A case of 'all change, please'?

As the sector awaits the results of various consultations on personal injury, **Jonathan Wheeler** advises firms to brace for change and to potentially alter course into new markets

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We are used to reeling with the punches as personal injury lawyers. As litigators, winning and losing is our bread and butter. But the punches are coming thicker and faster with a whole raft of so-called reforms affecting both us and our clients.

There are, at present, three government reforms out for consultation. On 6 January, we saw the closure of the consultation on proposals to remove or limit general damages for 'low-value' whiplash injuries, or possibly all low-value soft tissue injuries flowing from road traffic accidents. This could also encompass claims where psychiatric harm is the primary injury.

While a 'minor injury' is defined as being of at least six months' duration, damages for pain, suffering, and loss of amenity under a tariff scheme could equate to the sort of compensation you can claim when your plane is delayed for over three hours – seriously. At the same time, the government proposes increasing the small claims limit to at least £5,000 for PSLA in all personal injury claims. Who cares that the attack on tortious principles would set back our law to Victorian times? Now is the time to lobby your MP, and your clients' MPs, explaining what these proposals will mean for their constituents where they are genuinely injured through no fault of their own.

The Department of Health published a 'pre-consultation' on fixing fees in clinical negligence cases up to £250,000 in 2015. The full consultation has been awaited for sometime but has yet to make an appearance, possibly because of Lord Justice Jackson's review. However, it has not necessarily gone away and remains a threat.

In addition, the Ministry of Defence is consulting on a no-fault (and 'de-lawyered') scheme for armed forces personnel injured or killed in a combat situation, which raises more questions than it answers.

The government is conflicted: on the one hand, it is the defendant, paying out on claims against the NHS and by the military staff it employs; on the other, it proposes restricting the rights of legitimate claimants, with the winds of austerity blowing through Whitehall corridors and everything slave to the money-saving mantra. It is no exaggeration to claim that the rule of law is literally under attack by these proposals. The MoD consultation closes on 23 February.

Similarly, at the Civil Justice Council, work is well underway to recommend fixing fees and processes for noise-induced hearing loss claims. Jackson LJ, in the meantime, has been tasked with developing a scheme to fix fees in all multi-track claims, possibly up to £250,000. Fixed fees can only work if there is a fixed process. One size cannot fit all for claims worth up to a quarter of a million pounds, let alone claims in other disciplines. Jackson LJ's call for evidence ends on 23 January.

The Lord Chancellor surprised some by promising to announce the results of her department's review of the discount rate by the end of January. This could potentially have the most far-reaching effects on those most seriously injured.

The 'discount' applied to damages for future losses to factor in investment returns has been 2.5 per cent since 2001. It is widely felt that its true value should be -0.5 per cent or -1 per cent, when one considers current gilt yields. Now that the Association of British Insurers has applied for permission to judicially review the Lord Chancellor, her announcement may be delayed indefinitely. Meanwhile, in real terms, those accident victims whose needs are the greatest continue to be under-compensated by the judicial system, and are forced to risk their compensation for higher returns. The message we have to get across is that compensation is for life, it's not a lottery windfall.

So if you're a PI lawyer, what should you do? Our firms should be nimble, braced for change and able to alter course. We may have to seek new markets for our talents; we should certainly be honestly evaluating the ones we are in, and taking necessary action.

Good, proper, and decent representation for injured people is at risk here, and we owe it to the clients we serve to ensure we are operating viable and profitable businesses to allow us to deliver that service, which for most – through conditional fees – is free at the point of need.

Note too that the judiciary's response to its consultation on whether to continue to allow paid McKenzie friends is awaited. If – bucking the trend – there is no change, then this may represent a business opportunity for us all outside the highly regulated solicitors' sector. After all, there are likely to be a lot of desperate litigants in person out there. **SJ**