

Competition Commission

Private Motor Insurance Market Investigation: Provisional Findings



A response by the Association of Personal Injury Lawyers

January 2014

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has over 4,000 members in the UK and abroad who represent hundreds of thousands of injured people a year.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL welcomes the opportunity to respond to the Competition Commission Private Motor Insurance Market Investigation provisional findings, particularly the Notice of Possible Remedies.

APIL previously recommended that insurer practices be taken into account as part of the Competition Commission's investigation. The insurance industry has, for a long time, had an agenda which aims to cut lawyers out of road traffic accident claims process. This agenda has fuelled the perception that personal injury claims are to blame for rising insurance premiums. This has dangerous consequences for injured people.

There is a stigma attached to claiming compensation, which dissuades those who are legitimately injured and entitled to compensation from bringing a claim to obtain the damages and redress that they deserve. This is illogical, as one of the purposes of compulsory motor insurance is to ensure that, should a person become injured as a result of someone else's fault, that injured person is then able to obtain necessary compensation. We are therefore encouraged by the conclusions of the Commission in recognising that various insurer practices, including "an inefficient supply chain which involves excessive frictional and transitional costs", contribute to higher premiums for the consumer, and must be addressed and rectified.

Unintended consequences

APIL is concerned that some of the proposals in this paper, whilst not directly relating to personal injury, could have unintended consequences for those pursuing a claim for any injuries that they have suffered. There is a danger that, for example, limiting the claimant's choice of which insurer they can use in a vehicle damage claim will also lead to a loss of freedom of choice in a subsequent personal injury claim, as both claims form part and parcel of the process following an accident.

The basis of the Competition Commission enquiry was a focus on malpractice and insurer control. It is important that any remedies that are adopted should not contribute to further abuse or problems in any part of the claims process.

Remedy A: Measures to improve claimants' understanding of their legal entitlements

The consumer should be provided with clear and concise information on their rights and choices. We agree with the provision of information as set out in paragraph 18 (a) – (d) of the Provisional Findings remedies paper. Information should be available throughout the whole of the process – from the inception of the insurance policy through to the end of any

claim. Additionally, if there are examples of insurer best practice, they should be made available to consumers.

This information should be available in both electronic and paper form, and should be available in the same terms in all formats to ensure consistency in the provision of information and easy accessibility. Consumers will therefore be fully informed of their rights.

In order to ensure that this remedy is effective, sanctions need to be considered for failure to comply, this could be regulated by the Financial Conduct Authority.

Freedom of choice - remedies 1A and 1B

APIL is concerned that there may be unintended consequences should either remedy 1A or 1B be implemented. As well as being fully informed of their rights and choices, claimants should be entitled to freedom of choice throughout the claims process.

Both remedies 1A and 1B, whilst appearing only to deal with vehicle damage claims, may impede a claimant's freedom of choice in relation to any related claim for personal injury. It is likely that a personal injury claim would, should any such claim arise, be instigated in tandem with any vehicle damage claim. Limits on who can handle the vehicle damage claim may affect the claimant's decision on who should handle their personal injury claim. Any ill-informed or daunted claimant would be likely to accept an offer to handle their claim from whoever may be dealing with their vehicle damage claim, which, if remedy 1B is introduced, would be the at-fault insurer. The at-fault insurer would be incentivised to minimize the cost of the claim, and most likely want to close the claim as quickly as possible, which could lead to a sub-standard service to the claimant. It is important, therefore, to ensure that the claimant has the freedom to choose the provider, to ensure fairness.

Further, we are concerned that remedy 1B may pave the way for at-fault insurers being automatically given the first option to handle claims in other aspects of the accident claims process, including claims for personal injury, thus completely removing freedom of choice for the claimant. APIL has long campaigned against defendant insurers "capturing" claims in relation to personal injury. This practice results in great unfairness and denial of access to justice for the claimant as the insurer has an interest in settling the claim as quickly and cheaply as possible. There will be lack of transparency and the injured person will not have access to independent legal advice. Having no knowledge of how much their claim is worth, the innocent injured person will most likely accept a significantly lower amount of compensation than they require and deserve in the circumstances. In 2012, APIL carried out research with regard to direct contact by the at-fault insurer in road traffic accident cases¹. A

¹<http://files.apil.org.uk/campaigns/the-whiplash-report-2012.pdf>

survey of APIL members' last three cases found that on average, the involvement of a lawyer raised the value of the offer from around £4,000 to £27,000. If a solicitor had not been involved, therefore, the direct offer would have resulted in inadequate compensation for the victim, and a denial of access to justice.

We hope our comments prove helpful to the Competition Commission.

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