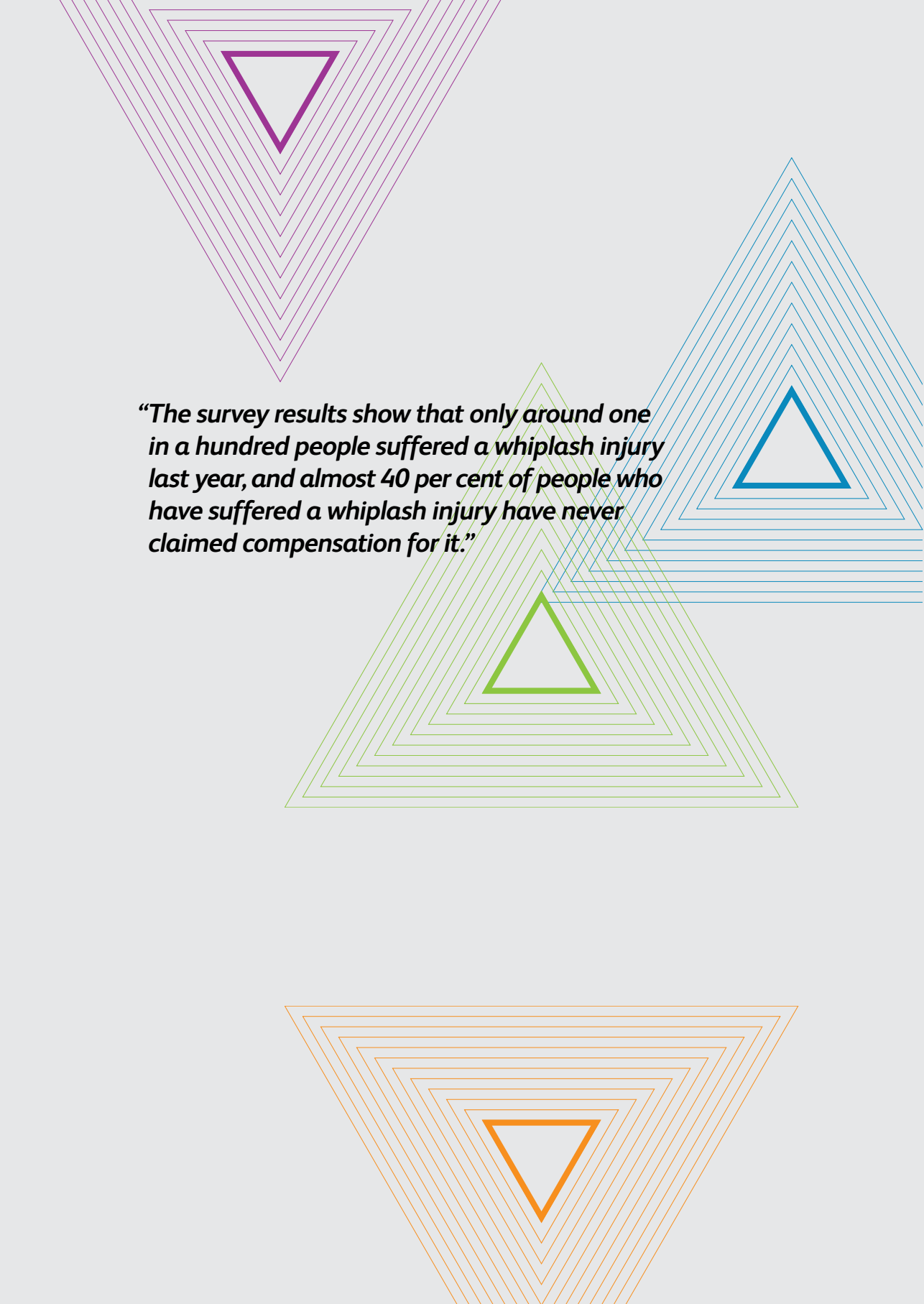


The Whiplash
Report 2012

MYTH
OR
FACT
?



“The survey results show that only around one in a hundred people suffered a whiplash injury last year, and almost 40 per cent of people who have suffered a whiplash injury have never claimed compensation for it.”

Introduction

A lot has been said about whiplash during recent years, much of which has been the subject of hyperbole, occasionally bordering on hysteria. Some would have us believe that compensation claims for whiplash injuries are the scourge of all those who have to pay car insurance premiums. Some people could be forgiven for thinking that anyone who makes a claim following a whiplash injury is perpetrating a fraud.

It is impossible to conduct rational debate in such a febrile atmosphere and yet rational debate on this subject, based on independent evidence, is long overdue. In a bid to separate the myths about whiplash from the truth, APIL commissioned an independent survey of more than 4,000 people from June to August 2012. ^[1]

Some may find the answers surprising.

Whiplash is often painted as an epidemic – a windfall for anyone whose car is hit from behind. The reality is very different. The survey results show that only around one in a hundred people suffered a whiplash injury last year, and almost 40 per cent of people who have suffered a whiplash injury have never claimed compensation for it.

While more than a third of people with whiplash injuries recovered within a month, around one in five had symptoms for more than a year.

Furthermore, the number of compensation claims for whiplash injuries is falling. According to the Government's Compensation Recovery Unit, claims for whiplash have fallen by almost 24,000 in the past 12 months.

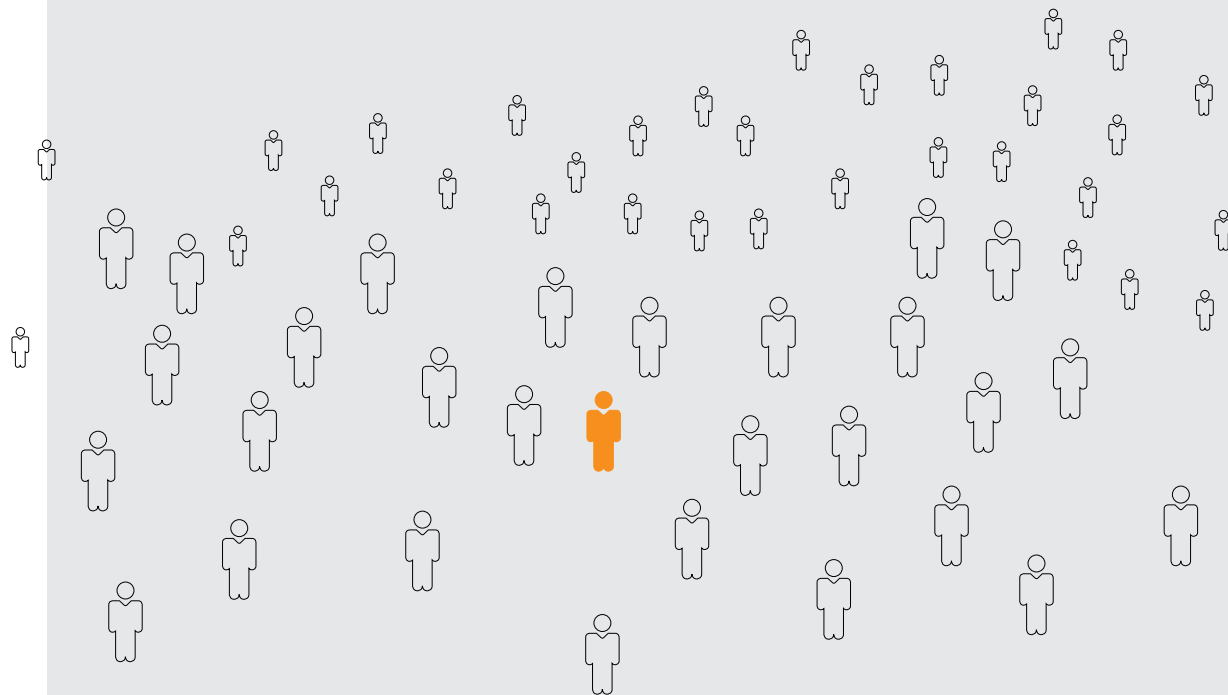
So, read on for a balanced view of the situation, along with some workable suggestions for ways of dealing with the real mischiefs of the system.

Deborah Evans
Chief Executive

^[1] The survey was undertaken by Canadean Consumer research, a leading independent market research company, via its online omnibus panel. In total, four waves of the survey went to Canadean's online omnibus panel between June and August, with responses provided by separate nationally representative samples (reflecting the UK adult population above the age of 18).

Executive Summary

- Whiplash is not an epidemic. Only around one person in a hundred suffered a whiplash injury in the past year
- Whiplash claims have fallen by almost 24,000 in the past twelve months
- One in five whiplash sufferers suffer symptoms for more than a year
- Almost 30 per cent of claims are encouraged by insurers
- Almost 90 per cent of sufferers are diagnosed by a medical professional
- 80 per cent of sufferers either report their symptoms accurately, or underplay their symptoms
- Almost 40 per cent of sufferers do not claim compensation
- 70 per cent of people would not want to pursue a whiplash claim without an independent solicitor



Whiplash is an epidemic

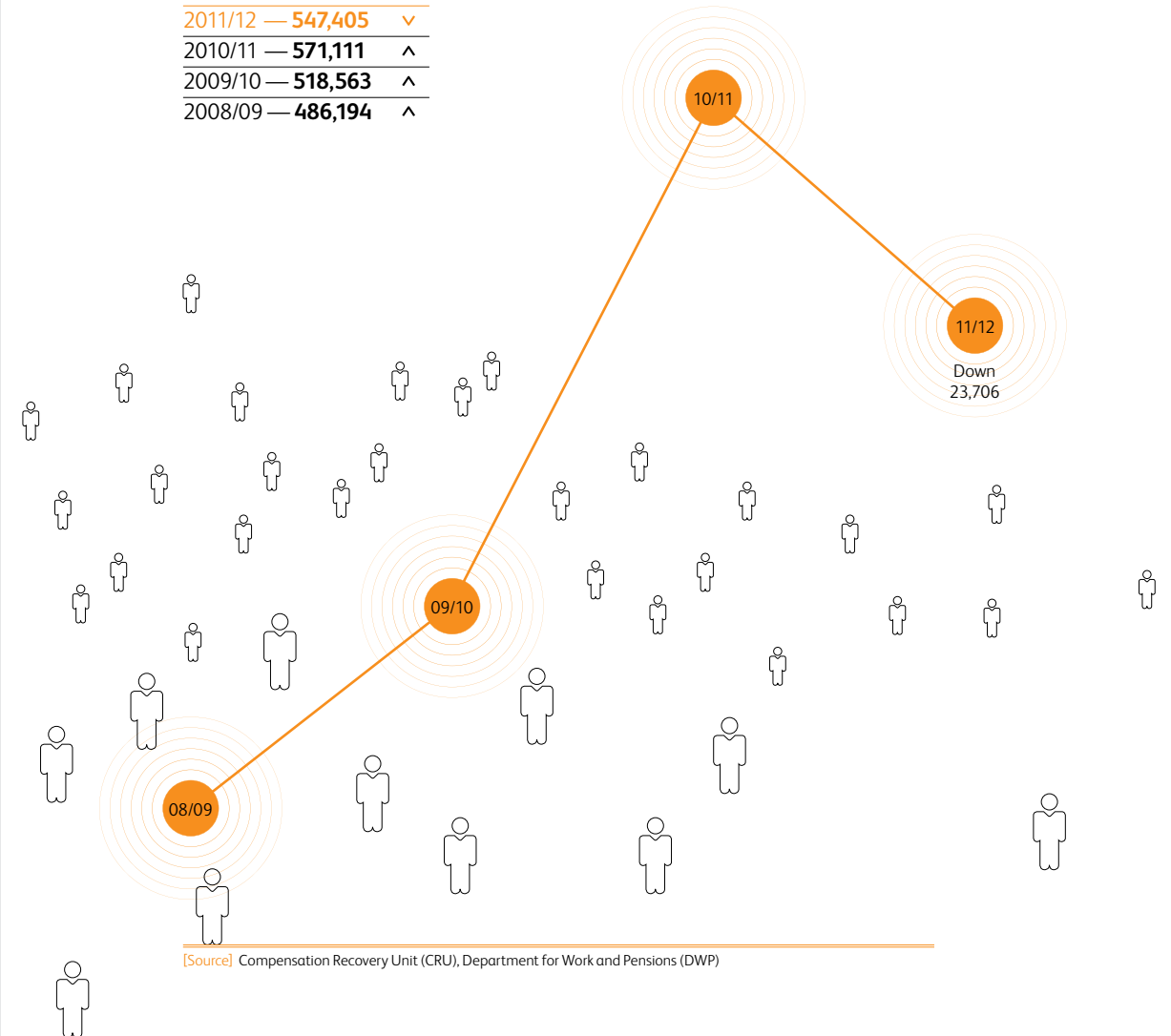
MYTH OR FACT?

Of 4,000 people surveyed, only around one in a hundred had suffered a whiplash injury in the last 12 months.

The Government's Compensation Recovery Unit statistics on the number of whiplash-related claims show that claims fell by almost 24,000 in the past 12 months.

NUMBER OF WHIPLASH CLAIMS

2011/12	— 547,405	▼
2010/11	— 571,111	▲
2009/10	— 518,563	▲
2008/09	— 486,194	▲



[Source] Compensation Recovery Unit (CRU), Department for Work and Pensions (DWP)

Britons have the weakest necks in Europe

MYTH OR FACT?

Road congestion

According to the World Bank, the UK has 79 per cent more vehicles per kilometre of road compared to the European Union average. Logic dictates that, if our roads are busier and our towns congested, low velocity accidents, with relatively minor injuries, are likely to be more prevalent than high-speed crashes causing catastrophic injuries and death.

Car design and construction

According to the Association of British Insurers, “vehicle bodies have become stiffer since the late 1980s, increasing crashworthiness in high speed rear-end crashes. This helps reduce the incidence of serious injuries, but may increase the incidence of whiplash, due to a higher relative transfer of energy in a crash at the same speed.” [2] James Dalton, the ABI’s Assistant Director of Motor and Liability, reiterated this point when he said that: “in reducing death and serious injury, there has been an increase in more minor injuries such as whiplash.” [3]

The most recent Department for Transport road casualties figures (2010) indicate that “the proportion of car occupants with minor injuries was higher in the newest cars, suggesting less severe injuries for occupants of newer cars. For example the proportion of MAIS 1 injuries [minor injuries] was 34 per cent for occupants of cars aged 1-4 years, and 29 per cent for occupants of cars aged 10 years or older.” [4]

Seat belt legislation

A number of studies have found that the introduction of seat belt legislation in 1983 led to an increase in neck sprains and soft tissue injuries to the lower part of the neck. Galasko *et al.* (1993) stated that their results “confirm that there was an increase in all forms of neck sprain after the introduction of seat belts.” [5] Andrew Ritchie QC – in his book ‘Medical evidence in whiplash cases’ – is quick, however, to point out that “these figures are not a criticism of seat belts. It appears that by their introduction we have reduced head injuries, facial injuries and fatalities but paid the price in ‘whiplash injuries.’” [6]

[2] <http://www.abi.org.uk/content/contentfilemanager.aspx?contentid=24986>, page 9

[3] http://www.abi.org.uk/Media/Articles_and_Speeches/59263.pdf

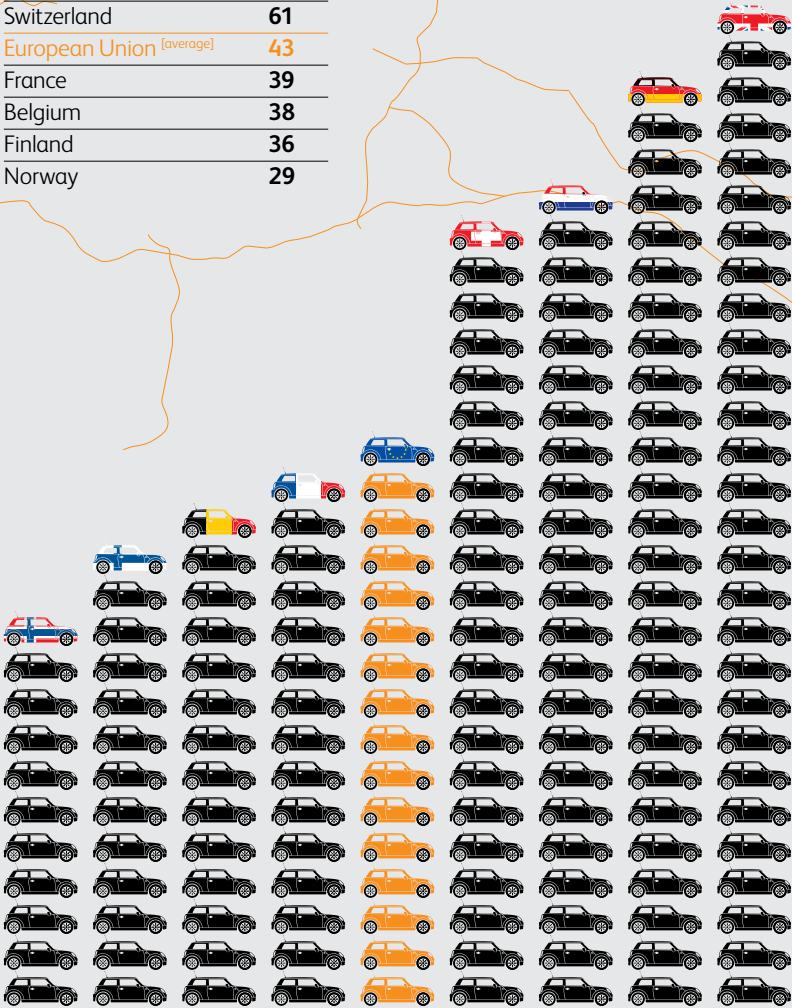
[4] <http://assets.dft.gov.uk/statistics/releases/road-accidents-and-safety-annual-report-2010/rccgb2010-00.pdf>, page 6

[5] ‘Neck sprains after road traffic accidents: a modern epidemic’ Injury; vol 24; issue 3, March 1993; pp155-157

[6] ‘Medical Evidence in Whiplash Cases’ Andrew Ritchie (Sweet & Maxwell, 1999) – paragraph 1-05, page 3

NUMBER OF VEHICLES (PER KM OF ROAD)

United Kingdom	77
Germany	71
Netherlands	63
Switzerland	61
European Union (average)	43
France	39
Belgium	38
Finland	36
Norway	29



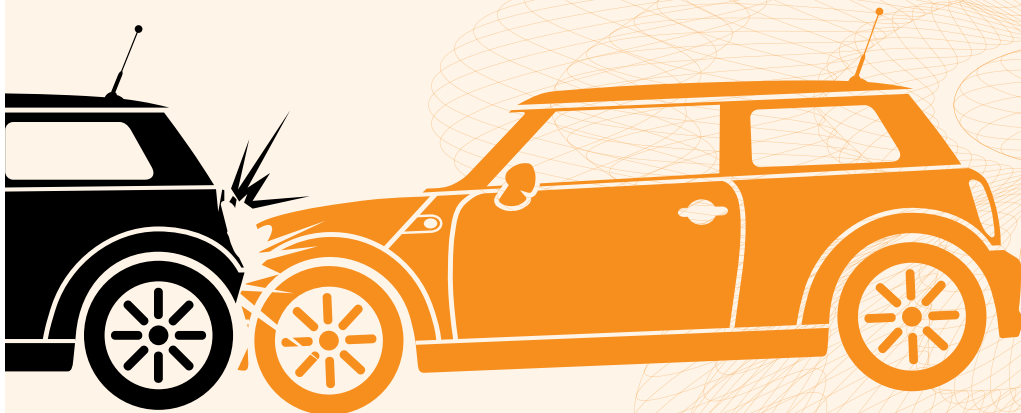
[Source] World Bank figures (2008)

Whiplash is a cash bonanza

MYTH OR FACT?

- Almost 40 per cent of respondents to the independent survey have not claimed compensation after suffering a whiplash injury.
- Almost 75 per cent of those people who suffered a whiplash injury and whose symptoms lasted more than a year, brought a claim.
- Just over half of those whose symptoms lasted a couple of weeks brought a claim.
- 33 per cent of people reported their symptoms accurately; 47 per cent of people said they made their symptoms seem better than they were, to the person making the diagnosis.

It is not surprising that people play down their symptoms – it is part of human nature to put up with low level pain, or to put a brave face on it.



Whiplash claims are driven by lawyers

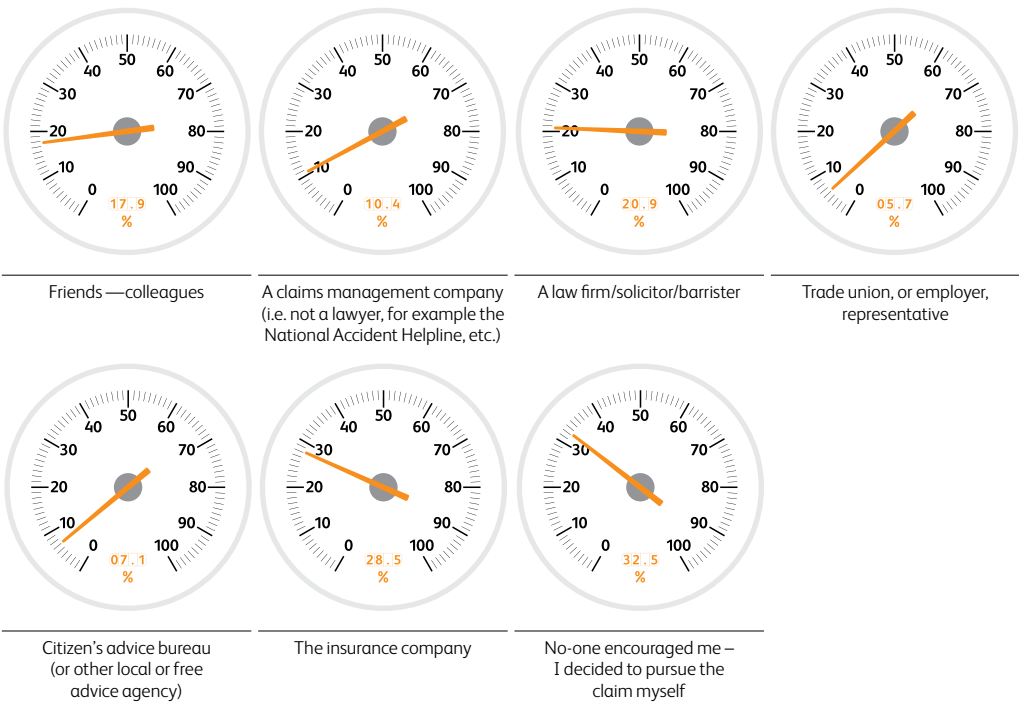
MYTH OR FACT?

- In fact, the survey reveals that just under 30 per cent of all claims were encouraged by insurance companies.

A victim may be contacted by his own insurer or the insurer of the person who caused the injury, a practice which is increasing and which is causing growing concern. It is not in the interests of the wrongdoer's insurer to take care of the needs of the claimant, and we hear too often about insurers making low offers to unrepresented claimants or making offers without reference to a medical report, all to settle claims quickly to avoid legal fees.

- Almost a third of respondents decided to pursue the claim themselves.
- Around 18 per cent were encouraged to pursue a claim by friends or relatives.
- Around 21 per cent were encouraged to pursue a claim by a lawyer.

WHO, IF ANYONE, ENCOURAGED YOU TO MAKE A CLAIM FOR YOUR WHIPLASH INJURY?



Whiplash is impossible to diagnose

MYTH OR FACT?

Nearly 90 per cent of respondents to the survey had their injury diagnosed by a medical professional.

Pain may not show on an x-ray. Soft tissue injuries are difficult to see. That does not mean pain doesn't exist or that soft tissue injuries cannot be diagnosed. Close questioning of a patient by a medical professional will result in an accurate diagnosis: the speed of onset of pain; initial severity; the presence of arm pain or paraesthesia; whether the patient was aware the vehicle was about to be struck; whether the vehicle was stationary; whether the handbrake was on; whether the patient was wearing a seatbelt; the site of the pain; restriction of movement – all these factors can help a doctor make an accurate diagnosis. As well as a diagnosis, a medical professional will provide a prognosis. This will tell the victim how long full recovery will take, which is important when assessing a compensation claim. Lawyers rely on these expert opinions in pursuing their cases.

Many insurers don't believe this medical evidence is important, and they make offers of compensation to victims before they have even seen any medical evidence about the injury.

The impact of this is two-fold

- An easy way to check if a claim is genuine is removed from the legal process.
- If a claim is genuine, the information needed to provide accurate, fair compensation to the injured person is missing. This can be especially devastating for people with long-term injuries who need proper compensation to help them put their lives back on track.



90%

Case study

In Spring 2011, John and Ann Cooper's Renault Clio was struck from behind by a 4x4 at a roundabout. Ann was driving.

"That was on a Sunday morning," said Ann (71). "By Sunday afternoon I couldn't open my jaw, and I was in pain."

Ann suffered 12 months of neck and lumbar spine pain and restricted mobility, as well as nine months of psychological symptoms in the form of fear of travel and gastrointestinal disorders (IBS) due to stress. She calls whiplash 'the silent injury'.

The couple had been fit and active in their retirement. Ann took part in weekly yoga classes, was a keen hill walker, and regularly swam 40 lengths of her local swimming pool. It was not until 12 months after the crash that she was able to go back to the pool.

"I've always been active and an independent woman," she said. "But all of a sudden I was reduced to this wreck."

"I'm still not recovered, and I'm having to have more physiotherapy because I wake up in excruciating pain every day, but I'm about as good as I'm going to get. Hopefully it is not going to take too much of my life away now but it has taken me a good year to get to a point where I feel I can have a go at trying to live my old life again.

"I'd even argue that a person who has internal, unseen injuries could suffer more than someone with something as obvious as a broken leg - just because it can't be seen does not make it any less painful."

The accident happened while the Coopers were queuing at a roundabout. Although it happened at a very low speed Ann believes this had no bearing on the couple's injuries. "Instead of looking at speeds, whoever is looking into this should consider what is clearly happening to the people inside the car," she said.

John recovered from his neck injuries, although he still suffers some memory loss, which is a recognised consequence of whiplash. He was an insurance assessor and clerk for a major insurance company until 1996. "I used to see whiplash claims often," he said. "It's only now I've seen what it does that I know it goes a lot deeper than I thought at the time."

Most symptoms disappear after a few days

MYTH OR FACT?

- The survey reported:
- One third of sufferers recovered within a month
 - Three quarters of all sufferers were symptom-free within six months
 - One in five people had symptoms for more than a year

DURATION OF WHIPLASH SYMPTOMS NO. OF PEOPLE

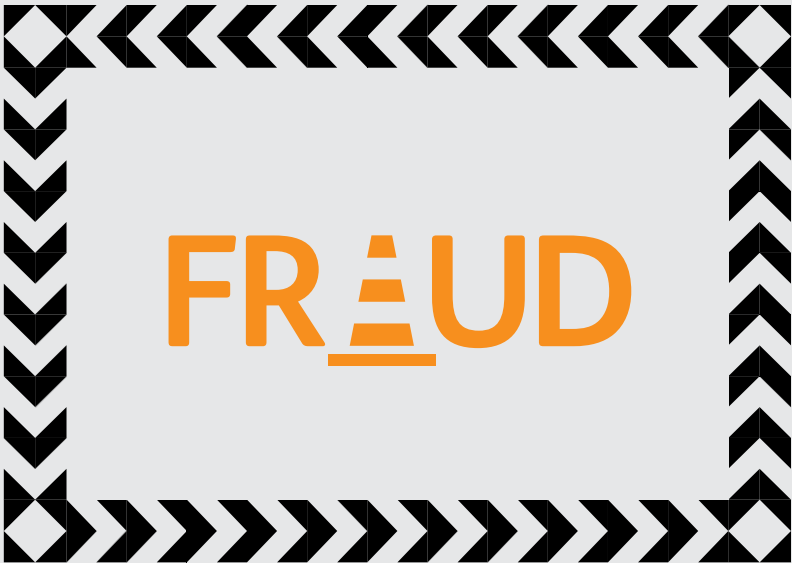
A couple of days	13%
A couple of weeks	25%
A couple of months	24%
About 6 months	13%
Nearly a year	5%
Over a year	20%



Attitudes towards fraud

Respondents were clear about what they perceived to be fraudulent behaviour – and it is not just people making claims for compensation who are in the frame: ^[7]

- 90 per cent of people think claiming for an injury when you haven't been injured is fraudulent
- 89 per cent of people think deliberately crashing your car in order to be able to make a claim for personal injury is fraudulent
- 78 per cent of people think that a car repair company which charges more, because an insurance company is paying the bill, is fraudulent
- 68 per cent of people think that an insurer who denies his client caused an injury, then admits it later on, is fraudulent
- 63 per cent think offering £1,000 compensation for an injury when the injury is actually worth considerably more, is fraudulent
- Half of respondents think offering compensation without a medical report is fraudulent.



^[7] Methodological note: These results are from omnibus waves 3 and 4. The question asked "Based on your understanding of fraud, indicate on a scale of 1 to 5 which of the [following] activities you consider to be fraudulent (with 1 being 'not at all fraudulent' and 5 being 'completely fraudulent')". The findings have been subsequently sub-divided into three distinct categories – answers between 1 and 2 were considered to be 'not fraudulent'; people who answered 3 were considered to be 'unsure'; and answers between 4 and 5 were considered to be 'fraudulent'.

Fraud: separating the wheat from the chaff

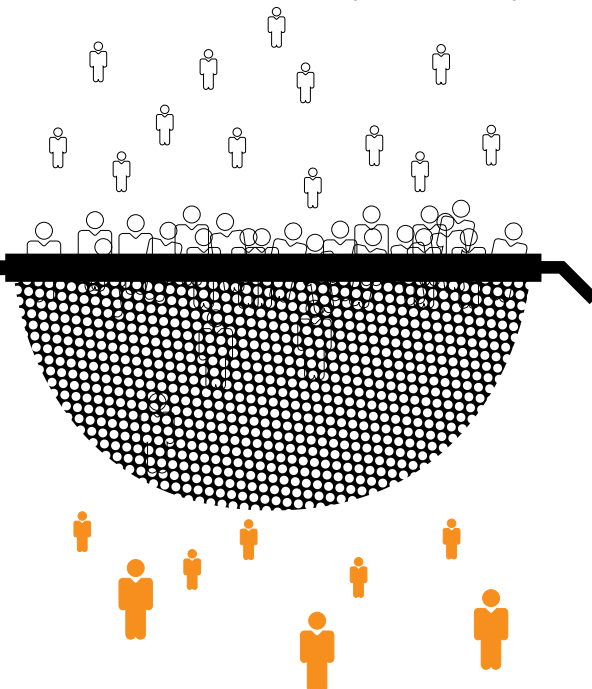
There is no room in the system for people who claim compensation when they have not been injured.

APIL has developed a ten-point plan (see opposite page) to help eliminate fraud in whiplash claims while ensuring the majority of people who are honest, like Mr and Mrs Cooper, are still able to make valid claims.

The plan calls for effort and commitment from all parties concerned, and is based on the need for proper evidence, the sharing of information about fraudsters and consistently ethical standards from all those involved in the process.

The removal of some of the checks and balances from the system (such as the requirement for a medical report before compensation is offered) does nothing to combat fraud or ensure an accurate settlement for the genuine claimant. Insurers also deal with claimants direct in many cases, and are quick to offer cash to settle, without seeking medical evidence. This is another practice which needs robust regulation to prevent abuse.

Claimant lawyers are gatekeepers against fraud and regularly turn people away if they suspect they are not being truthful. Lawyers have no interest in pursuing fraudulent claims and those who do face the very real risk of being struck off.



Eliminating fraud in whiplash claims

Apil calls for

- [1] Free and prompt exchange of information between the Road Traffic Accident (RTA) claims portal and the Insurance Fraud Bureau to facilitate identification of fraudulent behaviour at the earliest possible opportunity.
- [2] Claimants to be subject to a standard, written statement of truth which must be explained to them by their solicitors. A document to be signed by either the claimant or the solicitor to confirm that the claimant understands the commitment behind the statement of truth. Breach of the statement may amount to fraud and may make the claimant liable to prosecution.
- [3] Insurers to be banned from making offers of compensation before a medical report has been seen: the medical report is a critical factor in ensuring a claim has merit and that accurate compensation is paid.
- [4] The rules governing the conduct of solicitors, insurers and claims management companies to be amended and standardised to prevent offers of gifts or cash inducements being made to potential clients.
- [5] Robust enforcement of the imminent ban on the sale of claimants' personal details by the defendants' insurers.
- [6] Any party who instructs an expert to give the other party a list of the names of one or more experts he considers are suitable to instruct beforehand, to ensure the expert is accepted as credible by both sides.
- [7] Development of guidance to assist medical experts to identify and understand whiplash claims. The guidance should be developed in conjunction with the relevant medical organisations.
- [8] Photographic identification of the claimant to be required by the medical expert: if this cannot be produced, the omission will be included in the expert's report.
- [9] The claimant's solicitor to organise access to relevant medical records where a medical expert is to be instructed.
- [10] 'Spam' or 'cold' texting to be banned.

Injured people will be better off if they are dealt with by insurers direct

MYTH OR FACT?

Many people who are injured through no fault of their own are contacted directly either by their own insurers or the insurers of the people who have injured them. Their own insurers will usually refer them to solicitors to settle claims on their behalf. If a victim is contacted directly by the 'at fault' insurer, however, it will usually be an attempt to settle the claim without the involvement of an independent lawyer. This saves the insurer paying legal costs. But, as the injured person is highly unlikely to know how much compensation he is entitled to, this practice puts claimants at risk of having cases settled for less than they are worth.

In 2009 the Financial Services Authority (FSA) found that "on average 3rd parties were awarded 274.95% or £1,003.07 more through court proceedings than the initial rejected out-of-court offer from a [insurance] firm".

In June 2010 the Association of British Insurers published a code of practice to offer protection to injured people who are dealt with directly by an insurer, without help from an independent lawyer.

A survey has now been conducted of APIL members' last three cases. It did not ask questions only about whiplash, but about all road traffic claims. The figures clearly suggest that the ABI code is not working:

- The first offer from an insurer prior to a lawyer being involved is a fraction of the value of the claim, with the average offer being £4,359 (in addition, many insurers do not make a first offer as the claim is often denied completely)
- The involvement of a lawyer raises the average value of an offer to £27,092 – an increase of nearly £13,000
- The final settlement is, on average, £47,643, which is more than ten times the original offer.

If insurers continue to deal directly with people who have been injured by their own clients, and if people are to have any confidence in the justice system, it is critical that insurers are regulated robustly.

Compensation is about finding the right figure, not finding the lowest figure a claimant will accept.

The issue of trust

When someone is injured they need to know who they can trust. So our survey asked the question.

Our survey measured levels of trust across those professions which may come into contact with people involved in whiplash claims: ^[10]

WHO WOULD PEOPLE TRUST TO LOOK AFTER THEIR BEST INTERESTS?



There is clearly work for all professions to do in raising trust in, and the reputation of, the compensation system. The answer is not to shut the door in the face of the injured person: it is to fight fraud head on, restore faith in the professions, and reduce the negligence which causes needless injury in the first place.

^[10] Methodological note: These results are from omnibus waves 1 and 2. The question asked 'on a scale of 1 to 10 how much do you trust the following people to look after your best interests [with 1 being 'not at all' and 10 being 'completely']. The findings have been subsequently sub-divided into three distinct categories – answers between 1 and 4 were considered to be 'not trusted'; answers between 5 and 6 were considered to be 'unsure'; answers between 7 and 10 were considered to be 'trusted'.

The future

The way whiplash claims are dealt with in the legal system may be changing.

The Government is considering pushing claims such as these into the small claims court, which is designed as a court where people represent themselves. Traditionally it is used for settling disputes about faulty goods or services. Personal injury cases are different. They all require, at the very least, an ability to gather the right evidence and the ability to identify the value of the claim before a claim can be successful.

Our survey examined how people might be affected by these proposed changes:

Of the 4,000 people surveyed:^[8]

- 70 per cent who provided a definite answer^[9] would not know how much to claim for their whiplash injury
- Nearly two thirds of people (65 per cent) who gave a definite answer were not confident that an insurer would offer them the appropriate amount of compensation for their whiplash injury
- 70 per cent would not want to pursue a whiplash claim without a solicitor.

The small claims court is designed for 'litigants in person' – ordinary people unrepresented by a solicitor. Yet only 30 per cent of people said they would be likely to pursue a personal injury claim for whiplash in the small claims court on their own.

This is no surprise, as personal injury cases can be complex and difficult. Defendants, and the insurance companies which represent them, know exactly how to exploit the injured person who is usually a completely uninformed, and often intimidated, first-time user of the legal system. It is the duty of insurance companies to look after their shareholders. This is a classic David and Goliath situation.

So, most claimants would need the help of an independent solicitor. But the small claims court is the only court in which the injured person's solicitor is not paid by the defendant, if the claimant wins his case. This means the solicitor has to be paid out of the claimant's own pocket.

In addition to that, the injured person also has to pay court fees and he won't be able to recover these if the case is lost, which is obviously more likely if he is unrepresented. This could mean an injured person risking hundreds of pounds if he has to take his case to a hearing. This is unjust and unfair and reflects badly on a society which purports to care for vulnerable people.

[8] In omnibus waves 1 and 2.

[9] People who answered 'maybe' or 'don't know' were discounted.

Conclusion

We have now, for the first time in years, a much clearer picture of whiplash claims and an insight into views about what constitutes fraudulent behaviour.

Whiplash is not an epidemic, and the vast majority of people are honest, with a great many even playing down their symptoms. Whiplash injuries are real and they can be life-changing.

Fraudulent claims waste money, bring the whole system into disrepute and must be eliminated.

Eliminating fraud while protecting honest claimants must be the goal of all concerned. Certainly, APIL can't do this alone. But by working with other lawyers' groups which share similar agendas, with the assistance of sensible policy-making by the Government, and the co-operation of the Association of British Insurers by releasing data, we can begin to move forward.

We need a universal commitment to working to reduce fraud in whiplash cases. If we can reduce the level of false claims significantly, or even eliminate them completely, it would save millions of pounds.

Eliminating fraud would save unnecessary expenditure by insurance companies which should contribute towards lower motor insurance premiums over time. It would remove the mistrust associated with whiplash claims and allow everyone to focus on the victim.

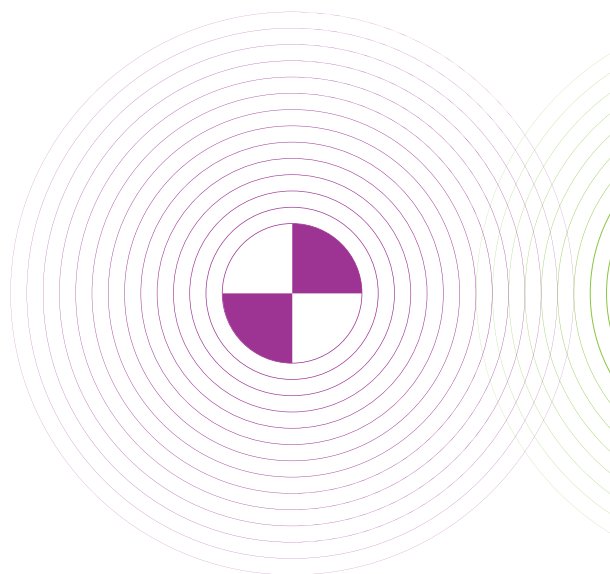
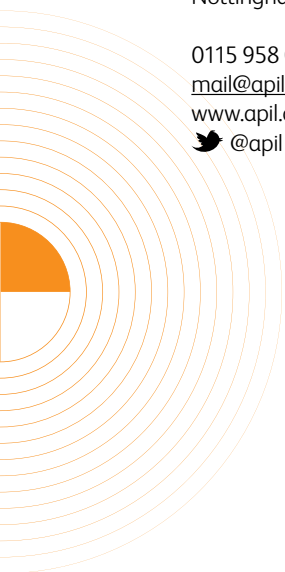
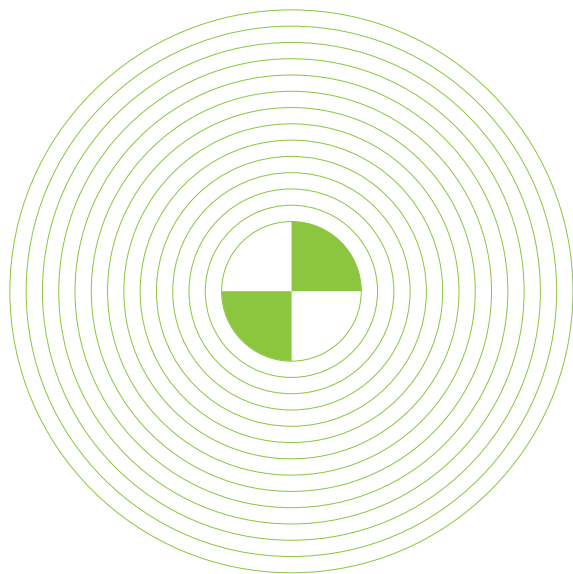
APIL will support any proposals which will eliminate fraud, but will stand firm against any proposals which put barriers in the way of obtaining compensation for people with genuine whiplash claims.

No-one wants to be in a car accident. No-one wants to have their life affected by pain, even in the short term. APIL's goal is to ensure that everyone who suffers a genuine whiplash injury at the hands of another is properly compensated. Let's build policy based on fact, rather than myth.

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