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It seems that barely a week goes by without there being a news story about the phenomenon of whiplash. Whether it relates to legislative announcements from the Ministry of Justice ("MoJ") or the Transport Select Committee or calls to action from various lobby groups, industry associations and insurers, it has made headlines at every turn.

What is encouraging to see is that there appears to be a consensus that whiplash fraud is a genuine scourge of the motor insurance industry. Fraudulent whiplash claims undermine confidence in genuine claims relating to motor accidents and, ultimately, continue to put pressure on premiums. Recent estimates suggest that whiplash claims still add, on average, over £2 billion to the premiums of honest motorists. We all pay the price for payouts relating to spurious or exaggerated claims.

In our report into whiplash last year (July 2013), AXA looked into approaches taken by other developed economies in tackling whiplash claims, and found there to be common problems but many different, and often more effective, solutions to cracking down on fraudulent activity. More than a year on it is pleasing to see that some of our recommendations have been implemented and the reforms undertaken by the Government will go some way towards combating the problem.

However, it is apparent that whiplash fraud continues almost uninhibited. What is more, it became clear from the targeted research we conducted to support this particular report that people remain disillusioned with the current remedies and fed up with fraudulent activity. The perception is that fraud remains a systemic issue within motor insurance and, more broadly, retains its place as a permanent feature of the UK’s compensation culture landscape.

This report – part of AXA’s Compensation Culture Series - sets out to show whiplash from the consumer’s perspective, incorporating proprietary research polling a representative sample of the UK adult population, and debunks any suggestion that whiplash can yet be considered a “problem solved”.

Chris Voller
AXA Claims Director

Key highlights

- Sixty-eight per cent of respondents believe it is “not reasonable” to claim for “neck ache” and over half (52 per cent) think it is “not reasonable” to pursue a claim if the claimant has “neck ache and headache/migraine”. Eighty five per cent of respondents believe that in the case of “neck ache and a suspected fracture/dislocation” it is entirely fair to make a whiplash claim.

- Sixty-seven per cent believe that people should only be allowed six months in which to bring forward a whiplash insurance claim - two and a half years shorter than under the current system.

- Ten per cent of respondents admitted to having made, or knowing someone who has made, a fraudulent or exaggerated whiplash claim in the past. Any extrapolation of this figure to the broader UK population will confirm the extent of the problem still to be addressed.

- There is a consensus that whiplash claims and injuries associated with such claims are an area open to fraudulent activity. Over three quarters (78 per cent) of those polled agree that “being able to claim for whiplash/whiplash-related injuries is open to abuse”. Furthermore, 73 per cent agree with the statement that it “is easier to embellish a whiplash claim as compared to other types of insurance claims”. Clearly, in people’s minds whiplash stands out as a specific problem area.

- There is broad agreement that the burden of proof should continue to fall upon the claimant and that independent medical examiners, preferably with expertise in whiplash diagnosis, as identified in our 2013 report, should be responsible for determining whether an individual has suffered whiplash. More than three quarters (79 per cent) of people polled by AXA agree that medical examinations “should be made mandatory” in all whiplash insurance claim cases. Furthermore, over half (55 per cent) believe that an independent professional medical examiner should be responsible for deciding that a person has endured a whiplash injury for the purposes of making a claim.

- Notwithstanding the fact that medical examinations are now required for the majority of whiplash cases people think that having to provide supporting evidence from a medical examination to prove that the claimant is suffering from his/her condition in all cases will “act as a deterrent” to fraudsters attempting to make whiplash claims. Nine out of ten people (89 per cent) say that fraudulent claimants will be put off if more stringent measures are introduced.

- Whiplash fraud is deemed to be a significant enough problem that people are even prepared to pay extra in the short term if it means the eradication of whiplash fraud in the long term. Sixty-two per cent of respondents would support the introduction of mandatory medical examinations “even if it resulted in their insurance premiums rising in the short term”.

1 The definition of whiplash claim, as agreed by the cross industry working groups for the purposes of regulation by the MoJ is: ‘Soft Tissue Injury Claim’ means a claim brought by an occupant of a motor vehicle where the significant physical injury caused is a soft tissue injury and includes claims where there is a minor psychological injury secondary in significance to the physical injury. See Annex A in the following link: http://www.justice.gov.uk/downloads/civil-justice-reforms/whiplash-proposal-on-fixed-costs-for-medical-examinations.pdf
There are two main forms of compensation for bodily injury: first, compensation for economic losses—things that can be measured in monetary terms, such as lost earnings and the cost of medical treatment—and, second, compensation for non-economic losses. The latter are elements of a compensation claim that cannot be measured in terms of money. The most common and significant example is compensation for ‘pain, suffering and loss of amenity’ (PSLA). The ‘loss of amenity’ component refers to any reduction in the quality of the claimant’s life that results from the injury, such as an inability to take part in one’s usual sports or pastimes. PSLA is usually the main, and sometimes the sole, element in a whiplash claim: whiplash claimants often suffer little or nothing in the way of economic loss, because they rarely incur large medical bills and are frequently able to work, despite their injuries. The availability of compensation for non-economic losses—which, unlike economic losses, do not require strict proof in the form of bills, invoices or earnings statements, presents obvious opportunities for fraudulent, or at least exaggerated, claims—especially when coupled with the fact that the existence of the soft tissue damage that is typical of a ‘minor’ whiplash claim cannot be objectively proved, or disproved, by scans or other medical means.

Although the amounts of compensation paid to whiplash claimants are relatively small (though not as small as people might imagine and, according to the respondents in the AXA research, not as small as they should be) the claims handling costs that go with them, including the costs of investigation, processing and, possibly, lawyer’s fees and medical reports, are disproportionately large. For example, a payment to a whiplash claimant of a thousand pounds or so may ultimately cost the paying insurer two or three times that amount. Since whiplash claims are extremely common in the UK, the effect on motor insurance premiums is very significant. It is also probably fair to say that most whiplash claimants do not ‘need’ the compensation—on the basis that whiplash injuries are rarely permanent, life threatening, life changing or a source of significant expense to the claimant.

The AXA research does reveal public concern at the prevalence and size of whiplash claims. The definition of a whiplash injury, and when it should be compensated, is clearly an issue. One in five respondents did not know how to define a whiplash injury but two in three believed it should amount to more than just neck ache. Certainly, for a large majority of respondents, the words ‘severe’ and ‘fracture’ were crucial in justifying an injury claim. It is also clear that claims for whiplash injury are seen as open to abuse, and more so than other types of insurance claim.

Strikingly, one in fifty respondents admitted to having personally made a fraudulent claim. The survey used a sample of the general public and 20 per cent of respondents lived in a household without a car. Many of these respondents may still travel by car or have previously been in a household with a car, but this, together with a probable tendency to under-report involvement in fraudulent claims, suggests that one in fifty is likely to be an underestimate. A further four in fifty respondents said a family member or friend had made a fraudulent claim, which could mask some reluctance to admit personal involvement. Whichever way one looks at it, the extent of the respondents’ connection with fraudulent claims is high. The indication that the age group 25-34 is more than twice as likely as other age groups to be involved or connected with a fraudulent claim is of particular note.

There is general support for measures that would reduce the incidence of fraudulent or exaggerated whiplash claims. In all age groups, over 90 per cent of respondents supported mandatory medical examination. Overall, 75 per cent of respondents supported medical assessment of whiplash injury by the claimant’s own independent doctor, but the percentage has a strong positive correlation with age, with support ranging from 56 per cent in the 18-24 age group to 88 per cent in the 65+ age group. In the 18-24 age group for example, 24 per cent did not know where that responsibility should lie. When asked whether mandatory medical examination would be a deterrent to claiming, the overwhelming majority agreed in the context of unjustified claims, but half the respondents felt it could also deter genuine claims. Again, we see an age effect, with younger claimants more likely to be deterred from making a genuine claim than older people, which is consistent with their views on medical assessment, above. This suggests that measures to cut the number of fraudulent or exaggerated claims should not make claiming seem difficult for genuine claimants.

The survey asked how respondents feel about any extra initial cost of new measures to reduce fraudulent claims and cut premiums in the longer term. The proportion of motor insurance policyholders (who, in practice, would bear the cost) in the sample is not known, but there seems to be some willingness to accept premium rises in the short term. However, there is a significant age effect in this area too: the willingness among younger people is only moderate (44 per cent) but gets stronger with age. Among those over the age of 65, support is over 70 per cent.

In the light of their research, AXA proposes a number of modest reforms; a more radical solution would be to entirely disallow (or, perhaps, cap at a nominal amount) compensation for non-economic loss in the case of all minor injuries. Non-economic loss compensation for serious injuries would be retained, as would compensation for economic losses (such as lost earnings) resulting from any injury, whether major or minor. This would overcome the difficulty of defining the injuries to which the sort of cap proposed by AXA would apply. Of course, the main problem then would be to define the threshold between ‘major’ and ‘minor’ injuries. A time threshold, for example, which allowed non-economic loss compensation only in the case of injuries that persisted for longer than (say) two months would clearly tempt some people to malinger. Whiplash claimants, for example, might be inclined to maintain that the stiffness and pain in their neck was still present after more than two months, even if it had disappeared long before the end of the period—although this incentive could be reduced if compensation awards did not take into account any pain, suffering or loss of enjoyment of life in the two months immediately following the injury.

Finally, differences in the perceptions of young people with regard to whiplash claims, which emerge at various points in the AXA research, suggest that extra efforts may be needed to win them over to the idea of reform.

Professor Christopher Parsons,
Cass Business School
Since AXA published its Whiplash Report in July 2013, a number of reforms have been promoted and enacted across this area, including by the UK Government, designed to reduce fraudulent or exaggerated claims which in turn inflate insurance costs for UK motorists. Currently whiplash claims cost an estimated £2 billion\(^2\) to honest motorists, a large of amount of which can be attributed to the cost of fraudulent claims.

**Key developments since that report’s publication include:**

- In July 2013 the Road Traffic Accident Portal was extended to include claims up to £25,000.
- The MoJ supported, in a consultation that closed on 28 April 2014, proposals previously made by AXA to increase the maximum fine on Claims Management Companies (CMCs) for unsolicited calls from £500,000 to £1 million, indicating it would legislate for the power to fine CMCs up to 20 per cent of their turnover when this figure exceeded £500,000.
- In June 2014 the Secretary of State for Justice, Chris Grayling, announced new measures to tackle insurance fraudsters including improving medical assessments and the dismissal of compensation applications where claimants have been fundamentally dishonest.
- In addition, Grayling announced that lawyers would be banned from offering would-be claimants incentives such as money or a free iPad to encourage them to make a claim.
- From October 2014, medical professionals can only charge £180 for an initial whiplash report, reflecting the time taken to carry out assessments and write them up.
- Further announcements are expected which will clarify provisions for independence, by way of prohibition on either party from having a financial interest in an intermediary through which a medical report is obtained.

Clearly, however, more needs to be done to stem the tide of fraudulent and exaggerated whiplash claims.

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\(^1\) The £30 figure is attributed to the Association of British Insurers (ABI), which was cited in its evidence submitted to the Transport Select Committee for its inquiry into whiplash and the cost of motor insurance. The evidence was given in December 2013. See the following link: [https://www.abi.org.uk/~/media/Files/Documents/Publications/Public/2013/Motor/ABI%20Submission%20to%20the%20Transport%20Select%20Committee%20on%20Whiplash%20inquiry.pdf](https://www.abi.org.uk/~/media/Files/Documents/Publications/Public/2013/Motor/ABI%20Submission%20to%20the%20Transport%20Select%20Committee%20on%20Whiplash%20inquiry.pdf)
Findings

Defining whiplash

- Although the definition of whiplash remains relatively subjective and often therefore contentious, 55 per cent of respondents believe that the definition of whiplash should include “severe neck ache”, whereas only four per cent think that mere “neck ache” should be taken into account.
- Of that 55 per cent who believe that “severe neck ache” should be included in the definition of whiplash, 31 per cent think that “severe back pain” should comprise part of the description.
- There is little support for the idea that headache and migraines should be referenced as part of the definition of whiplash, with only ten per cent agreeing with their inclusion.
- Over a fifth (21 per cent) don’t know how whiplash is “currently defined” and 19 per cent don’t know how the term should be defined, suggesting that whiplash remains a difficult concept for a significant group of people.

The findings relating to the definition – current and ideal – of whiplash are illuminating in that they suggest that people believe that injuries relating to whiplash must be severe in order to be eligible for compensation. AXA’s research shows that the severity of injury is a critical component in the public’s perception of whether a whiplash injury should be the subject of compensation. In the view of respondents, having a sore or stiff neck is not enough to constitute an injury and therefore invalid in terms of filing a claim. In addition, very few people believe that having a headache or migraine following a motor accident should be associated with the term “whiplash”. As a condition that is hard to prove, headaches may be considered to be a cover for an exaggerated or fraudulent claim.

It would seem, therefore that the introduction of The Quebec Task Force Classification system for diagnosis of whiplash, which is classified into four grades in increasing order of severity, would not only serve as a more robust definition of whiplash injuries but also provide a clearer guide as to what level of injury is compensatable.

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1 Compensation is not usually provided for headache/migraine although the intensity of an injury can impact these conditions so as to affect the amount of compensation awarded
“Reasonable” and “unreasonable” whiplash claims

- Over two thirds (68 per cent) of respondents believe it is “not reasonable” to claim personal injury compensation for simple “neck ache”.
- Half (52 per cent) think it is “not reasonable” to pursue a claim if the claimant has “neck ache and headache/migraine”.
- Eighty-five per cent of those polled believe that in the case of “neck ache and a suspected fracture/dislocation” it is entirely fair to make a whiplash claim.
- Eighty-two per cent say that it is “reasonable” to claim personal injury compensation if the individual suffers from “severe neck ache and severe back pain”.

A gulf exists between what is deemed to be reasonable and not reasonable in relation to making claims on certain types of injuries brought about by whiplash. Whilst the majority of respondents understandably think that it is reasonable to claim compensation if an individual suffers severe neck ache and, critically accompanied by, a “suspected fracture/dislocation”, there is clearly far less sympathy for those that merely claim for “neck ache”. It is not unreasonable to conclude that this latter term is viewed by the majority of individuals as, at best, a woolly term and at worst a phrase used in order to make false and unsubstantiated whiplash claims.

Using The Quebec Task Force Classification system could allow grade 1 and 2 injuries to be categorised as below the threshold of compensation while the more serious grade 3 and 4 injuries would receive compensation, something that AXA’s 2013 Whiplash Report called for.

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5 In the UK, over 92-95 per cent of all whiplash cases are attributed to grades 1 and 2 whiplash associated disorder (WAD), which includes neck pain and possibly decreased range of motion in the neck. Only five-eight per cent of WAD incidence is attributed to grades 3 and 4, which includes symptoms of neurologic damage and spinal cord injury - Dr Simon Petrides, “Whiplash Related Neck Pain”, The Blackberry Clinic. [Online] http://www.blackberryclinic.co.uk/back-a-neck-pain/back-pain-causes/whiplash/whiplash-related-neck-pain
Whiplash – a fraudulent claims vehicle

- Over three quarters (78 per cent) of those polled agree that “being able to claim for whiplash/whiplash-related injuries is open to abuse”.
- Furthermore, 73 per cent agree with the statement that “it is easier to embellish a whiplash claim as compared to other types of insurance claims”.

There is a consensus that whiplash claims and injuries associated with such claims is an area open to fraudulent activity. Clearly, in people’s minds whiplash fraud stands out as a specific problem area in the insurance industry. This is perhaps surprising given the array of other known areas of fraudulent activity, in particular in the realm of workplace injuries and the prevalence of suspect so-called “slip and trip” claims. The fact there is agreement that whiplash injuries are open to abuse suggests that there is a significant flaw either in the way in which whiplash injuries are currently viewed or in the public perception of how whiplash injuries are currently assessed.
Deadline for making whiplash claims

- Almost three quarters (74 per cent) of respondents believe that claimants should only be allowed one year in which to bring forward a whiplash damages claim.
- Forty-three per cent think that individuals should only be able to bring a claim for whiplash injuries within one month of the injury taking place.
- Only seven per cent said that people should be eligible to make a claim over two years after the injury, and only four per cent said “there should be no time limit”.

Whilst the majority of whiplash claims will be presented shortly after an accident, people currently have three years in which to file a whiplash claim and it is evident that many feel this is too long a period. There appears to be a general feeling of scepticism around those who claim for whiplash injuries up to three years after the accident. That lack of sympathy can, perhaps, be attributed to the role that CMCs play in bringing such claims to the fore. The fact that the majority of people feel the current legislation allows people two years more than they suggest should be the legal standard indicates a degree of discontent with the system presently in place. In its whiplash report in July 2013 AXA called for the Government to implement a minimum threshold system in the UK, similar to that used in Sweden, based on a time limit system for the onset of symptoms where, typically, claims presented more than three to four days after the accident are usually rejected. The findings from this research support the need for tighter rules around time limits although the UK Government has shown no appetite to alter the status quo.

It is fair to say that the sooner a claim for whiplash is brought and the sooner independent and specifically accredited medical examination takes place, the greater the likelihood of objective evidence being evident. The fact that the current system allows for leaving medical examinations until nearly three years post-accident means that the process is highly subjective.

Approximately how long after the injury has taken place do you think people should be able to bring forward a whiplash insurance claim?

Deadline for making whiplash claims

- Ten per cent of respondents admitted to having made, or knowing someone who has made, a “fraudulent” or “exaggerated” whiplash claim in the past.
- Six per cent of those polled know a friend who made an “exaggerated claim”; five per cent know a friend who has made a “fraudulent” one.
- Two per cent admit to having personally made a “fraudulent” or “exaggerated” claim.

The findings from two questions relating to whether the respondent, or someone the respondent knows (either friend or family), has ever committed insurance fraud or filed an exaggerated claim relating to whiplash, are perhaps the most startling of all responses in this research. Ten per cent of all respondents committing, or knowing someone who has committed, whiplash fraud is a statistic that has significant and worrying implications. One might expect that the percentage of people admitting to being or knowing a fraudster is lower than the real number but even at the level indicated in our survey, the amount of fraud taking place is disturbingly high. Extrapolating out to incorporate the entire adult population of the UK results in a total number of fraudulent or exaggerated claims of truly epic proportions. This reveals the scale of the problem and the uphill challenge the UK Government and insurance industry still face if this proportion is to be reduced in the mid to long term.

It is also interesting to note that the percentage of respondents replying “yes” to the question of whether they have made, or know someone who has made, a fraudulent or exaggerated whiplash claim peaks in the 25-34 age group. Indeed, it is approximately twice the rate of other age groups, with 18 per cent and 20 per cent of 25-34 year olds admitting to having made or knowing someone who has made a fraudulent or exaggerated whiplash claim respectively. It is difficult to determine the reason for this and this finding warrants further investigation.

## Coming clean about exaggerated or fraudulent whiplash claims

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It is also interesting to note that the percentage of respondents replying “yes” to the question of whether they have made, or know someone who has made, a fraudulent or exaggerated whiplash claim peaks in the 25-34 age group. Indeed, it is approximately twice the rate of other age groups, with 18 per cent and 20 per cent of 25-34 year olds admitting to having made or knowing someone who has made a fraudulent or exaggerated whiplash claim respectively. It is difficult to determine the reason for this and this finding warrants further investigation.
More than three quarters (79 per cent) of people polled by AXA argue that medical examinations “should be made mandatory” in all whiplash insurance claim cases.

Only five per cent believe that medical examinations should not be made compulsory.

Over half (55 per cent) agree that independent professional medical examiners should be responsible for deciding that a person has endured a whiplash injury for the purposes of making a claim.

A fifth (20 per cent) said that the claimant’s GP should be responsible for determining whether or not an individual has sustained a whiplash injury.

There is broad agreement amongst respondents that the burden of proof should continue to fall upon the claimant and that independent and specifically accredited medical examiners should be compulsory to determine whether an individual has suffered whiplash. While medical examinations were clearly the favoured approach, there was some take up for the idea of the claimant’s GP being empowered with the responsibility to determine the scale and type of injury and whether the injury is valid or not in terms of making an insurance claim. However, empowering GPs to undertake medical assessments of their patients is fraught with potential hazards, given that it would be impossible to guarantee impartiality on the part of the GP and consistency in assessment method would be more difficult to enforce than assessment under an independent panel. Furthermore, there is anecdotal evidence that GPs are put under due pressure to sign off on whiplash injuries and, given that they are notoriously difficult injuries to prove, this could give rise to an increase, rather than a decrease, in exaggerated and fraudulent claims activity.

There is an interesting discrepancy of views split across the age groups on the issue of medical assessments. While 75 per cent overall support medical assessment of suspected whiplash injuries, it is valued more highly by the older generation than the younger, with 78 per cent of those aged 65 and over contrasted with only 30 per cent of those aged 18 to 24 coming out in support of medical evaluations.

The Transport Select Committee’s Report in July 2014 was critical of the role that pre-medical (pre-med) settlement offers play when considering fraudulent whiplash claims. Some insurers argue that pre-med offers, sometimes referred to as ‘day one offers’, are currently made on cases where accident circumstances make it very likely an injury would have been suffered. That way the cost of an unreliable medical report is not incurred. Genuinely independent medical reports coupled with a reliable means of diagnosing a true injury (and rejecting false ones) would mean that pre-meds or day one offers would become unnecessary.

The fact that almost four fifths think that medical examinations should be made mandatory in whiplash insurance claims cases should be met positively by the MoJ, following the recent announcement by Chris Grayling, Justice Secretary, in which he confirmed that charges for an initial medical report reduce to £180 from October 2014. The Government believes that a fixed rate for medical examinations will stop some experts who produce the assessments encouraging claimants to arrange unnecessary treatment in order to generate profit. This is part of the Government’s efforts to reform the broken system that has allowed a whiplash claims culture to spiral out of control and these measures will be welcomed by many people.

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Medical examinations: a deterrent?

- Eighty-nine per cent say that the introduction of the requirement to provide supporting evidence from a medical examination will “act as a deterrent” to fraudulent whiplash claimants.

- Furthermore, 90 per cent of “exaggerating claimants” will be put off making a claim by the introduction of this more rigorous and empirically supported system.

It appears that the majority of people think that, whilst it will not deter genuine claimants, having to provide supporting evidence via a medical examination to prove that the claimant is suffering from his/her supposed whiplash condition will “act as a deterrent” and, by inference, help to drive down the number of suspect whiplash cases. Fifty-four per cent believe that the introduction of such a system would make “a lot” of difference. The argument in favour of mandatory medical assessment and supportive evidence in the case of all whiplash claims appears to be extremely strong. This finding supports the MoJ’s recently announced intentions to fix the cost of medical assessments and reports, in order to raise the volume of medical examinations and disincentivise those seeking to make fraudulent claims.

The perception that independent and specifically accredited medical examinations will have an impact is met by the reality that they will actually be a robust piece of forensic work by an independent accredited expert with the tools to diagnose true whiplash injury.

Paying for the new whiplash claims system

- Sixty-two per cent of respondents would support the introduction of mandatory medical examinations even if it resulted in their insurance premiums rising in the short term.

- Of that number, 32 per cent would “strongly support” these measures even if it meant higher premiums.

- Only 14 per cent oppose the introduction of mandatory medical examinations on the grounds that it would increase their premiums in the short term.

It is extremely revealing that whiplash fraud is deemed a significant enough problem that people are even prepared to pay extra in the short term if it means the eradication of whiplash fraud in the longer term. This is clearly not a “phantom” issue – it is something that people have strong opinions on and are, in the main, supportive of attempts to deal with the practice of whiplash fraud in a robust, zero tolerance, manner. As one might expect there is an age effect to the responses – the willingness of younger people to pay more is only moderate (44 per cent), but this gets stronger with age and for the over-55s support for these measures is over 70 per cent.

To what extent would you support or oppose mandatory medical examinations for whiplash cases if it resulted in your insurance premium rising in the short term?

- 62% Support
- 14% Oppose
- 24% Tend to support
- 29% Tend to oppose
- 5% Neither support nor oppose
- 2% Strongly oppose
- 9% Strongly support

Approximately how much do you believe is a reasonable amount of compensation to claim for a genuine whiplash injury (when symptoms persist for a month or less)?

- Up to £500: 3%
- Between £500 and £999: 11%
- Between £1000 and £1999: 20%
- Between £2000 and £2999: 28%
- Between £3000 and £3999: 27%
- Over £5000: 26%

Average 1130

NET: Any compensation 93%

A lot A little Not at all

NET: At all 89%

NET: At all 90%

NET: At all 48%
The AXA Whiplash Report 2013 was a substantial piece of research that contained a number of detailed recommendations.

Key recommendations in the report included:

1. The MoJ proposals to introduce a national accredited panel of experts to assess contested whiplash claims should be further developed, including shifting the burden of proof onto the claimant in a similar manner to the French system.

2. Independent medical reports should categorise whiplash in accordance with the Modified Quebec Task Force scale. There should be a medical threshold below which compensation is not recoverable, e.g. medical reports could categorise Quebec grade 1 and 2 as below the threshold of compensation while grade 3 and 4 injuries receive compensation.

3. Implement a minimum threshold system in the UK, similar to that used in Sweden, based on a time limit system for the onset of symptoms, after which no compensation claim is recoverable.

4. If any part of an insurance claim made by a policyholder is tainted by fraud, the whole claim fails. The same position should apply in respect of personal injury claims.

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7 The financial limit for the small claims track is currently generally £5,000 (increased to £10,000 from April 2013) but lower limits apply to personal injury claims and housing disrepair claims - House of Commons Library Standard Note, The Financial limit for small claims and low value road traffic accident personal injury claims, 22 March 2013
July 2013
Launch of AXA’s Whiplash Report.
Road Traffic Accident (RTA) Portal was extended to include claims up to £25,000.
Transport Select Committee’s 4th Report into Cost of motor insurance: whiplash recognises that there is no generally accepted objective test for a whiplash injury and recommends that the Government bring forward recommendations to reduce the time period during which whiplash claims can be made.

October 2013
Announcement that MoJ will push ahead with independent medical panels and that the small claims track would not be raised.

December 2013
Further Government Response to the Transport Select Committee’s Fourth Report of Session on Cost of motor insurance: whiplash. It stated the Government’s intention to agree a new reporting system with stakeholders in which only medical reports by accredited examiners would be acceptable as evidence in whiplash claims.

April 2014
The MoJ consultation supported proposals previously made by AXA to increase the maximum fine on Claims Management Companies (CMCs) for unsolicited calls from £500,000 to £1 million, indicating it would legislate for the power to fine CMCs up to 20 per cent of their turnover when this figure exceeded £500,000.

June 2014
Secretary of State for Justice, Chris Grayling, announced new measures to tackle insurance fraudsters including improving medical assessments and the dismissal of compensation applications where claimants have been fundamentally dishonest.
Lawyers banned from offering would-be claimants incentives such as money or a free iPad to encourage them to make a claim.

July 2014
Transport Select Committee’s 1st Report into Driving premiums down: fraud and the cost of motor insurance agrees in principle with striking out “dishonest” claims but cautions against hasty legislation because “there may be complex legal implications”.

August 2014
MoJ announced that, from October 2014, medical professionals can only charge £180 for an initial whiplash report, reflecting the time taken to carry out assessments and write them up.
Further announcements are expected which will clarify provisions for independence, by way of prohibition on either party from having a financial interest in an intermediary through which a medical report is obtained.

Timeline of activity

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Lawyers banned from offering would-be claimants incentives such as money or a free iPad to encourage them to make a claim.

July 2014
Transport Select Committee’s 1st Report into Driving premiums down: fraud and the cost of motor insurance agrees in principle with striking out “dishonest” claims but cautions against hasty legislation because “there may be complex legal implications”.

August 2014
MoJ announced that, from October 2014, medical professionals can only charge £180 for an initial whiplash report, reflecting the time taken to carry out assessments and write them up.
Further announcements are expected which will clarify provisions for independence, by way of prohibition on either party from having a financial interest in an intermediary through which a medical report is obtained.
Many of the recommendations in our previous report have been reflected in the Government’s work programme. However, there is more that could and should be done to tighten the existing framework, reduce fraudulent and exaggerated claims and thereby reduce premiums. This report demonstrates that, crucially, there is a significant consumer appetite to tackle the problem, particularly with regards to what level of severity whiplash injuries are compensatable.

Below, AXA sets out a number of recommendations that incorporate the work of the 2013 report and this follow up to it:

1. The Government should continue to work at pace to introduce their reforms to the whiplash medical reporting system, including the accreditation of medical experts and introducing a new system which will allocate medical experts on a random basis.

2. As part of the reforms to the whiplash medical reporting system whiplash claims should be categorised in accordance with the Modified Quebec Task Force scale in order to provide a clear definition of whiplash.

3. There should be a medical threshold below which compensation is not recoverable at all, e.g. medical reports could categorise Quebec grades 1 and 2 as below the threshold of compensation while grade 3 and 4 injuries receive compensation.

4. Clarify the position surrounding the term “fundamentally dishonest” in The Criminal Justice and Courts Bill - if the law is intended to ensure that any claim found to be dishonest in any aspect should be thrown out and receive no compensation at all then the word “fundamentally” should be removed entirely. If on the other hand, Parliament wishes to allow Judicial discretion as to whether the dishonesty in question was intentional, thereby allowing for some of the claim to be compensated, the word “fundamentally” should be replaced with a clearer definition such as “deliberate” or “conscious”.

5. The Government should resume work as soon as possible towards increasing the Small Claims Track (SCT) limit from £1,000 to £5,000 for RTA personal injury claims.

Methodology

The fieldwork research component of this report was undertaken independently by the research house Populus. 2,000 people of all ages from 18 included were polled between 25 and 27 July 2014.

Note from Cass Business School
The survey response rate conforms to what is standard experience in an omnibus survey. The respondents are spread across all age groups, geographical areas and socio-economic groups. The research house considers the responses to be representative of the relevant population. Importantly, this implies that non-response is independent of the subject of the survey.