House of Commons

Transport Committee

Cost of motor insurance: follow up: Government Response to the Committee's Twelfth Report of Session 2010–12

Thirteenth Special Report of Session 2010–12

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The Transport Committee

The Transport Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Transport and its associate public bodies.

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Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at http://www.parliament.uk/transcom.

Committee staff

The current staff of the Committee are Mark Egan (Clerk), Jessica Montgomery (Second Clerk), David Davies (Senior Committee Specialist), Tony Catinella (Senior Committee Assistant), Edward Faulkner (Committee Assistant), Stewart McIlvenna (Committee Support Assistant), and Hannah Pearce (Media Officer).

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Thirteenth Special Report

On 13 March we received a response from the Government to the Transport Committee's Twelfth Report of 2010–12, *Cost of motor insurance: follow up*,[1] which we publish with this Special Report.

Government Response

Introduction

The Government welcomes the Transport Select Committee's follow up report on the Cost of Motor Insurance. The cost of insurance is an important issue with significant economic and social impacts for all motorists, especially for young drivers. There is much the Government has already done to address the causes of rising insurance costs, in particular the introduction of a ban on referral fees in personal injury cases and abolishing the recoverability of success fees and after the event insurance, and the Committee's report recognises that. The Government is committed to:

- Implementing Lord Justice Jackson's reforms in the Legal Aid, Sentencing and Punishment Offenders Bill including banning referral fees in personal injury cases.
- Extending the threshold for claims in the road traffic accident personal injury claims protocol from the current £10,000 to £25,000. This will bring further personal injury claims related to road traffic accidents into the scope of the protocol, so the fixed legal costs will apply.
- Reviewing and reducing fixed fees that lawyers can earn from RTA personal injury claims. All of these reforms will bring down the legal cost of many cases and will deter many speculative claims being made.
- Working with industry and others to identify options and implement changes to reduce the number and cost of whiplash claims.
- Continuing to tackle uninsured driving and fraud by working with the insurance industry to have better access to drivers' records.
- And working to improve young drivers' risk and safety, including encouraging the growth of telematics.

The Prime Minister and Secretary of State for Transport met with the insurance industry at a Downing Street summit on 14 February and a follow up meeting is planned for later in the spring. We have also worked across Whitehall to gather information on the underlying causes and options for change. In addition we await with interest the OFT market study into competition issues related to the provision of third party vehicle repairs and credit hire replacement vehicles, which is also due to report later in the spring.

The Government's response to each of the Committee's detailed recommendations is set out below.

Response to Recommendations

Personal injury claims and referral fees

Whiplash

Recommendation 1. Where someone can demonstrate that they have suffered an injury, including whiplash, as a result of a road traffic accident for which they were not fully liable they should be able to claim and receive compensation. However, in relation to whiplash, we are not convinced that a diagnosis unsupported by any further evidence of injury or personal inconvenience arising from the injury should be sufficient for a claim to be settled. In our view, the bar to receiving compensation in whiplash cases should be raised. We note the Government's argument that its legal reforms should reduce the money in the system and encourage insurers to defend claims more vigorously. If the number of whiplash claims does not fall significantly once these changes are implemented there would in our view be a strong case to consider primary legislation to require objective evidence of a whiplash injury, or of the injury having a significant effect on the claimant's life, before compensation was paid. (Para 8)

DfT response. The Government shares the Transport Committee's concern at the increase in numbers and costs of claims for compensation relating to whiplash injuries and their impact on motor insurance premiums. At a time when vehicles have become much safer and where there has been a significant reduction in the number of accidents and casualties, we agree that whiplash claims and costs should not be rising.

At the industry summit in February the Government committed to working urgently with the insurance industry and others to identify and investigate appropriate ways to effectively reduce the number and cost of whiplash claims.

The Government thanks the committee for their comments and proposals and will consider them and those of other stakeholders very carefully before deciding the best way forward in this complex area.

Referral fees

Recommendation 2. Although we welcome the Legal Services Board's new guidance on the transparency of referral fees, it does not go far enough. Firstly, it relates to fees paid by solicitors but leaves untouched the fees paid by others involved with motor insurance claims, such as garages and credit hire firms. Secondly, we are disappointed that the Government has not given a stronger signal that more transparency is necessary. We recommend that this is done, for example by Ministers setting out the information they think insurers should provide to consumers and drawing attention to examples of good practice. (Para 12)

Recommendation 3. The Committee notes the swift action taken by the Government to tackle referral fees and recommend that once the Legal Aid, Sentencing and Punishment of Offenders Bill is enacted, the Government prioritises the implementation of what was new clause 20 in the Commons, *Regulation by the FSA*,

which could prohibit insurers from receiving referral fees across the board rather than only in relation to legal action. (Para 17)

DfT response. The Government welcomes the Committee's comments regarding the ban on referral fees in personal injury cases and notes its recommendations.

As the Committee will be aware, the referral fee provisions in the Legal Aid, Sentencing and Punishment of Offenders Bill (clauses 54 to 58) prohibit the payment and receipt of referral fees in personal injury claims by lawyers, claims management companies and insurers. The Government is primarily concerned with the issue of personal injury claimants being actively encouraged to pursue their claims for compensation, and the option of increased transparency does not address these objectives as well as the Government's preferred option to ban referral fees in personal injury cases.

The regulatory ban will capture the key players; preventing solicitors and CMCs from paying, and insurers from receiving referral fees. This will cut off the source of funding for others, such as repair garages and credit hire services. Under our provisions, the Lord Chancellor will have the power to extend the prohibition on the payment and receipt of referral fees to other types of claim and other legal services under clause 54, should the case for doing so be made out.

Additionally, on 14 December 2011, the Office of Fair Trading (OFT) published the summary of their findings following their call for evidence on the UK private motor insurance sector. Based on the evidence received the OFT have launched a further 'market study' into the supply of motor insurance in the UK. Amongst other things the study will cover the use of referral fees in the credit vehicle hire and insurers' repairer network sectors. The Government will consider the results of this investigation and any recommendations made by the OFT when they are made available.

The Committee also recommends that the implementation of the ban on referral fees in respect of insurers is prioritised after the Bill is enacted. The Government believes the implementation of the civil litigation funding and costs proposals in Part 2 of the Bill are important measures, and we want to implement them as soon as possible, in order to control costs. We will implement the referral fee ban at the same time as the other changes under Part 2 of the Bill to the no win no fee arrangements in April 2013. We will be working closely with the regulators and relevant stakeholders on the details.

Recommendation 4. We recommend that the Government review how the protocol and portal have operated since they were introduced last year, looking in particular at how the fixed costs associated with the protocol relate to the actual cost of the work involved and whether use of the protocol acts as an incentive for insurers to concede claims which ought to be defended. This review should be conducted and its results published within six months. (Para 18)

DfT response. The Government notes the committee's comments in relation to the Road Traffic Accident protocol and portal and can confirm that it has already commissioned a report to review how the protocol is working. The report is due to be published later this year.

In light of the recent ban on referral fees the Government is also working with stakeholders to review the level of fixed costs associated with the protocol and looking in particular how these fixed costs relate to the actual cost of the work involved.

Data protection

Recommendation 5. The Committee recommends that the Government send a clear message to the insurance industry that it expects the data protection legislation to be fully respected and echo the recommendation of the Justice Committee that stricter penalties for breaching the Act, passed by Parliament in 2008, should be brought into force. (Para 21)

DfT response. The Government is clear that all organisations that process personal data must comply with the requirements of the Data Protection Act 1998 (DPA). The DPA ensures that the processing of personal data is conducted in a fair and lawful manner, and any processing has to comply with the Act's eight data protection principles, unless specific exemptions apply. Any data controller that fails to comply with the DPA can be subject to enforcement action by the Information Commissioner, who is the independent regulator under the Act. One aspect of compliance with the Act is that information is provided to individuals about how their personal data will be processed, including, amongst other things, whether their data will be shared with third parties.

The Ministry of Justice notes that evidence was provided to the Committee to indicate that a number of bodies had clearly breached data protection and Ofcom rules concerning the sharing of customers data. The Information Commissioner's *Guide to Data Protection* sets out that as part of complying with the DPA's requirement that processing be fair and lawful, organisations must, amongst other things, "be transparent about how you intend to use the data, and give individuals appropriate privacy notices when collecting their personal data".

In his foreword on the Code of Practice on Privacy Notices, the Information Commissioner states: "As a minimum, a privacy notice should tell people who you are, what you are going to do with their information and who it will be shared with. However, it can also tell people more than this. It can, for example, provide information about people's rights of access to their data or your arrangements for keeping their data secure. Whatever you include in your notice, its primary purpose is to make sure that information is collected and used fairly".

The Information Commissioner has a wide range of powers to ensure compliance with the DPA. Under Section 43, he has a power to serve a data controller with a notice requiring the data controller to provide the Commissioner with such information as is specified in the notice. A notice can be issued if the Commissioner has received a request by someone affected by the processing of their personal data, or on his own initiative if he reasonably requires any information to determine whether a data controller is complying with the data protection principles. In circumstances where the Commissioner is satisfied that a data controller has contravened or is contravening any of the data protection principles, he can serve an Enforcement Notice setting out the steps that the data controller must take to comply with the relevant requirements of the Act.

The Information Commissioner also has powers of entry and inspection, and is able to apply to the courts for a search warrant where there are reasonable grounds for suspecting that a data controller is contravening any of the data protection principles, or that an offence has been committed and that evidence of the contravention or of the commission of the offence can be found on the premises in question. Section 51(7) provides the Information Commissioner with the power, with the consent of the data controller, to assess any processing of personal data for the following of good practice. In addition, under section 55A of the DPA, the Information Commissioner has the power to serve a data controller with a monetary penalty of up to £500,000 for serious contraventions of the data protection principles.

However, there is a separate issue under Section 55 of the DPA. This provides an offence for anyone who knowingly or recklessly obtains, discloses or procures the disclosure of personal data without the consent of the data controller. The Information Commissioner has successfully prosecuted many such cases, including most recently a former health worker who accessed the medical records of five members of her ex-husband's family in order to obtain their new telephone numbers, and a receptionist who unlawfully obtained her sister-in-law's medical records in order to find out about the medication she was taking. Both convictions were secured under section 55 of the DPA.

The Committee refers to the Justice Committee's recommendation that custodial sentences should be introduced for section 55 offences, without delay, and reinforces their view that strict penalties for breaching the DPA should be brought into force. The Leveson Inquiry, which has been set up to consider "the culture, practices, and ethics of the press, including…the extent to which the current policy and regulatory framework has failed including in relation to data protection". Given this remit, the Ministry of Justice has decided to await the outcome of this Inquiry before considering the issue further; the first stage of the Inquiry is expected to report in summer 2012.

The Government believes there are effective sentences in place to deal with much of the reported behaviour in this area. The Committee will recall the Government's response to the House of Commons Justice Committee's report "Referral fees and the theft of personal data", which made it clear that a section 55 offence may be committed as part of a course of criminal conduct, involving the commission of other offences. These could include unlawful interception of communications under Regulation of Investigatory Powers Act 2000 and unauthorised access to computer material under the Computer Misuse Act 1990. Both offences carry a two year prison sentence. In addition, under the Fraud Act 2006, it is an offence to dishonestly make a false representation (including as to identity) with a view to financial gain. The maximum sentence is ten years' imprisonment. Bribing another or being bribed contrary to the Bribery Act 2010 is an offence which carries a maximum penalty of ten years' imprisonment. In relation to police officers and other public sector workers, the common law offence of misconduct in public office may also be relevant, and this carries a custodial sentence.

Recommendation 6. We also call on the Government to initiate an investigation of cold calling intended to generate personal injury claims, with a view to examining the legal and regulatory options for curtailing this activity. (Para 22)

DfT response. Any business that intends to market its products or services electronically must comply with the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended). The Regulations lay down rules for marketing via electronic means - including SMS messages and automated voice calls - and prohibit the sending of such marketing to a consumer who has not consented to receive it; the Regulations are enforced by the Information Commissioner's Office. Under the Data Protection Act 1998, which is also enforced by the Information Commissioner's Office, consumers should be able to opt out of receiving marketing delivered via non-electronic means. Businesses ought not to cold-call consumers who have registered their telephone numbers with the Telephone Preference Service.

Insurers' conduct - including their contact with consumers who may have cause for a claim - is regulated under the Financial Services and Markets Act 2000, and the Financial Services Authority's Principles of Business and Insurance Conduct of Business Sourcebook. Solicitors are prohibited under the Solicitors Regulation Authority's rules from generating claims through cold-calling. Claims management companies ("CMCs") may not refer claims generated through cold-calling to solicitors because to do so would be to act in a way that puts solicitors in breach of their rules; they are also not permitted to cold-call in person.

Any direct marketing carried out by a CMC must comply with the Claims Management Regulator's conduct rules; CMCs' marketing must be clear, transparent, fair and not misleading. Those conduct rules also require CMCs to comply with the Direct Marketing Association's Code of Practice, which is a set of best-practice guidelines for direct marketers, incorporating relevant legal and regulatory requirements. Complaints that a CMC has breached the conduct rules - for example, by referring claims that were generated through cold-calling to solicitors, by giving misleading information over the phone or by cold-calling a consumer who is registered with the Telephone Preference Service - will be investigated by the Claims Management Regulator, which will take enforcement action if necessary. In any event, a CMC may not take payment from a consumer for any claims management service until it has sent that consumer written pre-contractual information.

More widely, the Claims Management Regulator is a member of a working group established to tackle the use of unsolicited text messages and automated calls seeking to generate claims. Other members of that working group include telecoms providers, the Information Commissioner's Office, the Direct Marketing Association and Ofcom.

The Government considers that adequate regulation already exists to tackle cold-calling intended to generate personal injury claims; it therefore considers that an investigation is not necessary. It will, however, continue to ensure regulators exercise their powers to intervene when they discover malpractice.

Other issues

Fraud

Recommendation 7. We recommend that the Government provide us with updated information on its timetable for its project to enable insurance firms to gain access in real-time to the DVLA database.(Para 25)

DfT response. The Government is currently working with the insurance industry on the detail of the systems design for a solution which allows them access to the DVLA driver record. The insurance industry has agreed to fund £1 million to take the project to this next stage of reviewing requirements and workshops were held in January 2012 to discuss detailed requirements and what it will cost. The industry has agreed in principle to fund the infrastructure build relating directly to their requirements. Subject to agreement by all on the detailed design and costs, the system could be implemented by early 2014.

Uninsured driving

Recommendation 8. We recommend that the Government keep us informed of its review of the penalties associated with motoring without insurance. (Para 26)

DfT response. The Government's Strategic Framework for Road Safety in May 2011 commits to reviewing fixed penalty levels for some motoring offences such as speeding, mobile phone use and not wearing a seat belt, and including motor insurance offences.

As part of the review we are considering whether the fixed penalty fines for motoring without insurance are appropriate relative to comparable offences and what the potential impact would be on repayment levels if the FPNs were increased. We intend to consult on these issues shortly.

Conclusion

Recommendation 9. We recommend that the Government provide us with a written response to the House's resolution setting out how this will be implemented. (Para 29)

DfT response. Following the industry summit in February, the Government set out a series of measures that it is taking to tackle the compensation culture and reduce legal costs including

- Committing that the Government will take action to reduce the number and cost of whiplash claims and will work with stakeholders to identify effective ways to do this. Options include improved medical evidence, technological breakthroughs, the threshold for claims or the speed of accidents.

- That the Government will look with the Insurance industry at what can be done on young drivers' risk and safety. This includes the wider use of telematics or 'smartbox' technology. This monitors driving behaviour, giving young drivers the chance of affordable car insurance by adopting safer driving;

- The Government has already cracked down on uninsured driving, which puts at least £30 on the price of each premium, by making it illegal to own an uninsured car;

- Tackling soaring legal costs by implementing in full the Jackson reforms in the Legal Aid, Sentencing and Punishment Offenders Bill that will reform 'no win, no fee' and ban referral fees;

- Addressing the fear from businesses of being sued for trivial or excessive claims by extending the road traffic accident claims process, by increasing the value of the

claims that go through it from £10,000 to £25,000, and extending the process to employer liability and public liability claims;

- Committing to reduce the £1,200 fee that lawyers can earn from small value personal injury claims. This will help bring down the legal cost of many cases and deter the speculative health and safety claims being made; and,

- A follow up summit with insurers is planned for later in the spring. We note the Committee raised a motion on 8 November for a cross departmental Ministerial Committee and that motion was passed. Work has already commenced across Whitehall to look at the underlying causes of the cost of insurance and we are currently arranging for a meeting of relevant ministers to consider further options for change.