



Reforming the Soft Tissue Injury ('whiplash') Claims Process – Ministry of Justice Consultation – December 2016

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing approximately 20,000 members in train operating companies and freight companies as well as London Underground and light rail systems.
2. ASLEF strongly opposes the government's plans to increase the small claims limit in all personal injury claims, not just whiplash claims, from its current level of £1,000 to £5,000. The union fears that the government is indirectly proposing to reduce access to justice for working people via its plans to deal with a so-called "whiplash" crisis. We believe that pursuing these cases through the small claims court will mean successful parties are not eligible to recover costs from the guilty party. This will therefore prevent genuine claimants from taking their case to court, no matter how strong the case may be.
3. ASLEF does not accept that there is a crisis in this area of the law. The government's own Compensation Recovery Unit (CRU) figures show that the total number of injury cases has dropped by 6% since 2013 and whiplash injuries have decreased from 571,111 in 2011 to 335,365 in 2016 which represents a fall of some 40%. The same CRU figures show that workplace injury claims have fallen by 12% in the last decade.
4. ASLEF takes the view that it is unacceptable and illogical to pursue all personal injury claims under £5000 through the small claims court on the dubious basis that such changes will help address fraudulent whiplash

claims. The consultation gives three broad reasons for the proposed changes. Firstly, it states that the changes are needed to prevent false whiplash claims. Secondly, the contention is put forward that instances of whiplash have risen in the last 10 years. Finally, it suggests that the proposals would benefit the public by driving down motor insurance premiums. Not one of these reasons have any bearing on injuries at work. In fact, ASLEF notes that claims for injuries at work have fallen over this period. There is therefore no justification for increasing the limit of damages which are dealt with by the small claims court by 500%.

5. The union acknowledges that there have already been many concerns expressed about the potential implications of changes to the small claims court limit. When examining the issues around costs, Lord Justice Jackson recommended against any increase in the small claims limit until inflation justifies an increase to £1,500. Inflation does not yet justify that change. The Transport Select Committee also recommended against any increase in the small claims limit in 2013. The Committee considered that the measures would restrict access to justice and that insurers would use legal professionals to contest claims. ASLEF restates its belief that these proposals are deeply unfair and should they be introduced will result in nearly one million people losing the right to free or affordable legal advice.
6. The government has said that the majority of road injury victims will be unaffected because of legal expense insurance but this does little to assist those hurt in the workplace. Personal injury cases will become imbalanced with unrepresented workers facing multinational insurance companies and their lawyers. Workplace injury cases are typically far more complicated than road traffic accidents making it even less appropriate for a greater number of them to come under the jurisdiction of the small claims courts.
7. ASLEF is concerned that the established and fundamental principle in English law of “the polluter pays” is at risk. Any deviation from this would

be unfair on the victim of negligence. It could also compromise workplace safety if injuries to employees become less significant to employers.

8. The union would also question the financial premise underpinning the proposals. The government's own figures state that these proposals would see the NHS lose at least £9m per year while the same figures show that the Treasury (and, therefore, public services including schools and the NHS) will lose at least £135m per year. Why reduce access to justice and strengthen the hand of multinational companies against individuals who have been injured at work while at the same time increasing costs to the taxpayer during a period of cuts in public expenditure?
9. In fact, it should be noted that the main beneficiary of this change will be the insurance industry which stands to make £200 million in additional profits a year. ASLEF cannot understand why the insurance industry would need this assistance from state through this legislation. In 2015, Admiral increased its UK motor insurance profit before tax by 11% to £443m. Direct Line and Admiral between them paid out £1.65bn in dividends in the last three years.
10. One of the suggested benefits of the proposals is to pass on a reduction in premiums to motorists of about £40 a year. There is no evidence to support this claim. Motor insurers have saved around £8bn in claims costs over the last five years, yet premiums have continued to increase over the same period.
11. ASLEF believes there are no benefits from these changes other than boosting the profits of the already extremely profitable insurance companies. Claims in the cases that would be newly covered by the small claims court are down, suggesting the whole premise of the need for change is entirely false. Meanwhile the changes are based on a false premise which is the idea they are simply about whiplash, when in fact,

they will cover all personal injury cases. In preventing cost recovery from many more cases that would come under these rules due to the 500% increase in the compensation limit, the government will force many people to represent themselves against large companies that will have legal professional working for them. Alternatively, they will simply not be able to afford assistance. In either case, access to justice will be reduced. In addition the changes will cost the taxpayer £135 million a year with the NHS hit by £9-13 million, ASLEF fears that such changes could be perceived as prioritising the profits of the insurance industry over the interests of the taxpayer and those who are victims of accidents. Curbing access to justice in this way would be completely immoral.

Mick Whelan
General Secretary
77 St John Street
London
EC1M 4NN