



Ministry of **JUSTICE**

Consultation Document

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

Response from:

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BVRLA's Response on Extending the RTA - MoJ

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Executive Summary

1. The BVRLA and its members welcome the opportunity to comment on the Ministry of Justice's consultation paper on, 'Extension of the RTA Scheme'. Our members share a wealth of experience to recognise the importance of fully supporting the recommendations made by Lord Justice Jackson and the outcome of the Insurance Summit hosted by the Prime Minister. It is on this basis that we in principle support realistic policy objectives which will help to reduce and manage costs associated with motor claims.
2. It may be helpful to explain that the vehicle rental industry is a major consumer of compulsory motor insurance and the sector would be unable to offer its services to the public without it. Regardless of whether a vehicle rental company or car club purchases motor insurance on the open market or operates through a 'captive' the impact of increased liability costs is having a major impact on the industry's ability to deliver an efficient low cost mobility solution to consumers and businesses.
3. For the vehicle rental industry, concern has rapidly escalated to a crisis, as the costs associated with motor accident claims and related motor insurance costs reach unsustainable levels. The increasing cost of compulsory motor insurance currently creates the greatest risk for the profitability and sustainability of our industry and the vehicle rental industry is calling on the Government to take urgent, decisive action that will bring relief in the short and long term.
4. We recognise the Government's wider policy objectives to support jobs and growth in the UK, however the rising cost of motor insurance are hampering the rental sector in supporting these objectives. Feedback from our smaller members has been that some insurance companies have put disproportionate requirements, for example requiring tracking devices to be fitted to new vehicles, before insurance can be accessed. This type of costly investment, at a time when the volume of claims has not increased, has resulted in some small businesses seriously considering their product offering and in some cases it has been a contributing factor in business closures.
5. It is no surprise that the excessive cost of motor insurance is driven by the high (and still increasing) cost of claims. As has been well reported by the ABI, its members are operating with combined ratios above 1600%, meaning losses are outstripping premium and expenses.
6. Our members, who have introduced alternative methods of risk financing to reduce the reliance on motor insurance, are suffering the same net effect as motor insurers. In other words, while the amount paid in motor insurance premiums may be reduced, the claim cost increases cannot be avoided.
7. Figures which we have collated show that over the last six years the number of personal injury claims which our members receive has increased from 17% of accidents to 25% of accidents. In addition, the average cost of each claim has more than doubled over the last four years.



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8. The UK's motor insurance crisis has taken time to unravel, with opportunities for exploitation of the current system by claimants, service providers, and even motor insurers producing multiple symptoms and contributing to a new lexicon; claims management companies, compensation culture, crash for cash, referral fee income, etc. It is on this basis that we believe the solution should be focussed on the cause, not the symptoms, to reduce the overall cost of claims sustained by all compensators, which includes the vehicle rental sector.
9. The controllable cost items such as, reducing the ease and number of claims brought for minor personal injury, reducing the disproportionate legal costs involved in delivering compensation, and reducing the cost of providing replacement vehicle solutions, must all be the target of change.
10. In light of the increasing costs associated with motor claims, the BVRLA is calling for the following measures to be considered and implemented:

Personal Injury

Introduce a threshold for personal injury claims resulting from road traffic accidents that requires;

- a) objective evidence of injury documented by an independent medical practitioner, and that the injury is not predominantly:
 - i. a sprain,
 - ii. a strain, or
 - iii. a whiplash associated disorder injury, and
- b) the injury would entitle the claimant to recover damages of greater than 2.5% of the Judicial Studies Guidelines amount for the most serious personal injury, unless a permanent and serious impairment has been sustained.

Civil Litigation

Introduce Lord Justice Jackson's reform for civil litigation to help achieve the following;

- a) Eliminate the recovery of after the event insurance premiums,
- b) Eliminate the recovery of success fees for claimant solicitors
- c) Introduce fixed costs in fast track litigation
- d) Reduce the current £1,200 minimum fee that claimant lawyers can earn from small value personal injury claims handled through the Ministry of Justice Portal to £400.
- e) Ban the payment of referral fees or any other consideration by lawyers in personal injury cases. Consideration should be given to a system of fixed costs outside the RTA Portal to reduce the incentive for claimant solicitors to exit the process.
- f) Introduce regulation requiring all UK motor insurers to provide coverage within the mandatory third party motor insurance policy for the rental of a similar substitute motor vehicle in the event the insured's vehicle is unavailable due to accidental damage caused by a third party.



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Specific Questions

Question 1

The level of fixed recoverable costs you think would be appropriate at each stage of the process for RTA claims and those arising from employer and public liability accident claims and any evidence you can provide to support your views.

11. We remain of the view that the Ministry of Justice (MoJ) should substantially limit the level of fixed recoverable costs for motor claims which is processed through the RTA Personal Injury Scheme.

- **Stage 1 costs should be £100.**

- If the payment of referral fees is banned, there is little justification for funding a significant portion of the fees up front, as acquisition cost will fall dramatically.
- Given the limited work involved in obtaining a claimant's details sufficient to submit the CNF, £100 is sufficient remuneration.

- **Stage 2 costs should be £300.**

- Following an admission of liability, the process of appointing a medical reporting agent and placing a value on the claim will be minimal in most cases.

- **Stage 3 costs should remain £250 for paper and £500 for oral hearings.**

- There will be no change to the process, and the current fees appear proportionate for the work completed.

Question 2

What, if any, modifications would need to be made to the pre-action protocol and the electronic portal for claims in value of between £10,000 and £25,000.

12. We believe a limited change to the protocol and the portal would need to be made purely to reflect the increase in claims value. However, questions regarding the suitability of the portal for more complex claims would likely be resolved by claims leaving the portal and being managed under existing rules for litigated claims. This would limit the effectiveness of the increase in claims value in controlling costs.

13. In addition, a minimal modification may need to be made for claims in value of between £10,000 and £25,000, these could for example be for the provision of additional medical evidence and more complex loss of earnings information.



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Question 3

What, if any, modifications would need to be made to the pre-action protocol and the electronic portal to deal with employers' and public liability claims.

14. The ABI believes that an amended version of the current process can be used to deal with EL and PL claims. Stages 2 and 3 of the RTA pre-action protocol, for example, can be used for EL and PL claims; an injury is an injury howsoever it arises. However, Stage 1 will need to be amended e.g. to allow compensators more time to investigate liability.

Question 4

The reasons why, since the commencement of the RTA protocol, claims have exited the scheme and any ways this might be addressed.

15. Incentives for claimant law firms are misaligned. The financial benefit is increased by the claim exiting the portal, and this may increase if portal fees are reduced while non-portal fees remain at current levels. Claims solicitors are not incentivised to act within the spirit of the protocol, and consciously or subconsciously they seem to take less care over items such as ensuring a claim is sent to the correct insurer and/or claims office.
16. Furthermore, most claims are likely to exit the RTA Portal where the liability is denied, which of course is perfectly acceptable. However, our members remain concerned with some undesirable behaviour from claimant lawyer representatives as they believe they gain higher legal fees if they operate outside the portal process.
17. There are a small proportion of claims which require more than 15 days to accept for a number of reasons including:
 - a) With increasing concerns over fraudulent claims, 15 days can be insufficient to complete a full investigation in order to validate that the claim presented is genuine. Caution usually results in a claim being allowed to exit the portal while investigations continue.
 - b) The increase in whiplash claims has often been associated with an increase in claims following a low velocity impact (LVA). 15 days can be insufficient to complete a full investigation in order to validate the claim presented or consider a causation defence.
 - c) In the vehicle rental industry, there are sometimes challenges in confirming the renter or driver's version of events sufficient to admit liability and causation within 15 days.
 - d) When insurance coverage issues are identified (e.g. unauthorised driver), it can be difficult to complete a coverage investigation within 15 days in order to confirm indemnity is being provided by the insurer.



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General Comments

18. The BVRLA believes that current levels of fixed costs in the RTA PI scheme are set too high. There are several factors that contribute to the disparity between the operating cost of work undertaken and level of fees recoverable. These are summarised as follows:

Legal Fees

- a. Guideline Hourly Rates (GHRs) recommended by the Advisory Committee on Civil Costs (ACCC) have become increasingly influential benchmark when computing legal costs and importantly are now being used as common basis for the calculating the fixed legal costs. It is notable that these rates have increased without any evidential basis or explanation for the rises.
- b. We also believe that the GHRs do not accurately reflect the type of litigation work to which they are used for. It is on this basis that we welcome and support the recommendations of Lord Justice Jackson and greater independence, transparency and accountability is required to ensure the GHRs are set are fair and equitable level.
- c. It is also vital that the rates reflect the banning of referral fees and as part of the wider recommendations made by Lord Justice Jackson.

Reduction in lifecycle

- d. We wish clarify that the RTA low value PI scheme has successfully helped to deliver compensation in an efficient and cost effective manner, especially when it is compared to previous regimes.
- e. The legislative controls now in place have helped to reduce the lifecycle of a claim, especially as there is less time on case management and follow ups.

Technological Developments

- f. The majority of law firms specialising in personal injury and motor claims have invested in electronic case management systems which have reduced the time required to manage certain tasks. As a direct consequence, this has helped to deliver efficiency savings in processing and presenting claims. Simplifying and removing complex management and decision making processes has meant staff do not need a qualified solicitor and often the work can be managed by a legal assistant or para-legal.

Referral Fees

- g. As we highlighted above, 'no win – no fee' legal payment terms has meant the claimant does not give much consideration to the selection of the law firm or how efficiently they are managing the claim as this will ultimately be payable by the compensator and not by the claimant.
- h. Legal costs are simply recovered at the optimum amount within the confines of the legislative controls in place; they are not a commercially sensitive amount that the claimant will agree to pay before obtaining a quote from the next solicitor.



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- i. Efficiency improvements from the factors identified above ensure a consistent upward pressure on the level of referral fees. In the absence of the need for competitive pricing, excess profits have mutated into referral fees of up to £1000 and in some cases 65% of the total profit costs recovered.
- j. As the MoJ will be all too aware, a ban on referral fees for personal injury matters will now be subject to the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 at the same time as the planned expansion of the RTA scheme. A significant corresponding reduction in fixed fees and GHRs must therefore be introduced simultaneously with the referral fee ban to ensure proportionate legal costs going forwards.

Legal costs inflation

- k. Legal costs resulting from personal injury claims continue to rise in the areas where fixed costs have not been introduced. Notwithstanding the recommendations of Jackson LJ to act swiftly on the findings on his report, there is now increasing evidence which suggests that legal costs have increased since the publication of his findings.

Closing comments

- 19. We trust our comments will help to add value to the debate on an appropriate level of revised costs for the RTA scheme and rising costs associated with motor and personal injury claims. Should you require any additional information or clarification then please do not hesitate to contact us.



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About the Industry

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Bona-fides BVRLA, the Industry and its Members

- The BVRLA is a trade body for companies engaged in the leasing and rental of cars and commercial vehicles. Its Members provide short-term self-drive rental, leasing and fleet management services to corporate users and consumers. They offer a combined fleet of 2.5 million cars, vans and trucks, buying 44% of all new vehicles sold in the UK.
- Through its members and their customers, the BVRLA represents the interests of more than two million business car drivers and 10 million people who use a rental vehicle each year. As well as informing the Government and policy makers on key issues affecting the sector, the BVRLA regulates the industry through a mandatory code of conduct.