



Ministry of **JUSTICE**

Consultation Document

Reducing the number and costs of whiplash claims

Response from:

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Executive Summary

We welcome the opportunity to comment on the proposals to reduce the number and costs of whiplash claims.

We are pleased that the Government has recognised there is a need to remedy two areas where the current arrangements are imperfect:

- i) the difficulties in diagnosing the injury and
- ii) the nature and cost of the court system that can work against insurers when challenging suspect claims

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.

We fully support the proposal to introduce an independent medical panel as this approach will be able to objectively assess all whiplash claims. We believe this will go some way to reduce the number of fraudulent whiplash claims currently being made. Furthermore, adopting this approach will help to ensure that only genuine claims are paid which will reduce costs for all UK businesses.

However, we would ask that the department goes further 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 department 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



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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.

The common experience has been that objective tests create 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.

Specific Comments

Question 1: Do you agree that, in future, medical reports for whiplash injury claims should be supplied by independent medical panels, using a standard report form, and should be available equally to claimants, insurers, and (for contested claims) the courts?

We agree that an independent medical panel, using a standard report form should be used for assessing whiplash claims. However, we do not believe this is enough as it will not reduce the volume of claims. We would suggest the Government consider introducing 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.

By taking this approach we believe that the Government will be able to ensure that only genuine claims are paid and reduce costs for UK businesses. This type of approach or using predictable damages as is used in Spain, Italy and France is a logical step in facilitating access to justice and adds a layer of transparency and certainty into the claims process.



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Question 2: If no, how would you address the problems listed at paragraphs 35 to 39 of part two of this consultation document?

As we have mentioned above we believe that a threshold for person injury claims needs to be introduced.

Question 3: Which model should be used for the independent medical panels – Accreditation, national call-off contract or some other variant?

We believe that accreditation would be the best way forward as it will ensure independence and should be a cost effective way forward.

Question 4: Do you consider that an element of peer review should be built into every assessment, or only for a sample of assessments for audit purposes?

From a cost perspective we believe that a sample of assessment for audit purposes should be sufficient.

Question 5: How should costs be dealt with and apportioned?

We believe that the costs should be covered by the at fault party in the claim unless the case is proven to be fraudulent in which case the fraudulent claimant should cover all costs.

Question 6: Should the Small Claims track threshold be increased to £5,000 for RTA related whiplash claims, be increased to £5,000 for all RTA PI claims or not changed?

We would support the approach of increasing the threshold to £5,000 for all RTA PI claims as this will reduce costs for all parties. To future proof the threshold we would suggest index linking it to inflation in order that all claims that are intended to be captured by the increased threshold, remain within the small claims track going forward.

Question 7: Will there be an impact on the RTA Protocol and could this be mitigated?

Whilst the volume of claims will increase we don't believe this will impact on the protocol.



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Question 8: What more should the Government consider doing to reduce the cost of exaggerated and/or fraudulent whiplash claims?

If the Government is serious about reducing insurance premiums for motorists we believe there needs to be some form of legal restriction on the types of claims that can be pursued along the same lines as was recognised for the Criminal Injuries Compensation Authority.

Rising insurance costs in the vehicle rental industry

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.

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 a number of smaller operator closures.

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.

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.

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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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.

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.

Leasing Members

In general, vehicle leasing is an arrangement where the user simply hires the use of the vehicle and assumes operational responsibility for a predetermined period and mileage at fixed monthly rental from the owner (the leasing company). Legal ownership is, in the majority of cases, retained by the leasing company.

Short Term Rental Members

Rental Members offer hourly, daily, weekly and monthly rental of vehicles to corporate customers and consumers. As explained above, rental members are the owners of the vehicle.



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Bona-fides **BVRLA, the industry and its members**

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