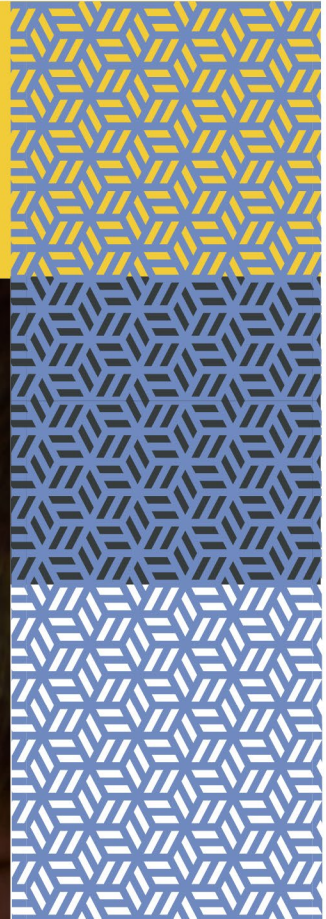




Risk Control

Market (Injury) Update & Impact
of the Whiplash Reforms –
January 2024



In partnership with



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Introduction

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

In the previous update we noted that the Parliamentary Select Committee's review in to the reforms was published with questions raised of the MOJ and MIB into the low levels of direct claimants, high level of outstanding claims, concerns over savings being passed on to motorists with insurance premiums. The issue surrounding the valuation of 'mixed injury' was raised but not expanded on and is due to be heard by the Supreme Court with a date now set of 20th February. The Government responded to the report in a letter issued on 20th November.

The letter states that... *"the Government remains committed to reducing costs for ordinary motorists in England and Wales through the Whiplash Reform Programme, whilst also ensuring access to justice for all parties through a more proportionate compensation regime."*

In a detailed memorandum to the letter, the Government has responded to the questions raised in the report with its conclusions highlighted below¹:

Use of the OIC portal by litigants in person

The Government states that it does not agree that further action is required regarding the proportion of unrepresented claimants using the OIC service. The OIC provides claimants with a choice as to whether to progress a claim themselves or to seek the support of a legal professional. It is important that this choice is maintained. They will, however, continue to work with MIB, and other stakeholders to identify and implement web optimisation and improve the visibility of the OIC service.

Unresolved cases and timeliness

The MoJ agrees that more work needs to be undertaken to better understand the flow of claims through the OIC process. Additional data will be published from January 2024 (see below) to help to provide greater clarity on the impact of dormant claims on outstanding claim volumes. The MoJ will also continue to work with MIB, CPL, MedCo and the senior judiciary to analyse the different claim journeys, to identify and implement improvements to the claims process.

In addition, feedback and evidence from the recent medical reporting consultation exercise will be considered and fed into the work on claims flow.

The cost of motor insurance

The MoJ agrees that transparency is important regarding the production of the statutory savings report and will work with HMT and the FCA in this regard, taking due notice of commercial sensitivity of the data collected. The Government will continue to liaise with HMT and the FCA in relation to whether to conduct a follow-up assessment one year after the publication of the review report. Whilst there is no statutory requirement to complete a follow-up exercise they do not disagree with the suggestion. They would though caution that it is too early to make such a commitment. They will, however, continue to discuss this point with HMT and FCA as their work on the savings report progresses.

Claims Portal(s) Review

Following the reported influx of EL Disease claims in August and September, volumes have now returned to pre August levels with December recording the lowest volumes seen in 2023. As such and as suggested the increase was down to the sweeping up of claims and potential farming of claims to ensure they were submitted prior to the extension of the Fixed Costs Regime in October last year. Below is the review of the volume of claims seen in the OIC Portal²:

Report Highlights

Reporting Period OICP	Total Claims	01/010-31/12
Overall claims volume:	702,904	67,258
Represented Claims:	633,552	59,523
Unrepresented Claims:	69,352	7,735
Liability decisions:	521,234	39,022
Settlements (closed):	190,686	31,100
Settlements (open):	22,525	

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 that follows.

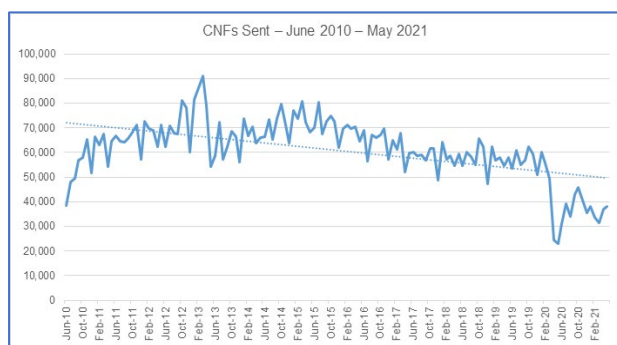
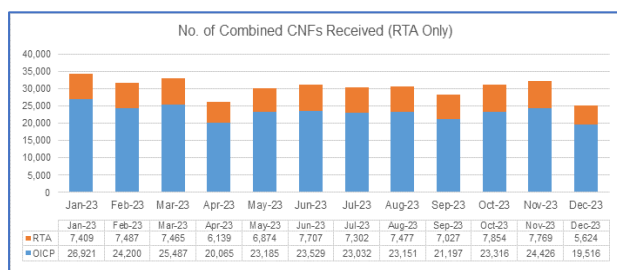
¹ [Whiplash reform and the Official Injury Claim Service: Government Response to the Committee's Ninth Report of Session 2022–23 \(parliament.uk\)](#)

² [Cms Data \(officialinjuryclaim.org.uk\)](#)

In the last rolling 12 months, November remains the only time the combined new claims received in the month exceeded 35,000, with a gradual drop off in the overall number of claims in June, July and August and September seeing the lowest number of claims submitted into the OICP since April (April had four fewer working days than September).

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, total volumes however, have dropped to 25,000 for the first time since the early pandemic days in 2020. There are of course other social and economic issues that can influence accident numbers not least the cost of living, inflation as well as the residual COVID-19 impact.

The overall of claims split remains circa 75/25 in favour of the OICP.



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.

This figure has remained within 1% each quarter since data has been available and was a key question raised by the Parliamentary Select Committee, as the estimated figure given pre-launch was that 30% of claimants wouldn't have legal representation.

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 as 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 to took to enter the process.

Of the claims presented 97% of claims remain as having 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'. 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 with this issue as mentioned above being heard in February. This decision will have far reaching consequences for how low value/high volume personal injury claims are valued, just a £500 average increase as an example on 1000 injury claims will have dramatic effects on claims experiences.

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 22% (up 1% on last quarter) 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. 30% of represented claims however have exited due to the defendant stating there are complex matters of law involved. This is down from 31% and 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 521,234 cases have had a liability decision made. With 80% have had liability admitted in part or in full by the at-fault compensator.

Dormant Claims

A new addition to the report produced by the MIB is in response to the suggestion a number of claims remain 'dormant' in the system due to a variety of reasons. We now have data being produced highlighting the number of claims consider 'dormant' that sit in either a 'Pending Liability Rejected', 'Pending Medical', 'Pending Withdrawal' or 'Pending Removal' stage. To be considered dormant, claims must have been at the pending liability and medical stage for 180 days and for pending withdrawal and removal this is reduced to 30 days.

There is a total of 228,470 claims that sit in the above stages. This equates to 33% of all claims submitted into the OICP to date. Of these, 153,070 or 67% of these claims are considered 'dormant using the above method and is 22% of the total claims submitted since May 2021. Clearly these dormant claims will have an impact on the overall lifecycle of claims and need to be flushed through the system. Correct administration of claims both by defendant and claimant's is needed to ensure these claims move from the dormant stage to conclusion else the numbers will continue to be skewed.

Settlements and Award Levels

The volume of claims settling has continued to rise since the data was previously published. 190,686 claims have now settled with 31,100 settling between September and the end of December. 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 ½ 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 296 days a further increase from the last update of 27 days. This will rise as more claims progress to settlement and more complex/longer injury duration claims begin to settle.

The low number of settlements being seen comparative to the number of live claims in the system was addressed in the Government's response to the Select Committee's report and is further commented on below:

As expected we have seen a rise in the whiplash bracket with settlements in the 9 to 12 and 12 to 15 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, but this has yet to show itself in the data – perhaps supporting the Select Committee's views on a lack of progression of claims through the system.

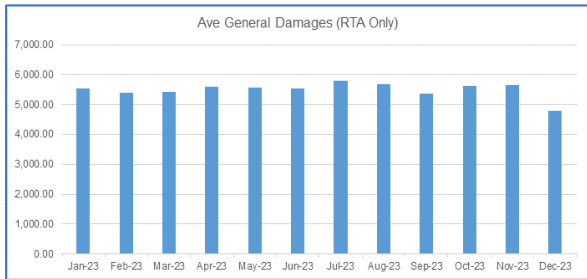
Similar levels of damages are being agreed for both represented and unrepresented claimants, with unrepresented claimants fairing slightly better in both non-tariff and tariff based injuries, which goes some way to adding weight against the argument given by claimant law firms that direct claimants would be pressured into accepting lower offers than if represented.

Type of Representation Injury	Injury – non-tariff	Tariff amount	Tariff uplift
Unrepresented	£984 (£981)	£746 (£738)	£158 (£156)
Represented	£968 (£952)	£737 (£731)	£183 (£188)

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 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 once the Mixed Injury claims are heard in the Supreme Court will need to be monitored as the data matures.

Claims Portal also continues to release settlement data. We are now seeing the lower value claims being settled and disappearing from the Portal pushing up awards for General Damages as expected. We previously reported that average settlements were consistently settling on average above £5,400, this largely remains the case bar in September that dipped below £5,400 and December which saw the biggest reduction to £4,781 indicating perhaps Christmas settlements were made and accepted.

We have not seen a jump in settlement averages throughout the year, averages have remained relatively static in 2023 bucking the general inflationary trend seen elsewhere. However, additional heads of claim are being seen to increase in cost of care, earnings, rehabilitation costs as well as those heads of damage settling outside the injury space in respect of bent metal and property damage claims.

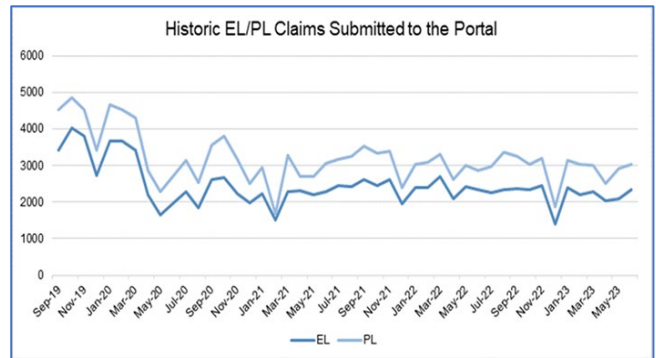
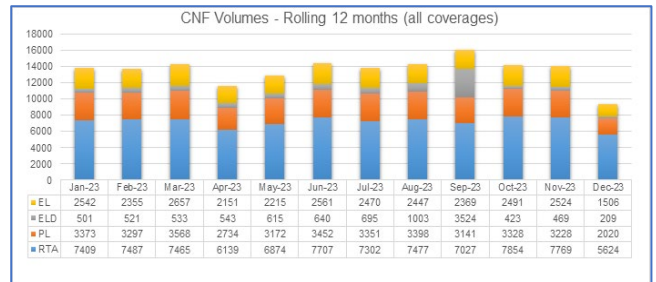


EL and PL Claims Impact

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.

The numbers of new claims however have remained relatively static with December seeing the lowest volumes of claims since 2020. 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.

As mentioned above, the anomaly of the number of EL Disease claims seen in August and September can be explained by claimant law firms looking to submit applicable claims prior to the Fixed Recoverable Costs Expansion introduced in October 2023. The number of such claims that prove to be successful remains to be seen of course, however what is telling is the number of EL Disease claims that exited the Portal at Stage 1 in November hit 1,711 compared to 330 in December – a difference of 1,381.

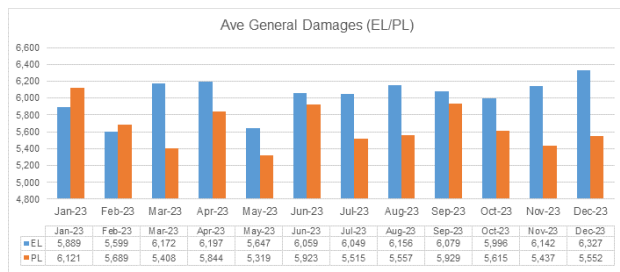


Award Levels

Award levels have remained relatively static over the last year, with an increase seen in each month in the last quarter and December saw the highest average for EL claims.

We will continue to monitor this trend to see if the averages remain above £6,000 – however, fluctuations seen in EL settlements can be due to the lower number of claims settling in any one month.

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. When considering settlement averages over a longer period, we are seeing on average c. 25% increase in settlement figures seen in EL and PL over the course of the last 3 years. However, this has been a gradual increase over time and is reflective of the increases seen in the JCG Guidelines. The monthly averages can be seen in the chart 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

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

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