Question:	Response from: **The Chartered Society of Physiotherapy** **14 Bedford Row,** **London. WC1R 4ED**
Question 1: Should the definition in paragraph 23 be used to identify the claims to be affected by removal of compensation for pain, suffering and loss of amenity from minor road traffic accident related soft tissue injury claims, and introduction of a fixed tariff of proportionate compensation payments for all other such claims? Please give your reasons why, and any alternative definition that should be considered.	*[RTA PAP 16(A) 'soft tissue injury claim' means a claim brought by an occupant of a motor vehicle where the significant physical injury caused is a soft tissue injury and includes claims where there is a minor psychological injury secondary in significance to the physical injury'.]* We are happy with this definition to be used as it reflects the mechanism of injury and the nature of the injuries to be considered.
Question 2: Should the definition at paragraph 23 be extended to include psychological trauma claims, where the psychological element is the primary element of a minor road traffic accident related soft tissue injury claim? Please provide further information in support of your answer, including if relevant, how this definition could be amended to effectively capture this classification of claim	Any definition used must as far as is reasonably practicable, reflect the nature of the injuries sustained. It should reflect that each case is individual, within the collective broad definition, and that in some individuals the psychological component of injury may be more dominant than in another. Psychological trauma should not automatically be considered secondary to physical trauma, and where necessary it should be given the primary recognition it requires for improved health and well-being outcomes in individuals. We suggest: *'soft tissue injury claim' means a claim brought by an occupant of a motor vehicle where there is either a significant physical injury caused to the soft tissues and/or a significant psychological injury caused by the collision'*

Question 3: The government is bringing forward two options to reduce or remove the amount of compensation for pain, suffering and loss of amenity from minor road traffic accident related soft tissue injury claims Should the scope of minor injury be defined as a duration of six months or less? Please explain your reasons, along with any alternative suggestions for defining the scope.	Reducing monetary compensation for whiplash injuries may have the effect of reducing the number of claims made. This may also therefore reduce the volume of work for both claimant solicitors and defendant insurers managing these claims. However, introducing a time limit may also introduce a perverse incentive of encouraging allegedly fraudulent claimants to exaggerate their symptoms even further to ensure they cross any time-limited threshold, and thus access compensation payments. Where a time limit is introduced, it must be matched to the clinical evidence that the chosen time limit is relevant, reliable and robust. There must also be standardised outcome measures or data sets agreed so that there can be further consistent monitoring of claims at both the individual and wider 'whiplash' population level.
Question 4: Alternatively, should the government consider applying these reforms to claims covering nine months' duration or less? Please explain your reasons along with any alternative suggestions for defining the scope.	However, introducing a time limit may also introduce a perverse incentive of encouraging allegedly fraudulent claimants to exaggerate their symptoms even further to ensure they cross any time-limited threshold, and thus access compensation payments. Where a time limit is introduced, it must be matched to the clinical evidence that the chosen time limit is relevant, reliable and robust. There must also be standardised outcome measures or data sets agreed so that there can be further consistent monitoring of claims at both the individual and wider 'whiplash' population level.
Question 5: Please give your views on whether compensation for pain, suffering and loss of amenity should be removed for minor claims as defined in Part 1 of this consultation? Please explain your reasons	Reducing monetary compensation for whiplash injuries may have the effect of reducing the number of claims made. It may mean that, in the absence of financial compensation, more individuals may try to seek advice and rehabilitation for their injuries and this may increase the demand on physiotherapy services, both in the NHS and independent sectors. We would support the assertion that individuals who have experienced a legitimate injury through no fault of their own, and of a form that is compensatable, should be entitled under the principles of natural justice to seek fair compensation to return them to their pre-injury status. We would

	distinguish the right to access treatment and rehabilitation from the right to claim compensation. We would oppose any proposal that placed barriers to people accessing physiotherapy management for any condition for which physiotherapy was beneficial. Physiotherapy is of value in managing the pain and disability experienced in whiplash sufferers. Where this also has a quantifiable impact on a person's health well-being and lifestyle we would oppose any plan that prevented individual accessing the necessary continued rehabilitation. However, we acknowledge the cost of whiplash claims, and the need to seek to address these.
Question 6: Please give your views on whether a fixed sum should be introduced to cover minor claims as defined in Part 1 of this consultation? Please explain your reasons.	Reducing monetary compensation for whiplash injuries may have the effect of reducing the number of claims made. This may also therefore reduce the volume of work for both claimant solicitors and defendant insurers managing these claims. Whilst the CSP cannot comment on the impact on the legal services industry, we would support the assertion that individuals who have experienced a legitimate injury through no fault of their own should be entitled under the principles of natural justice to seek fair compensation to return them to their pre-injury status, which should where indicated, include access to rehabilitation. We would distinguish the right to access treatment and rehabilitation from the right to claim compensation. We would oppose any proposal that placed barriers to people accessing physiotherapy management for any condition for which physiotherapy was beneficial. Physiotherapy is of value in managing the pain and disability experienced in whiplash sufferers. Where this also has a quantifiable impact on a person's health well-being and lifestyle we would oppose any plan that prevented individual accessing the necessary continued rehabilitation, including where that is included in a compensation award. However, we acknowledge the cost of whiplash claims, and the need to seek to address these.

Question 7: Please give your views on the government's proposal to fix the amount of compensation for pain, suffering and loss of amenity for minor claims at £400 and at £425 if the claim contains a psychological element. Please explain your reasons.	This would need to be revised given our response to Question 2. Whilst reducing the financial compensation paid may deter allegedly fraudulent claims, those who are pursuing genuine claims should not be penalised from receiving fair compensation. Both psychological and physical injury should be treated equally. Therefore, we suggest one fixed fee where there is only one component of objective, quantifiable injury, with a second fee where there is a second injury present. Whilst the CSP cannot comment on how tariff payments for compensation are set, we do not believe that £25 cannot be considered anything more than a notional payment for any kind of injury.
Question 8: If the option to remove compensation for pain, suffering and loss of amenity from minor road traffic accident related soft tissue injury claims is pursued, please give your views on whether the 'Diagnosis' approach should be used. Please explain your reasons.	There are merits to this approach in that a professional opinion based on a conversation with the patient and subjective and objective examination will be conducted within a set period of time. However, if this approach is taken then there must be a clear indication within the report as to whether the person has sought, or been referred for earlier intervention such as physiotherapy. Early access to physiotherapy following injury enables people to regain function and return to work more quickly: http://www.csp.org.uk/professional-union/practice/your-business/evidence-base/physiotherapy-works/fitness-for-work http://www.csp.org.uk/professional-union/practice/your-business/evidence-base/physiotherapy-works/self-referral Where people believe that access to physiotherapy can be delayed until the outcome of a 'diagnosis' report at 6 months, may have the perverse effect of increasing the burden of services required for those who may have benefitted from early referral, and also increase the number of claims that continue due to the persistence of symptoms beyond 6-9 months.
Question 9: If either option to tackle minor claims (see Part 2 of the consultation document) is pursued, please give your views on whether the 'Prognosis' approach should be used. Please explain your reasons.	Using a 'prognosis' approach may introduce a perverse incentive of encouraging allegedly fraudulent claimants to exaggerate their symptoms even further to ensure they cross any time-limited threshold, and thus access compensation payments.

	A more balanced approach may be to introduce a combination of both 'diagnosis' and 'prognosis' approaches to managing these claims. In this way a combination of both diagnostic and prognostic professional judgment can be used, which when matched with robust and reliable data collection and outcome measures should objectively establish claims with merit from allegedly fraudulent ones.
Question 10: Would the introduction of the 'diagnosis' model help to control the practice of claimants bringing their claim late in the limitation period? Please explain your reasons and if you disagree, provide views on how the issue of late notified claims should be tackled.	The CSP cannot comment on the impact on the legal services industry. We would support any measure that promoted early notification of claims and early access to physiotherapy and rehabilitation. We acknowledge that patient's individual response to whiplash, including when they first notice the signs and symptoms of injury may vary, but that ordinarily this would certainly be within the period suggested by the 'diagnosis' model. Early access to physiotherapy following injury enables people to regain function and return to work more quickly: http://www.csp.org.uk/professional-union/practice/your-business/evidence-base/physiotherapy-works/fitness-for-work http://www.csp.org.uk/professional-union/practice/your-business/evidence-base/physiotherapy-works/self-referral We would welcome any measure that ensured that patients were able to access prompt access to services, and that where claims were rejected there is an objective basis for this.
Question 11: The tariff figures have been developed to meet the government's objectives. Do you agree with the figures provided? Please explain your reasons why along with any suggested figures and detail on how they were reached.	The CSP is unable to comment on legal services compensation tariff figures and how these are calculated.
Question 12: Should the circumstances where a discretionary uplift can be applied be contained within legislation or should the Judiciary be able to apply a discretionary uplift of up to 20% to the fixed compensation payments in exceptional circumstances? Please explain your reasons why, along with what circumstances you might consider to be exceptional.	It is beyond the scope for the CSP's business to critically appraise how injury compensation schedules are legally calculated.

Question 13: Should the small claims track limit be raised for all personal injury or limited to road traffic accident cases only? Please explain your reasoning.	We acknowledge that any change to thresholds would capture a greater range of claims within the small claims limit. In principle using the small claims court is quicker, simpler and cheaper than needing to engage solicitors in a full litigation process so may be of benefit to some individuals with simple claims or injuries that have been quantified as low value. This should take the pressure of the Courts and serve to discourage spurious claims.
Question 14: The small claims track limit for personal injury claims has not been raised for 25 years. The limit will therefore be raised to include claims with a pain, suffering and loss of amenity element worth up to £5,000. We would, however, welcome views from stakeholders on whether, why and to what level the small claims limit for personal injury claims should be increased to beyond £5,000?	We also are not best placed to comment on the impact on the legal system of any shift in the Small Claims Court limits, and any impact this would also have on the balance of represented-persons to litigants-in-person that may be caused by this reform of the small claims court.
Question 15: Please provide your views on any suggested improvements that could be made to provide further help to litigants in person using the Small Claims Track.	No comments.
Question 16: Do you think any specific measures should be put in place in relation to claims management companies and paid McKenzie Friends operating in the PI sector? Please explain your reasons why.	It is beyond the scope for the CSP's business to critically appraise this question.
Question 17: Should the ban on pre-medical offers only apply to road traffic accident related soft tissue injuries? Please explain your reasons why.	We would be against any measure in which individuals may decide on accepting a settlement for their injuries without first having access to proper professional physiotherapy opinion on the extent of their condition. It is also important not to tie settlements with having to wait until a 6-month time limit report (if introduced). Introducing a ban would increase the number of claims in the system. If a settlement cannot be reached until a medical property has been undertaken then this may actually increase the demand for medical reports, as well as increase the demand for early physiotherapy services, for which adequate provision must be made.

	This would simply clog up the system and cause potential beneficiaries of early physiotherapy to be prevented for having early treatment and force physiotherapy rehabilitation to be delayed into the chronic phase.
Question 18: Should there be any exemptions to the ban? If so what should they be and why?	(Not within remit of CSP to comment)
Question 19: How should the ban be enforced? Please explain your reasoning.	(Not within remit of CSP to comment)
Question 20: Should the Claims Notification Form be amended to include the source of referral of claim? Please give reasons.	Yes. There should be an open and transparent culture within claims management in which actual and potential conflicts of interest must be fully identified. 'Referral fees' are widely banned in clinical settings due to the acknowledged conflict of interest with regard to duty of care. Robust and open data collection will help ensure that patterns of referral can be properly justified and conflicts of interest reduced.
Question 21: Should the Qualified One-way Costs Shifting provisions be amended so that a claimant is required to seek the court's permission to discontinue less than 28 days before trial (Part 38.4 of CPR)? Please state your reasons.	It is beyond the scope for the CSP's business to critically appraise this question.
Question 22: Which model for reform in the way credit hire agreements are dealt with in the future do you support? a) First Party Model b) Regulatory Model c) Industry Code of Conduct d) Competitive Offer Model e) Other Please provide supporting evidence/reasoning for your view (this can be based on either the models outlined above or alternative models not discussed here).	It is beyond the scope for the CSP's business to critically appraise this question.
Question 23: What (if any) further suggestions for reform would help the credit hire sector, in particular, to address the behaviours exhibited by participants in the market? Please provide the factors that should be considered and why.	It is beyond the scope for the CSP's business to critically appraise this question.

Question 24: What would be the best way to improve the way consumers are educated with regards to securing appropriate credit hire vehicles?	It is beyond the scope for the CSP's business to critically appraise this question.
Question 25: Do you think a system of early notification of claims should be introduced to England and Wales? Please provide reasons and/or evidence in support of your view.	This may encourage earlier physio referral. We would support this where it is linked to an early referral for physiotherapy advice and rehabilitation. Any process which increases the efficiency, effectiveness and cost-effectiveness of a claims management system is to be welcomed.
Question 26: Please give your views on the option of requiring claimants to seek medical treatment within a set period of time and whether, if treatment is not sought within this time, the claim should be presumed to be 'minor'. Please explain your reasons.	We would support any measure where individuals are encouraged to seek early intervention for soft tissue injuries. Early access to physiotherapy following injury enables people to regain function and return to work more quickly: http://www.csp.org.uk/professional-union/practice/your-business/evidence-base/physiotherapy-works/fitness-for-work http://www.csp.org.uk/professional-union/practice/your-business/evidence-base/physiotherapy-works/self-referral We would welcome any measure that ensured that patients were able to access prompt access to physiotherapy services, although the impact on NHS services, which are already under pressure must be considered. Should the NHS be unable to meet any added demand, then this may also increase demand in the private sector for physiotherapy. Whilst a mixed economy of public and private physiotherapy provision may stimulate competition and quality, access to medical treatment in order to pursue a valid and legitimate compensation claim should not become the preserve of those who are able to pay for private treatment. We would be against any measure that defined an injury as 'minor' without professional clinical judgment against objective criteria.
Question 27: Which of the options to tackle the developing issues in the rehabilitation sector do you agree with (select 1 or more from the list below)? Option 1: Rehabilitation vouchers Option 2: All rehabilitation arranged and paid for by the defendant Option 3: No compensation payment made towards rehabilitation in low value claims	We would support any measure where individuals are encouraged to seek early intervention for soft tissue injuries. Early access to physiotherapy following injury enables people to regain function and return to work more quickly: http://www.csp.org.uk/professional-union/practice/your-business/evidence-base/physiotherapy-works/fitness-for-work

Option 4: MedCo to be expanded to include rehabilitation Option 5: Introducing fixed recoverable damages for rehabilitation treatment Other: Please give your reasons.	http://www.csp.org.uk/professional-union/practice/your-business/evidence-base/physiotherapy-works/self-referral However, this must be properly funded to ensure that rehabilitation is provided by properly registered and qualified physiotherapists, and where professionally indicated rehabilitation provided by others under the direction of a qualified physiotherapist. Options 1,2 and 5 provide opportunity to recognise the value that early rehabilitation can play in the functional outcomes of whiplash type injuries. These may result in an increase in referrals to physiotherapy. The current capacity issues within many NHS physiotherapy departments may mean that the added work may place increased burdens on already stretched NHS resources. If the government wishes to promote early rehabilitation for these injuries, which we would certainly welcome and support, then there should be provision made to increase the capacity of NHS physiotherapy departments, which should also include proper consideration of the number of physiotherapists required and the advanced practice skills required to deliver specialist rehabilitation. Any delay in accessing early treatment from a physiotherapist may increase the possibility of symptoms becoming chronic in nature and reduce a claimant's ability to self-manage their symptoms. At the current time, it may mean many NHS services struggle to provide early access to treatment, and the national target for first appointments for MSK conditions is 18 weeks. A wait of 18 weeks for treatment many in many cases, mean symptoms would have become chronic in nature and thus increases the likelihood that more resources required to manage this. NHS services may struggle to meet demand for rehabilitation. Increased referrals to private physiotherapy providers may be welcomed by those who wish to offer rehabilitation services. However, only a small volume of physiotherapy clinics may be currently set up to manage high-

	volume whiplash rehabilitation work. It must be acknowledged that where it is likely that NHS services may not initially be able to meet demand for early access services, there may also be a lag time in private practice capacity whilst clinics adapt their business model and services to meet demand. Option1: The matter of using vouchers needs to be carefully considered, and in particular the price that is actually received by the treating physiotherapist must recognise the education, training and skills required as registered professionals to deliver high quality care. There is already a real problem with falling actual prices paid to physiotherapists, meaning that many experienced physiotherapists now choose not to provide this type for service to patients, where it is not cost effective or worthwhile for them to do so. This is not in the interest of patients who may find it difficult to access an appropriately skilled and experienced practitioner in their area. The use of intermediary companies also needs to be closely examined and reviewed if any voucher scheme is introduced, as intermediaries already take a cut of any fixed fee paid and/or add on administration fees, thus exaggerating the diminution of fees actually paid to the treating clinicians. A voucher scheme that excludes intermediary companies and appropriately remunerates physiotherapists on a par with doctors where there are demonstrably comparable skills is appropriate. It must be fully acknowledged that intermediary company costs may be part of the problem of costs inflation this sector. Where there is no proven benefit to either patient care or the provision of efficient justice in this type of claim the role of intermediary company should be reduced. Option 4: Any impact on increasing the scope of MedCo operations to include the provision of rehabilitation – as distinct from its current role of being a portal to access independent expert reports – would need proper consideration. There would need to be proper fire-walling to ensure that

	those providing reports do not provide rehabilitation for the same patient. There would need to be close governance in place to prevent any actual or perceived conflict of interest within physiotherapy MedCo registered individual experts or MRO's to ensure that the two functions remained separate. In addition, where Medco is involved with providing rehabilitation, intermediary may still be involved and so the cost issues highlighted with vouchers applies here too. MedCo as a concept seems to having success, in particular with regard for experts to be properly educated, trained, competent and registered to undertake medico legal reporting. This is something we welcome as, whatever role a physiotherapist undertakes, patients/claimants have a right to expect a reasonable standard of care, which included a reasonable standard of expert witness practice. However, requiring all provides of rehabilitation to be registered with MedCo may mean that some established providers of WAD rehabilitation choose not to register with MedCo, with a subsequent impact on their business, which will be more enhanced where such private clinics have chosen not to diversify outside performing high-volume WAD rehabilitation work and are not currently registered as either a MRO or individual expert reporter.
Question 28: Do you have any other suggestions which would help prevent potential exaggerated or fraudulent rehabilitation claims?	Whilst the intention of these reforms is to address the increasing number of fraudulent claims entering the system, it must be recognised that the treating clinicians delivering care, as registered professionals, will be bound by their own codes of conduct and so it is unlikely that clinicians themselves are perpetuating fraudulent claims. Any change made to the system should be reasonable and proportionate at addressing the fraudulent claims and must not unreasonably impact honest claimants'

	ability to access both compensation and rehabilitation nor affect WAD rehabilitation clinics' ability to continue to provide services.
Question 29: Do you agree or disagree that the government explore the further option of restricting the recoverability of disbursements, e.g. for medical reports? Please explain your reasons.	We disagree. Disbursements are a separate expenditure that are a necessary part of a legal claim. Those professional experts giving their time and expertise must be entitled to expect full payment for their skills regardless of the outcome or nature of the case. Whilst experts may choose themselves to do pro bono work, that is at their choice and part of a fully considered business decision. Any move to restrict the payment of experts is likely to result in those properly educated, trained and competent to provide such reports withdrawing from the market. This will not service the interest of the claimant or the legal process as it may result in insufficiently experienced and able individuals taking on the work. Whilst some solicitors and MRO's may have clauses in their Terms and Conditions that set out that experts will be fully reimbursed for their work should the firm become bankrupt, this provision must extend to all providers of reports to prevent financial damage to any physio doing MedCo reports.
Question 30: A new scheme based on the 'Barème' approach, could be integrated with the new reforms to remove compensation from minor road traffic accident related soft tissue injury claims and introduce a fixed tariff of compensation for all other road traffic accident related soft tissue injury claims. What are the advantages and disadvantages of such a scheme? Please give reasons for your answer and state which elements, if any, should be considered in its development.	It is beyond the scope for the CSP's business to critically appraise this question.
Question 31: Please provide details of any other suggestions where further government reform could help control the costs of civil litigation	No comments.