









Road to reform:

Tackling the UK's compensation culture

July 2014



Contents

	Introduction	2
	What is wrong with the motor insurance claims process?	4
	Claims, compensation and consumers	10
	What should be changed?	12
	What consumers think should change	14
	What the financial benefits will be for drivers	15

Introduction

The issues affecting the cost of motor insurance have been in the spotlight for several years, leading to last year's landmark reforms of the civil litigation system. Although these reforms have successfully brought down premiums, everyone from the Government to insurers themselves agrees that more needs to be done to bring long-term, sustainable cuts to the cost of motor insurance.

In its fourth report looking at the cost of motor insurance, the Transport Select Committee (TSC) said parts of the motor insurance market remain "dysfunctional" and have encouraged fraud.

The motor claims market – which is supposed to put the customer above all else – has instead thrown cash at its problems without any real thought on the consequences of its actions for the customer and the premium they pay.

This has left a wake of bad practices, profiteering, poor customer outcomes, and – despite the billions spent – a lot of sore necks. Collectively insurers, brokers, personal injury lawyers, claims management companies and government must take responsibility for that.

However, it hasn't been all bad. Consumers have benefitted from lower motor insurance premiums recently, thanks to key reforms implemented by the Government last year. Aviva and other insurers have been quick to pass the savings on to the customer, resulting in a 14% drop (according to the ABI) in premiums since 2012.

But there is more to do if these premium savings are to be sustainable. We believe, with Government support, that premiums can be cut by another 14% - or £50 on average - for each insured

motorist. Our report outlines three key steps to deliver this ambition which will protect motorists from escalating costs and increase support for genuine accident victims.

First, we must move away from a system which pays cash compensation for minor, short-term whiplash, to one that focusses on providing and helping them with the costs of medical treatment. Second, we have to restrict the use – and fees – of lawyers on cases where their involvement is simply not needed. Finally we need to bring in a comprehensive ban on all referral fees, and tackle the aggressive pursuit and marketing texts and telephone calls chasing the personal details of accident victims to sell to lawyers.

The main reason we need these changes is to reduce the impact of minor, short-term whiplash claims. We understand that whiplash, a neck injury sustained in an accident, can cause pain and discomfort. That's why we want to put care for the injured party at the heart of the claims process.

Our recommendations are about how we best compensate accident victims for their benefit as well as the insured motorist's benefit. Aviva's number one priority is to pay genuine claims quickly and fairly while offering a great service to our customers. Last year in the UK, for example, Aviva settled over 910,000 claims worth £2.65 billion.

However, we must look at the claims system which has financially incentivised injured parties, personal injury lawyers, brokers, claims management companies, etc. to bring these claims. Some may be tempted or encouraged to exaggerate their injuries.

Worse yet, the focus on cash has also encouraged a boom in "crash for cash" fraudsters. As Aviva reported earlier this year, fraudulent 'slam-ons' – road traffic accidents deliberately caused in order to claim for whiplash compensation – increased by 51% in 2013.

The fast growth of induced accidents on our roads is cause for serious concern. Another reason, then, to treat the injury instead of allowing compensation for these minor claims. If we shift the balance towards all insurers providing care to their customers, we will help all customers with minor injuries to get better quicker, while taking away the incentive for fraudulent and exaggerated claims.

It's time to put the brake on the UK's compensation culture: should we continue to compensate minor, short-term injuries with cash, which drives up the cost of insurance for all of us? Or should we provide care, such as rehabilitation, to those with minor whiplash, while keeping motor insurance affordable for Britain's motorists?

We hope this report will stimulate debate on the UK's compensation culture, and help us show, amongst other things, that we do not have the weakest necks in Europe. Such a change brings its own rewards – making motor insurance even more affordable.

Maurice Tulloch

**Chairman Global General Insurance / CEO
UK & Ireland General Insurance
Aviva**



“We believe, with Government support, that premiums can be cut by another 14% - or £50 on average - for each insured motorist”

What is wrong with the motor insurance claims process?

What has happened to car insurance premiums and claims since the LASPO Act of April 2013?

Premiums

According to the Association of British Insurers' (ABI) latest quarterly motor premium tracker, the average private comprehensive motor insurance premium was £358 in Q1 2014, a fall of 3% on the preceding quarter and down 14% over two years. In 2013, the average premium fell by 9%.

Claims

Claims data from Aviva demonstrates the benefits of LASPO since the reforms came into effect. This has been at the centre of an industry-wide fall in premiums.

- Bodily Injury claims reported to Aviva fell 11.4% in the year following LASPO. April 2012 – 2013: 19,784 were notified; April 2013 – 2014: 17,510 were notified.
- Meanwhile the cost of motor injury claims fell by 7.7%. The average settled claim (under £125,000) in the year to April 2013 was £8,557; and in the year to April 2014 £7,897.
- Legal costs associated with these claims also fell. Pre-LASPO, for every £1 in compensation paid, Aviva paid an additional 82p to claimant lawyers. Since LASPO, this has reduced to 77p paid to lawyers for every £1 compensation paid.

Civil litigation changes in 2013 that have impacted motor PI claims

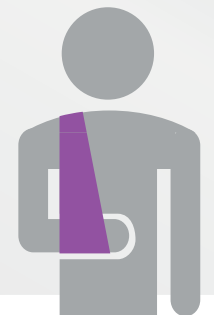
On 1 April 2013 Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the LASPO Act') brought reforms to civil litigation funding and costs in England and Wales. LASPO has had a particular impact in no-win, no-fee personal injury cases.

LASPO set out to boost efficiency and reduce litigation costs and fraud, resulting in lower premiums for motorists. LASPO:

- Transformed no-win, no-fee deals so lawyers can no longer double their fees if they win, at the expense of defendants and their insurers
- Banned referral fees paid between lawyers, insurers, claims firms and others, leading to a reduction in the fixed fees lawyers can charge insurers for processing basic, uncontested claims for compensation for minor injuries suffered in road accidents – from £1,200 to £500
- Introduced a new regime of 'qualified one way costs shifting' (QOCS) in personal injury cases. Honest claimants who lose their case are protected from having to pay the defendant's legal costs
- Balanced insurer and claimant interest. Successful claimants now have to pay their own lawyer up to 25% of their injury damages

Further reforms are still to come into effect which will also help cut costs for the customer's benefit:

- Independent medical panels to assess whiplash claims
- A ban on solicitors from offering cash incentives or gifts to people or organisations who bring them claims
- Changes in the law so that regulated companies which breach Claims Management Regulation Unit rules can be fined



Motor insurance premiums have fallen
14% since 2012.

(Source: ABI)

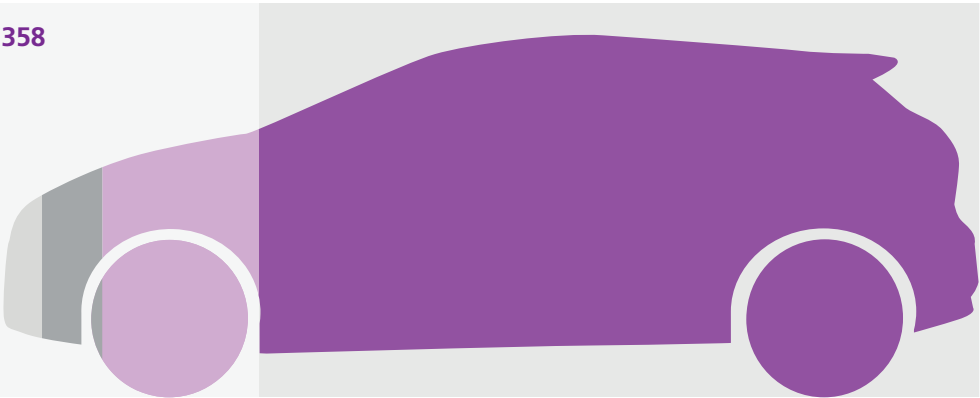
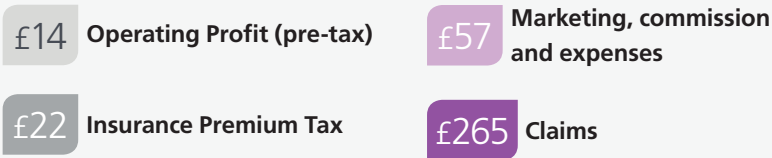
Factors that are negatively impacting claims costs, premiums and driver safety

Against this backdrop, there are several pressure points on claims costs. According to the Institute of Actuaries, the rate of claims ‘inflation’ is 9.1%. Although some of these increases will be beyond insurers’ control, some of these costs can be addressed through stronger regulation.

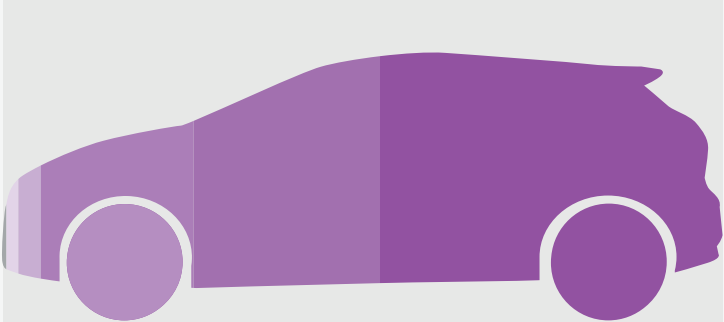
Claims costs represent the majority (£265) of where the motorist’s premium is spent and are therefore the most significant factor influencing premiums: the higher the total cost of claims, the higher the premium; likewise, removing cost from the claims process will see a corresponding drop in motor insurance premiums.

Many extra costs remain in the motor claims process that provide little real value to customers. As these costs push premiums up, we believe that these issues need to be tackled.

What’s in a Motor Premium: elements of an average premium of £358



Claims costs: where it all goes



Source: ‘What’s in a Premium’: Aviva; *average premium from ABI Quarterly Premium Index, April 30 2014)

Problem 1: Soaring volume and cost of minor bodily injury whiplash claims

Despite progress from LASPO, insurers are still receiving more than 1,300 whiplash claims a day. Collectively, these cost around £2 billion (ABI), which equates to £90 on every motor premium. At least half of these claims are for short-term, minor whiplash injuries which resolve quickly.

To better understand the scale of the problem, Aviva examined its own data on whiplash. It found that last year, 94% of all personal injury motor claims Aviva paid were for minor injuries such as short-term whiplash. In France, this figure is estimated to be around 3%.*

This illustrates that the number of whiplash claims in the UK remains out of proportion to our European neighbours, as well as when compared to the falling number of reported personal injury road accidents (down 5% from 2012, source: Department of Transport).

Although LASPO has helped to reduce the number of whiplash claims, Aviva's claims costs associated with bodily injury suggest the impact has not been as significant as some were hoping (Aviva included).

From 2005 to 2011, personal injury claims shot up by 41%, accounting for 52% of Aviva's total motor claims costs. In the year since LASPO (to April 2014), these costs have decreased, but only by 3% - perhaps less than insurers collectively hoped for. It remains clear that more can – and needs – to be done if we are to tackle whiplash and injury claims to achieve long-term premium reductions.

Such is the extent of the number of whiplash claims that many insurers settle whiplash claims before the claimant has undergone a medical examination. While this is understandable as it will reduce the insurer's costs associated with a claim, Aviva believes this simply exacerbates a problem which will end up costing the customer.

Aviva does not settle claims without a medical certificate, and welcomes the Transport Select Committee's recommendation in its fourth report on the cost of motor insurance, that the Government should prohibit insurers from settling claims before the claimant has undergone a medical examination.

Where there is suspicion that the injury is not genuine, insurers should challenge in order to reduce the impact of fraud. The advent later this year of a nationwide panel of independent experts producing medical reports in support of whiplash claims will help claimants get the care they need and reduce the cost of fraud associated with bogus whiplash claims.

*Comité Européen des Assurances, a pan-European trade body, now Insure Europe.

Fraudulent 'slam-ons' increased 51% last year and are at the highest levels ever detected.

Problem 2: The rise of 'crash for cash'



Cash compensation for whiplash is at the heart of 'crash for cash' – when fraudsters deliberately cause real accidents in order to claim compensation. This puts innocent motorists in harm's way, diverts emergency services away from real need, and has a significant impact on premiums and the public purse.

Fraudulent 'slam-ons' increased 51% in 2013, according to claims fraud data from Aviva. These induced accidents are at the highest levels ever detected by the insurer and represent a growing threat to motorists' safety. In 2011, one young motorist was killed as a result of being caught up in an accident deliberately caused by three fraudsters.

They are also the most common type of fraud in the UK, accounting for 54% of Aviva's total detected claims fraud costs, worth around £60m last year. Over 50% of these claims are planned by organised gangs. Aviva has seen increases in third party organised motor fraud. For example, in 2013, Aviva identified fraud in one-in-nine third party motor injury claims.

According to the Insurance Fraud Bureau, crash for cash costs insurers £392m a year. The ABI estimates that fraud adds £50 to the cost of insurance.

Problem 3: Legal costs remain too high

Financial incentives to claim for whiplash remain for both claimants and associated third parties such as claims management companies and personal injury lawyers, and as such, these claims remain prone to fraud and exaggeration.

There are, of course, cases which require the involvement of lawyers. But 94% of Aviva's motor bodily injury claims are for short-term whiplash-type injuries. In most of these claims (the typical claim is a rear-end shunt) liability is clear-cut and agreed.

Aviva does not believe that lawyers are needed in these straight-forward claims in order for the injured person to receive fast and fair compensation. In fact, data on the compensation paid to injury victims shows that Aviva paid out as much in these low value personal injury claims where the claimant came to us directly, as those where claimants used a solicitor.

However, 96% of low-level injury claimants used a personal injury lawyer or claims management company to make their claim against Aviva. Only 6% approached Aviva directly for compensation. Each of these claims where the injured party was represented will also attract legal costs which Aviva will have to pay in addition to the claimant's compensation.

Aviva is concerned that many motorists are unaware that since the demise of no-win, no-fee rules, claimant lawyers can take up to 25% of a claimant's compensation as a 'success fee'. This is a poor result for the injured person, who would otherwise get to keep 100% of their damages by going direct to the insurer.

And, even post-LASPO, legal costs stemming from these straight-forward claims remain high. For every £1 Aviva paid out in personal injury compensation last year, it paid another 77p to lawyers. Legal costs continue to inflate insurance premiums and the service provided in most cases is of negligible value to the injured party.

For every £1 Aviva paid out in personal injury compensation last year, it paid another 77p to lawyers

Problem 4: Third party referral fees and incentives

While the LAPSO Act banned personal injury referral fees, they are still commonly paid for replacement vehicles, repairs and recovery – typically £350 for replacement cars, £150 for repairs and £50 for vehicle recovery. Referral fees are paid in exchange for details about accidents so that the replacement hire firm, bodyshop or recovery agent can pick up the work associated with the claim.

This practice is the most ‘dysfunctional’ end of the market. Labelled the industry’s “dirty little secret” by Jack Straw MP several years ago, Aviva believes it is time to end the practice of backhanders in exchange for accident details.

This has led to bad practices such as the annoying text messages and intrusive phone calls from claims management companies that consumers are clearly fed up with. Just as bad, these referral fees add up to £200m to the cost of motor insurance and provide no tangible benefit to the customer. These fees line the pockets of companies who profit from motor claims at the expense of the premium-paying customer.

In its recent report (12 June 2014), the Competition and Markets Authority (CMA) sought to limit costs associated with replacement vehicles and vehicle repair. Aviva responded to the CMA’s market investigation making clear that we believe a ban on all referral fees is in the customers’ best interest. Aviva remains concerned that the wider referral fee ban is not amongst the provisional remedies and is an opportunity missed to reduce these fees which directly impact customer premiums. We have asked the CMA to implement a comprehensive ban on all referral fees in the motor insurance market.

Problem 5: Insurers are obliged to pay for bills they have no control over

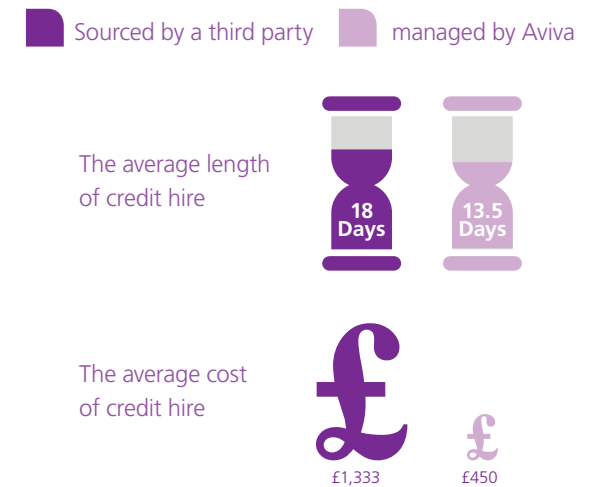
Much of the problem with the current motor claims process is that the insurer of the party who is at fault is responsible for paying the bills stemming from a claim. However, the ‘at fault’ insurer has no control over the costs incurred during the claim, including, for example, the cost of the replacement vehicle, repair and the referral fees mentioned above.

This drives distortions in how ‘fault’ versus ‘non-fault’ claims are handled, with ‘non-fault’ claims attracting extra costs that line the pockets of third parties, without providing recognisable (tangible?) value to the customer.

Simply put, a third party who is not responsible for paying the bill has no incentive to manage costs. There are numerous examples where claims management companies, credit hire operators and even insurers will use these non-fault claims as an opportunity to drive excessive profit out of a customer’s misfortune.

The recent proposed changes by the CMA did not fully address this issue. Aviva believes that if the market is to be fully reformed for the benefit of the customer, the systemic issues that are driving large-scale, extra costs into the motor claims process need to be tackled. The market – insurers, brokers, claims management companies, etc. – all need to shift their mindset to minimise costs for the benefit of all consumers.

For example, insurers have shown that they can manage the customer’s replacement car at a much lower rate than third party providers. Aviva looked at its own claims data relating to credit hire and found that:



Managing the replacement vehicle directly not only helps to control costs, but as shown here will get the customer back in their car sooner.

Aviva recently received a bill for over £100,000 on a single replacement car. Although Aviva was able to prove that this was fraud, this highlights the lack of control over hire costs which in turn can drive premiums up.

UK motorists could benefit from a £1.4 billion cut in motor insurance costs if poor motor claims practices were tackled.

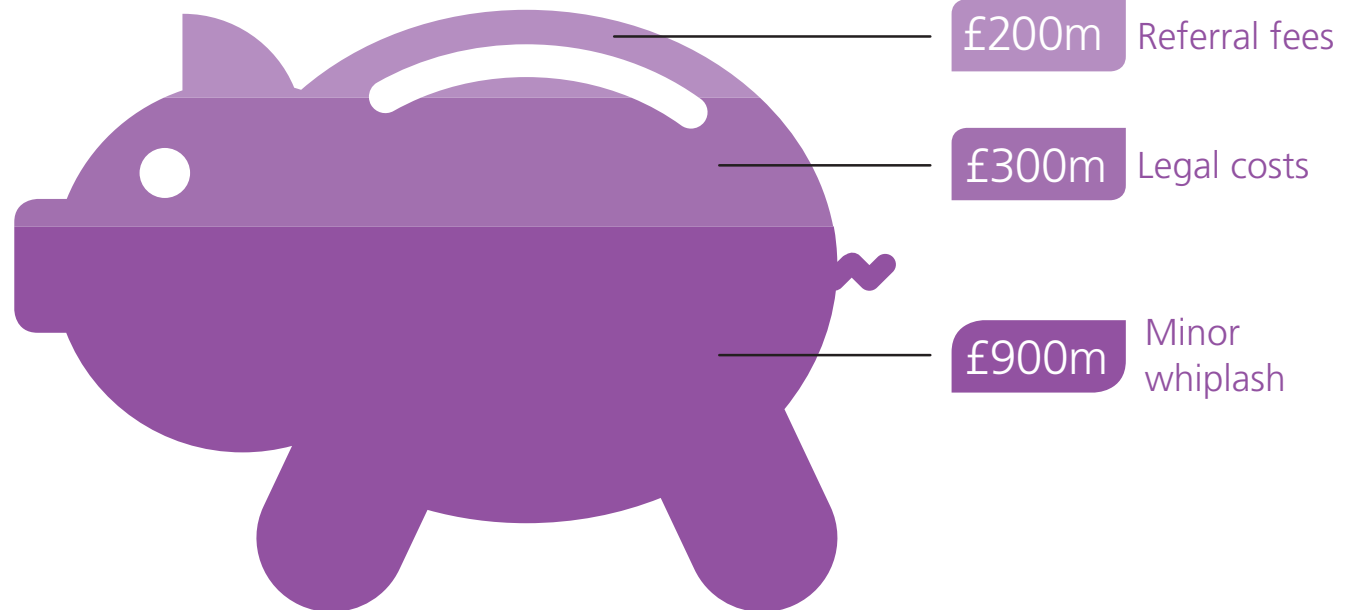
Aviva's three point plan to reform the motor claims system consists of:

Compensate minor, short-term personal injuries in road accidents with rehabilitation only - £900m

Restrict personal injury lawyers to cases where their expertise is needed by raising the small claims track limit to £5,000 - £300m

Comprehensive ban on referral fees - £200m

Industry savings
£1.4bn



Claims, compensation and consumers

To track motorists' views of personal injury (PI) claims in motor insurance a year on from the LASPO act, Aviva researched a representative sample of over 2,000 UK motorists, and compared the findings to previous research undertaken before these changes, in December 2012.

Key Findings

Drivers think that an excessive cash-compensation culture is getting worse

For short term injuries such as minor whiplash, only 3% of drivers thought no-one would seek compensation (down from 6% last year), whilst the vast majority (60%) think that more than half would claim for such an injury (up from 55%), and 12% think everyone would claim (up from 7%).

The claims process continues to be fuelled

In the past year 57% of UK drivers have received an unsolicited text, email or phone call from a claims management company encouraging them to make a claim for an accident that may not have even happened.

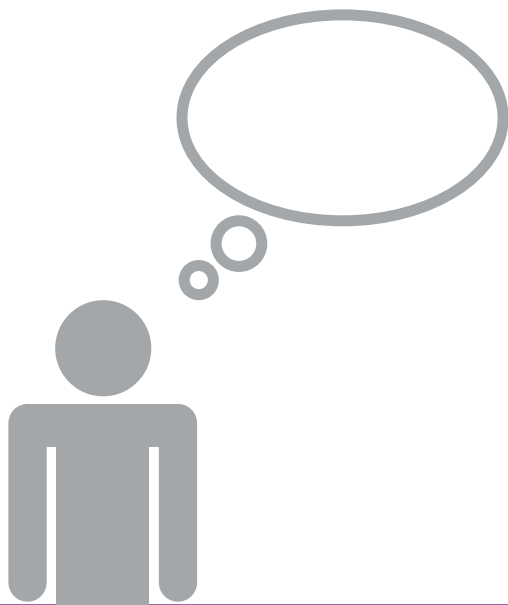
Drivers continue to vote for care, not cash compensation

Almost two thirds (64%) of UK drivers believe there should be no cash compensation in the case of minor injuries such as short-term whiplash.

However, this is down from 85% in 2013, suggesting further that compensation culture in the UK is getting worse despite last year's motor reforms.

Cynicism as to why motorists seek compensation continues

Almost half of drivers think people seek compensation to get the money to spend on whatever they want (47% down from 63% in 2013), while 40% say people do this because they think insurance companies can afford it (down from 55%).



(Source: All data from Opinion Matters survey of 2009 adults who drive, May 2014)

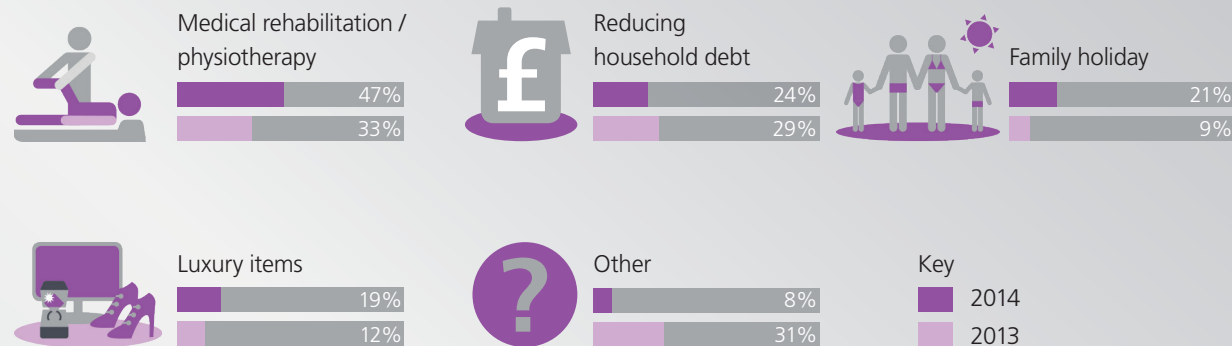
Personal Injury Claimants

Aviva surveyed 204 drivers who have made a PI claim to understand their experience and views:

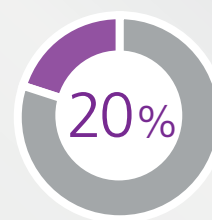
71% of drivers who have made a personal injury claim were encouraged to do so by someone else, up from 59% in 2013. People continue to be influenced by a range of sources to make a claim, but friends or family are playing a much larger role in encouraging or advising drivers to make a personal injury claim than in 2013, 47% were encouraged to make a claim by a family member in 2014, an increase of 18%. Meanwhile 43% were advised to do so by a friend, up by 15%.

Far fewer were encouraged to make a personal injury claim by their insurer (down from 37% to 23%) while the influence of personal injury lawyers seems relatively stable (down from 11% to 9%). A similar number (8%) were advised by a personal injury lawyer or CMC to make a claim.

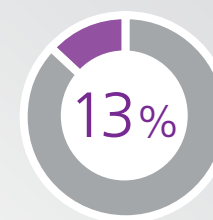
What they are spending their compensation on:



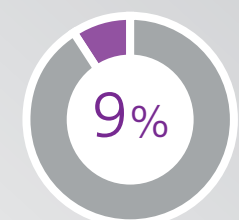
- Over half (55%) went through their insurer to make a personal injury claim, up from 47% in 2013.



- However, one in five (20%) still went through a personal injury lawyer, down slightly from 23% last year.



- 13% went through a broker compared to 8% in 2013.



- 9% went through a claims management company compared to 11% in 2013.

What should be changed?

Aviva's template for further change

Although 2013's motor reforms have been successful in helping to reduce motor insurance premiums for customers, more needs to be done if motor insurance customers are to benefit from real, long-lasting reductions in the price of motor insurance.

Based on the five problems outlined above that are increasing premiums and negatively affecting customers' claims, Aviva makes three key recommendations that we estimate could cut up to £1.4 billion from motor insurance premiums for customers. This would mean a saving of around £50 for every insured driver in the UK, or a reduction of around 14% on the latest reported market average premium of £358 (Q1 2014, ABI).

1. Whiplash: Provide care not cash

We are calling for a change in legislation so that minor, short-term whiplash claims are treated with rehabilitation instead of cash compensation. Insurers would arrange and pay for the customer's rehabilitation, regardless of fault.

Whiplash is the key area that continues to inflate motor insurance premiums despite the 2013 motor reforms. Whiplash costs the UK motorist around £2bn per year in insurance premiums and half of this is for minor injuries.

Aviva believes that in most instances of minor whiplash injury, a system of appropriate medical treatment or rehabilitation will be both effective for the injured parties and benefit all drivers through reducing costs, leading to cheaper motor premiums. Our report has already shown that 64% of consumers are in support of this method of compensation. Removing financial incentives

would also greatly reduce the number of fraudulent claims, such as crash for cash.

We welcome the introduction of independent medical panels later this year. We believe these will help call out potential fraud and will end the practice of insurers settling a claim without medical evidence. This important change which was brought in as part of the LASPO Act will help insurers, and ultimately policy holders, save around £70m in spurious and fraudulent claims.

Automatically compensating those with minor injuries with medical treatment rather than cash would save around £1bn each year. Taking into account an estimated cost of £100m to implement a rehabilitation facility operated and paid for by insurers, this would save £900m – a premium saving of around £32 for every driver.

Most insurers already have either a rehabilitation offer available to their customers or a health insurance arm that allows them to easily offer rehabilitation to their customers.



Aviva's Whiplash Treatment Scheme

Aviva has helped nearly 7,000 people recover from their injuries through its Whiplash Treatment Scheme. Originally a pilot launched in 2011, it now has facilities across the UK. It complies with the Rehabilitation Code of Conduct.

How it works:

- Applies to all not at fault unrepresented claims under £10,000.
- An Aviva handler makes an assessment in conversation with the claimant and offers rehabilitation.
- A full Immediate Needs Assessment Report is undertaken within 24 hours and the claimant has access to a web-based instruction portal. For 30% of people this addresses their needs.
- Contact with the claimant is by a trained physiotherapist with a clinical background.
- A DVD containing practical information about whiplash neck/back pain is sent to the claimant.
- Regular contact with the claimant is maintained and recovery targets set.
- More serious injuries are referred for specialist treatment.

2. Ban Referral Fees

Referral fees add a significant level of cost into motor claims, but from a customer's point of view, add nothing. They exist to incentivise claims, and demonstrate how third parties such as some claims management companies, view motor claims not as an opportunity to help the customer, but instead to profit at the customer's expense.

We believe that the referral fee ban on personal injury claims should be extended to all parts of the motor claims process. The focus in every motor claim should be on restoring the customer and their vehicle to the position they previously enjoyed – not on adding cost into the system that lines third parties pockets at the expense of the customer.

Banning referral fees will help save around £200m, or £7 off every motorist's premium. Moreover, customers will not notice any difference to how their claim is handled – referral fees add nothing but cost and so banning them removes this cost without affecting the customer's claims experience.

3. Raise the small claims track limit to £5,000

The threshold at which lawyers typically get involved in minor injury compensation claims - £1,000 - has not changed since 1999.

Aviva wants to see this threshold increase to £5,000. This is in the customer's interest for two reasons: first, the legal fees in these straight-forward cases can't be justified as Aviva's claims compensation data shows: we paid at least as much compensation to claimants who came to us directly, as to those who used a solicitor.

Second, many consumers are unaware that new rules allow lawyers to take up to 25% of a successful claimant's compensation. By coming direct to the at-fault insurer they can keep 100% of the compensation rewarded.

Raising the small claims track limit to £5,000 will save approximately £300m in legal costs annually, or £11 on the average premium.

What the financial benefits will be for drivers

Industry savings
Premium savings

£200m
/£7

Ban all existing
referral fees /
incentives



£300m/£11

Small claims
track limit



£900m/£32

Whiplash
(net savings for cost of
implementing rehabilitation care
not cash)



What consumers think should change

Aviva's consumer research of 2,000 drivers revealed:

Drivers support further claims cost reform

UK drivers are supportive of additional reforms to take cost out of the motor insurance system, with 44% saying definitely and 54% saying possibly depending on what the changes were.

Drivers want to tackle costs of claims intermediaries

95% would like to see tighter regulations on how claims management companies market their services, consistent with last year's findings.

Drivers want to clamp down on organised insurance fraud

Over two thirds (69%) of drivers agree there must be a clamp down on organised insurance fraud such as cash for crash operations. Over three-quarters (77%) believe there must be a clampdown on people purposely exaggerating claims to get compensation.

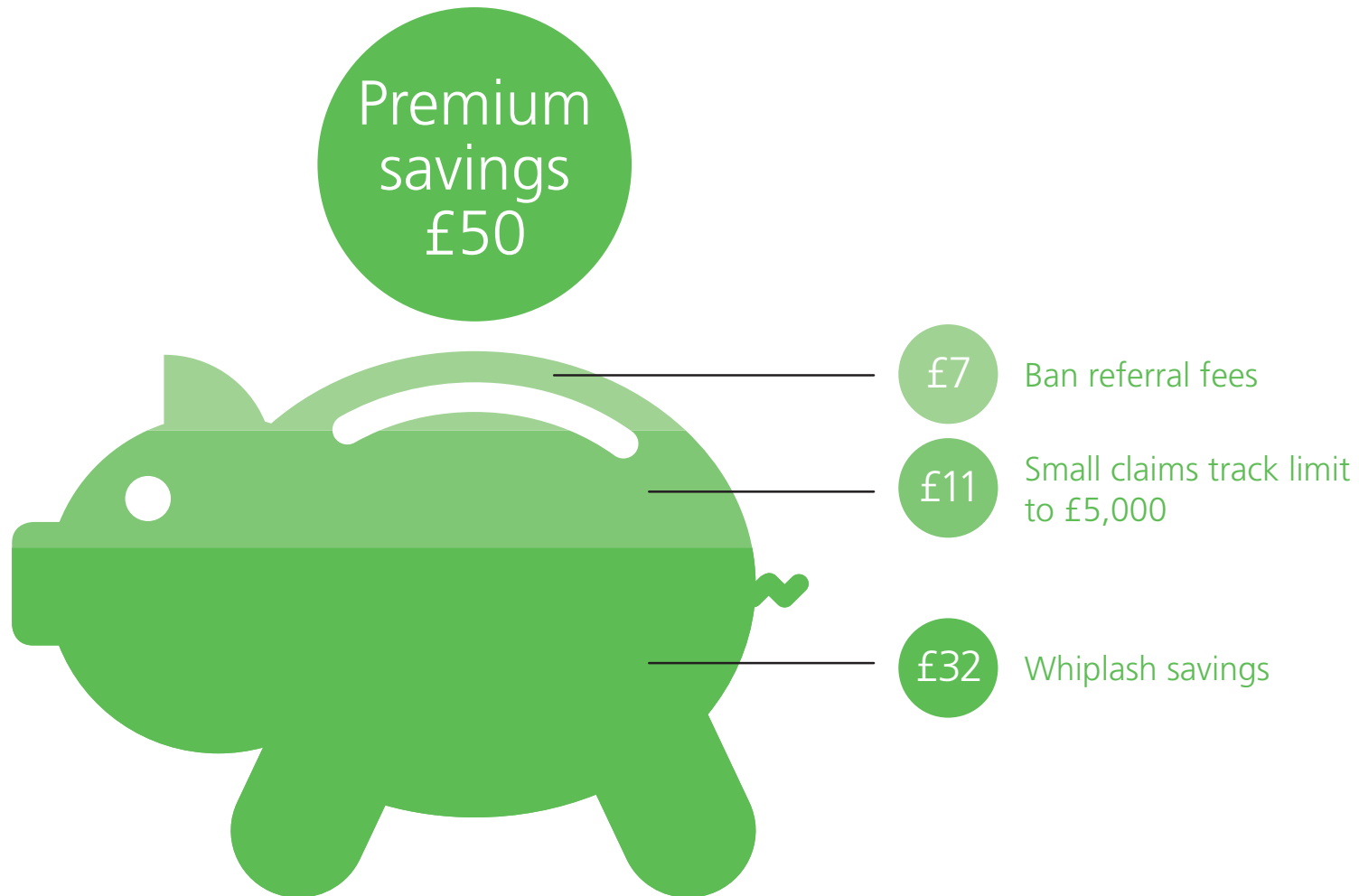
Drivers want to see care not cash compensation

When thinking about others seeking compensation for a minor whiplash injury after a car accident that was not their fault, 58% believe they should be given access to rehabilitation or physiotherapy to address the injury.

Drivers want stronger sentences for fraud convictions

There is strong support from the public for crash for cash convictions to attract stronger sentences. Two out of three (66%) respondents supported stronger sentences for convictions of motor injury fraud, while almost 9 in 10 (87%) felt custodial sentences sent the strongest message.

What the financial benefits will be for drivers



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