

## Cycling UK briefing

### Civil Liability Bill – 2<sup>nd</sup> Reading in the House of Lords 24<sup>th</sup> April 2018 at 2.30pm

#### Background

1. The Civil Liability Bill was introduced to the House of Lords (HoL) on 20<sup>th</sup> March 2018, with the second reading scheduled for 24<sup>th</sup> April. It is a Government Bill to make provision for whiplash claims and the personal injury (PI) discount rate. The HoL Delegated Powers and Regulatory Reform Committee have criticised the skeletal nature of the Bill  
<https://publications.parliament.uk/pa/ld201719/ldselect/lddelreg/123/12303.htm> , and the extensive use of delegated powers which would “severely limit parliamentary scrutiny”.
2. If the Bill is enacted, the Government proposes simultaneously to increase the small claims track (SCT) limit for PI cases from £1000 to £5000 for all Road Traffic Accident (RTA) claims, and to £2000 for all other PI claims. Victims of injuries where the pain, suffering and loss of amenity (PSLA) was valued below these new limits would no longer be able to recoup their legal costs. Although the changes to SCT limits do not appear on the face of the Bill (as they can be implemented through secondary legislation via an amendment to the Civil Procedure Rules <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part27>), the Ministry of Justice’s (MoJ) impact assessment <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0090/civil-liability-IA.pdf> makes it clear that the SCT increase is part of the same broader reform package.

#### The concern for vulnerable road users

3. Increasing the SCT limit to £5000 for RTA claims would disproportionately affect vulnerable road users (VRUs), depriving the victim of their ability to reclaim their legal costs in 70% of cyclist PI claims and a similar percentage of motorcyclist PI claims. Yet the MoJ’s consultation document clearly indicates that its main aim was to tackle fraudulent and exaggerated whiplash claims. So the disproportionate impact on VRUs must surely be an unintended consequence of the proposals, given that (a) there is no evidence that fraudulent claims by VRUs have been a concern, and (b) VRU whiplash claims are almost unheard of.
4. Whiplash claims are brought by occupants of motor vehicles, not VRUs, and the mechanism of the injuries sustained is different. People on bikes hit hard surfaces (bonnets, tarmac etc). They sustain fractures and injuries which can be evidenced through medical reports, and challenged where necessary.

## Complexity of VRU claims

5. The MoJ's position is that most minor PI cases are straightforward enough to be brought without the need for legal representation, and that in the vast majority of RTA PI claims the issues of causation and liability are admitted early in the process, with claims usually proceeding to court hearings only in relation to quantum.
6. However this is not the case for VRU PI claims. For one thing, VRU claims are more likely to arise from impact collisions (as noted in paragraph 4), and are therefore more likely to involve multiple injuries and hence more than one medical report. For another, liability in VRU PI claims is more often contested. Insurers will often claim that cyclists should not have been filtering through traffic, were not visible, were riding too far from the kerb etc. In other cases where primary liability is not disputed, 'contributory negligence' arguments are commonly made instead, for instance that the cyclist was partially liable due to them not wearing high visibility clothing and / or a helmet, riding two abreast etc. This puts the onus on injured cyclists – whose injuries may mean they cannot recall the collision – to prove that they were not negligent in the manner claimed by the driver's insurance company. When 'contributory negligence' claims are made, victims are often deterred from contesting this threat to deduct part of their claim, for fear that they could otherwise risk losing all of it.
7. Liability or contributory negligence also arise commonly in pedestrian injury cases, e.g. whether the pedestrian crossed the road and whether they took sufficient care for their own safety. For motorcyclist PI claims, liability is more than twice as likely to be disputed compared to claims by the occupants of other motorised vehicles.
8. The SCT was designed to deal with cases which litigants brought themselves without lawyers. Many cyclists' claims will involve detailed arguments concerning what can appear to be conflicting Highway Code (HC) rules. A litigant in person would need to be able to deal with all those issues together with the legal arguments surrounding contributory negligence.
9. If the SCT limit is increased to £5000 for all RTA PI claims, many VRUs with injuries including fractured collarbones and punctured lungs (both with a sub £5000 tariff) will face Hobsons choice: instruct lawyers to pursue a PI claim without the prospect of costs recovery and no opportunity for full compensation having regard to costs; or conduct the litigation themselves against the insurer. Many will be deterred from seeking compensation, particularly the elderly and most vulnerable.
10. Whilst the changes to the SCT limit are matters outside the Bill, they are part of the overall package of reforms and are expected to be introduced at the same time. Cycling UK therefore calls on Peers to consider raising this issue during second reading, highlighting the disproportionate impact on all VRUs, and seeking a ministerial assurance that the SCA limit for VRUs will not be caught by proposals aimed at tackling whiplash and fraudulent claims, neither of which are relevant to VRU injuries.