

9 January 2013

Inquiry Manager  
Private Motor Insurance market investigation  
Competition Commission  
Victoria House  
Southampton Row  
London  
WC1B 4AD



By email: [pmi@cc.gsi.gov.uk](mailto:pmi@cc.gsi.gov.uk)

Dear Sirs

### **Response to Competition Commission Statement of Issue**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have around 4,400 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which 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;
- To provide a communication network for members.

APIL welcomes the opportunity to respond to the Competition Commission's statement of issue regarding private motor insurance (PMI). We are encouraged that the PMI market is the subject of investigation, and that the Competition Commission is seeking to tackle distortion and restriction of competition in this area. We note the theories of harm that are intended to be the subject of this investigation, and also note that the relationship between the PMI market and the personal injury market is not to be considered<sup>1</sup> It is our view that

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<sup>1</sup> Paragraph 36 and 37 of the issue statement

Private Motor Insurance (PMI), and the practices of insurance companies, have distorted the RTA Personal Injury market enormously. It is vital, therefore, that the impact of private motor insurers' practices is taken into account so as not to lead to distorted and inappropriate conclusions. Distorted conclusions will therefore mean that changes proposed by the Competition Commission to improve the market as a result of this investigation will do nothing to stem the influence that insurers have over the PI market. This influence can be particularly damaging to the injured person, as practices such as using tactics to delay cases, can lead to a denial of access to justice.

The distortion of the PI market by the practices of insurance companies is evidenced in a variety of ways, namely

- Rising insurance premiums being blamed on personal injury claims
- False claims of disproportionate damages
- Defendant insurers using tactics to prolong cases
- Insurance investment issues
- The practice of third party capture

### **Rising Insurance Premiums**

It is common for insurers to claim, in the face of criticism, that the cost of personal injury claims is to blame for the high cost of insurance premiums. A comparative study in 2004 stated that in terms of the split between bodily and material claims of the 2.9 million claims, only 17% relate to personal injury claims<sup>2</sup>. Therefore personal injury makes up only a small percentage of insurance payouts- car insurance covers theft and fire as well as accident related claims. Blaming personal injury claims for high insurance premiums has dangerous consequences for injured people. Because of these claims by insurers, there is a stigma attached to claiming compensation, which therefore dissuades those who are legitimately injured from bringing a claim to obtain damages and redress that they need and deserve. This is a ridiculous situation, as the one of the purposes of motor insurance is to ensure that should there be an accident, the person injured has access to adequate compensation.

### **False claims of disproportionate damages**

Insurers continue to suggest that legal costs are increasing and disproportionate to damages recovered. The Association of British Insurers (ABI) frequently says that "for every pound

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<http://www.insuranceeurope.eu/uploads/Modules/Publications/Minor%20Cervical%20Trauma%20Claims.pdf>

paid in compensation, a further 87 pence is paid in legal costs<sup>3</sup>. We know from the last UK Bodily Injuries Award Study<sup>4</sup> that legal costs as a percentage of total payouts by insurers have remained constant at 30% for many years. We also know that damages for pain, suffering and loss of amenity (the physical injury) remain below the levels that the Law Commission suggested they should be at in 1999 when the commission suggested an increase in damages for pain, suffering and loss of amenity. This suggests that legal costs are probably at the right level but in fact, general damages should be increased. Again, this distortion by the insurance market has led to a denial of access to justice, as damages are lower than they should be.

### **Prolonging cases**

Where injuries do occur, it is imperative, both for the welfare of the injured person and in order to limit legal costs, that claims for compensation are dealt with quickly and efficiently. Yet, research conducted by APIL<sup>5</sup> has shown that defendants (and, therefore, their insurers) indulge in behaviour which inevitably prolongs cases and results in increased costs. In more than 2,000 cases relating to lower value claims which ultimately settled for general damages of £5,000 or less:

- The final offer made to a claimant by a defendant's insurer was more than 50% higher than the first offer;
- 63% of defendants' insurers who subsequently admitted liability failed to do so during the so-called 'protocol period' (the first three months of the claim).

### **Insurance investment and income issues**

The insurance industry's business model is such that their income does not only come from premiums. They also use premium income to fund their investments from which they have received an additional income. The global economic downturn has seen their investments and investment income shrink; greater capital solvency requirements mean that they have to be less risky and not invest as much money; and they have less money to invest due to having lower reserves.<sup>6</sup>

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<http://claimscouncil.org/system/files/182/original/ABI%20response%20to%20consultation%20on%20Jackson%20recommendations.pdf?1299140630>

<sup>4</sup> ABI and IUA 4<sup>th</sup> Bodily Injury Awards Study 2007

<sup>5</sup> APIL research- "Potential impact of the threshold limit for personal injury cases within the small claims court being raised to £5,000." The research was done between January and February 2005 with 782 APIL members responding.

<sup>6</sup> See the British Insurance Brokers' Association (BIBA)'s written evidence to the Transport Committee (CMI19) (See <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtran/591/591we12.htm>)

In turn, this has required them to raise premiums, irrespective of any other variable. Reducing the time taken to settle claims will also impact on their ability to invest in the long term. All these issues need to be examined in the round as it cannot simply be personal injury claims that are increasing premiums.

The ban on referral fees that is set to come into force in 2013 should, using the logic in the Government's planned lowering of Fixed Recoverable Costs for the portal, reduce car insurance premiums, as the insurers would no longer need to spend money on paying out for referrals. In 2010 over half of Admiral's, the Cardiff based specialist motor insurer and owner of Confused.com, UK car insurance pre-tax profit came from net ancillary income; a large part of which related to referral fees. Indeed, following announcement of the referral fees ban last June, shares in Admiral plunged 5% in early trading due to the fact that it was perceived that "the ban would impact profits at the group"<sup>7</sup>

Furthermore Admiral has suggested that rather than reduce premiums the removal of referral fees will actually increase premiums; Admiral chief executive Henry Englehardt said "If referral fees are banned, the result would be car insurance going up."<sup>8</sup>

This further supports the point above that personal injury claims cannot be solely blamed for rises in insurance premiums. There are internal factors within the insurance market which have a large bearing on how much premiums cost. When insurers use the personal injury market as a scapegoat, this has extremely damaging effects on the rights of the injured person to claim the compensation that they need and deserve.

### **Ancillary services**

It is also necessary that the agreements that insurers have with garages, hire companies and medical agencies are examined. There is often substantial income generated from such agreements. We also know from the case of *Fallows v Harkers Transport*<sup>9</sup> that insurers themselves are adding to the increase in cost of RTA claims. The case involved an RTA where Royal Sun Alliance (RSA) sent the claimant's car to be repaired by its own repair company, which is called DWS. The 'administration' for doing this was sorted by a wholly owned subsidiary of RSA, called RSAARL. When RSA sought to recover the costs of the repairs, by submitting an invoice from RSAARL, the defendant insurer Equity Red Star questioned the amount as the VAT and the hourly labour rates did not add up correctly. Essentially the court discovered that RSAARL was being invoiced for one hourly labour rate

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<sup>7</sup> <http://www.telegraph.co.uk/finance/personalfinance/insurance/8751683/Motor-insurer-Admiral-hit-by-ban-on-referral-fees-from-personal-injury-lawyers.html>

<sup>8</sup> <http://www.thisismoney.co.uk/money/cars/article-2036472/Car-insurance-referral-fees-crackdown-force-premiums-higher-claims-Admiral-boss.html>

<sup>9</sup> [2011] EW Misc 16

by DWS, but was then inflating the cost of repairs, increasing the labour rate and invoicing its parent company for a higher amount.

Such agreements often limit a claimant's choice of repairer, hire company and medical agency. We would also invite the Competition Commission to examine the cost of repairs to vehicles. Some cars can cost as much as £6,000 to repair for a 6mph crash<sup>10</sup>. Modern cars can be expensive to repair and this cost will in turn affect premiums paid by motorists. For instance, modern cars include air bags, which if deployed are very expensive to replace and reset.

### **Insurer Practices**

The insurance industry has developed a growing practice of generating claims against itself. This distorts the claims market. Insurers are 'capturing' claims from people who might never have claimed compensation. They do this through direct telephone calls, text messages and e-mails. Many people who are approached in this way may not have claimed compensation at all if they have not been approached by the insurer. It is very difficult for anyone to ignore repeated and persistent offers of compensation, often made without the requirement for medical examination.

There is also "third party assistance". This is also known as "third party capture", and means that the insurer of the defendant driver approaches the injured claimant and offers to settle the claim directly. The insurer then acts as judge and juror about what level of compensation is appropriate. APIL has serious concerns about this practice, not least because of the lack of transparency. The injured person in this situation will not have access to independent legal advice, and so, having no idea how much their claim is worth, will probably accept a significantly lower amount of compensation than they require and deserve in the circumstances.

### **Uninsured drivers**

The Motor Insurers' Bureau (MIB) estimates that in 2011, there were 1.2 million uninsured drivers on Britain's roads<sup>11</sup>.

Mike Penning, the Former Road Safety Minister, stated that, "Currently every responsible motorist pays an average £30 each year within their premiums to cover crashes involving

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<sup>10</sup> Thatcham research news, special edition 09/No.2 "What's the damage?", page 2

<sup>11</sup> [http://www.mib.org.uk/NR/rdonlyres/048F832D-60C9-4BC6-9E59-B4561ABB2AE0/829/MIBAnnualReportAccounts2011\\_web0612.pdf](http://www.mib.org.uk/NR/rdonlyres/048F832D-60C9-4BC6-9E59-B4561ABB2AE0/829/MIBAnnualReportAccounts2011_web0612.pdf)

uninsured and untraced drivers.”<sup>12</sup> However, MIB figures indicate that the number of uninsured drivers nationally has decreased by 20 per cent in the past four years.<sup>13</sup>

Yet, in the same period this decrease has not been reflected in insurance premiums. It is important to determine by what extent motor premiums are being affected by uninsured drivers.

We hope that we have provided sufficient evidence to show that the relationship between the private motor insurance and personal injury markets cannot be overlooked as part of this investigation. If you require any further assistance, please do not hesitate to get in contact.

Yours faithfully

Alice Warren  
Legal Policy Officer

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<sup>12</sup> <https://www.iam.org.uk/drivers/motorists-courses/advanced-driving/86-about-us-old/newsletters/687-uninsured-drivers-face-new-crackdown>

<sup>13</sup> [http://www.mib.org.uk/NR/rdonlyres/E675DE3F-C26F-415B-8B4F-1C85D47D8C42/0/Hotspots\\_national\\_release\\_2010\\_FINAL.pdf](http://www.mib.org.uk/NR/rdonlyres/E675DE3F-C26F-415B-8B4F-1C85D47D8C42/0/Hotspots_national_release_2010_FINAL.pdf)