









Road to reform: Driving out compensation culture

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Background

The detrimental effects of the UK's compensation culture - forged from the entwined issues of whiplash, fraud and nuisance calls by claims management companies - are, once again, reaching a boiling point.

Just as motorists began to feel the benefit of cuts to their motor insurance premiums thanks to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO', which saw insurers cut premiums by around 14%), data from the Claims Portal shows that the number of minor bodily injury claims are again reaching historic levels. In response to increased frequency and costs, insurers are starting to slowly increase motor premiums.

The cost of living is as relevant today as it ever has been, and the pressure on insurers to address exaggerated whiplash, fraud and the cost of motor insurance is mounting.

The creation of the Insurance Fraud Taskforce by the Government to identify changes to reduce insurance fraud is a very welcome development. Last year, Aviva witnessed a 21% increase in organised fraud over 2013, which contributed to a record number of fraudulent motor claims. More than 50% of Aviva's motor injury claims fraud is organised and we have over 6,500 suspicious injury claims linked to known fraud rings which costs honest policyholders £50 on their premium. Crash for cash, whiplash claims and bogus injuries that never even happened are putting motorists' personal safety at risk while inflating their premiums.

Research by Aviva found that **95%** of consumers would like CMCs to face tougher regulation over how they market their services.

We have to ask ourselves as a society, why does this problem exist in the UK in the first place and why are we in a worse position than any other EU country? Simply put, whiplash remains an easy target for fraudsters, claims management companies and even opportunistic motorists who have not suffered an injury to 'have a go' and claim compensation.

As long as there are financial incentives to pursue low-level injury claims with no real risk of incurring legal costs and without objective proof of being injured as a requirement, these problems will continue to plague insurers and their customers.

But the problem extends well beyond higher premiums and crash for cash scams. CMCs are plaguing motorists with texts and calls, encouraging consumers to make an injury claim regardless of their circumstances. We even have evidence of claims being made on their behalf without the motorist even being aware.

Consumers are fed up with this harassment: research by Aviva found that 95% of consumers would like CMCs to face tougher regulation over how they market their services.

Aviva has led the insurance industry's call for fundamental change to cut motor premiums, fight fraud and pull the plug on nuisance calls and texts. Last year, our *Road to Reform* report outlined a three-point plan that would cut motor premiums by £50 and strike a blow to the UK's infamous 'compensation culture' by reforming how we handle whiplash claims.

Our plan was simple: treat minor, short-term injuries with rehabilitation instead of cash awards; raise the threshold at which lawyers – who add cost to motor claims – are involved and ban all referral fees. Introduced together they would remove £1.4bn of unnecessary cost from the motor insurance market.

Our proposals struck a chord with consumers, MPs, the media and industry experts. Against the backdrop of a growing number of bodily injury claims following motor accidents (despite the reduction in the number of road traffic accidents) and increasing premiums, we believe now is the time to outline in greater detail exactly how such changes could be implemented.

This report builds on our previous proposals by looking at other countries' personal injury compensation systems to understand what we can learn from their experience to reduce the number and cost of whiplash claims in the UK.

There are clear links between what has worked in other countries that have a low number of whiplash claims and our earlier recommendations. So we have applied those learnings which inform our recommendations in this report. Our aim remains the same: to find simpler, cost-effective ways of providing better value motor insurance for our customers at a lower price.

Aviva believes that everyone is entitled to fairly priced insurance to protect what is important to them. Failing to address an escalating claims culture puts consumers and businesses at risk and increases the cost of living for us all.

We will be working with Government and other relevant stakeholders with the aim of bringing about long-term change that will cut costs and bring sustainable reductions in motor insurance premiums for everyone.

Maurice Tulloch
Chairman Global General Insurance / CEO
UK & Ireland General Insurance
Aviva



“Our aim remains the same: to find simpler, cost-effective ways of providing better value motor insurance for our customers at a lower price.”

Insurers cut premiums by **14%** after 'LASPO' was introduced

What has happened to motor premiums and claims since the LASPO Act of 2012?

The history of whiplash and its role as a driving force at the centre of the UK's compensation culture is a complex one.

During the period from 2005 – 2013, the number of road traffic accidents on UK roads fell by 30%. However, safer roads and safer cars have not translated into fewer injury claims. Just the opposite: insurers witnessed a rapid increase in the number of bodily injury claims made, accompanied by an increase in the cost per claim of 73%.

This has been driven, in part, by a growth in the number of people who make an injury claim stemming from a single accident. From 2007 to 2014, Aviva witnessed an 11% increase in the number of injury claims arising from a single accident.

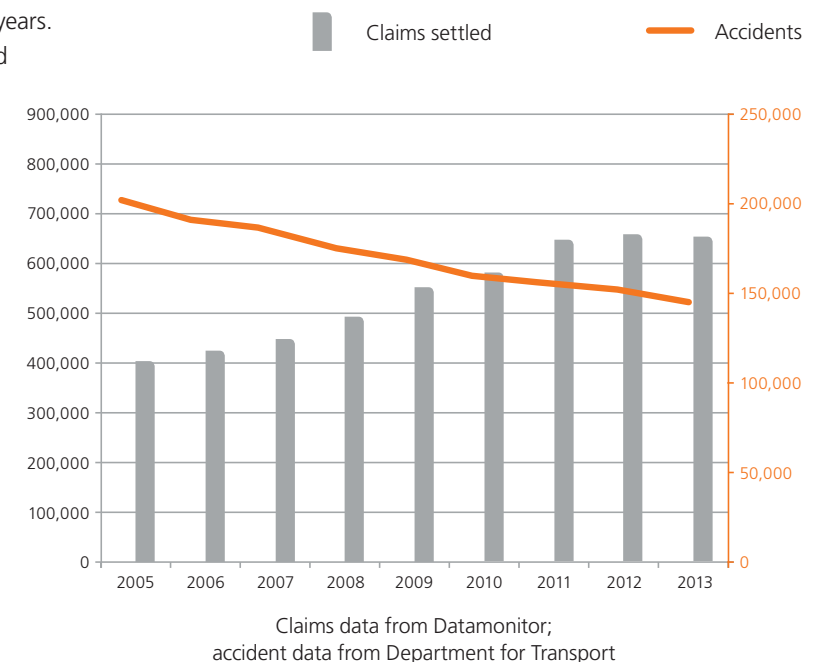
In fact, from 2005 – 2011, the number of bodily injury claims submitted to motor insurers increased by 80%. This tapered over the next two years as the Government began to address the issue of whiplash, including the banning of referral fees which encouraged claims and the introduction of LASPO. Still, from 2005 – 2013 claims grew by 62% - while road traffic accidents fell by nearly one-third.

Insurers, for their part, did not immediately recognise this counter-intuitive set of events. From 2005 – 2008 motor insurance premiums in the UK actually marginally declined. But then from 2009 – 2012, insurers were forced to implement a steep rise in insurance premiums, which grew by 80% during this three year period. However when the Government introduced changes to curb this inflation in 2012-13 (LASPO), insurers were very quick to respond and premiums have since dropped by around 14%.

However, as the number and cost of injury claims continue to climb, the premium benefits driven by the LASPO reforms are being eroded. The ABI Motor Premium Index showed that motor premiums rose in Q4 2014 by 5% over the previous quarter.

Compared with other European countries looked at in this study such as France and Norway, it is clear the UK is alone facing the whiplash challenge. In our study of motor insurance premiums since 2005, and in spite of the cuts in premium from 2012 - 2014, the UK has risen far more than other major European countries.

But this increase in the cost of motor insurance did not result in profit taking. In fact, the direct motor insurance industry did not make an underwriting profit from 1994 until 2014 – 20 years. Few industries have ever had to endure such a prolonged period of lack of profitability.



Between 2005 - 2013 the UK motor insurance market witnessed a paradox:

Road traffic accidents fell by 30%



but claims for personal injury increased by 62%



The average cost of a bodily injury claim increased by 73%



What makes the UK unique in its susceptibility to whiplash claims?

Conclusions from Frontier Economics Whiplash Report

Aviva commissioned a report by Frontier Economics to understand what the UK can learn from injury compensation systems abroad that would help to address the growing number of bodily injury claims and the high incidence of fraud in the UK.

Aviva does not agree with the oft-stated allegation that UK motorists have the weakest necks in Europe. It is our view that the UK system has been exploited and new guidance or legislation to address the issues we highlight is needed to restore the balance and stop the 'have a go' claim culture.

As a society, the UK must now address the question at the heart of its compensation culture by learning from the experiences of other countries: do we want to continue to compensate every minor knock or bruise at the expense of ever-increasing premiums? Or should we alter our system and if so how could we do so fairly?

We have already seen that increasing claims costs and frequency are directly linked to increased premiums. In fact, claims costs make up the great majority (76%) of motor insurance premiums.

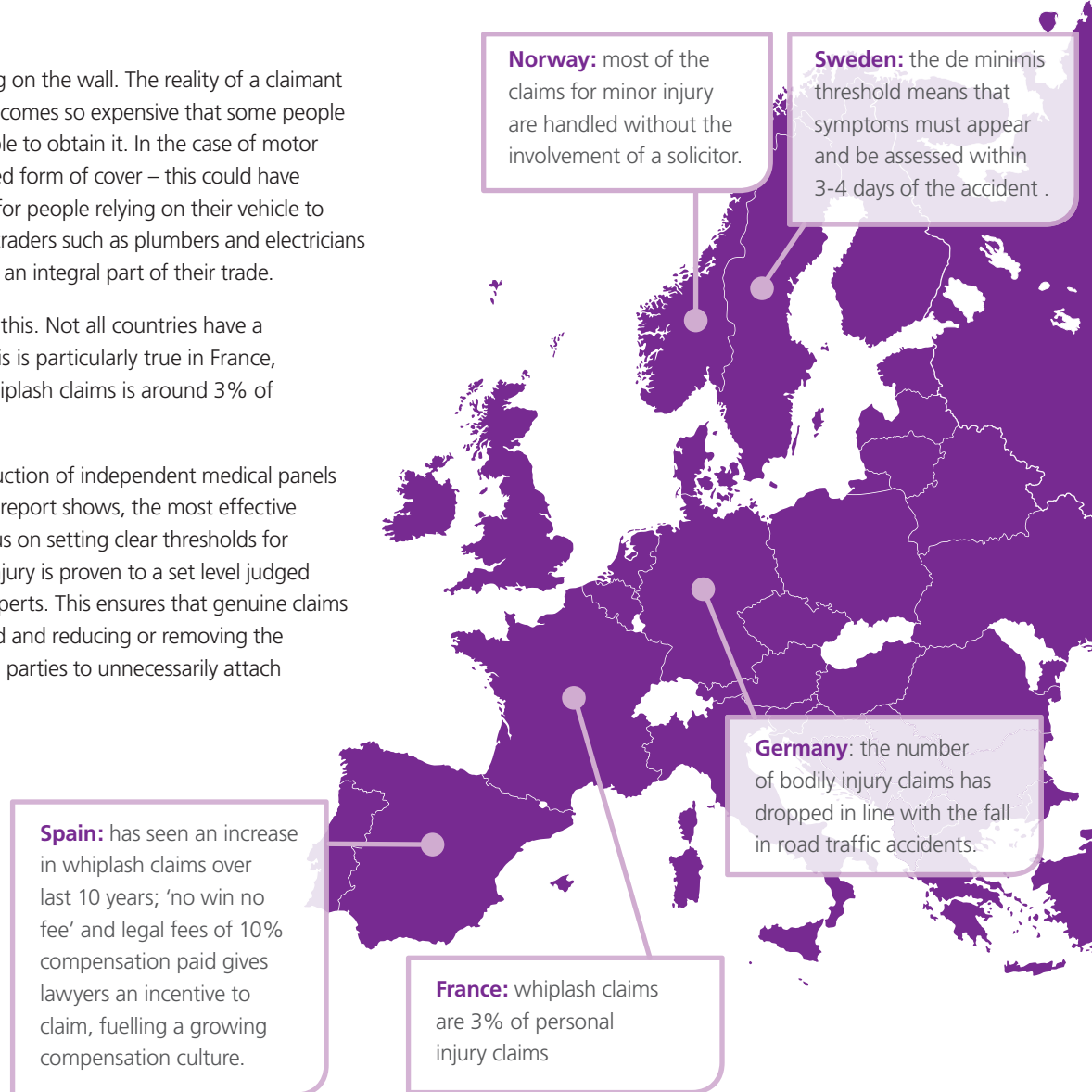
Worryingly, the frequency of bodily injury claims have returned to their pre-LASPO levels. In 2011, prior to the introduction of LASPO, Aviva reported that third party personal injury claims accounted for 52% of its motor claims costs. As recently as April 2014 this figure had dropped to 49%, thanks to the LASPO reforms. Yet less than one year later the increased number of bodily injury claims has pushed personal injury costs up again, which now account for 52% of Aviva's total motor claims costs.

This is the proverbial writing on the wall. The reality of a claimant culture, is that insurance becomes so expensive that some people are excluded from being able to obtain it. In the case of motor insurance – a legally required form of cover – this could have devastating consequences for people relying on their vehicle to commute to work, or sole traders such as plumbers and electricians who rely on their vehicle as an integral part of their trade.

It does not need to be like this. Not all countries have a 'compensation culture'. This is particularly true in France, where the incidence of whiplash claims is around 3% of personal injury claims.

Aviva welcomes the introduction of independent medical panels later this year. As Frontier's report shows, the most effective compensation systems focus on setting clear thresholds for compensation where the injury is proven to a set level judged by independent medical experts. This ensures that genuine claims are paid while limiting fraud and reducing or removing the financial incentives for third parties to unnecessarily attach themselves to a claim.

Last year, Aviva witnessed a **21%** increase in organised fraud compared to 2013, which contributed to a record number of fraudulent motor claims.



Frontier's findings are clear. The UK should actively consider implementing the following, subject to practical and legal constraints:

1. Shorten the limitation period from 3 years and increase transparency and consistency of the claims process with a greater weight on timely evidence of the injury. Evidence of the claimant's injury should be obtained from an accredited medical practitioner within a reasonable period after the accident. Limitation periods across Europe range from one to 10 years. Norway and Sweden have limitation periods and also require medical reports to be obtained within short periods. MedCo could look to include this as part of the process.

2. Introduce an objective diagnosis for whiplash or soft tissue injuries with clear and workable severity scales to inform compensation payments. Other countries have drawn on the Quebec Task Force report to provide an objective basis for diagnosing whiplash. Severity scales are also used in Germany. Current market reforms to the medical diagnosis process (including 'MedCo') may wish to consider this.

3. Introduce a table of predictable damages: Spain, Norway and Sweden (and UK sectors such as workplace personal injury) use predictable damage tables. This would increase the efficiency and transparency of handling low level claims.

4. Ensure medical practitioners are formally accredited and have specialist qualifications to diagnose whiplash and related soft tissue injuries. Spain and France require medical practitioners diagnosing whiplash to have specific qualifications and be trained in bodily injury diagnoses. The formation of the forthcoming Medical Panel offers an opportunity to introduce formal accreditation.

5. Lower the costs to claimants of involving intermediaries where appropriate:

i. Ban or lower allowable contingency fees for intermediaries (lawyers or otherwise): In Germany, contingency fees are permitted only in the cases where the claimant does not have the financial means to retain a lawyer.

ii. Lower the cap on legal fees. The cap in the UK has fallen from £1200 to £500; lowering the cap further would lower costs for claimants.

iii. Increase the small claims limit: The UK's small claims track limit (currently £1,000) could increase to allow more whiplash/ soft tissue injury claims to be settled without solicitors. In France 'small claims' are considered to be up to €4,000 (£3,000) and €10,000 (£7,300).

Aviva does not settle claims without a medical certificate

About MedCo

'MedCo' will be a new system for sourcing medical reports in soft tissue injury claims.

Insurers have agreed to fund the creation of the MedCo IT Portal system from the Motor Insurer Bureau levy. Once built it will be self funding via medical reporting organisations and medical experts.

Aviva remains supportive of the Government's forthcoming changes to the allocation of medical experts and the introduction of a system of accreditation.

The Government's Programme:

MedCo is a Government system that will randomly allocate medical experts to soft tissue bodily injury claims such as whiplash and remove any links between medical experts and the lawyers who instruct them.

'Tranche One' is already in force:

- **Fixed Costs** for initial whiplash medical reports
- **Limited Reports** - a second medical report can only be commissioned if the first expert says such a report is needed
- **Limited Experts** - the experts who are qualified to provide a first report are limited to an 'approved list'
- **Independence** - a ban on those experts providing treatment to the claimant also providing medico reports, other than in exceptional circumstances
- **Defendant Story** - Provision for the defendant to put forward his/her version of events where medical causation is in issue such as low speed of impact
- **Pre Medical Offers** - are effectively restricted / banned

From 6 April, 2015, 'Tranche Two' will see:

- **Accreditation** - a system of accreditation for experts to ensure minimum quality and will include peer review, audit of reports and sanctions for non-compliance or bad behaviour
- **MedCo** - this will be a compulsory IT system which provides a randomised allocation of instructions to medical experts from claimant solicitors meaning no more 'cosy' relationships
- **Independence** - a ban on solicitors / legal representatives instructing an expert or medical organisation with which they have any financial interest

Aviva's Plan

Aviva's previous recommendations, outlined in July 2014 (Road to Reform: Tackling the UK's Compensation Culture), called for minor, short-term whiplash to be treated with care, not cash compensation.

Our analysis of the Frontier study and its key findings has helped us form more specific recommendations to address the UK's burgeoning compensation culture. We have outlined a 'road map' of what a potential package of reforms could look like that would maintain access to justice, ensure claimants with genuine, minor injuries receive the care they deserve, while removing the financial incentives in the system that are driving so much dysfunctional behaviour and inflating the cost of motor insurance.

These measures are recommendations that we believe deserve wider debate and consultation, and we would urge the next Government to consider this package of proposed reforms to bring about sustainable cuts to the cost of motor insurance.

The UK has seen some of the highest percentage motor premium increases in Europe since 2005. This 52% rise in premiums follows the corresponding 62% rise in bodily injury claims during this time.



But the Frontier study of foreign models shows that it does not need to be like this. The UK does not need to retain its dubious crown of whiplash capital of Europe.

Aviva's Plan

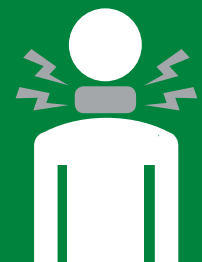
The Frontier study shows that different countries have tackled the whiplash challenge with a series of wide-ranging solutions. We agree that there is no single solution that is a cure-all to the UK's compensation culture woes.

Instead, the key is to bring in a series of changes that re-balance the system and removes the blight caused by whiplash on UK motor insurance premiums and the claims farming industry that feeds off of it.

Aviva believes that people with genuine minor injuries are best treated with rehabilitation rather than cash. By doing this we will support those who need treatment and at the same time tackle those who seek to abuse the system by profiting from fraudulent, exaggerated or minor, short-term injuries.

Aviva's Roadmap to Fighting Whiplash

- **Reduced Limitation Period** - All whiplash / soft tissue injury claims must be made within 12 months of the accident as opposed to the usual 3 year limitation period.
- **Time Limits and a Threshold** – In order to pursue a whiplash / soft tissue injury claim the claimant's symptoms must be more than trivial or simple 'nuisance' symptoms and must last longer than 3 months. The period and extent of suffering must be evidenced by way of medical records and/or evidence of treatment.
- **Rehabilitation** – Insurers should provide treatment of up to 3 months to their policyholders or the injured party regardless of who is at fault for the accident.
- **Medical Evidence** - An independent medical report must be obtained by the claimant from the new Government vehicle MedCo between 3 and 12 months after the accident for whiplash/soft tissue injury claims where the symptoms persist beyond 3 months post-accident.
- **Level of Disability** – All medical reports obtained via MedCo should assess the % of disability caused. Compensation is only recoverable where the expert considers that there is actual evidence of injury and the level of impairment caused by the accident is, for example, between 10% - 15%.
- **Predictable Damages** - Where a claimant is able to demonstrate via independent medical evidence he has overcome the threshold, damages for pain, suffering and loss of amenity should be awarded against a clear, transparent tariff. This would make it absolutely clear to a claimant what he/she is likely to be awarded and would cut down unnecessary legal argument. Countries such as France, Spain and Norway have fixed damages tariffs for whiplash type injuries.



Additionally, more needs to be done to reduce the profit at the centre of these claims. Too many parties, such as claims management companies and personal injury lawyers, are still grossly incentivised to bring claims, focusing on profit and not the person. This drives the aggressive nuisance texts and calls that we have all received, as well as adding cost to all motor claims – without adding any value – and driving up the cost of motor insurance for us all.

We believe Government should:

Ban all referral fees. Famously described as ‘the industry’s dirty little secret, referral fees exist to incentivise claims, not for the benefit of the customer, but for the financial gain of the claims management company, motor repairer, replacement vehicle provider, etc.

Reduce the fees lawyers can charge in low-value personal injury claims. The ban on referral fees has only been partially successful as it has reduced the profit on these cases but has not taken all of the incentives out of the system. Following the ban on solicitors paying referral fees in connection with a personal injury claim, The Ministry of Justice reduced legal fees to accommodate for lawyers’ lower cost base as a result of the ban. However, as the growing number of claims in the portal and the number of ABS law firms specialising in high volume personal injury claims suggests, there is still an excessive level of profit for lawyers who bring these claims and a further reduction should be considered if an increase to the small claims track limit is not made.

If lawyers’ fees are not reduced, then consider raising the small claims track limit from £1,000 to £5,000.

The point at which lawyers get involved in minor injury compensation claims (value over £1,000) has not changed since 1999. We believe this should increase to £5,000. The legal fees in these straight-forward cases are not justified: an ABI study has shown that insurers pay as much in minor injury compensation to claimants who go directly to their insurer as to those who used a solicitor. In other jurisdictions there is either no costs recovery or legal fees set at a level far lower than the UK.

For too many consumers, using a solicitor in these minor, straight-forward claims comes at a too high a price: consumers risk losing up to 25% of their compensation if they go to a lawyer.



Consumers risk losing up to 25% of their compensation if they go to a lawyer.

The savings

The changes as outlined by Aviva will fundamentally reform the UK's compensation system, demolishing the £2.5bn whiplash problem and bringing the UK in line with the rest of Europe and how it treats minor motor injuries.

The benefit of these changes is not just financial. By deciding when compensation should be paid and having an objective test in place it will result in earlier treatment for the claimant. In claims where the recovery is less than three months, the customer's own insurer can help their customer recover from minor injuries by providing short-term rehabilitation. Cash compensation is paid only for longer-term injuries.

The role of insurance of any type is to reinstate the insured into the position they enjoyed prior to the claim. Allowing for the sad fact that we cannot always restore people to the health they enjoyed prior to their accident, providing rehabilitation for minor injuries does this, while compensating injuries above the agreed threshold acknowledges the detrimental impact that longer-term injuries can have.

Introducing a threshold and reducing the limitation period will deter a large number of minor, spurious or fraudulent whiplash claims, and remove the extent to which profiteering third parties attach themselves to these claims purely for their own gain.

These changes would not impact on access to justice as the system as a whole changes for all consumers and it removes the excessive cost from the system. All too often access to justice has come to mean access to a lawyer and a compensation payment, no matter how spurious the claim.

If new timescales, a threshold and an objective test for whiplash are introduced, this will filter exaggerated and fraudulent claims out from the claims process and result in a reduction in the number of whiplash claims being. It is Aviva's view that this will be substantial and the premium benefits to customers will be significant.



Conclusion

Consumers are fed up with the UK's compensation culture and all its trimmings: the nuisance texts and calls from claims management companies, profiteering lawyers, increasing motor insurance premiums and fraudsters abusing the system for their own financial gain.

Aviva believes now is the time to take the necessary action to stop the nuisance texts calls, stop excessive lawyers fees, stop the increasing whiplash claims and corresponding premium rises, and stop the fraudsters pursuing bogus claims.

We urge the Government to address these inter-related issues. Aviva's report shows that, while we have come a long way, thanks to reforms such as LASPO, there is still more to do to fight the scourge of CMCs and fraudsters and cut motor premiums. Our plans show that it is possible to cut motor insurance while ensuring the genuinely injured party gets the care and compensation they deserve. Our plans also address the text pests that phish for even the most spurious claim by reducing the financial incentives.

We would urge the newly formed Government to consider our calls for action and commission a white paper to encourage a far wider debate about how the current compensation system operates and how policy changes - as we have outlined here - could lead to a fairer, lower cost system for the future.

They will have the support of the UK's motorists, who are irritated at paying the high price for the UK's compensation culture.

And we will finally be able to show that the UK does not have the weakest necks in Europe.

For additional information please contact:

Erik Nelson

Aviva

01603 682 264

07989 427 086

erik.nelson@aviva.co.uk