

Title: Extension of the system for dealing with low value Road Traffic Accident (RTA) Personal Injury (PI) claims Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)
	IA No: MoJ 069
	Date: 29 March 2010
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: Sean Rigney – 0203 334 3187	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The legal costs involved in making civil claims are often disproportionate compared to the value of the claim, and making claims is often time consuming. In part, costs are driven by the fact that currently, many cases settle prior to a court hearing, but by that time have already used a significant amount of court resources. Further, communication between claimant and defendant legal services providers is often inefficient, creating delays. Government intervention is required as the proposed changes would require practice directions to be drafted and approved by the Civil Procedure Rule Committee i.e. secondary legislation would be required.

What are the policy objectives and the intended effects?

The existing Road Traffic Accident (RTA) Personal Injury (PI) scheme is designed to provide efficiency benefits for claimant and defendant legal services providers, to reduce legal costs for claimants and defendants, to reduce HM Courts Service (HMCS) costs and to speed up case resolution and the payment of compensation and legal fees. The objective of expanding the RTA scheme would be to enable a wider set of claims to benefit from the processes of the RTA scheme. This should help reduce legal costs, reduce HMCS costs, and make case resolution quicker.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The following options have been considered:

Option 0: Do nothing (base case)

Option 1: Extend the RTA PI claims process. The proposal would involve extending the upper limit for RTA claims from £10,000 to £25,000, and would add all personal injury claims under £25,000 including clinical negligence claims to the scope of the RTA process.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Autumn 2013
What is the basis for this review? PIR. If applicable, set sunset clause date: N/A

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes
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Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:.....  Date: 22.02.2011

Summary: Analysis and Evidence

Policy Option 1

Description: Extension of the RTA personal injury claims process

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

There may be adjustment costs for legal services providers and ATE insurers. There may be cash flow costs for defendants, and costs to all parties from establishing and (in future) revising the fixed cost regime. These costs may be significant. The inflexibility of the fixed cost regime may lead to reduced fairness.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

There may be cash flow gains for some legal services providers, and for claimants who would receive earlier compensation payments under the proposal. Reductions in legal costs, court fees and ATE premiums, all relating to improved productive efficiency, would ultimately represent gains to defendants.

Key assumptions/sensitivities/risks

Analysis assumes the defendant is liable, pays compensation to the claimant, and covers claimant costs. The fixed cost regime is assumed to identify and implement a more efficient approach to resolving cases, with no change to case outcomes. Risks include that fixed costs are set at the wrong level and lead to worse case outcomes, worse service standards, and to less involvement by legal services providers.

Court cost recovery is assumed to remain the same, and any cost per case changes are assumed to be reflected in changes to court fees and/or to changes in backlogs and waiting times. Legal services providers and ATE insurers are assumed to adjust to the changing pattern of demand associated with the proposal.

It is assumed that the proposal has no significant distributional implications.

The net benefit of the proposal essentially hinges on how the developed fixed costs regime works in practice.

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO? Measure qualifies as	
Costs:	Benefit:	Net:	Yes	IN

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	Autumn 2012				
Which organisation(s) will enforce the policy?	Judiciary/HMCS				
What is the annual change in enforcement cost (£m)?	N/A				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:			Non-traded:	
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:			Benefits:	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties	Yes	
Economic impacts		
Competition	Yes	
Small firms	Yes	
Environmental impacts		
Carbon Assessment	No	
Wider environmental issues	No	
Social impacts		
Health and well-being	No	
Human rights	No	
Justice	Yes	
Rural proofing?	No	
Sustainability?	No	

Evidence Base (for summary sheets) – Notes

References

No.	Legislation or publication
1	<i>Common Sense, Common Safety</i> - report by Lord Young published on 15 October 2010 http://www.cabinetoffice.gov.uk/news/lord-young-restores-common-sense-health-and-safety
2	Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents – Civil Procedure Rules http://www.justice.gov.uk/civil/procrules_fin/
3	<i>Transforming Civil Justice in England and Wales: A flexible, simple and proportionate approach to dispute resolution in the County Courts</i> http://www.justice.gov.uk/consultations/consultations.htm .
4	Lord Justice Jackson’s review of civil litigation costs http://www.judiciary.gov.uk/publications-and-reports/reports/civil/review-of-civil-litigation-costs

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Evidence Base (for summary sheets)

1. Introduction

- 1.1 This Impact Assessment accompanies a Ministry of Justice (MoJ) consultation paper entitled: *Transforming Civil Justice in England and Wales: A flexible, simple and proportionate approach to dispute resolution in the County Courts*¹. The consultation paper sets out a number of proposals for reforming the way in which the civil justice system delivers its services in England and Wales. The reforms are designed to improve the experience of those using the justice system by improving processes and targeting cases towards the most appropriate services for resolution.
- 1.2 The aim of the consultation paper is to seek public views on proposals to provide a more streamlined, responsive and efficient civil justice system that better supports users by preventing the unnecessary escalation of legal problems or disputes where possible. Where judicial intervention is required, the proposals seek to ensure that courts are able to offer a range of quick and efficient services that meet the needs of the court user whilst delivering an effective and proportionate route to justice.
- 1.3 Cases relating to road traffic accident (RTA) personal injury (PI) claims are currently subject to a set of case management procedures and fixed costs, as outlined in the background section below. In October 2010, Lord Young published a report entitled '*Common Sense, Common Safety*²', which contained a set of recommendations related to the RTA PI scheme. The Ministry of Justice (MoJ) committed to implementing these recommendations, subject to consultation. Lord Young's proposals are to:
 - i. Introduce a simplified claims procedure for Personal Injury (PI) claims similar to that for road traffic accident claims under £10,000 on a fixed costs basis.
 - ii. Examine the option of extending the upper limit for RTA claims to £25,000.
 - iii. Explore the possibility of extending the framework of such a scheme to cover low value medical negligence claims.
 - iv. Examine the option of extending the upper limit to £25,000 for all PI claims.
- 1.4 This Impact Assessment examines extension of the RTA scheme for PI claims to include clinical negligence cases and increasing the scope of the scheme to cover cases up to a value of £25,000.
- 1.5 The intention would be to extend the RTA PI scheme in autumn 2012, following a public consultation conducted in 2011. This will be implemented by means of pre-action protocols, Practice Directions and amendments to the Civil Procedure Rules, which would come into effect in October 2012. In the longer term consideration will be given to making pre-action behaviours (including a mediation stage) mandatory, which would require legislation to implement.
- 1.6 As the proposed extension of the RTA PI scheme would include the extension of a fixed recoverable costs regime, the proposals would need to take into account any future policies resulting from Lord Justice Jackson's review of civil litigation costs³. The consultation on the RTA PI scheme will follow the publication of the consultation response on Lord Justice Jackson's proposals.

Background

- 1.7 The existing low value RTA PI claims process was implemented on 30 April 2010. It was designed for RTA PI claims valued between £1,000 and £10,000 and was intended to reduce costs and improve efficiency (the cost involved in making an RTA PI claim often exceeds the compensation awarded, particularly in lower value claims). The RTA PI process applies only to claims where liability is admitted. In cases where liability is not admitted or is admitted subject to contributory negligence (other than failure to wear a seatbelt), the claim drops out of the process and is

¹ This will be published on 31 March 2011 at <http://www.justice.gov.uk/consultations/consultations.htm>.

² <http://www.cabinetoffice.gov.uk/news/lord-young-restores-common-sense-health-and-safety>

³ <http://www.judiciary.gov.uk/publications-and-reports/reports/civil/review-of-civil-litigation-costs>

continued under the current civil court process, with the regime of fixed costs for road traffic accidents and/or the general costs rules applying.

- 1.8 The scheme was agreed between key claimant and defendant representative bodies, and the Ministry of Justice (MoJ) was also involved to help ensure that the outcome was reasonable and acceptable, given the need for MoJ support for the scheme's implementation (which involved secondary legislation). The scheme relates to small and simple claims which are relatively homogeneous including in terms of the types of PI suffered and the degree of liability attached to the incidents which caused the PI.
- 1.9 The existing RTA PI process sets a timetable for action and is divided into three stages:
- **Stage 1:** All claims pass through Stage 1 of the process. This is the initial stage where the claimant notifies the defendant of the claim. At this stage the defendant can either admit or deny liability and must do so within 15 days.
 - **Stage 2:** Involves cases where liability is admitted and the claimant sends a medical report, evidence of disbursements, and an offer that specifies the amount claimed to the defendant. This stage also involves offers to settle being made by both parties and time for the parties to negotiate a settlement.
 - **Stage 3:** Involves cases that are not settled at Stage 2 and for which proceedings are issued for the court to assess the amount of damages due to the claimant. At this stage, the parties may agree a settlement before the court assessment or progress to an assessment, which may be on paper or at a hearing.
- 1.10 The process also governs the information that must be provided by each party. It requires the necessary information (only) to be provided for each stage at the earliest opportunity. The claims process also provides for standard forms and electronic communication.
- 1.11 Recoverable costs and success fees are fixed for each stage, including Stage 3 (court proceedings). The claimant receives a payment at the end of each stage. This means that by the time a claim reaches trial, the fixed recoverable costs for Stage 1 and Stage 2 will have already been paid by the defendant together with the appropriate success fee, agreed disbursements and interim damages.
- 1.12 The process of how court proceedings are issued is also simplified. It entails fewer steps from the point where proceedings are issued to the final decision by the court. In particular, there is no allocation stage and no listing questionnaire is required, nor is there provision for a case management or directions hearing. There is therefore no allocation or hearing fee even if a case proceeds to trial.
- 1.13 A key part of the RTA PI process is an electronic portal used to exchange information. The 'portal' developed by the industry to accommodate the electronic exchange of information required by the process has been well utilised since its introduction, although data is still being gathered and tested. The Ministry of Justice (MoJ) is not involved in the development and management of the system, given that the exchanges governed by it are exclusively outside the court system. The MoJ worked closely with key claimant and defendant representative bodies to agree the detail of the RTA PI process and, during development, the key organisations agreed that the pre-action exchange of information should be through electronic communication between parties. Given the exchanges governed by this system were exclusively outside the court system, the government was not involved in the provision of any systems to facilitate this. As a result, the portal was developed as an industry-led solution.
- 1.14 Currently, PI cases outside the RTA process are subject to the court's case management directions once issued. However, there are no controls pre-issue apart from the pre-action protocol for personal injury claims and if this is not adhered to there are rarely sanctions imposed by the court. There is therefore generally no control over the costs that can be accumulated prior to proceedings being issued. For RTA PI claims outside the RTA PI process, the costs of cases that settle without trial are also subject to a separate fixed recoverable costs regime.

Problem under consideration

- 1.15 The costs involved in making civil claims are often disproportionate compared to the value of the claim, and making claims is often time consuming. In part, costs are driven by the fact that currently, many cases settle prior to a court hearing, but by that time have already used significant court resources. Further, communication between claimant and defendant legal services providers is often inefficient, causing delays.
- 1.16 The existing RTA PI scheme was intended to introduce efficiency savings for legal services providers by reducing the amount of resources required to process low value RTA claims, in part through the development of an electronic communication portal. It also sought to generate efficiency savings from HMCS by ensuring only cases reaching court require court resources.
- 1.17 For all cases not covered by the existing RTA PI process, the inefficiencies outlined above remain. Under the proposal, around 50,000 claims that are currently issued and not covered by the existing low value RTA PI process would be added to the RTA PI process.
- 1.18 Government intervention is required as the proposed changes would require Practice Directions to be drafted and approved by the Civil Procedure Rule Committee, i.e. secondary legislation is required.

Economic rationale

- 1.19 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and redistribution reasons (e.g. to reallocate goods and services to the more needy groups in society).

Process efficiency

- 1.20 In principle the proposal would be justified on productive efficiency grounds if the same outcomes were achieved at a lower overall resource cost. This would be the case if aspects of current court and other case processes could be removed altogether, or if processes could be undertaken by other parties at lower overall cost. The proposal seeks to do the latter; some elements of case management would be the responsibility of clients and their solicitors, rather than the courts.
- 1.21 The proposal would also involve communication being done through an electronic portal, rather than through other communication channels, e.g. post. This may be a quicker and more efficient process for litigants and their legal representatives.
- 1.22 The proposal may also reduce the court resources required for cases that never ultimately reach court. This would provide further productive efficiency benefits for HMCS.

Coordination efficiencies – communication reforms

- 1.23 Court cases and other disputes involve (at least) two parties. Due to potential coordination failures and other potential game play issues it is possible that a case might be resolved using more resources than might otherwise be the case. This could constitute a resource inefficiency.
- 1.24 The proposed electronic portal and RTA PI process time limits aim to address this by providing for quick communication. This may help in avoiding unnecessary legal costs being incurred. As such the rationale for the electronic portal may extend beyond simple communication channel efficiencies and include wider benefits from reducing avoidable sunk costs which generate limited if any direct benefits in terms of case resolution.

Coordination efficiencies – fixed costs regime

- 1.25 Related to the above, due to potential coordination and game play issues, it is possible that the overall costs of resolving disputes might be lower than would otherwise be so depending upon how all parties approach a case and behave during the case. If an 'efficient equilibrium' approach or model was devised for a particular case then there might be external benefits from applying such an approach to all similar cases. This would be akin to devising a new more efficient production process and then unrolling it more widely. The rationale for having a fixed cost regime essentially relates to this situation.
- 1.26 The rationale for the government to get involved, rather than leaving this matter entirely to the industry, relates to a number of considerations. First, any industry-negotiated fixed price regime risks being anti-competitive, and acting as a barrier to entry and/or as a means of securing extra margin from consumers or otherwise undermining the consumer safeguards stemming from competition. This may arise especially if an industry-wide agreement is formed using a number of representative bodies rather than all participants (which would not be possible in practice, including because future possible participants would be difficult to involve). MoJ involvement could help prevent such risks from materialising.
- 1.27 Secondly, government intervention may be needed to help ensure that an agreement is applied uniformly to all participants, and is applied in the most efficient manner. For example an agreement which is optimal for all parties might be undermined by the 'prisoner's dilemma' problem, whereby one party might be better off if they deviated from the agreement but others would be worse off and the aggregate position would also be worse.
- 1.28 Against these justifications would need to be balanced the resource costs of devising, monitoring, enforcing and revising a fixed cost regime, which might be very significant, and the costs and risks of the regime not being suitable for all cases covered by it. These risks of the fixed prices being set at the wrong level, or not adjusting effectively, have applied to many fixed price regimes in the past (e.g. in command economies), and have been associated with significant economic welfare costs and inefficiencies.
- 1.29 In addition fixed cost regimes can promote a number of unintended consequences. Given that a principal-agent relationship exists between the client and their legal adviser, and that information asymmetries also apply, under a fixed cost regime there is a significant risk that client safeguards and service standards might fall. If this had an adverse impact on case outcomes then there might also be costs in terms of reduced equity and fairness.

Distributional, equity and fairness rationale

- 1.30 The proposal may have distributional impacts between claimants, defendants, and their legal representatives, given cases moving into the RTA PI process should settle more quickly, and the payment of legal fees and compensation is staggered. The justification for the proposals might be supported if society valued these distributional implications, e.g. quicker payment to claimants.
- 1.31 Unintended changes to any of these factors stemming from the fixed cost regime could create a further set of distributional impacts, and could directly affect the satisfaction of claimants and defendants with the new processes (e.g. if litigants prefer the current process to the proposed process), to fairness (if case outcomes become less fair), or to reduced confidence in the outcomes reached (if outcomes are perceived as less fair).

Conclusion

- 1.32 The overall economic justification for the proposals probably hinges upon how well the fixed cost regime operates in practice. This is likely to overshadow the other aspects of the proposals.

Affected stakeholder groups, organisations and sectors

- 1.33 These proposals are likely to affect the following sectors and groups:

- *Claimants*: Claimants would be affected if their case is brought into the scope of the existing RTA PI process.
- *Defendants*: Similarly, defendants would be affected if their case is brought into the scope of the existing RTA PI process. In RTA cases defendants are primarily insurers, the Motor Insurers' Bureau and large companies involved in road transport such as hauliers, bus and coach companies.
- *Legal profession*: Would be affected as a greater volume of cases would be brought into the scope of the RTA PI process.
- *Her Majesty's Courts Service*: The proposal may result in a reduction in HMCS resources required to deal with cases moving into the RTA PI process.
- *After the Event insurers*: the proposal may result in a change in the demand for ATE insurance.
- *Legal Services Commission*: There may be legal aid impacts as the proposal would bring clinical negligence and other personal injury cases into the scope of the RTA PI process. However it is very unlikely that the types of case affected by these proposals would be covered by legal aid hence the legal aid impacts are assumed to be negligible.

2. Costs and benefits

2.1 This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

Option 0: Base case (do nothing)

Description

- 2.2 Under the "do nothing" base case the current system would remain unchanged whereby only eligible RTA PI claims (liability admitted and value under £10,000) would fall within the scope of the RTA PI process. All other cases would continue to be issued in the County Courts, and follow standard civil court processes. Further details are provided in the introduction section above.
- 2.3 The "do nothing" option is compared against itself and therefore its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1: Extension of RTA Personal Injury claims process

Description

- 2.4 Under this option, the scope of the existing RTA PI scheme would be extended to include clinical negligence cases and all PI cases with a value of less than £25,000. PI claims make up some 70% of all claims that currently fall in the fast and multi-tracks, and 92% of PI claims are under £25,000. Under the proposal, it is estimated that around 50,000 claims would be added to the RTA PI scheme.
- 2.5 The current RTA PI scheme has a fixed costs regime which was developed after negotiation by the Civil Justice Council with claimant and defendant representative bodies. The intention would be to undertake the same exercise for the additional cases being brought within the scope of the expanded RTA PI scheme, as necessary.
- 2.6 As outlined above, the costs and benefits of the proposals are strongly influenced by the assumptions made about how the fixed cost regime might work in practice, although feedback from legal practitioners representing both sides of the existing process is that they are working well.

Costs

Providers of legal services

- 2.7 In general, any costs to legal services providers from reduced levels of business would mirror the gains to claimants and defendants who use, and pay for, these legal services. We assume that if there was a reduction in business in this area then legal services providers would engage in other activity relating to other types of case, or may engage in other types of work, of a broadly equivalent value. As such legal services providers would incur adjustment costs from the changing pattern of demand but would not incur ongoing costs.
- 2.8 In this instance the reforms should probably lead to reduced levels of legal services business. The process efficiency reforms should result in less overall resource being needed to resolve a case. The same applies to the fixed cost regime, assuming this involves devising and applying the most efficient approach. The lower costs per case are not expected to increase demand for cases and hence case numbers, as case numbers are considered to stem from the number of underlying accidents which happen, and this is assumed not to change.
- 2.9 Whilst overall legal services resource requirements per case should be lower, within this there may be some operational cost increases for legal services providers. Any costs for legal services providers will ultimately be passed on to defendants, who cover the legal costs in such cases. These are outlined below:
- The proposal is likely to create some one off transition costs for legal services providers. Such costs could include familiarisation with the expanded RTA PI process, which may involve staff training. One aspect of the RTA PI process is the use of an electronic communication portal between claimant and defendant solicitors. As a result of the proposal, some solicitors may choose to adapt their case management systems to enable direct data flow with the portal, which would involve some further additional cost. For legal services providers that already use the portal, any additional costs are not expected to be significant, given they will already be set up to use the portal. However, there may be transition costs for any legal services providers that do not currently use the portal.
 - When the existing RTA PI scheme was introduced, development costs associated with creating the portal were borne by legal services providers. However, it has been assumed that significant amendments should not be required to the portal in order for it to cope with the proposed expansion. There are therefore no expected additional portal development costs.
 - The current fixed costs were developed through negotiation with relevant representative bodies. Implementing the proposal may require further negotiation with legal services providers. Further ongoing negotiation costs might be incurred as and when the fixed costs regime is amended and updated in future and other costs to legal services providers might arise as a result of how the fixed cost regime is monitored, applied and enforced.

HMCS

- 2.10 The position for HMCS is similar to that for other service providers. HMCS charges fees for the services it provides and HMCS fees are assumed to cover HMCS costs. As such, a measure which affected HMCS costs would have a neutral financial impact on HMCS.
- 2.11 In this instance the number of cases is considered to remain the same. However some parts of existing court process would not be applied in future, and fees would not be charged accordingly (e.g. allocation fees and hearing fees). The reduction in fee income is assumed to reflect the reduction in HMCS costs.
- 2.12 This is based on an assumption that moving cases into the RTA PI process may result in more cases settling before court involvement is required. This may be a strong assumption.
- 2.13 In addition HMCS may face some minor one-off operational cost increases associated with amending court forms and training material. There may be further costs associated with developing the fixed costs regime through negotiation. It is assumed that these increased HMCS costs would be met by increased HMCS fees per case.

2.14 It has been assumed that the reforms would not involve HMCS capacity being adjusted (e.g. staff and estate). As such there would be no capacity adjustment costs.

Defendants

2.15 In general it is assumed that defendants would cover the costs of the case (as they have admitted liability) and would also pay damages to claimants. It has also been assumed that the proposals would not affect case outcomes in aggregate. This might be a fairly strong assumption. Also whilst the aggregate position may be the same, this might not be so for each individual case.

2.16 Defendants would, therefore, ultimately cover any cost increases experienced by HMCS or by legal services providers, for example in the form of increased fees. In this instance the proposals are expected to lead to reduced overall legal costs and court fees, hence there would be no such cost increases for defendants.

2.17 Although it has been assumed that the fixed cost regime would involve applying a more efficient approach it is possible that this might be associated with reduced levels of service quality from legal services providers. At one extreme this might have an adverse impact on case outcomes, such as the amount paid to claimants, although this is assumed not to be the case.

2.18 Defendants might also incur cash flow costs. The RTA PI process is designed to increase the speed at which cases are resolved when liability is admitted. Defendants in cases being moved into the RTA PI process may therefore be required to pay compensation more quickly as a result of the proposal. The RTA PI process also requires staggered payment of legal fees as cases proceed through each stage. For the cases being moved within scope, if legal fees are currently paid at the end of the case, this will represent a further cost to defendants given payments will now be made earlier.

2.19 Defendants might also directly incur increased operational costs from the way the new process operates. In particular there may be costs in negotiating the new fixed costs regime and in reviewing and updating it in future. These may be significant. There might also be one-off costs and ongoing costs associated with the operation of the new IT portal. Additional portal development costs are assumed to be negligible; this might be a strong assumption.

Claimants

2.20 In general it is assumed that claimants would receive payment from defendants for their damages and would have their legal costs paid by defendants, including court fees and any applicable ATE premiums. It is possible that not all of their costs might be recovered by defendants. It has also been assumed that the proposals would not affect case outcomes in aggregate. This might be a fairly strong assumption. Also whilst the aggregate position may be the same, this might not be so for each individual case.

2.21 As for defendants, although it has been assumed that the fixed cost regime would involve applying a more efficient approach it is possible that this might be associated with reduced levels of service quality from legal services providers. At one extreme this might have an adverse impact on case outcomes, such as the amount received by claimants, although this is assumed not to be the case.

2.22 As for defendants, claimants might incur cash flow costs. As outlined above, the RTA PI process requires staggered payment of legal fees as cases proceed through each stage. This may represent a cost to claimants if payments by claimants are made earlier than at present. This might not apply where the claimant is funded by a Conditional Fee Arrangement, i.e. a no win no fee arrangement.

2.23 As for defendants, claimants (or those acting on their behalf) might directly incur increased operational costs from the way the new process runs. In particular there may be costs in negotiating the new fixed costs regime and in reviewing and updating it in future. These might not be insignificant. There might also be one-off costs and ongoing costs associated with the operation of the new IT portal. Additional portal development costs are assumed to be negligible; this might be a strong assumption.

After The Event (ATE) insurers

- 2.24 This is insurance relating to the claimant being exposed to the defendant's costs if the claimant loses a case.
- 2.25 ATE insurance should be regarded in the same way as other services. A decrease in business for insurers, e.g. because lower risks are being covered, would equate to a gain to those who pay the insurance premium. In this instance whilst the claimant might take out ATE insurance cover, the costs of the premium would be charged to the defendant if the claimant wins the case. In this analysis we assume the claimant wins the case.
- 2.26 The RTA PI process is designed to create greater certainty. This may result in reduced ATE insurance premiums, and possibly a reduction in the demand for ATE insurance, which would represent a cost for ATE insurers.
- 2.27 As for legal services providers, it is assumed that insurers would respond to this by entering other fields or other lines of business. As such it is assumed that insurers would not incur any ongoing costs but would incur costs from adjusting to a new pattern of demand.

Equity and fairness

- 2.28 It has been assumed that case outcomes would not be affected in aggregate. However on an individual case basis the fixed cost regime is likely to introduce inflexibilities. This may lead to outcomes being less fair in some cases. It has been assumed that this would apply equally to defendants and claimants.

Distributional costs

- 2.29 As above, it has been assumed that case outcomes would not be affected in aggregate. Overall, claimants are expected to gain at the expense of defendants only in relation to the speed of payment. Defendants are likely to be insurers and claimants are likely to be individuals.

Wider social and economic costs

- 2.30 Wider social and economic costs are not anticipated given the assumptions adopted, in particular that case outcomes would remain the same, that productive efficiencies would be reaped, and most importantly that the fixed cost regime would be successful. The assumptions section of the Impact Assessment considers this in more detail.

Benefits

Providers of legal services

- 2.31 As explained, in general any benefits to legal services providers from increased levels of business would mirror the costs to claimants and defendants who use, and pay for, these legal services. In this instance, however, the reforms should probably lead to reduced levels of legal services business.
- 2.32 As explained in the costs section, the process efficiency reforms should result in less overall resource being needed to resolve a case. The same applies to the fixed cost regime, assuming this involves devising and applying the most efficient approach. The RTA PI process should provide a more efficient process through which cases can be handled, which will be applicable to a greater volume of cases. Efficiency savings should stem from the fact that the electronic portal makes communication between parties quicker and easier, and that it provides a simplified process of issuing court proceedings.
- 2.33 In addition, the proposal should provide legal services providers with better cash flow through the earlier resolution of cases, and through the system of staged payment of legal costs.
- 2.34 Overall, any benefits for legal services providers will ultimately be passed on to defendants, who cover the legal costs in such cases.

HMCS

- 2.35 As explained, the position for HMCS is similar to that for other service providers. HMCS charges fees for the services it provides, and HMCS fees are assumed to cover HMCS costs. As such a measure which affected HMCS costs would have a neutral financial impact on HMCS.
- 2.36 In this instance the number of cases is considered to remain the same but HMCS costs per case should be lower, with associated reductions in HMCS fee income. The proposal should result in a reduction in the HMCS resources required to process claims. Currently, cases may settle before a court hearing but after significant court resources have been used on their case, for example in relation to case issue, allocation, and court listing. Moving cases into the RTA PI process may provide efficiency savings for HMCS if these court processes are no longer required.
- 2.37 Further, cases that do ultimately come to court for a hearing may be better prepared if proceeding through the RTA PI process improves the case management of cases. This would provide further efficiency savings from HMCS if this reduced the amount of case management processes required at the court.

Defendants

- 2.38 On the assumption that defendants would cover the costs of cases (as they have admitted liability), defendants would gain from reduced court costs and legal service provider costs. Any reduction in ATE insurance premiums would also benefit defendants. Observations from claimant solicitors since the introduction of the existing RTA PI scheme tell us that the average ATE premium has dropped from £400 to under £100 per case.
- 2.39 Whilst case outcomes are considered to be the same in aggregate this might not be so in each individual case. In some cases it is possible that the defendant might be better off than beforehand.

Claimants

- 2.40 In general it is assumed that claimants would receive payment from defendants for their damages and would have their legal costs paid by defendants, including court fees and any applicable ATE premiums.
- 2.41 Whilst case outcomes are considered to be the same in aggregate this might not be so in each individual case. In some cases it is possible that the claimant might be better off than beforehand.
- 2.42 There may also be cash flow benefits for claimants due to the earlier receipt of compensation. Under the process, claimants should know if liability has been admitted within 3 weeks of submitting a claim notification form and could receive final payment of damages within 12 weeks. In addition, an automatic interim payment of damages is paid to the claimant before court proceedings are commenced, except where the claimant is a child.
- 2.43 Claimants who do not have legal representation can also benefit from the proposal, as they can use the process to progress their claim, making it easier to communicate with defendants or the defendant's solicitor.

After The Event (ATE) insurers

- 2.44 No benefits to ATE insurers are anticipated.

Equity and fairness

- 2.45 Quicker payment and quicker case resolution might be associated with increased fairness.

Distributional benefits

- 2.46 As above, it has been assumed that case outcomes would not be affected in aggregate. Overall, claimants are expected to gain at the expense of defendants only in relation to the speed of payment. Defendants are likely to be insurers and claimants are likely to be individuals.

Wider social and economic benefits

2.47 The proposals would be associated with increased resource efficiency, given the assumptions applied.

Risks and assumptions

2.48 The analysis in this Impact Assessment assumes that the defendant admits liability, pays damages to the claimant, and pays the claimants costs including court fees and ATE insurance premiums. If claimants were liable for costs in some cases, any reduction in legal costs as a result of the proposal would instead benefit claimants.

2.49 There is a risk that the impacts outlined above could change if the proposals made by Lord Justice Jackson were implemented.

2.50 It is assumed that the fixed costs for the cases being brought into the RTA PI process, once developed, will accurately reflect the work required and undertaken by legal services providers on a case by case basis.

2.51 Based on this assumption, it is assumed that the proposal will have no impact on the level of damages paid out in those cases moved into the RTA PI process. It is assumed that there would be no impact on the propensity of defendants to accept liability, on the volume of cases reaching court, on the outcomes of cases once at court, or on the underlying volume of RTA, PI and clinical negligence cases that are pursued overall.

2.52 It is assumed that without the fixed cost regime there would be more variation in the way cases are resolved in terms of the legal costs incurred. In particular it is assumed that in some cases the legal costs would be more substantial and the cases would take longer to resolve. It is assumed that whilst service standards might change in future under the fixed costs regime, this would not affect case outcomes in terms of agreed liability and damages paid.

2.53 It is assumed that the costs of establishing the fixed cost regime and of making future amendments would be proportional. In particular it is assumed that these costs would not act as a barrier to appropriate future adjustments.

2.54 If the fixed costs developed do not reflect the work required, or do not adapt effectively to changing circumstances, this could lead to a wide range of unintended impacts. These could include less fair case outcomes in terms of damages awarded and liability agreed, and reduced quality of legal services. In particular an inability to adjust by changing the price may lead to adjustment via service standards, which may affect outcomes. Alternatively, legal aid providers may cease to engage in this business area.

2.55 There is a further risk that fixed costs may be less applicable for higher value or more complex cases, even if fixed costs were set at the correct level on average. If so, this could also lead to the unintended consequences outlined above. Making the fixed costs regime more flexible would reduce this problem, but would increase adjustment costs for all parties involved (given the fixed fee regime would be more complex).

2.56 It is assumed that HMCS capacity would not be adjusted in light of these proposals. It is assumed that HMCS fees would adjust to any change in HMCS costs per case, or that case backlogs and waiting times would adjust, such that HMCS overall cost recovery would remain the same.

3. Enforcement and Implementation

3.1 HMCS and the Judiciary will be responsible for implementing and enforcing these proposals, which would take effect from autumn 2012.

4. Specific Impact Tests

Equality Impact Assessment

4.1 An Equality Impact Assessment Initial Screening has been completed and is attached at Annex 2.

Competition Assessment

4.2 The fixed costs regime might act as a barrier to entry by preventing competition based on price. The fixed cost regime negotiations might also not reflect the interests of potential future market entrants. The IT portal proposal is also likely to introduce an entry barrier.

Small Firms Impact Test

4.3 Prior to the implementation of the existing RTA PI process, the MoJ involved the Federation of Small Businesses, the Confederation of British Industry and the Engineering Employers' Federation when exploring the impact on business, including small business. During the development of the protocol process the key claimant and defendant representative organisations engaged with the small businesses likely to have an interest in the process. The impact on small businesses will be considered further during the consultation process. The IT portal proposal may have a disproportionate impact on small firms.

Carbon Assessment and Other Environmental Impacts

4.4 No significant impacts are likely to apply to carbon emissions and the environment.

Health Impact Assessment

4.5 The proposal is not expected to have a significant impact on health, save that it should reduce legal costs in lower value clinical negligence and employer liability cases. Discussions are ongoing with the Department of Health about how this will be taken forward. There may be positive implications from cases being resolved quicker and payments made sooner.

Human Rights

4.6 The proposal is compliant with the Human Rights Act.

Legal Aid and Justice Impact Test

4.7 The proposal is not expected to have any significant impact on legal aid. Impacts on HMCS are explained in the main body of the Impact Assessment.

Rural Proofing

4.8 The proposal is not expected to have any significant rural impacts.

Sustainable Development

4.9 The introduction of the existing RTA PI process meant that the exchange of information for claims was to be completed electronically. This was at the request of both claimant solicitor and defendant/insurers representatives. Under the previous pre-action protocol for PI claims, the majority of claimants and their solicitors used traditional postal methods for exchanging information. In moving away from a paper-based system, environmental impacts relating to the manufacture, transportation, packaging and disposal of paper was reduced. The proposal is expected to reduce these impacts even further, as more cases will be captured under the process.

Privacy Impact Test (an MoJ Specific Impact test)

4.10 The proposal requires that standard forms and information continue to be exchanged electronically between the parties and makes no provision for data to be exchanged by post. This was originally at the request of both claimant solicitor and defendant/insurers representatives and this position has not changed. The data exchanged is the same as that exchanged under the previous pre-action protocol for PI claims, largely by post. The Association of British Insurers (ABI) funded the secure portal that was set up to facilitate the exchange of information for these cases in a way that is consistent with the requirements of the Data Protection Act 1998 (the Act). The Information

Commissioner's Office was consulted as part of developing the system to ensure compatibility with the Act.

Annex 1: Post Implementation Review (PIR) Plan

Basis of the review

To check whether the proposals have resulted in the intended consequences of putting personal responsibility for resolving disputes into the hands of parties so that court action becomes a last resort and ensuring that legal costs are not disproportionate in relation to the value of any claim.

Review objective

The post implementation review will analyse the impact in terms of settlement rates of claims and litigation rates for cases that ultimately come to court for resolution. It will analyse the impact on waiting and hearing times and the impact this has on the way HMCS provides its services. The impact on legal costs will also be considered.

Review approach and rationale

As most of the directions that parties would undertake before starting a court action are done pre-court, much of the data used to evaluate the success of the proposals would be qualitative evidence obtained from stakeholders in addition to any quantitative data from HMCS.

Baseline

The current position is that a court claim can be started without parties being obliged to first explore other ways of resolving the dispute despite this always being an option. Legal costs build up quickly and often disproportionately to the value of the claim and a large majority of cases settle just before trial stage.

Success criteria

It is intended that there should be a more collaborative approach to dispute resolution that will allow parties to take personal responsibility for how this is achieved at a more sustainable and proportionate cost.

Monitoring information arrangements

We would focus on qualitative evidence from stakeholders in addition to anecdotal evidence from the judiciary and quantitative data from HMCS.

Reasons for not planning a PIR

N/A