



Written Evidence

Whiplash Claims

Response from:

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Overview of response

This memorandum is submitted by the British Vehicle Rental and Leasing Association on behalf of its members and their customers. The BVRLA represents the interests of more than two million business car drivers and the millions of people who use a rental vehicle each year.

The cost of motor insurance for the vehicle rental industry 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.

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.

We would recommend that the Government should take the following steps which we believe will help further reduce the costs associated with whiplash claims:

- Ensuring that a claimant is not able to recover damages greater than 2.5% of the Judicial Studies Guidelines for the most serious personal injury, unless a permanent and serious impairment has been sustained and can be proven.
- Ensuring that where a court finds that a claim has been fraudulently exaggerated then 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 by eradicating exaggerated claims in the UK.
- To review the benefits of introducing mandatory fitment of head restraints to all new vehicles sold in the UK that meet Euro NCAP score of 3 or above.

Who we are and what we do

The BVRLA is the trade body for companies engaged in the leasing and rental of cars and commercial vehicles. Its members provide rental, leasing and fleet management services to corporate users and consumers. They operate a combined fleet of 2.75 million cars, vans and trucks, buying nearly half of all new vehicles sold in the UK.

As well as campaigning on key issues affecting the sector, the BVRLA regulates the industry through a mandatory code of conduct. www.bvrla.co.uk

Specific comments

Recovery of Damages

We would suggest the Transport Committee considers recommending further reforms to help reduce the costs associated with whiplash claims. This could, for example, be achieved by ensuring that a claimant is not able to recover damages greater than 2.5% of the Judicial Studies Guidelines for the most serious personal injury, unless a permanent and serious impairment has been sustained and can be proven. This approach would provide certainty and clarity for all parties involved. If there is a dispute then the small claims court provides a solution to bring claims to a resolution at a proportionate cost.

The committee may be aware that a similar approach has been taken in other common law jurisdictions which have been affected by rising insurance costs. We believe that lessons can be learnt from experiences in other jurisdictions which share the similar origins of our legal systems. Australia, Canada, and Ireland have, for example, all responded decisively to manage the spiralling cost of motor insurance given the detrimental effect to the wider economy. Each country mentioned recognised that unfettered access to the courts, regardless of severity of damage or costs of delivering compensation, was unsustainable and appropriate measures were implemented.

A key strategy for maintaining affordable motor insurance adopted in the Canadian and Australian jurisdictions was to limit recovery for non-serious personal injuries. A number of methods, including caps, deductibles, and financial thresholds have been introduced as a means of identifying non-serious injury.

For example, in Alberta, Canada a cap on pay outs was set at \$4000 (around £2,500), while in Nova Scotia, New Brunswick and Prince Edward Island it was set at \$2,500 (around £1,600). In the years between 2003 and 2011, average premiums fell in all of these provinces. The cap was a success in terms of reducing the severity of injury claims experience, reducing the frequency of minor injury claims, and stabilising premiums. Another reform implemented in Ontario was a requirement that an injury had to be a “permanent and serious impairment of an important function” to seek recovery through the civil justice system.

The common experience has been that objective tests create and deliver greater certainty. By introducing the approach adopted by other jurisdictions, which largely looked at the process of identifying a genuine claim, had the desired outcome. This was introduced without the need to impose arbitrary factors which were difficult to prove, such as the speed of impact as applied by the German judiciary.

Fraudulent claims

We would recommend that the committee considers putting forward a recommendation for a change in the law where a court finds that a claim has been fraudulently exaggerated. In this event then we strongly recommend that the entire claim, which includes any genuine element, should be struck out.

Currently a claimant can 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 resource of the courts becomes 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.

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.

Head restraints

There is research from Euro NCAP which shows whiplash injuries are common in rear impacts. While the mechanisms by which the injuries are caused are not fully understood, it is known that seat and head restraint design can influence the risk of injury. Euro NCAP assesses the geometry of the restraint in relation to the head and tests the seats in three severities of impact – high, medium and low – using a dummy specially designed for rear impacts. Further information is available [here](#).

Given this research we would suggest that the committee should recommend that only head restraints with a Euro NCAP rating of 3 or above are fitted to newly manufactured vehicles. This could help reduce the occurrence of whiplash injuries especially in rear impacts. This could be mandated through the type approval process for newly registered vehicles.

Closing Comments

We trust our comments will help to add value to the debate on how to reduce the number and costs of whiplash claims. Should you require any additional information or clarification then please do not hesitate to contact us.