PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CIVIL LIABILITY BILL [*LORDS*]

Second Sitting

Tuesday 11 September 2018

(Afternoon)

CONTENTS

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 15 September 2018

The Committee consisted of the following Members:

Chairs: † Sir Henry Bellingham, Graham Stringer

† Brereton, Jack *(Stoke-on-Trent South)* (Con)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Courts, Robert *(Witney)* (Con)
† Davies, Chris *(Brecon and Radnorshire)* (Con)
† De Piero, Gloria *(Ashfield)* (Lab)
† George, Ruth *(High Peak)* (Lab)
† Green, Chris *(Bolton West)* (Con)
† Hanson, David *(Delyn)* (Lab)
† Heaton-Jones, Peter *(North Devon)* (Con)
† Mann, Scott *(North Cornwall)* (Con)
† Milling, Amanda *(Cannock Chase)* (Con)
† Onasanya, Fiona *(Peterborough)* (Lab)
† Reeves, Ellie *(Lewisham West and Penge)* (Lab)
† Russell-Moyle, Lloyd *(Brighton, Kemptown)* (Lab/Co-op)
† Stevens, Jo *(Cardiff Central)* (Lab)
† Stewart, Rory *(Minister of State, Ministry of Justice)*
† Tracey, Craig *(North Warwickshire)* (Con)

David Weir, Kenneth Fox, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 11 September 2018

(Afternoon)

[Sir Henry Bellingham *in the Chair*]

Civil Liability Bill [*Lords*]

The Chair: Members may remove their jackets if they wish. Will everyone ensure that their telephones are switched to silent? Tea and coffee are not allowed during sittings.

Clause 6

Rules against settlement before medical report

Amendment proposed (this day): 19, in clause 6, page 5, line 37, after "injuries" insert—

'provided by an accredited medical expert selected via the MedCo Portal'.—*(Gloria De Piero.)*

This amendment, together with Amendments 20 and 21, would ensure that any medical evidence of a whiplash injury must in all cases be provided by a person registered on the MedCo portal website.

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 20, in clause 6, page 6, line 1, leave out subsection (3).

See explanatory statement for Amendment 19.

Amendment 21, in clause 6, page 6, line 22, at end insert—

'(7) In this section, the "MedCo Portal" means the website operated by Medco Registration Solutions (company number 09295557) which provides a system for the accreditation of medical experts.'

See explanatory statement for Amendment 19.

New clause 3—*Recoverability of costs in respect of advice on medical report, etc.*—

'(1) For the purposes of civil procedure rules, the costs recoverable by a claimant who recovers damages in a claim for a relevant injury which is (or would be if proceedings were issued) allocated to the small claims track include the costs of the items set out in subsection (2).

(2) The items are—

(a) legal advice and assistance (including in respect of an act referred to in paragraph (a) or (d) of section 6(2)) in relation to the quantum of damages in the light of a medical report or other appropriate evidence of injury; and

(b) in a case where liability for the injury is not admitted within the time allowed by any relevant protocol, legal advice and representation in relation to establishing liability.

(3) For the purpose of ascertaining the amounts recoverable in respect of those items, the claim is to be treated as if it were allocated to the fast track.

(4) In this section "relevant injury" means an injury which is an injury of soft tissue in the neck, back, or shoulder, and which is caused as described in paragraphs (b) and (c) of section 1(4) (negligence while using a motor vehicle on a road, etc.), but does not include an injury in respect of which a tariff amount is for the time being prescribed under section 2.'

This new clause would ensure that a successful claimant is able to recover costs incurred for legal costs in respect of advice sought in relation to determining the quantum of damages following a medical report or the establishment of liability where it is in dispute.

Gloria De Piero (Ashfield) (Lab): It is a pleasure to serve under your chairmanship, Sir Henry. The Minister had just concluded his remarks, and I had started to say that we would press the amendments in the group to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 10]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.

Amendment proposed: 20, in clause 6, page 6, line 1, leave out subsection (3).—*(Gloria De Piero.)*

See explanatory statement for Amendment 19.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 11]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.

Amendment proposed: 21, in clause 6, page 6, line 22, at end insert—

'(7) In this section, the "MedCo Portal" means the website operated by Medco Registration Solutions (company number 09295557) which provides a system for the accreditation of medical experts."

See explanatory statement for Amendment 19.—(Gloria De Piero.)

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 12]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.
Clause 6 ordered to stand part of the Bill.
Clause 7 ordered to stand part of the Bill.

Clause 8

Regulation by the Financial Conduct Authority

Gloria De Piero: I beg to move amendment 17, in clause 8, page 7, line 15, at end insert—

'(4A) The Treasury must, within one month of the passing of this Act, make regulations specifying that the Financial Conduct Authority is to require all insurers holding a licence to offer UK motor insurance to publish a report—

(a) on the loss cost savings achieved as a result of the provisions of Part 1 of this Act; and

(b) how, and the extent to which, such savings have been applied to reduce motor insurance premiums.

(4B) The first such report from insurers must cover the period of 12 months beginning with the first day of the month immediately after the commencement of Part 1 of this Act and must be sent to the Financial Conduct Authority by the end of the period of 15 months beginning with the commencement of Part 1 of this Act.

(4C) The Financial Conduct Authority will require further annual reports.

(4D) The Financial Conduct Authority, within the period of 18 months after the commencement of Part 1 of this Act, must make and publish a reasoned assessment of whether it is satisfied that every insurer covered by this section is passing on to customers any loss cost savings made by those insurers arising from Part 1 of this Act.

(4E) Regulations made under subsection (4A) must make provision for the Treasury to grant powers to the Financial Conduct Authority to enforce a requirement for insurers to pass on loss cost savings, achieved as a result of the provisions of Part 1, from insurers to consumers through a reduction in the cost of premiums if, after the period of 30 months following the commencement of this section, the Financial Conduct Authority advises the Treasury that such powers are necessary."

This amendment would require the Financial Conduct Authority to require insurers to report on the savings they have made as a result of this Bill and the extent to which such savings have been passed on to insurance consumers.

The Chair: With this it will be convenient to discuss the following:

Government new clause 2—*Report on Effects of Parts 1 and 2.*

New clause 6—*Passing on savings made by insurers.*

'(1) Any savings made by any insurer as a result of anything in this Act or associated changes by regulation shall be passed to policyholders by way of reduced premium.

(2) The Financial Conduct Authority shall require all such insurers to submit an annual report detailing the savings they have made and how all those savings have been used to reduce policyholder premiums.

(3) In this section—

"savings" means any reduction in an insurer's outlays in damages or costs paid in personal injury claims from the time this Act receives Royal Assent;

"insurer" means any insurer holding a licence to offer UK motor insurance;

"policyholder" means the holder of a policy of motor insurance with the insurer;

"premium reduction" means a reduction in the annual cost of a policy of motor insurance taken out by a policyholder."

This new clause would require insurers to pass on to insurance consumers all savings made as a result of these changes.

Government amendments 5 and 6.

Gloria De Piero: Amendment 17 would require insurers to report on whether savings have been passed on to consumers. New clause 6 would require insurers to pass on all savings as a result of the changes to consumers. Unlike the Government's over-wordy, over-complicated new clause 2, which I will discuss shortly, amendment 17 and new clause 6 are straightforward. They would require the Financial Conduct Authority to insist that insurers report on the savings they have made as a result of the Bill, and the extent to which such savings have been passed on to policy holders. There are no caveats, no get-outs—it is a straight-line requirement to do the right thing.

The Bill is the latest in a long line of Government handouts to the insurance industry. Back in 2012 in a closed-door meeting at No. 10, the insurers—in return for being able to set the fixed costs in the new fast track that the new Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced—promised to reduce insurance premiums. Since then, insurers have saved more than £11 billion; those are Association of British Insurers figures, not my own. As the Minister must concede, motor insurance premiums are higher now than they were then. So much for those promises.

In the Bill, the Government have, again, swallowed hook, line and sinker the insurers' promises that they will reduce premiums. History is repeating itself. Insurers are making record profits: Direct Line's profits in 2017 jumped by 52% to £570 million and Aviva recorded a profit of £1.6 billion. No, that is not all motor related, but in the case of Direct Line it will largely be so.

Meanwhile, insurer CEOs are on multimillion pound packages—Paul Geddes from Direct Line and Mark Wilson from Aviva made more than £4.3 million each in 2017. We are now discussing measures that will save the insurers £1.3 billion a year. Of that, the insurers might—if the wind is blowing in the right direction and none of the ludicrously large get-out clauses in new clause 2 apply—hand across up to 80%. Notably, the cuts to insurance premiums of £35 a year, which insurers are promising now, are much lower than the previous estimates of £50 per year promised in the Prisons and Courts Bill. The Government represent a party that claims to oppose red tape: here is a chance for them to avoid it. Let us have a simple clause that does what it says on the tin.

That leads me to Government new clause 2, which is as full of red tape as it is holes. Perhaps my most fundamental question to the Minister is this: what is wrong with the word "will"? The new clause is peppered with the word "may". If the Government are genuinely committed to ensuring that savings are passed to consumers, why do they not insist that that happens? Paragraph 3 includes provision for all kinds of ways in which, by regulation, insurers should provide information. Is there any reason why that information should not be made publicly available?

[Gloria De Piero]

Paragraph 4 is a catalogue of reasons why insurers could wheedle out of being transparent and evade passing on the very substantial savings that the Government's impact assessment makes clear they will be making. The truth is that all the Government have managed to extract from the insurers, who stand to gain massively from this Bill, is a vague promise that they will pass on savings.

Embarrassed by the lack of hard evidence for a commitment, the Government have tabled this new clause, which is riddled with get-outs and opportunities for insurers to worm their way out of the flimsy commitments they have made. We know—and if the Government are honest, so do they—that insurers will seek to avoid paying the savings that they make back to policy holders. That is what happened when they last made promises in 2012. Given the weakness of the new clause, that is what will happen again.

In truth, the Government have rolled over and the new clause is simply a fig leaf to cover their embarrassment. The answer, I suggest, is to include a simple clause that—and I use a phrase from Conservative Back Benchers on Second Reading—will

"hold the insurance industry's feet to the fire."—[*Official Report*, 4 September 2018; Vol. 646, c. 111.]

Our new clause would mean that any savings made by any insurer as a result of anything in this Act, or associated regulation, will be passed to policy holders by way of reduced premiums. What could be simpler? The Minister may notice that our proposed new clause quite deliberately refers to

"savings made…as a result"

of changes by this regulation.

The Government have refused to include in the Bill the small claims changes that they propose; we will come back to that issue later in our other amendments. What is crucially different between the Government's new clause 2 and our new clause 6 is that our new clause is not only simpler but mentions the savings that insurers will make from the small claims changes.

In calculating the £1.3 billion in savings that the insurers will make every year, the Government's impact assessment includes the savings created by the increase in the small claims limit as a result of the so-called wider package of measures. For the Government not to include the savings made from the small claims limit changes in their new clause 2 renders it virtually worthless, and undermines their much-vaunted and fundamental promise that motor insurance premiums will drop by £35 a year.

David Hanson (Delyn) (Lab): It is a pleasure to serve under your chairmanship today, Sir Henry.

I know it is a long time ago, but I will take the Committee back, if I may, to 25 November 2015, when George Osborne, as he is now known, was the Member for Tatton and serving as Chancellor of the Exchequer. At that time, he said—it was recorded in *Hansard*:

"We will bring forward reforms to the compensation culture around minor motor accident injuries, which will remove… £1 billion from the cost of providing motor insurance."

And here is the crucial bit:

"We expect the industry to pass on this saving, so that motorists see an average saving of £40 to £50 per year off their insurance bills."—[*Official Report*, 25 November 2015; Vol. 602, c. 1367.]

When this Bill was introduced to the House of Lords and subsequently to this place, the Ministry of Justice's impact assessment indicated at first that the figure would now be £40, not £50—not between £40 and £50, but £40. However, when the general election was fought last year, the figure had miraculously gone from £40 to £35.

In October last year, one of the insurance companies that the Minister in another place, Lord Keen of Elie, has been fond of quoting—Liverpool Victoria or LV=—spoke. Caroline Johnson, director of third party and technical claims at LV=, spoke at the Motor Accident Solicitors Society's annual conference in Sheffield, which must have been an important place to say this; it was not just said off the cuff, but at the conference. She said, "The £35 may or may not be achievable".

I ask my first question today in support of the new clause tabled by my hon. Friend the Member for Ashfield and to start the testing of the Minister's new clause. In his response, can the Minister give the latest Government assessment of what the £50/£40/£35/possibly-not-achievable £35 is as of today? We are expected to take on trust the figures that he has given.

There is no doubt that the insurance companies will save £1.3 billion a year. That figure has been accepted by the Government and the insurance companies, and I suspect that it will be cited again—not only by my hon. Friend the Member for Ashfield, but by others who will say that it is the saving, the prize, that the Government seek. My concern is not the insurance companies and the £1.3 billion; my concern is how much, if there are savings to be made in the areas we are concerned about, of that £1.3 billion will land in the pockets of those individuals who would then have lower premiums as a result.

I am very pleased to sit on the Justice Committee, just as I was very pleased to sit coterminously this morning with this Committee; I have to say that was very interesting. The Justice Committee carried out an investigation into this area and came to a conclusion as a whole—it was not just the Labour members of that Committee. It is chaired by the hon. Member for Bromley and Chislehurst (Robert Neill), who is a Conservative; it has a Conservative majority; and it has unanimous support for the recommendations it made in this very area. The Committee said:

"As obtaining insurance involves a commercial transaction with a private sector body...there is little that the Government can do to enforce lower premium rates without significant change to present policies."

My question to the Minister is about his proposed new clause 2. There is something I cannot find in it—it may be hidden in there within the legalese—but, if it is, could he please put it in simple language for the Committee? What happens if this investigation proves that the insurance companies have made a saving of anything between nothing and £1.3 billion? What steps will the Government take at that stage to enforce their policy objective of ensuring that £50/£40/£35/possibly £35 goes into the pockets of individuals who pay the insurance companies?

2.15 pm

Government new clause 2 says the assessment will be made on 1 April 2024. Half this Committee might be dead by then—that is just under five and half years

from now, and I hope we are all here to see it. I have been round the goldfish bowl a couple of times already this year on Bill Committees; I cannot remember what I did last year on some Committees because we are busy people in this House. Who is going to hold the Government to account on 1 April 2024 when it comes to the report produced by the Financial Conduct Authority, put into effect by the Government's proposed new clause 2?

I want the Government today to say not just that they will publish that report, but that they will put that report forward for debate in the House, whoever is in the House on 1 April 2024, and agree some mechanism. The Minister could outline that now because he has six years to find out how to work it before this report comes out. Will he outline to the Committee today what mechanism he is going to put in place to force the insurance companies to give back any premiums that they might be making as a result of these savings?

We are talking about the Parliament after next, in 2024. I do not want to turn up at some future Parliament when, if everything in proposed new clause 2 goes hunky-dory, an insurance company comes along and says to the Financial Conduct Authority, "We've made £300 million or £500 million; we've saved £1.3 billion." What are the Government going to do or say when that figure comes out? I cannot find it. It might be in here hidden away, but I would like the Minister to tell me what the Government are going to do if a figure of surplus, as a result of these savings, is made, and it has not been returned to consumers.

I would like to know what rigour the Government are going to put in place with the Financial Conduct Authority, to ensure that it is rigorously examining the costs and services. If I were a smart insurance company, I would find some costs to show that actually, although I may have saved £1.3 billion on this, I have had difficult challenges such as renewed claims, and this and that. I am not involved in the insurance industry. I could probably, if I spent the next week thinking about it, find 10 reasons why my costs had increased and that £1.3 billion had been subsumed.

The Minister has a duty to tell the House, with regard to proposed new clause 2, what he expects the Financial Conduct Authority to do. The whole premise of the Government's proposal has been that this is going to stop insurance companies from having extra costs, and those extra costs are going to be passed on to us—to everybody who has a car—in saved premiums.

The Government's figure, with which I started my contribution, has gone from £50 in November to £15 to £35 now, with the insurance companies themselves saying that £35 may or may not be achievable. "May or may not" is quite a loose phrase; "may or may not" means we do not yet know what the figure is. I would like to know from the Minister not just what we are going to find out on 1 April 2024: whenever this legislation is enacted, there will be a period between then and 1 April 2024. My hon. Friend the Member for Ashfield's proposal says we should look at the figures earlier than 2024. I would like to know what the insurance companies are saving in 2019, 2020, 2021, 2022 or 2023—and, indeed, in 2024.

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): Is it not the case that the best time for an assessment to be made would be in the first year following the changes—not years down the line?

David Hanson: My hon. Friend makes a valid point; it is one I had not thought of and I am grateful to him for bringing that to the Committee's attention. If this saving is going to be made, it would be sensible to say whether it is made early on, because downstream, as my hon. Friend indicated, there will no doubt be a tapering.

To be honest with the Committee, the Minister is only proposing new clause 2 because he got done over in the other place by Members of the House of Lords and could not get the Bill through the House of Lords without this new clause. He got done over in the other place because the Justice Committee unanimously called for

"the Financial Conduct Authority to monitor the extent to which any premium reductions can be attributed to these measures and report back to us after 12 months."

I go back to the all-party Justice Committee, chaired by a Conservative MP, with a Conservative majority, which said in its report on this Bill that there should be a report within 12 months. We have been helpfully reminded by my hon. Friend the Member for Brighton, Kemptown why we suggested that at the time: because we wanted to see the impact within 12 months.

On the amendment tabled by Lord Sharkey in the House of Lords, Lord Keen, the Minister dealing with this in the other place, said on Report:

"the Government are not unsympathetic to the underlying intention of Amendment 46, as tabled by the noble Lord, Lord Sharkey. The point is that having made a firm commitment, insurers should be accountable for meeting it."—[*Official Report, House of Lords,* 12 June 2018; Vol. 791, c. 1632.]

That is what this Minister's colleague said in the House of Lords, and I do not disagree with it. I only say to the Minister that April 2024 seems a tad far in the future to secure the proposals that he is putting to the Committee today.

The Minister needs to say firmly to the Committee what he anticipates the savings to be now, how he will monitor what the insurance companies are making—not just now, but in the next five years—and how he will hold the insurance companies to account. How will he ensure that, whatever date we end up with—be it 1 April 2024 or, if the amendment of my hon. Friend the Member for Ashfield is accepted, as I hope it will be, an earlier date—they meet their obligations and give the money back to the people who are funding it in the first place?

The Minister of State, Ministry of Justice (Rory Stewart): It is a great honour to serve under your chairmanship, Sir Henry. I am grateful to right hon. and hon. Members for bringing proposing the amendments and new clauses.

Effectively, as the right hon. Member for Delyn has pointed out, new clause 2 was introduced with a lot of influence from the House of Lords—it was driven by Opposition Members of the House of Lords to meet exactly the concerns raised by right hon. and hon. Members. Therefore, I am tempted to argue in my brief argument that amendment 17 and new clause 6 are, in fact, unnecessary. The noble Lords did a good job in new clause 2 of addressing many of the concerns raised in the debate, which is why the Government are keen to ask for the Committee's support.

At the heart of this, the Committee will discover, is a fundamental disagreement about the nature of markets, which will be difficult to resolve simply through legislation.

[Rory Stewart]

There are profoundly different views on both sides of the House about what exactly is going on in a market. Again and again, all the arguments—from the hon. Member for Jarrow (Mr Hepburn) right the way through to the eloquent speech by the right hon. Member for Delyn—rest on the fundamental assumption that every company, insurance or otherwise, in the country is simply involved in trying to charge their consumers as much as possible and provide as few services as possible, and that there is nothing to prevent their doing that.

Of course, what prevents companies from doing that ought to be competition. It does not matter whether that is the insurance industry or, to take a more straightforward question, why Tesco's does not charge £50 for a loaf of bread and try to produce one slice. In the end, the decision on what premiums are charged will be driven by competition between different insurance companies. All the arguments, whether in relation to these or other amendments, are based on that fundamental misunderstanding. The Labour party is again effectively pushing for a prices and incomes policy. They are trying to get the Government to fix the prices of premiums and control the prices that insurance companies charge because they simply do not trust the Competition and Markets Authority, the FCA, the insurance industry or any other business to pass on savings to consumers.

David Hanson: With respect to the Minister, in this case the Labour party is just asking for confirmation of what the Government want to do. They said that they want to save £1.3 billion, and in November 2015 said that they would give back £50 as premiums. That figure has changed. All I am asking is this: what is their estimate of the figure today? The Minister should be able to give an estimate because he has done so on two previous occasions—in an assessment of the Bill's financial implications in the Conservative party manifesto, and in the Chancellor's statement to the House of Commons.

Rory Stewart: Unfortunately, something is being missed in the way the right hon. Gentleman is framing his arguments. He is suggesting that there is a fixed, stable situation—the Chancellor of the Exchequer offered £50, nothing changed, and now it is £35. If that were true, it would indeed be a disgrace, but the reality is that, following the negotiations that took place in the consultation and in the House of Lords, the savings that the insurance companies will realise and will be in a position to pass on to the man or woman paying the premium have been considerably reduced.

When the Chancellor of the Exchequer—*[Interruption.]* The right hon. Gentleman might be interested in listening to the answer rather than talking to somebody else. When the Chancellor of the Exchequer spoke, he of course suggested that all general damages would be entirely removed. His proposal was that there would be no general damages at all. It is therefore perfectly reasonable. If no general damages at all were paid, the insurance company's savings would be considerably larger, and the savings passed on to the consumer might indeed have been £50.

Due to the very good work that the Opposition and the noble Lords put in, there have been a number of compromises to the Bill, which mean that the savings passed on to the insurers, and from the insurers in the form of premiums, will be considerably reduced. One of those compromises is that, whereas in the past there were going to be no general damages paid to anybody getting a whiplash injury of under two years, there is now a tariff for money to be paid out. As it gets closer to two years, the tariffs paid out will be much closer to the existing Judicial College guidelines, so the savings will be considerably less.

Bambos Charalambous (Enfield, Southgate) (Lab): We have been here before with the Domestic Gas and Electricity (Tariff Cap) Act 2018, in which the Government fixed the energy price cap and said that the big energy companies would give money back to the consumers, even though the money is not as high as we expected. Then it was £100, and now it is about £70. Why does the Minister not want to do that with insurance companies?

Rory Stewart: That is a very good question. The hon. Gentleman and the right hon. Member for Delyn are essentially asking the same question. Indeed, that is what this whole debate is about. The question is about the extent to which the Government wish to interfere in the market to fix prices. As the hon. Member for Enfield, Southgate suggested, a very, very unusual and unprecedented decision was made about the energy companies following a suggestion originally made by the Labour party that we should get involved in fixing prices. That is something about which, from a policy point of view, we generally disagree with Labour because—this deep ideological division between our two parties goes back nearly 100 years—we are a party that fundamentally trusts the market.

The Financial Conduct Authority and the Competition and Markets Authority argue that the insurance companies are operating in a highly competitive market. The reason why we did not initially suggest that we need to introduce anything equivalent to new clause 2 is precisely that we believe that the market is operating well, and that the savings passed on to the insurance companies will be passed on to the consumers, as happens in every other aspect of the market. I have not yet heard a strong argument from the Opposition about why they believe that not to be the case. Logically, Opposition Members can be making only one argument: they must somehow be implying that the insurance companies are operating in an illegal cartel.

Jo Stevens (Cardiff Central) (Lab) *rose—*

Rory Stewart: I give way to hear why the Opposition believe that is not the case.

Jo Stevens: The Minister has said that the Opposition want to fix the market and prices. He also mentioned trust, which is exactly what this is about, because we have been in this situation before. Previously, insurers promised to return savings to consumers and did not. Why is it different this time? Why does the Minister think we can take insurers at their word this time when they have not returned savings previously?

Rory Stewart: Recent evidence on the cost of motor premiums shows that, after the implementation of the last set of reforms, there was a flattening off in the increase in the insurance premiums that was lower than

inflation. The reason we believe this mechanism works—this was all part of the evidence put forward by the Competition and Markets Authority—is that it is a very mobile market. Currently, 72% of policyholders have switched their motor insurance provider—it is not a static market where people do not move between providers, which gives a very strong incentive to compete on the premiums. Fifty per cent. of insurance customers are going to comparison websites to compare the premium prices.

2.30 pm

That is part of the reason why we believe insurers will pass on the savings to consumers. However, we concede that there is an issue of trust—from the public, the Opposition and the House of Lords—which is why we believe we have come forward with the correct new clause 2, which will allow right hon. and hon. Members on both sides of the House to hold the insurers to account. In the very detailed amendment put forward by the Government, which the right hon. Member for Delyn suggested was too detailed, we have specified all the information we expect insurers to provide, so that we are in a position to work out exactly what savings they derive. That will allow the Treasury, working with the Financial Conduct Authority, to come to a view on whether insurers are passing on the savings to the customers.

The right hon. Member for Delyn asked what the point is of the new clause and why we do not propose a compulsory mechanism to pass savings on. The answer is that it all depends on competition and market law. If at the end of the reporting period there is clear evidence that the companies have significantly increased their revenues without passing on savings to customers, that will raise very considerable questions about the operations of markets and competition. That may indeed imply, as Opposition Members seem to imply, that some form of legal cartel is in operation. At the moment, there is no evidence that that is happening.

Gloria De Piero: Does the Minister accept that, since the changes made in 2012, insurance companies have saved £11 billion?

Rory Stewart: I am not in a position to accept or reject that figure—I am not familiar with that figure and I am not clear how it has been arrived at. I am happy to look at that in more detail before Report stage of the Bill.

Craig Tracey (North Warwickshire) (Con): The Minister mentioned the reforms of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, but is it not right that, in the two years following those reforms, insurers passed on £1.1 billion of savings, and that average premiums dropped by £50?

Rory Stewart: Again, the Competition and Markets Authority is our best guide. Its job is to look very closely at the operations of its industry. It believes that this is a very competitive industry, which is why it is confident that the reforms introduced led to savings that were passed on to customers and why it believes that the current reforms will lead to the same. If that does not happen, it would be interesting to hear Labour Members' theories about why competition is not operating in this market and why they believe there is a cartel. If that is the argument they wish to make, they will be assisted and not impeded by the Government new clause, which will enable them to gather the information with the Treasury and the Financial Conduct Authority in order to make precisely that case.

Jo Stevens: Perhaps I can help the Minister on the figure that my hon. Friend the Member for Ashfield mentioned—the £11 billion of savings after the 2012 changes. That is an Association of British Insurers figure. That figure was saved in claims costs over six years, according to its evidence, but premiums are now higher than ever.

Rory Stewart: I will return to the fundamental disagreement between right hon. and hon. Members. We can all agree that there were significant savings to the insurance industry. We can all agree that some of those savings were passed on to customers and that premiums ceased to rise at the rate at which they had been. There is some disagreement between the two sides of the House about whether enough of those savings were passed on—we argue that the industry passed on sufficient savings—and whether premiums went up more than they should. However, without Government new clause 2, the evidence or information will not be available to people in order to make such arguments.

It is not enough to produce a general figure, saying, "Here is £11 billion, and this is how much was passed on in premiums." That is why the new clause has no less than 11 subsections that detail the kind of data that would need to be extracted from the insurance industry by the date recommended in order to prove that case. I was asked why reporting would not be done annually. The answer, of course, is that a claim can be brought any time within three years of an accident. The date takes into account that the law is due to come into effect in 2020. We add three years to that for the claim, and then time for the data and evidence gathering in order to report in 2024.

David Hanson: If the Bill comes into effect in 2020 and we add three years, that is 2023. However, new clause 2(7) says:

"Before the end of a period of one year beginning with 1 April 2024".

That means that the report may not be done until the end of March or April 2025. It may be published by the Government after that, and then there will be discussion. Therefore, even on the Minister's timetable, we are talking about three years past the 2023 deadline that he indicated to the Committee a moment ago. He should reflect on that and table an amendment to his new clause on Report that brings forward the proposed date considerably.

Rory Stewart: The reason why I respectfully request that the Government amendments are supported and the Opposition amendments are withdrawn is that pushing for one-year rather than three-year reviews and attempting to price fix the result would leave the opposition amendments open to judicial review and create an enormous, unnecessary burden on the market. Our

[Rory Stewart]

contention is that the market already operates—we have the Competition and Markets Authority to argue that that is the case—and, by introducing our new clause, we will be able to demonstrate that over time. It is a very serious thing.

I remain confident that, if insurance companies are compelled to produce such a degree of detail and information to the Financial Conduct Authority and the Treasury, they will pass on those savings to consumers because, were they not to, they would be taking a considerable legal risk. The industry initially resisted this move, and understands that it is a serious obligation.

Ruth George (High Peak) (Lab): As the Minister said, the insurance companies have said that they will pass savings on to consumers, and the Government have been actively engaged in trying to ensure that all insurance companies sign up to a pledge to reduce premiums, which in itself is a way of fixing the market. However, if it will take insurance companies seven years from now to produce the information, from what date will premiums be reduced? When will consumers see payback from the policy?

Rory Stewart: We would expect, because of the nature of competition, for premiums to begin to reduce soon—almost immediately—as insurance companies anticipate the nature of the changes and move to drop premiums to compete with each other and attract new customers. In fact, following legislation in 2012, premiums dropped from £442 in 2012 to £388 in 2015.

Ruth George: If the Minister expects premiums to drop so soon, why can the Government not report to the House on those premiums dropping?

Rory Stewart: The premiums dropping will be assessed and published in the normal fashion. The requirement in new clause 2 is much more complex. The new clause requires a prodigious amount of information about all forms of income streams, the number of claims and the number of premium holders so the Treasury and the Financial Conduct Authority can develop a sophisticated and detailed picture in order accurately to address the concerns of Opposition Members that, over the period—particularly the three-year period that will be affected by the introduction of the Bill—insurance companies will not pass on savings to consumers. We believe they will, which is why we are comfortable pushing for this unprecedented step of gathering that information to demonstrate that the market works.

On that basis, I politely request that the Opposition withdraw their amendments and support Government new clause 2, which after all was brought together by Opposition Members of the House of Lords and others, and which achieves exactly the objectives that the Opposition have set out.

Gloria De Piero: The Minister talked a lot about where the Committee disagrees, but there are things we can all accept as fact—the facts that insurance profits are up massively and that these changes will save insurance companies £1.3 billion, for instance—and we all want premiums to come down. We believe only amendment 17 and new clause 6 will deliver that, so we seek to divide the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 13]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.

Clause 8 ordered to stand part of the Bill.

Clause 9 ordered to stand part of the Bill.

Clause 10

ASSUMED RATE OF RETURN ON INVESTMENT OF DAMAGES

Ellie Reeves (Lewisham West and Penge) (Lab): I beg to move amendment 24, in clause 10, page 9, line 20, leave out from "SCHEDULE A1" to end of page 14, and insert—

"SCHEDULE A1

ASSUMED RATE OF RETURN ON INVESTMENT OF DAMAGES: ENGLAND AND WALES

Periodic reviews of the rate of return

1 (1) The Lord Chancellor must instruct the expert panel to review the rate of return periodically in accordance with this paragraph.

(2) The first review of the rate of return must be started within the 90 day period following commencement.

(3) Each subsequent review of the rate of return must be started within the 5 year period following the last review.

(4) It is for the Lord Chancellor to decide—

(a) when, within the 90 day period following commencement, a review under sub-paragraph (2) is to be started;

(b) when, within the 5 year period following the last review, a review under sub-paragraph (3) is to be started.

(5) In this paragraph—

'90 day period following commencement' means the period of 90 days beginning with the day on which this paragraph comes into force;

'5 year period following the last review' means the period of five years beginning with the day on which the last review under this paragraph is concluded.

(6) For the purposes of this paragraph a review is concluded on the day when the Lord Chancellor makes a determination under paragraph 2 as a result of the review.

Conducting the review

2 (1) This paragraph applies when the Lord Chancellor is required by paragraph 1(2) or (3) to instruct the expert panel to conduct a review of the rate of return.

(2) The Lord Chancellor must instruct the expert panel to review the rate of return and determine whether it should be—

(a) changed to a different rate, or

(b) kept unchanged.

(3) The expert panel must conduct that review and make that determination within the 140 day review period.

(4) When deciding what response to give to the Lord Chancellor under this paragraph, the expert panel must take into account the duties imposed on the Lord Chancellor by paragraph 3.

(5) During any period when the office of Government Actuary is vacant, a reference in this paragraph to the Government Actuary is to be read as a reference to the Deputy Government Actuary.

(6) In this paragraph '140 day review period' means the period of 140 days beginning with the day which the Lord Chancellor decides (under paragraph 1) should be the day on which the review is to start.

Determining the rate of return

3 (1) The expert panel must comply with this paragraph when determining under paragraph 2 whether the rate of return should be changed or kept unchanged ('the rate determination').

(2) The expert panel must make the rate determination on the basis that the rate of return should be the rate that, in the opinion of the expert panel, a recipient of relevant damages could reasonably be expected to achieve if the recipient invested the relevant damages for the purpose of securing that—

(a) the relevant damages would meet the losses and costs for which they are awarded;

(b) the relevant damages would meet those losses and costs at the time or times when they fall to be met by the relevant damages; and

(c) the relevant damages would be exhausted at the end of the period for which they are awarded.

(3) In making the rate determination as required by sub-paragraph (2), the expert panel must make the following assumptions—

(a) the assumption that the relevant damages are payable in a lump sum (rather than under an order for periodical payments);

(b) the assumption that the recipient of the relevant damages is properly advised on the investment of the relevant damages;

(c) the assumption that the recipient of the relevant damages invests the relevant damages in a diversified portfolio of investments;

(d) the assumption that the relevant damages are invested using an approach that involves—

(i) more risk than a very low level of risk, but

(ii) less risk than would ordinarily be accepted by a prudent and properly advised individual investor who has different financial aims.

(4) That does not limit the assumptions which the expert panel may make.

(5) In making the rate determination as required by sub-paragraph (2), the expert panel must—

(a) have regard to the actual returns that are available to investors;

(b) have regard to the actual investments made by investors of relevant damages; and

(c) make such allowances for taxation, inflation and investment management costs as the expert panel thinks appropriate.

(6) That does not limit the factors which may inform the expert panel when making the rate determination.

(7) In this paragraph 'relevant damages' means a sum awarded as damages for future pecuniary loss in an action for personal injury.

Determination

4 When the expert panel makes a rate determination, the expert panel must give reasons for the rate determination made.

Expert panel

5 (1) For each review of a rate of return, the Lord Chancellor is to establish a panel (referred to in this Schedule as an 'expert panel') consisting of—

(a) the Government Actuary, who is to chair the panel; and

(b) four other members appointed by the Lord Chancellor.

(2) The Lord Chancellor must exercise the power to appoint the appointed members to secure that—

(a) one appointed member has experience as an actuary;

(b) one appointed member has experience of managing investments;

(c) one appointed member has experience as an economist;

(d) one appointed member has experience in consumer matters as relating to investments.

(3) An expert panel established for a review of a rate of return ceases to exist once it has responded to the consultation relating to the review.

(4) A person may be a member of more than one expert panel at any one time.

(5) A person may not become an appointed member if the person is ineligible for membership.

(6) A person who is an appointed member ceases to be a member if the person becomes ineligible for membership.

(7) The Lord Chancellor may end an appointed member's membership of the panel if the Lord Chancellor is satisfied that—

(a) the person is unable or unwilling to take part in the panel's activities on a review conducted under paragraph 1;

(b) it is no longer appropriate for the person to be a member of the panel because of gross misconduct or impropriety;

(c) the person has become bankrupt, a debt relief order (under Part 7A of the Insolvency Act 1986) has been made in respect of the person, the person's estate has been sequestrated or the person has made an arrangement with or granted a trust deed for creditors.

(8) During any period when the office of Government Actuary is vacant the Deputy Government Actuary is to be a member of the panel and is to chair it.

(9) A person is 'ineligible for membership' of an expert panel if the person is—

(a) a Minister of the Crown, or

(b) a person serving in a government department in employment in respect of which remuneration is payable out of money provided by Parliament.

(10) In this paragraph 'appointed member' means a person appointed by the Lord Chancellor to be a member of an expert panel.

Proceedings, powers and funding of an expert panel

6 (1) The quorum of an expert panel is four members, one of whom must be the Government Actuary (or the Deputy Government Actuary when the office of Government Actuary is vacant).

(2) In the event of a tied vote on any decision, the person chairing the panel is to have a second casting vote.

(3) The panel may—

(a) invite other persons to attend, or to attend and speak at, any meeting of the panel;

(b) when exercising any function, take into account information submitted by, or obtained from, any other person (whether or not the production of the information has been commissioned by the panel).

(4) The Lord Chancellor must make arrangements for an expert panel to be provided with the resources which the Lord Chancellor considers to be appropriate for the panel to exercise its functions.

(5) The Government Actuary's Department, or any other government department, may enter into arrangements made by the Lord Chancellor under sub-paragraph (4).

(6) The Lord Chancellor must make arrangements for the appointed members of an expert panel to be paid any remuneration and expenses which the Lord Chancellor considers to be appropriate.

Application of this Schedule where there are several rates of return

7 (1) This paragraph applies if two or more rates of return are prescribed under section A1.

(2) The requirements—

(a) under paragraph 1 for a review to be conducted, and

(b) under paragraph 2 relating to how a review is conducted, apply separately in relation to each rate of return.

(3) As respects a review relating to a particular rate of return, a reference in this Schedule to the last review conducted under a particular provision is to be read as a reference to the last review relating to that rate of return.

Interpretation

8 (1) In this Schedule—

'expert panel' means a panel established in accordance with paragraph 5;

'rate determination' has the meaning given by paragraph 3;

'rate of return' means a rate of return for the purposes of section A1.

(2) A provision of this Schedule that refers to the rate of return being changed is to be read as also referring to—

(a) the existing rate of return being replaced with no rate;

(b) a rate of return being introduced where there is no existing rate;

(c) the existing rate of return for a particular class of case being replaced with no rate;

(d) a rate of return being introduced for a particular class of case for which there is no existing rate.

(3) A provision of this Schedule that refers to the rate of return being kept unchanged is to be read as also referring to—

(a) the position that there is no rate of return being kept unchanged;

(b) the position that there is no rate of return for a particular class of case being kept unchanged.

(4) A provision of this Schedule that refers to a review of the rate of return is to be read as also referring to—

(a) a review of the position that no rate of return is prescribed;

(b) a review of the position that no rate of return is prescribed for a particular class of case."

This amendment would require that the discount rate was set by the expert panel, not the Lord Chancellor.

The Chair: With this it will be convenient to discuss the following:

Amendment 22, in clause 10, page 10, line 13, at end insert—

"( ) the expert panel established for the review;"

This amendment, together with Amendment 23, would require the Lord Chancellor to consult the expert panel before the initial discount rate determination, rather than just the subsequent ones as currently required.

Amendment 23, in clause 10, page 10, line 21, at end insert—

"( ) The expert panel must respond to the consultation within the period of 90 days beginning with the day on which its response to the consultation is requested."

See explanatory statement for Amendment 22.

New clause 5—*Review of assumptions on which calculation of the personal injury discount rate is based—*

"(1) Within 3 years from the date on which this Schedule comes into force, the Lord Chancellor must arrange for the expert panel to review the assumptions on which the personal injury discount rate is based, and review how investors of relevant damages are investing such damages.

(2) The review must report to the Lord Chancellor whether the assumptions on which the personal injury discount rate is based should be changed and set out recommendations."

This new clause would require the Lord Chancellor to arrange for the expert panel to conduct a review of the assumptions on which the discount rate is based in light of how claimants are in practice investing their compensation.

Clause stand part.

Ellie Reeves: The personal injury discount rate is a pivotal part of the compensation process. It must be carefully reviewed, calculated and set. The rate is critical as it helps to determine what an injured person receives following what can often be life-changing injuries. Damages are paid to individuals, usually as a lump sum, to account for the losses caused by an injury. The level at which the personal injury discount rate is set is based on assumptions about the risk of the recipient's investment of the damages they are awarded, which helps to ensure that any future market fluctuations are accounted for. The rate ensures that recipients ultimately receive the level of compensation that was intended and do not enter a state of extreme over or under-compensation.

The need for the rate to be set correctly is clear. An individual involved in a major car crash who breaks their back and may as a result never work again might need to adapt their home and pay for care, and might have loss of earnings. When they receive their compensation as a lump sum, they would need to invest it. At present, injured individuals are treated as very risk-averse investors, rightly so given the impact that a major injury would likely have on one's perception of risk. Also, they are not investors looking at the stock market. Their future quality of life depends on ensuring that they have enough money to live on and to provide important care. It is therefore imperative that the rate is set at the correct level to ensure that compensation awards are delivered as intended—based on the risk of the investments that the sums are put in.

2.45 pm

The amendment would replace schedule A1 as drafted with a far more appropriate means of setting the discount rate—allowing it to be set by an expert panel, rather than it being politicised as a decision by the Lord Chancellor. Amendments 22 and 23 would ensure that the expert panel set the rate right from the beginning and not just in subsequent reviews. Throughout the Bill there are too many instances of handing power from experts to Ministers without sufficient checks and balances. That is not right, and the concessions offered by the Government—for Ministers to liaise with some experts—do not go far enough. Our amendment would shift the emphasis from the Lord Chancellor to the independent expert panel.

Furthermore, the Justice Committee recommended in its pre-legislative report on the draft personal injury discount rate that the panel should advise on the first review and, if the Lord Chancellor chose not to follow the panel's advice in setting the rate, that information should be made public, along with his or her reasons for so doing. The requirement to consult a panel appeared in the original Bill, but unfortunately it was removed from the Bill in the House of Lords. Opposition amendments seek to address that, and they would add much-needed clarity and transparency on how the rate

is set initially and in future, avoiding politically or ideologically driven decisions by shifting the balance in favour of experts.

Paragraph 5 of proposed new schedule A1 in the amendment clearly outlines the necessary credentials of members of the expert panel, whether as experienced actuaries, investment managers or economists. Transparency and independence, and external expertise are vital in setting the rate, and they should be welcomed. To hand decision making over to the Lord Chancellor, as the Bill does in many places, will remove independence from a process that helps to deliver access to justice. Confidence in politicians is at a low, and we cannot allow confidence in the justice system—or our constituents' faith in their ability to access justice—fall to equally low levels.

New clause 5 would see the expert panel conduct a review of the assumptions on which the rate is set within three years of the legislation coming into force. That is set to be within three years of the date of the schedule coming into force so, although both the existing schedule A1 and the alternative proposed in amendment 24 maintain the period of review for the rate as being within five years, as amended in the House of the Lords, I hope that the Minister will give us assurances that should it be found during the review of the assumptions that the most prevalent investments by injured claimants are determined to be very low risk—as such, people would not be receiving appropriate compensation payments—the rate would be changed sooner rather than later during that period.

It is imperative that the vast changes to be introduced by the Bill have sufficient checks and balances in place to ensure that they work as intended, so that injured claimants are not left suffering further in the pursuit of justice. As I outlined in my speech on Second Reading, the changes to be introduced by the Bill have the potential to be a textbook example of a change in the law with ramifications that we will not truly know until much further down the line, at which point it will be too late, with the damage done and access to justice eviscerated for many.

For that reason, it is important that we should ensure that the correct checks and balances, regular reviews and expert-led setting of the rate form part of the Bill. I hope that by implementing those measures we will not see a repeat of the access-to-justice crisis caused by LASPO, employment tribunal fees and—an anticipated impact—changes to the small claims limit. The Government should take the time to implement the amendments to part 2 of the Bill.

Bambos Charalambous: Let us be clear what we are talking about with the discount rate: damages for people who have suffered catastrophic, life-changing injuries. The lump sum they receive is to last them their entire life and is to pay for urgent treatments, care, support, adaptations—a whole host of things. We need to be very careful how we deal with this, as very small variations in the discount rate can have serious impacts.

As an example, I have been advised by a leading law firm that it settled a claim in 2015 for a client in her 30s who suffered cardiac arrest and irreparable brain damage due to negligence. She was awarded £9.95 million when the discount rate was 2.5%. That award was to pay for extensive medical treatments, childcare and live-in carers for the rest of her life. Had the claim been settled in 2017, when the discount rate was changed to -0.75%, it would have resulted in a settlement of £20 million.

Such cases are relatively few in number, but when they do occur, we must make sure that they are dealt with as precisely as possible, without leaving such large fluctuations to chance. We would all agree that the time between the setting of the two discount rates was far too long. I very much support a shorter period of time for that to take place. Someone who receives such a lump sum would surely choose to invest it in as low risk a manner as possible—they would not want any risk if possible—because it has to last them their entire life. The discount rate should be set on the basis that the investment will be very low risk.

In setting the discount rate, the Lord Chancellor is given wide-ranging discretion. That opens up potential for other factors to influence the Lord Chancellor, which could adversely impact the compensation received by someone who has suffered catastrophic injuries. We need to be clear about the reasons why the Lord Chancellor will be setting the rate. As my hon. Friend the Member for Lewisham West and Penge mentioned, the Justice Committee recommended setting up an independent panel of experts to advise the Lord Chancellor on setting the rate. It also recommended that the panel's advice be published in full. The Bill has removed that transparency. I have grave concerns about the reasons for that and how the rate will be set. We need to know how the rate has been set. When the Bank of England sets interest rates, it has a panel of experts and it gives reasons why. A similar system should apply here.

I support the amendments and new clause. It would be right and proper for the power to be taken away from the Lord Chancellor and for the rate to be set by an independent panel of experts, at regular periods.

Rory Stewart: I have enormous sympathy for the amendments, in particular the arguments on amendments 24, 22 and 23. As the hon. Member for Lewisham West and Penge and the hon. Member for Enfield, Southgate have clarified, we are dealing here with people who have suffered catastrophic, life-changing injuries and we have a very particular responsibility, particularly since some of those people can be immensely vulnerable. They can include children who have catastrophic, life-changing injuries. We all have an obligation to ensure that the principle of 100% compensation is met.

The discount rate can seem a slightly technical mathematical formula. It is there to try to hedge effectively against inflation and the expected rate of investment returns in setting an award. As the hon. Member for Enfield, Southgate pointed out, a shift in the discount rate could mean a difference between an award of £10 million and an award of £20 million—a very significant difference.

In setting the discount rate, our first obligation has to be to the very vulnerable individuals who have suffered a catastrophic or life-changing injury. We need to ensure that they are able to make an investment that does not carry substantial risk. We cannot guarantee everything because inflation and markets can move. Insofar as we can do so in advance, we should attempt to arrive at a rate that fairly reflects the likelihood of their getting the compensation that it was anticipated they would receive

[Rory Stewart]

from the judge. That means that we should not aim to chase a median rate. We should aim to chase a rate on the basis of advice from the Government Actuary and later from the expert panel, to determine the fair rate of return.

In that case, why are the Government challenging amendments 24, 22 and 23? The answer is that amendments 22 and 23 reflect the original position of the Government on the Bill, so we are slightly going round in circles. We had originally suggested in the version of the Bill that we presented to the House of Lords that the Lord Chancellor should consult the expert panel before setting the rate. Under pressure from Opposition Members in the House of Lords, in particular Lord Sharkey, the Lords pushed us into a position where we agreed that, instead of an expert panel, it should be the Government Actuary, working with the Lord Chancellor, who set the first rate.

The argument made by the Lib Dem peer and backed by others, including Lord Beecham, was that the problems for the NHS caused by the discount rate are so extreme and the costs on the public purse so extreme, that the first change in the discount rate should happen relatively rapidly, on the advice of the Government Actuary. Were we now to reject that amendment, which we accepted after long negotiation in the House of Lords, we would have to go back to the drawing board and set up the expert panel again, leading to a very significant delay, which would impose costs on the NHS.

We are in the ironic position that the Opposition are now proposing as amendments the original Government position, which the Opposition struck down in the House of Lords. We are slightly in danger of going round in circles. We are where we are and, given the problems of time, I suggest that the pragmatic compromise is that the Government Actuary, who is an independent individual with enormous expertise, works with the Lord Chancellor on the first setting or the rate, and that for subsequent settings of the rate, the expert panel comes in, as the House of Lords recommended.

That brings us to the lengthy amendment 24, which the hon. Member for Lewisham West and Penge introduced with great eloquence. That essentially argues that the rate should be set by the expert panel alone and not by the Lord Chancellor. We disagree fundamentally with that because the expert panel and the Government Actuary would argue that it is not their position to set the rate. It is their position to provide actuarial advice on different investment decisions that could be made, the likely rates of inflation and the likely rates of return.

Ultimately, a Minister accountable to Parliament should set that rate, because they have to balance some very different issues: our obligation towards vulnerable people who have suffered catastrophic life-changing injuries and our obligation on the costs to the national health service, which run into billions of pounds, and balancing these different public goods.

It simply would not be fair to expect an actuary to make those kinds of political and social decisions. It is entirely appropriate to expect actuarial experts to provide the expert advice on what the range of options would be, and to reassure individuals that the Lord Chancellor is not likely to make a decision that would have a significant negative impact. It is only necessary to look at what the Lord Chancellor did two years ago in setting the rate of -0.75%. If it had been the case that the Lord Chancellor was fundamentally driven by Treasury calculations and was not interested in defending the vulnerable individual, they would not have moved the rate from 2.5% to -0.75%, effectively doubling the compensation paid. The Lord Chancellor, in setting this rate, on the advice of the expert panel, will be acting as the Lord Chancellor, not as the Secretary of State for Justice.

Bambos Charalambous: The Minister said there was a big change when a previous Lord Chancellor set the rate at -0.75%. I wonder what advice and from whom she received in setting that rate. Clearly, she would have had some advice, rather than plucking that figure out of the air. I wonder what the situation is now.

Rory Stewart: At the moment, the advice received would be from actuaries. Ultimately, we commission the Government Actuary's Department voluntarily to provide the best advice on what the rate should be. It then arrives at a gilt rate, which drove us towards -0.75%. The Bill puts the role of the Government Actuary into law, so it is no longer voluntary but compulsory. It will be obligatory for the Lord Chancellor to consult, and in future there will be a broader expert panel around the Government Actuary.

3 pm

The Government will publish the Government Actuary's report, the panel's report and later reviews. I am happy to make that commitment to the hon. Gentleman, who asked about transparency. I respectfully ask that the Opposition amendment be withdrawn, and that the Government amendment be accepted.

Gloria De Piero: My learned and experienced colleagues have spoken in great detail about our issues with the amendments, so I do not anticipate making a long speech. I wholeheartedly concur with the comments that my hon. Friend the Member for Lewisham West and Penge made about the importance of periodical payment orders and a proper, timely review of the personal injury discount rate. As everybody who has contributed has said, we are talking about the most seriously injured. They cannot and must not be let down by our playing politics or by insurers seeking to save money.

In amendments 22 and 23, we say that, if an expert panel is appropriate for subsequent reviews, why should not expert opinion from the panel be appropriate for the initial determination of the rate of return? That is why we will press them to a Division.

Ellie Reeves: I thank the Minister for his response to the points that I made. For the reasons that I and my hon. Friend the Member for Enfield, Southgate set out, I want to press amendment 24 and new clause 5 to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 14]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 8.

Division No. 15]

AYES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

NOES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

Question accordingly agreed to.

Clause 10 ordered to stand part of the Bill.

New Clause 2

Report on effect of Parts 1 and 2

'(1) Regulations made by the Treasury may require an insurer to provide information to the FCA about the effect of Parts 1 and 2 of this Act on individuals who hold policies of insurance with the insurer.

(2) The regulations may provide that an insurer is required to provide information only if it has issued third party personal injury policies of insurance on or after 1 April 2020 to individuals domiciled in England and Wales.

(3) The regulations may—

(a) specify the information or descriptions of information to be provided;

(b) specify how information is to be provided;

(c) specify when information is to be provided;

(d) require that information or specified descriptions of information be audited by a qualified auditor before being provided;

(e) make provision about the audit;

(f) require that details of the auditor be provided to the FCA.

(4) Regulations under subsection (3)(a) may in particular require an insurer to provide information, by reference to each of the report years, about—

(a) the amount paid by the insurer during the report period under its relevant third party personal injury policies of insurance in respect of personal injuries sustained by third parties, where the amount of damages for the injury is governed by the law of England and Wales;

(b) the amount that the insurer might reasonably have been expected to pay in respect of those injuries if this Act had not been passed;

(c) the mean of the amounts paid during the report period under those policies in respect of those injuries;

(d) what might reasonably have been expected to be the mean of the amounts paid in respect of those injuries if this Act had not been passed;

(e) the amounts described in paragraphs (a) to (d), determined by reference only to cases where—

(i) the amount paid by an insurer under a policy, or

(ii) the amount that an insurer might reasonably have been expected to pay under a policy,

falls within one of the bands specified in the regulations;

(f) the amount charged by the insurer by way of premiums for relevant third party personal injury policies of insurance where the cover starts in the report period;

(g) the amount that the insurer might reasonably have been expected to charge by way of premiums for those policies if this Act had not been passed;

(h) the mean of the premiums charged for those policies;

(i) what might reasonably have been expected to be the mean of the premiums charged for those policies if this Act had not been passed;

(j) the amounts described in paragraphs (f) to (i), determined as if the references to a premium charged for a relevant third party personal injury policy of insurance were references to so much of the premium as is charged in order to cover the risk of causing a third party to sustain personal injury;

(k) if any reduction in the amounts referred to in paragraph (a) has been used to confer benefits other than reduced premiums on individuals, information about those benefits.

(5) The regulations may make provision about the methods to be used in determining the amounts described in subsection (4)(b), (d), (g) and (i), including provision about factors to be taken into account.

(6) The regulations may provide for exceptions, including but not limited to—

(a) exceptions relating to policies of insurance obtained wholly or partly for purposes relating to a business, trade or profession;

(b) exceptions relating to policies of insurance of a specified description;

(c) exceptions for cases where the value or number of policies of insurance issued by an insurer is below a level specified by or determined in accordance with the regulations, and

(d) exceptions relating to insurers who, during the report period, issue policies of insurance only within a period that does not exceed a specified duration.

(7) Before the end of a period of one year beginning with 1 April 2024, the Treasury must prepare and lay before Parliament a report that—

(a) summarises the information provided about the effect of Parts 1 and 2 of this Act, and

(b) gives a view on whether and how individuals who are policy holders have benefited from any reductions in costs for insurers.

(8) If insurers provide additional information to the FCA about the effect of Parts 1 and 2 of this Act, the report may relate also to that information.

(9) The FCA must assist the Treasury in the preparation of the report.

(10) In the Financial Services and Markets Act 2000—

(a) in section 1A (functions of the Financial Conduct Authority), in subsection (6), after paragraph (cza) insert—

"(czb) the Civil Liability Act 2018,";

(b) in section 204A (meaning of "relevant requirement" and "appropriate regulator")—

(i) in subsection (2), after paragraph (a) insert—

"(aa) by regulations under section (Report on effect of Parts 1 and 2) of the Civil Liability Act 2018,";

(ii) in subsection (6), after paragraph (a) insert—

"(aa) by regulations under section (Report on effect of Parts 1 and 2) of the Civil Liability Act 2018;".

(11) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure.

(12) In this section—

"the FCA" means the Financial Conduct Authority;

"insurer" means an institution which is authorised under the Financial Services and Markets Act 2000 to carry on the regulated activity of—

(a) effecting or carrying out contracts of insurance as principal, or

(b) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's;

"qualified auditor" means a person who is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006;

"relevant third party personal injury policy of insurance" means a third party personal injury policy of insurance issued by an insurer to an individual domiciled in England and Wales;

"report period" means the period of three years beginning with 1 April 2020;

"report year" means a year beginning with 1 April 2020, 2021 or 2022;

"third party personal injury policy of insurance" means a policy of insurance issued by an insurer which provides cover against the risk, or risks that include the risk, of causing a third party to sustain personal injury.'

This new clause provides for regulations requiring insurers to supply information about the effect of Parts 1 and 2 of the Bill and requires a report based on that information to be provided to Parliament.—(Rory Stewart.)

Brought up, read the First time and Second time, and added to the Bill.

New Clause 1

Restriction on increase in small claims limit for relevant personal injuries

'(1) In this section, the "PI small claims limit" refers to the maximum value (currently £1,000) of a claim for damages for personal injuries for which, in accordance with Civil Procedure Rules, the small claims track is the normal track.

(2) Civil Procedure Rules may not increase the PI small claims limit in respect of relevant injury claims to an amount above £1,000 for the first time unless—

(a) the Lord Chancellor is satisfied, and has certified in writing, that on the day the rules are to come into force, the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to CPI, would be at least £1,500, and

(b) the rules increase the PI small claims limit to no more than £1,500.

(3) Civil Procedure Rules may not increase the PI small claims limit in respect of relevant injury claims on any subsequent occasion unless—

(a) the Lord Chancellor is satisfied, and has certified in writing, that on the day the rules are to come into force, the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to CPI, would be at least £500 greater than on the day on which the rules effecting the previous increase were made, and

(b) the rules increase the PI small claims limit by no more than £500.

(4) In this section—

"CPI" means the all items consumer prices index published by the Statistics Board;

"relevant injury" means an injury which is an injury of soft tissue in the neck, back, or shoulder and which is caused as described in paragraphs (b) and (c) of section 1(4) (negligence while using a motor vehicle on a road, etc.);

"relevant injury claim" means a claim for personal injury that consists only of, or so much of a claim for personal injury as consists of, a claim for damages for pain, suffering and loss of amenity caused by a relevant injury, and which is not a claim for an injury in respect of which a tariff amount is for the time being prescribed under section 2.'

This new clause would limit increases in the whiplash small claims limit to inflation (CPI), and allow the limit to increase only when inflation had increased the existing rate by £500 since it was last set.—(Gloria De Piero.)

Brought up, and read the First time.

Gloria De Piero: I beg to move, That the clause be read a Second time.

New clause 1 deals with one of the most important effects of this package of measures. It says that the whiplash small claims limit can increase only in line with inflation based on the consumer prices index. It specifies that the limit can increase only when inflation has increased the existing rate by £500 since it was last set.

The Government have been disingenuous in trying to sneak through these changes to the small claims track limit by using delegated legislation, which restricts the proper scrutiny that such significant changes deserve. With the new clause, we ask the Government to do the right thing and to put it on the face of the Bill, enshrining the terms that a plethora of experts agree on: the use of CPI over the retail prices index when it, and using 1999 as a start date for any recalculation of the limit for a small claims track.

The White Book that I showed the Minister shows that there was a 20% increase in the small claims limit in 1999 when special damages were removed from the *calculation* of the limit. Lord Justice Jackson, in his "Review of Civil Litigation Costs: Final Report" said that the only reason to increase the personal injury small claims limit would be to

"reflect inflation since 1999. As series of small rises in the limit would be confusing for practitioners and judges alike."

He made it crystal clear that the limit should remain at £1,000 until inflation warrants an increase to £1,500.

The Government admitted to me this morning that there is a difference of opinion in their own ranks about which of these years should be the benchmark. We say again that they must listen to the Lord Justice Jackson and the Justice Committee chaired by one of their own, the hon. Member for Bromley and Chislehurst (Robert Neill), who agrees with him. We should state on the face

of the Bill that 1999 must be the start date for any recalculation of the small claims limit, not 1991. The Government accepted all the key recommendations in the Jackson report save the recommendation that there should be an increase in the small claims limit to £1,500 only when inflation justifies it.

To turn to another aspect—the Government have admitted that it has caused a dispute among Ministers—I want to make the case, as I have done before, that CPI and not the RPI is the correct measure to apply for inflation. It seems that the Government use RPI when it suits and use CPI when it suits. CPI is what we use for the pensions and benefits paid to injured workers while they are pursuing justice for that injury through the claim. Even the Chief Secretary to the Treasury agrees with me. When asked at the House of Lords Economic Affairs Committee whether she agreed that RPI was an inadequate measure, she said:

"We certainly agree that it is not the preferred measure of inflation. CPI is a much better measure of inflation… we agree that it is not the preferred method, and we are seeking to move away from RPI".

Why are we moving towards it here? The Government say they wish to apply RPI to the small claims limit because RPI is applied to updating damages—the same damages that they are taking an axe to with the new tariff.

Perhaps some in the Conservative party are persuaded, like me, that CPI is the best option, because of yet another expert who has lined up to say so. On 30 January 2018, the Governor of the Bank of England, Mark Carney, said:

"At the moment, we have RPI, which most would acknowledge has known errors. We have CPI, which is what virtually everyone recognises and is in our remit."

It is perfectly clear that we need to enshrine CPI as the key measure on the face of the Bill. The amount of £1,000 from 1999 would now be worth either £1,440 if CPI is applied, or £1,620 if RPI is applied. Lord Jackson said that it should not go up to £2,000, as the Government suggests, until inflation warrants it.

I trust the Minister will not be as dismissive as Lord Keen was when he said in his evidence to the Justice Committee:

"We do not feel that there is a material difference between setting it at £1,700 today and seeing it drop behind inflation next year, and setting it at £2,000 without the need to review it again for a number of years."

Try telling the nurse, the caretaker or the bus driver that there is no material difference between £1,700 and £2,000. For those on real wages, that has a real impact.

Rory Stewart: Relatively rapidly, I would say that we have five types of disagreement with the amendments. Broadly speaking, those are political, philosophical, economic, financial and constitutional. The political disagreement is that the amendment would go to the heart of the Bill. The entire concept of the Bill is to try to effect a change in the current practice and process around whiplash claims by moving the claim limit to £5,000. That is part of the entire package—the tariffs and small claims limits are related to that.

Philosophically and fundamentally, we are not arguing that the shift to £5,000 is fundamentally a question of inflation. There are many other reasons why the small claims limit has been moved in the past. Indeed, in relation to some types of claim, as you will be aware Sir Henry, as one of our learned friends, some of the claims have been moved to £10,000, which goes a long way beyond inflation.

Largely, the driver of whether or not something is on a small claims track is to do with the nature of the claim, not the nature of inflation. However, if we worked on the narrow question of inflation, the Judicial College guidelines are currently on RPI as opposed to CPI. I respect the arguments that the hon. Member for Ashfield made but that is not the fundamental argument the Government are making.

The amendment would have curious financial implications. It would create a strange syncopated rhythm, whereby movements in CPI are not necessarily reflected in the triennial review except in £500 increments which, over time, mathematically will lead to peculiar results.

The fundamental reason we oppose the amendment is the final argument I mentioned, which is constitutional. This is business for the Civil Procedure Rule Committee, as it always has been, and it is not suitable to put in the Bill. On the basis of those political, philosophical, economic, financial and constitutional arguments, I respectfully request that the amendments be withdrawn.

Robert Courts (Witney) (Con): I want to make a few brief comments. I entirely understand the force of the comments made. As someone who started his practice in the small claims court before progressing to other courts, I have seen how they work. I have a couple of pertinent points—the Minister alluded to the first. For some very complicated cases, particularly commercial ones, there are already limits of £10,000. As other Members who have practised will realise, the fact that someone is in a small claims court and not represented does not mean that they are completely unassisted. The district judges who hear those claims are solicitors or barristers and are extremely competent and experienced in their own right. Therefore, there is every reason to believe that they will be able to hear those claims, which will have justice as their case is heard.

Jo Stevens: I take the hon. Gentleman's point but judges are not there to represent in that case, whereas a solicitor would be there to represent. Does he agree that he is comparing apples with pears?

Robert Courts: The hon. Lady is absolutely right. I know she has a long history of practising, as do I. That is, of course, absolutely correct, but it does not mean that they are simply left to sink or swim on their own. I have seen countless cases in my practice where a district judge, although not representing someone, clearly points out arguments that may wish to be made. District judges frequently bend over backwards to ensure that the correct points are made by claimants. Although that is true and I accept the force of the hon. Lady's point, I suggest that the overall thrust of enabling justice, but at a reasonable and proportionate cost, is being addressed.

Ellie Reeves: Is it not the fact that district judges increasingly have to assist litigants in person when people cannot get legal representation, and that that is putting a huge burden on the courts and district judges?

[Ellie Reeves]

That is not their role but they are increasingly having to do that, which puts an extra burden on them and increases court costs.

Robert Courts: The hon. Lady makes an excellent point. Clearly, cases where judges have to assist claimants are likely to take longer. However, this comes down to ensuring that claimants in cases at the lower end of the scale—I do not for a moment downplay the seriousness of people having been hurt in this way—can be heard at proportionate cost, and that the court's resources, particularly for the payment of costs, go to cases at the higher end. Ultimately, the costs burden is what denies access to justice.

3.15 pm

Ruth George: Is it not the case that the district judges set out in their response to the Government consultation back in 2015 that courts would become clogged with litigants in person if this change were made? It simply will not be possible for district judges to support those litigants given the number of claims. Have Government Members read that powerful submission and listened to the arguments of those judges?

Robert Courts: Although I understand the arguments made by district judges, I have faith in their ability to deal with cases efficiently, because I have seen that happen so often. In an ideal world, I would of course prefer everyone to be legally represented. That would be more efficient and would mean that people had someone to argue for them. However, it is not practical within the costs regime under which we live.

Ruth George: I spent more than 20 years working for the Union of Shop, Distributive and Allied Workers. In many claims involving road traffic accidents and workplace injuries, claimants were referred by their union to a solicitor who gave them the support they needed to bring a case. As the hon. Gentleman set out, lawyers are experienced and often give claimants the advice they need about whether they can take a claim forward or whether that is not worth doing, and therefore protect district judges and the court system. Projections show that there will be an extra 36,000 cases a year in the small claims court. With the best will in the world, district judges, who are already struggling, will not be able to cope with that additional workload. That is what the district judges themselves said in response to the consultation. *[Interruption.]* They said it whether the Minister chooses to shake his head or not.

Many younger claimants and those who do not have experience of dealing with the legal system will find it much harder to bring a case themselves. This is not just a question of compensation up to the level we are discussing for minor cases. We have debated the figure for general damages but, as the Minister said, there are exceptional circumstances payments and compensation for loss of wages on the back of that, so an individual's total claim may be much higher than the limit on small claims. I note that even someone with a claim for a whiplash injury that lasted up to two years will fall under the £5,000 small claims limit. Even someone who suffered an injury that prevented them from working for two years will not be able to take their case to the general court, but will have to represent themselves in the small claims court. The associated loss of wages may have a huge impact on their life and wellbeing.

I hope the Minister looks again at this measure, which will severely disadvantage people who are not able to take claims through themselves. People often need a lawyer to support them. That would make the system more efficient and effective, and that is what we argue for.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 8, Noes 9.

Division No. 16]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.

New Clause 3

RECOVERABILITY OF COSTS IN RESPECT OF ADVICE ON MEDICAL REPORT, ETC.

'(1) For the purposes of civil procedure rules, the costs recoverable by a claimant who recovers damages in a claim for a relevant injury which is (or would be if proceedings were issued) allocated to the small claims track include the costs of the items set out in subsection (2).

(2) The items are—

(a) legal advice and assistance (including in respect of an act referred to in paragraph (a) or (d) of section 6(2)) in relation to the quantum of damages in the light of a medical report or other appropriate evidence of injury; and

(b) in a case where liability for the injury is not admitted within the time allowed by any relevant protocol, legal advice and representation in relation to establishing liability.

(3) For the purpose of ascertaining the amounts recoverable in respect of those items, the claim is to be treated as if it were allocated to the fast track.

(4) In this section "relevant injury" means an injury which is an injury of soft tissue in the neck, back, or shoulder, and which is caused as described in paragraphs (b) and (c) of section 1(4) (negligence while using a motor vehicle on a road, etc.), but does not include an injury in respect of which a tariff amount is for the time being prescribed under section 2.'—*(Gloria De Piero.)*

This new clause would ensure that a successful claimant is able to recover costs incurred for legal costs in respect of advice sought in relation to determining the quantum of damages following a medical report or the establishment of liability where it is in dispute.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 8, Noes 9.

Division No. 17]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.

New Clause 4

PERIODICAL PAYMENT ORDERS

'(1) Within 18 months from the coming into force of this Act, the Civil Justice Council must undertake a review of the impact of Part 2 and the setting of a new rate of return on the extent to which periodical payment orders are made by the courts in personal injury actions.

(2) A report setting out the results of the review must be laid before each House of Parliament by the Civil Justice Council within two years of the coming into force of this Act.'—*(Ellie Reeves.)*

This new clause would require the Civil Justice Council to undertake a review and report to Parliament on the impact that the changes this Bill makes to the Discount Rate assumptions and mechanism has on the use of periodic payment orders.

Brought up, and read the First time.

Ellie Reeves: I beg to move, That the clause be read a Second time.

To understand the importance of new clause 4, we must understand the significance of the use of periodical payments to compensate those who have been injured through negligence, often catastrophically, with little or no capacity for work and with considerable care costs.

More often than not, successful claimants are paid a lump sum, which is intended to compensate them for the rest of their life. However, the benefits of periodical payments, rather than a lump sum, are threefold. First, periodical payments are index-linked so they go up in accordance with rising costs of living or care. Secondly, in such cases, there are often arguments about life expectancy. If the court accepts that a victim of a catastrophic injury is likely to live until 42 but medical advances mean that they actually live until 80, a lump sum will run out many years earlier. With periodical payments, the injured person is compensated every year for the rest of their life. Thirdly, receiving an annual periodical payment rather than a lump sum means that injured people do not have to make difficult investment decisions and, equally, it removes the risk that they will spend the money all at once.

The setting of the discount rate is highly relevant to periodical payments. When the rate stood at 2.5%, it was far more attractive for defendants to pay a lump sum that was discounted by 2.5% than to pay index-linked annual payments. That meant that in all but the most serious cases, periodical payments often met huge resistance from defendants. A rate that assumes a much lower level of investment risk by injured people may well result in an increase in the use of periodical payments, particularly in cases not at the most catastrophic level where resistance from defendants has been greatest. The benefits to the injured person are clear, and the benefits to the state of not having to pick up the bill for care or housing, if and when the money runs out, are obvious.

On Second Reading, the Minister said that he welcomed the use of periodical payments. Can he tell us the percentage of personal injury claims in which they are used? It is my understanding that the figures are astoundingly low, often due to resistance from defendant insurers. New clause 4 makes it incumbent on the Civil Justice Council, with its expert knowledge, to review the impact of part 2 and the discount rate on the prevalence of periodical payments being awarded. If we agree that periodical payments are a good thing, surely we can agree that their use must be monitored so that appropriate and evidence-based action can be taken where necessary. This would benefit injured people and the Treasury alike.

Rory Stewart: Once again, I want to take this opportunity to praise the hon. Member for Lewisham West and Penge. The arguments for PPO are very strong. It is absolutely correct that the ideal thing is to give someone a PPO. The problem at the moment with receiving a large sum with a discount rate is that one could end up overcompensated or undercompensated. Overcompensation means a huge cost to the NHS and the taxpayer. Undercompensation can be catastrophic for one's lifetime care costs. Rather than taking a lump sum, the PPO ensures that one gets the amount of money required to look after one's costs. Therefore, we agree with the nature of this argument.

The disagreements with this amendment are technical. The 18-month period from Royal Assent is too short to take real effect. Regarding the basic question the hon. Lady has raised—whether the Civil Justice Council should look at the use of PPOs and the impact of discount rates on PPOs—we have written directly to the Master of the Rolls to request that the Civil Justice Council look at the use of PPOs. We remain open to doing that again, once the new review of discount rate is introduced.

It is absolutely right that we should encourage more uptake and challenge the insurance companies, which have said publicly that they want more use of PPOs, to ensure that more PPOs are given out. That is the best way to protect an injured person. There are some narrow cases where it is not appropriate—somebody may not have sufficient insurance or the financial weight to deliver a PPO—but when it is paid out, it ought to be paid and that is why we are grateful that, for example, the NHS continues to use the PPOs in the case of catastrophically injured children. I request that the hon. Lady withdraw the amendment.

Ellie Reeves: I thank the Minister for that response and, to some extent, his assurances. However, given that the Bill seeks to make big changes, if we are committed to periodical payments and their use, there should be a mechanism for review built into the legislation. I shall press the new clause to a Division.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 8, Noes 9.

Division No. 18]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.

New Clause 5

REVIEW OF ASSUMPTIONS ON WHICH CALCULATION OF THE PERSONAL INJURY DISCOUNT RATE IS BASED

'(1) Within 3 years from the date on which this Schedule comes into force, the Lord Chancellor must arrange for the expert panel to review the assumptions on which the personal injury discount rate is based, and review how investors of relevant damages are investing such damages.

(2) The review must report to the Lord Chancellor whether the assumptions on which the personal injury discount rate is based should be changed and set out recommendations.'—*(Gloria De Piero.)*

This new clause would require the Lord Chancellor to arrange for the expert panel to conduct a review of the assumptions on which the discount rate is based in light of how claimants are in practice investing their compensation.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 8, Noes 9.

Division No. 19]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.

New Clause 6

PASSING ON SAVINGS MADE BY INSURERS

'(1) Any savings made by any insurer as a result of anything in this Act or associated changes by regulation shall be passed to policyholders by way of reduced premium.

(2) The Financial Conduct Authority shall require all such insurers to submit an annual report detailing the savings they have made and how all those savings have been used to reduce policyholder premiums.

(3) In this section—

"savings" means any reduction in an insurer's outlays in damages or costs paid in personal injury claims from the time this Act receives Royal Assent;

"insurer" means any insurer holding a licence to offer UK motor insurance;

"policyholder" means the holder of a policy of motor insurance with the insurer;

"premium reduction" means a reduction in the annual cost of a policy of motor insurance taken out by a policyholder.'—*(Gloria De Piero.)*

This new clause would require insurers to pass on to insurance consumers all savings made as a result of these changes.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 8, Noes 9.

Division No. 20]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.

New Clause 7

SMALL CLAIMS TRACK: VULNERABLE ROAD USERS

'(1) The Small Claims Track Limit in relation to claims made by vulnerable road users for whiplash injuries may not be increased unless the increase is to an amount which is not more than the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to the consumer prices index.

(2) In subsection (1)—

"vulnerable road users" means any person other than a person—

(a) using a motor vehicle other than a motor cycle on a road or other public place in England or Wales, or

(b) being carried in or on a motor vehicle other than a motor cycle while another uses the vehicle on a road or other public place in England or Wales.'—*(Gloria De Piero.)*

This new clause would limit increases in the small claims track limit in relation to vulnerable road users (cyclists, pedestrians, horse riders, etc) suffering whiplash injuries to inflationary rises only.

Brought up, and read the First time.

Gloria De Piero: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 8—*Restriction on increase in small claims limit for relevant personal injuries suffered by people during the course of employment*—

'(1) In this section, the "PI small claims limit" refers to the maximum value (currently £1,000) of a claim for damages for personal injuries, specifically general damages, for which, in accordance with Civil Procedure Rules, the small claims track is the normal track.

(2) Civil Procedure Rules may not increase the PI small claims limit in respect of relevant injury claims to an amount above £1,000 for the first time unless—

(a) the Lord Chancellor is satisfied, and has certified in writing, that on the day the rules are to come into force, the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to CPI, would be at least £1,500, and

(b) the rules increase the PI small claims limit to no more than £1,500.

(3) Civil Procedure Rules may not increase the PI small claims limit in respect of relevant injury claims on any subsequent occasion unless—

(a) the Lord Chancellor is satisfied, and has certified in writing, that on the day the rules are to come into force, the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to CPI, would be at least £500 greater than on the day on which the rules affecting the previous increase were made, and

(b) the rules increase the PI small claims limit by no more than £500.

(4) In this section—

"CPI" means the all items consumer prices index published by the Statistics Board;

"relevant injury" means an injury which is an injury of soft tissue in the neck, back, or shoulder suffered during the course of employment which is caused as described in paragraphs (b) and (c) of section 1(4) (negligence while using a motor vehicle on a road, etc.);

"relevant injury claim" means a claim for personal injury that consists only of, or so much of a claim for personal injury as consists of, a claim for damages for pain, suffering and loss of amenity caused by a relevant injury, and which is not a claim for an injury in respect of which a tariff amount is for the time being prescribed under section 2;

"general damages" shall mean damages for pain, suffering and loss of amenity.'

This new clause would limit increases in the small claims track limit in relation to people who have suffered a whiplash injury during the course of their employment to inflationary rises in increments of £500 only.

Gloria De Piero: The Government have refused to allow the small claims changes, which will have a fundamental impact on access to justice for hundreds and thousands of injured people every year, into the Bill. New clause 7 is designed to ensure that vulnerable road users are exempted as the Minister has promised. New clause 8 would do little more than reflect the recommendations of Lord Justice Jackson in his civil justice review. The Minister agreed this morning that there had been a change to the small claims limit in 1999. New clause 8 says that 1999 is the date from which any change to the small claims limit should be calculated and that the increase should be by no more than £500 at any one time. As I have said, that reflects the recommendations of Lord Justice Jackson.

There is a difference between us on the appropriate level of inflation. We say CPI—the consumer prices index. There is absolute logic in that because that is the inflation rate applied by the Government to benefits paid to injured people. It is also, of course, the rate that the Governor of the Bank of England recommends.

Rory Stewart: Given that we are coming towards the end of the proceedings, I again pay tribute to right hon. and hon. Members on both sides of the Committee for the quality of debate. It has been quite testing personally: a lot of very learned friends have asked a lot of fundamental questions, ranging from inflation rates to the good challenges from my friend the right hon. Member for Delyn (David Hanson), who keeps me on my toes. I thank them very much for their various contributions.

With the final group of amendments, we come to questions that relate to some of the debates that we have had already, in different forms. This in effect is a subset of the arguments made on new clause 1. As right hon. and hon. Members will remember, new clause 1 involved an argument that the reductions should be made in relation to all personal injury claims. These proposals take the same arguments and apply them to two subsets of people who are injured: vulnerable road users and people injured in the course of employment. On both those things, there are some differences between us, again, on the correct level at which to set the rate, but there are also some important concessions that are worth bearing in mind. They were made in the House of Lords and in the subsequent process.

In relation, first, to people injured in the course of employment, personal injury claims that are not as a result of whiplash, we have listened very carefully to right hon. and hon. Members. They will remember that in the initial consultations there were suggestions about raising the limit to £10,000 or £5,000. The agreement has been that for non-whiplash-related injuries, it is kept at £2,000.

There is some discussion about whether it is correct to see that in terms of CPI or RPI—the retail prices index—but broadly speaking, it is not very significantly different from the rates that were set in the 1990s when inflation was applied, although there is some disagreement between the two sides of the House, to the extent of a few hundred pounds, on the extent of headroom put on top of inflation. There could be a broader argument, which was raised earlier, about the fundamental principle that compensation should be paid for the injury rather than on the basis of why somebody was present on the scene, whether in the course of employment or another activity. However, that goes beyond the scope of the amendment.

The real concession has been made in relation to vulnerable road users, which I hope hon. Members on both sides of the House will welcome. We listened carefully to representations made primarily not by people who own horses—although I remind hon. Members that there are more than a million horses in the United Kingdom, so it is not quite as much of a minority pursuit as some might like—but by cyclists, who led a strong campaign arguing that they are particularly vulnerable on the roads. They are: they are not encased in a sheet of metal. We accept that the same argument also applies in spades to pedestrians—as a proud pedestrian, I feel that very strongly—and to people on motorcycles, who are not encased in metal either.

We are delighted to confirm that vulnerable road users will be excluded in respect of the small claims limit and the Bill. On that basis, with many thanks to everybody for their prodigious and learned contributions, I politely ask that the amendment be withdrawn.

Gloria De Piero: I will disquiet the Minister one more time and press the new clause to a Division.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 8, Noes 9.

Division No. 21]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.

New Clause 8

RESTRICTION ON INCREASE IN SMALL CLAIMS LIMIT FOR RELEVANT PERSONAL INJURIES SUFFERED BY PEOPLE DURING THE COURSE OF EMPLOYMENT

'(1) In this section, the "PI small claims limit" refers to the maximum value (currently £1,000) of a claim for damages for personal injuries, specifically general damages, for which, in accordance with Civil Procedure Rules, the small claims track is the normal track.

(2) Civil Procedure Rules may not increase the PI small claims limit in respect of relevant injury claims to an amount above £1,000 for the first time unless—

(a) the Lord Chancellor is satisfied, and has certified in writing, that on the day the rules are to come into force, the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to CPI, would be at least £1,500, and

(b) the rules increase the PI small claims limit to no more than £1,500.

(3) Civil Procedure Rules may not increase the PI small claims limit in respect of relevant injury claims on any subsequent occasion unless—

(a) the Lord Chancellor is satisfied, and has certified in writing, that on the day the rules are to come into force, the value of £1,000 on 1 April 1999 adjusted for inflation, computed by reference to CPI, would be at least £500 greater than on the day on which the rules affecting the previous increase were made, and

(b) the rules increase the PI small claims limit by no more than £500.

(4) In this section—

"CPI" means the all items consumer prices index published by the Statistics Board;

"relevant injury" means an injury which is an injury of soft tissue in the neck, back, or shoulder suffered during the course of employment which is caused as described in paragraphs (b) and (c) of section 1(4) (negligence while using a motor vehicle on a road, etc.);

"relevant injury claim" means a claim for personal injury that consists only of, or so much of a claim for personal injury as consists of, a claim for damages for pain, suffering and loss of amenity caused by a relevant injury, and which is not a claim for an injury in respect of which a tariff amount is for the time being prescribed under section 2;

"general damages" shall mean damages for pain, suffering and loss of amenity.'—*(Gloria De Piero.)*

This new clause would limit increases in the small claims track limit in relation to people who have suffered a whiplash injury during the course of their employment to inflationary rises in increments of £500 only.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 8, Noes 9.

Division No. 22]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.

New Clause 9

EXEMPTION FOR VULNERABLE ROAD USERS AND PEOPLE INJURED DURING THE COURSE OF THEIR EMPLOYMENT

'(1) Nothing in Part 1 of this Act other than Clauses 6 and 7 shall apply to a claim made by—

(a) a pedestrian, cyclist or horse rider; or

(b) a person injured in the course of their employment.'.—*(Gloria De Piero.)*

This new clause would exempt vulnerable road users and people injured in the course of their employment from the provisions of Part 1 of the Bill, except Clauses 6 and 7.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 8, Noes 9.

Division No. 23]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	Russell-Moyle, Lloyd
Hanson, rh David	Stevens, Jo

NOES

Brereton, Jack	Mann, Scott
Courts, Robert	Milling, Amanda
Davies, Chris	Stewart, Rory
Green, Chris	Tracey, Craig
Heaton-Jones, Peter	

Question accordingly negatived.

Clause 11 ordered to stand part of the Bill.

Amendments made: 5, in clause 12, page 15, line 30, leave out subsection (1) and insert—

'( ) This Act extends to England and Wales only, subject to the following subsections."

This amendment and Amendment 6 provide for NC2 to have England and Wales extent.

Amendment 6, in clause 12, page 15, line 35, leave out "This Part extends" and insert

"Sections (Report on effect of Parts 1 and 2)(13) and 11 to 14 extend".—*(Rory Stewart.)*

See the explanatory statement for Amendment 5.

Clauses 12 and 13 ordered to stand part of the Bill.

Clause 14

SHORT TITLE

Rory Stewart: I beg to move amendment 7, in clause 14, page 16, line 6, leave out subsection (2).

This amendment removes the privilege amendment inserted by the Lords.

The amendment is procedural. It is a privilege amendment that changes subsection (2) of the short title. The House of Lords has said that nothing in the Act shall impose any charge on the people or on the public funds. Bringing it to the House of Commons means the Ministry of Justice should be liable for any charges to the funds. The House of Commons is able to take on the terms of the fund. This is a normal procedural amendment for when something comes from the House of Lords to the House of Commons, so we ask that Government amendment 7 is accepted.

Amendment 7 agreed to.

Clause 14, as amended, ordered to stand part of the Bill.

Bill, as amended, to be reported.

3.42 pm

Committee rose.

Written evidence to be reported to the House

CLB01 Joanne Ali

CLB02 Access to Justice (A2J)

CLB03 Irwin Mitchell LLP

CLB04 Carpenters Group

CLB05 Motor Accident Solicitors Society (MASS)

CLB06 Association of British Insurers (ABI)

CLB07 Forum of Insurance Lawyers

CLB08 LV=

CLB09 Thompsons Solicitors