

<p>Dismissal of personal injury claims involving fundamental dishonesty</p> <p>IA No: MoJ 021/2014</p> <p>Lead department or agency: Ministry of Justice</p> <p>Other departments or agencies:</p>	<p>Date: 6 June 2014</p> <p>Stage: Introduction of Legislation</p> <p>Source of intervention: Domestic</p> <p>Type of measure: Primary legislation</p> <p>Contact for enquiries: general.queries@justice.gsi.gov.uk</p>
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Summary: Intervention and Options

RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value (2013/14 prices)	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£0m	N/A	N/A	No	N/A

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

The policy objective is to tackle fundamentally dishonest claims and ensure that only genuine and reasonable compensation is awarded. The Government seeks to introduce a provision to require the court to dismiss in its entirety any claim where it is satisfied that the claimant has been fundamentally dishonest, unless it would cause substantial injustice to the claimant to do so. The reform requires primary legislation and so Government intervention is necessary.

What are the policy objectives and the intended effects?

The policy objective is to reduce the volume of fundamentally dishonest claims and to ensure that only reasonable and genuine compensation is awarded. It is anticipated that any aggregate reduction in compensation paid by defendant insurers should feed through to lower insurance premiums than would otherwise be the case. Where defendants are not insured and pay compensation directly, e.g. the NHS, they would also gain from paying out lower compensation.

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

Option 0: Do Nothing
Option 1: Introduce primary legislation to strike out a claim where the claimant has been fundamentally dishonest

The Government's preferred option is Option 1 as this should meet the policy objectives.

Will the policy be reviewed? It will be reviewed. If applicable, set review date:

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 N/A	< 20 N/A	Small N/A	Medium N/A	Large N/A
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 (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: Swan Faulkner Date: 18/06/2014

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce a clause in the Criminal Justice and Courts Bill providing for the court to strike out entirely any claim where it is satisfied that the claimant has been fundamentally dishonest unless it would cause substantial injustice to the claimant to do so.

FULL ECONOMIC ASSESSMENT

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

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

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

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

Claimants who make fundamentally dishonest claims may be unable to gain any compensation for the genuine part of their claim as a result of these claims being dismissed.

In relation to other claims, claimants may receive less compensation if they exaggerate claims less in future. No win no fee claimant lawyers may receive less success fee income as a consequence.

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

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

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

Defendants (insurers and the NHS) will benefit from paying reduced compensation in relation to fundamentally dishonest claims that are dismissed in future.

Defendants (insurers and the NHS) may benefit from paying reduced compensation if claimants exaggerate other claims less in future.

If reduced costs incurred by defendant insurers are passed on via lower insurance premiums then policy holders would benefit (including businesses, local authorities and motorists).

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

It has been assumed that there will be no change in the volume of personal injury claims nor in the volume of court proceedings issued and the volume of cases going to court.

It has been assumed that in future some claims which are found to be fundamentally dishonest will be dismissed.

It has been assumed that as a behavioural consequence of the reforms, claimants will exaggerate other claims less in future, resulting in lower compensation settlements.

BUSINESS ASSESSMENT (Option 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

Evidence Base

Background

1. The Government is committed to tackling unjustified personal injury (PI) claims, demonstrated by the programme of work to tackle whiplash and the cost of motor insurance. As part of this, the Government proposes further reforms to discourage fundamentally dishonest (PI) claims and ensure that compensation is only awarded in the case of genuine and reasonable PI claims. There is a strong case for further action in this area, as the Transport Select Committee have recognised. By reducing the aggregate compensation paid by insurers, these reforms should support the Government's work to reduce the cost of motor insurance premiums, on the understanding that insurers should pass through their cost savings via lower premiums.
2. The Government seeks to introduce a provision to require the court to dismiss in its entirety any claim where it is satisfied that the claimant has been fundamentally dishonest, unless it would cause substantial injustice to the claimant to do so. This would apply to all PI cases, not only in cases where a claimant had grossly exaggerated his or her own claim, but also in cases where the claimant was genuinely injured and connived with other fraudulent claimants who dishonestly claimed that they were also injured, for instance in road traffic accidents.
3. Under the current law the courts have discretion to dismiss a claim entirely in these circumstances, but will only do so in exceptional cases, and will generally not award the exaggerated element of the claim but still award the claimant the relevant compensation in relation to the "genuine" element of the claim. In future where such claims are dismissed the claimant would no longer receive the "genuine" element of the claim. Strengthening the law would send a strong message to deter fraudulent behaviour. It would also give a greater incentive to defendants and their insurers to investigate and challenge dubious claims.

Policy rationale and objective

4. The Government anticipates that the reforms will send a strong message to claimants that if they act in a fundamentally dishonest way there is a greater probability that they will lose all compensation. The Government anticipates that this will reduce the number of fundamentally dishonest PI claims, and the associated costs of paying compensation, which are met by insurers and by bodies such as the NHS which are not insured. In addition as a behavioural response the Government expects that other PI claims may be exaggerated less, again leading to lower compensation paid by defendants. The Government expects that defendant insurers should pass through, in the form of lower insurance premiums, any reduction in the aggregate compensation they pay out.

Description of options

Option 0 – Base case: Do Nothing

5. Under the 'do nothing' base case, the current system would continue to apply.
6. The current law gives the court the power to dismiss the entirety of the claim where the claimant grossly exaggerates the extent of his or her injury, including any award for a genuine injury. A similar position applies in cases where the claimant is injured, typically as a car driver, and does not exaggerate his own claim but connives with fraudulent "phantom passengers" who dishonestly claim they were in the vehicle and also injured. However, the Supreme Court has indicated that under the current law the power to dismiss should only be exercised in very exceptional circumstances. In these circumstances, the claimant is still able to recover costs for the "genuine" element of the claim, but may receive a punitive adverse costs order and in more serious cases may be charged with contempt of court.

Option 1: Introduce primary legislation to strike out a claim where the claimant has been fundamentally dishonest

7. Introduce a clause to the Criminal Justice and Courts Bill to providing for the court to dismiss entirely any claim where it is satisfied that the claimant has been fundamentally dishonest (either in relation to their own claim or in supporting another claim relating to the same incident ("phantom passenger" cases)), unless it would cause substantial injustice to the claimant to do so.

Costs and Benefits

8. This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly 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. In this case a largely qualitative assessment has been provided for most of the costs and benefits.
9. An indication of the magnitude of the costs and benefits has been provided where possible. The key assumptions and background data are considered below, including an indication of how firm the assumptions are.

Key data and assumptions

Background data

10. Figures published by the Compensation Recovery Unit (CRU) indicate that in 2013/14 there were around 1.02 million PI and disease claims¹. Around 76% of all these PI claims were motor claims, around 10% were employer liability claims, around 10% were public liability claims, and around 2% were clinical negligence claims. CRU data indicates that motor claim volumes have increased by around 24% over the last five years (since 2008/09).
11. PI claims are classed as 'unspecified money claims' by HM Courts and Tribunals Service (HMCTS), and previous internal HMCTS research indicates that the vast majority of unspecified money court claims are likely to be PI claims². Published HMCTS data indicates that on average court proceedings were issued in relation to around 180,000 unspecified money claims, of which around 10,000 went to a court hearing³.
12. In terms of value, this published HMCTS data indicates that around 4% of unspecified money claim court proceedings related to claims above £50,000, and that around 3% of unspecified money court hearings related to claims of above £50,000.
13. Precise levels of fraud are uncertain. The Association of British Insurers (ABI) reported that in 2013, there were 59,900 dishonest motor claims, an increase of 34% since 2012⁴. Dishonest motor claims represent around 8% of all motor claims in 2013 registered to the CRU. This figure relates to cases where fraud was detected, rather than to the total volume of suspected (detected and undetected) exaggeration. The Government has not verified this figure.

Assumptions

For the purposes of assessing the costs and benefits of this policy in this IA a number of simplifying assumptions have been made. The sensitivity of costs and benefits to varying these assumptions is also considered.

14. The Government does not centrally record data on the number of claims involving fundamental dishonesty. It has been assumed that as a result of the reforms, a small number of PI claims will be considered by the court to be fundamentally dishonest and will be dismissed. As a result the claimant will receive no compensation. It has been assumed that currently the exaggerated element of these claims would not be awarded but the "genuine" element would be.

¹ Compensation Recovery Unit (DWP) Performance Statistics Snapshot taken as at 24th April 2014.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306064/cases-registered-cru-2013-14.csv/preview

² Research undertaken on case allocation between 1999 and 2001 that suggested that 83% of all unspecified money claims related to personal injuries.

³ MoJ (2014) Court Statistics Quarterly: Case progression statistics. Figures are taken as an average of all those issued between 2009 and 2011 to allow time for progression to hearing by Quarter 4 in 2013. Figures are rounded to the nearest 10,000.

⁴ ABI (2014) News release <https://www.abi.org.uk/News/News-releases/2014/05/Insurance-cheats-feel-the-heat-value-of-fraudulent-claims-uncovered-by-insurers-hits-record-level>

15. In relation to PI claims which are dismissed in future, no assumption has been made about the size of the “genuine” element of the claim, although based on anecdotal information relating to a small number of cases which have attracted public attention, this may be considered for illustrative purposes to constitute a relatively small proportion of the total claim.
16. It has been assumed that the reforms may lead to other claims no longer being exaggerated in future. This would constitute a behavioural response on the part of claimants. It has been assumed that this would apply mainly, but not solely, to higher value PI claims. Given limited data and evidence in this area, no assumption has been made about the aggregate reduction in compensation paid as a result of some settlements being lower in future. The Government believes it is reasonable to consider that the increased prospect of a claim being dismissed with no compensation paid at all may have some form of a deterrent effect on other cases.
17. It has been assumed that the total volume of PI claims and of court proceedings and court cases is likely to remain the same, and that the reforms will more narrowly affect the size of compensation awarded. There is no reason to consider that the volume of PI claims will rise as a result of firmer action being taken in relation to fundamentally dishonest claims. Given that (potentially) fundamentally dishonest claims are assumed to be higher value claims, the Government considers that they will still be made in future, i.e. that the reforms should not lead to these higher value claims not being pursued at all in future.
18. In the absence of a firm body of evidence to the contrary it has been assumed that, overall, the amount of legal work required to settle claims in future will remain broadly the same, both on the part of defendants and claimant lawyers. It could be that less work is required to resolve some claims in future if the claim appears to defendants to be less exaggerated and if defendants accept the claim with less discussion and negotiation. Conversely it could be that claimant lawyers devote more resource in future to demonstrating that a claim is honest
19. It has been assumed that PI claimant lawyers are usually funded on a no win no fee basis.

Base Case - Option 0: Do Nothing

20. Under the ‘do nothing’ base case, the current system would continue to apply. The ‘do nothing’ option is compared against itself and therefore its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1: Introduce primary legislation to strike out a claim where the claimant has been fundamentally dishonest

Costs of Option 1

Claimants

21. Currently, claimants are able to secure compensation for the “genuine” part of their claim, even if part of their claim was fraudulent. Under the reforms, claimants who act in a fundamentally dishonest way will be unable to gain any compensation for their injury. As explained in the assumptions section this may relate to a very low number of higher value claims, especially if the reforms encourage claimants not to make fundamentally dishonest claims in future. The size of the “genuine” part of their claim, which claimants will no longer receive in future, is expected to be a relatively minor proportion of their total claim. This would constitute a direct cost of the reforms.
22. In addition claimants are expected to reduce the extent of exaggerated claims in future, and this would also apply more widely to other claims. This would be a behavioural response by claimants to the reforms hence these impacts are considered to be indirect. Claimants are expected to receive less compensation as a result, but are still expected to receive fair and reasonable compensation for genuine injuries. The extent of this aggregate reduction in claimant compensation is expected to be much larger than the aggregate reduction mentioned above in relation to claims being dismissed.

Claimant lawyers

23. No win no fee claimant lawyers may receive less success fee income in aggregate as a result of the reduction in compensation paid to claimants. This would follow the anticipated reduction in the exaggeration of claims. (This impact may not arise if success fees are so high that they hit the success fee cap of 25% of general damages or 100% of base legal costs (whichever is lesser), and if future success fees still hit the success fee cap).

Defendants (insurers, NHS)

24. There are no expected additional costs to defendants.

Other government departments

25. In relation to claims which are dismissed in future, DWP and DH would be unable to recover benefit payments or health costs in relation to the “genuine” part of the claim which would currently be paid. These costs are currently recovered from the defendant through the Compensation Recovery Unit. Given the very low volume of claims likely to be dismissed in future this impact is expected to be relatively minor. Furthermore the option will remain to DWP and DH of pursuing the claimant for these benefit payments and health costs under fraud procedures if appropriate.

HM Courts and Tribunal Service (HMCTS)

26. It has been assumed that there will be no change in PI claim volumes and no change in the number of court proceedings issued nor in the volume of cases which go to a court hearing. Instead the reforms

should affect how cases are resolved and how much compensation is paid.

27. HMCTS operates on a cost recovery basis in the long run. If the reforms were to generate any increase in HMCTS operating costs this is expected to be offset by an increase in court fee income, leaving HMCTS in a financially neutral position.

Benefits of Option 1

Claimants

28. Claimants may pay reduced claimant lawyer success fees. However this benefit stems from the fact that claimants will receive less compensation (as the success fees are a proportion of the compensation). Furthermore this benefit may not arise if success fees currently hit the success fee cap and if they continue to do so in future.

Claimant lawyers

29. There are no anticipated benefits for claimant lawyers, who are expected to receive less fee income as a result of the reforms.

Defendants (insurers, NHS)

30. Where cases are dismissed in future, defendants will benefit from not having to pay compensation to claimants for the “genuine” element of their claim.
31. Defendants are also expected to benefit from a reduction in compensation payments if, as a behavioural response to the reforms, there is a reduction in the exaggeration of claims and a reduction in compensation paid.

Other government departments

32. There are no benefits to other government departments (aside from the benefits to the NHS identified above).

HM Courts and Tribunal Service (HMCTS)

33. As explained above, the financial impact on HMCTS is expected to be neutral.

Wider society

34. If reduced costs to defendant insurers are reflected in lower insurance premiums this should provide wider benefits for policy holders, who may include local authorities, businesses and motorists.

Net Impact of Option 1

35. Claimants would lose from receiving less compensation in aggregate. This may largely stem from their behavioural response of not exaggerating claims as much in future, rather than from fundamentally dishonest claims being dismissed.
36. Claimant lawyers may lose out from less success fee income where this is a consequence of lower compensation settlements.
37. Defendants (insurers and the NHS) will gain from paying less compensation in aggregate.

Risks and Assumptions

38. The sensitivity of the costs and benefits to changed underlying assumptions are summarised below.

Assumption	Sensitivity of costs and benefits to changing the assumption
It has been assumed that in future some fundamentally dishonest cases will be dismissed.	If cases which appear to be fundamentally dishonest are not dismissed in future after all, for example because the court considers that this is not in the interests of justice, then the benefits to the defendants and costs to the claimants and claimant lawyers involved in these cases are likely to be reduced. Conversely, if a larger than expected number of fundamentally dishonest claims are dismissed, then the benefits to defendants and costs to the claimants and claimant lawyers involved are likely to be increased.
It has been assumed that as a result of the reforms, claimants are likely to exaggerate their claims less.	If this behavioural response does not materialise, claimants will continue to receive the same level of compensation and claimant lawyers will continue to receive the same level of success fee income. Defendants will continue to pay the same level of compensation. In summary the reforms would have a limited impact if they do not generate wider behavioural change in reducing the exaggeration of claims. The impacts instead would relate solely to the very small number of fundamentally dishonest claims, where the reduction in compensation paid may be relatively small scale (and would relate solely to the “genuine” part of the claim).

<p>It has been assumed that the “genuine” element of claims which are dismissed is a relatively small proportion of the total claim.</p>	<p>If the “genuine” element of claims which are dismissed is a much smaller proportion of the total claim then the claimant would have less to lose from making a fundamentally dishonest claim. Costs to the claimant and gains for the defendant would be smaller in relation to cases which are dismissed. The reforms might also generate less of a wider behavioural change if they are perceived to have less of an impact. Conversely, if the “genuine” element of claims which are dismissed is a much larger proportion of the total claim, then the claimant would have more to lose from making a fundamentally dishonest claim. Costs to the claimant and gains for the defendant would be larger in relation to cases which are dismissed. The reforms might also generate more of a wider behavioural change if they are perceived to have more of an impact.</p>
<p>It has been assumed that the total volume of court proceedings issued and court cases will remain the same.</p>	<p>Fewer court proceedings may be issued and fewer court hearings may take place if fewer claims are exaggerated in future and if they are contested less. HMCTS would lose out from reduced court fee income but would save costs from the reduced volume of cases. HMCTS operates on a financially neutral cost recovery basis in the longer term.</p>
<p>It has been assumed that the total amount of legal work required to resolve a claim remains the same.</p>	<p>If claimant legal costs were higher as a result of the reforms, for example because more work is required to establish that a claim is honest, these costs would be passed to defendants in cases won by the claimant but would be met by the claimant lawyer in cases which are dismissed (but not by the claimant if a no win no fee agreement applies). If claimant legal costs were lower as a result of the reforms, for example because less exaggerated claims were settled with less negotiation and challenge, then defendants would benefit by paying claimant lawyers less fee income. Claimant lawyers would lose out from less fee income but would be able to allocate the resources saved by undertaking less work to other profitable activities.</p> <p>If defendants’ own legal costs were higher as a result of challenging claims more, then these additional costs would be met by defendants if the claim was still settled in favour of the claimant. These additional costs could be passed to the claimant in cases which are dismissed. In other cases which are exaggerated less and still settled in favour of the claimant, and change in defendants’ own legal costs would fall to defendants themselves.</p>

<p>It has been assumed that PI claimant lawyers are usually funded on a no win no fee basis.</p>	<p>If PI claimant lawyers are not funded on a no win no fee basis, then claimants whose cases are dismissed would have to pay their own lawyers' costs. Claimants would have more to lose from making a fundamentally dishonest claim. As a result claimants would have more of an incentive to avoid claims being dismissed in future. When claims are dismissed claimant lawyers would be better off without no win no fee agreement as they would still be paid.</p>
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