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Transport Committee

Cost of motor insurance: follow up

Twelfth Report of Session 2010–12

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written evidence*

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The Transport Committee

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

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Summary

In this report we follow up the Government's response to our March 2011 report on the cost of motor insurance and also deal with new developments in this area, including the Government's decision to ban referral fees relating to personal injury cases.

In relation to the ban, we echo doubts expressed at Report Stage in the House about its efficacy, particularly once rules restricting the ownership of law firms are relaxed. However, we recommend that once the Bill is enacted the Government should prioritise the implementation of the ban on the receipt of referral fees, which could prohibit insurers from receiving referral fees across the board rather than only in relation to legal action. One way to help reduce premiums may be to consider whether the legal costs of low value claims processed using the pre-action protocol and online portal are reasonable. We recommend that the Government review how the protocol and portal have operated since they were introduced last year and publish the results within six months.

The rise in personal injury claims, most of which are for whiplash injuries, is the main reason for the rise in premiums. It is difficult to diagnose whiplash objectively and this has deterred insurers from defending claims in court. We recommend that the bar to receiving compensation in whiplash cases should be raised. If the number of whiplash claims does not fall significantly as a result there would in our view be a strong case to consider primary legislation to require objective evidence of a whiplash injury, or of the injury having a significant effect on the claimant's life, before compensation was paid.

We recommend that the Government send a clear message to the insurance industry that it expects the data protection legislation to be fully respected and we echo the recommendation of the Justice Committee that the stricter penalties for breaching the Act, passed by Parliament in 2008, should be brought into force. We also call on the Government to initiate an investigation of cold calling intended to generate personal injury claims, with a view to examining the legal and regulatory options for curtailing this activity.

The House recently agreed to a resolution on the cost of motor insurance based on our earlier report, which called for the establishment of a cross-departmental ministerial committee on reducing the cost of motor insurance and the publication of a plan for dealing with the different aspects of the problem. We call on the Government to explain how it will implement this resolution.

We also followed up our previous recommendations on uninsured driving and fraud. Earlier recommendations on young drivers will be followed up in our forthcoming inquiry on road safety.

1 Introduction

1. In March we published a report on the cost of motor insurance which looked at the reasons for the very significant increases in quoted premiums in recent years.¹ The AA calculated that the average of the lowest three quotes from 90 providers (the ‘shoparound’ average) for comprehensive cover increased by 39.3% in the year to October 2010. Our report triggered a positive public reaction: we received numerous letters from members of the public about their premiums and how their claims were handled. During the last eight months there have been a number of further developments which led us to hold a further oral evidence session, on 11 October, and to publish this report. We are grateful to our witnesses on 11 October and to the individuals and organisations who volunteered further written evidence.

2. The main developments relating to the cost of motor insurance since our last report can be summarised as follows:

- Quoted premiums have continued to rise, but more slowly than before. The AA’s shoparound average fell by 0.3% between the second and third quarters of 2011, although the annual rate of increase remains well above inflation at 16.4%. Quoted premiums for younger drivers continued to rise.²
- Rt Hon Jack Straw MP introduced a bill to Parliament under the ten minute rule procedure to ban the payment of referral fees, establish new standards relating to the evidence required and damages payable for whiplash, to reform the Pre-Action Protocol for Personal Injury Claims in Road Traffic Accidents, and to set requirements in respect of risk pricing for personal injury claims.³
- The Government brought forward legislation to ban referral fees in personal injury cases, as part of the Legal Aid, Sentencing and Punishment of Offenders Bill which is now in the House of Lords.⁴ The Justice Committee welcomed the Government’s commitment to ban referral fees but said it did not believe the ban should be limited to personal injury cases.⁵
- The OFT issued a call for evidence to establish the background to recent reports of rising UK private motor insurance premiums and consider whether further work may be necessary to improve the way the market works.⁶

In addition, we received the Government reply to our report, which we published in September.⁷

1 *The cost of motor insurance*, Fourth Report, Session 2010–12, HC 591 (hereafter *CMI first report*).

2 Ev 19.

3 HC Deb, 13 Sep 11 cc 898–98.

4 See HC Deb, 1 Nov 11, cc 822–50.

5 *Referral fees and the theft of personal data: evidence from the Information Commissioner*, Ninth Report, Session 2010–12, HC 1473, paragraphs 10–14.

6 OFT press release, 8 September 2011.

7 Fifth Special Report, 2010–12, HC 1466 (hereafter *Government reply*).

3. As part of our continuing work in this area we took up an offer from Young Marmalade, a firm specialising in insurance for young drivers, to conduct a survey of their customers' attitudes to young drivers. The full results and a summary of the comments received can be found in the annex to this report. The headline results were:

- 96% of young drivers think they are being priced off the road because of high motor insurance premiums.
- 21% have considered driving without insurance, because of the high cost of premiums.
- 30% have considered altering the information they provided to insurance firms in order to secure a lower quote. This included 15% who considered changing the main driver of the car—a potentially illegal practice known as 'fronting'.
- 57% were unaware that, after an accident, insurance firms often pass personal details to a solicitor, car hire firm or garage in return for a referral fee.

4. In this report we comment on events relating to motor insurance since March and review how policy is developing in the areas we identified as contributing to higher premiums.

2 Personal injury claims and referral fees

5. As the tables below show, the number of personal injury claims arising from road traffic accidents is continuing to grow, despite there being fewer casualties from such accidents.

Number of motor insurance injury claims notified to the Compensation Recovery Unit⁸

2000–05 average	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11
395,735	466,097	518,821	551,905	625,072	674,997	790,999

Number of casualties in road accidents⁹

2000–04 average	2005	2006	2007	2008	2009	2010
301,529	271,017	258,404	247,780	230,905	222,146	208,648

There is widespread agreement that better access to justice, particularly arising from the legalisation of ‘no win, no fee’ arrangements, has been the main driver for this increase. Many of these claims are undoubtedly genuine. Some are fraudulent, such as ‘cash for crash’ scams involving staged accidents. The genuineness of others, particularly some claims for whiplash injuries, is hotly contested. In this chapter we discuss proposals for changing the law on claims for whiplash; referral fees; and data protection issues.

Whiplash

6. Around 70% of motor insurance personal injury claims arise from whiplash injuries,¹⁰ for which there will often be no objective evidence. Mr Straw described whiplash as “not so much an injury, more a profitable invention of the human imagination—undiagnosable except by third-rate doctors in the pay of the claims management companies or personal injury lawyers”.¹¹ In his ten minute rule bill, Mr Straw has proposed that compensation for whiplash should only be paid where “clear objective evidence of real injury” is provided.¹² Paul Evans, the CEO of AXA UK, described whiplash as “medically unprovable” and said:¹³

Because it is my responsibility to defend a claim as an insurer, I have no defence because I can't prove that it does not exist any more than a customer can prove that it can exist, and therefore it is a very easy claim.

⁸ See *CMI first report*, p9, table 1 and latest Compensation Recovery Unit performance statistics at <http://www.dwp.gov.uk/other-specialists/compensation-recovery-unit/performance-and-statistics/performance-statistics/>.

⁹ Taken from *Road Casualties Great Britain*, annual reports published by the DfT.

¹⁰ *CMI first report*, paragraph 16.

¹¹ HC Deb, 13 Sep 11, cc897.

¹² *Ibid.*

¹³ Q15.

On the other hand, Andrew Dismore of the Access to Justice Action Group said that there was new evidence of an organic cause for whiplash and that it could be diagnosed by a test. He argued that “if the insurers think whiplash does not exist at low velocity, test it in court”.¹⁴ The Motor Accident Solicitors Society (MASS) mentioned research which concluded that “a change of velocity of 2.5 mph was sufficient to cause symptoms” associated with whiplash.¹⁵

7. Jonathan Djanogly MP, Parliamentary Under-Secretary of State for Justice, described whiplash as a “complicated area”. He argued that Government proposals to limit the recoverability by claimants of the success fees charged by solicitors to take on ‘no win, no fee’ cases as well as the premiums for insurance against losing such cases would “suck money out of the market” and reduce the number of whiplash claims. He also suggested that insurers had “been induced to settle too easily” and that with a more “balanced suing mechanism” whiplash claims would be defended more vigorously: “from a governmental point of view ... we encourage them to do so”.¹⁶

8. Where someone can demonstrate that they have suffered an injury, including whiplash, as a result of a road traffic accident for which they were not fully liable they should be able to claim and receive compensation. However, in relation to whiplash, we are not convinced that a diagnosis unsupported by any further evidence of injury or personal inconvenience arising from the injury should be sufficient for a claim to be settled. In our view, the bar to receiving compensation in whiplash cases should be raised. If this were possible by means of an insurer taking a case to court and establishing new case law we suspect this would already have happened. We note the Government's argument that its legal reforms should reduce the money in the system and encourage insurers to defend claims more vigorously. If the number of whiplash claims does not fall significantly once these changes are implemented there would in our view be a strong case to consider primary legislation to require objective evidence of a whiplash injury, or of the injury having a significant effect on the claimant's life, before compensation was paid.

Referral fees

9. We described in our earlier report the ‘merry-go-round’ of referral fees paid to secure business relating to an insurance claim. As we noted in our previous report, there are sharply divided views on these fees. While some witnesses described them as a form of marketing cost, which had no impact on premiums, others suggested that referral fees were a symptom of excess costs in the market which had contributed to rising premiums.¹⁷

10. Since our previous report was published some insurers, including AXA UK, have chosen not to accept referral fees. Mr Evans described the fees as “immoral” because they reflected inflated fees for solicitors and the ease of securing compensation for whiplash.¹⁸

14 Q20.

15 Ev 23 paragraph 35.

16 Q64.

17 For example Ev 25 and see *CMI first report* paragraphs 24–25.

18 Q15.

He confirmed, however, that AXA UK continued to receive referral fees from credit hire firms, although it preferred to arrange a bilateral agreement not to use credit hire and, as a result, “last year we referred only 4,700 people into a credit hire situation for an average fee of £300”.¹⁹

11. We recommended that there should be more transparency about the connections between insurers and solicitors (and other firms involved with motor accidents) and that, when claims are made, insurers should make it clear to claimants that they need not use the solicitor, credit hire firm or vehicle repairer recommended by the insurer. At that time, the Government was awaiting advice from the Legal Services Board on whether or not legal referral fees should be banned, following the recommendation in favour of a ban from Lord Justice Jackson in his review of civil litigation costs. The Board decided against a ban, recommending instead more transparency and oversight of any detriment to consumers arising from referral fees by the various legal regulators. It was particularly concerned about the uncertainty caused by the imminent introduction of 'alternative business structures' in the legal services market, whereby people without legal qualifications will be able to offer legal services, and the possibility of a ban creating “perverse incentives which lead to more harmful behaviour, such as the payment of ‘under the counter’ inducement fees”.²⁰

12. The Legal Services Board has provided new guidance on the transparency of referral fees for the legal regulators to implement.²¹ It will review the impact of the guidance in 2013–14. The Government told us that it awaited the response to the guidance of the regulators and the insurance industry.²² **Although we welcome the Legal Services Board's new guidance on the transparency of referral fees, it does not go far enough. Firstly, it relates to fees paid by solicitors but leaves untouched the fees paid by others involved with motor insurance claims, such as garages and credit hire firms. Secondly, we are disappointed that the Government has not given a stronger signal that more transparency is necessary. We recommend that this is done, for example by Ministers setting out the information they think insurers should provide to consumers and drawing attention to examples of good practice. Thirdly, we are disappointed that the insurers, who have complained about the dysfunctionality of the current system, have not done more to improve it. Our recommendation about transparency was met with silence from the insurers, which perhaps tells its own story.**

13. The Government announced its decision to ban referral fees in personal injury cases on 9 September. Legislation to achieve this, added into the Legal Aid, Sentencing and Punishment of Offenders Bill, was debated in the House of Commons on 1 November.

14. Although primarily focused on referral fees paid in relation to personal injury claims, the Government has also provided for the receipt of referral fees to be prohibited, something which could apply to all types of referral fee.²³ Various questions were raised in

19 Qq 16, 18.

20 *Referral fees, referral arrangements and fee sharing: Decision Document*, Legal Services Board, May 2011, chapter 1, paragraphs 8 to 14.

21 *ibid*, pp 10–15.

22 *Government reply*, p3.

23 See HC Deb, 1 Nov 11, c824.

the House about the new legislation, including how it might apply in relation to alternative business structures, how referral fees would be defined, and when a ban would be implemented. Under the legislation the payment or receipt of referral fees would be a regulatory offence.²⁴

15. One of the points made in the debate was that a ban on referral fees might be ineffective if the legal costs associated with personal injury claims from motor accidents under £10,000 are not also reduced. Mr Straw said:²⁵

I believe there is now widespread agreement that the current fee, of at least £1,200 for claims under £10,000, is at least twice as high as it should be. It is leading to lawyers advertising as two firms at the end of my street in Blackburn do: they have great banners across their windows saying, "Bring your claim in here, we'll pay you up to £650 in cash for it." They can do that and still make a profit out of the £1,200, because the actual costs of running the portal [for low value claims] are about £100.

John Spencer of MASS pointed out that the fixed fees were agreed by the insurers as well as the claimant solicitors' organisations. He was concerned that cutting the fees "might reduce down the level of service that people receive".²⁶

16. Mr Djanogly told us that reducing the fixed fees was being considered: "You are right that we cannot get insurance premiums down, for instance, or it would be hard, without sorting out the fixed costs as well ... We have initiated that process." However, this would require negotiation with the solicitors' organisations which did not necessarily accept that the fees were too high.²⁷

17. Legislation to ban referral fees is now in the House of Lords and can be expected to reach the statute book by the Spring. Implementation will come later, perhaps much later, and will depend on how the regulators approach questions such as the definition of 'referral fee'. In the meantime, the introduction of alternative business structures could transform the market for legal services and render this debate largely redundant. **Despite these doubts, we note the swift action taken by the Government to tackle this issue and make two recommendations. Firstly, once the Bill is enacted, we call on the Government to prioritise the implementation of what was new clause 20 in the Commons, *Regulation by the FSA*, which could prohibit insurers from receiving referral fees across the board rather than only in relation to legal action.**

18. **Secondly, one way to help reduce premiums may be to consider whether the legal costs of low value claims processed using the pre-action protocol and online portal are reasonable. We recommend that the Government review how the protocol and portal have operated since they were introduced last year, looking in particular at how the fixed costs associated with the protocol relate to the actual cost of the work involved and whether use of the protocol acts as an incentive for insurers to concede claims**

24 Ibid.

25 HC Deb, 1 Nov 11, c830.

26 Qq 18–19.

27 Q65.

which ought to be defended. This review should be conducted and its results published within six months.

Data protection

19. A final aspect of this issue concerns claimants' personal data. Mr Dismore said that in taking out or renewing an insurance policy customers were “authorising the insurer concerned to basically sell my data to anybody they wanted ... the claims management companies cannot get that information from anywhere else other than insurers”.²⁸ Mr Evans denied that this occurred.²⁹ Mr Straw said that there were “clear breaches of data protection and Ofcom rules, not necessarily in respect of insurance companies but by other parties here”.³⁰ Concerns have also been raised about cold calling and text messaging, which seek to persuade people into making personal injury claims for accidents and injuries which are often long forgotten. Mr Dismore said these communications came from unregulated marketing companies.³¹

20. Our sister committee, the Justice Committee, heard oral evidence from the Information Commissioner in September who argued that “even in cases where insurance companies had a clause in the small print of policies giving them permission to pass data to lawyers the practice might still not be legal”. The Committee said it was “struck by the range of illegal behaviour that referral fees can reward, from individuals stealing data to companies with contracts or practices which breach the Data Protection Act” and recommended that stricter penalties under the Data Protection Act which were agreed by Parliament in 2008 should now be implemented.³²

21. Mr Evans described the “poor, innocent victim” of a road traffic accident as “a profit centre and a very valuable commodity that everyone wants to get their hands on to sell to the solicitor”.³³ We would go further than this. Any claimant on a motor insurance policy is a valuable commodity to a whole range of firms, keen to offer legal assistance, vehicle hire or vehicle repair. As soon as a claim is made, claimants are bombarded with calls from such firms and it has to be questioned whether claimants have properly consented to this and understand who is calling them and for what purpose. We agree with the Information Commissioner and the Justice Committee that this loose, potentially illegal, attitude to data protection is driven by the endemic nature of referral fees. **We recommend that the Government send a clear message to the insurance industry that it expects the data protection legislation to be fully respected and we echo the recommendation of the Justice Committee that the stricter penalties for breaching the Act, passed by Parliament in 2008, should be brought into force.**

28 Q37.

29 Q38.

30 Q38.

31 Q6 and see Qq 58–60 for the Minister’s response on this point.

32 *Referral fees and the theft of personal data: evidence from the Information Commissioner*, Justice Committee, Ninth Report, Session 2010–12, HC 1473, especially paragraphs 10–14.

33 Q15.

22. We also call on the Government to initiate an investigation of cold calling intended to generate personal injury claims, with a view to examining the legal and regulatory options for curtailing this activity.

3 Other issues

23. In this chapter we briefly cover developments in respect of some of the other issues raised in our earlier report.

Fraud

24. During our previous inquiry we were made aware of preliminary discussions about establishing a dedicated police unit for tackling insurance fraud, which would be funded by the industry. We recommended that such a unit should be set up, preferably by 2012–13.³⁴ This recommendation was agreed and the Association of British Insurers has told us that it will be operational from 1 January 2012. The Association is confident it will “deliver a step change in enforcement activity against fraudsters, deter future offending and reduce losses”.³⁵ We congratulate all concerned with the establishment of the insurance fraud police unit and look forward to hearing more about its work during the rest of this Parliament.

25. We also heard about proposals for the DVLA to give insurers access to its database, so details such as penalty points and convictions can be checked when insurance is being arranged. We welcomed this proposal and asked for information about the timetable for introduction.³⁶ The Government said there were several options for achieving this aim and it hoped to decide on an approach and agree a timetable for implementation during the summer.³⁷ The DVLA recently told us that the main challenge lay in authenticating the entity seeking to interrogate its database.³⁸ **We recommend that the Government provide us with updated information on the timetable for its project to enable insurance firms to gain access in real-time to the DVLA database.**

Uninsured driving

26. In our earlier report we recommended that the penalties associated with driving, and keeping a car, without insurance should be reviewed once continuous insurance enforcement had bedded in, because the monetary penalties were usually much lower than the cost of insurance itself.³⁹ The Government accepted this recommendation.⁴⁰ Mike Penning MP, the Parliamentary Under-Secretary of State for Transport, told us that he was working with the Ministry of Justice on sentencing guidance which would put more emphasis on penalty points and disqualification than fines because these are likely to be more of a deterrent. Although we see the sense in the Minister’s view, penalty points will only act as a deterrent if they lead to disqualification: as we have subsequently found,

34 *CMI first report*, paragraphs 43–44.

35 Ev 15.

36 *CMI first report*, paragraph 42.

37 *Government reply*, p6.

38 Oral evidence from the DVLA, 22 Nov 11, HC 1611-i (hereafter *DVLA evidence*) Q6.

39 *CMI first report*, paragraph 37.

40 *Government reply*, p5.

thousands of drivers with more than 12 points on their licence continue to drive because the court has considered that disqualification would cause the driver “exceptional hardship”.⁴¹ We may return to this issue at a later date. In the meantime, **we recommend that the Government keep us informed of its review of the penalties associated with motoring without insurance.**

Young drivers

27. Our previous report made recommendations relating to the driving test, post-test qualifications and new technology which can assist young drivers in demonstrating that they are safe drivers. We will return to these during our forthcoming inquiry into road safety.

41 *DVLA evidence*, Qq 51–72.

4 Conclusion

28. The cost of motor insurance matters to millions of people across the UK. The increase in premiums in recent years has bit deep into disposable incomes which are already under severe pressure because of the prolonged economic downturn. When we first launched this inquiry, in late 2010, the cost of motor insurance had been the subject of little parliamentary or Government attention. Because of our inquiry and report that has now changed: the issue is now firmly on the political map and we intend to keep it there.

29. Numerous factors affect the cost of motor insurance and tackling some in isolation would not be guaranteed to bring premiums down. On 8 November we initiated a debate in the House in time allocated by the Backbench Business Committee on a motion which called for the establishment of a cross-departmental ministerial committee on reducing the cost of motor insurance and the publication of a plan for dealing with the different aspects of the problem. The motion was passed without a division, although the Minister, Mr Penning, indicated that there was no need for a new committee given that ministers from different departments were already working together on this issue. **We recommend that the Government provide us with a written response to the House's resolution setting out how it will be implemented.**

30. The spiralling cost of motor insurance has resulted from market dysfunction. Insurers, solicitors, claims management firms and others have focused their attentions on claimants who are not at fault for the accidents in which they were involved, ensuring that they can easily, and without cost to themselves, claim for personal injury, car hire, and other legal costs. This has driven up premiums, particularly as the difficulty of defending claims for whiplash has been exploited to the full. Although we strongly support access to justice, insurers and solicitors have lost sight of the interests of their customers as a whole by encouraging claims to be maximised. Collective leadership is required to turn back from some of the sharp practices of recent years: to give up referral fees or commission arrangements, or make them more transparent; to enable customers to make choices about their claims rather than be railroaded into launching legal action or taking hire cars for long periods; and to honour the spirit as well as the letter of data protection law. We look to the insurance industry to start showing this leadership.

Conclusions and recommendations

Whiplash

1. Where someone can demonstrate that they have suffered an injury, including whiplash, as a result of a road traffic accident for which they were not fully liable they should be able to claim and receive compensation. However, in relation to whiplash, we are not convinced that a diagnosis unsupported by any further evidence of injury or personal inconvenience arising from the injury should be sufficient for a claim to be settled. In our view, the bar to receiving compensation in whiplash cases should be raised. If this were possible by means of an insurer taking a case to court and establishing new case law we suspect this would already have happened. We note the Government's argument that its legal reforms should reduce the money in the system and encourage insurers to defend claims more vigorously. If the number of whiplash claims does not fall significantly once these changes are implemented there would in our view be a strong case to consider primary legislation to require objective evidence of a whiplash injury, or of the injury having a significant effect on the claimant's life, before compensation was paid. (Paragraph 8)

Referral fees

2. Although we welcome the Legal Services Board's new guidance on the transparency of referral fees, it does not go far enough. Firstly, it relates to fees paid by solicitors but leaves untouched the fees paid by others involved with motor insurance claims, such as garages and credit hire firms. Secondly, we are disappointed that the Government has not given a stronger signal that more transparency is necessary. We recommend that this is done, for example by Ministers setting out the information they think insurers should provide to consumers and drawing attention to examples of good practice. Thirdly, we are disappointed that the insurers, who have complained about the dysfunctionality of the current system, have not done more to improve it. Our recommendation about transparency was met with silence from the insurers, which perhaps tells its own story (Paragraph 12)
3. Despite these doubts, we note the swift action taken by the Government to tackle this issue and make two recommendations. Firstly, once the Bill is enacted, we call on the Government to prioritise the implementation of what was new clause 20 in the Commons, *Regulation by the FSA*, which could prohibit insurers from receiving referral fees across the board rather than only in relation to legal action. (Paragraph 17)
4. Secondly, one way to help reduce premiums may be to consider whether the legal costs of low value claims processed using the pre-action protocol and online portal are reasonable. We recommend that the Government review how the protocol and portal have operated since they were introduced last year, looking in particular at how the fixed costs associated with the protocol relate to the actual cost of the work involved and whether use of the protocol acts as an incentive for insurers to concede

claims which ought to be defended. This review should be conducted and its results published within six months. (Paragraph 18)

5. We recommend that the Government send a clear message to the insurance industry that it expects the data protection legislation to be fully respected and we echo the recommendation of the Justice Committee that the stricter penalties for breaching the Act, passed by Parliament in 2008, should be brought into force. (Paragraph 21)
6. We also call on the Government to initiate an investigation of cold calling intended to generate personal injury claims, with a view to examining the legal and regulatory options for curtailing this activity. (Paragraph 22)

Fraud

7. We recommend that the Government provide us with updated information on the timetable for its project to enable insurance firms to gain access in real-time to the DVLA database. (Paragraph 25)

Uninsured driving

8. We recommend that the Government keep us informed of its review of the penalties associated with motoring without insurance. (Paragraph 26)

Conclusion

9. We recommend that the Government provide us with a written response to the House's resolution [on the cost of motor insurance] setting out how it will be implemented. (Paragraph 29)

Annex: Survey results

Full results of survey data collated by Young Marmalade (1127 total responses):

Please tell us your gender	
Male	786 (69 %)
Female	337 (29%)

Please tell us your age when you first started driving lessons.	
17	889 (78%)
18	101 (8%)
19	50 (4%)
20	21 (1%)
21	8 (0%)
22	5 (0%)
23	1 (0%)
24	7 (0%)
25-30	9 (0%)
Over 30	32 (2%)

Because of the high cost of insurance, have you ever considered driving without insurance?	
Never	881 (78%)
Considered it but decided against it	209 (18%)
Yes	34 (3%)

Have you considered altering the information provided to an insurer, to secure a lower premium? If yes, please let us know all facts you have amended to improve the premium	
No	795 (70%)
Yes - Changed my address	33 (2%)
Yes - Changed my job	34 (3%)
Yes - Changed whether I was the main driver	176 (15%)
Yes - Added another driver	258 (22%)
Yes - Changed my driving history, points, convictions etc	7 (0%)
Yes - Changed my previous claims history	7 (0%)

Are you aware that in the event of an accident, your details may be passed on to Solicitors, Car Hire Firms and Garages in return for a fee?	
Yes	468 (41%)
No	652 (57%)

Which one of the following statements best describes your situation?	
Not yet passed	470 (41%)
Driving my own car with insurance in my name	211 (18%)
Driving a family or partner's car as a named driver	236 (20%)
I passed my test but could not afford a car	200 (17%)
I have a company car	6 (0%)

Do you think young drivers are being priced off the road?	
Yes	1083 (96%)
No	9 (0%)
Don't know	14 (1%)

A selection of comments from the Young Marmalade survey

- Insurance treats all young people the same, assuming we are all as likely to behave like yobs behind the wheel.
- Compared to the rest of Europe the cost of insurance is simply absurd and should be heavily revised
- The difference between male and female is very unfair I had a car which secured my chance of finding employment my parents paid for the excessive premiums in insurance not everyone is that lucky young drivers are being handed obstacles at every turn I say bring down the price and impose other curfews ie no passengers no driver after midnight anything but allow us to afford the transport we need to do our jobs
- Living in a rural area the only way you can get a job is to be able to drive. High cost car insurance is a big barrier to employment as wages are low even if you can get a job.
- The range of insurance products for young drivers is extremely limited. I imagine there is much potential for short term cover and pre-agreed restrictions that could be used to adapt policies and make them more affordable for young drivers
- Honest people paying for dishonest. Why can't we ban claims for personal injury or make people fight their own cases with the potential to have to pay costs if they lose
- My parents are buying my first years insurance, otherwise I would not be able to drive a car. I need a car as I live in a village with no buses.
- With such out of this world and totally unrealistic premiums it will definitely encourage young drivers to drive without insurance.
- It's no wonder there are so many young drivers driving around without insurance. It is far far too expensive for new drivers, even with pass plus. We need a scheme where younger drivers are given a chance.
- It seems mad when the cost of insurance is a lot more than the value of the car. Maybe the test system needs to change to something like they have in Queensland, Australia where they have to drive 100 hours before they can take their test, surely experience is what you need and if insurance is v expensive you don't get the experience to make you better.
- The cost of insurance is so high that I have to be a named driver on my Mum's car, so I cannot build up no claims history, also, I know a lot of young people who will have to drive without insurance which puts the cost up for all of us law-abiding drivers
I learnt to drive as I was spending nearly a quarter of my monthly income on taxi's and buses to travel to work but after passing my test I realised it would be much more expensive to have my own car
- The high cost of insurance is almost beyond my family and high. I have a twin brother and the cheapest insurance for my family's car with he and I added on as drivers is £3500 per year!!! How many families in the UK can afford that?!

- The cost of the car I wished to buy—a 5 year basic Ford Fiesta was cheaper than the Insurance quoted and left me no alternative than to abandon any thought of buying a car for me until the Insurance is less than £1000 per year for me as a main driver
- I believe the rise in car insurance is promoting more uninsured drivers on the road and makes it seem ok to those who are careless and under age drivers on the road, making it very unsafe for those who are doing right.
- I think insurance companies are profiteering from young drivers. I would like to know what has changed so much in the last 15 years or so to see premiums rise so astronomically.
- So so so so expensive!!

Formal Minutes

Tuesday 13 December 2011

Members present:

Mrs Louise Ellman, in the Chair

Steve Baker
Jim Dobbin
Julie Hilling
Kwasi Kwarteng

Paul Maynard
Iain Stewart
Graham Stringer
Julian Sturdy

Draft Report (*Cost of motor insurance: follow up*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 30 read and agreed to.

Annex and Summary agreed to.

Resolved, That the Report be the Twelfth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence, reported and ordered to be published on 11, 19 and 25 October, was ordered to be reported to the House for printing with the Report.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned till Wednesday 14 December at 5.00 p.m.]

Witnesses

Tuesday 11 October 2011

Page

Rt Hon Jack Straw MP, John Spencer, Vice-Chairman, Motor Accident Solicitors Society, **Paul Evans**, Chief Executive Officer, AXA UK, and **Andrew Dismore**, Access to Justice Action Group Ev 1

Mike Penning MP, Parliamentary Under-Secretary of State, Department for Transport, and **Jonathan Djanogly MP**, Parliamentary Under-Secretary of State, Ministry of Justice Ev 9

List of printed written evidence

1	Association of British Insurers (ABI)	Ev 15
2	Letter from Nick Starling, ABI, to the Chair	Ev 15
3	The AA	Ev 15, Ev 18
4	Motor Accident Solicitors Society (MASS)	Ev 20
5	Mark Boleat	Ev 24
6	Ford Motor Company	Ev 26
7	AXA UK	Ev 27, Ev 28
8	Ai Claims Solutions (UK) Ltd	Ev 29
9	Admiral Group plc	Ev 30

List of unprinted evidence

The following written evidence has been reported to the House, but to save printing costs has not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives (www.parliament.uk/archives), and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074; email archives@parliament.uk). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Young Marmalade survey comments

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

Twelfth Report	Cost of motor insurance: follow up	HC 1451
Eleventh Report	Thameslink rolling stock procurement	HC 1453
Tenth Report	High Speed Rail	HC 1185-I
Ninth Report	Out of the jam: reducing congestion on our roads	HC 872
Eighth Report	Bus Services after the Spending Review	HC 750 (<i>HC 1550</i>)
Seventh Report	Taxis and private hire vehicles: the road to reform	HC 720 (<i>HC 1507</i>)
Sixth Report	The Coastguard, Emergency Towing Vessels and the Maritime Incident Response Group	HC 948, incorporating HC 752-i (<i>HC 1482</i>)
Fifth Report	Keeping the UK moving: The impact on transport of the winter weather in December 2010	HC 794 (<i>HC 1467</i>)
Fourth Report	The cost of motor insurance	HC 591 (<i>HC 1466</i>)
Third Report	Transport and the economy	HC 473 (<i>HC 962</i>)
Second Report	Financial Scrutiny of the Department for Transport	HC 683
First Report	Drink and drug driving law	HC 460 (<i>Cm 8050</i>)
Tenth Special Report	The proposal for a National Policy Statement on Ports: Government Response to the Committee Fifth Report of Session 2009–10	HC 1598
Third Special Report	The performance of the Department for Transport: Government response to the Committee's Fourth Report of Session 2009–10	HC 549
Second Special Report	Update on the London Underground and the public-private (PPP) partnership agreements: Government response to the Committee's Seventh Report of Session 2009–10	HC 467
First Special Report	The major road network: Government response to the Committee's Eighth Report of Session 2009–10	HC 421

Oral evidence

Taken before the Transport Committee on Tuesday 11 October 2011

Members present:

Mrs Louise Ellman (Chair)

Steve Baker
Jim Dobbin
Mr Tom Harris
Julie Hilling
Kwasi Kwarteng

Paul Maynard
Iain Stewart
Graham Stringer
Julian Sturdy

Examination of Witnesses

Witnesses: **Rt Hon Jack Straw MP, John Spencer**, Vice-Chairman, Motor Accident Solicitors Society, **Paul Evans**, Chief Executive Officer, AXA UK, and **Andrew Dismore**, Access to Justice Action Group, gave evidence.

Q1 Chair: Good afternoon, gentlemen. Welcome to the Transport Select Committee. Could you please identify yourselves with your name and organisation? This is for our records.

John Spencer: John Spencer, Vice-Chairman of the Motor Accident Solicitors Society, MASS.

Mr Straw: Jack Straw, Member of Parliament for Blackburn.

Andrew Dismore: Andrew Dismore, Co-ordinator of the Access to Justice Action Group.

Paul Evans: Paul Evans, Group CEO of AXA UK.

Q2 Chair: As you are aware, gentlemen, we have been looking at the rising cost of motor insurance premiums. We have produced a report on this. We have had a phenomenal public response because this is a very real issue causing very great concern. We have decided to extend our inquiry now to look at the current situation and new evidence. The recent figures that we have had suggest that the increases in premiums are levelling off. Can anyone suggest to me the reasons for that? Mr Spencer, do you have any ideas?

John Spencer: I can only think that it might have to do with some of the cost controls that have been put in around personal injury cases certainly since April 2010, where the industry, both insurer and claimant's solicitor, have agreed a costs position which may have an impact as those cases start to close. Probably the gentleman from AXA is best placed to inform us of why premiums might go down.

Q3 Chair: Is that information correct? Is there a downward move?

Paul Evans: What we are seeing is a slowdown in the rate of increase. I do not believe we have seen a levelling off in the sense that premiums are no longer increasing, but they are increasing by maybe 1% or 2% per month rather than the very large steps that we have seen since the beginning of 2010.

Andrew Dismore: There is a change in the insurance market as well. It is a soft market moving into a hard market and now it is probably softening up again. What used to happen—and indeed the CEO of Allianz

warned about this as long ago as 2004—was that there were a lot of peaks and troughs in the insurance market. In a soft market they were prepared to take some hits to increase market share. It then transformed into a harder market where, particularly after the banking crisis, the objective was to try and build up reserves, which meant putting up premiums. I see that AXA's premiums were going up earlier in the year as well.

Paul Evans: Absolutely. Our premiums have increased and they continue to increase. We are still seeing inflation in the average cost of claim per policy running at between 10% and 13% a year. I believe there has been some catching up in premiums since the beginning of 2010 but we will continue to see continued increases for months to come.

Q4 Chair: So the premiums are going up. Mr Straw, you drew attention to evidence showing that the cost of premiums in the north-west was 50% higher than in other areas. Why do you think that is?

Mr Straw: Madam Chairman, may I also just say that it would be expected, given the huge double digit increases in premiums which have taken place in recent years—30% last year—that there would be some levelling off. That provides no grounds for complacency whatsoever about the current situation. What I am clear about is that, of a total of about £9 billion in premium income, £2 billion is costs caused by people who I think can accurately be described as the parasites in this system. They were not there before when premiums were, in real terms, significantly lower. Premiums for cars have gone up by about 75% in cash over the last 10 years and about half of that in real terms. I have the exact figures which I can give you. Those costs were not there before to anything like the same extent. They are now, including claims management companies, credit hire companies and these other intermediaries. Of course they have to take their costs and profit out, which in turn is put on to the backs of the policyholders.

In terms of the variable costs, I have loads of data on this which I can certainly give to the Committee. There is not much doubt that there is certainly a

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statistical connection and correlation—I think myself it is causal—between the density of claims management firms by region and the level of premium. It would be unsurprising if that were not the case. The claims management firms exist to generate claims artificially. By chance, as I was preparing to give evidence to your Committee yesterday evening, the phone rang and it was a claims management company saying I had had an accident within the last three years and would I like to claim. I have not had an accident within the last three years but it shows the relentless pressures inside these very dodgy firms. My colleagues here can see the data. These are the numbers of claims management companies. That is the north-west. The mauve bar is also by year. I can give you all this information.

Q5 Chair: That would be helpful. You might also be interested to know that I received a telephone call this morning saying they understood I might have had an accident over the last three years. When I asked where this information had come from, and indeed where my ex-directory phone number had come from, the phone went dead.

Mr Straw: These people are verging on the criminal, if not the criminal. In any other walk of life we would describe the whole racket of referral fees as bribery. Why I think this needs to be taken very, very seriously by this Committee, if I may suggest this, is because motor insurance is compulsory. You have no choice. You do have a choice about whether you insure anything else in your life for any other kind of risks. You have absolutely no choice about whether you insure for motor risks. It is a public good. At the moment it is delivered through the private sector. These practices are leading to very substantial increases on the law-abiding motorist for no public benefit.

Andrew Dismore: The insurance industry are bringing a lot of this on themselves. If you look at some of the other abuses in the system, like the credit hire system, that puts £44 or 10% on each policy. The body shop fiddle also adds to that. The increase in claims, in large part, is down to third-party capture. If you look at the graph of claims increases, it roughly coincides with when third-party capture started to become a lot more popular in the mid 2000s. If you look at the question of referral fees, a fifth of cases are referred by the insurers themselves, apart from third-party capture, and they are taking referral fees for those too. If you look at CMCs, a lot of them will also provide other services.

Q6 Chair: Can you say what these are?

Andrew Dismore: Claims management companies. They do not just phone people up; in fact, most of them do not. It is against the claims management rules which are supposedly run by the Ministry of Justice. You will find that most of the calls that are cold calls are from marketing companies or people outside the system who are not regulated and are operating unlawfully. There is a very simple answer to cold calling. That is to empower the phone operators to cut off the phone lines. That is what they do with prostitutes' cards when you see them in phone boxes.

If they see the numbers, they cut them off. If people are making illegal cold calls that are unsolicited, then the remedy is a relatively straightforward one. Cut the phone lines off and that will stop it.

Q7 Julian Sturdy: I come back to the average quoted premium per region. I am amazed when you look at the figures, as I think most people are, that in the north-west it is three times higher than Scotland, and Yorkshire is twice as high. You are saying that the density of claim management firms in that particular region is dictating that. Does everyone on the panel agree with that?

Paul Evans: Can I give a quick statistical answer? Certainly, as far as AXA is concerned, we see that in Scotland, for example, 7% of every RTA—road traffic accident—will involve a personal injury claim. In the north-west 26% of road traffic accidents will involve a personal injury claim. Towers Watson has produced a report and you can map the frequency of personal injury claims with the location of accident management companies. It is statistical and it is there. I should say that we look at regional premiums. We do see different frequency of road traffic accidents by region but the variation might be only one-and-a-half times; that is, I might see one-and-a-half times more accidents in one region than another. You can see up to four times more personal injury claims in some regions than others. That is leading to the regional pricing. There is no question at all in my mind that the greatest driver of regional motor insurance pricing is the incidence of personal injury claims which can be mapped to the location of claims management companies.

Q8 Chair: Mr Straw, you have referred to the problem of risk being assessed in relation to postcodes rather than across the region. Would you like to say something about that?

Mr Straw: I confirm what Mr Evans has said. I have looked at the data. The correlation is very clear. If you are a north-west Member of Parliament, as some of us on all four sides of this table are, it is palpable, eternally on daytime television. There are a lot of dodgy firms of solicitors who are part of these rackets. I go down the end of my street where my home is in Blackburn and there are two firms of solicitors within 100 yards saying “£600 for a referral” and so the whole thing spirals.

What is also clear is that within a region there are significant variations in premium, which is nothing to do with the individual drivers or the risk of theft of, or from, vehicles but to do with the overall level of personal injury claims arising from people whose address is in that area, but whose claims may not have arisen from that area. I first got on to this, Madam Chairman, when I asked for the data about motor accidents in the Blackburn and Darwen area and thefts of and from vehicles. Those were going down quite dramatically. I could not work out why it was, therefore, that premiums were going up.

I understand why all the insurers have alighted on this model where they are postcode-specific. If one is this sophisticated, the others have to follow their lead and there will be no competition in terms of model. The

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social effects of doing this are really very severe. The level of premium for people in some areas—completely law-abiding people who pose no risk at all and who are not going to make a claim—is now extortionate. Some groups of young in those areas, who may also pose much less of a risk than other young, are being excluded altogether. There is geographical and social exclusion taking place.

The insurers say to me, “We have to be able to assess risk on the most sophisticated basis of all.” As I say, this is compulsory. They are delivering a public good. It is not like any other insurance. Ultimately they will price people out of ability to follow the law. That cannot be right.

In other fields of insurance the insurers have accepted that they have to modify their postcode specificity. For example, in respect of flood victims, the insurers were pricing people who lived in flood areas out of the market but they have had to modify that. The great irony is that in respect of the ultimate insurer of motor risks, including personal injury motor risks, which is the Motor Insurers Bureau, the insurers could be postcode-specific. They have all the data about where these accidents happen and where the defendant is not insured. They could say, “Right, if you happen to come from Blackburn we have assessed that instead of the average across the country of about £40, which is what you pay for the MIB, because Blackburn has a higher propensity you should pay £80 or, if it has a lower propensity, you should pay £20.” They don’t; they simply say, “We are going to average this across the country.”

My point is that this is compulsory. We give insurers a profit—that is the idea—in return for delivering not a private good but a public good. There has to be modification of the way the insurers behave. You cannot do that by exhortation because they are locked into their model. You have to do it by law. What I have proposed in my Bill is that the insurers cannot specify or identify the risk in respect of personal injury claims below the level of a standard region. It is not other claims. It is not about age, driving record or anything else. I do accept that, if we have a particular problem in the north-west over avaricious, rapacious claims management companies, then it is not fair for people in the south-east to have to bear that one. My view is that the geographical area that I have chosen, which is the region, would provide a fair balance.

Q9 Chair: What would the impact of that change be? Mr Spencer, is that something you could comment on?

John Spencer: It was not the specific point that I was concerned about, but it is on the same point.

Q10 Chair: Just let me ask this one and I will then come back to you. Mr Evans, could you help us on that point, please? What would be the impact of the change proposed by Mr Straw?

Paul Evans: We need to break the dilemma into several chunks. The first dilemma without question is personal injury. I believe that one of the first objectives of Mr Straw’s Bill is to cut the fixed fee that solicitors can earn from motor personal injury claims. I fundamentally support that.

Q11 Chair: What about the issue of distributing the risk? What is the impact of that?

Paul Evans: To go to the heart of the question, if we went to regional pricing, then, because the level of risk is higher in conurbations due to the higher density of traffic, you will see a higher premium in the rural areas of that region. There will be a significant transfer of premium to those in the rural areas and from those in the conurbations. Given that those in the rural areas are already often observed as being disadvantaged, that would simply be a further transfer of cost to those living in rural areas.

John Spencer: In my view there are two big areas for this Committee to be very concerned about in the control of motor insurance premiums. One is the activity that has been alluded to in terms of advertising and gaining work, where I hope we would all support better cohesive advertising control—control under the Data Protection Act in terms of when your details can be released to claims management companies, insurers and so on.

There is also another big area of concern, which is the insurers themselves. It has been alluded to already. There is the practice of third-party capture and being engaged in referral fee income themselves. I know that Mr Evans is notable as an exception within the insurance industry recently being converted to a no referral fee system—and I underline the word “recently”—but insurers can and do receive large amounts of referral fee income which is not transparent, as this Committee picked up when it last met. There are no available statistics with regard to the level of income received.

For some reason we have seen motor claims increase and almost double over a period of five or six years. I do not think it is right to alight simply upon the claims management industry to explain that. The insurance activity around capturing clients—that is intercepting them before they have the opportunity to see and be independently advised by a solicitor—is quite a big issue. An even bigger issue, in my view, is the referral fee income gained by those. There is one insurer that has published some statistics that I have seen to the investment community. RBS Insurance published that it received £15 million of fee income from referral fee cases which it has sold to its panel of solicitors.

I would like to see more transparency around what other incomes are received by insurers, claims management companies and others. There are all sorts of commissions around medico-legal fees, credit hire, witness statement taking and costing companies. There is a whole flux of activity and profiteering going on. Unless you look at this in both segments, in terms of the claims management sector and the insurance sector, and ancillary services as well as referral fees, it is my fear that the goal of this Committee which everyone would support, namely, reducing the cost of motor insurance, will not be reached if we keep seeing it as either insurers or claims management companies or solicitors. It is the whole lot.

Q12 Chair: We will be pursuing these. We did refer to the “merry-go-round” of referral fees and we will be exploring those too.

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John Spencer: You did, and you were right to do so.

Q13 Paul Maynard: So that I am clear about the role of claims management companies, does the panel believe the existence of CMCs is the problem, the practices they engage in or the practices that unregistered CMCs engage in? It was not clear from any of the evidence what proportion of CMCs were unregistered.

Andrew Dismore: The answer to your question is that CMCs have done a great deal to improve access to justice. Mr Straw has talked about the number of cases in his area, but if those cases have no merit then they will not get paid out. The point remains that CMCs have improved access to justice for people who might not otherwise have known about it in his area.

The biggest problem arises from unregulated marketing companies, people who are working outside the system, and of course insurers themselves. It is no surprise that Admiral's share price dropped 13% on the day the Government announced that they planned to ban referral fees because they have a large part of their income from referral fees.

CMCs do not just advertise. They meet the marketing needs of a lot of law firms which would have to be paid for anyway if they were not being done by CMCs and would cost rather more because they would not have the economies of scale. They also screen the cases and do a lot of the preliminary investigation. It is not just money for old rope. They do something for the money that they earn. As I say, they have also done a significant amount to improve access to justice. If we are talking about advertising, we need to put the other half of the argument, which is the amount that the insurance industry itself spends on attracting policies towards itself. If you look at the top 10 motor insurers in 2007, each of them spent £11 million on advertising. That had doubled by the following year.

Q14 Chair: Can you try and keep to the point more closely?

Andrew Dismore: The simple point is this. There is an attack on advertising by CMCs. I can see nothing wrong in advertising for claims when the insurers are allowed to advertise for the policies in the first place.

Mr Straw: Mr Maynard, my view, and it has changed over time in the light of experience, is that, fundamentally, claims management companies are parasitic and the reforms which were introduced with all-party support in 2006, for which I was responsible as Justice Secretary, have not worked effectively. My own view is that there was perfectly adequate access to justice before we had ever heard of a single claims management company. They have imposed costs which the British public, the law-abiding motorist, has had to pay.

My last point is this, Madam Chairman. I profoundly disagree with Mr Dismore when he comes up with his syllogism that if cases have no merit they will not be paid out. Frankly, this is nonsense, Andrew. You know it is utter nonsense. It is self-serving lawyer's nonsense. It begs the question about whether claims should lie in those circumstances.

Lots of people have been paid out for whiplash because the current state of the law and the costs of

insurers fighting these cases is such that £3,000 or £3,500 has become the going rate. It is very hard to argue that anybody should be paid out simply for their neck going forward and then back.

Andrew Dismore: Can I answer the question?

Q15 Chair: No; we are not having dialogue. Mr Evans, you wanted to say something.

Paul Evans: Mr Maynard asked what the root cause is. I profoundly believe that the root cause of this personal injury dilemma is the amount of fixed fee that personal injury lawyers can earn at the point of prosecuting a claim against the insurer. The amount that is receivable as the fixed fee, which is £1,200, is quite evidently so high that they can afford to pay on average £800 as a referral fee. It means that the poor, innocent victim of an RTA is immediately a profit centre and a very valuable commodity that everyone wants to get their hands on to sell to the solicitor, who can earn so much money from prosecuting a case that Mr Straw observes is generally whiplash and is medically unprovable. Because it is my responsibility to defend a claim as an insurer, I have no defence because I can't prove that it does not exist any more than a customer can prove that it can exist, and therefore it is a very easy claim.

You have a situation where the fees paid to the solicitors are too high. That encourages them to want to attract customers, who can have the opportunity of claiming whiplash, suddenly to be reminded that they have a stiff neck—or had a stiff neck some months ago, I hasten to add—and to bring about a case that can pay to the customer, say, £2,500, which will cost the insurer £4,500 including all the legal costs, for which in the past the insurers have participated in this merry-go-round to attract the £800. £800 minus £4,400 is not a very happy merry-go-round. AXA jumped off because fundamentally we think it is immoral. It is immoral for the consumer and it is immoral for society that motor premiums have to pay for the fact that this is so profitable to prosecute.

Q16 Chair: Mr Evans, you have decided that you are not going to receive referral fees from insurance companies. Are you receiving them from any other bodies such as repairers or credit hire companies?

Paul Evans: We receive referral fees from credit hire companies, yes.

Q17 Chair: So you are still doing that.

Paul Evans: Yes.

Q18 Chair: You think that is all right.

Paul Evans: First, I would observe that the situation is quite different with credit hire. AXA will go to other insurers and arrange a bilateral agreement not to pursue credit hire if one of their customers, the other side, is the non-fault customer. AXA will do this. For example, last year we referred only 4,700 people into a credit hire situation for an average fee of £300. That is £1.5 million worth of income.

We are addressing this as an industry. I believe this is dysfunctional too. I would acknowledge that. It is difficult for AXA to jump off unilaterally. We do it in this case by going to each insurer in turn and saying,

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“Look, this is stupid. Let’s stop doing it to each other.” We are doing that quite successfully and it is coming down. We believe that the industry has a responsibility to address this issue itself. We cannot always come to Government and say, “Please solve our problems for us.” In this case we believe we do have to ask Government to help us to solve the problem because AXA cannot alone, unilaterally, solve the problem. It is just too big.

John Spencer: Can I correct one point because it is inaccurate? I sat on the Committee that set the £1,200 fee that has been referred to. It is an agreed figure. It was negotiated between insurers and claimant solicitors’ organisations.

Mr Straw: It was poorly negotiated.

John Spencer: It was negotiated and reduced—

Q19 Chair: Can we resist the temptation for discussion between the witnesses?

John Spencer: I just wanted to make that point. The other point is that I am not a supporter of these other ancillary activities and profiteering that is being referred to. What they do in the end in a fixed fee system is reduce the amount of money available to properly represent the accident victim. With my firm I have been outbid by other practices that are paid to pay more and more money in referral fees to all the sundry organisations that are involved in this activity, because I know that if I go beyond a certain threshold we would not be in a position to conduct that client’s case properly. You have to be careful if you simply see this as a reduction of fixed fees and everything will be okay. It might reduce down the level of service that people receive.

This danger is compounded by the advent of alternative business structures which are around the corner, where an insurer or a CMC, far from referring cases, will own the solicitors’ practices that conduct them. They will devolve the conduct of these cases to the lowest common denominator. Who will suffer? The accident victim at the end of it will not get properly represented because they will still want to generate profit. There is a broader issue about licensing of insurers under ABSs and licensing of claims management companies who will look to go into new industries. I would like to see properly regulated conduct of cases with people being properly looked after and proportionate costs being spent, rather than trying to look at one segment or the other and just making, dare I say it, cheap political points out of it against the insurers—

Mr Straw: Who is making cheap political points?

John Spencer: I think there are cheap points being made around insurers and CMCs.

Chair: Witnesses, would you please address the Chair and the Committee. I know that you are all very anxious to put your points. I am trying to make sure you all have the opportunity to do it.

John Spencer: It is too important for it to be a political football.

Q20 Iain Stewart: I would like to go back a couple of points and look at the likely effect on premiums if injury referral fees are banned. The evidence I have looked at suggests that there is no consensus as to

what would happen. I refer to written evidence we have received from Admiral Group which says that the net effect would probably be neutral. While there would be a reduction in whiplash costs, referral fees income cross-subsidises other unprofitable parts of the business. But others argue otherwise and I am trying to get my head round what the impact would be.

John Spencer: The accurate answer to that question is that, if the existing fixed cost regime remains as it is, it will have a negligible impact on the cost of motor insurance premiums because the costs are fixed. They are fixed by the agreement that I referred to. If you then go further and look at what you do with those fixed costs, it all begs the question of what you do with those fixed costs as to how much costs might be saved by that action. Here and now, doing nothing else, the answer is that there would be no impact.

The other problem with this issue is that there is no transparency by insurers as to what they are paying. We don’t know what insurance companies are receiving by way of fee income from referral fees. Up to last November their position was that they thought we should take a long, hard look at referral fees. Then this Committee sat and I gave evidence to this Committee. Then the insurers started saying they wanted to ban referral fees. They still have not done what should be done, which is to reveal what they receive by way of referral fee income.

Mr Straw: The Law Society and the Bar Council have also said ban referral fees. The Legal Services Board said they are concerned about it and they want greater transparency. The research on which they based that is extraordinary.

If you halve the costs allowed through the portal, as I propose in my Bill and for which there is overwhelming evidence, you basically take out £600 per claim. The fact that Admiral’s share price went down, to which Mr Dismore referred, indicates that its investors believe that they will have a lower income from this.

We have unnecessary costs riding in the system. There is no one magic wand that is going to take these out; it is a whole series of things. On whiplash there are sensible changes which could be introduced on the pre-action protocol—the portal—as well as on referral fees. If we could move away from what the head of motor insurance in the ABI said was a dysfunctional system, in which everybody behaved badly, to a more functional system, in which people behaved well, we would then get some proper competition and we would not have in a sense the industry obscuring unacceptable practices until recently, as, for example, over credit hire.

Andrew Dismore: The problem with Jack’s approach is that he overlooks the fact that, if you did not have CMCs providing the marketing and other functions, then the law firms would have to provide it for themselves. The fact remains that CMC advertising is more cost-effective than a law firm having to try and advertise itself, bearing in mind the cost per case of attracting that work, plus all the additional things the CMCs do in terms of screening cases and doing some preliminary investigation work. That work would have to be paid for one way or the other and you can’t get a quart out of a pint pot.

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As far as whiplash is concerned, there is a very easy answer to this. Mr Straw knows about this. There is new evidence emerging that you can test whiplash. Equally, there is new evidence emerging from Australia that says you can show an organic cause. The answer is quite straightforward. If the insurers think whiplash does not exist at low velocity, test it in court. That is what they did with pleural plaques and that is what they did with all sorts of other asbestos cases. You would not legislate for that when you were the Secretary of State.

Mr Straw: That is completely different; you know that.

Chair: We have enough to discuss by keeping to this one.

Q21 Julie Hilling: I want to come back to the point where you are saying you need the Government to legislate in terms of personal injury claims but you are quite happy that you should try and somehow sort out the other extremely costly parts of motor insurance. Mr Evans, you were saying this but I do not understand.

Paul Evans: First, we do support a ban as wide as Jack proposes. However, I would say that in the case of credit hire the impact on premium is very low. It is nothing like as systemic as the personal injury issue. It is relatively straightforward for two insurers to agree not to refer each other's cases. With personal injury there are too many other mouths in the trough, if you like, who are able to refer that individual to a CMC or to a personal injury solicitor that we just cannot control. Going back to the earlier question perhaps, we believe that, if the fixed fee is reduced, the personal injury dilemma will go away, I promise, and that premiums will fall because it is a very competitive marketplace.

I am perfectly happy for credit hire to be wrapped into that and resolved in exactly the same way. I am simply saying that the insurance industry has a responsibility. I believe that it can address that issue itself but we cannot reduce the fixed fee available to solicitors in personal injury cases. That has to be reduced if personal injury frequency is to fall and motor premiums are to be reduced.

Q22 Chair: Have your premiums fallen now that you have stopped referral fees?

Paul Evans: No, not at all. They have not increased as a result of us not taking referral income, which might have been the other question. We cannot reduce premiums until the frequency of personal injury claims reduces. The frequency will not reduce even by a ban on referral fees. As pointed out earlier, alternative business structures will be formed. We will not do it, but they will be formed, which will continue the industry around this profit pool. The profit pool has to be reduced. It will be reduced by reducing the fixed fee. When that happens personal injury frequency falls, and when that falls premiums will fall.

John Spencer: Can I—

Chair: You will have another opportunity. I want to let other Members put questions.

Q23 Mr Harris: Mr Evans, for how many years did AXA receive referral fees before deciding they were immoral?

Paul Evans: Since 2007.

Q24 Mr Harris: So for those three years they were quite acceptable and then last year you said they were immoral.

Paul Evans: It is a difficult position because this was a decision that I took. A corporate has a life of its own, but I took over as Group CEO in October 2010. I banned them in June 2011. I cannot really speak for predecessor views, but I certainly believe that it has been demonstrated, certainly more recently with the higher premiums, that it is having an immoral impact on the industry. The insurers' take of that is relatively small compared to the whole, but we have to make a stand.

Q25 Mr Harris: AXA were the first to go with the announcement that you were going to unilaterally ban them. Was that influenced at all by a strategy internal document by ABI which said: "Our sense is that it would help greatly if one insurer announced publicly that it would stop receiving referral fees and if others followed suit. This would give our lobbying efforts more credibility. The current ABI position that we want a ban while our members continue to receive these fees is not ideal and leaves the industry open to allegations of hypocrisy"? Were you aware of that discussion?¹

Paul Evans: I have never heard that said, and no, I was not aware of that position. I called the ABI the morning of our announcement to make them aware that I was breaking the line of the industry calling for a ban while not banning it themselves. I found that intolerable and I unilaterally decided. I was not aware of that.

Q26 Mr Harris: You were not aware that the ABI wanted one insurer to do it first?

Paul Evans: I was absolutely not aware.

Q27 Mr Harris: You mentioned alternative business structures. Is it correct that AXA is not going down that road and you have no plans at all to buy Knight Law Ltd, for example?

Paul Evans: Knight Law operates for us as a defendant; that is, it supports our defence of personal injury claims. It does not prosecute claims—that is, represent the claimants—and never will.

Q28 Mr Harris: You have no intention of purchasing it.

Paul Evans: I have no intention of purchasing it. To be fair, I think I own part of it but I would need to clarify that.² I have no intention whatsoever of it prosecuting personal injury claims against insurers.

¹ See a letter from Nick Starling, Director of General Insurance and Health, ABI, for a response to this question (CMI 13d)

² See supplementary evidence from AXA UK for clarification (CMI 38a)

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Q29 Mr Harris: You have no intention of purchasing any law firm in the future to service your clients in the event of a personal injury?

Paul Evans: No. I want this issue to be resolved as quickly as possible so that that would become a foolish strategy. I have no interest in doing it.

Q30 Kwasi Kwarteng: I want to go back to the whiplash story. Are people on the panel suggesting that there is a severe problem with whiplash and that fraud is not a factor in any of these instances of whiplash? It is a question to you, Mr Spencer.

John Spencer: Ever since the introduction of seatbelts, motor accidents have incurred the whiplash injury. It is better than what went before but clearly not good. The problem with whiplash is that it covers a huge range of injury from the very modest to the quite severe. My issue with Jack's proposal with regard to whiplash is that, if you choose a mile per hour parameter to determine whether or not someone has a claim, say, 15 mph, which is the speed at which vehicle damage will be apparent, you will exclude cases of quite severe impact on individuals by doing that. Gender, height and pre-existing conditions all have an impact on how severe the injury is.

Andrew Dismore: There seems to be an inference that every whiplash claim is somehow fraudulent. The ATE insurers have done some research on the number of cases that have actually proven to be fraudulent. DAS, which is ATE and one of the biggest, had only six cases in one year. It is 0.018% of their cases. ARAG, another big ATE insurer, is 0.02%. Experian Fraud Index found 12 cases in every 10,000 applications and cases. Let us keep a sense of proportion about the actual incidence of fraud rather than what is alleged.

To finish the point about whiplash—

Q31 Chair: I want to hear Mr Straw on this one.

Mr Straw: It is not quite how it works. Leaving aside the cash-for-crash claims where people double or treble the number of people alleged to have been involved, if there is an accident and somebody's head goes forward—or that is the inference from the impact—they are then encouraged to put in a claim. The claims management company sells the claim, so they have a real interest in pursuing it to the point of profit. They are then sent to medical practitioners who are in the pay of the CMC—"You will get a fee for this"—and as sure as I am sitting here—

Andrew Dismore: That is wrong. They are not in the pay of the CMCs.

Mr Straw: Hang on a second—

Chair: Each witness must give their own answers.

Mr Straw: As sure as I am sitting here, they are paid by the CMCs. The CMC ultimately, if they succeed, will get the fee back from the insurer. I have spoken to people who have been in this situation. They have reluctantly been persuaded to make a claim for whiplash because they just want to get them off their back and they say it is £3,000. They go and see the

doctor. The doctor says, "Did your head go forward? Are you sure you didn't have a headache? You must have had a bit of a headache." He ticks a whole series of boxes and it is £3,000. It would not stand up in a fraud prosecution. It is right on the edge.

What I have suggested in my Bill, and I have thought about this very carefully, is that the onus is on the claimant to satisfy the court that there is independent objective evidence that they have suffered harm. No damages should be recoverable if the only evidence is a subjective description of symptoms by or on behalf of the claimant.

On Mr Spencer's point, I am not saying—and it does not say in the draft of the Bill—that if the accident took place at a relative speed of 15 mph or less then no claim will lie. That is one possibility, but it also has to be shown that there are no musculoskeletal signs of any injury, including fracture or dislocation. If you have a crump below 15 mph but you had these signs of musculoskeletal injury, then of course damages would lie.

Q32 Kwasi Kwarteng: You are saying that the focus is that there should be third-party corroboration that the injury happened.

Mr Straw: Yes. Can I just say—and I am happy to give it in evidence—there is a major academic study of the invention of whiplash, which started in the United States? I know the old story that it is all to do with seatbelts, etc. It is a little bit to do with seatbelts. Frankly, it is also to do with the avaricious tendencies of an industry chasing premium income and damages and a common law system which has not been adept enough to keep pace with these other developments. That is the truth of it. It has happened in the US. It has happened in Australia. It is happening here. The fact that it does not happen in Scotland or Germany to the same extent illustrates that this is basically artificial for the most part, but not completely.

John Spencer: A survey by Davis in 1998 demonstrated that whiplash injury is sustained upwards from 2.5 mph, which is six times less than 15 mph.

Q33 Kwasi Kwarteng: I remember that you came earlier, a few months ago, and we looked at an international comparison with Germany where instances of whiplash were practically zero. Yet you are saying that this is an incredibly devastating condition. How do you explain the fact that in Germany there are very few instances of it?

John Spencer: I do not think there are fewer instances; I think there is a different legal system operating with regard to the ability to claim for that injury.

Q34 Kwasi Kwarteng: So you think thousands of Germans are suffering from whiplash but they do not have the means to claim?

John Spencer: We have an ability in this country, which is well established, to present a claim for your injury and be compensated for it. The system within

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Germany is different from that which operates in this country. I do not think it is a physiological difference.

Q35 Kwasi Kwarteng: I ask you a simple question. Are there thousands of people who are suffering from whiplash in Germany who have no legal means of redress?

John Spencer: I expect that there are similar numbers in Germany to those that there are in this country, yes, because I do not believe that physiologically we are different.

Q36 Chair: Mr Dismore, can you make your points as quickly as you can, please? We are running out of time.

Andrew Dismore: I will, very quickly. Jack refers to evidence from the US. There is other evidence now emerging from scientists in Australia about whiplash. The answer is very straightforward. Time and again the insurers test these things in court. When I was in litigation myself I defended a number of test cases and, indeed, brought test cases. That is how this is resolved. It is not by a Committee like this, august though it may be, and not by legislation, but by the evidence being tested in court in a test case that goes all the way to the Supreme Court. Let the Supreme Court decide, as they have done time and again on many other aspects of personal injury law.

Q37 Jim Dobbin: For the record, Chair, I did have a text a couple of days ago saying that I would pick up £3,700 for the accident I never had. It just did not exist, quite honestly. On the back of that, how is all this information getting out to these people? Are the insurance companies breaching the Data Protection Act by making personal data available to solicitors, garages, credit hire firms and others without the consent of the policyholder? Is that what is happening?

Andrew Dismore: I can answer that because I have just renewed my insurance policy. For once I listened very closely to the very long recorded message at the start when I did it over the line and I read the small print of the policy very closely. I was authorising the insurer concerned to basically sell my data to anybody they wanted. The data concerned, which is supposed to be there to prevent fraud and misrepresentation, is being used to sell on that information. The answer is relatively straightforward. The data should only be allowed to be transferred if the client insured gives specific authority in relation to the case in question and not one of these general authorisations. The CMCs cannot get that information from anywhere else other than insurers.

Q38 Chair: So you think that is the way to deal with it. Mr Evans, do you have any view?

Paul Evans: All I can say is that there is absolutely no evidence whatsoever that insurers are selling data. Can I explain the conversation that takes place with a

customer? A customer calls to report a claim. We would ask that customer, "Has anybody been injured?" as part of that claim. The customer would say, "Yes: X and Y." We would ask that customer, "Do you want any support in pursuing your claim?" If they say no, fine. If they say yes, we say, "We can refer you to a solicitor." If they say, "Yes, I would like you to do that," we do so. In the past we would have written to them to say, "We have referred you to X and we have received a fee of X" as a response. Now we say, "We referred you to X." We do not mention a fee as there was not one. There is no evidence. Believe me, the ABI have made lots of inquiries of any insurer selling wholesale data. It is not happening.

Mr Straw: The answer is that there are clear breaches of data protection and Ofcom rules, not necessarily in respect of insurance companies but by other parties here. I have had correspondence with both Christopher Graham, the Information Commissioner responsible for data protection, and Ed Richards, the Chief Executive of Ofcom, about this. I am happy to submit that in evidence.

Q39 Chair: Finally, Mr Straw, would you support a request I am about to make for a debate on this topic to the Backbench Business Committee?

Mr Straw: Very strongly.

Q40 Chair: Thank you. I see there is continuing interest in the issue.

Mr Straw: But bear in mind that the Government—and I welcome this unequivocally—have committed themselves to the abolition of referral fees, although not to the other changes. My guess, and it is no more than that, is that those changes may be the subject of new clauses or amendments when the Legal Aid, Sentencing and Punishment of Offenders Bill comes up for its Report stage, whenever that is.

Q41 Chair: I would like from all of you literally a one-word answer. Do you support the banning of all forms of referral fees? That means not just in relation to lawyers.

Mr Straw: Yes.

Q42 Chair: Mr Spencer, just one word. If you don't, say so.

John Spencer: Personally, yes. My organisation has a broader range of view.

Q43 Chair: But your view is yes. Mr Dismore?

Andrew Dismore: No, because it goes against—

Q44 Chair: I just want the answer.

Andrew Dismore: It goes against the principles of good regulation.

Q45 Chair: Mr Evans?

Paul Evans: Yes.

Chair: Thank you very much, gentlemen.

Examination of Witnesses

Witnesses: **Mike Penning MP**, Parliamentary Under-Secretary of State, Department for Transport, and **Jonathan Djanogly MP**, Parliamentary Under-Secretary of State, Ministry of Justice, gave evidence.

Q46 Chair: Good afternoon, Ministers. Welcome to the Transport Select Committee. Mr Djanogly, could you tell us why the Government decided to ban referral fees in personal injury cases, against the advice of the Legal Services Board?

Mr Djanogly: Good afternoon, Chair. First, I wish to declare interests. Should I do that now?

Chair: Yes, please.

Mr Djanogly: I wish to declare all relevant disclosures made in my entries in the Register of Members' Financial Interests and the Ministerial Register. In particular, I mention any interest I may have as a non-practising solicitor who has not received any payment under the Legal Aid Scheme. Can I also declare any interests I may have in the insurance sector? My investment holdings are in the hands of a blind trust and, although I do not know what they are, I know that they did include, and therefore possibly may still include, a minority share in the Djanogly Family LLP and various other insurance and financial shareholdings as publicly declared by me to the Register of Members' Financial Interests at the start of this Parliament.

Q47 Chair: Thank you. We have noted that. Could you tell us why you decided to ban referral fees in personal injury cases when the Legal Services Board had come out against that?

Mr Djanogly: When we came into Government, the starting point on all of this was the report prepared at the instigation of the senior judiciary by Lord Justice Jackson. That dealt with civil costs and other civil litigation issues. In that report he did include a recommendation for the banning of referral fees. In addition to that, the Prime Minister requested a report to be prepared by Lord Young. He also suggested a ban on referral fees.

At the time when the Legal Aid Bill was in gestation, the Legal Services Board was also conducting a review of referral fees. They did not recommend a ban but they basically shifted the decision as to whether to go ahead with a ban on to the underlying regulators beneath the Legal Services Board.

On reflection we thought, having read the Legal Services Board report and taking account of the other reports, public opinion and evidence that we were taking from around the stakeholder communities, that a ban was appropriate. I should say that that has been generally welcomed. Some elements of our Legal Aid Bill proposals in relation to civil costs are not welcomed by some people who do want a ban. For instance, the Law Society does not like our general Jackson proposals in the Legal Aid Bill but they do like the idea of a ban on referral fees. Our intention basically is to discourage claims harvesting and to reduce the high costs and volume of litigation, which is increasingly becoming a commodity. A claim, for instance, can be sold with a referral fee attached up to five times before it gets anywhere near a court.

Q48 Chair: Have you considered referral fees in relation to vehicle repairers or other people who are involved in the merry-go-round of referral fees?

Mr Djanogly: The word "merry-go-round" is an appropriate way to describe it. It is important to make the general point that we do accept what I think was the finding of your Committee the last time you looked at this: that referral fees are a symptom of the compensation culture rather than the cause of it. When we look at things like referral fees, I would put them into the same basket as SMS texting, garages selling lists and inducement advertising. All of these are symptoms of what I would call a sick suing culture.

Q49 Chair: Why are you only looking at referral fees in relation to lawyers and you don't seem to be looking at referral fees in relation to other people on that merry-go-round?

Mr Djanogly: We are.

Q50 Chair: Are you looking at banning referral fees for repairers and car-hire companies?

Mr Djanogly: We are looking at both the receipt and the payment of referral fees. The payment of referral fees by solicitors is the starting point, but we are also looking at the receipt of referral fees too.

Q51 Chair: How will this be progressed? When will the ban be effected?

Mr Djanogly: My hope is that it will be put into the Legal Aid Bill. That has not yet been finally signed off by party managers, but that is what I am personally pushing for. Of course, what I want to do is to have it go through in that Bill because it ties in very cleanly with the other civil costs Jackson provisions, which I think should come into play all at the same time for proper effect. That is an important point. If you want to go into the compensation culture aspects of it, I can talk further on that.

Q52 Chair: Mr Penning, were you involved in this decision? We discussed this when you came to the Committee the last time.

Mike Penning: Yes, we were. We are very, very keen. The evidence I gave to the Committee last time was that we are very keen to give all the backing to the Minister to get this Bill through. It will be part of a package that will start to address the costs of insurance. I say "part" because there are other issues that we have discussed before and I am sure we will discuss today.

Q53 Paul Maynard: Are you concerned that the new so-called Tesco Law—the alternative business systems that will allow insurers to either purchase or set up their own law firms—will allow your banning of referring fees to still have the desired impact? Are there any other impacts that you fear might occur as a consequence?

Mr Djanogly: That is a very good and a very complicated question. I do not think anyone could give you a firm answer on it because no one quite

knows what the impact of alternative business structures is going to be because of the scope of them. However, you are right. I do think that there will be a significant number of claims management companies who, realising that our proposals are going to severely curtail their business, will look to join with solicitors. In effect that would mean that the claims management company would become the advertising arm of the law firm, even though it may own that law firm, which will become possible under the proposals due to come into place around the end of the year.

However, from a regulatory perspective I think that that would be advantageous. The reason why is because the claims management companies would then be regulated by the Solicitors Regulation Authority. That would be a very significant movement in favour of consumer protection. I do not fear that as a move; I would encourage it.

Q54 Paul Maynard: Prior to the introduction of referral fees there was an underground market of sorts. How do you think you can prevent that re-emerging also?

Mr Djanogly: That is a key concern of mine. It is a straightforward fact that when referral fees were banned last time, which I think was pre-2004, there was huge leakage. There are many ways that you can get round a straightforward referral fee. In a simple sense it is easy. I give you a job and you pay me a referral fee. However, we do know from how it worked in the past that there are many ways that you can get round referral fees. For instance, insurers give work to solicitors on the basis that the solicitors get their insurance off the insurer. Trade unions will apparently give work to solicitors on the basis that they do their low-value work for nothing or very little on the basis that they get their high-value work pretty much guaranteed.

There are other ways of cutting it. For instance, instead of paying a referral fee, you could pay for "services" and get a fee for the services rather than a referral fee. To what extent those services are really undertaken is something that would have to be looked at in the context of the case, as with all of these examples I am giving. Sometimes they may be tied down to referrals; sometimes they may be valid services.

That is why, I have to say, when we looked at how this should be put into effect, we veered away from a criminal offence. A criminal offence is a very blunt instrument. You have to prove beyond a reasonable doubt and the grounds for when something would be a referral fee or not would be very much merged. It would be very difficult for a jury to convict on the basis of the complexity of these arrangements, which is why we came down on the basis that it should be a regulatory offence where the principle of what is happening can be looked at by the regulator and a view taken.

Q55 Mr Harris: Minister, you said at the beginning in terms of referral fees that they were a symptom rather than a cause of the dysfunctionality of the system. I do not know if you have seen it, but we have written evidence submitted today from Admiral Group

which uses precisely that wording. Do you feel sometimes that you are a bit too close to the insurance company, because that is almost exactly what they have said to us as well?

Mr Djanogly: I think that is the case, and I will explain why I think it is the case.³ On insurance companies, no, I do not feel that I am at all too close to insurance companies. Indeed, there seems to be some assumption that what we are proposing is going to help insurance companies. That is not by any means necessarily the case. If, as I hope, the level of claims comes down and that can be fed through to the consumer so that insurance premiums come down, that will not be to the benefit of insurance companies. Of course, insurance companies themselves are very big earners from referral fees, particularly, by the way, the company that you have given as an example. Reportedly their share price fell on the day that I announced the referral fee ban. Of course the ATE insurance market could be pretty much totally ended from our proposals. The idea that insurance companies are going to benefit from what we are doing is certainly not the case for all insurance companies and I would say not necessarily the case for most.

Q56 Mr Harris: There is a report in yesterday's *Guardian* that suggests that you met with leading members of the insurance industry on 19 January and told them. You asked their advice about how best to draft rebuttals to criticisms of Government proposals that might arise from its consultation on Legal Aid reforms. Then you come to this Committee and use a phrase which is identical to one of the bits of evidence that Admiral Group has given us. You see where I am going here. It looks like a very cosy relationship here.

Mr Djanogly: With respect, if you were going to make the point you have not used a good example to make it with. In relation to *The Guardian*, let me just put the situation into context. Obviously I read the article this morning and I did have a feeling it may come up today. I have discussed this within the MoJ because it mainly relates to the MoJ rather than to me. There has been ongoing dialogue between the Government and stakeholders with a range of opposing views. That is an important part of policy making. The story in *The Guardian* today only covers one stakeholder group whose view was broadly supportive of the MoJ's policy on controlling costs in civil cases, not legal aid, as reported. The story refers to a meeting with MoJ officials in May this year at which officials set out the Government's policy. There is nothing surprising in that. The Government had set out its position clearly and fully in an oral statement to Parliament by the Secretary of State on 29 March. The quotes and interpretations in their e-mails are their own rather than the MoJ's.

I can confirm that my officials and I have met with a number of organisations from the side of both the claimant and the defendant as part of the process of consulting on and implementing Government policy. I would have thought that most people would have wanted us to do no less.

³ Note from witness: i.e. referral fees being a symptom

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Chair: I do want to try to keep to the points of concern.

Q57 Mr Harris: Absolutely. I will ask a question on policy then. Is the Government going to make illegal the text messaging that Mr Dobbin, for example, referred to from personal experience? I do not know if that was in an earlier session. People do get these texts saying, "You could make three grand if you phone this number." Are you going to outlaw them?

Chair: These are cold calling messages.

Mr Djanogly: I have had them too, Chair, by the way. I think we all probably have.

Q58 Chair: It does look as if there is a problem with regulation or absence of regulation on data protection. What is going to be done about that?

Mr Djanogly: First, we do need to point out that not all of these texts are necessarily illegal. You may, when you signed up to your insurance, have signed up to small print which gives permission, for instance, for them to use text messages. If they are DPA registered, then it may be done legally. However, a lot of these text messages are illegal. I do see them as another symptom of the compensation culture—the money flushing through the system that is going into referral fees. Some is going to pay for text messages.

Q59 Chair: What are the Government proposing to do about it?

Mr Djanogly: The starting point is that, if you feel that you get a text message and you want to report it as a potentially illegal text message, you can do so now by calling the ICO hotline.

Q60 Chair: But do the Government intend to take any new action to deal with this problem? They may be telephone calls. They may not be text messages.

Mr Djanogly: We are, and we are looking at several ways of doing so. First, we are working with industry, the Direct Marketing Association and others, to see how we can crack down on the use of technology in this way. I am pleased to say that in the last month we have reached agreement with a number of major network operators who have now agreed to help with the investigations and giving us access so that the ICO and indeed the Claims Management Regulatory Unit at the MoJ can get access to who these people are. If they are not registered and are texting illegally, we can then investigate. The ICO can deliver very stringent fines and the MoJ can strike off CMCs that are acting illegally. We have struck off over 250 CMCs in the last year.

Q61 Mr Harris: I have one more very brief question, Mr Djanogly. It follows on from your very first statement to the Committee. I think this is relevant and I just want some clarification. You said that your membership of the Djanogly Family LLP was in a blind trust. Is that correct?

Mr Djanogly: Yes; correct.

Q62 Mr Harris: So you are no longer a member of the Djanogly Family LLP; is that correct?

Mr Djanogly: No; my interests are controlled by a third party.

Q63 Mr Harris: It is just that a member of an LLP does have a fiduciary and statutory duty.

Mr Djanogly: That is my duty to the LLP. It has nothing to do with Parliament.

Mr Harris: It was part of the original statement, Chair.

Chair: The statement was given.

Q64 Iain Stewart: In the evidence we have received it is the compensation claims for whiplash that seem to be a particular problem in fuelling this compensation culture. Is the Government planning to look at imposing a limit on the value of the claims for whiplash?

Mr Djanogly: Whiplash is a complicated area. Let me start with the easy bit. First, there is a growing amount of fraud. There are people orchestrating crashes, for instance, and then claiming whiplash. More prosecutions are taking place and that needs to be increased. That is the criminal aspect, if you like.

Secondly, we need to appreciate that abolishing the recoverability of success fees and ATE insurance premiums is going to suck money out of the market. We do hope that that again will have a significant impact on SMS texting and on inducement advertising because there will be less money to pay for them. That in itself will reduce the number of whiplash claims.

Thirdly, we need to appreciate that because we have not had a balanced suing mechanism, if you like, defendants have been induced to settle too easily. Through our other reforms we are hoping to create an atmosphere where the insurance defendants will want to defend more readily. From a governmental point of view, I say today, we encourage them to do so.

Q65 Julie Hilling: Are you intending to reduce the fixed fee through the RTA portal?

Mr Djanogly: In terms of the underlying causes it goes back to recoverability. We need to appreciate that, if we sort out recoverability, which we are proposing to do in the LASPO Bill, we will have less money in the system, but, because there are fixed costs for small claims under £10,000, that will not change the amount going through the system at all for small claims. You are right that we cannot get insurance premiums down, for instance, or it would be hard, without sorting out the fixed costs as well or at least that will help the process. We have initiated that process.

Again, that it is not straightforward. I believe that there is a notional amount within those fixed costs that is attributed to referral fees. In effect we want to reduce the fixed cost by that amount. However, the legal profession disputes that vociferously. They either say that there is no notional amount for referral fees or, if referral fees are banned, they will have to spend more on advertising and therefore they should keep that amount. There is going to be a negotiation there. Last time this came up as an issue it was in effect brokered by the Civil Justice Council. They may have a role in this again. I have said to the Law Society that it is not the Government's intention to stop

referral fees going to claims management companies just so that lawyers can take those referral fees in effect for themselves. We want the benefit of that to feed through to the consumer in lower insurance premiums.

Q66 Julie Hilling: Are you then going to monitor the effect on access to justice for less well-off people? The thread through this seems to be that whiplash is a non-existent injury and that people are milking the system. But there is a reality that the people who do not have the means to employ a solicitor in the first place are the people who are benefiting from these systems. Are you going to monitor the effect of the reduction on particular groups? It is not just about whether there is an overall reduction. An overall reduction may not mean that there is an overall reduction in people that are suffering.

Mr Djanogly: We will be monitoring that. Your question goes to the heart of this whole issue, and that is recoverability. If you don't mind, Chair, can I just address that because I think it is the starting point?

What happened was that pre-1997, in the last Conservative Government, Lord Mackay put in place some proposals which introduced CFAs: no win no fee deals, if you like. They did not include recoverability of success fee or ATE insurance premiums. It was just a basic CFA. In the 1999 Access to Justice Act there were some important changes. First, the then Government took away legal aid for personal injury. At the same time they added recoverability for the winning claimants of success fees and ATE insurance premiums.

That had a huge and dramatic effect. For instance, I can tell you that one individual indicated that in 1999 claimants' solicitors' costs were equivalent to just over half the damages agreed or awarded at 56%. By 2010, the average claimant costs represented 142% of the sums received by the injured victims. The same person said that, while average damages paid had increased since 1999 by 33%, average claimant costs paid had increased by 234%.

That legislation had a dramatic and significant impact on the claims culture. The problem is that, if you are a claimant and you have no chance of losing, then you are almost obliged and you are almost crazy not to sue. Why shouldn't you? That is the mechanic of the compensation culture. That is what we are proposing to reverse in our legislation. We are basically going back to the Lord Mackay system, as proposed by Lord Justice Jackson, whereby the claimant ultimately has an interest in what they are paying their own lawyer and they will be interested in the outcome of the case.

Q67 Julie Hilling: Is it not the case that the rich will continue to sue people willy-nilly, but it is the people who have less access to solicitors who don't do so and therefore are more likely than not to receive what they are due in terms of an accident that is not their own fault?

Mr Djanogly: It is a very important point. We are not proposing to end no win no fee litigation. We are proposing to take away the success fee element. In future you will still be able to go to a solicitor and say, "Please act for me for nothing." The solicitor will

still be able to say, "Yes, I will act for you for nothing and I will get my costs plus a mark-up," but that mark-up would come out of damages rather than from the losing defendant. That happens in every other country in the world, by the way. We hope that will reintroduce a degree of thought as to whether you should sue. What will happen is that, if it is a blatant case, you will still easily get a CFA. If it is a marginal case, then you might have to think a bit more carefully because there could be a downside. But litigation is about risk and that is where we are heading towards.

Q68 Jim Dobbin: This is probably a question for Mr Penning. How big a problem is uninsured driving throughout the country?

Mike Penning: As I said to the Committee last time, it is a really difficult situation in the country as a whole. The last time I came here the estimate was that there were about 1.2 million or 1.3 million drivers on the road that were uninsured. This has a knock-on effect. The police tell me that, if you are likely to be driving with no insurance, you are likely to be driving without other car documents and you may well be involved in other criminality as well.

There are two different kinds of people. There are people who just do not think they should insure and do not care about the consequences. There are people who cannot afford to insure and take the risk of being taken to court or being caught. It is a massive issue and not just in fiscal terms. There is the time involved with my own Department, the insurers and the police in trying to police uninsured drivers. It is a big issue.

Q69 Jim Dobbin: Certain areas are highlighted as having a bigger problem than others. We are aware of Birmingham and Bradford. Why should that be?

Mike Penning: It is not for me to say. It is a fact that the number of people who drive uninsured is largest where there are areas of economic and social deprivation. The biggest area we have is in young people, though. That goes across the country as a whole. As I said at the last Committee, it is particularly 17 to 25-year-old boys, where insurance is difficult based on risk and because 17 to 25-year-old boys are more likely in general to be involved in an accident than a girl of a similar age. Of course the European Court has ruled that that is illegal, which I think was a somewhat silly decision. That is being polite.

Q70 Jim Dobbin: On the point of insurance for young people, do you ever see a time when the exorbitant insurance tariffs that they have to pay will be reduced?

Mike Penning: Yes, I do, and it is happening now. As my colleague has said, I have met with the insurers mostly to do with how we can get the insurance down. Insurers operate on a profit situation, but if no one insures with them they don't make any money. They look at the risk. It is for others in the insurance business to tell you exactly how they calculate that. Sometimes I struggle as well as to how they calculate that.

What is starting to happen on the insurance side, for instance, is that I had an insurer with me the other day

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which puts a black box into the insured's car. That policy is specifically for younger people. That box will tell the insurer if they break the speed limit. This is the stage the technology has reached. They get a reduced premium with that. If they break the speed limit two or three times, they will get a letter of warning and then eventually the insurance will be removed from them. That is also a symptom of the problems we have in teaching people to drive safely for themselves and others rather than just passing a test, which is another issue that we are dealing with, along with other measures as well. We need to teach and educate people from a very young age that they can enjoy a car or a motorcycle but that it is actually a very dangerous piece of equipment as well.

Q71 Jim Dobbin: So I can tell my older grandchildren that their insurance premiums will be reduced shortly; is that right?

Mike Penning: Having two teenage daughters that have gone through the same process, I know exactly how you feel.

Q72 Jim Dobbin: Do you think the penalties that the courts are allowed to levy are high enough?

Mike Penning: The levies that they can give are high enough. This is something that the Minister and I are working on now. If you are an imaginary boy or girl under 25 with three points on your licence, it is without a doubt a risk that they are willing to take at times to go to court or to take the fixed penalty of £200 and the points because they know that they will not necessarily lose their licence, rather than pay for the insurance.

The magistrate could give you a fine of up to £5,000. Going back to the point you were making, if you or your family don't have a particularly large income, a £5,000 fine is not going to work. But what would work is if we look at the points. That would be much better. The loss of their vehicle or their ability to drive the vehicle is much more of an incentive for them to adhere to the law—we know that from crushing when we take the vehicles away—than giving them a fine. The fine is disproportionate to the actual cost of insurance. This is something that we are working on now with the Justice Department to see if we can get the guidance to the magistrates to not just hit them with a fine. They may have to get a fine because they have not paid their premium, but we are looking at whether or not the penalty is more of a deterrent to them—in other words points on their licence and the loss of their licence.

Q73 Chair: I do not know if you are aware, Minister, but Young Marmalade has conducted a study looking at young people and very high premiums. There is a fairly shocking figure of about a third who admit that they have considered altering the information to get lower quotes. Over 20% have considered driving without insurance.

Mike Penning: Yes; I have seen the evidence.

Q74 Julie Hilling: On points, do you also think that the fact that drivers are not being banned when they have more than 12 points adds to this problem? An

increasing number of people are continuing to be allowed to drive beyond that.

Mike Penning: Without being rude to the Committee, you are dragging me into the territory of judicial decisions—in other words, what a judge or a magistrate does. That is not for me to decide as a Transport Minister, but it is very difficult for my Department and DVLA. Naturally, it is highlighted at 12 points that that person would normally have their licence removed, but it is within the legislation for the presiding judge or magistrate to have a degree of autonomy. Personally I don't quite understand how they get to 20 points with that autonomy, but that is a personal view and not a criticism of the relevant judges or magistrates. But it is a good point that you make and I know it is something that is being looked at as well in the other Departments.

Q75 Julie Hilling: And are a lot of those driving without insurance in those cases?

Mike Penning: Of course if you have no licence your insurance is invalid, so you are driving without insurance immediately. There is a catalogue of crimes that come immediately to mind.

Mr Djanogly: I point out that it is for the Sentencing Council to determine the guidelines for offences. We can have an impact on that.

Mike Penning: We must agree on these things, obviously. The point is that the magistrate or the judge does have the power to allow people to go over 12 points if they believe that they should do so. There are some, as you are probably aware and we know this, up around 20 points. That, to me, is an issue.

Q76 Kwasi Kwarteng: This is a question to the Transport Minister. What is your view on referral fees and how active were you with the Ministry of Justice in coming to—

Mike Penning: When I sat here last time I called them "ambulance chasers". My view before and since I got this job, and frankly just as a human being, is that I find it very difficult that any organisation would see a profit in someone's injury. I know people deserve compensation if they are injured, but 50% of the insurance claims are personal injury claims now. That is partly why our premiums are so high, though there are other reasons.

When the Minister and I talked, we pushed, and I think it was very important that we did it. But it was not my Department; it was the Minister's Department and we are very pleased.

Mr Djanogly: There was general agreement across Departments that it was the right policy to push ahead with. It is worth pointing out that, when the Jackson Report first came out, obviously the last Administration was in power and the then Secretary of State, Jack Straw, welcomed it at the time, although they did not get round to doing anything about it.

Q77 Julian Sturdy: Most of my questions have been asked by Mr Dobbin. Going back to the uninsured drivers point, do you think enough is being done to

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clamp down on this regional disparity within uninsured drivers? Mr Dobbin raised that briefly, but obviously that is having an impact on the cost of motor insurance at a regional level. We heard earlier on in the session about the huge disparity in motor insurance on a regional basis.

Mike Penning: And postcodes.

Q78 Julian Sturdy: Absolutely. Do you think we are really doing enough to tackle the regional disparity in this?

Mike Penning: There is a lot more to be done; we accept that. Of course, a lot depends on how the particular police force in each particular area looks at this particular crime. All Chief Constables have priorities set for them not only by central Government but by their own police committees. Some of them would see this as more of an issue than others.

I see it very much as a national issue. We brought in continuous insurance in June, which I discussed at the Committee last time. That has started to develop significant results. 60% of those who are being contacted to say, "You are not insured" are immediately SORN off the road or insured. That is higher than I expected and I went into this with a very open mind.

The insurance companies are now funding a specialist unit within the City of London Police. For the first time there is a national fraud computer system within insurers, so we are starting to know who these characters are. One of the things I always say through ACPO to the Chief Constables is that this is not a tiny issue. It is a really, really big issue. Where police forces have clamped down on this, they have seen their detection rates in other crimes dramatically increase as well.

We will look very carefully at the evidence that you have been given as well as to what work we can do in those areas particularly. Very often we will pick up vehicles which are not taxed and invariably they are not insured. We predominantly crush those vehicles now and the crushing regime is working. People will

give up everything else but they hate losing their car. If that is what I need to do to get them to insure, then I will take the car.

Q79 Chair: What is the current position on the establishment of a unit to deal with insurance fraud, paid for by the insurance companies?

Mike Penning: As I said at the last Committee, I ask for things from the insurers and they naturally ask for things from me. I asked for a lot of money from them to do the Continuous Insurance Bureau, which they came up with. The £9 million for the City of London Bureau is not an insignificant amount of money. We are preparing to give them access to the DVLA database so that they will know when giving a quote whether or not that person is telling the truth—in other words, whether there is fraud taking place there.

I will be honest with you: there are issues to do with cost because there is a cost to DVLA to create that portal. We are in discussions with the insurers. As soon as we can get that through, which I think we will be able to do, they will have that access. That will start to eliminate intentional and unintentional fraud.

There are two sorts of fraud that take place. As a dad, I remember my daughter saying to me, "Dad, will you put me on your insurance?" I was absolutely adamant that she was put down as the main driver because she was, even though it was on the family insurance. A lot of mums and dads don't because it obviously has an effect on the premium. But that is fraud, the same as someone saying, "I don't have any points. Give me a premium of X." That is the same. Some of it is intentional, some of it is done for the best possible reasons, but it is still fraud.

Q80 Chair: When will the new unit start its work?

Mike Penning: I do not have a date, Madam Chair, but I will write to the Committee and give you a date. I had hoped it would be up and running by now but we had some technical issues.

Chair: Thank you very much, Ministers, for coming and answering our questions.

Written evidence

Written evidence from the Association of British Insurers (ABI)

In light of the report of the Transport Select Committee which calls upon the insurance industry to do more to tackle fraud, I thought you would be interested to learn that the industry has firmly committed to create a dedicated police insurance fraud investigation unit and to set up an insurance fraud register. These two initiatives will make it harder than ever to get away with making a fraudulent claim and ensure that convicted fraudsters face the full consequences.

The police unit will become operational on 1 January 2012. It will investigate specific insurance frauds referred to it by insurers, regional police forces and the Insurance Fraud Bureau. We are confident that the unit will deliver a step change in enforcement activity against fraudsters, deter future offending and reduce losses. It will also recover and return to the industry assets lost to fraudsters under the Proceeds of Crime Act and other civil measures.

The unit, which will consist of around 35 full-time police officers and other specialised support staff lead by a Detective Chief Inspector located at the City of London Police headquarters, will operate routinely throughout England and Wales with the ability on occasion to work in Scotland and Northern Ireland. It will have access to wider police resources and capabilities such as surveillance teams and forensic support. The establishment of the unit will not mean that regional police forces will stop investigating insurance crime, within their more limited resources.

The Insurance Fraud Register is an industry-owned database that will provide a single platform to enable insurers to share details on all known insurance fraudsters across insurance sectors. It will become operational in early 2012. The register is visible proof that the industry continues to strengthen its controls against all types of fraud. In meeting the regulator's expectation that the industry seeks to manage fraud on a collaborative basis, it will enable the industry to provide consolidated data to the National Fraud Intelligence Bureau.

The ABI will continue to work closely with the National Fraud Authority and the Insurance Fraud Bureau to further develop the industry's anti-fraud strategy. We would welcome the support of the Transport Select Committee in sending public messages that insurance fraud is unacceptable and will be tackled vigorously.

I will of course keep you and the committee in touch with developments as we move towards full implementation early in 2012.

July 2011

Letter from Nick Starling, ABI to the Chair

During the Transport Committee's oral evidence session on The Cost of Motor Insurance on 11 October 2011, Mr Tom Harris MP claimed to quote an internal ABI strategy document suggesting that it would help our lobbying efforts if one insurer announce a ban on referral fees and others followed and that the current position is not ideal and leaves the industry open to allegation of hypocrisy.

I would like to put on the record that this was not an ABI document. This information was from the minutes from a meeting Keoghs hosted with the MoJ which was attended by ABI.

The views expressed were those of a Keoghs representative, not an ABI position or even a view aired by a representative of the ABI.

I would be grateful if this could be put on record.

October 2011

Written evidence from the AA

Below is the latest edition of the AA's benchmark British Insurance Premium Index, which since 1994 has been tracking the quarterly movement of both car and home insurance premiums. This has been issued to the media under embargo for tomorrow, Thursday 28 July.

Over the past couple of years, car insurance premiums have been rising particularly sharply, which prompted the Transport Committee's inquiry into car insurance. However, despite predictions from some commentators to the contrary, the rate of increase has been easing. The "Shoparound" index saw premiums rise by 3.6% over Q2, the smallest quarterly rise for some time—however, premiums have nevertheless risen by 30.1% over the 12 months ending 30 June 2011. There was an unexpected but very welcome fall over the quarter in the Shoparound premiums quoted for young drivers aged 17–22.

The Shoparound index is an average of the cheapest three quotes from a wide range of direct insurers, brokers and schemes, against a UK-representative basket of risks.

I am aware that the Transport Committee is calling for further oral evidence later this year and felt that you would find this latest release helpful.

If I can provide any further information or would welcome further contributions from the AA I would be happy to assist: meanwhile, attached is a table showing the movement of car insurance premiums by age and gender.

CAR INSURANCE INCREASES EASE, AA INDEX SHOWS

- AA British Insurance Premiums Index for three months ending 30 June.
- Young driver premiums fall slightly for the first time in two years.

Car insurance summary

According to the latest benchmark AA British Insurance Premium Index, the cost of car insurance appears to be levelling off, with an unexpected but welcome fall for young drivers over the second quarter of 2011.

This follows two years of unprecedented premium increases.

The average Shoparound cost of an annual car insurance premium increased overall by 3.6% over the three months ending 30 June 2011 to £923.90, the lowest rise for 18 months. Nevertheless, over 12 months, the Shoparound premium has risen by 30.1%.

However, for drivers aged 17–22, premiums fell by 5.6% during the quarter—a welcome respite for young drivers after more than two years of sharp quarterly increases.

The AA British Insurance Premium Index has been tracking the quarterly movement of both car and home insurance premiums since 1994. It measures the market average premium (an average of all quotes on a UK-representative basket of “customers”) as well as the three cheapest quotes for each “customer” to provide the Shoparound index.

Simon Douglas, director of AA Insurance, says: “The easing of insurance prices is welcome news, especially for young drivers whose premiums have become unaffordable for many.”

“I predicted last year that during 2011 we would see competitive pressure returning to the market which would help to reduce the rate of increase.”

“This is the smallest increase we have seen for some time, and I believe that over the rest of this year we will at last see premiums level off, despite the gloomier predictions of other market commentators.”

Headline figures

SHOPAROUND INDEX: CAR INSURANCE

<i>Average Premium</i>	<i>Jul 2011</i>	<i>Apr 2011</i>	<i>% Change</i>	<i>Jul 2010</i>	<i>% Change</i>
Comprehensive	£923.90	£892.08	+ 3.6%	£709.91	+ 30.1%
TPFT Fire & Theft	£1,465.23	£1,538.62	– 4.8%	£979.66	+ 49.6%

Car insurance analysis

Hope for young drivers?

The most welcome news in the latest benchmark AA British Insurance Premium Index is an unexpected fall of 5.6% in the average Shoparound cost of an annual comprehensive car insurance policy for young drivers.

This has helped to bring the overall Shoparound average increase to just 3.6%, the smallest quarterly premium increase for nearly two years.

The Shoparound index calculates the average of the cheapest three premiums from a range of insurers for each “customer” in a UK representative basket of risks.

Says Simon Douglas, director of AA Insurance: “Young drivers have for a long time been the biggest losers in the insurance market with premiums driving them off the road. They share the greatest number of serious crashes, premiums have been rising at a disproportionate rate, but it seems at last that insurers are starting to compete a bit more for their business with rates starting to come down.”

Nevertheless, the average Shoparound premium for a 17 to 22-year-old is £2,294 compared with the £924 average. However, Mr Douglas warns that with the end of gender-based pricing in December 2012; young women under 25, who typically pay premiums up to 40% less than their male counterparts, can expect to see a sharp rise in the cost they pay for their cover.

The average premium paid by 17–22 year-old men is currently £2,872 and for women £1,671.

Commenting on the overall slowing in premium increases, Mr Douglas believes that insurers have done sufficient work to overcome most of the underwriting losses of the past couple of years.

“At the end of 2009, for every £100 taken in premiums, £123 was being paid out in claims. By the end of 2010 this had fallen to £116 and I believe that the gap has closed further since then. This is encouraging insurers to price more competitively which is benefiting every driver, but especially young drivers.”

In addition, new legislation is helping to restore confidence for car insurers.

“The recent introduction of continuous insurance enforcement means that it is now illegal to keep a registered car that is neither insured nor recorded as off the road through a Statutory Off Road Notification (SORN). The Motor Insurers’ Bureau is now writing to the owners of all vehicles on the DVLA database that are not insured, encouraging their owners to take action or face a fine and possible confiscation of the vehicle.”

“Similarly, the police have been very successful in stopping uninsured drivers—last year, they confiscated over 150,000 cars being driven illegally.”

Other developments that will help to reduce insurer costs include the setting up of a dedicated police fraud unit and, in the longer term, a new industry-wide fraud database and access to DVLA driver data for insurers.

“Fraud continues to be one of the biggest challenges facing the insurance industry,” Mr Douglas points out. “According to new figures from the Association of British Insurers, the value of detected fraud amounts to £17.5 million per week, an increase of 9% over the previous year.”

“However, we believe that this is just the visible tip of the iceberg—beneath the waterline there is a serious culture of insurance crime that must be stopped.”

“While insurers are getting better at identifying attempts at fraud, the formation of a new police fraud unit early in 2012 will help ensure that insurance criminals are brought to book much more quickly.”

One of the biggest contributors to premium increases has been false and exaggerated personal injury claims, Mr Douglas points out.

“One recent case involved a claim for over £1 million by a man who said that he had to rely on a stick to walk and a wheelchair, yet he was witnessed uncoupling and pushing a caravan without difficulty. He was jailed for nine months.”

“It’s vital that the industry strongly gets the message over that there will be no hiding place for those who attempt to rip off their insurance company.”

Mr Douglas added that he welcomes the recent public outcry over the no-win, no-fee claims culture that has encouraged people to make false or exaggerated injury claims.

“The sooner legislation is introduced to bring to an end the cold-call marketing of accident management firms; the better it will be for everyone.”

Regional car insurance winners and losers

Regionally, the biggest jump in car insurance premiums over the three months ending 30 June was London with a 4.8% rise to an average Shoparound premium of £1,069—overtaking Yorkshire to become the second most expensive region to insure a car.

In Yorkshire, premiums increased by 3.1% to a Shoparound average of £1,058. And despite an increase of just 1.4%, the North-west retains top position in the premium leaderboard.

The cheapest region to insure a car remains Scotland with an average quoted Shoparound policy price of £556, up by 1.9% over the quarter. It is perhaps also no co-incidence that claims management firms don’t operate in Scotland, where the legal system is very different.

<i>Region</i>	<i>Jul 2011</i>	<i>Apr 2011</i>	<i>% Change</i>
London	£1,069	£1,020	+ 4.8%
South	£795	£778	+ 2.2%
Anglia	£734	£720	+ 2.0%
Central	£912	£888	+ 2.6%
West & West Country	£725	£702	+ 3.2%
Wales	£793	£780	+ 1.7%
North-west	£1,521	£1,500	+ 1.4%

<i>Region</i>	<i>Jul 2011</i>	<i>Apr 2011</i>	<i>% Change</i>
Yorkshire	£1,058	£1,026	+ 3.1%
Border & Tyne Tees	£893	£888	+ 0.7%
Scotland	£556	£546	+ 1.9%
Northern Ireland	*	*	*

*Insufficient number of risks for analysis

August 2011

Further written evidence from the AA

The biggest car insurance premium increases since records began appear to have ended, according to the latest AA British Insurance Premium Index.

The broker's benchmark Shoparound index, an average of the cheapest three quotes from a range of insurers for each "customer" in a UK-representative basket of risks, fell by 0.3% (just £2) to £921 over the three months ending 30 September.

At the end of March 2011, premiums had risen by over 40% over the previous 12 months. The annual rise has now dropped to 16% for the 12 months ending September, giving hope that the worst of the price hikes are over.

Simon Douglas, director of AA Insurance, says: "The past two years have seen the biggest-ever rises in premiums as insurers struggled to close a widening gap between premium income and claims costs. Although historically costs had been rising, premiums had not and, at the end of 2009, for every £100 taken in premiums £123 was being paid out."

"Something had to give," he says. "But the gap has now closed sufficiently to allow insurers to start pricing more competitively once again."

However, he warns there are still inflationary pressures for insurers and that the respite may be short lived.

"I believe that this fall is a respite rather than the start of a trend. Premiums are likely to continue rising next year, but at a much more modest rate," he adds.

"I would be concerned if they do start falling because after a time, it could lead to a repeat of the past two years' sharp premium inflation."

The steep upward premium increases recorded by the AA's Index attracted the attention of the Commons Transport Committee, which is continuing an inquiry into the cost of car insurance. More recently, the Office of Fair Trading started a probe into the industry while the Justice Minister announced reform of the way that personal injury claims are managed: including an end to so-called "referral fees". This is regarded as one of the principal causes of premium increases.

Introduction this year of continuous insurance enforcement (CIE) to tackle uninsured driving; the launch early next year of a dedicated police insurance fraud unit funded by the insurance industry and moves to allow insurance companies to access customer data held by the DVLA are all also expected to help insurance companies control fraudulent claims over coming months.

"I expect these moves to help the insurance industry manage costs which, in turn, should help avoid big premium increases in the future," Mr Douglas says. "But the fact remains that while the number of accidents on Britain's roads is falling, the number of personal injury claims continues to rise and I'm glad that this is at last going to be brought under control."

Over the past six months, premiums for young drivers have also shown signs of falling. They fell by over 5% during the previous quarter but have since risen again slightly.

Recent statistics from the Department for Transport suggest that the number of crashes involving death and serious injury amongst young drivers are falling although they remain significantly higher than for other age groups.

Education, changes to the driving test and development of new black-box "pay by performance" insurance solutions should all help young people start their driving careers responsibly and safely, Mr Douglas believes, but points out: "There will need to be strong evidence that these reduce the number of serious crashes experienced by young drivers before premiums fall much further for them."

Car insurance premiums at a glance: Third quarter, 2011

- *Average Shoparound premium* for a comprehensive car insurance policy is now £921.38, a fall of 0.3% over the past three months and a rise of 16.4% over 12 months. This is an average of the cheapest three quotes for each "customer" in the basket of risks.

- *Market average premiums* (average of all quotes for each “customer” in the basket of risks) for a comprehensive car insurance policy £1,449.85, a rise of 0.8% over the past three months; 16.0% over 12 months. This is a rise of 277.1% since the Index started in 1994.
- *Ups and downs of an annual comprehensive car insurance policy* according to the AA’s Shoparound average, since 2004:
 - October 2011: £921.38.
 - October 2010: £791.82.
 - October 2009: £568.62.
 - October 2008: £503.43.
 - October 2007: £463.07.
 - October 2006: £450.01.
 - October 2005: £450.43.
 - October 2004: £455.55.
- *Regional winners and losers:*

SHOPAROUND

<i>Region</i>	<i>Oct-11</i>	<i>Jul-11</i>	<i>% Change</i>
North-west	£1,529	£1,521	+ 0.6%
London	£1,058	£1,069	– 1.0%
Yorkshire	£1,065	£1,058	+ 0.7%
Central	£914	£912	+ 0.3%
Border & TyneTees	£893	£893	– 0.0%
Wales	£790	£793	– 0.4%
South	£789	£795	– 0.8%
Anglia	£732	£734	– 0.3%
West & West Country	£723	£725	– 0.2%
Scotland	£555	£556	– 0.2%
Northern Ireland	Insufficient data for analysis		

- *Shoparound Index by age and gender:*

MALE

<i>Age</i>	<i>Oct-11</i>	<i>Jul-11</i>	<i>% Change</i>
17–22	£2,977	£2,872	+ 3.7%
23–29	£1,464	£1,479	– 1.0%
30–39	£788	£788	+ 0.1%
40–49	£710	£711	– 0.2%
50–59	£559	£560	– 0.3%
60–69	£495	£503	– 1.6%
70 +	£611	£616	– 0.8%
Subtotal	£1,132	£1,132	+ 0.0%

FEMALE

<i>Age</i>	<i>Oct-11</i>	<i>Jul-11</i>	<i>% Change</i>
17–22	£1,682	£1,671	+ 0.7%
23–29	£901	£911	– 1.1%
30–39	£576	£579	– 0.6%
40–49	£591	£595	– 0.5%
50–59	£512	£513	– 0.1%
60–69	£400	£406	– 1.5%
70 +	£449	£453	– 0.9%
Subtotal	£749	£753	– 0.6%

ALL			
Age	Oct-11	Jul-11	% Change
17-22	£2,342	£2,294	+ 2.1%
23-29	£1,169	£1,181	- 1.0%
30-39	£680	£682	- 0.3%
40-49	£650	£652	- 0.4%
50-59	£533	£534	- 0.2%
60-69	£451	£458	- 1.6%
70 +	£524	£529	- 0.9%
Total	£937	£939	- 0.3%

— *Index summary:*

Market summary

(AVERAGE OF ALL QUOTED PREMIUMS FOR EACH RISK IN THE INDEX BASKET OF RISKS)

Average Premium	Oct-11	Jul-11	% Change	Oct-10	% Change	Jul-94	% Change
Comprehensive	£1,449.85	£1,438.18	+ 0.8%	£1,249.71	+ 16.0%	£384.50	+ 277.1%
TPFT Fire & Theft	£1,513.03	£1,510.80	+ 0.1%	£1,246.41	+ 21.4%	£333.39	+ 353.8%

Shoparound summary

(AVERAGE OF THREE CHEAPEST PREMIUMS FOR EACH RISK IN THE INDEX BASKET OF RISKS)

Average Premium	Oct-11	Jul-11	% Change	Oct-10	% Change	
Comprehensive	£921.38	£923.90	- 0.3%	£791.82	+ 16.4%	Shoparound data only
TPFT Fire & Theft	£1,460.85	£1,465.23	- 0.3%	£1,097.72	+ 33.1%	collated since 2005

Price comparison sites: Market summary

(AVERAGE OF ALL QUOTED PREMIUMS FOR EACH RISK IN THE INDEX BASKET OF RISKS)

Average Premium	Oct-11	Jul-11	% Change	Oct-10	% Change	
Comprehensive	£1,053.28	£1,067.72	- 1.4%	£888.84	+ 18.5%	Aggregator data only
TPFT Fire & Theft	£1,280.87	£1,280.36	+ 0.0%	£909.02	+ 40.9%	collated since October 2009

Price comparison sites: Shoparound summary

(AVERAGE OF THREE CHEAPEST PREMIUMS FOR EACH RISK IN THE INDEX BASKET OF RISKS)

Average Premium	Oct-11	Jul-11	% Change	Oct-10	% Change	
Comprehensive	£682.80	£696.67	- 2.0%	£592.08	+ 15.3%	Aggregator data only
TPFT Fire & Theft	£949.27	£940.72	+ 0.9%	£764.77	+ 24.1%	collected since October 2009

October 2011

Written evidence from the Motor Accident Solicitors' Society (MASS)

1. MASS is a non-profit making national association of solicitors who specialise in road traffic accidents, representing the accident victim. Formed in 1991, MASS promotes the highest standards of legal services through education and representation in the pursuit of justice for the victims of road traffic accidents. MASS comprises 190 solicitor firms that employ over 2,000 legal staff, throughout the UK. Collectively member firms conduct in excess of 600,000 road traffic accident personal injury claims each year.

2. The victim, and what is in their best interests, must remain at the centre of the debate. Our goal in this debate is to both protect the rights and interests of consumers who are victims of genuine road traffic accidents as our constitutional objective.

3. MASS fully endorses the Committee's view that whatever the solution to the problem, the "Government should ensure that arrangements exist to enable people injured in a motor accident to claim compensation, regardless of their income".

 OVERVIEW

4. The contributory factors to the cost of motor insurance are many and complex. There will be no straightforward solution to the problem of rising costs and each solution will inevitably have impacts and consequences which must be considered carefully in terms of what is gained and what is lost.

5. Referral fees are undoubtedly an important factor of this debate, but it remains only one part of a possible solution. It is vital that the motor accident industry is looked at holistically and in considerable more depth before wide-reaching reforms are introduced that are potentially over hasty, ill-conceived and which may have highly detrimental negative consequences for the principles of access to justice.

6. The solution must be evidence-based, with a full understanding of the associated facts and figures—too often at the moment the evidence is contradictory and potential decisions are being taken on the basis of insufficient facts and evidence of how the industry and insurance market operates and the true costs involved.

7. Understanding the true scale of the issue has proved protracted and difficult: there is still no accepted figures for precisely how much the market in referral fees in all its guises is worth. We strongly urge the Committee to seek full disclosure from those concerned to determine exactly what the market in referral fees is valued at. Only then can the possible savings and future reductions in car insurance premiums be measured.

8. The debate has been distorted unfairly to focus on injury claims and those who pay referral fees, including lawyers, rather than the true cost of claims, which is the value of those claims less all income received in referral fees and commissions from other parties in the claims process.

9. Greater transparency must be forthcoming from all parties to ensure that the scale and elements of the market in referral fees are fully understood. For instance, very few publicly-listed insurance companies have yet declared how much they receive in referral fees. Admiral is one of the few companies that have, announcing that 6% of its profits are derived from referral fees, although a detailed breakdown of figures for other types of commissions and payments are not published and so this may be even higher.

10. Parliament, the Ministry of Justice, the Office of Fair Trading (who initiated an investigation into related elements on 8 September 2011) and professional representative bodies and leading organisations must fully co-operate in pulling together all the available evidence before fully implementing the Government's proposed course of action.

11. MASS believes that clients will have guaranteed access to justice and protection only through a genuine regulatory and industry-wide commitment to challenge deeply entrenched commercial interests and eliminating elements which add no value to claimants.

THE COST OF CLAIMS

12. Road accident personal injury (RTAPI) claims represent 790,999 claims out of a total of 987,381 claims, according to Compensation Recovery Unit figures published by the Government in respect of the year 2010–11, which is over 80% of all personal injury claims.¹

13. MASS rejects the accusation that the cost of claims is out of control because of lawyers involved in personal injury claims.

14. Since 2003 two separate fixed costs regimes have existed for legal costs for Road Traffic Accident Personal Injury (RTAPI) claims up to £10,000, representing in excess of 75% of all RTAPI claims since 2003. The new streamlined process for RTAPI claims, implemented by the Ministry of Justice on 30 April 2010, and agreed in full by the insurance industry and others, are actually lower than those agreed in 2003. Both sets of costs were negotiated and agreed without any reference to the payment of referral fees.

15. MASS questions why motor insurance premiums have risen so dramatically in recent years when there has been in place fixed legal costs which insurers have agreed, for in excess of 75% of all RTAPI claims since 2003?

16. The Association of British Insurers (ABI) has stated that insurance premiums have risen 40% in the last year, blaming rising legal costs. Yet one insurance comparison website (tiger.co.uk) recently found that prices were 2.3% lower in September 2011 than in August 2011, were down 4.5% in the third quarter of 2011 when compared to the second quarter. Furthermore they are predicting that motor insurance prices for the whole of 2011 are likely to be about 17% higher than 2010 prices.² Whilst such a rise would undoubtedly still be too high, there is clearly an incomplete picture of the insurance industry which should be addressed as a matter of urgency.

17. We note with interest press reports (Insurance Times, 23 September 2011) that seven leading insurers—Ageas, Allianz, AXA, Equity Red Star, Groupama, NFU Mutual, QBE and Zurich—are considering a class action against RSA for inflating repair costs. MASS hopes that the OFT will help determine the impact of such factors on the high costs of motor insurance.

¹ Compensation Recovery Unit, Department for Work and Pensions, May 2011, <http://www.dwp.gov.uk/other-specialists/compensation-recovery-unit/performance-and-statistics/performance-statistics/>

² Insurance Times, 23 September 2011

18. We remain extremely concerned at the continuing rise of motor insurance premiums and the impact that this has on consumer behaviour, including encouraging continued high levels of driving without insurance.

IMPLEMENTATION OF A REFERRAL FEE BAN

19. With the Ministry of Justice having declared that it will seek to introduce a ban on referral fees, probably by amending the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill during its passage through the House of Lords, it is imperative that the new measures are workable, fair and uniformly applied across the entire sector.

20. Careful consideration must of course be given to the definition of what constitutes a referral fee. It is essential that it is wide enough to cover all potential commission fees, administrative cost transfers and any other payments that may be disguised.

21. MASS questions whether it should be just referral fees captured by the ban or should it include all commissions within the system arising from claims?

22. Should the ban on referral fees just apply to the motor insurance sector? With increasing anecdotal evidence of referral fees developing in other areas of the personal injury market, the culture of such practices may only be eradicated if a ban is applied across the entire personal injury market.

23. Who will oversee the referral fee ban? Is it sufficient for the courts to implement or should a regulator also play a role in oversight?

24. It is proposed that individuals are liable to prosecution for breaching a potential ban, but should corporate entities also be responsible with directors held responsible for the actions of employees?

25. The purpose of a ban on referral fees is to reduce motor insurance premiums in the future, but how is this to be judged? Without some measurement process in place and a binding commitment by the insurance sector to reduce premiums, the benefits derived from a ban may not necessarily be passed on to consumers. The Chief Executive of Admiral has even suggested that car insurance may increase following a ban on referral fees.³

26. Previous experience suggests that savings may not be passed on to the consumer. When the Motor Insurers' Bureau, which gathers a levy from all of its UK insurance member companies in order to pay for uninsured and untraced claims, returned a surplus of £40 million unclaimed funding in March 2010, this money was not returned to consumers through reduced motor insurance premiums.⁴

INTERNATIONAL EXPERIENCE

27. There is potentially great value in learning from the experience of other countries. However, it is vitally important that all of the facts are known and understood given the ease with which statistics can be manipulated or taken out of context.

28. The ABI have stated recently motor premiums fell by 16% in Ireland in the two years after reforms were implemented. Yet this picture is challenged by at least one academic study commissioned by public authorities and conducted by University College Dublin and the University of Strathclyde. It concludes that insurance premiums had been falling before the reforms (since 2003), whilst acknowledging that the reforms may have accelerated the reduction.⁵

29. Ireland's second largest general insurer, FBD, has said the insurance premiums are likely to continue to fall not as a result of the reforms, but as a result of wider economic conditions, with fewer people being able to afford to own and operate cars, resulting in less motor insurance claims.⁶

JACKSON PROPOSALS

30. MASS continue to have grave reservations with the planned changes to litigation funding and costs contained within the Legal Aid, Sentencing and Punishment of Offenders Bill (LASPO Bill) before Parliament. These proposed changes will significantly impact consumers' access to justice in motor accident claims, making it increasingly difficult for a person who has been injured due to someone else's negligence to find, or fund, a lawyer to represent them.

31. A vitally important element of this package, as recommended by Lord Justice Jackson, is for a 10% increase in general damages to compensate for abolishing recoverability of success fees. MASS believes that this figure is woefully inadequate to compensate the accident victim for the loss of recoverability (of Success

³ Boss of insurer Admiral warns Government referral ban "will push up car cover", Financial Mail, 11 September 2011, <http://www.thisismoney.co.uk/money/markets/article-2035905/Boss-insurer-Admiral-warns-Government-referral-ban-push-car-cover.html#ixzz1XvkD6POE>

⁴ Motor Insurers' Bureau Annual Report & Accounts 2009

⁵ P.15, Dr Jonathan Ilan, "Four years of the Personal Injuries Board: Assessing its impact", UCB/University of Strathclyde, March 2009, http://www.ucd.ie/roads/roads_documents/compcultwp%20no2.pdf

⁶ Irish Examiner, 25 August 2011, <http://www.irishexaminer.com/business/insurance-premiums-likely-to-fall-165299.html>

Fees and ATE premiums). However, with around 90% of civil litigation cases never reaching court, the government has admitted that it has no mechanism to force the 10% uplift to be included in out-of-court offers.

32. The Government is relying upon the judges to implement the uplift on the 10% of cases that do go to court: “We would expect insurers to comply with the rates set by the courts when making out-of-court settlements”.⁷ We urgently hope that a mechanism is put in place to ensure that this increase is implemented.

WHIPLASH

33. MASS reject the notion that whiplash as a soft-tissue injury is somehow not a proper injury and should be outlawed. Whiplash is indeed the most frequently reported injury in motor vehicle crashes and due to the difficulties in diagnosis and treatment, a percentage of claims are undoubtedly fraudulent.

34. However, the sudden extension of the neck and whip-like movement frequently experienced in motor vehicle accidents can have serious impacts upon ligaments, tendons, muscles, intervertebral discs, facet joints and nerve roots. This can result in a collection of symptoms including dizziness, headaches, blurred vision, pain on swallowing, ringing in ears, tinnitus, memory loss, cognitive impairment, sleep disturbance, fatigue and depression.

35. There is a growing body of evidence attesting that whiplash injuries are not just about movement at high speed but a complex series of pressures that can result in injury. For instance, one study⁸ summarised the literature on crash tests on humans by concluding that a change of velocity of 2.5 mph was sufficient to cause symptoms and that 8.7 mph was required to cause vehicle damage.

FIXED FEES

36. It has been suggested that the fixed fees under the RTA portal scheme should be dramatically reduced and capped by legislation. MASS rejects this proposal as too prescriptive and believes that these rates should be negotiated between claimants and defendants. Such negotiations have taken place successfully in 2003 and on the introduction of the portal in 2010 and we believe that this would be the most appropriate way to reach agreement going forward.

UNINSURED DRIVING

37. In 2009 there were 1.5 million uninsured drivers, 20% of whom were between 17 and 20; the cost to the industry is approximately £500 million, which adds about £30 per year to every policy for the law abiding motorist.

38. MASS welcomes the change implemented by the government earlier this year with uninsured driver now being fined or having their car confiscated even when they are not driving it. However, we believe that significantly more can be done to reduce the level of uninsured driving; for example, to investigate the feasibility of lowering the cost of insurance premiums for those young drivers who have a good driving record whilst driving under their parent’s motor insurance policy, and allowing them to transfer the number of years without a claim to their own policy.

FRAUD

39. MASS welcomes any further initiatives that can be undertaken to further reduce the high levels of fraud. We will continue to work closely with the on-going work undertaken by the Insurance Fraud Bureau (IFB)—an insurance industry funded body—to combat motor insurance fraud. As an example of this work, MASS are hosting a Motor Fraud forum in October 2011 with representatives from all the key stakeholders to discuss working collaboratively to combat fraud within the motor industry.

EDUCATION

40. MASS will continue to campaign for improved education of young drivers, reducing the incidence of uninsured driving through improved reporting and effective deterrents, increased penalties and reducing the high levels of fraud all have an important contribution to make;

THIRD PARTY CAPTURE

41. MASS believes that the practice of Third Party Capture is placing the accident victim at an unfair and distinct disadvantage. Offers made to accident victims by insurers are frequently lower than the claim is worth, denying the victim the service and compensation they deserve.

42. Where an injury has occurred, insurers often make settlement offers without medical examinations to ascertain the full extent and degree of the injury and any short, medium or long term effects the injury may

⁷ MoJ spokeswoman, Law Society Gazette, 21 September 2011, <http://www.lawgazette.co.uk/news/claimants-will-never-see-ten-cent-damages-uplift>

⁸ Davis (1998)

have. Pressure through telephone calls and even unannounced doorstep visits are frequently done at a time when accident victims are already vulnerable following an accident.

43. There is a huge conflict of interest because the insurer is acting on behalf of their policy holder (the defendant) and the accident victim at the same time. An insurers' primary objective is to save money—there is little or no regard for the victims' best interests.

44. MASS believes that insurers are not adequately regulated or monitored when carrying out Third Party Capture. The ABI's voluntary code is not compulsory and only applies to their members and therefore not all insurers. According to ABI statistics in October 2010 only 34 Members had signed up to this code, out of a membership of over 300. We await the 2011 figures to see if more ABI members have signed up to the code during the last year.

CLAIMS MANAGEMENT COMPANIES

45. MASS unreservedly condemn some of the marketing practices of Claims Management Companies (CMCs), particularly that of cold calling and texting. Data protection laws should be enforced and the terms and conditions of insurance premiums should be amended as standard to protect consumers from having their personal information sold on. Cold calling and texting are an irritant at least, intrusive and do little to benefit the consumer and such activities should be appropriately regulated.

THE FUTURE IMPACT OF ABSs

46. MASS remains concerned about the future impact of the Legal Services Act 2007, in particular the introduction of Alternative Business Structures (ABSs) from 6 October 2011. Whilst we believe that there will never be a substitute for high quality legal advice for motor accident victims, we are concerned that cross-ownership or the delivery of legal advice by insurers or CMC's will have a serious detrimental impact upon the genuine victims of accidents. ABSs may be used to circumvent any ban on referral fees and may seriously limit the victims' access to independent legal advice, creating potential conflicts of interest by blurring the distinction between defendant and claimant.

October 2011

Written evidence from Mark Boleat

INTRODUCTION

The issue of referral fees has reappeared on the political agenda. This note briefly considers the issue. The author has some qualification to comment as the former Head of Claims Management Regulation and someone who has considerable experience in regulation, including as a member of the Regulatory Policy Committee.

HOW THE PERSONAL INJURY MARKET WORKS

Low value personal injury claims typically are introduced to solicitors by intermediaries. The chance of someone seeking to make a claim for say £4,000 finding a suitable lawyer on their own initiative is very small. While many lawyers may say they are willing to handle personal injury claims, at any point in time a particular lawyer may not want to take on more claims because they do not have the capacity to run them or a particular claim may not be one that the lawyer is experienced in handling either because of the nature of the claim or because of the circumstances of the client.

There is also no guarantee that the business coming directly to a solicitor automatically means that the solicitor is acting in the best interests of the client and is independent. Solicitors are in business to make money, and the extent to which they will make money on particular cases inevitably influences their willingness to take on those cases.

Low level personal injury cases are not going to happen without an effective marketing campaign. A solicitor wanting to do personal injury business who does no marketing or who pays no referral fees, but rather relies on an entry on the APIL website together with an entry in the Yellow Pages will get very little, if any, business. Indeed, so low (and therefore at a high unit cost) will be the volume of business that they may well not be able to handle it effectively. A solicitor who wants a sufficient volume of business so as to be able to take advantage of economies of scale and to be able to offer the necessary specialism can do one or more of the following:

- Direct advertising locally, regionally or nationally.
- Advertise through collective arrangements with other solicitors such as those operated by Injury Lawyers 4U or National Accident Helpline.
- Employ staff whose responsibility it is to generate personal injury cases by establishing the necessary contacts, for example with insurance brokers and accident repair centres.
- Pay fees to businesses that are able to introduce cases that in turn must have used one or more of these methods.

Introducers vary from those introducing leads, a small proportion of which may turn into actual cases capable of being run, to those that undertake much of the sifting and preliminary analysis that would otherwise be done by a solicitor, producing cases the vast majority of which are ready to be run.

Some figures may help to illustrate the point. A solicitor business may judge that it needs 400 cases a year to be able to employ the necessary legal and other expertise and to take maximum advantage of economies of scale in respect of case handling. It may also work out that the maximum it could afford to pay to attract that business and still make an adequate profit is £200,000, that is an average of £500 a case. It could spend that £200,000 by:

- Paying for direct local and national advertising, eg in the local press and radio, on Classic FM or on daytime TV.
- Contributing to a collective advertising arrangement through Injury Lawyers 4U or National Accident Helpline.
- Paying four business development managers to get business, who in turn would be partially rewarded on a commission basis.
- Buying 1,000 raw cases at £200 a lead of which 60% would prove not to be worth running.
- Buying 400 “oven-ready” cases at £500 per case all of which could successfully be run.
- Any combination of the above, eg £30,000 on local advertising, two businesses development managers and buying some raw leads and some “oven ready” cases.

It is a business decision as to which method or combination of methods should be used. Different businesses will have different approaches and the same business may change the balance of its marketing effort over time.

Use of the term “*Referral Fee*” or “*Commission*” is misleading. By using introducers solicitors are merely outsourcing part of what they would otherwise have to do themselves. Outsourcing itself does not threaten a solicitor’s ability to act independently or in the best interests of the client anymore than where work is done in-house. For example, a small solicitors’ practice wholly reliant on personal injury work is itself vulnerable for this reason. Similarly, solicitors wholly reliant on conveyancing are vulnerable if there is a downturn in the housing market, which may cause them to move into other areas of business in which they are not really competent.

EVIDENCE

There is, sadly, little empirical evidence on how the market for personal injury cases works. One useful piece of work was the report on referral arrangements and legal services prepared for the strategic unit of the Law Society by Moulton Hall in June 2007. Among the points made in the executive summary of this report were:

- On average the number of PI cases conducted by firms paying referral fees was 100 times that of those who are not paying “*There is very little work available in the PI market unless it is paid for*”.
- Firms which do not pay for referrals rely solely on their reputations, work from previous clients and other solicitors “*Few firms use traditional advertising methods, as the amount of marketing they would need to do in order to compete with introducers and generate any potential clients is prohibitively costly*”.
- Paying referral fees has enabled firms working in PI to stay in business. The number of cases and profits has increased when a high volume of cases has been achieved. Service levels have been maintained or improved by adopting new business methods.

More recently the Legal Services Board Consumer Panel has looked in detail at referral fees. It concluded:

“The Panel has its reservations about referral arrangements and considers that action is needed to tackle concerns which cause, or have the potential to cause, harm to consumers. This report identifies those concerns and suggests some corrective actions. Nevertheless, the Panel recommends that referral arrangements continue to be permitted, as in both the conveyancing and personal injury markets the worst of the alleged problems are not substantiated by the evidence. Further, the marketing and the hand-holding role performed by claims management companies and not-for-profit bodies has widened access to justice.”

The Legal Services Board’s study of referral fees thoroughly examined the case for and against the payment of such fees by solicitors, including the impact on costs and the independence of legal advice. It accepted the view of the consumer panel that there was not sufficient detriment to consumers to merit a ban on such fees but there were concerns about transparency.

THE CONSEQUENCES OF BANNING REFERRAL FEES

If referral fees were banned the consequences are very predictable:

- Solicitors, individually or collectively, would acquire claims management companies or employ claims farmers directly.
- Solicitors would increase their own marketing spend.

- When ABSs are introduced the larger claims management businesses would acquire solicitors.
- Referral fees would continue to be paid but suitably disguised (as was the case when referral fees were banned). For example, a solicitor would pay for advertising in a car hire business, but the advertising charge would be paid only in those months when a set number of referrals had been made.

CONCLUSION

There is no question that referral fees are high, but that is a symptom of the CFA arrangements that government has mandated. Fees are a symptom of the problem, not the cause. Banning them would have no effect on legal costs but would merely make something that is currently reasonably transparent into something totally opaque. The other Jackson reforms that are being implemented should have the desired effect of cutting the fat in the system, which should automatically reduce the scope to pay acquisition costs, whether by advertising, paying referral fees or any other means.

October 2010

Written evidence from the Ford Motor Company

FORD ACCIDENT MANAGEMENT: A BLUEPRINT FOR CLAIMS MANAGEMENT WITHOUT PERSONAL INJURY REFERRAL FEES OR CREDIT HIRE

Ford Motor Company welcomes the findings of the House of Commons Transport Committee report in to the cost of motor insurance. It is not in Ford's interests to see car owners priced out of the insurance market. Nor is it in anyone's interest to see an increase in uninsured driving. Ford has therefore developed a new working model to address the causes of rising insurance premiums.

THE CURRENT ACCIDENT MANAGEMENT (AM) SECTOR BUSINESS MODEL

- Revenue is taken in the form of personal injury (PI) referral fees. Firms of solicitors pay these fees in exchange for details of "non fault" drivers. As PI referral fees are so lucrative motorists are encouraged to make PI claims, asked repeatedly if they have suffered bodily injury and advised of typical compensation payments that they might receive.[1]
- Credit hire revenue: insurers are charged General Terms of Agreement (GTA) rental rates which are far higher than the actual cost of providing hire vehicles.
- It is financially beneficial to AM companies if repairs take longer than necessary, extending the duration of this credit hire.

All these elements represent significant *sources of insurance premium inflation*:

- Fees charged to repairers: accident repair centres pay the claims management companies an admin fee for repairs they carry out.

FORD'S NEW ETHICAL MODEL FOR ACCIDENT MANAGEMENT

Ford Motor Company has launched the *Ford Accident Management* programme free of charge for the owners of new and used Ford vehicles, enabling the following advantages:

- No personal injury (PI) "ambulance chasing". Customers are not induced to make personal injury claims. Neither Ford nor its partners make any money from PI referral fees.
- No credit hire. No credit agreement for customers to sign (the current business model sees customers underwriting the cost of hire vehicles).[2]
- A hire vehicle is provided to drivers needing transport. For "at fault" drivers a Ford courtesy car is provided, for "non fault" drivers a hire car, *appropriate to their needs*, is provided (by Ford Rental where possible).
- The Ford model charges insurers the cost of providing rental vehicles (for "at fault" drivers) plus a small admin fee. Courtesy cars are not charged to insurers.
- An admin charge is paid by repairers to Ford's call centre partners. This fee covers the cost of the call centre/ claims handling process.

SUMMARY

- Ford's model cuts out PI referral fees and excess hire vehicle charges.
- All customer calls to the call centre are screened for potential fraud.[3]
- The model does not prevent drivers from seeking bodily injury compensation following a road traffic incident, however it does not induce spurious claims to be made and there are no PI fees which would be passed on to insurers. Customers who express a wish to make a PI claim, unprompted, could be referred to mediation, reducing the cost of the claim.

Only 24% of the cost of a motor insurance claim is the cost of repairing the vehicles involved. By substantially reducing the remaining 76% of costs driven mainly by PI referral fees and credit hire charges the costs to insurance companies will be substantially reduced. The UK motor insurance market is very competitive, with a reduced cost base insurers will have to compete on price to win new business.

NOTES

[1] Department of Transport statistics report a 10% fall in the number of road traffic accidents involving personal injury over the past three years, yet personal injury claims on motor insurance policies have increased by 43% over the same period. *Association of Bodyshop Professionals (ABP) 3/8/11.*

Compensation claims for the neck injury now stand at 76% of all personal injury claims as a result of a car accident, and the insurance industry is convinced that many are fraudulent. “76% is twice the average for other European countries,” says a spokesman for the Association of British Insurers (ABI). “It’s unlikely we’ve got some of the weakest necks in Europe.” 2/8/11 *Daily Telegraph.*

[2] Credit hire: customers sign credit agreements when they are put in to a hire vehicle by claims managers. If insurance companies dispute the amount of hire the customer is liable for the debt. There have been high profile cases where customers have had to appear in court to explain the charges, eg the footballer Darren Bent vs. Allianz Insurance dispute over a £63,000 hire car bill. It has been argued that customers are not fully aware of their liability when they sign agreements to take hire cars.

[3] Car insurance companies end up paying out an extra £2 billion in costs every year due to fraudulent claims. This means that for the honest policyholder in the UK, their car insurance rates go up by an average of £44 every year (ABI).

August 2011

Written evidence from AXA UK

REFERRAL FEES AND WHIPLASH—AXA’S CASE FOR CHANGE

On 28 June 2011 AXA became the first—and so far only—insurer to unilaterally ban referral fees from personal injury lawyers, highlighting the need for legislative and regulatory changes to curtail market practices which fuel the “compensation culture” and consequential increases in motor insurance premiums.

In this note we outline the background to this decision and set out, in AXA’s view, the right way forward to deliver a better outcome for consumers. In particular we focus on the need for urgent reform of the whiplash regime.

BACKGROUND

Personal injury claims arising from road traffic accidents have increased by 43% over the past three years which is perverse given that the number of motor vehicle accidents has been falling progressively over many years—by 31% in 2009 compared to the average for 1994–98 as published in the Committee’s recent report into the cost of motor insurance.

In our view there seems to be no question that UK society is drifting into a compensation culture, encouraged by an industry of claims management firms that has formed to profit from the misfortune of others.

The insurance industry has stood accused of feeding that industry by accepting fees for referring potential personal injury claimants, and thus promoting a dysfunctional market which has inflated motor premiums, particularly in those areas of the country where claims management firms are so prevalent. In practice, the role of insurers in this matter is only a small fraction of the issue—the main reasons for the rise in personal injury claims are the growth in accident management companies, credit hire firms and personal injury lawyers.

Having concluded that the practice is immoral, AXA has withdrawn from the practice of accepting referral fees from personal injury lawyers.

REFERRAL FEES

Referral fees are a symptom—not the cause—of a broken compensation system. The main cause of increasing motor insurance premiums is the frequency of minor personal injury claims which cost in the region of £4,400 each. Banning referral fees will help, but in itself will not bring about the step change needed to drive a better, fairer and more affordable system; and almost certainly will not lead to the reduction in personal injury claims necessary for a restoration of cheaper motor insurance premiums.

In our opinion, reform of personal injury legislation must have regard to the following dynamics:

- Referral fees averaging £800 are paid by claims management firms and personal injury lawyers to a number of market participants. A ban would eliminate their incentive to promote minor injury claims, but must be structured so as to avoid replication by other means—for example by netting against the cost of providing services, or other forms of cash/non-cash incentive.

- The fixed fee under the Ministry of Justice Road Traffic Accident Portal is £1,200 which, allowing for an average referral fee of approximately £800, is quite obviously too high meaning that personal injury cases are too profitable. We estimate that the true cost of handling these claims is likely to be nearer £250. Fixed fees should be reduced so as to remove the excess profit—deployed in part to pay referral fees.
- In some cases (for example large retail brokers), profiting from personal injury claims is so fundamental to shareholder returns that any ban on referral fees will likely be circumvented through deploying new business models—for example, the acquisition of personal injury law practices under the forthcoming “Alternative Business Structures” which will come about following the de-regulation of legal services. Measures should be considered that would prevent a ban on referral fees simply encouraging market participants to set up their own practices to capture the profit from current personal injury practices.
- It is too easy to claim whiplash after a road traffic accident. Such soft tissue injuries are impossible to prove, or disprove, and as such represent an opportunity for a “lottery win” of around £2,500 each for those involved but not at fault in a minor accident. Reform is required to shift the burden of proof, so that compensation is payable only where the party has suffered demonstrable injury as is the case in some European countries.

Below we have expanded upon the whiplash regime, which we argue needs fundamental reform.

WHIPLASH REFORM

The NHS spends around £8 million in treating whiplash and other soft tissue injuries yet insurers pay out approximately £2 billion in compensation for the same conditions.

Measures are required to raise the burden of proof required for minor bodily injury such as whiplash. New medical developments and also broader expert opinion on the possibility of whiplash at low speeds or below certain force levels should be examined. These have the potential to deepen our understanding of minor soft tissue injuries. The burden should then switch to the claimant to prove that an injury exists rather than an insurer having to disprove it. In practice, it is simply too easy for a claimant to secure a medical report that they are suffering from whiplash—the doctor has no means by which to prove or disprove, so medical certificates are provided with minimal investigation, often several months after the event when a claimant is “awoken” by either referral or advertising.

If these steps are taken as a package, then the insurance industry will see a reduction in the frequency of minor personal injury claims and a commensurate reduction in motor insurance premiums will follow. This will have positive benefits for consumers, not simply through lower motor insurance premiums, but through arresting the decline into a compensation culture and the other costs which arise—for example minor personal injury claims against councils and employers.

What is needed is a process that ensures those injured by the negligent acts of others receive the timely and fair compensation they are due, and that fraudulent claims can be filtered out and rejected without incurring unnecessary cost. We need a system that does not encourage the harassing of people to generate these claims.

With regard to whiplash and other soft-tissue injuries we are about to embark on studies that will examine the evaluation of muscle damage following a typical low impact road traffic accident.

August 2011

Supplementary evidence from Paul Evans, AXA UK

I am writing in connection with my appearance to provide oral evidence to the Transport Select Committee’s enquiry into the cost of motor insurance. During the session, I was asked by Mr Harris, “You mentioned alternative business structures. Is it correct that AXA is not going down that road and you have no plans at all to buy Knight Law Ltd, for example?” I replied correctly that, “Knight Law operates for us as a defendant; that is, it supports our defence of personal injury claims. It does not prosecute claims—that is, represent the claimants—and never will.” Mr Harris then pressed, “You have no intention of purchasing it,” to which I replied, “I have no intention of purchasing it. To be fair, I think I own part of it but I would need to clarify that. I have no intention whatsoever of it prosecuting personal injury claims against insurers.” I would like to clarify this last point.

In the moment, I could not remember whether AXA owned all, or part of Knight Law, but I knew we had no acquisitions planned, and observed I would need to clarify the extent of our ownership. In fact AXA acquired 100% of Knight Law some years ago through the acquisition of another company. I would like this clarification to be recorded in the transcript. However, I note that it does not change the substance of my reply to the core of the question, which is that AXA does not intend to exploit alternative business structures to allow Knight Legal to prosecute personal injury claims so that AXA might profit from such claims.

October 2011

Written evidence from Ai Claims Solutions (UK) Ltd

SUMMARY

The Transport Select Committee is due to hear evidence from a number of bodies, including Jack Straw MP, during its re-opened Inquiry into Motor Insurance. Ai Claims Solutions is concerned to ensure members of the Committee are given the opportunity to hear evidence from both sides of the motor claims argument, especially where referral fees and reform of industry practices are concerned.

CONTEXT

Justice Minister Jonathan Djanogly MP has announced that the Government is to bring forward legislation to ban referral fees for personal injury cases. In a Written Ministerial Statement, the Minister said:

“Our aim is to reform the system to end the abuses that have occurred while ensuring that victims who have suffered a personal injury through someone else’s negligence remain able to make a claim for damages where they have an appropriate case. Alongside the planned reforms to conditional fee agreements, the ban on referral fees will contribute to the Government’s plans to tackle the compensation culture by discouraging unmeritorious claims and controlling the disproportionate costs of personal injury claims, without denying access to justice.”

There is no official statement on when the Government is likely to introduce legislation, nor any clear sense of the scope of the reforms. In media interviews, the Minister inferred that legislation may be introduced in the Spring of next year.

KEY MESSAGES

1. A ban on PI referral fees will not resolve dysfunctional market

Despite the Government’s intention to row back against the compensation culture, Ai do not believe a ban will have the effect ministers believe.

- A ban will drive more public marketing and advertising from solicitors.
- Solicitors will still pay money to pick up potential clients, but the practice will go underground.
- Solicitors will change the way they attract referrals by switching to payment through “marketing”. It is hard to see how legislation can counteract this, even if the practice is criminalised.
- A ban would not create fairer treatment for customers and no reduction in the cost of claims.
- A ban would not stop insurance fraud.
- Referral fees are not a major factor behind the rise in motor premiums; if they were banned, premiums would continue to rise.

2. The effect of ABS (Tesco Law)

The genesis of alternative business structures (Tesco Law) is already creating changes in market practice. Government should monitor these changes before taking precipitate action.

Insurers (even those who have already said they’ll ban referral fees) are setting up law firms to generate new revenue streams from claims management. Customers in an accident will be referred to the insurer’s own law firm. Although more transparent, customers won’t have the freedom to choose their own provider, as they will come under pressure to use the law firm specified by the insurer.

Claims for whiplash have risen in recent years—but the science behind whiplash has barely advanced.

- Lack of investment from NHS into whiplash—£8 million last year versus £2 billion paid out.
- We need to explore how other legal systems deal with whiplash and seek new ways to manage this type of injury.
- The ABI’s own statistics are flawed and unreliable.
- A large proportion of the ABI membership do not want a ban on referral fees.

The insurance industry is divided on the issue of referral fees, which in any event are a small issue in context of other industry practices.

Examples include:

- Insurers profiting from vehicle repairs.
- Insurers selling data to data mining businesses.
- Insurers misselling legal expenses insurance.
- The growing incidence of fraud.
- Insurers poor claims management practices which delay settling claims.

If Government was serious about reducing the costs of motor insurance, there are more appropriate targets and approaches than referral fees.

Ai is unconvinced that the Government has fully thought through the implications of a ban, given the lack of detail in the Minister's statement about the scope of the legislation.

Our sense is that the decision seems to have been made in response to pressure from campaigners, as the Ministerial statement contains little evidence/facts to justify the ban. Ministers must clarify the benefits in clear and monetary terms so that the industry can see the positive effects of a ban.

QUESTIONS REQUIRING FURTHER INFORMATION FROM GOVERNMENT

1. What the real figures are to drive the decision to legislate? How many PI claims have been made and what is the total solicitors cost? What is the total paid out in compensation?

2. By banning, how much "income" that goes back into the system to insurers would be lost—how would insurers make up the shortfall? There are no clear figures on how much whiplash actually adds to a premium? The ABI says 87% but is this figure before or after insurers take their income?

3. The Government's announcement has come before the impact of alternative business systems (ie Tesco Law) is in place. This will bring about significant market changes, in particular, policyholders being channelled into insurer-owned legal firms rather than being given a free choice.

4. There are many other issues which need resolution as well as referral fees (a ban on its own won't have much impact). Ministers need to consider regulating insurer profits from repairs, mis-selling Legal Expenses.

September 2011

Written evidence from Admiral Group plc

Admiral Group plc is a company based in Cardiff, South Wales, with offices in Newport, Swansea; Bangalore, India and Halifax, Canada servicing UK customers. It currently employs over 4,500 people in the UK. It also has small businesses in Spain, France, Italy and the USA.

OVERVIEW OF REFERRAL FEES

Referral fees are a symptom of the dysfunctionality of the current system not the cause.

The dysfunctionality of the current situation is driven by two elements of the system:

- the fact that lawyers are paid £1,200 to handle a small BI claim that only costs them a fraction of that amount to process; and
- the fact that a relatively minor undiagnosable condition that can't be disproven, namely whiplash, generates compensation payments of £1,000–£2,000 and so creates a huge temptation to many people to exaggerate or misrepresent their symptoms.

Referral fees are a result of the resulting scramble to capture the high profit margin available to lawyers on whiplash claims. If referral fees were to be banned then the cost of any individual claim would not fall, it would instead shift the "profit" from the referrers to the lawyers.

Referral fees do, however, increase the number of whiplash claims by funding activities that increase the number of whiplash claims (eg repeat phone calls to potential claimants to persuade them they have "whiplash").

If referral fees were banned without any other action taken the net effect on car insurance premiums is hard to estimate accurately but is likely to be pretty neutral—there would be a reduction in the number of whiplash claims made but there would also be an end to the referral fee income to insurers and brokers on all whiplash claims which currently helps pay the costs of operating in the largely unprofitable UK car insurance market.

ADMIRAL'S RESPONSE

Admiral is supportive on the banning of referral fees, but believes in order to make recommendations work, the following need to be considered:

1. Reduce the level of legal costs included in the settlement of bodily injury claims. Legal costs receivable by claimant lawyers on car insurance claims materially exceed the actual processing costs incurred. Because of this excess profit, lawyers spend large sums of money trying to capture a bigger share of such claims, through referral fees (> £800 per case) and direct advertising. This activity stimulates extra claims. A reduction in legal costs would thus both cut the average cost and the number of bodily injury claims.
2. Reduce the level of compensation for pain and suffering in relation to the whiplash claims. Whiplash is an undiagnosable condition. If a motorist asserts that they have whiplash, it is nearly impossible to disprove this assertion. Because of this, the majority of motor insurance fraud is centred on bogus whiplash claims. The right level of compensation for the discomfort associated with whiplash is a subjective decision, but the actual pay-outs at £1,000+ represent a significant proportion (circa 25%)

of bodily injury pay-outs. A material reduction in the compensation awarded for whiplash would reduce car insurance premiums and reduce fraud.

3. Place restrictions on young drivers. The ABI have made a number of suggestions which would, if implemented, materially cut car insurance premiums for younger drivers at the cost of some restrictions for recently-qualified younger drivers. Examples would include restrictions on night-time driving and driving with more than one passenger. Other countries have additional requirements in place for young drivers, an example of which would be a zero alcohol tolerance for individuals aged below 21.

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