

## Civil Liability Bill - 2nd Reading Briefing

### Fixing a broken system, helping millions of motorists

The ABI and the insurance industry strongly welcome measures set out in the Civil Liability Bill, as a step towards fixing the broken system of personal injury compensation in the UK. When enacted, the Bill will deliver a fairer system for insurance customers, claimants, compensators, such as the NHS, and taxpayers.

The measures in the Bill will reduce insurance costs, and benefit millions of ordinary motorists by reforming the law relating to compensation for whiplash claims. It also provides for a sensible, modern framework for setting the Personal Injury Discount Rate, updating the principles established by Parliament in 1996.

### Why should you support this Bill?

- **The Bill sets out a package of measures to bring about long overdue reforms to personal injury compensation that will mean a fairer system for claimants, insurance customers and taxpayers.** This would create a more proportionate compensation system for both whiplash-style claims and claims to which the Personal Injury Discount Rate is applied, ensuring that claimants receive 100% compensation and bringing the UK in line with comparable international jurisdictions.
- **In the last decade personal injury claims have risen by 40%, while vehicles have become safer and road accidents have fallen by 31%.** This bald fact illustrates how our broken personal injury compensation system is being exploited by claimant lawyers with vested interests at a cost to millions of honest motorists.
- **The benefits of a modernised system will be passed on to customers.** In an unprecedented move, leaders of UK insurance companies have committed to pass on cost benefits to customers if the Bill is enacted in full<sup>1</sup>. Insurers have a track record of passing on cost savings - the industry passed on over £1.1 billion in savings following the LASPO<sup>2</sup> measures, which saw premiums fall by £50 on average over the following two years.
- **There is public support for reform:** Consumer polling, which the ABI will be publishing shortly, has shown that two-thirds of respondents felt that a compensation culture environment was behind the trend of rising motor personal injury claims despite a fall in the number of road accidents since 2005. Consumers felt that the activities of claimant lawyers (59%) and claims management companies (58%) were to blame. The survey also found that nearly 9 in 10 (87%) of those surveyed felt that legal costs within the current system were too high, with a majority of respondents (two-thirds) supportive of proposals to simplify personal injury compensation, including setting up an online process to make a low value claim.

<sup>1</sup><https://www.abi.org.uk/news/news-articles/2018/03/industry-leaders-commit-to-passing-on-cost-benefits-from-civil-liability-bill-announcement-today/>

<sup>2</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)

# What will the measures achieve?

## 1. A FAIR AND TRANSPARENT FRAMEWORK FOR LOW VALUE PERSONAL INJURY CLAIMS

Part 1 of the Bill sets out a tariff of fixed compensation for pain, suffering and loss of amenity (PSLA) for whiplash style claims which will make the process clear and fair for all claimants.

These measures aim to deliver the Government's manifesto commitment to "reduce insurance costs for ordinary motorists by cracking down on exaggerated and fraudulent whiplash claims". In addition, the Queen's Speech outlined the Government's intention to "modernise the courts system and to help reduce motor insurance premiums."

Other countries, such as France, Italy and Spain, have introduced a similar tariff-based system for road traffic accident (RTA) injuries, which have positively impacted on the number of claims made and the cost of motor insurance.

Contrary to the arguments of some claimant lawyers – whose business models are predicated upon the exploitation of the compensation system – claimants will continue to be able to claim, as they can now, for any medical treatment costs, loss of earnings and hire vehicle charges following an accident. The introduction of the tariff will make valuing a claim simple, transparent and equitable for all claimants. What will be removed will be the ability of law firms to earn 50p on top of every £1 a claimant receives in compensation.

There is public support for this, with consumer polling showing that nearly 9 in 10 (87%) of those surveyed felt that legal costs within the current system were too high.

## 2. A MODERN FRAMEWORK FOR CALCULATING THE PERSONAL INJURY DISCOUNT RATE, FAIR TO CLAIMANTS AND CONSUMERS

The Personal Injury Discount Rate is intended to help ensure that those who suffer life-changing injuries receive 100% compensation, neither more nor less, to meet their future needs, such as medical care and to restore lost earnings.

### **What is the Personal Injury Discount Rate and when is it applied?**

- Compensation for personal injury claims is intended to put the claimant in the position they would have been, had they not suffered an injury.
- Claimants are able to take a Periodical Payment Order (PPO) or a lump sum of compensation to cover their future financial losses, such as lost earnings and future care needs.
- In cases where a claimant chooses to take a lump sum payment they would then invest this money and use it for their future needs. The Discount Rate is applied to lump sum compensation payments, in order to reflect the likely rate of return on the claimant's investment.
- The Rate has historically been based on returns expected from Index-Linked Government Securities (ILGS) and assumes the claimant invests solely in ILGS. However, all the evidence demonstrates that claimants do not invest solely in ILGS nor are they able to. Instead, they invest in a low risk mixed portfolio of assets.
- Lawyers and compensators, such as the NHS, use the Ogden Tables (an actuarial calculator) to establish how the Discount Rate, as set by the Lord Chancellor, is applied to different categories of damages, such as lost earnings.

Following the significant change to the Rate made by the then Lord Chancellor in February 2017, from 2.5% to minus 0.75%, calls to modernise the system for setting the Rate have come from a number of quarters. The need for reform has been recognised by the Government, the Justice Select Committee and legal experts. The change had, and continues to have, significant financial consequences for compensators, including the NHS and insurers, adding significant cost pressures to the public purse and insurance premiums for businesses and motorists.

Insurers fully support the principle of 100% compensation, as set out by Parliament, but we are an international outlier in how we achieve it, with the most costly Personal Injury Discount Rate in the world that fails to take into account how claimants typically invest their compensation. Our Discount Rate is the lowest of similar common law and European jurisdictions. We are the **only** country that has a single rate of less than 1%.

The current Rate is set based on the assumption that claimants invest solely in Index Linked Government Securities (ILGS) which no claimant would actually do, or be advised to do, in practice as this would achieve a negative rate of return. The new system, as proposed within Part 2 of the Bill will reflect the reality of how low-risk claimants invest their compensation and the compensation calculated will be considerably more generous to claimants than it was before the 2017 change.

The current Rate places a considerable financial burden on the NHS and other public services. The Government set aside an additional £6 billion to cover extra compensation costs for the NHS. NHS Resolution estimated that the 2017 change would add an additional £500 million to the costs of clinical negligence claims in 2017-18 in England alone. The NHS Confederation has said that “the rising cost of clinical negligence is unsustainable” and that “compensation must be balanced against the ability of society to pay.” The measures as passed in the House of Lords, will allow for an urgent first review of the Rate, and sets out a sustainable long-term framework of regular and expert reviews under the expert panel every 5 years.

### **3. A REDUCED BURDEN OF COSTS FOR MOTORISTS, INSURERS, COMPENSATORS, SUCH AS THE NHS, AND THE TAXPAYER**

When the current Discount Rate was announced in February 2017, the Prudential Regulation Authority (PRA) estimated that the reduction in the Discount Rate from 2.5% to minus 0.75% could cost insurers around £2 billion a year; reforming the way the Rate is set is likely to reduce costs to insurers and consumers. Higher costs are likely to have a greater impact on younger drivers who already pay over double the average premium<sup>3</sup>.

With low value personal injury claims, despite a fall in accidents of 30% in the last decade, the number of claims has risen by over 40%. Since the announcement of the measures within the Bill the number of these types of claim has finally started to fall, but the overall number and cost of all motor insurance claims continues to rise. In the first half of this year insurers paid out £4.3 billion on all motor claims, compared to £4 billion in the same period in 2017.

Consumers and taxpayers bear the burden of these increasing costs in premiums and in costs to the Government through the NHS and the Courts, whilst lawyers continue to profit at their expense.

The measures within the Bill, therefore, aim to deliver upon the Government’s manifesto commitment to “reduce insurance costs for ordinary motorists by cracking down on exaggerated and fraudulent whiplash claims” and the Queen’s speech commitment to “modernise the courts system and help to reduce motor insurance premiums.”

### **4. COST BENEFITS OF THESE REFORMS WILL BE PASSED ON TO CUSTOMERS**

In an unprecedented move, leaders of UK insurance have set out their commitment to “passing on to customers cost benefits arising from Government action to tackle the extent of exaggerated low value personal injury claims and reform to the Personal Injury Discount Rate.”<sup>4</sup> The industry has committed to working with Government to demonstrate this, once the measures within the Bill have been implemented.

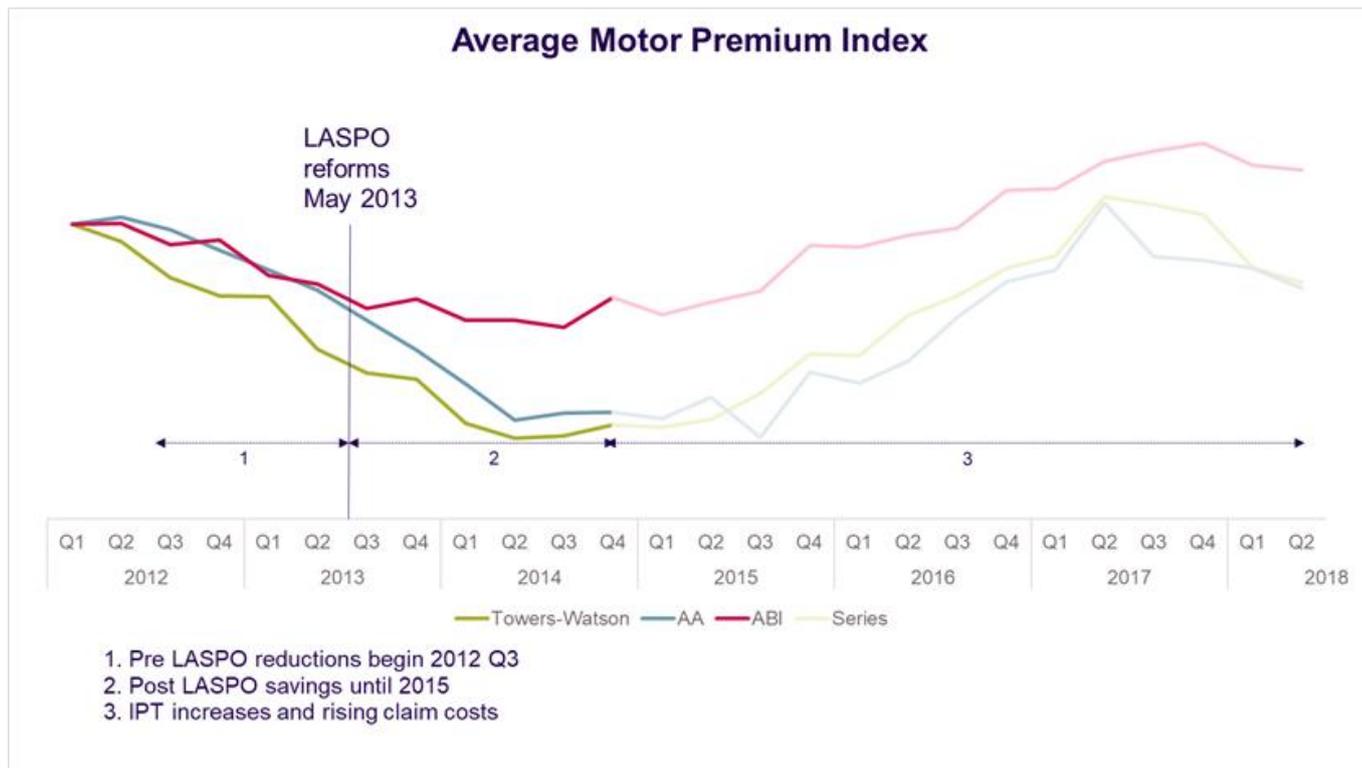
Indeed, falling premiums suggest customers are already starting to feel these benefits. In the first half of this year, the price paid for the average comprehensive motor insurance fell by £16 (down 3%) on the same period last year<sup>5</sup>. It is positive for customers that they appear to be already starting to see the benefits of the planned reforms, but lower insurance costs can only be sustained if Parliament follows through and fixes our broken compensation system. Insurers have a track record of passing on cost

<sup>3</sup> <https://www.abi.org.uk/news/news-articles/2017/07/premiums-for-young-and-old-drivers-at-record-levels/>

<sup>4</sup> <https://www.abi.org.uk/globalassets/files/subject/public/personal-injury/ceo-letter-on-civil-liability-bill.pdf>

<sup>5</sup> <https://www.abi.org.uk/news/news-articles/2018/07/cost-of-motor-insurance-falls-for-second-successive-quarter/>

benefits. Following the initial LASPO reforms, between 2012-2014 the average motor premium fell by £50 a year, and savings worth over £1 billion in total were passed on.

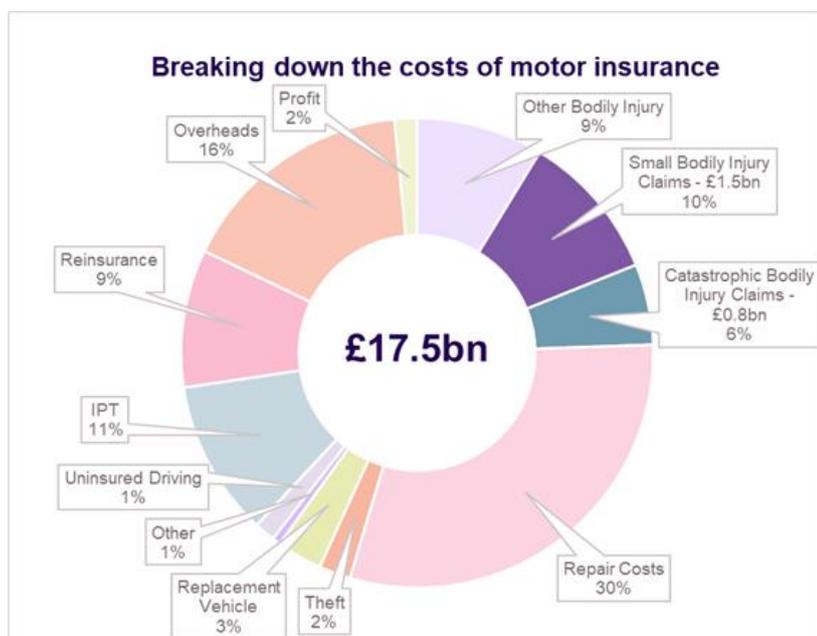


It is vital that we get this right, as insurers and their customers face pressures on premiums from other factors including rising repair costs, more costly vehicle parts, and Insurance Premium Tax, which has doubled from 6 to 12% since 2015.

**Reporting on how benefits are passed on**

As has been highlighted during the debates in the House of Lords, it is the Government’s intention that the measures within the Bill reduce the “unacceptably high” number of low-value personal injury whiplash claims and reduce the burden of costs borne by motorists through premiums as a result, and insurers have committed to passing on benefits arising from the measures to consumers.

The insurance industry stands ready to work with Government to deliver upon this commitment and expects to see an amendment brought forward by Government to detail how a reporting mechanism might be implemented. Insurers are fully committed to working with Government to deliver upon this commitment and support its incorporation into the Bill.



We would urge Government and Parliamentarians to consider the following factors in considering how best to do so:

The UK motor insurance market is highly competitive; with 94 insurers licensed to sell motor insurance and the CMA finding that customers will regularly switch for a small saving in the premium they pay.

Whilst personal injury claims are one of the biggest contributors towards the costs of motor insurance, they are just one element in an ever-shifting combination of costs, as shown here.

In such a competitive market, insurers will seek to offer their customers the most competitive price possible and will price premiums based on a wide variety of factors.

It is therefore fundamental that the approach around reporting the impact on customers considers carefully the complexities of the market and not place undue, or impractical, burdens upon insurance companies, or indeed Government whilst maintaining competition.

## **5. COMBATTING FRAUD AND UNSCRUPULOUS BEHAVIOURS**

In announcing the Bill<sup>6</sup>, the Ministry of Justice outlined the Government's intention to reduce the "unacceptably high" levels of insurance fraud, particularly within personal injury claims, "fuelled by predatory parts of the claims industry" through the measures within the Bill. Insurers are determined to do all they can to detect and prevent dishonest insurance claims, the costs of which end up being paid for by all insurance customers through higher premiums.

Latest industry fraud statistics<sup>7</sup>, show that every minute an insurance fraud is detected in the UK, and that a total of 562,000 insurance frauds were detected by insurers in 2017. Of these there were 113,000 fraudulent claims, and 449,000 dishonest insurance applications, with dishonest claims valued at £1.8 billion.

The industry works collaboratively with Government and other bodies, detecting fraud valued at around £1.3 billion a year and spends over £250 million a year on measures to combat fraud. This includes initiatives such as the Insurance Fraud Bureau (IFB) and the Insurance Fraud Enforcement Department (IFED) within the City of London Police.

- IFED is proving its worth, having secured over 400 court convictions since it was established by the ABI and Lloyds in 2012.
- The industry has invested £1.5 million in setting up MedCo to oversee the medical assessment of whiplash-related claims.
- £25 million has been invested in the MyLicence system to help identify fraudulent motor insurance applications.
- The industry is working with the Government to develop the Counter Fraud Data Alliance, to enable confirmed fraud information to be available across the public and private sectors

According to the Ministry of Justice<sup>8</sup>, there are 1,388 CMCs operating in the UK, of these 752 are involved in personal injury, more than in any other sector, and generate annual income of £182 million. High levels of activity in this sector has, fuelled by the activities of unscrupulous firms, led to an increasing number of fraudulent and exaggerated claims, creating an unsustainable compensation culture. ABI consumer polling shows that the public felt that the rising number of claims were driven by the activities of claimant law firms (59%) and CMCs (58%). These firms drive cold-calling and nuisance calls with one insurer estimating that there were 895m personal injury nuisance calls in 2017 alone.

The measures within the Bill, alongside new measures within the Financial Guidance and Claims Act 2018, will clamp down on these behaviours to the benefit of customers and the taxpayer.

## **6. AN ACCESSIBLE SYSTEM FOR CLAIMANTS UNDER THE SMALL CLAIMS TRACK REFORM**

The measures in the Bill are an important part of a wider programme to reform and reduce the costs of civil litigation, the burden of which is borne by ordinary motorists and consumers.

Contrary to the myths circulated by claimant law firms – whose business models are geared towards maximising commercial benefit from the current system – these reforms will deliver access to justice at a more proportionate cost. It is however vital that any loopholes or reductions be avoided, because if there are any, they will be exploited, as they were after earlier reforms introduced back in 2013.

<sup>6</sup> <https://www.gov.uk/government/news/justice-secretary-unveils-new-bill-to-cut-car-insurance-premiums>

<sup>7</sup> <https://www.abi.org.uk/news/news-articles/2018/08/one-scam-every-minute/>

<sup>8</sup> Ministry of Justice Claims Management Regulation Annual Report 2016/17

Raising the small claims track limit to £5,000 will reduce incentives for claimant lawyers and CMCs to drive up costs on small claims without impacting seriously injured claimants.

### What is the Small Claims Track (SCT)?

- The SCT provides a simple and informal way of resolving disputes, often without the need for lawyers and the associated costs, in low value and simple claims.
- At present the SCT limit is £1,000 for Personal Injury (PI) claims and housing disrepair claims and has not been increased since 1991.
- For all other types of Civil claims, the SCT limit was increased to £10,000 in 2013, these include:
  - Compensation for faulty services and goods i.e. builders or repair garages, or televisions and washing machines.
  - Disputes between landlords and tenants – for example, rent arrears or compensation for not doing repairs.
  - Compensation for Road Traffic Accidents (RTAs) where there is no injury – for example, for vehicle damage or car hire.
  - Employment issues – for example, for wages owed or money in lieu of notice.

The industry and stakeholders, including claimant representatives, are working with Government to ensure that the new system works for claimants; to ensure that access to justice is not impeded and that the system works clearly and simply for ordinary claimants, with sufficient safeguards in place. This includes a process for deciding any claims where there is a dispute as to who was at fault for the accident and a process to ensure claimants can source high quality medical evidence to support their claim.

There is public support for these wider reforms as the ABI consumer survey shows over two-thirds (68%) of the public would be comfortable with the change if it leads to lower motor premiums.

## 7. DELIVERING ROBUST AND LASTING REFORMS

It remains essential that the measures are robust and flexible enough to adapt to changing conditions and the dynamic and shifting activity of claimant law firms and CMCs, and that the measures are not left open to exploitation through loopholes or diluted in any way during the remaining stages of the Bill

It is highly likely that unscrupulous CMCs and claimant lawyers will seek to exploit the measures wherever possible, as they have done in previous reforms. We therefore urge the Government to think carefully on the exclusion of minor soft tissue injuries within the current definition, which we believe will encourage the inflation of minor injury claims to attract non-tariff damages.

We expect that this may lead to a shifting focus from whiplash to bruises and may severely undermine the cost-savings as set out in the Government's Impact Assessment. Measures to ensure this does not become the case should be carefully considered and explored as the Bill proceeds.

### An opportunity to deliver lasting reform

The Government has outlined, through its manifesto commitment and in the impact assessment to accompany the Bill, the savings that can be delivered from the implementation of these measures and the wider reforms.

During its passage through the House of Lords, the measures within the Bill were debated at length and a number of amendments have been incorporated into the Bill. Insurers have welcomed this debate and stand ready to discuss outstanding concerns with Parliamentarians throughout the Bill's continued passage through Parliament.

The Civil Liability Bill represents an opportunity to end the abuse and exploitation of the personal injury compensation system once and for all, and to deliver a modern and fair framework for the setting of the Personal Injury Discount Rate and is a 'last chance saloon' to get this right.