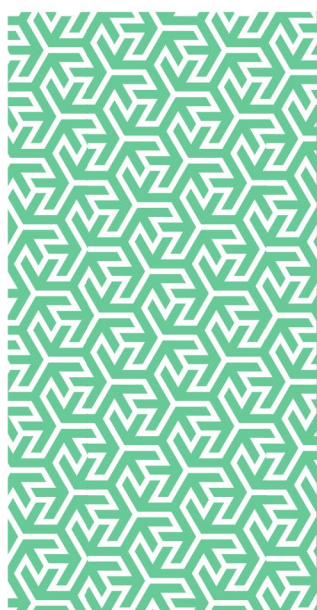


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Risk Control

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



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Introduction

Please find below the analysis on the latest MI released from both the Claims Portal and the OIC Portal¹.

Following the call for a general election and Labour's subsequent success; Shabana Mahmood MP was appointed Lord Chancellor and Secretary of State for Justice.

One of her key tasks involves the review of the discount rate effecting future loss claims, and amendments to the same in recent years that has seen huge swings in respect of reserves for affected claims.

Notice was received that the review did indeed commence on 15 July. The review and the determination regarding the rate must occur on or before 11 January 2025. With other pressing matters to address, there is doubt that we will see the outcome much before this date.

Another key decision surrounds the review of the Whiplash Reforms, and in particular the tariff used to value such claims. We previously reported that on 22 May, the then Lord Chancellor, Alex Chalk, had announced that he had completed his statutory review.

However, publication of the review was delayed because of the general election being called. Although the Civil Liability Act imposes a statutory duty to review the tariff every three years. It remains to be seen what action the new government will take in respect of the review.

Claims Portal(s) Review

Below is the review of the volume of claims seen in the OIC Portal.

Reporting Period OICP	Total Claims	1/04 – 30/06
Overall claims volume:	832,475	61,447
Represented Claims:	747,498	53,989
Unrepresented Claims:	84,977	7,458
Liability decisions:	603,675	34,687*
Settlements (closed):	248,987	28,025
Settlements (open):	28,769	

As always, RTA claims presented in the Claims Portal (claims above £5,000 or for other exempt claims) still must be considered in the overall numbers and these are shown combined with the OICP data in the chart that follows.

Volumes of new claims in the Claims Portal remain static picking up claims that are not suitable for the OIC Portal.

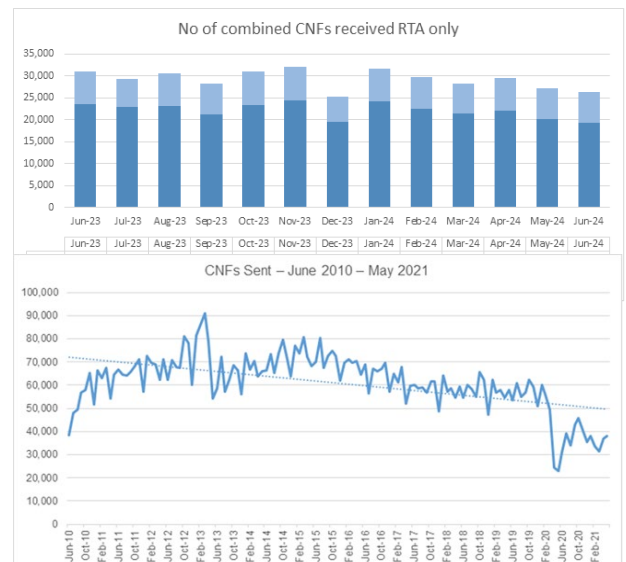
Claims within the OIC Portal fell below 20,000 for the second time in this rolling 12-month period with 4,000 less claims presented in June 2024 than in June a year ago.

The combined RTA injury numbers are a long way off the pre-pandemic figures where we were seeing claims submitted 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 first lockdown but did increase to in excess of 30,000 by Q3 of 2020.

Average monthly volumes now remain static between 25,000 and 30,000 a month. The fluctuation is largely dependent on the number of working days in any given month.

The volumes seen prior to the pandemic are unlikely to be seen again. This is due to the pandemic lockdowns and subsequent adoption of different driving behaviours, different working patterns, as well as social and economic factors created by the recent cost of living crisis and the impact of the Whiplash Reforms.

It would be extremely difficult to separate the various market influences to see the impact of the whiplash reforms in isolation. The overall of claims split remains circa 75/25 in favour of the OICP.



¹ Service Data June 2024 | Official Injury Claim

Representation and Injuries Presented

As per the previous updates, the split of represented versus unrepresented claimants remains heavily weighted towards represented claimants, with 88% having representation. This figure has remained static within 1% variability each quarter since data has been available and is nowhere near approaching the estimated 30% of claimants that would not 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 mechanism 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 include an element of whiplash (awards covered by the new tariff), with 69% of all claims having an additional injury element to the claim or a 'mixed damages claim'.

This is up 3% on the previous quarter's figures and shows the trend we thought likely to continue following the Supreme Court's decision on how to value such claims and therefore increasing the level of damages that might either be awarded or indeed forcing claims out of the process to recover legal fees.

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 60% of unrepresented claimants and 78% of represented claimants stating no uplift to be claimed.

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 provide evidence in person when claiming for an uplift if challenged, but potentially not required to give evidence in person if being challenged on a mixed injury 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, 20% have exited the portal for a reason other than settlement.

Claims can exit the OIC process in a variety of different circumstances. 29% 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. It may well be that defendants and insurers are using this facility to circumnavigate the lack of this option being available.

In total 603,675 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

Dormant claims are those claims 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' or 'pending medical' stage for 180 days. For 'pending withdrawal' and 'pending removal' this is reduced to 30 days.

There is a total of 219,717 claims that currently 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, 128,100 or 58% 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 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. 275,756 claims have now settled; however, settlement levels are still comparatively low compared to the number of live claims in the system.

We are now past the 3-year anniversary of the OICP and so 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 345 days for represented claimants and 136 days for unrepresented claimants (combined average of 304 days).

The average lifecycle for represented claimants continues to grow. This due to the growth in dormancy claims and those simply waiting to disclose medical reports or awaiting updated evidence.

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. 87% 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.

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. This 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	£998 (£989)	£756 (£752)	£159 (£155)
Represented	£1000 (£981)	£746 (£741)	£173 (£179)

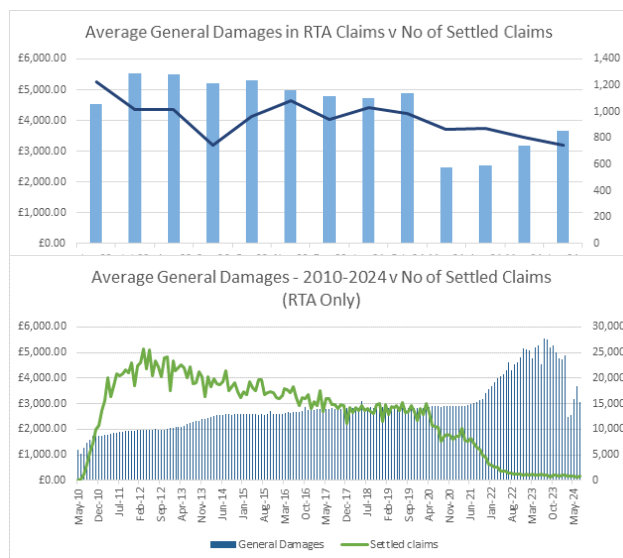
As mentioned above, with the recent cases looking at mixed injury we are likely to see a rise in the level of awards seen in the non-tariff category.

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 is disproportionate to the claim types being presented at the SCNF stage.

The Claims Portal also continues to release settlement data. What is interesting in this reporting period is that the average general damages settlement has fallen quite dramatically, with May seeing an average of just £2,473. This is a stark contrast to the same period last year where average settlements were in excess of £5,000.

What is driving the recent reduction is difficult to identify with certainty. Settlement numbers remain in and around the 1,000 mark but have been reducing over time. The last 3 months certainly has bucked the trend seen in the preceding months, and we must go as far back as late 2013 to see a monthly average at £2,400.

Historically, we have never seen such fluctuation on the monthly average since the Claims Portal's launch and will certainly need to be reviewed in the coming months.



Employers Liability and Public Liability Claims Impact

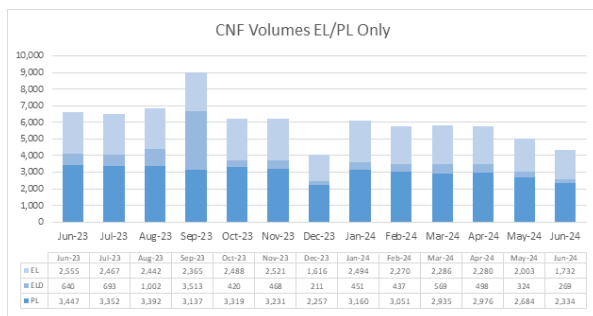
One concern raised with the introduction of the reforms was the impact on Employers Liability (EL) and Public Liability (PL) claims and whether we would see claimant law firms historically focused on whiplash move into EL and PL injury claims. Numbers of new claims however have remained static with December 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 previously, 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, 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 claims.

New PL claims submitted have steadily reduced over the last 12 months, with a drop of 1,100 claims in June this year to June 2023. EL claims also have seen a drop of circa 700 claims between the same period.

The reduction in both cannot be down to the number of working days in each month as June 2024 had 1 more working day June 2023.

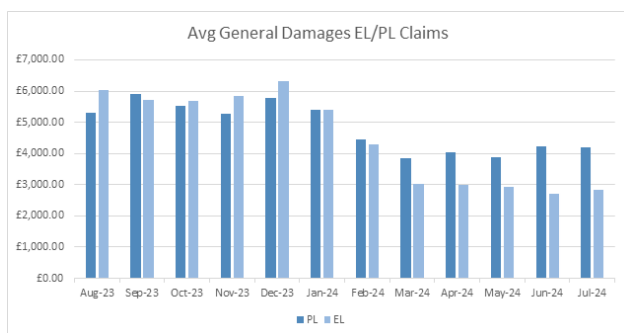


Award Levels

In the 12-month period from January 2023 to January 2024, award levels remained static with averages for both coverage areas between £5,000 and £6,000. However, for the past few months average settlements have reduced to those seen in 2022, and have remained consistent in and around £3,000 for EL and £4,000 for PL.

With inflationary pressures and the uplift seen in the latest edition of the JC Guidelines, it is somewhat surprising to see this reduction maintained over the last 4 months as all indicators in the last 3 years have seen a gradual increase in settlement averages as to be expected and in line with inflationary increases seen elsewhere.

The monthly averages can be seen in the chart below.



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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Get in touch

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

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