ABI Briefing

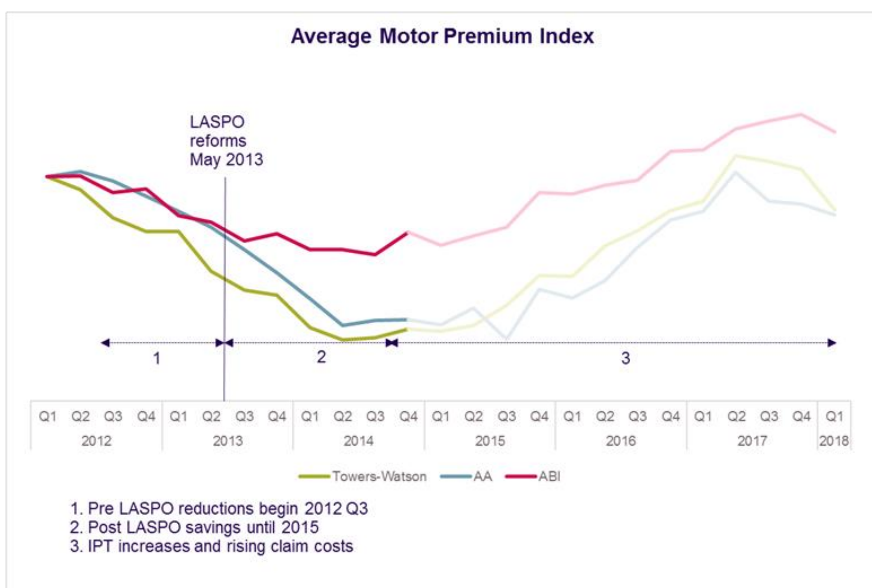
Association of British Insurers

Civil Liability Bill – Committee Stage - House of Lords

The ABI and the insurance industry strongly welcomes the introduction of the Civil Liability Bill, as a step towards fixing a broken system and helping millions of motorists who have seen their insurance premiums go up and up in the last two years.
The measures in the Bill will reduce the burden of costs on millions of ordinary motorists for whom premiums have reached a record high of £493 at the end of 2017[1] 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.

Passing on benefits to consumers:

Following the publication of the Bill in an unprecedented move, **leaders of insurance companies representing 93% of the motor insurance market** underwritten by ABI members in the UK have set out, in a letter[2] to the Lord Chancellor, 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.**"

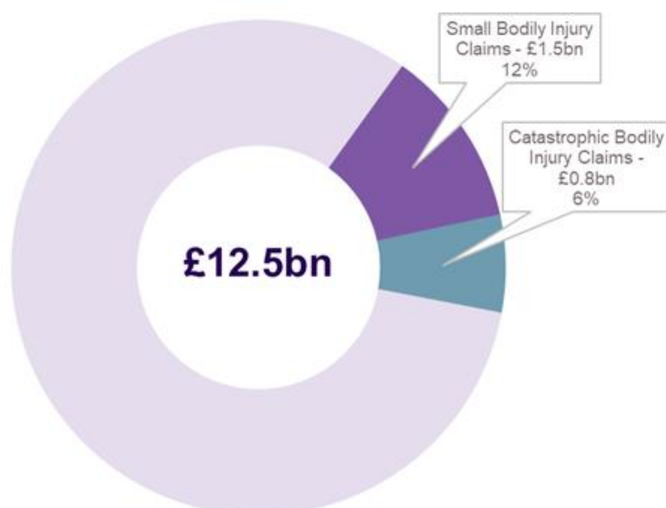


Insurers have a track record of passing on cost savings - **the industry passed on over £1.1 billion in savings following the LASPO[3] measures, which saw premiums fall by £50 on average** over the following two years.

The ABI produces a quarterly motor premium tracker, which alongside other trackers (based on quotes rather than premiums paid), shows pricing trends within the UK motor market. According to the latest statistics, the average price paid for comprehensive motor insurance fell in the first quarter of 2018 but remained higher than it has ever been in the first quarter of the year.

The motor insurance market is highly competitive, with 94 insurers licensed to write motor insurance in the UK. Furthermore, the CMA undertook a thorough investigation of the motor insurance market[4] reporting in 2014 finding it to be competitive, with customers regularly switching for only a small saving in the price of their policy.

[1] https://www.abi.org.uk/news/news-articles/2018/03/new-civil-liability-bill-would-be-great-news-for-motorists-says-abi/
[2] https://www.abi.org.uk/globalassets/files/subject/public/personal-injury/ceo-letter-on-civil-liability-bill.pdf
[3] Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and the reduction of Fixed Recoverable Costs (FRC) in the Claims Portal
[4] https://assets.publishing.service.gov.uk/media/5421c2ade5274a1314000001/Final_report.pdf



While personal injury claims are the biggest contributor towards the cost of premiums, they are just one element in an ever-shifting combination of costs that make up premiums. 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.

Whiplash - Fixing a broken system:
The fact that in the last decade injury claims have gone up 40% while the latest available figures show road accidents down by 30%, shows clearly how our broken personal injury compensation system is being exploited by those with vested interests at a cost to millions of honest motorists.

Whilst those with vested interests have argued against the measures within the Bill, the plain truth is that their business models are set up to exploit the compensation system wherever possible for commercial gain.

A history of gaming the system:
This is evidenced by the history of exploitation in the areas of MedCo, holiday sickness, noise-induced hearing loss and in personal injury to circumvent the LASPO reforms. In each of these areas, there is clear evidence that some claimant law firms move quickly to either exploit loopholes in legislation or move to other areas of the system in order to continue to pursue their commercial gains at the expense of taxpayers and consumers. A clear and undisputable example of this exploitative behaviour can be found in the recent spike in claims related to holiday sickness/gastric illness.

The Association of British Travel Agents (ABTA) reported in June 2017 that there had been a 500% increase in the number of compensation claims for holiday sickness since 2013, with tens of thousands of claims in the past year. Yet, during the same period, sickness levels in resorts did not rise and there was no increase in claims levels from non-British travellers visiting the same resorts. With unmeritorious claims continuing to soar, the Government has now moved to introduce changes to the Civil Procedure Rules to clamp down on unscrupulous claims management companies and claimant law firms encouraging claims in this area.

What has this got to do with claimant lawyers?

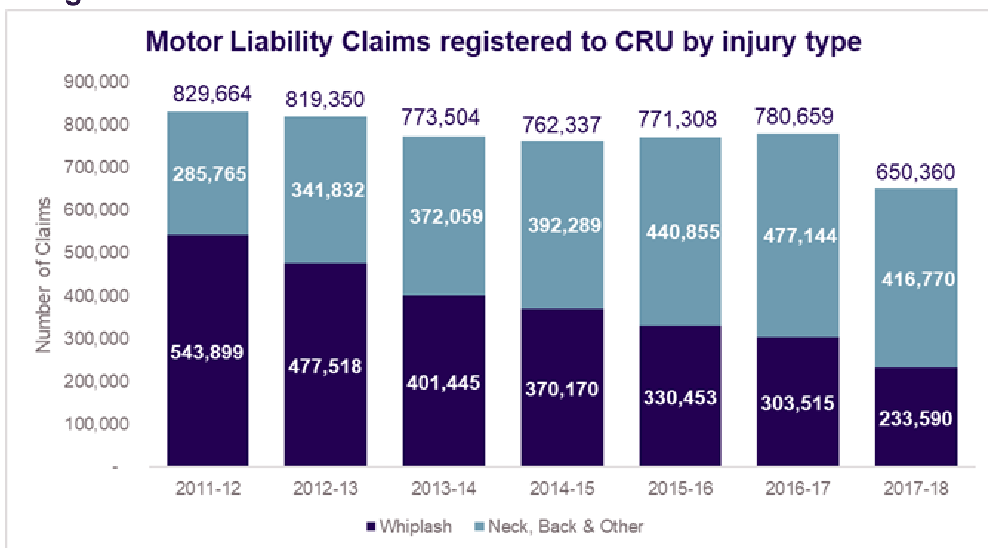
Claimant lobbyists have longed argued that the number of whiplash claims has decreased. However, we suspect that claimant lawyers, when providing data to the DWP's Compensation Recovery Unit (CRU), have been purposefully phasing out the use of the term ‘whiplash’ so that the CRU statistics reflect a more favourable decrease in claims figures.

As shown, claimant law firms have an adaptable business model, ready to seize upon the next area of the “squeezed balloon” and will continue to do so. The Association of Personal Injury Lawyers has confirmed that firms are already adapting ahead of the measures being enacted, by developing a new market on unbundled legal advice, which will see lawyers provide legal advice on parts of the claims process.

Given that road traffic accidents have declined in recent years, it is a sign of how broken the system is that this is only now reflected in falling claims. The could be due to the threat of legislation forcing Claims Management Companies (CMCs) and Claimant Lawyers to move their attentions elsewhere yet again

looking for the next loophole to be exploited. Failing to fix the broken system for whiplash claims now would most likely see claimant lawyers and CMCs return in numbers and millions of motorists will pay the price.

Defining and calculating whiplash compensation – why a flexible approach via secondary legislation is needed:

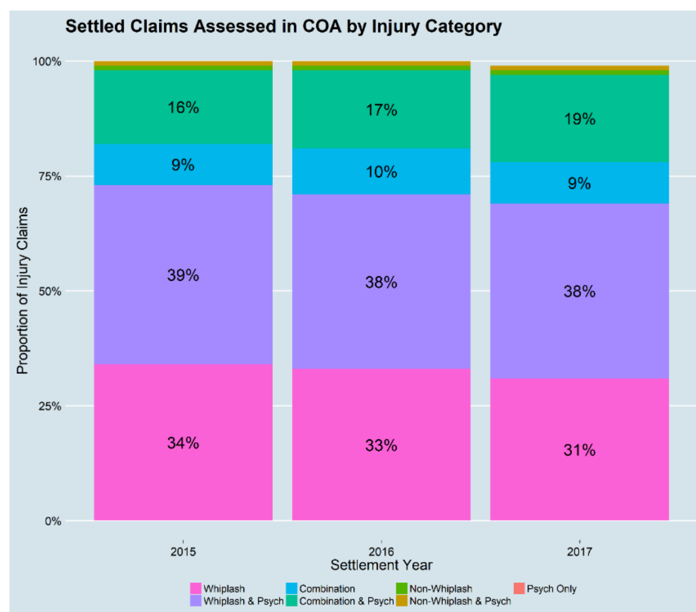


To avoid the measures within the Civil Liability Bill from being circumvented and to ensure they achieve the Government's aims and cost savings, it is essential that the measures are flexible enough to adapt to changing conditions and the dynamic and shifting activity of claimant law firms and CMCs.

The recommendations of the Delegated and Regulatory Reform Committee's 22nd Report, whilst understandable within the wider debate around parliamentary scrutiny and ministerial (Henry VIII) powers, would, by placing the definition and the tariff basis for damages on the face of the Bill, remove this necessary flexibility and undermine the ultimate aims of the measures as set out by the Government.

On the definition of whiplash, it is understandable that the Bill should define in more detail what will constitute a whiplash or soft tissue injury to be captured by the measures (and the ABI is supportive of amendments to this effect as outlined below). However, this definition must, through secondary regulations, allow sufficient flexibility to adapt this definition to prevent similar exploitation as that which was seen following the introduction of the LASPO reforms.

As demonstrated in the graph, the current whiplash definition in the legislation would capture just over two thirds of soft tissue injury claims. However, just under a third of claims would currently attract both tariff damages and non-tariff damages for minor injuries. This undermines the effectiveness of the tariff as a control mechanism: non-tariff damages for minor bumps and bruises could be worth more than the tariff figure itself. There is already some evidence of an increase in the frequency of such claims; and there will be an incentive to add more minor injuries to the claim to increase the overall level of damages, which would have a negative impact on the Government's intended cost savings.



On the tariff of damages, the Government has, on 8 May, published draft regulations[5] outlining the tariff of damages to show the intended levels of compensation, dependent upon the duration of an injury.

The ABI fundamentally believes that these elements of the measures should be defined in secondary regulation as including fixed levels of compensation within the Bill would not allow these measures to be

[5] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705413/annex-a-civil-liability-draft-regs-the-whiplash-injury-regulations.pdf

adapted to meet changing environments. It should also be noted that changes to the levels of the tariff would dramatically alter the potential cost benefits of the reforms as the Government impact assessment, which estimated cost savings of £1bn and average premium reductions of £35 per policy as a result of the measures and the full benefits to consumers could not therefore be realised.

A broader package of civil justice reform – updating the Small Claims Track for RTA personal injury:

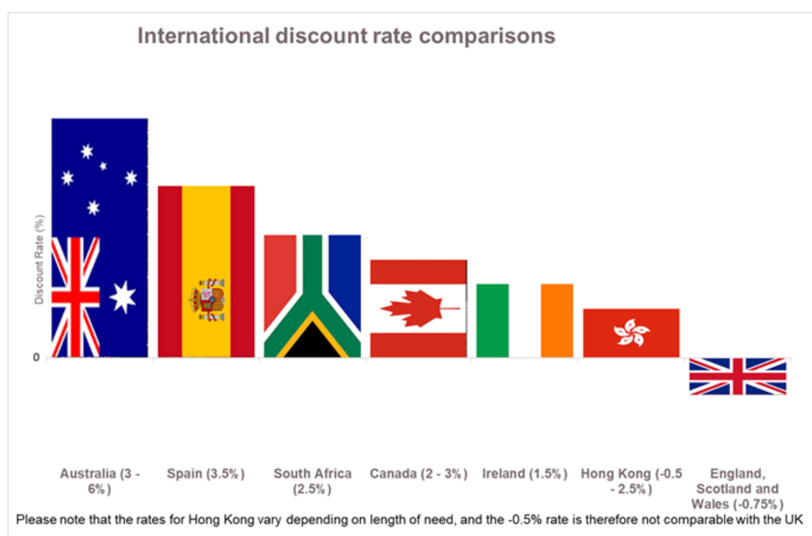
The measures in the Bill are an important part of a wider programme to reform and reduce the costs of civil litigation which include tackling rising insurance premiums for consumers, particularly motorists. These civil procedure rules changes propose to raise the Small Claims Track (SCT) limit for RTA personal injury and will deliver a new online system enabling claimants to pursue their own claimants, with support and guidance when required.

After 27 years the SCT limit for RTA personal injury urgently needs updating. The current limit of £1,000 was set in 1991, and for a vast array of other civil cases, an SCT limit of £10,000 is commonplace. A new limit of £5,000 would significantly reduce incentives for claimant law firms and CMCs to drive up costs on small claims without impacting seriously injured claimants. 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.

Industry and government are already working with claimant representatives to ensure that access to justice is safeguarded and respected, and many other jurisdictions such as Finland, France and Norway, do not involve lawyers when settling low value PI claims.

Personal Injury Discount Rate - Setting a modern and fair framework

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. 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.



Please note that the rates for Hong Kong vary depending on length of need, and the -0.5% rate is therefore not comparable with the UK

The change had, and continues to have, significant financial consequences for compensators, including the NHS and insurers. In a letter to the Lord Chancellor, a number of NHS organisations have stressed that, following the increased burden stemming from the change to the Personal Injury Discount Rate "the rising cost of clinical negligence is unsustainable". Given the wider pressures on the healthcare system, the rising cost of clinical negligence is already having an impact on what the NHS can provide." Given that the Chancellor set aside an additional £5.9 billion in the last Spring Budget to cover the additional cost of compensation, reform of the system is also necessary to counter the rising costs to the NHS.

Independent research[6], commissioned by the Ministry of Justice, has also shown that the current Personal Injury Discount Rate in the England and Wales is the lowest of similar common law and European jurisdictions, with no other jurisdiction having a single rate of less than 1%, and the majority were above 2.5%. This reinforces that the current Rate of -0.75% is too low to deliver against the principle of 100% compensation. Change is therefore necessary to restore the balance back to adherence to the 100% compensation principle, in order to be fair to claimants, compensators, the taxpayer and society.

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[6] https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/biicl-comparative-law-report.pdf