

The logo for Weightmans, featuring the name in white text on a dark teal, wavy rectangular background.

Weightmans

# An analysis of the UK personal injury market

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Market Affairs Group

February 2017

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## 1.0 Introduction

Weightmans LLP is a Top 45 law firm with extensive experience in the insurance claims field. Over recent years this market has undergone significant transformation and these changes have had a profound effect on claimant solicitors' firms and their business models resulting in market consolidation and domination by a relatively small number of large claimant firms.

In our first report published in July 2015 in conjunction with our Management Information and Business Intelligence teams, Weightmans' Market Affairs Group reported on their findings following an analysis of claims data from the Claims Portal ("Portal") and the Compensation Recovery Unit ("CRU") to identify trends within the various classes of claims to assist compensators with forecasting in terms of reserves and deployment of operational resources. A copy of that report can be found [here](#) where data analysed was for the period of 01 January 2011 to 31 March 2015.

Our second report, published in April 2016, analysed data for the period of 01 November 2013 to 31 October 2015 for CRU data and 01 November 2013 to 30 September 2015 for Portal data. In that report we also analysed the fluctuation in levels of general damages in the Portal so as to consider the potential impact of the proposed reforms announced in the Chancellor's Autumn Statement. A copy of our second report can be found [here](#).

This is the third edition of our report. Whilst we were intending to provide a full analysis of both CRU and Portal data as we had previously, our request to the Department of Work and Pensions under the Freedom of Information Act for an update to the CRU data was declined on the basis that *'due to unforeseen circumstances they no longer have the expertise in the Compensation Recovery Unit to produce robust data.'* This lack of expertise comes at a time when the Government is consulting on and considering the future of low value personal injury claims and the inability to produce robust data must be a concern and perhaps one that would be damaging if it was picked up by the Claimant lobby.

Accordingly, the analysis contained within this report is limited to the data which is freely available from the Claims Portal only and covering a two year period from 01 January 2015 to 31 December 2016. Our analysis of the Portal data has been considered in conjunction with the proposals contained within the Ministry of Justice's consultation on Reforming the Soft Tissue Injury ('Whiplash) Claims Process.

Given the recent whiplash consultation we have also included the FOIL and APIL responses in respect of the key aspects of the consultation.

## 2.0 Analysis and methodology

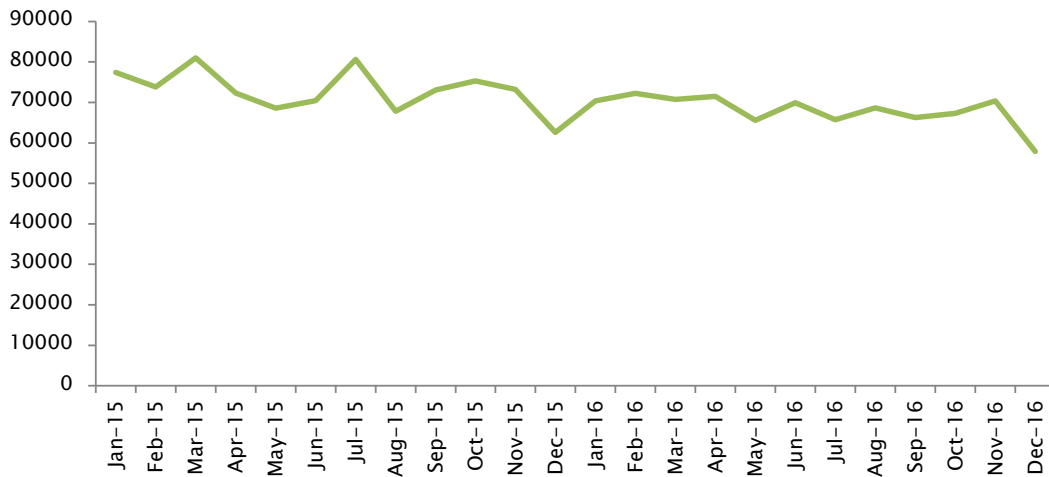
As part of this process we have analysed the Portal data as follows:

- Data accessed from the Claims Portal website covering the period 01 January 2015- 31 December 2016.
- The Claims Portal data does not provide a breakdown of disease type on disease claims. In the absence of having CRU data we have not been able to carry out an analysis relating to disease types.
- Data in relation to “Settlements” is limited to the count of Stage 2 Settlement Packs where agreement has been reached during each monthly period. The Portal data does not provide details of the outcomes of claims that have exited the Portal and therefore repudiation rates cannot be calculated from this data.

## 3.0 The UK personal injury market

### Motor (RTA)

#### Number of CNFs submitted to the Portal

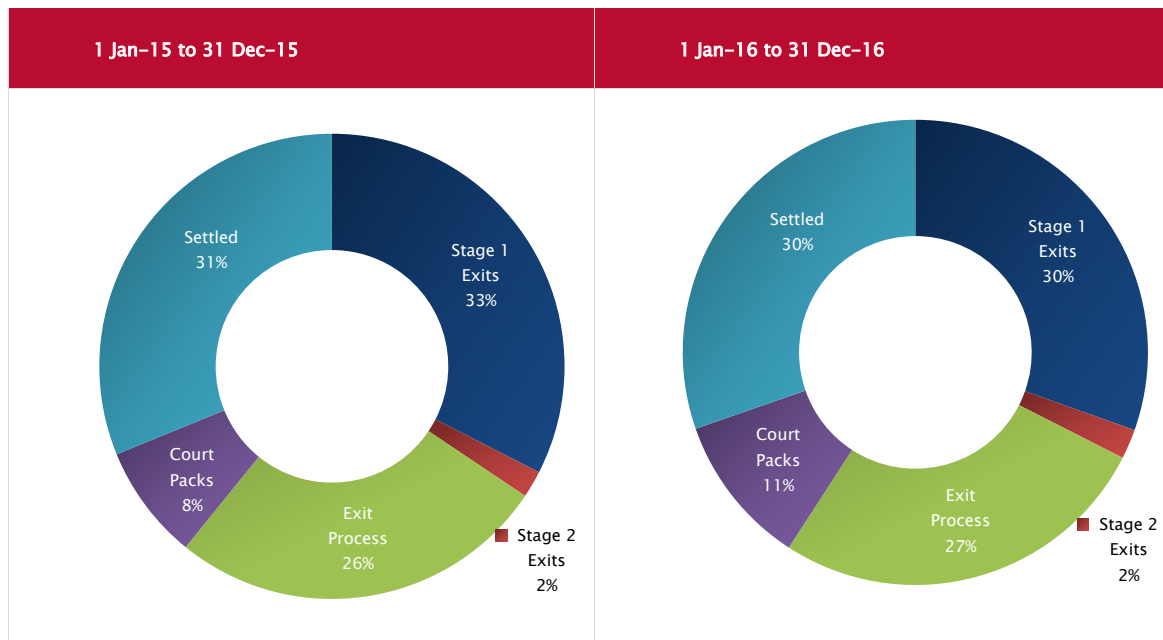


	1 Jan-15 to 31 Dec-15	1 Jan-16 to 31 Dec-16
No. of CNFs	876,214	816,722

- RTA claim numbers for 2016 have decreased by 6.78%.
- Our Head of Motor, Chris Ball, comments that the market has regularly voiced concern that whilst the volumes of accidents were reducing, the volumes of injury claims were increasing. Explanations for this unusual trend were mooted as being an increase in spurious claims, aggressive claims farming, and duplicate claims. We also saw the inevitable spikes in claims volumes just prior to the introduction of rule changes in 2013 designed to reduce the recoverable costs. What is perhaps surprising are the reductions in EL/PL and disease claims which could indicate that the anticipated migration from RTA claims to other classes of claim has not occurred, or at least not to the extent that was perhaps feared.
- Whilst dysfunctional behaviours remain very much a daily issue for defendants, the reduction in claims volumes, whilst modest, could indicate that we are starting to see a positive impact of the LASPO changes. The proposed whiplash and small claims track reforms may well see claims volumes decline further. However, we are likely to see a spike in claims volumes immediately prior to the introduction of any new claims regime.

## 3.0 The UK personal injury market

### Exits and Settlements



- Exits and settlements – there is very little difference between the 2015 exits and settlements when compared against the 2016 numbers. The RTA Portal has now been operational for over six years and the data seems to suggest that it is now not only embedded, but that the measures put in place to deal with dysfunctional behaviour have perhaps had the desired effect.

## 3.0 The UK personal injury market

### Average Damages Paid



	1 Jan-15 to 31 Dec-15	1 Jan-16 to 31 Dec-16
Average Damages Paid	£2,586	£2,673

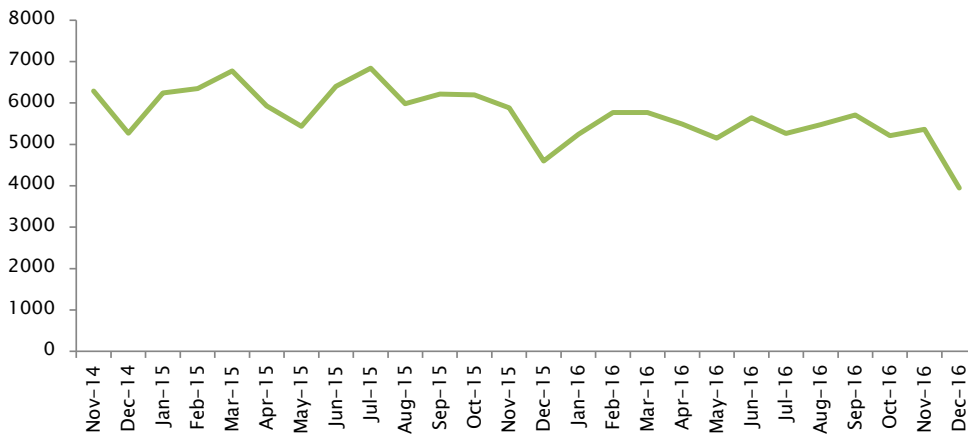
- There has been an increase of 3.36% in general damages in 2016 from £2,586 to £2,673. In our previous report we highlighted that from 2011 to the end of 2014 there was a 35.54% increase in average general damages. Accordingly, there appears to have been something of a brake put on the increase last year.
- The increase in general damages over the previous three years has been 6.62% (01 November 2013 – 31 December 2016) which seems to suggest that:
  - the majority of the increases which have taken place in previous years were as a result of the corresponding increases to the Judicial College Guidelines (“JCG”) on general damages as well as;
  - the 10% uplift introduced by LASPO to compensate for the removal of the ability to recover success fees and ATE premiums from defendants;
  - it is noteworthy that the level of increase in previous years outstrips inflation.

The proposed introduction of a tariff system in respect of general damages would undoubtedly result in a significant reduction in average general damages in the future. A tariff based system would be more transparent and readily understood by litigants in person, whilst at the same time removing the inflationary involvement of the judiciary in determining levels of damages in pre-litigation matters. The portal figures reflect increases in the JCG which are produced by reference to awards that have been and are being made by the courts in other cases. This goes to the heart of what drives the inflation behind the figures and is the reason why cutting the judiciary out of the equation should help to halt the upward trend. The tariffs will presumably be subject to future review but that is likely to be a more considered, collaborative and controlled process as opposed to the current ‘damages creep’.

## 3.0 The UK personal injury market

### Public liability (PL)

#### Number of CNFs submitted to the Portal



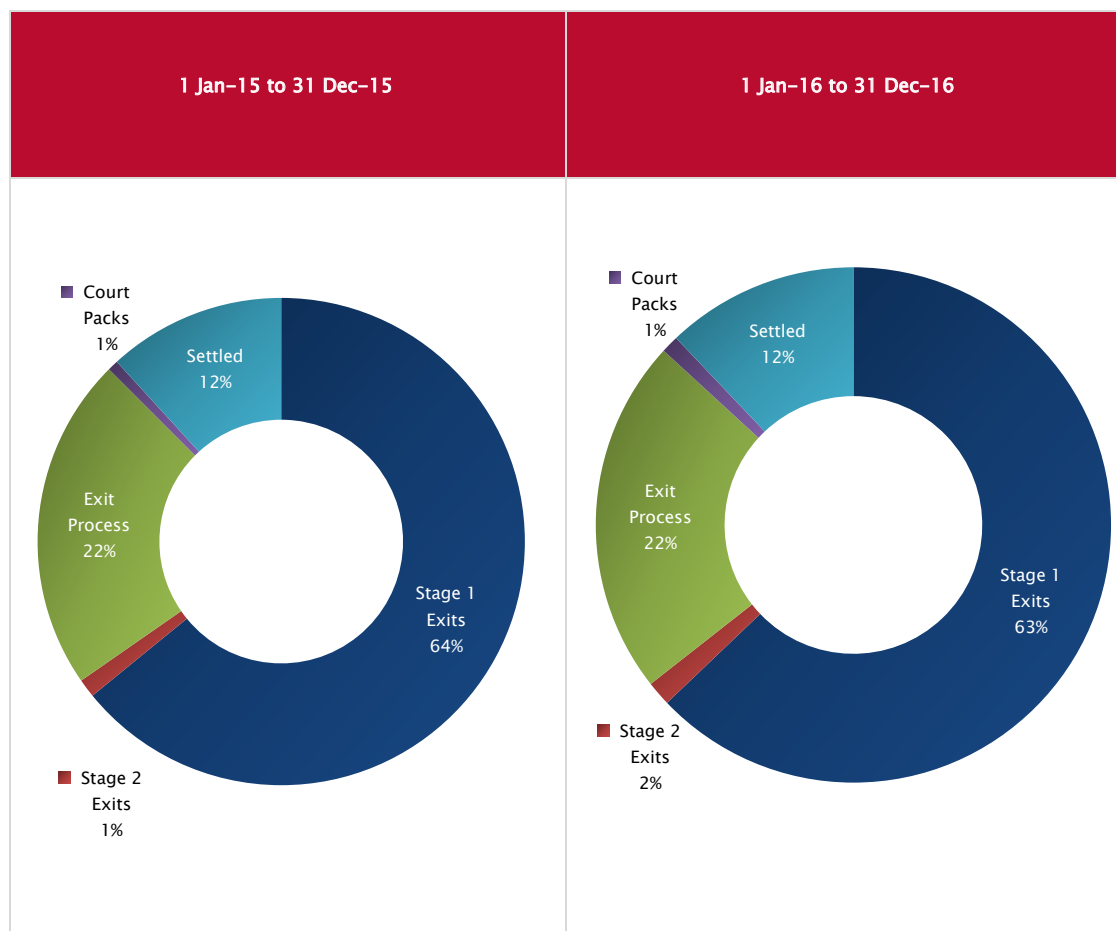
	1 Jan-15 to 31 Dec-15	1 Jan-16 to 31 Dec-16
No. of CNFs	72,846	64,030

- PL claim numbers for 2016 have decreased by 12.10%.
- Our Head of Casualty Claims, Peter Forshaw, comments that the fall in PL claims and the bigger percentage of claims exiting the Portal in PL cases mirrors the anecdotal evidence from clients. However, he notes that the sharper decline in PL than EL is surprising. Either claims volumes are more static but not going through Portal (due to value hike, numerous tortfeasors, etc.) or what is more likely is that there are simply fewer cases. To some extent we may be seeing a levelling off of claims since the raised profile of the Portal's introduction. It may also be the case that the wave of key authorities in recent years dealing with PL accidents, particularly in the field of Occupiers Liability, in light of the relatively low defence threshold, could be acting as a deterrent. With a lower cost attraction, single defendant PL claims against a defendant who can demonstrate some sort of prevention or inspection system being in place are likely to be less attractive profit hubs for claimant lawyers.



## 3.0 The UK personal injury market

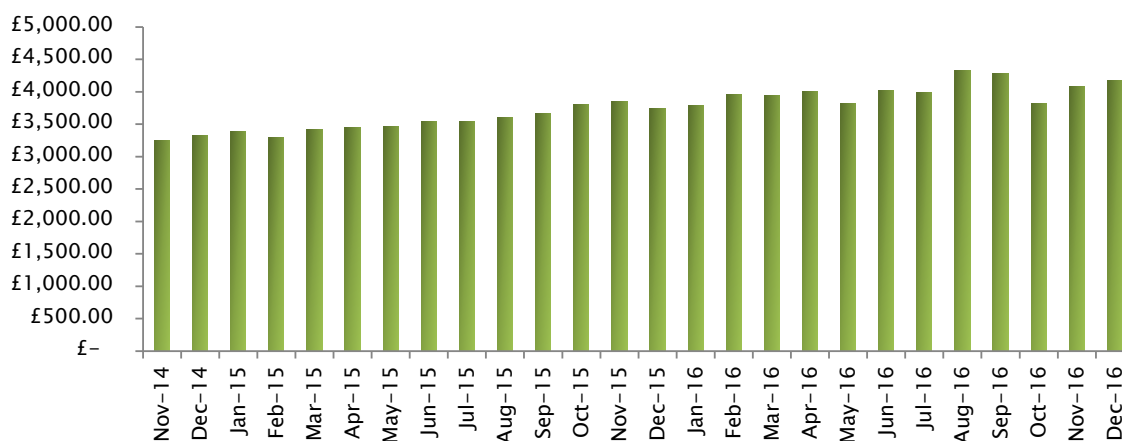
### Exits & Settlements



- Exits and settlements- in percentage terms there is very little difference between the 2015 exits and settlements when compared against the 2016 numbers.
- The higher percentage of portal exits in PL rather than EL is not surprising. There appears greater appetite on the part of defendants to allow a case to exit, perhaps due to an inability to investigate (which we see regularly) or the greater prospects of maintaining either an outright defence or a defence which blames someone else.

### 3.0 The UK personal injury market

#### Average Damages Paid



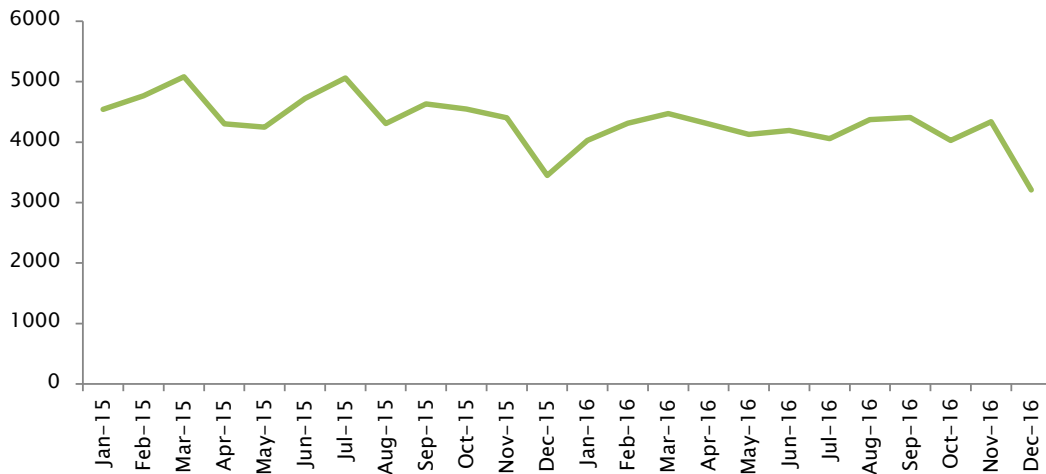
	1 Jan-15 to 31 Dec-15	1 Jan-16 to 31 Dec-16
Average Damages Paid	£3,587	£3,946

- There has been an increase of 10.08% in general damages in 2016 from £3,587 to £3,946. In our previous report we observed a significant increase in general damages from 2014 to 2015 (27.05%). This increase continues, but is lower than previous years. This suggests that with the data pool volumes increasing, we are now getting a much more accurate picture and perhaps what we are starting to see is the beginning of a levelling off in respect of general damages as and when the more complex claims are settled.

## 3.0 The UK personal injury market

### Employers' liability (accident) (EL)

#### Number of CNFs submitted to the Portal

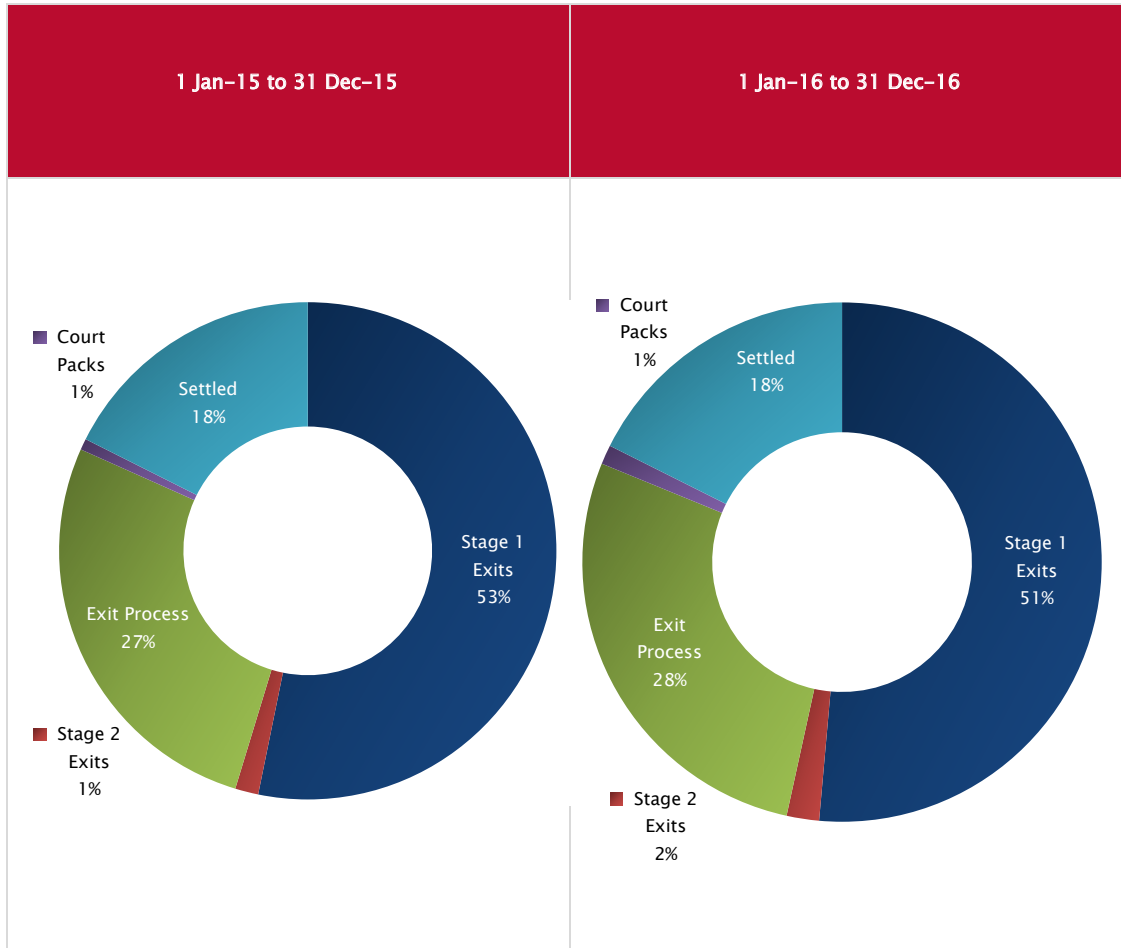


	1 Jan-15 to 31 Dec-15	1 Jan-16 to 31 Dec-16
No. of CNFs	54,062	49,859

- EL claim numbers for 2016 have decreased by 7.77%.
- Peter Forshaw comments that the decline in both EL and PL portal claims mirrors wider anecdotal reports of a reduction in claims intimations generally over the past year or two. The reduction in EL claims is probably more obvious, as traditional industries like manufacturing (and other manual occupations where claims volumes would often be higher) have declined, and as organisations' general health and safety records improve we have seen a reduction in incident volumes. This is supported by HSE data which shows a generally safer British Industry over the past few years. This is particularly so given the rise in mechanisation and less human interaction in the workplace. Unlike disease where there has been intense focus by the claimant community to target claims, there has been little obvious activity in the EL accident space to try and fill the voids created.

## 3.0 The UK personal injury market

### Exits & Settlements



- Exits and settlements – in percentage terms there is again very little difference between the 2015 exits and settlements when compared with the 2016 data.
- The percentage exiting the Portal being lower in EL rather than PL is not too surprising. There seems to be a greater drive by defendants in EL claims to preserve the benefits of keeping cases within the Portal wherever possible and certainly unless there are very high prospects of a successful outright defence, very high contributory negligence or guaranteed contributory negligence on claims at the upper threshold which means the likely reduction outweighs the increased costs of exiting, EL claims seem to remain within the Portal.

## 3.0 The UK personal injury market

### Average Damages Paid



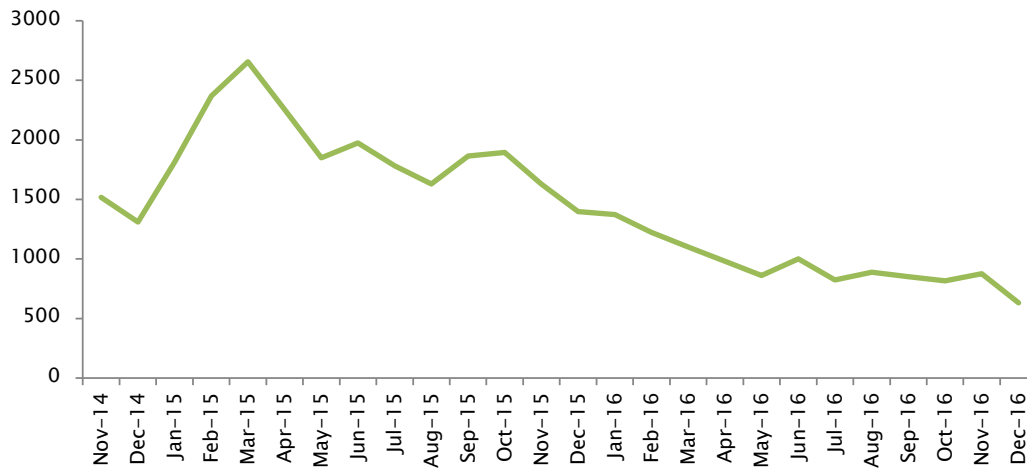
	1 Jan-15 to 31 Dec-15	1 Jan-16 to 31 Dec-16
Average Damages Paid	£3,569	£3,994

- There has been an increase of 11.90% in general damages in 2016 from £3,569 to £3,994. In our previous report we observed a significant increase in general damages from 2014 to 2015 (26.75%). Whilst we have seen an increase again this year, this has been at a lower rate than in previous years. This could indicate that with the data pool volumes increasing we are starting to get an accurate picture and, as with PL claims, what we are starting to see is the beginning of a levelling off in respect of general damages.

## 3.0 The UK personal injury market

### Disease

#### Number of CNFs submitted to the Portal



	1 Jan-15 to 31 Dec-15	1 Jan-16 to 31 Dec-16
No. of CNFs	23,113	11,423

- In the absence of CRU data we have been unable to analyse disease types, however, on the basis of Portal data, disease claim numbers for 2016 have decreased by 50.57%. This is perhaps indicative of the substantial decline in NIHL notifications.
- Our Head of Disease, Jim Byard, comments that whilst accepting Portal Disease Claims are restricted to those of fast track value and limited to single defendant cases, this decline in disease Portal claims is also representative of the wider decline seen with NIHL cases, which have been for several years the most prevalent disease claims intimated to the market. Whilst final figures have yet to be collated by the Insurance Actuarial Deafness Working Party, it is estimated that the market received 40,000 to 45,000 NIHL notifications in 2016 compared to approximately 85,000 notifications in 2015. The reasons behind this are multi factorial but include:

  - A “crackdown” on claims management companies and “cold calling”**  
The continued government focus on CMC marketing activities and in particular on nuisance or “cold calling”, which has brokered many claims in recent years, has exerted a downward pressure on volumes.

## 3.0 The UK personal injury market

- **The high “Nil” settlement rate**  
The inability of claimant law firms to convert NIHL claims into cash has led several leading players either to diversify their business models into different areas outside NIHL and in some instances to relinquish their attachment to NIHL claims.
- **Exhaustion by claim**  
Commentators views vary on the size of the pool of potential NIHL claimants which currently remains (those exposed historically to noise in breach of duty but have not yet claimed) but there are signs through the increasing prevalence of ‘low loss’ claims that this pool may be exhausting.
- **The existence of “softer targets”**  
NIHL claims remain difficult to prove on all grounds – limitation, breach of duty and medical causation. Additionally, claimant law firms also face an insurance market which is essentially well marshalled to defend such claims. “Softer” targets do exist – whether this is for claims for flight delays, travel sickness, financial mis-selling or vehicle emission failures.
- **The lack of a “significant” player**  
High NIHL settlement rates have meant that no one firm can claim to have significantly influenced the market in financial terms with some becoming increasingly detached from NIHL claims handling.

## 3.0 The UK personal injury market

### Exits & Settlements

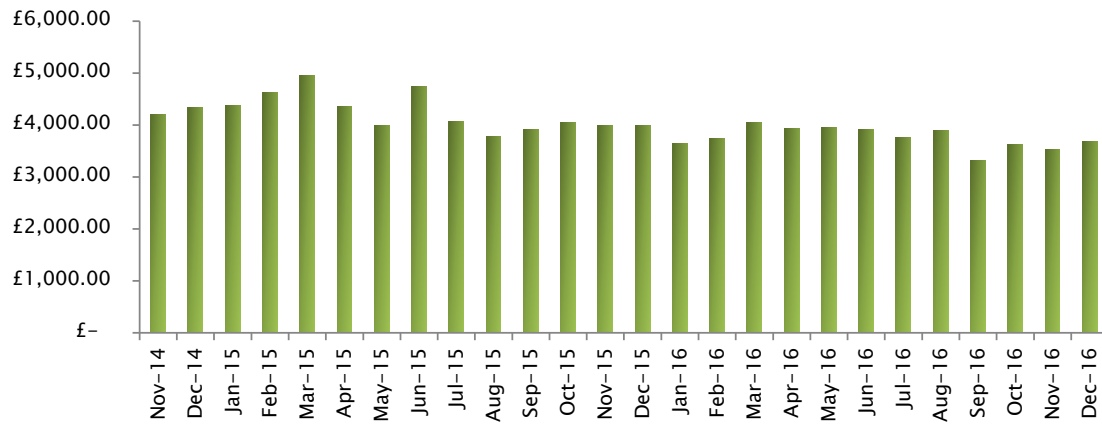


- Exits and settlements – the percentage of claims exiting the process at stage 2 (as a proportion of all claims) has increased. Whilst we can't go behind the data to understand the reason for the increase, it is our view that this could be evidence of anecdotal reports that claims management companies are now trawling the claims pool looking for quick wins. The result of this is an increase in unmeritorious claims being presented.



## 3.0 The UK personal injury market

### Average Damages Paid



	1 Jan-15 to 31 Dec-15	1 Jan-16 to 31 Dec-16
Average Damages Paid	£4,215	£3,760

- The decrease in general damages has continued and in 2016 there was a decrease of 10.79% from £4,215 to £3,760.

## 3.0 The UK personal injury market

### Reform

There are no signs of reform slowing down and the market continues to go through unprecedented change. Whilst Brexit has the potential to slow down anything demanding primary legislation, the Briggs reforms and the changes required to bring about the proposed whiplash reforms are likely to be covered in the imminent Courts and Prisons Bill and therefore unlikely to be slowed by Brexit.

The latest consultation, Reforming the Soft Tissue Injury ('Whiplash) Claims Process, closed on the 6 January 2017 with the outcome awaited by 7 April 2017, although the Courts and Prisons Bill referred to above is expected imminently.

What is clear is that the Government is committed to reform in one shape or another with additional activity expected in respect of:

- Lord Justice Jackson's recommendations to increase fixed fees to £250,000;
- Lord Justice Briggs' recommendations in respect of an on line court;
- Fixed fees in clinical negligence claims and
- Review of the discount rate
  - What is probably upmost in the minds of insurers is what will happen to the discount rate. A link to our update on the review of the discount rate can be found [here](#). As we know the ABI was unsuccessful in its legal challenge (and subsequently was refused permission to appeal) against the Lord Chancellor to review the discount rate for personal injury claims.
  - A decision is expected sometime in February 2017.

The challenge for the market is to make sense not only of the pace of reform, but also how to formulate a strategy that is coherent and relevant given the number of concurrent but separate (unlinked) proposals that are on the table. There is a risk, just like there was with LASPO, that if the proposals are not considered as a package of reform, or implemented in a systematic way, it will become an operational nightmare for the market with unintended consequences such as CMC's gaining a significantly increased share of the market or insurers not being able to deal with the demands of litigants in person leading to an increase in operational expenditure, to name a few. Further details of the impact of the whiplash reforms are discussed below.

## 4.0 An analysis of the whiplash reforms

One could be forgiven for wanting ringside seats to witness the arguments as they unfold between claimant and defendant stakeholders on what must be one of the most debated topics that the market has seen in a very long time, with both sides having such opposing views.

We have applied the data to the proposed reforms to look at potential impacts and outcomes. We have broken down the consultation into 3 key areas for consideration:

1. Whiplash (soft tissue injuries);
2. Small Claims Track; and
3. Ancillary matters

Whilst there are a number of stakeholders, we have documented the APIL executive summary and condensed the FOIL consultation responses to understand where both stand in respect of the various proposals.

### 4.1 Whiplash (soft tissue injuries)

The consultation focused on RTA soft tissue injury claims and in particular, an expansion of the definition of soft tissue injury. It also considered;

- the removal of the right for cash compensation for minor soft tissue injury claims; the introduction of a set amount of damages for those soft tissue injuries determined to be minor;
- the introduction of a tariff for soft tissue injuries up to 24 months in duration.

In the event that general damages are abolished or a tariff system is introduced, insurers are likely to see significant savings in terms of their overall indemnity spend. The consultation makes proposals in respect of minor soft tissue injury claims (defined as being injuries up to either 6 months or 9 months in duration) and soft tissue injuries in excess of the minor duration and up to 24 months duration. To understand the potential financial impact we need to understand the value of such injuries today. The current weighted median compensation payment for PSLA as contained within the whiplash consultation sets out the following:

<b>Injury Duration</b>	<b>Weighted Median Value (£) (excluding psych)</b>	<b>Proposed Tariff (£) (excluding psych)</b>	<b>Saving per claim (£)</b>
0-6 months	1,750	400	1,350
7-9 months	2,400	700	1,700
10-12 months	2,950	1,100	1,850
13-15 months	3,300	1,700	1,600
16-18 months	3,750	2,500	1,250
19 - 24 months	4,350	3,500	850

## 4.0 An analysis of the whiplash reforms

Commentators have voiced concern with the fact that the consultation used the outdated 12th edition of the Judicial College Guidelines, as opposed to the 13th edition which was in publication at the time the consultation was issued. Accordingly, we have chosen the Weighted Median Value, also utilised in the consultation document, as a more realistic and perhaps accurate valuation.

FOIL	APIL
<ul style="list-style-type: none"> <li>▪ Supports the reduction of damages for low value claims and prefers a modest award over an outright removal of compensation for minor whiplash claims.</li> <li>▪ Suggests that injuries where symptoms do not last beyond 7 days in duration should receive no compensation.</li> <li>▪ Supports the introduction of a tariff system for those injuries up to 24 months in duration.</li> <li>▪ There should be no additional sum for psychological injuries as this would encourage psychological claims to be pursued when they might not be otherwise.</li> <li>▪ Any judicial uplift must also address the circumstances in which the uplift is to be applied. Simply applying uplift to “exceptional” cases is insufficient.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Removal of general damages for all “minor” RTA soft tissue injury claims is unlawful.</li> <li>▪ It is also a vastly disproportionate action to take to justify the aim of reducing the cost and number of these claims. People who have been needlessly injured by the negligence of others should be entitled to full and fair compensation, a principle which is enshrined in common law.</li> <li>▪ There are more proportionate measures to tackle fraudulent claims than introducing a fixed sum of compensation including the banning of pre-medical offers and prohibition of cold calls by claims management companies.</li> <li>▪ A £25 additional payment for the psychological element of a “minor” claim is derisory, has no logical basis, and is insulting to an injured person.</li> <li>▪ If the proposal were introduced, a person would be able to claim more for the inconvenience of a train delayed for 30 minutes than they would for weeks of travel anxiety caused by the negligence of another.</li> <li>▪ There must be judicial discretion in awards. A tariff approach to damages which is based solely on the duration of an injury will lead to under-compensation because:             <ul style="list-style-type: none"> <li>▪ This method fails to take into account the impact that the injury has had on that specific individual. A mother may be unable to pick up her child, or a plasterer may be unable to carry his load. Failure to take into account the true impact of the injury will inevitably lead to under compensation.</li> <li>▪ Tariff systems rarely take account of the full extent of an injury.</li> </ul> </li> </ul>

## 4.0 An analysis of the whiplash reforms

### 4.2 Small Claims Track (“SCT”)

The consultation focused on:

- increasing the SCT to £5,000 across all injury classes, or alternatively limited to RTA claims; and
- increasing the SCT beyond £5,000.

If we consider the proposals to increase the SCT in isolation, there is no immediate impact in terms of recovery of general damages, but there will be a significant reduction in recoverable legal costs.

Since 2010, RTA claims (and subsequently other claims classes) with a value of up to £25,000 (£10,000 initially) have been administered through the Claims Portal. Taking into account the average general damages as set out above in our Portal analysis section, it is not difficult to imagine a scenario where almost all claims brought within the Claims Portal would fall within the proposed new SCT limit. Accordingly, applying current SCT rules, all of those claims would not attract recoverable costs.

In terms of cost savings, looking only at those claims which reportedly settle within the Portal for the period of January to December 2016, we would estimate potential savings as per the below:

Claims Class	No Settled Claims	Fixed Portal costs (£)	Savings (£)
Motor	200,816	500.00	100,408,000
EL	8,174	900.00	7,356,600
PL	7,399	900.00	6,659,100
Disease	875	900.00	787,500

The above calculations are of course working on the basis that SCT claims do not attract costs unless litigated. Looking at the potential litigation rate for motor claims as an example, 10% of all claims submitted to the Portal resulted in a Court Proceedings Pack being issued. Whilst this doesn't necessarily translate into actual litigated claims, it does give an insight as to the potential savings available given the small proportion that actually go to stage 3.

As it stands, if the SCT is increased as proposed, there is a need to ensure that the Claims Portals and the low value protocols are revisited to ensure that these claims continue to be brought through the tried and tested Claims Portal. This is essential to also allow litigants in person to bring their claims in a world where legal representation may be difficult to acquire. In the event that the rules are amended to allow these claims to continue to be brought through the Portal, the Portal fixed costs will need to be amended to reflect the SCT regime. What is also worthy of note is that Briggs LJ has repeatedly commented that personal injury claims are outside the scope of the on-line court. However, he also commented that he would be minded to review this position in the event that the SCT was increased.

## 4.0 An analysis of the whiplash reforms

With legal costs no longer being recoverable in those claims falling within the proposed new SCT limit, claimants will undoubtedly need to share their general damages in order to acquire legal representation.

What is clear is that the increase in the SCT limit cannot be considered in isolation and must be part of a package of reforms to include:

- the introduction of a tariff system;
- robust regulation on potential new entrants, e.g. CMCs;
- measures to protect litigants in person.

<b>FOIL</b>	<b>APIL</b>
<ul style="list-style-type: none"> <li>▪ The SCT limit should be increased to £5,000 but the increase should be limited to RTA claims at this stage.</li> <li>▪ FOIL endorses the Government's reservations that EL, PL, and clinical negligence claims are likely to be more complex than RTA claims.</li> <li>▪ EL and PL claims handled within the SCT would make it harder for insurers to get information from litigants in person ("LIPs") without the kind of detailed stage 1 process envisaged by LJ Briggs for the on-line court.</li> <li>▪ The lack of information could force defendants to settle claims in the Portal that they would otherwise have fought, the knock on effect could be that EL and PL claims are seen as a "soft touch" encouraging claims displacement from RTA.</li> <li>▪ RTA claims should continue to be dealt with through the Portal regardless of whether they become small claims track matters.</li> <li>▪ The RTA Claims Portal can be amended so that it is accessible to LIPs where as amendments to the EL and PL Portal for accessibility by LIPs would be difficult. The introduction of a low cost process for PL claims, in particular, may be undermined by concerns around increased fraud, the difficulty in investigating claims brought by LIPs and a lower repudiation rate, reducing the potential for costs savings.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The small claims limit should not be increased. An increase to £5,000 or above would severely restrict access to justice for genuine claimants, but would not stop fraud.</li> <li>▪ Genuine claimants would be deterred by a daunting claims process and prospect of having to run a claim without legal representation against an experienced and knowledgeable insurer who will be legally represented. There are complexities in personal injury claims that are not common to other types of claims in the Small Claims Court. Unrepresented claimants may also be deterred by upfront costs that would ordinarily be initially paid by their solicitor.</li> <li>▪ Even if people do decide to run a claim, there will be a risk of under-compensation.</li> <li>▪ There will also be unintended consequences such as:             <ul style="list-style-type: none"> <li>▪ Courts inundated with claims that would have been dealt with efficiently under the portal system. Delays and increased workload would be further exacerbated by the increase in LIPs.</li> <li>▪ A rise in unmeritorious claims.</li> <li>▪ A failure to reduce fraud due to a rise in cold calling by Claims Management Companies.</li> <li>▪ The practices of Claims Management Companies need tackling. The Government should consider criminal sanctions directly against the directors of a CMC should they be found in</li> </ul> </li> </ul>

## 4.0 An analysis of the whiplash reforms

<ul style="list-style-type: none"> <li>▪ The on-line court could prove to be an alternative to the current claims portal, or a mechanism for those that drop out of the current portal.</li> <li>▪ FOIL is concerned at the evolution of the McKenzie Friend from an informal lay friend to a semi-professional service.</li> </ul>	<p>breach of the regulations.</p> <ul style="list-style-type: none"> <li>▪ Fee charging McKenzie Friends should be banned. Evidence from family cases highlights the dangers of McKenzie Friends exploiting the vulnerable for their own agenda, charging for services that the McKenzie Friend cannot even provide, and giving advice that the client wants to hear but that is not necessarily true.</li> </ul>
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### 4.3 Ancillary matters

The consultation focused on:

- a ban on premedical offers across the board or just limited to RTA claims;
- credit hire proposals;
- early notification of injury;
- rehabilitation proposals;
- recoverability of disbursements.

#### 4.3.1 – A ban on pre-medical offers

The consultation document suggests that there is evidence that approximately 10% of all RTA claims (in excess of 50,000 cases) are currently settled by way of a pre-medical offer. If one of the Government’s objectives is to tackle the issue of fraud, it seems sensible to consider the viability of premedical offers and the impact that this may have on fraud.

Whilst there are arguably some benefits in insurers retaining the ability to make pre-medical offers, particularly through enabling obviously genuine and low value cases to be dealt with quickly, we also understand the dysfunctional behaviours that this can lead to. Such behaviours are more prevalent in RTA matters but do exist in other classes of claim.

FOIL	APIL
<ul style="list-style-type: none"> <li>▪ Insurers only make pre-medical offers because the quality of the medical evidence they receive is not good enough.</li> <li>▪ MedCo has made the medical evidence process much more robust.</li> <li>▪ A ban on pre-medical offers should be limited to RTA matters as supported by the Insurance Fraud Taskforce.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There should be a ban on pre-medical offers in all personal injury cases.</li> <li>▪ These offers create an environment of easy money, allowing fraudulent claims to be settled without the necessary checks and balances.</li> <li>▪ There is also a risk of under compensation for the claimant, as they settle without knowing the full extent of their injuries.</li> </ul>

## 4.0 An analysis of the whiplash reforms

- The ban should be policed by the Financial Conduct Authority (FCA), and there should be a significant monetary fine for those insurers that do not comply.

### 4.3.2 – Credit hire

Whilst different models are proposed to tackle the issue of credit hire, and the increasing issues relating to fraud and spiraling costs, we feel that a different model is the way forward:

#### The Non-Fault Time Limited Model

In our response to the MOJ consultation on whiplash reform, we suggested that in the event of an accident the innocent third party should be obliged to approach the insurer of the at fault party to give them the opportunity to provide a hire vehicle. If the insurer cannot provide an appropriate hire vehicle within a set period of time, for example 48 hours, the innocent third party would then be at liberty to approach a credit hire organisation to obtain a hire vehicle. That credit hire organisation would be required to check with the at fault insurer that they have been given the opportunity to provide a hire vehicle and that the set timescale has actually expired. In the event that the at fault insurer has not been provided with the opportunity to provide hire, the claimant, who may well be acting in person, should be referred to the insurer to allow them the opportunity to provide hire.

Additionally, we have suggested that credit hire should be brought within the regulatory regime of CMCs with capped hire rates per vehicle, and a coherent set of rules to which the hire organisation must adhere to or else face action from the regulator in the event of a breach. This would allow insurers to provide a real service to innocent third parties and keep them mobile at a fraction of the current cost. It would also ensure that credit hire organisations remain available in the event that an insurer's supply chain is unable to source an appropriate vehicle in time and go some way to stamp out the cost building exhibited by some credit hire organisations.

FOIL	APIL
<ul style="list-style-type: none"> <li>▪ Credit hire remains an area of high claims in terms of volume and quantum.</li> <li>▪ The CMA failed to find a remedy to the issue and the GTA is an imperfect solution.</li> <li>▪ The situation can be remedied by earlier notification, an extension of fixed costs to credit hire and credit repair matters, a pre-action protocol for credit hire claims, a reduced limitation period for credit hire claims of three years, and an increase in the fast track limits to £50k – £100k for credit hire claims.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Credit hire is an area that must be examined if the Government is serious about reducing costs in RTA claims.</li> <li>▪ Credit hire must not be looked at in isolation however. There are other areas of the system, such as vehicle repair, where insurer practices are driving up the cost of premiums.</li> </ul>



## 4.0 An analysis of the whiplash reforms

### 4.3.3 – Early Notification of Injury

We have seen anecdotal reports of an increase in claims being notified on the eve of limitation due to claims farming activities and adverse litigation tactics. We therefore see a benefit to a requirement of early notification.

There is a suggestion that the injured third party should attend a medical professional within 72 hours (or an alternative time limit) of the accident for assessment/treatment failing which the injury will be considered as minor. We consider this to be a proposal open to obvious criticisms given its potential to compound the existing pressures on the NHS and the fact that it is arguably not practical with injured parties being hard pushed to see a GP within 72 hours in some areas.

It is also worth noting that a compensator is currently liable to pay the Compensation Recovery Unit the sum of £665 in the event that an injured person attends A&E. The result of this proposal could see the requirement for this statutory payment to be extended for all medical attention following an accident. This would build additional expense into the system which insurers may not be expecting.

Further, there are a large volume of cases where injury symptoms only last a few days and claimants elect not to claim compensation. A mandatory system of notification would mean that most claimants will already have made a positive step towards making a claim and claims volumes could therefore increase.

As opposed to insisting on a visit to a medical practitioner, it would perhaps be more prudent to require that all claims are reported within three months of the date of the accident. Perhaps for minor soft tissue injuries, it would also make sense to reduce the limitation period from three years to one year as this would reduce the lifecycle of the claims and provide more certainty, not only for claimants but also insurers.

<b>FOIL</b>	<b>APIL</b>
<ul style="list-style-type: none"><li>▪ Believes in the merits of early notification and a reduced limitation period.</li><li>▪ Is concerned at the burden on the NHS if implemented as proposed.</li><li>▪ Supports the Insurance Fraud Taskforce suggestion of the introduction of a rebuttable presumption that no injury occurred if evidence is not provided showing medical assistance sought within one year of the accident.</li><li>▪ The cost of any medical report obtained beyond a year after the accident should not be recoverable from the defendant, regardless of the outcome of the claim.</li></ul>	<ul style="list-style-type: none"><li>▪ APIL does not support a system of early notification of claims. This would act as a driver for CMCs to hound potential claimants to pursue their claim.</li><li>▪ There are also many legitimate reasons why an injured person chooses not to pursue a claim immediately.</li></ul>

## 4.0 An analysis of the whiplash reforms

### 4.3.4 – Rehabilitation Proposals

Rehabilitation fraud is a growing problem for the insurance industry. In January 2017 there were reports of individuals being prosecuted for rehabilitation fraud. Of all the proposals to tackle this growing problem, our view is that the second proposal in the consultation, for the insurer of the at fault party to provide the physiotherapy to the injured claimant, makes most sense. This would allow the cost to be controlled by the insurer through the utilisation of their supply chain solutions removing the opportunity for fraud.

FOIL	APIL
<ul style="list-style-type: none"> <li>▪ The issues arising from the provision of rehabilitation fall into three categories:               <ol style="list-style-type: none"> <li>1. fraud, often as a result of ‘phantom rehab’, a service which has not been delivered;</li> <li>2. the provision of rehab where financial links between the referrer and the provider are the driver; and,</li> <li>3. rehabilitation used to build up and exaggerate the claim.</li> </ol> </li> <li>▪ Vouchers, fixed damages, and/or a ban would not address all of the issues. Rehabilitation being paid for by the defendant appears to be the better option but won’t prevent claims building. MedCo providing rehabilitation could have merit when MedCo has had the opportunity to bed down.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proposals to reform rehabilitation are based on misconceptions and risk undermining the work of the International Underwriting Association (IUA)’s rehabilitation working party and their Rehabilitation Code.</li> <li>▪ The proposals would create an environment where rehabilitation is difficult or impossible to access, even where early access to rehabilitation could mean that the genuine claimant has a quicker route to recovery.</li> </ul>

## 4.0 An analysis of the whiplash reforms

### 4.3.5 – Recoverability of Disbursements

The proposal to remove or reduce the recoverability of the initial medical report fee is one which clearly has benefits for compensators.

However, if the Government implements the tariff for minor soft tissue injury claims (£400 excluding psychological injury) and a claimant is obliged to pay for their own medical report with no ability to recover the cost from a defendant, this could have negative connotations for the public and could fuel an access to justice argument.

FOIL	APIL
<ul style="list-style-type: none"><li>▪ The defendant should take responsibility for obtaining the medical evidence and paying for it.</li><li>▪ A system which required a LIP to pay £180 plus VAT to bring a claim would be likely to prevent individuals of modest means from claiming compensation and is likely to face considerable opposition on the grounds of access to justice.</li><li>▪ Supports a proposal which prevented claimants from recovering the cost of a medical report if it were obtained more than a year after the date of the injury.</li></ul>	<ul style="list-style-type: none"><li>▪ We strongly disagree that the recoverability of disbursements should be restricted. This proposal is purely designed to make all “minor” whiplash claims unattractive to pursue – those with genuine claims will be deterred from bringing a claim.</li></ul>

## 5.0 Conclusion

On the basis of the available data, what is clear is that claims volumes are falling across the board which goes against assumptions that claimant firms are exiting the RTA claims sphere for the more lucrative claims generated in the EL/PL/Disease arena. It could be that the focus for claimant firms is migrating to areas where fixed costs don't apply, such as travel claims, professional negligence claims, etc.

Whilst motor claims volumes continue to decline year on year, general damages are very much on the increase. There is an obvious question as to whether this is sustainable.

The impact that the proposed reforms will have on both volumes and damages is another unknown with the potential to impact significantly on insurers' operating models going forward. Whilst we are sceptical that the proposed reforms will have a significantly positive influence on claims volumes, there is undoubtedly the opportunity for significant savings on both damages and costs.

In terms of motor claims volumes, we have seen the introduction of autonomous technologies such as autonomous emergency breaking which is designed to reduce the instances and the severity of RTAs. Whilst it is not clear whether this has contributed to the reduction in RTA claims volumes, it is anticipated that some future decline in volumes will inevitably be as a direct result of these technologies.

The market is going to change significantly. In addition to whiplash and SCT reform, there are a whole host of different proposals on the table ranging from Briggs' on-line court to Jackson's increase to fixed fees on all civil claims up to £250,000 that will feed into that change process. It is very difficult at this stage to articulate the impact of these proposals; however, if we were to hazard a guess, it would be as follows:

### Claims

- a more streamlined process, heavily reliant on technology for the courts and the low value claims process;
- an increase in LIPs;
- a significant reduction in general damages if the tariff system is introduced;
- a significant reduction in costs;
- the courts potentially facing a resource challenge, largely as a result to an increase in LIPs;
- traditional motor claims making way for more product liability type claims with the increase in autonomous technology in vehicles in the longer term.

Giving evidence to the House of Commons Civil Justice Select Committee, James Dalton, Director of General Insurance at the Association of British Insurers, said that the proposed SCT increase should be limited to RTA claims. There remains much debate in the market about the extent and scope of any SCT increase and what is clear is that should the proposals be introduced as currently mooted, this will clearly have implications for defendants and claimants alike.

## 5.0 Conclusion

### Market

- an increase in claims management companies;
- consolidation in the solicitors market (claimant and defendant);
- more partnerships between insurers, manufacturers, and technology providers;
- an increase in business models encompassing CMCs, Solicitors, CHOs, MROs, and rehab providers and
- growing use of Artificial intelligence in the claims handling arena.

Whilst technology will inevitably assist in the claims process, advances in technologies such as autonomous vehicles, drones, the internet of things, artificial intelligence etc, have the ability to fundamentally change the claims landscape and both the insurance and legal industries will need to adapt to service the claims of the future.

## 6.o Weightmans Market Affairs Group

Weightmans Market Affairs Group is a focal point for the consolidation, analysis and development of the firm's wider thought leadership activity.

The team operates in England, Wales and Scotland and:

1. Monitors developments in the insurance market and how that shapes insurer business structures and informs business imperatives.
2. Addresses process change, keeping clients up to date with regard to changes but also assisting them in looking at what is on the horizon and how they might influence and shape reforms.
3. Identifies products and innovations that the firm's clients might consider in order to maximise their position in that changing market environment.

The team comprises David Johnson (Political Affairs), Bavita Rai (Innovation & Client Affairs), Kurt Rowe (Market Affairs) and Doug Keir (Scottish Affairs). Their contact details are below but if you have any queries please email the team at [marketaffairs@weightmans.com](mailto:marketaffairs@weightmans.com).



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