

Legal Aid, Sentencing and Punishment of Offenders Bill Committee

Thursday 14th July

Examination of Witnesses

Nick Starling, Muiris Lyons and Catherine Hopkins gave evidence.

3.46 pm

The Chair: I welcome our witnesses to the Committee. Thank you for coming along this afternoon. In a moment, I will ask you to introduce yourselves to say who you are and who you represent. I remind the Committee that this session is due to end at 4.30. We are still on amber alert for a Division in the main Chamber. Should a Division be called at 4.15 or afterwards, I will invite the Whip to move that the Committee be adjourned. Let us start right to left with Catherine Hopkins.

Catherine Hopkins: I am Catherine Hopkins. I am legal director at Action Against Medical Accidents, which is a UK-wide charity that campaigns for patient safety and justice.

Muiris Lyons: I am Muiris Lyons. I am the immediate past president of the Association of Personal Injury Lawyers. We are a not-for-profit organisation of around 5,000 lawyers who act for those who are injured through no fault of their own.

Nick Starling: My name is Nick Starling. I am director of general insurance and health at the Association of British Insurers, which represents the interests of the UK insurance industry.

Q 325Yvonne Fovargue: Catherine, what sort of injuries do you deal with through AvMA?

Catherine Hopkins: We deal only with people who are injured in the course of health care and that could be anything in a health care setting. We have a helpline that is open to the general public. Injuries can be any sort, from self-limiting injuries where surgery has gone wrong and somebody has made a recovery within a few months, to a birth injury where a child faces a lifetime of severe disability.

Q 326Yvonne Fovargue: What percentage of people who come to you are children? If these reforms go through, what percentage of those would not be able to be dealt with?

Catherine Hopkins: We are extremely concerned about the effect of the loss of clinical negligence from scope, particularly for children and for people with serious and persisting injury. We do not see conditional fee arrangements

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as a viable alternative, despite what is often repeated. We do not see them as being particularly viable now under the present rules, but it will be more so in the future.

Q 327Tom Brake: I want to consider a slightly different aspect of clinical negligence. What would be your view about the impact of a statutory duty of candour in terms of professional staff reporting a medical accident. What is your view about the potential of that to cut down on litigation?

Catherine Hopkins: It is possible that it will cut down on litigation in some circumstances. People feel that they have a duty—and it is quite right that they do—to know what has gone wrong in hospital. Occasionally, people bring civil claims to find out what is wrong, but you could not bring one just to find that out. People will bring a civil claim only if they have physical or psychological damage, which is compensable through the civil court system. It is unlikely that anyone would bring a claim to find out what went wrong, because there is no remedy there; it is simply to get disclosure. I do not think that that will have a huge impact, although it is highly desirable.

Q 328 Mr Slaughter: You talked about CFAs. What sort of people bring CFAs? What would be a typical CFA case?

Muiris Lyons: Almost anybody can use a CFA to bring a case, which is one of the real merits of the current regime. It provides access to justice for literally everyone. The key is that it provides access to justice to those who cannot afford to bring a claim in any other way. Particularly in the fields of personal injury and clinical negligence, for which people are not eligible for legal aid, that is the only route of access to justice, unless they happen to have the benefit of before-the-event legal expenses insurance.

Q 329 Mr Slaughter: Do you have any figures? If you do not have them here, you can write to us, by all means. Part of the reason I ask is because you hear about people who can afford to bring litigation in their own name using CFAs, because they find it convenient for some reason. I am interested in what the income and background are of people who bring CFAs.

Muiris Lyons: Noted cases, which appear on the front pages of newspapers, include that of Naomi Campbell. However, that is the exception. By and large, no win, no fee agreements and conditional fee arrangements are used by ordinary people who would otherwise be unable to afford redress or compensation. I am a clinical negligence practitioner in practice myself, and for those clients of ours who are not eligible for legal aid, almost all cases are run on a no win, no win basis.

Our concern is that the current proposals are a double whammy for such clients. Those who are eligible for legal aid will no longer be able to access legal aid, and those who bring a case through a no win, no fee agreement will face having to pay up to a quarter of their compensation in legal costs. That seems fundamentally unfair and wrong.

Nick Starling: I cannot make a great observation on the sort of people who bring CFAs at the moment, except to say that our member companies deal with

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people who have been injured or made ill through no fault of their own. We fundamentally agree that in any system, it is essential that people who have been in that situation—a car accident or a workplace accident—who have got an injury when it was not their fault, get quick and proper redress. That is fundamental to our approach. That can be through the legal system or outside it, but that is fundamental to our approach. We believe that the package of reforms that Jackson has proposed, some of which are under scrutiny in the Bill, will improve and enhance that system, reduce its cost and increase its speed and effectiveness.

Catherine Hopkins: As an organisation, we strongly disagree with that position. Any litigant who has to bring a claim financed by a conditional fee arrangement will be worse off than they are now. There are two extremes. The first is the case of a brain-injured child. Less than 10% of the damages that are awarded to a child, even if the damages run into millions of pounds, represent pain, suffering and loss of amenity. Most of the damages represent losses consequent on that child's

injury. Yet, those in themselves are not always enough to cover the cost. In our submission to the consultation on the Jackson reforms, we provided case studies that showed that the general damages element—pain, suffering and loss of amenity—is needed for the children to supplement their accommodation costs. Without that, their damages will not pay for the adapted accommodation that they require.

In any event, the past losses are not the child's; they are usually owed in trust to that child's parents, who might have spent five, 10 or 15 years providing free care for the child. Although most parents are generous and do not immediately ask, "Which bits of the damages are mine?", it is not the child's. Yet, both general damages and past losses are available up to the cap of 25% for a deduction. We believe that that will leave a severely disabled child in a worse position; much worse than they are currently. Furthermore, if you look at the squeezed middle of our society—the people that Muiris just talked about, on average incomes of £30,000, £40,000 or £50,000—they could not afford to bring a claim without a conditional fee arrangement and are not eligible for legal aid. If your injury is self-limiting and you are recovered in two or three years, but you lost a significant amount of income, 25% of your damages—all of them if you do not have future damages—could be taken towards a success fee. Take a self-employed plumber: a chunk of the damages will be his loss of earnings and he will never get those back because they will be deducted under the conditional fee arrangement. People will be left at a serious disadvantage.

Muiris Lyons: There is a broad point, which is that the whole premise behind the package of reforms that with which this part of the Bill is concerned is addressing disproportionate costs, stemming from Lord Justice Jackson's report. But of course, as you will all know, the Ministry of Justice has been overseeing a very successful pilot that was introduced for road traffic claims up to £10,000, which has fixed costs for those cases: £1,350 plus a 12.5% uplift. Up to 75% of all personal injury claims are now in a streamlined, fast-track, fixed-cost process. That has addressed the issue of disproportionate costs in three quarters of all personal injury cases. I should add that I know the Ministry are currently

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consulting on extending that scheme to cover other personal injury cases, which may take the figure as high as 90% to 95% of all personal injury cases.

We are left with the really difficult, complicated cases. Industrial disease, clinical negligence, catastrophic injury—those are the sort of cases in which clients will find it very difficult to find a lawyer to take on expensive, difficult litigation on their behalf. If they lose those cases, they will find it very difficult, and in the absence of legal aid they will find it very difficult to bring those cases where legal aid will otherwise be available.

Nick Starling: I want to distinguish between catastrophic injury claims and the more straightforward ones. Our members are less involved in clinical cases, but they deal with massive motor claims—catastrophic claims there—and it is absolutely essential that people are compensated according to their needs. That is vital and needs to happen. I would merely make the observation that the 25% limit is not a target; it is an absolutely maximum that lawyers can take. It need not necessarily be taken.

Looking at the vast majority of straightforward claims I think that that is where the problems in the system lie; they attract disproportionate costs. We now have an extremely simple motor portal system that requires very little input. Liability is usually determined very easily. As Muiris Lyons just pointed out, the £1,350 fee for that—£1,200 plus VAT—is utterly disproportionate to what must happen. We think that a fundamental part of cleaning up the system is a substantial reduction in those fixed fee costs. I know that that is not in the Bill, but it is an important part of the whole

system of reform. If you reduced these fixed fee costs, the problem of referral fees—which we would also like to see banned—goes away because it would not be worth people’s while to pay a large sum of money to get an even larger sum in costs.

Q 330 Mr Slaughter: I can see why you might think some of the proposals in the Bill are helpful or favourable to your members, Mr Starling, but you said that they were better for claimants as well, if I understood correctly. We have heard from the other panel members about the up to 25% that may be taken from meritorious claimants’ damages. I appreciate your point that clinical negligence is not principally what you deal with, but the submission on legal aid by the NHS Litigation Authority said:

“We have serious concerns over the proposal to withdraw legal aid from clinical negligence claims”

and it questioned whether CFAs are likely to be available to fund many of the more serious claims currently brought by legal aid. So there are concerns—even from defendant bodies—not just that this may not be fair on claimants because of the new CFA damages-based agreements, but also that the cases simply will not get to court. Is that right?

Nick Starling: I thought that that question was addressed to me. Was it specific to me, or was it to anyone?

Q 331 Mr Slaughter: It was, but I would welcome the view of the others as well.

Nick Starling: When our members are dealing with claims, the fundamental issue is liability. In the great majority of claims, liability is relatively straightforward to establish and quite a lot of the issues then are about what actually has to be paid in terms of compensation.

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Our members are used to dealing with catastrophic claims; they deal with them all the time. We have seen no evidence that has demonstrated that this will affect people’s ability to take forward cases or that lawyers will be any more reluctant to take forward cases. If someone presented us with that sort of evidence we would be happy to look at it, but there is no evidence as far as we can see.

When it comes to the lower-value claims, I would defy anyone not to know that they can make claims because they are surrounded by people encouraging them to do so all the time. We understand that people might have concerns about access to justice, but we have seen no evidence that this will make it more difficult. On the contrary, we think that we need a system that is quicker, more efficient and cheaper, because we are all paying our premiums, which fund these things. That would be to the benefit of everyone. A great deal of people have before-the-event insurance anyway, particularly for motor claims, which they can then use under those circumstances.

Catherine Hopkins: The key difference has been illustrated by Mr Starling, when he said that liability is not a difficult thing. That is quite the opposite in clinical negligence. If someone is run over on the crossing outside, everyone here will be able to tell whether or not that person was injured by a car and whether the car was being driven negligently. That is not the case in medical negligence. Apart from a pregnant woman who is going into hospital to deliver a baby, when people go into hospital they have something wrong with them, so if they come out still with something wrong with them the cause may not be negligence; it could be something else. That means that a lot of work has to be done on liability and causation. It is not straightforward and cheap to investigate clinical negligence claims.

The other thing that I would say is that practically no claims are worth less than £10,000. If they are, they are not really brought. Under legal aid requirements—the cost-benefit requirements—you would not get a certificate for a client with such a low-value claim—a claim for less than £10,000. Occasionally, there are difficulties along the way and the damages are lower, but your initial valuation must be much greater.

In a sense, therefore, we are talking about different issues here. We are talking about the biggest claims with the most complicated issues on causation and liability—mostly causation—and currently they are virtually all legally aided. It is such a glib thing to say, “Oh, well, they can all be CFA’d.” You would be asking firms such as Stewarts, which already do a large amount of conditional fee agreements, suddenly to take a chunk of the biggest, most complicated cases into their conditional fee agreement management system. That will mean funding up to £100,000 worth of disbursements. I know that there is a concession on the insurance, but you are actually talking about firms carrying an overdraft for those disbursements. We do not have a remit for lawyers, but we recognise that lawyers have got to remain in business in order to provide access to justice for our clients, who are former patients. We worry a lot about this. Many of our members say they will not be able to afford to take catastrophic injury cases on conditional fee agreements.

My phone rang all morning on 21 June, when the Bill was published, with people I know who are our panel members and who work at relatively small local firms,

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particularly in the north. I think that the north will be more affected. Muiris’s firm is a largeish firm and it has a Leeds office; it is fairly unusual for the larger firms. There is one other. Those people ring, saying, “Well, we do CFAs. We do CFAs for the slightly lower-value cases. We do all our catastrophic injury clin neg cases on legal aid and I don’t think my partners will accept that extra burden on the firm of three or four years of building up work in progress and being unable to bill it.”

Access to justice is going to be a significant problem. I talked earlier about if the case runs and is successful, but I think that actually finding a solicitor who can say to a young mother with a child with brain injury, “Yes, I will take your case on from today, on a conditional fee agreement”, will be like finding hen’s teeth in some areas. Others will say, “Yes, if you can deposit £3,000 with me to cover the cost of the initial investigation, I will do that—you might risk losing that money, but when I have got the initial reports from, say, an obstetrician and a paediatrician, minimum, I will tell you whether my firm will take it on under a conditional fee agreement.” I think that is the problem.

Q 332 Mr Watts: Is not the problem with medical negligence that we are looking at a wide span of different conditions and different issues to be redressed? You just talked about, for example, a child that was severely brain damaged. If the case was to be taken on, lots of up-front costs would be incurred before the solicitor would know if there was a case or not. I think we were referring to some of the minor cases in which you think there is not a problem. We have heard from previous witnesses that CFAs would probably not be available, and you have repeated that just now. Is there then likely to be a growth in insurance policies? Would your members see a growth in people wanting to take out an insurance policy against that, if they were going into hospital? What would the cost be for someone who wanted to do that?

Nick Starling: I would have thought that was unlikely. It is not something I have thought about. I do agree that, to some extent, we are talking about very different situations. As I said, our members do deal with catastrophic injuries—they are not really the kind of problems that we are trying to address by the Jackson reforms. By definition, they have to be dealt with over a long period of time,

they cost a lot of money—the legal fees are much more proportionate to the amount awarded—and that is a slightly separate issue for our members.

The big issue for our members is the huge amount of low-cost bodily injury claims, for example the £2 billion-worth of whiplash claims, by far the greatest in Europe. I do not know the extent to which there are low-cost clinical claims, but we are all familiar with the advertisements we see in hospitals inciting people to make them. Our issues really are with the lower-value claims where the costs are, quite simply, too high. People are encouraged to come forward—I think the words of Lord Young were “incitement to litigate”—and that leads to large numbers of exaggerated and in some areas certainly fraudulent claims. That is where the reforms will be instrumental in getting the costs and such claims down, so that the genuine claims—coming back to my original point—of people who have been injured or they are ill and it is not their fault are dealt with quickly, so people get proper, speedy and correct redress.

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Q 333Mr Wallace: May I ask all three witnesses the question about liability to which Mr Starling referred? Do you think that the claimant and the claimant’s lawyers have some liability for the claims that they make—the success or failure? Should they carry some liability?

Muiris Lyons: In terms of if their claims are successful or unsuccessful—

Mr Wallace: Yes. The costs of the case.

Muiris Lyons: The key point with all litigation is who has responsibility for it. As a report by three leading cost judges pointed out very recently, the main costs should be put at the door of defendants who drag cases out, deny liability unnecessarily, try to settle at the end, very close to the court door, and then complain about being penalised in costs because they chose to conduct litigation that way.

Mr Wallace: To defend themselves—

Muiris Lyons: They are entitled to defend themselves if they have got a defence, but if they say, “No liability”, and then two years later, “Oh, okay, we are liable”—they play a numbers game, and it is an attritional strategy that works very well when you take a global look at the numbers.

The difficulty for claimants is that we have got to do the best for our clients—nothing pleases me more than when a defendant admits liability early on, because I know then that those expensive issues are resolved at an early stage and we can get on to sorting out what this client needs to help improve his life, his independence and his quality of life. Those are the key things that the debate ought to be about, whether the levels of damages are enough to do that. The Law Commission reported 10 years ago that damages were too low and recommended an increase of 50%. That has never been introduced. We are now talking about taking 25% off current levels of damages to fund these reforms. Claimants will pay 25% of their legal costs to subsidise the person who injured them in the first place.

Q 334Mr Wallace: Can I hear from Catherine Hopkins about the issue of liability?

Catherine Hopkins: Lawyers already do incur a liability in terms of costs because if you take on a case on a conditional fee agreement, you risk being paid nothing. There is already that. If you take on a case on legal aid and you fail, the costs paid to a solicitor under legal aid are considerably less than

the inter partes costs, so there is still a risk there, although it is smaller. There is probably a much greater risk if a solicitor is a bad judge of risk and takes on lots of cases on legal aid that all fail. Even if they fail at the first hurdle, which is the initial investigation, they risk losing their legal aid franchise, so it is not without risk already.

Q 335 Mr Wallace: But some of those risks will be mirrored by the defendant. The defendant will go through the process of thinking, "If I defend this, it's going to cost me money just to start the process." Although you talk about some of the severe clinical negligence cases, which are 5% of the total market of litigation, 95% are not clinical negligence. We talk about personal injuries and Mr Lyons's examples of industrial disease, but all

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the falling down in cracks and minor industrial disease was left out. The "Where there's blame, there's a claim" and ambulance chasing stuff is all out there driving up costs. That is a very large part of the civil claimant market that is impacting on my constituents' insurance policies and businesses. One of the reasons they get hammered is through the success fee, which is why I wanted to ask about liability.

The Chair: Order. May we have a question, Mr Wallace?

Q 336 Mr Wallace: Yes. Rupert Jackson refers to the success fee, which is a win bonus. One of your members, Mr Lyons, had a website that described it as a win bonus for solicitors for winning a case. But the defendant, who may have no liability in other cases, has to pay to compensate that lawyer for having unsuccessful cases elsewhere. Do you think that it is a fair principle for a defendant that he or she has to compensate a lawyer for cases that are not linked to that defendant? Why should they? What have they done wrong to have to pay for your claims elsewhere that may be bogus, unsuccessful or claim farmed? I am interested in your view about why we should continue the success fee.

The Chair: Quick answers and then we will move on.

Muiris Lyons: I will be as quick as I can. They do not have to pay for bogus or fraudulent claims. They are paying those premiums only in cases that they have lost and where they have insured somebody who has been found to be liable or negligent. It is a simple premise. It is the insurance premise of the many paying for the few. The idea behind it is that the success fee on the winning cases allows firms such as mine to take cases that are unsuccessful. When they were first brought in, success fees were calculated to be revenue neutral. The idea is that, across a basket of cases, lawyers do not make extra money; they just make enough to cover the losses.

Mr Wallace: But that is not the case—

The Chair: Order. No, Mr Wallace, we carry on. Nick Starling, anything to say?

Nick Starling: May I quickly say that one of the problems is that it is all of us paying for the many, rather than just the many paying for the few. I emphasise that we are not talking about the very high-end difficult cases that Ms Hopkins has talked about. We have a dysfunctional system, in which people play in dysfunctional ways. We need a system that ensures that when liability is there, it can be dealt with very quickly. If people play the system—if they take unmeritorious cases forward or if defendants spin things out—there should be ways of penalising them for doing so. We need everything that encourages the system to work smoothly and effectively and quickly. It is that dysfunctionality that Jackson tackled and that we need to strip out of the system.

Q 337 Alex Cunningham: Many people agree that the compensation culture is getting a bit out of hand. We talk about it being dysfunctional, but surely insurance companies appear to be keen to encourage their clients to seek damages. They inquire very kindly after them and then check for accidents. I do not know whether that is a policy to try to see off the no win, no win

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people or not. It strikes me that the question is whether their proactive approach is not as much to do with growing a compensation culture as that of the no win, no fee merchants, who spend a fortune chasing ambulances.

Muiris Lyons: First, the Government's report by Lord Young last year said that there was no compensation culture—that is Lord Young saying that. Secondly, on the increase in claims, broadly speaking, the number of claims in employer liability and public liability is falling. It is only in road traffic accidents and, recently, in clinical negligence, that claims are starting to go up. Whether that is down to third party capture or assistance by insurers—their payment of referral fees and so on—is an entirely different matter. That issue is not part of the Bill, which I think is about whether clients who have legitimate claims can get access to justice, and whether it is fair for them to pay up to a quarter of their damages in legal costs.

Nick Starling: The question was put partly to me, so may I answer that? There is a compensation culture. It may not be absolutely widespread throughout the UK, but in parts of the UK, if I go into the back of your car, you are three times more likely to make a personal injury claim than in other parts. In some parts there is an expectation that you can make a claim, and we need to sort that out. I do not intend to do so, but if I were to run into the back of your car, your car might be out of action—it might need repairs and you might need a replacement vehicle. You might have an injury and it is really important that you are helped quickly. That is what you should expect. I am liable; you should be helped and you want people to come to you. It may well be that my insurer will come to you direct and say, "Can we sort you out?" That is what is called third party assistance.

We are all familiar with referral fees—they are a symptom of how the system has gone wrong. Insurance companies pay referral fees, and the firm that picks up your vehicle and the garage might pay them. Jack Straw has alleged that the police and the NHS pay referral fees—everyone is at it. It is not part of the Bill at the moment, but it is vital to ban them. We also need to cut off the fuel supply to them, which is the excessive cost to the system.

There is some simple arithmetic. You can charge £1,200 for a simple road traffic accident cost and you can pay £800 for the referral fee to get that £1,200, so you make £400 for a relatively straightforward claim. Let us get rid of the referral fee—the £800—then we can reduce the costs. If they were £400, everyone would be happy.

Q 338 Alex Cunningham: There would probably be lower insurance premiums as a result.

Nick Starling: We must tackle some of these big issues, such as the £2 billion cost of whiplash claims—one in 140 people in this country make a whiplash claim every year. I do not believe that people in this country have the weakest necks in Europe; it is simply inconceivable.

Muiris Lyons: We have had a fixed cost regime in place for a year and my insurance premium has not come down.

Nick Starling: Last year, motor insurers made an overall loss of £2 billion. You can work out a bit of simple arithmetic there and that is what is pushing

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premiums up. It is a very competitive industry. If we can strip out the unnecessary costs, sort out the problem of whiplash and deal with the claims management companies that are inciting people to make claims, insurers will compete with each other and premiums will come down.

Catherine Hopkins: There is no compensation culture in clinical negligence. Not only does Lord Young say that in his report, but so does the NHS Litigation Authority. If you look at the number of adverse incidents reported in the NHS compared with the number of claims issued, the proportion—I do not have the figures, but I can provide you with them—is enormous. It is less than 1%.

Q 339 Tom Brake: Mr Starling, I want to ask you a question, which I think you have answered. Your view is that an appropriate fee for an RTA would be in the order of £400 or £500. Is that what you are saying?

Nick Starling: I was not making a formal suggestion. I was just saying that there is a simple piece of arithmetic—that it is worth people's while to pay an £800 referral fee to get a £1,200 fee for an RTA. I was just saying that you can do a simple bit of arithmetic that works out what a more appropriate fee might be.

I know that there is a similar situation in Germany, where the fee is around €300 or €400. It is much higher in the UK than in other countries. I am not here to dictate what that fee should be. I am just saying that there is scope for it to be much lower. That is a symbol of success. The portal has been a huge success. It has sped up the claims below £10,000. Sometimes, they are dealt with in hours rather than days or weeks. The amount of input that is needed does not need that sort of fee to sustain it. If lawyers are not having to pay the referral fee to get the business, they should still be able to make a decent living out of it.

Q 340 Damian Hinds: Not everything that Lord Young said was greeted with universal approval. As for the point about there not being a compensation culture, excluding the relatively small amount of complex medical negligent claims, if you watch daytime television—not that I do—it would be difficult to reach the conclusion that you and Lord Young have reached. Do we know the size of the advertising market in that regard?

Catherine Hopkins: It would be interesting to see whether there is a correlation between advertising and the number of successful clinical negligence claims. It is probably likely that it results in more telephone calls to solicitors saying, "I think that I've got a claim. Will you listen to my story?" The firms that keep stats will say that they perhaps take on one in 10 cases. That does not necessarily mean that they will succeed; they will take them on to investigate. I was in private practice as a clinical negligence solicitor for more than 10 years, and we would listen politely to most calls and say, "Sorry, there isn't a case that we could take on here." There may be a perception, but actually the cases do not proceed.

Q 341 Damian Hinds: I was suggesting that, if it were not a profit maximising activity, people would not be spending money on the adverts. Whatever the calls-in to cases-taken ratio, I am sure that it is relevant, but it does not change the argument that there must be greater prevalence of such things to justify all the spend.

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Muiris Lyons: In his report, Lord Young recognised that, with the prevailing advertising, there was a perception of a compensation culture. But, broadly speaking, the figures show that claims are falling, not going up. It is important to recognise that. From my perspective, if there are concerns about advertising and referral fees, fine—address them directly. Taking a quarter of an injured innocent claimant’s damages is not the way to do it, nor is withdrawing legal aid from some of society’s most vulnerable people.

Nick Starling: I do not know what the advertising spend is, but we do know that there is a very strong correlation between the location and density of claims management companies in particular parts of the country and consequent bodily injury claims, particularly minor bodily injury claims. In some parts of the country and in particular areas of activity, such as motor, there is a compensation culture. That is undoubtedly so, and anything that can be done to strip out the propensity to claim—Lord Young used the words “incitement to litigate”—is extremely important.

Q 342Mr Llwyd: I do not accept that. Your claims are going down. You may say you are talking about your sector, but generally there is no compensation culture. I speak as a lawyer myself. Going back to Mr Hind’s question, if there were a compensation culture, why would they need to advertise?

Nick Starling: We have an extremely good road safety record in this country. Last year, there were below 2,000 deaths, which is a great improvement. But our members have not seen it, because they constantly see an increasing number of personal injury claims. I come back to the fact that many of them are minor bodily injury claims, and we think that there is a compensation culture.

To finish that comment, I am not including the large catastrophic claims in all this. We deal with a lot of them. There is a particular problem of catastrophic injuries with young drivers and their passengers. I am not including those in my remarks, but focusing on the lower value, the exaggerated, the fraudulent.

Muiris Lyons: But the measures in the Bill will impact most significantly on those types of cases. That is the real difficulty.

Q 343Mr Slaughter: Mr Starling, you have made some sweeping statements. I wish to put some of them back to you, if you do not mind. The big advertisers are the insurance companies. One insurer alone spends more than £180 million on advertising, including things like BTE insurance, which you would put as an alternative once you have got rid of ATE insurance. You say that there is a compensation culture, and that there are too many claims, many of which are fraudulent, but almost 95% of people who claim are either making a first or a second claim. You do not have a large incidence of serial claims. You also say that insurers are not making profits. Some are. Admiral is a top 10 insurer that is making very healthy profits. I asked them why and they said that it was because they manage their business and their claims very well. Are you not possibly making excuses for inadequacies in your own industry?

It seems to me, and this is the main point that I should like to put to you, is that you are saying that if you have a very straightforward claim where liability is

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clear, then you do not need a lawyer. The insurance company will make an offer. We have been given examples where the initial offer made by an insurance company is then beaten by it when the claimant gets a lawyer six or sevenfold, which implies that the insurance companies are not always being entirely even handed. You would not expect them to be. What happens in those cases where

someone is going to pay for meritorious but marginal cases? Should it be the claimant out of their damages if they succeed? Should it be the NHS which may have to pay for their health care costs or the Department of Work and Pensions? Or should it be the tortfeasor's insurers at the end of the day? What do you think is fair in social terms?

Nick Starling: I think what is absolutely fair is that insurers pay valid claims where there is a clear liability and someone has been injured or made ill when it is not their own fault. I have made that clear throughout. Our member companies compete fiercely. They advertise. I have noticed that other companies in other sectors advertise too. That is generally accepted as a way to win business. Also, without commenting on the profitability or otherwise of some of our members, in any realm of business, some are more successful than others. That is just the way that business works. You say there are lots of examples where lawyers have got a substantially larger settlement. I can point to many examples where the original claim has gone down substantially. We can all argue on the fringes about particular cases. In a dysfunctional system people tend to behave in dysfunctional ways. If we can sort out the system, if we can streamline it—

Q 344Mr Slaughter: Why is it less dysfunctional for the claimant to have to pay from their damages than for the insurers to have to pay?

Nick Starling: Jackson did a package and he compensated for that by increasing the general damages so that the whole thing works properly. He accepted that there were changes and the way that general damages increase—I do not believe that is in this Bill—is important. The insurance industry has always said that you need to take Jackson as a package. We have not tried to cherry-pick the bits we like. It would have been very easy for us to have said, “We like the cost shifting and so forth but we don't like the general increase in damages.” We need the whole package as a whole to come in. Some of that is in the Bill and some of it is outside.

Q 345Mr Slaughter: Would you therefore appreciate the retention of legal aid for clinical negligence, which is what Jackson suggests?

Nick Starling: Our members do not deal with legal aid issues so I cannot comment on that. I can comment on the fact that a lot of people have before the event insurance and we are keen to encourage a better take-up and better awareness and understanding that people can use before the event insurance. That relates to motor insurance in particular.

The Chair: Two minutes to go and Catherine Hopkins is itching to come in.

Catherine Hopkins: Sorry, I was, but now I have suddenly lost my train of thought.

Column number: 155

Muiris Lyons: May I make a quick interjection while Catherine recovers her train of thought. The 10% increase in damages was Sir Rupert's suggestion to offset the losses that would be incurred. It is based on a flawed piece of analysis which uplifted 10% of all damages, not just the general damages. That is not what the proposal is. The proposal is not in the Bill but the impact assessment that is published with it makes the same mistake. Based on a set of data from a defendant's cost consultants, Jaggards, it uplifts 10% on all damages, not just general damages. That is not the proposal, even though the proposal is not in the Bill and we are told it will come elsewhere. It is also, in my view as a practitioner, an unworkable proposal. The concern is that when you negotiate with defendants, you ring up and you say, “This claim is worth £2,500.” They say, “No, it is worth £2,000”. We say, “Okay, we'll do a deal of £2,250.” I then say, “Can I have my 10% uplift on general

damages?" They will say, "You've got it already." We are never going to see the 10% uplift in practice.

Column number: 156

The Chair: Thirty seconds to go.

Catherine Hopkins: I was just going to say that we believe that the tortfeasor should pay, in answer to Mr Slaughter's question. If the tortfeasor is insured, he has prudently provided for this eventuality. The NHS is obviously self-insured in a way through the CNST. It has not been raised so far today, but I should just like to raise a concern that I see no impact assessment on the NHS in the cumulative impact assessment to the Bill. We would question how much extra it will cost the NHS.

The Chair: Order. I thank our witnesses for coming before us today.

Ordered, That further consideration be now adjourned. —(Jeremy Wright.)

4.30 pm

Adjourned till Tuesday 19 July at Nine o'clock.