Title: Reforming the Soft Tissue Injury ('whiplash') Claims Process **IA No: MoJ015/2016** **RPC reference Number:** **Lead department or agency: Ministry of Justice** **Other departments or agencies: N/A**	**Impact Assessment (IA)** **Date: 17/11/16** **Stage:** Consultation **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** general.queries@justice.gsi.gov.uk
Summary: Intervention and Options	**RPC Opinion: fit for purpose**

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, Three-Out?**	**Measure qualifies as**
£780m	**£10.8bn to £10.5bn**	**-£1.2bn**	**Yes**	**QRP**

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

The Government is concerned about the continuing high number and cost of road traffic accident (RTA) related low value soft tissue injury ('whiplash') claims, many of which are minor, exaggerated or fraudulent, and the impact these claims have on motorists through increased motor insurance premiums. The Government believes the amount of compensation currently paid to claimants for these claims is out of all proportion to the level of injury suffered. Government action is needed to provide a more proportionate approach to the payment of compensation for Pain Suffering and Loss of Amenity (PSLA) and reduce costs for motorists.

What are the policy objectives and the intended effects?

The policy objectives and intended effects are to disincentivise minor, exaggerated and fraudulent claims so as to reduce the number and cost of claims, leading to savings which insurers can pass back to policy holders in the form of reduced motor insurance premiums. This will be achieved by means of the following measures:

- reducing the number and cost of soft tissue personal injury claims by (i) either removing compensation for PSLA from claims covering injuries lasting up to and including six months or setting a fixed amount of compensation for PSLA for these claims and (ii) setting a proportionate tariff of compensation payments for other such claims, providing claimants with certainty as to the level of damages payable;
- bringing more low value personal injury claims into the Small Claims Track (SCT), by raising the limit of the track for personal injury claims to £5K, thus reducing the costs of such claims; and
- Introducing a ban on offers to settle without a medical report

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

- **Option 0:** Base case (do nothing)
- **Option 1.1:** Removal of PSLA compensation for all minor RTA related soft tissue injury claims with a duration of a) 6 months or less, or b) 9 months or less.
- **Option 1.2**: Introduction of a fixed sum of compensation for minor RTA related soft tissue injury claims where the injury duration is a) 6 months or less, or b) 9 months or less
- **Option 2**: Introduction of a fixed tariff system for PSLA compensation amounts for where the injury duration is a) greater than 6 months, or b) greater than 9 months.
- **Option 3:** Raise the small claims limit to £5k (from £1k) for a) All Personal Injury (PI) claims, or b) RTA claims only
- **Option 4:** Require medical reports to be produced for every soft tissue injury claim.
- **Option 5.1:** This would combine Options 1.1a, 2a, 3a, and 4 (recommended options).
- **Option 5.2** This would combine Options 1.2a, 2a, 3a, and 4 (recommended options). The Government's preferred option is either Option 5.1 or Option 5.2 as this best meets the policy objectives

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

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

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 17/11/2016

Summary: Analysis & Evidence

Policy Option 1.1

Description: Removal of PSLA compensation for all minor RTA related soft tissue injury claims with a duration of a) 6 months or less, or b) 9 months or less.

FULL ECONOMIC ASSESSMENT

Price Base Year 15/16	PV Base Year 16/17	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	**High:**	**Best Estimate:** £761m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	Not Quantified		£577m	**£4.0bn**

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

- For Option 1.1)a) the cost to claimants would be £413m as a result of removed PSLA damages and the estimated reduction in special damages[1] claims.
- For Option 1.1)b) the costs to claimants would be £760m.

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

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate	Not Quantified		£486m	**£4.8bn**

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

- For Option 1.1)a) The overall gross saving for defendant insurers is estimated to be £532m as a result of removed PSLA damages, reduced special awards claims, medical costs, legal fees and VAT.
- £452m is estimated to be passed on to consumers in form of lower motor insurance premiums, leaving a net saving for insurance companies of £80m. A reduction in premiums would mean consumers benefit by an additional £45m from reduced Insurance Premium Tax (IPT).

- For Option 1.1)b) Gross saving to insurers would be £953m, consumers would benefit by £810m, leaving a net saving for insurance companies of £143m. Consumers would also benefit by paying £81m less IPT.

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

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

- 85% of savings to defendant insurers are assumed to be passed onto consumers.
- Without reform, volume and value of RTA-related soft tissue claims will remain at around current levels
- Those providing services (lawyers, medical experts, Claims Management Companies) are assumed to find alternative economic activities.
- There is a risk of claims inflation i.e. we could see a number of claimants pushing for their prognosis/diagnosis period to exceed the 6 or 9 month threshold to obtain PSLA damages. Or alternaively to seek higher special damages to offset the decline in PSLA.

THIS ASSESSMENT RELATES TO OPTION 1.1 BEING IMPLEMENTED IN ISOLATION RELATIVE TO THE BASE CASE

BUSINESS ASSESSMENT (Option 1.1)

Direct impact on business (Equivalent Annual) £m:				In scope of OITO?	Measure qualifies as
Costs: N/A	**Benefits:** N/A	**Net:**	N/A	N/A	N/A

[1] Claimants are entitled to recover any direct financial loss as a result of the injury such as loss of earnings, or payment for cost of medical treatment, known as special damages.

Summary: Analysis & Evidence

Policy Option 1.2

Description: Introduction of a fixed sum of compensation for minor RTA related soft tissue injury claims where the injury duration is a) 6 months or less, or b) 9 months or less **FULL ECONOMIC ASSESSMENT**

Price Base Year 15/16	**PV Base Year** 16/17	**Time Period Years 10**	**Net Benefit (Present Value (PV)) (£m)**		
			Low:	**High:**	**Best Estimate:** £761m

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	Not Quantified		£547m	**£4.5bn**

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

- For Option 1.2)a) the cost to claimants would be £385m as a result of removed PSLA damages and the estimated reduction in special damages[1] claims.
- For Option 1.2)b) the costs to claimants would be £714m.

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

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	Not Quantified		£455m	**£3.8bn**

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

- For Option 1.2)a) The overall gross saving for defendant insurers is estimated to be £504m as a result of reduced PSLA damages, reduced special awards claims, medical costs, legal fees and VAT.
- £428m is estimated to be passed on to consumers in form of lower motor insurance premiums, leaving a net saving for insurance companies of £76m. A reduction in premiums would mean consumers benefit by an additional £43m from reduced Insurance Premium Tax (IPT).

- For Option 1.2)b) Gross saving to insurers would be £907m, consumers would benefit by £771m, leaving a net saving for insurance companies of £136m. Consumers would also benefit by paying £77m less IPT.

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

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

- 85% of savings to defendant insurers are assumed to be passed onto consumers.
- Without reform, volume and value of RTA-related soft tissue claims will remain at around current levels
- Those providing services (lawyers, medical experts, Claims Management Companies) are assumed to find alternative economic activities.

THIS ASSESSMENT RELATES TO OPTION 1.2 BEING IMPLEMENTED IN ISOLATION RELATIVE TO THE BASE CASE

BUSINESS ASSESSMENT (Option 1.2)

Direct impact on business (Equivalent Annual) £m:				**In scope of OITO?**	**Measure qualifies as**
Costs: N/A	**Benefits:** N/A	**Net:**	N/A	N/A	N/A

[1] Claimants are entitled to recover any direct financial loss as a result of the injury such as loss of earnings, or payment for cost of medical treatment, known as special damages.

Summary: Analysis & Evidence

Policy Option 2

Description: Introduction of a fixed tariff system for PSLA compensation amounts for where the injury duration is a) greater than 6 months, or b) greater than 9 months.

FULL ECONOMIC ASSESSMENT

Price Base Year 15/16	**PV Base Year** 16/17	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low:	**High:**	**Best Estimate: £0**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	Not Quantified		£630m	**£5.2bn**

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

- For option 2)a) claimants would no longer recover £581m per annum in reduced PSLA damages
- For option 2)b) claimants would no longer recover £347m per annum in reduced PSLA damages

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

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	Not Quantified		£630m	**£5.2bn**

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

- For option 2)a) The overall gross savings for defendant insurers would be £581m in reduced PSLA damages. £494m is estimated to be passed on to consumers in the form of lower motor insurance premiums, this would leave a net benefit for insurers of £87m. Consumers would also benefit by paying £49m less IPT.

- For option 2)b) The gross savings to insurers would be £347m, consumers are expected to benefit by £295m thereby the net benefit to insurers would be £52m. Consumers would also benefit by paying £30m less IPT.

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

Key assumptions/sensitivities/risks | 3.5

- 85% of savings to defendant insurers are assumed to be passed onto consumers.
- Without reform, volume and value of RTA-related soft tissue claims will remain at around current levels
- Those providing services (lawyers, medical experts, Claims Management Companies) are assumed to find alternative economic activities

THIS ASSESSMENT RELATES TO OPTION 2 BEING IMPLEMENTED IN ISOLATION RELATIVE TO THE BASE CASE

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			**In scope of OITO?**	**Measure qualifies as**
Costs: N/A	**Benefits:** N/A	**Net:** N/A	N/A	N/A

Summary: Analysis & Evidence

Policy Option 3

Description: Raise the small claims limit to £5k (from £1k) for a) All PI claims, or b) RTA claims only, and align the Clams Portal with the SCT cost provisions

FULL ECONOMIC ASSESSMENT

Price Base Year 15/16	PV Base Year 16/17	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** £286m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	Not Quantified		£422m	**£3.5bn**

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

- There would be a cost to RTA claimants of £130m per annum as a result of having to pay their own legal fees, and for PSLA damages and special damages not pursued.
- Some claimants will have Before the Event (BTE) insurance to cover legal fees, BTE providers would have a cost of around £247m per annum for claimants' legal fees as they would no longer be able to recover from the at-fault insurer. These costs are estimated to be passed onto consumers.

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

- Similarly to RTA claims detailed above, it is likely that there would be a reduction in the number of Employer Liability/Public Liability (EL/PL) claims pursed, resulting in reduced overall PSLA damages and special damages for claimants. Claimants coulld also face higher BTE premiums when taking out their motor insurance.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate	Not Quantified		£456m	**£3.8bn**

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

- There would be a gross saving of £419m per annum for RTA defendant insurers, it is estimated that £356m would be passed on to consumers, leaving a net saving for insurers of £63m. Consumers would also have an additional benefit by £36m due to reduced IPT.

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

- EL/PL defendants would save as they would no longer have to pay out recoverable legal fees. We cannot assume savings would be passed on directly to consumers, but we would expect both local and national Government authorities to re-invest any savings in public services of benefit to consumers.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

- 85% of savings to defendant insurers are assumed to be passed onto consumers
- 100% of costs incurred by BTE insurers will be passed onto consumers
- Without reform, volume and value of RTA-related soft tissue claims will remain at around current levels
- Those providing services (lawyers, medical experts, Claims Management Companies) are assumed to find alternative economic activities

THIS ASSESSMENT RELATES TO OPTION 3 BEING IMPLEMENTED IN ISOLATION RELATIVE TO THE BASE CASE

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	**Benefits:** N/A	**Net:** N/A	N/A	N/A

Summary: Analysis & Evidence

Policy Option 4

Description: Require medical reports to be produced for every RTA soft tissue injury claim

FULL ECONOMIC ASSESSMENT

Price Base Year 15/16	PV Base Year 16/17	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** -£347m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	Not Quantified		£138m	**£1.1bn**

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

- Gross costs to defendant insurers would be £102m as a result of claimants now proceeding with a medical report, resulting in increased costs in: PSLA damages, special damages, medical report fees, legal fees and VAT. It is assumed these costs will be passed onto consumers. In addition consumers would incur increases in IPT of £10m.
- 7,000 claimants who are assumed to no longer pursue a claim as a result of a medical report being required or because the medical report does not support the claim are expected to no longer receive around £13m in compensation.

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

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate	Not Quantified		£96m	£800m

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

- Claimants who currently settle without medical reports (referred to as pre-medical claims) but seek one as a result of this optiion would receive an additional £51m in PSLA damages, and £14m in special damages
- £13m would be saved by defendant insurers for claims no longer pursued/not supported by evidence.

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

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

- 10% of RTA settled claims are currently assumed to be settled by insurers without a medical report (70,000). Without reform, volumes will remain at around current levels
- It is assumed that pre-medical claims currently receive less compensation than those with a medical report, and that defendant insurers will incur costs as a result of all claims proceeding with a medical report. It is assumed that 100% of the costs will be passed on to consumers
- The increase in revenue received by service providers such as medical experts would be be offset by increase in resource required.

THIS ASSESSMENT RELATES TO OPTION 4 BEING IMPLEMENTED IN ISOLATION RELATIVE TO THE BASE CASE

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	**Benefits:** N/A	**Net:** N/A	N/A	N/A

Summary: Analysis & Evidence

Policy Option 5.1

Description: Cumulative assessment of Options 1.1a, 2a, 3a and 4 (recommended options)

FULL ECONOMIC ASSESSMENT

Price Base Year 15/16	PV Base Year 16/17	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** £780m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	Not Quantified		£1.4 bn	**£11.7 bn**

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

- Claimants would incur £1 billion in costs resulting from (i) claims that no longer receive PSLA damages (ii) reduced PSLA damages (iii) special damages not claimed (iv) claims not pursued due to medical report being required/ not supported by the medical report (v) Having to pay their own legal fees,
- The gross costs to defendants are estimated to be £30m from the requirement for all claims to have a medical report. These costs are assumed to be passed onto consumers
- Consumers would incur £189m cost in increased BTE premiums

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

As in option 3: It is likely that there would be a reduction in the number Employer Liability/Public Liability (EL/PL) claims pursed, resulting in reduced overall PSLA damages and special damages for claimants

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate	Not Quantified		£1.5bn	**£12.5bn**

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

- Defendant insurers would save £1.3 bn (gross) mainly as a result of: (i) PSLA damages being removed and reduced, (ii) unclaimed special damages, (iii) a reduction in claims as a result of a medical report being required, (iiiv) savings in medical reports costs from a reduction in claims with medical reports, (v) legal costs not being recoverable. It is assumed £1.1bn of these savings will be passed onto consumers in the form of lower premiums, leaving a net benefit for insurers of £201m

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

- As in option 3: EL/PL defendants would save, as they will no longer have to pay out recoverable legal fees.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

- 85% of savings to defendant insurers will be passed onto consumers and 100% of any costs incurred.
- Without reform, volume and value of RTA-related soft tissue claims will remain at around current levels.
- Those providing services (lawyers, medical experts, Claims Management Companies) are assumed to find alternative activities of equal economic value.

BUSINESS ASSESSMENT (Option 5.1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £17.8m	**Benefits:** £1.2bn	**Net:** £1.2bn	Yes	QRP

Summary: Analysis & Evidence

Policy Option 5.2

Description: Cumulative assessment of Options 1.2a, 2a, 3a and 4 (recommended options)

FULL ECONOMIC ASSESSMENT

Price Base Year 15/16	**PV Base Year** 16/17	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low: Optional	**High:** Optional	**Best Estimate:** £780m

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	Not Quantified		£1.4 bn	**£11.5 bn**

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

- Claimants would incur £999m in costs resulting from (i) claims that no longer receive PSLA damages (ii) reduced PSLA damages (iii) special damages not claimed (iv) claims not pursued due to medical report being required/ not supported by the medical report (v) Having to pay their own legal fees,
- The gross costs to defendants are estimated to be £30m from the requirement for all claims to have a medical report. These costs are assumed to be passed onto consumers
- Consumers would incur £189m cost in increased BTE premiums

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

As in option 3: It is likely that there would be a reduction in the number Employer Liability/Public Liability (EL/PL) claims pursed, resulting in reduced overall PSLA damages and special damages for claimants

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	Not Quantified		£1.5bn	**£12.2bn**

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

- Defendant insurers would save £1.3 bn (gross) mainly as a result of: (i) PSLA damages being reduced, (ii) unclaimed special damages, (iii) a reduction in claims as a result of a medical report being required, (iiiv) savings in medical reports costs from a reduction in claims with medical reports, (v) legal costs not being recoverable. It is assumed £1.0bn of these savings will be passed onto consumers in the form of lower premiums, leaving a net benefit for insurers of £196m

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

- As in option 3: EL/PL defendants would save, as they will no longer have to pay out recoverable legal fees.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

- 85% of savings to defendant insurers will be passed onto consumers and 100% of any costs incurred.
- Without reform, volume and value of RTA-related soft tissue claims will remain at around current levels.
- Those providing services (lawyers, medical experts, Claims Management Companies) are assumed to find alternative activities of equal economic value.

BUSINESS ASSESSMENT (Option 5.2)

Direct impact on business (Equivalent Annual) £m:			**In scope of OITO?**	**Measure qualifies as**
Costs: £17.8m	**Benefits:** £1.2bn	**Net:** £1.2bn	Yes	QRP

Evidence Base (for summary sheets)

This IA has the following main sections:

2.252 Introduction
2.252 Costs and benefits
2.252 Enforcement and implementation
2.252 One In Three Out assessment.
2.252 Specific Impact Tests
2.252 Small and Micro Business Assessment
2.252 Annex A – Key data and assumptions
2.252 Annex B – Glossary of acronyms

1. Introduction

Problem under consideration

1.1 Since 2013, the Government has implemented a number of reforms to control the costs of civil and in particular personal injury (PI) litigation. The Jackson reforms, which were implemented through provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), introduced a raft of measures to streamline costs, ban the payment and receipt of referral fees and rebalance the system of 'no win no fee' conditional fee agreements (CFAs) used in PI cases. Those reforms were supported by further measures to reduce the fixed recoverable costs available to lawyers from £1,200 to £500 and to ban Claims Management Companies (CMCs) from offering financial and other inducements in return for claims.

1.2 Following these initial reforms the Government committed to take action to reduce the number and cost of soft tissue injury claims. The first phase of the Government's soft tissue reform programme was introduced in October 2014 through measures to

- reduce and fix the cost of initial soft tissue medical reports at £180;
- allow defendants to give their account to the expert;
- discourage insurers from making pre-medical offers to settle; and
- ban experts who write medical reports from also treating the claimant.

1.3 The second phase of this reform programme followed on 6 April 2015, with the introduction of the MedCo IT Portal for sourcing medical reports used in support of initial soft tissue claims, the aim being to improve the quality and independence of medical reporting. This meant that from 6 April 2015, solicitors wanting medical reports and the experts and medical reporting organisations providing them for soft tissue claims were required to be registered on and use the new MedCo IT Portal. The final phase of this programme was implemented on 1 June 2016 when an accreditation scheme for medical experts came into force. To support the MedCo reforms a definition was formulated - set out below - for inclusion in the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (RTA PAP). This definition enabled the appropriate tranche of claims to be identified for the purposes of MedCo and it has also been used to inform the analysis included in this impact assessment (IA). The definition of a 'soft tissue injury claim' as set out in the RTA PAP is:

'a claim brought by an occupant of a motor vehicle where the significant physical injury caused is a soft tissue injury and includes claims where there is a minor psychological injury secondary in significance to the physical injury'.

1.4 Whilst 'whiplash' is the most common form of soft tissue injury, the proposed reforms would also apply to the separate categories of neck and back soft tissue injuries. In this Impact Assessment the reforms are, from now on, described as applying to soft tissue injury claims.

1.5 Despite previous Government action, the volume of Road Traffic Accident (RTA) PI claims has remained static over the last three years and remains at a level 50% higher than 10 years ago. This increase has occurred despite a decrease in road traffic accidents reported to the police.

1.6 In addition, over this same period there have been significant advances in vehicle safety, with an increasing number of vehicles introduced which feature integrated seat and headrests specifically designed to minimise injuries from low speed road traffic accidents. Further advances in safety in the last few years include energy absorbing car design and the introduction of automatic collision detection systems which can take control of a vehicle's steering and braking systems to avoid low speed impacts.

1.7 Similar advances in vehicle safety have also been introduced in other jurisdictions where they have contributed to reductions in both accidents and injuries. For example in Finland, the number of injuries reported following RTAs peaked in 2008 when there were around 8,000 injuries. Since then, the figures have been steadily falling with around 6,800 reported injuries following RTAs in 2013, with increased vehicle safety design sited as a contributory factor in the reduced figures[1]. These advances in safety should therefore lead to lower soft tissue injury claims volumes overall in England and Wales, particularly as the number of cars on the road with these safety improvements increases.

1.8 In Italy there was a growing problem with low value soft tissue claims which, as in the England and Wales, were having a detrimental effect on the cost of motor insurance. Premiums in Italy increased by 18% between 2002 and 2009, against an average of 7% across the rest of Europe[2]. Since the introduction in 2012 of a new tariff based system of compensation, the number of claims in Italy has started to fall with a consequential fall in premiums between 2012 and 2013 of around 5%[3].

1.9 Research published by the Insurance Fraud Taskforce shows that, although there are on average 79% more cars per kilometre on our roads than in other EU countries, there are proportionately fewer fatal or serious accidents. This makes the UK one of the safest places to drive in Europe.

1.10 The number of soft tissue claims made in England and Wales is higher than in other jurisdictions. For example, as set out above, given recent improvements in vehicle safety claims volumes in Finland have been falling since 2008. In addition, the number of claims in Scotland is considerably lower than the volumes for England and Wales.

Rationale for Government Intervention

Policy rationale

1.11 The number of personal injury claims and, in particular, soft tissue injury claims, in England and Wales remains too high, despite earlier Government reforms. Therefore, Government action has to be taken to address this problem. A number of these claims are minor, exaggerated or fraudulent and have a cost to motorists through increased motor insurance premiums. The amount of compensation paid to claimants for soft tissue injury claims is out of proportion to the level of injury suffered. The removal of or the payment of a single reduced amount of compensation for PSLA for minor injuries, and the introduction of a fixed tariff of proportionate

[1] http://www.trafi.fi/filebank/a/1385544081/aacede60b181fe7444e0cd3d57ddfc51/13667-Trafi_Tieliikenteen_turvallisuuskatsaus_2013_eng.pdf

[2] http://www.economist.com/node/16542751

[3] http://www.insuranceeurope.eu/sites/default/files/attachments/European%20motor%20insurance%20markets.pdf

compensation payments for PSLA for all other soft tissue injury claims up to an injury duration of 24 months, will benefit all motorists.

1.12 The present round of reforms build on the previous reforms to address the ongoing issue of minor, exaggerated and fraudulent claims. In particular, they are targeted at soft tissue injury claims, where in some quarters it has become accepted practice for claims to be made for very low level injuries, often fraudulently. The level of compensation has a wider cost to motorists at large through increased motor insurance premiums. As motor insurance is compulsory, this has an impact on all drivers in England and Wales.

1.13 Therefore, Government intervention is necessary to ensure that where compensation is paid for PSLA following an RTA resulting in a soft tissue injury claim the amount paid is proportionate to the injury suffered.

1.14 There is too great a financial incentive to make claims, and the level of challenge by defendant insurers can often be too low. The Government's new reform package seeks to tackle the incentives on both sides in order to reduce the significant costs associated with PI claims, costs which are then passed back to the consumer. Raising the small claims limit for personal injury claims, alongside banning pre-medical offers, will disincentivise minor, exaggerated and fraudulent claims and therefore remove unnecessary costs from the process. These measures will also encourage greater challenge from defendants.

Economic rationale

1.15 The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more needy groups in society).

1.16 The proposals considered in this IA are primarily justified on efficiency and equity grounds. Under the current system there are three key market failures which interact with one another.

1.17 Asymmetric information: Soft tissue injuries are inherently difficult to identify and assess. This means that claimants will usually know more about whether there is an injury and how severe it is compared to defendants. This makes it difficult for insurers to assess whether individual claims have merit and provides an opportunity for claimants to falsify claims or exaggerate their severity. The availability of compensation provides incentives for claimants to exploit this information asymmetry. By removing or reducing the availability of compensation for PSLA, these incentives would be reduced.

1.18 Negative externality: Under the current arrangements, claimants do not bear the cost of bringing a successful claim which, instead, are paid by losing defendants. But, because it is very hard to disprove soft tissue claims (i. above) defendants who contest such claims are likely to simply increase their total costs without substantially increasing their chances of success. Hence, in such circumstances, and especially for lower value claims, it may be cheaper for defendants to accept liability without contesting the claim and to pass the costs involved to motor policy insurance holders, so creating a negative financial externality. Shifting cases to the Small Claims Track (SCT), where legal fees are not recoverable, would mean that claimants would bear more of the cost of bringing claims.

1.19 Positive externality: Currently claimants can receive compensation for soft tissue claims without presenting medical proof to the defendant. Inefficiencies and costs in the system can often incentivise defendants to settle without this information, with a settlement normally being a more

commercial viable option. This has led to a situation where medical reports are under consumed and as such there is information failure. It is believed this information failure can be addressed by mandating that there can be no settlement without the production of a medical report which would help deter future fraudulent claims, tackling the inefficiencies and increased costs these claims create.

1.20 The costs of the current system are met by insurers and ultimately borne by motor insurance policy holders. This provides further justification for the policy proposals on grounds of equity. The proposals would help prevent the costs of minor, exaggerated or fraudulent soft tissue claims from being borne by the broad mass of policy holders. For longer lasting injury duration, where the injury is likely to be more significant, we propose to introduce a fixed tariff system to reduce the PSLA awards, which should also reduce disputes over quantum, provide greater certainty of the value of a claim to claimants, therefore reducing the overall costs of a case.

1.21 The proposals considered in this IA should ensure that there are fewer minor claims, and that, where payable, the compensation paid would be more proportionate to the injury suffered.

1.22 It is unlikely that the market would be able to reduce the costs of claims and the number of unnecessary claims without government intervention. This is because the current costs and incentives, in part, are a function of current court procedures and framework for diagnosis.

Policy objectives

1.23 Based on the above economic rationale, the main policy objectives are:

- To create a more balanced, predictable and proportionate system for the payment of compensation for PSLA for soft tissue injury claims.
- To reduce the incentives to bring forward minor, exaggerated and fraudulent soft tissue injury claims and therefore reduce the overall cost to society through lower motor insurance premiums.

Description of options considered (including do nothing):

1.24 Consideration has been given to whether the same objectives could be achieved through non-regulatory means. Such an approach could include working with claimant and defendant representative groups to discourage minor, exaggerated or fraudulent claims through, for example, wider communications campaigns. However, such an approach would not meet the policy objectives as well as either Option 5.1 or 5.2, which are designed to amend the current regulatory regime to achieve the required policy objectives. This is because it has become culturally acceptable in some quarters to make minor, exaggerated or fraudulent soft tissue injury claims and a substantial industry has developed to encourage such claims. In the Government's view it is therefore very unlikely that voluntary initiatives through a non-regulatory approach would have any discernible impact on reducing incentives and costs in the market. Such an approach is unlikely to meet the Government's objectives to reduce the wider costs of soft tissue injury claims for motorists through reduced motor insurance premiums.

1.25 The policy options under consideration are:

- **Option 0:** Base case (do nothing)
- **Option 1.1:** Removal of PSLA compensation for all minor RTA related soft tissue injury claims with a duration of a) 6 months or less, or b) 9 months or less.
- **Option 1.2**: Introduction of a fixed sum of compensation for minor RTA related soft tissue injury claims where the injury duration is a) 6 months or less, or b) 9 months or less

- **Option 2**: Introduction of a fixed tariff system for PSLA compensation amounts for where the injury duration is a) greater than 6 months, or b) greater than 9 months.
- **Option 3:** Raise the small claims limit to £5k (from £1k) for a) All PI claims, or b) RTA claims only and align the Clams Portal with the SCT cost provisions.
- **Option 4:** Require medical reports to be produced for every claim for soft tissue injury claims.
- **Option 5.1:** This option would comprise of Options 1.1a, 2a, 3a and 4
- **Option 5.2:** This option would comprise of Options 1.2a, 2a, 3a, and 4

The Government's preferred option is either Option 5.1 or Option 5.2 as this best meets the policy objectives.

Affected stakeholder groups, organisations and sectors

1.26 The following groups are expected to be most affected by all or some of the above options. In the costs and benefits assessment for each option if a particular group is considered to be unaffected they have not been included. A brief description is included below outlining the role of each group in this area:

- **Defendants (mainly insurance companies):** In RTA claims this will mainly be insurers, although a number of Employer Liability/Public Liability/Clinical Negligence defendants will not have private insurance and will pay any damages themselves. The proposed changes would affect defendants as they currently pay PSLA damage awards and the claimant's legal costs in cases where they admit liability and for those claims that they lose in court.

- **Before The Event (BTE) insurers:** BTE insurance is typically purchased as part of an add-on to a motor insurance policy, and provides the policy holder with an indemnity against any legal costs incurred in pursuing a claim for damages.

- **Claimants**: For the majority of the options these are individuals who are seeking to make a claim for damages due to a RTA-related soft tissue injury. For option 3a, this also includes individuals who suffer an accident/injury in the workplace or a public place, and those with injuries resulting from medical negligence.

- **Claimant lawyers:** These are lawyers who are instructed by claimants to assist them with pursuing a claim. If the defendant admits liability, or if the claim reaches court and their client wins, claimant lawyers can recover the legal fees from the defendant. If their client loses, the claimant lawyer tends to absorb the cost as part of the CFA[4]. In some cases claimants enter in damages-based agreements (DBA) whereby legal fees are paid out of any damages received.

- **BTE lawyers**: Panel law firms are a subset of claimant lawyers who represent claimants under BTE policies. Panel law firms are those that are favoured by defendants (insurers), as those who will not try and unduly inflate claims. They also provide a claims screening service for insurers.

- **Medical Reporting Organisations/Medical experts (MROs/MEs):** MROs/MEs provide medical reports for claimants to assess whether an injury has been sustained and, if so, its severity, prognosis and whether other treatments, such as physiotherapy, are required. Claimants and defendant use these reports to agree an appropriate level of compensation for any injury suffered. Claims which are settled without such reports are referred to as 'pre-medical offers'.

- **MedCo**: MedCo is an industry owned 'not for profit' company which oversees the accreditation of medical experts and operates an IT Portal which is used to independently source the initial medical reports used in support of soft tissue injury claims.

[4] These are the funding agreements that are commonly used in personal injury claims where the clamant only pays for the solicitor's work if they win the case. Under the current system if a clamant has a CFA, if they win the case they can recover the legal fees from the defendant, and if they lose they do not have to pay legal fees as part of the agreement.

- **Rehabilitation providers:** Rehabilitation in PI cases can include physical treatments, such as physiotherapy, or psychological treatments to address anxiety following an RTA. Rehabilitation is an accepted treatment for neck/back pain and a claimant can often receive and have to pay for such treatment before the claim has progressed to a settlement. This is a form of special damages – these relate to actual expenses accrued by the claimant. Although claimants would still be able to receive special damages under all of these proposals, there may be behavioural impacts such as a change in take-up with are covered in the relevant options.

- **Claims Management Companies (CMCs):** CMCs offer services to claimants in respect of their claims. They advertise for business and often work with claimant lawyers.

- **National Health Service (NHS):** The NHS can recover the cost from the at-fault insurer where an individual with a settled soft tissue injury claim required an ambulance called out, or hospital treatment for both in-patients and out-patients.

  It has been assumed that claim recoveries for soft tissue injuries requiring an ambulance or being admitted to hospital as an in-patient will not be affected by this proposal, because these injuries are likely to be on the more severe scale and so claims for these injuries will continue. Therefore the impact on out-patients only is considered, this has been agreed with Department of Health (DH).

- **Department for Work and Pensions (DWP**): DWP can recover benefits a claimant receives, relating to their accident, from the at fault insurer.

- **Third sector advice providers**: The third sector can be a source of information and advice for claimants, particularly those who do not have legal representation.

  Similarly 'McKenzie friends'[5] (who can be paid) are sometimes used by unrepresented litigants requiring help and advice in the small claims track.

- **Claims Portal Limited (CPL)**: The CPL is an industry owned 'not for profit' company which oversees the operation of an electronic portal for processing low value PI claims in line with the RTA PAP. Most of these claim types must begin on this online portal.

- **HM Courts and Tribunals Service (HMCTS**): A minority of PI cases proceed to court, for example, if liability is not admitted and the defendant chooses to contest the claim.

- **HM Revenue and Customs**: HMRC receives revenue from VAT from legal service providers and from the Insurance Premium Tax (IPT) which, from October 2016, will be set at 10 per cent of a premium's value.

- **Wider social and economic benefits:** The costs and benefits are split by;

  (i) Motor Insurance Policy Holders: Compensation that insurers pay out to claimants in PSLA awards and legal costs are ultimately paid by motor insurance policy holders so raising their premiums. The proposed reforms would reduce these costs for consumers

  (ii) Wider society: The proposed reforms would also tackle the wider compensation culture which has grown up surrounding RTA-related soft tissue injuries, thus benefiting wider society.

[5] A McKenzie friend assists a litigant in person in a court of law in England and Wales. They don't need to be legally qualified and tend to be lay advisors who provide moral support for litigants, take notes, help with case papers and give advice on the conduct of a case. McKenzie friends cannot conduct litigation, address the court or sign court documents, their services are usually free, but paid McKenzie Friends are becoming more common.

2. Costs and benefits

2.1 This IA 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. IAs 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 and proportionately 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.

Assumptions: All Options

2.2 Baseline volumes. The number of settled RTA-related PI claims in 2014/15 was 702,000[6] Of which:

- 545,000 received a financial settlement[7].
- 523,000 related to soft tissue injury RTA accidents that received a financial settlement[8]

2.3 This IA assumes that there would be a steady baseline volume of around 615,000 RTA PI claims per annum in the future, if the Options in the IA were not taken forward. These baseline claims include the 545,000 cases that received a financial settlement in 2014/15 (and are assumed to be supported by a medical report), and 70,000 RTA cases that currently do not have medical reports[9]. Depending on the option being considered, there are respective impacts that are assumed to change this volume, described in each option. Sensitivity analysis considers the impact of an increase and decrease in the baseline volumes.

2.4 It has been assumed that the majority (85%) of savings will be passed onto consumers. There are 3 reasons for this:

(i) The motor insurance industry is competitive on price[10] and we believe insurers will have no choice but to pass on the savings, or risk being priced out of the market.

(ii) A group of leading insurers have all committed to passing on these savings, with two insurers making a public commitment to pass on 100% of the savings.[11]

(iii) This assumption is in line with a report published by the Competition and Markets Authority (CMA), where they applied an assumption of 80-90% pass through of revenue from insurers to lower premiums. Upon publication this assumption was not contentious (other assumptions did receive considerable feedback) which suggests this is a reasonable assumption to make.

2.5 We welcome views on this assumption.

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[6] Based on data we received DWP's Compensation Recovery Unit (CRU)

[7] Based on DWP compensation recovery data (CRU). By financial settlement, we mean any claims that result in compensation being paid out, either where claims/damages are settled (i.e. by agreement, where liability is admitted/damages agreed) or won (i.e. where liability/damages are denied/disputed).

[8] Based on combining CRU data above and the COA and CSC databases used by insurers, see annex A for more information on these databases

[9] Please see the Key Volumes section for further details – It is assumed 10% of claims are currently settled without a medical report. Applying this 10% to the 702,000 settled RTA claims in 2014/15 suggests that around 70,000 claims are currently settled without a medical report.

[10] The Office of Fair Trading launched a calls for evidence in the Private Motor Insurance market in 2011. Page 15: "There has been a reasonable degree of consensus amongst respondents in our call for evidence that the private motor insurance market is strongly competitive https://assets.digital.cabinet-office.gov.uk/media/532ad723e5274a226b00030b/Motor_Insurance__1_.pdf

[11] AVIVA Nov 2016: "*Aviva will pass on 100% of the savings from this Government initiative to our customers". http://www.aviva.co.uk/media-centre/story/17556/aviva-welcomes-uk-government-action-to-cut-motor-p/*
LV= Jan 2016: "LV= has already confirmed it would pass on all savings from the Autumn Statement whiplash crackdown to consumers " http://www.lv.com/about-us/press/article/uk-named-world-capital-for-whiplash

2.6 There are some groups (lawyers, medical experts, CMCs) who will likely experience changes in demand as a result of the proposed reforms. Throughout this IA their estimated loss or gain in revenue is included in the costs and benefits sections for each option, but is not included in the NPV calculations (this methodology is in line with standard practice for calculating the effects of changing demand on suppliers). We will demonstrate clearly, both in words and in terms showing consistency of the NPV and EANDCB figures that this treatment has been applied to both the NPV and the EANDCB, and will set out the rationale for it at post consultation stage in the final IA.

2.7 The loss of tax revenue mentioned in the costs and benefits sections is for steady-state purposes, to estimate the impact once each reform proposal has had time to bed in. This estimate does not take account of any behavioural changes in insurance purchasing; it assumes that premiums decrease in direct proportion to the estimated savings made by insurers that are passed on to premium holders, and that these savings have had time to reach steady state. Calculations of Exchequer impacts are based on a detailed assessment of the five year accounting period for Public Finances, and they take account of behavioural impacts, therefore the figures presented in these sections make use of different data sources and methodology, resulting in different figures.

2.8 Tables outlining the key volumes and assumptions relevant to the costs and benefit assessment of a particular option are included in the relevant section of the IA. Annex A provides full information on the data sources, and the figures and assumptions used in the analysis.

2.9 Throughout this IA, the following rounding conventions have been adopted when presenting data and the estimates of any monetary costs and benefits (any remaining discrepancies are due to rounding):

- Case volumes are rounded to the nearest 1,000.
- Costs and benefits over £1 million are rounded to the nearest £1 million and those below £1 million have been rounded to the nearest £0.1 million.
- Figure greater than £500 have been rounded to the nearest £50 and figures below £500 have been rounded to the nearest £10.
- Percentages quoted are rounded to the nearest 1%.

2.10 In the following analysis Options 1, 2, 3 ,4 and 5 are first assessed in isolation against the base case, and are then assessed cumulatively as a package against the base case. Because the Government only intends to implement the entire package, a One In Three Out assessment has been produced only in relation to the entire package.

Option 0: Base case (do nothing)

2.11 Under the “do nothing” base case, the current system would continue to apply e.g. PSLA compensation awards would remain unchanged for soft tissue injuries resulting from an RTA, the SCT limit would remain at £1,000 for PI claims and offers without medical offers would still be made. Because this ‘do nothing’ option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV)[12]. All other options are measured relative to the base case.

Option 1.1: Removal of PLSA compensation for all minor RTA related soft tissue injury claims with a duration of a) 6 months or less b) 9 months or less

Description

[12] The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future. Similarly, people prefer to pay costs later rather than in the present.

2.12 Option 1.1 would involve the removal of PSLA compensation from minor RTA related low value soft tissue injury claims. Two different durations of injury are being considered, the first covers a period of up to and including 6 months, whilst the second covers an injury duration of up to and including 9 months. Compensation for PSLA is determined on a range of factors including the seriousness of any injury suffered and the length of the injury. In addition, if there are multiple injuries the compensation reflects the most serious injury suffered, often with additional smaller payments for less serious injuries. Therefore, this option would not impact on claimants with more serious injuries than low level RTA related soft tissue injuries alone.

2.13 All the costs and benefits outlined below have been estimated based on the injury prognosis method as the current system is based on this approach and hence reflects the data that is available. Under the prognosis approach claimants would continue to be required to seek a medical report to support claims through the MedCo IT Portal which will include the prognosis period for the claimant's injuries. In contrast a diagnosis approach would require claimants to wait for six or nine months (depending on which definition of minor is agreed) before seeking a medical report. Claimants would then have to demonstrate that the injury is still ongoing and they are therefore entitled to compensation for damages for PSLA. The claimant would be able to seek a medical report earlier but the cost would not be recoverable. It is not possible to determine what difference a diagnosis approach would make to injury durations, but it is not thought to have a substantial impact.

2.14 This option would apply to claims with a medical report and those without (referred to as pre-medical offers). Option 4 which relates to the requirement of all claims having a medical report before an offer is made explains pre-medical offers in more detail. As this section of the IA assesses Option 1.1 in isolation, pre-medical offers are still feasible under this option.

Key assumptions

2.15 The key assumptions are set out in the table below. While we would welcome views and further evidence on all of the assumptions, we have highlighted assumptions in particular that we would appreciate more detailed data or feedback on.

2.16 The numbers in the table below do not always sum to the totals due to rounding.

No.	Main figures and assumptions	Source	Would particularly welcome feedback on this assumption * = Yes	Included in sensitivity * = Yes
1	Option 1.1 a) would affect around 221,000 RTA claims (around 195,000 claims with medical reports and 26,000 claims without medical reports)	Combining DWP Compensation Recovery data (CRU) with databases used by insurers (COA and CSC). Anecdotal evidence provided by the Association of Medical Reporting Organisation (AMRO) that 10% of claims are currently assumed to be settled without a medical report.		Sensitivity analysis is carried out on overall volumes of RTA claims, which considers a 10% increase and decrease from baseline volumes, which impact this assumption
2	Option 1.1 b) would affect around 360,000 RTA claims (around 317,000 claims with medical reports and 43,000 claims without medical reports)	Combining CRU data, with COA and CSC datasets used by insurers. Anecdotal evidence provided by the Association of Medical Reporting Organisation (AMRO) that 10% of claims are currently assumed to be settled without a medical report.		Sensitivity analysis is carried out on overall volumes of RTA claims, which considers a 10% increase and decrease from baseline volumes, which impact this assumption
3	The median gross PSLA damages awarded for soft tissue injuries of 6 months is around £1,850	COA and CSC databases used by insurers		
4	The median gross PSLA damages awarded for soft tissue injuries of 9 months is around £2,100	COA and CSC databases used by insurers		

5	£1,800 is the average (mean) PSLA compensation received for soft tissue claims without a medical offer	Evidence submitted by the insurer AXA to the Transport Select Committee in 2013[13] suggests the PSLA amounts are between £1,600-£2,000.		
6	The weighted median value of special damages for soft tissue claims is £100 for injury duration of <= 6 months, and £250 for 9 months <=injury duration < 6 months	COA and CSC databases used by insurers		
7	70% of RTA claims have special damages	COA database used by insurers		
8	It has been assumed that 50% of low value RTA claims that have special damages would continue as a claim.	Illustrative example to give an idea of potential changes	*	Sensitivity analysis conducted on 0% and 100%
9	It has been assumed 1% of RTA claimants currently represent themselves in court, referred to as Litigants in Person (LiPs).	Data from Caseman (the County Court case management system) shows 96% of PI claims in the SCT have legal representation. Around 10% of RTA claims go to the SCT. The rest go through the Claims Portal where legal representation is required. Overall this suggests 99% of RTA claims have legal representation and 1% are LiP.		
10	Average legal fees of £550 for RTA claims	Data from a leading panel law firm combined with the fixed recoverable costs set out in Pre-Action Protocol for low value PI claims in RTA		
11	£180 is the average medical report cost per claim	Fixed fee as set out in the Pre Action Protocol for low value PI claims in RTA		
12	80% of pre-medical claims currently have no legal representation. It has been assumed this will remain constant, as a result of this proposal.	Illustrative assumption, based on anecdotal evidence which suggests the majority of pre-medical offers are made early by insurers before solicitors are instructed.	*	

[13] Evidence submitted to the TSC in 2013 quote:
'One such example is so called "pre-medical" offers where an insurer will make an offer, following submission of a claim for "whiplash", without medical evidence. Typically, such offers range from £1,600–£2,000.'
http://www.publications.parliament.uk/pa/cm201314/cmselect/cmtran/117/117.pdf

13	All pre-medical claims with legal fees have a non-minor injury duration	Illustrative assumption that follows from the above, given that lawyers are expected to be involved in claims with longer injury durations.	*	
14	14% of pre-medical claims currently have BTE insurance and 6% have legal representation (non BTE). It has been assumed this will remain constant, as a result of this proposal.	Anecdotal evidence from insurers and a leading panel law firm suggests 70% of RTA claimants have BTE insurance. This has been applied to the 20% of pre-medical claims which have legal representation.	*	

2.17 As the methodology is the same for Options 1.1 a) and 1.1 b), the section below details how the costs and benefits were derived for Option 1.1a) only. However the costs and benefits for both 1.1a and 1.1b are included in the NPV table at the end of the discussion of Option 1.1.

2.18 The total costs and benefits discussed below may not match exactly due to rounding.

Costs

Claimants

2.19 The primary costs of this option would be to claimants, who would no longer be able to receive PSLA damages for low value RTA-related soft tissue claims.

2.20 It is estimated that around 36% of the 545,000 RTA claims with medical reports and a financial settlement[14] are soft tissue and have an injury duration of 6 months or less (195,000 claims). 37%[15] of the 70,000 pre-medical claims are estimated to be soft tissue and have an injury duration of 6 months or less. Applying the median gross[16] PSLA damages currently awarded for these cases, it is estimated that Option 1.1 a) would involve a **loss to claimants of £406m per annum**.

2.21 In addition to the reduction in PSLA damages, claimants can receive special damages which are awarded in various areas to pay for actual expenses accrued by the claimant, such as cost of medical treatment. It has been assumed that some claimants would no longer proceed with their claims for special damages as these are relatively low (mean award for those with an injury duration of <=6 months is £100). Data from COA suggests around 70% of minor soft tissue claims include a claim for special damages, it has been assumed that 50% of claims currently would no longer proceed just for their special damage claims.

2.22 For Option 1.1 a) for those with medical reports, this equates to around 136,000 claims with special damages (around: 36%*70%*545,000). Assuming 50% decide to no longer proceed, 68,000 claimants would no longer receive their special damages. This would give a **loss to claimants of around £7m per annum in special damages.**

2.23 Data is not available on the special damages currently awarded for pre-medical offers. It is assumed that no more than 5% of pre-medical claims currently claim for special damages so the loss to these cases is expected to be minimal.

Claimant lawyers

[14] By financial settlement, we mean any claims that result in compensation being paid out, either where claims/damages are settled (i.e. by agreement, where liability is admitted/damages agreed) or won (i.e. where liability/damages are denied/disputed).

[15] This differs to the 36% given above for RTA claims with medical reports, because all pre medical claims are assumed to be soft tissue, whereas 96% of claims with medical reports are assumed to be soft tissue.

[16] Available data only contains gross PSLA damages awarded. The net amount will be slightly lower to reflect any deductions for contributory negligence (such as an RTA claimant failing to wear a seat belt). This means the figures used in the analysis may be overstated slightly.

2.24 Claimant lawyers **could incur a loss of revenue of £20m**[17] per annum for the 127,000[18] claims with medical reports that would no longer proceed. As described in section 2.6, this is cost neutral in the NPV calculation.

2.25 It is assumed that the minority of pre-medical claims with legal representation are those with non-minor soft tissue injuries and therefore legal costs under this option would be unaffected.

BTE Providers

2.26 BTE providers could experience a **loss in revenue of £49m** from the 127,000 claims that would no longer proceed[19]. As with other service providers, this has been assumed to be cost neutral in the NPV.

Medical experts/MROs

2.27 MROs and MEs could experience a **reduction in revenue of around £23m per annum** for the 127,000 claims that no longer proceed. This has also been assumed to be cost neutral in the NPV.

Rehabilitation providers

2.28 If fewer special damage claims are made, there could be a decrease in revenue for rehabilitation providers, but this has been assumed to be cost neutral as above. It has not be possible to quantify the impact because the data does not separate out special damages paid for rehabilitation.

CMCs

2.29 This proposal could affect CMCs, as there would be a fall in the number of potential cases eligible for their services. This is also assumed to be cost neutral in the NPV.

HMCTS

2.30 If there are fewer soft tissue claims, there could be a reduction in the number of contested claims which would result in reduced court fee income. However this would be accompanied by a reduction in court resources required, and as court fees have been set on a cost recovery basis for claims under £10,000, it is assumed that the financial impact on HMCTS would be neutral.

NHS

2.31 For individuals who would no longer be able to claim for PSLA damages, the NHS would not be able to recover the costs of any treatment supplied from the at-fault insurer.

2.32 Data from the Department of Health (DH) shows that in 2014/15, 20% of settled claims for soft tissue, neck or back injuries were treated as an outpatient in hospital and required the NHS to recover money from insurance companies, this amounted to £67m. DH or DWP (who administer this scheme for DH) do not hold information on the individuals requiring treatment such as details of their treatment or injury length. Information is being sought on this as part of the consultation.

2.33 For Option 1.1 a) it has been assumed that 20% of these outpatient cases have an injury duration of 6 months or less. This assumption is illustrative and has been agreed with DH colleagues. Using the same assumptions as set out in the claimants costs section, where 30% of PSLA claims have no accompanying special damages and therefore would no longer be claims, and that half of the claims with special damages no longer proceed, the NHS would no longer be able to recover costs from the at-fault insurer for 13% of these outpatient cases (20%*(30%+35[20]%)). This amounts to a cost to the NHS of around **£9m a year.**

[17] It is estimated that 29% of legal fees are currently funded by non-BTE law firms.

[18] The 30% of claims with no special damages and the 50% of those with special damages who do not proceed

[19] It is estimated that 70% of legal fees are currently funded by BTE

[20] 70% with special damages * 50% drop out gives 35%

2.34 This cost may be mitigated if many claimants currently only attend A&E for the purposes of subsequently making a claim and not because they have any significant injury. Removing the incentives to make minor claims may therefore reduce the number of people attending hospital.

DWP

2.35 For individuals who no longer claim PSLA damages, DWP would no longer be able to recover benefits a claimant receives relating to their accident from the at-fault insurer.

2.36 The vast majority of individuals who claim for PSLA damages for soft tissue motor accidents do not claim DWP benefits which are recoverable under the Social Security (Recovery of Benefits) Act 1997[21]. For those cases in 2014/15 where DWP benefits were recovered, the majority were Disability Living Allowance and Employment and Support Allowance. It has therefore been assumed these are the more severe soft tissue injury cases which would not be affected by this option. The effects on DWP are therefore assumed to be minimal. These assumptions have been agreed with DWP.

HMRC

2.37 If insurance premiums were to decrease, HMRC would lose revenue from IPT. There would also be a loss to HMRC through reduced VAT payments from legal costs and for medical report costs for the claims that drop out. However, tax is counted as a transfer of resources in this IA, as the tax reduction is a cost to HMRC but a benefit to consumers. In addition consumers are likely to use the tax savings for other forms for economic activity which will generate revenue for the government. The amount of the transfer is as follows.

2.38 The cost of a medical report is £180 plus 20% VAT meaning that HMRC receive £36[22] per medical report in VAT. For Option 1.1)a), around 127,000 claims are assumed to drop out, which means HMRC would have a cost of around £5m per annum in lost VAT income from medical reports.

2.39 The average amount paid in legal fees per claim is around £550[23] plus 20% VAT meaning that HMRC would lose around £110 for each claim that drops out. This results in an additional cost of lost VAT income of around £14m[24] per annum.

2.40 There would also be a net cost to HMRC in reduced IPT income. For Option 1.1 a) there are net benefits of £452m passed onto consumers (discussed below). As HMRC recover 10% of this in IPT it has been assumed they will have a cost of around £45m per annum.

Claims Portal Ltd

2.41 A reduction in claims volumes would mean the Claims Portal would have less claims to process. However, the effect is expected to be cost neutral as Claims Portal is an automated service.

Medco

2.42 A reduction in the volume of claims could lead to a decrease in searches undertaken on Medco by solicitors seeking medical reports. This could cause some MROs to amalgamate while other MROs may decide not to register in the future, if they do not think there will be enough work for them. This would cause a reduction in Medco fees. However, Medco is a not for profit organisation, so any reduction in fees would be accompanied by a reduced workload and is assumed to be cost neutral.

Benefits

Defendants (mainly insurers)

[21] Analysis of DWP Compensation Recovery claims data for 2014/15 indicates that only around 1% of Whiplash, Neck and Back claims had a recoverable benefit

[22] These figures have not been rounded as they are known quantities and not calculated from the data.

[23] These figures have been rounded to the nearest £10 as the mean amount paid in legal fees has been calculated from the data.

[24] For the 99% of claims with medical reports assumed to currently have legal fees. It has been assumed all the pre medical claims which drop out do not currently have legal fees.

2.43 For Option 1.1 a) defendant insurers would experience a **gross saving of around £532m per annum.** This saving to defendants would be as a result of the combined effects of the:

- £406m per annum in PSLA damages no longer payable to claimants;
- £23m per annum in medical reports;
- £69m per annum in legal fees[25];
- £7m per annum in special damages for the claims that no longer proceed;
- In addition, they would save £5m per annum and £14m per annum for VAT no longer owed to HMRC for medical reports and legal fees respectively and;
- £9m per annum from not paying out costs to DH.

2.44 It has been assumed that defendant insurers would pass on 85% of these savings to consumers, meaning insurers would have a **net benefit of around £80m per annum**.

MEs/MROs

2.45 If there is a decrease in the number of medical reports that are required, MEs/MROs would have more time to do other medical work.

Rehabilitation providers

2.46 If there is a decrease in low value/less serious rehabilitation claims, rehabilitation providers would have more capacity to treat more serious cases.

HMCTS

2.47 As explained in the costs section, it is estimated that the impact on HMCTS would be cost neutral, due to the relationship between HMCTS costs and court fees.

NHS

2.48 Removing the incentives to make minor claims could lead to a drop in the number of people attending hospital as outpatients, so freeing up doctors time to spend on other medical concerns.

Third sector advice providers

2.49 Third sector advice providers could experience a small reduction in the number of claimants seeking external advice, freeing up resources to spend on advice for other individuals.

Wider social and economic benefits

2.50 Motor insurance policy holders:

2.51 Assuming 85% of defendant insurers' savings are passed onto consumers in the form of lower motor insurance premiums, this would equates to a **benefit** for consumers **of £452m** per annum.

2.52 There is the additional benefit for motor premium holders, due to the £45m reduction in IPT. This raises the **total benefit to consumers to around £497m**.

Wider Society:

2.53 This proposal could help to discourage minor, exaggerated and fraudulent claims, which would free up resources for more productive economic activity.

[25] It has been assumed all the pre medical claims which drop out do not currently have legal fees, but 99% of claims with medical reports currently have legal fees.

Option 1.1 Summary

The monetised costs and benefits of Option 1.1A and 1.1B are summarised in the table below.

The cost and benefits may not match the net exactly due to rounding

	Costs (6 months)	Benefits (6 months)	Net (6 months)	Costs (9 months)	Benefits (9 months)	Net (9 months)
Defendants		£61m saved in removed PSLA damages (both with meds and pre-meds)	£80m net benefit		£111m saved in removed PSLA damages (both with meds and pre-meds)	£143m net benefit
		£14m saved in medical reports & legal fees for 127,000 claims that drop out			£22m saved in medical reports & legal fees for 207,000 claims that drop out	
		£3m in legal fee and medical report VAT no longer owed to HMRC for 127,000 drop out.			£4m in legal fee and medical report VAT no longer owed to HMRC for 207,000 drop out.	
		£1m in special damages no longer paid out in the claims that drop out			£3m in special damages no longer paid out in the claims that drop out	
		£1m saved by not paying out to NHS			£2m saved by not paying out to NHS	
Claimants	£406m cost in removed Soft tissue PSLA damages		£413m net cost	£743m cost in removed Soft tissue PSLA damages		£760m net cost

	£7m in special damages for the claims that no longer proceed			£18m in special damages for the claims that no longer proceed		
NHS	£9m cost from no longer being able to recover outpatient costs		£9m net cost	£13m cost from no longer being able to recover outpatient costs		£13m net cost
HMRC	£18m in legal fee and medical report VAT income no longer received £45m in reduced IPT income		£64m net cost	£30m in legal fee and medical report VAT income no longer received £81m in reduced IPT income		£64m net cost
Wider Social Benefits		£345m passed on from removed soft tissue PSLA damages (pre-meds and with meds) £78m passed on from Insurer's medical report and legal fees savings due to claims no longer proceeding £6m in special damages benefits passed on from insurers £8m passed on from NHS	£497m net benefit		£631m passed on from removed soft tissue PSLA damages (pre-meds and with meds) £127m passed on from Insurer's medical report and legal fees savings due to claims no longer proceeding £15m in special damages benefits passed on from insurers	£891m net benefit

		savings £16m for legal fee and medical report VAT benefits passed on from insurers £45m in insurance premium tax reductions.			£11m passed on from NHS savings £25m for legal fee and medical report VAT benefits passed on from insurers £81m in insurance premium tax reductions.	
Total costs and benefits	£486m total cost	£577m total benefit	£91m net benefit	£884m total cost	£1.0bn[1] total benefit	£149m net benefit[2]

[1] £1.034bn

[2] This benefit comes from the medical report and legal fee costs which defendant insurers would no longer pay for claims that no longer proceed. It is £1m less than the difference between the total costs and total benefits due to rounding.

Option 1.2 Introduction of a fixed sum of compensation for minor RTA related soft tissue injury claims where the injury duration is a) 6 months or less, or b) 9 months or less

Description

2.54 Option 1.2 would involve the introduction of a fixed sum of compensation for PSLA for minor RTA related soft tissue injury claims. As with Option 1.1, two different durations of injury are being considered for the definition of minor claims. The first covers a period of up to and including 6 months, whilst the second covers an injury duration of up to and including 9 months. Compensation for PSLA is determined on a range of factors including the seriousness of any injury suffered and the length of the injury. In addition, if there are multiple injuries the compensation reflects the most serious injury suffered, often with additional smaller payments for less serious injuries. Therefore, this option would also not impact on claimants with more serious injuries than minor RTA related soft tissue injuries alone.

2.55 This option differs from Option 1.1 in that it would introduce a set sum of compensation payment for these claims, with the aim of reducing the overall PSLA compensation payments of these claims. It is proposed that a payment of £400 would be made for these minor claims with a further £25 added if the claim has a psychological element.

2.56 All the costs and benefits outlined below have been estimated based on the injury prognosis method as the current system is based on this approach and hence reflects the data that is available. Indeed, for this option, this is the only approach that would be workable in practice. Under the prognosis approach claimants would continue to be required to seek a medical report to support claims through the MedCo IT Portal which will include the prognosis period for the claimant's injuries.

2.57 This option would apply to claims with a medical report and those without (referred to as pre-medical offers). Option 4 which relates to the requirement of all claims having a medical report before an offer is made explains pre-medical offers in more detail. As this section of the IA assesses Option 1.2 in isolation, pre-medical offers are still feasible under this option.

2.58 This option is very similar to Option 1.1. To avoid repetition, only the affected parties that would have an impact that differs from the impact considered in Option 1.1 are given below. There are no additional affected parties that were not considered in Option 1.1. At the end of this section, all affected parties that belong in the NPV summary are included in the Option 1.2. Summary table, so that a complete picture of Option 1.2 is in one place.

2.59 Similarly, all of the assumptions considered in Option 1.1 are applied to Option 1.2. This includes the assumption regarding the volume of low value claims that would proceed (35%) - However, in the sensitivity analysis the impacts on Option 5.2 of 70% and 0% of low value claims proceeding has been considered - As mentioned previously, this is an illustrative assumption and we welcome views on it as part of the consultation.

2.60 To avoid repetition, only any new assumptions are described below.

Key assumptions

No.	Main figures and assumptions	Source	**Would particularly welcome feedback on this assumption * = Yes**	**Included in sensitivity * = Yes**

1	The weighted average PSLA award to a soft tissue injury claimant with injury duration of <= 6 months would be around £411 if Option 1.2.a) was implemented	Taking a weighted average of the proportion of claimants in COA and CSC data that either have or do not have psychological injuries included in the claim (and have injury duration of <=6 months) & the available awards considered for such claimants in the tariff.		
2	The weighted average PSLA award to a soft tissue injury claimant with injury duration of <=9 months would be around £412 if Option 1.2.b) was implemented	Taking a weighted average of the proportion of claimants in COA and CSC data that either have or do not have psychological injuries included in the claim (and have injury duration of <=9 months) & the available awards considered for such claimants in the tariff.		
3	It is assumed the average amount awarded for low value pre-medical claims would be £260 if Option 1.2.a) was implemented	Comparing COA and CSC data on PSLA damages awarded to claims with medical reports, with the assumed average PSLA damages for pre-medical offers, suggests claims without a medical report get around 37% less. Applying this to the weighted average amount awarded in the proposed tariff for claims with injury duration of <= 6 months (£411) gives £260.		
4	It is assumed the average amount awarded for low value pre-medical claims would be £260 if Option 1.2.b) was implemented	Comparing COA and CSC data on PSLA damages awarded to claims with medical reports, with the assumed average PSLA damages for pre-medical offers, suggests claims without a medical report get around 37% less. Applying this to the weighted average amount awarded in the proposed tariff for claims with injury duration of <= 9 months (£412) gives £260.		

2.61 As in Option 1.1, the methodology is the same for Option 1.2.a) and 1.1.b). The section below details how the costs and benefits were derived for Option 1.2.a) only. However the costs and benefits for both 1.1.a) and 1.1.b) are included in the NPV table at the end of the discussion of Option 1.2.

Costs

Claimants

2.62 For the reasons as described in the policy description, claimants would receive less PSLA damages. As it is assumed that 35% of the 195,000 low value claims currently with medical reports proceed[1] (68,000) and receive a weighted average of £411 per claim, then the total PSLA cost to claimants in Option 1.1 of £406m per annum would be reduced by £28m to £378m per annum.

[1] Total low value claims = 36% * 545,000 = 195,000

2.63 Similarly, for the low value claimants currently without medical reports, as it is assumed that 2.5%[2] of the low value claimants would still proceed (700) and receive PSLA damages of around £260 per claim, the total PSLA cost to claimants in Option 1.1 would be reduced by a further £0.2m per annum.

2.64 The overall PSLA cost to claimants would therefore be £378m per annum.

			Weighted soft tissue PSLA cost to claimants[3] per claim	
PSLA Awarded for Prognosis	Fixed tariff without psychological injuries	Fixed tariff with psychological injuries	Without Psychological injuries	With Psychological injuries
Injury duration <= 6 months	£400	£425	£1,367	£1,523

HMRC

2.65 There would also be a net cost to HMRC in reduced IPT income. For Option 1.2.a) there are net benefits of £428m passed onto consumers (discussed below). As HMRC recover 10% of this in IPT it has been assumed they will have a cost of around £43m per annum.

Benefits

Defendants (mainly insurers)

2.66 For Option 1.1 a) defendant insurers would experience a gross saving of around £532m per annum. For Option 1.2.a), this saving is reduced by £28m due to the additional PSLA costs owed to claimants, described above, **giving a gross saving of £504m per annum and a net saving of 76m per annum.**

Wider social and economic benefits

Motor insurance policy holders:

2.67 Assuming 85% of defendant insurers' savings are passed onto consumers in the form of lower motor insurance premiums, this would equates to a **benefit** for consumers **of £428m** per annum.

2.68 There is the additional benefit for motor premium holders, due to the £43m reduction in IPT. This raises the **total benefit to consumers to around £471m**.

[2] As mentioned in Option 1, data is not available on the special damages currently awarded for pre-medical offers. It is assumed that no more than 5% of pre-medical claims currently claim for special damages, so it has been assumed that only half of these low value claims would proceed (2.5%).

[3] The difference between the weighted average amount claimants with injury duration of <= 6 months are currently awarded & what they would be awarded under the proposed fixed tariff.

1.1 Summary

The monetised costs and benefits of Option 1.2.a) and 1.1.b) are summarised in the table below.

The cost and benefits may not match the net exactly due to rounding

	Costs (6 months)	Benefits (6 months)	Net (6 months)	Costs (9 months)	Benefits (9 months)	Net (9 months)
Defendants		£57m saved in reduced PSLA damages (both with meds and pre-meds) £14m saved in medical reports & legal fees for 127,000 claims that drop out £3m in legal fee and medical report VAT no longer owed to HMRC for 127,000 drop out. £1m in special damages no longer paid out in the claims that drop out £1m saved by not paying out to NHS	£76m net benefit		£105m saved in reduced PSLA damages (both with meds and pre-meds) £22m saved in medical reports & legal fees for 207,000 claims that drop out £4m in legal fee and medical report VAT no longer owed to HMRC for 207,000 drop out. £3m in special damages no longer paid out in the claims that drop out £2m saved by not paying out to NHS	£136m net benefit
Claimants	£378m cost in reduced soft tissue PSLA damages £7m in special damages for the claims that no		£385m net cost	£697m cost in reduced soft tissue PSLA damages £18m in special		£714m net cost

	longer proceed			damages for the claims that no longer proceed		
NHS	£9m cost from no longer being able to recover outpatient costs		£9m net cost	£13m cost from no longer being able to recover outpatient costs		£13m net cost
HMRC	£18m in legal fee and medical report VAT income no longer received £43m in reduced IPT income		£61m net cost	£30m in legal fee and medical report VAT income no longer received £77m in reduced IPT income		£107m net cost
Wider Social Benefits		£322m passed on from reduced soft tissue PSLA damages (pre-meds and with meds) £78m passed on from Insurer's medical report and legal fees savings due to claims no longer proceeding £6m in special damages benefits passed on from insurers £8m passed on from NHS savings	£471m net benefit		£592m passed on from reduced soft tissue PSLA damages (pre-meds and with meds) £127m passed on from Insurer's medical report and legal fees savings due to claims no longer proceeding £15m in special damages benefits passed on from insurers £11m passed on from NHS savings	£848m net benefit

		£16m for legal fee and medical report VAT benefits passed on from insurers £43m in insurance premium tax reductions.			£25m for legal fee and medical report VAT benefits passed on from insurers £77m in insurance premium tax reductions.	
Total costs and benefits	£455m total cost	£547m total benefit	£91m net benefit	£834m total cost	£984m total benefit	£149m net benefit[1]

[1] This benefit comes from the medical report and legal fee costs which defendant insurers would no longer pay for claims that no longer proceed. It is £1m less than the difference between the total costs and total benefits due to rounding.

Option 2 Introduction of a fixed tariff system for PSLA compensation amounts for where the injury duration is a) greater than 6 months, or b) greater than 9 months.

Description

2.69 This option would supplement Option 1.1 by rationalising the amount of compensation payable for PSLA claimants suffering injuries with a duration of up to two years. Payments would be fixed using a tariff system which would better relate the level of damages paid to the amount of pain and suffering incurred and provide certainty to both claimants and defendants as to the value of a claim. Such a tariff would also protect the claimant from under-settlement, reduce the time needed to settle the claim and therefore reduce the overall costs of dealing with the claim. This proposal applies to RTA soft tissue injury claims.

2.70 As this option is being looked at in isolation in this part of the impact assessment, **the costs and benefits given in this section are the additional costs and benefits on top of those in Option 1.1 or Option 1.2.**

2.71 All the costs and benefits outlined below have been estimated based on the injury prognosis approach. It is not possible to determine what difference a diagnosis approach would make to injury durations, but it is not thought to make a substantial difference. The figures proposed below for the tariff would be subject to periodic review by Government.

2.72 This option would apply to claims with a medical report and to pre-medical offers. Option 4 covers pre-medical offers in more detail. As option 2 is assessed in isolation, pre-medical offers are still feasible under this option.

2.73 As the methodology is the same for option 2a and 2b, the section below details how the costs and benefits were derived for option 2a only, however both 2a and 2b are included in the NPV table at the end of the discussion of Option 2.

Key assumptions

2.74 The key assumptions are set out in the table below. While we would welcome views and further evidence on all of the assumptions, we have highlighted assumptions in particular that we would appreciate more detailed data on or feedback on.

2.75 The numbers in the table below do not always sum to the totals due to rounding

No.	Main figures and assumptions	Source	Would particularly welcome feedback on this assumption * = Yes	Included in sensitivity * = Yes
1	Option 2 a) would affect around 369,000 RTA claims (around 326,000 claims with medical reports and 43,000 claims without medical reports)	COA and CSC datasets used by insurers.		Sensitivity analysis is carried out on overall volumes of RTA claims, which considers a 10% increase and decrease from baseline volumes, which impact this assumption
2	Option 2 b) would affect around 253,000 RTA claims (around 227,000 claims with medical reports and 26,000 claims without medical reports)	COA and CSC datasets used by insurers.		Sensitivity analysis is carried out on overall volumes of RTA claims, which considers a 10% increase and decrease from baseline volumes, which impact this assumption
3	£2,500 is the median PSLA compensation received for soft tissue claims that have medical reports	COA and CSC databases used by insurers		
4	70,000 claims currently settled without a medical report, all of which are soft tissue	Anecdotal evidence provided by the Association of Medical Reporting Organisation (AMRO) that 10% of claims are currently assumed to be settled without a medical report.	*	

5	£1,800 is the average (mean) PSLA compensation currently received for soft tissue claims without a medical report	Evidence submitted by the insurer AXA to the Transport Select Committee in 2013[1] suggest the PSLA amounts are between £1,600 to £2,000.	*	
6	It is assumed the average amount awarded for pre-medical claims would be £845 if option 2 is implemented	Comparing COA and CSC data on PSLA damages awarded to claims with medical reports, with the assumed average PSLA damages for pre-medical offers, suggests claims without a medical report get around 37% less. Applying this to the average amount of PSLA damages to be awarded in the proposed tariff system (around £1,340) gives £845		

2.76 The total costs and benefits discussed below may not match exactly due to rounding.

Costs

Claimants

2.77 It has been assumed all claims with a medical report that qualify for PSLA damages would continue, but would receive revised PSLA damages in line with the proposed tariff system shown in the table below (see Annex A for more information). Based on the difference between the amounts currently paid in PSLA damages and the proposed tariff amounts, option 2 a) would incur a loss for claimants with medical reports of **£539m per annum**

			Weighted soft tissue PSLA Saving per claim	
PSLA Awarded for Prognosis	Fixed tariff without psychological injuries	Fixed tariff with psychological injuries	Without Psychological injuries	With Psychological injuries
Injury duration <= 6 months (Option 1.1)	£0	£0	£1,767	£1,948
Injury duration <= 6 months (Option 1.2)	£400	£425	£1,367	£1,523
6 Months < Injury duration <= 9 Months	£700	£740	£1,740	£1,788
9 Months < Injury duration < =12 Months	£1,100	£1,150	£1,856	£1,891
2 Months < Injury duration <= 15 Months	£1,700	£1,760	£1,602	£1,664
15 Months < Injury duration < =18 Months	£2,500	£2,575	£1,272	£1,258

[1] Evidence submitted to the TSC in 2013 quote:
'One such example is so called "pre-medical" offers where an insurer will make an offer, following submission of a claim for "whiplash", without medical evidence. Typically, such offers range from £1,600–£2,000.'
http://www.publications.parliament.uk/pa/cm201314/cmselect/cmtran/117/117.pdf

18 Months < Injury duration < =24 Months	£3,500	£3,600	£837	£798
Injury duration > 24 Months	No revision	No revision	£0	£0

2.78 Currently pre-medical claimants receive less in PSLA damages that claims with medical reports. In line with this, it is assumed insurers would reduce the amount currently offered, so that it would be less than what they would receive under the tariff system. Assuming pre-medical claims would now receive £845 on average in PSLA damages, compared to the £1,800 currently awarded, this would result in a **loss to claimants of £42m per annum**.

2.79 The overall loss to claimants of option 2 a) would therefore be **£581m per annum in reduced PSLA** damages.

HMRC

2.80 There would be a cost to HMRC due to the further reduction in IPT income from the expected fall in motor premium prices. As explained in Option 1.1, this is treated as a transfer.

2.81 For option 2 a) the total benefit that would be passed onto consumers (discussed below) is estimated to be £494m. This would represent a cost to HMRC of around £49m per annum.

Benefits

Defendants (mainly insurers)

2.82 For option 2 a) the gross savings to insurers would be £581m per annum from paying out reduced PSLA damages in line with the reduced tariff structure. It is assumed that insurers would pass on around 85% of these savings to consumers, giving a **net benefit to insurers of £87m.**

Claimants

2.83 There are no expected financial benefits for claimants. However, claimants would gain certainty as to the exact value of the PSLA compensation they would receive and therefore be protected against the under-settlement of claims. They could also benefit from a speedier resolution of their claim due to the lack of negotiations over quantum.

Claimant lawyers

2.84 The fixed tariff system may minimise any disputes about quantum and reduce negotiation times for claimant lawyers due to damage awards being set at fixed levels.

HMCTS

2.85 The fixed tariff system may minimise any disputes about quantum and reduce the burden these cases place on HMCTS. As set out in Option 1.1, due to the relationship between HMCTS costs and court fees, any change is expected to be cost neutral.

Wider social and economic benefits

2.86 Motor insurance policy holders:

2.87 For option 2 a) 85% of the gross savings to insurance companies are assumed to be passed on, leaving to a benefit to consumers from reduced PSLA damages **of £494m per annum**

2.88 Consumers would also benefit from the £49m of additional IPT no longer received by HMRC.

2.89 Wider Society:

2.90 This proposal would benefit society by creating a more balanced, predictable and proportionate system for the payment of compensation for PSLA for soft tissue injury claims.

Option 2 Summary of the monetised costs and benefits of Option 2 a) and b) are summarised in the table below. The costs and benefits given in this table are the additional costs and benefits on top of those in Option 1.1.

The cost and benefits may not match the net exactly due to rounding

	Costs(6 months)	Benefits(6 months)	Net (6 months)	Costs(9 months)	Benefits(9 months)	Net(9 months)
Defendants		**£87m** in revised soft tissue PSLA damages	**£87m net benefit**		**£52m** in revised Soft tissue PSLA damages	**£52m net benefit**
Claimants	**£581m** cost for the revised PSLA damages		**£581m net cost**	**£347m** cost for the revised PSLA damages		**£347m net cost**
HMRC	£49m cost in reduced insurance premium tax revenue		**£49m net cost**	£30m cost in reduced insurance premium tax revenue		**£30m net cost**
Wider social and economic benefits		**£494m** benefit for revised PSLA damages, passed on by insurers £49m benefit due to reduced insurance premium tax revenue owed to HMRC	**£543m net benefit**		**£295m** benefit for revised PSLA damages, passed on by insurers £30m benefit due to reduced insurance premium tax revenue owed to HMRC	**£325m net benefit**
Total costs and benefits	**£630m total cost**	**£630m total benefit**	**£0m net**	**£377m net cost**	**£377m net benefit**	

Option 3: Raise the small claims PSLA limit to £5k (from £1k), with the total settlement remaining at £10k, for a) all personal injury claims and b) all RTA claims

Description

2.91 Under Option 3, the Small Claims Track (SCT) PSLA limit would be increased from £1,000 to £5,000 for relevant PI cases. It is expected that the majority of claims would continue to proceed on the Claims Portal with the change being that this would be aligned with the SCT cost provisions (as opposed to currently where fast track cost provisions apply). Contested PI claims under this limit would proceed as small claims rather than through the fast track.

2.92 The current SCT limit for PI claims of £1,000 has remained unchanged for 25 years, whilst the small claims limit for most other types of claim has increased to £10,000. Low value soft tissue injuries are straightforward in nature, liability is admitted in the vast majority of cases and more time is spent arguing quantum. Therefore such claims are suitable for the SCT.

2.93 The impact of this option is largely driven by the rules around the recoverability of costs in the SCT which differ greatly from those in the fast track. In the fast track the successful party is generally able to recover their costs, including the cost of legal representation, from the unsuccessful party. In the SCT the costs that can be recovered from the other side are strictly limited. The proposal therefore results in claimants being responsible for their own legal costs of making a claim[1] which would reduce the costs for defendant insurers.

2.94 The increase in the SCT limit may be applied to all PI cases or for all RTA PI cases. In addition to RTA, PI claims include Employer Liability (EL), Public Liability (PL) and Clinical negligence (CN).

2.95 CN claims have not been analysed in the costs and benefits below due to data constraints. However, the overall impact is not expected to be significant as CN claims only make up around 2% of PI claims. In addition, it is unlikely that these reforms would apply to many CN cases, as the value of these are often much higher than RTA, EL, or PL, and are often more complex, and so many would likely continue to qualify for fast track cost provisions. Data received from the NHS Litigation Authority shows that in 2014 less than 60% of CN claims would qualify for the SCT after the proposed increase in the PSLA limit[2].

Key assumptions

2.96 The key assumptions are set out in the table below. While we would welcome views and further evidence on all of the assumptions, we have highlighted assumptions in particular that we would appreciate more detailed data on or feedback on.

2.97 The numbers in the table below do not always sum to the totals due to rounding.

[1] The legal costs that claimants would bear depends on the arrangements they are able to make with legal service providers and whether they have taken out BTE insurance which would provide cover for any legal costs incurred

[2] In 2014, around 60% of CN claims had a total settlement of less than £10,000. It is a subset of these claims which will have PSLA damages of under £5,000 and could qualify for the SCT cost provisions.

No.	Main figures and assumptions	Source	Would particularly welcome feedback on this assumption * = Yes	Included in sensitivity * = Yes
1	The SCT limit rise applies to 96% of RTA claims (525,000 claims) plus pre-medical cases (70,000)[3]	Combining CRU data, which shows 545,000 personal injury motor accidents received a financial settlement in 2014/15, with COA and CSC datasets used by insurers. Anecdotal evidence provided by the Association of Medical Reporting Organisation (AMRO) that 10% of claims are currently assumed to be settled without a medical report.		Sensitivity analysis is carried out on overall volumes of RTA claims, which considers a 10% increase and decrease from baseline volumes, and on the proportion of low value claims that proceed as claims, which impacts this assumption
2	The SCT limit rise applies to 87% of EL claims (46,000 claims)	Combining CRU data, which shows 53,000 EL claims with a financial settlement in 2014/15, with COA and CSC datasets used by insurers.		
3	The SCT limit rise applies to 85% of PL claims (42,000 claims)	Combining CRU data, which shows 42,000 PL claims with a financial settlement in 2014/15, with COA and CSC datasets used by insurers.		
4	70% of RTA claimants currently have BTE insurance	Anecdotal evidence from insurers and a leading panel law firm	*	
5	1% of RTA claimants are currently litigants in person and 29% currently have legal representation (non BTE).	Data from Caseman (the County Court case management system) shows 96% of PI claims in the SCT have legal representation. Around 10% of RTA claims go to the SCT. The rest go through the Claims Portal where legal representation is required. Overall this suggests 99% of RTA claims have legal representation and 1%		

[3] It has been assumed all pre-medical cases are within the proposed SCT limit

		are LiP.		
6	BTE insurance take up for RTA claims will remain at 70% post reforms.	Future take up is uncertain; on the one hand, demand may go up because claimants will have to pay the legal fees for any claims they make, but on the other hand premiums could go up (to cover the increased costs to BTE insurers) which may make demand go down. It is therefore reasonable to assume take up will remain the same.	*	
7	A reduction in RTA claim volumes of 6% as a result of this proposal (of claims currently with medical reports)	This is an illustrative assumption, but is in line with the reduction seen in money claims (around 20%) when enhanced fees were introduced. Applied to the 30% of claims without BTE, this gives a 6% drop in claims.	*	
8	An increase in LiPs from 1% to 5% for RTA claims, as a result of this proposal.	This is an illustrative assumption, but is in line with the increase in the proportion of LiP (around 40%) when legal aid was removed from private law family cases[4].	*	
9	A decrease in the proportion of RTA claims with legal representation (non BTE) from 29% to 19%, as a result of this proposal	Combining the assumptions above regarding BTE, LiPs and the drop in claims, leaves 19% of claims choosing to pay for legal representation		
10	80% of pre-medical claims currently have no legal representation. It has been assumed this will remain constant as a result of this proposal.	Illustrative assumption, based on anecdotal evidence which suggests the majority of pre-medical offers are made early by insurers before solicitors are instructed.	*	
11	14% of pre-medical claims currently have BTE insurance and 6% have legal representation (non BTE). It has been assumed this will remain constant as a result of this proposal.	Anecdotal evidence from insurers and a leading panel law firm suggests 70% of RTA claimants have BTE insurance. This has been applied to the 20% of pre-medical claims which have legal representation.	*	
12	The RTA claims which no longer proceed, would be	COA and CSC databases used by insurers		

[4] It has been assumed the increase in LiP for RTA claims will be higher than the increase in private law family cases, for the following reasons: (i) the Claims Portal will be amended to allow LiP (ii) in family cases individuals might be more inclined to pay for legal representation due to the personal nature of these cases, (iii) in private law family cases, not all individuals were eligible for legal aid, whereas in soft tissue all successful claims can currently recover legal costs, and (iv) in private law family cases it was already fairly common to be a LiP

	for low level soft tissue injuries, where the median gross PSLA damages currently awarded is £1,850			
13	The RTA claims which no longer proceed, would be for low level soft tissue injuries, where the weighted median special damages currently awarded is £100	COA and CSC databases used by insurers		
14	All of the claims currently without medical reports would qualify for SCT provisions	Illustrative assumption: 98% of soft tissue claims qualify for SCT rules, therefore it seems reasonable to assume that those without medical reports would all qualify		
15	Average legal fees of £550 for RTA claims	Data from a leading panel law firm combined with the fixed recoverable costs set out in pre-action protocol		
16	Average legal fees of £950 for EL/PL claims	Data from a leading panel law firm combined with the fixed recoverable costs set out in pre-action protocol		
17	£180 is the average medical report cost per claim	Fixed fee as set out in the pre Action Protocol for low value PI claims in RTA		

2.98 The total costs and benefits discussed below may not match exactly due to rounding.

Costs

Claimants

2.99 *RTA Claimants*: It has been assumed that the SCT limit rise would apply to the 525,000 RTA claims with medical reports plus the 70,000 pre-medical claims.

2.100 It has been assumed there would be a 6% reduction in the volume of RTA claims with medical reports as a result of this proposal i.e. a reduction of 31,000 claims. This would result in a loss to claimants of around **£61m per annum**. This is made up of a loss of £58m in PSLA damages and a loss of £3m in special damages.

2.101 Due to limited data on pre-medical offers, it has been assumed the volume of those without medical reports would stay the same.

2.102 It is likely that there would be a reduction in the volume of low level EL/PL claims as a result of this proposal. However, it has not been possible to estimate the impact of this, because the proportion of claimants who currently have legal representation is unknown, and we do not have reliable data on the PSLA compensation or special damages for low level EL/PL claims.

2.103 As claimants would no longer be able to recover legal fees in successful cases, the legal costs that claimants would bear would depend on the arrangements they are able to make with legal service providers, or whether they have taken out BTE insurance or, alternatively, if they decide to pursue a claim as a litigant in person (LiP). For those with medical reports, assumptions have been made on how legal representation might change which are detailed below. It has not been possible to get data on the pre-medical claims, it has therefore been assumed there will be no change.

2.104 It has been assumed that the take-up of BTE insurance for RTA claims would remain constant. As a result of changes to legal costs recoverability, claimants would likely face higher BTE premiums (as explained below under 'BTE insurers') when taking out their motor insurance.

2.105 For those without BTE insurance, claimants may decide to pay for legal representation out of their damages[5]. Overall it has been assumed there would be a decrease in the proportion of RTA claims with legal representation (non-BTE) from 29% to 19%. For claimants that decide to pay for legal representation out of their damages, there would be a **total cost of £68m**. This includes cost of £55m per annum in legal fees, and a cost of £11m in legal fee VAT for those currently with medical reports, and a cost of £2m and £0.5m for those currently without medical reports[6].

2.106 It has been assumed there would be an increase in the number of RTA claimants with medical reports who proceed as a Litigant in Person (LiP) who would have to spend time familiarising themselves with the claims process.

2.107 As insurers would no longer be liable to pay for the legal fees if the claimant wins they might be incentivised to contest more claims. This could potentially lead to a reduction in settled claims or lower settlement for claimants; however these are likely to be unmeritorious claims.

2.108 *EL/PL Claimants*: There is likely to be a reduction in the volume of low level EL/PL claims as a result of this proposal. However, it has not been possible to quantify the impact of this because we do not know the proportion of claimants which currently have legal representation, and we do not have reliable data on the PSLA damages or special damages for low level EL/PL claims.

Medical experts/MROs

2.109 If there is a reduction in the number of RTA claims, there may be a decrease in the number of medical reports that are required. MEs/MROs could have a **cost of £6m** in revenue for the 31,000 claims that do not proceed. As with other service providers, this has been assumed to be cost neutral in the NPV.

Rehabilitation providers

2.110 There may be a decrease in rehabilitation services required as a result of the reduction in RTA claims. However as with MROs/MEs, this impact has been assumed to be cost neutral in the NPV.

Claimant lawyers

2.111 As a result of this proposal, it has been assumed claimants would be more likely to bring claims as a LiP and that some claimants may be deterred from making a claim altogether. This is likely to reduce demand for claimant lawyers. Claimant lawyers could experience a total **loss in legal fee income of £29m**, from the 31,000 claims that currently have non-BTE legal representation that drop out, and the 21,000 claims that currently have non-BTE legal representation that become LiPs. As with other service providers, this has been assumed to be cost neutral in the NPV.

BTE insurers

2.112 In RTA claims where the claimant's legal fees are funded by BTE insurance but recovered from the at-fault insurer, these fees would instead have to be paid by the BTE provider so there would be an extra cost to BTE providers for successful claimants[7].

2.113 It is assumed that 70% of RTA claimants with medical reports and 14% of pre-medical claimants have BTE insurance. BTE providers would have **costs of around £206m per annum in legal fees** and **£41m per annum for the VAT** on these legal fees for the claims which proceed with BTE

[5] For these cases, it is assumed that claimants would no longer enter 'no win no fee' conditional fee agreements (CFAs) because the legal costs payable if successful would no longer be recoverable from defendants. Instead, it could cause an increase in other types of 'no win no fee' agreement, such as Damages Based Agreements (DBA), where clients pay a proportion of their damages to lawyers to pay for legal representation.

[6] Total of 497,000 claims currently medical reports that proceed, qualify for SCT provisions, and currently have legal fees that insurers could save upon, and all of the14,000 claims for those in the without medical report group that have legal fees; all of which are assumed to qualify for SCT provisions.

[7] ABI believe that BTE insurance would apply to all claims that are currently in the fast track if Option 3 is enacted, providing claimants with legal representation under their BTE policy.

cover. It has been assumed they would pass these costs onto consumers in the form of higher BTE insurance premiums, but this impact should be considered secondary.

2.114 There is a risk that it could become uneconomic for insurers to offer a BTE policy. However, this is thought to be unlikely as insurers have indicated that the BTE market should be able to adapt.

HMCTS

2.115 Insurers might be likely to defend more cases if they would no longer have to pay claimant's legal costs if they lose[8]. Also, if there was an increase in LiPs, it could take longer for claims to be settled in court. Alternatively, claimants may be encouraged to settle through the claims portal to avoid the higher legal costs in the SCT. All of these impacts, would have cost implications in terms of court resources and operating costs. However, as HMCTS operates on a cost recovery basis for PI claims less than £10,000, any increase in workload would be offset by an increase in court fee income.

NHS

2.116 If there is a reduction in the number of RTA claims, the NHS would no longer be able to recover the costs of any treatment supplied from the at fault insurer. Data from the Department of Health (DH) shows that in 2014/15, the NHS recovered £67m from insurance companies for outpatient care. Assuming 31,000 low value soft tissue RTA claims would no longer proceed, then 16% of total low value RTA claims no longer proceed[9], and given 20% of NHS outpatient care claims are assumed to be low value and soft tissue, then the NHS would no longer be able to recover costs from the at fault insurer for 16% of their low value soft tissue cases. **This amounts to a cost to the NHS of around £2m[10] a year**.

2.117 This loss may be mitigated if many claimants currently only attend A&E for the purposes of making a claim, and not because they have any significant injury. It has been assumed that the RTA claims which no longer proceed, will be for low level soft tissue injuries. A drop in the number of these type of claims may lead to a drop off in the number of people attending hospital

DWP

2.118 If there is a reduction in the number of RTA claims, DWP would no longer be able to recover any benefits these claimants may have received from the at-fault insurer which relate to their accident. However, this impact is expected to be minimal because it has been assumed that the claims which no longer proceed will be for minor low level soft tissue injuries for which claimants will not claim DWP benefits which are recoverable.

HMRC

2.119 As explained in Option 1.1 tax is counted as a transfer of resources and will therefore cancel out in the NPV calculation.

2.120 If there is a reduction in claims and an increase in LiPs, there would be a revenue loss to HMRC through reduced VAT payments from legal costs and medical reports. For RTA claims, HMRC would **experience a loss in VAT income of £7m per annum**. This is made up of a loss of £5m for 31,000 claims which no longer proceed, and £2m for the additional claimants that proceed as LiPs.

2.121 If motor insurance premiums were to go down then HMRC would lose revenue from IPT, this costs is **estimated to be around £36m.** This is derived from the £357m net benefit passed onto consumers in the form of lower motor premiums (which is discussed below).

2.122 For EL/PL claims, it has not been possible to estimate the impact to HMRC because the proportion of claimants currently with legal representation is unknown. There would be a cost to HMRC for a loss in IPT revenue for EL/PL claims, where the defendant has private insurance, because the proportion of claims this applies to is unknown, the cost has not been quantified.

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[8] This should be considered alongside Qualified One- Way Cost Shifting, which was introduced as part of the LASPO reforms. Defendants that successfully challenge claims cannot recover their costs from the other side, so their expected costs of settling a claim pre-court would likely need to exceed their expected cost of challenging a claim.

[9] 31,000/195,000

[10] 20%*67m*16%

Third sector advice providers

2.123 If as a result of the SCT changes, there were a reduction in the number of claimants with legal representation, this could lead to an increase in demand for advice from third sector providers.

Claims Portal Limited

2.124 There could be administrative costs for Claims Portal if it is to be aligned with the SCT cost provisions.

Medco

2.125 The MedCo IT portal user interface is a web based system which would need to be amended to allow LIPs to become users of MedCo in order to obtain a medical report. There could be a small administrative cost to MedCo to make this amendment,

Wider social and economic costs

2.126 Motor Insurance Policy Holders:

2.127 As explained above, BTE providers would have costs of around £247m per annum in legal fees and VAT for the claims which proceed. It has been assumed they would pass these costs onto consumers in the form of higher BTE insurance premiums.

Benefits

Defendants

2.128 *RTA Defendants*: Defendant insurers would save £274m per annum in RTA legal fees that would no longer be recoverable and £55m per annum in VAT on legal fees. This is for claims which proceed and currently have legal representation i.e. 20% of pre-medical and 93% of other RTA claims which qualify for SCT provisions.

2.129 In addition, as detailed above, RTA defendant insurers would save £89m in PSLA damages, special damages, legal fees, medical report fees and VAT for the claims which no longer proceed, and £2m in costs no longer owed to NHS.

2.130 This amounts to gross savings for RTA defendant insurers of around £420m per annum. Assuming 85% of these savings are passed on to consumers, this corresponds to a **benefit for insurers of around £63m per annum** from all RTA claims.

2.131 *EL/PL Defendants*: As detailed in Annex A, it has not been possible to get the detailed information needed to accurately estimate the savings to EL/PL defendants. We have requested information as part of the consultation and, if possible, will update the analysis at the final stage IA.

2.132 EL defendants would be expected to save a maximum of around £45m per annum in fixed recoverable legal fees and VAT, for the 46,000 EL claims qualifying for SCT provisions[11]. PL defendants would be expected to save a maximum of around £41m per annum in fixed recoverable legal fees and VAT for the 42,000 PL claims qualifying for SCT provisions[12].

2.133 There are likely to be additional savings for EL and PL defendants in PSLA damages, special damages and medical reports for claims which no longer proceed, but it has not been possible to quantify these savings.

2.134 There could be a reduction in EL and PL insurance premiums, which would result in a reduction in IPT for defendants with private insurance. However, it is unknown what proportion of EL/PL defendants with private insurance (against those that defend themselves and pay for claims out of their profits or budgets), so this cannot be quantified.

[11] This is a maximum saving because we do not know the proportion that currently have legal representation

[12] This is a maximum saving because we do not know the proportion that currently have legal representation

CMCs

2.135 There may be the potential for a rise in CMCs seeking to enter the market to support LIPs.

BTE insurers

2.136 In the SCT, most legal costs are not recoverable from defendants. This may result in an increased incentive for individual's to take out BTE insurance, resulting in increased income for BTE insurance providers.

HMCTS

2.137 As explained in the costs section above, insurers might defend more cases in court as they would no longer have to pay the claimant legal costs if they lose[13]. Also, if there is an increase in LiPs, it could take longer for claims to be settled in court. Both of these impacts would have cost implications in terms of court resources and operating costs. However, because HMCTS operates on a cost recovery basis for PI claims less than £10,000, any increase in workload would be offset by an increase in court fee income.

Third sector advice providers

2.138 There is the potential for a rise in the number of 'McKenzie Friends' (who can be paid) offering to represent LIPs. Whilst many of these are former lawyers with reasonable legal knowledge others are not and this sector is currently unregulated.

Wider social and economic benefits

2.139 Motor insurance policy holders:

2.140 Motor premium holders would benefit from **savings passed on by defendant insurers of around £357m per annum** due to the legal fees and VAT which defendant insurers would no longer responsible for in claims that proceed, and PSLA compensation, special damages, medical reports, legal fees, and associated VAT for claims which no longer proceed (85% of their gross savings). This would result in an additional benefit of around £36m per annum in lowered IPT revenue. This gives a total saving of around £392m passed onto consumers in the form of lower premiums.

2.141 These benefits need to be considered alongside the expected rise in BTE premium prices. Assuming BTE providers would pass on their increased costs of around £247m per annum (explained in the costs section above) onto consumers, this will result in higher BTE insurance premiums of around £9 per annum.

2.142 It has not been possible to quantify savings to EL/PL defendants that would be passed onto consumers, however it expected that both local and national Government authorities would re-invest any savings in public services of benefit to consumers. Questions on this have been included in the consultation and if possible we will update the analysis in the final IA.

2.143 Wider Society:

2.144 The option would tackle the costs of litigation for low value personal injury claims and have a wider social benefit of reducing the compensation culture.

[13] This should be considered alongside Qualified One- Way Cost Shifting, which was introduced as part of the LASPO reforms. Defendants that successfully challenge claims cannot recover their costs from the other side, so their expected costs of settling a claim pre-court would likely need to exceed their expected cost of challenging a claim.

Option 3 Summary

Option 3A: Raise the small claims PSLA limit to at least £5k (from £1k), with the total settlement remaining at £10k, for all PI claims.

The monetised costs and benefits of Option 3A are summarised in the table below. The costs and benefits for EL/PL claims have been excluded from the table because we do not know the proportion of claimants which currently have legal representation. Without this information, it is not possible to assign the costs/benefits to the appropriate parties.

The cost and benefits may not match the net exactly due to rounding

Costs	Benefits	Net cost
RTA Defendants (insurers)	£13m in removed PSLA damages, special damages, legal fees, medical reports & VAT for claims that drop out	£63m net benefit
	£0.6m in VAT payments for RTA legal fees and medical report fees for claims that drop out	
	£41m in RTA legal fees which insurers are no longer responsible for in claims which continue	
	£8m in VAT payments for RTA legal fees which insurers are no longer responsible for in claims which continue	
	£0.3m saving from no longer having to pay NHS costs	

Claimants	£61m loss in PSLA damages and special damages for RTA claims which drop out £68m cost in legal fees for RTA claims which choose to pay for legal representation		£130m net cost
NHS	£2m cost from no longer being able to recover outpatient costs		£2m net cost
HMRC	£5m loss in medical report and legal fee VAT for 31,000 claims that drop out £2m cost for legal fee VAT no longer required for the additional LiPs created by the reform £36m in IPT income cost for RTA claims		£42m net cost
Wider social & economic costs & benefits to consumers	£206m passed on by BTE providers for legal fees in RTA claims which continue £41m passed on by BTE providers for VAT on legal fees in RTA claims which continue	£72m in removed PSLA damages, special damages, legal fees, medical reports & VAT for claims that drop out £4m in VAT payments for RTA legal fees and medical report fees for claims that drop out £233m in RTA legal fees which insurers are no longer	£146m net benefit

		responsible for in claims which continue £47m in VAT payments for RTA legal fees which insurers are no longer responsible for in claims which continue £2m saving from no longer having to recover NHS costs £36m in lowered insurance premium tax for RTA claims	
Total costs and benefits	£422m cost	£456m benefit	£34m net benefit

Option 3B: Raise the small claims PSLA limit to at least £5k (from £1k), with the total settlement remaining at £10k, for RTA claims.

As EL/PL costs and benefits have been excluded from the summary table above, the costs and benefits for this option are the same as those outlined for option 3A.

Option 4: Require medical reports to be produced for every claim

Description

2.145 Under Option 4 all low value soft tissue RTA claims would need to be supported by a medical report provided by a MedCo accredited medical expert. There are broadly 3 types of claims that are currently settled without a medical report (referred to as pre-medical offers):

(i) The majority are offers that are made directly from insurers to claimants in order to obtain a quick and straightforward settlement.

(ii) In a minority of cases some claimant lawyer firms will request such offers from insurers.

(iii) In a minority of cases pre-medical offers are made towards the end of the limitation period of three years, where a medical report is unlikely to be useful evidence.

2.146 The Government will bring forward legislation to make sure that a medical examination and report is completed before any RTA low value soft tissue injury claim can proceed. Such legislation would provide more certainty to the costs of the settlement process and will provide both parties with information as to the severity of the injury, an accurate assessment of the treatment required and/or compensation to settle the claim.

2.147 This will mean an end to the practice of pre-medical offers to settle, which can lead to unmeritorious, minor or exaggerated claims being made by some claimants, including fraudulent claims by uninjured claimants. It also reduces the risk of under-settlement as this option would ensure that claimants with genuine injuries are properly assessed by accredited medical experts and receive compensation appropriate to the level of pain and suffering they have endured.

Key assumptions

2.148 The key assumptions are set out in the table below. While we would welcome views and further evidence on all of the assumptions, we have highlighted assumptions in particular that we would appreciate more detailed data on or feedback on.

2.149 The numbers in the table below do not always sum to the totals due to rounding.

No.	Main figures and assumptions	Source	Would particularly welcome feedback on this assumption * = Yes	Included in sensitivity * = Yes
1	702,000 personal injury motor claims registered in 2014/15	DWP compensation recovery unit (CRU) data		Assumptions in this option do not have sensitivity analysis carried out due to low impact
2	10% of claims are assumed to be settled without a medical report (pre-med claims)	Anecdotal evidence provided by the Association of Medical Reporting Organisation (AMRO)	*	
3	10% of settled pre-med claims assumed to not be pursued in future due to a medical report being required or the report not supporting the claim	Illustrative example to give idea of potential changes	*	
4	63,000 additional medical reports are estimated	Based on combining assumptions 1, 2 and above.		
5	£180 is the average medical report cost per claim	Fixed fee as set out in the Pre Action Protocol for low value PI claims in RTA		
6	It has been assumed the injury duration of pre-med claims have the same distribution as those which currently have a medical report.	This is a purely illustrative assumption, as we did not receive any data on pre-medical claims.	*	
7	£1,800 is the average (mean) PSLA compensation received for soft tissue claim without a medical offer	Evidence submitted by the insurer AXA to the Transport Select Committee in 2013[48] suggest the PSLA amounts between £1,600-£2,000.		

[48] Evidence submitted to the TSC in 2013 quote:
'One such example is so called "pre-medical" offers where an insurer will make an offer, following submission of a claim for "whiplash", without medical evidence. Typically, such offers range from £1,600–£2,000.'
http://www.publications.parliament.uk/pa/cm201314/cmselect/cmtran/117/117.pdf

8	No more than 5% of pre-meds offers currently contain special damages awards	Illustrative assumption, based on anecdotal evidence which suggests the majority of pre-med offers result from insurers and claimants wanting quick straight forward settlements.	*	
9	The proportion of pre-med claim who could claim for special damages is the same as the with-medical report cohort (70%)	This is an illustrative assumption, as we did not receive any data on pre-medical claims. The 70% is based on COA database used by insurers	*	
10	41,000 (65% of the pre-med cohort) who pursue a claim would receive special damages as a result of this proposal	A combination of assumptions 4, 8 and 9		
11	80% of pre-medical claims currently have no legal presentation.	Illustrative assumption, based on anecdotal evidence which suggests the majority of pre-medical offers are made early by insurers before solicitors are instructed.	*	
12	A similar proportion of pre-medical claimants as the with-medical cohort are assumed to have legal representation (99%) as a result of this proposal.	The 99% is derived from: Data from Caseman (County court case management system) shows 96% of PI claims in the SCT have legal representation. Around 10% of RTA claims go to court. The rest proceed via the Claims Portal where legal representation is required. Overall this suggests 99% of RTA claims have legal representation and 1% are LiP	*	
13	56,000 additional claims are assumed to have legal representation (79% of the pre-med cohort)	Based on assumptions 4, 11 and 12.		
14	Average legal fees of £550 for RTA claims	Data from a leading panel law firm combined with the fixed recoverable costs set out in pre-action protocol		

2.150 The total costs and benefits discussed below may not match exactly due to rounding.

Costs

Defendants (mainly insurers)

2.151 Defendant insurers would pay for around 63,000 more expert reports per year for pre-medical offers that now proceed with a medical report. The fixed cost per report is £180, this would result in a cost of around **£11m per annum.**

2.152 Insurers would also be responsible for paying VAT on these medical reports. For each report, insurers pay £36 in VAT to HMRC, totalling around **£2m per annum**. This assumes that all medical experts & MROs are VAT registered, so this estimate is a maxima.

2.153 Insurers could incur increases in PSLA compensation costs as settlements with medical reports are generally higher than those without a medical report. This amounts to around **£51m per annum.** A breakdown of these costs is given in the table below. This should be considered an upper estimate, as for the purposes of this IA it has been assumed that current pre-medical claims that pursue a claim in future with a supporting medical report, would receive the same PSLA (and special damages) as those currently with medical reports. However it could be that this group continue to receive less.

Injury duration	PSLA compensation without a medical report(overall average)[49]	PSLA compensation with a medical report	Claim volumes[50]	Total cost per annum
<= 6 months	£1,800	£1,800	24,000	£1m
6 - <= 9 months	£1,800	£2,400	15,000	£10m
9 - <= 12 months	£1,800	£3,000	12,000	£14m
12 - <= 15 months	£1,800	£3,300	7,000	£12m
15 - <= 18 months	£1,800	£3,800	3,000	£5m
18 - <= 24 months	£1,800	£4,400	2,000	£5m
> 24 months	£1,800	£5,200	1,000	£4m
All				**£51m**

2.154 Insurers would potentially pay out for additional special damages. It has been assumed that currently no more than 5% of the pre-medical claims have an accompanying special damage claim. However we have assumed that the proportion who could technically claim for special damages is similar to those with a medical report (70%). If pre-medical offers were no longer allowed and instead such claims followed a similar claims process to with-medical report claimants, it is likely that insurers having to pay for the 41,000 (65% of pre-medical offers[51]) claimants who are eligible but do not currently claim for their special damage. The weighted median special damage award is around £350, this would give a cost to insurers of **£14m per annum.**

2.155 There would also be additional legal costs for insurers. Currently it is assumed that 80% of pre-medical claims do not have legal fees as they settle their claims early. However in future as these claims would proceed via the claims portal or court, it has been assumed a similar proportion as the with-medical report group would have legal representation (99%). This equates to around 56,000 additional claims with legal fees multiplied by the average legal fee for RTA claims which

[49] We have limited data on the PSLA awards for pre-medical offers so have used the average, this means the savings will be under-estimated at the lower prognosis periods as their current PSLA awards are likely to be lower than the average used, and similarly over-estimated for the higher prognosis periods

[50] 1000 higher due to rounding

[51] 70% of the pre-medical cohort are assumed to have special damages (based on the pattern in the with-medical cohort), however currently no more than 5% are assume to claims these damages, which leaves around 65% who may decide to take-up special damage awards as a result of this proposal

is £550. This gives a cost of **£30m[52] per annum**. VAT would also need to be paid to HMRC on these claims which equates to an additional cost to insurers of around **£6m per annum**

2.156 In addition, the costs to defendant insurers of resolving claims may be higher where claims include a medical report, such as increased costs associated with considering report contents. Information in this area was requested from insurers, however it has not been possible to quantify any additional administrative costs. Overall it is expected to be marginal, especially considering only around 10% of claims are assumed to be settled on a pre-medical offer basis and because insurers did not raise concerns about these additional costs in discussions with them.

2.157 Combining all the costs set out above equates to a total gross cost to insurers of **£115m per annum**. It is expected that 100% of these additional costs would be passed onto consumers in the form of higher insurance premiums, thus making the overall cost of this option to insurers neutral. As a result the costs to insurers are not included in the NPV table below.

Claimants

2.158 If pre-medical offer claimants decided to no longer pursue their claim or because the medical report does not support the claim, for example for fraudulent claims by uninjured claimants, they would no longer receive a compensation settlement. It has been assumed that 10% of cases are no longer pursued (7,000 claims). This equates to **claimants no longer receiving compensation of £13m per annum.**

2.159 Claimants may incur increased costs from being examined by experts, such as the costs of their time, and the inconvenience of being examined. In addition, these claimants may lose out if it is takes longer to settle claims as a result of requiring a medical report. This may include cash flow costs as well as a loss in welfare from receiving settlements later. However, this should be offset by the increased PSLA settlements that they would receive.

Medco

2.160 If there is additional demand for medical reports, there would be an increased use of the MedCo IT portal to obtain them. There could potentially be some administrative costs for managing these additional claims but these are unlikely to be substantial.

Claims Portal Limited

2.161 The vast majority of the additional claims that no longer proceed on a pre-medical basis are assumed to begin proceedings via the online claims portal. There could be additional administrative costs for these claims but these are not expected to be substantial.

HMCTS

2.162 This option is unlikely to have any significant impacts on HMCTS as these claim types predominantly settle without court proceedings being issued and without court hearings taking place.

Wider social and economic costs

2.163 Motor insurance policy holders:

2.164 As detailed above the total cost to insurers are estimated at £115m per annum. To estimate the cost to consumers any savings to insurers needs to be subtracted from this, to get the net cost. It is then been assumed that 100% of net costs would be passed on to consumers. It is estimated that there would be £13m in savings for insurers (detailed below). **This gives a combined total costs of £102m** (£115m cost minus the £13m benefit)**.** It is assumed that this would be a cost to consumers in the form of higher motor premiums.

[52] 99% with medical group with legal representation * 80% of pre-med without legal rep * 70,000 initial pre-med cohort * £550

2.165 In addition consumers would pay IPT which is 10%, which results in a £10m cost to motor insurance policy holders

2.166 **In total there would be a cost to consumers of £113m per annum**

Benefits

Defendants (mainly insurers)

2.167 It has been assumed that 10% of current claims would no longer be pursued leading to a reduction in 7,000 claims per annum. The average PSLA award for these claims is £1,800, which suggests **around £13m would be saved by defendant insurers.**

2.168 However as there is an overall cost to insurers, it is assumed that these benefits would be deducted from the costs and passed on to consumers (£115m cost minus the £13m benefit), **so the overall benefit is neutral.**

Claimants

2.169 As set out in the defendant costs section claimants are estimated to **benefit by £65m** per annum as a result of:

2.170 The 63,000 extra claims requiring a medical assessment are assumed to receive around £51m per annum increased PSLA compensation.

2.171 65% of these claims are assumed to receive special damages in future, resulting in a benefit to claimants of £14m per annum.

MEs/MROs

2.172 For the 63,000 extra reports produced, medical experts would receive £180[53] per report, giving an increase income of around **£11m per annum**. As with other service providers, this is considered to be cost neutral in the NPV calculation.

Claimant lawyers

2.173 It has been assumed that currently 80% of pre-medical claims are settled without legal representation, and that almost all would seek legal representation in future. It is assumed that 29% of these claims would involve non-BTE legal representation. This would provide additional revenue of around £9m per annum to claimant lawyers. This is considered to be cost neutral in the NPV calculation.

BTE Providers

2.174 It has been assumed that 70% of the 80% pre-medical claims that almost all now require legal fees would be represented by BTE lawyers. This would provide additional revenue to BTE providers of around £21m per annum. This is also considered to be cost neutral.

HMRC

2.175 HMRC would benefit from an increase in revenue in 3 ways:

2.176 63,000 additional medical reports would be required with £36 paid in VAT per report, providing income to HMRC of around **£2m[54] per annum**

[53] It is not known what proportion of this £180 is profit. We have enquired with stakeholders but this information is commercially sensitive.

[54] All VAT estimates are maximums as it has been assumed that all medical experts, MROs, and PI firms are VAT registered and thus pay VAT of 20% on top of the medical reports and legal fee revenue

2.177 The increase in claims with legal representation would increase VAT income to HMRC by around **£6m per annum.**

2.178 There would be increase in IPT revenue due to the expected increase in insurance premium prices. It is estimated that £102m would be passed onto consumers in the form of higher premiums, IPT is 10% which results in an estimated overall increase in HMRC revenue of around **£10m per annum.**

Wider social and economic benefits

2.179 Wider Society:

2.180 Genuine claimants would receive a proper examination and medical report by an accredited medical expert ensuring that they receive, where applicable, the appropriate compensation payment and if required any appropriate treatment.

2.181 Moreover, there would be wider benefits to society insofar as requiring potential claimants to submit medial reports would send a signal that could help dis-incentivise minor, exaggerated and fraudulent claims. This will lead to reduced costs to society through reduced motor insurance premiums.

Option 4 Summary

The monetised costs and benefits of Option 4 are summarised in the table below.
The cost and benefits do not match the net exactly due to rounding.

	Costs	Benefits	Net
Claimants	£13m in removed PSLA damages for claims that no longer proceed	£51m increased compensation (for cases which currently have no report) £14m more in special damages for cases which are currently pre-meds	£52m net benefit
HMRC		£2m and £6m in VAT income from medical reports and legal fees £10m in income from an increase in IPT revenue	£19m net benefit

Wider social and economic costs and benefits	£115m passed onto consumers by defendant insurers in the form of higher motor premiums (100% of insurers costs passed on) £10m additional cost in increased insurance premium tax payments	£13m saving passed onto consumers (PSLA for those that drop out)	£113m net cost
Total costs and benefits	£138m cost	£96m benefit	£42m net cost

Option 5.1: This option would comprise of Options 1, 2, 3 and 4

2.182 This option combines the previous 4 options into a single overlapping reform package, which is the most appropriate way to view these reforms.

2.183 In Option 1, 2 and 3 the threshold and coverage are being consulted on. The Government recommendation is that the threshold for no PSLA damages should be where symptoms of an injury do not last more than 6 months (as opposed to the 9 month option) and that SCT cost provisions should apply to all personal injury (not just RTA). The Government is of the view that removing PSLA damages for injuries that do not last six months is a proportionate response to reducing the cost of these claims and the wider cost to society and therefore meeting the Government's policy objectives, whilst considering the potential impact of the removal of PSLA claims to individuals. The Government is also of the view that raising the SCT to all PI claims up to £5K is the best approach as the majority of these claims are not complex and should not require legal representation.

2.184 **The figures that follow in the text are based on the definition of minor soft tissue being those with an injury duration of no more than 6 months. However the NPV tables shows the costs and benefits for both the 6 months and 9 months definition.** The impact of raising the SCT for all personal injury claims is considered, however as with option 3 it has not been possible to add the EL/PL figures to the NPV table.

Interactions between the options

2.185 The costs and benefits are not always the same as those outlined in Option 1 to 4 as there are interactions between the options. It is only the RTA interactions that need to be considered, as EL and PL claims are only affected by Option 3 a). The significant interactions are outlined below, followed by a table outlining the key revised volumes used for assessing the costs and benefits of this combined option.

2.186 Option 1.1a/b estimates that insurers would save in claimants' legal costs that they incur, this is due to a reduction in overall claims volumes. Option 3 estimates savings in legal costs for insurers because legal fees would no longer be recoverable for claims with a PSLA up to

£5,000[55] (the vast majority of RTA cases). These two are not complimentary as the savings estimated in option 3 would include the low value claims that drop out as a result of Option 1.1.

2.187 When assessing option 4 in isolation, it was assumed the insurers would have to pay more in PSLA damages for the additional claims with a medical report. This is because the pre-medical claim average PSLA award is currently £1,800 which is lower than the with-medical report (mean is £2,500). When assessed in combination, the £1,800 pre-med average is compared against the proposed fixed tariff (option 2a/b) which is lower (weighted mean is £920). Thus looking at option 4 and 2a/b in combination this results as saving for insurers (and thereby motor policy holders).

2.188 In option 4 in isolation there were 63,000 additional claims requiring a medical report and incurring the associated costs for insurers. Combining this with Option 1.1 a), where around 36% of claims have an injury duration of 6 months or less, of which 65% are assumed to no longer pursue a claim (either because they are no longer eligible or have chosen not to claim for their special damages in isolation), this results in a reduction of 15,000, leaving 48,000 additional claims requiring a medical report.

2.189 Option 1.1 a) assumes total claim volumes with a medical report would reduce by 23%, and option 3a/b assumes a 6% reduction as a result of SCT cost provisions applying. Claims that drop out as a result of option 3a/b are assumed to be the low value claims and thereby captured by the 23%.

Key volumes

2.190 The assumptions used for assessment of this option are those already set out in options 1 to 4. Combining these with the interactions outlined results in the following volumes for RTA claims

No.	Estimated volume (based on data and assumptions set out in Option 1.1-4)
1	**Baseline: 615,000 settled RTA claims** - 545,000 with a medical report - 70,000 currently without a medical report
2.	**A total reduction of 24% as a result of combining all options (149,000 volume)** - 23% of the with a medical report group (127,000) - 32% of the currently without a medical report group (22,000 volume)
3	**A total of 76% going forward (466,000 volume)** - 90% of total going forward currently have medical reports (418,000) - 10% of total going forward currently without a medical report (48,000 volume)
4	**95% of claims going forward have SCT costs provisions applying (445,000 volume)** - 95% of the with med group that proceed(397,000[56]) - 100% of the currently without med that proceed (48,000 volume)

2.191 The methodology for calculating the costs and benefits is the same as detailed in options 1 to 4, therefore all the calculations steps have not been repeated. Please refer to the relevant option for full detail.

[55] And total settlement of <= 10K

[56] 1% these are estimated to be litigants in person, meaning there are 393,000 claims that proceed, qualify for small claims track provisions, and currently have legal fees.

2.192 The section begins with the costs and benefits for the RTA impacts (as these are where the interaction are), and then adds on the EL and PL estimates from Option 3 a) at the end.

2.193 The total costs and benefits discussed below may not match exactly due to rounding.

Costs

Defendants (mainly insurers)

2.194 Any costs for defendant insurers arise from the requirement of a medical report for all claims, although the costs are different from option 4 due to this option using the indicative tariff awards from option 2. **The costs to defendants are estimated to be £30m** (which we assume will be passed onto consumers), these costs are outlined below.

2.195 For claimants with an injury duration of greater than 18 months (around 3,000 claims) it is estimated that there would be an increase in PSLA compensation paid out by around **£9m per annum.** The amount awarded under the new indicative PSLA tariff system is higher than the estimated amounts awarded to claimants who currently have pre-medical offers (assumed to be £1,800 across all injury durations[57]). The costs are broken down as follows:

Injury duration	Weighted soft tissue tariff amount awarded	Weighted saving per soft tissue claim	Total soft tissue claims	PSLA cost/saving to insurers
15 Months < Prognosis < =18 Months	£2,500	-£700	3,000	-£2m
18 Months < Prognosis < =24 Months	£3,600	-£1,800	2,000	-£3m
Prognosis > 24 Months	£5,200	-£3,400	1,000	-£4m
All				**£9m**

2.196 Defendant insurers would incur a cost for the 48,000 additional medical reports estimated to be required, which equates to a cost of around **£9m per annum** and VAT payments for these at a cost of **£2m per annum**

2.197 Defendant insurers would incur a cost for special damages in around 33,000 claims[58], giving a total cost of around **£11m per annum**.

2.198 There are no additional legal fees to consider as these claims are all assumed to fall within the SCT limit rise and so insurers will not be responsible for legal fee costs.

Claimants

2.199 The total costs to claimants (both with-medical and pre-medical combined) are expected to be **£1.0bn[59]:**

2.200 As a result of the removal of PSLA damages for those with injury durations of no more than 6 months, claimants are estimated to receive around **£402m** less PSLA compensation per annum (218,000[60] number of claimants affected).

[57] We have limited data on the PSLA awards for pre-medical offers so have used the average, this means the savings will be under-estimated at the lower prognosis periods as their current PSLA awards are likely to be lower than the average used, and similarly over-estimated for the higher prognosis periods

[58] 30% (7,000) claims with injury duration <= 6 months (70% of low value pre-meds will claim for specials with pre-med offers banned, and it's assumed only half will claim for their specials as in option 1, giving 35% (8,000) of low value that claim. Given insurers currently pay for 5% of specials it's a cost for 30% of the 37% low value claims); and a cost for 65% of claims with injury duration greater than 6 months in the pre-med cohort (as currently 5% receive special damages and this will increase to 70%), all special damages expected to proceed > 6 months (28,000 claims, of which insurers bare a cost for 26,000).

[59] 1.049bn

[60] This includes 195,000 soft tissue claims that currently have medical reports, and 24,000 claims without medical reports.

2.201 Due to the reduction in PSLA damages for those with injury durations of greater than 6 months, this is estimated to result in **£ 563m**[61] less compensation for claimants per annum (361,000 claimants affected).

2.202 It is assumed that special damages would no longer be claimed by around 68,000[62] claims, resulting in a reduction of around **£7m per annum**.

2.203 It is estimated that 7,000 pre-medical claims would not be pursued as a result of a medical report being required/ claims not supported by the medical report, leads to a reduction of **£13m** for claimants.

2.204 Claimants would become responsible for their own legal fees and legal fee VAT at a cost of at least **£65m**[63] per annum. It has been assumed that the proportion of claims with legal fees that currently do not have medical reports remains at 80%. This is higher than in option 4 because there would be no requirement for claimants to have legal representation. If this proportion decreases then claimants would incur higher costs.

2.205 Claimants are likely to face higher BTE premiums (as explained below under 'BTE insurers') when taking out their motor insurance.

Claimant lawyers

2.206 Claimant lawyers are estimated to see a reduction in income of **£31m per annum** due to a reduction in claims that currently have non-BTE legal representation (37,000 claims, 6%) and from an increase in LiPs in claims that proceed & qualify for SCT provisions (21,000 claims, 3%). However as with Option 1.1-4, this is assumed to be cost neutral in the NPV calculation.

Medical experts and MROs

2.207 Medical experts and MROs are estimated to see a reduction in revenue of around **£23m per annum** for the 127,000 claims that no longer proceed. Similarly to claimant lawyers this is assumed to be cost neutral in the NPV.

HMRC

2.208 HMRC would incur total costs of **£135m** as a result of the following:

2.209 A reduction in VAT from medical reports of around £5m per annum due to the 127,000 claims that previously had a medical report but now no longer proceed.

2.210 A reduction in legal fee VAT of £16m per annum for the 126,000 claims with legal representation that no longer proceed and the 20,000 new LiPs that qualify for SCT provisions described in the claimant lawyers' costs, above.

2.211 Costs of around £114m per annum in reduced IPT revenue. This is because it is estimated that motor premiums would be reduced as insurers are expected to pass 85% of their savings on. The total saving passed onto consumers is estimated to be £1.1bn[64] (detailed in the benefits section below). As HMRC get 10% from each policy, this infers HMRC could lose income of £114m. This cost is assumed to be a transfer payment to consumers whom will benefit from lower motor premiums.

NHS

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[61] This includes all soft tissue claims from claims greater than 6 months that currently have medical reports (327,000), and all claims in the without medical reports group greater than 6 months but less than or equal to 15 months (34,000).

[62] 35% of the 195,000 with medical report claims with injury duration <= 6 months

[63] Of the 29% with medical reports claims that currently have non-BTE legal representation & proceed and qualify for SCT (115,000 = 29% of 397,000), 83% become funded by claimants (17% of them become LiPs). As in Option 3, for claims without medical reports, 30% of the 14,000 claims with legal representation are assumed to be non-BTE funded. This gives 95,000 claims from the with medical report group and at least 4,000 claims from the without medical report group where claimants are now responsible for their own legal fees and VAT.

[64] 1.138bn

2.212 NHS would no longer recover costs of £9m per annum for the 127,000 claims currently with medical reports that no longer proceed. The without medical report group are assumed to not have sought hospital treatment. This is detailed in Option 1.1.

CMCs

2.213 The reduction in claims may lead to a fall in the number of cases eligible for their services. However, this is assumed to be cost neutral in the NPV.

BTE providers

2.214 As described in Option 3, claimants could see in increased BTE premiums. It has been assumed that 68%[65] of claimants currently have BTE. As providers would no longer be able to recover this from defendants, it has been assumed that they would pass on their estimated costs (legal fees and legal fee VAT) of at least **£189m[66] to consumers**. If the proportion of claimants currently without medical reports but with a report in future, that have BTE cover increases from 14%, then this cost could be higher.

2.215 BTE providers would experience a loss in revenue of **£49m** from the 127,000 claims that no longer proceed[67]. Similarly to claimant lawyers this is assumed to be cost neutral in the NPV.

Rehabilitation providers

2.216 As detailed in Option 1.1 if fewer special damage claims are made as a result of these reforms, there could be a decrease in rehabilitation. However this is assumed to be cost neutral.

Claims Portal Ltd

2.217 There could be admin costs for Claims Portal as it would need to be amended so that it aligns with the SCT cost provisions. It has not been possible to quantify the cost of these changes, however they are not expected to substantial.

Benefits

Defendants (mainly insurers)

2.218 Defendant insurers are estimated to benefit from **savings with equate to £1.4bn[68]** (this is without the 85% passed onto consumers). The savings would be expected from the following:

2.219 As a result of the removal of PSLA damages defendants are estimated to **save around £402m** compensation per annum.

2.220 The reduction in PSLA damages are estimated to result in **£563m savings per annum.**

2.221 It is assumed that special damages are no longer claimed by around 68,000[69] claimants, resulting in savings of around **£7m per annum**.

2.222 Defendant insurers would save around **£13m per annum** in PSLA for the estimated 7,000 pre-medical claims that are no longer pursued due to the requirement to have a medical report (as described in option 4).

2.223 Defendants save in legal fees no longer being recoverable, equating to **savings of around £291m** per annum. This consists of:

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[65] 14% of the 70,000 claims without a medical report have BTE, and 70% of the 545,000 claims with a medical report have BTE.

[66] This includes 278,000 from claims that currently have medical reports (70% of the 397,000 that proceed & qualify for SCT) & at least 10,000 claims from claims that currently do not have medical reports (14% with BTE that proceed and qualify for SCT) – BTE providers will become responsible for both the legal fees and legal fee VAT for these claims, passing the costs onto consumers in the form of higher BTE premiums.

[67] 70% of those that drop out have BTE (89,000), where BTE providers would no longer receive legal fees for them.

[68] £1.370bn

[69] 35% of the 195,000 claims with prognosis <= 6 months

- **£69m** for 127,000 claims that no longer proceed
- **£222m** for the remaining 407,000[70] claims currently have legal representation & that fall under SCT cost provisions.

2.224 The reduction in legal fees would result in a saving of **£58m per annum** in VAT payments.

2.225 Defendant insurers would save around **£23m per annum** in medical reports due to a reduction of 127,000 claims of those with medical reports and **£5m** in VAT for these medical reports.

2.226 Defendant insurers would save around **£9m per annum** in costs to NHS (detailed in Option 1.1).

2.227 This amounts to RTA savings for defendant insurers of around £1.4bn[71] per annum, deducting the £30m estimated costs gives a total gross benefit of £1.3bn[72]. Assuming that 85% of these will be passed onto consumers, this gives a **net benefit to insurers of around £201m per annum.**

Claimants

2.228 As outlined in the cost for defendants section:

2.229 Claimants with an injury duration of greater than 15 months are estimated to see an increase in PSLA compensation paid out, **equating to a total of £9m**

2.230 Claimants who currently do not have a medical report would **benefit from around £11m** per annum in special damages.

Medical experts MROs

2.231 Medical experts and MROs would receive **£9m revenue per annum** for the additional medical reports required. This is considered to be cost neutral in the NPV calculation.

HMRC

2.232 HMRC are estimated to **benefit by around £2m** in VAT payments for the 48,000 additional medical reports produced

Wider social and economic benefits

Motor insurance policy holders:

2.233 The net benefits to insurers was estimated to be **£1.3bn[73]** per annum. Assumed that insurers would pass on 85% of their savings, this results in savings to consumers of **£1.1bn[74],** in the form of lower premiums.

2.234 In addition, consumers would benefit from the decrease in insurance premium tax owed to HMRC on these lower premiums of £114m. **This amounts to total RTA savings for motor premium holders of around £1.3bn[75]**.

Wider Society:

2.235 These reforms should dis-incentivise minor, exaggerated and fraudulent claims. This would have a beneficial effect on wider society through reduced motor insurance premiums.

EL/PL Defendants (such as Local Authorities, and Government Departments)

[70] 393,000 claims with a medical report, and 14,000 claims currently without a medical report.

[71] £1.370bn

[72] £1.339bn

[73] £1.339bn – This takes account of the £30m cost that insurers face due to claims currently without medical reports, as described in the defendant insurers cost section.

[74] £1.138bn

[75] £1.252bn

2.236 As described in option 3, we have not been able to get the detailed information that we require to accurately estimate the savings to EL/PL defendants.

2.237 EL defendants would be expected to save a maximum of around £45m per annum in fixed recoverable EL legal fees and VAT, for the 46,000 EL claims qualifying for SCT provisions[76]. PL defendants are expected to save a maximum of around £41m per annum in fixed recoverable PL legal fees and VAT, for the 42,000 PL claims qualifying for SCT provisions[77].

2.238 There are likely to be additional savings for EL and PL defendants, in PSLA damages, special damages and medical reports for claims which no longer proceed. It has not been possible to estimate these savings because we do not have reliable data on the PSLA damages or special damages of low level EL/PL claims.

2.239 There could be a reduction in EL and PL insurance premiums, which would result in a reduction in insurance premium tax for defendants with private insurance. However the proportion of EL/PL defendants with private insurance is unknown (against those that defend themselves and pay for claims out of their profits or budgets), so this cannot be quantified. Therefore, as in option 3, El and PL benefits have been excluded from the summary table.

[76] This is a maximum saving because the proportion that currently have legal representation is unknown

Option 5.1 summary.

The monetised costs and benefits of Option 5.1 are summarised in the table below. The costs and benefits for EL/PL claims have been excluded from the table because the proportion of claimants which currently have legal representation is unknown. Without this information, it is not possible to assign the costs/benefits to the appropriate parties.

The cost and benefits may not match the net exactly due to rounding.

	Costs (6 months)*	Benefits (6 months)*	Net (6 months)	Costs (9 months)	Benefit (9 months)	Net (9 months)
Defendants (insurers)	**£1m in PSLA for those without medical reports > 15 months injury duration (15% of cost)** **£1m for the 48,000 med reports required in the pre-med cohort (15% of cost)** **£0.3m for the medical report VAT owed on these 48,000 reports (15% of cost)** £2m for the 34,000 special damages required in the pre-med cohort for claims that currently don't	**£60m from removal of PSLA damages** **£84m from revised PSLA damages** £2m in PSLA for the 7,000 claims that drop out due to requirement for a medical report £1m in NHS outpatient fees insurers save £1m benefit for the low value claims with specials that no longer proceed £3m benefit from 127,000 medical reports no longer required. £0.7m benefit for med report	£201m net benefit	£1m in PSLA for those without medical reports > 15 months injury duration (15% of cost) £1m for the 38,000 med reports required in the pre-med cohort (15% of cost) £0.2m for the medical report VAT owed on these 38,000 reports (15% of cost) £1m for the 34,000 special damages required in the pre-med cohort for claims that currently don't have them (15% of cost).	£110m from removal of PSLA damages £49m from reduced PSLA damages £2m in PSLA for the 7,000 claims that drop out due to requirement for a medical report £2m in NHS outpatient fees insurers save (1) £3m benefit for the low value claims with specials that no longer proceed £6m benefit from 207,000 medical reports no longer required.	£222m net benefit

	have them (15% of cost).	VAT no longer owed on these claims. **£44m legal fees benefit for 127,000 drop outs, 393,000 with fees that proceed and qualify for SCT rise, and 14,000 of the pre-meds.** **£9m saving in legal fee VAT for these 534,000 claims**			£1m benefit for med report VAT no longer owed on these claims. £44m legal fees benefit for 207,000 drop outs, 316,000 with fees that proceed and qualify for SCT rise, and 14,000 of the pre-meds. £10m saving in legal fee VAT for these 534,000 claims	
Claimants	£402m cost from removed PSLA damages. £563m cost from revised PSLA damages. £13m PSLA cost for pre-med drop out £7m specials for with med drop out. £65m legal fees & VAT that claimants will be	£9m PSLA benefit for pre-meds with injury duration > 15 months £11m benefit in special damages for pre-med claims > 6 months injury duration that now receive them.	£1bn[78] net cost	£735m cost from removed PSLA damages. £329m cost from reduced PSLA damages. £13m PSLA cost for pre-med drop out £18m specials for with med drop out. £53m legal fees & VAT that claimants will be	£9m PSLA benefit for pre-meds with injury duration > 15 months £10m benefit in special damages for pre-med claims > 6 months injury duration that now receive them.	£1.1bn[79] net cost

[78] 1.029bn

[79] 1.129bn

	responsible for			responsible for		
BTE Providers	BTE providers will face higher costs as legal fees are no longer recoverable from defendant insurers. These costs are passed onto BTE premium holders in the form of higher premiums.			BTE providers will face higher costs as legal fees are no longer recoverable from defendant insurers. These costs are passed onto BTE premium holders in the form of higher premiums.		
NHS	£9m in outpatient fees they no longer recover		£9m net cost	£13m in outpatient fees they no longer recover		£13m net cost
HMRC	£5m VAT cost for the 127,000 medical reports no longer required. £16m legal fee VAT cost for the 126,000 claims that drop out with legal representation, and the 20,000 new litigants in persons created. £114m in reduced IPT revenue (based on total saving from Option 5.1)	£2m benefit in VAT payments for the additional medical reports in the pre-med cohort	£133m net cost	£7m VAT cost for the 207,000 medical reports no longer required. £24m legal fee VAT cost for the 207,000 claims that drop out with legal representation, and the 20,000 new litigants in persons created. £126m in reduced IPT revenue (based on total saving from Option 5.1)	£2m benefit in VAT payments for the additional medical reports in the pre-med cohort	£156m net cost

Wider social and economic benefits	At least £189m in increased BTE premiums **£7m in PSLA costs for pre-med claims with > 15 months injury duration, passed on** **£7m in medical report costs for pre-meds, passed on** **£1m in med report VAT for the pre-meds, passed on** £10m cost for special damages required for the pre-medical claims (85% cost passed on)	**£341m from removed PSLA damages.** **£479m from revised PSLA damages.** £11m in PSLA for 7,000 pre-meds that no longer proceed due to requirement to have medical report £19m in med report savings for 127,000 that drop out passed on by insurers £4m in med report VAT savings for 127,000 that drop out, passed on by insurers £6m in special damages benefits for 127,000 that drop out, passed on by insurers **£247m in legal fee savings for 127,000 drop outs, 393,000 that proceed and qualify for SCT rise, and 14,000 in pre-meds that captured under SCT rise.** **£49m in legal fee VAT savings passed on by**	£1.1bn[80] maximum net benefit	At least £153m in increased BTE premiums £7m in PSLA costs for pre-med claims with > 15 months injury duration, passed on £6m in medical report costs for pre-meds, passed on £1m in med report VAT for the pre-meds, passed on £8m cost for special damages required for the pre-meds, (85% cost passed on)	£625m from removed PSLA damages. £280m from reduced PSLA damages. £11m in PSLA for 7,000 pre-meds that no longer proceed due to requirement to have medical report £32m in med report savings for 207,000 that drop out passed on by insurers £6m in med report VAT savings for 207,000 that drop out, passed on by insurers £15m in special damages benefits for 207,000 that drop out, passed on by insurers £249m in legal fee savings for 207,000 drop outs, 393,000 that proceed and qualify for	£1.2bn[81] maximum net benefit

[80] 1.064bn

[81] 1.228bn

		insurers £8m in saving from NHS savings passed on by insurers £114m in insurance premium tax savings as a result of reduced motor premiums prices.			SCT rise, and 14,000 in pre-meds that captured under SCT rise. £50m in legal fee VAT savings passed on by insurers £11m in saving from NHS savings passed on by insurers £126m in insurance premium tax savings as a result of reduced motor premiums prices.	
Total costs and benefits	£1.4bn[82]	£1.5bn[83] net benefit	£94m net benefit	£1.5bn[84]	£1.6bn[85]	£151m

*Costs classified as direct costs for the purposes of the One In Three Out assessment (section 4) have been marked in bold

In conclusion, the total costs and benefits (including direct, indirect and transfers) are as follows:

- Motor premium holders would benefit by around £1.1 billion per annum overall.
- Defendants would benefit by around 201 million per annum overall.
- Claimants would have costs of around £1 billion per annum overall.
- NHS would have costs of around £9 million per annum overall.
- Defendant insurers/Government departments/Local authorities would benefit by around £94 million per annum.

[82] 1.411bn

[83] 1.505bn

[84] £1.498bn

[85] £1.649bn – This is £4m less than the sum of its parts due to rounding.

Option 5.2: This option would comprise of Options 1.2, 2, 3 and 4

2.240 This option combines options 1.2, 2, 3 and 4 into a single overlapping reform package, which is the most appropriate way to view these reforms. In Option 1.2, 2, and 3 the threshold and coverage are being consulted on. The Government recommendation is that the threshold for the introduction of a fixed sum of compensation should be where symptoms of an injury do not last more than 6 months (as opposed to the 9 month option) and that SCT cost provisions should apply to all personal injury (not just RTA). Introducing a fixed sum of PSLA compensation payment for these claims would also be a proportionate response to reducing the cost of these claims and the wider cost to motorists and therefore meeting the Government's policy objectives. The Government is of the view that raising the SCT to all PI claims up to £5K is the best approach as the majority of these claims are not complex and should not require legal representation.

2.241 **The figures that follow in the text are based on the definition of minor soft tissue being those with an injury duration of no more than 6 months. However the NPV tables shows the costs and benefits for both the 6 months and 9 months definition.** The impact of raising the SCT for all personal injury claims is considered, however as with option 3 it has not been possible to add the EL/PL figures to the NPV table.

2.242 This option is very similar to Option 5.1. To avoid repetition, only the affected parties that would have an impact that differs from the impact considered in Option 5.1 are given below. There are no additional affected parties that were not considered in Option 5.1. At the end of this section, all affected parties that belong in the NPV summary are included in the Option 5.2. Summary table, so that a complete picture of Option 5.2 is in one place.

2.243 Similarly, all of the assumptions considered in Option 5.1 are applied to Option 5.2. This includes the assumption regarding the volume of low value claims that would proceed - However, in the sensitivity analysis the impacts on Option 5.2 of all low value claims proceeding has been considered - As mentioned previously, this is an illustrative assumption and we welcome views on it as part of the consultation.

2.244 To avoid repetition, only any new assumptions are described below.

Key assumptions

No.	Main figures and assumptions	Source	**Would particularly welcome feedback on this assumption * = Yes**	**Included in sensitivity * = Yes**
1	The weighted average PSLA award to a soft tissue injury claimant with injury duration of <= 6 months would be around £411 if Option 1.2 a) was implemented	Taking a weighted average of the proportion of claimants in COA and CSC data that either have or do not have psychological injuries included in the claim (and have injury duration of <=6 months) & the available awards considered for such claimants in the tariff.		

2	The weighted average PSLA award to a soft tissue injury claimant with injury duration of <= 6 months would be around £412 if Option 1.2 b) was implemented	Taking a weighted average of the proportion of claimants in COA and CSC data that either have or do not have psychological injuries included in the claim (and have injury duration of <=9 months) & the available awards considered for such claimants in the tariff.		
3	It is assumed the average amount awarded for low value pre-medical claims would be £260 if Option 1.2 a) was implemented	Comparing COA and CSC data on PSLA damages awarded to claims with medical reports, with the assumed average PSLA damages for pre-medical offers, suggests claims without a medical report get around 37% less. Applying this to the weighted average amount awarded in the proposed tariff for claims with injury duration of <= 6 months (£411) gives £260.		
4	It is assumed the average amount awarded for low value pre-medical claims would be £260 if Option 1.2 b) was implemented	Comparing COA and CSC data on PSLA damages awarded to claims with medical reports, with the assumed average PSLA damages for pre-medical offers, suggests claims without a medical report get around 37% less. Applying this to the weighted average amount awarded in the proposed tariff for claims with injury duration of <= 9 months (£412) gives £260.		

2.245 The total costs and benefits discussed below may not match exactly due to rounding.

Costs

Defendants (mainly insurers)

Claimants

2.246 For the reasons as described in the policy description, claimants would receive less PSLA damages. As it is assumed that 35% of the 195,000 low value claims currently with medical reports proceed[1] (68,000) and receive a weighted average of £411 per claim, then the total PSLA cost to claimants in Option 5.1 of £402m per annum would be reduced by £28m to £374m per annum.

2.247 Similarly, for the low value claimants currently without medical reports, as it is assumed that 35% of the low value claimants would still proceed (8,000) and receive PSLA damages of around £260 per claim, the total PSLA cost to claimants in Option 1.1 would be reduced by a further £2m per annum.

2.248 The overall PSLA cost to claimants would therefore be £372m per annum.

HMRC

[1] Total low value claims = 36% * 545,000 = 195,000

2.249 There would also be a net cost to HMRC in reduced IPT income. For Option 5.2 a) there are net benefits of £1.1bn[2] passed onto consumers (discussed below). As HMRC recover 10% of this in IPT it has been assumed they would have a cost of around £111m per annum.

Benefits

Defendants (mainly insurers)

2.250 For Option 5.1 a) defendant insurers would experience a net saving of around £1.3bn[3] per annum**.** For Option 5.2. a), this saving is reduced by £30m due to the additional PSLA costs owed to claimants, described above, giving a net saving of £1.3bn[4] per annum. Assuming that insurers pass on 85% of this to consumers, insurers would have a **net saving of around £196m per annum.**

Wider social and economic benefits

Motor insurance policy holders:

2.251 Assuming 85% of defendant insurers' savings are passed onto consumers in the form of lower motor insurance premiums, this would equates to a gross **benefit** for consumers **of £1.1bn[5]** per annum.

2.252 There is the additional benefit for motor premium holders, due to the £111m reduction in IPT. This raises the gross benefit to consumers to around £1.2bn[6] per annum.

2.253 The net benefit to consumers in Option 5.1 would be around £1.1bn[7] per annum. Consumers' PSLA saving in Option 5.2 would be reduced by around £25m[8], described above, and their IPT saving would be reduced by around a further £3m[9], **giving a net benefit to consumers of around £1.0bn[10]** per annum**.**

[2] 1.113bn

[3] £1.339bn

[4] £1.309bn

[5] £1.113bn

[6] £1.224bn

[7] £1.064bn

[8] 85% of the £30m PSLA benefit reduction to insurers, described above.

[9] The IPT saving in Option 5 is £114m, against the £111m reduction in Option 5.2

[10] £1.036bn

Option 5.2 summary.

The monetised costs and benefits of Option 5.2 are summarised in the table below. The costs and benefits for EL/PL claims have been excluded from the table because the proportion of claimants which currently have legal representation is unknown. Without this information, it is not possible to assign the costs/benefits to the appropriate parties.

The cost and benefits may not match the net exactly due to rounding.

	Costs (6 months)*	Benefits (6 months)*	Net (6 months)	Costs (9 months)	Benefit (9 months)	Net (9 months)
Defendants (insurers)	**£1m in PSLA for those without medical reports > 15 months injury duration (15% of cost)** **£1m for the 48,000 med reports required in the pre-med cohort (15% of cost)** **£0.3m for the medical report VAT** **owed on these 48,000 reports (15% of cost)** £2m for the 34,000 special damages required in the pre-med cohort for claims that currently don't have them (15% of cost).	**£56m from reduced PSLA damages for <= 6 months cohort** **£84m from revised PSLA damages for >6 months cohort** £2m in PSLA for the 7,000 claims that drop out due to requirement for a medical report £1m in NHS outpatient fees insurers save £1m benefit for the low value claims with specials that no longer proceed £3m benefit from 127,000 medical reports no longer required. £0.7m benefit for med report VAT no longer owed on these claims.	£196m net benefit	£1m in PSLA for those without medical reports > 15 months injury duration (15% of cost) £1m for the 38,000 med reports required in the pre-med cohort (15% of cost) £0.2m for the medical report VAT owed on these 38,000 reports (15% of cost) £1m for the 34,000 special damages required in the pre-med cohort for claims that currently don't have them (15% of cost).	£103m from reduced of PSLA damages for <= 9 months cohort £49m from revised PSLA damages for >9 months cohort £2m in PSLA for the 7,000 claims that drop out due to requirement for a medical report £2m in NHS outpatient fees insurers save (1) £3m benefit for the low value claims with specials that no longer proceed £6m benefit from 207,000 medical reports no longer required. £1m benefit for med report VAT no longer	£214m net benefit

		£44m legal fees benefit for 127,000 drop outs, 393,000 with fees that proceed and qualify for SCT rise, and 14,000 of the pre-meds. **£9m saving in legal fee VAT for these 534,000 claims**			owed on these claims. £44m legal fees benefit for 207,000 drop outs, 316,000 with fees that proceed and qualify for SCT rise, and 14,000 of the pre-meds. £10m saving in legal fee VAT for these 534,000 claims	
Claimants	£372m cost from reduced PSLA damages for <=6 months cohort. £563m cost from revised PSLA damages for >6 months cohort £13m PSLA cost for pre-med drop out £7m specials for with med drop out. £65m legal fees & VAT that claimants will be responsible for	£9m PSLA benefit for pre-meds with injury duration > 15 months £11m benefit in special damages for pre-med claims > 6 months injury duration that now receive them.	£999m net cost	£686m cost from reduced PSLA damages for <= 9 months cohort. £329m cost from revised PSLA damages for >9 months cohort. £13m PSLA cost for pre-med drop out £18m specials for with med drop out. £53m legal fees & VAT that claimants will be responsible for	£9m PSLA benefit for pre-meds with injury duration > 15 months £10m benefit in special damages for pre-med claims > 6 months injury duration that now receive them.	£1.1bn[1] net cost
BTE Providers	BTE providers will face higher costs as legal			BTE providers will face higher costs as legal		

[1] 1.080bn

	fees are no longer recoverable from defendant insurers. These costs are passed onto BTE premium holders in the form of higher premiums.			fees are no longer recoverable from defendant insurers. These costs are passed onto BTE premium holders in the form of higher premiums.		
NHS	£9m in outpatient fees they no longer recover		£9m net cost	£13m in outpatient fees they no longer recover		£13m net cost
HMRC	£5m VAT cost for the 127,000 medical reports no longer required. £16m legal fee VAT cost for the 126,000 claims that drop out with legal representation, and the 20,000 new litigants in persons created. £111m in reduced IPT revenue (based on total saving from Option 5.2)	£2m benefit in VAT payments for the additional medical reports in the pre-med cohort	£130m net cost	£7m VAT cost for the 207,000 medical reports no longer required. £24m legal fee VAT cost for the 207,000 claims that drop out with legal representation, and the 20,000 new litigants in persons created. £121m in reduced IPT revenue (based on total saving from Option 5.2)	£1m benefit in VAT payments for the additional medical reports in the pre-med cohort	£152m net cost
Wider social and economic benefits	At least £189m in increased BTE premiums **£7m in PSLA costs for pre-med claims with > 15 months injury duration,**	**£316m from reduced PSLA damages for <=6 months cohort.** **£479m from revised PSLA damages for >6 months cohort.**	£1bn[2] maximum net benefit	At least £153m in increased BTE premiums £7m in PSLA costs for pre-med claims with > 15 months injury duration, passed on	£583m from reduced PSLA damages for <= 9 months cohort £280m from revised PSLA damages for >9 months cohort.	£1.2bn[3] maximum net benefit

[2] 1.036bn

[3] 1.182bn

passed on	£11m in PSLA for 7,000 pre-meds that no longer proceed due to requirement to have medical report	£6m in medical report costs for pre-meds, passed on	£11m in PSLA for 7,000 pre-meds that no longer proceed due to requirement to have medical report
£7m in medical report costs for pre-meds, passed on	£19m in med report savings for 127,000 that drop out passed on by insurers	£1m in med report VAT for the pre-meds, passed on	£32m in med report savings for 207,000 that drop out passed on by insurers
£1m in med report VAT for the pre-meds, passed on	£4m in med report VAT savings for 127,000 that drop out, passed on by insurers	£8m cost for special damages required for the pre-meds, (85% cost passed on)	£6m in med report VAT savings for 207,000 that drop out, passed on by insurers
£10m cost for special damages required for the pre-medical claims (85% cost passed on)	£6m in special damages benefits for 127,000 that drop out, passed on by insurers		£15m in special damages benefits for 207,000 that drop out, passed on by insurers
	£247m in legal fee savings for 127,000 drop outs, 393,000 that proceed and qualify for SCT rise, and 14,000 in pre-meds that captured under SCT rise.		£249m in legal fee savings for 207,000 drop outs, 393,000 that proceed and qualify for SCT rise, and 14,000 in pre-meds that captured under SCT rise.
	£49m in legal fee VAT savings passed on by insurers		£50m in legal fee VAT savings passed on by insurers
	£8m in saving from NHS savings passed on by insurers		£11m in saving from NHS savings passed on by insurers
	£111m in insurance premium tax savings as a result of reduced motor premiums prices.		£121m in insurance premium tax savings as a

					result of reduced motor premiums prices.	
Total costs and benefits	£1.4bn[4]	£1.5bn[5] net benefit	£94m net benefit	£1.4bn[6]	£1.6bn[7]	£151m

*Costs classified as direct costs for the purposes of the One In Three Out assessment (section 4) have been marked in bold

In conclusion, the total costs and benefits (including direct, indirect and transfers) of Option 5.2a are as follows:

- Motor premium holders would benefit by around £1 billion per annum overall.
- Defendants would benefit by around £196 million per annum overall.
- Claimants would have costs of around £999 million per annum overall.
- NHS would have costs of around £9 million per annum overall.

[4] 1.379bn

[5] 1.473bn

[6] £1.444bn

[7] £1.596bn –

Risks and sensitivity analysis

Risks:

2.254 As a result of these proposals, there is a risk of claims inflation. Under Option 1.1 claimants could push for their prognosis/diagnosis period to exceed the 6 or 9 month threshold (whichever is chosen) to obtain PSLA damages. However, this may be mitigated if Option 1.2 is implemented or if Option 1.1 is implemented alongside option 2, which will introduce a tariff system of reduced PSLA damages. Claims inflation could still occur, but the differences in the compensation awarded under the tariff structure are relatively small which should help deter this behaviour.

2.255 Another form of claims inflation could be from special damages, attempts might be made to inflate the value of special damages claims to offset the removal/reduction in PSLA damages

Sensitivity:

2.256 In this section we have not included sensitivity analysis around all assumptions but instead focussed on the following areas as these that have the biggest cost implications.

2.257 Sensitivity analysis is applied to the combined proposals (Option 5.1 & Option 5.2), and the results are relative to this assumption. The net costs and benefits of Option 5.1 and Option 5.2 (base cases) are included in Table A and Table B, below, alongside all sensitivity analysis, so the impact of the sensitivity analysis is clear.

2.258 The sensitivity analysis only considers the impacts on the main groups affected.

2.259 Only costs and benefits from removed PSLA damages for claims with injury duration of 6 months are described in detail. Most of the impacts on the key stakeholders are proportional to the changes in claim volume by considering 9 rather than 6 months as the threshold; As such, it should be possible to reach the final quoted net costs and benefits for 9 months by considering the individual costs for the 6 month threshold in the sensitivity below.

Sensitivity 1: The proportion of cases that will not proceed.

2.260 Options 5.1 & 5.2 contain an assumption that 65% of low value claims would no longer proceed. This includes all of the low value claims without special damages (30%), and half of the low value claims with special damages (35%). Special damages are around £100 for claimants with injury duration less than or equal to 6 months, and around £250 for those less than or equal to 9 months, which could be low enough to cause a further drop in low value claims. This would be most likely in Option 5.1, due to the proposed removal of PSLA damages for low value claims. However, we could also experience more than the expected 35% low value claims proceeding, particularly when considering Option 5.2 due to some PSLA damages still being available for low value claims. This sensitivity assesses the impacts of none or all of low value claimants with special damages proceeding with their claims (0% and 70% of low value claims).

2.261 The calculation steps for the costs and benefits included in Table A are detailed beneath it. The difference in net benefits to consumers between Option 5.1 and sensitivity 1.a / 1.b is an increase & decrease of around £60 million per annum respectively, which is lost in rounding, showing that the benefits are proportional to claim volume. Similarly, the difference between Option 5.2 and sensitivity 1.1.a/1.1.b is an increase and decrease of around £88 million per annum.

Table A: The costs and benefits of Options 5.1 and 5.2 and sensitivity analysis 1

	Minor injury defined as not more than 6 months				Minor injury defined as not more than 9 months			
Scenario	**Net benefit to RTA Insurers**	**Gross benefit to consumers**	**consumer costs**	**Net benefit to consumers**	**Net benefit to RTA Insurers**	**Gross benefit to consumers**	**consumer costs**	**Net benefit to consumers[1]**
Base case (Option 5.1)	£201m	£1.278bn	£214m	**£1.064bn**	£222m	£1.404bn	£176m	**£1.228bn**
0% low value claims proceed – Sensitivity 1.1.a	£206m	£1.304bn	£180m	**£1.123bn**	£230m	£1.452bn	£120m	**£1.332bn**
70% low value claims proceed - Sensitivity 1.1.b	£196m	£1.252bn	£248m	**£1.003bn**	£213m	£1.356bn	£231m	**£1.124bn**
Base case (Option 5.2)	£196m	£1.250bn	£214m	**£1.036bn**	£214m	£1.358bn	£176m	**£1.182bn**
0% low value claims proceed – Sensitivity 1.2.a	£206m	£1.304bn	£180m	**£1.123bn**	£230m	£1.452bn	£120m	**£1.332bn**
70% low value claims proceed - Sensitivity 1.2.b	£187m	£1.196bn	£248m	**£947m**	£198m	£1.264bn	£232m	**£1.033bn**

Sensitivity 1.1.a: 0% low value soft tissue claims proceed, in Option 5.1

2.262 The net benefit to consumers is not greatly altered when compared to the net benefit in Option 5.1. It is increased by £60m per annum, around a 6% increase. The key components of this increase are given below:

2.263 Insurer's medical report savings (reports and VAT) & special damages savings would be increased for the claims currently without medical reports, as the 8,000 low value claims that proceed in Option 5.1 would no longer proceed. These savings would also be increased for claims currently with medical reports, where the drop out would be increased by around 68,000. There would be around 46,000 fewer claims where BTE premium holders would become responsible for legal costs, increasing consumer savings, because if fewer claims proceed there would be less legal costs for BTE providers to absorb and pass on. The additional legal costs (fees and VAT) that insurers would save on are marginal, because 98% of claims that do not drop out are subject to SCT provisions anyway[2], removing insurer's responsibility for these costs.

2.264 Consumers would face decreased insurance premium tax revenue required on their premiums in line with the expected fall in premium prices.

[1] The difference in savings between the primary recommendation and sensitivity 1.a / 1.b is an increase & decrease of around £60m respectively, which is lost in rounding, showing that the benefits are proportional to claim volume.

[2] As discussed in option 3

2.265 If minor soft tissue injury is defined as 9 months, the overall net increase in benefits to consumers would be £104m. This can be calculated by considering the same affected groups as above but with an increase of 111,000 claims & the associated 9 month cost parameters[3].

Costs to main groups affected – considered against Option 5.1

2.266 Claimants would receive less special damages, HMRC would no longer recover as much medical report VAT, and there would be an increased loss in BTE providers, claimant lawyer's, and medical experts/MROs revenue. However, it is assumed that the BTE providers and claimant lawyers would find alternative areas of economic activity that would offset any loss in revenue.

Sensitivity 1.2.a: 0% low value soft tissue claims proceed, in Option 5.2

2.267 The only difference between Option 5.1 and Option 5.2 is the amount of PSLA damages that low value claimants can claim for. As no low value claims are assumed to proceed, the impacts in Option 5.1 and 5.2 would be exactly the same, and as such the impacts provided in Table A for scenario 1.2.a are the same as the impacts of scenario 1.1.a.

2.268 In Option 5.2.a (where minor injury is defined as 6 months) , the net benefit to consumers is £28m less per annum than the net benefit to consumers in Option 5.1, due to insurers needing to pay low value claimants some PSLA damages in Option 5.2. If insurers no longer need to pay these damages, the net benefit to consumers considered in scenario 1.1.a. of £60m per annum would be increased by £28m to around £88m per annum.

2.269 Similarly, in Option 5.2.b the net benefit to consumers is £46m[4] less per annum than the net benefit to consumers in Option 5.1, if minor injury is defined as 9 months. The net benefit to consumers considered in scenario 1.1.a. of £104m per annum would be increased by £46m to around £150m per annum.

Sensitivity 1.1.b: 70% low value soft tissue claims proceed, in Option 5.1

2.270 In scenario 1.1.a. there was a decrease of 76,000 claims that proceed, against Option 5.1. In scenario 1.1.b there would be an increase of 76,000 claims that proceed, against Option 5.1. The costs and benefits are proportional to the change in claim volume, and impact on the same groups as considered in 1.1.a; i.e. the net benefits to consumers are decreased by around £60m (6%), which can be seen in table A.

2.271 Overall, consumers would be passed on less benefits by defendant insurers as there would be more claims that proceed in both the with and without medical report groups, claimants would benefit as they would receive more special damages, HMRC would recover more VAT on the claims that proceed (legal fees and medical reports), and there would be more claims that proceed with BTE funded legal representation, where consumers would bear the costs of increased BTE premiums.

2.272 This scenario is less likely than scenario 1.1.a, as it's assumed in Option 5.1 that the total low value claims that no longer proceed includes claims that currently have legal representation funded under a conditional fee agreement, that drop out because these claimants would need to either fund legal representation under a damages based agreement or proceed as a litigant in person but choose not to[5]. If 70% of low value claims proceed, than this implies only half of this expected decrease could occur (17,000 claims, explained in the footnote[6]), which is likely to be over estimating the number that would proceed.

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[3] These relevant parameters have been detailed in previous options

[4] This is the difference between the net consumer savings in the Option 5 and Option 5.2 summary tables when minor injury is defined as 9 months (£1.228 & £1.182 bn, respectively).

[5] It is assumed that 6% of soft tissue claimants that qualify for the SCT rise and currently have legal representation (31,000 claims) drop out; as described in option 3.

[6] 29% of claims currently have legal representation, and there are 59,000 claims that drop out in this scenario, giving a maximum drop out for claims currently with legal representation of 17,000 (59,000 * 29%).

2.273 If minor soft tissue injury is defined as not more than 9 months, than there would be a decrease in the net benefit to consumers of £104m, on top of what was considered in Option 5.1. As in scenario 1.a, this can be calculated by considering that there would be an increase in 111,000 claims that proceed. The affected groups are the same as for the 6 month definition.

Sensitivity 1.2.b: 70% low value soft tissue claims proceed, in Option 5.2

2.274 As the volume of claims that proceed is the same for Option 5.1 and Option 5.2, the only difference between scenario 1.1.b and scenario 1.2.b is that insurers would have less savings as they would need to pay claimants PSLA damages for the additional 76,000 low value claims that proceed. This would cost insurers a further £30m per annum, leading to a reduction in net consumer benefits of £28m per annum[7]. Therefore, the net benefit to consumers considered in scenario 1.1.b would be reduced by a further £28m to £88m per annum, which can be seen in Table A.

2.275 Similarly, if minor injury was defined as 9 months, the net benefit to consumers would be reduced by around £150m per annum.

[7] See Option 5.2, which assesses the PSLA impact of 76,000 low value claims proceeding (68,000 without medical reports, and 8,000 with medical reports)

Sensitivity 2: RTA steady state claim volumes are 10% higher or lower than in Options 5.1 and 5.2

2.276 It is assumed in all options that there is a baseline volume of claims at steady state. This assumption is also considered here (sensitivity 2), by considering the impacts of there being either a 10% higher or 10% lower volume of RTA claims.

2.277 The calculation steps for Table B are detailed beneath it.

Table B: The costs and benefits of Options 5.1 and 5.2, and sensitivity analysis 2

	Minor injury defined as not more than 6 months				Minor injury defined as not more than 9 months			
Scenario	**Net benefit to RTA Insurers**	**Gross benefit to consumers**	**Consumer costs**	**Net benefit to consumers**	**Net benefit to RTA Insurers**	**Gross benefit to consumers**	**Consumer costs**	**Net benefit to consumers**
Base case (Option 5.1)	£201m	£1.278bn	214m	**£1.064bn**	£222m	£1.404bn	£176m	**£1.228bn**
Sensitivity 2.1.a – RTA steady state claim volumes are 10% higher in Option 5.1	£221m	£1.405bn	£235m	**£1.170bn**	£244m	£1.543bn	£193m	**£1.350bn**
Sensitivity 2.1.b – RTA steady state claim volumes are 10% lower in Option 5.1	£181m	£1.151bn	£194m	**£958m**	£200m	`£1.265bn	£159m	**£1.106bn**
Base case (Option 5.2)	£196m	£1.250bn	£214m	**£1.036bn**	£214m	£1.358bn	£176m	**£1.182bn**
Sensitivity 2.2.a – RTA steady state claim volumes are 10% higher in Option 5.2	£216m	£1.374bn	£235m	**£1.139bn**	£235m	£1.492bn	£193m	**£1.300bn**
Sensitivity 2.2.b – RTA steady state claim volumes are 10% lower in Option 5.2	£177m	£1.126bn	£193m	**£932m**	£193m	£1.223bn	£159m	**£1.065bn**

Sensitivity 2.1.a: Steady state RTA claim volumes increase by 10%, in Option 5.1

2.278 This scenario considers the baseline RTA claims is increased by 10% to 676,000, which is an increase against Option 5.1 of 54,500 claims with medical reports, and 7,000 claims without medical reports.

2.279 The cost and benefits considered in all options have a linear relationship to the volume of claims. If the volume of claims increases by 10% or decreases by 10%, than the individual costs and benefits increase or decrease by close to 10%. For example, the net benefit to consumers is increased from £1.1bn[1] in Option 5.1 to £1.2bn[2], an increase of £106m (10%). All of the groups considered in detail in Option 5.1 would be affected, just with 10% higher costs and benefits. This effect can be seen in Table B, above.

2.280 If minor injury is defined as 9 months, the net benefit to consumers would be increase from £1.2bn[3] to £1.3bn [4](10%)

Sensitivity 2.2.a: Steady state RTA claim volumes increase by 10%, in Option 5.2

2.281 Similarly, all costs and benefits considered in the Option 5.2 summary table would be increased by 10% if the baseline RTA claims volume was increased by 10%. A selection of these key costs and benefits have been provided in Table B.

Sensitivity 2.1.b: Steady state RTA claim volumes decrease by 10%, in Option 5.1

2.282 This would reduce the baseline volume of RTA claims to 553,000, which is a decrease of 54,500 claims with medical reports and 7,000 claims without medical reports, against the Option 5.1. As in option 2a, all affected groups are dependent on claim volume, leading to a 10% decrease in all costs and benefits.

2.283 The net benefit to consumers would be decreased from £1.064bn in the Option 5.1 to £958m, a decrease of £106m (10%).

2.284 If minor injury is defined as 9 months, the net benefit to consumers would decrease from £1.2bn to £1.1bn[5] (10%)

Sensitivity 2.2.b: Steady state RTA claim volumes decrease by 10%, in Option 5.2

2.285 Similarly, all costs and benefits considered in the Option 5.2 summary table would be reduced by 10% if the baseline RTA claims volume was reduced by 10%. A selection of these key costs and benefits have been provided in Table B.

3. Enforcement and Implementation

3.1 It is proposed that all measures would be implemented together as a package for accidents on or after a specific date subject to the Parliamentary timetable for the legislative changes required. The only measure that is likely to require pro-active enforcement is the measure to ban pre-medical offers. The Government will be discussing this with the relevant regulators, for example, the SRA and the FCA.

[1] £1.064bn

[2] £1.170bn

[3] £1.228bn

[4] £1.349bn

[5] £1.107bn

4 One-In, Three-Out (OI3O) assessment.

Option 5.1

4.1 Defendants (insurers) are estimated to experience a direct net benefit of £1.3bn[6] as a result of the proposals. This is made up of £1.3bn[7] in benefits and £19m in costs.

4.2 Insurers would experience a net direct benefit of around £1.31bn a year which consists of:

- £402m from the removal of PSLA damages for claims where the injury duration is less than 6 months. The government would directly be removing the right to general damages in these claims and therefore this would be a direct benefit to insurers who would no longer have to pay out these damages.
- £563m for introducing a fixed table for PSLA damages in claims where the injury duration is over 6 months. This would be a direct impact as the proposal mandates the level of payment which has been set below the current average and therefore would be a direct benefit to insurers because the average amount they would have to pay out in these claims would be lower.
- £291m in reduced legal fees from the reduction in claims, the SCT proposal removing cost recovery and increasing the amount of claims covered by SCT rules. Some of this benefit from a reduction in claims could potentially be indirect although the majority of the benefit accrues from directly capturing more claims under the SCT rules which removes cost recovery. The benefit is therefore deemed to be a direct impact on business.
- £58m in reduced VAT payments due on legal fees that would no longer need paying (as noted above). This is considered a direct impact for the same reasons as legal fees (as outline above).

4.3 Insurers would experience a net direct cost of around £19m a year which consists of:

- £8m would be incurred from paying out higher PSLA damages where the injury duration was higher than 15 months and the claimant does not currently have a medical report. PSLA damages for claims with an injury duration of longer than 15 months currently without a medical report but estimated to have one after the reforms, would be higher than they are currently, even with the fixed tariffs set out in option 2.
- £8m from paying for medical reports in claims that currently do not have a medical report but are estimated to after reforms.
- £2m VAT owed on additional medical reports.

4.4 As with the benefits in the main body of the IA it is assumed 85% of this £19m cost is passed on to consumers. Whilst this is a coherent assumption for the main body of the IA, for the purpose of OI30 this is deemed to be a voluntary action and thus 100% of this direct cost, rather than only 15%, is estimated to be incurred by insurers.

4.5 Medical practitioners and experts would have fewer reports to produce, due to the fall in claims. The change in expert report fees constitutes a business to business transfer from Medical practitioners to defendant insurers and has a neutral overall impact on business.

4.6 Legal service providers and claim management companies may face a reduction in demand for their services because cases allocated to the small claims track require fewer legal resources than those allocated to the fast track, and some claimants may choose to act as litigants in person. Legal services providers and claims management companies could also face a cost as fewer claims may be lodged as a result of these proposals. However, in the case of legal services providers this may be partially offset by an increase in the number of cases contested as a result of these reforms, which were previously uncontested, which would increase demand for legal

[6] £1.295bn

[7] £1.314bn

services (legal costs in uncontested cases are assumed to be lower than legal costs in the small claims track).

4.7 Overall the reforms are assessed as being an OUT because the direct economic benefits to business exceeds the direct economic costs. They generate net direct business benefits of around £1.3bn[8] per year. For the purposes of the One In Three Out assessment this is a deregulatory OUT with a figure of £1.2bn[9] (2014 prices).

One-In, Three-Out (OI3O) assessment.

Option 5.2

4.8 The only difference to the impacts considered for Option 5.1, above, is that insurer's direct net benefit would be reduced by £30m per annum from £1.3bn[10] to £1.3bn[11]. This is due to insurers having PSLA savings of £372m per annum in Option 5.2, rather than £402m in Option 5.1, due to some PSLA damages being available in Option 5.2.

4.9 Overall the reforms are assessed as being an OUT because the direct economic benefits to business exceeds the direct economic costs. They generate net direct business benefits of around £1.3bn[12] per year. For the purposes of the One In Three Out assessment this is a deregulatory OUT with a figure of £1.2bn[13] (2014 prices).

5 Specific Impact Tests

Competition Assessment

5.1 The proposals should have no influence on competition within the insurance sector. The impact of these proposals is likely to increase competition between service providers in the legal sector, as there will be a reduction in demand for their services. The proposals could make small legal firms less able to compete with larger firms that have greater economies of scale and can provide services on mass as cheaply as possible.

Justice Impact Test

5.2 The justice impacts are set out in the main body of this impact assessment.

Equalities Statement

5.3 We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010[14]. Paying 'due regard' needs to be considered against the nine "protected characteristics" under the Equality Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

5.4 As part of the consultation exercise, we have included specific equalities questions intended to help us better understand any potential equalities impacts of these proposals.

Direct discrimination

[8] £1.295bn

[9] £1.210bn

[10] £1.295bn

[11] £1.265bn

[12] £1.265bn

[13] £1.182bn

[14] Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

5.5 We consider that the amendments are not directly discriminatory within the meaning of the Equality Act as they apply equally to all claimants irrespective of whether or not they have a protected characteristic. We do not consider that they result in people being treated less favourably because of a protected characteristic.

Indirect discrimination

5.6 The Compensation Recovery Unit (CRU), record both the age and sex of claimants in motor liability claims. 2014/15 CRU data shows that men accounted for 58% of motor liability claims. Men are therefore over represented amongst these claimants when compared to the general population[15] (49 per cent), and may therefore be differentially impacted by the proposals.

5.7 In 2014/15 those aged between 31 and 50 years old account for 41% per cent of motor liability claims. This age group are over-represented in comparison with the general population (27 per cent[16]) and may therefore be differentially affected by the proposals. Similarly those aged between 18-30 might be differentially affected as they represent 32% of motor claims and again are over-presented compared to the general population (over 14 per cent[17])

5.8 Motor liability claimants can be passengers as well as drivers and therefore a proportion of claimants (9 per cent) are younger than the legal driving age of England and Wales. The proposal to raise the SCT limit, could adversely impact children *because all RTA claims on behalf of children under 18 years old must be settled via the court, the proposal to raise the SCT limit could adversely impact on children, since they may no longer be able to recover their legal costs (£500 in the SCT) from the at fault insurer, but instead would most likely pay them from of their damages*.

5.9 There are limitations to the data sources presented. Data is limited to just two of the nine protected characteristics (age and sex). The Government do not collect comprehensive information about claimants, in relation to protected characteristics. This limits our understanding of the potential equality impacts of the proposals for reform. Some concerns have been raised that the proposals set out in the IA might particularly disadvantage people on low incomes. **We would welcome evidence and information to help us gain a better understanding of the potential equalities impacts that these proposals might have on those with protected characteristics.**

5.10 The comparator group used to identify differential impacts on age and sex is the general population of England and Wales. Whilst this comparator group is both entirely appropriate and the best available, it may not entirely reflect the breakdown by age and sex of road users in England and Wales.

Discrimination arising from disability and duty to make reasonable adjustments

5.11 The proposal to raise the SCT limit, could adversely impact on the mentally disabled, as they might be less able/willing to represent themselves as a litigant in person. It will be important to ensure appropriate support is given for mentally disabled claimants.

Harassment and victimisation

5.12 We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

Advancing equality of opportunity

5.13 Consideration has been given to how these proposals impact on the duty to have due regard to the need to advance equality of opportunity, by minimising disadvantages suffered by people due to their protected characteristics. We are seeking views on these issues as part of the consultation process.

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[15] Source: http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/rel/pop-estimate/population-estimates-for-uk--england-and-wales--scotland-and-northern-ireland/mid-2014/rft---mid-2014-population-estimates-analysis-tool.zip

[16] These figures are for ages 30-50 as opposed to the CRU age band of 31-50

[17] These figures are for 20-30 as opposed to the CRU age band of 18-30

Fostering good relations

5.14 Consideration has been given to this objective.

Family Impact test

5.15 There will be no impact on strong and stable family relationships as a result of this proposal.

6 Small and Micro Business Assessment

6.1 The main business stakeholders affected by the proposals are claimant lawyers, CMCs, and defendant insurers. Defendant insurers tend to be large businesses and are not considered further in the small and micro business assessment. Discussions with stakeholders, such as the ABI, have confirmed that a large majority of insurer market activity is captured by a small number of large firms.

6.2 Data from the Law Society suggests that the majority of solicitor firms to be small. The latest available data, from the Law Society shows that around 55% of firms undertaking PI work had up to five solicitors, and around 40% had between six and forty solicitors[18]. It is not known how many of these firms employ between 40 and 50 employees as the data is not broken down at this level.

6.3 CMCs operating in the PI sector make up around **54%** of the total number of CMCs currently in operation. The majority of CMCs operating in the personal injury sector are classed as **micro-businesses** with **791 (91%)** CMCs employing fewer than 10 staff. **57 (7%)** CMCs in the PI sector are classed as **small businesses** employing between 10 and 49 staff. **16 (2%)** CMCs in the PI sector employ 50 or more staff[19].

6.4 This suggests that at least 95% of law firms undertaking PI work and around 98% of CMCs are considered small or micro businesses.

6.5 As a result of the proposals, legal services providers and claims management companies may face a reduction in demand for their services as the number of soft tissue RTA claims is reduced. Changes to the SCT limit may also have an impact with claimants potentially deciding to be litigants in person due to the removal of cost recovery as well as the SCT requiring fewer legal resources than the fast track, meaning lower overall profits. Small organisations may be less able to absorb the impacts of the change or redirect resources to other areas. Potentially solicitors will no longer find it financially viable to be involved in this market.

Full Exemption

6.6 If the proposals were not applied to small and micro businesses then it is unlikely that they would be applied at all. This is because non application to part of the industry would not meet the policy objectives, and would also generate competition issues. Including small and micro businesses is vital to meeting the policy objectives and accruing a substantial proportion of the benefits. This is due to the interdependent nature of the claims industry and the resulting transfer of impacts. For every firm that doesn't lose out another firm does not benefit. Therefore including them is a proportionate means of achieving the desired benefits and outcomes.

Partial Exemption

6.7 A partial exemption will lead to the same issues above. They are likely to substantially affect the overall benefits and a partial exemption will lead to even more complicated competition issues of forum shopping to find firms who the reforms of removed and reduced damages, the SCT rules extension and a ban on pre-med offers apply too. Firms who are not exempt will receive very low to no demand for their services as it is more beneficial for claimants to find a firm not subject to

[18] Source: Data provided by the Law Society, 2013/2014 is the latest available data due to a lag in firms reporting turnover due to accounting reasons etc.

[19] Source: MoJ compliance team through regulatory reporting by the CMCs, snapshot figures as at April 2016.

the new reforms. Partial application might also lead to some businesses reconfiguring in order to become micro businesses so that they can avoid the full impact of the reform programme.

Extended Transition Period

6.8 In order to address the concerns with the way the personal injury process currently works, it is the Government's intention to implement this reform programme as quickly as Parliamentary time allows. It is therefore not possible to utilise an extended transition period.

6.9 However, the Government's intention to introduce these reforms and it's likely implementation timetable have already been publicly announced, which will provide affected micro businesses adequate time to consider whether amended business practices/models are required in order to conform with the policy intention of these reforms.

Temporary Exemption

6.10 A temporary exemption would have a similar issue to a partial exemption. There would be a spike in demand for the services of exempt businesses as claimants try and secure their claim with a legal service providers who has more favourable terms before the new rules come into force. These exempt firms may have to quickly scale up resources for a short time to deal with an increase in demand. Large firms may set up small shell companies to sign up clients on the more favourable terms.

Varying Requirements by Type and/or Size of Business

6.11 The same issues apply of claimants picking exempt firms which operate under vastly more favourable rules. This would lead to a shift in demand away from non-exempt businesses to exempt ones and potentially lead larger companies to reconfigure into smaller firms to gain the exemption.

Specific Information Campaigns or User Guides

6.12 There are a number of publications that explain the Small Claims Track process and provide support to litigants in person. These include guidance published by both the Civil Justice Council and the Bar Council. These documents can be found here:

- https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/CJC/Publications/Other+papers/Small+Claims+Guide+for+web+FINAL.pdf
- http://www.barcouncil.org.uk/media/203109/srl_guide_final_for_online_use.pdf

6.13 We will work with representative groups and the Civil Procedure Rules Committee to provide any additional guidance, if required.

Direct Financial Aid for Smaller Business

6.14 Offering financial aid for smaller businesses is likely to undermine the objective of the policy and mute the incentive structure the reforms are aiming to create. The government believes there needs to be substantial reform in this area and part of this is changes to the configuration of relevant industries.

Opt-in and Voluntary Solutions

6.15 Opt-in would create the same problems as exemptions on transitionary agreements.

6.16 Voluntary solutions would not work as it is not in the interest of several relevant industry to self-implement these reforms and therefore the government needs to legislate to ensure the policy objective is met through a consistent approach.

7 Annex A – Key data and assumptions

7.1 An overview of the key data and assumptions is provided below. Data and evidence sources have been referenced.

7.2 A number of direct and indirect impacts of the reforms are anticipated. Some of the indirect impacts may result from behavioural changes which stem from the reforms, or they may otherwise be an indirect consequence of the reforms. The Ministry of Justice has engaged with a range of key business stakeholders (including insurance and medical expert trade bodies, a leading claimant panel law firm, and individual insurers) to gather evidence and better understand all direct and indirect impacts.

7.3 Assumptions relating to the impacts of the proposals have been informed by this stakeholder engagement. They are not the outcome of formal research and are labelled in this Impact Assessment as purely illustrative assumptions. They are considered to be sufficient for the purpose of providing an indicative monetisation of the direct and indirect impacts of the reforms. Indirect impacts do not feed into the One in Three Out net business cost calculation.

7.4 As some of the analyses is based on illustrative assumptions as opposed to formal research, we have carried out sensitivity analysis, the results can be seen in the 'risks and sensitivity section'. As part of the consultation document we are seeking feedback from respondents on the range of illustrative assumptions that we have used and will update the analysis in light of feedback for the final stage Impact Assessment.

Key data sources

7.5 Much of the data considered in this IA is derived from the Claims Outcome Advisor (COA/ISO) and Collosus (CSC). They have developed systems for insurance companies to input details about personal injury claims, to evaluate what the settlement should be, by drawing on a company's previous settlements, to minimise pay-out variance.

7.6 There is no overlap between insurers using COA and CSC so we have combined findings from these datasets, using weighted averages.

7.7 COA data captures part of 20 different insurer's claims data, at least 5 of which are one of the top 20 leading insurers based on gross written domestic[1] premiums in 2014. CSC's data captures part of 5 different insurers' claims data, at least 3 of which are one of the top 20 insurers based gross written domestic premiums in 2014". These databases do not record details of Pre-medical offers or complex cases, because these claims tend to go to specialist teams to be assessed, rather than using the specialist software. This data covers around 35% of all motor claims for 2015[20].

7.8 The analysis related to raising the SCT is restricted to a smaller subset of data, as a number of different datasets were merged to create a matched file containing the PSLA damages and total settlements of claimants (including special damages). CSC data on total settlement amount has not been used as it is not reliable (it is entered by a claims handler and they cannot guarantee total settlement values include special damages as well as PSLA damages). COA have a rich data source for total settlement data that is linked to PSLA amounts, containing an automated interface with the Claims Portal. This captures details for around 5,000 claims per month. This reduces the market coverage to an estimated 10%[21], however COA still retains a wide client base (that encompass a variety of business practices due to the varying sizes and business models of each insurer) and so this is deemed representative of the insurance market and reliable for analysis.

7.9 PSLA damages have increased post LASPO (April 2013), so all analysis relates to the most recent COA and CSC data for 2015.

[1] Rather than commercial policies

[20] This has been estimated by taking the claims volumes from the COA/CSC data as a proportion of all claims recorded on the CRU with a financial settlement.

[21] By comparing the total number of settlements in the data with the claims volumes from the COA/CSC data as a proportion of all claims recorded on the CRU with a financial settlement.

7.10 As part of the verification process, data has been sought from other stakeholders, such as solicitor firms and trade organisations. Where data was received it was consistent. We will seek their views again during the consultation period and feed this into the final stage IA.

Key volumes

Soft Tissue Injury resulting from road traffic accidents (RTA)

7.11 There were 545,000 RTA PI claims recorded as receiving a financial settlement[22] on DWP's CRU in 2014/15[23] in England and Wales relating to soft tissue, neck and back injuries. It has been assumed that this is a steady-state volume and will remain unchanged in the future.

7.12 The reforms that are related to the removal/reduction of PSLA damages (1 and 2) apply to around 523,000 of the 545,000 baseline RTA PI claims. This has been estimated using data from the COA and CSC, which shows that the proportion of RTA claims that are soft tissue (as defined by the Road Traffic Accident Pre-Action Protocol) is 96%. DWP CRU data only considers soft tissue claims to account for around 90% of total claims, but this is not as reliable because it excludes claims where the injury is categorised as 'other', which will likely contain some soft tissue injuries that are included in the Medco definition.

Claims currently settled without a medical report

7.13 When considering proposal 4 and all of the proposals combined together, additional medical reports will be required. It is assumed that 10% of claims are currently settled without a medical report. This is based on anecdotal information provided by the trade body, the AMRO. Similar information was sought but not received from insurance companies.

7.14 This 10% has been applied to the 701,550 soft tissue, neck and back *total registered claims* as recorded on CRU in 2014/15, indicating that around 70,000 extra medical reports would be needed as a result of the requirement for all claims to have a medical report.

7.15 A percentage of these claims could drop out, due to potential claimants, being deterred from making a claim by the requirement to have a medical report. It has been assumed that 10% (this is an internal assumption for illustrative purposes) of cases which are currently settled without a medical report are no longer pursued in the future i.e. around 7,000 claims.

7.16 Taking these two assumptions into account, there will be a requirement for an additional 63,000 medical reports. These assumptions are illustrative, views will be sought as part of the consultation document. Sensitivity analysis has not been included in this area for proportionality reasons, as this element of the reform is anticipated to have a small impact relative to other measures.

7.17 For the purposes of the analysis, we have made a number of additional assumptions about these 63,000 new claims, which are often referred to throughout the impact assessment as the pre-med cohort:

- We assume all these new claims are soft tissue claims, as non-soft tissue claims would include breaks and fractures, which are serious enough injuries to warrant medical reports currently.
- This new cohort of claims have the same injury duration distribution and special damages distribution as seen in the existing claims in the data we have analysed.

7.18 It has been assumed that currently no more than 5% of pre-medical report offers contain special damages awards. It has also been assumed that 20% currently have legal representation. These are illustrative assumptions, discussed further in the relevant sections below. It has not been

[22] By financial settlement, we mean any claims that result in compensation being paid out, either where claims/damages are settled (i.e. by agreement, where liability is admitted/damages agreed) or won (i.e. where liability/damages are denied/disputed).
[23] Compensation Recovery Unit (2014/15): Snapshot taken in April 2015

possible to obtain information on Pre-medical offers. Respondent's views will be sought during the consultation period and fed into the final stage IA.

Non RTA PI claims

7.19 Option 3 considers either raising the SCT for RTA only, or raising the SCT for all PI claims which will include Employer Liability (EL) Public Liability (PL) and Clinical Negligence (CN) claims. The CRU data shows that in 2014/15 there were around 53,000 EL claims, around 49,500 PL claims and around 10,500 CN claims with a financial settlement.

7.20 Raising the PSLA small claims limit from £1k to £5k will reduce costs for PI defendants, as claimants will not be able to recover their legal costs.

7.21 We have received data from COA and CSC on EL and PL claims; this is limited to a proportion of defendants that have private insurance. The proportion of EL/PL/CN claims where the defendant has insurance is unknown.

7.22 There will be some EL/PL/CN claims that are too complex for the SCT and will continue to be allocated to the fast or multi tracks, cost recovery rules will not change for these cases. It has not been possible to obtain data on the proportion of claims that would be too complex for the small claims track.

7.23 The NHS LA, who deal with CN cases against the NHS in England provided data. The NHS LA IT system does not record the split between damages for PSLA and Special Damages, so it has not been possible to determine the proportion of cases which will be affected by raising the SCT limit. The data shows that in 2014 around 60% of CN claims had a total settlement (including PSLA damages and special damages) of less than £10,000.Therefore, based on costs alone 40% of CN claims would not be subject to SCT provisions. It has been assumed that the impact on CN claims will be minimal because of they are low volume (1.6% in 2014/15 based on CRU data), and tend to have a higher value.

7.24 For these reasons, the analysis of the impact of option 3 on non-RTA PI claims is indicative only. More information will be requested as part of the consultation document and will be used to inform the final stage IA.

Compensation settlement

7.25 Claimants can currently recover compensation for PSLA. The level is determined by a number of factors, such as length of injury, severity of injury and loss of amenity. In addition, claimants are entitled to recover any direct financial loss as a result of the injury such as loss of earnings, known as special damages.

7.26 Analysis of the COA and CSC data shows the median net PSLA compensation paid for soft tissue RTA claims[24] below £10k is around £2,500 and the median special damages paid out for all soft tissue RTA claims is around £350. There may be bias in the data because, as explained above, their software excludes some more serious/complex claims. This could make the average special damage amounts marginally higher, but we cannot quantify this.

7.27 Evidence submitted by the insurer AXA to the Transport Select Committee in 2013[25] suggested that RTA soft tissue claims settling without a medical report tend to settle for between £1,600 and £2,000. It has been assumed that the average current settlement is the mid-point, around £1,800.

7.28 This suggests that cases settled without a medical report receive less than the average PSLA compensation. This is consistent with what we would expect for a number of reasons:

[24] Low value is defined as those with a financial settlement less than £10k. These will be highly representative of all soft tissue claims as more than 99% of claims in the COA data have PSLA damages of < £10k.

[25] Evidence submitted to the TSC in 2013 quote:
'One such example is so called "pre-medical" offers where an insurer will make an offer, following submission of a claim for "whiplash", without medical evidence. Typically, such offers range from £1,600–£2,000.'
http://www.publications.parliament.uk/pa/cm201314/cmselect/cmtran/117/117.pdf

(i) Insurers can save the cost of medical reports, and legal fees by offering a total settlement that will be lower than if the case proceeds as a claim

(ii) Claimants settle for what is offered as there is little or no injury suffered, or their injury is less severe

(iii) Claimants may value a quick and early settlement and be willing to accept less to achieve this.

7.29 Updated information on compensation settlements for claims settling without a medical report was sought from a number of sources such as insurance providers and claimant solicitors, but was not provided. More information will be sought as part of the consultation.

7.30 In the absence of data, and as mentioned above, it has been assumed the claims which currently settle without a medical report have the same injury duration distribution as those with medical reports. There is a view that these claims are more likely to be trivial, with little or no injury suffered, meaning costs may be overstated slightly, but the impact is expected to be small.

7.31 To calculate the change in compensation this group will now receive as a result of being subject to a medical report, the difference between the proposed PSLA tariff amounts and £1,800 is taken.

7.32 Analysis of the COA and CSC data shows the median PSLA settlement for **all** RTA claims below £10k is £2,500, for all EL claims below £10k is £3,050 and for PL is £3,100. These compensation amounts are likely to be skewed to include a high proportion of low value claims, as the COA and CSC data tends to capture the more straight forward cases. Additionally, the EL and PL figures only represents EL and PL claims where the defendant has taken out an insurance policy. Data on what the amounts awarded are where the defendant does not have private insurance is not held. Further views will be sought as part of the consultation.

Injury durations

The table below shows soft tissue claims as a proportion of total RTA claims by injury length, based on data from COA and CSC:

Injury duration	**% of RTA claims**
<=6 months	35.7%
> 6 months and <= 9 months	22.6%
> 9 months and <=12 months	17.5%
>12 months and <= 15 months	11.4%
>15 months and <= 18 months	4%
>18 months and <= 24 months	2.7%
>24 months	1.6%
Total	**96%**

7.33 Medco data indicates a higher proportion of cases, over 50%, have an injury duration of less than or equal to 6 months. MedCo is a new organisation, with an immature dataset. This estimate relates to a third of claims which have had a medical report uploaded onto Medco's systems, and we have not been able to ascertain whether there is a bias in terms of the types of solicitors uploading reports. We believe the COA and CSC data is more representative, due to having a wide and established clientele base (that encompass a variety of business practices due to the varying sizes and business models of each insurer). In addition, the COA and CSC data provides a much richer source of data, so for example we can see what claimants with different injury durations went on to settle for, which is not possible with the Medco data. Data was sought from other stakeholders such as solicitors and trade organisations to verify the injury duration data but they were not able to provide information in the time available. We will seek views as part of the consultation, which will be reflected in the final stage IA

7.34 Prognosis data from COA and CSC contains gross rather than net PSLA damages. Net represents the final sum paid to a claimant, as some PSLA damages can be removed from the gross total to account for contributory negligence (such as an RTA claimant failing to wear a seat belt). This means that the figures used in the analysis for the PSLA awarded for each injury duration may be overstated slightly. The difference between the Gross and Net PSLA awarded for claims between £1-2k and £2-3k (which encompasses the majority of soft tissue claims) is very small, so it is not expected that using gross rather than net figures to assess the median PSLA awarded for each injury duration will have a big effect on the analysis.

Special damages

7.35 Special damages are paid to claimants to recover any direct financial loss as a result of their injury, such as loss of earnings. In the COA data, 70% of claims have special damages. CSC stated that their special damages data is not reliable to use. Throughout the analysis it has been assumed that 70% of claims have special damages. In reality, the proportions may differ for claims with different injury durations, but data is not available by injury duration.

7.36 The weighted median amount paid in special damages per claim is £350[26]. This figure is used to calculate how much an insurer will pay out on average in special damages to new claims that will be created by banning pre-medical offers (Option 4 and Options 5.2 & 5.2).

7.37 It has been assumed that no more than 5% of claims currently without medical reports contain special damages.[27]

Disbursements

7.38 Disbursements are sums payable to a service provider in relation to the pursuit of a claim e.g. for medical reports, and are recoverable from a defendant by a successful claimant, including claims that qualify for SCT cost provisions. In the majority of claims this will be a cost that insurers pay to successful claimants. For every settled claim, we have included a £180 disbursement cost for medical reports. Legal fees are also a disbursement, but they are considered separately throughout the IA.

HMRC

7.39 Estimates have been made of the VAT owed on medical reports and legal fees. This assumes all medical experts and PI firms are VAT registered, which may slightly overestimate the VAT costs and benefits that apply to defendant insurers, HMRC, and any groups that become responsible for paying these VAT costs in the analysis. There will be some VAT owed on the special damages, but these have not been considered in the analysis.[28]

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[26] Regardless of injury duration. This differs slightly from the amounts considered for the removal of PSLA damages (option 1), which only affects low value soft tissue claims where the mean specials awarded are lower.

[27] Based on anecdotal evidence which suggests the majority of claims currently without medical reports result from insurers and claimants wanting quick straight forward settlements.

[28] Special damages constitutes loss of earnings and medical expenses. There will be some VAT owed on the medical expenses.

7.40 The loss of insurance premium tax revenue[29] mentioned in the costs and benefits sections is for steady-state purposes, to estimate the impact once each reform proposal has had time to bed in. This estimate does not take account of any behavioural changes in insurance purchasing; It assumes that premiums decrease in direct proportion to the estimated savings made by insurers that are passed on to premium holders, and that these savings have had time to reach steady state. Calculations of Exchequer impacts are based on a detailed assessment of the five year accounting period for Public Finances, and they take account of behavioural impacts, therefore the figures presented in these sections make use of different data sources and methodology, resulting in different figures

Commencement costs in the small claims track

7.41 Commencement costs are currently payable by claimants in the SCT for cases with legal representation. These are recoverable from defendants where the value of the claim is greater than £1,000 but not more than £5,000. The recoverable costs are fixed at £90 where there is only one defendant. These have not currently been included in the analysis, but could be worked into the final IA following consultation. This could cause a reduction in consumer legal fee benefits for claims that proceed in the small claims track that retain legal representation, by around £25m[30].

The claims process for low value RTA/EL/PL claims

7.42 It is helpful to understand the context of the claims process before considering the costs that are recoverable in successful claims (legal fees), this is covered in the next section.

7.43 Under the Pre-Action Protocols for Low Value Personal Injury Claims in Road traffic accidents or Injury ('the RTA and EL/PL Protocols'), PI claims are started through the Claims Portal. It has three stages. As an overview: Stage one requires the defendant to admit or deny liability. If liability is denied the claim will exit the Pre-Action Protocol at that stage. If liability is admitted, the claim will proceed to Stage two, where the two parties negotiate a final settlement. If a settlement is reached, the claim ends at that stage. If a settlement cannot be reached the claim will proceed to Stage three, where the court will determine the damages to be awarded.

7.44 At any stage, a claim can exit the Pre-Action Protocol for a variety of reasons. If the claim does exit the Protocol for Low Value Personal Injury Claims it may enter the Pre-Action Protocol for Personal Injury Claims, with the possibility of Part 7 proceedings being issued. Whether the claim is subsequently settled or proceedings are issued, the costs recoverable by the claimant will depend upon the stage the proceedings reach before settlement, or the court finds in the claimant's favour and will be significantly higher than those payable had the claim remained in the RTA Protocol. The claimant is at risk of recovering no more by way of costs than those available had the claim remained within the RTA Protocol if held to have acted unreasonably in causing the claim to exit the RTA Protocol. Based on data received from a leading panel law firm we believe that around a third of claims exit the Protocol, and that when they do so the majority settle without going to court.

7.45 Each stage of the RTA Protocol includes fixed recoverable legal costs (FRCs) for claimant's legal representatives, which are considered in the next section.

7.46 Under option 3a, the majority of soft tissue PI claims are expected to be shifted to the Small Claims track cost provisions, meaning there will be no fixed recoverable legal costs for claimants with legal representation. Claims Portal is currently only set up to be used by lawyers and insurers. It has been assumed that these claims will continue to proceed on Claims Portal (which would require suitable restructuring to the Claims Portal and the Pre-Action Protocol for low value Injury claims for RTA & EL/PL), but with SCT cost provisions (no fixed recoverable legal costs) so that the small claims courts do not become clogged with claims.

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[29] IPT will be increased to 10% of premium price before these reforms are implemented.

[30] 393,000 claims estimated to proceed and qualify for SCT provisions, 89% of which are estimated to have legal representation (discussed in option 5). Insurers would save £550-£90 for all of these claims, and pass on 85% of these savings to consumers.

Legal costs

7.47 To estimate the legal costs we have used the fixed recoverable costs applicable depending on which stage the claim settled. These fixed costs are published in the Pre-Action Protocols for Low Value Personal Injury Claims in Road traffic accidents or Injury (EL and PL claims) and are the fixed amounts that claimant can recover for legal expenses if they are successful.

RTA PI claims

7.48 The table below sets out the legal costs that we have applied, which are standard for RTA claims that have a total settlement of greater than £1k and <=£10k:

Claims	% of Claims	Fixed recoverable legal fees (known as FRCs) for RTA claims
Settled by the end of stage 2	59%	£500
Settled by the end of stage 3	6%	£1000
Fall out of portal	35%	£550

7.49 This gives a weighted average FRC for legal fees per RTA claim of £547.

7.50 A leading panel law firm provided data on the proportion of claims settling at each stage. These figures have been used rather than Claims Portal figures, because Claims Portal have highlighted that claims handlers often don't update the data in their system to reflect the true nature of claims. The Claims Portal figures suggest the proportion that drop out of the portal is around 50% rather than 35%, but this discrepancy will not have much impact on the analysis because the majority of claims will either settle by the end of stage 2 (and will therefore incur FRCs of £500), or drop out of the portal and settle before court proceedings (and will therefore incur FRCs of £550). The difference in FRCs is negligible, and thus will have a negligible impact on the analysis.

7.51 Anecdotal evidence from insurers and a leading panel law firm suggests that the majority of claims that fall out of the portal will settle prior to court. We have therefore assumed that all claims that fall out of the portal have fixed recoverable costs (FRCs) of £550. However we might be under representing the savings if some these claims go to court, where the FRCs are increased to £1,160 + 20% of damages. Data from a leading panel law firm suggests that 15% of claims that drop out will go to court (5% of total claims), and thus incur these higher fees. However, these will likely be claims that are more complex and thus may be deemed as too complex for the SCT track, and if they're then sent to the fast track, legal fees would still be recoverable and would thus not be a saving considered by the measures. For the purposes of the analysis it has been assumed that the mean fixed recoverable legal fees for claims that drop out of the portal is £550, whilst the mean for those that stay on the portal includes those that settle at stage 3[31] (court). This causes the overall mean recoverable legal fees for RTA claims to be £547.

7.52 When considering the population of claims that will be affected by raising the small claims track, it has been assumed it can only apply to the claims registered with CRU that have a financial

[31] It is assumed that those that go to court currently at stage 3 of the portal process will be suitable for SCT provisions.

settlement, for 2015 (545,000 claims). This is because legal fees are only recoverable in a claim where the claimant is successful.

Non RTA PI claims

7.53 A similar method was applied to Non RTA PI claims and the table below sets out the legal costs that we have applied:

Settlement stage	% of claims	Fixed recoverable cost
Settled by the end of stage 2	59%	£900
Settled by the end of stage 3	6%	£1,400
Fall out of the portal	35%	£950

7.54 We do not have data on the proportion of EL/PL claims that settle by each stage or that fall out of the portal so the proportions in the RTA data have been applied in the analysis, this gives a weighted average FRC for legal fees per EL/PL claim of £947.

7.55 It has not been possible to get suitable data on clinical negligence cases and these claims make up less than 2% of PI claims, so we have not included them in our analysis. We will seek information on the impact on clinical negligence cases as part of the consultation.

Legal representation

7.56 **RTA claims currently with medical reports:** It has been assumed that 70% of claimants currently have BTE funded legal representation[32], 29% currently have legal representation (non BTE funded), and 1% are LiPs[33]. If the SCT limit increases, it is assumed that the proportion of claimants with BTE funded legal representation remains at 70%[34], and from those currently with non BTE-funded legal representation there will be an increase in LiPs from 1% to 5%[35], and a drop out of 6%[36], decreasing the 29% with non-BTE legal representation to 19%.

7.57 **RTA claims currently without medical reports:** It has been assumed that 20%[37] of claimants currently have legal fees. It is assumed that 14% of these have BTE funded legal representation and 6%[38] have legal representation (non-BTE). In option 4 it is assumed that all claimants require legal fees post-reforms, but in all other options it is assumed that the proportion with legal fees remains fixed at 20%. Option 4 in isolation would require all claimants to have legal

[32] Anecdotal evidence from insurers and a leading panel law firm.

[33] Data from Caseman (the County Court case management system) shows 96% of PI claims in the SCT have legal representation. Around 10% of RTA claims go to the SCT. The rest go through the Claims Portal where legal representation is required. Overall this suggests 99% of RTA claims have legal representation and 1% are LiP.

[34] The reforms will have an impact on BTE cover that we cannot predict, but insurers feel confident it will adapt and continue to exist post-reforms. However, we cannot say if it will continue to include representation for cases that qualify for small claims track cost provisions, or whether the take up will remain so high (as premiums will increase). Due to this uncertainty we think it's appropriate to ask stakeholders for more evidence on BTEs in the consultation, but to proceed with the information we have currently available and assume there is not a drop in claim volumes (from 70%) due to this proposal.

[35] This is an illustrative assumption, but is in line with the increase in the proportion of LiP (around 40%) when legal aid was removed from private law family cases. It's slightly higher than in private law family cases because: (i) the Claims Portal will be amended to allow LiP (ii) in family cases individuals might be more inclined to pay for legal representation due to the personal nature of these cases, (iii) in private law family cases, not all individuals were eligible for legal aid, whereas in soft tissue all successful claims can currently recover legal costs, and (iv) in private law family cases it was already fairly common to be a LiP

[36] Due to claimants not wishing to self fund their legal representation. This is an illustrative assumption, but is in line with the reduction seen in money claims (around 20%) when enhanced fees were introduced. Applied to the 30% of claims without BTE, this gives a 6% drop in claims.

[37] Anecdotal evidence: the majority of settled claims without medical reports are made early by insurers before solicitors are instructed.

[38] A 70%/30% split.

representation to use Claims Portal, whilst this is not a requirement in the other options. Due to the uncertainty of the legal representation market post reforms, it is assumed that this proportion remains the same[39]. This assumption is not considered in sensitivity as the impact would be relatively low[40].

Reduction in claim volumes caused by the removed/reduced PSLA proposals

7.58 For claims with injury durations of 6 months or less, that have special damages, it is not possible to determine the number that will continue as a claim. The median special damages awarded for claims with injury durations of 6 months or less is around £100[41] on average (depending on whether it is a soft tissue claim that is without/with psychological injuries included). It could be argued that these are relatively low amounts and thus claimants in this prognosis group are unlikely to claim for special damages alone, but as this is a behavioural impact it is impossible to know. It has therefore been assumed that 50% of these claims will continue.

7.59 This assumption is considered further in the sensitivity analysis, where the impacts of all claims with injury durations of 6 months or less and no claims with injury durations of 6 months or less dropping out are considered.

7.60 For claims with an injury duration of 6 months or less that do not have special damages (30% of this cohort), it is assumed these claims do not proceed.

7.61 For claims with an injury duration of 9 months or less, the median special damages awarded is around £250 on average[42].We have had to estimate these figures as the special damages data that we have corresponds to the PSLA amounts grouped in bands of £1,000 e.g we have the average SD for those with a PSLA amount of £1,000 - £2000 etc. As the median PSLA damages awarded for soft tissue claims with injury duration of 9 months or less is around £2100 this does not map directly across to the SD band data that we have so we have taken an average of the £1,000 – £2,000 and £2,000 - £3,000. As a result it's likely to be a slight overestimate. The same assumption applied in Options 1.1a, 1.2a, & 2a is also applied in Options 1.1b, 1.2b, & 2b, i.e. that 50% of the low value claims do not proceed.

Tariff system for revised PSLA damages

7.62 Option 2 proposes a fixed tariff for claimants with injury durations greater than 6 months to 24 months. The tariffs applied will have an impact on the savings that can be achieved.

7.63 In the analysis, we have assumed the tariff system in the table below. The amounts awarded are calculated by considering a percentage reduction from what is currently awarded. The percentage reduction becomes smaller as the injury duration increases to reflect the policy intention having less impact on the PSLA damages for those with more serious soft tissue injuries and that there should be appropriate levels of compensation. The reductions range from around 70% for those with injury duration of 6 to 9 months to around 20% for those with injury duration of 18 to 24 months. The Government will consult using these values, but respondents will be specifically asked to give views on appropriate amounts which will be analysed and fed into the final stage IA.

[39] i.e. 20% have legal representation – 14% with BTE & 6% non-BTE

[40] Due to the volume of claims currently without medical reports being 70,000.

[41] Weighted average, based on the proportion of soft tissue claims without/with psychological injuries included.

[42] Weighted average, based on the proportion of soft tissue claims without/with psychological injuries included.

			Weighted soft tissue PSLA saving per claim that proceeds	
PSLA Awarded for Prognosis	Fixed tariff without psychological injuries	Fixed tariff with psychological injuries	Without Psychological injuries	With Psychological injuries
Injury duration <= 6 months (Options 1.1 & 5.1)	£0	£0	£1,767	£1,948
Injury duration <= 6 months (Options 1.2 & 5.2)	£400	£425	£1,367	£1,523
6 Months < Injury duration <= 9 Months	£700	£740	£1,740	£1,788
9 Months < Injury duration < =12 Months	£1,100	£1,150	£1,856	£1,891
12 Months < Injury duration <= 15 Months	£1,700	£1,760	£1,602	£1,664
15 Months < Injury duration < =18 Months	£2,500	£2,575	£1,272	£1,258
18 Months < Injury duration < =24 Months	£3,500	£3,600	£837	£798
Injury duration > 24 Months	No revision	No revision	£0	£0

8 Annex B – Glossary of key acronyms used in the IA

- **BTE providers**: **Before The Event providers**

BTE insurance is typically purchased as part of an add-on to a motor insurance policy, and provides the policy holder with an indemnity against legal costs incurred in pursuing a claim for damages. Panel law firms represent claimants under BTE policies. Currently where their claimant is successful, BTE lawyers can recover legal fees from the at-fault insurer.

- **CFA: Conditional Fee Agreement**

These are the funding agreements that are commonly used in personal injury claims where the clamant only pays for the solicitor's work if they win the case. Under the current system if a claimant has a CFA, if they win the case they can recover the legal fees from the defendant, and if they lose they do not have to pay legal fees as part of the agreement.

- **CMCs: Claims Management Companies**

CMCs offer services to claimants in respect of their claims. They advertise for business and often work with lawyers.

- **CN**: **Clinical Negligence**

Claims for damages related to injury resulting from medical negligence

- **CRU**: **Compensation Recovery Unit**

When a claimant is awarded compensation, the compensator (the person or organisation likely to be paying the compensation) must inform CRU before any payment is made.

- **COA (Claims Outcome Advisor/ISO) and CSC (Colossus)**

These are systems developed for insurance companies to input details about personal injury claims, to evaluate what the settlement should be, by drawing on a company's previous settlements, to minimise pay-out variance.

- **DBA: Damage-based agreements**

DBAs are an option for funding litigation – if the case is successful, the lawyer's fee is calculated as a percentage of the damages obtained; if the case is lost, no fee is payable to the lawyer.

- **EL: Employer liability**

Claims for damages related to accidents or injury in the workplace

- **IPT: Insurance Premium Tax**

This is a tax on general insurance premiums, including car insurance, which, from October 2016, will be set at 10 per cent of a premium's value.

- **LIPs: Litigants in Persons**

This relates to individuals who do not have legal representation.

- **MROs/ MEs: Medical Reporting Organisations/Medical experts**

MROs/MEs provide medical reports for claimants who undergo a medical examination to assess whether an injury has been sustained, and if so its severity, prognosis and whether treatment is required.

- **PI claims: Personal Injury**

Claims for damages relating to Road Traffic Accidents, Employer Liability, Public Liability and Clinical negligence

- **PSLA: Pain, Suffering and Loss of Amenity**

An award for PSLA compensates the claimant for the distress or frustration caused by the injury and the general impact of the accident upon their lifestyle.

- **PL: Public Liability**

Claims for damages related to accidents or injury in a public place such as slips and trips

- **RTA claims: Road Traffic Accidents**

This refers to individuals who are involved in a RTA who are seeking to make a claim for damages as a result of the accident.

- **RTA PAP: Road Traffic Accident Pre-Action Protocol**

This outlines the steps the courts would usually expect parties of a RTA dispute to take before court proceedings are issued, this includes the legal fees which are recoverable.

- **SCT: Small Claims Track**

A court will usually allocate a personal injury case to the SCT if the PSLA compensation being claimed is no more than £1,000 (and total settlement is under £10,000)