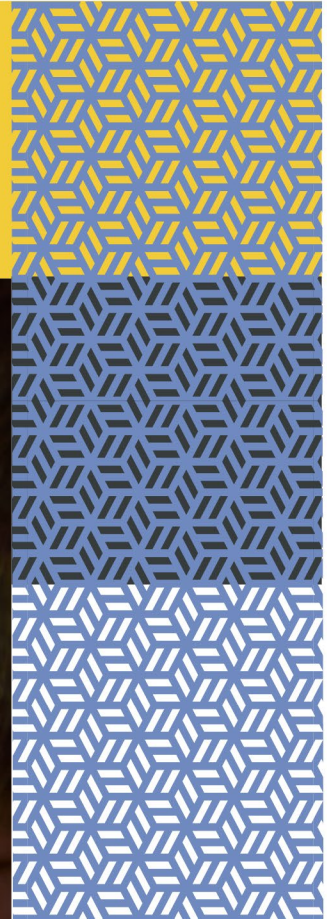




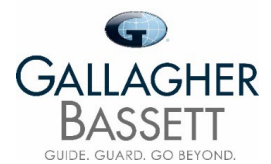
## Risk Control

Whiplash Reforms Update

August 2023



In partnership with



# Risk Control

## Whiplash Reforms Update

### August 2023

#### Introduction

Please find below the analysis on the latest MI released from both Claims Portal and the OIC Portal.

We now have data from the first half of 2023, the latest data covering the quarter from April through to the end of June, and crosses over the 2<sup>nd</sup> anniversary of the reforms and the OIC Portal. Within the quarter, we also saw the Supreme Court confirm it will hear the appeal made by the ABI following the decision in the CA on mixed injury claims. We await the outcome of the Parliamentary Select Committee's review in to the reforms generally, as always Portal Co have also released their data which includes average general damages settlements, and is commented on below.

The full PDF report can be accessed here: [Cms Data \(officialinjuryclaim.org.uk\)](https://officialinjuryclaim.org.uk)

#### Report Highlights

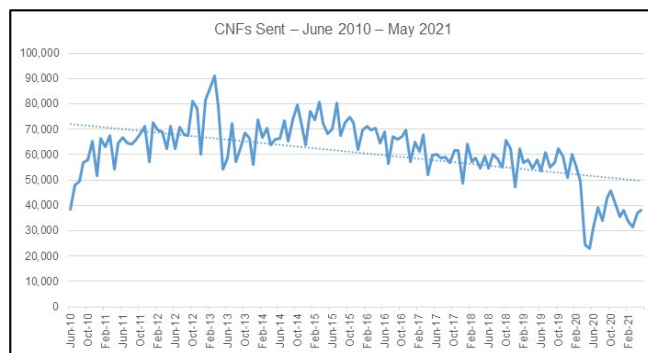
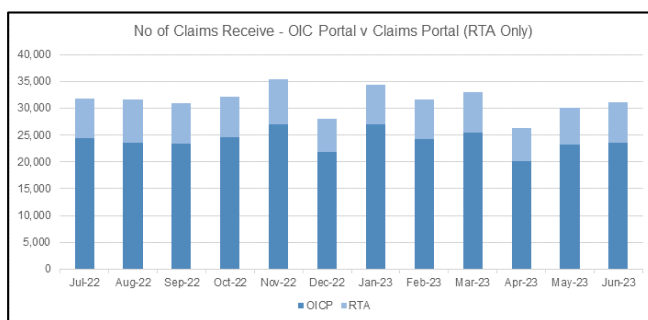
Reporting Period OICP	Total Claims	01/04-30/06
<b>Overall claims volume:</b>	568,214	66,741
<b>Represented Claims:</b>	514,150	59,154
<b>Unrepresented Claims:</b>	54,064	7,587
<b>Liability decisions:</b>	428,289	37,614
<b>Settlements (closed):</b>	130,048	26,997
<b>Settlements (open):</b>	16,578	

As always, RTA claims presented in Claims Portal (claims above £5,000 or for other exempt claims) still have to be taken into account in the overall numbers and these are shown combined with the OICP data in the chart below. What is clear is that the combined OICP and Claims Portal RTA new claim numbers are lower than seen in the corresponding quarter last year, with only June being on comparable volumes to 2022. In the last rolling 12 months November remains the only time, the combined new claims received in the month exceeded 35,000. We of course must bear in mind the number of working days in April and May was impacted by both Easter and the additional bank holidays due to the coronation.

To compare historic volumes I have added a chart that looks at the volume of claims received since the Portal was first introduced in 2010. Pre pandemic lockdown we were seeing claims regularly in excess of 50,000-60,000 a month, CNFs dropped to below 30,000 in the quarter from March 2020 due to the 1st lockdown, but did increase to in excess of 30,000 by Q3 of 2020. Volumes have remained relatively constant thereafter perhaps therefore the combination of the lockdowns followed by the whiplash reforms together has

been responsible for numbers remaining where they are. It would be extremely difficult to separate the two market influences to see the impact of these reforms in isolation.

The overall of claims split remains circa 75/25 in favour of the OICP. What will be interesting is comparing the number of paid/successful claims as an overall percentage of those submitted in the coming months when settlement data is more mature.



#### Representation and Injuries Presented

As per the previous updates the split of represented v unrepresented claimants remains heavily weighted towards represented claimants, with 89% having representation (down 1% on the previous quarter). This mirrors our own experience, with direct claimants often finding the process complicated and requiring guidance on how to progress any claim made. Of those claimants with representation 76% are represented through traditional UK based lawyers, 24% via an ABS structured law firm and only a small percentage having non-lawyer led representation, the rise of the CMC led claim advisory service has not yet taken off. However, differing behaviours are still being seen depending on the funding the claimant lawyer has in place and the route to market the claim took to enter the process.

Of the claims presented 97% of claims have an element of whiplash (awards covered by the new tariff) with 67% of all claims having an additional injury element to the claim or a 'mixed damages claim' this is up 1% in comparison to the previous quarter's data. Only 30% of claims submitted are for tariff only. The trend of claimant law firms looking to present mixed injury claims in order to raise the level of damages and in turn the potential for either obtaining recoverable costs or costs claimable from the claimant or LEI accordingly has not reduced and in fact increased since the OICP launch.

Certainly, the biggest single impact on these cases will be determined by how the Supreme Court deals with the way such claims are to be valued. Defendants are also looking at these claims by scrutinising the evidence presented, and examining what has been presented in the medical evidence against the actual mechanics of the incident itself. What is critically important is the way in which causation is dealt with by medical experts and also challenged by defendants through to trial where required.

### Exceptional Circumstances or Exceptionally Severe Whiplash

A proportionately higher number of unrepresented claimants continue to claim a whiplash injury was exceptionally severe compared with those having representation with 41% claiming the injury was exceptionally severe compared to 21% of represented claimants.

This is reflective in the fact a claimant's own perception of the injury they sustain and completing the online notification themselves may well be considered more severe prior to speaking to a legal advisor well versed in personal injury settlements and having that form completed for them.

Of interest is the fact that a far higher proportion of represented claimants present claims for mixed injury, yet the reverse is true when looking at claims for exceptionally severe injury, whether the fact a claimant is automatically required to physically give evidence in person where claiming for an uplift if challenged but potentially not required to give evidence in person if say being challenge on the mixed injury sustained might also be a factor in the low numbers of an uplift being claimed.

### Claims Exiting and Liability Decisions

Of the total number of claims received, 13% have exited the portal for a reason other than settlement. Claims can exit the OIC process in a variety of different circumstances. There are 31% of represented claims however which have exited due to the defendant stating there are complex matters of law involved, (down from 33%). One of the

issues with the OICP has been the inability to reject a CNF as can be done in the Claims Portal, as previously mentioned it may well be that defendants and insurers are using this option to circumnavigate the lack of this option being available.

In total 428,289 cases have had a liability decision made. 81% have had liability admitted in part or in full by the at-fault compensator.

### Settlements and Award Levels

The volume of claims settling has continued to rise since the data was previously published. There are 130,048 claims, which have now settled, with 26,997 settling between April and the end of June, we are continuing to see an upward trend in the number of settlements per month, however they are still comparatively low compared to the number of live claims in the system. As we have now gone past the 2-year anniversary of the OICP we may well start seeing claims leave the process due to the prognosis period exceeding the 2-year limit set in the tariff itself. This will need to be monitored over the coming months.

The average settlement period at present is 251 days a further increase from the last update of 13 days. This will rise as more claims progress to settlement and more complex/longer injury duration claims begin to settle.

As also expected we have seen a rise in the whiplash bracket with settlements in the 9 to 12 month bands starting to emerge in greater numbers. 88% of claims are settling within the first three tariff bands (claims for an injury with a duration of up to nine months). As time elapses, more claims will fall into the higher bands.

Similar levels of damages are being agreed for both represented and unrepresented claimants, with unrepresented claimants fairing slightly better in both non-tariff and tariff based injuries.

Type of Representation Injury	Injury – non-tariff	Tariff amount	Tariff uplift
<b>Unrepresented</b>	£971	£730	£156
<b>Represented</b>	£932	£723	£197

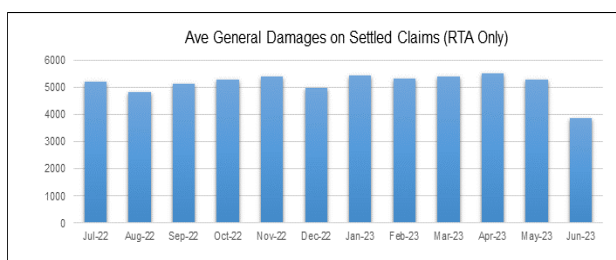
As mentioned above with the recent cases looking at mixed injury we are likely to see a rise in the level of awards seen in the non-tariff space.

The proportion of claims settled also are those presented with a whiplash in isolation of an additional injury, with tariff only settlements representing 75% of all claims that have settled. This figure of course is disproportionate to the claim types being presented at the SCNF stage.

Settlement data in light of the recent Court of Appeal cases and subsequent challenges will need to be monitored as the data matures.

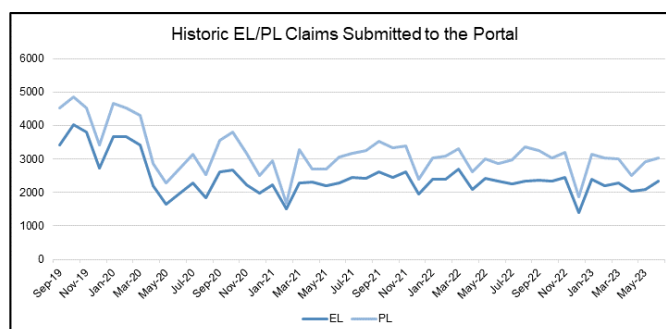
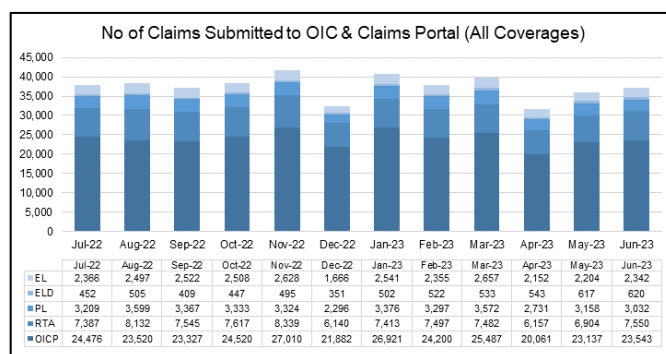
Claims Portal also continues to release settlement data, as shown below average damages have remained relatively static in the last rolling 12 months. What is interesting and has to be monitored is the comparison of settlements in Claims Portal against the OICP to see whether the intention of bringing down low value damages award levels comes to fruition, or if the high level of mixed injury claims drags that average up potentially to over the averages seen prior to the OICPs introduction.

However, the general impact of inflation in awards being agreed is not having the impact being seen elsewhere. We will see whether recent court awards adjusting settlements by applying an inflationary increase has an impact on portal settlements going forward, however it is difficult to look in isolation the impact inflation has on settlements due to the launch of the OICP taking lower value claims out of the Claims Portal.



### EL and PL Claims Impact

One concern raised with the introduction of the reforms was the impact on EL&PL claims and whether we would see claimant law firms historically focused in whiplash move into EL&PL injury claims, numbers of new claims however have remained relatively static with a slight increase seen over the year perhaps driven more by the opening up of society than the reforms. The volume of claims seen however are still considerably lower than those seen pre pandemic with EL claims on average c1,000 lower than in 2019/20 and PL c1,500-2,000 lower.



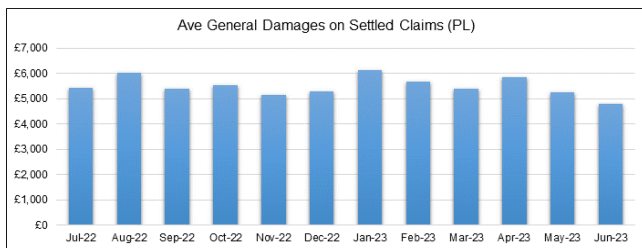
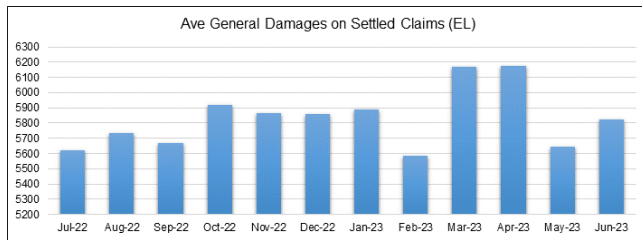
### Award Levels

Award levels have remained relatively static over the last quarter as seen to the levels in RTA cases, fluctuations seen in EL settlements can be due to the lower number of claims settling however, average settlements remain between £5,800 and £6,200.

There is a wider fluctuation in PL settlement averages but the average seen in January has not been replicated since and in fact, a slight downward trend has been seen.

Despite this the average settlement figures has seen a 25% increase in the average general damages settlement for EL and PL claims in the last 3 years, following the inflationary trends.

The monthly averages can be seen in the charts below.



## Summary

The report certainly makes for interesting reading as are the trends we can see beginning to emerge. We will continue to provide you with intermittent updates as we receive new data through to analyse.

## Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

## Get in touch

For more information, please contact your broker, RMP risk control consultant or account director.

[contact@mpartners.co.uk](mailto:contact@mpartners.co.uk)



### **Risk Management Partners**

The Walbrook Building  
25 Walbrook  
London EC4N 8AW

020 7204 1800  
[mpartners.co.uk](http://mpartners.co.uk)

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