Motor insurance compensation systems with a focus on whiplash and soft tissue injuries

A report for Aviva

March 2015
Executive summary

Context

All drivers of vehicles in the UK are legally obliged to have motor insurance. Motor accident personal injury claims have been rising over recent years. Almost 80% of such claims are accounted for by whiplash or soft tissue injuries. This independent study has been commissioned by Aviva to investigate what the UK can learn from overseas motor insurance systems to address rising claims for whiplash and soft tissue injuries.

Four particular observations in the UK are below.

Observation 1: The annual number of accidents reported on British roads fell 30% over 2005-2013, yet the number of settled personal injury claims from road traffic accidents increased 62% over the same period. This increase is driven by the prevalence of whiplash and soft tissue injury claims. We focus on this in this report.

Observation 2: Both the average cost per personal injury claim and the number of settled claims grew markedly over the period 2005-2013, by 73% and 62% respectively, as the chart below illustrates.

Observation 3: Since 2008, UK transport insurance prices have risen more than other major European countries, as shown in the chart below.

Observation 4: UK transport insurance prices have recently been associated with increases in the cost of personal injury claims, as shown below.

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Source: Frontier analysis of Eurostat data

Source: Frontier analysis of Datamonitor data for the claims (deflated to 2014 prices) and Eurostat data for transport insurance price inflation

Executive summary

The factors underlying observations 1 to 4 need to be understood to inform appropriate actions to address them. As whiplash is estimated to be almost 80% of personal injury claims, this is clearly an important driver of trends relating to the number of claims, rising costs per claim and rising premiums. Many also acknowledge a link between rising whiplash claims and nuisance calls and texts; some action has been taken to address this.

The UK car insurance system

Despite some action being taken to address previously identified

issues with the UK motor insurance system, we have identified six potential remaining issues. These are shown in the diagram below. To inform how these potential issues could be addressed, this report investigates what the UK could learn from motor insurance systems in other countries.

In particular, we have explored whether particular features of overseas systems could be considered in the UK to address the costs associated with rising whiplash claims and soft tissue injuries.

The overseas motor insurance systems we have considered are France, Germany, Spain, Norway, Sweden, New Zealand and Ontario, Canada. These countries were selected to provide good coverage of major European countries – some of which have taken steps to tackle rising whiplash and soft tissue injury claims – as well as allowing us to look at motor insurance systems farther afield.
## Recommendations

The UK should actively consider implementing the following:

### Shorten the limitation period and place a greater weight on timely evidence of the injury

*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.*

The limitation periods differ across Europe, ranging between 1 year and 10 years. Other countries like Norway and Sweden have limitation periods and also require medical reports to be obtained within short periods (72 hours). MedCo could look to include this as part of the process.

### Introduce objective diagnosis with clear and workable severity scales

*Introduce an objective diagnosis of 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 (supported by Supreme Court judgements) to provide an objective basis for diagnosing whiplash. Severity scales are also used in other jurisdictions such as Germany. Current market reforms to the medical diagnosis process (including MedCo) may wish to consider this.

### Introduce a table of predictable damages

Many other countries (and UK sectors such as workplace personal injury) use predictable damage tables. For example, Spain, Norway and Sweden. This would increase the efficiency and transparency of handling low level claims.

### Ensure formal accreditation of medical practitioners who diagnose whiplash and soft tissue injuries

*Ensure medical practitioners are formally accredited and have specialist qualifications relevant for the diagnosis of whiplash and related soft tissue injuries.*

Other jurisdictions such as Spain and France require medical practitioners who are diagnosing whiplash to have specific qualifications and to be trained in bodily injury diagnosis. The formation of the Medical Panel being introduced in the UK offers an excellent opportunity to introduce such formal accreditation.

### Lower costs to claimants of involving intermediaries where appropriate

*Measures could include:*

- **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. In some cases, the court will appoint one.
- **Lower the cap on legal fees:** The cap in the UK has recently fallen from £1200 to £500; lowering the cap would lower claimant costs.
- **Increase the small claims limit:** The UK’s low small claims track limit (currently £1,000) could increase to provide the incentive for more whiplash/soft tissue injury claims to be settled without the undue cost of involving solicitors. In France ‘small claims’ are considered to be up to €4,000 (£3,000) and €10,000 (£7,300), for example.

Obviously, all of these suggestions require more in-depth analysis in order to determine the most workable solutions that offer benefits greater than costs.
1. Purpose of this study
This independent study has been commissioned by Aviva to investigate what the UK can learn from overseas motor insurance systems to address rising claims for whiplash.

Motor insurance in the UK

All drivers of vehicles in the UK are legally obliged to have motor insurance. In 2012, 19.6 million households had motor insurance, representing 74% of all households in the UK (ABI, 2013). Given that cars are essential for many to get to work, take children to school and carry out other day to day activities, motor insurance is an unavoidable cost of living. Motorists therefore have an interest in ensuring those costs are minimised.

The Road Traffic Act (1988) requires that all UK car insurers include at least third party cover in their standard motor insurance policies. This means the liable party’s insurer covers any physical damage to other vehicles/structures, and personal injuries to third parties. It is of course vital that insurers pay appropriate compensation for valid claims. Insurance premiums are intended to cover the costs of claims (and other financial costs), so in a competitive market, insurers therefore have an interest in minimising inflated or fraudulent claims.

Recent reforms in the market

Over the period 2005-2013 the number of settled personal injury claims in the UK rose by 62%. The industry attributes this to a surge in claims for whiplash or related soft tissue injuries. In response to this trend, and rising legal costs, the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 implemented substantial changes to civil litigation funding and costs in England and Wales.

These reforms led to a reduction in car insurance premiums pre-empting the reduction in litigation costs and fraud.

LASPO also paved the way for MedCo, a system for sourcing medical reports from accredited medical reporting organisations in soft tissue injury claims. A motor insurance claims fraud task force is also being set up.

Previous work has identified a range of issues with the UK motor insurance system that still remain and could be contributing to inflated insurance costs, for example, Aviva “Road to Reform” (2014).

Detailed analysis is however required to understand specific changes that could be made in the UK to address whiplash and soft tissue injury claims, and lower insurance costs.

In this context, Frontier has been asked to investigate what we can learn from overseas motor insurance systems.

Objectives of this study

The focus of this particular study is whiplash and soft tissue injury claims. It provides an evidence-based assessment of:

- **Problem diagnosis:** Key observations about the current trends in UK motor insurance
- **Potential causes:** Potential issues that could, if addressed, lower costs of motor insurance in the UK
- **What we can learn from overseas:** Features of motor insurance systems in other countries that appear to have addressed the potential issues observed in the UK
- **Potential remedies:** Findings about features that could be considered for implementation in the UK, subject to legal and practical checks.
- **Recommendations**
2. Problem diagnosis: key observations about trends in the UK motor industry
Observation 1: The annual number of accidents reported on British roads fell 30% over 2005-2013, yet the number of settled personal injury claims from road traffic accidents increased 62% over the same period.

Road accidents reported to police per year have been falling consistently over the period. This is likely to be due to factors such as safer vehicles and safety campaigns. However, the number of settled personal injury claims rose sharply over 2005-2011, peaking at over 658,000 in 2012. Since then, settled claims have been broadly flat.

Aviva estimates that almost 80% of personal injury claims are accounted for by whiplash or soft tissue damage. This is therefore an important driver of any trend observed.
The number of settled personal injury claims rose 62% over 2005-2013 – whiplash and soft tissue injury claims account for the majority of such claims. The average cost per claim (2014 prices) grew 73% over the period (note this is all personal injuries, not just whiplash or soft tissue injuries, and includes personal injury compensation, legal costs and other costs to the claimant). This rise in average cost per claim could indicate that when accidents occur they are more severe (leading to more bodily injuries and higher claims) or that costs per claim are inflated, by for example, additional costs in the system. Evidence also suggests that the average number of claimants per claim has increased from around 1.3 in 2007 to around 1.5. today (according to Aviva data).

The total number of claims has dipped since 2011. This is largely thought to be as a result of LASPO reforms.

The number of settled claims has remained broadly flat since 2011, with a slight decline over the last year. Despite this the cost per claim has continued to increase – the average cost per claim rose 14% over 2012-2013.

Overall costs of personal injury claims to the industry were £7.6 billion in 2013 (2014 prices). This is almost 3-fold higher than in 2005 (in real terms).
Observation 3: Since 2008, UK transport insurance prices have risen more than other major European countries.

This chart shows the rate of change in real (i.e. after general inflation) transport insurance prices - it does not show the level of insurance premiums in different countries. The data relate to all transport insurance, but this is likely to largely reflect motor insurance. The chart indicates that the growth in the cost of transport insurance in the UK has outstripped other major European countries since 2010. Insurance premiums, after adjusting for inflation, are now 52% higher than they were in 2005.
Observation 4: UK transport insurance prices are generally associated with increases in the cost of personal injury claims

This shows a recent correlation between the rate of change in the price of transport insurance in the UK and the total costs of claims to the industry (which in 2013 were £7.6 billion).

I. Phase 1 (2003 – 2009): during this period, capacity in the motor insurance increased. There were several new entrants in the market including price comparison sites. For example, Go Compare launched in 2006 and other price comparison sites, such as moneysupermarket.com (which launched in 1999) and confused.com (which launched in 2002), had a larger role in the market by allowing customers to compare motor insurance prices more easily.

II. Phase 2 (2009 – 2012): prices of transport insurance rose alongside a rise of 19% in the number of settled claims and an increase of 31% in the total cost of personal injury claims (2014 prices).

III. Phase 3: (2012 – 2014): during this period, the effects of LASPO are beginning to be observed as prices began to fall after 2012 but more recent signs suggest they are beginning to rise again.
Factors underlying observation 4: The rise in motor insurance premiums does not appear to be associated with a rise in profits in the industry

A natural question to ask is whether the increase in prices in phase 2 (2009-2012) because insurers were simply increasing profits. The evidence suggests not.

Evidence suggests profits did not rise alongside the rise in transport insurance premiums over 2009-2012. Data from the Association of British Insurers (ABI, 2014) implies that the motor insurance industry made an under-writing loss each year until last year (2014). More specifically, motor insurers consistently made an underwriting loss from 2007-2013. This loss was largest in 2010 at -£1,783 million, and was -£53 million in 2013 (ABI, 2014). The chart below illustrates.

This is also supported by data on Combined Operating Ratio which in 2011 was 102.5%, despite the rise in premiums. A ratio below 100 indicates a profit has been made, as has been the case over the last year with the 2013 COR at 98.5% (Ernst and Young, 2014).

3. Potential causes: issues in the current UK motor insurance system
The UK motor insurance system has undergone recent reform. There is the potential to go further still in order to lower the cost of motor insurance claims and premiums.

The UK motor insurance claims process

The minimum liability legally required in the UK is third party. This provides coverage as summarised below.

<table>
<thead>
<tr>
<th>Party at fault</th>
<th>Damage to vehicle</th>
<th>Only third party is covered unless fully comprehensive insurance is held</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Personal injury</td>
<td>Not covered</td>
</tr>
<tr>
<td>Party not at fault</td>
<td>Covered by own insurer – which then claims it back from the insurer of the ‘at fault’ party</td>
<td>Covered by the insurance of the ‘at fault’ party if claim successful (though fault could be share if party not at fault was not wearing a seatbelt)</td>
</tr>
</tbody>
</table>

Where fully comprehensive insurance is purchased, personal injury and physical damages to a party’s own vehicle would be covered, even if they are at fault.

According to the ABI’s average motor insurance premium tracker, the average comprehensive private motor insurance premium in Q4 2014 was £372, up 5% from the previous quarter but just 1% higher than in Q4 2013¹.

This report has so far identified several key trends that have been observed in the market in recent years. In response to some of these, LASPO (2012) was implemented. Among the key changes were:

- Preventing lawyers doubling their fees at the expense of defendants and their insurers, if the case is successful. Previously lawyers could charge fees up to 100% of total legal costs but now the maximum limit on success fees is now 25% of the successful claim value (excluding future care and losses, and subject to this amount not exceeding 100% of base costs).

- Banning personal injury referral fees between lawyers, insurers, claims management companies and other intermediaries. Other referral fees remain permitted, however. For example, referral fees are still commonly paid for replacement vehicles, repairs and recovery.

- Reducing solicitor fees so that the fixed cost solicitors fee for processing simple, uncontested claims has been reduced from £1,200 to £500 for cases below £10,000.

- Qualified One Way Costs Shifting (QOCS) was introduced in personal injury cases so that honest claimants who lose their case do not have to pay the defendant’s legal costs. After The Event (ATE) insurance was purchased by claimants to cover the defendant’s costs if they lose their claim. QOCS removed the need for ATE for personal injury claims by ensuring claimants only pay defendant’s costs if their claim is found to be dishonest or if the claimant fails to beat the defendant’s Part 36 offer².

The next page maps out the claims process and identifies potential issues that could still lead to costs being higher than would be expected in an effective market.

² Part 36 offers are usually offered in the early stages of quantum and can be proposed by either the defendant or claimant
The UK motor insurance personal injury claims process has three phases

The UK motor insurance claims process

After a road traffic accident, where a personal injury has been sustained, the claimant would follow the process below.

Phase 1: Presentation of a claim

This phase involves the claimant filling in a “claim notification form” in the personal injury portal. According to the RTA management information from the claims portal, over 800,000 claim notification forms were presented in 2014, averaging at almost 70,000 claims per month.

Referral fees¹ are still commonplace in some aspects of the claims system, for example, in relation to repairs and recovery. This increases the potential for costs of these services to be higher than they might otherwise be, and form part of a claim.

Qualitative evidence suggests that a large proportion of these claims are being filed by a solicitor representing a claimant. There is currently a small claims track limit of £1,000. This means that although a claimant is free to involve a solicitor, there is no recovery of costs against the defendant if the claim is worth less than this sum. The average cost per personal injury claim (reflecting all personal injuries, not just whiplash) was over £11,500 in 2013². As whiplash and soft tissue injuries account for almost 80% of the number of such claims, this suggests a greater incentive to involve lawyers for these claims.

Claimants have a period of 3 years in which to submit their claim by issuing proceedings. No medical assessments or reports are required before the claim is submitted.

Phase 2: Assessment of liability

This phase involves determining the party liable for the crash and associated damages. Once a claim has been submitted into the portal, the defendant can:

- Accept liability
- Partially accept liability: if a claimant is not wearing a seatbelt then they are by default at least 25% liable (i.e. 25% liability is removed from the defendant), for example
- Dispute liability: this means leaving the process and going to court
- Do not reply in the 15 day time limit i.e. “timeout”: this allows the claimant to pursue a more expensive route for damages.

Phase 3: Assessment of quantum (amount of compensation)

In this phase, the amount to be paid out to the claimants (or not) is determined. Two main types of damages are usually claimed for:

- Special Damages – actual losses measured in monetary terms such as medical expenses and loss of income (benefits paid by Government during time off work are recoverable against defendant insurers);
- General Damages – items that cannot easily be assigned a monetary value (e.g. compensation for pain resulting from injury). While every case for General Damages is unique, there is a guideline called the “Judicial Studies Guidelines” which is the guide to General Damages used in the UK. It is published every other year and represents a review of awards made by Judges during that period for similar injuries.

Post-Jackson Review, although a medical report is required (now at a fixed cost of £180 plus VAT) there is no objective test for whiplash. The medical panel being introduced will be independent and practitioners must be on an ‘approved list’, so this will help with the rigour of diagnosis.

Lawyers, where they are involved, are allowed to retain up to 25% of damages from successful claims (excluding future care and losses, and capped at 100% of base costs).

¹ The payments service providers make to third parties in return for recommending their services or sending customers to them
² Frontier analysis of Datamonitor data, 2014 prices
A further feature of interest is the limitation period for claimants to issue proceedings (make a claim)

The limitation period in the UK

The limitation period refers to the time limit after the date of an accident that a claimant has to issue proceedings. In the UK, the time limit is 3 years. Although a claim can be submitted up to the 3-year limit, there is no requirement for any form of medical examination to have taken place before submitting the claim. This could make objective diagnosis of whiplash or soft tissue damage difficult. To demonstrate the distribution of when claims are submitted after an accident, we have analysed Aviva (UK) data. This is shown in the chart below and shows the percentage of whiplash claims that were submitted more than 300 days after the date of accident.

This shows that there is an increasing proportion of whiplash or soft tissue injury claims being submitted more than 300 days after the date of accident. In 2011, around 4% of whiplash claims were submitted more than 300 days after the accident; the most recent estimate suggests this has increased to 12%.
We have identified 6 potential issues with the UK system. We will explore next what other countries have done to address these or similar issues.

**Potential issue 1**
The low small claims track limit (£1,000) could increase the number of claims in the system and the unnecessary involvement of lawyers.

**Potential issue 2**
Referral fees could lead to more claims entering the system.

**Potential issue 3**
3 year limit to claims period means medical reports for older cases could be subjective.

**Potential issue 4**
With no objective test for whiplash, this could lead to exaggerated or fraudulent claims.

**Potential issue 5**
25% success fee for lawyers could lead to inflated claims.

**Potential issue 6**
There is no set way to determine quantum.

**Other regulatory challenges:**
- **Solicitors fees are capped** at £500 for processing simple, uncontested claims. This was lowered from £1,200 prior to LASPO. Where this cap remains higher than actual costs, there remains a profit incentive for lawyers to be involved.
4. What we can learn from overseas
We have looked at what we can learn from 5 European countries, plus two systems further afield

1. France
2. Germany
3. Norway
4. Spain
5. Sweden

These countries were selected to ensure coverage of the following:

- Representative spread of major western European countries (France, Germany, Spain)
- Jurisdictions that have motor insurance systems that differ markedly from the UK (Ontario and New Zealand)
- Jurisdictions that have implemented measures to address whiplash and soft tissue damage claims (Germany, Norway and Sweden)
- Jurisdictions that does not appear to have, now or in the past, a problem with whiplash or soft tissue damage claims (France)
Learning from other countries

Approach

To develop the evidence to underpin this study, we have used a wide range of published and stakeholder sources including:

- Published data and statistics from the jurisdictions considered;
- Published reports and studies that have considered the insurance systems in the selected jurisdictions;
- Legal documentation;
- Interviews with representatives from insurers in some of our selected jurisdictions.

For each of the jurisdictions considered, we provide an overview of the basic features of the motor insurance system and how to make a personal injury claim. We then consider the extent to which whiplash and soft tissue damage has been an issue and if so, the actions that have been taken to address it. We also draw together the available data on the potential effectiveness of those interventions where they have been implemented. Other interesting features are also noted.

Interpretation of the evidence

We present the evidence that it has been possible to collate during the period of this short study. Evidence presented includes descriptive statistics of the motor insurance claims process (for example, number of claims or average premium) along with data on the trends observed following the implementation of particular interventions.

There are inevitable gaps that have not been possible to fill within the scope of this study. In particular, these relate to:

- The incidence of fraud and the extent to which this affects the cost of insurance; and,
- The proportion of the average insurance premium that is accounted for by personal injury claims for whiplash or soft tissue injury.

It is important to note two further aspects when interpreting the analysis of other jurisdictions:

1. **For the purposes of this study, we have focused on minor personal injury claims.** There are of course many claims for severe personal injury which are likely to involve different processes for making a claim.

2. **Motor insurance systems contain a myriad of features – the UK must learn from those that are relevant.** Given the complexity of motor insurance systems, insurance premiums can therefore be affected by a range of factors, individually or combined. Therefore, even if a jurisdiction has addressed whiplash or soft tissue damage, there may be other factors that push the average premium up (for example, level of coverage provided; legal fees; generous payments for damages etc).

Each jurisdiction is discussed next.
The minimum legal requirement for car insurance is 3rd party liability (*au tiers*). The additional levels are:
- third party, fire and theft (*au tiers illimité*);
- multi-risk collision (*multirisque collision*); and
- comprehensive (*tous risques*).

In the case of a motor accident, the insurance company of the party at fault will cover both:
- **Damages to the not at fault party** – covered by the “third-party liability” component of the insurance premium; and
- **Damages to their own insured party** – covered only if the driver has multi-risk collision (*multirisque collision*) or comprehensive (*tous risques*).

<table>
<thead>
<tr>
<th>Party at fault</th>
<th>Damage to the vehicle</th>
<th>Personal injury</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the driver has <em>multirisque</em> collision or <em>tous risques</em> then the insurance will cover it, otherwise the driver must cover the costs.</td>
<td>If the driver has a <em>tous risques</em> policy then the insurance will cover it, otherwise the driver must cover the costs.</td>
<td></td>
</tr>
</tbody>
</table>

So **who covers what** in case of an accident between two vehicles under the standard motor insurance policy?

- The liable driver’s insurance will cover this.
- The liable driver’s insurance will cover this.
Whiplash has not been a significant concern in France. The 2004 CEA report on Minor Cervical Trauma injuries put the rate of whiplash at 3% of personal injury claims (CEA 2004). France still does not have a problem with whiplash and, because of this, very little data on the incidence of whiplash has been published (AXA 2013).

Several features of the motor insurance system in France could contribute to the low rate of whiplash claims:

- There are two small claims courts: Juges de Proximité which is for claims <€4,000 (£2,900) and Tribunaux d’instance which is for claims <€10,000 (£7,250) and neither requires legal representation.
- Predictable damages: use of table defining the compensation by injury type (not legally binding)
- The medical process for claims is rigorous

The predictable damages and medical diagnosis are further outlined in the following pages.

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France – personal injury claims process

The accredited specialist must have one of two nationally recognised university diplomas, and is independent of the insurers and victim.

Victim is assessed by approved body injury specialist. This happens for all personal injury claims.

Specialist must see evidence of (whiplash) injury (e.g. from an MRI, X-ray).

Approval granted for grounds for compensation for personal injury. The Dintilhac classification is generally used to determine the level of compensation awarded.

If not, then the victim can take the case to court. The compensation is then generally based on average costs.

The claimant is liable for all costs if unsuccessful. French law does not allow a ‘no win no fee’ legal system, but part of the costs can be a proportion of the successful compensation. Occasionally, claimants may be required to contribute a small amount to the costs of the winning party.

The Dintilhac classification is considered in more detail on the next page.

Source: AXA (2013); CEA (2004)

The medical accreditation system to diagnose whiplash in France is rigorous as the medical examiner must have either of two specific national diplomas. This helps to standardise the medical diagnosis, and allows the examination to be conducted by only those with medical expertise in bodily injury assessment – this is very different to the use of GPs to diagnose whiplash in the UK.

In addition to this, the accredited medical specialist must find physical evidence of whiplash. This may be less likely to be observable in the most mild forms of whiplash (depending on the timing of the examination), so this could constrain the number of claims that can be made.

Whilst it is possible for a claimant to sue for higher damages through the court system, this happens very infrequently (Source: Aviva France).

France - using predictable damages

The Dintilhac classification is generally used in determining the compensation for personal injuries, although it is not legally binding (Oliphant et al 2011). It is based on three factors:
1 - direct victims/indirect victims;
2 - temporary losses/ permanent losses
3 - economic losses/non-economic losses

Courts generally publish their reference guidelines but there are no national tables of compensation.

The compensation for personal injuries is based on the percentage of disability and age of the victim. It is also affected by whether the disability rating is permanent or temporary.
Compensation for pain and suffering is assessed on a scale of 0-7 to reflect severity. Courts have guidelines for the level of compensation based on the level of suffering (CCR 2012).

The loss of income compensation is primarily covered by social security provision, as well as occupational benefits. This reduces the damages left to pay by the insurer – again this is different to the UK.

<table>
<thead>
<tr>
<th>Scale</th>
<th>Severity</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Very mild</td>
<td>&lt; € 1,500</td>
</tr>
<tr>
<td>2</td>
<td>Mild</td>
<td>€ 1,500 – 3,000</td>
</tr>
<tr>
<td>3</td>
<td>Moderate</td>
<td>€ 3,000 – 6,000</td>
</tr>
<tr>
<td>4</td>
<td>Average</td>
<td>€ 6,000 – 10,000</td>
</tr>
<tr>
<td>5</td>
<td>Quite significant</td>
<td>€10,000 – 22,000</td>
</tr>
<tr>
<td>6</td>
<td>Significant</td>
<td>€ 22,000 – 35,000</td>
</tr>
<tr>
<td>7</td>
<td>Very significant</td>
<td>≥ € 35,000</td>
</tr>
</tbody>
</table>

An example table of compensation for pain and suffering, based on the Dintilhac nomenclature for the Cours d’appel de Agen, Angers, Bordeaux, Grenoble, Limoges, Nîmes, Orleans, Pau, Poitiers, Toulouse, Versailles, Basse-terre.

As evidence of personal injuries must be found by the medical examiner for compensation, this limits the compensation for pain and suffering for whiplash injuries.

Data from Fédération Française des Sociétés d’Assurances (FFSA) indicates:
- The average cost of a claim was approximately €21,000 in 2012
- 71% of injuries do not have “AIPP” (the measure of disablement)
- Injuries with AIPP (disablement) of 20% or more account for 58% of total compensation for personal injuries
Legal system

The legal system in France is civil law (as opposed to common law, as in the UK). This means judges have less discretion and precedents of high levels of compensation do not carry the same weight that they do in the UK. In France, 95% of claims in low value personal injury cases settle without court proceedings (The Jackson Review 2009).

Policy features

There are two conventions to allow insurers (who are signed up to them) to settle claims quickly (Index de l’Assurance, 2015):

- The physical damage convention (IRSA) has maximum damages of €6,500 (£4,700): if damages exceed this then the usual settlement process occurs.
- The personal injury convention (IRCA) applies only when the disablement is less than 5%. Personal injuries that do not have AAIP include bruising and mild damage. Examples of injuries of a medical disablement greater than 0 and less than 5% include the paralysis or loss of a finger or toe, painful scars on the head, tinnitus and loss of smell (AXA 2013; Association d’Aide aux Victimes de France 2010).

These reduce the opportunities for personal injury lawyers to get involved.

Fraud

To combat the incidence of fraud, the Fédération Francaise des Sociétés d’Assurances (FFSA) created the Agence pour la lutte contre la fraude à l’assurance (ALFA), in 1989 to examine potentially fraudulent claims. ALFA works against fraudulent activities across the insurance market as a whole, especially by creating tools to find and investigate potential fraud. ALFA trains and certifies fraud investigators, helps insurers work together when they are collectively affected by fraud and gives advice on optimal ways to engage with law enforcement agencies.

Statistics:

- Motor insurance premiums are an average of 40% less in France than in the UK (AXA, 2013)
- Total motor claims were €16,300 million in 2013 – this is a nominal growth of 3.2% on 2012 (Insurance Europe, 2014)
- Total motor premiums were €19,700 million in 2013 – this is a nominal growth of 1.2% on 2012 (Insurance Europe, 2014)
The minimum legal requirement for car insurance is 3rd party liability under The Obligatory Car Insurance Act (PflVG)¹. Comprehensive coverage (first party), is not mandated by law, though some creditors may require it when financing a motor vehicle.

In the case of a motor accident, the insurance company of the party at fault will cover both:

- **Damages to the not at fault party** – covered by the “third-party liability” component of the insurance premium; and
- **Damages to their own insured party** – covered only if the driver has comprehensive

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So **who covers what** in case of an accident between two vehicles under the standard motor insurance policy?

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<td></td>
<td>The liable driver’s insurance will cover this.</td>
<td>The liable driver’s insurance will cover this.</td>
</tr>
</tbody>
</table>

1. Aida German Chapter (2013), Response to the Questionnaire on Mandatory Insurance, http://www.aida.org.uk/docs/Germany.doc
Whilst the rising cost of claims has been a concern in Germany, the incidence of whiplash is not currently a cause for concern to the same extent as it is in the UK. This is partly because the overall number of personal injuries has been falling. The 2004 CEA report on Minor Cervical Trauma injuries put the rate of whiplash at 47% of personal injury claims (CEA 2004). This is a significant percentage but much less than the equivalent figure of just under 80% of all bodily injuries estimated in the UK.

There are several features of the German motor insurance system that could contribute to the lower rate of whiplash claims:

- Proof of causality of injury is de facto (mandated by law), and the onus of that proof rests with the victim or claimant who must provide practical and convincing proof of the injury. The victim must also prove the causal link between the accident and the injury. Further, if the injury existed before the accident, the insurer is only required to pay compensation for the additional injuries sustained.

- The definition of whiplash splits the injury into three levels of severity: first, second, and third degree, with increasing severity. The two most severe have clear objective criteria and the first degree requires a substantial amount of proof. Victims in Germany require two medical opinions, in order to prove that they have suffered whiplash injury and that severity will be classified along the “abbreviated injury scale”.

- If the claim is disputed, an “independent expert opinion” is required, along with the original medical opinion (AXA, 2013).

The number of accidents and the percentage of those accidents with personal injuries have been falling in line with each other over recent decades, as shown in the chart below. This is in contrast to the UK where the number of accidents has been falling but the number of personal injury claims has been rising.
Determining the level of damages

In Germany, the following are key features of the process through which the level of damages is determined for personal injury claims (not just whiplash). Unless otherwise stated, the source for this material is Rechtsanwalt Wolfgang Frese (no date):

- Where personal injury costs are covered by the social security system, the social insurance system will pay them and then seek reimbursement from the liability insurer.

- Compensation for pain and suffering can be claimed. The level is dependent on a range of factors including the severity of the injury, the period of treatment, age of the injured party. Compensation for pain and suffering will not be granted for small injuries such as bruises and scratches – this implies that the severity of whiplash must first be established in order to determine if compensation would actually be paid.

- Compensation can be claimed for psychological injuries if they are as a result of the accident.

- Compensation can be claimed for increased financial needs, such as healthcare or nursing staff. Where these are already covered by, for example, health insurance, then the healthcare insurance provider would seek reimbursement from the liability insurer.

- Where appropriate given the degree of disability, the cost of home assistance can be claimed.

- Where an individual incurs a loss of income as a result of a road traffic accident, then as long as the individual has been in his/her job more than one month, payment can be claimed. In the first instance, full wages are paid by the employer for 6 weeks. After that, health insurance will pay around 70% of salary for 78 weeks. Both of these payments are then reimbursed by the insurer of the liable party, along with the 30% that is not paid by health insurance and the 100% salary after 78 weeks.

In relation to whiplash, determining the severity of the injury is therefore critical to determine to establish if compensation would be paid.

Change to bio-mechanics:

Bio-mechanical considerations were previously considered in claims. These looked at the speed of impact and whether whiplash could have reasonably been sustained. Generally, whiplash was not considered if the speed at impact was less than 10km/h; presumed in cases between 10 and 30km/h; and taken as a fact when over 30km/h. This law was overturned in 2003 by the Federal Court of Justice (BGH), in order that a case-by-case analysis could be adopted.

Legal system features

- Legal costs relating to personal injury claims in Germany are among the lowest in the world—averaging 14.4 percent of the total claim value, and the average fixed claimant legal costs are €300 (£220) (AXA, 2013). This is significantly below the UK, at £500 (recently down from £1,200).
- In Germany, lawyers’ fees are charged either in accordance with the Lawyers’ Remuneration Act Rechtsanwaltsvergütungsgesetz (RVG) or on the basis of fee agreements. The remuneration schedule prescribes either fixed fees or fee ranges applicable to individual activities – the schedule is in Annex 1 of the RVG and is normally determined by reference to the value of the claim. The ranges of fees based on claim value stipulate the maximum and minimum fee rate payable. The actual fee levels based on claim value are set out in the fees table in Annex 2 of the RVG (European Commission, 2015).
- The German legal system permits the use of contingency fees only in limited circumstances—in particular when the claimant doesn’t have the financial means to retain a lawyer (AXA, 2013; Jackson, 2009).
- Because the courts in Germany control the proceedings and evidence brought before it in civil litigation proceedings, it has the ability to appoint its own experts to assist the court on relevant factual issues, rather than leaving it only to the parties before the court to present their own expert evidence.

Statistics:

- Motor insurance premiums are an average of 50% less in Germany than in the UK (Insurance Europe, 2014)
- Total motor claims were €21,770 million in 2013 – this is a nominal growth of 7.7% on 2012 (Insurance Europe, 2014)
- Total motor premiums were €23,260 million in 2013 – this is a nominal growth of 5.8% on 2012 (Insurance Europe, 2014)

The minimum legal requirement for car insurance is 3rd party liability. In the case of a motor accident, the insurance company of the party at fault will cover both:

- **Damages to the not at fault party** – covered by the “third-party liability” component of the insurance premium; and
- **Damages to the insured party** – covered by the “own damages” component of the insurance premium (where this is purchased).

**So who covers what** in case of an accident between two vehicles under the standard motor insurance policy?

<table>
<thead>
<tr>
<th>Party at fault</th>
<th>Personal injury</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Damage to the vehicle</strong></td>
<td>Covered by the “own damages” component of coverage if purchased (i.e. the insurer of the ‘at fault’ party pays)</td>
</tr>
<tr>
<td>Covered by the “own damages” component of coverage (where purchased) – possible to reduce compensation on the grounds of negligence</td>
<td></td>
</tr>
<tr>
<td><strong>Party not at fault</strong></td>
<td>Covered by the “third-party liability” coverage of the party at fault</td>
</tr>
<tr>
<td>Covered by the “third-party liability” coverage of the party at fault (i.e. the insurer of the ‘at fault’ party pays)</td>
<td></td>
</tr>
</tbody>
</table>
Compensation categories
The principle behind road traffic accident personal injury claims in Norway is to “put the individual back in the same economic situation as prior to the accident”. In light of this, five damage components related to the accident are taken into account:

1. loss of income;
2. expenses – including items such as medical treatments or help at home;
3. future loss of income; and
4. future expenses; and

Given out as a lump sum. By way of comparison, Sweden and Finland offer monthly payments lasting for a lifetime

5. a “non-economic” compensation for a medical disability. For this element, there is a table of medical disability. The compensation is standardized based on the medical disability

The last category is regulated by the state. It is based on a formula developed with the social welfare department taking into account the seriousness of the injury and the age of the injured party.
Norway – incidence of whiplash

Key factors in addressing whiplash

In the 1990s Norway experienced a high and increasing number of minor injury claims related to whiplash.

Two important changes appear to have contributed to battling the rise of whiplash claims:

1. The Quebec Task Force was introduced in the well reputed neurological journal “Spine” in 1995. At the same time there was an international congress presenting the task force in Stockholm, Sweden. The task force was also presented in the Norwegian medical journal (Tidsskrift for Den norske lægeforening) no. 17 / 1995;

2. The Supreme Court made their first decision based on the Quebec Task Force in October 1998 (published in Rt. 1998 page 1565). This included, for example, that symptoms have to arise within 72 hours.

These changes were introduced in a system in which the burden of proof was already on the claimant.

Wider features of the system

Other features of the Norway system are:

- Most of the claims for minor injury are handled without the involvement of a solicitor. However, if a claimant prefers to be represented by a solicitor, he/she can hire one. In such cases, the insurance will then cover what are deemed as reasonable expenses. There is no market for 'no win no fee' solicitors.

- The diagnosing process for minor injury claims is carried out by independent doctors. Such doctors are considered ‘independent’ if they are not the claimant’s own GP or for example, if they work at the public hospital. However, there is no independent panel of doctors created specifically for this issue. Belgium is an example of a country in which such independent panel of doctors exists.

- Fraud is not perceived as a particular problem in Norway at the moment.

- Costs however remain high because of the level of compensation that claimants are eligible to claim. The overarching principle is to return the claimant to the same economic position after the accident as before.

Personal injury claims in Norway

Since the introduction of the measures designed to address whiplash, Norway has seen a downward trend in the frequency of both personal injury claims and whiplash and over the period 2002-2014. The frequency of both forms of claim halved over the period. Although there are many factors that would affect the trend, it seems likely that it is in large part due to the measures introduced to address whiplash.

However, over the same period, the average cost of claims has doubled. This could be as a result of the fact that where claims are made, they are increasingly only the more severe cases.
Spain – system overview

The minimum legal requirement for car insurance is 3rd party liability. Additional levels are:

- third party plus voluntary additional coverage for bodily injury and property damage (the mandatory insurance has a maximum coverage amount); and
- comprehensive insurance.

In the case of a motor accident, the insurance company of the party at fault will cover both:

- **Damages to the not at fault party** – covered by the “third-party liability” component of the insurance premium (subject to a maximum); and
- **Damages to their own insured party** – covered only if the driver has comprehensive insurance.

So who covers what in the case of an accident between two vehicles?

<table>
<thead>
<tr>
<th>Damage to the vehicle</th>
<th>Personal injury</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party at fault</td>
<td>Comprehensive insurance will cover this but third party will not, in which case the liable driver must cover costs.</td>
</tr>
<tr>
<td>Party not at fault</td>
<td>The liable driver’s insurance will cover this. If the claims exceed the mandatory insurance policy maximum the liable driver has to cover the additional amount.</td>
</tr>
<tr>
<td></td>
<td>Comprehensive insurance will cover this but third party will not, in which case the liable driver must cover costs.</td>
</tr>
<tr>
<td></td>
<td>The liable driver’s insurance will cover this. If the claims exceed the insurance policy then the liable driver will have to cover the additional amount.</td>
</tr>
</tbody>
</table>
Spain – incidence of whiplash

Spain currently has an increasing problem with the percentage of personal injury claims that are for whiplash of soft tissue damage. In 2004 bodily injuries accounted for 10.8% of all insurance claims, of which whiplash claims were 32% (CEA, 2004). In 2012 the Spanish national average was 43% of all personal injury claims were for whiplash, but some areas had whiplash levels as high as 59% of all personal injury claims (Ponle Freno-AXA, 2013).

The two policies that have been implemented to address whiplash claims are:

- predictable damages tables: the Baremo system is used to estimate damages and is a legally binding scale 1-6. It is for all personal injuries, not just whiplash; and
- medical examiners are accredited as bodily injury specialists and have access to the claimant’s medical history. Again this is not specific to whiplash but it is intended to help achieve more accurate diagnoses.

Potential reasons for the rising percentage of whiplash claims (as shown on the right) noted by the industry are:

- The development of a “claims culture” around whiplash (JLT Insurance Agency, 2009).
- The involvement of law firms taking up large numbers of such cases gives rise to concern over organised crime, as well as the potential for health professionals to be involved in giving false/inflated medical certificates (AXA, 2013).

Whiplash claims as a percentage of all personal injury claims*


*The trends in personal injury claims overall are not however clear and therefore we cannot conclude what the change in the number of whiplash claims is.
Spain - medical process for claims: predictable damages using the Baremo system for compensation

The Baremo system is a legal scale which determines the compensation for personal injuries through tariffs. It is based on 6 tables – this allows for flexibility around individuals’ circumstances. It is legally binding.

- Table 1: fatality compensation
- Table 2: corrections on 1 based on special circumstances (eg death of both parents)
- Table 3: permanent disability compensation - the value of the points increases as the level of disability increases and there is an age adjustment
- Table 4: corrections on 3 based on special adaptions (eg wheelchair access to house)
- Table 5: temporary disability compensation – adjusted for age and set by the recovery length
- Table 6: correction on 3 based on individual’s special circumstances

Severity of injuries are rated from 1-100 – whiplash is usually limited to ≤ 3 which limits the amount paid in damages.

For illustration, this is an extract of Table 3: permanent disability compensation. The compensation increases as the points increase, and as the age decreases.

<table>
<thead>
<tr>
<th>Puntos</th>
<th>Hasta 20 años</th>
<th>De 21 a 40 años</th>
<th>De 41 a 55 años</th>
<th>De 56 a 65 años</th>
<th>Más de 65 años</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>652,40</td>
<td>789,14</td>
<td>725,87</td>
<td>668,23</td>
<td>598,10</td>
</tr>
<tr>
<td>2</td>
<td>878,70</td>
<td>811,68</td>
<td>744,65</td>
<td>666,72</td>
<td>607,58</td>
</tr>
<tr>
<td>3</td>
<td>902,31</td>
<td>831,85</td>
<td>761,35</td>
<td>703,23</td>
<td>617,15</td>
</tr>
<tr>
<td>4</td>
<td>923,24</td>
<td>849,61</td>
<td>775,84</td>
<td>717,76</td>
<td>622,33</td>
</tr>
<tr>
<td>5</td>
<td>941,48</td>
<td>864,98</td>
<td>788,45</td>
<td>730,29</td>
<td>627,63</td>
</tr>
<tr>
<td>6</td>
<td>957,04</td>
<td>877,97</td>
<td>798,88</td>
<td>740,83</td>
<td>631,54</td>
</tr>
</tbody>
</table>

- The Baremo system was introduced in 1995 in order to improve the fairness of the system, as previously it varied between provinces and sometimes even between courts (Jackson Review 2009). It is thought to have caused the number of damages disputes to fall.
- The compensation for loss of income is based on a tariff: actual previous income does not need to be demonstrated. The compensation does not take into account applicable social security benefits that will simultaneously be received by the victim.
- The tables are annually updated in line with Consumer Price Index levels of inflation

Spain - other interesting remarks

Statistics:
- Total motor claims were €7,593 million in 2013 – this is a nominal decrease of 4.1% on 2012 (Insurance Europe, 2014)
- Total motor premiums were €9,833 million in 2013 – this is a nominal decrease of 4.2% on 2012 (Insurance Europe, 2014)

Trends in accidents and premiums
The financial crisis in Spain led to fewer new cars being sold, as well as individuals having less money for petrol, more comprehensive insurance policies and so on, which is thought to have reduced the road traffic accident risk exposure. In turn, this is thought to have heightened price competition for customers among insurers and dampened rises in insurance premiums.

Involvement of lawyers
In a similar manner to the UK, lawyers are heavily involved in the whole process of personal injury claims. The legal system operates on a 'no win no fee' basis, where the legal fees are a percentage of the compensation paid – typically around 10%. This could potentially incentivise inflated claims.

Medical reports
Liability must be established and a medical certificate produced in order to claim for personal injury.

Fraud
Most insurance companies have implemented strong anti-fraud policies, as has the government. These policies focus on the detection of fraud and the number of police checks has increased as well. The Spanish Union of Insurance Companies (UNESPA) works with government security services specifically to reduce the market for stolen cars and improve the recovery of such vehicles.
Sweden – system overview

The mandatory level of insurance is known as traffic insurance

- It is non-fault for personal injuries: it covers physical injury to anyone involved in an accident with a vehicle – including the liable driver.
- It is third party liability for damage to vehicles.

If the liable driver brought about the accident through intent or gross negligence (e.g. driving under the influence) then the compensation the liable driver receives will be reduced.

Additional levels of insurance are:
- third party, fire and theft; and
- comprehensive.

If a vehicle is not insured, then the Swedish Association of Motor Insurers (TFF) will charge the owner for the period of time without insurance: this daily charge is at a significantly higher rate than traffic insurance, and the driver legally must pay it.

So **who covers what** in case of an accident between two vehicles under the standard motor insurance policy?

<table>
<thead>
<tr>
<th>Damage to the vehicle</th>
<th>Personal injury</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Party at fault</strong></td>
<td>Comprehensive insurance will cover this but mandatory traffic insurance will not, in which case the liable driver must cover costs.</td>
</tr>
<tr>
<td><strong>Party not at fault</strong></td>
<td>The liable driver’s insurance will cover this. In the case of no insurance then the TFF will cover it.</td>
</tr>
</tbody>
</table>
Sweden has previously had problems with whiplash, but has worked to address these problems through the Whiplash Commission. Since 2009, Insurance Sweden estimates that whiplash claims account for up to 60% of all personal injury claims. They believe that this percentage has been higher in the past.

There are several policies in place to manage the level of whiplash claims.

- The Whiplash Commission, explained in detail on the next page, implemented several key policies:
  - grades I-III of the Quebec Task Force definition of whiplash are used. Grade 0 injuries do not receive compensation
  - the *de minimis* threshold means that whiplash symptoms must appear and be assessed within 3-4 days of the accident
  - the Whiplash Medical Task Force and the Swedish Society of Medicine have produced a comprehensive review on how to diagnose and treat whiplash
- A national table is used to establish the level of compensation through predictable damages (this is not specific to whiplash).

The number of personal injuries has been falling in recent years as shown on the right. Insurance Sweden attribute this to improved road safety and better vehicle safety, as well as a lower rate of whiplash.

The Whiplash Commission Medical Task Force and the Swedish Society of Medicine produced a comprehensive review of how to diagnose whiplash. They defined whiplash as indirect cervical spine trauma, and use grades I-III of the Quebec Task Force Definition:

- Grade 0 was removed as it is the most mild of whiplash
- Grade IV is a fracture/dislocation which is a clear personal injury.

In some contexts trauma from whiplash must occur within 72 hours of the accident, but it is accepted that trauma would occur within 3-4 days of the accident. ‘Within several days’ is the *de minimis* threshold implemented by the Whiplash Commission: a claim can still be submitted without a medical report in this time but it will be much more difficult to prove (Insurance Sweden 2015).

Studies looked at by the Commission have shown that there was no relationship between whether a victim had applied for compensation and speed of recovery after whiplash.

There is a potential correlation between the Whiplash Commission’s final report in 2005 and a fall in motor claims and premiums, although both have been rising recently. Insurance Sweden do not attribute these rises to whiplash claims.
Sweden - the claims process for personal injuries

The victim is entitled to full compensation; the aim of which is that s/he will be economically as well off as before the accident. There are two steps to the claims process for personal injuries:

1. **The period of medical emergency**

   This period can vary greatly depending on the severity of the injury and the treatment process. Compensation for expenses, loss of income and pain and suffering (which relates directly to the healing process and distress it causes, and age is not a factor). Tables are released by the Swedish Road Traffic Injuries Commission (TSN: Trafikskadenämnd) to determine the compensation for pain and suffering: the tables use a classification of the severity of the injury and the length of recovery time. Payments can be increased because of treatment methods, such as repeated major surgery and time spent in intensive care units.

   Expenses for medication, for example, are reimbursed in a regular manner by refunding the exact amount.

   The compensation for loss of income includes calculations of the victim’s average earnings, potential occupational benefits and state benefits. What remains after these deductions is the indemnified loss.

2. **Period of disability**

   This will not exist for all claimants and can require a medical review after a set period of time. When the degree of disability is above 10% the TSN must be involved and they will give a recommendation of the compensation (TSN 2015). When it is below 10% the insurance company will calculate their the level of compensation using Medical Disability Scheme tables: however the claimant can involve the TSN if they choose to do so. Insurance companies rarely do not accept the recommendation of the TSN (Insurance Sweden 2015). Disadvantage or other permanent capacity covers compensation for permanent physiological/psychological damage, as well as under the ‘specific inconveniences heading’ (these are other non-financial damages). Age is a factor in these non-financial damages as a younger person would have to live for longer with the disabilities (if permanent).

   The Commission has Medical Disability Scheme tables published annually that base the level of compensation on a combination of percentage of disability, age of the individual and whether or not they can return to work. The latter is broken up into whether you return to work at least 25% of full time, if you previously were in work and if you cannot return. If you return to work you receive compensation for strain at work and in daily life, where applicable. This is a similar method of compensation calculation as the previously outline pain and suffering tables.

   The TSN uses its own lawyers in presenting the cases internally and has access to doctors, who are independent from insurance companies, for additional medical information. If the victim does not agree with the recommendation of the TSN for compensation, or the offer from the insurance company if it is different from the recommendation, then the victim can take the claim to a general court. This is when personal injury lawyers would be involved. This happens infrequently (TSN 2015).

Statistics:
• Total motor claims were €1,973 million in 2013 – this is a nominal growth of 4.5% on 2012 (Insurance Europe, 2014)
• Total motor premiums were €2,634 million in 2013 – this is a nominal growth of 3.8% on 2012 (Insurance Europe, 2014)

In 2006 the average cost of a personal injury claim in Sweden was the lowest out of the 16 countries listed by Insurance Europe, whereas the UK was fourth highest – it should be noted that compensation of loss of income in Sweden includes deductions for occupational and state benefits which are more generous than in the UK.

Insurance Sweden has created informative brochures for its customers on how to treat and deal with whiplash, in order aid rehabilitation and limit medically inaccurate claims.

Non-whiplash fraud

- There have recently been problems with vehicle arson in Sweden: cars were bought cheaply online, set fire to, and then the insurance claims were for a higher value than the car was bought for. Cars intentionally damaged or falsely claimed as stolen for compensation are a significant problem in the Swedish car insurance market. The number of stolen cars has been falling in the past several years but it remains a problem. In 2012 the rate per 100,000 population of stolen vehicles was 304 in Sweden: in comparison it was approximately 138 in the UK (United Nations Office on Drugs and Crime 2014).
- Across all types of insurance in Sweden, surveys by Insurance Sweden indicate that 10% of the population would engage in insurance fraud, and fraudulent claims are estimated to be 5-10% of all claims.
- The value of fraudulent attempts to claim compensation from motor insurance rose by 56% from 2012 – 2013 (Larmtjänst 2013). This apparent rise could also be due to better fraud detection rather than an increase in the incidence of fraud.
- Car insurance is suspected to be 43% of all insurance fraud
- Young people (especially those in their twenties) are proportionally more likely to engage in non-life insurance fraud

New Zealand has a **common law legal system** similar to the UK; however, their car insurance systems differ significantly:

- In New Zealand, motor vehicle insurance is not a legal requirement with at-fault drivers personally liable for any damage they cause other vehicles if they are uninsured.
- In a marked contrast to the UK, compensation for personal injuries has been removed from the legal system, with cases dealt with by a public body. This means that injured parties cannot sue at-fault parties except under exceptional circumstances.

So **who covers what** in case of an accident between two vehicles?

<table>
<thead>
<tr>
<th></th>
<th>Damage to the vehicle</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Party at fault</strong></td>
<td>With comprehensive insurance, the at-fault party’s insurer is liable. If uninsured or have third party insurance, the at-fault party is personally liable.</td>
</tr>
<tr>
<td><strong>Party not at fault</strong></td>
<td>If the at-fault party is insured, the at-fault party’s insurer will liable for the non-fault party’s vehicle damage costs, otherwise the at-fault party is personally liable.</td>
</tr>
</tbody>
</table>

Personal injury:

- Accident Compensation Corporation
- Accident Compensation Corporation
New Zealand – the claims process

The claims process: damage to the car

- While there is no legal requirement for car insurance in New Zealand, the country’s Ministry of Transport (2009) estimates that over 90% of the population are insured.

- Drivers in New Zealand can insure their car against accidental loss or damage up to its market value or a value agreed with their insurer. Insurance can take the form of Third Party Property Damage; Third Party, Fire and Theft; or Comprehensive motor vehicle insurance – similar to the UK.

- If uninsured drivers crash, they are personally liable to paying the repair costs to the non-fault party’s vehicle.

The claims process: personal injury

- Under the Accident Compensation Act (1972), the government established the Accident Compensation Corporation, which is responsible for administering the country’s ‘no-fault’ accidental injury scheme.

- Under this system, the Accident Compensation Corporation (ACC) compensates for injuries sustained in crashes.

- Due to the schemes ‘no-fault’ basis, personal injury claims cannot be brought against the at fault party, except in exceptional circumstances. As such, there is no legal requirement for compulsory third party insurance in New Zealand as there is in the UK.

Damages and entitlement process
Once an ACC claim form is submitted, the ACC is responsible for dealing with the entire personal injury process: determining the injured parties’ cover and the recompense they require, as well as purchasing any treatment and rehabilitation services they need. These can include:

- Medical treatments
- Rehabilitation
- Compensation
- Assistance care
- Childcare
- Travel to treatment

The ACC funds its actions through the vehicle license fee and a levy on the price of petrol. The levy is:
- 9.9 cents per litre of petrol (from 1 July 2014 to 30 June 2015)
- $198.65 for the licence fee levy on passenger vehicles (data available on ACC webpage)

Benefits of statutory claims process
The benefits of an administrative body that deals solely with these issues include:
- Compensation is delivered without any involvement from lawyers;
- All accident victims will receive some level of compensation; and
- No one will need to face the costs and delays involved in pursuing claims through the judicial system.
Two particular issues with New Zealand's car insurance market have been identified:

1. **The cost of the scheme**: the scheme is very costly and the government has been forced to reduce the level of benefits available to inured parties and raise the levels of taxation funding the ACC over the years (Cook, 2013).

2. **Fraud**: Issues with fraud still remain even though personal injury lawyers are not a problem in New Zealand. In the 2012, the ACC uncovered several false claims that would have cost NZ$36million (£17.6 million) had they remained undetected (New Zealand Herald, 2013).
Ontario – system overview

Vehicle owners in are required to purchase a car insurance which includes:

- **Damage to vehicle** cover;
- **First party no-fault injury** cover – covering personal injury claims, regardless of fault in the accident, and there is a scale of eligibility for which other people involved in the accident (e.g. pedestrians) can claim as well;
- **3rd party injury-tort process** cover – indemnification and defence in case the insured is at fault; and
- **Uninsured automobile** cover – covering physical and personal damages resulting from an unidentified/uninsured driver.

So **who covers what** in case of an accident between two vehicles under the standard motor insurance policy?

<table>
<thead>
<tr>
<th>Party at fault</th>
<th>Party not at fault</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Damage to the vehicle</strong></td>
<td><strong>Personal injury</strong></td>
</tr>
<tr>
<td>Covered by the “Damage to vehicle” category of coverage</td>
<td>Covered by the “first-party no-fault” coverage</td>
</tr>
<tr>
<td>Covered by the “Damage to car” category of coverage</td>
<td>Covered by the “first-party no-fault” coverage + possible to get extra damages back through the tort process</td>
</tr>
</tbody>
</table>
The “first-party no-fault” mandatory insurance covers the insured person, irrespective of fault.

This cover is benefit-based, so rather than giving the claimant money to spend on rehabilitation courses, the cover pays the doctors/rehabilitation specialists directly for the treatments needed. The cover also provides income replacement benefits.

This part of the mandatory car insurance coverage is the most expensive, and there is a high incidence of fraud. Transaction costs (such as assessments) also drive up the cost.

Any health practitioner can certify a treatment plan and a disability certificate for injuries that are within his/her scope of practice. Health practitioners are physicians, chiropractors, dentists, occupational therapists, optometrists, psychologists, physiotherapists, nurses, speech pathologists (IBC, 2014).

The medical/rehab component of “first-party no-fault” cover is structured by classifying claims in three “buckets”:

1. Minor injuries (such as whiplash, anxiety etc);
2. Non-minor/Non-Catastrophic; and
3. Catastrophic impairment cases (such as blindness, quadriplegic, loss of limb, etc).

Each is described in detail next.
Minor injuries

Injuries classified as “minor” fall into this bucket. Minor injuries are defined as:

“One or more of a sprain, strain, whiplash associated disorder (WAD), contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury” (IBC, 2014).

There is a verbal threshold below which general damages cannot be awarded for minor injuries (under which whiplash typically falls). Where the injury is above this threshold, the injury coverage provides for medical treatment and rehabilitation up to the value of $3,500 (£1,800). There is no cash payout to the injured person because there is a treatment protocol (programme of care) for minor injuries and the healthcare provider is paid $3500 (£1800) for delivering the treatment.

Non-Minor/Non-Catastrophic

In this case the insurance provides for medical treatments and rehabilitation up to a value of $50,000, claimable over a period of 10 years. This coverage also provides up to $36,000 in attendant care; and income replacement of $400 per week (for 2 years; lifetime for total disability) – the first 7 days are not covered.

Catastrophic impairment

This cover is intended to deal with very serious injuries. The damages caps are the following:

- up to $1m for rehabilitation (over the lifetime or until the $1 million is used);
- up to $1m for attendant care benefits (over the lifetime or until the $1m is used);
- Potential caregiver benefit of $250 per week and $50 per week for each additional dependant;
- Housekeeping and home maintenance payment of $100 per week (potentially over the lifetime); and
- 70% of gross income with a cap at $400 a week as disposable income replacement.

Claims for catastrophic impairment can be also made if the individual has experienced (i) a combination of physical and mental damage; or (ii) a combination of mental and behavioural disorders.
The “third-party injury” part of the mandatory insurance is to defend and indemnify an individual in case they have an accident on the road and are at fault.

**How does it work?**
In the case in which person A is injured in an accident caused by person B, person A can claim damages (additional to those claimed through “first-party no-fault” cover) from person B by filing a claim – this falls under tort law. Person B is insured against this occurrence through the “third-party injury” cover.

**Other points to note about the system:**

**Medical diagnosis:**
- The definition of ‘catastrophic impairment’ is a medical test which has not been eroded through medical interpretation. The legal test to pass is ‘material contribution’, rather than causation or ‘but for’.

If there are **grounds for a claim**, then:
- No general damages are awarded in respect of minor injuries. This is intended to contain costs of minor injury claims. This is achieved through verbal threshold and a deductible.
- The threshold curtained in the Insurance Act provides that no damages are provided for pain and suffering unless the plaintiff has sustained a serious disfigurement or a serious impairment of an important physical, mental or psychological function. Most of these terms are further defined by legislation. In addition, a deductible of $30,000 is applied to the general damages reward up to $100,000.
- Car insurance premiums are highly regulated – insurance firms cannot set their own premiums.
- A lawyer does not have to be involved; if a lawyer is involved, it is usually on a “no-win no-fee” basis, with the solicitor receiving up to 35% of any settlement. There is a strong network of law firms, with a couple investing a lot in advertising and getting customers, and then subcontracting to the other firms; and
- There is no ban on referral fees (though it is being considered).
Ontario – proposed reforms

Ontario is in the process of reforming its motor insurance system to:

- reduce its vulnerability to fraud, and
- make motor insurance more affordable for drivers.

In Ontario, if an individual has an accident and the only personal injury suffered is whiplash then:

- the medical care required is set by a treatment protocol, is covered by the individual’s own insurance regardless of fault and it is subject to a $3,500 (£1,800) cap; and

- general damages cannot be claimed through tort (even where the individual is not at fault).

This second feature is the result of a verbal threshold in place for which general damages cannot be awarded for minor injuries (under which whiplash falls). There is no written definition of what constitutes a minor injury which is why it is known as a verbal threshold.

Data from the Insurance Bureau of Canada (IBC) suggest:

- The average motor insurance premium in 2014 was $1500 (£780);
- The average cost of accident benefits claims payouts to help injured people recover was $31,785 (£16,500) in 2013
- Lawyers’ contingency fees applied to 2013 Bodily Injury insurance claims ranged between $400 million (£207 million) to almost $700 million (£363 million)
- Out of the $949m (£490m) total cost of car insurance for AVIVA Ontario Auto, about 67% of it goes to claims;
- Aviva Ontario Auto estimates that bodily injury and accident benefit claims contribute about 44% to the cost of the premium; and
- Aviva Ontario Auto faces over 7,800 bodily injury and accident benefit claims per year; out of the ~570,000 Ontario auto policies sold annually.
According to AXA (2013), of the selected countries in western Europe that we have explored in this study, all have lower average motor insurance premiums than the UK (in terms of purchasing power parity in 2012). The difference, relative to the UK are:

- France: average of 40% lower
- Germany: average of 47% lower
- Norway: average of 35% lower
- Spain: average of 29% lower
- Sweden: average of 46% lower.

Differences across the systems are not reflected in these premiums. For instance the income replacement provided through social security affects the compensation that insurers need to pay and this feeds back through to the premiums. This can make the UK seem more expensive when these costs are borne by the welfare state in other countries.

## Comparative analysis across all case studies

<table>
<thead>
<tr>
<th>Country case study</th>
<th>Limitation period for the claim</th>
<th>Time limit for medical examination</th>
<th>Legal costs</th>
<th>Table of predictable damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Kingdom</td>
<td>3 years</td>
<td>None</td>
<td>£500 cap with 25% contingency fees.</td>
<td>No but general damages have Judicial Studies Guidelines.</td>
</tr>
<tr>
<td>France</td>
<td>10 years</td>
<td></td>
<td>Lawyers rarely used for motor insurance minor personal injury claims</td>
<td>Yes. Dintihac classification is used but is not legally binding</td>
</tr>
<tr>
<td>Germany</td>
<td>3 years (from the end of the calendar year in which the injury occurred)</td>
<td>Not known</td>
<td>Fixed in line with Lawyers’ Remuneration Act (Rechtsanwaltsvergütungsgesetz) (RVG) or set by agreements</td>
<td>Equitable pecuniary compensation amount depends on the extent and severity of the injury, period of treatment, age of the injured party and extent of liability¹</td>
</tr>
<tr>
<td>Norway</td>
<td>No limit for submitting a claim (but they have closing dates in some cases)</td>
<td>72 hours</td>
<td>No win no fee lawyers are not used</td>
<td>“Non-economic” compensation for a medical disability is paid in line with a table of medical disability. The compensation is standardized based on the medical disability</td>
</tr>
<tr>
<td>Spain</td>
<td>1 year</td>
<td>No set time limit but the examiners have specialist training in assessing bodily injury</td>
<td>No win no fee model with contingency fees typically around 10%</td>
<td>Yes. Baremo Tables (are legally binding)</td>
</tr>
<tr>
<td>Sweden</td>
<td>3 years</td>
<td>3-4 days for whiplash</td>
<td>No win no fee lawyers are not used</td>
<td>Yes. Tables are published by the Swedish Road Traffic Injuries Commission (are legally binding).</td>
</tr>
<tr>
<td>New Zealand</td>
<td>1 year</td>
<td>n/a</td>
<td>Lawyers not generally involved</td>
<td>Yes. Used by Accident Compensation Corporation</td>
</tr>
<tr>
<td>Ontario, Canada</td>
<td>7 days (to give insurer notice of the circumstances that gave rise to the entitlement)</td>
<td>n/a</td>
<td>Up to 35% contingency fees, no ban on referral fees</td>
<td></td>
</tr>
</tbody>
</table>

5. Potential remedies
We have found various features of overseas systems that could be considered to address the potential issues in the UK.

<table>
<thead>
<tr>
<th>Potential issue identified in the UK</th>
<th>Countries that we can learn from</th>
<th>Policies that have addressed this</th>
<th>Consider this for the UK?</th>
<th>Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The low small claims track limit (£1,000) could increase the number of claims in the system and the unnecessary involvement of lawyers</td>
<td>France</td>
<td>There are two small claims courts, with maximum claims amounts of €4,000 and €10,000, in which lawyers are rarely used.</td>
<td>Yes</td>
<td>Increasing the threshold for which solicitors cannot reclaim their costs from defendants could reduce overall costs. In the UK the threshold is currently £1,000. Any new limit should be reviewed regularly (it has not been changed since 1999). However, even if the involvement of lawyers is minimised, other intermediaries may spot a market opportunity, with potential cost implications.</td>
</tr>
<tr>
<td>2. Referral fees could lead to more claims entering the system</td>
<td>Norway, Sweden and France</td>
<td>Little evidence on this but these countries do not have no-win no-fee solicitors</td>
<td>Maybe</td>
<td>The UK banned personal injury referral fees in 2012 (LASPO). Referral fees were previously thought to have increased the extent to which lawyers were involved with personal injury claims. However, referral fees are not banned in some parts of the UK system – which leaves potential opportunities for some parties, with consequent potential cost implications.</td>
</tr>
<tr>
<td>3. Three year limitation period in the UK means some claims are submitted a long time after an accident, with medical reports potentially even later</td>
<td>Sweden</td>
<td>In Sweden the de minimis threshold requires that the medical examination of whiplash occurs within 72 hours. The Supreme Court of Norway also ruled that symptoms have to arise within 72 hours from the accident.</td>
<td>Yes</td>
<td>MedCo in the UK could play a role in rapid assessments.</td>
</tr>
<tr>
<td></td>
<td>Norway</td>
<td></td>
<td></td>
<td>In Norway there is no formal limit for bringing a claim and in Sweden the limit is 3 years, but the medical assessment has to occur within the time threshold of 72 hours. In the UK claimants have 3 years in which to bring the claim, with medical examinations potentially even after that period.</td>
</tr>
</tbody>
</table>
We have found various features of overseas systems that could be considered to address the potential issues in the UK

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<tbody>
<tr>
<td>Objective diagnosis of whiplash and threshold for compensation</td>
<td>Sweden, Norway, Germany</td>
<td>In Sweden grades I-III of the Quebec Task Force Definition constitute the definition for whiplash injuries. Norway adopted the Quebec Task Force Definition as well. In Germany, there are also three grades of whiplash injury. These definitions help make the diagnosis objective by outlining the conditions that must be met for each level of whiplash injury.</td>
<td>Yes</td>
<td>This makes the diagnosis and treatment of whiplash more objective, as well as providing a basis for the level of compensation due. Compensation is associated with the grade/severity of the whiplash injury. In Sweden there is a threshold for claiming compensation for whiplash: the removal of grade 0 stops the least severe whiplash injuries from claiming compensation. In Germany, it increases the burden of proof of injury at the lower end of severity, and compensation is not paid for the most minor injuries.</td>
</tr>
<tr>
<td>Medical professionals who make the diagnosis</td>
<td>Spain, France, Germany</td>
<td>Spain: specialist courses and degrees at university are necessary to qualify in assessing bodily injury. Forensic medical specialists have training in injury assessment. France: The specialist medical examiner must find physical proof of the whiplash injury. Specialists must have one of two university diplomas in bodily injury and are independent from the claims process. Germany: Proceedings and evidence presented in German civil court are determined by the court itself, which can rely on the opinion of experts it appoints rather than just on the testimony of experts presented by the parties.</td>
<td>Yes</td>
<td>Accreditation of medical professionals is an important part of ensuring accurate and objective diagnoses of whiplash. We note that following the recent reforms in the UK, and those that are currently still being developed, ‘MedCo’ in the UK will move in this direction. MedCo may wish to consider approaches used in other countries when designing the accreditation process in the UK.</td>
</tr>
</tbody>
</table>
We have found various features of overseas systems that could be considered to address the potential issues in the UK.

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<thead>
<tr>
<th>Potential issue identified in the UK</th>
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<th>Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. 25% contingency fee for lawyers could lead to inflated claims</td>
<td>Germany</td>
<td>In civil court, contingency fees (no win no fee arrangements) are permitted only in the cases where the claimant doesn’t have the financial means to retain a lawyer. In some cases, the court will appoint one. In France, Norway and Sweden, no-win no-fee lawyers are not used</td>
<td>Yes</td>
<td>Germany has one of the lowest percentages of legal costs relating to personal injury in the world. There are fixed schedules that prescribe what can be charged.</td>
</tr>
<tr>
<td></td>
<td>Sweden, Spain, France, Norway</td>
<td>The use of a national table to determine the compensation by severity of injury, the recovery period, the lost income, pain and suffering et cetera. In France this table is not legally binding, but in Spain and Sweden it is.</td>
<td>Yes</td>
<td>This could reduce the level of general damages paid, as additional damages beyond those listed in the table for pain and suffering would only be possible after a successful court challenge. The tables cover for lost income: in the UK the Ogden tables are already used for this.</td>
</tr>
<tr>
<td></td>
<td>Ontario</td>
<td>There is a verbal threshold below which general damages cannot be awarded for minor injuries (under which whiplash falls). The medical bills are paid directly, rather than as damages to the claimant.</td>
<td>No</td>
<td>As in the above, this might be a deterrent for fraudulent or exaggerated claims, but it would open a question on whether general damages are appropriate for minor injuries.</td>
</tr>
<tr>
<td></td>
<td>Spain</td>
<td>Social security provision is not included when assessing how much compensation is needed to replace lost income</td>
<td>No</td>
<td>This would be expensive and lead to claimants receiving compensation twice.</td>
</tr>
<tr>
<td></td>
<td>France</td>
<td>Social security provides for most of the income lost due to personal injury from a traffic accident</td>
<td>No</td>
<td>System is too different to the UK</td>
</tr>
<tr>
<td>Alternative systems</td>
<td>New Zealand</td>
<td>All personal injury claims are covered by the Accident Compensation Cooperation.</td>
<td>No</td>
<td>This is covered by an expensive levy on petrol and the vehicle licence fee.</td>
</tr>
</tbody>
</table>
Evidence provides some insight into the potential impacts of reforms in other countries

<table>
<thead>
<tr>
<th>Countries</th>
<th>Distinctive policy features</th>
<th>Evidence of impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>• use of table for predictable damages</td>
<td>The 2004 CEA report on Minor Cervical Trauma injuries put the rate of whiplash at 3% of personal injury claims (CEA, 2004). The number of bodily injury claims has consistently fallen over the period 2000 to 2014, with a fall of 55% over the period.</td>
</tr>
<tr>
<td></td>
<td>• medical examiners must have specific qualifications and find physical evidence of whiplash</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>• contingency fees are only allowed where the claimant cannot afford a lawyer</td>
<td>The 2004 CEA report on Minor Cervical Trauma injuries put the rate of whiplash at 47% of personal injury claims (CEA 2004). This is a significant percentage but much less than the 76% of all bodily injuries in the UK.</td>
</tr>
<tr>
<td></td>
<td>• legal fees are prescribed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• definition of whiplash in use (3-levels)</td>
<td></td>
</tr>
<tr>
<td>New Zealand</td>
<td>• all personal injury claims are covered by the Accident Compensation Cooperation</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>• predictable damages tables are used</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>• the Quebec Task Force Definition of whiplash is used</td>
<td>Nearly 45% of personal injury claims in road traffic accidents are caused by rear-end collisions (a proxy for whiplash). Since 2002, the frequency of personal injury claims and those due to rear-end collisions has halved. Average costs have however doubled (where claims are made they are for more severe cases) (source: source IF).</td>
</tr>
<tr>
<td></td>
<td>• predictable damages tables are used</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• symptoms must arise within 72 hours of the accident – upheld by Supreme Court</td>
<td></td>
</tr>
<tr>
<td>Ontario</td>
<td>• there is a verbal threshold for minor injuries and minor injuries cannot be awarded general damages (whiplash is a minor injury)</td>
<td>The Minor Injury Guideline puts the protocol medical treatment maximum at $3,500 for whiplash (and related minor injuries): 80% of personal injury claimants fall into this minor injury category (source: Ontario Trial Lawyers Association, 2014). The average cost of accident injury benefits claims in 2013 was $31,785 (this compares with $3,766 in Alberta, Canada)</td>
</tr>
<tr>
<td></td>
<td>• $3500 (£1800) rehabilitation program for minor injuries</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• there is a verbal threshold for minor injuries and minor injuries cannot be awarded general damages (whiplash is a minor injury)</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>• predictable damages table used</td>
<td>The CEA 2004 report put the proportion of whiplash claims at 32% of all personal injury claims (CEA, 2004) but in 2013 this had risen to 60% of all personal injury claims (AXA, 2013).</td>
</tr>
<tr>
<td></td>
<td>• specialist courses for qualification to assess bodily injuries</td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>• grades I-III of the Quebec Task Force Definition are used</td>
<td>Insurance Sweden estimates that whiplash claims are 60% of personal injuries claims and that this has been higher in the past. The number of personal injuries claims was rising through the 1990s but has been falling since a peak in 2000 (Source: Insurance Sweden).</td>
</tr>
<tr>
<td></td>
<td>• symptoms must appear within 3-4 days</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• predictable damages used</td>
<td></td>
</tr>
</tbody>
</table>

6. Conclusions
Recommendations

The UK should actively consider implementing the following:

**Shorten the limitation period and place a greater weight on timely evidence of the injury**

*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.*

The limitation periods differ across Europe, ranging between 1 year and 10 years. Other countries like Norway and Sweden have limitation periods and also require medical reports to be obtained within short periods (72 hours). MedCo could look to include this as part of the process.

**Introduce objective diagnosis with clear and workable severity scales**

*Introduce an objective diagnosis of 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 (supported by Supreme Court judgements) to provide an objective basis for diagnosing whiplash. Severity scales are also used in other jurisdictions such as Germany. Current market reforms to the medical diagnosis process (including MedCo) may wish to consider this.

**Introduce a table of predictable damages**

Many other countries (and UK sectors such as workplace personal injury) use predictable damage tables. For example, Spain, Norway and Sweden. This would increase the efficiency and transparency of handling low level claims.

**Ensure formal accreditation of medical practitioners who diagnose whiplash and soft tissue injuries**

*Ensure medical practitioners are formally accredited and have specialist qualifications relevant for the diagnosis of whiplash and related soft tissue injuries.*

Other jurisdictions such as Spain and France require medical practitioners who are diagnosing whiplash to have specific qualifications and to be trained in bodily injury diagnosis. The formation of the Medical Panel being introduced in the UK offers an excellent opportunity to introduce such formal accreditation.

**Lower costs to claimants of involving intermediaries where appropriate**

*Measures could include:*  
- **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. In some cases, the court will appoint one.  
- **Lower the cap on legal fees:** The cap in the UK has recently fallen from £1200 to £500; lowering the cap would lower claimant costs.  
- **Increase the small claims limit:** The UK’s low small claims track limit (currently £1,000) could increase to provide the incentive for more whiplash/soft tissue injury claims to be settled without the undue cost of involving solicitors. In France ‘small claims’ are considered to be up to €4,000 (£3,000) and €10,000 (£7,300), for example.

Obviously, all of these suggestions require more in-depth analysis in order to determine the most workable solutions that offer benefits greater than costs.
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