



29 October, 2013

The Law Commission
Steel House
11 Tothill Street
London, SW1H 9LJ

Direct Dial: 01494 545706
Email: jay@bvrla.co.uk

Dear Sirs,

Twelfth Programme of Law Reform

The British Vehicle Rental and Leasing Association is the UK trade body for companies engaged in the rental and leasing of cars and commercial vehicles. Its members operate a combined fleet of 2.75 million cars, vans and trucks. We welcome the opportunity to provide the Law Commission with our views on key areas we believe should be included in its future work programme.

We specifically believe the Law Commission should consider the proposal to introduce legislation which would ensure courts are able to strike out fraudulently exaggerated claims. To help support our suggestion, we have summarised our reasoning below.

The vehicle rental industry is a major consumer of compulsory motor insurance and would be unable to operate without it. Regardless of whether a rental company buys insurance, or self-insures, the impact of increased personal injury and accident liability costs is having a major impact on the sector's ability to deliver an efficient mobility solution to consumers and businesses across the UK.

Figures obtained from our members show that over the last six years the number of personal injury claims alone increased from 17% to 25%. In addition, the average cost of each personal injury claim, within our sector, has more than doubled over the last four years.

Given the wider public interest on the matter, the UK Government has also started to address the problems associated with the recent sharp rises in the cost of motor insurance. For the vehicle rental industry, this area of concern has rapidly escalated into a crisis, as the cost of insurance had reached unsustainable levels. The sharp rise in the costs of compulsory motor insurance has created one of the greatest risks to our sectors profitability and sustainability.

In addition, the House of Commons Transport Select Committee carried out an inquiry into Cost of Motor Insurance - Whiplash. The committee made a number of recommendations to the Government, which included the need to tighten up the requirements for motor insurance claims and requirement for claimants to provide proof that they have either been seen by a doctor or attended A&E shortly after the accident.¹

¹ [Cost of Motor Insurance:Whiplash \(fourth report of session 2013-14\)](#)

British Vehicle Rental and Leasing Association

River Lodge, Badminton Court, Amersham, Bucks HP7 0DD
tel: 01494 434747 fax: 01494 434499 e-mail: info@bvrla.co.uk web: www.bvrla.co.uk

Law Commission

October 2013

The Ministry of Justice had similar concerns and conducted a consultation² on the creation of independent medical panels to support better diagnosis of possible whiplash injuries. In addition, it looked at whether the small claims track threshold for damages for personal injury claims arising from road traffic accidents should be raised. The outcome of the consultation was to introduce independent medical panels, and defer the decision on raising the small claims threshold for personal injury claims.

Legal Problem

The law currently permits a claimant to submit an exaggerated claim with the peace of mind that if the fraud is discovered, the genuine element of the claim made will *not* be struck out. In contrast, the law on exaggerated first party insurance claims, the policyholder forfeits the whole insurance claim where the fraud is identified.

In a recent court case of *Summers -v- Fairclough Homes* [2012] UKSC 26 the court held a claim could be struck out under Civil Procedure Rules 3.4(2) or under a court's inherent jurisdiction at any stage, but only in 'very exceptional circumstances' at the end of a trial.

In this particular case, the genuine value of the claim was found to be £88,716. This had been exaggerated by approximately tenfold. The court, nevertheless, still concluded that the claim fell short of 'very exceptional circumstances' and allowed the claimant to still receive a payment of £88,716.

This court case heightens our concern that there will be little or no disincentives for claimants to submit an exaggerated personal injury claim in the future. If our concern was to become more widespread then we believe fraudulently exaggerated claims will directly impact access to justice for honest claimants, especially as the limited courts resource become clogged up in dealing with such claims. We also believe that this will have a disproportionate impact on the costs associated with defending and challenging such spurious claims.

Our Recommendation

Where a court finds that a claim has been fraudulently exaggerated then we strongly recommend that the entire claim, which includes any genuine element, should be struck out. This approach has already been adopted successfully in the Republic of Ireland and would go some way to help reduce the cost of motor insurance in the UK.

It is on this basis that we ask that our proposal is considered for inclusion by the Law Commission for inclusion in the Twelfth Programme of Law Reform.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jay Parmar', written in a cursive style.

Jay Parmar
Legal and Policy Director

² [Reducing the Number and Cost of Whiplash Claims](#)