



# Whiplash reform: operational impact for insurers



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# Introduction

Monday 31 May 2021 was an important day for motor insurers as the long-awaited whiplash reforms came into force. Overnight, this set of changes has transformed whiplash claims for insurers in three fundamental ways:

1. A new regime for assessing the value of claims, with fixed compensation awards for whiplash injuries;
2. A new Pre-action Protocol, introducing changes to how claims are raised by claimants and handled by insurers, and
3. Changes to rules applying to recovery of legal costs, largely removing the insurer's exposure to claimant lawyer fees.

It has arguably been a long time coming. The Civil Liability Act 2018 (CLA), the vehicle for some of the key changes, received Royal Assent in December

2018 and was originally intended to come into force in 2019. Whilst the delay has caused the industry some frustration over the last couple of years, the implementation itself should be seen as a success.

The reforms have been designed to reduce the overall costs involved in whiplash injury claims to a proportionate level, and the combination of reduced compensation and the end of recoverable costs should go some way to achieving this. It is not, however, expected that the changes will lead to a significant reduction in the number of claims.

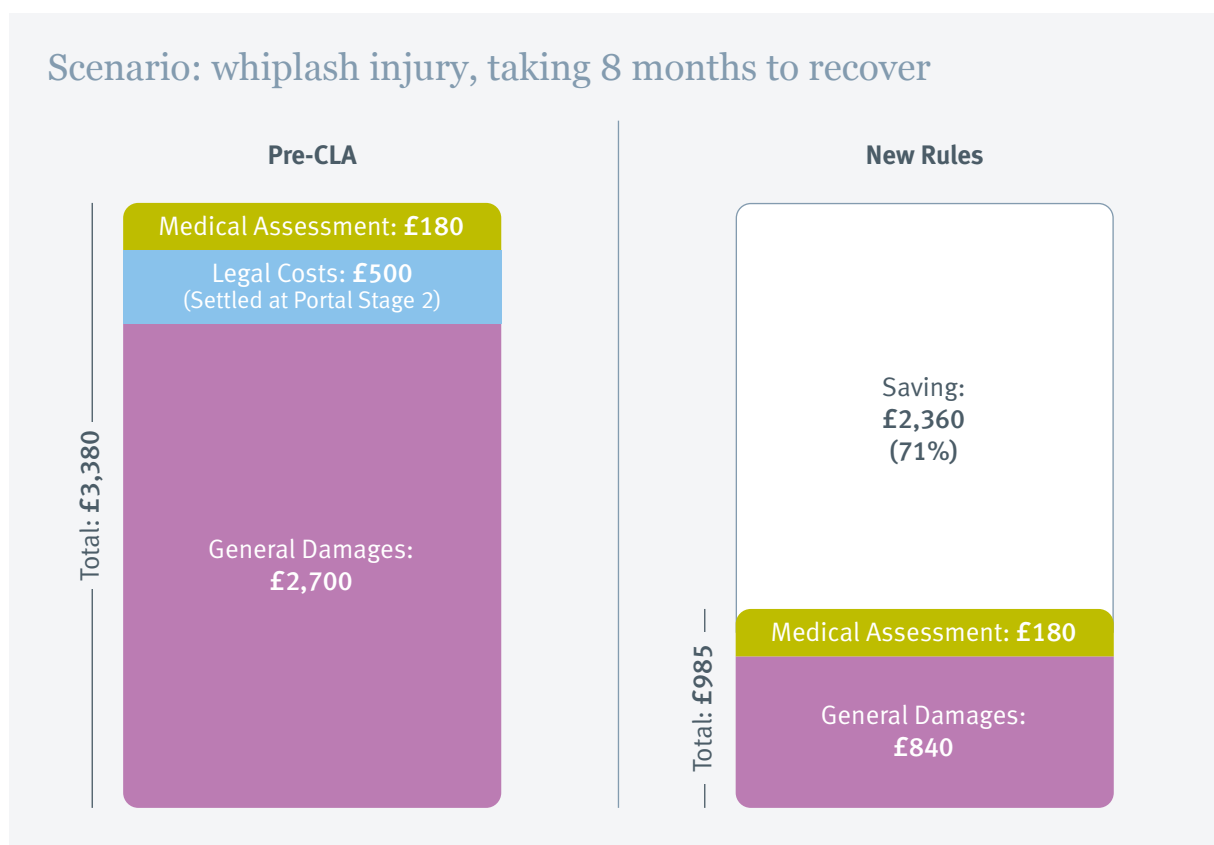


Figure 1: Example of a claim for damages and legal costs for whiplash, pre- and post-implementation of the reforms

**What we do expect are longer term, more complex, impacts to claimant firms and defendant insurers, including:**

- behavioural changes in the claimant sector, with efforts to move the focus to different types and values of claim;
- further market consolidation in the legal and claims management company (CMC) markets;
- increased use of technology as elements of the process become simpler to automate, improving the efficiency of claims management processes, and
- new challenges for insurers in handling claims brought by claimants directly without legal representation.

We will cover these areas in more depth throughout this paper, which provides an analysis of the operational impacts of the reforms to insurers, both in terms of the immediate position and the longer-term view of how we expect things to evolve.

# The reforms – past and present

## A decade of reform

There have been previous efforts to address issues around disproportionate legal costs in personal injury claims, notably under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. This legislation introduced a ban on referral fees paid by claimant personal injury (PI) firms for details of potential claims, and removed the ability for claimant firms to recover success fees and after-the-event insurance premiums from defendants (these costs are now paid by the claimant, which means that they will have to pay towards their own legal costs if their claim succeeds).

Other developments included the reduction of fixed legal costs which could be recovered by claimant firms, changes to rules relating to settlement offers, and new rules applying to claims which are determined to be “fundamentally dishonest” – under the Criminal Justice and Courts Act 2015, such claims can now be struck out entirely, even

if part of the claim is genuine. The introduction of MedCo to facilitate the sourcing of medical reports has raised the levels of scrutiny and consistency in the Medical Reporting Organisation (MRO) sector. From a regulatory perspective, CMCs are now within the remit of the Financial Conduct Authority (FCA), rather than the MoJ.

The backdrop to these initiatives was a perception, supported by the significant increase in claim volumes since 2006 (whilst accident rates were falling), that the UK was suffering from a “whiplash epidemic”, and recognition that this environment created ideal conditions for fraudsters to take advantage through “crash for cash” schemes or exaggerate the effects of a minor injuries to increase compensation. Whilst addressing some of the challenges, these reforms did little to reduce the overall volumes and significant costs of these claims, and in 2016 the MoJ started consultation on the latest reforms, leading to the development of the Civil Liability Bill.

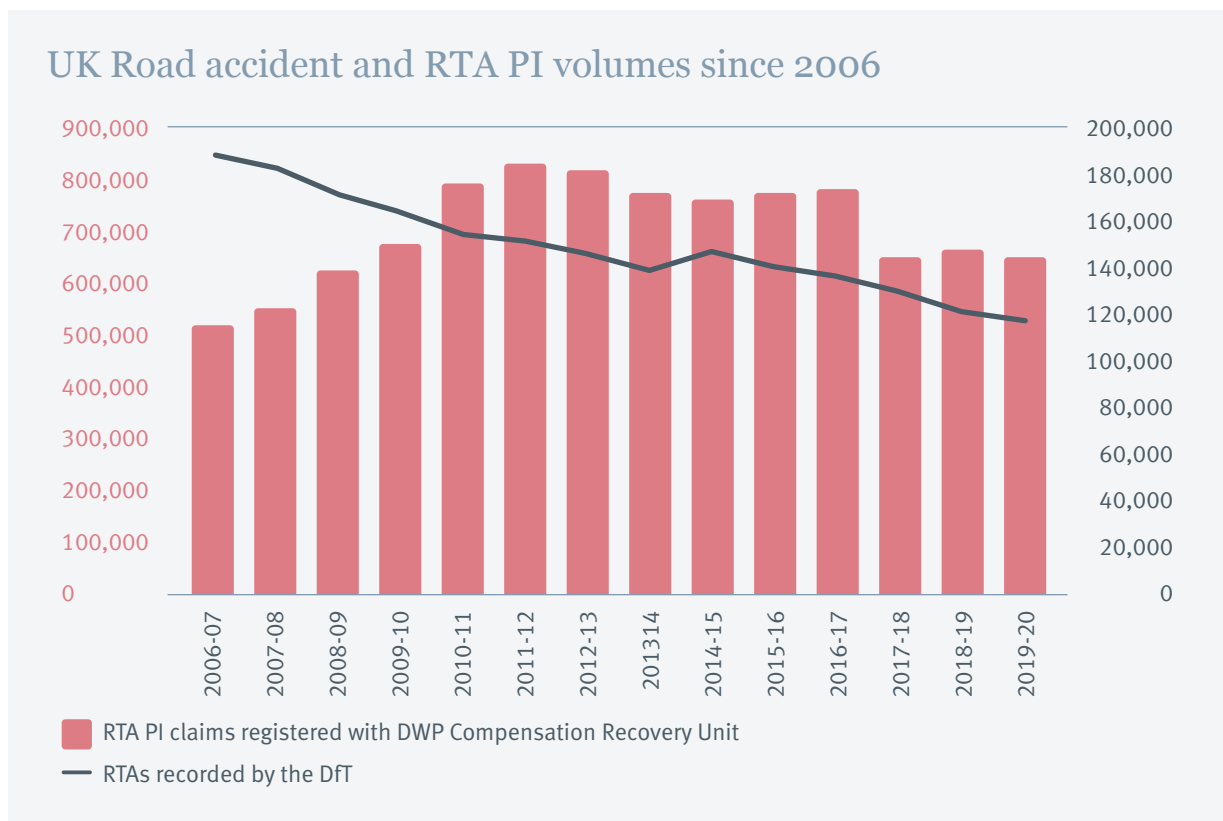


Figure 2: Graph highlighting a rise in claims frequency, despite reduction in accident figures

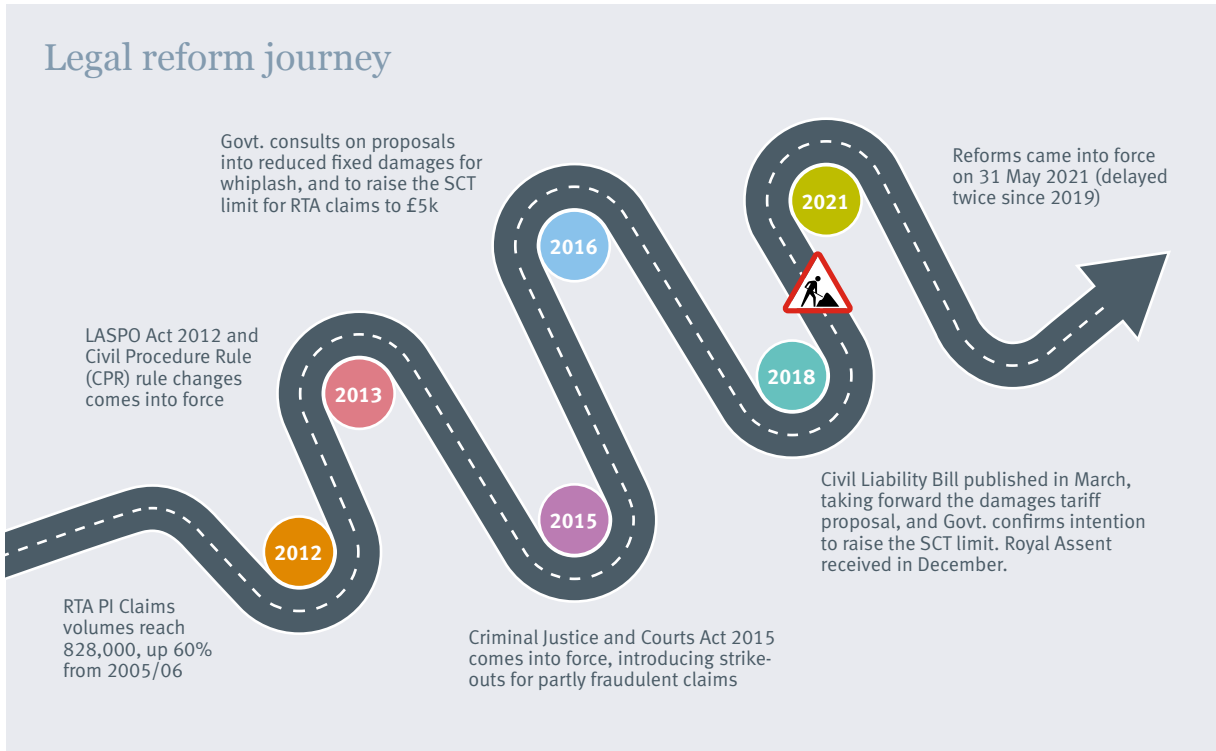


Figure 3: Timeline of recent legislative changes affecting motor personal injury claims

## The Civil Liability Act 2018

Part One of the Civil Liability Act 2018 (CLA) came into force on 31 May 2021, providing the framework for a set of reforms which has significantly changed the landscape for low value road traffic accident (RTA) PI claims.

The key change under the CLA is the introduction of a damages tariff, with fixed damages for pain, suffering and loss of amenity that can be sought by claimants that suffer whiplash. Alongside this, changes to the Civil Procedure Rules mean that RTA whiplash claims valued up to £5,000 are now handled through the Small Claims Track, as the limit has been increased from £1,000, and a new electronic portal has been developed by the MIB to support this process (Official Injury Claim).

## What do the new damages awards look like?

Under the new tariff, damages will now be assessed with reference to the duration of injury which the claimant “has suffered, or is likely to suffer”, details of which must in most cases be provided as part of a MedCo appointed medical expert before a claim can be settled. Details of the fixed amounts for compensation have been set out in the Whiplash Injury Regulations 2021.

The new figures are significantly lower than those currently paid out for whiplash injury claims and have been designed to provide a more proportionate level of compensation. The figures are slightly higher than previously proposed, due to the inflationary impact on claim values over the last couple of years. For claims which include a minor psychological injury in addition to a whiplash injury, the tariff includes slightly higher levels of compensation.

# The reforms – past and present (cont.)

The courts also have the power to apply an uplift to damages of up to 20%, in circumstances where the degree of pain suffered or combination with another injury makes it appropriate to do so.

The table below sets out the tariff figures against the bands for general damages in the 2020 edition of the Judicial College Guidelines (JCG), and industry data for claim settlements from 2015, which the MoJ have weighted to reflect changes to the JCG in their Impact Assessment for the draft legislation.

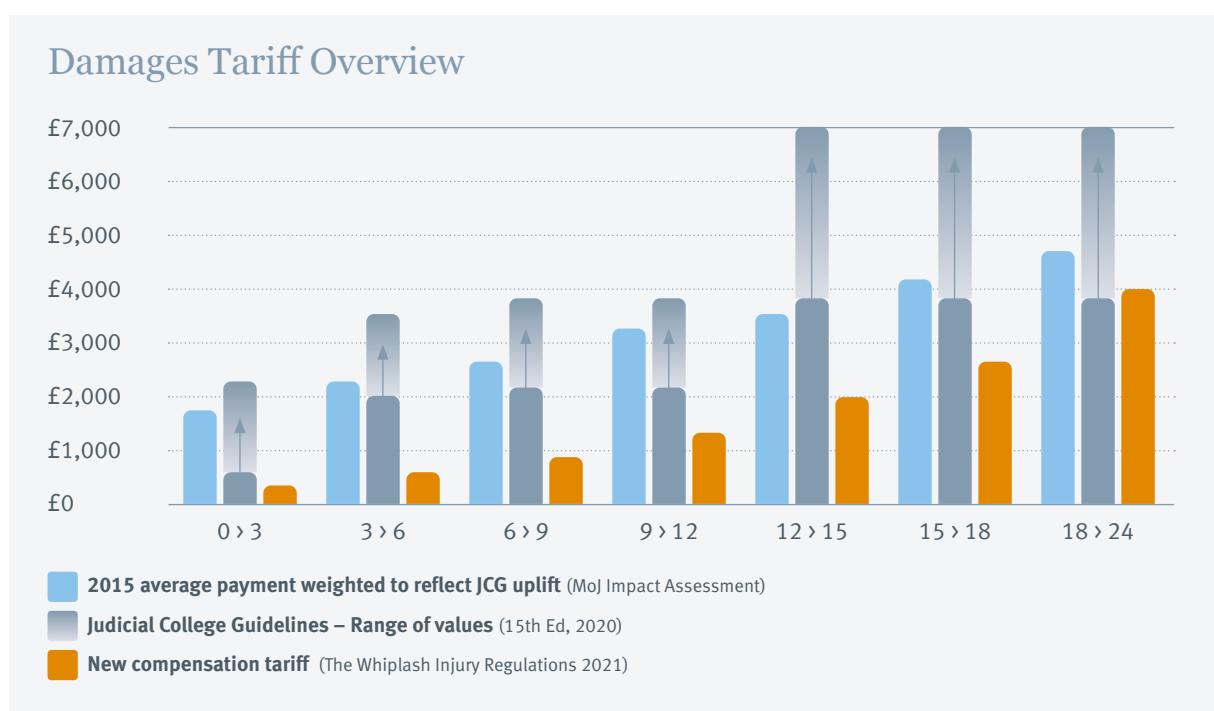


Figure 4: Overview of the new damages tariff for different periods of injury, compared with the typical figures that applied pre-reform

## Key changes summary

- Low value RTA PI claims worth up to £5,000 are now handled in the Small Claims Track (limit increased from £1,000).
- A tariff of damages for whiplash injury claims has been introduced, with compensation set at significantly lower levels than damages received for the same injuries pre-reform.
- New Pre-Action Protocol which applies to whiplash claims, with longer timescales to respond to claims, but shorter timescales to deny liability.
- The introduction of a new electronic portal – Official Injury Claim – built and managed by the Motor Insurance Bureau (MIB).

# Pre-litigation: a new model

The diagram below provides a high-level view of the claims processes, highlighting the key parties involved, how they are connected, and for the insurer, the core aspects of the operating model that support the claims function in dealing with whiplash claims through the OIC Portal.

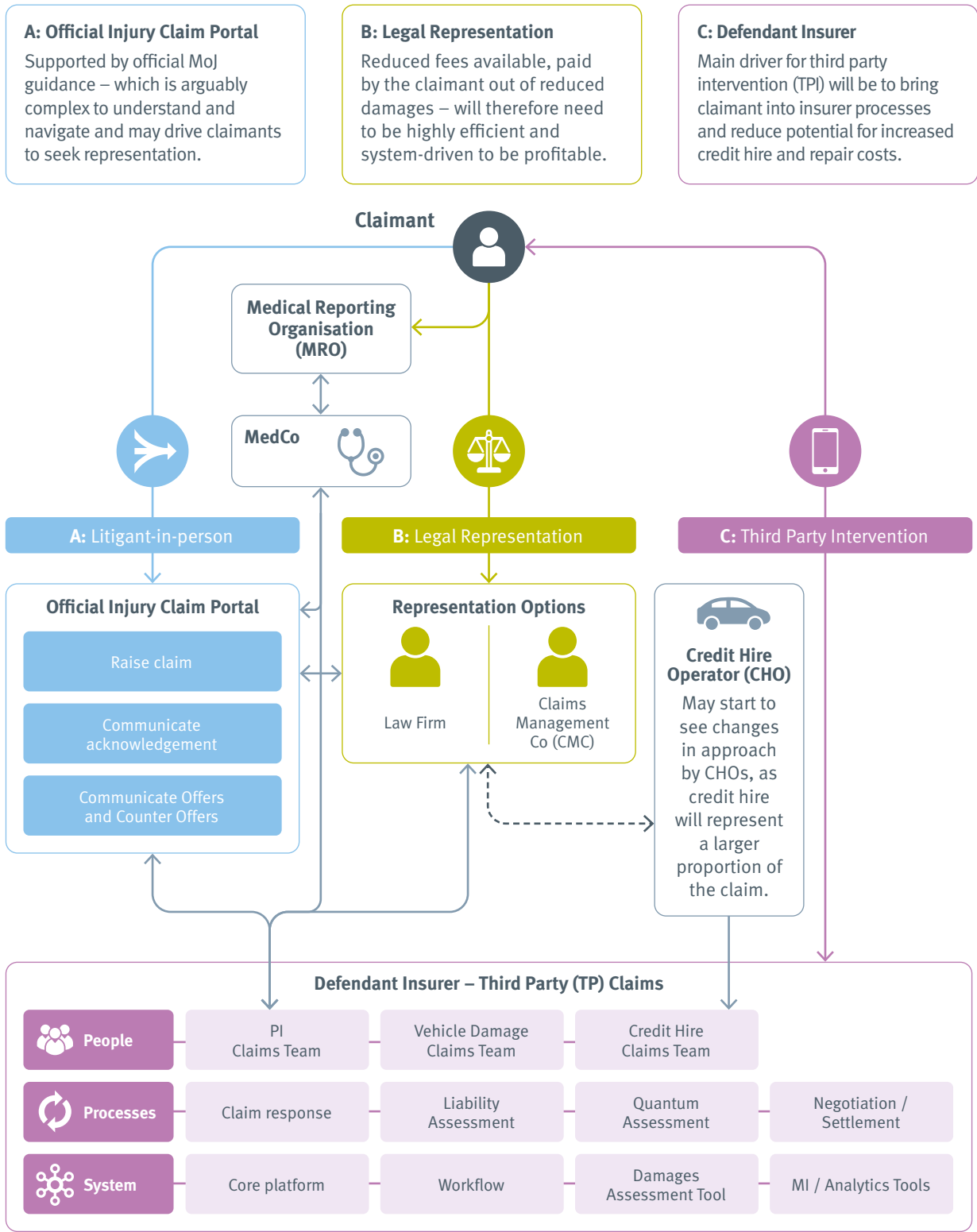


Figure 5: High level view of the new environment for whiplash claims

# Impact

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We looked at the high level impacts in our previous paper, ‘Whiplash Reform: Looking Beyond the Costs’, identifying the following key areas:

- CMCs stepping into the place of law firms, as they will now be able to act for whiplash claimants where claims are under the SCT limit, potentially keeping claims volumes high.
- Displacement of claimant activity, where there is motivation to move claims away from the OIC Portal, and attention moves to credit hire and credit repair.
- Increased application of AI, as quantum assessment become more process driven, rather than being based on analysis and legal expertise.
- Adapting the claims operating model to reflect the change in costs profile across claim types, opportunities to simplify existing processes, and the new soft-skill challenges involved in dealing with direct claimants.

In this section, we will dive into some of these areas in more detail, looking at the impact the changes are likely to have on the different parties involved in whiplash claims, and set out our thoughts on what this means for defendant insurers.

## Claimant sector impact

Looking again at the earlier example of the whiplash claim that takes 8 months to recover, we can split out the cost impacts for insurers, legal representatives and both represented and unrepresented claimants. In Figure 6 below, we look at what happens to the claimant’s compensation in the context of the pre-reform position, the new position for unrepresented claimants and for claims where there is a claimant legal representative.



# Impact (cont.)

## Typical whiplash claim examples

Scenario: whiplash injury, taking 8 months to recover

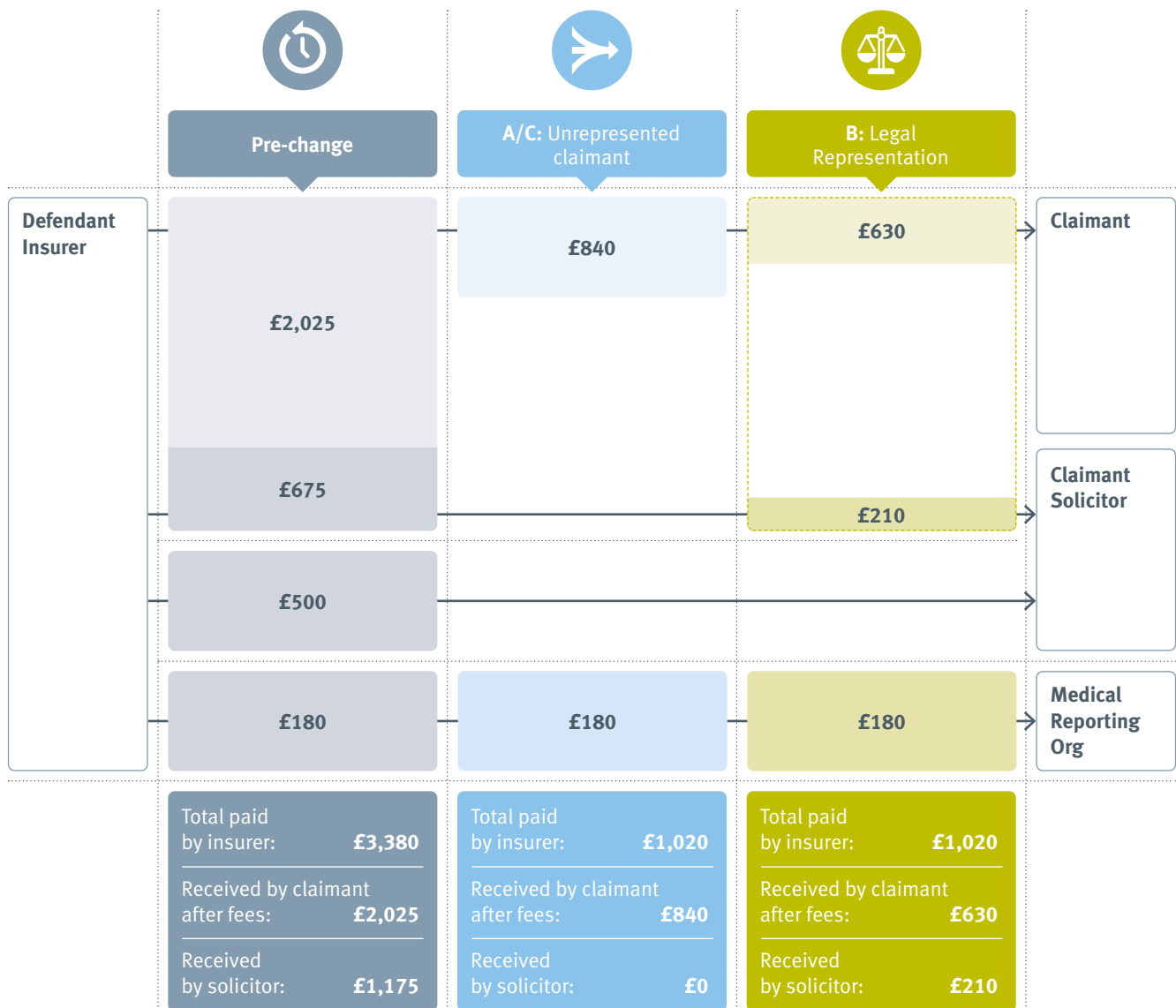


Figure 6: Breakdown of damages and legal costs in a typical claim pre- and post-reform, with impacts for insurers, claimants and solicitors

# Impact (cont.)

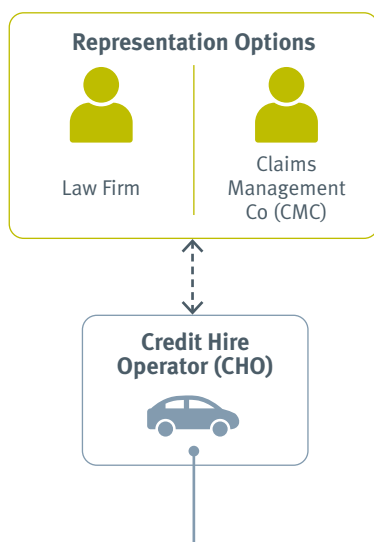
The impact on revenue to law firms is profound, as a slice of the claimant’s damages has become significantly smaller, and the fixed recoverable costs of £500 no longer apply. Given the reduced levels of compensation available, it is unlikely that moving to an hourly rate model is conceivable to lawyers, as the claimant would be left with a bill for legal costs which significantly erodes or outweighs any potential compensation they would receive.

Much more likely is that whiplash claims will become highly commoditised, and we will see market consolidation, increased use of automation and lower skilled workforces enabling a smaller number of personal injury firms (or CMCs) to continue making a profit on these claims.

The margins are now much tighter, and this is likely to mean changes in behaviour elsewhere, such as a shift in focus to credit hire and credit repair claims (referred to as Non-protocol Vehicle Costs).

We are likely to see fewer claims in the 0-3 month and 3-6 month brackets, as damages have been reduced to £240 and £495 respectively – with fees potentially limited to £60-£125 per claim, it may only be CMCs that are interested in pursuing these. These lower value claims were estimated to represent 36% to 49% of all whiplash claims in the MoJ’s Royal Assent Impact Assessment, produced in early 2019.

It is likely that there will be a shift in focus away from whiplash injury claims, potentially to other types of injury, and almost certainly to the Non-protocol Vehicle Costs which have to be claimed separately but parallel with a whiplash claim. If claims can be pushed beyond the overall £10,000 limit of the Small Claims Track, which applies to the sum of the injury and non-injury elements of the claim, there will be higher fees which can be recovered by claimant law firms.



Credit hire is already a major area of focus for motor insurers. We are likely to see changes in behaviours by CHOs and law firms or CMCs pursuing credit hire losses and associated legal costs, which will have the potential to far outweigh the whiplash element of a claim.

**Claimant sector impact – key points for insurers**

- As whiplash claims become highly commoditised insurers will be dealing with claims which are managed by less skilled, less professional claimant representatives.
- As claimant firms start to become more automated in their approach to claims, there will be a pressure on insurers to adapt processes and potentially increase use of automation to keep costs at a proportionate level.
- With the reduced levels of fees available for claimant lawyers for whiplash, insurers need to have controls in place to monitor changes in claims behaviours, to understand whether changes in claimant tactics lead to claims inflation or increases in other types of injury or financial loss (e.g. credit hire), and to enable them to adapt quickly.

# Impact (cont.)

## Customer impact

Motor insurance customers should see an average reduction in their premiums of £35, based on a total of £1.1bn saving estimated by the Ministry of Justice (MoJ). Before coming into force, the CLA was amended to include a regulatory power to require insurers to provide information regarding how much they have saved against the pre-reform position, and whether these savings have been passed on to customers.

For insurers, one challenge here will be in ensuring that the savings resulting from the reforms can be accurately tracked, whilst at the same time dealing with the likely increase in accident volumes and overall claims costs as traffic volumes return to pre-pandemic levels.

## Customer impact – key points for insurers

- Insurers will need to be able to report on the extent to which they are passing on savings which result from the reforms onto customers.
- It is not an obligation to pass on these savings, but in a highly competitive motor market any cost savings are likely to lead to premium reductions.

# Impact (cont.)

## Insurers – data, flexibility and the operating model

The insurance industry has had to prepare for the immediate practical implications, with changes to process, integration with the Motor Insurance Bureau’s (MIB) new ‘Official Injury Claim’(OIC) Portal and providing training to teams that deal with third party injury claims. Insurers have not, however, fundamentally changed their operating models for the start of June , as the real impact of the reforms cannot be fully known at this point in time.

In the short-term insurers must undertake a period of monitoring, analysis and reflection, to ensure that the early signals of how things are changing are picked up and understood. The development of the appropriate controls and management information (MI) mechanisms to track changes across third party claims (using internal data and panel law firm input), including the relationships between different types of injury claim, individual heads of loss and non-injury elements of claims will be key to this. These mechanisms need to:

- (i) enable an insurer to respond quickly to changes in the market, updating claims handling strategies for third party personal injury and vehicle damage claims to avoid costs inflation and potential claims leakage, and
- (ii) feed into an insurer’s transition to a new claims operating model, aimed at achieving the right balance between automated processes and claims handler expertise, ensuring that efficiencies are realised where possible, whilst continuing to handle third party claims fairly and pragmatically.

One area which will need particular attention is third party intervention, particularly in view of the likely focus on credit hire from the claimant sector. The risk of ‘Non-protocol vehicle related damages’,

in particular credit hire and credit repair, increasing out of control in a single claim can be reduced by reaching the third party before they are approached by a claimant law firm or credit hire operator.

There are opportunities here to build processes more closely around the claimant, whether they are likely to seek representation or pursue a claim as a Litigants-in-person (LiP), helping both to maintain costs, and to make a positive impression and potentially win new customers. Similar to initiatives we have seen in the application of data science to improve retention rates for existing customers, there are companies that have utilised these capabilities to identify and make the most of opportunities to attract third party claimants to use their services.

### Next steps for insurers

- Now that the initial process changes have been made, and systems integrated with the OIC Portal, insurers will need to make sure they have the right MI mechanisms and controls in place to monitor changes in third party claims and to adapt their processes and decision-making quickly as issues emerge.
- This analysis should feed into longer term changes to the claims operating model.
- To counter any increased focus on credit hire and credit repair losses by the claimant sector, insurers must review existing strategies for third party intervention. The increased use of technology and data analytics for customer engagement has equal applicability to third party claims.

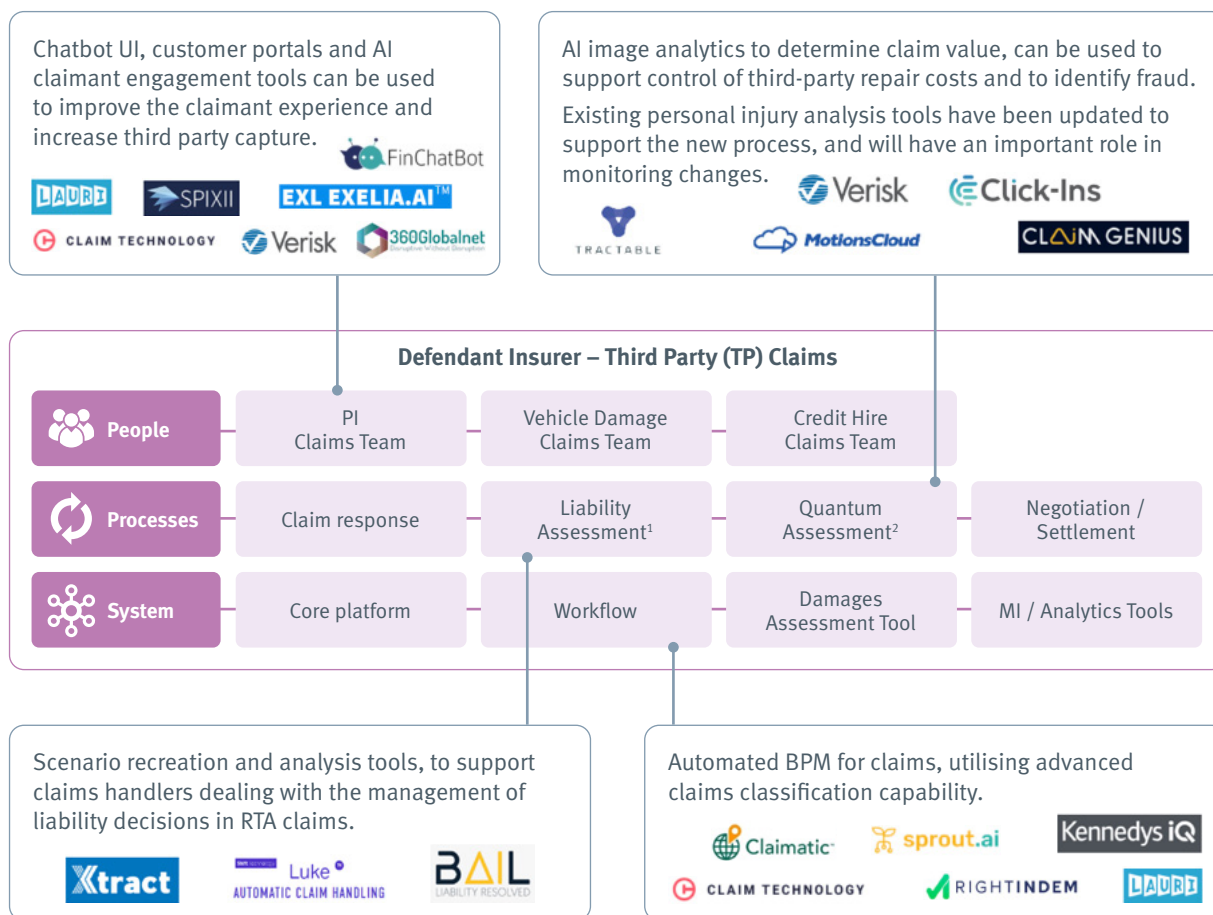
# Is technology the answer?

Introducing automation and analytics, augmenting claims handler decision-making, to liability claims does carry its own challenges, particularly when it comes to the assessment of liability and litigation prospects. For claims which have the potential to move outside the jurisdiction of the Small Claims Track, the assessment of quantum becomes more complex.

Although OCR capabilities have certainly improved over time, particularly with the introduction of AI and Machine Learning to this technology, the lack of standardisation of medical report structures can

present a challenge to the automation of these sub-processes.

Notwithstanding these challenges, there are opportunities to utilise new technology to improve third party claims handling, with a growing number of claims-focused insurtech solutions emerging in the last few years. Taking another look at the high-level operating model view, we can identify and map a range of solutions to high level processes and systems, to develop a strategy which combines these technical capabilities with an existing core claims platform.



It may be hard to write the business case for implementing a set of diverse technologies as outlined above, but these are examples of solutions which in combination potentially provide a point of difference. Many of these providers are on the way to becoming more established and should be attractive from a commercial perspective.

For insurers considering this approach to improving internal capabilities, it is vital that they look to deliver changes in a coherent and joined up way, and that the architecture for technical integration is developed into the future operating model.

# Conclusion

These reforms represent one of the most significant shifts in motor claims management in recent times, with impacts to claims costs, rethinking of existing processes and systems, and fundamental changes to the claimant sector. It is a shake-up which will provide opportunities to insurers, once initial impacts are understood and well-informed predictions can be made, to gain competitive advantages through more efficient, technology-driven operating models and improvements to their customer (and third party) service offerings.

To make the most of this opportunity, insurers need to ensure they have a clear focus on the data, that trends can be fully understood, causes analysed, and the noise created by other developments stripped out.

Insurers need to ensure they have the right mechanisms in place to track changes in approach from the claimant market, and to understand the level of support that is needed to manage claims by litigants in person. They need to be confident that the changes that are identified are the result of these reforms, as opposed to the wide range of other external factors that can impact third party claims metrics. Measures should include:

- MI reporting, with a focus on changes in volumes, values and the relationships between claim types;
- Ensuring that guidance and training materials for personal injury handlers are kept up to date, and are aligned with any insights which are feeding through from panel law firms;
- Ensuring that discussions are joined up at the right level across the industry, so that key themes and issues can be worked through and form part of any ongoing engagement with the MoJ; and
- Looking more broadly at the solutions offered by established and emerging technology vendors, to understand how they could be utilised to enhance claims management capabilities.

This will give claims leadership the insights needed to design an optimised third-party claims model for the future, with the right balance of automation and technical claims expertise, a digital approach to third party engagement, and the structural flexibility to adapt quickly to future changes.

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