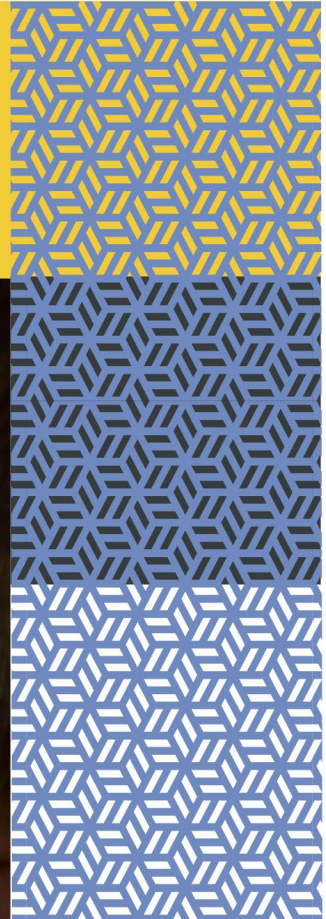


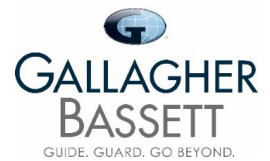


## Risk Control

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



In partnership with



# Risk Control

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

### Introduction

Please find below the analysis on the latest MI released from both Claims Portal and the OIC Portal<sup>1</sup>.

Further developments have taken place in Q1 of 2024 specific to the way in which injury claims and importantly claims within the OICP are valued.

The Supreme Court handed down its judgement on the issue of valuing 'mixed injury', this where a claim for whiplash and an additional injury is presented. The Court dismissed the appeal and confirm that the steps to be taken are;

- Whiplash Tariff for valuing the whiplash element
- Additional injury to be assessed as per the common law position (i.e. JC Guidelines)
- Step back and deduct to allow for overlap of PSLA
- However, the final award cannot be lower than would have been awarded as common law damages for PSLA for the non-whiplash injuries had the claim been only for those injuries, effectively any deduction can only total the sum awarded for the tariff.

This decision albeit a blow for the insurance industry is not a surprise and as there has been commentary previously on the number of claims that are currently sitting in limbo within the Official Injury Claim Portal (OICP), it can be expected that many claims with additional injuries to the whiplash that may have been awaiting this judgment will now be disclosed and with c65% of all claims submitted to the OICP having additional injuries claimed, this number will not be insignificant. In addition to the above we also now have the updated 17th edition of the Judicial College (JC) Guidelines published with inflationary uplifts applied of 22%. This will no doubt put upward pressure on negotiation of settlements and pressure on defendants to justify offers being made where deductions have been made for the double recovery for the same PSLA.

The whiplash tariff itself is to be reviewed this summer as such in claims involving both whiplash and non-whiplash injuries we are likely to see more arguments stating that the valuation is above the £5,000 Small Claims Track limit currently applicable and with that the ability to recovery legal fees against the paying party.

One of the areas of importance for defendant claim handling is ensuring that causation and the mechanics of the additional injuries claimed are genuine and that the medical expert has correctly assessed the impact on the PSLA to the claimant.

The ABI has previously issued a ten step plan to combat the rising costs of motor insurance cover, part of this included amending the current tariff to be extended to cover other injuries to knees, sprained ankles and the like and also a call to increase the Small Claims Track limit in line with inflation.

### Claims Portal 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 Portal.

Reporting Period OICP	Total Claims	01/01/24 – 31/03/24
Overall claims volume:	771,012	68,098
Represented Claims:	693,494	59,935
Unrepresented Claims:	77,518	8,163
Liability decisions:	567,429	40,444*
Settlements (closed):	221,253	30,861
Settlements (open):	25,262	

As always, RTA claims presented in Claims Portal (claims above £5,000 or for other exempt claims) still must be taken into account in the overall numbers and these are shown combined with the OICP data in the chart below. In the last rolling 12 months monthly CNFs remained between 25,000 and 33,000 per month (with April and December 2023 notably low in numbers due to the reduced working days in each month). Only once in the last 18 months has the monthly total exceed 35,000, with numbers in holiday unaffected months averaging just over 30,000.

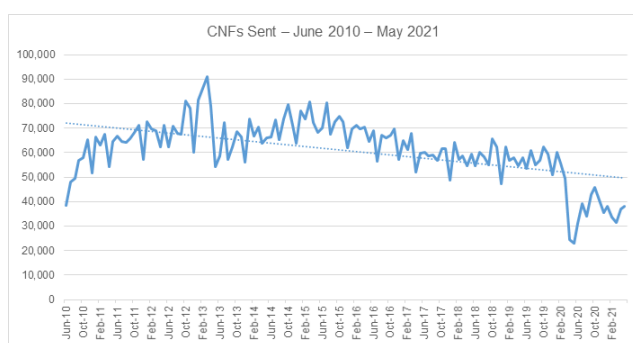
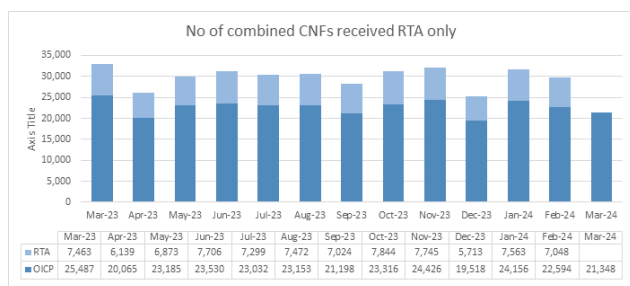
<sup>1</sup> Cms Data ([officialinjuryclaim.org.uk](https://officialinjuryclaim.org.uk))

These numbers are long way off the pre pandemic figures where 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 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 88% having representation (down from 89% from the previous quarter).

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 77% are represented through traditional UK based lawyers, 23% 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 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.

## 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 39% claiming the injury was exceptionally severe compared to 23% (down 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 server 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, 17% have exited the portal for a reason other than settlement.

Claims can exit the OIC process in a variety of different circumstances. 28% of claims that have exited has been due to the defendant stating there are complex matters of law involved, 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 567,429 cases have had a liability decision made. With 80% having 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, this due to a variety of reasons. We now have data being produced highlighting the number of claims considered '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 229,679 that sit in the above stages, this after a number of claims have been moved out of the dormancy stage. This equates to 30% of all claims submitted into the OICP to date. Of these, 131,365 or 57% are showing as pending medical, which includes pending it to be uploaded as well as undertaken.

Clearly these dormant claims will have an impact on the overall life cycle 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. 221,253 claims have now settled; however settlement levels are still comparatively low compared to the number of live claims in the system. We are now fast approaching the 3-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 290 days a reduction in fact from last the last reported quarter of 5 days.

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 as commented on previously.

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 committees' 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 slight 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 in to accepting lower offers than if represented.

Type of representation Injury	Injury – non-tariff	Tariff amount	Tariff uplift
<b>Unrepresented</b>	£989 (£984)	£752 (£746)	£155 (£158)
<b>Represented</b>	£981 (£968)	£741 (£737)	£179 (£183)

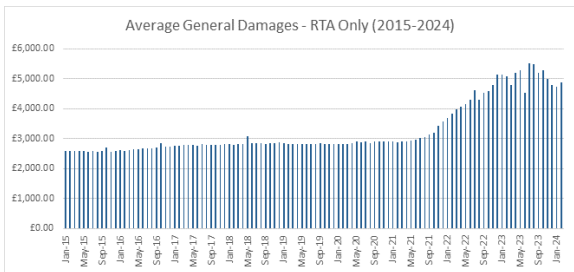
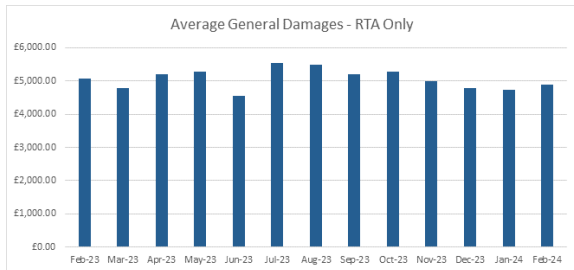
As mentioned above with the recent cases looking at mixed injury, we are likely to see a rise in the level of awards seen in the non-tariff space. The proportion of claims settled also are those presented with a whiplash in isolation of an additional injury, with tariff only settlements representing 75% of all claims that have settled. This figure of course is disproportionate to the claim types being presented at the SCNF stage.

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 figure has dropped somewhat for the period since November and remains under £5,000.

What is difficult is assessing the inflationary impact on General Damages due to the reduction in lower value claims within the RTA claims settling in the Claims Portal, average settlements since 2015 are shown below, but the increases seen are of course primarily down to claims moving into the OICP that would have sat within Claims Portal historically.





### EL and PL Claims Impact

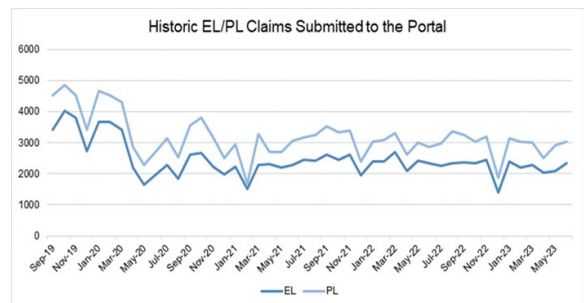
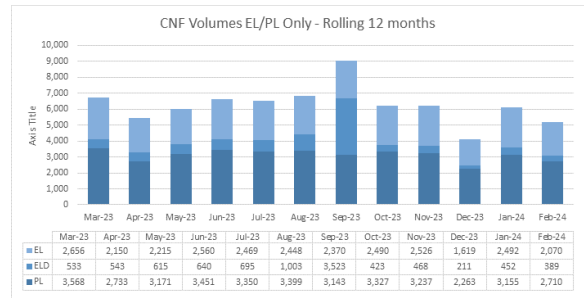
One concern raised with the introduction of the reforms was the impact on EL&PL claims and whether we would see claimant law firms historically focused in whiplash move into EL&PL injury claims, numbers of new claims however have remained relatively static with December seeing the lowest volumes of claims 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

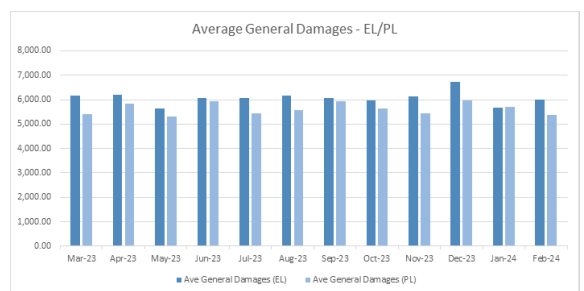
Award levels have remained relatively static over the last year, with an increase seen in each month in the last quarter and December saw the highest average for EL claims, we will continue to monitor this trend to see if the averages remain above £6,000 however fluctuations seen in EL settlements can 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 c25% increase in settlement figures seen in EL & 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 impact of the latest guidelines increase are of course not yet seen, in the next update we may well see the impact of that inflationary increase coming through.

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

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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