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GENERAL COMMITTEES

Public Bill Committee

PRISONS AND COURTS BILL

Second Sitting

Tuesday 28 March 2017

(Afternoon)

CONTENTS

Examination of witnesses.
Adjourned till Wednesday 29 March at twenty-five past Nine o'clock.
Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 1 April 2017

The Committee consisted of the following Members:

Chairs: † Mr Graham Brady, Graham Stringer

Arkless, Richard *(Dumfries and Galloway)* (SNP)
† Burgon, Richard *(Leeds East)* (Lab)
† Fernandes, Suella *(Fareham)* (Con)
Gyimah, Mr Sam *(Parliamentary Under-Secretary of State for Justice)*
† Heald, Sir Oliver *(Minister for Courts and Justice)*
† Jenrick, Robert *(Newark)* (Con)
† Lynch, Holly *(Halifax)* (Lab)
McGinn, Conor *(St Helens North)* (Lab)
† Opperman, Guy *(Lord Commissioner of Her Majesty's Treasury)*
† Philp, Chris *(Croydon South)* (Con)
† Qureshi, Yasmin *(Bolton South East)* (Lab)
† Saville Roberts, Liz *(Dwyfor Meirionnydd)* (PC)
† Smith, Nick *(Blaenau Gwent)* (Lab)
Swayne, Sir Desmond *(New Forest West)* (Con)
† Thomas-Symonds, Nick *(Torfaen)* (Lab)
† Tomlinson, Michael *(Mid Dorset and North Poole)* (Con)
† Tracey, Craig *(North Warwickshire)* (Con)
† Warman, Matt *(Boston and Skegness)* (Con)

Katy Stout, *Committee Clerk*

† attended the Committee

Witnesses

Jenny Beck, Co-Chair, Legal Aid Practitioners Group

Professor Richard Susskind OBE

Richard Miller, Head of Justice, The Law Society

Polly Neate, Chief Executive Officer, Women's Aid

Penelope Gibbs, Director, Transform Justice

James Dalton, Director of General Insurance Policy, Association of British Insurers

Brett Dixon, Vice President, Association of Personal Injury Lawyers

Rob Townend, UK General Insurance Claims Director, Aviva

Public Bill Committee

Tuesday 28 March 2017

(Afternoon)

[Mr Graham Brady *in the Chair*]

Prisons and Courts Bill

Examination of Witnesses

Jenny Beck, Professor Richard Susskind, Richard Miller, Polly Neate and Penelope Gibbs gave evidence.

2 pm

The Chair: We will now hear oral evidence from the Legal Aid Practitioners Group, Professor Richard Susskind, the Law Society, Women's Aid and Transform Justice. We have until about a quarter past 3 for this session. Would the witnesses please introduce themselves for the record?

Richard Miller: My name is Richard Miller. I am head of justice at the Law Society.

Penelope Gibbs: I am Penelope Gibbs, director of the charity Transform Justice.

Polly Neate: I am Polly Neate, chief executive of Women's Aid.

Jenny Beck: I am Jenny Beck, co-chair of the Legal Aid Practitioners Group.

Professor Susskind: I am Richard Susskind. I am IT adviser to the Lord Chief Justice and I chaired the Civil Justice Council advisory group on online dispute resolution.

Q51 The Minister for Courts and Justice (Sir Oliver Heald): It is a joy to serve under your chairmanship again, Mr Brady. I thought I would start with some questions to Professor Susskind about the online procedure for civil and family courts and tribunals, which is dealt with in clauses 37 to 45. Then, after colleagues have put their questions, I will perhaps deal with cross-examination in family matters—clause 47—and criminal proceedings, which are dealt with in clauses 23 to 30 and 35 to 36.

Professor Susskind, I believe you have been the technology adviser to the Lord Chief Justice for many years and you are an advocate for the law adapting to modern technology. These proposals involve the use of digital processes, simpler rules and an online procedure rule committee to set them up. I wonder what your views are about whether the quality of this work will be as good as it is now—that it will not be not a second-class system—and what you think are the implications for the legal professions.

Professor Susskind: The motivation behind this is interesting. If one thinks of low-value claims—say civil claims—the current process is too costly, too time-consuming, largely too combative and largely unintelligible for the non-lawyer. Lord Dyson, the former Master of the Rolls, put it well when he said that any system that has a 2,000-page user manual has a problem, and that is the traditional civil justice system. I have long been an advocate of thinking of different ways of resolving disputes.

It seems to me that one argument that is often put is that we are going to allow people who can afford lawyers and legal advice access to the traditional court system, and those who use an online process will receive a second-class service, but our group—and, I believe, the Government—anticipates a system that is more accessible, more proportionate, quicker, easier to use and does not require people to take a day off work or pore through thousands of pages of rules, which seems to me to be a first-class service rather than a second-class service. It may be that, from a purist's point of view, one can see advantages in the traditional system—I am a great believer in the traditions of the law—but for small, low-value claims, I think what is proposed here will be a great improvement rather than some pale substitute for the traditional system.

The implications for lawyers are very interesting. In so far as one of the great mischiefs sorted out here is that of litigants in person—that is to say people who represent themselves—then today lawyers are not involved in the process in any event. So for both litigants in person and for the great mass of people to whom we often refer as having unmet legal need—those who cannot afford or find too forbidding entry into the system in the first place—there is no impact on the legal profession at all, because the legal profession is not involved today.

As for the cases—they will probably be slightly higher value cases—that lawyers currently undertake, it is wrong to suggest that lawyers will be excluded from the process. There is a misunderstanding and ongoing debate about this. It has never been anyone's intention that lawyers should not be allowed to participate; the intention is that this should be a system that people can use without the assistance of lawyers. My research is in medicine, law, tax, audit and architecture, and I think there is no denying that right across the professions we are seeing technology being used in ways that will reduce the number of some traditional jobs. On the other hand, new jobs will arise.

As I often say, the law is no more there to provide a living for lawyers than ill health is there to provide a living for doctors. It is not the purpose of the law to keep lawyers in a living. Lawyers, like all other industries, have to face the challenge of modernising and industrialising, and this is one of the consequences of offering far greater access to justice through technology.

Q52 Sir Oliver Heald: Do any of the other witnesses want to comment on the online court for civil cases, family courts and tribunals and whether it improves access to justice—the point that Professor Susskind just made?

Richard Miller: I think it has been readily accepted among many people who have discussed this issue that the system will work most effectively if there is good legal advice at appropriate points within the process. It may well be that the role of lawyers in this revised system is very different, but people who are looking to enter into any sort of dispute resolution system will want to know whether they have a good case, what evidence they need, whether any defence filed is valid and how to respond to it. There will be key stages

within any case where good-quality legal advice will be essential if the system is to work effectively, but that is not to say there will not be a different role for lawyers within the system if it rolls out as is currently envisaged.

Q53 Sir Oliver Heald: Lord Justice Briggs said that it might be a role where a particular piece of legal advice would be given and then fixed recoverable costs would be involved, as a way of ensuring it could be funded. Do you have any views on that?

Professor Susskind: That is entirely feasible. I take the point entirely that there will be places where it would be beneficial to have the participation of lawyers. It might well be that we can, in an online process, involve lawyers in a more modular, occasional way, rather than an all-or-nothing way. If I am absolutely honest, we are to a large extent on new ground here. We can look at what has happened in Canada and what is happening in Singapore and Holland. We are feeling our way.

The overwhelming evidence is that online dispute resolution provides a cheaper, quicker, less forbidding service, but no one in the world has yet delivered an integrated service of the sort that the Law Society is sensibly anticipating, where lawyers can be involved in a structured, systematic way in the new process. I would welcome that, but again, we cannot forget the swathes of cases just now where people are self-represented or do not go to law at all, and lawyers are not involved. With online dispute resolution, there is the possibility of lawyers becoming more involved in some of those cases that they do not reach at all now.

Q54 Sir Oliver Heald: Perhaps I can ask one more question, before opening this up. Would you like to say a word about the benefits of virtual hearings and dispute resolution within this process?

Professor Susskind: It is important to draw a fundamental distinction—I am doing it in my terms—between virtual hearings and online process. With virtual hearings, there is a hearing: that is to say, there are people communicating with one another at the same time, but they are not all physically in one place; there is a video connection and an audio connection. Technologists would call that "synchronous". Everyone has to gather together, and it may not be in one physical space, but there is a hearing and they are all attending it virtually. Online process is quite different. It is asynchronous: that means a party can submit a piece of evidence and a judge can respond, but they do not all need to be online at the same time. I am not sure if the Bill or people around the table are completely comfortable with that distinction between virtual hearings and online process. They are very, very different beasts.

The virtual hearing, in a sense, is a natural evolution from the traditional hearing. If people are vulnerable, if they are many miles away, or if it does not seem proportionate for them all to attend in person, why not attend by video and audio? That is the idea of a virtual hearing. It is an extension of the current system. An online process is often entirely different.

Q55 Nick Thomas-Symonds (Torfaen) (Lab): I want to talk about virtual and online courts—I am with Professor Susskind in recognising that they are very different animals—in the criminal context. I will start with Penelope from Transform Justice. In your recent report you looked at an evaluation of the use of technology in the criminal courts back in 2010. The report said:

> "The evaluation of the pilot was published in 2010, and concluded that virtual courts as piloted were more expensive, may lead to more guilty pleas and longer sentences, and impeded the communication between lawyer and client."

As we embrace new technology, how can we seek to deal with those worries?

Penelope Gibbs: With huge difficulty. I would say that the virtual hearings as done now are slightly different from the ones piloted in 2010 in terms of the cost basis, but we still have a huge problem about the relationship between the lawyer and the client. Every piece of research that exists suggests that that communication is impeded.

The other huge problem that came up in that research, which was under-reported, was that actually it reduced the number of people who used a lawyer. In that research, I think only 52% or something of the defendants used a lawyer, despite the fact that all had access to legal aid. So there was something about the circumstances of doing it virtually that meant that they did not use a lawyer, and I would say that the criminal system, in some ways like the civil system, is pretty unsuited to anybody not having a lawyer. It is very complicated and complex, the procedure is difficult and the law is difficult, so there are huge concerns about having people virtually, nearly half of them without a lawyer, with huge decisions being made about remand and sentence, and even the proposition of trial in the Bill by conference call or virtually where you can see people.

Q56 Nick Thomas-Symonds: This is a follow-up, first for Richard and then for Professor Susskind. Should youth defendants be excluded from the Bill's provisions on virtual courts?

Richard Miller: There would be strong argument for that, yes. We see a clear difference between initial hearings in criminal cases where, for example, bail is being decided and subsequent administrative hearings. For subsequent administrative hearings—for example, where the client has been remanded in custody and is already in prison—having the video link from prison makes a lot of sense. Our members report to us that those sort of virtual hearings work perfectly okay.

The real concern is around the initial hearings, where a whole range of interactions lead to decisions on, for example, whether bail should be granted. The lawyer has to talk to their client and to the prosecution, and they might have to talk to the defendant's family. There may be ongoing discussions while the case is being heard, with the magistrates coming up with ideas for bail conditions that the lawyer needs to take instructions on. All of those interactions are very difficult to have when you are holding a virtual hearing and the lawyer and the client are not in the same place. That is based on feedback from our members who are involved in the existing pilot projects: they find those interactions very difficult. There are real risks, and particularly when the client is vulnerable it is very difficult indeed to build up that necessary relationship of trust between the defendant and the lawyer to ensure that the right outcome is reached.

It is worth remembering that if in the hearing there is a situation where bail might have been granted

but because the necessary instructions cannot be taken or necessary discussions cannot take place the client is remanded in custody, that has a significant impact not only on the client but on the public purse. That is particularly noteworthy, given that the Bill has as its first part—the prisons part—a clear aim to reduce the use of prison where appropriate and to make prison more rehabilitative. If we end up sending more people to prison who should not have been there in the first place, that really is running counter to what we are trying to do with the Bill.

Professor Susskind: I want to answer the question in a slightly different way. Incidentally, I think it is very dangerous to make assumptions about the future based on a report about technology that was written in 2010. We are seven years on from 2010 and I presume the technology was from at least a few months, if not a couple of years, before then. The transformation in video calls since then has been absolutely astounding. Think of the way in which we all use FaceTime and Skype. We are now entering an era of telepresence—I joke not. Recently, I offered someone a cup of tea when I was in a telepresence conversation with them by video. These systems are never going to be any worse: they are getting better and better. Strategically—and this is where we have to have a collective vision—our role is not to think, "How was that technology X years ago when we looked at it?" but rather, "How will it be in two or three years' time?" It is only going one direction.

Is it not interesting when you think of youth, because is that not such a common way for young people communicate now? Relationships are established through FaceTime and other similar types of videolinking. The assumptions we make as "grown-ups"—as one might say—about how we establish trust and communicate comfortably with others cannot necessarily be carried forward to people who have grown up in the internet era, for whom the conduct of a meeting and interaction via video may be more comfortable and comforting and give rise to a greater experience of trust than it would for our generation. We have to think of the next generation too.

Frankly, the research is not in the justice system. It is like the research we do at Oxford Internet Institute—considering how young people are using and adapting to technology. All the signs are that these technologies are becoming more and more powerful and people are more comfortable using them.

Q57 Nick Thomas-Symonds: I will just move to the online criminal convictions—this is clauses 35 and 36 of the Bill. This is a general question to the panel. Do you think there are sufficient safeguards in the Bill for defendants who use the automatic online conviction process? For example, how could you make an offender aware of the consequences to their employment status of having a criminal conviction? What are the safeguards to enable them to fully understand the consequences of that guilty plea?

Penelope Gibbs: That is a challenge. The Bar Council has suggested that only non-recordable offences should go on to the online conviction system, and I agree with that. To an extent, that would resolve some of the criminal record issues, because non-recordable offences are not added to the police national computer. They can attract a rehabilitation period, but they do not come up in Disclosure and Barring Service checks. That is one of the issues.

If we move on to recordable offences that do attract a criminal record, it is absolutely crucial that people are given full information. A criminal record is not just a barrier to employment: it is a barrier to education, travel and housing. Also, something might be minor and recordable, and you think, "Oh well, that is okay," but if you have two minor offences, they come up on a DBS check. So if you apply for lots of jobs, they will come up. It is a complex area, and it is crucial that the online conviction system does do that.

It is also important that the system gives people an idea of what a viable defence is. There is an idea that people know whether they are guilty or not. It is true that they might have done the deed, but if they have a legally viable defence, they have a good possibility of being acquitted. This is a complex legal area, and it is crucial that the online criminal conviction court should go through what a viable legal defence is, and refer people to legal agencies that could help with that.

Q58 Sir Oliver Heald: Penelope, you mentioned the 2010 pilot, which was between a police station and the magistrates court and which did reveal some interesting lessons, such as how to schedule cases—that needed to be done better—the elements of a case that are best dealt with by videolink, and the importance of technical quality and reliability. I am sure you would agree that, since then, videolinks have been used successfully in the Crown court, magistrates court hearings and in many other ways, and that the lessons have been learned. Now videolinks are better scheduled, they are used in a more targeted way, and the technology has improved.

There are a lot of benefits to a videolink: for vulnerable witnesses it is often used as a special measure, it stops people having to travel long distances, it stops the wasting of police time, and the professionals find it increasingly helpful to be able speak to their clients at distance. Then there is the security side of it, which means you do not have a lot of people having to use prison transport. Do you accept that things have moved on since 2010?

Penelope Gibbs: They have moved on in a tiny way. I went to observe a court the other day and the videolink worked but the camera angle on the defendant was towards the top of his head and he was quite distant from the camera. People had real difficulties understanding what he said. That was just a month ago.

I would like to talk more about that case—

Q59 Sir Oliver Heald: Before you go on, on that point, in the Rolf Harris trial that recently concluded, the video evidence was given from Australia. That meant the victims did not have to travel thousands of miles. Surely that is a benefit?

Penelope Gibbs: Can I distinguish between the use of videolink for expert witnesses and other witnesses and defendants? There are different issues with witnesses, who will often benefit from a videolink, and defendants.

Q60 Sir Oliver Heald: Rolf Harris watched it from prison.

Penelope Gibbs: It was his choice to do so, but in the 2010 research, the evidence was that those who were on videolink got longer sentences.

On the police station videolink, it is worth going backwards and saying, "Why are so many defendants being detained by the police on quite minor charges?" When I twice observed videolinks the other day, those people had been detained by the police, they are produced in the videolink room and most of them were released immediately after that videolink appearance. One of the police stations that it was linked to was 15 minutes' walk from the magistrates court and the cost of the journey—in the 2010 report; I do not know if it is the same now—was only £35. For a defendant to be participating in their own process, it is worth £35 to get them into the court, because all the evidence says it is a less good process. Also, crucially in the 2010 report, people on videolink got longer sentences.

Q61 Sir Oliver Heald: Do you not accept you are going back to the very early history of this and that since a whole range of videolinks have been set up in prisons and in other places right across the country, as well as in police stations? The whole thing has moved on in leaps and bounds over the last seven years.

Penelope Gibbs: I do not think the basics of what was looked at in the 2010 report have actually changed. Of the lawyers I am in contact with, I have not met one lawyer now who thinks they can have the same relationship and the same communication with somebody who is on videolink as if they are in the court with them.

Q62 Sir Oliver Heald: It has been made clear that there will be safeguards for the online procedure. Although I accept they have to be done well, it is a procedure that should be tried, given how simple it is for everybody concerned. Are you against even trying it?

Penelope Gibbs: I am not opposed to online criminal conviction if we are talking about non-recordable offences and if sufficient, very rich information is put on the net. I have many more concerns about online indications of plea.

Q63 Nick Thomas-Symonds: Jenny, one of the critical things in the virtual court environment is that people and defendants understand what is going on within that environment despite being on videolink. This is why I raised a concern earlier about young defendants. How do you feel the cuts to legal aid and the proliferation of litigants in person will affect the way people are able to understand what is going on when there is no lawyer present either?

Jenny Beck: It is a massive risk. The critical point is that those who are the most marginalised are the most affected. People who have difficulty understanding, people who have learning needs and people who have language difficulties are the most likely to be those facing the most difficulty. I can see a split in access to justice as a consequence. In the absence of really targeted lawyer intervention at very strategic points, including the introduction of early advice across the board for people, which would be a huge step in the right direction, from a qualified lawyer via legal aid, you can get into a situation where people will be pushed to the margins and miscarriages of justice will result.

Professor Susskind: I want to highlight something that is important in civil, family and tribunals, which is that the introduction of the online process is to be accompanied—this is crucial—by a highly simplified set of rules. That does not fully meet Jenny's point, but I do not want people to think we are cutting and pasting the old rules online. The idea is that the system will be governed by a very simple set of explicit rules, a lot of which will be embedded within the system, so it will be intuitive and easy to use. There will always be the hard to reach, those who do not use technology comfortably, for example, and the Government have in mind some assistive technology services. I think we will need services for people who otherwise would find the process difficult, but for the lion's share of people, who use Amazon daily or perhaps renew their tax online, the system should not be complex in the sense of its having a vast body of unintelligible rules.

Q64 Nick Thomas-Symonds: I have just one brief follow-up question for Professor Susskind—I am grateful for your patience, Mr Brady. How do you think the whole online courts idea affects the principle of open justice?

Professor Susskind: Again, we have to have a very clear distinction between virtual courts and online courts.

Nick Thomas-Symonds: I am asking about online courts.

Professor Susskind: Okay. Online, my view is that we can make a system that is far more transparent. What we have in mind when we talk about open justice is that members of the public—anyone—can scrutinise the process, understand the results and view justice as it is being administered. When I speak to the judges who are involved in thinking through what the online process will be like, they are entirely happy. For example, in tribunals, an ongoing dialogue between the parties and the judges can be available online and scrutinised. The decisions will be made available online.

I want to challenge the assumption that is often made that you need physically to congregate in a courtroom for a service to be transparent. That is only really available to the public who live nearby. What we have in mind is an internet-based service that could be subject to scrutiny and visibility by anyone who has internet access. It would be a different kind of transparency, but it is transparency none the less, giving far wider access to the process.

Q65 Michael Tomlinson (Mid Dorset and North Poole) (Con): I will pick up on a couple of points that have been raised. Professor Susskind, you talked about technology improving. Just to give you an idea, I can remember using this technology myself in court as a practising barrister—I am now a non-practising barrister—both before 2010 and after. Since then, technology has been improving on a daily basis. I was particularly pleased to hear that the west of the country seems to be doing well in using technology.

My specific question is directed towards Richard Miller, and Penelope Gibbs as well. Richard, you were talking about concerns about defendants giving evidence virtually. Do you accept the benefits of, for example, vulnerable witnesses giving evidence virtually? For those who would be nervous or anxious about attending court, all those anxieties can be put to rest and they can give evidence from a safe distance.

Richard Miller: We do not have any major problem with that, subject to the judge's overall control to ensure that justice is being done in the individual case. On the

concern about bail hearings in particular, it is not so much the defendant giving evidence as the whole series of interactions that have to happen during the hearing and whether it is practical to accommodate all that within a virtual hearing.

Q66 Michael Tomlinson: If it were possible to overcome that, for example by having proper briefings with lawyers in advance and debriefings after the hearings, that would allay some of your concerns. Would that be fair?

Richard Miller: Yes, it probably would. We would obviously need to see the detail, but the main concern is to ensure that all those issues properly are taken into account.

Q67 Matt Warman (Boston and Skegness) (Con): I used to write about technology and in 2010 I covered the launch of FaceTime. I wonder whether the panel collectively agree that commercial products such as that have fundamentally changed the way that almost the entire public engage with this kind of video communication. Sitting here trying to put my old journalistic hat on, we are talking about technology based on a report from 2010, but it seems fundamentally a different world. I suspect that Richard Susskind might agree, but I wonder whether Penelope Gibbs or Richard Miller could try to convince me that the technology of 2010 is even relevant in 2017.

Richard Miller: I want to pose a challenge in response to that: how far has the technology actually available in the courts moved on from 2010 technology? The real issue is whether the courts actually have this up-to-date technology which, as you say, is leaps and bounds ahead of what was going on in 2010.

Q68 Matt Warman: So it is not so much the principle as the technology? You were talking earlier, Penelope Gibbs, about the angle of the camera and how well people could be understood. Obviously, we would all want people to be understood and adequately photographed, but that is a very trivial thing in comparison to the principle of using digital technology, is it not?

Penelope Gibbs: I use Skype, FaceTime, everything, but still I think you will find in business, however much increase there is in the use of such things, that people will still get on planes and go halfway across the world to have a meeting with somebody. There is a consensus that seeing a person in reality, as we are in this room, makes a difference, in terms of the relationship, the body language and so on. So I would ask, is it truly necessary?

Here, I repeat that we are talking about very vulnerable people, who while they may be able to do FaceTime, certainly do not understand criminal law or the criminal justice system. They may be unrepresented, so while there may be extra barriers—they may have mental health problems, learning difficulties, et cetera—all these mean that even when they are in the court they struggle to understand what is going on and how to participate. If you put them at one remove, where they cannot talk to their lawyer—

Q69 Matt Warman: Just to challenge you on that: they have to talk to their lawyer in a different way. This is different, is it not?

Penelope Gibbs: They have to talk to their lawyer, but I urge the Committee to go incognito into a court with a video link and watch what goes on, and then look at a court where you have the normal interaction with the lawyer and the client; you will see that it is different. Every lawyer, at the moment, says that it is far more difficult. Obviously, you talk to them beforehand, you talk to them afterwards—you go into a separate room or you clear the court or whatever—but there are various barriers with this.

As I say, we are talking about people who do not understand the criminal justice system and the law already. So I would say it is not ideal to be virtual, even if that person uses FaceTime the whole time with their friends. It is a different situation. We are talking about people's liberty here, or whether they get a criminal record for life or whatever. These are huge decisions and people meet person to person on purpose for things that are far more minor.

Q70 Matt Warman: Is not the other side of this, though, that for a lot of people the very process of travelling long distances to court, in many cases—I think of my own constituents—is what makes the system intimidating and unapproachable? It is part of the problem and to some extent, particularly for the vulnerable witness we talked about before, this can diminish those issues. I suppose what I am driving at is that you are making it sound like this is all bad, whereas actually you are even conceding yourself that some of it is good. Perhaps we should be a bit more nuanced.

Penelope Gibbs: Can I distinguish the views and evidence about witnesses versus defendants? They are totally different parties with different dynamics going on. Obviously, the defendant has much more to face if they are found guilty. Yes, it is difficult for witnesses: I am not opposed to witnesses appearing virtually, because they are doing a different thing and it is a different role. Even so, we have very, very little evidence in the way of research.

On the 2010 report, it would have been great if the Ministry of Justice had updated that subsequent to 2010 and so on. With witnesses, what we do not know, because we have not done the research, is what impact this has on juries and on the process of the court case. I absolutely agree that it is probably, in most cases, a better experience for witnesses, but I am also concerned that we need urgently to do some research to see whether it has a negative impact on juries. With regard to pre-trial cross-examination of witnesses, where it is not live during the trial and the jury does not hear the witness live, again, this might be a good thing for the witness, but we really need to know whether it is going to have such a negative effect on juries that cases will collapse.

Q71 Matt Warman: Richard Susskind, as the other side of this argument, if you like, how would you characterise the evidence for this working better?

Professor Susskind: When people say there is no evidence, I often say there is no evidence from the future: we have not actually introduced the kinds of system that many of us are anticipating. I suppose as policy makers, as politicians, what you are trying to do is make our country a better place and embrace technology where it is appropriate; I am not suggesting for a second that one introduces technology for the sake of it. All the

signs, across so many corners of society, are that we can defeat problems of distance, overcome problems of excessive cost and make public services more accessible and more affordable by using a whole set of technologies.

I was not for a second suggesting that because you use FaceTime to chat, that means you should use FaceTime. I was simply making the point, and there is other research—this is not anecdotal; it is good empirical stuff—to suggest people would prefer to see their psychotherapists; people would prefer to see their doctors. People actually like some of the distance that the technology puts in place. A lot of assumptions are made that somehow the technology is putting people at one remove. In fact, people feel more relaxed.

I think there is sufficient evidence elsewhere to suggest that this is a proportionate way of resolving a great many of the disputes and problems that arise in a highly physical courts system—a system, incidentally, that is inaccessible for many millions of people who are disabled or who can attend only with great difficulty. It seems to me intuitive in the 21st century—I agree that we need to undertake research as we go along—that in a measured and controlled way, we introduce modern technologies as we are doing right across society. I cannot provide evidence from the future, but I can say that in so many other areas this seems to be a sensible direction of travel.

Jenny Beck: Could I make a very small observation from the coalface? I am also a practising lawyer. I use a lot of technology because I am a legal aid lawyer and, as a consequence of the advice deserts that have popped up all over the place because of cuts in funding, we often have to see people via FaceTime or take instructions over the telephone. It is absolutely a fact that the most vulnerable people find it less easy to access their justice via those mechanisms. I am not saying there is not a place for this, but it is a fact, in my experience, that that is the case.

Q72 Matt Warman: But these are the greatest challenges for digital inclusion full stop, are they not? This is not a unique problem for justice.

Jenny Beck *indicated assent.*

Q73 Liz Saville Roberts (Dwyfor Meirionnydd) (PC): What is very interesting about this discussion is that we seem to have become very polarised in favour and against. It strikes me that perhaps we need to take a step back and look at the other considerations that need to be brought in to make this effective and not a risk in terms of justice outcomes.

If I may, I will make this slight comparison. I used to be responsible for teaching through video non-traditional A-level subjects—through the medium of Welsh, as it happens—to widen their accessibility, to 15 secondary schools in Wales. Of course, we constantly had the check of the results and seeing how the students who were being taught by video performed in comparison with the conventional teaching method. There is great potential in technology, as is being discussed, but I think there are issues in relation to the vulnerable and there are age—generational—issues as well, without beginning to touch on the nature of technology in some of our rural areas.

What worries me, and what I would like your opinion on, is how we bring this in and have the checks and balances to assess the research—whether there are different outcomes to justice in terms of this—and that this is not a headlong rush into technology in which some participants will actually suffer or there will be unjust results because of it. This cannot be polarised; it has to be something that we discuss as we go along.

Professor Susskind: I accept that it cannot be polarised. You obviously invite people along who are likely to take a position, and my position is a position of change. I have been involved with this for 35 years, suggesting that technology should be used more in the court system. I cannot say for a second that anyone has ever been rushing in; it has been a very slow, arduous and sometimes painful process.

I travel the world, have spoken in more than 40 countries and visited courts. We are, in this country, falling behind other courts, so we cannot be accused of rushing in. I fully agree, however, that to jump ahead in a foolhardy way would be silly. I am simply pointing out, and will say again, that in the context of civil law the current system is inaccessible, unaffordable and unintelligible—full stop. It seems to me worth at least introducing some of these new procedures to offer access to people who would otherwise never have had it. I do not find that contentious; in fact, on civil, I do not think I have been hearing great opposition to it.

Q74 Liz Saville Roberts: Forgive me, but what would the checks be as we change from one very well established and familiar system to a new system? What will be the checks from day to day that they are operating properly?

Professor Susskind: Are we talking about the civil system or the criminal system? Because if we are talking about the civil system, I have to come back at you. You say that it is a very well established system, but my view is that it is a system that suffers from very serious difficulties.

The last research was shown to suggest that 1 million people every year have justiciable entitlements and do not, or cannot, pursue their rights in the civil justice system. We have vast numbers of litigants in person who really struggle to understand the system. If our system was great just now, I would be very hesitant about saying we should replace it with technology.

If this is taking a polar position, I am happy to take one—we have a civil justice system just now that is inaccessible for the overwhelming majority of citizens. I want to say to you that it is surely worth introducing, for some low-value claims, a new way of offering access to judges and then monitoring it very carefully—maybe that is the point you want a response on. I think it is vital that we do ongoing research. The point is well made that we need to understand the impact as we go along and we need be willing to change direction.

As for the evolution of technology in the private sector and the public sector, we are not architects. You cannot design the finished building and say, "Here is what it is going to look like." It is a bit of a journey. If you are hesitant about starting the journey because we do not have the checks and balances in place—we need to have the checks in the place. I think you will find that most leaders, both in the public and private sector, have a sense of direction and say, "Let's start this together, monitor carefully and ensure we are delivering the benefits." It seems to me that the option of saying, "Let's not change at all because we cannot be certain how it is going to unpack," is not an attractive one.

The discussion we should be having is how we ensure, with all these new technologies, that we are monitoring their impact, and that there is an appropriate hand on the tiller when it seems it is taking us in different directions.

Q75 Liz Saville Roberts: Could you recommend what form that should take?

Professor Susskind: I am bound to say this, because in part I am an academic by background, but I think we need to move beyond anecdote. I can tell you what I heard in the court room that I visited—it was nothing like what was heard over here—but actually, what each of us says as individuals is less important than engaging serious researchers to undertake attitudinal surveys and surveys of people who have been through the process. That is the kind of work that we have seen someone like Hazel Genn at UCL doing over the decades—understanding why people go to the law, how they feel when they have been through the process and whether they have confidence in the system.

I have been strongly advocating, even for the civil system that I have recommended we introduce, that we should not rush in. We should think big, but start small. We should start small, monitor, evaluate, undertake serious academic empirical research, report back, invest where things seem promising and be prepared to accept if developments do not work out. We do not have the evidence yet so we have got to kick-start it somewhere. This, for me, is a call for an incremental—the technology would say an agile—modular step-by-step approach. If I was getting the sense that the Government were advocating a big bang—one single system, architect in advance—I would be very critical of that, but that is not the approach being taken.

Q76 Sir Oliver Heald: I was hoping we might move on to clause 47—the cross-examination in family justice. I was hoping to ask Polly from Women's Aid, who is sat very patiently, one or two questions about this. Polly, could you give us a sense of the harm caused by victims being cross-examined in person by alleged abusers in the family courts?

Polly Neate: It is hard to overstate how harmful it is, actually; it is genuinely traumatising. In particular, it makes it very difficult for the family courts to play the role they should play, which is to put the child's best interests first, when usually the mother of the child is not able to advocate adequately because she is being questioned by somebody who has put her through abuse—sometimes, years of abuse.

The other thing that is really important to understand about this—this is what is worrying about judges' understanding, if I may say so—is that domestic abuse is not all about incidents of physical violence; it is all about control, and coercive control. The family courts are being used, if you like, as an arena for perpetrators to continue to exert the control over their partner or former partner, and in particular they are using child contact proceedings as a way of continuing to exert that control.

So it is not only that the person might be overtly abusive towards the survivor in the court, although that happens unfortunately. It is also that there are like trigger words and almost code words that a perpetrator can use when talking to the victim, which will mean something to her that is extremely traumatic but to anyone listening it would not necessarily appear to be abusive, on the face of it. That is why we say that the practice just has to be banned, because as an onlooker you cannot necessarily tell the meaning of what is being said between those two people, particularly—this often happens—after years of abuse and coercive control of all kinds, and psychological control in particular.

Q77 Sir Oliver Heald: We have been very grateful to work with Women's Aid on this issue and for the help that you have been giving in trying to help with the training of those in the family justice system. Do you think the provisions in the Bill will help, and do you have any more that you feel needs to be done in terms of guidance and the judiciary?

Polly Neate: Absolutely, the provisions in the Bill will help. As you know, we very warmly welcome the move that has been made; I think it will make a big difference. We work on this issue with quite a number of women who have been through this experience and their reaction to the news that this is coming in the Bill has been quite amazing; there has been a very big kind of welcoming from women themselves. That is really important.

The only bit where I think we really need to take care is the level of judicial discretion in the other cases. So, we know that where an alleged perpetrator has already been convicted or charged, or where there is an injunction in place, automatically they will not be able to cross-examine the witness—the victim. However, there are other cases that will rely on judicial discretion and I guess my concern with that is, as I said, the understanding of judges. Their understanding of domestic abuse is what they will have to draw on in order to use that discretion. Very often their understanding is simply extremely inadequate, to be completely frank—particularly their understanding of coercive control, which is the key issue here.

Either the ban on cross-examination has to apply whenever domestic abuse is alleged, which would be our preference, or it is really vital that training for judges is absolutely ensured, and also that there is much better access to special measures in protection as well, so that the whole family court estate and system can be much safer for survivors of domestic abuse.

Q78 Sir Oliver Heald: Jenny, I know that the Legal Aid Practitioners Group has been very involved with this issue, as well.

Jenny Beck: Yes, we have.

Q79 Sir Oliver Heald: I do not know whether you would like to say something about all of those issues.

Jenny Beck: Yes, please. I echo all the points that Polly has made. I am also a family practitioner, so I go to court a lot and specialise in domestic abuse work. Last week, I had a client who did not give evidence in the case concerning her children, because she was terrified of being cross-examined. I know that the applicant in that case deliberately was unrepresented in order to be able to cross-examine her. That is a hands-on example of exactly what is happening, which is that perpetrators are using the court process to effect further abuse on their victims. We all know that; it is commonplace. It is not a special trick; it is very well known, so this is a hugely welcome move in the right direction.

Equally, I would like to see a widening of the last provision for the other cases to make sure that the representation covers the victim cross-examining in those cases as well, because that is not quite as clear as it is in the first two clauses. The reciprocity is quite clear in the first two clauses, but in the other cases there is a concern because, although legal aid is still available for victims of domestic abuse, there are still people who are not able to get it, because they have not got the right gateway evidence or because they are excluded on the basis of means or unable to make a contribution. It would be a perverse situation if you found that the perpetrator were able to be represented and the victim were not.

Q80 Sir Oliver Heald: As you probably know, on the evidence requirements, we have made partial announcements and we are reviewing it with the aim of making a fuller announcement fairly soon.

Polly Neate: Which is also extremely welcome.

Q81 Sir Oliver Heald: Richard Miller, do you want to come in?

Richard Miller: We also very much support the proposals. One of the issues that has been of concern, but I think is understood, is that there is a lot of comparison with provisions in the criminal courts. However, in the criminal courts, the victim is a witness in the case who comes in and gives evidence and leaves, whereas in the family courts they are a party and there is interaction throughout the entire process. It means this is a different situation with more scope for harm to be caused to victims of domestic violence within the family courts. We would want to continue to have dialogue to ensure that as much protection as possible is given in those circumstances.

We have identified a couple of specific points that we want to think about a little further. For example, the first provision talks about instances where someone has been convicted or charged. We wonder whether that ought to cover instances where they have been cautioned for the offence as well. That is something that might be added in.

The other issue that has struck us is that this protection will apply not just to the victim but also potentially to other witnesses, such as a child of the family who has witnessed some of the alleged abuse. In that situation, the child could be called on behalf of either party and therefore the issue might not be strictly cross- examination. That may also need to be looked at to ensure that adequate protection is there for all the vulnerable witnesses we are trying to protect.

Q82 Nick Thomas-Symonds: Clause 47 is very welcome. These protections have existed in the criminal courts for some time and to have them now in the family courts is absolutely right. Starting with Polly, what is your view on extending that principle to the civil courts more generally, even beyond simply the family court?

Polly Neate: This is why in the other cases where there was judicial discretion, I said we should discuss any alleged perpetrator of domestic abuse, where there is an allegation. I cannot see the benefit in any situation of any perpetrator of abuse being able to use any court directly to question or cross-examine the victim or the children in the situation. Coercive control does not only exist between a couple; it is something that is deliberately exerted by one person on the other members of the family, which very often includes the children. I want to back up that point, which was very well made.

I can think of no reason other than cost for the idea that someone has to have his day in court. I think that notion needs to be done away with altogether. There is no circumstance where that could possibly be a good idea.

Q83 Nick Thomas-Symonds: Jenny, I see you nodding. Do you share that view?

Jenny Beck: Yes. I would also add that it is in the interests of justice being done, of equality of arms and of ensuring that the system is fair. Any area where justice is not done because one person is unable to represent their case properly—it does not really matter which discipline it is—lacks fundamental natural justice. If we can do something to avoid that by putting measures in place to ensure that the evidence given is proper and robust, why would that not happen?

Q84 Nick Thomas-Symonds: The point presumably is that the court should never become an instrument for the extension of coercive behaviour.

Jenny Beck: Exactly, although there are a couple of ways in which that happens; it is not just in the cross-examination of expert witnesses. Perpetrators also prolong cases and bring additional unnecessary litigation within family cases, but this is certainly a welcome move in the right direction.

Penelope Gibbs: I think this is an excellent initiative; it just brings a question mark for me. If the person is to have aid cross-examining throughout a family case, why should they not be legally aided in the first place? It seems to me that the Government will probably spend as much paying the lawyer for their interventions in helping cross-examine as they would if they legally aided the person.

Q85 Nick Thomas-Symonds: Richard, can I come to you on the issue of funding? Clearly, there will be a court-appointed advocate who needs to be funded, but one curiosity is that the funding of the court-appointed advocate is left to regulation; it is not in the Bill. Do you think that it would be helpful if it were in the Bill, given how crucial funding is?

Richard Miller: Potentially. This issue is very much in the criminal sphere at the moment, because there is a proposal substantially to reduce the payments for advocates who carry out this role in the criminal courts. One concern is basically that the market will speak—if the rates are set at too low a level, you might find that lawyers are just not willing and able to undertake these cases. It is vital that whatever rates are agreed for this work are sufficient to enable advocates of suitable quality to conduct it. At the moment, we think that it is an issue of potential concern that we will not be in that position in the criminal courts if the proposals go through as currently suggested.

Q86 Richard Burgon (Leeds East) (Lab): I have a question for the representative of Women's Aid, then two questions on employment tribunals. Polly, are you in a position to comment on the effect of the nature of the MOJ estate on the elongation of abuse or coercive behaviour? It seems to me that there may be an issue with the layout of family court buildings and other things. Regardless of the welcome change set out in

clause 47, which you also welcomed, is there anything that you would like to add about issues such as waiting rooms and so on?

Polly Neate: Absolutely. That is the kind of thing that I was referring to when I talked about the need to look at special measures as a backdrop to this. The court reform process now provides an important opportunity to improve the family courts' ability to provide special measures. We believe that that should be a priority. Separate waiting areas are an obvious example. In the surveys that we have done of women who have been through the family courts and who are survivors of domestic violence, abuse within the court estate is incredibly common. Again, because of the coercive controlling nature of domestic abuse, sometimes it is not visible.

I will give you an example. I spoke to a woman who was in the same waiting room as her ex-partner throughout the whole time the case was going on, and any time she moved anywhere in the building, he would leap up and hold the door open for her as she walked through. To her, that was incredibly intimidating. He was constantly there whenever she went anywhere in the building. Anybody watching would not necessarily have seen that as abusive behaviour, but in fact, given the history of the relationship, it was extremely intimidating behaviour. If there had been separate waiting areas, it could not have happened—so, absolutely, it is very important.

Q87 Richard Burgon: On employment tribunals, I would be interested to hear what Richard Miller from the Law Society has to say. Our position on employment tribunal fees is well known. We would abolish the fees that were brought in in 2013 because we believe, among other things, that they have a really negative affect on access to justice, with a 70% reduction in cases being brought. Richard, are you in a position to give your view on the effect of the introduction of employment tribunal fees on access to justice in the employment courts?

Richard Miller: The Law Society is well aware of the research showing the 70% reduction, and what is more significant about the figure is that there has been no change in the proportion of successful cases. That means that legitimate cases have been deterred in the same proportion as frivolous ones. We think that the evidence makes it crystal clear that a lot of people who previously would have had access to tribunals to get justice in employment disputes are now not getting it.

Q88 Richard Burgon: That is very useful. My final question is to Richard Miller, and to Penelope in particular, if she has any thoughts on this. Clause 52 of the Bill talks about the composition of tribunals. As a former tribunal lawyer, I very much did not welcome—and Labour Members do not welcome—the reduction in the use of tribunals and the increase in instances of judges sitting alone. We do not make that point out of any partisan pro-employee or anti-employer position—we are, of course, not anti-employer. It is very useful to have an employer representative and an employee representative there to provide real-world experience to assist the judge. Clause 52 commits the senior president, or the president, of tribunals to extend even further the type of cases in which employment judges would be sitting alone, further undermining the tripartite nature of the tribunal. Do you think that the Committee should amend that?

Penelope Gibbs: I sat as a magistrate myself, so I am very much in favour of the use of lay judges in our justice system. It gives a different perspective from that of people who are part of the paid judiciary, of great quality though they are. I also have concerns about judgments made by people sitting alone. If you have two or three people discussing something, they can hear something, notice something, or bring a perspective that is very relevant to the decisions made, which is why we have benches of three magistrates. So I have huge concerns, and I also see it, I am afraid, as part of an ongoing diminution of lay justice, in that it is reducing or, potentially reducing, lay representation on tribunals while, at the same time, the number of lay magistrates has fallen by a third in the past eight years.

Richard Miller: From the point of view of the Law Society, when the proposal was originally consulted on, it was certainly read as suggesting there should be a default position of a single person deciding these cases, rather than the panel of three, and the Law Society was extremely concerned about that. It was particularly in the context of mental health tribunals and social security tribunals that we got very strong evidence from our members as to the benefits of the additional participants in the panel. It is something that has significant benefits across the board. Having it as a discretion for the senior president of tribunals is a much improved position from the idea of a default that there should be only a single person, but it is worth further thought as to whether it is extending the use of a single person panel further than is appropriate.

Q89 Nick Thomas-Symonds: Penelope, you mentioned that you sat as a lay magistrate. There is a provision in the Bill that abolishes local justice areas, which means a magistrate will not be allocated now to a particular area. Can you comment on the morale of lay magistrates at the moment and how you think it will be affected by the abolition of local justice areas?

Penelope Gibbs: The actual effect of this provision in terms of whether benches will be abolished is not quite clear. I would say if it becomes a situation where local benches of magistrates are abolished, that is a big problem. Already, there have been many amalgamations. Magistrates like to be part not only of their community geographically, but to be part of a community of magistrates. Therefore, even if we create a single justice area, I would say it is very important that benches remain, from the point of view of the morale of magistrates but also being able to communicate and have links to local agencies and people. Without benches, who is the local community supposed to go to when they want to interact with magistracy?

The Chair: There are no further questions. I thank all the witnesses for their evidence and we will move on to the next panel.

Examination of Witnesses

James Dalton, Brett Dixon and Rob Townend gave evidence.

3.8 pm

The Chair: I welcome the next panel of witnesses. We will now hear oral evidence from the Association of British Insurers, the Association of Personal Injury

Lawyers and Aviva. We have until 4.30 pm for the session. Please will the witnesses introduce themselves for the record?

Brett Dixon: Hello, I am Brett Dixon. I am the vice-president of the Association of Personal Injury Lawyers. We are a not-for-profit organisation that looks out for the interests of injured people.

Rob Townend: Hi, I am Rob Townend. I am the UK claims director for Aviva.

James Dalton: I am James Dalton, the director of general insurance policy for the Association of British Insurers.

Q90 Sir Oliver Heald: Let us start with you, Mr Townend. In recent years, since 2005, we have seen a fall in the number of road accidents, we have seen safer vehicles and we have seen a more than 50% increase in whiplash-related claims. Can you put this in perspective and tell us what you think the problem is and whether you think our tariff system is going any way to solving it?

Rob Townend: The first part, yes, we have seen a reduction in road traffic accidents and an increase in injury claims. From our perspective, it is the easy access to cash that has created the problem. In terms of your tariff, I think that will go part way with the other parts of the solution to deal with the problem around whiplash in the UK. It is interesting if you look at places such as Germany, where injury claims have fallen in line with a reduction in road traffic accidents.

Q91 Sir Oliver Heald: On what you think the problem is, you said "easy access to cash". Would you like to explain the whole thing a bit more fully?

Rob Townend: The insurance industry has been part of this in settling claims too quickly. Some of that has been an attempt to avoid ongoing costs. A whiplash claim can get anything from £1,500 to £4,000. It is quite difficult to diagnose whiplash, so the propensity for claims has increased over the last 10 to 15 years.

Q92 Sir Oliver Heald: What do you put it down to? What is actually going on?

Rob Townend: I think it is claims farming, nuisance calls and people drawn to easy money. I think it is everything from "cash to crash" gangs to opportunists. Claims management companies are driving up claims and incentivising people to make claims.

Q93 Sir Oliver Heald: What about you, Mr Dalton? Do you agree? Do you think the tariff system will help?

James Dalton: I think the way Mr Townend has articulated the problem is exactly right. The behaviours that he described are symptomatic of a system that has too much money in it and incentivises lawyers to farm claims and to push claims into the system for insurers to pay, which drives up the cost of car insurance for everyone.

In terms of the Government proposals in the legislation, the tariff system is an important mechanism to provide clarity to claimants about the amount of damages that they will receive. That is an important clear signal to claimants in terms of ensuring that they get some compensation for the injury that they have suffered.

Q94 Sir Oliver Heald: Say that Mr Dixon says in a moment, "No, these are all genuine claims, and anyway they haven't gone up; they've gone down." That is something I have heard said. What would you say about that?

James Dalton: I am sure Mr Dixon will say that. He is being selective with the numbers he is using. There is absolutely no doubt that the number of whiplash claims has decreased. That is true—it is what the Compensation Recovery Unit statistics will tell you—but at the same time that the number of whiplash claims has gone down, the number of back injury claims has gone up significantly. Claimant lawyers re-labelling what is essentially the same injury as a back injury rather than a whiplash injury does not mean that the claim has gone away.

Q95 Sir Oliver Heald: The circumstances are the same, are they not? A shunt up the back, and then it is described as a back injury rather than a whiplash injury.

James Dalton: Correct.

Q96 Sir Oliver Heald: Well, Mr Dixon, are you going to tell us what I predicted, or do you disagree?

Brett Dixon: No, I was going to start by correcting something Mr Dalton said. It is not the claimant's lawyer who enters the details for the Compensation Recovery Unit; it is the defendant's representative. If they are being entered as back injuries, it is the defendant's representative doing so. I am aware of that as a practitioner. The Government CRU statistics seem to me to be crucial to understanding this. If you look back—

Q97 Sir Oliver Heald: Can you explain what it is, in case anybody here does not know? It is the DWP, isn't it?

Brett Dixon: It is. If you have an injury claim, the defendant's representative informs the DWP—the Compensation Recovery Unit—that a claim is being made. Then there is a mechanism for the Government to recover costs such as NHS costs or benefits paid because someone has been unable to work. It is important that the money from the person who has negligently caused harm finds its way back into the Government system, rather than the Government and the taxpayer footing the bill, but what is important about those statistics is the simple fact that they effectively record the number of claims that go through the whole court system as well as claims settled before the court system.

If you look back six years, you can see that the Government figures show a 41% decrease in this type of whiplash claim. If you look at it in terms of neck and back—there are different recording mechanisms; they are all available and there to be seen—there is an 11% decrease over a similar period. The ABI's own statistics also show that since 2013, which is roughly after the last major set of reforms, the cost of dealing with these types of claim is down 12%. They are saving approximately £500 million per year. There is not an issue in terms of cost.

I would urge the Committee not to be taken in by the hyperbole prevalent in the sector and think how we as a society we would want to deal with someone who has been genuinely injured as a consequence of somebody else's negligence. There should be consequences for wrongs, and insurance is there and takes a premium to

cover people in those circumstances. If there are issues with people pursuing claims that are not genuine, that is a completely different thing for the Committee to look at. We should not impact on genuine people and the fabric of our society in an effort to deal with that problem.

Q98 Sir Oliver Heald: So, Mr Townend, you are exaggerating the figures and these are genuine claims.

Rob Townend: There is a point around it being a choice for society—that is the one thing we agree with—whether people want to pay for these claims in their premiums; whether they want the ongoing nuisance calls; whether they want the fraudulent and opportunistic claims. We seem to think of this as victimless crime where people are not injured, but we have to defend our customers from spurious claims through the courts. We have had serious injuries and fatalities related to "cash for crash".

In terms of the volume point, our volumes have been flat for the last three or four years. We still see significant variations between different areas of the country in terms of injury as a proportion of total claims. Somewhere like Exeter has 20% of road traffic accidents with an injury. If I go to Manchester, it is nearly two and a half times that. Why do they have weaker necks in Manchester than in Exeter? The road traffic accidents are no different, so that tells you the extent of the problem.

Q99 Sir Oliver Heald: If there are some savings here, is it right that Aviva has said that they will pass them on to the customer?

Rob Townend: Absolutely. We will guarantee to pass on 100% of the savings through the premiums.

Q100 Richard Burgon: Can I just start by clarifying with the Aviva representative that Aviva has chosen to pass that saving on? That is not compulsory; it is your organisation's choice to do that.

Rob Townend: It is our commitment as an organisation. Most of you are aware of how the market works; it is a highly competitive motor market. There are a lot of underwriters and business providers. Whether claims costs increase or reduce, they typically flow through to our premiums.

Q101 Richard Burgon: To the best of your knowledge—obviously, you will know all about your competitors—is Aviva in a minority in taking this position to pass on the saving?

Rob Townend: I know others have. I do not know whether James knows more.

James Dalton: There are firms that, like Aviva, have committed to pass on the savings. As Rob said, the market is highly competitive. There are 97 businesses in the UK that write car insurance. If one firm fails to pass on the savings—that may happen—the premiums charged by that firm will be higher, so consumers will switch. There is a report out from the Competition and Markets Authority this morning that indicates that over 80% of consumers use a price comparison website each year to shop around for insurance. It is a highly competitive market, and the dynamics of that competition will ensure that savings are passed on to consumers.

Q102 Richard Burgon: So there is no figure at moment about how many of the 97 competitors have adopted Aviva's approach? We do not know whether it is a minority or a majority of them?

James Dalton: There is no figure.

Q103 Richard Burgon: Finally, I would like to ask each of the panel members, starting with Brett, why, in your opinion, the Government do not seek to better regulate claims management companies, which unlike solicitors are free to cold call potential customers?

Brett Dixon: In my opinion, the Bill is a missed opportunity to deal with the real drivers of these types of claims, and that is claims management companies. I can see the argument that, in some respects, if you do not regulate claims management companies—which we would firmly support—and you do not ban pre-medical offers and cold calling, you are creating a circumstance where someone who does not have a genuine claim might see this as a one-way bet. By that I mean that you might be encouraged by a claims management company to make a claim. I am told that insurers make pre-med offers without any medical evidence and you can, in effect, make it up and not be able to be called to account, because you can stop before there is medical evidence. If you take rogue claims management companies out of the equation and ban this insurance-led practice of making pre-med offers then I think you deal with most of the problems in the sector that we are hoping to deal with through the Bill and maintain the position of the genuine claimant who wants access to justice.

Q104 Craig Tracey (North Warwickshire) (Con): I shall start with you, Mr Dalton. Obviously, the Government are keen to get a definition of whiplash in the Bill, and I think it will be key to this being successful that we get that definition right. Does the current framework definition hit all the right spots, or should we be looking at something else?

James Dalton: This is a critical point. Clause 61 defines whiplash: we have some significant concerns, which go to my earlier comment that the definition does not adequately include cover for back injuries: it includes neck and upper torso but does not include back. We think that is a really important part of the jigsaw that needs to be included within this legislative framework, so that you capture the right type of claims. The risk if you do not do that is that whiplash injuries will become back injuries and they are not covered by this legislation.

Rob Townend: I have the same answer, really. We do not want to see a loophole where back is excluded and you end up with two systems, one for neck and upper torso and one for back. It adds complexity and reduces the number of claims that are caught by the legislation by about 60%.

Brett Dixon: Clause 61, particularly clause 61(1), does contain provisions for further regulations. I think it is important to understand what is intended in the regulations and how that would interact with it. I sound one note of caution as a practitioner: it would be within the realms of a medic or a medical expert to define what whiplash is. If you were to ask a medic, or you were to ask a lawyer to give a go at what a medic would say, they would say it is soft tissue injury to the upper torso and

neck that has been caused by hyperextension or hyperflexion. The mechanism is as important: some thought needs to be given to involving a medic in the way that regulations are drafted. That is the most important point.

Q105 Craig Tracey: What about the MedCo definition?

Brett Dixon: The MedCo definition is something of a work in progress in many respects. There is a definition there that has been imported into the civil procedure rules and this draws in part from it. Just because it exists in the civil procedure rules and is used for MedCo does not mean that this is either a good starting point or the way to go. This is an opportunity to define it properly by using and involving medics.

Q106 Craig Tracey: What are the consequences to insurers if you get the definition wrong, in terms of additional cost? Has there been any analysis of how much more that will cost insurers?

Rob Townend: You will see displacement of claims from purely neck injuries to back injuries. The analysis we have done suggests that 60% of the claims that are currently wrapped under small soft tissue injuries will drop out. Without the displacement impact, where people will claim, I think it gives a loophole for fraudsters and I do not think it will help to reduce nuisance calls.

Craig Tracey: Any other thoughts?

James Dalton: No. I think the revised regulatory impact assessment from the Ministry will be extremely important for understanding the extent to which this definition will deliver the Government's anticipated savings. Because I do not think it will, for the reasons I have already explained. So if we do stick with this definition, the regulatory impact assessment should show that.

Q107 Craig Tracey: That brings me to the cost. We have already said that Aviva has said that it will pass on the cost, as have other insurers. It was based on a £40 figure, wilfully, at the time, but I think that figure was based on the complete removal of soft tissue injuries. Has there been a re-evaluation of likely cost? What is the impact on other things such as insurance premium tax rises and discount rate changes, which we will obviously see? You can pass on a saving but that does not necessarily mean a lower cost.

Rob Townend: Let me deal with the exclusion of back, which has the biggest impact in terms of how the definition is written. Having a tariff instead of removing damages in its totality has a smaller impact. I think our analysis—we can share it properly with the Committee—was £4 or £5. So the bigger impact is in the reduction of back. The second part of the question was—

Craig Tracey: It was around other impacts such as IPT rises.

Rob Townend: The environment around motor pricing at the moment is really dynamic. IPT has been going up and the discount rate has significant impact on premiums for larger injuries. Adding these together, the opportunity to offset premium increases with a reduction in the cost of whiplash claims would be beneficial to consumers.

James Dalton: We have been very public about our view that the decision to reduce the discount rate to the extent that it has been reduced is absurd. There is a very important need to reform the system and we look forward to seeing the Government's consultation on that in due course. Inevitably that has already led to increased car insurance premiums and an increase in the insurance premium tax. This makes it even more important to progress these reforms in order that premiums will not go up as much as they would were you not to proceed with these changes.

It comes back to the society question: do you want to live in a society where you have a claims culture and compensation system that drives the sort of behaviours that Rob Townend was describing earlier. I think the answer that most consumers give to us is that they are sick and tired of the cold calling and the text messages. This is the system that drives them.

Q108 Nick Thomas-Symonds: I have two points, Mr Brady, and the first is to Brett Dixon. The small claims track limit of £1,000 has been there since 1999. If you increased it by the same rate as the consumer prices index, you would end up with just under £1,500. If you increased it by the same rate as the retail prices index, you would end up with just under £1,600. Do you think there is any justification for going to £2,000 in most cases and £5,000 in whiplash cases?

Brett Dixon: I do not think there is any justification for it, to be perfectly frank with you. The use of a small claims track system is to identify those claims that somebody can deal with on their own, rather than it being about a monetary value. If you introduce changes to the small claims track at the same time as altering the court system to provide hearings at a distance—video evidence—you are going to make it incredibly difficult for a litigant in person to deal with and understand all those issues on their own.

Remember, the defendant who has paid an insurance premium has a right to call on those insurers to provide them with legal representation. I always think of it as being the person in the dentist's chair on their own—that is what you would be as a litigant in person against well-represented opponents. I think that there is no justification, either monetarily as you have put it, or on the basis of the purpose of a small claims track.

Q109 Nick Thomas-Symonds: Perhaps Mr Dalton could answer another question. You are talking about a claims culture and all the rest of it. When we are talking about fraudulent claims, if there is sufficient evidence to plead fraud—and I appreciate there has to be a bar to plead fraud—the defendant lawyers, whoever they are, will plead the fraud and it is either proved before the court or it is not. I can remember my own involvement with these cases. You will have a number of cases where fraud has been definitively proven. Beyond that, any statistics are just based on suspicion, aren't they?

James Dalton: No, not really, because the ABI produces statistics which indicate the number of detected fraudulent motor claims each year. In 2015, the last year for which statistics are available, there was £800 million of detected insurance fraud and there were around 70,000 cases. However, I think the really important thing to think about in this context is whether the reforms are designed to address fraud. I think that they will help to address the fraud issues that you have articulated, but again it comes back to the societal

question: do you want the text messaging, the spam calls and that type of environment, with the money in the system that drives those sorts of behaviours?

Q110 Nick Thomas-Symonds: In how many of the 70,000 cases where you say fraud was detected were the frauds actually proven before the courts?

James Dalton: I do not have those statistics. Each insurer will decide whether they take further action; maybe Rob can explain how Aviva approaches it. Each insurer will make a decision as to how they deal with the case in question.

Q111 Nick Thomas-Symonds: You just made a statement about 70,000 cases of detected fraud and you cannot even tell me how many of those are actually proven before the courts?

James Dalton: No.

Q112 Suella Fernandes (Fareham) (Con): I have defended parties in low-velocity impact claims, and the guidance is generally set out when an allegation of fraud is going to form part of a defence; it is set out in the Court of Appeal guidance for Casey *v.* Cartwright. What do you think is the problem with that guidance and how will these proposals assist? It imposes a burden on the defendant to notify that fraud will be part of the defence and, importantly, in many cases it will allow them to adduce medical evidence on the issue of causation.

James Dalton: There are a number of tools at insurers' disposal to address the type of cases that we have just been discussing. Whether insurers choose to use them is obviously a decision for them and, as I said, Rob might be able to explain what Aviva's position is.

However, the Government have recognised that fraud is a big problem in insurance. They established an insurance fraud taskforce, which has reported and made a number of recommendations for reform. The Government have delivered. For example, there is now a fundamental dishonesty action that insurers can plead in court, so that those claims that are so flagrantly fraudulent are kicked out of the system. We need those tools and we are using them to get rid of fraud from the system.

Rob Townend: It is a good question; I will answer two questions together. We started defending claims at Aviva a couple of years ago. We stood back and said, "Look, we're not going to back away quickly. We are going to trust the courts to support us," and we took a defence excellence strategy on behalf of our customers. If they are saying, "There wasn't anybody injured. I might have been liable, but the speed of the accident didn't cause injury," we have been defending our customers through the courts for the last couple of years. I think we have put 1,700 through the courts; we have a success rate of something like 70%. More recently, we have had great success with fundamental dishonesty and the judges are generally starting to support us. I think we have had 174 cases where we have had fundamental dishonesty.

If we go to the other gentleman's comment about fraud, we do not pay one in 10 of our whiplash claims. Some of that disappears when we challenge it. I invest millions of pounds in investigation analytics capability technology and we will challenge plaintiffs at the first point where we think the claim is linked to a gang and is spurious. We do not pay one in 10 of our whiplash claims at Aviva.

Q113 Suella Fernandes: Does Mr Dixon wish to comment?

Brett Dixon: Yes, I would—thank you.

In some respects, the debate has moved on from fraud and low-velocity impact. That is because of the provisions that were enacted in relation to fundamental dishonesty, which are in the civil procedure rules at rule 44.16 and in section 57 of the Criminal Justice and Courts Act 2015.

If a defendant thinks that there is fundamental dishonesty involved in a claim, they have two opportunities to challenge it. They can challenge it at the conclusion of a case, when the case is unsuccessful, and then seek their costs. They can also challenge a case if it is successful but there is a question mark over what has been claimed, and that can lead to a claimant losing all of their damages and to a cost order as well. There are sufficient drivers in the system and levers that can be pulled to discourage any type of claim like that.

It is important, though, to understand this in context. First, the most important thing is to consider proven fraud. I see in practice, from different members of our organisation, many allegations of fraud or fundamental dishonesty that are not made out when tested by the court. You only need to look at a recent Court of Appeal decision by Lord Justice Briggs in Qader & Ors *v.* Esure Services Limited to see that there is a developing gaming of the system by insurers to prevent people from being able to challenge those cases properly. That case was about trying to prevent a claimant from having access to the same tools to fight the allegations as a defendant has to bring them.

There was an implicit recognition from the Court of Appeal in that judgment that it is important that a person who is accused of something like that has the ability and resources to answer it. It is a serious issue for somebody accused of it and it is about what is proven fraud, rather than vague statistics of about 70,000 cases, where we are not quite sure whether it is fraud, detected fraud or suspicion of fraud and what standard that is at. It is for the judiciary to decide if that is an issue and, if it is found to be an issue, that person should be dealt with. Equally, if you are going to have access to justice and equal rights on a level playing field, they need the ability to challenge it in appropriate circumstances.

Q114 Chris Philp (Croydon South) (Con): Welcome to our panellists this afternoon. About three years ago, my wife and I were involved in a relatively minor road traffic accident. For the year that followed that, I was phoned up on my mobile almost every week by people talking about the accident and trying to make me submit a claim for a neck injury. No matter how many times I told them that neither I nor my family had suffered any injury, they persisted in trying to incite me to commit fraud. Mr Townend, why were they doing that?

Rob Townend: I spoke a bit about it earlier: it is encouraging you to make a claim so they can access the cash. The referral fee ban that was put in LASPO obviously is not working. There are marketing fees

available for people to attract you to make a claim. I agree with Mr Dixon and his earlier comment about regulation of claims management companies. Insurers and lawyers are heavily regulated; I would still like to see more regulation of the legal fraternity by the Solicitors Regulation Authority. The regulation around CMCs has been pushed back, I understand, to 2019. The referral fee ban has not worked. There is too much money still in the system and they will keep pestering. We know that. We have got a lot of examples where vulnerable customers are being contacted repetitively, like you were, until they make a claim.

Q115 Chris Philp: Am I right in saying that panel members are unanimous in their view that cold calls by CMCs should be banned?

Brett Dixon: Yes.

James Dalton: Yes.

Rob Townend: Yes.

Q116 Chris Philp: The panel is unanimous on that point.

You mentioned referral fees, Mr Townend. As you say, they were banned a few years ago. My understanding is that some organisations, including insurance companies, seek to circumvent the referral fee ban by entering into what they euphemistically term "alternative business structures", where they essentially have some kind of equity stake in a claims management company and, effectively, get paid via their equity stake or similar arrangement, rather than an explicit referral fee. Is it the opinion of the panel that this practice, designed to circumvent the will of Parliament, is going on?

James Dalton: The referral fee ban is widely regarded as being relatively ineffective. The mechanism you have articulated is one of the ways people have chosen to get around that ban, including insurance companies and law firms, I would emphasise. That problem is addressed substantially by the reforms in this legislation, because what they do is take that money out of the system and, therefore, take out the incentive to try and circumvent a referral fee ban.

Q117 Chris Philp: Mr Dixon, do you want to add at all to that before I move on?

Brett Dixon: I will with an anecdote, more than anything else. I shared a similar experience to you where I had vehicle damage. I was not in the vehicle. It was in a supermarket car park and an older gentleman was kind enough to leave his details. I was pestered by my insurance company. I was even asked, "Are you sure you weren't in the vehicle?" Take that on board.

If you have damage to your vehicle—your car that is insured—the first organisation that has access to knowledge that you have had an accident is the insurance company. They take referral fees for work—I am aware of that practice—and they also make a profit from referring such cases on. You only need to look at some of the reports that they make as part of the stock market requirements in relation to that.

Generally, if you take claims management companies out of the equation, you will remove one of the drivers. If you look at banning the practice of insurance companies and claims management companies referring work on, you go some way towards doing that as well. If you ban cold calls, for which the Association of Personal Injury Lawyers has been campaigning for some time, you remove the possibility of what I call the one-way bet and you are focusing then on the real problem, rather than on the genuinely injured person.

Q118 Chris Philp: Your mention of the one-way bet brings me to my next area of questioning. Take the example I experienced: had the recipient of that cold call been someone who was more open to temptation than I am and gone along with what the claims management company was suggesting, how would the claims management company have ended up making money out of an essentially bogus claim? They must be able to make money out of it, otherwise it would not be worth them soliciting the public.

Brett Dixon: It is the one-way bet analogy. If you then compound the problem by allowing an insured defendant to make an offer to somebody without seeing medical evidence, where are the checks and balances in the system? Bear in mind that a claims management company may be dealing with that, rather than a lawyer or a solicitor at that point. If you remove those two levers, those two drivers—the cold calling and the effect of a claims management company encouraging somebody to make it, and an insurance company then making pre-med offers without evidence of the actual injury—then you can deal with a lot of the problems that are inherent in the sector.

Q119 Chris Philp: Am I right in saying that under qualified one-way costs shifting, were an insurance company to take the choice to defend a claim, even if it were successful in defending that claim—if the claim was found to be without foundation—the insurance company would none the less bear both sides' costs? Would it not further be the case that those costs would be substantially—probably by a factor of two or three—in excess of the value of the claim, and that is why for the past five, 10 or 15 years, insurance companies have simply coughed up without challenging the case? Perhaps Mr Townend might comment on that.

Rob Townend: Yes; I am one of the insurers who has been defending despite the costs.

Q120 Chris Philp: When you defend a claim and win, do you lose money?

Rob Townend: It depends on whether we then go for a costs order. We will try to if we think we will be successful in that. What is really interesting is that, in the model I operate, the only person I am paying as a result of an injury claim is the party who has been injured and their lawyer. How the CMC gets remunerated for that introduction, I do not really know. The only person I am paying cash to is the plaintiff and their lawyer.

Q121 Chris Philp: Presumably one of those two makes an onward payment to the claims management company?

Rob Townend: I do not know how it works.

Q122 Chris Philp: Mr Dixon, you practise in the area. How does the money get to the CMC—by magic?

Brett Dixon: I do not take any work from CMCs; I take the work from personal referrals. What I would like to do is to pick up on some of your questions.

Q123 Chris Philp: Before you do, you also represent the trade body representing personal injury lawyers, so you can answer in general terms. How does the money get from the claimant's lawyers or the claimant to the CMC?

Brett Dixon: We do not recommend that any of our members interact with CMCs.

Q124 Chris Philp: I did not ask what you recommend, which I am sure is very virtuous; I asked what actually happens in practice.

Brett Dixon: I would not know what happens in practice because I don't do it and our members are told not to do it either.

Q125 Chris Philp: They clearly do, otherwise CMCs would not exist.

Brett Dixon: We have a large membership but it is not all people who practise in the area. There may be areas where they are not APIL members where that practice goes on. To go back to your earlier point about the qualified one-way cost shifting and the effect of it, qualified one-way cost shifting was brought in to replace the after-the-event insurance policy, which was something insurance companies were making money out of.

Now, if a claim is not successful, then there are exceptions to the qualified one-way cost shifting rule. Take the example of the one-way bet, where someone has not actually had an accident. There would be two different provisions in the civil procedure rules whereby a defendant could get their costs paid. There would be fundamental dishonesty, and there would also be the fact that the claim would be struck out for being no cause of action, or an abuse of process. If there was no actual accident, then it is not a viable claim. It would be an abuse of process.

If the claim was successful, there is a provision in section 57 of the Act for them to recover in circumstances where there is a taint of fraud in relation to a fundamental, or large, part of the claim. If a defendant challenges a claim where there is evidence of fundamental dishonesty, or it is based on a one-way bet, there is a mechanism for them to be paid. It is a mechanism that is being used and, like any provision that you introduce into the civil procedure rules, the mechanism takes time for the courts to interpret and to bed in. However, there have been quite a lot of cases—at county court level, High Court level and some in the Court of Appeal—that are starting to shape how that works. The fundamental point is that, in those circumstances, there is a mechanism for a defendant to be paid for the costs they have incurred.

The final point you made was about the cost being two or three times the likely damages. If it is for a whiplash claim that is in the fast track, then that is fixed cost, so you will not get two or three times the damages. The only circumstances in which you would are if you have made a part 36 offer to the defendant and then gone on to do better than it. In other words, you offered to settle at an early stage and that offer was ignored. That is there to promote settlement between the parties and save court time.

Q126 Chris Philp: The phrase I have heard several of you use is this idea of a one-way bet. Given that it is a one-way bet, it is no surprise that the floodgates have opened in the past few years.

I would like to come on to the pre-med offer point, which is important. In clauses 64 and 65, legislation contemplates essentially banning pre-med offers where there has been a whiplash claim—a whiplash claim is defined as in clause 61. Would it not make sense, in relation to the banning of pre-med offers, to suggest that any personal injury claim in relation to a road traffic accident should involve a face-to-face medical examination, rather than just the whiplash claims, as currently drafted? Would that not be a much stronger way of ending the pre-med offer practice?

Rob Townend: From our perspective, absolutely. We would like to see a pre-med offer ban. In Aviva, we do not make any offers without a medical—again a decision we made—

Q127 Chris Philp: Are those face-to-face medicals?

Rob Townend: Yes.

Q128 Chris Philp: You are unusual in doing that, are you not?

Rob Townend: Yes, we are pretty unusual doing that. We looked at the overall system and said, "We do not want to feed it". We wanted to make sure we have medical evidence around the settlements we make, and that we then follow through and defend those if we think the injury is not in line with either the accident—

Q129 Chris Philp: So the suggestion I just made is in line with your current practice, and it would effectively force the rest of the insurance industry to adopt the very commendable practice you are already adopting voluntarily?

Rob Townend: Yes, I think: do not pay a claim without medical evidence, whether that is a motor accident or a liability claim in the commercial courts.

Q130 Chris Philp: Mr Dixon, are you happy with that?

Brett Dixon: Very short and very simple: yes, ban it in all personal injury claims. Pre-med offers should not happen.

Chris Philp: Goodness me, there we are! A further usual outbreak of unanimity.

Rob Townend: There is one point to go back to. Do not end with a system with your current definition of whiplash that excludes back because, unless you do that, you will have no pre-med offers—

Q131 Chris Philp: There are two operative provisions in the Bill. One is in relation to the fixed tariff, and one is in relation to pre-med offers, and one might treat them slightly differently.

In relation to the definition of whiplash in clause 61, my colleagues have asked about this already but, having read your submission to the Committee, Mr Dalton, I think I am right in saying that you are concerned that the definition in clause 61(1) is too narrowly drawn. In particular, it excludes the back, and you are worried that there will be a sudden miraculous upsurge in people with bad lower backs.

James Dalton: Absolutely correct. I repeat the point I made earlier: getting the definition right is absolutely critical to ensuring the success of this legislation, in terms of delivering the outcome that the Government have articulated that they want to achieve. At the moment, I am concerned that by excluding back you will see a surge in back claims that are not covered by this legislation.

Q132 Chris Philp: To be clear, we have heard a figure of £1 billion a year of savings mooted in the past. If we adopt the definition as drafted, in your opinion what proportion of those estimated savings will in fact be realised?

James Dalton: I think you said earlier that Aviva's figures suggest that 60% of the claims are probably going to be excluded, so take away 60% of £1 billion.

Q133 Chris Philp: The final question I would like to ask is about a matter I understand might be introduced into the Bill at a later date, which is to do with the discount rate used when paying claims for long-term injuries. It has recently been amended by the Lord Chancellor from, I think, 2.5% down to minus 0.75%. I would like to close by giving each of the panellists an opportunity to comment on that move and the impact it may have on the wider public.

James Dalton: The decision to reduce the discount rate by 325 basis points has imposed substantial costs on the insurance industry. By "substantial", I mean to the tune of about £6 billion. That is about 60% of the annual claims cost of motor claims. That cost simply cannot be absorbed; it must be passed on to consumers. Premiums will inevitably rise as a result.

A number of firms have indicated in the public domain that that is the case. The Government need to put out the consultation they said they would produce so people can address the principles underpinning how a rate is set. At the moment, it is linked to Government bonds. No one goes and buys Government bonds. It makes assumptions that 100% of a claimant's damages are invested in one asset class. No rational investor would do that. So the fundamental underpinnings of how the discount rate are set are fundamentally wrong, and we need to address that.

Q134 Chris Philp: In the absence of any change, what is your assessment of the percentage impact on the average car insurance premium in this country?

James Dalton: It will go up significantly. I think the impact on young drivers is going to be particularly bad, because those are the customers who are most likely to have catastrophic injuries. It is estimated that their premiums could increase by £1,000.

Rob Townend: I will not say a lot that differs from what Mr Dalton has said. We have got to sort out the methodology for setting out the discount rate, because I think nobody would say that it fits the current world, either from an investment return point of view or from the point of view of looking after those who are seriously injured.

The fact that there are so many variations of the potential solution that the Lord Chancellor could have chosen tells you that the mechanism does not work. At the moment, while the consultation is happening, there is a world of uncertainty around what will happen in the future. I think it is in everybody's interest to get clarity around a longer-term rate that can be as formulaic as possible and looks after the long-term interests of those who are seriously injured while looking at the longer-term investment returns that lump-sum payments can achieve. We just plead that the consultation is got on with quickly. We would love to see the piece of legislation that it could be put into.

Brett Dixon: It is important to understand that you are dealing with issues at two ends of a different spectrum. You are talking about a whiplash claim, and in the same breath, in terms of the discount rate, you are talking about the catastrophically injured person. The important point in relation to that is that, first, the insurers have known for some time that this change was coming. It was long overdue. For a number of years they have made provisions in their own accounts for this, so to suggest that this has come like a bolt out of the blue is disingenuous.

Secondly, the changes are to ensure that a seriously injured person has sufficient moneys available to make provision for their future needs because of somebody's negligent act. A lot of it is about care. If you are not making sure the person who did the damage is paying via their insurance policy, it will be the NHS and the taxpayer who ultimately have to foot the bill to look after that seriously injured person. What you will not change by changing the mechanism for the discount rate is the fact that that person is seriously injured and needs that care. It is right for society that the person who did the damage should foot the bill, not the taxpayer.

Insurers knew this was coming. I hear a lot of talk about how you cannot buy Government gilts. Because of the mechanism chosen in the Damages Act 1996, the person who is investing their money does so on the basis that they are taking a no-risk investment. That is why that is there. There are no other no-risk investments available. If you want a judge to calculate damages, he has to have a methodology and a starting point.

James Dalton: No one is arguing about whether these claimants need the support that an insurance company is going to provide. No one is saying that these people should get less money. What we are saying is that the formula for setting the rate, which is now 20 years old, needs to be updated to take into account the fact that it is linked to Government bonds and assumes 100% compensation. These things do not just happen in practice.

Q135 Sir Oliver Heald: I do not know if Mr Dixon and Mr Dalton would agree that the Lord Chancellor has had to exercise her duty in a quasi-judicial way under the existing mechanism as it stands. It is right for this to be a consultation about the future, but that was the law. Do you agree?

Brett Dixon: I agree entirely. The Lord Chancellor made the decision that she was legally required to make. She was exercising a quasi-judicial function when we made the reforms, introduced the Supreme Court and made other changes. That role was retained by the Lord Chancellor, even though setting damages is properly a judicial function.

James Dalton: I do not agree. The Government undertook consultation exercises in 2012 and 2013 specifically asking questions around whether the regulatory framework for setting the discount rate was right. Indeed, there is going to be a consultation now asking similar questions. To me, that suggests that the Government do not think that the framework is right. In that context, it also suggests that the decision that the Lord Chancellor has decided to take, based on legal advice, is questionable. I do not think that the way that she has taken that decision is right.

The Chair: If there are no further questions, may I thank the witnesses for their evidence and invite the Government Whip to propose the adjournment?

Ordered, That further consideration be now adjourned. —(*Guy Opperman.*)

3.58 pm

Adjourned till Wednesday 29 March at twenty-five past Nine o'clock.

Written evidence reported to the House

PCB 01 Association of Personal Injury Lawyers (APIL)

PCB 02 Arthur Michael Robinson, Director and Solicitor, Emmersons Solicitors Limited

PCB 03 The Law Society

PCB 04 Prison Officers Association (POA)

PCB 05 Royal College of Psychiatrists