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making financial sense of the future

Third Party Working party
GI Pricing Seminar, 17 June 2010



Third Party Motor Claims Some preliminary results

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Acknowledgements

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Context

Motor Market Size and Results

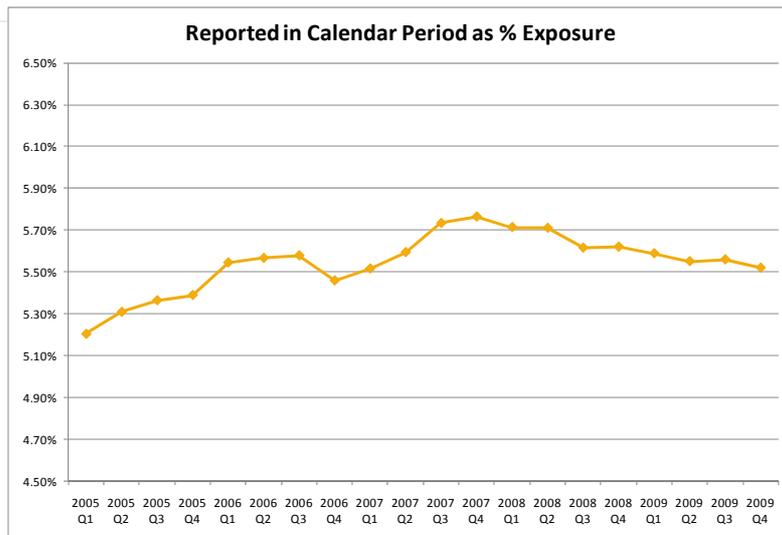
- 2009 NEP for FSA regulated entities > £8 billion
 - £6.3 billion personal motor
 - £1.8 billion commercial motor
- Other notables include Admiral (£900+ million), Zurich (c. £800 million), IAG (£364 million)
- 2009 claims ratio 89.7%
 - 92.6% excluding prior year releases
- Motor COR 118.2%
 - 121.1% for personal and 107.7% for commercial

(Source: FSA Returns)

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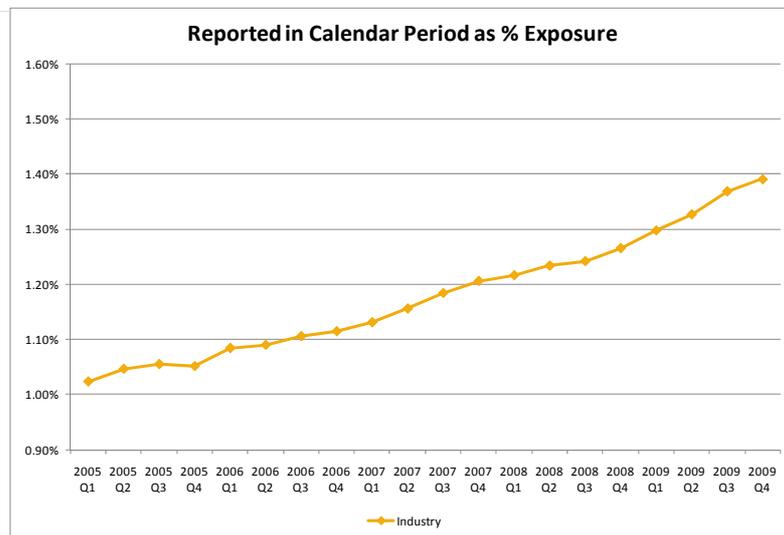
Accidents Involving Third Parties Stable



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Accidents Involving Injury Claims Going Up



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Public Statements – Groupama

- Groupama chief executive attributes recent slump in profits to **the increase in claims farming**
- “All other lines are performing in-line with expectation...we have been surprised with the injury inflation...”
- “There has been an **increase in whiplash claims** suddenly people seem to have more sensitive necks. **Whether it is linked to the recession or a further significant increase in claims farming activities I am not sure but it could be both.** It certainly took us by surprise.”
- Accidents **fell 5%** overall during the first half of the year, **the number of PI claims increased by 22%**. **The number of claimants per accident also rose from 1.2 to 1.5.**
- Mr Boisseau said the company had increased rates in private motor by 9% in H1 and intended to raise them to at least 12% by the end of the year.
- Appealing to the insurance industry to help tackle the issue of claims farming, he added: “I would call on my fellow industry leaders to take action because we have to reduce this activity. It is not good for the industry and it is not good for the customers, as it is increasing premiums.”

Post Magazine, 9 September 2009

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Public Statements – RBSI

- Paul Geddes, RBSI chief executive, said: “Despite the current economic environment, we continue to see solid growth in our own brands, across both and direct and aggregator channels, supported by strong marketing initiatives and improved retention of existing customers.
- “However, the most significant factor to impact our results is the estimated increase in claims costs, notably in the area of motor bodily injury claims. This is mainly due to an **upsurge in the frequency of bodily injury claims**, as well as an uplift in claim severity that has been driven by an **increase in the number of claimants** per claim. Significant action has now been taken to mitigate this impact by refining our claims handling processes and reflecting this exposure in our pricing.
- “**Net claims were significantly higher than expected in the quarter, with an increase of 22% compared with 2Q09.** This was largely due to greater claims being made against our customers for bodily injury accidents, resulting in the need to strengthen both current and prior years' claims reserves by a total of £118m above that projected for the quarter.
- “Although, the full impact of this situation may not be realised; we are confident that we are well prepared. We have robust processes in place to detect potentially fraudulent and exaggerated claims; however, we remain committed to paying valid claims quickly and fairly.”

Post Magazine, 6 November 2009

Public Statements – Zurich financial statements

- ...
- The net underwriting result decreased by USD 256 million or 51 percent to USD 245 million and by 47 percent on a local currency basis. This decrease is reflected in a 2.0 percentage point increase in the combined ratio to 97.6 percent.
- The **motor personal lines business is reflecting the difficult economic environment putting pressure on our generally strong margins. In the UK, the loss ratio deteriorated driven by the so-called credit hire practices as well as an overall increase in personal injury claims.** We continue to respond to these developments through rate changes and through a dedicated claims management strategy.
- In Italy ...

Public Statements – IAG Financial Statements 2 June 2010

- “Insurance Australia Group (IAG) today announced that due to a **significant deterioration in UK claim experience**, in particular bodily injury claims, it had conducted a further independent actuarial review of its UK business. As a result, in FY10 the Group expects to recognise an associated one-off, pre-tax charge of approximately \$365 million...”
- “The anticipated **\$365 million charge in FY10 mainly relates to claim reserve strengthening...**”
- “...the Group had previously highlighted an increase in the cost of bodily injury claims relating to the 2007 and prior underwriting years, however, the latest actuarial review has confirmed the **scope of the issue is greater than originally anticipated.**”
- “The UK insurance industry has seen a significant increase in the cost of bodily injury claims. This includes a **notable rise in the number of injured parties per accident**, primarily driven by the ‘**claim farming**’ activities of accident lawyers. Recent industry reports indicate significant claims inflation in this area driven by increases in both frequency and severity. **Economically-inspired claim activity is also growing in a tough environment**”

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Third Party Claims and the role of the Claims Farmer

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The claims process - Overview

Outcome of claims process for claimants

- Repair
- Car hire
- Compensation for Injury

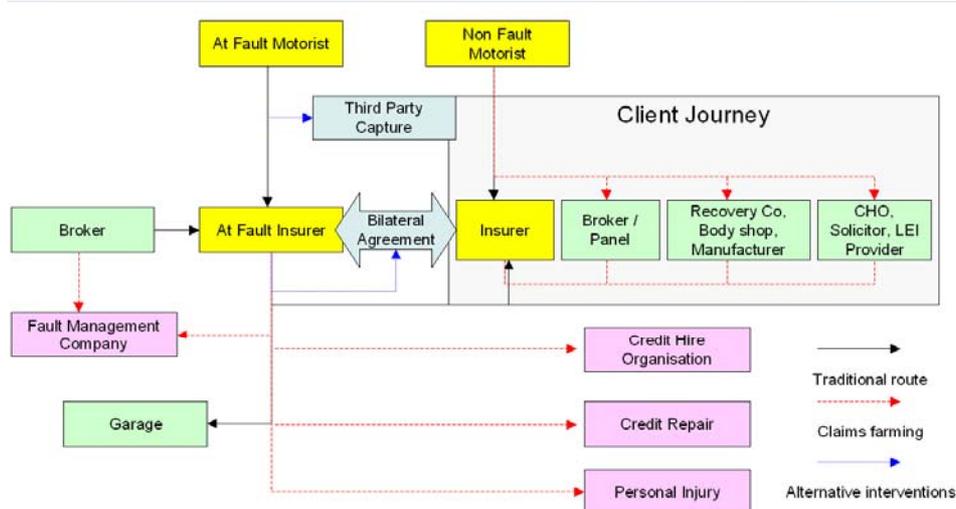
Factors affecting route through process

- Who did you call first?
- Who is at fault?
- Is your insurer helping enough?

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The claims process - Overview



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Introducing Claims Management Companies

Accident Management Companies (“AMCs”)

- Third Party Property Damage
- Specialist repair/hire services

Claims Management Companies (“CMCs”)

- Third Party Personal Injury
- Not solicitors
- Authorised to receive referral fees

Accident Management Companies (“AMCs”)

Services provided

- Credit repair
- Credit hire
- Fleet support
- Claims administration
- Third party capture
- TPPI referral.

Accident Management Companies (“AMCs”)

History

- Market has grown since the 1980s
- Initial demand from unhappy insurance claimants:
 - Poor service levels from insurers
 - Courtesy car not “like for like”
- Rapid growth in last 10 years
 - Referral fees to brokers and insurers
 - Outsourcing of claims handling

Accident Management Companies (“AMCs”)

Sources of new business

- Chiefly from contracts with brokers and insurers
- Referrals may come from garages / solicitors
- Some business won by direct advertising (e.g. web searches)
- Specialist market in fleet claims management
- Common ownership of insurer / broker / AMC / law firm / etc..

Accident Management Companies (“AMCs”)

Costs to the industry

- Extra layer of costs?
 - Service element payable by insured
 - “Impecunious” insured may recover this element from insurer
- Inflated costs?
 - Incentive to delay repair
 - Very high hire costs (e.g. £122,000)
 - No incentive to minimise repair costs

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Accident Management Companies (“AMCs”)

Benefits to the industry

- More competitive market in claims processing
- Insurers more pro-active in resolving claims
- Valuable service for fleet managers

Regulation of AMCs

- AMCs unregulated, but represented by NACHO
- ABI GTA controls costs

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Accident Management Companies (“AMCs”)

ABI GTA

- First and Second Tier subscribers
- Agreed car hire day rates (retail)
- Agreement on where extra charges apply, eg:
 - Sat Nav: No
 - Automatics/Convertibles: Yes
- “First to the customer” rule
- Monitoring and reporting of repair times
- Penalties for late payment

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Accident Management Companies (“AMCs”)

State of the Market

- Dominated by Helphire (PLC) and Drive Assist (private)
- Smaller players: Accident Exchange, Kindertons, AI
- Circa £600m annual industry turnover
- Turnover flat since 2008 and tight credit is a problem

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Claims Management Companies (“CMCs”)

Services provided

- Referral of cases to PI solicitors
- Arranging of finance and ATE insurance

History

- Linked to the rise in “no win no fee”
- Different system in Scotland
- Covered in detail in legal section

Claims Management Companies (“CMCs”)

How they get business

- Predominantly by advertising
- Cold calling forbidden but numerous examples of:
 - Unsolicited text messages following web insurance quote
 - Phone calls from AMC inviting claims for “neck injury”
 - Leafleting on the streets of Newcastle
 - Recent initiatives to target old claims:
 - details sold by aggregators, or
 - well known broker re-opening closed claims

Accident Types

- Road Accidents
- Work Accidents
- Whiplash Injury

claim
free

FREMSG: Our records indicate you may be entitled to 3750 pounds for the Accident you had. To claim for free reply with YES to this msg. To opt out text STOP

Claims Management Companies (“CMCs”)

Costs to insurers

- Recent upsurge in PI claims, especially small

Benefits of CMC involvement

- More equitable treatment of accident victims?

Regulation of CMCs

- Claims Management Regulator est. 23 April 1997
- More detail in legal section
- Has regulation pushed “cowboys” into the AMC market?

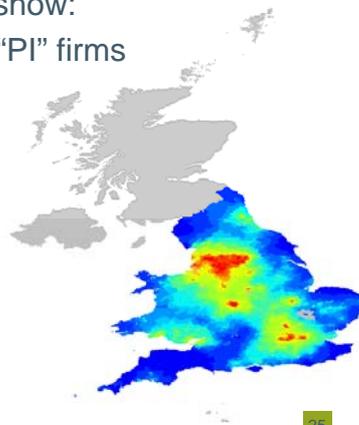
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Claims Management Companies (“CMCs”)

State of the Market

- CMR figures comparing 2008 with 2009 show:
 - 60% increase in number of regulated “PI” firms
 - 25% increase in revenues to £287m
- Location of firms broadly matches PI risk level - cause or effect?



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Role of insurers

Conditions for growth

- Poor service levels led to initial demand for AMC services

Insurance industry fight back

- Industry has responded to higher costs with:
 - bilateral agreements
 - complicity with system (to gain referral fees)
 - marketing of legal insurance (non risk income)

The customer pays!


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The Legal Background

A brief history of claims farming...

- Until 1984, advertising by solicitors was banned
- Conditional Fee Agreements (“No Win, No Fee”) have been allowed in personal injury cases since 1995
- Legal Aid removed in personal injury cases from April 2000
 - Rapid expansion in accident management companies
- October 2003 - predictable costs introduced for low value personal injury claims
- 2004 - Law Society relaxed its rules to permit solicitors to pay referral fees to introducers of personal injury claims

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Regulation of Claims Management Companies

- Concerns about the method of operation of some claims management companies led to a provision in the Compensation Act 2006 for such companies to be regulated
- Any business providing claims management services to be either authorised by the Claims Management Regulator or exempt
- By May 2009, 2928 firms had been authorised, with over 1500 active in personal injury claims with a combined turnover of nearly £300m.
- The Ministry of Justice has reported on its experience of regulation
- The regulation only applies to England and Wales

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Case Law

- Case law continues to emerge as to the recoverability of credit hire fees.
 - Dimond v Lovell (2002)
 - Lagden v O'Connor (2003) – impecuniosity
 - Copley v Lawn (2009)

Case Law

- Satellite litigation has explored various aspects of the recoverability of success fees and insurance premiums in personal injury cases.
 - Callery v Gray (House of Lords, 2002)
 - Halloran v Delaney (Court of Appeal, 2003)
 - Hollins v Russell (2003)
 - Sarwar v Alam (2001)
 - A series of test cases involving Claims Direct and the Accident Group
 - Rogers v Merthyr Tydfil (2006)
 - Woollard v Fowler

Ministry of Justice Reforms

- Came into effect 30th April 2010
- For every £1 paid in compensation, 88p is paid in legal fees
 - for motor claims under £5000 the figure rises to 88p
- Aims to speed up the process of claims settlement and remove duplication of work for the part of solicitors
- Applies to motor claims between £1000 and £10000 occurring in England and Wales.
- Strict timescales for an insurer to admit/deny liability and to make settlement. If timescales not met then the claim falls into the process
- The reduction in legal fees should also mean that solicitors have less capacity to pay referral fees to CMCs

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Jackson Review

- In January 2010, Lord Justice Jackson published the report on his comprehensive review of civil litigation costs
- Jackson concluded that costs are often disproportionate and impede access to justice and recommended
 - Banning referral fees
 - Abolishing the recoverability of success fees and ATE premiums
 - Increasing general damages awards by 10%
 - Introducing “qualified one way costs shifting”
 - Introducing fixed legal costs for fast track cases worth up to £25,000
 - Promoting Before the Event legal expense insurance

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Jackson Review

- By banning referral fees and giving claimants a financial interest in the level of costs being incurred on their behalf, the reforms would do much to restrict claims farming
- The Solicitors Regulatory Authority argue that the reforms would restrict access to justice
- It is uncertain whether or when the Government will introduce the reforms suggested by Jackson

Regulation of AMCs

- No formal regulation
- Some of the case law on Credit Hire is relevant
- In 1999, the ABI developed General Terms of Agreement (GTA) to which insurers and credit hire organisations could subscribe
 - Not all insurers subscribe
 - Axa withdrew in 2009 believing they could achieve a better deal outside the agreement.

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Industry Statistics

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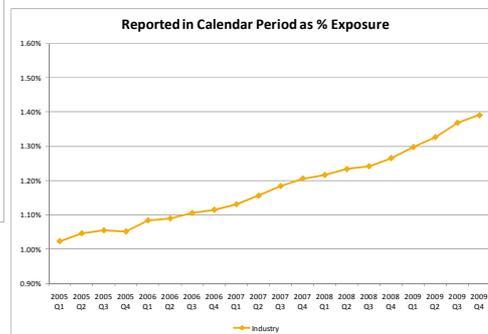
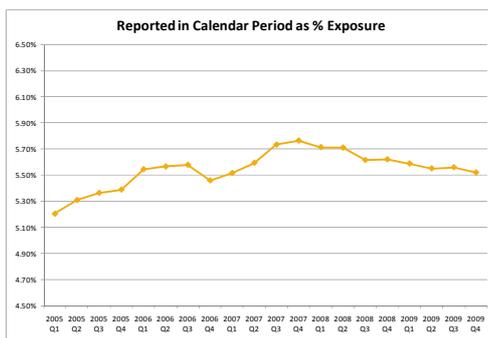
Background

- All members of the working party contributed data to the study
- Other contributions invited via direct approaches and by “Peter Sterling” email
- In total, 80-85% of FSA market (by premium volume) contributed data

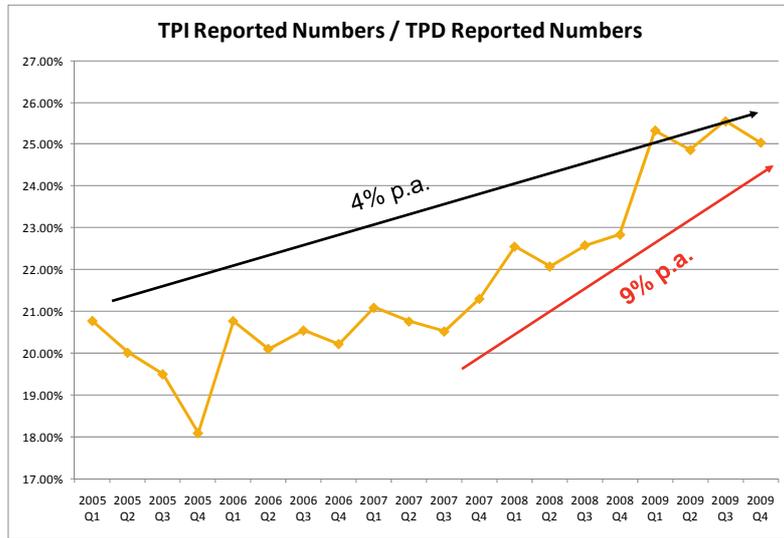
Scope of Data

- Data specified to look at two aspects of third party experience
 - Overall data trends
 - Geographical data trends
- Overall triangles of numbers of claims (reported and settled), paid amounts, incurred amounts, plus exposure information
- Collected separately for TPD and TPI claims
- Geographical data of exposure, numbers of claims and claim amounts by postcode, again separately for TPD and TPI claims

Preliminary Results Reported Numbers of Claims (TPI and TPD)

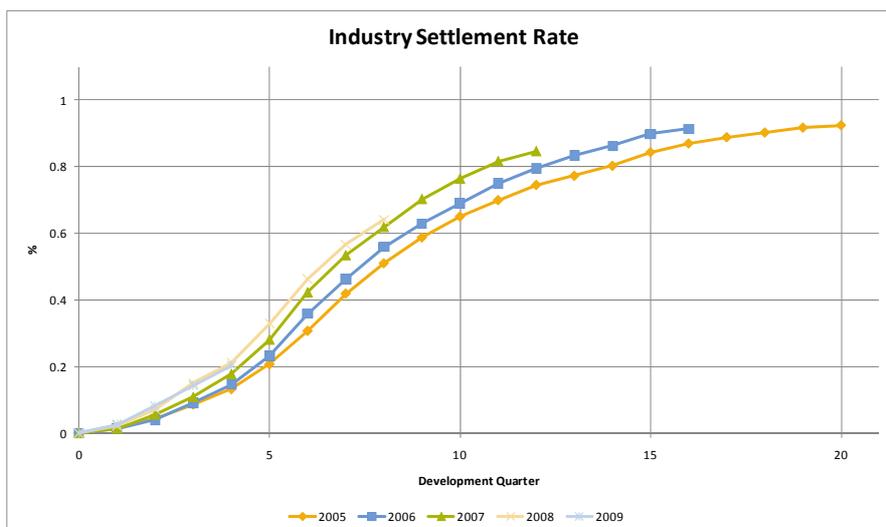


Ratio of TPI to TPD Reported Numbers



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Settlement Rates Across the Industry Speeding Up...



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... But so too are Settled Average Costs



Claimants per Claim

- Less information available on claimants per claim
- Where data was available, increase in numbers of claimants per claim between 2008 and 2009 was in the range of 2.6% to 7%
- 2008 compared to 2007 showed comparable levels of increases

However trends don't look good.....

- Frequency + 9% p.a. ('07 – '09)
- Average costs +10% ('05 – '09) or +30% ('08 – '09)
- Combined.....+20%, +40%....
- Slightly offset by settlement rates increasing

Can pricing keep up??

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Foreign solutions to a similar problem

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How is business distributed?

	Broker	Tied Agent	Direct	Net/Aggs	Partners & Banks	State	Farming / Credit Hire an issue?
Australia	Yes					Injury	F = Yes
Canada	Yes	Yes					F = Not major but Tow trucks
China							Not an issue!
France	Yes	Yes	Small	Small	Yes		No
Germany	Yes	Yes	Yes	Growing	Growing		F = No, CH = Yes
Hong Kong							F = Growing
Ireland	Yes	Yes	Small		Yes		F = Yes, CH = some
Italy	Yes	Yes	Small	Small	Small		F = No, CH = yes
Poland	Yes		Growing	Growing			F = Growing
Russia	Small	Yes	Small				Not really an issue
Scotland							Less than England
Spain		Yes			Yes		No
Switzerland	Yes	Yes	Yes	Yes	Yes		Not an issue
USA	Yes	Yes	Yes	Some			Medics = enemy, CH = No, Tow trucks

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Claim process

Most countries have a similar notification process

- Inform own or third party insurer / intermediary
- Individual insurers may elect to contact third party directly to limit costs

Knock for knock?

- No – Switzerland, Russia, Canada, Poland, Germany (but being considered)
- Yes - Italy (compulsory through CARD)
- Yes – France (fixed tariffs to recover from the at-fault driver's insurer (1200 € for 100% recovery for vehicle damage). Split liability only exists in full quarters e.g. 25/75)
- Yes – Ireland (akin to individual bi-lateral)
- Yes – Spain (ad hoc basis for non-injury claims - non-fault insurer recovers a fixed fee)

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USA

- Medical bills cause head aches
 - Many states have a no fault system - medical bills are usually paid by own insurer, irrespective of fault
 - Tow-truck operators cruise for accidents - \$100-\$200 (Canada too!)
 - Insurers' perspective - medical centres are a source of big bills spurious/no work
 - Victim's relationship with doctor/insurer - no big bills for the insurer....**often the insurer is unaware of the referral fee and on occasions the insured receives a referral fee!**
- No fault states
 - Should reduce the cost of medical bills; in practice attorneys receive referral fees
 - Limit level of compensation (e.g. \$100,000), once bills exceed this (c3% of claims) **and** the fault insurer is only a secondary source of funds for attorneys
- Pain and suffering
 - Attorney's fee is a percentage of the award (even in no fault states)
 - Attorney's fee is a percentage of the claimant's award (rate agreed between the attorney and claimant - sometimes a maximum rate of 30%)
 - Some cases are settled out of court.

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France

- Motorists must keep a document** in their cars
 - who to contact
 - compensation available
 - likely timescales
- (www.victimesindevices.fr/images/stories/rapports/statistiques/rapportannuel2008.pdf)
- Compensation – fixed tariff as the awards from around 46,000 cases published on the internet
(www.victimesindevices.fr/sees-fvi.fr)
- Awards challenged but not common practice
- Personal injury claims (serious injuries) used more than in the UK
- Legal cover is widely purchased

** See Additional information slides

Poland, Scotland and Spain

Poland

- Increasingly insurance aware population – farming by
- No legislative deterrent to farming

Scotland

- Legal System very different to England – cost of recovering legal costs (biggest driver of claim farming)
- Scottish system is more 'proportionate' – attract costs on a fixed/scale basis (English/Welsh based on a whole case – allow based on hours worked, area of the country and additional disbursements)
- Recently the issue of Predictive Fees – limited cost recovery for un-litigated claims
- Lawyers adept at getting Predictive Fees regime into normal litigation and enhancing their costs

Spain

- Social Security covers most claim items - medical expenses don't need to be recovered
- Claimants go to UK but no claim/accident management companies
- No specific legislation encourages/deters claims farming. However, Spain's very strict data protection laws may provide a certain level of deterrent compared to the UK.

Cover / Culture

	Courtesy car/cover available?	Choice of garage	Bodily injury: insurance or state	AMC's advertise?	Insurance: necessary evil or valued?	Compensation Culture	3 rd parties: a revenue stream?
Australia			State				
Canada	Yes	Yes	Usually	No	Valued	Some	No
China							
France	Yes	Yes	Insurance	Yes, not widely used	A tax	Legal framework limits opportunity	No
Germany	Yes	Yes	Insurance	No	Evil	No	No
Hong Kong				Yes			
Ireland	Yes	Yes	Insurance	Yes	Valued	Yes	No
Italy	Legal right/cost being challenged	Yes, credit hire & growing	Insurance	Yes	Both	Not normally	No /small
Poland	Sparingly	Yes	Insurance (medical bills = state)	Yes	Evil	Growing	No
Russia	No	Cash settlement	Yes, TRUR 160 pp, 280 in total	No	Evil	Yes, insurers fair game	Yes
Scotland	Yes	Yes	Insurance	Less so	Evil	Some	Less than England!
Spain	Optional extra – rarely taken	Yes	Insurance (medical bills = state)	Yes, limited	Valued	No but gradually changing	No
Switzerland	Yes	Yes	Both	Yes	Both	Not really	No
USA	Yes				Evil	A sport	No

Main lessons

- Farming is continent agnostic
 - North America, Australia, Asia and Europe suffer
 - China, France, Germany, Russia and Switzerland appear immune
- Legislation has
 - Stopped farming (Germany, Ireland, France)
 - Reduced the impact (USA, Canada)
 - Failed to resolve the growing issue (Hong Kong, Poland)
- The French have a natural flair
- No obvious short-cut route to market and claim farming
- Insurance is a necessary evil/tax and insurers are “fair game”
- Lawyers find a way to generate and recover fees

Cruising tow-trucks & medical centres

Any Questions?



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Additional information

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GIRO Convention 2010
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Legal in detail

A brief history of claims farming...

- Until 1984, Law Society rules banned advertising by solicitors.
 - These rules were gradually relaxed through the late 1980s
- Conditional Fee Agreements (“No Win, No Fee”) have been allowed in personal injury cases since 1995
 - Initially, the success fee and any After-the-Event insurance premium were not recoverable from the losing party, but were deducted from the claimant’s damages
- The Access to Justice Act removed availability of Legal Aid in personal injury cases in England and Wales from April 2000
 - Success fees and ATE insurance premiums were made recoverable from the losing party, with the aim of promoting CFAs as an alternative way of funding claims.

A brief history of claims farming...

- These changes saw a rapid expansion in accident management companies encouraging individuals to pursue compensation claims.
 - Examples include Claims Direct, National Accident Helpline and the Accident Group.
 - Whilst some of the early pioneers in this area failed this has not deterred many others starting up in their place.
 - Many of the issues that caused the demise of these groups were related to cashflow, as insurers challenged the recoverability of fees through lengthy court proceedings

A brief history of claims farming...

- From October 2003, a regime of predictable costs was introduced for low value personal injury claims
 - The aim was to reduce the amount of litigation over costs
 - Arguably, however, it has encouraged solicitors to streamline processes and reduce their own costs, leaving a surplus of fees over costs that can be used to pay referral fees.
- In 2004, the Law Society relaxed its rules to permit solicitors to pay referral fees to introducers of personal injury claims
 - This was in response to an Office of Fair Trading report arguing that the existing restrictions distorted competition
 - Prior to this change, many solicitors had in any case been paying referral fees by any other name.

Regulation of Claims Management Companies

- Concerns about the method of operation of some claims management companies led to a provision in the Compensation Act 2006 for such companies to be regulated
- This requires any business providing claims management services to be either authorised by the Claims Management Regulator or exempt
 - This includes personal injury cases and various other categories, but not vehicle hire or repair services
 - Claims management services include advertising for potential claimants, advising claimants, referring details of a claim or representing a claimant

Regulation of Claims Management Companies

- There are a range of exemptions, including insurance companies and brokers that are already regulated by the FSA, solicitors, trade unions and charities.
- Since April 2007 it has been an offence to operate without authorisation or exemption.
- By May 2009, 2928 firms had been authorised, with over 1500 active in personal injury claims with a combined turnover of nearly £300m.
- Authorised businesses must comply with the Conduct of Authorised Persons Rules.

Regulation of Claims Management Companies

- The Ministry of Justice has reported on its experience of regulation.
 - Problems relating to cold calling to solicit claims, misleading advertising and unauthorised marketing in hospitals had largely been dealt with. However, new concerns have emerged regarding telephone cold calling and misleading information given in these calls
 - The Regulator had also assisted enforcement agencies in developing a strategy for dealing with contrived accidents.
 - An unfortunate side effect of clamping down on claims management businesses where there was evidence of involvement in contrived accidents has been some of these firms withdrawing from personal injury but concentrating instead on vehicle damage and credit hire claims
 - The Solicitors Regulatory Authority has found widespread non-compliance with its rules in respect of referral fees. The SRA regulates solicitors, who are exempt from authorisation by the CMR.

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Regulation of Claims Management Companies

- The regulation only applies to England and Wales. Claims management companies operating only in Scotland or Northern Ireland do not need to register.
- In December 2008, the Scottish Government consulted on whether to introduce a similar system of regulation.
 - The continuing availability of legal aid means that CMCs have gained less of a foothold in Scotland
 - A few respondents reported concerns over CMCs engaging in misleading advertising
 - 85% of respondents were in favour of regulation
 - No representatives of the insurance industry were invited to respond to the consultation
 - To date no Government response has been forthcoming

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Case Law

- Case law continues to emerge as to the recoverability of credit hire fees.
 - In *Dimond v Lovell* (2002), the House of Lords ruled that the credit agreement between Mrs Dimond and the hire company was unenforceable, so no judgement was required on the amount of the hire charge.
 - However, a majority of Lords expressed their view that the claimant must mitigate the loss and hence that hire charges should only be recoverable at the going rate for spot hires
 - The Lords expressed surprise at credit hire rates of £30/day. More recent cases have seen rates exceeding £500/day in some cases!

Case Law

- In *Lagden v O'Connor* (2003), the House of Lords ruled that the claimant is entitled to hire an equivalent vehicle to his own. Where the claimant can demonstrate that they were impecunious, it is reasonable for him to incur credit hire rates
- In *Copley v Lawn* (2009), the Court of Appeal ruled that, where an insurer offers a replacement car to a claimant, they must make clear the costs of such a vehicle and that the claimant has a duty to mitigate their loss, or else it is not unreasonable for the claimant to reject that offer in favour of a credit hire.

Case Law

- There has also been a series of satellite litigation cases exploring various aspects of the recoverability of success fees and insurance premiums in personal injury cases.
 - Callery v Gray (House of Lords, 2002) established the principle that success fees and ATE insurance premiums were recoverable, but only where the amounts were proportionate and reasonable.
 - Halloran v Delaney (Court of Appeal, 2003) took this a stage further in decreeing that in straightforward road traffic accidents, a success fee limited to 5% was reasonable based on the comments of the judges in *Callery*. The impact of this ruling was backdated to the date of judgement in *Callery*.

Case Law

- In *Hollins v Russell* (2003), the Court of Appeal ruled that minor technical breaches were not enough to make CFAs unenforceable.
- In *Sarwar v Alam* (2001), the Court of Appeal ruled that in general ATE insurance should not be sold where the claimant already had a BTE policy in force
- A series of test cases involving Claims Direct and the Accident Group challenged the level of ATE premiums, with the Courts deconstructing the premiums to establish which elements were recoverable.
- At this stage, the majority of judgements had been broadly in favour of insurers and costs were being capped. However, the tide started to turn.

Case Law

- In *Rogers v Merthyr Tydfil* (2006), the Court of Appeal ruled that staged ATE premiums are legitimate, and that higher insurance premiums can be expected in the later stages.
- In *Woollard v Fowler*, the Court considered whether a fee paid to an agency to obtain a medical report on behalf of a solicitor was recoverable as a disbursement.
 - The Court ruled that this was reasonable, leaving the way open for solicitors to do less work for their fixed fees and include more agency fees for delegated work as disbursements.
 - In May 2007, the Civil Justice Council brokered an agreement between a number of insurers and medical reporting agencies for capped costs for medical reports

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Ministry of Justice Reforms

- The MoJ Reforms come into effect from 30th April 2010
- The context is that, for every £1 paid in compensation, 43p is paid in legal fees; for motor claims under £5000, this figure rises to 88p
- The aim is to speed up the process of claims settlement and to remove duplication of work and costs on the part of solicitors
- The scheme applies to motor injury claims valued at between £1000 and £10000 occurring in England or Wales.
- There are strict timescales within the process for an insurer to admit or deny liability and to make offers of settlement. If the timescales are not met then the claim falls out of the process
 - Any denial of liability, allegation of fraud or contributory negligence also removes a claim from the process.

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Ministry of Justice Reforms

- If a claim remains in the process then fixed legal fees are recoverable. The aim of the reforms is to eliminate unnecessary cost and this should be broadly favourable to insurers.
- The reduction in legal fees should also mean that solicitors have less capacity to pay referral fees to CMCs
- However, insurers have some concerns
 - Claimant solicitors may attempt to have claims removed from the process so that higher fees are recoverable.
 - Fixed fees are set at a level similar to current rates, building in some margin that solicitors can use to pay referral fees.
 - The tight timescales will make it more difficult for insurers to investigate suspected fraudulent or exaggerated claims.
 - The speeding up of payment will distort historic patterns, causing difficulties for reserving actuaries!

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Jackson Review

- In January 2010, Lord Justice Jackson published the report on his comprehensive review of civil litigation costs
- Jackson concluded that costs are often disproportionate and impede access to justice, and he made a number of recommendations to address these concerns
- His recommendations included:
 - Banning referral fees – Jackson says “It is a regrettably common feature of civil litigation... that solicitors pay referral fees to claims management companies. Referral fees add to the costs of litigation without adding any real value to it.”
 - Abolishing the recoverability of success fees and ATE insurance premiums

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Jackson Review

- His recommendations included:
 - Compensating for this irrecoverability by increasing general damages awards by 10%
 - Promoting access to justice by introducing “qualified one way costs shifting”, so that an unsuccessful claimant is not liable for the defendant’s costs, provided the claimant has not acted unreasonably
 - Introducing fixed legal costs for fast track cases worth up to £25,000
 - Promoting Before the Event legal expense insurance
- The reforms would apply only in England and Wales

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Jackson Review

- By banning referral fees and giving claimants a financial interest in the level of costs being incurred on their behalf, the reforms would do much to restrict claims farming.
 - It remains possible that accident management companies would be able to find a way round any restriction and be remunerated in another way
 - Some commentators believe that referral fees will not be banned, but that some restriction or cap is more likely
- The Solicitors Regulatory Authority has argued that the reforms, and particularly the banning of referral fees, would restrict access to justice by making it more difficult for claimants to afford legal representation
- It is uncertain whether or when the Government will introduce the reforms suggested by Jackson, particularly given the imminent General Election.

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Regulation of AMCs

- There is no formal regulation of accident management companies
- There is some relevant case law on credit hire described earlier
- In 1999, the ABI developed General Terms of Agreement (GTA) to which insurers and credit hire organisations could subscribe
 - The stated aim was to reduce the amount of litigation challenging every aspect of credit hire agreements
 - From insurers' perspectives, the aim was also to cap the rates that they would have to pay for credit hire
 - The agreement sets out maximum daily hire rates for different categories of vehicles, and standard payment terms
 - Since the launch of the GTA, there have been perennial disagreements between insurers and CHOs as to how to update the hire rates each year
- Not all insurers subscribe to the GTA. Notably, Axa withdrew in 2009 believing they could achieve a better deal outside the agreement.

GIRO Convention 2010
Third Party Working Party

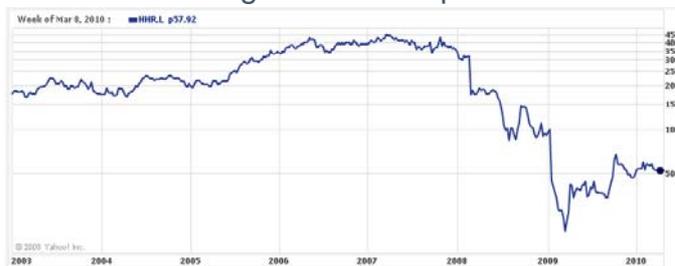
The legal background

Accident Management Companies (“AMCs”)

State of the Market

- Dominated by Helphire (PLC) and Drive Assist (private)
- Smaller players: Accident Exchange, Kindertons, AI
- Circa £600m annual industry turnover
- Turnover flat since 2008 and tight credit is a problem

Helphire
share price
2003 to 2010



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GIRO Convention 2010
Third Party Working Party

Foreign solutions

Areas covered

- Americas
 - Canada, USA
- Asia
 - China and Hong Kong
- Australia
- Europe
 - (West): Ireland, Italy, France, Germany, Scotland, Spain, Switzerland
 - (East) Poland, Russia,
- Africa, Antarctic and Arctic - none

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International Research on Claims Farming Questions

1. How is business distributed – direct, internet, aggregators, third parties (brokers, partners, tied agents)
2. Claim process
 - a) Contact strategy with own client and third party
 - b) Opportunities for third parties to generate a revenue stream
 - c) Prevalence of knock-for-knock/bilateral agreements – do they exist now/have they existed in the past?
 - d) Industry changes over the past 5-10 years
3. Legislative background
 - a) How does the legal environment support/deter claim farming?
 - b) What options are available to fund claims?
 - c) Are legal fees recoverable?

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International Research on Claims Farming Questions

4. Cover level
 - a) Is courtesy car provision widely available – what options are available to clients?
 - b) How much freedom exists in terms of where vehicles can be repaired – prevalence of select repairer networks?
 - c) Is personal injury covered by insurance or the state?
 - d) Can accident management companies advertise for business?
5. Culture
 - a) How is insurance viewed – a valuable purchase or compulsory evil?
 - b) Prevalence of a compensation culture - what's in it for me?
 - c) Do insurance companies view third party claims as a revenue stream

Switzerland

- Third party insurer pays for indemnity and legal fees. P... legal duty to minimise the loss => no potential revenue stream for third party insurer
- Most claims settled out of court
- High court recently allowed success based... - no significant changes in practice expected (is this optimistic?)
- Private associations (e.g. whiplash...) change rulings. Advertise on TV and work with lawyers. No evidence they... of claim or affect cost of claims
- Lawsuit financing companies... insurance institutes offer financing, widely success-based. Lawyers deliberately... assistance to such credits and get their fee based on expenses in order to... their legal principles
- only certified/re... allowed to conduct court cases.
- bound by... professional conduct including advertising campaigns
- No win... ed
- Legal... verable for the claimant, but not for the insurer

Australia

- Personal injury insurance is sold via the state - CTP (Compulsory Third Party)
 - Schemes range from no-fault (Victoria) to fault based (New South Wales) and are funded by the government (Victoria, Western Australia) or by private insurers (New South Wales, Queensland)
 - Cost is a major political issue – what schemes are prepared to pay damages versus what they're prepared to pay
 - Heavily regulated - legislation prescribes what can be claimed and sets damages / compensation
 - When premiums become unaffordable, government intervenes
- Since the collapse of HIH in 2001, states have legislated to contain legal costs, reduce litigation and limit minor claims:
 - prescribing the amount of legal costs that can be charged for legal costs ("regulated costs")
 - establishing dispute resolution mechanisms outside of our formal court processes
 - capping the amount of economic damage (maximum allowances for economic loss)
 - establishing mechanisms for access to certain damages (care, general damages)
 - working towards no-fault schemes
- States are also working towards no-fault schemes to reduce adversarial nature of litigation – joint experts, fast track timetables

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Italy

- Knock-for-knock
 - Voluntary CID scheme introduced 30 years ago where insureds and passengers contact their own insurers who then contact other insurers
 - Replaced by mandatory CARD scheme in 2001. 88% of third party claims. Larger bodily injury cases dealt outside the courts
 - Under CARD money is recovered from the insurer according to the tariff (Forfait) rather than the indemnity. Tariff is set every year since the introduction of CARD in 2007 (2010 is no different)
- No-win-no-fee exists but premiums are based on indemnity and are lower than UK/USA.
- Brokers seen as a result of the prevalence of claim farming (inconsistent with England).
- In the past 18 months there has been a woken up to credit hire opportunities – legality being challenged in court

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Germany

- The German model is more straightforward than that of the UK. There are no accident management companies and the role of lawyers is limited.
- Lawyers are not allowed to be aggressive, adversarial or to sue for damages.
- No-win-no-fee arrangements don't exist.
- Legal protection insurance is available for all employees (pre and post event)
- Apportioning liability can get complex
 - If an accident takes place on the way to work => a call on work insurance
 - If an accident means an injured person is no longer able to work => a call on pension insurance
 - Liability determined by the courts or by a negotiated settlement.

Farming NOT an issue

Ireland

- Injuries Board (following a 2004 study)
 - Reduces cost of delivering compensation => no legal costs or payments for goods and services (pre Injuries Board litigation costs are 10% of award value)
 - Assess injury compensation without the need for litigation (typical handling fee c €1,050) – most uncontested liability claims are resolved quickly and with access to the courts
- Credit hire
 - Garages can offer claimants a replacement vehicle for extended periods!
 - Claimants claim for depreciation on the replacement vehicle due to the damage (c10%-15% of repair cost) and often look for compensation for the use and loss of earnings (a feature in today's recession).
- No win, no fee has been used in Ireland. Taxing Master decisions cast doubt on whether solicitors can recover their costs. In today's risk adverse environment, this is not a risk they want to take (some have opted for a fixed fee).
- There is no ban on claims farming, however, S.I. No. 518/2002 — The Solicitors Acts, 1955 (Solicitors (Advertising) Regulations, 2002 offers a useful barrier.

Farming an issue

Hong Kong, China and The Middle East

- Recovery agents aggressively advertise on TV and in newspapers
- Lawyers operating a no-win-no-fee basis risk being held liable for professional conduct (champerty)
- According to the Employees' Compensation Ordinance
 - The number of minor injury cases processed by courts has increased since 2006 resulting in average awards reduced by increasing legal costs
 - The increase in small claims has led to recovery agents advertising
 - The proportion of cases from recovery agents is growing (currently estimated as 10%)
- China and Middle East have seen a rise in claim farming

Farming a growing issue

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Translation of French guidance to motorists

The information contained in this document outlines what you need to do and the compensation available under 1985 & 1986 insurance regulations.

The law dated 5th July 1985 has given more rights to victims of traffic accidents. There are very few cases where no compensation is available. The insurer has 8 months to make an offer in the case of bodily injury.

Who can get compensation?

For bodily injury:

- Passengers, pedestrians and cyclists, except if
 - the damage was carried out on purpose
 - you were completely negligent unless you are under 16 or are more than 80% invalidated (ie. very badly injured)

The driver of the damaged vehicle except if you are responsible for the accident

For material damage

Everyone who is not responsible for the accident.

What's the procedure for getting compensation?

The insurer of the vehicle responsible for the accident contacts you.

You give them information.

You have a medical examination.

The insurer makes you an offer.

You accept the offer and the insurer makes the payment.

You refuse the offer and the case goes to court.

Appendix 1

Translation of French document

Who do you contact?

1. In the majority of cases; the insurer of the vehicle responsible for the accident. If several vehicles are responsible, one insurer acting for all insurers will contact you.
2. The state or other public body for vehicles owned by the state or public bodies.
3. A central French bureau for foreign vehicles.
4. Indemnity fund where owner of responsible vehicle is unknown.

At the point of first contact you will be asked to give necessary information. You can

- Ask to be helped by a lawyer;
- Obtain a copy of the police report.

You need to give the following information:

- Name
- Date of birth
- Occupation & name/address of employer
- Income with proof
- Description of your injury and a doctor's report
- Description of damage to your vehicle
- The name and addresses of your dependants at the time of the accident
- Your social security number
- List of additional income you have
- Your address for correspondence

If the victim has died, the spouse and each beneficiary needs to give similar information to the above.

Appendix 1

Translation of French document

You have six weeks to supply the above information. If you are late, your compensation will be delayed.

You have to undergo a medical examination

You will be advised two weeks before the examination:

- The date and place of the examination
- Who will conduct the examination
- The purpose of the examination
- The name of the insurer the doctor is representing
- You will receive a copy of the report within 20 days

You can:

- Go with your own doctor
- Refuse to attend if the communication of the appointment has not been as per the detailed description above
- Refuse to be examined by the doctor chosen by the insurer; in this case you can ask for another doctor or request that a court decides who the doctor should be

What's contained within the compensation offer?

If you've suffered bodily injury, an insurer will, within eight months of the accident, provide compensation for

- The injury
- Damage to your vehicle if not already paid.

The offer will be

- A final offer if your condition has been stable for 3 months
- A provisional offer.

Appendix 1

Translation of French document

The offer will cover the following elements:

- For injuries
 - Hospital, medical fees, etc
 - Loss of income
 - Incapacity benefit
 - Cost of a carer
 - Pain & suffering
 - Anything else as applicable
- Where the injured person died
 - Funeral expenses
 - Moral damages
 - Economic damages
 - Anything else as applicable

Note that there are reductions to the above in certain cases:

- Contributory negligence
- Where you receive compensation from other sources.

Who receives the compensation offer?

- You (usual case)
- Your dependants (where the victim has died)
- Guardian or legal representative where the dependants are minors or not capable of looking after their own affairs.

Appendix 1

Translation of French document

Follow-up

When you receive the offer, you can

- Accept the offer, but you can change your mind within two months
- Discuss / negotiate the offer
- Reject the offer

You can

- Go to court
- Impose penalties for a derisory offer

In all cases you must inform the insurer who made the offer of your decision and advise social security.

When do you get the compensation?

You are paid within 45 days of agreement to the compensation amount being reached. Interest is payable if the payment is late.

Practical advice

- You need a lawyer if your case goes to court
- You have got to pay for any specialist reports (eg. medical). This is the case even if you are entitled to legal aid or benefit from legal protection guarantees
- Be careful with timescales. If one month after the accident you have not heard from the insurer of the responsible driver, you should contact them.

Remarks

- The objectives of the law are to try and reduce the number of court cases and speed up the process of paying compensation. However, at any time you can go in front of a court if you want to get an injunction against the insurer eg. if the compensation offer is derisory, they are not behaving in a reasonable manner, ...