HM Treasury

Civil Liability Act report on savings provision:
consultation response

October 2019

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ISBN 978-1-912809-88-2
PU2286

Contents

Chapter 1
Introduction

1.1 The Civil Liability Act ("the act") reforms the system for whiplash claims and sets a new framework for calculating the discount rate for personal injury claims. These reforms are expected to produce some cost savings, which a majority of insurance companies represented by the Association of British Insurers (ABI) committed to passing on to their customers. The act imposes a statutory requirement on insurers to provide information to the Financial Conduct Authority (FCA) about claims costs and premium prices, as well as what they might have expected these figures to be had the act not been passed. This will enable the Treasury, with the assistance of the FCA, to fulfil the obligations placed on it by the act to lay a report before Parliament which assesses whether policy holders have benefited from any savings made by insurers as a result of the reforms of the act.

1.2 In March 2019, the government published a consultation on draft regulations which will require firms to report on whether they have passed on savings to their customers. The consultation sought views on the government's suggested approach to determining the firms in scope, the information required, and the treatment of this information.

1.3 During the consultation, a total of 16 responses were received from insurers, industry representatives, and representatives from the legal services industry (see Annex A for a list of respondents). The government has considered the responses to the consultation and is grateful for the technical advice received. As a result, we will make a number of changes to the statutory instrument (SI) to take into account the advice that has been submitted on the kinds of information insurers are able to provide. A draft of the SI is published alongside this document. This will be subject to further amendment, legal checks and parliamentary approval.

Chapter 2
Introductory provisions

2.1 In the consultation, the government proposed that firms that issue third party personal injury insurance policies (we expect this will be predominantly motor insurance policies) to individuals domiciled in England and Wales would be within the scope of these regulations unless they fall below the minimum threshold. Several respondents from the insurance industry requested that the scope be clarified and suggested limiting the scope in order to exclude single-vehicle commercial risks, home, and travel insurance. The government agrees that the overwhelming majority of customers affected by the Civil Liability Act reforms will be personal motor insurance policyholders. We therefore will define the scope as any insurer who has issued private motor insurance policies to individuals domiciled in England and Wales and meets the threshold conditions. Alongside this, the government will add a new definition of private motor insurance policies which is compatible with road traffic legislation, for purposes of a non-commercial character or for specified purposes (for example, social, domestic and pleasure purposes) and excluding use for hire, business or commercial use.

2.2 The consultation also asked for views on the appropriate method to limit the firms that will be in scope of these requirements, in order to avoid placing undue burdens on smaller firms. We proposed that this limit should be more than 10,000 policies sold in a year. We received feedback from insurance companies, industry bodies, and a body that represents legal services firms. Most insurers agreed that policies sold was a broadly appropriate measure, but that an alternative could be Gross Written Premium. Another suggestion was to make the threshold conditions more rigorous, for example by adding an additional measure like turnover. While we recognise the need to be rigorous, the government thinks that placing multiple restrictions may have the effect of excluding firms that we think should provide information. It is the government's intention that all firms offering personal motor insurance, apart from the very smallest, should be in scope of these requirements.

2.3 The consultation received multiple comments from insurers and industry representatives relating to the number of policies sold that indicates the threshold. These comments suggested that a limit of 10,000 policies sold would have the effect of including very small firms for which complying with these regulations would impose serious difficulties and a disproportionate cost. In response, the government will amend the number to 100,000 or more policies sold, which will still have the effect of covering more than 95% of the UK private motor insurance market.

2.4 In response to questions one to five, some respondents indicated there is a need for stricter enforcement relating to firms determining themselves to be in scope of the requirements. These responses came from legal services firms, in particular personal injury lawyers, and representatives from this industry. Suggestions included requiring insurers to provide evidence that the business is out of scope, and a strict penalty for failing to report information correctly. The government recognises the need for robust enforcement of these requirements. While not in the text of these regulations, under provisions made in the Civil Liability Act 2018, the FCA can use their full suite of powers to ensure that regulated firms comply with the statutory requirements placed on them under the Act. Insurers who are unable to provide the relevant information for one or more report years must give written reasons to the FCA explaining why they could not do so for the report year concerned. It will then be for the FCA to determine what action to take in accordance with its approach to enforcement and its disciplinary powers under the Financial Services and Markets Act 2000.

Chapter 3

Information to be provided by insurers

3.1 The act requires insurers to provide information about historic claims costs and premiums to the FCA, as well as an assessment of what these figures would have been without the reforms made by the act. Firms will also be required to ensure this information has been audited by a qualified auditor before providing it to the FCA.

3.2 The consultation sought views on the type of information firms should provide to enable the FCA and government to make an assessment of whether savings have been passed on to customers. We received responses from insurers, brokers, and their industry representatives on this topic.

3.3 Where the consultation draft of the SI asked for information about 'premium income', this will be changed to 'premium earned' from relevant policies. In this case, 'premiums earned' refers to the whole premium, not just the element of the price that relates to personal injury. The government will amend the wording for this element accordingly to more accurately capture the intended data. The figures required in s.4 should be provided gross of reinsurance and legal costs.

3.4 Respondents also raised concerns with the requirement to provide information about the 'technical price', suggesting that different firms would calculate this in very different ways. Based on this and further consultation with industry and regulatory experts, it is clear that information gathered in relation to the technical price would produce inconsistent results, and it would be burdensome for the FCA to obtain a market-wide average. The government is clear that this report should not place undue burdens on either industry or regulators, and that the overriding aim of these regulations is to allow the government to assess whether the market as a whole has passed on savings. In order to achieve this, the requirement to provide information about the technical price has been removed and the section of the SI requesting additional information has been expanded to enable the government and the FCA to take into account a wide variety of factors that may have impacted the end price for the consumer.

3.5 Some respondents suggested that we restrict the data required to cover whiplash claims only. The intention of the report is to assess whether any savings made from Parts 1 and 2 of the act have been passed on to customers. Several respondents asked for clarification that associated reforms such as the Small Claims Track limit rise would be included. Other respondents suggested that insurers should be required to give a full

breakdown of costs, including general damages, special damages, legal fees, and other costs. Information required by the act and these accompanying regulations is limited to those reforms brought in by the act. The required information about claims is intended to demonstrate the impact of changes as a result of the act. Furthermore, the government considers that requiring other information which it does not consider necessary, in order to make its assessment of savings passed on to consumers, would be an unjustified additional burden on industry.

3.6 Respondents generally agreed with the proposal to separate totals with respect to settlement value, with the split being £100,000. Some respondents felt £100,000 was too low, while others suggested requiring totals to be split into four bands. The government is satisfied that £100,000 is an appropriate value, as insurers have indicated that this is a widely recognised standard in the industry to separate high and low value personal injury claims.

Counterfactual information

3.7 Respondents generally agreed with the proposal to require counterfactual information, though noted several difficulties with providing and assuring this type of information. We accept that there will naturally be a level of uncertainty in estimations of the counterfactual, particularly when addressing the impacts of the reforms to whiplash compensation. However, estimations relating to the Personal Injury Discount Rate (PIDR) should use the previous legislative rate of -0.75%, although we accept that some insurers may not have priced on this basis. Where this is the case, insurers will be able to explain this as part of the additional information outlined in section 6.

3.8 Insurers also suggested that there would be many factors which might complicate the picture, including the impacts of EU exit and changes in regulation. Again, in section 6 the regulations provide for an opportunity for insurers to detail factors and trends affecting the figures in their returns, and the government will take this into account when producing the report to Parliament.

3.9 The regulations will allow firms to establish a methodology for calculating the required counterfactual information. However, this must be calculated using the same methodology as that used for obtaining the information in regulation 4, but substituting the figures representing the underlying assumptions and using -0.75% as the preceding discount rate for elements relating to the PIDR.

3.10 Many respondents suggested that the information returned, particularly counterfactual information, would be 'impractical' to audit, as auditors may take differing views on what factors or trends in the market may impact premium prices. Some suggested that auditors should perform 'Agreed Upon Procedures' rather than provide assurance. Taking these concerns and further consultation with auditors and regulators into account, the regulations will require that firms contract auditors to provide an assurance that the counterfactual information provided has been calculated taking into account the requirements of regulation 5(2) and (3).

Chapter 4
Additional information

4.1 Respondents generally agreed with the proposals to enable firms to provide additional information if they choose.

4.2 The proposal to require information about intermediary and reinsurance costs received mixed commentary, focused on the difficulties of obtaining definitions of both that are accessible to a wide range of firms. Based on responses from insurance companies and industry representatives, the government recognises the challenges associated with obtaining consistent information, so will not require firms to specifically identify intermediation and reinsurance costs.

4.3 However, regulation 6 requires firms to provide information about trends that may increase or decrease costs and prices, as well as if any benefits other than a reduction in premium prices have been passed to customers. This will now include third party costs such as reinsurance and intermediary costs and pricing or reserving actions taken in response to events which may have affected the market, such as new reforms (including reforms to the Small Claims Track) or other government announcements. The government will take this wider information into account when producing the report assessing whether savings have been passed on.

4.4 Some responses suggested that firms should be required to provide information annually, in order to test whether firms are passing on savings. In order to avoid placing unnecessary burdens on firms, and to gather enough data to make an assessment of whether the market as a whole has passed on savings, firms will be required to make their return to the FCA once, by 1 October 2023, but to account separately for each of the reporting years within that return. The government is confident that if the insurance market remains highly competitive, insurers will keep to their commitment to pass the benefits of the Civil Liability Act reforms onto their customers. If this commitment is not upheld, the government will investigate and take appropriate steps.

4.5 Other concerns were raised in the consultation responses, including around the sharing of market sensitive information. The information sent to the FCA will be aggregated and anonymised before it is shared with the government. The government's report will not publish information relating to individual firms or submissions, and will instead take a view based on an aggregate assessment of the whole market. Sensitive information provided to the FCA will be treated appropriately according to the FCA's practices. The Memorandum of Understanding will set out further arrangements for the sharing of information between HMT and the FCA.

Chapter 5

Next steps

5.1 The government will prepare a Memorandum of Understanding with the FCA which will set out the roles and responsibilities of each party in relation to handling and analysing the data collected and producing the report. This will be published in due course.

5.2 The government will bring these regulations into force in good time to allow firms to familiarise themselves with new requirements.

5.3 A draft of the SI is published alongside this consultation response. This draft is subject to further change after scrutiny from the Joint Committee on Statutory Instruments.

Annex A

List of consultation respondents

Association of British Insurers

Association of Consumer Support Organisations

Admiral Group plc

Aegas Insurance UK

Association of Personal Injury Lawyers

Aviva

AXA UK

British Insurance Brokers' Association

Chartered Institute of Legal Executives

LV=

Motor Accident Solicitors Society

Premier Insurance Company Limited

PwC

RSA

Tesco Underwriting Limited

Thompsons Solicitors

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