

Implementing Jackson: reform of 'no win, no fee' claims & related changes - 6th November 2012

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‘In some areas of civil litigation costs are disproportionate and impede access to justice. I therefore propose a coherent package of interlocking reforms, designed to control costs and promote access to justice.’

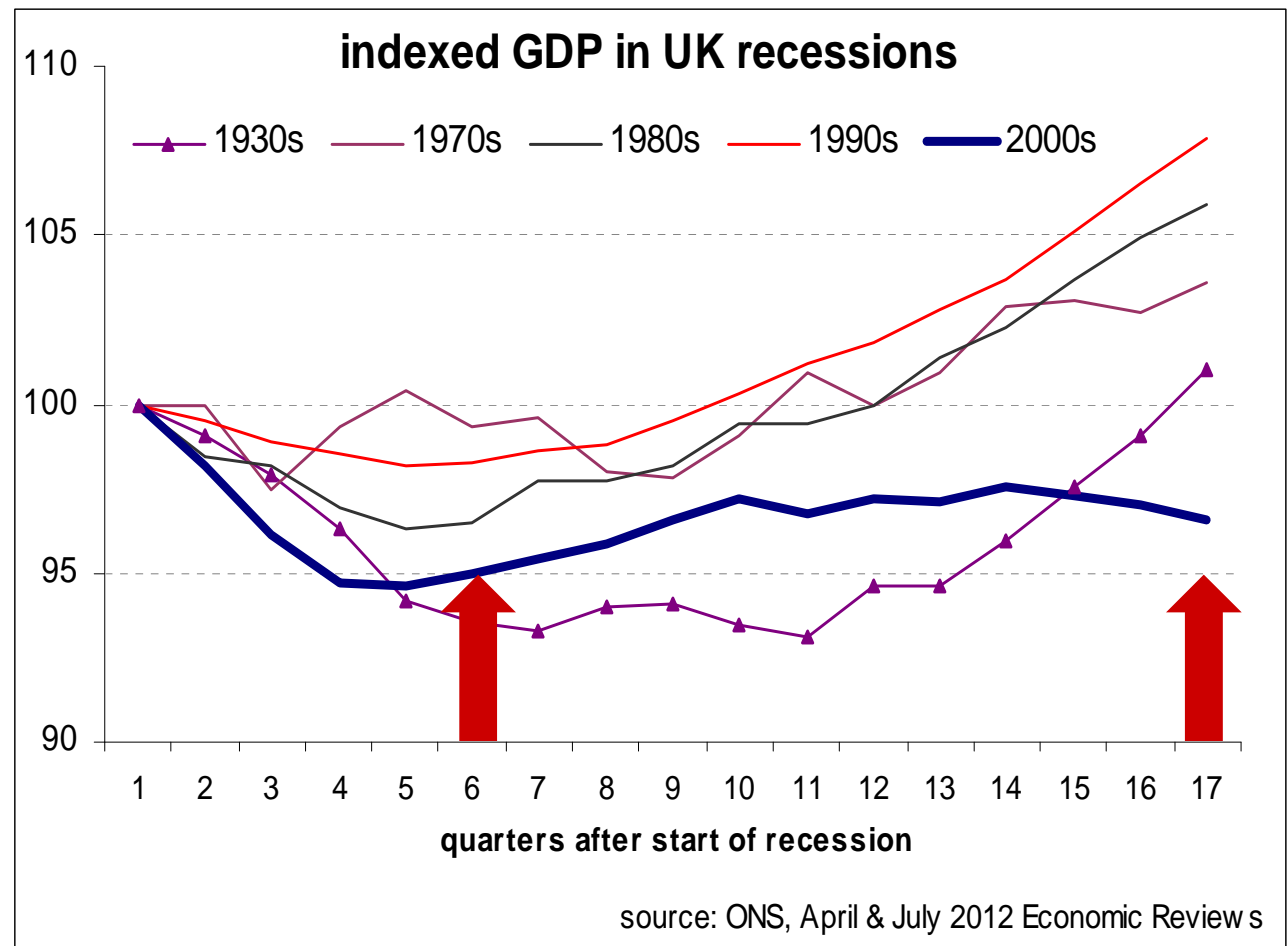
21st December 2009, Sir Rupert Jackson



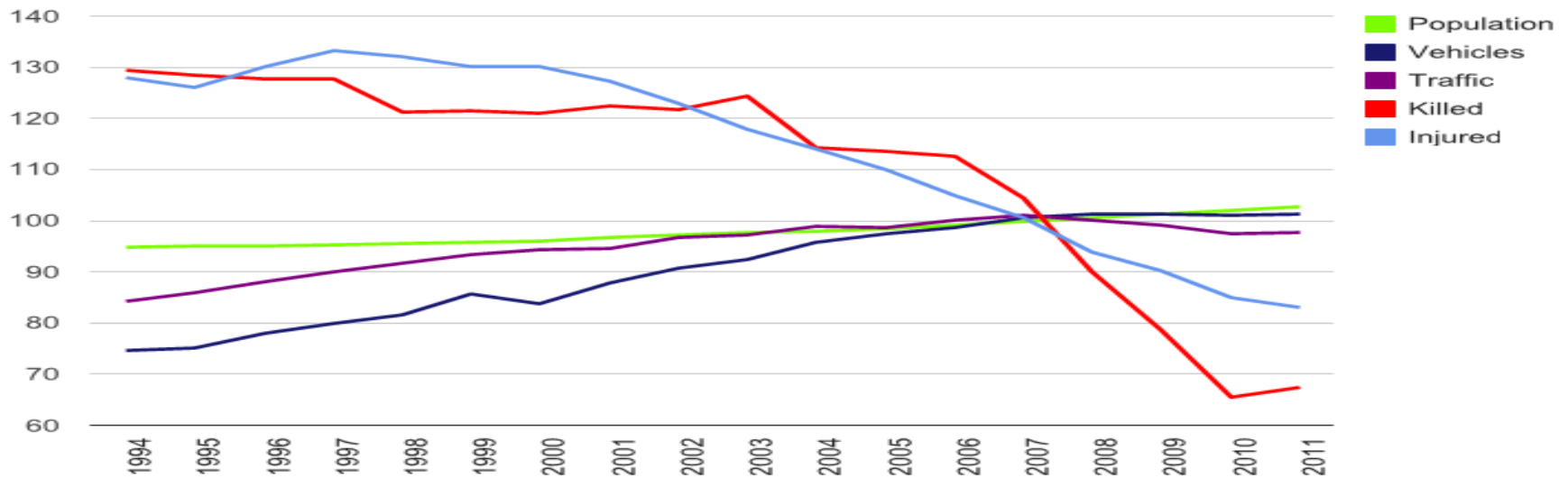
1. Lies, damned lies, and statistics

“The economy has shown no growth over the past year and has recovered less than half the output lost during the recession in 2008 and 2009.”

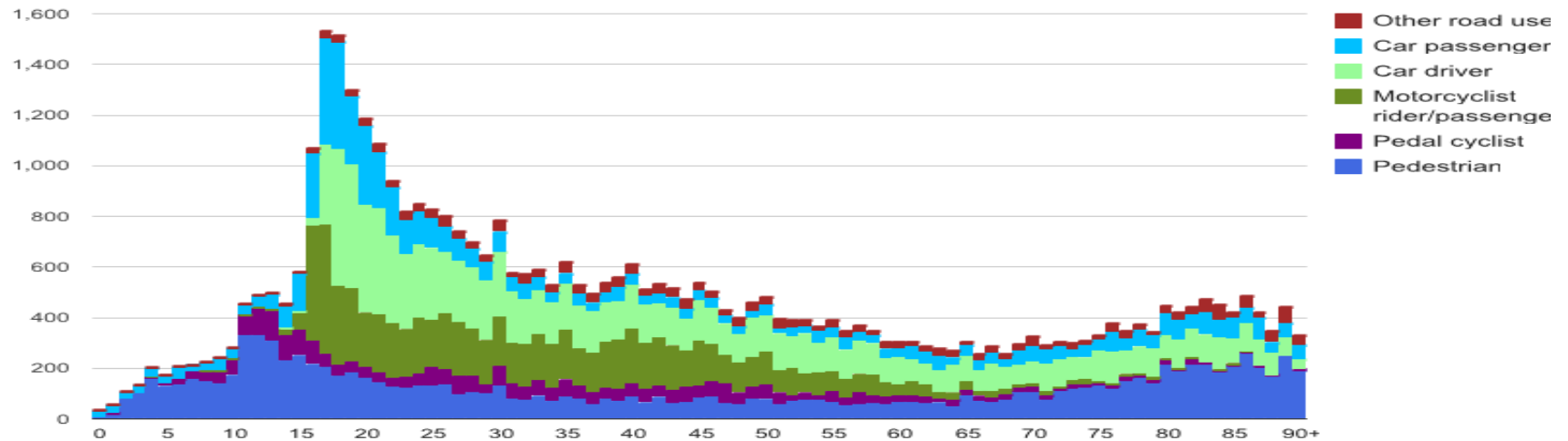
ONS, April 2012



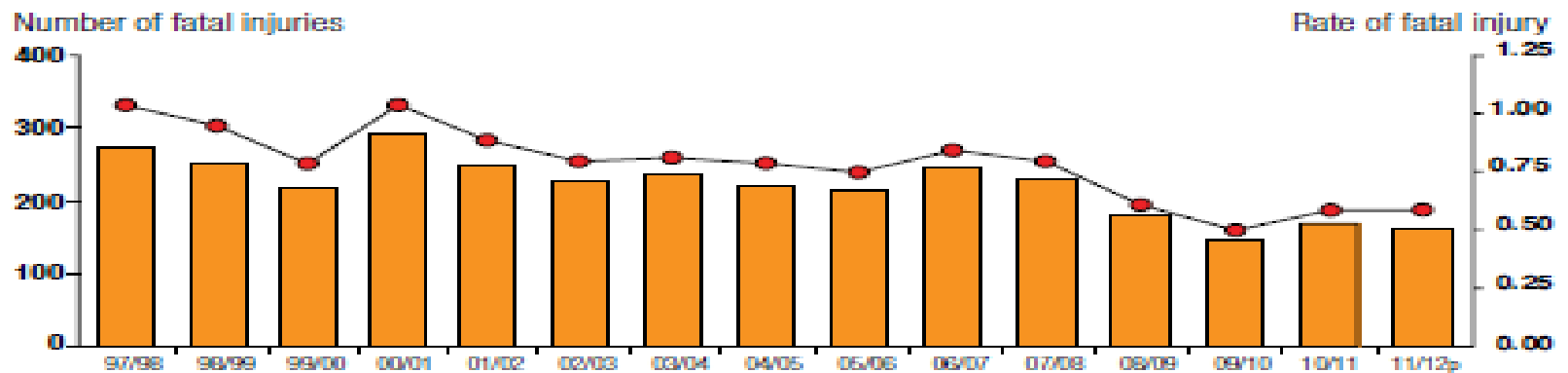
**Population, vehicle stock, motor traffic and reported casualties:
1994-2011**



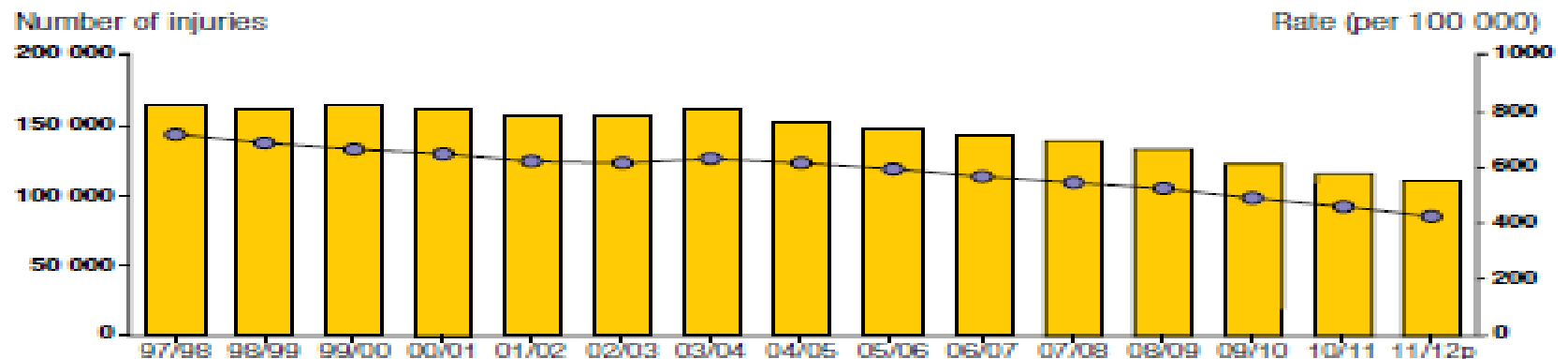
KSI casualties per million population rates, by road user type and age: GB 2007



Number and rate of fatal injuries to workers



Employer-reported non-fatal injuries



source: Health & Safety Executive "Annual Statistics Report 2011/12" (31 October 2012)

*“It is, of course, congenial for claimant lawyers to see their clients provided with comprehensive funding and insulated from all risk of adverse costs. It is congenial for both claimant and defendant lawyers to have a constant stream of work passing across their desks. Indeed, it is congenial for judges to know that the claimants who appear before them are not putting their personal assets at risk, whatever the outcome of the individual case. But these undoubted benefits have been achieved at massive cost, especially in cases which are fully contested. That **cost is borne by taxpayers, council tax payers, insurance premium payers** and by those defendants who have the misfortune to be neither insured nor a large and well resourced organisation.”*



2. Are you ready for Rupert?

One key restraint on the compensation culture

- banning referral fees

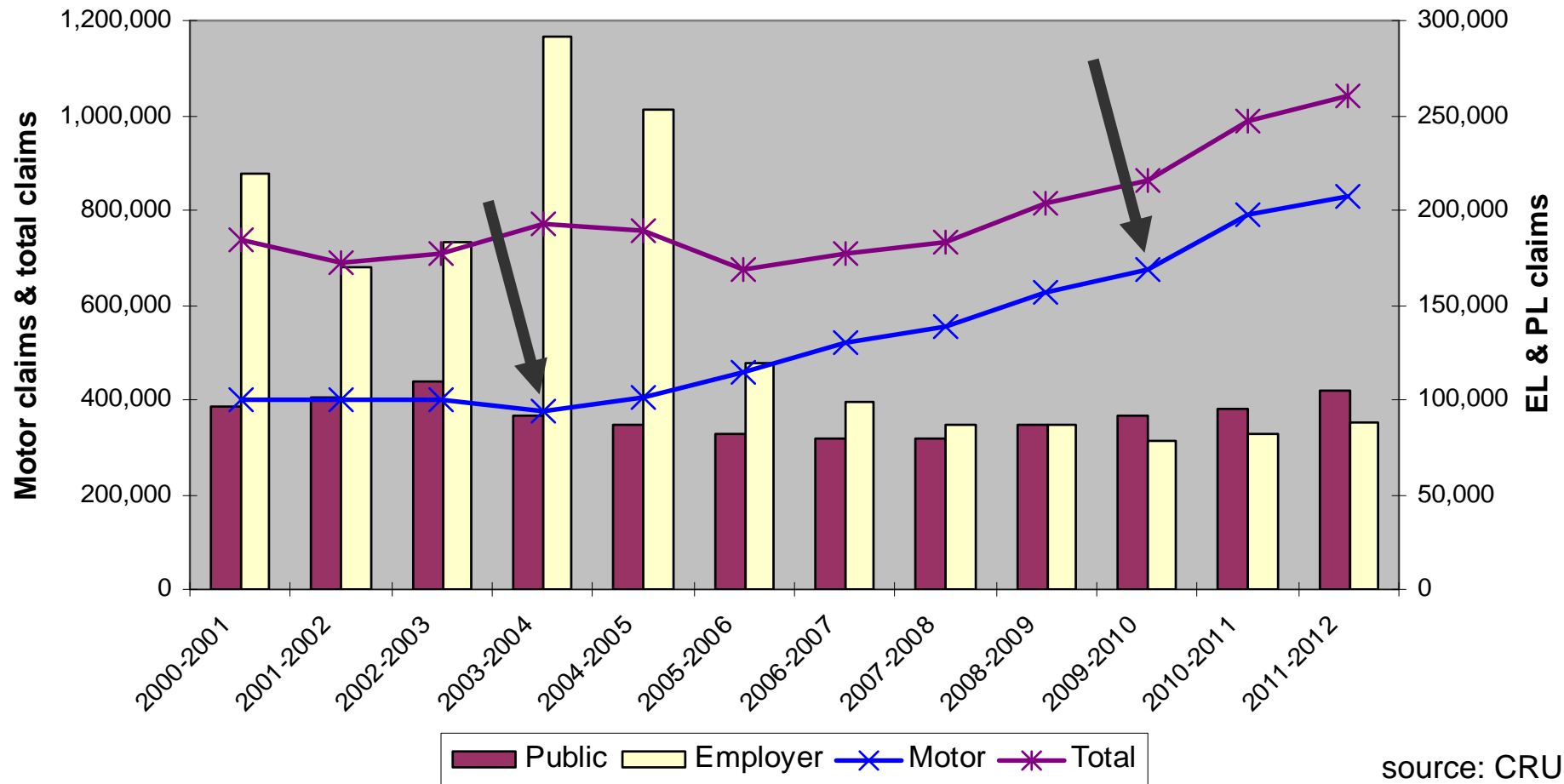


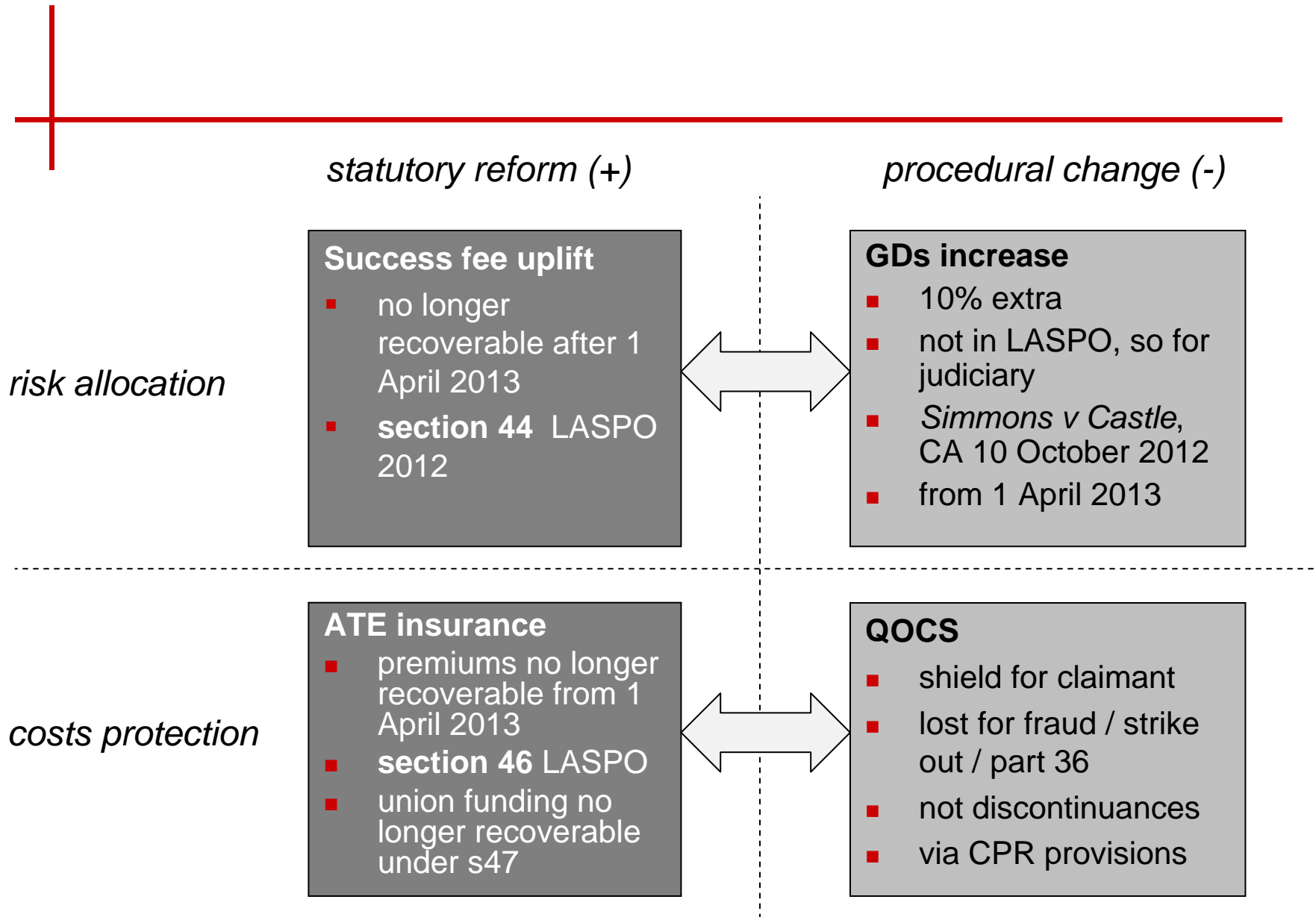
Two sets of balancing structural measures to control claims costs

- success fees vs general damages
- ATE insurance vs Qualified One-way Costs Shifting

Three areas for technical adjustments

- proportionality
- planning (costs budgeting and costs management)
- procedural efficiency i.e. fixed costs in the fast track





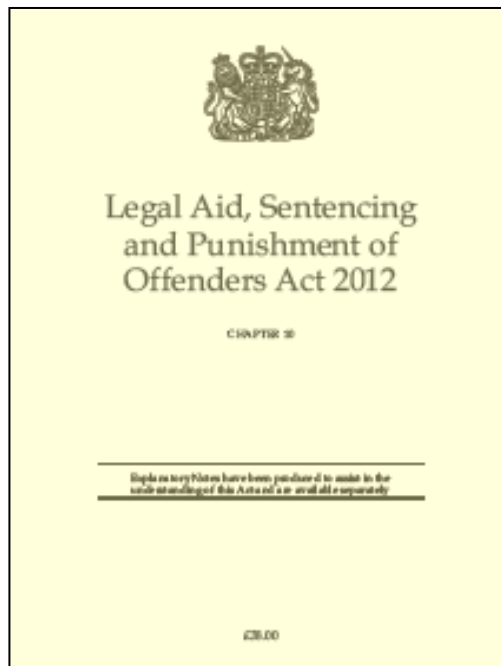
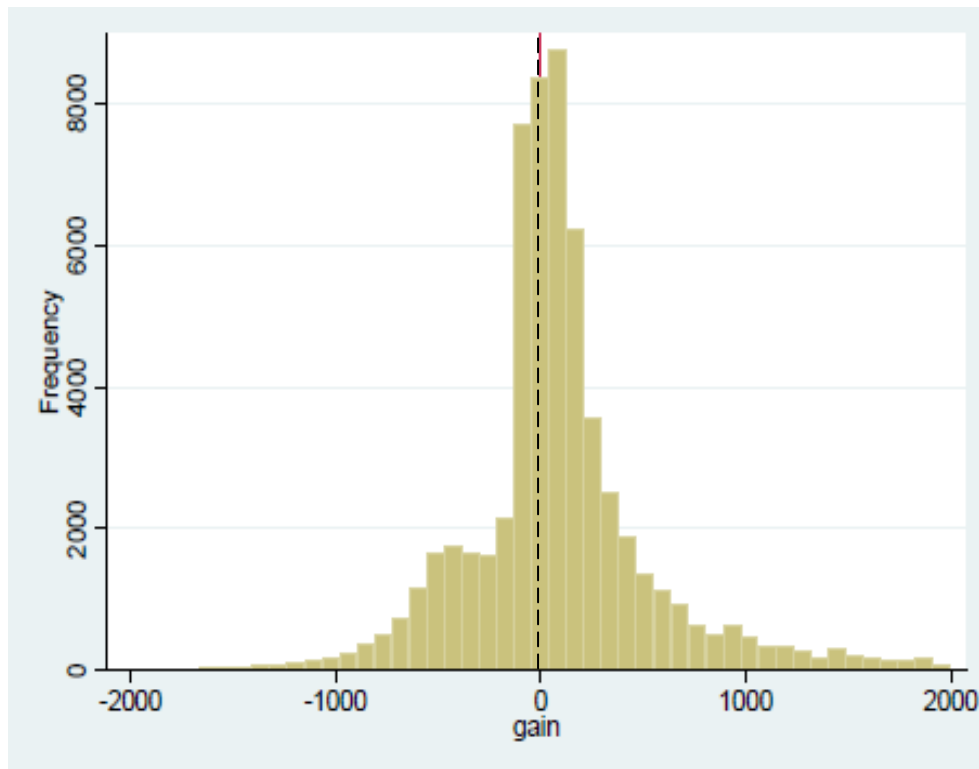


Table 1: Expected collective impact of Jackson's proposals

	Motor	Public liability	Employer liability	Overall impact
Defendant insurers-overall	neutral	pay out less	pay out less	pay out less
Claimants-overall	receive more	neutral	neutral	receive more
Claimant solicitors-overall	receive less	receive less	receive less	receive less

Source: Oxera analysis based on ABI members' data

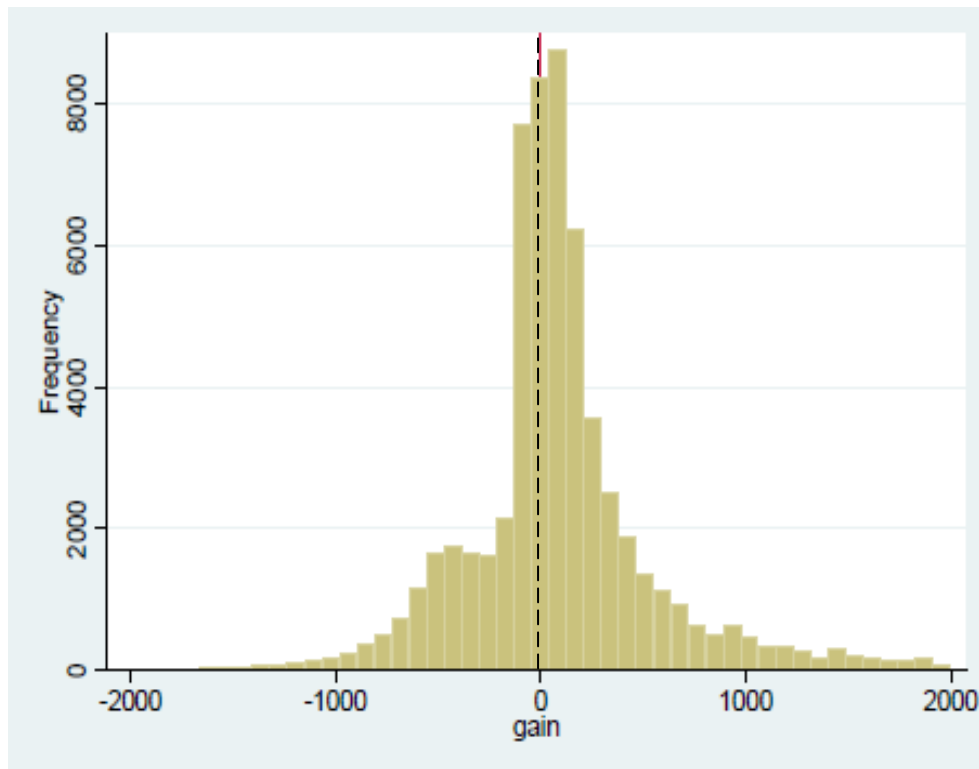
Total RTA, EL and PL claims combined



*“Once success fees are de-regulated, solicitors will compete on who can charge the lowest success fees, not who can pay the highest referral fees. Thus the beneficiaries of competition will be the injured claimants, rather than claims management companies, BTE insurers or other referrers. There can then be **little doubt that the great majority of claimants will be better off under the forthcoming reforms** than they are under the present arrangements.”*

Sir Rupert Jackson, February 2012

Total RTA, EL and PL claims combined

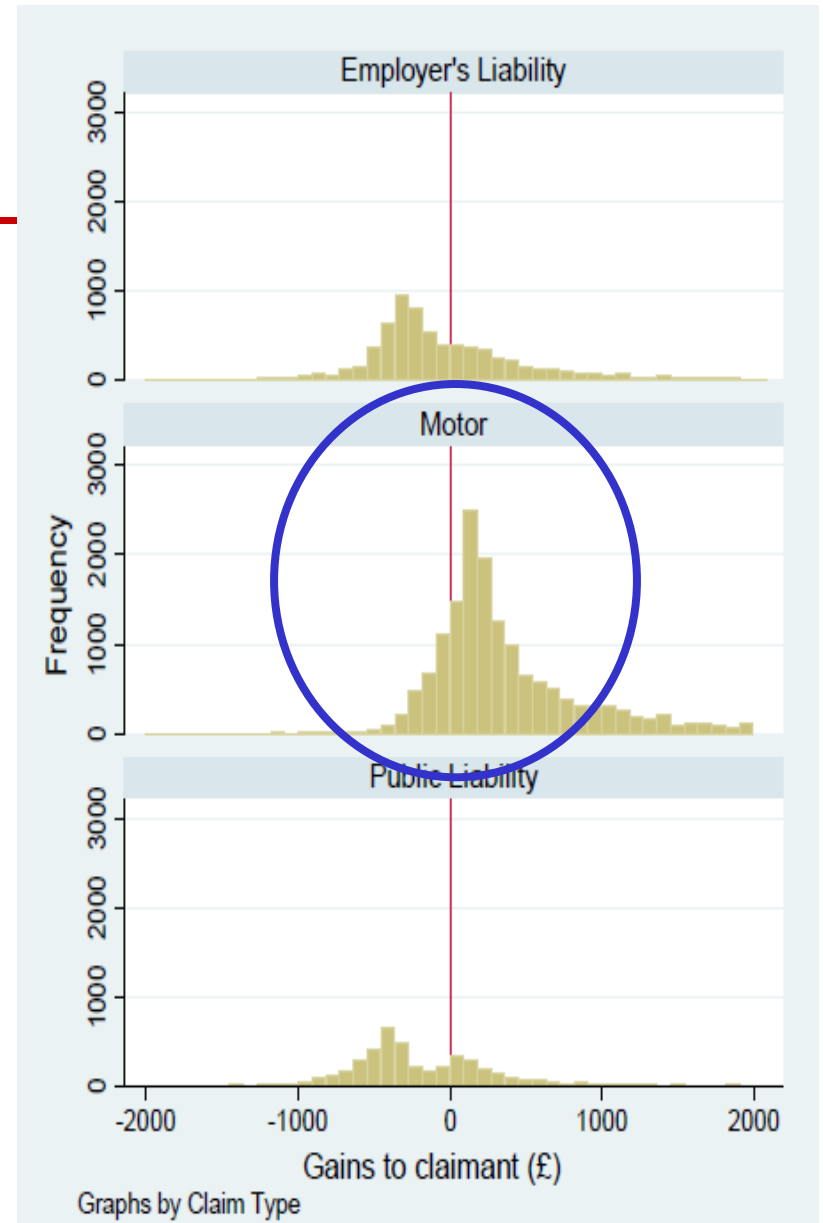
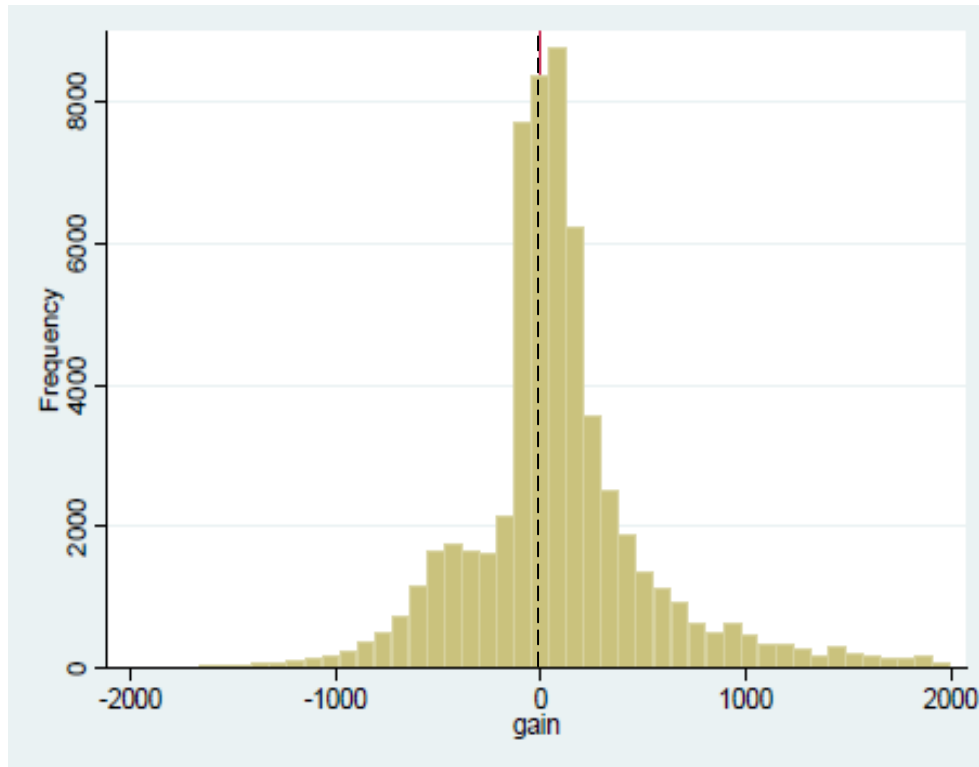


what is the post-Jackson out-turn?

£ *[current claims spend]*
LESS (success fees + ATE
premiums no longer paid)
PLUS (10% general damages
uplift + QOCS costs foregone)
= ?

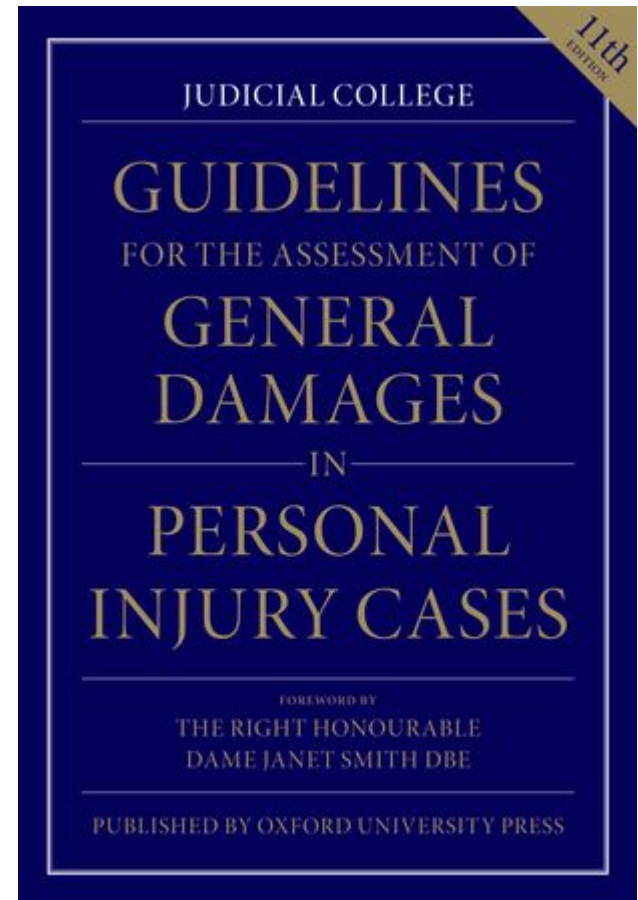
(all things being equal)

Total RTA, EL and PL claims combined



Jackson is not limited to costs reform – be aware of a trio of 10% damages increases

1. general damages - *Simmons v Castle* & the quid pro quo for s44 LASPO
2. all monetary damages - claimant part 36 offers & s55 LASPO
3. inflation – JSB / JC edition 11 & 11.1 (and Dame Janet's aside?)



3. Extending the RTA scheme

TABLE B – FIXED COSTS WITH DISCOUNTS FOR EARLY ADMISSION OF LIABILITY

MoJ RTA Claims Process					Pre Issue		Post Issue					Total- Advocate's Fee (Plus column 11)
Pre Issue £1,000 £10,000	Pre Issue £1,000-£10,000	Issued £1,000-£10,000	Issued £1,000- £10,000	Issued £1,000- £10,000	Pre Issue £1,000-£5,000	Pre Issue £5,000-£10,000	Pre Issue £10,000 - £15,000	Issued – Post Issue Pre Allocation	Issued – Post allocation non-trialing	Issued – Post litigation trial		
1	2	3	4	5	6	7	8	9	10	11	12	
Stage 1 – Notification leads to Admission of Liability	Stage 2 – Liability admitted, med rep obtained	Stage 3 – Settled pre- hearing	Stage 3 – Assessment Hearing (paper)	Stage 3 – Assessment Hearing (Oral)	Case Settles before Issue	Case Settles before Issue	Case Settles before Issue					
Road Traffic Accident												
Fixed Costs	£400	£1,100	£1,400*	£1,450	£1,700 (including £200 solicitor)	£800 + 20% of Damages	£1,800 + 15% of Damages over £10k	£2,350 + 10% of Damages over £10k	£1,800 + 20% of Damages	£2,500 + 20% of Damages	£3,250 + 20% of Damages	£482 (to £3,000) £690 (£3-10,000) £1,035 (£10-15,000) £1,650 (£15,000+)
Stages	na	na	na	na	na	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Success Fee	12.5%	12.5%	12.5%*	100%***	100%***	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%	100%***
Employer Liability Accident												
Fixed Costs	na	na	na	na	na	£1,600 + 17.5% of Damages	£2,475 + 12.5% of Damages over £10k	£3,100 + 10% of Damages over £10k	£3,225 + 20% of Damages	£3,925 + 25% of Damages	£4,825 + 20% of Damages	£482 (to £3,000) £690 (£3-10,000) £1,035 (£10-15,000) £1,650 (£15,000+)
Stages	na	na	na	na	na	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Success Fee	na	na	na	na	na	25%	25%	25%	25%	25%	25%	100%***
Public Liability Accident												
Fixed Costs	na	na	na	na	na	£1,600 + 17.5% of Damages	£2,475 + 10% of Damages over £10k	£3,075 + 10% of Damages over £10k	£3,650 + 17.5% of Damages	£3,650 + 22.5% of Damages	£4,350 + 27.5% of Damages	£482 (to £3,000) £690 (£3-10,000) £1,035 (£10-15,000) £1,650 (£15,000+)
Stages	na	na	na	na	na	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
Success Fee	na	na	na	na	na	45%	45%	45%	45%	45%	45%	100%***

Notes:

1. If an admission of liability is made within the protocol period, £250 will be deducted from the proposed Fixed Costs if the case settles pre-issue, and £500 will be deducted if the case concludes post-issue (incl. at trial)
2. All Fixed Cost figures are cumulative across stages, although payments are made at the end of each stage in the MoJ RTA Claims Process (save children claims)
3. An additional £150 is paid for advice on quantum and £200 for an approval hearing (contested/uncontested) at Stage 3 in children's cases in the MoJ RTA Claims Process
4. Defendants' costs are fixed at Stage 3 only in the MoJ RTA Claims Process
5. Base fees - in all cases increased by 12.5% where London firm
6. Success fees - in all non-trial EL cases are 27.5% for membership organisations

Legend


	Excluding CPR Parts 45 and 46		Proposed Fixed Costs
	MoJ RTA Claims Process		

* Stage 3 costs are only payable where settlement is higher than the defendant's Stage 2 offer

** Of Stage 3 costs only

*** Of all Base Costs

- 10 RTA scheme extension is part of “*Solving Disputes*” - now on Prime Minister’s agenda - key part of insurance summits in Feb and May 2012
- In Feb, MoJ confirms extension in principle & further consultation to May
- staged fixed costs will be lowered (ban on referrals) but no figures yet
- details published 22 October – second consultation by CPRC for 5 weeks
- last chance to respond by **23 November 2012**
- all indicators are for **April 2013 implementation** – ambitious target?



Citizen Space - Extension of the Road Traffic Accident scheme to include employers' and public - Windows Internet Explorer pro

https://consult.justice.gov.uk/digital-communications/extension-rta-scheme

File Edit View Favorites Tools Help

Home on BLM Law Intranet ...

Citizen Space - Extension of the Road Traffic Accident...

justice

Consultation Hub Find Consultations

Extension of the Road Traffic Accident scheme to include employers' and public liability claims up to the value of £25,000

Overview

The Prime Minister announced on 5 January that the current RTA scheme would be extended. Following publication of the responses to the 'Solving disputes in the county courts' consultation paper, the Government plans to extend the existing RTA PI Protocol to cover claims up to the value of £25,000 and to include employers' and public liability accident claims.

We will also be reviewing the fixed recoverable costs in the RTA scheme.

We welcome your views and evidence as to what is an appropriate level of revised costs

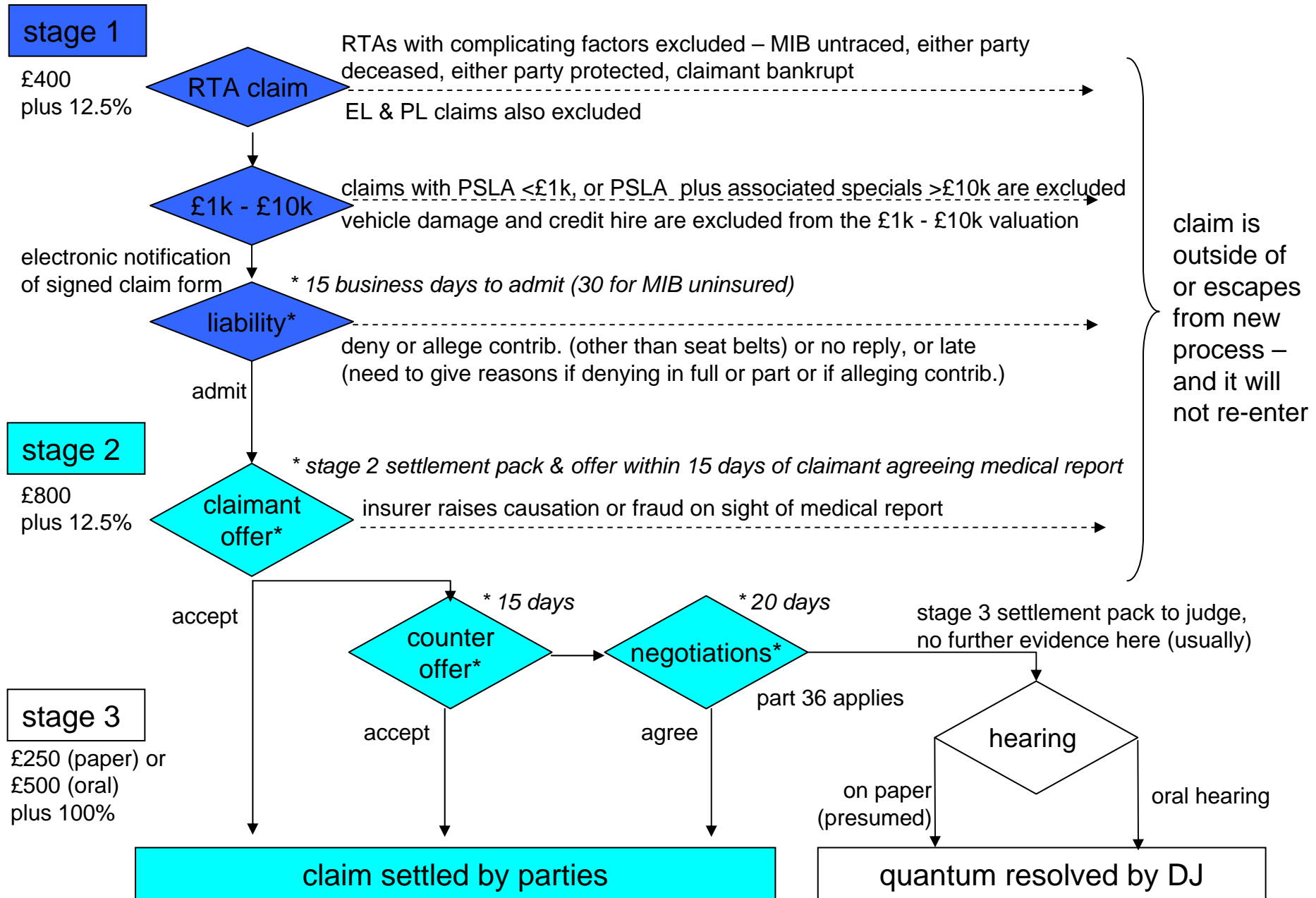
Contact

Philip Chamberlain
Civil Justice Reform
020 334 3185
Philip.Chamberlain1@justice.gsi.gov.uk

Dates

Consultation is Closed

Key Points of Current CPR Pre-action Protocol for Low Value Motor Injury Claims



Key Points of proposed CPR Pre-action Protocol for Low Value EL & PL Injury Claims

stage 1

£ ??
no success
fee*

EL & PL

- for injuries on or after 1 April 2013 (or first letter of claim, if disease)
- single defendant EL diseases included but all PL disease excluded
- mesothelioma and abuse claims also excluded
- as with RTA, complicating factors excluded – e.g. either party deceased, either party protected, claimant bankrupt etc

£1k - £25k

- this valuation is on full liability basis including past losses (excl. future)

liability

30 (EL) or 40 (PL) business days to admit

- admission is comprehensive – duty, breach, loss, no limitation
- allegations of contrib. cause the claim to leave the process
- employer to provide loss of earnings within 20 days of admission

admit

stage 2

£ ??
no success
fee*

claimant
offer*

* stage 2 settlement pack & offer within 15 days of claimant agreeing medical report

insurer raises causation or fraud on sight of medical report

accept

counter
offer*

* 15 days

accept

negotiations*

* 20 days

agree

part 36 applies

stage 3 settlement pack to judge,
no further evidence here (usually)

hearing

on paper
(presumed)

oral hearing

claim settled by parties

quantum resolved by DJ

claim is
outside of
or escapes
from new
process –
but it can
re-enter by
agreement

stage 3

£?? (paper) or
£?? (oral)
no success fee*

2. Are you ready for Rupert?

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- ATE insurance vs Qualified One-way Costs Shifting

Three areas for technical adjustments

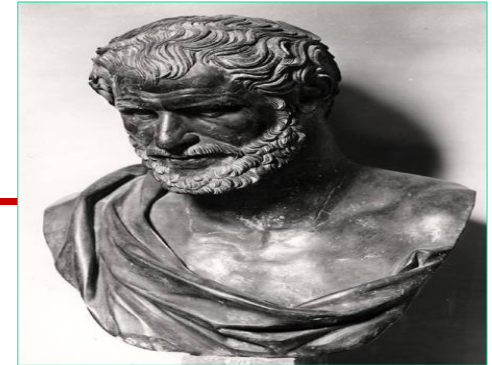
- proportionality
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plus: a potential game-changer in DBAs? (s45 LASPO)

in summary

- Jackson is as much about damages as about costs
- a real challenge around access to justice post LASPO
- where is the infrastructure to extend the RTA scheme?
- resources required to thrive in the extended scheme?
- the period up to April 2013 will be “lively”





“Nothing endures but change.”

- the **rewards** for making claims are changing
- the **processes** by which claims are brought to justice are changing
- the **organisations** which might act in claims are changing
- the **drivers** for acting for claimants are changing
- the **metrics** of claims are changing
- the **behaviours** for efficient defendant responses are changing
- the **formal rules** are changing, in April, and there are many unknowns

so ...



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