

Title: Fixed Recoverable Costs for the Extended Road Traffic Accident (RTA) Personal Injury Claims Protocol

IA No: MoJ 190

Lead department or agency: Ministry of Justice

Other departments or agencies:

Impact Assessment (IA)

Date: 27.02.2013

Stage: Final

Source of intervention: Domestic

Type of measure: Secondary legislation

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Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?	
			Yes/No	£m
£m	£m	£m	Yes/No	In/Out/zero net cost

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

The problem under consideration is that the legal costs involved in settling personal injury claims are considered to be excessive, especially for lower value claims where liability has been admitted. Government intervention is necessary to introduce the court rule changes which govern the processes for handling claims and which determine the costs which may be recovered by successful claimants from defendants.

What are the policy objectives and the intended effects?

The policy objectives are to reduce the legal costs applying to lower value Road Traffic Accident (RTA), Employer Liability (EL) and Public Liability (PL) personal injury claims, including in places by extending or introducing Protocols relating to processes and milestones. In addition to reducing legal costs the intended effects are to enable claims to be settled more quickly and efficiently.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do Nothing (base case)

Option 1: The reforms consist of four strands:

- (i) Reduce existing fixed recoverable costs (FRCs) for RTA claims between £1,000 and £10,000;
- (ii) Expand the RTA FRC regime to cover claims between £10,000 and £25,000;
- (iii) Introduce new FRC regimes for EL and PL cases between £1,000 and £10,000 and between £10,000 and £25,000;
- (iv) Introduce fixed recoverable costs for claims between £1,000 and £25,000 that exit the current and extended Protocols.

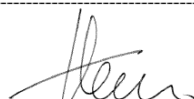
Option 1 is favoured as it meets the policy objectives and delivers the intended effects.

Will the policy be reviewed? It will/will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro	< 20	Small	Medium	Large
	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impacts of the proposal, and (b) the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: _____ Date: 27/2/13



Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

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

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

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

Reduced income for claimant solicitors from lower FRCs. For RTA Protocol claims between £1,000 and £10,000, if caseloads were to remain at 2011/12 levels, then there would be a reduction in income of around £200m. This mirrors the benefit to defendants (insurers) from paying lower legal costs. This figure relates solely to FRC income and not to success fee income.

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

Possible reduced income for claimant solicitors from lower CFA success fees, assuming success fees stay at the same rate and are applied to lower FRCs in future. This mirrors the benefit to claimants from paying lower success fees.
Cash flow costs for defendants (insurers) from quicker settlements. This mirrors the benefit to claimants of receiving quicker settlements.

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

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

Reduced legal costs for defendants (insurers). For RTA Protocol claims between £1,000 and £10,000, if caseloads were to remain at 2011/12 levels, then there would be reduced legal costs of around £200m. This mirrors the cost to claimant solicitors of receiving less FRC income. Savings to defendants (insurers) from reduced FRCs may be passed on to consumers and business in the form of lower insurance premiums.

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

Reduced admin and processing costs for claimant solicitors and for defendants (insurers).
Cash flow benefits for claimants from quicker settlements. This mirrors the cost to defendants (insurers) from quicker settlements.
Possibly reduced CFA success fees payable by claimants as these are a percentage of FRCs in some cases. This mirrors the cost to claimant solicitors from reduced success fee income.

Key assumptions/sensitivities/risks

Discount rate (%)

No impact on case volumes and on case outcomes and settlements. It is assumed that claimant willingness to bring a claim remains unchanged and there is no aggregate impact on claimant lawyers' willingness to take on cases. Whilst some claimant lawyers might exit the market, it has been assumed that others would enter or existing providers would expand to meet demand. This is because the proposed FRCs are considered to reflect the amount of work which an efficient and effective provider would undertake. Risk that CFA success fees might change in future.

Refer to main text for full detail of assumptions and sensitivities.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT/Zero net cost

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?					
Which organisation(s) will enforce the policy?			Judiciary/HMCTS		
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

References

No.	Legislation or publication
1	<i>Common Sense, Common Safety</i> - report by Lord Young published on 15 October 2010
2	Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents – Civil Procedure Rules
3	Helen Grant letter: <i>Extension of the RTA PI Scheme: Proposals on Fixed Recoverable Cost, November 2012.</i>
4	Jackson Final report on <i>Civil Litigation Funding & Costs (2009)</i>

Evidence Base (for summary sheets)

1. Introduction

- 1.1 This Impact Assessment relates to the Government’s proposals to extend and reform the existing fixed recoverable legal costs regime which applies to Road Traffic Accident (RTA) cases involving personal injury claims between £1,000 and £10,000 where liability has been admitted. Currently fixed recoverable costs (FRCs) apply to claims which are handled in accordance with arrangements set out in the RTA Protocol and are processed via the RTA Portal.
- 1.2 The problem under consideration is that the legal costs involved in personal injury claims might be excessive, especially for lower value claims where liability has been admitted. Government intervention is necessary to introduce the court rule changes which govern the processes for handling claims and which determine the costs which may be recovered by successful claimants from defendants.
- 1.3 The policy objectives are to reduce the legal costs applying to lower value RTA, Employer Liability (EL) and Public Liability (PL) personal injury claims, including in places by extending or introducing Protocols relating to processes and milestones. In addition to reducing legal costs the intended effects are to enable claims to be settled more quickly and efficiently.
- 1.4 The economic rationale for the reforms relates primarily to improving efficiency, which would occur if less resource is required to settle claims, if claims are settled more quickly, and if there are no significant impacts on case outcomes or case volumes.
- 1.5 In total, the volume of personal injury claims issued in 2011/12 recorded by the Compensation Recovery Unit (CRU) is around 1,050,000. Of these around 830,000 claims relate to RTA, around 105,000 relate to PL and around 90,000 relate to EL. RTA claims accounted for around 80% of total claims registered with the CRU in 2011/12, EL accounted for around 9% and PL for around 10%.
- 1.6 The number of settlements recorded by the CRU in 2011/12 for RTA claims is around 755,000, for PL around 100,000 and for EL around 90,000. RTA claims account for around 80% of total claims settled in 2011/12, EL for around 10% and PL for around 10%.
- 1.7 RTA claims below £10,000 account for around 90% of all RTA claims by volume, and the majority of these enter the existing Protocol process for claims of £1,000 - £10,000 where liability has been admitted. According to the Portal Co Statistics, in 2011/12 over 750,000 RTA claims entered the Protocol Process. In the same year, there were around 300,000 claims settled within the Process¹.
- 1.8 More generally, the majority of personal injury claims (by volume) relate to claims with damages of £1,000 - £25,000, as indicated in the table below. These figures should be considered indicative, as they are based on information from a sample of personal injury cases from Jaggards legal costs consultants, rather than representing data on all cases settled. Because they are based on a sample the total case volume figures extrapolated from the sample do not match up precisely with the figures from the CRU, which relate to actual claims recorded with the CRU. Nevertheless they provide an indicative illustration of the relative distribution of claims by size of claim.

Table 1: Total personal injury case volumes settled in 2011/12 estimated to recover damages between £1,000 and £25,000

	Road Traffic Accident (RTA)	Employer Liability (EL)	Public Liability (PL)	Total ²
CRU Settlements (2011/12) (rounded)	755,000	90,000	100,000	945,000
Proportion of settlements estimated to settle for damages of £1,000 - £25,000 ³	93%	85%	91%	n/a

¹ In practice settlements in one year reflect registrations which may have taken place in the previous year, and so these figures cannot be used to determine Protocol settlement rates.

² Totals may not sum due to rounding.

Approximate number of settlements in 2011/12 that recovered damages of £1,000 - £25,000	705,000	75,000	90,000	875,000
Of which approximate settlements £1,000 - £10,000 ⁴	650,000	65,000	80,000	795,000
Of which approximate settlements £10,000 - £25,000 ⁵	50,000	15,000	15,000	80,000

1.9 Full details of the Government's proposals may be found in the consultation response document at www.justice.gov.uk. In summary the package includes:

Reform 1: Reducing the existing fixed recoverable costs (FRCs) for RTA personal injury claims between £1,000 and £10,000 where liability has been admitted and which are subject to the RTA Protocol.

RTA Protocol claims: £1,000 - £10,000	Stage 1	Stage 2	Stage 1&2 total	Stage 3
Current FRCs	£400	£800	£1,200	£250 / £500 (paper / oral hearing)
Proposed FRCs	£200	£300	£500	£250 / £500 (paper / oral hearing)

Reform 2: Extending the RTA fixed recoverable cost regime to cover RTA personal injury claims between £10,000 and £25,000 where liability has been admitted and which are subject to the RTA Protocol, and introducing higher FRCs for these higher value claims.

RTA Protocol claims: £10,000 - £25,000	Stage 1	Stage 2	Stage 1&2 total	Stage 3
Proposed FRCs	£200	£600	£800	£250 / £500 (paper / oral hearing)

Reform 3: Introducing a new fixed recoverable cost regime for personal injury claims relating to Employer Liability (EL) and Public Liability (PL) cases where liability has been admitted. In particular introducing a new EL and PL Protocol for these cases, introducing one set of FRCs for EL and PL claims between £1,000 and £10,000, and introducing a higher set of FRCs for claims between £10,000 and £25,000.

EL / PL Protocol claims:	Stage 1	Stage 2	Stage 1&2 total	Stage 3
Proposed FRCs: £1,000 - £10,000	£300	£600	£900	£250 / £500 (paper / oral hearing)
Proposed FRCs: £10,000 - £25,000	£300	£1,300	£1,600	£250 / £500 (paper / oral hearing)

Reform 4: Introducing a new fixed costs regime in relation to all RTA, EL and PL claims between £1,000 and £25,000 that exit the current and extended Protocols. This would include cases where liability has not been admitted. For these claims, the figures and table in Appendix 5 of Lord Justice

³ These proportions are based on information provided in a sample of personal injury cases from Jaggards legal costs consultants.

⁴ Ibid

⁵ Ibid

Jackson's Review of Civil Litigation Costs were regarded as being a rational and proportionate starting point. These 2009 cost figures were adjusted for inflation and adjusted to account for the ban on referral fees which comes into effect in April 2013.

	Pre issue £1,000- £5,000	Pre Issue £5,001- £10,000	Pre Issue £10,001- £25,000	Issued – Post issue Pre Allocation	Issued – Post allocation pre listing	Issued – Post listing pre trial	Trial - Advocacy Fee
	Case Settles before Issue	Case Settles before Issue	Case Settles before Issue				
Road Traffic Accident							
Fixed Costs	Greater of £550 or £100 + 20% of Damages	£1,100 +15% of Damages over £5k	£1,930 + 10% of Damages over £10k	£1,160 + 20% of Damages	£1,880 + 20% of Damages	£2,655 + 20% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10- 15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Employers Liability							
Fixed Costs	£950 + 17.5% of Damages	£1,855 +12.5% of Damages over £5k	£2,500 + 10% of Damages over £10k	£2,630 + 20% of Damages	£3,350 + 25% of Damages	£4,280 + 30% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10- 15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Public Liability							
Fixed Costs	£950 + 17.5% of Damages	£1,855 +10% of Damages over £5k	£2,370 + 10% of Damages over £10k	£2,450 + 17.5% of Damages	£3,065 + 22.5% of Damages	£3,790 + 27.5% of Damages	£485 (to £3,000) £690 (£3-10,000) £1,035 (£10- 15,000) £1,650 (£15,000+)
Escape	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na

2. Costs and benefits

2.1 This Impact Assessment identifies both monetised and non-monetised impacts on individuals and businesses in the UK, with the aim of understanding what the overall impact might be. The costs and benefits of each option are compared to the 'do nothing' option. This Impact Assessment aims to value costs and benefits in monetary terms where possible. However some important aspects cannot sensibly be monetised. This includes changes in equity (fairness).

Option 0: Base case (do nothing)

2.2 These reforms are being introduced in the wake of the introduction of other reforms to the Conditional Fee Agreements (CFAs) proposed by Lord Justice Rupert Jackson – otherwise known as reforms to 'no win no fee' agreements. These reforms include a ban on referral fees, such as those paid to claims management companies by CFA lawyers.

2.3 These CFA reforms are coming into effect on 1 April 2013 – prior to the changes being assessed here. As a result, the 'do nothing' option in this Impact Assessment assumes that the Jackson CFA reforms are already in place. Impact Assessments relating to the Jackson CFA reforms and the referral fee ban may be found at: <http://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/Royal-Assent-IAs-and-EIAs.zip>

2.4 The Jackson CFA reforms also involve replacing the existing fixed recoverable CFA success fees (of 12.5% of CFA legal costs for claims which settle at Stage 2 in the RTA portal) with the general CFA success fee payable by the claimant but capped at the lower of 100% of base costs or 25% of damages for pain, suffering and loss of amenity. As such claimants will be able to agree the success fee they pay their CFA lawyer. Under the Jackson reforms there could also be more use of Damages Based Agreements, whereby claimants explicitly use a proportion of their damages to cover the legal costs.

2.5 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: Extend the RTA fixed recoverable costs regime, reduce existing costs within the current RTA regime, and reduce costs for cases outside the regimes

2.6 This Option involves implementing the package of reforms outlined in paragraph 1.8.

Assumptions

2.7 The following assumptions apply to the assessment of expected costs and benefits of Option 1:

- Overall claimant willingness to bring a claim remains unchanged. It is assumed that the majority of claims are brought using a CFA lawyer.
- No aggregate impact on claimant lawyers' willingness to take on cases. Whilst some claimant lawyers might exit the market it has been assumed that others would enter, or existing providers would expand to meet demand. This is because the proposed FRCs are considered to reflect the amount of work which an efficient and effective provider would undertake.
- No change in overall case volumes relative to the base case⁶. This stems from the above assumptions about claimants and claimant lawyers being as willing in future to pursue cases. In addition there is no reason to consider that the reforms might somehow impact on the underlying volume of personal injury accidents in relation to which claims are made, e.g. as a result of fraud or other claimant behavioural change.
- Claimant settlements remain the same. The proposed FRCs should reflect the amount of work required to process claims efficiently and effectively, both within and outside the RTA, EL and

⁶ In practice, the base case relates to the situation after implementation the Jackson proposals, which could impact base volumes of cases compared to currently.

PL Protocols. The Protocols cover cases where liability has been admitted within the Protocol period. The reforms also cover lower value claims where there may be relatively limited variation in relation to the amount of compensation paid for the particular personal injuries involved.

- Claimant ability to identify and engage a lawyer remains unchanged. There may be adjustments in terms of which lawyers and law firms continue to operate in this field, with some providers possibly exiting this market. In view of modern IT and communications, claimants' ability to identify and engage a lawyer is assumed not to be affected directly by these reforms. This would include the cost and time involved of engaging with a personal injury lawyer.
- No change in the way cases progress through the Protocol, i.e. overall RTA £1,000 - £10,000 case volumes would remain the same as in the base case, as do the proportion of claims which proceed to Stages 1, 2 and 3 of the Protocol and the proportion that drop out of the Protocols.
- No change in the number of litigants in person. In particular it is not possible for litigants in person to access the RTA Portal and hence to operate in accordance with the Protocol. These reforms do not change this position. Litigants in person would be individuals who pursue their claims outside the Protocol.
- No impacts on HM Courts and Tribunals Service (HMCTS), in particular no change in the number of RTA, EL and PL personal injury claims where court proceedings are issued, where cases are allocated to a court track, and where court hearings take place.
- No impacts on the equality of arms in court cases. No disadvantage for litigant in person cases or for varying quality in legal representation.

Benefits

Benefits to claimants

2.8 The main types of benefit are:

- 1) **CFA success fees:** This impact applies to all of Reforms 1-4. Compared to the base case, claimants may potentially benefit from paying reduced success fees to their CFA lawyer. Maximum success fees are the minimum of a percentage of CFA lawyer costs or a percentage of damages. As a result, success fees might be lower following the reduction in legal costs. This would depend upon: i) whether the proposals have an impact on the maximum success fee and ii) how close the success fee agreed between the claimant and claimant lawyer is to the maximum available success fee. This would depend on negotiations between claimants and their lawyers. In light of these uncertainties, the aggregate impact on CFA success fees has not been monetised.
- 2) **Earlier payment:** This impact applies primarily to Reforms 2 and 3, i.e. to the introduction of Protocols where they do not currently apply. The RTA, EL and PL Protocols should involve cases being settled more quickly than would otherwise be the case. This would provide claimants with cash flow benefits and with increased utility from having earlier access to compensation funds and the services and products these might be used for. Where funds are invested there might be further financial benefits. The aggregate value of earlier payment has not been monetised. This would depend upon the size of funds which are paid earlier, how much more quickly they are paid, and what they would be used for.
- 3) **Earlier case resolution:** This benefit applies primarily to Reforms 2 and 3, i.e. to the introduction of Protocols where they do not currently apply. In addition to earlier payment claimants may benefit from earlier resolution of their case including quicker resolution of liability. This impact has not been monetised.

Benefits to claimant solicitors

2.9 The following impacts apply to Reforms 2 and 3 and 4, i.e. to the introduction of fixed costs and / or associated Protocols where they do not currently apply. Assuming that case settlements remain at

their 2011/12 levels (including the proportion that settle within the existing RTA Protocol), these reforms could impact around 575,000 cases⁷.

- 1) **Reduced case administration and processing costs:** As explained in the Jackson report⁸ “a fixed costs regime is bound to generate business process efficiencies in the form of reduced management costs or overheads”. In particular, introducing set Protocols for claims where liability has been admitted, supported by electronic Portals (reforms 2 and 3), should encourage liability to be admitted early, saving time, as well as reducing the ongoing costs of processing claims through defining clear milestones and affecting how parties interact. The electronic Portals should also reduce the ongoing administrative costs of processing claims, such as the costs of exchanging information.

Overall, simplified, more uniform and more predictable processes applied to a large volume of similar claims may support additional case processing efficiencies, and might support new forms of business models. The ongoing costs of processing claims may fall as a result. The extent of these administrative and processing savings is not known and has not been monetised.

2.10 The following impact applies to Reforms 2, 3 and 4:

- 1) **Reduced ‘cost of costs’:** As identified in the Jackson report⁹, with a fixed costs regime, “claimant solicitors will no longer have to maintain documentation required for costs assessment or spend time arguing about costs”. Given this, less resource might be devoted to settling costs, generating further savings. The extent of any savings is unclear and has not been monetised.

Benefits to defendants (insurers)

2.11 The following impacts apply to all of Reforms 1-4:

- 1) **Reduced claimant lawyer costs:** A key impact of the reforms is to reduce the costs recovered by claimant lawyers which are subsequently passed to defendants (insurers). This benefit to defendants (insurers) would equate to a reduction in income for claimant solicitors.

Indicative estimates of these savings have been provided for Reform 1, where robust management information exists from the Portal Co. For reforms 2, 3 and 4, there is insufficient information about current costs and volumes of cases that might be affected by each of the reforms to provide meaningful estimates of the aggregate impacts.

Aggregate reduction in claimant lawyer costs associated with reform 1

The current fixed costs for a claim that settles at stage 2 of the existing RTA Protocol are £1,200. When the reforms are implemented, these will be reduced to £500. It is not known exactly how many cases will be affected by this reduction, as the Jackson proposals could impact baseline volumes of cases compared to currently. However, assuming that 2011/12 volumes of Protocol settlements (around 300,000 cases) remain, the aggregate saving to defendants of reform 1 would be around £200m. This relates purely to FRC costs. There is no impact on stage 3 costs.

A secondary impact is that, all other things equal, these savings to insurers may be passed to insurance policy holders in the form of lower insurance premiums.

2.12 The following impact applies to Reforms 2 and 3:

- 1) **Reduced case administration and processing costs:** The RTA, EL and PL Protocols are supported by electronic Portals which should reduce the ongoing administrative costs of processing claims such as the costs of exchanging information. The Protocols also establish

⁷ Assuming 2011/12 volumes of case settlements, it was estimated that around 875,000 cases might relate to damages of between £1,000 and £25,000. Of these, around 300,000 settled within the existing RTA Protocol, leaving around 575,000 cases outstanding.

⁸ <http://www.judiciary.gov.uk/publications-and-reports/review-of-civil-litigation-costs/reports/civil-litigation-costs-review-final-report>

⁹ *Ibid*

clear milestones and affect how claims themselves are processed and how parties interact. These simplified, more uniform and more predictable processes applied to a large volume of similar claims may also support additional case processing efficiencies, and might support new forms of business models. The ongoing costs of processing claims may fall as a result. The extent of these administrative savings is unknown and has not been monetised.

2.13 The following impact applies to Reforms 2, 3 and 4:

- 1) **Reduced 'cost of costs'**: Any reduced interaction with claimant solicitors in relation to cost assessment of time arguing about costs would generate savings to defendants. The extent of any savings has not been monetised.

Wider economic benefits

2.14 Overall the package should be associated with improved economic efficiency. In particular, fewer resources would be used to achieve equivalent outcomes, freeing up these resources for alternative uses which may generate social and economic benefits.

Costs

Costs to claimants

2.15 No direct costs to claimants are anticipated. The risks section below identifies possible costs which might arise.

Costs to claimant lawyers

2.16 The following key impacts apply:

- 1) **Reduced claimant lawyer income**: This impact applies to Reforms 1-4. A key impact of the reforms is to reduce the fees claimed by claimant lawyers, which are subsequently passed to defendants (insurers). This represents a cost to claimant lawyers from reduced income.

Indicative estimates of these savings have been provided for reform 1, where robust management information exists from the Portal Co. For reforms 2, 3 and 4, there is insufficient information about current costs and volumes of cases that might be affected by each of the reforms to provide meaningful estimates of the aggregate impacts. The overall net impact on claimant lawyers associated with reforms 2, 3 and 4 would depend on the efficiency benefits realised.

Aggregate reduction in claimant lawyer costs associated with reform 1

The current fixed costs for a claim that settles at stage 2 of the existing RTA Protocol are £1,200. When the reforms are implemented, these will be reduced to £500. It is not known exactly how many cases will be affected by this reduction, as the Jackson proposals could impact baseline volumes of cases compared to currently. Assuming that 2011/12 volumes of Protocol settlements (around 300,000 cases) remain, the aggregate cost to claimant lawyers of reform 1 would be around £200m. There is no impact on stage 3 costs.

- 2) **One-off adjustment costs and ongoing portal costs**: This impact applies to Reforms 2 and 3. The reforms might generate one-off business system adjustment costs and other costs might apply to using the Portal. Any ongoing costs of using the Portal are expected to be more than offset by the process and administrative savings it should generate.

Adjustment costs might also apply at market level. In particular some claimant lawyers and/or law firms might exit the market and others might enter or expand to meet demand. Those exiting this particular market might engage in other productive activity including other types of legal services work. The nature and extent of any market adjustment is not known.

Costs to defendants (insurers)

2.17 The following key impacts apply to Reforms 2 and 3:

- 1) **Earlier payment:** The RTA, EL and PL Protocols should involve cases being settled more quickly than would otherwise be the case. This would generate cash flow costs for defendants (insurers) which may take the form of reduced investment income. The aggregate value of earlier payment has not been monetised. This would depend upon the size of funds which are paid earlier, how much quicker they are paid, and the value of any reduced investment income
- 2) **One-off adjustment costs and ongoing portal costs:** The reforms might generate one-off business system adjustment costs and other costs might apply to using the Portal. These are expected to be lower than the costs of not using the Portal, as explained in the benefits section.

Risks and sensitivities

2.18 The following risks apply to the assessment of expected costs and benefits of Option 1:

- It has been assumed that claimants and claimant lawyers will be as willing as in the base case to pursue cases in future. There is a risk, however, that claimant lawyers might be less willing to take on cases which are relatively more expensive to process. This might relate to the nature of the claimant, to the nature of their injuries, and to how clear and quick it is to establish liability. It is unclear to what extent claimant lawyers might be able to identify at the outset which individual claims might be cheaper to process. It is also unclear whether there is a significant degree of potential variation in relation to the specific levels of liability and damages which apply to individual cases. However whilst some claimant lawyers might not be willing to take on some cases, others may enter or existing providers may expand to meet demand. This is because the proposed FRCs are considered to reflect the amount of work which an efficient and effective provider would undertake.
- If the above risk of claimant lawyers identifying and not taking on relatively more expensive cases were to materialise, there is an associated risk that case volumes in the Portals might be lower in future. This might be because these claimants litigate in person in future (and hence pursue their claims outside the Protocols), or because they no longer pursue their claims.
- Conversely, compared to the base case claimants might be less willing to act as litigants in person and more willing to engage a claimant lawyer and to pursue a claim. This is because CFA success fees might be lower as a result of FRCs being lower, reducing the potential cost to claimants of engaging a claimant lawyer. CFA success fees might be lower as they are a percentage of underlying legal costs, i.e. of FRCs, which will be lower in future.
- If the above risk of claimants being less willing to litigate in person and more willing to engage a CFA lawyer and pursue a case in future were to materialise, there is an associated risk that case volumes in the Portals might be higher in future.
- The position affecting claimants is further complicated by the possibility that CFA success fees might be higher or lower in future compared to the base case, i.e. might be a higher or lower percentage of underlying legal costs (FRCs). For example if CFA success fees were a higher percentage this would generate increased income for claimant solicitors but increased costs for claimants. This risk might materialise if, as a behavioural response to lower FRCs, CFA lawyers require higher success fees. Other conditions might also have to be met for this to materialise, for example weak competition between CFA lawyers and underlying FRCs which do not cover CFA costs adequately.
- There is a possible risk that claimants might benefit from reduced administration costs of liaising with their lawyer. This might arise if cases are settled more quickly and if there is less communication between the claimant and their lawyer in future. Reduced communication and engagement might also be viewed as one aspect of customer experience. It is conceivable that claimants might consider that such aspects of the customer experience are worse even if case outcomes remain the same. Solicitors would still be required to operate in accordance with professional standards so the scope of any risk of worse customer experience might be limited.

- It has been assumed that claimant settlements remain the same. There is a potential risk that claimant settlements might be lower in future. This risk might materialise if claimant lawyers reduced the time and resource they spend on cases in response to lower FRCs, and if as a result settlement negotiations lead to worse outcomes for claimants. Whether this risk materialises would depend upon the behaviour of defendants (insurers) in such settlement negotiations. Furthermore the proposed FRCs are considered to reflect the amount of work which an efficient and effective provider would undertake. In addition the types of case covered by these reforms might be those relating to less severe injuries where there may be less variation in the amount of damages awarded.

.Enforcement and Implementation

- 3.1 HMCTS and the Judiciary will be responsible for implementing and enforcing these proposals, which would take effect from April 2013 (reform 1) and July 2013 (reforms 2, 3 and 4).