



House of Commons
Transport Committee

**Cost of motor
insurance: whiplash:
Further Government
Response to the
Committee's Fourth
Report of Session
2013–14**

**Eleventh Special Report of Session
2013–14**

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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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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Mark Egan (Clerk), Farrah Bhatti (Second Clerk), Richard Jeremy (Committee Specialist), Adrian Hitchins (Senior Committee Assistant), Stewart McIlvenna (Committee Assistant) and Hannah Pearce (Media Officer)

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Eleventh Special Report

1. The Government published its response to the Transport Committee's Fourth Report of 2013-14, *Cost of motor insurance: whiplash*,¹ as a Command Paper, which also included a response to the Ministry of Justice consultation on arrangements concerning whiplash injuries in England and Wales.² The Command Paper overlooked a number of our recommendations so on 29 October we wrote to ask for them to be addressed. Our letter, and the reply we received from the Secretary of State for Justice on 21 November, are published with this Special Report.

2. We also publish correspondence we received on whiplash from Camps Solicitors, the Association of British Insurers, Berrymans Lace Mawer solicitors, Claims Portal Ltd, and the Motor Accident Solicitors Society.

Letter from Louise Ellman MP to Rt Hon Chris Grayling MP dated 29 October 2013

We were interested to receive your Command Paper on reducing the number and costs of whiplash claims. It was particularly gratifying to see that the Committee's principal recommendations, in relation to the accreditation of medical professional providing reports on whiplash injuries and the procedure for dealing with whiplash claims in court, were accepted.

However, we were disappointed that the recommendations in our report did not receive specific responses. In fact, several were ignored completely. In other cases, little detail was provided about how the Government would be taking things forward.

Consequently, we would be grateful if you could provide us with a response to the following recommendations:

- Government should provide a breakdown of claims for non-whiplash injuries since 2008-09 and explain trend for increasing number of claims of this sort, as whiplash claims decrease (Annex D, para 2).
- Whether you wish to mandate for general use the standard medical report form already used for portal claims or a new form; and if a new form is necessary, why that is so (Annex D, para 9).
- Government should consult on ways of requiring whiplash claimants to provide more information in support of a claim, such as proof they saw medical practitioner shortly after an accident or evidence of the impact of the injury (Annex D, para 12)
- Government should analyse impact of the electronic portal on claims management and costs before reconsidering whether to increase threshold for whiplash claims to be dealt with using small claims track; and consider ways in which small claims track could be combined with routine submission of expert evidence (Annex D, paras 16 and 17).

1 HC 117, published on 31 July 2013.

2 Cm 8738.

- MoJ should give its view on issues involved in limiting the right to compensation where it can be shown that a claim is grossly exaggerated (Annex D, para 19).
- Government should explain how it will monitor whether or not insurers will honour their commitment to ensure that any cost reductions resulting from proposed legal reforms are passed through to consumers in form of lower premiums (Annex D, para 24).
- Government should take a more strategic approach to tackling the cost of motor premiums, bringing together action by the MoJ, DoH and DfT as well as implementation of any future Competition Commission recommendations (Annex D, para 25).

In addition, we would be grateful for more detailed information on the following issues:

- How will DfT and the police improve information sharing about accidents so that highways authorities better target spending on improving road safety (Command Paper, para 49)?
- Does the Government agree that medical practitioners compiling reports on whiplash injuries should have access to details about the accident and the claimant's medical record (Annex D, para 8)?
- Does the Government agree that there may be scope for regulatory bodies such as the GMC to have a role in auditing reports relating to whiplash claims and handling complaints (Annex D, para 10)?
- What action will the Government take to establish collaborative arrangements between insurers and solicitors aimed at identifying and deterring potentially fraudulent claims (Command Paper, paras 22, 25-27, 29)?
- What work is being undertaken to explore how a rule could be introduced to ban pre-med offers by insurers (Command Paper, para 24)?
- What work is being undertaken by Government to improve the transparency of the motor insurance sector (Command Paper, para 30)?

Letter from Rt Hon Chris Grayling MP to Louis Ellman MP dated 21 November 2013

Thank you for your letter of 29 October regarding the recently published Government Command Paper (CM8738) which served as a formal response to both the Government's whiplash consultation and to the Transport Committee's report into the impact of whiplash on motor insurance.

I apologise that the Government response did not cover all the areas you were expecting it to, although I believe the response clearly indicates where the Government agreed with the Committee's conclusions (such as on improvements to medical reporting, data sharing and evidence gathering and on whether to raise the small claims threshold for personal injury claims). However, I appreciate your request for further information on

a number of areas, and I attach - at **Annex A** to this letter- an updated document which provides this detail.

I am grateful for the interest and input of the Transport Committee into this important topic, and look forward to further constructive engagement from the Committee going forward.

Government response

Annex A

Transport Committee Request	Government Position
<p>3. Government should provide a breakdown of claims for non-whiplash injuries since 2008-09 and explain trend for increasing number of claims of this sort, as whiplash claims decrease (Annex D, para 2).</p>	<p>The number of road traffic accident personal injury claims is static, but the proportion of claims described by DWP CRU as whiplash has fallen (currently 58%). This figure is also different from that quoted by the insurance industry (78%) in evidence to the committee.</p> <p>However, a deeper look at the Government figures shows that although the proportion of claims labelled as 'whiplash' is falling, at the same time the number of claims covering similar injuries to the neck have increased. Put together the actual rate of personal injury claims from RTAs to the neck area (including whiplash) is 87%.</p> <p>A detailed breakdown of these and of claims relating to Post Traumatic Stress Disorders are attached at Annex B</p>
<p>4. Whether you wish to mandate for general use the standard medical report form already used for portal claims or a new form; and if a new form is necessary, why that is so (Annex D, para 9).</p>	<p>It is our intention to agree a new reporting system with stakeholders in which only medical reports by accredited examiners will be acceptable as evidence in whiplash claims. Such a system will require an improved standard medical report form for use in all claims. The views of claimants, defendants, medical experts and the judiciary will all be considered when designing this form.</p> <p>The aim is to develop a specific, standardised report form to ensure information provided is comprehensive, useful and specific, but that it is also simplified as far as possible. We also favour reports being made equally available to claimants, insurers and (where necessary) courts.</p> <p>It is important that the report not only accurately assesses the claimant's injuries and provides a useful prognosis period the information included should also help all parties reach an effective and appropriate</p>

	settlement relating to the quantum of damages.
5. Government should consult on ways of requiring whiplash claimants to provide more information in support of a claim, such as proof they saw medical practitioner shortly after an accident or evidence of the impact of the injury (Annex D, para 12)	There is no immediate priority to consult further on this recommendation. As stated in the response document the Government is attracted to idea of a rule to ensure that medical examination and report is completed before claim can proceed (to provide greater certainty on costs and assessment of necessary treatment/compensation; and to stop pre-medical offers to settle). Such a rule would address the greater part of this recommendation. However, care should be taken when considering whether further evidence should be required. It would be very difficult to devise a system of evidence to use in this way which doesn't impact on the burden of proof used in such cases. The requirement for 'proof of a medical examination' should be usefully dealt with by the work we will be taking forward on stopping pre medical offers.
6. Government should analyse impact of the electronic portal on claims management and costs before reconsidering whether to increase threshold for whiplash claims to be dealt with using small claims track; and consider ways in which small claims track could be combined with routine submission of expert evidence (Annex D, paras 16 and 17).	<p>The Government's immediate priority is on the effective implementation of the measures announced on 23 October. We do believe there is a strong case for increasing the small claims track for personal injury claims, but when we return to this topic we will seek to ensure that adequate safeguards are developed to protect genuine claimants from any detrimental effects (access to justice; under-settling of claims) arising from any increase.</p> <p>MOJ officials and analysts are in regular contact with representatives from Claims Portal Ltd in order to ensure sufficient capability is built into the 'Portal' to mitigate against any impact arising from a future increase to the small claims track.</p>
7. MoJ should give its view on issues involved in limiting the right to compensation where it can be shown that a claim is grossly exaggerated (Annex D, para 19).	The Select Committee referred to the approach taken by the courts in relation to claims which contain a genuine element but which are grossly exaggerated, and asked for the Ministry of Justice's views on the issues involved. The courts' approach reflects long-established legal principles which have

	<p>implications across the spectrum of tort law. The Government understands that the issue has been raised with the Law Commission for possible consideration as part of its forthcoming 121 programme of law reform. The Commission will be discussing proposals for its programme with the Ministry of Justice shortly, and we will consider further whether to support its consideration of this issue.</p>
<p>8. Government should explain how it will monitor whether or not insurers will honour their commitment to ensure that any cost reductions resulting from proposed legal reforms are passed through to consumers in form of lower premiums (Annex D, para 24).</p>	<p>This is an area we need to do further work on to ensure we have an adequate baseline of effective data with which to work. The Government will continue to monitor the publically available sources of data- such as regular reports on motor insurance premiums published by the AA and Confused.com. Other financial performance reports and profits data, details of any refunds from the MIB levy etc will also be considered and we will also continue challenge the industry for the evidence of savings being passed on to consumers on a regular basis.</p> <p>However it is important to note that the level and timing of any reduction in the cost of motor insurance premiums is a matter for the insurance industry itself. The Government's earlier reforms to civil litigation costs and funding will result in unnecessary and excessive costs being removed from the system. These new reforms will strengthen the way medical evidence is assessed which will benefit the genuinely injured and deter those making speculative or fraudulent claims. We believe both sets of reforms to result in savings to the insurance industry and expect insurers to continue to pass on the savings made to consumers through lower premiums without delay.</p>
<p>9. Government should take a more strategic approach to tackling the cost of motor premiums, bringing together action by the MoJ, DoH and DfT as well as implementation of any future Competition Commission recommendations (Annex D, para 25)</p>	<p>An informal cross departmental working group already exists. Officials from the Ministry of Justice, Department for Transport and HM Treasury meet on an ad-hoc basis to discuss issues relating to the cost of motor insurance. Recent meetings have also included representatives from the Department of</p>

	<p>Health and NHS England. Going forward the meeting schedule of this group will be formalised to ensure it meets three times a year. In addition the group will also produce an annual update report to Ministers highlighting any areas of concern and recommendations for further Government action.</p>
<p>10. How will DfT and the police improve information sharing about accidents so that highways authorities better target spending on improving road safety (Command Paper, para 49)?</p>	<p>The Department for Transport has been fully engaged with Roger Carter's work seeking access to insurance data. Officials from both the Department and the Highways Agency are members of a working group looking at this issue, and we look forward to having access to the use of insurance claims data. We are actively seeking further support and co-operation from the industry as this is essential for information sharing in this area to be fully effective.</p>
<p>11. Does the Government agree that medical practitioners compiling reports on whiplash injuries should have access to details about the accident and the claimant's medical record (Annex D, para 8)?</p>	<p>This recommendation aligns with the majority view of stakeholders from the consultation responses. It also supports the view received from the ABI, MASS, FOIL and AMRO in their consensus paper on medical evidence. It is therefore the Government's intention to work with stakeholders from all sectors as well as with the judiciary to ensure the newly developed process is suitable for all and helps experts to achieve improved diagnosis, prognosis and report writing. We will ensure that the new system has the facility built in for experts to receive extra information such as accident reports from the defendant and the claimant's medical records where this is appropriate. However, there is a financial implication to the cost of any report which utilises such information and this also needs to be considered when a report is commissioned.</p>
<p>12. Does the Government agree that there may be scope for regulatory bodies such as the GMC to have a role in auditing reports relating to whiplash claims and handling complaints (Annex D, para 10)?</p>	<p>The Government wishes to develop an accreditation scheme that is effective for all, and which results in good practice techniques being utilised in a consistent manner by all medical experts engaged in producing medical reports. For this to happen there must be an effective auditing and sanctioning facility</p>

	<p>attached to the final scheme implemented. The Government does not intend to enforce an entirely new scheme if there are effective existing industry schemes or bodies which can be used to provide the required results. This means we will look at current smaller scale accreditation models and will also discuss with the existing regulators- such as the GMC- how they can help support the Government to achieve its objectives.</p>
<p>13. What action will the Government take to establish collaborative arrangements between insurers and solicitors aimed at identifying and deterring potentially fraudulent claims (Command Paper, paras 22, 25-27, 29)?</p>	<p>There is also a significant role to be played by others operating in the personal injury sector, and there certainly needs to be greater co-operation between the insurance industry and claimant lawyers and sharing of data on potential fraudsters. This will help to stop fraudulent claims at source and there is a role for Government in broking an agreement. We will work with stakeholders to first identify what data relating to fraudulent claims can be shared. Stakeholders will also be asked to supply the Government with details of previous discussions on this topic, what issues are causing delay and what further steps should be taken to facilitate an effective data-sharing agreement between the sectors. Officials are currently arranging meetings with stakeholder bodies to start this process. However, it is important to note that any Government intervention in this area should stop short of regulation.</p>
<p>14. What work is being undertaken to explore how a rule could be introduced to ban pre-med offers by insurers (Command Paper, para 24)?</p>	<p>As stated in the Government response we are attracted to idea of a rule to ensure that medical examination and report is completed before claim can proceed (to provide greater certainty on costs and assessment of necessary treatment/compensation; and to stop pre-medical offers to settle). However devising such a rule is unlikely to be straightforward and nor will it be sufficient on its own. MOJ Officials are currently arranging meetings with the relevant stakeholders to discuss the options and early indications from the ABI indicate there is a willingness on the part of insurers to end this practice. However, further work needs to be done with the stakeholders and their</p>

	regulators to ensure any action is effective.
15. What work is being undertaken by Government to improve the transparency of the motor insurance sector (Command Paper, para 30)?	<p>Lack of openness and transparency can detrimentally affect the perceived independence of medical experts. The Government supports greater transparency regarding financial and other links between insurers and other companies with interest in a claim. Our reforms will see experts being commissioned jointly by both the claimant and the defendant, and their payment not being dependant on the outcome of the claim. In addition, the Competition Commission is currently investigating behaviours and practices in the motor insurance sector, including the question of openness and transparency of the relationships between different parties involved in a personal injury claim. The Government will consider the results of this investigation and any recommendations made by the Competition Commission when they are made available. The Government will also consult with ABI and appropriate industry regulators on further ways to increase such transparency.</p>

Government should provide a breakdown of claims for non-whiplash injuries since 2008-09 and explain trend for increasing number of claims of this sort, as whiplash claims decrease (Annex D, para 2).

Table 1 provides a breakdown of motor injury compensation claims registered to the Department for Work and Pensions' Compensation Recovery Unit (CRU) since 2008/09. This is based on a July 2013 CRU snapshot of the data. The figures may be revised in future CRU snapshots.

Table 1 – Breakdown of Motor Injury Compensation Claims by injury type

Financial Year						
Injury Type	2008/09	2009/10	2010/11	2011/12	2012/13	Total
BACK	13,410	15,249	22,642	30,474	38,323	120,098
NECK	78,407	94,103	145,976	189,209	232,960	740,655
OTHER	52,111	50,847	56,772	66,129	70,764	296,623
WHIPLASH	482,497	514,816	567,440	543,849	477,257	2,585,859
Total	626,425	675,015	792,830	829,661	819,304	3,743,235

Source: DWP Compensation Recovery Unit (CRU) July 2013. Figures are subject to revision.

The above table shows that there were around 820,000 motor personal injury claims (registered to the DWP Compensation Recovery Unit) in 2012/13, compared to around 630,000 claims in 2008/09, an increase of around 30%. This rate of increase has tailed off over the past two years, and the total volume of motor personal injury claims in this snapshot fell slightly between 2011/12 to 2012/13 (from around 830,000 to around 820,000).

The absolute number of whiplash claims rose from around 480,000 in 2008/09 to a peak of around 570,000 in 2010/11, before falling back to around 480,000 in 2012/13. Whiplash claims formed 58% of motor personal injury claims in 2012/13. The increase in motor personal injury claims between 2008/09 and 2012/13 has mostly been driven by claims with a description of 'neck or back' injuries.

Over the last five years, claims for neck and back injuries have almost trebled to around 270,000 claims in 2012/13. It may be that a change in claims-labelling behaviour is behind this trend, such that a large volume of claims which would have previously been labelled as 'whiplash' are now instead being labelled as 'back or neck' injuries.

Table 2 identifies the number of claims registered with the CRU since 2009/10 that were labelled as either 'post traumatic stress', 'PTSD' or 'psychological'. These figures are

broken down by whether 'whiplash' was also mentioned. As above this is based on a May 2013 CRU snapshot, and the figures may be revised in future CRU snapshots.

Table 2- Number of Claims Registered with CRU labelled as either 'Post Traumatic Stress', 'PTSD' or 'Psychological'

Either PTSD or Psychological or Post Traumatic Stress AND:	2009/10	2010/11	2011/12	2012/13	Total
Whiplash also mentioned	1,457	1,383	1,560	1,473	5,873
Whiplash not mentioned	2,745	2,715	3,091	3,341	11,892
Total (PTSD or Psychological or Post Traumatic Stress)	4,202	4,098	4,651	4,814	17,765

Source: DWP Compensation Recovery Unit (CRU) May 2013. Figures are subject to revision.

Letter from the British Osteopathic Association to the Clerk of the Committee dated 7 August 2013

The role of osteopaths in delivering committee recommendations on whiplash

The British Osteopathic Association welcomes the recent publication of a report by the Government's Transport Select Committee on Whiplash, setting out recommendations for how whiplash injuries caused by road accidents should be handled in the future. We are hopeful that the recommendations achieve not just a reduction in the cost of whiplash to the economy but better care for those who are genuinely injured by collisions.

I note that a key recommendation of the report is to establish a standardised assessment for whiplash injuries that would provide clearer evidence of injury and seek to prevent fraudulent or exaggerated claims. I believe that osteopaths are well placed to help design and deliver these assessments.

As experts in disorders of the musculoskeletal system, osteopaths have the knowledge and skills to be able to assess damage to the neck and back that may have been caused by a motoring accident. With over 4000 qualified osteopaths in the UK they also have the capacity to be able to carry out assessments promptly, helping to achieve the recommendation that claims are made more quickly.

I also hope that prompt assessment will also lead to prompt treatment, which will reduce sickness absence and decrease the risk of a whiplash injury becoming a chronic condition.

As the professional association for osteopaths in the UK, the BOA is happy to facilitate the involvement of osteopaths in developing and delivering standardised assessments. We also wish to see osteopaths listed as a treatment option for people who suffer from a whiplash injury.

Letter from the Association of British Insurers to Louise Ellman MP dated 9 August 2013

I am writing to you following the publication of the Transport Select Committee's report The Cost of motor insurance: Whiplash and to thank you for inviting us to give evidence during your inquiry. The Government has recognised the significant impact that fraudulent and exaggerated whiplash claims have on the premiums of honest motorists and is working closely with the industry to help effectively tackle the problem. We are pleased that the Committee recognises the significant problems with the current medico-legal reporting system and we believe that reform in this area can play an important role in helping to tackle the whiplash problem.

There were a number of areas in the report where the Committee had requested further information or where I felt it would be helpful to provide you with an update on the ABI's work aimed at combating exaggerated and fraudulent claims.

Falling Motor Insurance Premiums

You will recall that when my colleague, James Dalton, gave evidence to your Committee on 20 May, he explained how motor insurers had given a public commitment following the Prime Minister's Insurance Summit in February 2012 to pass savings onto customers resulting from improvements to the civil litigation system. Although these changes have only just recently been implemented, premiums have fallen substantially in the past year. The AA shoparound premium index shows that the average quoted premium has decreased by just under 10% between July 2012 and July 2013. Furthermore, the Confused.com/Towers Watson premium tracker indicates that premiums have fallen by 19.7% in the last 18 months.

While a number of factors lie behind these reductions, they can largely be explained by insurers factoring into their pricing the anticipated savings from the civil litigation reforms. Further reductions in premiums can be anticipated depending on the nature and extent of any further reforms the Government introduces, especially for young drivers who have a proportion of the cost of whiplash claims incorporated into the high premiums they pay.

Exaggerated and Fraudulent claims

At the oral evidence hosted by the Committee, the insurers, along with the ABI, who gave evidence, spoke at length about the challenges that insurers face in combating objective test for whiplash. Furthermore, they explained to the Committee the time and effort the industry has gone to try and collect data in this area but why it is not always possible. Therefore, I am surprised by the recommendation in the Committee's report that the Government should press the ABI to provide better data in this area. We have always taken an open and collaborative approach to working with the Government in this area, and have always ensured that our policy positions are evidence based and robust.

You will recall from our evidence to the Committee that insurers invest heavily in combating fraudulent claims. This has largely taken the form of investment in the Insurance Fraud Bureau (IFB), the Insurance Fraud Enforcement Department of the City of London Police (IFED) and the Insurance Fraud Register (IFR), with insurers spending over £200 million in 2012.

Impact on the Claims Portal by increasing the Small Claim Track (SCT) limit

The Committee report recommended that the Government analyse the impact on the electronic portal of increasing the SCT limit. If the SCT threshold is raised it will have a significant impact on the number of claims being processed through the current Claims Portal process if the protocol remains as it is (i.e. that SCT cases are excluded). However, there is no practical reason why the simple process that is currently allowed for by the protocol could not be simplified yet further and extended to be used by self-represented claimants. This is a view shared by directors of Claims Portal Ltd, the company responsible for running the Portal.

In order to ensure that claimants can access any portal system, further IT work would be required in order to enable portal access via a neutral website, such as the court service website or the government services and information website. The vast majority of claimants have access to internet and this would allow claims to be run quickly and

conveniently and would also allow for simple step by step information to be provided at the outset as to the steps to be taken and when in the protocol.

The ABI is aware that there are claimants who do not have the means to access the internet. It would therefore need to be a requirement that where relevant claimants are able to contact the at-fault insurer by telephone. The at-fault insurer would then be required themselves to put the claim on to the portal and then post out the Claim Notification Form (CNF) and other documents required together with a clear explanation of the steps that a claimant is required to take and when.

Access to fraud data for claimant lawyers

As you are aware, the ABI is in discussions with APIL, MASS and the Law Society on an initiative to share data to help claimant lawyers identify fraudsters earlier in the claims process.

We have agreed to the principle of data sharing, and are working with claimant lawyer exactly what data we can usefully share with claimant lawyers without exposing insurers to unnecessary risk, for example, it is crucial that the data we provide cannot be used to 'phish' for potential new claimants.

Unfortunately, claimant lawyers informed us in June that the parameters for data sharing that we had agreed at a meeting back in April are no longer satisfactory, thus the work that we had begun to cost the solution has had to stop while we revisit what the solution will look like. We are hoping to have a clearer idea of next steps by the end of the summer, but remain committed to the principle of data sharing to help reduce fraud.

Insurance Industry Access to Driver Data

The Committee report asked for an update on the work being undertaken by the industry to enable insurers access to the DVLA database. The insurance industry and the Government remain committed to providing insurers with real-time access to the DVLA driver database. Insurers agreed to fund the project in June 2012, and since then substantial progress has been made on both detailed design and implementation. The project remains on track to be in place by the second quarter of 2014.

Once implemented, we expected that customers who provide their driving licence number when purchasing insurance will benefit from fairer premiums as they will no longer subsidise customers who accidentally or deliberately mis-declare their driver information. We expect that this initiative will save honest customers on average £15 per policy.

I hope you find this information helpful.

Letter from Berrymans Lace Mawer solicitors to Louise Ellman MP dated 15 August 2013

Transport Select Committee report "Cost of Motor Insurance: Whiplash" (HC 117, published 31 July 2013)

Berrymans Lace Mawer is an insurance litigation law firm which acts for many leading motor insurers. The firm comprises around 162 partners and 1450 staff and approximately 25% of our £85m turn over for 2012/13 was derived from defending motor claims. We have 153 people working in our office at Castle Chambers L2, in your Liverpool Riverside constituency.

Given the basis of our practice, we have followed the Select Committee's inquiries into motor insurance very closely. We note that the recent report refers (at paragraphs 55 - 58) to the 2012 Supreme Court case of *Summers v Fairclough Homes*. That case, which was handled by my partner David Spencer, turned on whether the courts should strike out entirely a claim which had been tainted by substantial fraudulent exaggeration.

We fully support your recommendation that "the Ministry of Justice should give its view on the issues involved in limiting the right to compensation where it can be shown that a claim is grossly exaggerated." This is not an easy point, as the judgment shows and as is evident from the examination of the case by your Committee. *Summers* is a Supreme Court decision and hence the end of that line - there is no prospect of further judicial activity. The legislative route would thus appear to be the only realistic path to change, as your report indicates.

It is our view that the legal issues raised, which are captured in the Committee's recommendation quoted above, would be well-suited to independent examination by the Law Commission possibly in conjunction with, or as part of, the Ministry's response to your recommendation. It happens that the Law Commission is currently seeking proposals for areas of the law that it might examine in its next (twelfth) programme of law reform (<http://lawcommission.justice.gov.uk/consultations/244l.htm>). It has requested that ideas are submitted by the end of October.

We think the Commission should fully examine the case for legislative change regarding substantially fraudulent third party claims. The timing of the Commission's call for ideas may well be helpful, as it coincides with the period during which a formal response is expected to your Committee's recommendations in the whiplash report. Passing this topic to the Commission would not be consigning it to 'the long grass': any examination could be time-limited to ensure that momentum for reform is preserved.

I wanted to bring all of this to your attention and to let you know that we will quote your Committee's recent recommendation in support of our submission to the Commission proposing that it should review this topic. It is also worth mentioning that the Commission is nearing the end of a major project of insurance law reform, with a report and draft legislation expected to be published by the end of this year. It seems to us entirely possible that any legislative recommendations on the point at hand could be accommodated in the draft Bill emerging from that wider work.

David Spencer and I would be pleased to meet you and/or other members of the Committee and its secretariat to discuss any of the matters raised here in greater detail. We very much look forward to hearing from you after the summer break.

Letter from Camps Solicitors to Louise Ellman MP dated August 2013

Following our correspondence earlier in the year, I wanted to follow up with you now that the Committee's Report on Whiplash has been published.

I should start by saying that Camps Solicitors broadly welcomes the publication of the Report. As you may recall, one of our particular concerns had been that the summit on the matter hosted by the Prime Minister had only heard from the insurance industry.

As the Report itself suggests, by listening only to insurers, the Government has ignored the evidence that whiplash claims are falling both by volume and as a percentage of overall personal injury claims. Ironically, in doing this, they have created a system that could increase fraud, reduce the reliance on medical evidence and limit access to justice.

We welcome many of the recommendations that the Report makes to Government, including a reduction to the time period during which whiplash claims can be made. We believe that a timeframe of one year would be adequate, subject to certain caveats to ensure that claimants with genuine and more severe injuries are not unduly disadvantaged. Camps have consistently argued that the increasing trend amongst insurers to settle claims in the absence of any medical evidence be outlawed. This would seem to be a practice that would encourage exaggerated or 'speculative' claims if allowed to continue.

We also welcomed your recommendation that compensation below £5,000 should not be switched to a small claims track. As the Committee concludes, this is likely to lead to a lack of access to justice for those who would benefit most from professional help. These are often the most vulnerable in society. Camps believe it is reasonable for there to be an inflation linked rise to the small claims limit over time and would argue that this should be linked to RPI.

There is a governing body for Claims Management Companies (CMCs) and perhaps further engagement and direction is required in this area to provide a clear distinction between them and the legal profession.

It will be interesting to see the work of the UK Statistics Authority, once they have had an opportunity to interrogate some of the apparent anomalies in the available data.

We did identify one or two apparent inconsistencies between the evidence presented and the conclusions reached.

In particular, the first line of the conclusions, presented in para 61, that 'the number of fraudulent and exaggerated whiplash claims has contributed to the increase in motor insurance premiums', does not appear to be based on any the evidence cited in the Report.

The relevance of *Summers v Fairclough Homes Ltd*, cited in para 56, is also unclear in the context of exaggerated whiplash claims, although it was notable that it partly informed media coverage of the report.

That aside, we very much welcome the publication of the report as a basis for the Government to develop a proportionate response, based on both facts and the views and interests of all interested parties.

We would be happy to meet with you as outlined in our previous correspondence and discuss both the report and next steps in progressing matters with both the government and engaging with the ABI.

**Letter from the Motor Accident Solicitors Society to Louise Ellman MP dated 19
November 2013**

I wanted to write to you on behalf of the Motor Accident Solicitors' Society (MASS) as immediate past Chairman in response to the letter to the Transport Committee from Otto Thoresen, Director General of the ABI, dated 9th August 2013, which was published on 4th November. Specifically I wanted to comment on the section of the letter (page 2) under the heading "Access to fraud data for claimants".

The ABI confirm that MASS, amongst others, has been engaged in discussions on access to fraud data since October 2011 when they attended a MASS forum with key interested parties. The purpose of this initiative has been to help claimant solicitors identify potential fraudsters early in the claims process and to work collaboratively with the insurance industry in combatting fraudulent claims. MASS believes strongly that this has to be the way forward. The insurance industry has invested heavily in building some excellent databases to cross- reference data and it would be a very positive step if claimant solicitors could share some of this information to reduce fraud.

The ABI state publicly in the letter that they have agreed 'in principle' to data sharing and we are all working on the detail of how this might be implemented. We all welcome this.

We were therefore greatly surprised and disappointed to read in the 9th August letter that the Committee had been told that we had informed them in June that "the parameters for data sharing", agreed in April, are "no longer satisfactory" and consequently that work on this initiative had been forced to stop.

We strongly contest this version of events and wish to place our view of the discussions on the record. At the outset we agreed that it would be beneficial to keep our discussions confidential but given the ABI has chosen to publicise the initiative, we shall follow their lead.

We remain absolutely committed to positively engaging in the process to increase the sharing of data between insurers and claimant solicitors believing that it could be very beneficial in combating fraudulent claims. We believe that we can visibly demonstrate this commitment over the last two years and attach to this letter a summary of relevant events that have taken place since 2011.

MASS was extremely disappointed to learn that, certainly as of 9th August, the ABI believes that discussions have stopped. Since we last met with the ABI on 24th April 2013, they have raised several queries in correspondence which we have dealt with in great detail and we have been waiting to hear the result of their internal deliberations since then. Based upon correspondence received on 22nd October when they asked us for more time to enable them to resolve certain internal issues, we were under the firm impression that

discussions were continuing, but were awaiting the result of these discussions within the ABI.

Central to the discussions are the "parameters" referred to in the ABI's letter and we feel that this will only make sense to the Committee if we expand upon the issue. In accessing the database, the proposal is that claimant solicitors are able to interrogate the data held about whether the claimant has made any previous claims. In short, our view is that when asking "has the claimant made any previous claims", the database should go further than simply responding "yes" or "no", but should state the number of claims made previously. Multiple claims may suggest possible fraudulent activity and would certainly deserve more intensive scrutiny. This proposal has been disputed and an alternative has been suggested that claimant solicitors could ask "Has the claimant made two previous claims?" which could elicit the answer "no" if the system recorded none, one, three or four previous claims. We believe that discussions are ongoing to resolve this issue to the satisfaction of both partners.

Since MASS responded to the publication of the ABI letter, we have received their assurance that, in fact, discussions are continuing and that they will move this initiative forward as a matter of priority, aiming to make significant progress before the end of the year.

Given that you are following up your inquiry into whiplash fraud, perhaps this is an area that the Committee would like to pursue directly with key stakeholders. We would welcome any elaboration that the Committee is able to discover about the ABI's concerns that solicitors will abuse the information.

We remain very keen to pursue this initiative to a successful conclusion. It is undoubtedly in the interests of the genuine, innocently injured person to combat fraud and we feel that such collaborate action will be a valuable component in this fight.

We would welcome this letter being placed formally on the record and would be happy to have it published as soon as possible on the Transport Committee's website. If you or the Committee would like further details about this initiative, we will be happy to assist.

Letter from Claims Portal Ltd to Louise Ellman MP dated 21 November 2013

I write on behalf of the board of Claims Portal Ltd regarding the ABI's letter of 9th August to the Transport Select Committee. (For ease of reference a link to the letter is set out below.) The board's attention was recently drawn to this letter and I wish to correct any misunderstanding that may have arisen from it.

The ABI's letter includes the view that "there is no practical reason why the simple process that is currently allowed for by the Protocol could not be simplified yet further and extended to be used by self-representing claimants" and there is then reference to this view being shared by directors of Claims Portal Ltd. That view does not correspond with the board's response to the Committee. It has not been and is not the currently the position of Claims Portal Ltd. The position of Claims Portal Ltd in relation to extending the Portal for

use by self representing claimants was set out in our response to the Whiplash Consultation. I have quoted the relevant passages below.