can be complicated and a claimant in person may not be aware of regulations or statutory duties that could apply to their claim. In addition issues such as identifying the right defendant and establishing a breach of duty of care can be difficult for an unrepresented claimant to understand. It can also be hard to collate the necessary evidence, medical and otherwise, to prove a claim. Potential claimants could be put off by the work involved and would not bring a claim

- In a vast majority of claims the defendants to personal injury claims are insured and the insurance companies can afford to be legally represented or will use expert claims handlers, even in lower value claims. If the limit was raised the claimant would often not be able to afford legal representation and would have no prior knowledge of establishing a claim. This could lead to inequality of arms.

- There is the added concern that potential claimants could have strong claims but be unable to afford legal representation or conduct their own claims either because they are poorly educated or because they do not have English as their first language. These people are often the most vulnerable in society. There is a real danger that they will be deprived of access to justice.

- Although these claims are referred to as low value, a sum of £1000 or £2000 is a significant sum of money to the overwhelming majority of the population.

- It is estimated that as many as 80 per cent of claims brought on behalf of trade union members have a value of less than £5000. The trade unions are concerned that raising the limit would mean that their members would no longer be legally represented but would be claiming against insurance companies who would be represented. The current situation allows the trade unions to offset claims for less than £1000 (where costs for legal representation cannot be claimed) against the majority of cases with a value between £1000 and £5000. If the limit were raised then they would be unable to afford to provide legal representation for all personal injury claims brought within the small claims track.

- There are specific concerns relating to industrial diseases such as vibration white finger which are brought on by working conditions. A claim for personal injury must be brought within three years of the date a person knew, or should have known, that they have a claim. There are fears that defendants will argue that claimants should have attributed their symptoms to their workplace more than three years before proceedings were commenced. In addition there is the concern that without either medical expertise or specialist-engineering expertise claimants will be unable to construct a claim. If the limit were raised to £5000 then many claims for industrial diseases would be brought within the ambit of the small claims track.

- One of the key arguments put forward in 1995 is still of relevance today, that claimants in person could potentially undervalue their personal injury claims and accept an offer of settlement that is too low. There are often significant increases from the first and final offer made by insurance companies, sometimes estimated to be as high as 50 per cent. Claimant solicitors' state that initial offers made by insurers are low for tactical reasons which a claimant in person might not understand. If a claimant was to accept the first offer from an insurance company they could be considerably under-compensated for their injuries.

- The argument that district judges will safeguard the claimant's interests by taking an interventionist approach when conducting hearings in attempt to level the playing field between the parties is somewhat misleading as:

    - many claims never get to the hearing stage as the majority of cases are settled out of court;

    - claimants in person will still have to assemble all the relevant evidence to establish their case;

    - claimants in person will still have to deal with the correspondence and tactics of defendants' solicitors;

    - research[5] indicates that district judges have greater difficulty hearing cases where one or more party is unrepresented.

[5] "Lay and Judicial Perspectives on the expansion of the Small Claims Regime" by John Baldwin, LCD Research Series 8/02 (2002)

- Neither the advice sector nor the courts could cope with a substantial increase in claimants in person in personal injury cases.

- Damages in low value claims have not materially increased over the last 10 years.

- Raising the limit of the small claims track will not in itself solve the issue of disproportionately high costs. It is necessary, alongside examining the track limits, to look at ways of streamlining the process to reduce costs this way (this is examined in more detail later in the paper).

- Although BTE insurance has become more prevalent, not every potential claimant will have the benefit of this.

- Although there are leaflets available that offer advice on procedural matters, such as what claims can be heard within the small claims track, these do not deal with substantive law. It would be difficult to produce a leaflet that covered every aspect of substantive law that could be relevant to a personal injury claim.

- There are already provisions in place that, when utilised properly by the court, stop disproportionate costs being incurred. For example the CPR allows the court to refuse to order costs if they are deemed disproportionately high. In addition a fixed fee model has been trialled in RTA cases, where it has been widely met with approval. There is an argument that instead of simply raising the track limit, this model of fixed fees should be adapted and extended for other types of personal injury claims.

- In some solicitor firms the majority of the work carried out is personal injury claims with a value of less than £5000. Some firms suggest as much as 90 per cent of their work is on claims with a value of less than £2500. These firms are concerned that if the limit was increased this work would disappear and firms may have to lay off staff, or in the most extreme cases, cease practising. This could have a knock-on effect on firms being unable to practice other areas of law and could lead to difficulties with access to justice.

- The ATE market would be destabilised by increasing the small claims limit for personal injury to £2500 or £5000 and could result in ATE not being available for claims above the limit. This would deny access to justice in those cases.

- In other jurisdictions where changes have been made to reduce the costs of litigation, there has been no consequent reduction in insurance premiums.

Consideration of arguments

17. In summary there are four options relating to the small claims track limit for personal injury claims:

    - raise the limit to £5000
    - raise the limit to £2500
    - raise the limit in line with inflation
    - no change.

Raising the limit to £5000

18. The rise from £1000 to £5000 would be a considerable step and would potentially affect hundreds of thousands of cases.

19. We understand that if the track limit were to be raised to this extent there is not the capacity in the advice centres to deal with such a substantial influx of claimants seeking advice on personal injury claims. Even if there was the capacity, there would be a need for additional training and expertise as currently little guidance is given by the advice sector on the merits of personal injury claims.

20. We note that some of the arguments in favour of an increase cite the assistance given by district judges. However, the vast majority of cases currently do not reach court. It is possible that more may do so if the limit was raised, but that may well stretch the available resources, in particular the district judges and court staff.

21. If the limit were increased to £2500 or £5000 then many injuries never intended to be dealt with as small claims would be within the remit of this track. These could be relatively severe, for example in the latest edition of the Judicial Studies Board (JSB) guidelines[6] the injuries which would be valued at £5000 for PSLA include fractures of the forearm, minor head injuries and moderate psychiatric damage. Claimants may have difficulty in understanding the medical terminology associated with these injuries. There may also be issues with

[6] "The Judicial Studies Board Guidelines for the Assessment of General Damages in Personal Injury Cases" Oxford University Press, 8th Edition

establishing causation, which could necessitate a greater volume of expert evidence than in non-personal injury small claims.

22. These considerations all support the strong argument put forward about an uneven playing field. For a large number of personal injury claims, the vast majority of claimants will not be able to afford legal representation, as they will not be entitled to recover their costs. Conversely, the majority of defendants are likely to be legally represented or have access to expert claims handlers. We consider that if the claimant does not have appropriate legal advice, it is possible that the case will not be pursued; it might fail because the claimant is unable to deal with issues of causation, liability, medical evidence and valuation; or the claimant might accept lower compensation than he or she is entitled to.

Raising the limit to £2500

23. It has been suggested that raising the limit to £2500 could be a compromise between not changing the limit at all, and a significant increase to £5000. CASC put forward the argument that a rise to £2500 would lead to the inclusion of certain types of minor injuries being dealt with within the small claims track, as was the original intention of Lord Woolf. This is an argument that needs to be examined in more detail.

24. The first edition of JSB guidelines was published in 1992 when the case track limit of £1000 was originally set. The guidelines illustrate the amount awarded for PSLA for certain injuries. It is possible to see what sort of injuries would have been dealt with within this track by examining the values of injuries as they were in 1992. The table below demonstrates that the volume of cases that it was intended would be dealt with within the small claims was very small. The first edition shows only six injuries that fall on or under the £1000 bracket. However, (as noted above) at this time the £1000 limit referred to the value of the entire claim. The majority of claims do not consist solely of PSLA, but also include special damages such as loss of earnings, cost of care etc. It might therefore be inferred that the greater part of personal injury claims must have had a value over £1000, and thus have been dealt with outside the small claims track.

25. By examining the fourth edition of the guidelines, published in 1998, it is possible to compare the value of the same injuries, as this was when the case

track limits were last reconsidered, and the decision made to fix the limit at £1000 for PSLA.

Injury	**1992**	**1998**	**2006**
Trivial thumb injuries	£750	£1000	£1250
Minor psychiatric damage	£200 - £1000	£500 - £2250	£840 - £3450
Vibration white finger/hand/arm minor	£800	Up to £2500	£1775 - £5100
Nose – simple undisplaced fracture with full recovery	£750	£750 - £1000	£1000 - £1400
Fracture of one finger with complete recovery in a few weeks	£740 - £1000	£1000 - £1750	£1775 - £2800
Loss of / or damage to back teeth, per tooth	£350 - £600	£500 - £850	£630 - £1000

This table illustrates that there has not been a significant rise in the damages awarded for similar injuries since the track limit was last considered in 1999. Thus it does not appear necessary to raise the track limits to take account of the increase in damages awarded. An increase to £2500 or £5000 would instead bring into the small claims track many injuries that have never been dealt with as a small claim.

Raising in line with inflation

26. An alternative option would be to raise the track limit in line with inflation. As the small claims track limit was last examined in detail in 1999, and fixed at £1000 then, inflation should be calculated from that year. This would result in an increase to around £1200.

27. Some consider that 1991 should be used as starting point, which would lead to an increase to around £1500. It would also bring the limit in line with the proposed European Directive on small claims. However as the limit was in effect increased in 1999, a rise to £1500 would represent more than inflation.

28. There are injuries where the JSB guidelines span £1500 and an argument against increasing the limit in this way is that it might risk claim inflation, with claimants estimating the value of their injuries at the upper end of the scale simply to lift their claims into the fast track.

No change to the limit

29. The other option is not to change the limit to the small claims track for personal injury claims and instead leave it fixed at £1000. This would mean that the status quo would remain as it now, with the vast majority of personal injury claims being dealt with within the fast track, and very few personal injury claims being allocated to the small claims track.

Conclusion

30. The Government believes that an increase to £2500 or £5000 will bring claims for certain injuries into the small claims track for the first time. There is also a concern about the availability of advice for claimants and the potential inequality of arms.

31. A rise in line with inflation would carry less risk, but might simply encourage the inflation of claims to bring them into the fast track.

32. The Government is very much aware of the need to provide access to justice and to ensure that victims of negligence receive fair compensation. However, there is a need to balance this against the high cost of pursuing these claims, which is a cost that society has to bear through higher insurance premiums and council tax. The current system cannot continue.

33. However, we are encouraged by the good progress that has been made in developing proposals to make the claims process more timely, proportionate and cost-effective and the constructive and positive support we have received from various stakeholders. We consider that this work can result in finding a better balance between the rights of claimants and defendants than would be reached in raising the limit. It will provide fair compensation more quickly but with lower costs. In these circumstances we propose to pursue this option and not to raise the small claims limit.

Q1: Do you agree that the small claims limit for personal injuries should remain at £1000 in view of the proposals set out in the second part of this

paper to improve the claims process? If not, please set out your reasons why and state what you consider the appropriate level would be.

Small Claims Limit for Housing Disrepair Claims

34. The arguments for and against raising the small claims limit for housing disrepair cases are summarised as follows:

Arguments in favour of raising the limit

- Housing disrepair is no longer the widespread social problem that it once was. It now only occurs in isolated incidents. Tenants do still experience problems with rented properties but these are often concerned with improvement to properties, which is not always the responsibility of the landlord, rather than disrepair of properties.

- Landlords are spending a large amount of resources defending claims that are devoid of any merit. They suggest that the fact that claimants are entitled to legal aid creates an uneven playing field, as claimants know irrespective of whether their claims are successful it is more than likely that they will not have to pay any legal costs. Raising the limit would reduce the legal aid available and dissuade claimants from bringing claims without merit. This would also cause a reduction in the spending of public money.

- Claimants should be able to present their own cases without the need for legal representation as they are essentially gathering relevant facts, such as what the defect consists of and when the landlord was notified about it. Further, it has been said that the use of expert evidence can obscure, rather than clarify, the relevant issues as experts can digress into talking about matters that are not relevant to a housing disrepair claim.

- The costs involved in defending a claim in the fast track are disproportionately high when compared to the relatively low value of the claims themselves. We have been cited examples of housing disrepair claims where claimants received around £2000 in damages but where costs of over £10,000 were claimed.

- The arguments relating to the assistance that judges can give through intervention, (which are examined in more detail above) are also relevant here.

Arguments against raising the limit

- Housing advice, including disrepair, is a priority for the Community Legal Service because it is usually the most deprived and excluded groups who inhabit properties which are older, have been less well maintained over the long term and, hence, are in greatest need of repair. This is particularly true for those renting within the private sector. It is also both a public health issue and a quality of life issue for the poorest in society.

- Although it has been argued that the provision of legal aid for claimants creates an uneven playing field, it is also true that these claims are often brought against organisations such as local authorities. These organisations can afford to have legal or expert representation available, even for smaller claims. Thus it could be argued that if the track limit were increased there would be a greater inequality of arms in the defendant's favour.

- Much of the reasoning against raising the limit for personal injury claims can also be applied to housing disrepair cases. Housing disrepair claims are often not as straightforward as it is contended. They can contain personal injury claims (where the disrepair has caused an injury such as asthma), or be brought as a counterclaim to a possession action. Both of these scenarios are complicated and it would be very difficult for a claimant in person to understand all the relevant issues without any legal assistance. There may be added complications with obtaining expert evidence or understanding medical terminology.

- The housing disrepair pre-action protocol has encouraged claimants to exchange information with defendants at an early stage in the claim, leading to claims settling at an earlier date and lower costs.

- There have been concerns about claims management companies operating in this area but these have now mostly been addressed through the Compensation Act 2006.

- One argument identified by CASC was that the damages for housing disrepair are relatively low and estimated to be 'about £1600 per year for the most severe cases.'[7] As public funding is not generally available for small claims, as there is no chance of recouping any costs, the situation might therefore be

[7] CASC Page 18

created where tenants choose to wait three or four years for the value of their claim to exceed the small claims limit.

Conclusion

35. In the conclusion of their findings CASC emphasised two key points in relation to the limit for housing disrepair. The first was the consistency of approach in relation to the personal injury limit (i.e. that the two limits should be kept in line with each other). The second was that it was essential to ensure that vulnerable tenants are not unduly disadvantaged. Two further points for consideration are that the pre-action protocol has been beneficial in improving the way in which the parties deal with these cases and the activities of claims management companies are to be regulated. For these reasons the Government does not propose to increase the limit for housing disrepair cases. However, we seek views on whether the process for dealing with housing disrepair cases can be improved and simplified, and if so, how this could be achieved.

Q2: 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.

Q3: 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.

Small Claims Limit for all Other Claims

36. The small claims track for all claims, other than personal injury and housing disrepair, is currently £5000. In comparison with other countries, both in Europe and worldwide, £5000 is one of the highest limits for a small claims track.[8] Stakeholders have not expressed strong views or provided evidence to support an increase in this limit. On this basis we consider that this limit is working effectively and do not propose any change.

[8] "Lay and Judicial Perspectives on the expansion of the small claims regime" John Baldwin, Research Series No. 8/02, September 2002, page 6

Q4: 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.

Fast Track Claims

37. As noted above, the fast track is the normal track for any claim to which the small claims limits do not apply, provided it has a financial value of not more than £15,000 and the trial is likely to last for no longer than one day. In addition oral expert evidence at trial is limited to one expert per party in relation to any expert field, and no more than two expert fields in total.

38. Some stakeholders have suggested that the fast track limit for both personal injury and non-personal injury cases could be increased. The CJC considered the matter in its report *Improved Access to Justice – Funding Options and Proportionate Costs* and recommended an increase to £25,000. It has not been possible to obtain detailed figures on the amount of claims with a value between £15,000 and £25,000. However, as noted above, the majority of personal injury claims fall below the level of £5000. Also, figures from the National Health Service Litigation Authority indicate that in 2004 ten per cent of clinical negligence claims fell into this band. Thus it would appear that a change to the fast track limit for personal injury claims would affect only a limited number of cases.

39. In the case of non-personal injury cases, it is understood that few cases arise just above the £15,000 limit, and that many relate to contractual or business disputes for which the fast track would generally be suitable.

40. We accept that if the limit is raised some cases that fall within this bracket will not be suitable for the fast track, for example, the hearing will take more than a day or the case will be particularly complex. However, we do not consider that to be a reason for not raising the limit as under the courts' case management powers, a judge will be able to allocate that case to the multi-track. Conversely, at present if a case is a multi-track case, the judge cannot allocate to the fast track unless both parties agree.

41. We therefore consider that a rise in the fast track limit will provide greater flexibility and will result in more cases being heard in the most appropriate track.

42. We have considered the paper *Focusing Judicial Resources Appropriately*, which recommends that district judges should be able to hear multi-track cases up to £30,000. The consultation paper also indicates that further guidance is to be issued by the Head of Civil Justice to encourage the allocation of a greater proportion of fast track cases to district judges.

43. It could be argued that any increase in the fast track should be to the limit of a district judge's normal jurisdiction and that we should consider raising the limit to £30,000. However, the judicial resources paper anticipates district judges hearing cases in the multi-track and did not see it as essential for the two limits to be the same. In addition, an increase to £30,000 would double the current limit, and if it applied to the new claims process, might be too great an increase.

44. The Government therefore proposes to raise the fast track limit to £25,000.

Q5: 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.

45. The Gowers Review of Intellectual Property was published on 6 December 2006. Recommendation 54 of the report asked the DCA to 'review the issues in relation to IP cases and the fast track.'[9] Some of the responses to the call for evidence raised concerns about intellectual property litigation. The most frequent observation was that the legal costs in bringing a claim are very high, sometimes so high that companies are dissuaded from entering into litigation. This was particularly true of small and medium size firms.

46. One suggestion was that the small claims limit could be raised significantly and the procedure adapted to make it suitable for intellectual property cases. It was suggested that measures could be introduced such as removing disclosure and only allowing cross-examination where strictly necessary. However, our view is these are not the type of cases suitable for the small claims track. In addition the measures suggested could result in unfairness as parties may be denied the opportunity to state their claim properly, particularly if restrictions are placed on evidential matters.

47. Several reasons were given as to why the costs in bringing a claim are so high, some of which are general points that apply to all civil litigation claims. Examples of these were the rates charged by lawyers and the rule that the

[9] Gowers Review of Intellectual Property, published December 2006, HM treasury

losing party pays the successful party's costs. Some respondents also felt that courts could do more to limit costs through their case management powers. However, it was also widely recognised that patent litigation is complex and thus could be very expensive.

48. There is no evidence to support a proposal that these cases should have a higher fast track limit than other types of cases. The nature of intellectual property claims means that they are perceived as being at the more difficult end of the scale. Raising the limit would be an arbitrary way to solve this problem and would result in an unrealistic timetable being imposed on claims. This could result in restrictions of access to justice, as parties will not be given the time needed to fully establish or defend their claim. Alternatively, most cases would end up being transferred to the multi-track.

49. However, we recognise the concerns about the costs involved in intellectual property litigation. We therefore seek views on whether intellectual property claims could be dealt with in a more efficient and cost effective way.

Q6: Are there any measures that would make the handling of intellectual property claims more efficient and effective? Is so please tell us what those measures are.

Q7: If the difficulty of dealing with intellectual property cases is not the court process, what are the difficulties and how could they be resolved?

Q8: 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.

Improving the Claims Process for Personal Injury Claims

Background

50. In its response to the BRTF report, *Better Routes to Redress* the Government indicated that it would look at ways to make the claims process more timely, proportionate and cost-effective. To take this forward we have been working with a wide range of stakeholders, through a stakeholder working group, workshops and meetings. We are grateful for the significant amount of time and constructive contributions that people have given to us in helping develop the following proposals. The proposals reflect many of the issues discussed, but do not necessarily reflect the views of all those who have taken part in those discussions.

51. The processes and costs involved in making a claim for personal injury are often perceived as being disproportionately high, particularly in the lower value claims.

52. Costs can often exceed compensation, sometimes by a considerable amount. Cases with a value of less than £2000 have incurred claimant costs of between £4500 and £7000, and we have been informed of much higher costs than these. There can be a number of reasons for this. For example, research has indicated that while pre-action protocols have been beneficial in many ways, they have had the effect of frontloading costs. The processes that the parties are required to follow can quickly drive up legal costs at an early stage of a claim and this can have the greatest impact in the lower value claims. In addition, the defendant/insurer is often not notified about a claim until the claimant lawyer has carried out a considerable amount of investigative work. If the defendant/insurer then admits liability much of the work that has been done, and the costs that have already accumulated as a result of that work, can prove to be either unnecessary, or duplicated. The impact of high costs is then increased as the success fee will be a percentage of those costs.

53. Another cost is the premium for ATE. Where a fixed premium is used, this can be in the region of £1000, when the claim is for little more. Where a staged premium is used, there is a lower initial premium that covers the pre-issue stage, sometimes with limited cover, and in the region of £350 - £400. There will usually be two further staged premiums, to cover the pre-trial and trial stages.

54. In addition, a referral fee is often paid, for example to a claims management company or an insurer and this can be in the region of £600 - £900.

55. The Government considers it important that these issues are addressed. The majority of personal injury claims are for amounts of below £5000 and the number of cases runs into several hundred thousands. This paper considers the issues and sets out proposals for a system that will provide fair compensation for the claimant in a more efficient and cost-effective way.

The claims process

56. First we consider the claims process. Through our work with stakeholders, we have identified key areas that can be targeted and have developed proposals to:

    - provide early notification of a claim to defendants/insurers
    - promote early admissions of liability and settlements
    - remove duplication of work from the process.

Making a claim

57. To avoid unnecessary delay and cost, it is important that the insurer is notified of a claim as soon as possible. This will help identify those cases where an admission of liability can be made at an early stage. This has the dual benefit of helping to ensure that costs are kept down, and ensuring the claim is dealt with as expeditiously as possible. To achieve this it is proposed that a claim form will be sent to defendants/insurers as soon as the claimant/solicitor has the minimum information that defendants/insurers need to reach a decision on liability. This will be before much of the investigative work has been carried out which currently precedes a letter of claim and which can frontload costs. Where the claim is sent to the defendant, for example an employer, a letter will accompany the form, asking the recipient to forward it to their insurer immediately. In addition the letter will request the recipient to inform the claimant solicitor of the name and contact details of the insurer, and the date that the claim form was forwarded on

58. We have had discussions with stakeholders to identify what would be the basic information required on the form to enable insurers to make an early and informed decision on liability. Based on those discussions and with input from

stakeholders, we have developed draft claim forms. Where a solicitor is acting for the claimant, a proposed form for RTAs is at Appendix 1. A form for other claims is at Appendix 2. A draft form for RTAs for use by claimants acting in person is at Appendix 3. At Appendix 4 is the claim form for a claimant acting in person for any claim other than one arising out of a RTA. There is also an optional form at Appendix 5, which provides for additional information which would be helpful to the defendant/insurer, but which would only be provided by the claimant/solicitor where it is readily available and would not cause delay.

59. It is proposed that the defendant/insurer will have a set period of time in which to investigate the claim. During that time period the claimant's solicitor will carry out no further work, unless there are exceptional circumstances where the claimant's position needs to be preserved, for example a witness emigrating, or the limitation period expiring.

60. Following investigation, the defendant/insurer will respond on the issue of liability, stating whether liability is admitted or denied. If the insurer is not able to do this within the time period then they should respond with an explanation, for example indicating that they need more time to investigate the claim, or identify a particular area of the claim that is problematic. This will assist in narrowing the issues in dispute between the parties.

61. Where the claimant's needs have not already been met, and where it is appropriate, an offer of rehabilitation should also be made at this stage. It is recognised that to have best effect, rehabilitation needs to be provided as early as possible, usually before a claim is made. Moreover rehabilitation is often needed where no personal injury claim is being brought. In these circumstances we do not believe that rehabilitation should be dependent on the claims process or await a claim being made.

62. The Government and other interested organisations are therefore currently taking forward initiatives on rehabilitation as a separate strand of work. These are very much aimed at meeting rehabilitation needs as early as possible. However, the proposals to address rehabilitation as part of the claims process will ensure that those cases where the claimants' needs have not already been met are identified, so that appropriate rehabilitation can be provided.

Where the insurer/defendant admits liability

63. It is proposed that where the defendant/insurer admits liability the admission will be binding, except in cases of fraud.

64. Once an admission of liability has been made, it is proposed that the claimant solicitor will obtain a medical report. This report should be sought from a level of medical expertise appropriate to the injury. Through our work with stakeholders, a standard medical template has been developed, which is at Appendix 6. This is intended to point medical experts to the issues that they need to cover in their report. It will help ensure that both parties have all the information they need and so reduce the possibility of delay or the need for a second report. It is proposed that there will be a maximum recoverable fee for the medical report.

65. On receipt of the medical report, and before it is sent to the defendant/insurer, it will be checked by the claimant for factual errors. If there is a problem with a report, then the defendant/insurer should be notified of the delay and the reasons why. If more time is needed before a final prognosis can be reached, the claimant/solicitor and defendant/insurer should aim to agree how long is needed. For example, the parties may agree to wait for six months for a full prognosis. If so, during this time neither party should carry out any unnecessary work.

66. It is proposed that once the report is agreed, it will be sent to the defendant/insurer as part of a settlement pack. In addition to the medical report, the pack will also include an offer to settle, a form setting out the special damages claimed and any other relevant documents. There will be a set time period in which the settlement pack should be sent, following agreement of the medical report. We have considered whether the fixed time period should also cover obtaining the medical report, but recognise that there may be difficulties. However we seek views on this.

67. The receiving party will have a set time period in which to accept the offer or to make a counter offer. There will then be a further set period for negotiation and for settlement to be reached, or for the offers to be finally rejected.

68. In our discussions with stakeholders there was some frustration that negotiations could break down due to the person negotiating not having the authority to take certain decisions or being unreasonable. We therefore suggest that where a negotiation is proving difficult, it should be possible to refer it upward within the organisation. To facilitate this, in the claim form and the response the parties will be asked to provide not only the names of the individuals dealing with the claim on a day-to-day basis but also the senior person who has overall management of the claim.

69. It is important that both parties make offers that are realistic, leading to early settlement, earlier compensation and rehabilitation for the victim and lower costs for the paying party.

Claimant in person

70. Where offers are made by defendants/insurers to claimants in person, including those that have made no direct claim but have been subject to third party capture, they should be provided with the information needed to enable them to make an informed decision. It is proposed therefore that when an offer is made to a claimant in person, he or she should be informed of the set time period in which they can accept or reject the offer and that if the offer is accepted, there can be no further claim. Claimants in person should also be informed of their right to seek independent legal advice from a solicitor or from their trade union if they are or a member of the family is a trade union member.

Q9: 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.

Q10: Do you have any comments or suggested amendments in relation to the draft forms?

Time periods

71. In determining the time periods for the various stages in the process there is a need to strike the right balance. Defendants/insurers will require a reasonable amount of time to make informed decisions on liability and rehabilitation. It has been suggested that if the time period is too short, it is possible that spurious claims will be admitted to avoid the cost consequences. However, consideration also needs to be given to how long it is reasonable to require claimants/solicitors to suspend their investigation of a claim. In our discussions with stakeholders there was a reasonable degree of consensus in relation to considering liability in RTAs, but claimant and defendant representatives had very different views in relation to employers' liability and public liability, ranging from one month to three. We propose that the following time periods should apply in relation to making a decision on liability:

	Road Traffic Accidents	**Employers/Public Liability**
Solicitor and claimant meet and instructions taken – time from which claim form is sent	5 working days	5 working days
Defendant/insurer communicates decision on liability and rehabilitation after notification	15 working days	30 working days

72. We anticipate that the periods suggested will allow a large proportion of claims to be dealt with by defendants/insurers within the time period without adversely affecting the claimant's case. We would expect the number to increase as users become more familiar with the new process and office systems are organised to deal with it. However we recognise that this will take time to achieve and will take account of this in our discussions on implementation with insurers and defendants. It has been suggested that public liability cases should have a longer time period than other types of case. If this is your view, please provide reasons why.

73. We propose that the settlement pack should be sent out within 15 working days of the medical report being agreed by the claimant. As the value of the claims increase, the settlement packs may become more complex and thus require a longer period of time. We would welcome views on whether there should be different time periods depending on the value of the case, for example, for claims above and below £10,000.

74. In relation to offers to settle, we propose that the defendant/insurer should have 10 working days in which to consider and accept the claimant's offer, or to make a counter offer. Where there is a counter offer, it is proposed that there will then be a further 20 working days for consideration and for negotiation.

Q11: Do you agree with the above time periods? If not please state why not and what they should be.

75. The time periods for determining liability in RTAs are likely to cause difficulty for the Motor Insurers' Bureau (MIB) because of the nature of the defendants they deal with. The MIB is a private company limited by guarantee for the purpose of entering into agreements with the Government to compensate the victims of negligent uninsured and untraced motorists. The MIB has indicated that it would like to use the new process wherever possible but, due to the complicated nature of their work, suggest that slightly longer periods should be allowed for their cases. The MIB have a claim form which has to be filled in for every claim made. We are currently working with the MIB to see whether it would be possible to streamline this form so that only the minimal information needed to make an informed decision on liability is collected.

Where negotiations break down

76. Where liability has been admitted, but quantum cannot be agreed, we propose that there should be a simple procedure for the parties to refer these cases to court for the issue of quantum to be resolved. The Association of District Judges has suggested such a procedure could be used for cases under £2500. Drawing on these proposals, we propose that an application will be made to the court for the amount of damages to be determined. All the relevant papers, including the proposed claim form, medical report and any other evidence will also be provided for the court, with final offers to settle from both parties in sealed envelopes. The provisions of Part 36 will apply to these offers. If either party considers that more evidence is needed, then that should be brought to the district judge's attention before a hearing is set so that he or she can decide what further evidence should be provided. This however should be the exception in cases of this value. The district judge will decide on the amount of damages at a hearing, unless both parties agree that it should be dealt with on paper.

77. Where the amount in dispute is more than £2500, we propose that the issue of quantum should also be dealt with as simply as possible. The application and papers will still be filed in court and if no further evidence is required it will proceed to hearing. However as claims increase in value it is perhaps more likely that the court will need additional evidence, with a need for directions to be given by the judge before the hearing.

78. Although the procedure for dealing with these applications is essentially the same, we have introduced a value of £2500 as a threshold. This will determine how the recovery of costs is dealt with, the need for ATE and the expectation that no further evidence will be required for quantum to be decided by the

district judge. The figure is based on that suggested by the district judges in their paper.

Q12: 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? If you agree, your views are sought on the procedure set out above. If you do not agree, please state why.

Where the insurer does not admit liability

79. Where the defendant/insurer does not admit, or denies liability then the claimant/solicitor will be entitled to proceed with the investigation of the claim. If the insurer needs more time, then we would expect the parties to discuss what might be a reasonable extension and for the claimant/solicitor to carry out only the essential steps in the meantime.

80. If possible the insurer/defendant will narrow the issues in dispute in any way they can, for example by informing the solicitors there is no dispute on breach of duty, but there is on causation. This will prevent solicitors carrying out unnecessary investigations. Where defendants/insurers deny liability, they will be expected to disclose any police report that they have obtained.

Q13: 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.

Damages

Special damages

81. Special damages cover loss and costs arising from the accident, for example, loss of earnings and care costs. To help reduce delay and costs in disputes relating to these damages we have considered with stakeholders the possibility of standardising certain special damages.

82. Claimant and insurer representatives have suggested that there should be an upper limit of £50 per week for certain losses, which would not be challenged by liability insurers, but which would be audited and monitored to ensure the system was not abused. Details are at Appendix 7.

83. In addition we suggest setting regional hourly rates in some circumstances, for example, for care and help provided for the claimant in the home. There are

currently a number of published tables that can be used to calculate care rates, such as the British Nursing Association rates. As well as standardising the rates, it is proposed that the potential disputes about the number of hours of care needed could be reduced. In discussions it was suggested that rather than simply basing the hours on the type of injury suffered, the degree of incapacity experienced by the claimant should be an issue covered in the doctor's report.

Q14: Do you agree with the proposals set out in Appendix 7? If not, please say why and set out any alternative proposals.

Q15: Do you agree that regional hourly rates should be set and if so, how should they be set?

General damages

84. General damages cover the pain and suffering element of a claim. Some stakeholders have suggested that there should be a tariff or assessment tool to assist with calculating to these. This would increase transparency and reduce delay and cost. This might be, for example, a computerised tool or a more sophisticated form of JSB guidelines, with narrower bands for injuries. Any system would need to be independent and have the confidence of all its users. Although we have had some discussion in the stakeholder meetings on this issue, more work needs to be done to assess the benefits and risks of such a system and, if it is considered worthwhile, what form it might take. As a first step we have asked the CJC to facilitate a forum to help inform our further considerations on this issue.

Q16: Your views are sought on developing an assessment tool for general damages.

Contributory negligence

85. We have considered how we might reduce the scope for delay and negotiation on contributory negligence, and we are grateful to the insurers who have identified the top scenarios in which it might be possible to standardise contributory negligence. However, we have concluded that this might result in unfairness and that we should not take this forward at this stage.

Q17: Do you agree that there is little scope for standardising contributory negligence? If not, please set out how it might be done.

Costs

86. It is proposed that fixed costs will apply to the first stage of the process, leading to the admission or denial of liability. If the claimant/solicitor drops the claim during this period, neither party will be liable for paying the other side's costs. There will also be fixed costs for the next stage, to the end of the period for acceptance or rejection of an offer. The fixed costs will be calculated to reflect only the work needed to be done to comply with the new process. They will not include the cost of referral fees.

87. It is proposed that there will be a fixed success fee. The intention is that the amount of the success fee should reflect the risk of taking on cases which appear to be good cases, but which might then be dropped in the first stage once liability is denied. However, these will cover no more than this otherwise there is little incentive to filter out spurious claims.

88. It is also proposed that fixed costs and fixed success fee will apply where an application is made to the court for damages to be decided, and the value of the claim is less than £2500. If the claimant's offer is not beaten then the claimant/solicitor will not be entitled to their costs of the hearing (although disbursements such as the cost of the medical report will be recoverable). Nor will they be liable for the other side's costs.

89. Where the value of the claim is more than £2500, we propose that differential fixed costs should apply. We would welcome views on whether these should be dependent on the value of the claim, or the duration of hearing needed to decide quantum.

Q18: Do you agree with the proposals in relation to costs? If not, please give your reasons and set out any alternative proposals.

After The Event (ATE) insurance and Conditional Fee Agreements (CFAs)

90. ATE insurance is generally taken out as soon as a solicitor is satisfied that there is no pre event insurance and that a CFA is appropriate. ATE providers work on the principle that the many pay for the few so the earlier that ATE insurance is requested the cheaper it will be. This means that the cost of claims and administration is distributed across all claims. Some providers charge a set premium, where the minimum premium can be in the region of £1000. Other insurers provide staged premiums, which increase as the claim progresses. The insurance covers the claimant's liability for the defendant's

costs should the claimant lose the claim. The premium can also include a premium to insure the premium and also cover the claimant solicitor's disbursements and counsel's fee in the event the claim fails, unless counsel is on a separate CFA. In addition the premium covers the insurer's costs, such as marketing costs, claims handling, commission and administration. To this is added a profit margin.

91. Under our proposals we do not consider it appropriate for the premium for any ATE taken out at the commencement of the claim to be recoverable. During the initial stage of the claim there will be no risk as to costs so there would be no risk to insure. As indicated above, if the claim falls at the admission/denial of liability stage, there will be no liability for costs between the parties. The solicitor's costs will be covered by the success fee element of the fixed cost and the cost to the defendant/insurer should be more than offset by not having to pay an ATE premium. Once the defendant has admitted liability then costs should follow the event so again there should be no risk to the claimant.

92. Where the value of the claim is less than £2500 and it proceeds to a hearing on quantum, then unless the claimant's offer is not beaten, costs should follow the event. As indicated above, where the offer is not beaten the solicitor's costs will be covered by the success fee and the cost to the defendant/insurer should again be offset by not having to pay an ATE premium.

93. If the value of the claim is over £2500 and the parties cannot reach an agreement over quantum it is suggested that it might then be appropriate to arrange for ATE insurance. This will cover the application for a hearing on quantum by the court. However, it is suggested that in this situation the premium should be considerably reduced to reflect the fact that the initial stage of the claim has already been completed and liability has been admitted. The claimant solicitor will be entitled to the fixed costs for the work they have carried out up to this stage in the claim. Consequently, the ATE will only cover the costs relating to the application to the court and the risk that the claimant's offer might not be beaten.

94. If the defendant/insurer denies liability then the claim will be taken out of this scheme and the claim will proceed as now, we seek views earlier in the paper on how this part of the process might also be improved. Once this has happened it will be appropriate for the claimant solicitor to arrange an ATE premium.

95. Concerns have been expressed that if these cases are removed from the ATE system the market will be severely damaged. Conversely, others have expressed the view that this is not the case and that if the market becomes more risk based and transparent it would encourage others to join it.

Q19: Do you agree that ATE insurance cannot be justified in the circumstances set out above and therefore should not be recoverable? If not, please give your reasons, identifying the risk that is being insured, and set out any alternative proposals.

Q20: What would be the impact on the ATE market of these proposals?

Claims that will be covered by the proposed new process

96. It is proposed that the new claims process will apply to all personal injury claims with a value of less than that of the fast track limit. The exception is claims for clinical negligence, for which the Redress Act 2006 makes separate provision.

Q21: 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.

Appendix 1: Road Traffic Accidents

Notification of a personal injury claim

Please complete all parts giving as much information as possible

CLAIMANT DETAILS:

Name:

Address:

Postcode:

Date of Birth: _____/_____/_____

National Insurance number (if known):

Occupation:

SOLICITOR DETAILS:

Name & reference:

Address:

Postcode:

Telephone number:

Fax:

E-mail address:

Name & contact details of person with overall supervision of the claim:

ACCIDENT DETAILS:

At the time of the accident was the Claimant *(please circle)*

Driving	YES / NO
The owner of the vehicle but not driving	YES / NO
A passenger in a vehicle owned by someone else	YES / NO
A pedestrian or cyclist	YES / NO

If driving please give details of the Claimant's**:**

Vehicle registration number:

Make and model of vehicle:

Insurance Company name, address and policy number (if known):

If a passenger please give driver details of the vehicle in which the claimant was a passenger:

Name:

Address:

Postcode:

Vehicle registration number:

Make and model of vehicle:

Insurance Company name, address and policy number:

If another party was involved in the accident, please provide the other driver's details:

Name:

Address:

Postcode:

Vehicle registration number:

Make and model of vehicle:

Insurance Company name, address and policy number (if known):

Who does the Claimant believe was at fault for the accident?

If the Claimant believes that another person could also bear some responsibility, please provide details:

Name:

Address:

Postcode:

Accident location:

Street:

Town:

County:

Date & time of accident:

Date: ____/____/____ Time: am/pm

Conditions at the time of the accident *(please circle as appropriate):*

Weather conditions - Sun / Rain / Snow / Ice / Fog

Road conditions - Wet / Dry / Ice or Snow / Mud or oil on road

Please give a brief description of the accident, including approximate speeds of all vehicles and details of areas of vehicle damage:

Please draw a sketch map of the accident:

Was the accident reported to the police? YES / NO

If the answer is “Yes”, please provide further information below, if available:

Name & Address of police station:

Reference & name of reporting officer:

INJURY AND MEDICAL:

Please provide a brief description of any injury arising out of the accident:

Has the Claimant had to take any time off work as a result of their injury? If so, for how long and are they still off work?

Has the Claimant sought medical attention? Yes/No

If “Yes”, on what date did they first do so? _____/_____/_____

Rehabilitation:

Has a medical professional recommended that the Claimant should undertake any rehabilitation such as physiotherapy? Yes/No

If so, provide brief details of the rehabilitation:

Do you believe that the Claimant has any needs, arising out of the accident, that could be met by rehabilitation? Is so please provide brief details:

I believe that the facts stated in this claim form are true.

Claimants Signature:

Date:

Appendix 2: For claims other than RTAs

Notification of a personal injury claim

CLAIMANT DETAILS:

Name:

Address:

Postcode:

Date of Birth: _____/_____/_____

National Insurance number (if known):

Occupation:

SOLICITOR DETAILS:

Name & Reference:

Address:

Postcode:

Telephone number:

Fax:

E-mail address:

Name & contact details of person with overall supervision of the claim:

ACCIDENT DETAILS:

Please provide details of the person or organisation the Claimant believes to be responsible for the accident

Name:

Address:

Postcode:

Relationship of person or organisation (e.g. employer)

Please provide a contact name in the organisation (*if known*)

Position of contact in organisation:

Telephone:

Email Address:

If the Claimant believes that another person could also bear some responsibility, please provide details:

Name:

Address:

Postcode:

When did the accident occur?

Date: _____/_____/_____ Time: am/pm

Where did the accident occur?

Address:

Postcode:

Please provide a brief description of the accident (if you have photographs of the accident site please provide them):

If appropriate please draw a sketch map of the accident:

INJURY AND MEDICAL:

Please provide a brief description of the injury:

Has the Claimant had to take any time off work as a result of their injury? If so, for how long and are they still off work?

If the Claimant has sought medical attention, on what date did they first do so?

_____/_____/_____

Rehabilitation

Has a medical professional recommended that the Claimant should undertake any rehabilitation such as physiotherapy? Yes / No

If so, provide brief details of the rehabilitation:

Do you believe that the Claimant has any needs, arising out of the accident, that could be met by rehabilitation? Is so, please provide brief details:

I believe that the facts stated in this claim form are true.

Claimants Signature:

Date:

Appendix 3: Claimants in person - road traffic accidents

Notification of a personal injury claim

- You should read the leaflet 'A personal injury claim: Road Traffic Accidents' that accompanies this form BEFORE filling this form in.
- You should only use this for if your claim arises from a road traffic accident. If your claim does not arise from a road traffic accident you should use the form 'A personal injury claim: Not arising from a Road Traffic Accident'.
- You should complete all parts. Please give as much information as possible. If you need more space please use a separate sheet and attach it to the back of this form.
- You are entitled to seek independent legal advice at the outset of the claim and at any point during your claim. You can contact a solicitor through the Law Society (0870 606 6575) or APIL (Association of Personal Injury Lawyers, 0870 609 1958). If you, or a member of your family, is in a trade union then you may be entitled to free legal assistance through the union. If you are unsure of whether you are entitled to this call the trade union general enquiry line on 0207 636 4030.
- Once this form is completed you need to send a copy to the person you consider responsible for the accident, and ask them to forward it to their insurers. You should keep a copy for yourself.

PART ONE – YOUR DETAILS

Full name:

Address:

Postcode:

Date of Birth:

National Insurance no: (if known)

Daytime phone no:

Evening phone no:

Email:

Occupation:

PART TWO: THE ACCIDENT

Please state whether at the time of the accident you were: (please circle)

Driving	Yes / No
The owner of the vehicle but not driving	Yes / No
A passenger in a vehicle owned by someone else	Yes / No
A pedestrian or cyclist	Yes / No

If driving please give the following details:

Vehicle registration number:

Make and model of vehicle:

Name, address of your insurance company and policy number (if known):

If a passenger, please give driver details of the vehicle in which you were a passenger:

Name:

Address:

Postcode:

Vehicle registration number:

Make and model of vehicle:

Name, address of their insurance company and policy number (if known):

Other party

If another party was involved in the accident, please provide the other driver's details:

Name:

Address:

Postcode:

Vehicle registration number:

Make and model of vehicle:

Name, address of their insurance company and policy number (if known):

Accident location:

Street:

Town:

County:

Date & time of accident:

Date _____/_____/_____ Time: am/pm

Conditions at the time of the accident (please circle)

Weather conditions - Sun / Rain / Snow / Ice / Fog

Road conditions - Wet / Dry / Ice or Snow / Mud or oil on road

Describe the accident:

Please give as much information as you can about the accident, including approximate speeds of all vehicles and details of areas of vehicle damage:

Was the accident reported to the police? Yes / No

If “Yes”,, please give the following information

Name & address of police station:

Name & reference of reporting officer:

Please draw a sketch map of the accident:

Do you have any photographs of the accident site? Yes / No

If “Yes”, please attach copies if these photos to the back of this form

PART THREE: YOUR INJURY

Describe your injuries:

Please provide as much information as possible. This should include details of the type of injuries and the parts of the body injured for example right lower leg etc. Include whether the symptoms are ongoing.

Have you seen a medical professional about your injury? Yes / No

If "Yes",, give details. Please state whether you attended a hospital, saw your GP, or other. Include the dates of all visits and the treatment that you received (for example X rays, medication prescribed).

Was it recommended that you should have further treatment (e.g. physiotherapy)?

If yes please give details:

Do you believe you have any further needs as a result of the accident, which could be met by further treatment?

I believe that the facts stated in this claim form are true.

Signature:

Date:

Appendix 4: Claimant in person - other than RTAs

Notification of a personal injury claim

- You should read the leaflet 'A personal injury claim: not arising out of a Road Traffic Accident' that accompanies this form BEFORE filling this form in.
- You should not use this form if your claim is a result of a road traffic accident. If your injury arises from a road traffic accident you should fill in the form 'A personal injury claim: Road Traffic Accidents'
- You should complete all sections of the form. Please give as much information as possible. If you need more space please use a separate sheet and attach it to the back of this form.
- You are entitled to seek independent legal advice at the beginning of your claim and at any point during your claim. You can contact a solicitor through the Law Society (0870 606 6575) or APIL (Association of Personal Injury Lawyers 0870 609 1958). If you, or a member of your family, is in a trade union then you may be entitled to free legal help through the union. If you are unsure of whether you are entitled to this, call the TUC general enquiry line on 0207 636 4030.
- Once this form is completed you need to send a copy to the person/ organisation who you consider responsible for your accident and ask them to forward it to their insurer. You should keep a copy of the form for yourself.

PART ONE – YOUR DETAILS

Full name:

Address:

Postcode:

Date of Birth:

National Insurance no: (if known)

Daytime phone no:

Evening phone no:

Email

Occupation:

PART TWO: THE ACCIDENT

Date & time of accident

Date:

Time:

Location of accident

Address:

Postcode:

Describe the accident:

Please give as much information as you can about the accident. Include the name of the person or organisation that you consider to be responsible for your accident and clearly state why you believe them to responsible. There is space for their contact details below.

Do you have photographs of the accident site: Yes / No

If “Yes”, please attach copies of the to the back of the form

If helpful, draw a sketch plan of accident:

About the person or organisation you consider responsible for the accident

Name:

Address:

Postcode:

Relationship: (e.g. employer)

Contact name:

Position in organisation:

Telephone:

Email:

Details of any other person or organisation you consider could be responsible for your accident:

Name:

Address:

Postcode

PART THREE: YOUR INJURY

Describe your injuries:

Please provide as much information as possible. This should include details of the type of injuries and the parts of the body injured (for example right lower leg etc.). Include whether the symptoms are ongoing.

Have you seen a medical professional about your injury? Yes / No

If "Yes", give details. Please state whether you attended a hospital, saw your GP, or other. Include the dates of all visits and the treatment that you received (for example, X-rays, medication prescribed).

Was it recommended that you should have further treatment (e.g. physiotherapy)?

If yes please give details:

Do you believe you have any further needs as a result of the accident, which could be met by further treatment?

I believe that the facts stated in this claim form are true.

Signature:

Date:

Appendix 5: Additional Information about the claim

IF YOU HAVE ADDITIONAL INFORMATION WHICH WOULD ASSIST IN ASSESSING LIABILITY, PLEASE PROVIDE IT USING THIS FORM BUT DO NOT DELAY THE PROCESS OF NOTIFICATION IN ORDER TO GATHER ADDITIONAL INFORMATION

LOSS OF EARNINGS

Does the claim include loss of earnings? YES / NO

If "Yes", state the dates of absence from work due to injury.

FROM: (date) (month) (year)

TO: (date) (month) (year)

Please provide details of the employer (including their name, address and postcode, and the name and contact number of supervisor):

Please state net weekly or monthly earnings (where applicable) at the time of the accident:

£ Weekly/monthly

Is the Claimant still medically certified as unfit for work? YES / NO

If "Yes", state the date when is it expected that they will return to work:

(Date) (Month) (Year)

MEDICAL EXPENSES

Does the claim include medical expenses? (e.g. prescription charges) YES / NO

If “Yes”, please attach receipts and state the total amount claimed:

£

Are further medical expenses anticipated? YES / NO

If yes please give details:

OTHER EXPENSES

Does the claim include any other expenses? (NOT included above) YES / NO

If “Yes”, please provide details and an estimate of the amount:

Details of other expenses claimed

Estimated cost

£

£

£

£

TOTAL OTHER EXPENSES CLAIMED: £

NOTE: receipts must support Claims wherever possible. Please ensure all relevant receipts are attached to the claim form.

WITNESS DETAILS

Please provide details of any witnesses:

Name:

Address:

Postcode:

Daytime telephone number:

Mobile telephone number:

Do you know this witness? YES / NO

Name:

Address:

Postcode:

Daytime telephone number:

Mobile telephone number:

Do you know this witness? YES / NO

Name:

Address:

Postcode:

Daytime telephone number:

Mobile telephone number:

Do you know this witness? YES / NO

HOSPITAL ATTENDANCE

If the Claimant has attended a hospital please provide the name and address of that hospital:

Type of visit to hospital (please circle):

Outpatient / Inpatient

CONTRIBUTORY NEGLIGENCE:

Does the Claimant believe that he or she caused, or partially caused, the accident?

Appendix 6: Medical Template

All reports should contain the following information:

CLAIMANT'S DETAILS:

Name of Claimant:

Address:

Date of Birth:

Photo ID confirmed Yes / No

Form of ID:

Occupation:

Age at time of accident:

Date of Examination:

Date of report:

Instructing solicitors/ agency:

History:

Including brief description of accident and immediate symptoms and treatment. History thereafter of treatment, specifying whether inpatient or outpatient where applicable. Detail improvement/deterioration of symptoms with dates as far as possible and in the case of injuries/symptoms fully recovering, specifying by when there was full recovery. Detail whether patient has ever experienced symptoms in injured area prior to the accident, and if so, what type and when.

Present position reported by Claimant:

Detail all ongoing symptoms reported at examination

Employment position/Education:

Include details of Claimant's job at time of accident, dates of any absences/light duties, part-time working, nature of any light duties, and setting out current position at work and any practical difficulties/symptoms or restrictions at work.

Consequential Effects:

Detailing impact on other activities such as hobbies, recreations, housework, gardening, DIY etc., including travelling, sex life, shopping, interaction with children, sleeping, holidays and others, detail also general state of mind

Past medical history / Review of records

Relevant history based on patient examination, or records as appropriate. *Post accident records should be considered where appropriate.*

On examination

Findings on examination (*include details of any restrictions, disability and/or handicap).*

Diagnosis Opinion and prognosis

Overall opinion as to position to date dealing with causation and including a prognosis. Setting out in respect of all reported symptoms and all

restrictions/symptoms identified under present position, employment position and home/domestic situation whether there will be a full recovery and, if so, when. If not, to what extent there will be a recovery, and by when this position will be reached. Identifying any further treatment required, and whether a further report is required from the same doctor. Confirming whether a specialist medico-legal opinion or other advice is required.

Future Treatment or Rehabilitation

Signed Statement of Truth *(Note: Civil Procedure Rule 35.3 states that an expert has an overriding duty to the Court and not to whoever he has received instructions/ is paid by)*

I confirm that insofar as the facts stated in my report are within my own knowledge, I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true *and complete professional opinion.*

Signature

Please attach a copy of your CV to the back of this form.

Appendix 7: Special damages

The proposals below arise out of a small working party on 20 July 2006, when liability insurers' representatives met with claimants' representatives, with the encouragement of the DCA.

The amounts set out below are intended as reasonable limits, *below* which liability insurers will normally take the claim on trust and without proof, but subject to an appropriate audit check. No documentary evidence would be required. This is intended to reduce cost by cutting scope for argument and time spent on gathering documentary evidence for lower value claims. If a claim is submitted above the listed amounts, documentary evidence should be produced where available.

In setting these amounts it is not intended to permit claims at the relevant figure, or to encourage higher claims towards the relevant figure. These are not standard charges. You should claim for the actual loss or damage incurred in a particular case. If insurers find that individual firms are charging them as a standard sum in all cases they may unilaterally suspend the agreement with that firm.

Excess	£250
Loss of use	£10 per day
(Not available if car hired)	Subject to 28 day cap
Fares (taxis, buses, tube etc.), fuel and car parking	£50
Fuel per mile	35 pence per mile
Postage/phonecalls/miscellaneous costs	£20 (this is intended as a standard charge)
Medication including prescriptions	£25
Motor cycle helmet	£250
Child car seat	TBC
Clothes	£50

Care	Either BNA or Spine point 8 of NJC – TBC Reduction of 25% for gratuitous care
Services	TBC (hourly rate and duration)

Notes:

Regional variation may need to be considered.

A system of up rating to take account of price and cost changes, or a regular review would be appropriate.

In addition to the opportunity to audit, in a small number of cases, which may be exercised in relation to some heads more than others, there would be a form of natural audit in respect of those items, which the insurers are informed of separately.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Q1: 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.

Q2: 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.

Q3: 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.

Q4: 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.

Q5 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.

Q6: Are there any measures that would make the handling of intellectual property claims more efficient and effective? Is so, please tell us what those measures are.

Q7: If the difficulty of dealing with intellectual property cases is not the court process, what are the difficulties and how could they be resolved?

Q8: 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.

Q9: 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.

Q10: Do you have any comments or suggested amendments in relation to the draft forms?

Q11: Do you agree with the above time periods? If not, please state why not and what they should be.

Q12: 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.

Q13: 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.

Q14: Do you agree with the proposals set out in Appendix 7? If not, please say why and set out any alternative proposals.

Q15: Do you agree that regional hourly rates should be set and, if so, how should they be set?

Q16: Your views are sought on the development of an assessment tool for general damages.

Q17: Do you agree that there is little scope for standardising contributory negligence? If not, please set out how it might be done.

Q18: Do you agree with the proposals in relation to costs? If not, please give your reasons and set out any alternative proposals.

Q19: 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.

Q20: What would be the impact on the ATE market of these proposals?

Q21: 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.

Thank you for participating in this consultation exercise

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	☐ (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please send your response by 13 July 2007 to:

Nina Skomorowski
Department for Constitutional Affairs
Legal Services Regulation and Redress Division
3.11, 3rd Floor
Selborne House
54-60 Victoria Street
London
SW1E 6QW

Tel: 020 7210 8541
Fax: 020 7210 0613
Email: nina.skomorowski@dca.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at http://www.dca.gov.uk/index.htm

Publication of response

A paper summarising the responses to this consultation will be published in September 2007. The response paper will be available on-line at http://www.dca.gov.uk/index.htm

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to

information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Annex A: Partial Regulatory Impact Assessment

1. Title of proposal

Review of the case management track limits for civil claims and improving the claims process for personal injury cases.

2. Purpose and intended effect

(i) Objective

The objective of these proposals is to ensure that civil claims are dealt with in the most suitable track and that the track limits are set at the most appropriate level, in the interests of access to justice and value for money. In addition, these proposals are intended to ensure that the claims process for personal injury cases is more timely, proportionate and cost-effective.

(ii) Background

The Track Limits

The Civil Procedure Rules (CPR), implemented following Lord Woolf's report, *Access to Justice*, provide a single set of rules that apply to claims both in the High Court and the county courts. The CPR provides for a system of three case management tracks, all of which have different rules that apply to them. These tracks ensure that cases are dealt with in a manner appropriate to their value and complexity.

All defended civil claims are allocated to one of these tracks, the multi-track, the fast track or the small claims track. The courts' powers in relation to the allocation of claims to tracks can be found in Part 26 of the CPR. There are several factors that the court can take into account when allocating a claim to a certain track, for example, the views of the parties and the nature and complexity of the claim. However, the most straightforward way for the courts to distinguish between cases is on the basis of monetary value, so each different track has a financial limit. These limits determine what the normal track for a claim will be.

Currently cases allocated to the small claims track are those with a monetary value of less than £5000. There are two exceptions to this general rule. The first is

personal injury claims where the limit of £1000 applies (this relates to the damages awarded for pain, suffering and loss of amenity only and excludes any other damages claimed). The second exception is housing disrepair where the limit of £1000 applies for the cost of the disrepair and £1000 for any other damages arising from the disrepair. In the small claims track the costs that can be recovered from the other side are strictly limited. No costs are allowed for legal representation (other than an amount up to £260, which can be claimed for legal advice and assistance in claims including an injunction or specific performance only).

Claims that are allocated to the fast track are those with a value that exceeds the limit of the small claims track, but is less than £15,000. Fast track cases have to be dealt with within a timetable provided for in the CPR and the trial can last no longer than one day. The use of expert witnesses is limited and there is fixed trial costs.

The multi-track is the normal track for any claim that does not fall within the scope of the small claims or fast track (i.e. predominantly with a value exceeding £15,000).

The CPR also introduced pre-action protocols, which set out the procedures that parties should follow before a case is litigated. For example, the personal injury protocol sets out the information the parties need to exchange.

The vast majority of personal injury claims are settled, either before litigation is commenced or before the case reaches trial. However, the settlement of claims has been, and will continue to be informed by, the pre-action protocols, the CPR, and the decisions of the courts. This means that the issues covered in this Regulatory Impact Assessment will affect behaviour both pre and post issue of any claim.

(iii) Rationale for government intervention

Several reports have recommended that the case track limits should be reviewed. These include the Better Regulation Task Force report, *Better Routes to Redress*; the Civil Justice Council report, *Improved Access to Justice – Funding Options and Proportionate Costs*, and the Constitutional Affairs Select Committee report, *The courts: small claims.*

The Government recognised the concerns that the processes and costs in lower value personal injury cases are often the most disproportionate. Raising the limit

for the small claims track would be a way of resolving this problem. However, it also recognised concerns about the potential lack of legal representation for claimants if the small claims limit for personal injury claims was raised.

The Government therefore undertook to review all the case track limits and to consider other options for dealing with personal injury claims in a more timely, proportionate and cost-effective way. As a part of this work, the Government considered the small claims limit for claims other than personal injury and housing disrepair. Stakeholders have not expressed strong views or provided evidence to support an increase in this limit. The limit of £5000 is already one of the highest in Europe and the current system appears to be working effectively. We have therefore not considered the costs and benefits of increasing this and propose no change.

3. Consultation

(i) Within government

The Department for Work and Pensions has been a member of the working group.

(ii) Public consultation

On the issue of the case track limits, the DCA has received many hundreds of submissions and letters, including from the legal profession, trade unions, insurers and members of the public. The proposals for improving the claims process for personal injury claims have been developed in discussions with a wide range of stakeholders through a working group, workshops and meetings.

4. Options

The following section sets out the options and is divided into separate sections for ease of reference:

1. Small Claims Limit for Personal Injury Cases and Improving the Claims Process

2. Small Claims Limit for Housing Disrepair Cases

3. General Small Claims Limit

4. Fast Track Limit

Costs and benefits

The sectors and groups outlined below are likely to be affected by the proposals across all four areas are:

- claimants – any individual or group who may wish to bring a claim for personal injury arising from the negligence of another person
- defendants – any individual or organisation subject to such claims, for example local authorities and employers
- legal profession – legal professionals, solicitors, barristers, paralegals and support staff engaged in bringing and defending claims
- insurers – both those providing liability insurance and after the event (ATE) insurance
- trade unions – who support members and their families in pursuing claims
- any other individual or organisation involved in a civil claim.

Equality Impacts:

The proposals, across all four areas, have been screened for impact on equalities. On the evidence available, we do not consider that any of the options impact differentially on individuals or groups within the population according to their ethnicity, religion, disability, age, gender or sexual orientation. Accordingly, it is our belief that no full equality impact assessment is required.

1. Small Claims Limit for Personal Injury Cases

The options we have considered are:

1. no change
2. raise the small claims limit for PI claims to £5000
3. raise the small claims limit for PI claims to £2500
4. raise the small claims limit for PI in line with inflation
5. improve the claims process

Option 1 – no change

Benefits

The current limit of £1,000 means that the vast majority of personal injury claims have a value greater than that of the small claims limit. This means that the fast track is the norm for personal injury cases, where the claimants can recover their legal costs. This allows a large number of claimants to bring their claims through a solicitor, generally funded by way of a conditional fee agreement and after the event insurance. By maintaining the status quo, organisations involved in PI cases would not have to become familiar with new rules or limits associated with these cases. Beyond this there are no additional benefits arising from the option.

Costs

The processes and costs in these cases are often the most disproportionate and this option would not remove the current inefficiencies and high costs from the system. Figures provided by insurance companies indicate that cases with a value of £2000 can have costs of between £4500 and £7000. There are even more extreme examples of this, for example, DCA research has illustrated there are cases where claims with a value of £1000 have costs of around £10,000. We do not therefore consider acceptable the option of doing nothing.

Option 2 - raise the small claims limit for PI cases to £5000

Benefits

This option would have the effect of taking the majority of personal injury claims out of the fast track and into the small claims track. The change would be likely to have an impact on several hundred thousand cases. In 2005/6 the number of accident claims notified to the Compensation Recovery Unit[10] (CRU) was 629,981. In their submissions to DCA, stakeholders have variously suggested that between 80 per cent to 95 per cent of the personal injury claims that they deal with are below £5,000. The Motor Accident Solicitors Society (MASS) has indicated that their members handled somewhere in the order of 400,000 claims in 2004 and that 95 per cent were for a value of less than £5,000.

[10] The Compensation Recovery Unit is a part of the DWP that operates the Compensation Recovery Scheme. Under this, all claims for compensation must be reported to the CRU by the compensator. The compensator repays any social security benefits paid to the claimant as result of the accident.

However, there are concerns that this approach could give rise to access to justice issues. There would be an uneven playing field as the defendant/insurer could continue to afford and make use of legal representation, or have the benefit of an experienced claims manager, while the inexperienced claimant would be acting in person.

Costs

This option would have cost consequences for claimants, the legal profession, the trade unions, advice sector and the courts.

It is estimated that in the 12 months prior to July 2006, there were 119,000 personal injury claims issued at the county courts. Of these, around 56,600 were estimated to be for claim values of between £1,000 and £5,000. Approximately 11,000 of these claims are thought to have been allocated to the fast track within that claim value band. Had the small claims limit been set at £5,000, these 11,000 cases may have been allocated to the small claims track instead (assuming that the same volume of cases would have been issued under the new small claims limit and that the cases are allocated purely on claim value).

DCA Caseman statistics show that a higher proportion of claims allocated to the small claims track reach a hearing than those allocated to the fast or the multi-track.[11] Assuming that this pattern would hold if the small claims limit were to rise, there would be a higher proportion of hearings than before, with around 6,800 small claims hearings within the £1,000 to £5,000 band. This could result in approximately £500,000 extra cost to the courts a year resulting from this change in hearing stage volumes.[12] An increase of this nature would also place additional pressure on the courts with claimants increasingly seeking advice from court staff. Further, the judiciary would need to give additional assistance to claimants with their case, which could also result in increased pressure on the court system.

It should be noted that these cost estimates do not take account of the fact that many of the claims would be discouraged due to the inability to recover costs. Claimant lawyer commissioned research suggests that 64 per cent of claimants

[11] 62 per cent of cases allocated to the Small Claims track go to a hearing as opposed to 22 per cent of those allocated to the Fast and Multi-tracks (DCA Caseman statistics – 12 months to September 2006)

[12] DCA Economics and Statistics Division estimate the cost, excluding accommodation costs, of a fast track trial and small claims hearing to be in the region of £590 and £280 approximately

would be dissuaded from pursuing a claim if they could not access legal advice. This would have serious negative implications for access to justice.

Legal costs awarded in cases between £1,000 and £5,000 are thought to total approximately 80 per cent of the actual claim value. If claimants were to bring their claim within the small claims track with legal representation, they would only be compensated at 20 per cent of the value that the court felt the injury warranted.

However, raising the limit would lead to a significant reduction in the legal costs payable by defendants/insurers. This is because the majority of claims would be subject to the cost regime of the small claims track where only limited costs can be recovered. This would mean most claimants would be unable to afford legal representation, which in turn would lead to a decrease in the legal fees paid out by insurers. Consumers could benefit if these savings were passed on to them through a reduction in insurance premiums and council tax bills.

While this option will produce significant cost savings, there are concerns (as expressed above) that raising the limit will significantly reduce access to justice. There are concerns that if victims of negligence do not have the benefit of legal advice they will not pursue valid claims, or if they do that they will accept an offer that represents less than full compensation. Research conducted by a trade union found that 66 per cent of people felt that their case would not have been dealt with fairly without the help of a lawyer. In addition there are concerns that claimants in person would significantly undervalue their claims and receive less compensation than their claim is worth. Claimant lawyer research illustrates that the increase from first to final offer made by insurers is often as much as a 50 per cent. Claimants who choose to pay for legal representation through their own means will be unable to recover their costs.

It has been suggested that the claimant could find advice elsewhere, however the advice sector is not equipped to deal with such a large influx of people seeking advice on personal injury claims. An unintended consequence and risk of this approach could be to increase the burden on this sector.

An increase in the limit to £5000 would result in many sectors of the legal profession that specialise in personal injury losing most of their work. Some firms estimate as much as 90 per cent of their work is on claims with a value of £5000 or less. Firms may either need to make significant staff cuts or close down their business altogether. These closures could impact on the availability of advice in other areas of law.

At present, trade unions support their members and families in pursuing personal injury claims including those with a value of less than £1000, where legal costs cannot be recovered. Figures provided by a trade union illustrate that in 2004 around 75 per cent of cases brought on behalf of members had a value of £5000 or less. If the limit was increased to £5000, the trade unions could no longer afford to provide that service.

As discussed above, an increase would produce cost savings for liability insurers in terms of legal costs. However, an increase to £5000 would have a significant impact on the ATE insurance market. It has been suggested that this impact could be so significant that the market would no longer be viable for insurers to operate in. This could have the effect of reducing access to justice for claims outside the small claims track.

Finally, a rise to £5,000 could lead to claims inflation. This would be particularly likely for claims with a value around the £5000 mark where claimants might over estimate the value of their claims so that they qualify for the fast track.

Option 3 - to raise the small claims limit for PI cases to £2500

Benefits

This option would also take a considerable proportion of claims out of the fast track and into the small claims track with the consequential loss of legal representation mentioned under “Option 2” (above).

Stakeholder estimates of the number of claims that would be affected range from 55 per cent up to 80 per cent. For example, MASS estimate that 75 per cent of the 400,000 claims handled by its members in 2004 were for a value of more than £1,000 but less than £2,500. Figures provided by a trade union demonstrate that 53 per cent of cases brought by members have a value of £2500 or less. Similarly, figures provided by claimant solicitor firms estimate that 55 per cent of their work is for claims with a value of £2500 or less.

The potential benefits of raising the limit to £5,000 will also accrue from raising the limit to £2,500, albeit to a slightly lesser, but still significant, degree.

Costs

Estimating the cost of raising the limit to £2500 is problematical because of the way that data is collected. We have no data on volume of personal injury claims between £1,000 and £2,500, although it can be estimated using sampler data that around 15,500 claims were issued between £1,000 and £3,000 over the year to July 2006.[13] This suggests that a large proportion of the costs resulting from an increase to £5,000 would also be felt if the limit was raised to £2,500. The findings of Fenn and Rickman (2002) and Fenn and Rickman (2003), in which most cases were found to be within the £1,000 to £2,000 band, support this.[14]

Option 4 - raise the small claims limit for PI in line with inflation

Benefits

An increase to the limit in line with inflation since it was last reviewed in 1999 would raise the limit to £1,200. An increase in line with inflation since 1991, when a limit of £1000 was first established, would raise it to £1,500. However an increase of this nature would reflect more than inflation given that from 1999 the limit applied to general damages only.

If we took the latter option, two of the injuries originally intended to fall within the limit would now do so. These are relatively minor injuries (trivial thumb injury and simple fracture of nose) so it is debatable that very much would be gained by such a change. There would however be some savings in legal costs for defendants/insurers.

Costs

An increase in line with inflation is more likely to lead to claims inflation as claimants re-valued their claim at the top level of a band so that their claim qualifies for the fast track. However, as in 'Option 3' there is very little data on the number of claims with a value between £1000 and £1500.

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[13] This sampler data only takes into account 29 courts and is based on small volumes of claims. This means that percentages are open to great distortion from extreme outlying values, which reduces the confidence surrounding this figure.

[14] This is supported by the findings of Fenn and Rickman (2002) and Fenn and Rickman (2003) in which most cases were found to be within the £1,000 to £2,000 band

Option 5 - improve the claims process

Benefits

The processes and costs involved in making a claim for personal injury are often perceived as being disproportionate, particularly in the claims with a value at the lower end of the scale. The consultation paper addresses these issues and sets out proposals for a system that will provide fair compensation in a more efficient and cost-effective way. The proposals will streamline the process and reduce costs by, for example, providing that:

- the claimant/lawyer only does the amount of work required by the insurer to make an informed decision on liability, avoiding much of the investigative work that is currently carried out at an early stage with the resultant front-loading of costs
- defendant/insurer will have a set time period in which to respond, during which the claimant/lawyer will not carry out any further work unless essential
- a template is used for medical reports with the aim of ensuring that all the information required is included in the report
- there will be set time periods for making offers and reaching settlement
- fixed costs will be used for various stages of the process
- success fees and ATE insurance are reduced to reflect the actual amount of work and risk involved in bring a claim.

We consider that these proposals provide the right balance. They retain many of the elements of the current system, which are currently working well, whilst removing its inefficiencies and resultant cost. Further, these processes have the added benefit of avoiding many of the access to justice difficulties, as discussed above.

Costs

As this system involves a different process from the current one, it is difficult to estimate what the costings and savings of this option will be. It is clear that it will not achieve the immediate levels of costs saving that would result from Options 1 and 2 because claimants will still be able to recover their legal costs. However,

there would be a significant reduction in legal costs paid by defendants/insurers due to the more streamlined procedure and fixed costs regime. The legal profession might receive less money for a claim but the costs they do receive will reflect the actual work done. This will result in quicker turnover and cash flow.

In cases where there is an early admission of liability and an early settlement, it will not be necessary for claimants to take out ATE. These changes will mean that providers of ATE insurance would have to revise their business model to take account of the smaller market in which risk would be pooled. It has been suggested that this might make the market less viable for insurers to operate in. However, it is likely that many cases will continue to need ATE and these proposals could make the market more attractive to some insurers by being more transparent and risk based.

2. The Small Claims Limit for Housing Disrepair Cases

The options we have considered are:

1. no change

2. an increase to either £2,500 or £5,000

Option 1 – no change

Benefits

The current limit of £1000 allows claimants to bring their claims through a solicitor, either with legal aid, or a conditional fee agreement. This is because, as in personal injury, most cases have a value above that of the small claims limit, which means that the majority of claims are heard within the fast track. Housing advice, including disrepair, is a priority for the Community Legal Service because it is usually the most deprived and excluded groups who inhabit properties which are older, have been less well maintained over the long term and, hence, are in greatest need of repair. This is particularly true for those renting within the private sector. It is also both a public health issue and a quality of life issue for the poorest in society.

Many of the past inefficiencies of the system, which were causing great concern, have been resolved by the pre-action protocol[15], which has been well received. The involvement of "claims farmers" in this sector, which was causing some concern, will be addressed by regulation through the Compensation Act 2006.

CASC recommended that the limit for Housing Disrepair should remain at the same limit as that for personal injury. They also noted that it was essential that any consideration of the limit for housing disrepair should ensure that any vulnerable tenants were not unduly affected.

For all these reasons, we consider no change to be the most appropriate option.

Costs

If the limit remains as it is, defendants/insurers and legal aid will have to continue paying successful claimants' legal costs. They will not benefit from the limited cost regime of the small claims track.

The total number of Legal Help (initial advice and assistance, not including legal representation) cases for Housing Disrepair in 2005-06 was 6,856 cases. No information on number of cases of legal representation is currently available. From current data, there is no way of knowing the amount of money being contested in these cases, and therefore what proportion would be affected if the proposed changes were brought in. In 2005-06 there were 1,832 legal aid certificates issued for proceedings, which involved disrepair, 1,748 for claimants, 72 for defendants, and 12 for third parties. These are cases that involved disrepair, though in a few of these cases disrepair was not the only contested issue.

Option 2 – an increase to either £2,500 or £5,000

Benefits

The clear benefit for defendants/ insurers and the legal aid fund is that a rise in the limit to either £2500 or £5000 would result in a reduction in the legal costs payable.

[15] The pre-action protocol for personal injury claims sets out the information to be exchanged by the parties before a claim is issued in the courts. It encourages behaviour between parties, which can assist settlement and, if litigation is necessary, enable it to run to the court's timetable and encourage medical or rehabilitative treatment for the claimant.

Costs

Defendants/insurers, including local authorities, and the legal aid fund will benefit from an increase in the limit in terms of savings in legal costs.

The Housing Law Practitioners Association has indicated that a rise in the limit to £2,500 would reduce the number of claims handled by its members by a fifth, as they would no longer be eligible for public funding.

There are concerns that housing disrepair cases which have a good chance of success, but for which legal aid was no longer available, would not be pursued by claimants in person. Alternatively, claimants would have to act in person against their landlord who would usually have the benefit of legal or other expert advice. This inequality of arms would result in reduced access to justice.

3. The Fast Track Limit

1. Option 1: no change
2. Option 2: the limit is increased to £25,000

Option 1: no change

Benefits

While the current system does not allow judges to allocate a case to a lower track unless both parties agree, the system of case management is flexible enough to allow a judge to give fast track type directions in appropriate cases. There are no additional benefits arising from this option.

Costs

Although the court can give fast track type directions, this may not always happen, not least because of the amount of work that the parties will have already put into the claim before the case reaches a judge. This means that claims suitable for the fast track are allocated to the multi-track, resulting in additional legal costs and delay.

Option 2: that the limit be increased to £25,000

Benefits

This option allows cases that fall within the fast track monetary limit to be dealt with in the most appropriate track. It will avoid the difficulties that can arise because a case cannot be allocated to a lower track. The court's case management powers will ensure that those cases not suitable for the fast track are instead allocated to the multi-track. A greater number of cases will be progressed as fast track cases, which will be dealt with in accordance with the fast track timetable and with savings in costs.

Costs

There will be savings in legal costs if more cases are dealt with in the fast track. It is difficult to estimate how many cases this rise will effect, as there are no figures relating to how many claims are issued with a value of between £15,000 and £25,000. One comparison that can be made is between the unit costs of a fast track and a multi-track trial. Not taking into account accommodation costs, as these would be completely fixed in the short term, it can be estimated that fast track trials cost the courts approximately £590, with the equivalent figure for multi-track being approximately £1,160 (although this relates to trial costs only). However, it should be noted that changing track does not necessarily result in a trial taking more or less time, as the nature of the claim may be that it requires a longer trial than first estimated.

Legal Aid

Legal aid is not generally available for personal injury cases, other than clinical negligence cases.

However, as discussed above, raising the small claims limit on housing disrepair cases could have an impact on the legal aid fund. The current limit of £1000 enables claimants to bring their claims through a solicitor, either with legal aid or a conditional fee agreement. This is because the majority of claims are heard within the fast track, meaning successful claimants can recover their legal costs. If the limit remains at £1000 then defendants/insurers and the legal aid fund will have to continue paying successful claimants' legal costs.

Raising the small claims limit to either £2500 or £5000 would mean that many claimants would no longer be entitled to recover their legal costs. This could lead

to savings through a reduction in the legal costs payable by defendants/ insurers and the legal aid fund.

In addition, increasing the limit would mean potential claimants would no longer be eligible for public funding. Housing advice, including disrepair, is a priority for the Community Legal Service because it is usually the most deprived and excluded groups who inhabit properties in greatest need of repair.

Small Firms Impact Test

We do not anticipate that the proposals will have a significant negative impact on small firms. The Federation of Small Businesses, the Confederation of British Industry and the Engineering Employers' Federation have already been involved in this work, through a working group and/or workshop, and we will engage further with small businesses as part of the public consultation. We will actively encourage small firms to participate in the consultation. The Small Business Service has been consulted and is content with this approach.

Competition assessment

The competition filter undertaken as part of the Competition Assessment suggests that there is unlikely to be a negative impact on competition. The market affected most by the proposals is the after the event insurance industry.

Enforcement, sanctions and monitoring

There are no enforcement measures or sanctions required. However, we are considering what monitoring systems would be put in place and will include our plans in this area in the final RIA. Views from consultees on the mechanisms that would be appropriate would be welcome.

Do you have any views on how these proposals should be monitored?

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 time scale 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.

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 the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at consultation@dca.gsi.gov.uk

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

Laurence Fiddler
Consultation Co-ordinator
Department for Constitutional Affairs
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 under **the How to respond** section of this paper at page 70.

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