



Competition Commission:

**Private Motor Insurance Market Investigation:
Provisional Findings Report**

Response from the Motor Accident Solicitors Society

February 2014

Introduction

This response is prepared on behalf of the Motor Accident Solicitors Society (MASS) and submitted by the Chairman, Craig Budsworth.

MASS is a Society of solicitors acting for the victims of motor accidents, including those involving personal injury (PI). MASS has over 160 solicitor firm Members, representing over 2000 claims handlers. We estimate that member firms conduct upwards of 500,000 PI motor accident claims annually on behalf of the victims of those accidents. The Society's membership is spread throughout the United Kingdom.

The objective of the Society is to promote the best interests of the motor accident victim. This is central, and core to our activity. We seek to promote only those policy and other objectives which are consistent with the best interests of the accident victim. We seek to set aside any self interest in promoting these arguments, recognising that we are in a position of trust, and best placed to observe the best interests of motor accident PI victims first hand. We are a not for profit organisation, which requires specialism in motor accident claimant work as a pre-requisite for membership. We also have a Code of Conduct which member firms are required to abide by, which is directed to the best interests of the motor accident victim.

This response to the Provisional Findings report should be read in conjunction with our response to the Competition Commissions Notice of Proposed Remedies.

Introduction

MASS has a particular concern that, as the report confirms in section 1 and at paragraph 3.21, the Commission felt it inappropriate to consider the element of any personal injury sustained from a road traffic accident (RTA), in their investigation. As stated in our previous response, we believe that it is impossible to separate elements of an RTA claim. By doing so this has a significant impact on the facts contained within the report as this identifies issues in relation to the law of tort that are linked to a personal injury claim and any proposed remedies will impact on access to justice for those who have also sustained an injury as well as a damaged vehicle.

Third Party Capture

MASS is extremely concerned about the issue of third party capture which we believe could increase further as a result of the Commission's proposals. MASS strongly believes that there should be no opportunity given to insurers to continue their practice of third party capture in any form. As stated in our previous response to "Remedy 1b Issues for Comment", there are a wide range of practices which the motor personal injury sector, engage in. MASS considers ultimately there is a conflict of interest when an at-fault insurer is attempting to settle the Claimant's claim (or any part of it) directly with the Claimant. An insurer has an army of trained specialist staff together with external experts and consultants to deal with RTA / personal injury claims, which provide an enormous inequality of arms. Where Claimants deal with insurers direct they will suffer as a result through a distinct inequality in terms of knowledge and claims handling experience. Through our experience of handling a large volume of RTA claims, it is clear from the current actions of insurers that the main incentive in dealing with a Claimant direct is not to protect the Claimant's best interests but to focus on the most cost-effective methods of settling a claim as cheaply as possible. A clear example of this is making an offer to settle a claim, without obtaining a medical report. It can therefore be construed that the practice of third party capture not only increases the number of claims but could facilitate fraud, particularly if medical reports are not obtained - all in all driving up the cost of motor insurance premiums.

MASS refers to paragraph 3.74 which identifies that 51% of time the at-fault insurer is the first to contact a claimant and the claimant accepts 38% of time. MASS is concerned that the Commission have not undertaken any review of the impact of those 38%, nor established to what extent their claim has been compromised by dealing direct with the at-fault insurer. Bearing in mind that 24% of claimants did not realise they were entitled to a replacement vehicle, in all likelihood those dealing direct with the insurer did not receive the same level of compensation, albeit the type of vehicle they used as a replacement or indeed were persuaded not to have a replacement vehicle altogether.

Over the past 2 years, MASS has assisted the Transport Select Committee (TSC) with their investigation into the cost of motor insurance, providing written and oral evidence when invited. During their investigation it became clear that dysfunctional behaviour within the insurance industry is having a bearing on the cost of motor insurance. Whilst we appreciate the Commission is investigating the credit hire and repair element and insurer behaviour within this area, MASS would urge the Commission to take into consideration findings from the TSC which clearly indicates that insurers' practices overall need to be scrutinized and improved dramatically to not only curb the continuing cost of motor insurance, but perhaps more importantly to ensure that the consumer is protected at all times and retains their fundamental right to access to justice and independent advice. On this basis we feel it is appropriate to refer the Commission to the most recent TSC report¹ and some comments made by the Committee and why MASS believe this is relevant:

- Ensuring the right of the accident victim to be able to claim compensation – This remains a fundamental right of the accident victim, the principle of which is supported by the TSC as stated in the Conclusion and Recommendations – paragraph 22 “...**it is appropriate that people injured in motor accidents through no fault of their own should be able to claim compensation from the party which caused the injury (paragraph 15)**”. MASS strongly believes that the current claims procedure enabling the accident victim to obtain independent advice must be retained to ensure equality of arms and should not be done direct by the at-fault insurer.
- Dysfunctional Behavior - Conclusion and Recommendations – paragraph 23 “... **the industry as a whole is damaged and motorists pick up the bill in the form of higher premiums. Insurers must immediately put their house in order and end practices which encourage fraud and exaggeration. If not, the Government should take steps to protect motorists (paragraph 63)**”.

In addition they also expressed their disappointment in the actions of insurers (paragraphs 62 & 63 - Section 4 – Conclusions) stating “... **this is particularly disappointing in light of the Government’s own observation that insurers have encouraged excessive and unnecessary claims within their own business models.**”

Cost Control and Proportionality

The Commission’s report has identified numerous areas of the law that show how the cost control element of being outside the control of the at-fault insurer is wrong. The report identifies these issues at paragraph 3.19, and quotes from the case of *Copley v Lawn and Madden v Haller [2009] EWCA Civ 580*. Whilst it might be little used, this case identifies that the at-fault insurer has full costs control. MASS is very concerned that the proposed theory of harm has not properly identified that tort law already provides for cost control. If the Commission is identifying a change to tort law to deal with this TOH, we would question that a full impact assessment is needed of the potential increase in cost to provide for a policy to cover a replacement vehicle on every policy. This current ‘add-on’ costs up to £30.00 so a saving of £6.00 - £8.00 identified of being the additional cost to date is clearly disproportionate. We would encourage the Commission to do a full impact assessment on ensuring that if a replacement vehicle is to be provided on every policy then the likely cost of this increase should be identified and considered on a proportionality basis.

At the same time, we believe an assessment should be undertaken as to the cost involved in delivering a service where the policy provides for a replacement vehicle, such as administering such a service. We would suggest that the reason why the at-fault insurer does not exercise their rights under the *Copley* case more often is because the cost to do so is actually more expensive than allowing the claimant to utilise the current alternative. Whilst this is identified in 6.46, there seems to be no costs assessment of the increase in cost if this was passed to the at-fault insurer and we would again reiterate our concern over the proposed remedies being disproportionate.

Also, when considering proportionality, the Commission should be aware that the provision of a replacement vehicle often comes with the benefit of a solicitor recovering the uninsured loss aspect. With more and more consumers not paying for a legal expenses insurance (LEI) policy then, if the law is changed in relation to Tort and a replacement vehicle is provided by the non-fault insurer, then the other uninsured losses would be left with the individual to recover without legal assistance. At 3.65 of the report, the Commission fails to identify that solicitors are also parties involved in non-fault claims. Thus, we would suggest that a further impact assessment on the cost of LEI needs to be added when considering the additional cost that would have to be borne by the consumer to automatically include LEI.

Profitability

The Commission advises at 5.9 that the top 10 insurers have earned £1.8 billion over 5 years. This evidence seems to have some flaws to it. Figures obtained through samples of website data when researching results for 2012 show the following:

Admiral = £345 millionⁱⁱ

Aviva = £448 millionⁱⁱⁱ

DLG (UK General insurance) = £322 million (motor only)^{iv}

LV = £117.1 million^v

RSA = £245 million^{vi}

Esure = £88.1 million^{vii}

NFU = £57^{viii}

These figures alone show in excess of £1.6 billion in one year, let alone 5 years.

Conclusion

In addition to our points raised above, in particular concerning third party capture and insurer behavior, MASS wishes to reiterate our concern regarding reviewing the RTA claims process holistically. Approaching the private motor insurance market with a view to introducing change in a piecemeal manner has the potential to create a perverse and complicated system similar to that which the Ministry of Justice has recently rebuffed to the Transport Select Committee. This could result in having one area of law for a private motorist and a completely different area of law for a commercial motorist. Not only would this be totally nonsensical, it would create an extremely confusing situation for the consumer when the aim of the Commission is to assist the consumer and make them more aware of their rights. Consequently we would urge to the Commission to reconsider their recommendations.

ⁱHouse of Commons Transport Committee – Cost of Motor Insurance: Whiplash. Fourth Report of Session 2013/14

ⁱⁱ http://www.admiralgroup.co.uk/pdf/annualreports/2012_annual_report.pdf

ⁱⁱⁱ www.aviva.com/media/upload/aviva-2012-annual-report.pdf

^{iv} http://ara2012.directlinegroup.com/pdf/direct_line_group_2012_annual_report_and_accounts.pdf

^v http://www.lv.com/assets/pdfs/about-us/report-accounts/21331792_lv_annual-report-pdf-printer-friendly.pdf

^{vi} http://www.rsagroup.com/rsagroup/uploads/investorpack/1RSA_AR2012.pdf

^{vii} <http://www.esuregroup.com/~media/Files/E/Esure/reports-and-presentations/2012-Annual-Report-and-Accounts.pdf>

^{viii} http://www.nfumutual.co.uk/Global/PDFs%20-%20document%20library/company_information/Reports-Accounts-2012.pdf