



Ministry
of Justice

Statutory review of the Whiplash Tariff

A Call for Evidence

This Call for Evidence begins on 6 February 2024

A decorative graphic in the bottom right corner consisting of a grid of light blue triangles of various sizes, some pointing up and some pointing down, creating a geometric pattern.



Ministry
of Justice

Statutory Review of the Whiplash Tariff

A Call for Evidence

A Call for Evidence produced by the Ministry of Justice. It is also available at <https://consult.justice.gov.uk/digital-communications/statutory-review-of-the-whiplash-tariff-cfe>

About this Call for Evidence

To: All those with an interest in whiplash-related personal injury claims

Duration: From 06/02/24 to 02/04/24

Enquiries (including requests for the paper in an alternative format) to:

Civil Justice & Law Policy
Post point 5.25
Ministry of Justice
102 Petty France
London SW1H 9AJ
Email: **whiplash-reform-team@justice.gov.uk**

How to respond: Please send your response by 2 April 2024 to:

Civil Justice & Law Policy
Post point 5.25
Ministry of Justice
102 Petty France
London SW1H 9AJ
Email: **whiplash-reform-team@justice.gov.uk**

Response paper: A summary of responses to this Call for Evidence exercise will be published in due at: <https://consult.justice.gov.uk/digital-communications/statutory-review-of-the-whiplash-tariff-cfe>

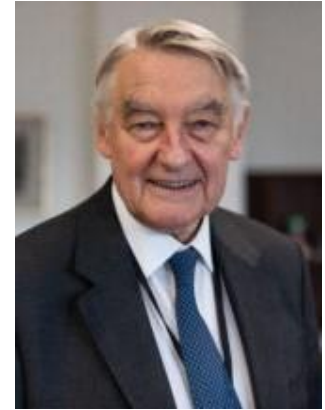
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Foreword

The Civil Liability Act 2018 (the CLA) made important changes to the claims process for low value road traffic accident (RTA) related personal injury claims, the majority of which are ‘whiplash’ claims.

The CLA introduced a fixed tariff system of compensation for whiplash to reflect a level proportionate with the pain and suffering incurred from such a minor injury. The CLA also brought in the need for compulsory medical evidence to support these claims.



The tariff represents the Government’s intention to ensure genuinely injured claimants receive proportionate compensation based on evidence. The Government is committed to ensuring, through regular reviews of the tariff, that this remains the case.

The measures came into force through Regulations introduced on 31 May 2021 which commenced the provisions included in Part 1 of the CLA. Under these, the Lord Chancellor has a statutory duty to review the fixed tariff every three years and to lay a report before Parliament.

This Call for Evidence will play an important role in supporting the Lord Chancellor to review the whiplash tariff, and I encourage all those with an interest to respond. All submissions will be considered and will form part of a wider analytical exercise being undertaken by the Ministry of Justice. This will ensure the evidence base for this work is robust, up-to-date and represents a broad range of views.

A handwritten signature in black ink that reads "Christopher Bellamy". The signature is written in a cursive style with a long horizontal line extending from the end.

Lord Christopher Bellamy KC
Parliamentary Under Secretary of State for Justice

Executive Summary

Part 1 of the Civil Liability Act 2018 (the CLA) changed the way claimants are awarded damages for whiplash injuries. The CLA provides for the Lord Chancellor to set a tariff of damages for whiplash injuries up to two years in duration and to make regulations to set the tariff amounts. The CLA also requires the Lord Chancellor to review the whiplash tariff no later than three years after its implementation and every three years thereafter.

This Call for Evidence forms a key part of that review of the whiplash tariff. It will examine what has changed since the introduction of the whiplash tariff measures and will consider its component parts (the duration bands, and the rates for whiplash only injuries and whiplash injuries with minor psychological damage).

In assessing the tariff, the review will explore how economic factors, such as inflation, have had an impact since the introduction of the tariff on commencement of the Whiplash Injury Regulations 2021 on 31st May 2021, as well as whether any broader factors should also be considered in the review.

All submissions and evidence provided will be considered by the Ministry of Justice.

Introduction

1. This Call for Evidence (CfE) exercise is intended to gather evidence as part of the statutory review of the whiplash tariff introduced on 31 May 2021. The review will assess the whiplash tariff and its component parts, and wider economic, sectorial and other changes since its introduction.
2. The review will explore changes in factors relevant to whiplash claims, as well as broader factors, such as inflation and changes in the claims sector. The review will not assess the extent to which the Whiplash Reform Programme measures have achieved their overall policy objectives, which is beyond the scope of the Lord Chancellor's statutory obligations.
3. The Lord Chancellor will also consider the likely implications of the different possible review outcomes, including the overarching reform objectives of reducing the number and cost of whiplash claims, before a final decision is made.
4. We welcome views from all who have an interest in this area, whilst acknowledging that some stakeholders have specialised areas of knowledge and may want to focus on providing evidence in these areas. Respondents are asked to consider the issues raised in this document and to provide responses to the questions asked, providing any documentary or other evidence available to support their position.
5. All submissions and evidence provided will be considered and used as part of the statutory review of the whiplash tariff to assist the Lord Chancellor. The Lord Chancellor is required to lay a report in Parliament on the outcome of the review and these submissions may be referenced therein.
6. An Impact Assessment has not been prepared for this paper, as its purpose is to gather evidence, rather than to put forward policy proposals for consultation.
7. Copies of the CfE paper are being sent to the organisations listed in **Annex 1**. This list is not meant to be exhaustive or exclusive. Responses are welcome from anyone with an interest in, or views on, any subject covered by this paper. It will be available online at <https://consult.justice.gov.uk/digital-communications/statutory-review-of-the-whiplash-tariff-cfe>
8. A Welsh language executive summary and question set will be made available at <https://consult.justice.gov.uk/digital-communications/statutory-review-of-the-whiplash-tariff-cfe>
9. **This Call for Evidence will last for 8 weeks and will close on 2 April 2024.**

Background

The Civil Liability Act 2018 reforms

10. Whiplash injuries are soft tissue injuries, typically affecting the neck and back. In May 2021, the Government implemented its Whiplash Reform Programme, which introduced secondary legislation that changed the way claimants are awarded damages for low value whiplash injuries. At the same time, the Official Injury Claim¹ (OIC) portal, an online service for bringing, negotiating and settling low value RTA-related personal injury claims, was launched to assist claimants affected by the reforms.
11. Prior to the introduction of Part 1 of the CLA², where injury damages could not be agreed by negotiation, awards were determined by the court. The court would consider, amongst other things, the severity and duration of the injuries, and previous levels of compensation for similar injuries.
12. This system, which often utilised the Judicial College Guidelines³, in the Government's view led to compensation levels which were out of step with the level of pain and suffering endured. For example, the average award for a whiplash injury with a prognosis period of 9 months prior to the reforms was around £2,600. The Government felt that this was disproportionate to the injury and contributed to increased insurance premiums for ordinary motorists.
13. Part 1, section 1 of the CLA introduces a definition of a whiplash injury for the first time, whilst Part 1, section 3 of the CLA allows the Lord Chancellor to set a fixed tariff of proportionate compensation for whiplash injuries. This measure was, in turn, implemented through the Whiplash Injury Regulations 2021⁴ (the Regulations) which came into force on 31 May 2021.
14. The tariff presents an ascending scale of fixed sum payments, with the appropriate tariff figure for any given claim being determined by the duration of the whiplash injury incurred. The tariff is split, and claims can either be made for whiplash injury only or for

¹ <https://www.officialinjuryclaim.org.uk/>

² <https://www.legislation.gov.uk/ukpga/2018/29/contents/enacted/data.htm>

³ The Judicial College Guidelines for the Assessment of General Damages are designed to provide a clear and logical framework for the assessment of damages in personal injury cases. Each edition is usually updated to consider inflation since the last edition and to reflect decisions of the higher courts on quantum. The book is edited by a working party of the Judicial College,

⁴ <https://www.legislation.gov.uk/uksi/2021/642/contents/made>

a whiplash and minor psychological injury. The compensation a claimant is entitled to depends on the prognosis period for their injury, which must be set out in a supporting medical report. The regulations also specify what constitutes appropriate medical evidence for the purposes of settling a whiplash claim.

15. An uplift of up to 20% of the relevant tariff amount can be applied for if the claimant can demonstrate their injury or circumstances are exceptional. No specific definition has been provided as to what constitutes an exceptional circumstance, as this will depend on individual circumstances.
16. More serious whiplash injuries exceeding 2 years in duration are not subject to the tariff and are still issued in the same way as prior to the reforms.
17. The CLA requires that the Lord Chancellor reviews the regulations made under section 3 (the whiplash tariff) by no later than three years after implementation and lay a report in Parliament on the review's outcomes and recommendations. The Lord Chancellor therefore has a duty to review the regulations no later than 31 May 2024, and every three years thereafter.
18. The Government committed, during the passage of the Whiplash Regulations 2021, to assessing the feasibility of an early review one year after implementation. An assessment was undertaken of the data available on settlements using the OIC service and those which had entered the court process.
19. This confirmed that whilst there was sufficient data available on the pre-court process, the available data from HM Courts and Tribunals Service on claims which have entered the courts for determination was significantly below the threshold for an effective assessment. The Lord Chancellor therefore decided that it was not appropriate to undertake a review at that time.
20. Consequently, this review of the whiplash tariff is the first time that this requirement has been undertaken.

Tariff structure

21. The table below sets out the current whiplash tariff structure and compensation amounts split by duration of injury, and by injury type, as set out in the regulations.
22. To allow for an even progression along the scale, dependent on the severity of the injury, the injury duration element was set at three month increments for an injury of a duration greater than six months but not more than 18 months, and a further six month increment for injuries of a duration of up to two years.
23. The tariff specifies two sets of figures, one for whiplash injuries only and one for whiplash injuries and any minor psychological injuries suffered on the same occasion. This ensures that compensation can be paid specifically for minor psychological injury only where it is present. In both instances, the value of the claim will be based on the duration of the whiplash injury, so claimants will be able to identify the appropriate compensation by reference to the prognosis in the medical report.

Table 1: Whiplash Tariff.

Duration of injury	Amount (whiplash only)	Amount (whiplash and minor psychological injury)
Not more than 3 months	£240	£260
More than 3 months, but not more than 6 months	£495	£520
More than 6 months, but not more than 9 months	£840	£895
More than 9 months, but not more than 12 months	£1,320	£1,390
More than 12 months, but not more than 15 months	£2,040	£2,125
More than 15 months, but not more than 18 months	£3,005	£3,100
More than 18 months, but not more than 24 months	£4,215	£4,345

24. In setting these figures, the government considered a number of factors, including the suggested guidelines for compensation set by the judiciary, the average levels of whiplash compensation paid, as well as the overall government objectives to control costs and benefit consumers through reduced premiums.

25. Data, evidence and feedback was gathered on actual settlements made from the insurance industry and claimant lawyers. When set, the tariff amounts also reflected projected inflation over the following three-year period (i.e., 2021-2024) and the most recent (at the time) edition of the Judicial College Guidelines.
26. The views of the then-Lord Chief Justice were sought before the figures were finalised, in line with the requirements of the CLA.
27. The following questions are intended to gather evidence from respondents about the tariff to inform the review. They focus on the different parts of the tariff structure, including the amounts, how these are split by duration of injury, and the distinction between whiplash only and whiplash plus minor psychological injury.
28. This includes evidence on how simple the tariff is to navigate, both for professional users and claimants without representation. It is important that the tariff is easy to understand for all those who need to refer to it to value a claim or respond to an offer.

Question 1: To what extent do the injury duration ranges in Table 1 reflect the typical duration of whiplash injuries?

Please provide reasons and data, where possible, to support your view.

Question 2: In your view, is splitting the tariff into “whiplash only” and “whiplash plus minor psychological injuries” a suitable approach?

Please give reasons to support your view and suggest an alternative if appropriate.

Question 3: How simple is the tariff to understand, use and explain?

Question 4: If you have experience engaging with unrepresented claimants, whether advising, providing support, or responding to claims, what is their experience of using the tariff?

Question 5: Do you have any other views on the structure or component parts of the tariff which are relevant to this review?

Changes since the introduction of the tariff

29. This section seeks to understand what has changed in the personal injury claims sector since the whiplash tariff was introduced that might be relevant to this review. Whilst the review will draw on claims data held centrally by OIC and HMCTS, we are also particularly interested in receiving information from respondents in relation to their individual experiences, supported by data wherever possible.

Question 6: Since the introduction of the whiplash tariff, what changes have there been in regard to the following factors that would be relevant to this review?

- a) the volume of whiplash settlements;**
- b) the composition of the claims market;**
- c) caseloads; and**
- d) any other relevant factors related to whiplash claims.**

Mixed injuries

30. Under the CLA, courts can continue to award damages which reflect the combined effect of injuries where there is a mix of whiplash (tariff) and non-whiplash injuries sustained at the same time. We are interested in understanding how the whiplash tariff has impacted claims for mixed injuries.

31. We are aware of the factors influencing the valuation of mixed claims, including the ongoing case regarding mixed injuries, due to be heard in the Supreme Court in February 2024, and the upcoming update to the Judicial College guidelines. However, the Government cannot comment on ongoing legal proceedings or prejudge what will be included in the revised guidelines.

Question 7: How has the introduction of the whiplash tariff changed the process of valuing injuries for the purpose of making offers/counter offers?

Question 8: How has the introduction of the whiplash tariff changed the process of agreeing settlements for mixed injury claims?

Question 9: What do you think should be taken into account in the review regarding mixed injuries?

Broader factors

32. This section seeks to gather evidence on the influence of broader factors since the introduction of the tariff. This is to understand their impact and consider how these may be taken into account in the context of reviewing the tariff.

Inflation

33. The Government committed to review the tariff every three years and created a three-year “buffer” in the figures to ensure that the rates took account of projected future inflationary pressures.

34. The whiplash tariff amounts were set using Consumer Price Index (CPI) as a general inflationary measure, in line with advice from the Office of National Statistics for Government. This is consistent with the approach taken elsewhere, for example, benefits, state pensions and business rates which are all set by reference to CPI.

35. Table 2 below, illustrates how the tariff figures for claims including whiplash and minor psychiatric injury, proposed in 2018, were updated and future-proofed using forecast CPI inflation between March 2021 and March 2024 at the time. The Government acknowledge that these figures do not account for the unexpected inflationary pressures since the initial tariff was set, and that the real value of the figures has fallen.

36. A different approach to structuring the tariff was of course then taken in the Whiplash Injury Regulations 2021, whereby the tariff was split into whiplash and whiplash + minor psychological injury (see paragraph 23).

Table 2: Illustrative Tariff using CPI uprating.

<i>Duration of injury</i>	<i>Draft amount proposed in 2018</i>	<i>CPI (rounded)</i>	<i>Increase over 3 years after implementation (CPI)</i>
Not more than 3 months	£235	£250	£260
More than 3 months, but not more than 6 months	£470	£495	£520
More than 6 months, but not more than 9 months	£805	£850	£900
More than 9 months, but not more than 12 months	£1,250	£1,320	£1,400
More than 12 months, but not more than 15 months	£1,910	£2,015	£2,040
More than 15 months, but not more than 18 months	£2,790	£2,945	£3,005
More than 18 months, but not more than 24 months	£3,910	£4,125	£4,215

37. The following questions seek to understand the real impact of inflation since the introduction of the tariff on 31 May 2021.
38. We are also interested in receiving evidence on any other economic factors which stakeholders feel are relevant to the review, such as unemployment and interest and exchange rates.

Question 10: What has been the impact of inflation on claimants' damages since 31 May 2021?

Question 11: Does CPI remain an appropriate inflationary measure?

If not, why not?

Question 12: Is the three-year inflationary buffer built into the whiplash tariff effective?

If not, what alternative would you propose and why?

Question 13: Are there any other economic factors which should inform the review?

Additional factors

39. In looking at what has changed since 2021, we are interested in gathering evidence on any other additional factors that are relevant in the context of the review.
40. Respondents are asked to consider political, social, technological, legal, environmental or other developments since the introduction of the tariff rates that are relevant to the review.

Question 14: What other factors are relevant in the context of a tariff review?

Please provide reasons supported by data where possible.

Question 15: Are there any other considerations not already discussed that should be taken into account as part of the review?

Equality considerations

41. Section 149 of the Equality Act 2010 (“the Act”) requires Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- 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).

42. In carrying out this duty, Ministers and the Department must pay “due regard” to the nine “protected characteristics” set out in the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity. An assessment on how the policy impacts the public sector equality duty has been carried out below.

Direct Discrimination

43. This Call for Evidence exercise is designed to gather evidence as part of the statutory review of the Whiplash Tariff to inform the Lord Chancellor’s decision on reviewing the rate.

44. Our assessment is that the whiplash tariff, including its review and any potential adjustments made in light of it, is not likely to be directly discriminatory within the meaning of the Equality Act 2010, as it will not treat anyone less favourably because of a protected characteristic.

45. As such we assess that the policy is not directly discriminatory within the meaning of the Equality Act 2010.

Indirect Discrimination

46. Indirect discrimination occurs when a provision applies equally to all individuals in the impacted pool but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not and cannot be shown to be a proportionate means of achieving a legitimate aim.

47. The Government does not collect comprehensive information about personal injury claimants in relation to protected characteristics, and therefore there is limited data with which to identify a pool, nor base reliable assumptions.
48. The whiplash tariff is applicable to all claimants with whiplash injuries lasting no more than two years, with the amount of damages determined by the expected length of the claim, and whether the injury is for whiplash only or with minor psychological damage. The intention of the policy is to suitably compensate for these minor injuries whilst reducing the overall cost of these claims, and we assess that the whiplash tariff, including its statutory review, is a proportionate means of achieving these aims.
49. It should be noted that certain claims are exempted from the RTA Small Claims Protocol and the tariff. These are claims where the claimant is child on the date the claim is started and where either the claimant or defendant is a protected party as defined in rule 21.1⁵.

Advancing equality of opportunity

50. Consideration has also been given to how the whiplash tariff impacts on the duty to advance equality of opportunity. We do not consider the policy as having significant impact on the achievement of this objective.

Discrimination arising from disability and duty to make reasonable adjustments

51. We do not consider that the provisions are likely to result in any unlawful discrimination on any grounds, including in relation to disability.

Fostering good relations

52. We assess that there will be no impact on relations between those who share protected characteristics and those who do not.

Question 16: Please provide evidence on how the whiplash tariff review may affect people with protected characteristics.

⁵ <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part21#21.1>

Questionnaire

We would welcome responses to the following questions set out in this Call for Evidence:

Question 1: To what extent do the injury duration ranges in Table 1 reflect the typical duration of whiplash injuries?

Please provide reasons and data, where possible, to support your view.

Question 2: In your view, is splitting the tariff into “whiplash only” and “whiplash plus minor psychological injuries” a suitable approach?

Please give reasons to support your view and suggest an alternative if appropriate.

Question 3: How simple is the tariff to understand, use and explain?

Question 4: If you have experience engaging with unrepresented claimants, whether advising, providing support, or responding to claims, what is their experience of using the tariff?

Question 5: Do you have any other views on the structure or component parts of the tariff which are relevant to this review?

Question 6: Since the introduction of the whiplash tariff, what changes have there been in regard to the following factors that would be relevant to this review?

a) the volume of whiplash settlements;

b) the composition of the claims market;

c) caseloads; and

d) any other relevant factors related to whiplash claims.

Question 7: How has the introduction of the whiplash tariff changed the process of valuing injuries for the purpose of making offers/counter offers?

Question 8: How has the introduction of the whiplash tariff changed the process of agreeing settlements for mixed injury claims?

Question 9: What do you think should be taken into account in the review regarding mixed injuries?

Question 10: What has been the impact of inflation on claimants’ damages since 31 May 2021?

Question 11: Does CPI remain an appropriate inflationary measure?

If not, why not?

Question 12: Is the three-year inflationary buffer built into the whiplash tariff effective?

If not, what alternative would you propose and why?

Question 13: Are there any other economic factors which should inform the review?

Question 14: What other factors are relevant in the context of a tariff review?

Please provide reasons supported by data where possible.

Question 15: Are there any other considerations not already discussed that should be taken into account as part of the review?

Question 16: Please provide evidence on how the whiplash tariff review may affect people with protected characteristics.

Annex 1: List of Consultees

AA	Fletchers
Admiral	Forum of Insurance Lawyers
Advantage Insurance Company	Gibraltar Insurance Association (GIA)
Ageas Insurance Limited	Hastings Direct
AIG	Hill Dickinson
Allianz	Irwin Mitchell
Association of British Insurers	JMW Solicitors
Association of Consumer Support Organisations	Keoghs
Association of Personal Injury Lawyers	Kennedys
Aviva	Law Society
Axa Insurance	LV=
British Insurance Brokers Association	Minster Law
Browne Jacobson LLP	Motor Accident Solicitors Society
Capsticks LLP	Motor Insurers' Bureau
Carpenters Group	NFU Mutual
CFG law	Nicholls Brimble Bhol
CILEx	Personal Injuries Bar Association
Citizens Advice	Sabre Insurance Group
Cloisters	Slater and Gordon
Clyde & Co	Thompsons Solicitors
DAC Beachcroft	Weightmans
DWF	Which?
eSure	Zurich

About you

Please use this section to tell us about yourself.

Full name: _____

Job title or capacity in which you are responding to this Call for Evidence exercise (e.g., member of the public etc.):

Date: _____

Company name/organisation (if applicable):

Address:

Postcode _____

If you would like us to acknowledge receipt of your response, please tick this box:

Address to which the acknowledgement should be sent, if different from above:

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

Contact details/How to respond

MoJ contact details

Please send your response by 2 April 2024 to:

Civil Justice and Law Policy

Ministry of Justice

Post point 5.23

102 Petty France

London SW1H 9AJ

Tel: 020 3334 3157

Email: whiplash-reform-team@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the Call for Evidence process, you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this Call for Evidence can be obtained from this address, and it is also available on-line at <https://consult.justice.gov.uk/digital-communications/statutory-review-of-the-whiplash-tariff-cfe>

Alternative format versions of this publication can be requested from:

whiplash-reform-team@justice.gov.uk

Publication of response

A paper summarising the responses to this Call for Evidence will be published in approximately three months' time. The response paper will be available on-line at:

<https://consult.justice.gov.uk/digital-communications/statutory-review-of-the-whiplash-tariff-cfe>

Representative groups

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

Confidentiality

Information provided in response to this Call for Evidence, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004).

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

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

Impact Assessment

An Impact Assessment has not been prepared for this Call for Evidence paper as the focus at this stage of the process is to gather evidence, rather than consulting on a set of proposals. Responses received to the Call for Evidence will help to inform the production of an Impact Assessment in the future.

Welsh Language

Welsh Language Impact Test

A Welsh language version of the executive summary and question set included in this Call for Evidence is also available on <https://consult.justice.gov.uk/digital-communications/statutory-review-of-the-whiplash-tariff-cfe>

The contents of this document do not affect MoJ services in Wales.

Call for Evidence principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Call for Evidence Principles 2018 that can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Call for Evidence_Principles__1_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Call_for_Evidence_Principles__1_.pdf)



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