Additional written evidence from the Association of British Insurers (ABI) (CMI 13c)

In light of the report of the Transport Select Committee which calls upon the insurance industry to do more to tackle fraud, I thought you would be interested to learn that that the industry has firmly committed to create a dedicated police insurance fraud investigation unit and to set up an insurance fraud register. These two initiatives will make it harder than ever to get away with making a fraudulent claim and ensure that convicted fraudsters face the full consequences.

The police unit will become operational on 1 January 2012. It will investigate specific insurance frauds referred to it by insurers, regional police forces and the Insurance Fraud Bureau. We are confident that the unit will deliver a step change in enforcement activity against fraudsters, deter future offending and reduce losses. It will also recover and return to the industry assets lost to fraudsters under the Proceeds of Crime Act and other civil measures.

The unit, which will consist of around 35 full-time police officers and other specialised support staff lead by a Detective Chief Inspector located at the City of London Police headquarters, will operate routinely throughout England and Wales with the ability on occasion to work in Scotland and Northern Ireland. It will have access to wider police resources and capabilities such as surveillance teams and forensic support. The establishment of the unit will not mean that regional police forces will stop investigating insurance crime, within their more limited resources.

The Insurance Fraud Register is an industry-owned database that will provide a single platform to enable insurers to share details on all known insurance fraudsters across insurance sectors. It will become operational in early 2012. The register is visible proof that the industry continues to strengthen its controls against all types of fraud. In meeting the regulator's expectation that the industry seeks to manage fraud on a collaborative basis, it will enable the industry to provide consolidated data to the National Fraud Intelligence Bureau.

The ABI will continue to work closely with the National Fraud Authority and the Insurance Fraud Bureau to further develop the industry's anti-fraud strategy. We would welcome the support of the Transport Select Committee in sending public messages that insurance fraud is unacceptable and will be tackled vigorously.

I will of course keep you and the committee in touch with developments as we move towards full implementation early in 2012.

July 2011

Letter from Nick Starling, ABI to the Chair (CMI 13d)

During the Transport Committee's oral evidence session on The Cost of Motor Insurance on 11 October 2011, Mr Tom Harris MP claimed to quote an internal ABI strategy document suggesting that it would help our lobbying efforts if one insurer announce a ban on referral fees and others followed and that the current position is not ideal and leaves the industry open to allegation of hypocrisy.

I would like to put on the record that this was not an ABI document. This information was from the minutes from a meeting Keoghs hosted with the MoJ which was attended by ABI.

The views expressed were those of a Keoghs representative, not an ABI position or even a view aired by a representative of the ABI.

I would be grateful if this could be put on record.

October 2011

Further written evidence from the AA (CMI 17a)

Below is the latest edition of the AA's benchmark British Insurance Premium Index, which since 1994 has been tracking the quarterly movement of both car and home insurance premiums. This has been issued to the media under embargo for tomorrow, Thursday 28 July.

Over the past couple of years, car insurance premiums have been rising particularly sharply, which prompted the Transport Committee's inquiry into car insurance. However, despite predictions from some commentators to the contrary, the rate of increase has been easing. The 'Shoparound' index saw premiums rise by 3.6% over Q2, the smallest quarterly rise for some time – however, premiums have nevertheless risen by 30.1% over the 12 months ending 30 June 2011. There was an unexpected but very welcome fall over the quarter in the Shoparound premiums quoted for young drivers aged 17-22.

The Shoparound index is an average of the cheapest three quotes from a wide range of direct insurers, brokers and schemes, against a UK-representative basket of risks.

I am aware that the Transport Committee is calling for further oral evidence later this year and felt that you would find this latest release helpful.

If I can provide any further information or would welcome further contributions from the AA I would be happy to assist: meanwhile, attached is a table showing the movement of car insurance premiums by age and gender.

CAR INSURANCE INCREASES EASE, AA INDEX SHOWS

- **AA Brtish Insurance Premiums Index for three months ending 30 June**
- **Young driver premiums fall slightly for the first time in two years**

Car insurance summary

According to the latest benchmark AA British Insurance Premium Index, the cost of car insurance appears to be levelling off, with an unexpected but welcome fall for young drivers over the second quarter of 2011.

This follows two years of unprecedented premium increases.

The average Shoparound cost of an annual car insurance premium increased overall by 3.6 per cent over the three months ending 30 June 2011 to £923.90, the lowest rise for 18 months. Nevertheless, over 12 months, the Shoparound premium has risen by 30.1 per cent.

However, for drivers aged 17-22, premiums fell by 5.6 per cent during the quarter – a welcome respite for young drivers after more than two years of sharp quarterly increases.

The AA British Insurance Premium Index has been tracking the quarterly movement of both car and home insurance premiums since 1994. It measures the market average premium (an average of all quotes on a UK-representative basket of 'customers') as well as the three cheapest quotes for each 'customer' to provide the Shoparound index.

Simon Douglas, director of AA Insurance, says: “The easing of insurance prices is welcome news, especially for young drivers whose premiums have become unaffordable for many.

“I predicted last year that during 2011 we would see competitive pressure returning to the market which would help to reduce the rate of increase.

“This is the smallest increase we have seen for some time, and I believe that over the rest of this year we will at last see premiums level off, despite the gloomier predictions of other market commentators.”

Headline figures

Shoparound Index: Car insurance

Average Premium	Jul-11	Apr-11	% Change	Jul-10	% Change
Comprehensive	£923.90	£892.08	+ 3.6%	£709.91	+ 30.1%
TPFT Fire & Theft	£1,465.23	£1,538.62	- 4.8%	£979.66	+ 49.6%

Summary ends / more

Car insurance analysis:

Hope for young drivers?

The most welcome news in the latest benchmark AA British Insurance Premium Index is an unexpected fall of 5.6 per cent in the average Shoparound cost of an annual comprehensive car insurance policy for young drivers.

This has helped to bring the overall Shoparound average increase to just 3.6%, the smallest quarterly premium increase for nearly two years.

The Shoparound index calculates the average of the cheapest three premiums from a range of insurers for each ‘customer’ in a UK representative basket of risks.

Says Simon Douglas, director of AA Insurance: “Young drivers have for a long time been the biggest losers in the insurance market with premiums driving them off the road. They share the greatest number of serious crashes, premiums have been rising at a disproportionate rate, but it seems at last that insurers are starting to compete a bit more for their business with rates starting to come down.”

Nevertheless, the average Shoparound premium for a 17 to 22-year-old is £2,294 compared with the £924 average. However, Mr Douglas warns that with the end of gender-based pricing in December 2012; young women under 25, who typically pay premiums up to 40 per cent less than their male counterparts, can expect to see a sharp rise in the cost they pay for their cover.

The average premium paid by 17-22 year-old men is currently £2,872 and for women £1,671.

Commenting on the overall slowing in premium increases, Mr Douglas believes that insurers have done sufficient work to overcome most of the underwriting losses of the past couple of years.

"At the end of 2009, for every £100 taken in premiums, £123 was being paid out in claims. By the end of 2010 this had fallen to £116 and I believe that the gap has closed further since then. This is encouraging insurers to price more competitively which is benefiting every driver, but especially young drivers."

In addition, new legislation is helping to restore confidence for car insurers.

"The recent introduction of continuous insurance enforcement means that it is now illegal to keep a registered car that is neither insured nor recorded as off the road through a Statutory Off Road Notification (SORN). The Motor Insurers' Bureau is now writing to the owners of all vehicles on the DVLA database that are not insured, encouraging their owners to take action or face a fine and possible confiscation of the vehicle.

"Similarly, the police have been very successful in stopping uninsured drivers – last year, they confiscated over 150,000 cars being driven illegally."

Other developments that will help to reduce insurer costs include the setting up of a dedicated police fraud unit and, in the longer term, a new industry-wide fraud database and access to DVLA driver data for insurers.

"Fraud continues to be one of the biggest challenges facing the insurance industry," Mr Douglas points out. "According to new figures from the Association of British Insurers, the value of detected fraud amounts to £17.5 million per week, an increase of 9 per cent over the previous year.

"However, we believe that this is just the visible tip of the iceberg – beneath the waterline there is a serious culture of insurance crime that must be stopped.

"While insurers are getting better at identifying attempts at fraud, the formation of a new police fraud unit early in 2012 will help ensure that insurance criminals are brought to book much more quickly."

One of the biggest contributors to premium increases has been false and exaggerated personal injury claims, Mr Douglas points out.

"One recent case involved a claim for over £1m by a man who said that he had to rely on a stick to walk and a wheelchair, yet he was witnessed uncoupling and pushing a caravan without difficulty. He was jailed for nine months.

"It's vital that the industry strongly gets the message over that there will be no hiding place for those who attempt to rip off their insurance company."

Mr Douglas added that he welcomes the recent public outcry over the no-win, no-fee claims culture that has encouraged people to make false or exaggerated injury claims.

"The sooner legislation is introduced to bring to an end the cold-call marketing of accident management firms; the better it will be for everyone."

Regional car insurance winners and losers

Regionally, the biggest jump in car insurance premiums over the three months ending 30June was London with a 4.8% rise to an average Shoparound premium of £1,069 – overtaking Yorkshire to become the second most expensive region to insure a car.

In Yorkshire, premiums increased by 3.1 per cent to a Shoparound average of £1,058. And despite an increase of just 1.4 per cent, the North-west retains top position in the premium leaderboard.

The cheapest region to insure a car remains Scotland with an average quoted Shoparound policy price of £556, up by 1.9% over the quarter. It is perhaps also no co-incidence that claims management firms don’t operate in Scotland, where the legal system is very different.

Region	**Jul-11**	**Apr-11**	**% Change**
London	£1,069	£1,020	+ 4.8%
South	£795	£778	+ 2.2%
Anglia	£734	£720	+ 2.0%
Central	£912	£888	+ 2.6%
West & West Country	£725	£702	+ 3.2%
Wales	£793	£780	+ 1.7%
North-west	£1,521	£1,500	+ 1.4%
Yorkshire	£1,058	£1,026	+ 3.1%
Border &TyneTees	£893	£888	+ 0.7%
Scotland	£556	£546	+ 1.9%
Northern Ireland	*	*	*

*Insufficient number of risks for analysis

August 2011

Further written evidence from the AA (CMI 17b)

The biggest car insurance premium increases since records began appear to have ended, according to the latest AA British Insurance Premium Index.

The broker's benchmark Shoparound index, an average of the cheapest three quotes from a range of insurers for each 'customer' in a UK-representative basket of risks, fell by 0.3 per cent (just £2) to £921 over the three months ending 30th September.

At the end of March 2011, premiums had risen by over 40 per cent over the previous 12 months. The annual rise has now dropped to 16 per cent for the 12 months ending September, giving hope that the worst of the price hikes are over.

Simon Douglas, director of AA Insurance, says: "The past two years have seen the biggest-ever rises in premiums as insurers struggled to close a widening gap between premium income and claims costs. Although historically costs had been rising, premiums had not and, at the end of 2009, for every £100 taken in premiums £123 was being paid out.

"Something had to give," he says. "But the gap has now closed sufficiently to allow insurers to start pricing more competitively once again."

However, he warns there are still inflationary pressures for insurers and that the respite may be short lived.

"I believe that this fall is a respite rather than the start of a trend. Premiums are likely to continue rising next year, but at a much more modest rate," he adds.

"I would be concerned if they do start falling because after a time, it could lead to a repeat of the past two years' sharp premium inflation."

The steep upward premium increases recorded by the AA's Index attracted the attention of the Commons Transport Committee, which is continuing an inquiry into the cost of car insurance. More recently, the Office of Fair Trading started a probe into the industry while the Justice Minister announced reform of the way that personal injury claims are managed: including an end to so-called 'referral fees'. This is regarded as one of the principal causes of premium increases.

Introduction this year of continuous insurance enforcement (CIE) to tackle uninsured driving; the launch early next year of a dedicated police insurance fraud unit funded by the insurance industry and moves to allow insurance companies to access customer data held by the DVLA are all also expected to help insurance companies control fraudulent claims over coming months.

"I expect these moves to help the insurance industry manage costs which, in turn, should help avoid big premium increases in the future," Mr Douglas says. "But the fact remains that while the number of accidents on Britain's roads is falling, the number of personal injury claims continues to rise and I'm glad that this is at last going to be brought under control."

Over the past six months, premiums for young drivers have also shown signs of falling. They fell by over 5 per cent during the previous quarter but have since risen again slightly.

Recent statistics from the Department for Transport suggest that the number of crashes involving death and serious injury amongst young drivers are falling although they remain significantly higher than for other age groups.

Education, changes to the driving test and development of new black-box 'pay by performance' insurance solutions should all help young people start their driving careers responsibly and safely, Mr Douglas believes, but points out: “There will need to be strong evidence that these reduce the number of serious crashes experienced by young drivers before premiums fall much further for them.”

<u>Car insurance premiums at a glance: Third quarter, 2011</u>

- ***Average Shoparound premium*** for a comprehensive car insurance policy is now £921.38, a fall of 0.3 per cent over the past three months and a rise of 16.4 per cent over 12 months. This is an average of the cheapest three quotes for each ‘customer’ in the basket of risks.

- ***Market average premiums*** (average of all quotes for each ‘customer’ in the basket of risks)for a comprehensive car insurance policy £1,449.85, a rise of 0.8 per cent over the past three months; 16.0 per cent over 12 months. This is a rise of 277.1 per cent since the Index started in 1994

- ***Ups and downs of an annual comprehensive*** car insurance policy according to the AA’s Shoparound average, since 2004:
  - October 2011: £921.38
  - October 2010: £791.82
  - October 2009: £568.62
  - October 2008: £503.43
  - October 2007: £463.07
  - October 2006: £450.01
  - October 2005: £450.43
  - October 2004: £455.55

- ***Regional winners and losers:***

Shoparound			
Region	**Oct-11**	**Jul-11**	**% Change**
North-west	£1,529	£1,521	+ 0.6%
London	£1,058	£1,069	- 1.0%
Yorkshire	£1,065	£1,058	+ 0.7%
Central	£914	£912	+ 0.3%
Border & TyneTees	£893	£893	- 0.0%
Wales	£790	£793	- 0.4%
South	£789	£795	- 0.8%
Anglia	£732	£734	- 0.3%
West & West Country	£723	£725	- 0.2%
Scotland	£555	£556	- 0.2%
Northern Ireland	Insufficient data for analysis		

- ***Shoparound Index by age and gender***:

Male			
Age	**Oct-11**	**Jul-11**	**% Change**
17 - 22	£2,977	£2,872	+ 3.7%
23 - 29	£1,464	£1,479	- 1.0%
30 - 39	£788	£788	+ 0.1%
40 - 49	£710	£711	- 0.2%
50 - 59	£559	£560	- 0.3%
60 - 69	£495	£503	- 1.6%
70 +	£611	£616	- 0.8%
Subtotal	£1,132	£1,132	+ 0.0%
Female			
17 - 22	£1,682	£1,671	+ 0.7%
23 - 29	£901	£911	- 1.1%
30 - 39	£576	£579	- 0.6%
40 - 49	£591	£595	- 0.5%
50 - 59	£512	£513	- 0.1%
60 - 69	£400	£406	- 1.5%

70 +	£449	£453	- 0.9%
Subtotal	£749	£753	- 0.6%
All			
17 - 22	£2,342	£2,294	+ 2.1%
23 - 29	£1,169	£1,181	- 1.0%
30 - 39	£680	£682	- 0.3%
40 - 49	£650	£652	- 0.4%
50 - 59	£533	£534	- 0.2%
60 - 69	£451	£458	- 1.6%
70 +	£524	£529	- 0.9%
Total	£937	£939	- 0.3%

- ***Index summary*:**

Market summary

(Average of all quoted premiums for each risk in the Index basket of risks)

Average Premium	Oct-11	Jul-11	% Change	Oct-10	% Change	Jul-94	% Change
Comprehensive	£1,449.85	£1,438.18	+ 0.8%	£1,249.71	+ 16.0%	£384.50	+ 277.1%
TPFT Fire & Theft	£1,513.03	£1,510.80	+ 0.1%	£1,246.41	+ 21.4%	£333.39	+ 353.8%

Shoparound summary

(Average of three cheapest premiums for each risk in the Index basket of risks)

Average Premium	Oct-11	Jul-11	% Change	Oct-10	% Change	
Comprehensive	£921.38	£923.90	- 0.3%	£791.82	+ 16.4%	Shoparound data only collated since 2005
TPFT Fire & Theft	£1,460.85	£1,465.23	- 0.3%	£1,097.72	+ 33.1%	

Price comparison sites: Market summary

(Average of all quoted premiums for each risk in the Index basket of risks)

Average Premium	Oct-11	Jul-11	% Change	Oct-10	% Change	
Comprehensive	£1,053.28	£1,067.72	- 1.4%	£888.84	+ 18.5%	Aggregator data only collated since October 2009
TPFT Fire & Theft	£1,280.87	£1,280.36	+ 0.0%	£909.02	+ 40.9%	

Price comparison sites: Shoparound summary

(Average of three cheapest premiums for each risk in the Index basket of risks)

Average Premium	Oct-11	Jul-11	% Change	Oct-10	% Change	
Comprehensive	£682.80	£696.67	- 2.0%	£592.08	+ 15.3%	Aggregator data only collected since October 2009
TPFT Fire & Theft	£949.27	£940.72	+ 0.9%	£764.77	+ 24.1%	

October 2011

Written evidence from the Motor Accident Solicitors' Society (MASS) (CMI 18a)

1. MASS is a non-profit making national association of solicitors who specialise in road traffic accidents, representing the accident victim. Formed in 1991, MASS promotes the highest standards of legal services through education and representation in the pursuit of justice for the victims of road traffic accidents. MASS comprises 190 solicitor firms that employ over 2,000 legal staff, throughout the UK. Collectively member firms conduct in excess of 600,000 road traffic accident personal injury claims each year.

2. The victim, and what is in their best interests, must remain at the centre of the debate. Our goal in this debate is to both protect the rights and interests of consumers who are victims of genuine road traffic accidents as our constitutional objective.

3. MASS fully endorses the Committee's view that whatever the solution to the problem, the "*Government should ensure that arrangements exist to enable people injured in a motor accident to claim compensation, regardless of their income*".

OVERVIEW

4. The contributory factors to the cost of motor insurance are many and complex. There will be no straightforward solution to the problem of rising costs and each solution will inevitably have impacts and consequences which must be considered carefully in terms of what is gained and what is lost.

5. Referral fees are undoubtedly an important factor of this debate, but it remains only one part of a possible solution. It is vital that the motor accident industry is looked at holistically and in considerable more depth before wide-reaching reforms are introduced that are potentially over hasty, ill-conceived and which may have highly detrimental negative consequences for the principles of access to justice.

6. The solution must be evidence-based, with a full understanding of the associated facts and figures – too often at the moment the evidence is contradictory and potential decisions are being taken on the basis of insufficient facts and evidence of how the industry and insurance market operates and the true costs involved.

7. Understanding the true scale of the issue has proved protracted and difficult: there is still no accepted figures for precisely how much the market in referral fees in all its guises is worth. We strongly urge the Committee to seek full disclosure from those concerned to determine exactly what the market in referral fees is valued at. Only then can the possible savings and future reductions in car insurance premiums be measured.

8. The debate has been distorted unfairly to focus on injury claims and those who pay referral fees, including lawyers, rather than the true cost of claims, which is the value of those claims less all income received in referral fees and commissions from other parties in the claims process.

9. Greater transparency must be forthcoming from all parties to ensure that the scale and elements of the market in referral fees are fully understood. For instance, very few publicly-listed insurance companies have yet declared how much they receive in referral fees. Admiral is one of the few companies that have, announcing that 6% of its profits are derived from referral fees,

although a detailed breakdown of figures for other types of commissions and payments are not published and so this may be even higher.

10. Parliament, the Ministry of Justice, the Office of Fair Trading (who initiated an investigation into related elements on 8 September 2011) and professional representative bodies and leading organisations must fully co-operate in pulling together all the available evidence before fully implementing the Government's proposed course of action.

11. MASS believes that clients will have guaranteed access to justice and protection only through a genuine regulatory and industry-wide commitment to challenge deeply entrenched commercial interests and eliminating elements which add no value to claimants.

THE COST OF CLAIMS

12. Road accident personal injury (RTAPI) claims represent 790,999 claims out of a total of 987,381 claims, according to Compensation Recovery Unit figures published by the Government in respect of the year 20010-11, which is over 80% of all personal injury claims[1]

13. MASS rejects the accusation that the cost of claims is out of control because of lawyers involved in personal injury claims.

14. Since 2003 two separate fixed costs regimes have existed for legal costs for Road Traffic Accident Personal Injury (RTAPI) claims up to £10,000, representing in excess of 75% of all RTAPI claims since 2003. The new streamlined process for RTAPI claims, implemented by the Ministry of Justice on 30 April 2010, and agreed in full by the insurance industry and others, are actually lower than those agreed in 2003. Both sets of costs were negotiated and agreed without any reference to the payment of referral fees.

15. MASS questions why motor insurance premiums have risen so dramatically in recent years when there has been in place fixed legal costs which insurers have agreed, for in excess of 75% of all RTAPI claims since 2003?

16. The Association of British Insurers (ABI) has stated that insurance premiums have risen 40% in the last year, blaming rising legal costs. Yet one insurance comparison website (tiger.co.uk) recently found that prices were 2.3% lower in September 2011 than in August 2011, were down 4.5% in the third quarter of 2011 when compared to the second quarter. Furthermore they are predicting that motor insurance prices for the whole of 2011 are likely to be about 17% higher than 2010 prices[2]. Whilst such a rise would undoubtedly still be too high, there is clearly an incomplete picture of the insurance industry which should be addressed as a matter of urgency.

17. We note with interest press reports (Insurance Times, 23 September 2011) that seven leading insurers – Ageas, Allianz, AXA, Equity Red Star, Groupama, NFU Mutual, QBE and Zurich – are considering a class action against RSA for inflating repair costs. MASS hopes that the OFT will help determine the impact of such factors on the high costs of motor insurance.

[1] Compensation Recovery Unit, Department for Work and Pensions, May 2011, http://www.dwp.gov.uk/other-specialists/compensation-recovery-unit/performance-and-statistics/performance-statistics/
[2] Insurance Times, 23 September 2011

18. We remain extremely concerned at the continuing rise of motor insurance premiums and the impact that this has on consumer behaviour, including encouraging continued high levels of driving without insurance.

IMPLEMENTATION OF A REFERRAL FEE BAN

19. With the Ministry of Justice having declared that it will seek to introduce a ban on referral fees, probably by amending the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill during its passage through the House of Lords, it is imperative that the new measures are workable, fair and uniformly applied across the entire sector.

20. Careful consideration must of course be given to the definition of what constitutes a referral fee. It is essential that it is wide enough to cover all potential commission fees, administrative cost transfers and any other payments that may be disguised.

21. MASS questions whether it should be just referral fees captured by the ban or should it include all commissions within the system arising from claims?

22. Should the ban on referral fees just apply to the motor insurance sector? With increasing anecdotal evidence of referral fees developing in other areas of the personal injury market, the culture of such practices may only be eradicated if a ban is applied across the entire personal injury market.

23. Who will oversee the referral fee ban? Is it sufficient for the courts to implement or should a regulator also play a role in oversight?

24. It is proposed that individuals are liable to prosecution for breaching a potential ban, but should corporate entities also be responsible with directors held responsible for the actions of employees?

25. The purpose of a ban on referral fees is to reduce motor insurance premiums in the future, but how is this to be judged? Without some measurement process in place and a binding commitment by the insurance sector to reduce premiums, the benefits derived from a ban may not necessarily be passed on to consumers. The Chief Executive of Admiral has even suggested that car insurance may increase following a ban on referral fees[3].

26. Previous experience suggests that savings may not be passed on to the consumer. When the Motor Insurers' Bureau, which gathers a levy from all of its UK insurance member companies in order to pay for uninsured and untraced claims, returned a surplus of £40 million unclaimed funding in March 2010, this money was not returned to consumers through reduced motor insurance premiums[4].

[3] Boss of insurer Admiral warns Government referral ban 'will push up car cover', Financial Mail, 11 September 2011, http://www.thisismoney.co.uk/money/markets/article-2035905/Boss-insurer-Admiral-warns-Government-referral-ban-push-car-cover.html#ixzz1XvkD6POE

[4] Motor Insurers' Bureau Annual Report & Accounts 2009

INTERNATIONAL EXPERIENCE

27. There is potentially great value in learning from the experience of other countries. However, it is vitally important that all of the facts are known and understood given the ease with which statistics can be manipulated or taken out of context.

28. The ABI have stated recently motor premiums fell by 16% in Ireland in the two years after reforms were implemented. Yet this picture is challenged by at least one academic study commissioned by public authorities and conducted by University College Dublin and the University of Strathclyde. It concludes that insurance premiums had been falling before the reforms (since 2003), whilst acknowledging that the reforms may have accelerated the reduction.[5]

29. Ireland's second largest general insurer, FBD, has said the insurance premiums are likely to continue to fall not as a result of the reforms, but as a result of wider economic conditions, with fewer people being able to afford to own and operate cars, resulting in less motor insurance claims.[6]

JACKSON PROPOSALS

30. MASS continue to have grave reservations with the planned changes to litigation funding and costs contained within the Legal Aid, Sentencing and Punishment of Offenders Bill (LASPO Bill) before Parliament. These proposed changes will significantly impact consumers' access to justice in motor accident claims, making it increasingly difficult for a person who has been injured due to someone else's negligence to find, or fund, a lawyer to represent them.

31. A vitally important element of this package, as recommended by Lord Justice Jackson, is for a 10% increase in general damages to compensate for abolishing recoverability of success fees. MASS believes that this figure is woefully inadequate to compensate the accident victim for the loss of recoverability (of Success Fees and ATE premiums). However, with around 90% of civil litigation cases never reaching court, the government has admitted that it has no mechanism to force the 10% uplift to be included in out-of-court offers.

32. The Government is relying upon the judges to implement the uplift on the 10% of cases that do go to court: "*We would expect insurers to comply with the rates set by the courts when making out-of-court settlements*"[7] We urgently hope that a mechanism is put in place to ensure that this increase is implemented.

WHIPLASH

33. MASS reject the notion that whiplash as a soft-tissue injury is somehow not a proper injury and should be outlawed. Whiplash is indeed the most frequently reported injury in motor vehicle crashes and due to the difficulties in diagnosis and treatment, a percentage of claims are undoubtedly fraudulent.

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[5] P.15, Dr Jonathan Ilan, 'Four years of the Personal Injuries Board: Assessing its impact', UCB/University of Strathclyde, March 2009, http://www.ucd.ie/roads/roads_documents/compcultwp%20no2.pdf
[6] Irish Examiner, 25 August 2011, http://www.irishexaminer.com/business/insurance-premiums-likely-to-fall-165299.html
[7] MoJ spokeswoman, Law Society Gazette, 21 September 2011, http://www.lawgazette.co.uk/news/claimants-will-never-see-ten-cent-damages-uplift

34. However, the sudden extension of the neck and whip-like movement frequently experienced in motor vehicle accidents can have serious impacts upon ligaments, tendons, muscles, intervertebral discs, facet joints and nerve roots. This can result in a collection of symptoms including dizziness, headaches, blurred vision, pain on swallowing, ringing in ears, tinnitus, memory loss, cognitive impairment, sleep disturbance, fatigue and depression.

35. There is a growing body of evidence attesting that whiplash injuries are not just about movement at high speed but a complex series of pressures that can result in injury. For instance, one study[8] summarised the literature on crash tests on humans by concluding that a change of velocity of 2.5 mph was sufficient to cause symptoms and that 8.7 mph was required to cause vehicle damage.

FIXED FEES

36. It has been suggested that the fixed fees under the RTA portal scheme should be dramatically reduced and capped by legislation. MASS rejects this proposal as too prescriptive and believes that these rates should be negotiated between claimants and defendants. Such negotiations have taken place successfully in 2003 and on the introduction of the portal in 2010 and we believe that this would be the most appropriate way to reach agreement going forward.

UNINSURED DRIVING

37. In 2009 there were 1.5 million uninsured drivers, 20% of whom were between 17 and 20; the cost to the industry is approximately £500 million, which adds about £30 per year to every policy for the law abiding motorist.

38. MASS welcomes the change implemented by the government earlier this year with uninsured driver now being fined or having their car confiscated even when they are not driving it. However, we believe that significantly more can be done to reduce the level of uninsured driving; for example, to investigate the feasibility of lowering the cost of insurance premiums for those young drivers who have a good driving record whilst driving under their parent's motor insurance policy, and allowing them to transfer the number of years without a claim to their own policy.

FRAUD

39. MASS welcomes any further initiatives that can be undertaken to further reduce the high levels of fraud. We will continue to work closely with the on-going work undertaken by the Insurance Fraud Bureau (IFB) – an insurance industry funded body - to combat motor insurance fraud. As an example of this work, MASS are hosting a Motor Fraud forum in October 2011 with representatives from all the key stakeholders to discuss working collaboratively to combat fraud within the motor industry.

EDUCATION

40. MASS will continue to campaign for improved education of young drivers, reducing the incidence of uninsured driving through improved reporting and effective deterrents, increased penalties and reducing the high levels of fraud all have an important contribution to make;

[8] Davis (1998)

THIRD PARTY CAPTURE

41. MASS believes that the practice of Third Party Capture is placing the accident victim at an unfair and distinct disadvantage. Offers made to accident victims by insurers are frequently lower than the claim is worth, denying the victim the service and compensation they deserve.

42. Where an injury has occurred, insurers often make settlement offers without medical examinations to ascertain the full extent and degree of the injury and any short, medium or long term effects the injury may have. Pressure through telephone calls and even unannounced doorstep visits are frequently done at a time when accident victims are already vulnerable following an accident.

43. There is a huge conflict of interest because the insurer is acting on behalf of their policy holder (the defendant) and the accident victim at the same time. An insurers' primary objective is to save money – there is little or no regard for the victims' best interests.

44. MASS believes that insurers are not adequately regulated or monitored when carrying out Third Party Capture. The ABI's voluntary code is not compulsory and only applies to their members and therefore not all insurers. According to ABI statistics in October 2010 only 34 Members had signed up to this code, out of a membership of over 300. We await the 2011 figures to see if more ABI members have signed up to the code during the last year.

CLAIMS MANAGEMENT COMPANIES

45. MASS unreservedly condemn some of the marketing practices of Claims Management Companies (CMCs), particularly that of cold calling and texting. Data protection laws should be enforced and the terms and conditions of insurance premiums should be amended as standard to protect consumers from having their personal information sold on. Cold calling and texting are an irritant at least, intrusive and do little to benefit the consumer and such activities should be appropriately regulated.

THE FUTURE IMPACT OF ABSs

46. MASS remains concerned about the future impact of the Legal Services Act 2007, in particular the introduction of Alternative Business Structures (ABSs) from 6 October 2011. Whilst we believe that there will never be a substitute for high quality legal advice for motor accident victims, we are concerned that cross-ownership or the delivery of legal advice by insurers or CMC's will have a serious detrimental impact upon the genuine victims of accidents. ABSs may be used to circumvent any ban on referral fees and may seriously limit the victims' access to independent legal advice, creating potential conflicts of interest by blurring the distinction between defendant and claimant.

October 2011

Supplementary written evidence from Mark Boleat (CMI 28a)

Introduction

The issue of referral fees has reappeared on the political agenda. This note briefly considers the issue. The author has some qualification to comment as the former Head of Claims Management Regulation and someone who has considerable experience in regulation, including as a member of the Regulatory Policy Committee.

How the Personal Injury Market Works

Low value personal injury claims typically are introduced to solicitors by intermediaries. The chance of someone seeking to make a claim for say £4,000 finding a suitable lawyer on their own initiative is very small. While many lawyers may say they are willing to handle personal injury claims, at any point in time a particular lawyer may not want to take on more claims because they do not have the capacity to run them or a particular claim may not be one that the lawyer is experienced in handling either because of the nature of the claim or because of the circumstances of the client.

There is also no guarantee that the business coming directly to a solicitor automatically means that the solicitor is acting in the best interests of the client and is independent. Solicitors are in business to make money, and the extent to which they will make money on particular cases inevitably influences their willingness to take on those cases.

Low level personal injury cases are not going to happen without an effective marketing campaign. A solicitor wanting to do personal injury business who does no marketing or who pays no referral fees, but rather relies on an entry on the APIL website together with an entry in the Yellow Pages will get very little, if any, business. Indeed, so low (and therefore at a high unit cost) will be the volume of business that they may well not be able to handle it effectively. A solicitor who wants a sufficient volume of business so as to be able to take advantage of economies of scale and to be able to offer the necessary specialism can do one or more of the following -

- Direct advertising locally, regionally or nationally.

- Advertise through collective arrangements with other solicitors such as those operated by Injury Lawyers 4U or National Accident Helpline.

- Employ staff whose responsibility it is to generate personal injury cases by establishing the necessary contacts, for example with insurance brokers and accident repair centres.

- Pay fees to businesses that are able to introduce cases that in turn must have used one or more of these methods.

Introducers vary from those introducing leads, a small proportion of which may turn into actual cases capable of being run, to those that undertake much of the sifting and preliminary analysis that would otherwise be done by a solicitor, producing cases the vast majority of which are ready to be run.

Some figures may help to illustrate the point. A solicitor business may judge that it needs 400 cases a year to be able to employ the necessary legal and other expertise and to take maximum advantage of economies of scale in respect of case handling. It may also work out that the maximum it could afford to pay to attract that business and still make an adequate profit is £200,000, that is an average of £500 a case. It could spend that £200,000 by –

- Paying for direct local and national advertising, eg in the local press and radio, on Classic FM or on daytime TV.

- Contributing to a collective advertising arrangement through Injury Lawyers 4U or National Accident Helpline.

- Paying four business development managers to get business, who in turn would be partially rewarded on a commission basis.

- Buying 1,000 raw cases at £200 a lead of which 60% would prove not to be worth running.

- Buying 400 "oven-ready" cases at £500 per case all of which could successfully be run.

- Any combination of the above, eg £30,000 on local advertising, two businesses development managers and buying some raw leads and some "oven ready" cases.

It is a business decision as to which method or combination of methods should be used. Different businesses will have different approaches and the same business may change the balance of its marketing effort over time.

Use of the term "*Referral Fee*" or "*Commission*" is misleading. By using introducers solicitors are merely outsourcing part of what they would otherwise have to do themselves. Outsourcing itself does not threaten a solicitor's ability to act independently or in the best interests of the client anymore than where work is done in-house. For example, a small solicitors' practice wholly reliant on personal injury work is itself vulnerable for this reason. Similarly, solicitors wholly reliant on conveyancing are vulnerable if there is a downturn in the housing market, which may cause them to move into other areas of business in which they are not really competent.

Evidence

There is, sadly, little empirical evidence on how the market for personal injury cases works. One useful piece of work was the report on referral arrangements and legal services prepared for the strategic unit of the Law Society by Moulton Hall in June 2007. Among the points made in the executive summary of this report were -

- On average the number of PI cases conducted by firms paying referral fees was 100 times that of those who are not paying "*There is very little work available in the PI market unless it is paid for*".

- Firms which do not pay for referrals rely solely on their reputations, work from previous clients and other solicitors "*Few firms use traditional advertising methods, as the amount of marketing they would need to do in order to compete with introducers and generate any potential clients is prohibitively costly*".

- Paying referral fees has enabled firms working in PI to stay in business. The number of cases and profits has increased when a high volume of cases has been achieved. Service levels have been maintained or improved by adopting new business methods.

More recently the Legal Services Board Consumer Panel has looked in detail at referral fees. It concluded –

> "The Panel has its reservations about referral arrangements and considers that action is needed to tackle concerns which cause, or have the potential to cause, harm to consumers. This report identifies those concerns and suggests some corrective actions. Nevertheless, the Panel recommends that referral arrangements continue to be permitted, as in both the conveyancing and personal injury markets the worst of the alleged problems are not substantiated by the evidence. Further, the marketing and the hand-holding role performed by claims management companies and not-for-profit bodies has widened access to justice."

The Legal Services Board's study of referral fees thoroughly examined the case for and against the payment of such fees by solicitors, including the impact on costs and the independence of legal advice. It accepted the view of the consumer panel that there was not sufficient detriment to consumers to merit a ban on such fees but there were concerns about transparency.

The consequences of banning referral fees

If referral fees were banned the consequences are very predictable –

- Solicitors, individually or collectively, would acquire claims management companies or employ claims farmers directly.

- Solicitors would increase their own marketing spend.

- When ABSs are introduced the larger claims management businesses would acquire solicitors.

- Referral fees would continue to be paid but suitably disguised (as was the case when referral fees were banned). For example, a solicitor would pay for advertising in a car hire business, but the advertising charge would be paid only in those months when a set number of referrals had been made.

Conclusion

There is no question that referral fees are high, but that is a symptom of the CFA arrangements that government has mandated. Fees are a symptom of the problem, not the cause. Banning them would have no effect on legal costs but would merely make something that is currently reasonably transparent into something totally opaque. The other Jackson reforms that are being implemented should have the desired effect of cutting the fat in the system, which should automatically reduce the scope to pay acquisition costs, whether by advertising, paying referral fees or any other means.

October 2010

Written evidence from the Ford Motor Company (CMI 37)

Ford Accident Management:
A Blueprint for Claims Management
Without Personal Injury Referral Fees or Credit Hire

Ford Motor Company welcomes the findings of the House of Commons Transport Committee report in to the cost of motor insurance. It is not in Ford's interests to see car owners priced out of the insurance market. Nor is it in anyone's interest to see an increase in uninsured driving. Ford has therefore developed a new working model to address the causes of rising insurance premiums.

<u>The current accident management (AM) sector business model</u>

- Revenue is taken in the form of personal injury (PI) referral fees. Firms of solicitors pay these fees in exchange for details of "non fault" drivers. As PI referral fees are so lucrative motorists are encouraged to make PI claims, asked repeatedly if they have suffered bodily injury and advised of typical compensation payments that they might receive. [1]
- Credit hire revenue: insurers are charged General Terms of Agreement (GTA) rental rates which are far higher than the actual cost of providing hire vehicles.
- It is financially beneficial to AM companies if repairs take longer than necessary, extending the duration of this credit hire.

All these elements represent <u>significant sources of insurance premium inflation</u>

- Fees charged to repairers: accident repair centres pay the claims management companies an admin fee for repairs they carry out.

<u>Ford's new ethical model for accident management</u>

Ford Motor Company has launched the *Ford Accident Management* programme free of charge for the owners of new and used Ford vehicles, enabling the following advantages:

- No personal injury (PI) "ambulance chasing". Customers are not induced to make personal injury claims. Neither Ford nor its partners make any money from PI referral fees.
- No credit hire. No credit agreement for customers to sign (the current business model sees customers underwriting the cost of hire vehicles). [2]
- A hire vehicle is provided to drivers needing transport. For "at fault" drivers a Ford courtesy car is provided, for "non fault" drivers a hire car, *appropriate to their needs*, is provided (by Ford Rental where possible).
- The Ford model charges insurers the cost of providing rental vehicles (for 'at fault' drivers) plus a small admin fee. Courtesy cars are not charged to insurers.
- An admin charge is paid by repairers to Ford's call centre partners. This fee covers the cost of the call centre/ claims handling process.

Summary

- Ford's model cuts out PI referral fees and excess hire vehicle charges.
- All customer calls to the call centre are screened for potential fraud. [3]
- The model does not prevent drivers from seeking bodily injury compensation following a road traffic incident, however it does not induce spurious claims to be made and there are no PI fees which would be passed on to insurers. Customers who express a wish to make a PI claim, unprompted, could be referred to mediation, reducing the cost of the claim.

Only 24% of the cost of a motor insurance claim is the cost of repairing the vehicles involved. By substantially reducing the remaining 76% of costs driven mainly by PI referral fees and credit hire charges the costs to insurance companies will be substantially reduced. The UK motor insurance market is very competitive, with a reduced cost base insurers will have to compete on price to win new business.

Notes

[1]
Department of Transport statistics report a 10% fall in the number of road traffic accidents involving personal injury over the past three years, yet personal injury claims on motor insurance policies have increased by 43% over the same period. *Association of Bodyshop Professionals (ABP) 3/8/11.*

Compensation claims for the neck injury now stand at 76% of all personal injury claims as a result of a car accident, and the insurance industry is convinced that many are fraudulent. "76% is twice the average for other European countries," says a spokesman for the Association of British Insurers (ABI). "It's unlikely we've got some of the weakest necks in Europe." 2/8/11 Daily Telegraph.

[2]
Credit hire: customers sign credit agreements when they are put in to a hire vehicle by claims managers. If insurance companies dispute the amount of hire the customer is liable for the debt. There have been high profile cases where customers have had to appear in court to explain the charges, e.g. the footballer Darren Bent vs. Allianz Insurance dispute over a £63,000 hire car bill. It has been argued that customers are not fully aware of their liability when they sign agreements to take hire cars.

[3]
Car insurance companies end up paying out an extra £2 billion in costs every year due to fraudulent claims. This means that for the honest policyholder in the UK, their car insurance rates go up by an average of £44 every year (ABI).

August 2011

Written evidence from AXA (CMI 38)

Referral Fees and Whiplash – AXA's case for change

On the 28th June 2011 AXA became the first – and so far only – insurer to unilaterally ban referral fees from personal injury lawyers, highlighting the need for legislative and regulatory changes to curtail market practices which fuel the 'compensation culture' and consequential increases in motor insurance premiums.

In this note we outline the background to this decision and set out, in AXA's view, the right way forward to deliver a better outcome for consumers. In particular we focus on the need for urgent reform of the whiplash regime.

Background

Personal injury claims arising from road traffic accidents have increased by 43% over the past 3 years which is perverse given that the number of motor vehicle accidents has been falling progressively over many years – by 31% in 2009 compared to the average for 1994-1998 as published in the Committee's recent report into the cost of motor insurance.

In our view there seems to be no question that UK society is drifting into a compensation culture, encouraged by an industry of claims management firms that has formed to profit from the misfortune of others.

The insurance industry has stood accused of feeding that industry by accepting fees for referring potential personal injury claimants, and thus promoting a dysfunctional market which has inflated motor premiums, particularly in those areas of the country where claims management firms are so prevalent. In practice, the role of insurers in this matter is only a small fraction of the issue – the main reasons for the rise in personal injury claims are the growth in accident management companies, credit hire firms and personal injury lawyers.

Having concluded that the practice is immoral, AXA has withdrawn from the practice of accepting referral fees from personal injury lawyers. .

Referral fees

Referral fees are a symptom – not the cause - of a broken compensation system. The main cause of increasing motor insurance premiums is the frequency of minor personal injury claims which cost in the region of £4,400 each. Banning referral fees will help, but in itself will not bring about the step change needed to drive a better, fairer and more affordable system; and almost certainly will not lead to the reduction in personal injury claims necessary for a restoration of cheaper motor insurance premiums.

In our opinion, reform of personal injury legislation must have regard to the following dynamics:

- Referral fees averaging £800 are paid by claims management firms and personal injury lawyers to a number of market participants. A ban would eliminate their incentive to promote minor injury claims, but must be structured so as to avoid replication by other means - for example by netting against the cost of providing services, or other forms of cash/non-cash incentive.
- The fixed fee under the Ministry of Justice Road Traffic Accident Portal is £1200 which, allowing for an average referral fee of approximately £800, is quite obviously too high meaning that personal injury cases are too profitable. We estimate that the true cost of handling these claims is likely to be nearer £250. Fixed fees should be reduced so as to remove the excess profit - deployed in part to pay referral fees.
- In some cases (for example large retail brokers), profiting from personal injury claims is so fundamental to shareholder returns that any ban on referral fees will likely be circumvented through deploying new business models – for example, the acquisition of personal injury law practices under the forthcoming 'Alternative Business Structures' which will come about following the de-regulation of legal services. Measures should be considered that would prevent

a ban on referral fees simply encouraging market participants to set up their own practices to capture the profit from current personal injury practices.

- It is too easy to claim whiplash after a road traffic accident. Such soft tissue injuries are impossible to prove, or disprove, and as such represent an opportunity for a 'lottery win' of around £2,500 each for those involved but not at fault in a minor accident. Reform is required to shift the burden of proof, so that compensation is payable only where the party has suffered demonstrable injury as is the case in some European countries.

Below we have expanded upon the whiplash regime, which we argue needs fundamental reform.

Whiplash reform

The NHS spends around £8 million in treating whiplash and other soft tissue injuries yet insurers pay out approximately £2 billion in compensation for the same conditions.

Measures are required to raise the burden of proof required for minor bodily injury such as whiplash. New medical developments and also broader expert opinion on the possibility of whiplash at low speeds or below certain force levels should be examined. These have the potential to deepen our understanding of minor soft tissue injuries. The burden should then switch to the claimant to prove that an injury exists rather than an insurer having to disprove it. In practice, it is simply too easy for a claimant to secure a medical report that they are suffering from whiplash – the doctor has no means by which to prove or disprove, so medical certificates are provided with minimal investigation, often several months after the event when a claimant is 'awoken' by either referral or advertising.

If these steps are taken as a package, then the insurance industry will see a reduction in the frequency of minor personal injury claims and a commensurate reduction in motor insurance premiums will follow. This will have positive benefits for consumers, not simply through lower motor insurance premiums, but through arresting the decline into a compensation culture and the other costs which arise – for example minor personal injury claims against councils and employers.

What is needed is a process that ensures those injured by the negligent acts of others receive the timely and fair compensation they are due, and that fraudulent claims can be filtered out and rejected without incurring unnecessary cost. We need a system that does not encourage the harassing of people to generate these claims.

With regard to whiplash and other soft-tissue injuries we are about to embark on studies that will examine the evaluation of muscle damage following a typical low impact road traffic accident.

August 2011

Supplementary written evidence from AXA UK (38a)

I am writing in connection with my appearance to provide oral evidence to the Transport Select Committee's enquiry into the cost of motor insurance. During the session, I was asked by Mr Harris, "You mentioned alternative business structures. Is it correct that AXA is not going down that road and you have no plans at all to buy Knight Law Ltd, for example?" I replied correctly that, "Knight Law operates for us as a defendant; that is, it supports our defence of personal injury claims. It does not prosecute claims—that is, represent the claimants—and never will." Mr Harris then pressed, "You have no intention of purchasing it," to which I replied, "I have no intention of purchasing it. To be fair, I think I own part of it but I would need to clarify that. I have no intention whatsoever of it prosecuting personal injury claims against insurers." I would like to clarify this last point.

In the moment, I could not remember whether AXA owned all, or part of Knight Law, but I knew we had no acquisitions planned, and observed I would need to clarify the extent of our ownership. In fact AXA acquired 100% of Knight Law some years ago through the acquisition of another company. I would like this clarification to be recorded in the transcript. However, I note that it does not change the substance of my reply to the core of the question, which is that AXA does not intend to exploit alternative business structures to allow Knight Legal to prosecute personal injury claims so that AXA might profit from such claims.

Yours sincerely
Paul Evans

October 2011

Written evidence from Ai Claims Solutions (UK) Ltd (CMI 39)

Summary

The Transport Select Committee is due to hear evidence from a number of bodies, including Jack Straw MP, during its re-opened Inquiry into Motor Insurance. Ai Claims Solutions is concerned to ensure members of the Committee are given the opportunity to hear evidence from both sides of the motor clams argument, especially where referral fees and reform of industry practices are concerned.

Context

Justice Minister Jonathan Djanogly MP has announced that the Government is to bring forward legislation to ban referral fees for personal injury cases. In a Written Ministerial Statement, the Minister said:

"Our aim is to reform the system to end the abuses that have occurred while ensuring that victims who have suffered a personal injury through someone else's negligence remain able to make a claim for damages where they have an appropriate case. Alongside the planned reforms to conditional fee agreements, the ban on referral fees will contribute to the Government's plans to tackle the compensation culture by discouraging unmeritorious claims and controlling the disproportionate costs of personal injury claims, without denying access to justice."

There is no official statement on when the Government is likely to introduce legislation, nor any clear sense of the scope of the reforms. In media interviews, the Minister inferred that legislation may be introduced in the Spring of next year.

Key messages:

A ban on PI referral fees will not resolve dysfunctional market

Despite the Government's intention to row back against the compensation culture, Ai do not believe a ban will have the effect ministers believe.

- A ban will drive more public marketing and advertising from solicitors
- Solicitors will still pay money to pick up potential clients, but the practice will go underground
- Solicitors will change they way they attract referrals by switching to payment through 'marketing.' It is hard to see how legislation can counteract this, even if the practice is criminalised
- A ban would not create fairer treatment for customers and no reduction in the cost of claims
- A ban would not stop insurance fraud.

- Referral fees are not a major factor behind the rise in motor premiums; if they were banned, premiums would continue to rise.

2. The effect of ABS (Tesco Law)

The genesis of alternative business structures (Tesco Law) is already creating changes in market practice. Government should monitor these changes before taking precipitate action

Insurers (even those who have already said they'll ban referral fees) are setting up law firms to generate new revenue streams from claims management. Customers in an accident will be referred to the insurer's own law firm. Although more transparent, customers won't have the freedom to choose their own provider, as they will come under pressure to use the law firm specified by the insurer.

Claims for whiplash have risen in recent years – but the science behind whiplash has barely advanced.

- Lack of investment from NHS into whiplash - £8m last year versus £2b paid out.
- We need to explore how other legal systems deal with whiplash and seek new ways to manage this type of injury
- The ABI's own statistics are flawed and unreliable.
- A large proportion of the ABI membership do not want a ban on referral fees.

The insurance industry is divided on the issue of referral fees, which in any event are a small issue in context of other industry practices.

Examples include:
- Insurers profiting from vehicle repairs
- Insurers selling data to data mining businesses
- Insurers misselling legal expenses insurance
- The growing incidence of fraud
- Insurers poor claims management practices which delay settling claims

If Government was serious about reducing the costs of motor insurance, there are more appropriate targets and approaches than referral fees

Ai is unconvinced that the Government has fully thought through the implications of a ban, given the lack of detail in the Minister's statement about the scope of the legislation.

Our sense is that the decision seems to have been made in response to pressure from campaigners, as the Ministerial statement contains little evidence/facts to justify the ban. Ministers must clarify the benefits in clear and monetary terms so that the industry can see the positive effects of a ban.

Questions requiring further information from Government

1. What the real figures are to drive the decision to legislate? How many PI claims have been made and what is the total solicitors cost? What is the total paid out in compensation?

2. By banning, how much "income" that goes back into the system to insurers would be lost – how would insurers make up the shortfall? There are no clear figures on how much whiplash actually adds to a premium? The ABI says 87% but is this figure before or after insurers take their income?

3. The Government's announcement has come before the impact of alternative business systems (ie Tesco Law) is in place. This will bring about significant market changes, in particular, policyholders being channelled into insurer-owned legal firms rather than being given a free choice.

4. There are many other issues which need resolution as well as referral fees (a ban on its own won't have much impact). Ministers need to consider regulating insurer profits from repairs, mis-selling Legal Expenses

September 2011

Written evidence from Admiral Group plc (CMI 40)

Admiral Group plc is a company based in Cardiff, South Wales, with offices in Newport, Swansea; Bangalore, India and Halifax, Canada servicing UK customers. It currently employs over 4,500 people in the UK. It also has small businesses in Spain, France, Italy and the USA.

Overview of Referral Fees

Referral fees are a symptom of the dysfunctionality of the current system not the cause. The dysfunctionality of the current situation is driven by two elements of the system:

- the fact that lawyers are paid £1200 to handle a small BI claim that only costs them a fraction of that amount to process.

- the fact that a relatively minor undiagnosable condition that can't be disproven, namely whiplash, generates compensation payments of £1000-£2000 and so creates a huge temptation to many people to exaggerate or misrepresent their symptoms

Referral fees are a result of the resulting scramble to capture the high profit margin available to lawyers on whiplash claims. If referral fees were to be banned then the cost of any individual claim would not fall, it would instead shift the "profit" from the referrers to the lawyers.

Referral fees do, however, increase the number of whiplash claims by funding activities that increase the number of whiplash claims (eg repeat phone calls to potential claimants to persuade them they have "whiplash").

If referral fees were banned without any other action taken the net effect on car insurance premiums is hard to estimate accurately but is likely to be pretty neutral – there would be a reduction in the number of whiplash claims made but there would also be an end to the referral fee income to insurers and brokers on all whiplash claims which currently helps pay the costs of operating in the largely unprofitable UK car insurance market.

Admiral's response

Admiral is supportive on the banning of referral fees, but believes in order to make recommendations work, the following need to be considered:

1. Reduce the level of legal costs included in the settlement of bodily injury claims. Legal costs receivable by claimant lawyers on car insurance claims materially exceed the actual processing costs incurred. Because of this excess profit, lawyers spend large sums of money trying to capture a bigger share of such claims, through referral fees (> £800 per case) and direct advertising. This activity stimulates extra claims. A reduction in legal costs would thus both cut the average cost and the number of bodily injury claims

2. Reduce the level of compensation for pain and suffering in relation to the whiplash claims. Whiplash is an undiagnosable condition. If a motorist asserts that they have whiplash, it is nearly impossible to disprove this assertion. Because of this,

the majority of motor insurance fraud is centred on bogus whiplash claims. The right level of compensation for the discomfort associated with whiplash is a subjective decision, but the actual pay-outs at £1000+ represent a significant proportion (circa 25%) of bodily injury pay-outs. A material reduction in the compensation awarded for whiplash would reduce car insurance premiums and reduce fraud.

3. Place restrictions on young drivers. The ABI have made a number of suggestions which would, if implemented, materially cut car insurance premiums for younger drivers at the cost of some restrictions for recently-qualified younger drivers. Examples would include restrictions on night-time driving and driving with more than one passenger. Other countries have additional requirements in place for young drivers, an example of which would be a zero alcohol tolerance for individuals aged below 21.

October 2011