PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CIVIL LIABILITY BILL [*LORDS*]

First Sitting

Tuesday 11 September 2018

(Morning)

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

(Morning)

[Graham Stringer *in the Chair*]

Civil Liability Bill [*Lords*]

9.25 am

The Chair: If they wish, hon. Members may remove their jackets. It is warm in here and we are trying to open a window. Please ensure that electronic devices are turned off or switched to silent. Tea and coffee are not allowed during sittings. We will first consider the programme motion on the amendment paper, which was agreed by the Programming Sub-Committee yesterday. If there are any matters of interest to declare, we will do that afterwards. We will then consider a motion to enable the reporting of written evidence for publication. In view of the limited time available, I hope we can take those motions without too much debate.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 11 September) meet—

(a) at 2.00 pm on Tuesday 11 September;

(b) at 11.30 am and 2.00 pm on Thursday 13 September;

(c) at 4.30 pm and 7.00 pm on Tuesday 9 October;

(2) the proceedings shall be taken in the following order: Clauses 1 to 10; new Clauses; new Schedules; Clauses 11 to 14; remaining proceedings on the Bill;

(3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 10.00 pm on Tuesday 9 October.—*(Rory Stewart.)*

Jo Stevens (Cardiff Central) (Lab): On a point of order, Mr Stringer. It is a pleasure to serve under your chairmanship. I refer the Committee to my entry in the Register of Members' Financial Interests. My partner is a solicitor and a chief executive of a personal injury law firm, which is relevant to the matters under consideration.

Robert Courts (Witney) (Con): Further to that point of order, Mr Stringer. I would like to make a similar declaration, because I used to practise as a personal injury barrister.

Gloria De Piero (Ashfield) (Lab): Further to that point of order, Mr Stringer. I declare the advice that I have received from Thompsons Solicitors, which will be entered in the register.

Craig Tracey (North Warwickshire) (Con): Further to that point of order, Mr Stringer. I declare an interest as chair of the all-party parliamentary group on insurance and financial services, and as a former insurance broker.

The Chair: Are there any other declarations of interest?

David Hanson (Delyn) (Lab): Just to be on the safe side, I am sponsored by the union USDAW, which has made representations to the Committee, and which I may speak on in due course.

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Rory Stewart.)*

The Chair: Copies of the written evidence that the Committee receives will be made available in the Committee Room. The selection list for today's sitting is also available in the room.

Clause 1

"Whiplash injury" etc

Gloria De Piero: I beg to move amendment 8, in page 1, line 4, leave out clause 1 and insert—

"Definition of whiplash injury

(1) In this Part 'whiplash injury' means an injury, or set of injuries, of soft tissue in the neck, back or shoulder that is of a description specified by the Chief Medical Officer of the Department of Health.

(2) For the purposes of this Part a person suffers a whiplash injury because of driver negligence if—

(a) when the person suffers the injury, the person—

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

(ii) is 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,

(b) the injury is caused—

(i) by the negligence of one or more other persons, or

(ii) partly by the negligence of one or more other persons and partly by the negligence of the person who suffers the injury, and

(c) where the negligence of the other person or persons consists in an act or acts done by the person or persons while using a motor vehicle on a road or other public place in England or Wales.

(3) The fact that the act or acts constituting the negligence of the other person or persons is or are also sufficient to establish another cause of action does not prevent subsection (2)(b) being satisfied.

(4) For the purposes of this section references to a person being carried in or on a vehicle include references to a person entering or getting on to, or alighting from, the vehicle.

(5) In this section—

'act' includes omission;

'motor cycle' has the meaning given by section 185(1) of the Road Traffic Act 1988;

'motor vehicle' means a mechanically propelled vehicle intended or adapted for use on roads;

'road' means a highway or other road to which the public has access, and includes bridges over which a road passes."

This amendment would require the Chief Medical Officer to define "whiplash injury".

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

Amendment 9, in clause 1, page 2, line 3, at end insert—

"(iii) unless in respect of 4(a)(i) or (ii) the person is in a motor vehicle during the course of their employment, in which case Clause 1 shall not apply."

This amendment would exempt people suffering a whiplash injury during the course of their employment from this definition.

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."

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.

Clause stand part.

Gloria De Piero: It is a pleasure to serve under your chairmanship, Mr Stringer. With amendment 8, we seek to address the Government's perplexing lack of faith in experts and their overweening belief that their own judgment is right. In the Bill, the Government have chosen to sideline doctors and, as we will see later, judges—two groups rightly held in high esteem in our society. Apparently, the Government know better than them. Quite simply, with this amendment, we say, "This is a medical issue, so ask a doctor."

Although we have seen the same arrogance that the Government know best and a lack of respect in other areas of policy in recent years, this is the most gratuitous and egregious example I can recall. The only explanation that I can think of as to why they do not want experts involved is that they think that their knowledge is greater and better—or perhaps this is an example of the nanny state that they say they do not believe in.

The Government have chosen not to ban all compensation for whiplash, which indicates that they accept its validity as a medical condition, but they attempt to define it themselves. If they accept that it exists as a medical condition, surely it needs a medical definition. The Minister may tell me that the definition in the Bill comes from doctors. If so, might I ask who? They make no mention of any input from medical experts. Could it be that they have not mentioned their sources because the adviser in this case was all too familiar from almost every other aspect of this Bill? And might the definition of a medical condition in this Bill possibly have come from the insurers, who stand to profit enormously from this huge shift in the law?

On Second Reading in the Commons, the Chair of the Justice Committee, the hon. Member for Bromley and Chislehurst (Robert Neill), alluded to the possibility that in certain parts of the Bill the Lord Chancellor might be acting in a quasi-judicial capacity, although I note that the Minister did not respond to that suggestion. However, even if that were the case, although he might be required to act independently he would not be transformed into a medical expert, which is what is required here.

Before I talk about amendment 9 and new clause 9, can the Minister confirm that vulnerable road users will be exempted from the Bill and from the small claims limit? Also, will he define who a vulnerable road user is?

The Minister of State, Ministry of Justice (Rory Stewart): Vulnerable road users will be excluded from the Bill and from secondary measures on the small claims court limit. A vulnerable road user is anybody who is neither driving a motor vehicle nor a passenger in one; in other words, the definition includes pedestrians, horse riders, motorcyclists or anyone else on the road who is not in a motor vehicle.

Gloria De Piero: I thank the Minister for putting that on the record.

We absolutely agree that there is a need to act against insurance cheats; no one supports fraudsters. The amendment would not affect the pursuit of those who are claiming fraudulently. By accepting this amendment, the Government can still hit their target. Through this amendment, we simply want to protect those who are injured in the course of their work through no fault of their own. Before it is suggested that this somehow drives a coach and horses through the Government's intentions, we are not talking about huge numbers of cases.

Thompsons Solicitors deals with workers' injuries day in and day out. The majority of its work is for the trade unions. Just 16% of its case load consists of injuries from road traffic accidents, and of that number whiplash cases comprise less than 20% of the total. Once we eliminate the large number of these claims that are not work-related, we are left with a tiny percentage of claims related to whiplash that people have suffered in the course of their work.

I have seen no complaint of fraud levelled by the Government against workers nor any suggestion that they are anything to do with the compensation culture of which there has been so much talk, although notably Lord Young said in his report, "Common Sense, Common Safety", that in any case that view was a perception and not a reality. The Association of British Insurers, which has been very active around this Bill, has produced no examples of fraudulent claims by workers.

This amendment is an opportunity for the Government to exempt employers' liability claims from the Bill and at the same time exclude them from the small claims limit. If the Government refuse to exempt workers, are they saying that any whiplash claim is evidence of fraud, whoever it is made by? If so, why have they not banned all whiplash claims? If they refuse to exempt workers, are they saying that the police officer, the paramedic, the school bus driver or the firefighter who suffers whiplash while working hard for our communities is scamming it?

Given that the Government have exempted vulnerable road users—horse riders, pedestrians and cyclists—from both the Bill and the associated small claims changes, what is their justification for not exempting workers? Are they saying that vulnerable road users are worthy of more protection than workers? Perhaps the justification is that the cyclist, the pedestrian and the horse rider do not take out motor insurance for their road use, but neither does the professional driver. If the justification for the exemption of vulnerable road users is that they are uniquely exposed, surely the professional driver is, too? For instance, there is the police officer in a high-speed chase or the HGV driver who is on the road for eight hours a day. The reality is that the Government have exempted vulnerable road users because including them would be politically untenable.

Craig Tracey: I just do not see any reason why someone who drives as part of their employment should recover a different sum to somebody else—one of our constituents, for example—who is driving in the normal daily course of their life, because they can still claim loss of earnings. The Bill does not change that, so they can still be compensated if they lose money as a result of being unable to work.

Gloria De Piero: It would be grotesque nonsense for a cyclist or a pedestrian injured through no fault of their own to find themselves subject to a tariff and a £2,000, let alone a £1,000, small claims limit when the target is whiplash and, in turn, apparently fraud. The same applies to workers. What on earth have they to do with whiplash for the purposes of fraud? If the Government will not move on this point, the only conclusion one can draw is that there is one rule for the small number of those wealthy enough to own a horse and another for the tens of thousands who drive for a living, many of them not in well-paid jobs—say, the paramedic or the refuse collector—who run the risk of whiplash when going about their jobs.

It is deeply disappointing that the Government are sneaking through crucial parts of their changes via a statutory instrument in order to avoid this sort of scrutiny. I wish to make perfectly clear today where the Opposition stands on workers for the entire package of measures. Workers, like vulnerable road users, should be excluded from both the Bill and the small claims increases.

Rory Stewart: It is a great privilege to serve under your chairmanship, Mr Stringer. Thank you again for the serious involvement that has gone into the debate. It has been a real privilege, as somebody who is not a legal specialist, to see how many well informed and distinguished colleagues we have on both sides of the House contributing to these interesting questions of definition.

Many of the amendments we are dealing with today reflect the work of the House of Lords and, in fact, of Opposition Members of the House of Lords—Labour Members, Liberal Democrat Members and Cross Benchers—who introduced many of the clauses into this Bill, which were not originally there and which we are now discussing. With your permission, Mr Chair, I will move quickly through amendments 8 and 9 and new clause 9 and then discuss why we feel clause 1 should stand part of the Bill.

The definition of whiplash, which is dealt with in amendment 8, was placed in the Bill after extensive debate pushed by the Delegated Powers and Regulatory Reform Committee of the House of Lords. In the initial version of this Bill, we had not sought to define whiplash. The DPRRC argued carefully and at great length that it felt strongly that it was inappropriate to have legislation of this sort if a definition was not in the Bill. The Committee felt it was not appropriate for any individual, whether a Minister or a chief medical officer, to make this definition on their own. It should be made by Parliament as a whole and it should be made fully explicit.

After a great deal of debate in the House of Lords, we conceded this point. The clause was inserted and everybody—Cross Benchers, Opposition Members of the House of Lords—nodded the amendment through. It was then inserted. The reasons for this are both those brought forward by the DPRRC and, I would add, to assuage some of the concerns put forward by the Opposition. Clause 2 also allows for a review of the definition by the chief medical officer, along with others, every three years to make sure it remains in touch with medical science and medical expertise. The definition is in the Bill and not purely provided by medical experts because, as the House of Lords argued, this is a medico-legal definition. In other words, it is not simply a question for medical specialists; it relates to the operation of law and the way in which the law of tort would operate.

The final reason for which I ask that amendment 8 be withdrawn is that I am afraid it refers only to the chief medical officer for England, whereas, of course, the legislation applies to England and Wales. That is why we feel strongly that clause 2, which refers to the chief medical officer for England and the chief medical officer for Wales and, indeed, the Lord Chief Justice and the Law Society in consulting on the definition of whiplash every three years, is the appropriate way to proceed. On that basis, I respectfully ask that amendment 8 be withdrawn.

It is easy to understand why amendment 9 was tabled and that the Opposition would be concerned. Again, we would respectfully argue that the key point is that the injury has occurred and not why the individual is in the car. The question of why they are in the car would be a distinction without a difference. There are many pressing reasons why somebody might be in a car. I, like many Members here, represent a rural area. Somebody might be in a motor car, for example, because they were having to drive their child urgently to a hospital. They might be in a motor car for any number of reasons that left them with little choice but to be in the car. It would seem invidious to distinguish between them and somebody else who is in the car for the purpose of employment, purely on the basis of the injury. The key is the injury and the fact that the third party who is liable for that injury is held liable.

Jo Stevens: The Minister mentioned choice. The fact is that if somebody is driving in the course of their employment, they do not have a choice because they are doing so on the instruction of their employer. Does the Minister accept that his argument on choice is not relevant when talking about an employer liability claim?

Rory Stewart: The argument I am trying to make is that, in many ways, travelling in a motor car in a rural area is, in effect, not a choice. If you were heavily pregnant and had to get to a hospital, you would have to get into that motor car. You would have no more choice than an individual who was in a car for employment purposes. In my constituency, very sadly, there are simply not the public transport links. People are obliged to be in a motor car, whether or not they are travelling in the course of their employment. Were they to suffer a whiplash injury, travelling in a rural area through no choice of their own, because they were suffering some kind of emergency or they were having to respond, it would seem invidious that they would receive different treatment from an individual who is, for example, driving a postal van.

Ruth George (High Peak) (Lab): I, too, live in a very rural area with a great scarcity of public transport in recent years. However, the difference between a lot of drivers who drive for a living and those of us who have to drive to get around near where we live, is that drivers who drive for a living are often doing so for eight or even more hours a day. If they are in traffic, it is more likely that they will be involved in a collision with a rear shunt of the sort that creates whiplash. If they accumulate different incidents of minor whiplash, it can cause a much greater injury on the neck than a single incident. People who work for a living put themselves in this situation every day because of their employment. Often, that is their only source of employment and what they feel able to do. Will the Minister reconsider in the light of that point?

The Chair: Order. Before I call the Minister, I remind hon. and right hon. Members that interventions should be short and to the point. We can be relatively relaxed, but not too relaxed.

Rory Stewart: Thank you very much, Mr Stringer. Those two arguments were based on the question of frequency of travel and probability of an accident. Again, the key point in any form of injury claim is the nature of the injury and the liability of the third party that caused it, not the reason someone is in a car. It would be difficult to argue that somebody who travels in the course of their employment is necessarily travelling more frequently than somebody who is not. Somebody in a rural area might, for example, be commuting 5 miles to work in the morning and 5 miles back in the evening. A farmer in my constituency could be travelling between one field and another. There is no necessary reason to feel that they would be travelling more frequently than, for example, a parent taking their child to school in exactly the same area.

Arguments based on frequency or probability of impact should not be relevant. A more fundamental reason is that, in the end, the law is about the injury and the obligation that the third party who caused the injury owes to the injured person, regardless of how frequently that individual is in a car or why they are in a car in the first place. To be blunt, they could simply have gone to the car to get something from it, and could not be driving anywhere, and be struck and suffer whiplash. They would be entitled to exactly the same compensation as an individual driving that car.

Jack Brereton (Stoke-on-Trent South) (Con): Does the Minister agree that the numbers applicable to amendment 9 would be negligible because most of the claims would be against a third party, not the employer?

Rory Stewart: Yes, I agree, but the key point is the injury, not why someone is in the car. This is a distinction without a difference.

Bambos Charalambous (Enfield, Southgate) (Lab): The Minister mentioned children. I am conscious that children are not regarded as vulnerable road users. They would still need to go to court and have infant settlements made in their name. What consideration has been given to children who are injured in an accident through no fault of their own, obviously, and who have to go to court for a settlement?

Rory Stewart: In this regard, it is correct that the age of the individual within the motor car is not relevant within the law in assessing the injury, except in so far as the injury is specific to the age of the individual.

9.45 am

Scott Mann (North Cornwall) (Con): The Minister makes an excellent point about rural areas. Many of my constituents have to travel for at least two hours to visit a GP or a hospital. The point I make is about the frequency of travel. I used to work for Royal Mail, driving for eight hours a day. My driving skill was much higher then than currently. Surely, such a person is less likely to have an accident because they are on the road more?

Rory Stewart: The key point, which goes against both Government and Opposition Members, is not the likelihood of having an accident. That should not affect the level of compensation that someone receives. That should be relative to one thing only: the nature of the injury and the prognosis. It should not be relative to why someone is in the car, how well or how frequently they drive or why they are driving. On that basis, I politely ask that amendment 9 be withdrawn.

New clause 9 reiterates some of the arguments in amendment 9; in other words, it focuses on the question of people injured during the course of their employment. However, it also references vulnerable road users. I have attempted to argue the relevance of someone driving a vehicle in the course of their employment in our discussion on amendment 9. On vulnerable road users, we respectfully request that new clause 9 be withdrawn for the reason I gave in my intervention on the hon. Member for Ashfield—vulnerable road users are already exempted by the Bill, so new clause 9 will be otiose.

On that basis, I respectfully ask that clause 1 stand part. This was a good and serious reform introduced with strong cross-party support by the House of Lords, driven by the DPRRC, which provides a much more accountable, transparent and predictable definition of whiplash to guide the legislation. We owe the Lords a huge debt of gratitude for that. We ask, on the basis that Members of the House of Lords from the Labour party, the Lib Dems, the Cross Benches and the Conservative party all agreed to it, that clause 1 stand part of the Bill.

Gloria De Piero: I have listened to the Government's arguments, but do not accept them. The Bill's objective is to reduce fraud. I have not heard anybody suggest that workers injured in the course of their employment are scammers. However, I have heard from Labour Back Benchers that workers drive all day and do not have a choice about whether to drive. I will divide the Committee on the amendments.

The Chair: Before the hon. Lady concludes, does she wish to divide the Committee on amendments 8 and 9?

Gloria De Piero: Yes.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 1]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	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: 9, in clause 1, page 2, line 3, at end insert—

'(iii) unless in respect of 4(a)(i) or (ii) the person is in a motor vehicle during the course of their employment, in which case Clause 1 shall not apply.'—*(Gloria De Piero.)*

This amendment would exempt people suffering a whiplash injury during the course of their employment from this definition.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 2]

AYES

Charalambous, Bambos	Onasanya, Fiona
De Piero, Gloria	Reeves, Ellie
George, Ruth	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 7.

Division No. 3]

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	Stevens, Jo
Hanson, rh David	

Question accordingly agreed to.

Clause 2 ordered to stand part of the Bill.

Clause 3

Damages for whiplash injuries

Gloria De Piero: I beg to move amendment 10, in clause 3, page 3, line 21, leave out "two years" and insert "twelve months".

This amendment would limit the tariff to injuries lasting less than one year.

The Chair: With this it will be convenient to discuss amendment 11, in clause 3, page 3, line 22, leave out "two years" and insert "twelve months".

This amendment would limit the tariff to injuries lasting less than 1 year.

Gloria De Piero: The Bill says that if someone's whiplash injury goes on for up to two years, or if it is thought that it might go on for up to two years, or if it goes on for up to two years because of their failure to "mitigate" their loss—that is, act to get themselves better by taking up an offer of physio, for example—they are eligible for fixed-tariff damages only.

Since 1999, special damages have been exempted from the calculation of whether a claim falls within the small claims limit. I will take this opportunity to nail down the ongoing argument about when the last increase in the small claims limit was. The Government say 1991, which is disingenuous and borders on the dishonest. I can provide quotes from the White Book if the Minister would like to see them. The limit has remained at £1,000 since 1991 but the method of calculating whether a claim falls within that limit changed in 1999 after the Woolf report. If any doubt remains, the evidence can be found in extracts from the White Book before and after the change.

From 1999, a definition of what was included in the £1,000 limit excluded special damages. It contains a helpful example that leaves no doubt that only general damages should be considered to see if a case is within the limit, and special damages are exempted from that time. I am told that special damages in a case add 20% to a claim on average, which means that the change in 1999 increased the limit by 20%. I shall assume that we have now laid that matter to rest and that any calculation from now on will be from 1999, not 1991. We may argue about the appropriate inflation index, or even the percentage increase from the changes made, but there should be no argument about the date from which it applies.

The impact of the clause is that someone could be off sick and losing wages, or having to work reduced hours, because of their whiplash complaint for up to two years before they are taken out of tariff damages. The Office for National Statistics says that the average wage in the UK was £27,200 in 2016-17, so an injured worker could lose more than £50,000 in earnings and still be subject to tariff damages. Someone on the minimum wage of £7.38 who works 35 hours a week for 48 weeks a year might earn £12,400, so they could have no income at all to support themselves and their family for up to two years.

Ruth George: Does my hon. Friend agree that the proposed tariff takes no account of victims' circumstances? A whiplash injury will have a greater effect on someone

in a manual job, who is less likely to be able to perform that job, than someone in a sedentary position, who is more likely to be able to continue to work through minor injury. Someone in a manual job is also likely to have lower wages and be less able to sustain a certain level of loss.

Gloria De Piero: My hon. Friend is completely in touch with the reality of life for working people. That is the argument that we seek to make. In tabling amendments 10 and 11, which bring that two years down to 12 months, we concede that people recover and that that can take time. We are not suggesting a short period, but a reasonable one, and we hope that the Government will concede that it is fair and proportionate.

On amendments 12 to 16, it is proposed that the Lord Chancellor should set the tariffs for pain, suffering and loss—

The Chair: Order. Those are amendments to the next clause—sorry.

10 am

Bambos Charalambous: The issue of tariffs has been set out in an arbitrary way in the Bill. The criminal injuries compensation scheme was set up in 1991. Since 1995, the scheme has set the damages received for a criminal injury at £1,000 for whiplash that lasts from six to 13 weeks. That was the same figure in 2001, when the scheme was updated, and again in 2008 when the scheme was updated, and even in the current scheme which has not been updated since 2012: the damage for whiplash is £1,000 for more than 13 weeks. That compares unfavourably with the tariff that has been set—£470 for whiplash—so there are two inconsistent schemes operating under Government auspices. Someone is better off if they are injured by another person in criminal activity—for example, during dangerous or careless driving—and then receiving money from the Government. If they are injured negligently in a car accident they would receive far less. It should not be the case that someone receives far less if someone else commits a criminal offence against them than they would as the result of an incident that has occurred through negligence.

Jo Stevens: Does my hon. Friend agree that the Bill is creating tiers of victims of personal injury, so there will be different rates for people injured in Scotland, the workplace and road traffic accidents, and as a result of a criminal act?

Bambos Charalambous: My hon. Friend makes an excellent point. This leads to my next point: the way damages are calculated by judges has evolved over time through the judicial colleges. They have years of experience, yet what we have here is the Lord Chancellor plucking figures out of the air just to make things fit and to satisfy the insurance companies. That is not right. There has to be consistency, and a consistent approach. The measure makes no sense at all, and we should not be a situation in which tariffs are set arbitrarily by the Lord Chancellor that are inconsistent with other parts of the law and even other schemes within the Ministry of Justice.

Ellie Reeves (Lewisham West and Penge) (Lab): I shall speak to amendments 10 and 11, which have been tabled by Opposition Mems. I stated on Second Reading that Opposition Members had expressed deep concern about the implications of the Bill and the policy agenda that the Government were operating under the cover of cracking down on fraudulent claims. Fraudulent claims are wrong, but we are not in the midst of an epidemic of fraudulent claims as Ministers would have us believe. In fact, insurance industry data show that of all motor claims, 0.17% were proven to be fraudulent in 2016. This is an extremely low percentage.

Craig Tracey: Does the hon. Lady accept that the figure of 0.17% relates to all motor claims, not just those relating to personal injury?

Ellie Reeves: The point about fraudulent claimants is that it is a very low percentage, and the insurance industry has reporting duties. No insurance company has stated that fraud is a material risk. It is not correct to suggest that there is an epidemic of fraudulent claims. Such claims should be tackled, but the way to do that is to go after those who commit fraud rather than innocent victims of road traffic accidents. The implementation of the Government's package of measures in this Bill and the forthcoming changes to the small claims limit would eviscerate access to justice for many people with genuine injuries. In its current form, the Bill would replace the long-standing and established Judicial Studies Board guidelines with a rigid tariff that would undermine judicial discretion and leave injured claimants worse off.

I agree with the conclusions of the Access to Justice group in its written submissions to the Committee, which state that the increase in the small claims limit and the introduction of a tariff system is punitive and arbitrary. The draft tariff system presented by the Ministry has shown an overwhelming reduction in payments for pain, suffering and loss of amenity for whiplash injuries. In comparison with the 2015 average pay-outs under the existing guidelines, injuries lasting 19 to 24 months would be compensated 13% less, and those lasting 16 to 18 months would be compensated 29% less, while injuries lasting 13 to 15 months would be compensated 45% less. I note that Government amendment 4 would ensure the Lord Chancellor consulted the Lord Chief Justice before proceeding with regulation changes, but it is not satisfactory and would not see access to justice delivered for injured claimants. It misses the point of what is damaging about the move from judicial guidelines.

The Bill classifies injuries dealt with by the proposed tariff scheme as minor. I am not sure by whose definition a minor injury is one that can last up to two years. By most standards, it is surely a significant injury, and I welcome the shadow Front-Bench amendments that would see injuries of more than a year removed from the scope of the tariff system. To grade an injury of up to 15 months as minor and restrict damages to nearly 50% of what they are currently is a clear, ideologically-driven assault on access to justice.

Moreover, the evidence submitted to the Committee by the Carpenters Group showed that 15% of road traffic accident injuries lasted for more than 12 months. We cannot insist that the punitive measures invoked by a move to a tariff system affect the ability of a substantial number of people to access justice. Further, on the

[Ellie Reeves]

secondary legislation changes to the small claims track from £1,000 to £5,000 for road traffic-related personal injury claims and to £2,000 for all other types of personal injury claim, the package of measures, of which this Bill forms part, will see thousands of injured people fall out of scope for free legal advice and potentially denied justice. Current predictions are that around 350,000 injured people will be put off pursuing a claim for an injury that was not their fault. Access to justice is on the line for thousands of genuinely injured people.

Jo Stevens: Does my hon. Friend agree that the impact of the Bill will mean that we are likely to see what happened in the employment tribunals when fees were introduced and there was a drop-off of 90%?

Ellie Reeves: That is absolutely right. If the changes go through, hundreds of thousands of people will simply not be able to pursue claims with legal representation and will be deterred from doing so. The Government's introduction of employment tribunal fees was found by the Supreme Court to be illegal because they denied people access to justice, and we seem to be going down the same route with the Bill's further attacks on access to justice and with the related small claims measures. Amendments 10 and11 should be adopted as they provide much needed strength to the legislation and will help protect access to justice for victims of accidents.

The Chair: Order. Minister, as you will have noticed, we have strayed into a stand part debate, so I do not intend to have a separate one. If the Minister wishes to say anything in response, now is the time.

Rory Stewart: I shall focus narrowly on amendments 10 and 11, which focus on the question of reducing the period from two years to 12 months. Perhaps when we move on to amendments 12 to 15, we can talk a little more about the Judicial College guidelines and the question of tariffs.

The hon. Member for Lewisham West and Penge questioned where the word "minor" came from, which is important. It comes from the Judicial College guidelines. The idea that injuries under two years rather than under one year should be separated reflects the process within the Judicial College guidelines and its definition of what constitutes a minor injury. Clearly, that is a legal definition; in no way does the Judicial College intend to suggest that somebody suffering two years of injury is not suffering considerable pain, distress and loss of amenity. It is simply used to make a distinction between an injury that passes over time and an injury that is catastrophic and lasts throughout one's life. In no way is it intended to denigrate the experience during the two years.

We feel strongly that it is important for the Bill to remain consistent with the definitions within the Judicial College guidelines. In the absence of that, there would be the first problem of imposing a very unfair pressure, which could inflate, on GPs to push through the one-year barrier, but there is a more fundamental problem. Were we to accept the amendments, they would not only take about 11% of cases out, but mean that the provisions on the requirement for a pre-medical offer would then be removed for the one to two-year period. We would suddenly end up with people able to proceed without medical reports for the one to two-year period, which would undermine a lot of the purpose of the Bill.

Ruth George: Surely it is up to insurance companies whether they choose to make pre-medical offers. It is entirely in their hands whether to do so. Whether or not it can be done is for the applicant but the decision is in the hands of the insurance companies; it should not be in the hands of legislation.

Rory Stewart: The hon. Lady puts her finger exactly on the current situation. Currently, the decision is in the hands of the insurance companies. The argument in the legislation is to take that decision away from the insurance companies; it will prohibit them from making an offer without a medical report. That was supported by the Opposition as well as the Government, and that is exactly the intention of the legislation. That is another reason why we will resist amendments 10 and 11.

Gloria De Piero: Does the Minister accept that, although the small claims limit has remained at £1,000, the way that was calculated changed in 1999?

The Chair: Order. Can I just say to the hon. Lady that the Minister had sat down? It is appropriate to intervene when the Minister is on his feet. If the Minister wishes to make a statement in response, I will take it.

Rory Stewart: This is a good challenge. It is not, respectfully, relevant to amendments 10 and 11, but relates to the question of something that will be done by the Procedure Committee, if it were to proceed through secondary legislation—a proposal to raise the limit from £1,000 to £2,000. The hon. Lady is correct that in 1999, changes were made to how the £1,000 limit was calculated, which adds an extra level of complication.

There is also a debate between us on whether CPI or RPI should be used to move that initial 1991 definition and, if so, to what amount. Should the hon. Lady wish to proceed, that is appropriate—not for this amendment or the Bill, but for subsequent measures.

Gloria De Piero: We do not intend to divide on this but we will raise these issues again on Report and Third Reading.

The Chair: Does that apply to amendments 10 and 11?

Gloria De Piero: It does, and I thank you for your advice. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Gloria De Piero: I beg to move amendment 12, in clause 3, page 3, line 26, leave out from "amount" to end of line 5 on page 4 and insert

"determined in accordance with the 14th edition of the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases or any subsequent revision to these guidelines."

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

Amendment 13, in clause 3, page 3, line 33, leave out subsections (3) to (7).

This amendment, together with Amendments 14 to 16, would replace the tariff with the Judicial College Guidelines for the assessment of damages.

Amendment 14, in clause 3, page 4, line 7, leave out "to which regulations under this section apply".

See the explanatory statement for Amendment 13.

Amendment 15, in clause 3, page 4, line 9, leave out "(subject to the limits imposed by regulations under this section)".

See the explanatory statement for Amendment 13.

Government amendment 4.

Amendment 16, in clause 3, page 4, line 18, leave out subsection (11).

See the explanatory statement for Amendment 13.

Gloria De Piero: The Bill proposes that the Lord Chancellor, rather than judges, should set the tariffs for pain, suffering and loss of amenities. In view of the opposition from those who are judicially qualified and the upholders of the law, can the Minister not see the sense in the point that no politician should be making decisions for which the judiciary is rightly responsible?

To go down that path sets a dangerous precedent. It may be justified by Government when they are the paymasters in the criminal injuries compensation scheme, for example, but in any other sphere of injury compensation it takes away an integral role of the judiciary and introduces another layer of bureaucracy.

The current calculation of damages by both sides—claimant and defendant—is made using the Judicial Studies Board guidelines. Those are based on what judges have awarded in the past—on what is fair. They are used by the parties to guide settlement out of court and by judges in court at trial. That makes the JSB the best guide to what is just and proper in terms of damages awarded. The Government are throwing all that out in favour of the Lord Chancellor—someone with far less expertise and a political agenda.

A lot of people would say that the JSB guidelines are what is just, or that they represent justice for the victim, although I have my doubts about that. After all, although special damages for losses and expenses can put someone back in a position financially, as if the injury had never occurred, general damages can only apologise for what someone has been through and may continue to suffer; they cannot make anyone better. That is at least, for now, something that the courts decide is appropriate; it is not a figure plucked out of the air.

The Government's attitude is, "What would experts know? It might be a basic tenet of English common law that people are compensated fairly and judges are best placed to assess that but, so what? Let's rip it up!" That is to ignore Lord Woolf, who said:

"The effect of whiplash injuries, with which we are concerned, can vary substantially according to the physical and mental sturdiness of the victim. This means that the appropriate amount of damages for a whiplash injury can vary substantially…I suggest they are not suited to a fixed cap, as proposed by the Government."—[*Official Report, House of Lords,* 12 June 2018; Vol. 791, c. 1593.]

10.15 am

They are also ignoring another former Law Lord, Lord Hailsham, who said:

"it seems admirable that we should put into statute a requirement that the Lord Chief Justice be consulted. If the Minister says, 'but of course he will be', all I can say is that Ministers sometimes have a curious habit of forgetting the obvious and their obligations."—[*Official Report, House of Lords,* 12 June 2018; Vol. 791, c. 1598.]

What did experienced practitioners from the Government's own Back Benches, such as Baroness Berridge, say?

"I have met many a claimant for whom the difference in damages now proposed by the introduction of the tariff, taking some damages from four figures—£1,200 or £1,400—down to the likes of £470 is a significant matter for many people's incomes up and down the country. I cannot have it portrayed that this might not make a great deal of difference to many ordinary people in the country."—[*Official Report, House of Lords,* 12 June 2018; Vol. 791, c. 1611.]

"Oh," say the Government, "and we will ignore the Justice Committee too." The Justice Committee could not have been clearer in its criticism regarding access to justice through this and any number of other measures in the Bill. The JSB guidelines allow for an appropriate degree of flexibility and are, as the name suggests, simply a guide. The Judicial College regularly revises the guidelines, with the latest having been published just last year. The Bill removes the judicial responsibility for the assessment of damages and reduces the damages that will be received by honest claimants, because of the activities of a tiny proportion of dishonest ones. That goes against our fundamental principles of justice but, as we know, this is not really about justice—it is simply about saving insurers money.

Ruth George: As someone who has suffered whiplash, I can speak about the amount of pain and suffering it causes and its impact on a victim's life. As my hon. Friend said, those things can vary from person to person and from accident to accident, but an injury to the ligaments at the bottom of one's neck, which carry the head all day long, can have a profound effect on someone's being able to lift anything at all.

At the time of my injury, I found it very difficult to lift my young baby. When I did so, I was in considerable pain for a long time thereafter, and the problem has continued. I am no longer able to lift very much because it gives me a severe migraine. That is the issue we are considering for people with whiplash.

Rory Stewart: If an injury continued, with migraines more than two years after the incident had occurred, it would not be classified as a minor one under the Bill and would not be subject to the tariffs. It would go through the normal court procedures, via a fast track, and the award would be made by judges.

Ruth George: Absolutely, but what I was going to say was that my injury was then exacerbated by physio. It might have cleared up within two years—I had hoped that it would and for most people it does—but it takes a long time and a lot of suffering to get to that point.

For the vast majority of people who suffer whiplash, and particularly when it is of longer duration where there is significant medical evidence—MRI scans and extended x-rays—the Bill, as the Minister said, will prevent pre-medical offers from being made. There will have to be medical reports showing what has been happening to someone's neck and the impact on them.

[Ruth George]

It does not make sense that we are considering introducing a one-size-fits-all tariff at a very low rate that takes no account whatever of the amount of pain and suffering, only its duration. It takes no account of the impact on the victim's life, including on their work and home life. If someone is a carer, works in a nursery or has another manual job, the impact on them will be far greater than on someone with a similar injury who does not have to perform such tasks.

Rory Stewart: This is an important and serious issue, so I wish to clarify something that I am sure all hon. Members on both sides of the House already understand. The legislation purely relates to general damages, which cover pain and loss of amenity. All the examples that were given, such as loss of earnings or being unable to perform a particular job because of whiplash, would be covered by special damages and are not affected by the legislation.

If an individual had an injury that prevented them from going to work, that loss of earnings would be covered under a separate special damages claim. The legislation relates purely to the subjective judgment on the pain experienced—not the physio costs or the loss of earnings. That is all unaffected by the legislation.

Ruth George: Those of us who have worked in the trade union movement will know that compensation for loss of earnings does not always equate to the amount that somebody loses and the impact on their job. Many employers have schemes whereby anyone who is off sick for more than a certain number of days is unable to return, or suffers some other detriment. With many schemes, people have to survive on sick pay. Even if the difference comes to a significant amount, it takes a long time for that to come through. That feeds into the impact not just on somebody's work, but on their life. The judiciary can take account of that when they set an award, but this tariff takes no account of the amount of pain and suffering—only the duration—or of the impact on a person's life at the time of the injury.

Bambos Charalambous: Is my hon. Friend aware that under the criminal injuries compensation scheme, which the Lord Chancellor sets the tariff for, there has been no increase for whiplash claims since 1995? I fear that that is what would happen if the tariff scheme for whiplash was set by the Lord Chancellor.

Ruth George: My hon. Friend makes an excellent point. I was dismayed by the huge cuts in 2012 to the criminal injuries compensation scheme, but the amount for whiplash remained at £1,000. Even this Government, who were looking to remove a vast proportion of the costs of the criminal injuries compensation scheme, did not seek to change the tariff for whiplash, because they accepted that £1,000 for a 13-week injury was a fair amount of compensation, even under the criminal injuries scheme paid for by the Government.

However, the Government are now proposing that insurance companies that receive far more than the amount of tariffs per year from many motorists should have to pay out less, and that for a six-month injury someone would receive perhaps £450. For many motorists an insurance premium for six months is more than £450, begging the question: what will they pay insurance for? Where is the value for money, and where is the fairness to victims of accidents in today's proposals?

Rory Stewart: I thank the hon. Members for Ashfield and for High Peak for their powerful speeches. Before I move on to amendments 12 to 15 and Government new clause 4, I will clarify some points raised by the hon. Member for High Peak.

Many things are covered by insurance besides the ability to get compensation for whiplash. It would be absurd if the entire purpose of an insurance scheme was simply to give someone an annual pay-out for whiplash, and they paid £450 for that insurance when such claims were capped at £450. The hon. Member for High Peak is right that that would be an absurd system, but insurance covers many things besides whiplash claims. In fact, we are trying to move to a world in which the majority of someone's insurance would cover things other than their whiplash claim.

This goes to the heart of the discussion so far, and to a point made by the hon. Member for Lewisham West and Penge. Fundamentally, the number of road traffic accidents has decreased by 30% since 2005. At the same time, cars have become considerably safer: headrests and other forms of restraints have made it much safer to be in a motor car than it was in 2005. During that same period, whiplash claims have increased by 40%. Whether we define these as fraudulent or simply exaggerated, there is no doubt of the trend. There are fewer road traffic accidents and cars are safer, yet whiplash claims are going up.

David Hanson: We heard a number times in the Justice Committee, when taking evidence from the Minister's colleague, Lord Keen, the question of the word "fraudulent". Can the Minister quantify for this Committee how many fraudulent claims he expects there to be on an annual basis?

Rory Stewart: The answer is that judging fraud in whiplash is almost impossible except statistically through the measures that I have used, because for minor whiplash claims of the sort that are covered in the tariff—not the type of whiplash injury that the hon. Member for High Peak experienced—there is no way of proving whether an injury has occurred. That is why *The New England Journal of Medicine* has done research on this.

There has been interesting research on what happens if someone sits in a motor vehicle with a simulated accident and a curtain behind them, so that they are unable to tell whether the accident has occurred or not. It shows that 20% of people experienced whiplash without the collision actually occurring. This is clearly a complex medico-social phenomenon. The polite way of putting it is that there is an asymmetry of information. It is close to impossible for an insurance company to prove that an individual did not experience whiplash, particularly at the three-month rate.

David Hanson: Could the record show, Mr Stringer, that the Minister, like his colleague in the House of Lords, could not indicate how many claims per annum are fraudulent?

Rory Stewart: I am very happy for the record to say exactly that, provided we explain why that is the case. The nature of this injury is such that it is impossible to know, in most cases, whether the individual is making a fraudulent claim. In the case of the kind of injury experienced by the hon. Member for High Peak—a much more serious injury—it is possible to detect things through MRI scans, but for the majority of injuries that we will be talking about in the three-month to six-month period, no physical evidence can be adduced one way or the other.

In the end, the qualified GP has to sit down and reach some kind of judgment, through discussion with the individual and gathering the evidence of injury, that the balance of probabilities holds that the individual is experiencing subjective pain, but it is impossible to prove that through the kinds of medical evidence that one would adduce in a normal medical case.

Ruth George: An MRI scan will identify where there is soft-tissue injury. At any stage, the point is whether it is worth going for an MRI scan. By reducing the tariff to such a small amount, GPs in many instances, particularly up to 12 months, may well deduce that it is not worth referring a patient for an MRI scan to produce that medical evidence. The tariffs proposed will reduce the amount of medical evidence produced and may well increase the number of fraudulent claims, because there will be less requirement for medical evidence such as an MRI scan.

Rory Stewart: Many whiplash injuries are not detectable on an MRI scan. Many people are currently receiving compensation for whiplash and have experienced whiplash injury, which cannot be caught on an MRI scan. The GPs who will be asked to decide whether someone has had a whiplash injury will not be holding them to the standards of an MRI scan. Were they to do so, we believe that the number of whiplash injuries would decrease very dramatically. Nothing like 550,000 injuries a year would be recorded on an MRI scan, particularly in the three-month to six-month period.

Jo Stevens: I practiced in this area for nearly 30 years. Every day, I saw the impact of motor accidents and soft-tissue injuries on young and old people from all sorts of backgrounds. What the Minister is saying is absolute nonsense. GPs are able to determine whether someone has suffered an injury—they have been doing so for many years and will continue to do so for many years. This is simply an excuse to increase insurance companies' profits.

10.30 am

Rory Stewart: There is a fundamental issue—we may get on to it later in the debate—about the different understanding of insurance companies on opposite sides of the House. Two arguments are put forward. The hon. Member for Jarrow (Mr Hepburn), for example, suggested in his speech in the House that the insurance industry worked on a binary basis—that the objective of the insurance industry was simply to increase the premiums as much as possible to sky-high levels, and reduce payouts.

We would argue, as does the Competition and Markets Authority, that there is a third crucial factor—competition—in understanding the impact of the legislation. What prevents premiums endlessly going up and an insurance companies never paying out is that people simply would not go to that insurance company and would go elsewhere. The insurance markets were very carefully studied by the Financial Services Authority and the Competition and Markets Authority. They are confident that 80% of the associated savings in costs will be passed on to consumers through the mechanism of competition and agencies advertising to get customers.

One way in which we seek to demonstrate that point publicly is through inserting an amendment to get the insurance companies to come forward with clear information on the amount of money they have received and the amount they have paid out. We can then have an open debate in Parliament to discover which of us is right—whether the Competition and Markets Authority is right or whether, as the hon. Member for High Peak and the hon. Member for Jarrow argue, it is a purely binary process.

Bambos Charalambous: Is the Minister aware that the insurance companies settle the vast majority of whiplash claims without going to court and pay up without even trying to fight the claims? If the Minister is correct that the claims are hard to detect, why are the insurance companies not fighting more of them and taking people to court?

Rory Stewart: The answer is exactly for that reason. Because they are so hard to detect, they are almost impossible to fight, and therefore insurance companies have historically made that decision. They often do not even get a medical report because it hardly seems worth while to do so. When somebody comes forward with a whiplash claim, the procedure has often been to settle without going to court in order to reduce the legal fees and the associated costs, exactly because it is incredibly difficult.

Whiplash claims are extremely controversial medically. A lot of articles are written about this—I quoted the *New England Journal of Medicine* in the House, which is particularly stark. Cassidy's article argues very strongly that the absence of compensation for pain and loss of amenity is associated with a much improved prognosis and reduced duration in the whiplash injury itself. In other words, the *New England Journal of Medicine* points to the fact that this is not purely a medical phenomenon. It has social and legal dimensions, of which compensation is a part.

Gloria De Piero: Is the Minister familiar with the quote from the head of the City of London police insurance fraud enforcement department? He said in the *Insurance Post*:

"It would be wrong to say that I believe there is a compensation culture or an insurance fraud culture in general."

Another expert denied?

Rory Stewart: Such arguments would be more powerful if Opposition Members could explain why the number of whiplash claims has gone up by 40% since 2005, when the number of motor vehicle accidents has declined by 30% and cars have got much safer? A lot of things

[Rory Stewart]

have been introduced in cars since 2005. Nearly 85% now have the safety features specifically designed to reduce whiplash that only 15% had in 2005. There are fewer accidents and much better protection around the individual.

Ruth George: Will the Minister give way? Does he want an answer?

Rory Stewart: Absolutely. Let me just articulate the question and the hon. Lady can perhaps answer it exactly. Why has the number of road traffic accidents reduced dramatically—cars have got safer so people are much less likely to experience injury, and there are fewer accidents—yet the number of claims has gone up by 40%? Why is she confident that the operation of claims management companies is not associated with the extraordinary increase in whiplash claims? Presumably, we have all received calls from claims management companies. An average of 600,000 claims are made a year—almost one in 100 citizens in the United Kingdom make a whiplash claim. How can that be possible when the number of road traffic accidents is reducing?

Ruth George: The Minister makes an excellent argument for regulating claims management companies properly. He has made no argument for blaming and making innocent victims of road traffic accidents. On Second Reading, we heard that many people are phoned by claims management companies. In many instances, their details are given out by the insurance companies to whom they make an honest claim. The insurance companies, which are linked to those claims management companies, give those details. If the Minister wants to act on the problem of whiplash, he should look at those claims management companies and their tactics of cold calling, as the Bill does in banning pre-medical offers, and end the links between insurance companies and claims management companies, rather than making innocent victims suffer.

Rory Stewart: With permission, I will proceed. There is still no answer to why the number of claims has risen, particularly when the number of road traffic accidents has dropped. The hon. Lady suggested that she would answer the question but did not. I look forward to someone answering that question, but I would like to make progress.

David Hanson: In Committee, it is normal to take interventions. As a Minister I never refused an intervention in Committee. I hope the Minister will accept this intervention. He mentioned the increase in claims being made. How many of those claims does he expect are fraudulent? That is the key. If they are not fraudulent, they are genuine claims, whether they are through a claims management company or from an individual.

Rory Stewart: The statistics suggest very strongly that what happened to an individual in a motor car in 2005 would, on average, have been much more severe than what happens to an individual in a motor car in 2018. A 30% reduction in the number of road traffic accidents, combined with the improvement in safety procedures, would suggest that an individual having a motor vehicle accident today would be considerably less likely to suffer whiplash than would have been the case in 2005. Therefore, the fact that the number of claims has increased by 40% is a very peculiar anomaly that requires explanation, which nobody has produced so far. Will somebody please explain why the number of claims has increased by 40% when there has been no physiological change in the human body since 2005 and motor cars have, if anything, got safer?

David Hanson: The Minister still has not answered the question. How many of those additional claims does he suggest are fraudulent? If a claims management company takes forward a claim, there might be issues about the claims management company but, ultimately, if the claim is not correct it will not be approved. Therefore, how many of those extra claims are fraudulent? He needs to tell the Committee.

Rory Stewart: In 2016, there were 7,572 confirmed fraudulent motor claims and 58,576 suspected claims, resulting in 66,147 detected motor fraud claims. However, my point goes much wider. Because of the asymmetry of information and because it is impossible to prove whether the injury has occurred—particularly at the three to six-month period—it is impossible to put a precise number on it. We can be confident, through the soaring inflation in the number of these claims, that many are exaggerated, to put it mildly, even though we cannot prove the exact number beyond the 66,147 that are actually fraudulent.

Craig Tracey: I spent 20-odd years on the frontline dealing with these types of claims and acting on behalf of the client rather than the insurance company. For genuinely injured people, we found that financial compensation was a minor consideration in the overall claim. They wanted to feel better and get put right. Is it not right that insurance companies should focus on rehabilitation, treatment and proper diagnosis rather than worrying so much about value?

Rory Stewart: I absolutely agree. It is very important to keep reminding the House that we are focusing on general damages, not special damages. In other words, we are focusing on what ultimately must be a difficult, subjective judgment about the level of pain that an individual experiences, and not loss of earnings or other forms of treatment.

Robert Courts: I repeat my declaration that I practised in this area until I was elected two years ago, and I remain a door tenant at my chambers. Having practised in this area for more than 10 years, I too have experience. Does the Minister accept that there is a danger that the Committee is confusing two issues? According to the guidance notes, the manifesto gave a commitment to

"reduce insurance costs for ordinary motorists by tackling the continuing high number and cost of whiplash claims."

This is not solely about fraud. It is also about perfectly genuine claims where the costs have become very expensive. Are the Government seeking to provide redress for those who have been injured, but to do so in a cost-proportionate manner?

Rory Stewart: Fundamental to decisions that the Ministry of Justice has to make under any Government is the need to think seriously about balancing different

types of interest—in this case the interests of the claimant, the third party and the taxpayer, as well as those of road users and people who take out motor insurance. It is therefore appropriate for us to question the overall cost of the system, and—particularly for motorists in rural areas—the fact that the premium could be as much as £35 a year extra, and considerably more for a young driver, because of the hundreds of thousands of people each year who make whiplash claims.

Gloria De Piero: Insurers have never mentioned fraud as a material risk in their financial report. If it were such a serious concern, would they not be required to report it to the Financial Reporting Council?

Rory Stewart: The question of what constitutes a material risk in a financial report is driven primarily by the financial stability of the company, so the question of whether fraud is defined in that way relates purely to the cost of the fraud. The question is a financial one, not one of honesty.

Amendments 12, 13, 14 and 15 relate to the Judicial College guidelines. This debate has had quite a long consultation period—it has been going on for more than three years. We are grateful to the Association of Personal Injury Lawyers and many others, including the Law Society, who have fed in to this consultation, and we have arrived at a compromise. The Opposition were extremely uncomfortable with the initial proposals, and we have made a lot of concessions—that is why I will be asking hon. Members to withdraw their amendments.

The initial proposals by the Chancellor of Exchequer in his Budget speech were to remove general damages entirely, and for no compensation to be offered for pain, suffering and loss of amenity. There was also a proposal to have no judicial involvement whatsoever in setting levels of compensation, and the third element of controversy was about whether it was appropriate to have tariffs at all.

We have made significant concessions on the first two points—in the House of Lords for the second proposal, and before that stage for the first proposal. Under pressure from many people, including Opposition Members, we have accepted that there should be general damages, and that principle has been reinserted. Secondly—this is why I will ask for support for clause 4—we will push ahead with the proposal that the Lord Chief Justice should be consulted on the level of the tariffs. That brings in the judiciary so that it will not be done purely by the Lord Chancellor, which brings us to the question of whether there should be tariffs at all.

A tariff system is relatively unusual in English common law although, as the hon. Member for Enfield, Southgate pointed out, an equivalent exists for criminal injury compensation cases, which creates some paradoxes and contradictions. At the moment, someone who suffers a criminal injury could receive a different level of compensation than if they suffer exactly the same injury without a criminal act. The same is true if someone in a motor vehicle suffers from a terrorist attack. The Government could give someone considerably more compensation if they are the victim of a terrorist attack than if they suffer the injury in a different way.

However, tariffs are not unusual: they have been introduced very successfully in Italy, France and many other European jurisdictions. Under the proposals in the Bill, there will be judicial discretion on the tariffs. That is judicial discretion that we have consulted on closely and will return to under later amendments. It is in line with what the European Court of Justice believes should be the appropriate degree of judicial flexibility when applied to a tariff system.

10.45 am

Bambos Charalambous: Let us assume for a moment that we accept that the tariff system is the right one. Does the Minister not agree that the inconsistencies are just unacceptable and that there needs to be a review of the levels that have been set out, because there seems to be no rhyme or reason to them? Can he explain to me how the levels have been arrived at? I cannot see where they have come from.

Rory Stewart: This goes to the heart of the concerns that the judiciary raised when the first criminal injury compensation schemes were introduced and, indeed, when compensation for a terrorist act was introduced. As the hon. Gentleman suggests, it is perfectly legitimate to question whether, within the tradition of tort in the English common law, it is appropriate to distinguish between an injury suffered at the hands of a criminal or a terrorist and an injury simply suffered at the hands of another third party who is liable, but that is a much deeper philosophical jurisprudential debate than I think we can proceed with here. With that, I respectfully request that the amendments be withdrawn or not pressed and I ask the Committee to support Government amendment 4.

Gloria De Piero: I am afraid that I am going to disappoint the Minister. We feel so strongly, because we are led by the independent experts, by the Select Committee on Justice and by some people in the Minister's own party, whom I quoted earlier, that we believe that the Committee needs to divide on amendments 12 to 16.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 4]

AYES

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

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: 13, in clause 3, page 3, line 33, leave out subsections (3) to (7).—*(Gloria De Piero.)*

This amendment, together with I 14 to 16, would replace the tariff with the Judicial College Guidelines for the assessment of damages.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 5]

AYES

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

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: 14, in clause 3, page 4, line 7, leave out:

'to which regulations under this section apply'.—*(Gloria De Piero.)*

See the explanatory statement for Amendment 13.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 6]

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.

Amendment proposed: 15, in clause 3, page 4, line 9, leave out

'(subject to the limits imposed by regulations under this section)'.—*(Gloria De Piero.)*

See the explanatory statement for Amendment 13.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 7]

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.

Amendment made: 4, in clause 3, page 4, line 17, at end insert—

'( ) The Lord Chancellor must consult the Lord Chief Justice before making regulations under this section.'.—*(Rory Stewart.)*

This amendment requires the Lord Chancellor to consult the Lord Chief Justice before making regulations about the amount of damages for whiplash injuries and minor psychological injuries suffered on the same occasion.

Amendment proposed: 16, in clause 3, page 4, line 18, leave out subsection (11).—*(Gloria De Piero.)*

See the explanatory statement for Amendment 13.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 9.

Division No. 8]

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.

The Chair: As I indicated, we have debated clause 3 sufficiently not to require any separate stand part debate.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

Clause 5

Uplift in exceptional circumstances

Gloria De Piero: I beg to move amendment 18, in page 4, line 30, leave out Clause 5 and insert—

"Power of court to uplift the amount of damages payable

(1) A court may—

(a) determine that the amount of damages payable for pain, suffering and loss of amenity in respect of a whiplash injury or a minor psychological injury is an amount greater than the tariff amount relating to that injury;

(b) determine that the amount of damages payable for pain, suffering and loss of amenity in respect of a whiplash injury and one or more minor psychological injuries, taken together, is an amount greater than the tariff amount relating to those injuries;

(c) in a case where the court considers the combined effect of—

(i) an injury or injuries in respect of which a tariff amount is specified by regulations under section 3(2) or (4), and

(ii) one or more other injuries, determine that an amount greater than the tariff amount is to be taken into account when deciding the amount of damages payable for pain, suffering and loss of amenity in respect of those injuries.

(2) In this section 'tariff amount' means—

(a) in relation to a whiplash injury, the amount specified in respect of the injury by regulations under section 3(2);

(b) in relation to a whiplash injury and one or more minor psychological injuries, the amount specified in respect of the injuries by regulations under section 3(4)."

This amendment would allow judges to increase the amount of damages payable where they determine the tariff amount to be insufficient compensation, rather than capping judges ability to increase compensation awards to a percentage specified by the Lord Chancellor as the Bill currently does.

The Chair: With this it will be convenient to discuss clause stand part.

Gloria De Piero: This amendment would allow judges to increase the amount of damages payable where they determine the tariff amount to be insufficient compensation, rather than capping judges' ability to increase compensation awards to a percentage specified by the Lord Chancellor, as the Bill currently does. Once again, I want to point out the long-standing tradition of trusting judges, rather than having politicians interfere with the discretion of the courts—a tradition that the Government are inexplicably undermining with this Bill.

Clause 5(3) states that if the court thinks there should be an uplift from the tariff because of the severity of the injury, the amount by which the court can increase the payment is limited according to a cap set by the Lord Chancellor. Not only are the courts being fettered by a tariff, but when they consider the tariff to be inappropriate, they will get their judicial wings clipped again. This reduces judges to little more than errand boys for the Lord Chancellor.

Many Lord Chancellors these days are not lawyers. They will rely on the advice of their officials, who need not have legal training either. If the Tories do not trust the judges, who do they trust? What are they scared of? What evidence do they have that judges will behave badly and award huge sums? What court cases can they point to in which that has happened? I can find none at all, and nor can the experts whom my team and I have consulted.

I suspect the insurers fear that without a cap, every tariff award will be taken to court, where judges will apply an uplift and blow up their tariff. If that is what they fear, it suggests that they secretly accept that the proposed tariffs are too low. Perhaps the reason for all these restrictions—all these fetters on what a judge can decide for themselves—is that the Government and the insurance industry are running scared that judges will, indeed, rebel against them. Not because judges are intrinsically rebellious—far from it, some would say; they are conservative with a big and a small c—but because they have a duty to be impartial and deliver justice, and the Government's proposed tariff does not even remotely do that. Amendment 18 would restore judges' lost autonomy.

Rory Stewart: I thank the hon. Lady for her speech. This amendment relates to the fundamental question of the tariff system and the relationship between the judiciary and the tariff system. Clause 5 provides a pragmatic compromise between a strict tariff system and judicial discretion by allowing the judges to lift that tariff in exceptional circumstances. However, as the European Court of Justice accepted in the arguments made in the Italian case, there needs to be a limit. If there were no limit to judges' discretion, the tariff system would become unworkable.

In so far as we disagree about whether there should be a tariff system in the first place, I completely understand where Opposition Committee members are coming from. However, given that the fundamental cornerstone of the Bill is that there should be a tariff, we need to strike a pragmatic compromise between the tariff and giving some discretion to judges. Therefore, we propose that the Lord Chancellor will set a percentage of discretion for judges to uplift the tariff. We also propose that he will consult the Lord Chief Justice on the appropriate level of discretion. We will look carefully at the rulings of the European Court of Justice and the decisions that it has made in other countries where tariffs exist to arrive at that figure.

Bambos Charalambous: The tariffs range from £235 to £3,910, which are incredibly small amounts in the great scheme of things. To try to fetter the judges' discretion on such small amounts, for exceptional circumstances that have yet to be defined, is to use a sledgehammer to crack a nut. We just accepted an amendment to the effect that the Lord Chancellor must consult the Lord Chief Justice. Does the Minister not think that it would be better to use that mechanism, rather than "exceptional circumstances", to set the tariffs?

11 am

Rory Stewart: We certainly will move to introduce an amendment exactly in relation the hon. Gentleman's question—he has campaigned well on this, as have other hon. Members—setting out that we should consult the Lord Chief Justice on the level of tariffs as well as on the percentage uplift for judicial discretion. Those are two important concessions that I hope will reassure the Opposition.

David Hanson: Before the Minister sits down, can he give some further detail about how he intends to consult the Lord Chief Justice on making the regulations? How much notice will he give the Lord Chief Justice? Will the Lord Chief Justice's comments be public? Will they be published so that other hon. Members can see them prior to any decision being taken? What happens if the Lord Chief Justice disagrees with the Government's suggestions? Could the Minister give some outline of those circumstances?

Rory Stewart: As the right hon. Gentleman is aware, clause 5(5) merely states:

"The Lord Chancellor must consult the Lord Chief Justice before making regulations under this section."

We intend that to be done in an accountable, responsible, transparent and predictable fashion that would give the Lord Chief Justice a serious amount of time to consider and respond, but, ultimately, it is a consultation and the power of decision rests with the Lord Chancellor, as is implied in the legislation.

David Hanson: Will the Lord Chief Justice's comments on the consultation be public? Will other people apart from those two parties be able to see both their comments?

Rory Stewart: That remains to be determined by regulations introduced by the Lord Chancellor and is not included in the Bill.

Jo Stevens: Why not take the pragmatic approach and just leave it to the judges to decide? They are the experts. Why should a politician influence what is happening?

Rory Stewart: The answer goes to the core of the entire legislation. The proposed tariff recognises that what we are dealing with—or at least, what we believe we are dealing with—in relation to whiplash, with the peculiar anomalies since 2005 and the increase in whiplash claims, is not exclusively medical or legal, but has strong social and political dimensions in terms of insurance premiums and the cost to the public purse, which is why quite a lot of part 2 of the Bill deals with the NHS. The introduction of the tariffs is designed precisely to reduce the amount paid out in the specific case of general damages for minor whiplash injuries. Simply to stick with the judicial college guidelines would obviate the entire purpose of the Bill and undermine the medical, legal, social and political arguments that underlie the legislation.

Ellie Reeves: Under the proposals, an uplift would be allowed only if the whiplash injury was exceptionally severe or the circumstances were exceptional. Does that not hugely undermine the principle of judicial discretion and take away judges' ability to assess cases and make appropriate awards for damages? The threshold in these proposals has to be far too high.

Rory Stewart: Clearly, a system of the sort we propose, which is modelled on the existing tariff systems in places such as France and Italy, is designed to set in law, through the actions of an accountable Minister, the level of the tariff. The argument is absolutely right. As the hon. Lady suggests, that will remove discretion from judges except in exceptional circumstances. The reasons for that are to do with our policy objective of dealing with the whiplash claim culture. Our intention is to reduce the damages paid for minor whiplash injuries, which are defined in the Judicial College guidelines as those that last less than two years. That will result in general damage payments lower than those currently awarded by judges. However, in exceptional circumstances, judges will be able to increase the award.

Gloria De Piero: What is the fear here? Is it that judges will make awards above the tariff set?

Rory Stewart: The Judicial College guidelines are simply a historical record of awards by the courts. It is a fact that those awards to date have been higher than the awards we propose in the tariff. The policy intention is to reduce the general damages paid, particularly for people at the three-to-six-month level. As we get closer to the two-year level, awards under the tariff come closer to the Judicial College guidelines, but at the lower end, as was suggested, there is a disagreement between the Government and the current practice of judges about the appropriate award for pain, suffering and loss of amenity.

There has been a lot of discussion about experts, but right hon. and hon. Members must remember that we are discussing general damages, not money for loss of earnings or to pay for physiotherapy. We are discussing a judgment of exactly how many pounds and pence someone should receive for a whiplash injury—for the subjective experience of pain in their neck or shoulder. It is difficult to argue that there is particular expertise on the question of the subjective experience of pain. Indeed, as the hon. Member for Enfield, Southgate suggested, it is impossible for anyone—whether they are a Minister, a judge or a doctor—to suggest that the money that is paid can remove the pain. The pain remains. Money paid in general damages is intended simply as an acknowledgement of the existence of pain, suffering or loss of amenity. It cannot, as would be the case with special damages, remove the pain itself. On that basis, I politely request that the amendments be withdrawn and the clause be accepted.

Gloria De Piero: We do not accept the Minister's arguments, so will divide the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 9]

AYES

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

NOES

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

Question accordingly negatived.

Clause 5 ordered to stand part of the Bill.

Clause 6

RULES AGAINST SETTLEMENT BEFORE MEDICAL REPORT

Gloria De Piero: I beg to move amendment 19, in clause 6, page 5, line 37, after "injuries" insert—

"provided by an accredited medical expert selected via the MedCo Portal".

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.

The Chair: With this it will be convenient to discuss 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: The amendments 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. The Government say in clause 6 that cases should never be settled until the claimant has been medically examined. We fully agree, but amendments 19 to 21 would go even further. The Government say that the Lord Chancellor can decide what constitutes appropriate evidence, but it is very simple. The only form of appropriate evidence must come from a proper doctor registered as such on the portal website of MedCo, the umbrella organisation through which doctors in all personal injury cases are currently chosen. Why on earth would the Government not go through the currently accepted route for all other personal injury cases and the same process that insurers accept in every other case? The only people to gain from offers without a medical are defendant insurers who get cases off their books at an undervalue.

Lawyers for the claimant are obliged to put any offer to the client. Reputable lawyers will always advise against acceptance until there is a medical, but some clients are desperate and reject their advice. Unsurprisingly, and heartbreakingly, it tends to happen when a client's sick pay runs out or perhaps near Christmas when people have been off sick and are desperate. Any downgrading of the requirement for a medical certificate by a medical registered doctor—this is the risk without the amendments—is just another way that vulnerable workers who have to take time off because of their injuries could be harmed by insurers who make record profits.

We suspect that the vagueness about what qualifies as proper medical advice might be an attempt to allow the use of physiotherapists for the evidence. Insurers have long pushed for that. Physiotherapists are great people doing wonderful work in an extremely important part of post-accident rehabilitation, but they are not doctors and are not able to assess and provide a long-term prognosis.

We fear that if we do not specify in the Bill who should provide the medical reports we will have injured people being prescribed a couple of sessions of physiotherapy and then being described by the insurers as malingering when they are not back to full health following the limited treatment, when in reality their condition might require far more intense rehabilitation efforts over a longer period. In some cases, the insurers might see a financial gain to employing a physiotherapist or owning a rehabilitation company. Without the amendments, that would suggest the insurers control not only the payment of damages, but the medical process leading to the award. Let us avoid that conflict. Let us trust doctors and specify where a medical report should come from. Any deviation from the gold standard of a medical doctor would negate the good that is done by effectively banning the settlement of whiplash claims without medical evidence, as this part of the Bill attempts to do.

On new clause 3, the Government say that the cases they intend to sweep into the small claims track are minor, straightforward and simple. We do not think that that is so, or that the injured claimant left on their own to fight insurance companies—let us be in no doubt that insurers will fight—will think that their cases are either small or simple. The new clause would ensure that, at the very least, when the injured person gets a medical report, as the Government in clause 6 rightly say they should, they can get independent legal advice on what the report means in terms of the value of their claim, so that, if they remain fighting on their own, they settle at an appropriate sum. How else would they know what their case is worth?

The Government might say that insurers will not rip people off and that they always pay what is fair. If that is the case, they have nothing to fear in ensuring that the injured get advice paid for that reassures them that that is the case. There is a societal benefit. If people settle at an undervalue or their conditions are not properly recognised, they will fall back on the state—the NHS or the benefits system—and the taxpayer will foot the bill that should properly have been met by the negligent party. The polluter will end up not paying and we will all pay through our taxes.

The same principle applies to cases where the insurers do not admit liability. The Government think that, when a claimant chooses to fight a case, the injured person will have the confidence to fight on. Facing a denial of liability, the claimant will, the Government think, be equipped to fight on, but, without help, we do not think they will be.

11.15 am

We therefore propose—this effectively happens now in a fast track case, where the defendant fights on liability and the case falls out of the fast track—that the claimant should get help to fight on. The costs will be fixed, as they are now in the fast track, but at least the claimant will have someone to hold their hand who is on their side. Perhaps the Government think that injured people, possibly claiming sums that exceed their monthly pay cheque, should be left on their own, assess quantum on their own and fight well-funded insurers on their own.

Rory Stewart: I very strongly support the basic principles and philosophy of amendments 19 to 21. I have huge respect for MedCo—right hon. and hon. Members will be aware that it is a non-profit portal designed to select at random an expert witness in order to testify in whiplash injury claims. I can reassure them that the intention is for MedCo to be the appropriate channel through which advice is sought.

[Rory Stewart]

The only reason we have not put MedCo on the face of the Bill is to provide for the eventuality that, in 20 or 30 years' time, an entity other than Medico might exist—as hon. Members will see in clause 6(4), we are specifying the form of evidence, the person, the accreditation and the regulations. That was on the advice of counsel, which has had strong experience over the last century, that defining a non-profit on the face of the Bill could cause massive challenges if something unforeseen happens to it. We absolutely agree that MedCo is the appropriate body to use at the moment. All the arguments made by the Opposition are accepted, but on counsel advice, we respectfully advise that it would be better to allow flexibility rather than defining MedCo on the face of the Bill, and therefore ask them to withdraw those amendments.

New clause 3 argues for an individual to be able to reclaim their legal costs while pursuing their whiplash claim. This is a fundamental point of debate and disagreement, and goes against the fundamental principle of the small claims court, the idea of which is that an individual should be a litigant in person and not in a position to recover their legal costs. The argument made is that, under the level proposed—which in the case of certain kinds of damages is £10,000, in relation to whiplash would be £5,000 and in relation to personal injury could be as much as £2,000—we believe that the nature of the claims, particularly with a medical report in place, should be relatively straightforward. We have made some concessions about the online portal and the roll-out, all of which, we think, makes it inappropriate to ask for the reclaim of legal costs.

Ellie Reeves: Are we not going to be in exactly the same situation we were with employment tribunal fees? For people pursuing claims, fees, whether they are court fees, legal fees or medical costs, will put people off pursuing claims and therefore undermine their access to justice. The Government were called out on this by the Supreme Court regarding employment tribunal fees and we seem to be going back down the same route.

Rory Stewart: This will be entirely different. The disagreement is only about whether one can employ a lawyer and recover the cost of the lawyer. The individual will be able to recover from the insurer the medical costs on the report they got—for example if they spent £140 going through the MedCo portal. The small claims court cost of registering the claim would also be recoverable. However, in the vast majority of cases at the moment—we consider that this will be true in the future—cases do not go to court at all. In the vast majority of cases, a claimant will get a medical certificate, follow the path of the online portal and the settlement will come without them having to proceed to court.

Jo Stevens: The Minister's impact assessment, which I referred to on Second Reading, explicitly states that the measure will affect the number of people who will bring cases, and that the number of cases will go down. Will he comment on that please?

Rory Stewart: Absolutely. The Government's contention is that some of the cases currently being brought forward are fraudulent or exaggerated claims motivated by a desire to get a payout when either an injury has not been experienced or the injury experienced was considerably less than claimed in court. We believe that, by reducing the level of tariffs that paid out and by removing the industry of lawyers whose costs can currently be reclaimed through the process, it will be less likely that an individual who has not suffered an injury will go through the inconvenience of seeking a medical report, and less likely that they will proceed to the small claims court or go through the online portal to receive payment for an injury that did not occur. They would not be supported and encouraged by the legal profession or, more likely, claims management companies in proceeding down that path.

Jo Stevens: Will the Minister clarify? Is he saying that, although his impact assessment states that the number of cases will go down, the measure will apply only to fraudulent cases? Is he saying that no genuine victim of injury will not pursue a claim because they are not able to recover their costs?

Rory Stewart: The impact assessment, which is based on an enormous amount of expert evidence and discussion, boils down to a pretty straightforward assumption about human behaviour. Under the proposed new system, if someone has a car crash and injures themselves, they will proceed to their insurance company, register the fact that they have genuinely injured themselves, be directed towards MedCo, which would provide a report, go to the online portal and, in an effective, efficient and transparent fashion, proceed towards a predictable tariff based on their medical reports. If the medical reports say that the prognosis is six months, a fixed tariff would be paid out.

The experts' contention is that, if someone has a car crash and genuinely nothing happens to them, it would be unlikely, in the absence of a claims management company encouraging them to do so, that they will tell the insurance company that they have a whiplash injury, or be coached to mislead a doctor in the MedCo process to get some kind of report suggesting they have a whiplash injury. Therefore, somebody who either did not experience an injury or experienced an injury so minor that they were not interested in pursuing compensation would not proceed. We believe that, under the current system, the practice of some claims management companies is to encourage people who either have not experienced an injury or have experienced a considerably more minor injury to make a fraudulent or exaggerated claim. We believe that those claims will be not entirely excluded but reduced.

Bambos Charalambous: Does the Minister accept that there has to be a hearing to settle children's claims, and that infant settlements require representation? Children often sue their parents if there has been a road traffic accident that is no fault of their own. Will he consider exempting them from the scope of the Bill? They require solicitors, because there has to be a hearing for there to be a settlement.

Rory Stewart: Perhaps we can return to that very interesting point on Report. It has not been raised in any of the amendments tabled so far, but I would be very interested to see an amendment tabled and to discuss the matter outside this Committee.

On the basis of the arguments I have made about MedCo, I respectfully request that the Opposition withdraw amendments 19, 20 and 21.

Gloria De Piero: Will the Minister say a bit more about the advice he has received from counsel and about why he will not accept the amendments?

Rory Stewart: It is pretty straightforward. MedCo is a non-profit organisation set up relatively recently as a portal funded by the insurance industry. We intend the Bill, like any law we pass, to have sustainability and resilience. Potentially, it will last 50 or 100 years. It is very difficult, looking forward over that period, to be confident that the exact portal or organisation by which doctors qualify to provide an assessment of whiplash will be called MedCo—it may be called something else. The measure provides the flexibility, through regulations from the Lord Chancellor, to define the form of evidence, the person, the accreditation and the regulation necessary to proceed. We think it would give a hostage to fortune to put the brand name of a specific non-profit on the face of the Bill. On that basis, I request that amendments 19, 20 and 21, and new clause 3, be withdrawn.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.