

# Transport Committee

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Lord Keen of Elie QC  
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11 January 2017

Dear Lord Keen

Thank you for your letter of 17 November 2016 about reform of the claims process for soft tissue injuries resulting from road traffic accidents.

The Committee discussed your letter earlier this week and agreed that I should write to you. I am aware that you wrote to the Chair of the Justice Committee in similar terms and I believe that they make take evidence on the reforms at some point early in 2017. I am copying my response to Bob Neill, Chair of the Justice Committee, so that his Committee is aware of my views.

## **The proposals**

The Transport Committee has called consistently for measures that bear down on the numbers of fraudulent personal injury claims. Such claims inflate the cost of motor insurance, a cost that is passed on to motorists in higher premiums.

The proposed ban on pre-medical offers is in line with recommendations made previously by the Transport Committee and builds on the reforms that introduced MedCo. I understand that MedCo got off to a shaky start but that the initial problems are being tackled. I would be grateful if you could let me have a note explaining what happened when MedCo was established, what issues arose after it was step up, how they were addressed. I would be interested too in knowing whether MedCo is delivering the outcomes it was intended to deliver and how the Ministry of Justice is measuring this.

The proposals to introduce a set tariff for pain, suffering and loss of amenity (PSLA) and to remove or reduce compensation for minor injuries could help to depress the number of claims overall but are not specifically targeted at fraudulent claims. The Transport Committee's recommendations focused on raising the bar for successful claims and was concerned to ensure that genuine claimants were not penalised. Your current proposals seek to reduce the incentives to claim. The Government should demonstrate how the proposals to reduce levels of compensation will deter fraudulent claims while allowing those with a genuine claim to get appropriate restitution. It is important that, in responding to the consultation, the Government shows how genuine claims will be protected.

Better data on claims is key. If the Government is to press ahead with these proposals it must make sure that it has a means of measuring the effect of the reforms so that it can show that its policies are delivering their intended benefits.

There is currently too little publically available data on claims and the correlation between claims and reporting of injuries in road traffic accidents (RTAs). In line with the Insurance Fraud Taskforce recommendations more needs to be done on information and data sharing. The Insurance Fraud Bureau has made a start but there is clearly much more to be done. Databases such as CUE need to be extended and data shared more widely, with proper safeguards put in place to ensure the data is not misused.

It is important that the Government continues to support efforts to detect, investigate and prosecute those engaging in fraud. I would welcome further information from you on the effectiveness of and support from the Government for the Insurance Fraud Bureau, the Insurance Fraud Enforcement Department, and the Insurance Fraud Register. I would also welcome your analysis of the effectiveness of measures to allow data to be shared between insurers and the Government (such as the MyLicence initiative).

Overall I would prefer to see the Government place more emphasis on measures that make it harder for fraudulent claims to succeed. It would be a poor outcome and represent an injustice for genuine claimants if the overall level of claims fell but the proportion of fraudulent claims rose.

In the Autumn Statement, the Chancellor of the Exchequer announced the whiplash reforms but he also announced a plan to consult on options to tackle pension scams, including banning cold calling in relation to pensions. It would help if you could set out the rationale for taking action against cold calling in respect of pensions but not including similar measures in relation to whiplash. I am concerned that the proposal to increase the small claims limit could see claims management companies move back into this sector. A ban on cold calling would be a sensible precaution.

### **Specific concerns**

The proposal to remove compensation for minor pain, suffering and loss of amenity (PSLA) could see a motorist or other road user getting no restitution for an injury that took six months to heal.

Those seeking to make fraudulent claims are likely to try to exploit any tariff or rule that is introduced. If the threshold for a minor injury is set at six months there will inevitably be a large number of claims where miraculously the diagnosis or prognosis will be for recovery in seven months. It is already well known that efforts to reduce fraud can often displace rather than eliminate it. I am concerned that the proposals will simply see fraudulent claims displaced.

These reforms continue the focus on whiplash but there are other elements within the claims process that are liable to fraud. The Insurance Fraud Taskforce identified that removing the right to general damages for minor whiplash injuries could push fraud to other parts of the claims chain. They identified fraudulent rehabilitation claims but repairs or credit hire are also areas where fraudulent claims could grow. The Government needs to show how it plans to tackle this potential for displacement of fraudulent claims.

### **Unintended consequences**

In addition to the concerns previously expressed by the Committee in relation to raising the small claims limit, one potential unintended consequence of the proposal may be to create a space for claims management companies to operate. The process of managing a claim through the small claims process, even with a McKenzie friend, will be a daunting prospect for many motorists. Many will not know where to start and unscrupulous claims management companies may see this as an opportunity. This could undermine the efforts that have been made previously to clamp down on such companies. It could even end up working against the proposals for a reduced tariff if such companies are able to encourage even minor claims in return for a share of any award. Even very small awards might allow them to make a profit if they can encourage enough claims. The Government must demonstrate how its reforms will not be open to such abuse.

The proposals could have an effect on the management of claims arising from road traffic accidents (RTAs) where there is no injury. Motorists with such claims benefit currently from the arrangements insurers have with solicitors. If legal representation is removed, these motorists may find that they too have to manage their own claims. The Government's response to the consultation should set out the effect the proposals will have on all RTA related claims and not just those that involve an injury of some kind.

The portal for managing claims and MedCo will need further reform if they are to be accessible to motorists managing their own claims.

### **Timing**

I do not consider that there has been enough time for the effect of the reforms that have been made recent years to have been properly evaluated. In particular I would like to see more of the recommendations from the Insurance Fraud Taskforce implemented. There should be a proper evaluation of the reforms to date and further reform only if it can be shown that previous reforms have not delivered.

### **Lower premiums**

It is claimed that the proposals will result in a reduction in insurance premiums as the savings are passed on to motorists. This claim was made repeatedly over the time the Committee was looking at the cost of insurance. There is little direct evidence that tackling fraud has reduced premiums. The recent increase in insurance premium tax may well offset any future fall arising from efforts to tackle fraud. At best the Government should probably be claiming that it has stopped claims rising as fast as they otherwise would have rather than raising expectations about lower premiums. In opposing fraud the Government should not put genuine claimants at risk of an injustice.

Yours sincerely



**Louise Ellman MP**

**Chair of the Transport Committee**

CC: Bob Neill, Chair of the Justice Committee