

The Actuarial Profession

making financial sense of the future

The UK Liability Crisis

Richard Bulmer

Current Issues in General Insurance

26 April 2004

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Agenda

▪Is there a crisis?

▪International perspective

▪OFT/DWP reports

▪Where do we go from here?

Crisis

International

OFT/DWP

Future

The Actuarial Profession

making financial sense of the future

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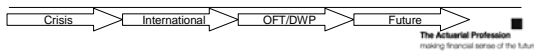
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## Is there a crisis?

- Yes, there is a crisis
- International crisis
- Crisis for a number of stakeholders
  - insurers
  - insureds
  - society in general
  - governments



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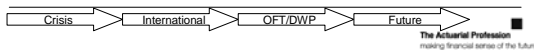
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## Background (1)

- Many years of insufficient liability premiums
- Substantial bodily injury claims inflation
- Conditional fee arrangements/ATE insurance
- Latent claims
  - asbestos claims
  - industrial deafness claims
  - retrospective legislation
- Falling investment returns



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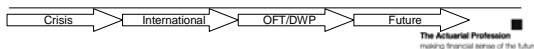
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## Background (2)

- 11 September 2001
  - downgrading of reinsurer credit ratings
  - replenishment of capital
  - reappraisal of business by reinsurers
- Unavailability of cost effective reinsurance
- Substantial increases in direct liability rates



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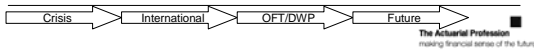
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### UK liability claims (1)

- Huge increases in EL/PL premiums for many insureds
- Reduction in amount of affordable available cover
- In UK, 1,000 companies have gone out of business
  - compulsory EL cover
  - no exclusions
- Risky sectors struggling to obtain cover (eg builders, scaffolders, bakers, engineers)



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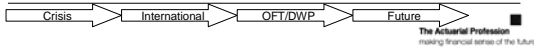
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### UK liability claims (2)

- 70% of market used to be controlled by 16 insurers
- Now controlled by 5 or 6 insurers
- All existing players have considered exiting the market
- Increasing capital requirements
- Some new entrants to the market



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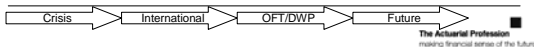
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### UK liability claims (3)

- No win no fee arrangements have increased number of claims in £3,000 to £9,000 bracket
- Legal costs have risen substantially over the last 2 to 3 years
- Injury claims inflation is increasing
- NHS recoveries
- Reviewable settlements



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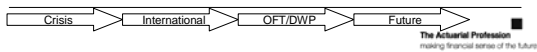
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## UK liability claims (4)

- Now a significant political issue
- OFT review
- Department of Work and Pensions reviews
- Increased longevity
- Increasing retirement age



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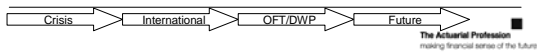
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## A few quotes

- "Writing EL business is a definite value-destroyer in the insurance market and that is not sustainable"
- "In all probability, (a requirement by the OFT that EL must be written on a stand-alone basis) would destroy the EL insurance market." (ABI)
- "If the issues of EL and compensation culture are not dealt with soon, it could mean the end for many companies across the UK." (CBI)
- "210,000 UK businesses are operating without EL cover, and some 16,000 have no insurance at all."



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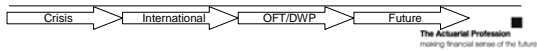
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## A few more quotes

- "Businesses face a widening gap between their level of insurance protection and their potential liability risk." (Marsh survey)
- "[D&O] insurance [premiums have] risen six-fold in the past two years, even for companies with low claims experience." (AIRMIC)
- "The current system of Employers' Liability insurance is in terminal decline and should be put out of its misery." (AIRMIC)
- "The cost of removing asbestos from workplace premises in the UK could be anything up to £80bn." (AIRMIC)



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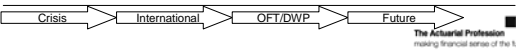
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- International perspective
- OFT/DWP reports
- Where do we go from here?



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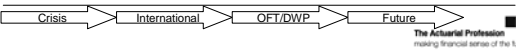
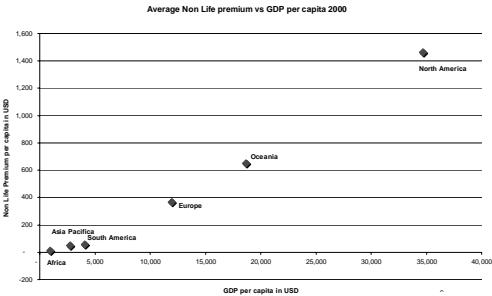
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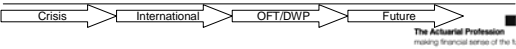
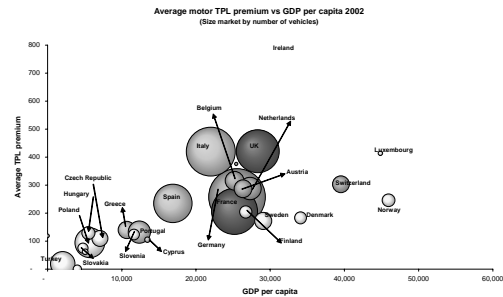
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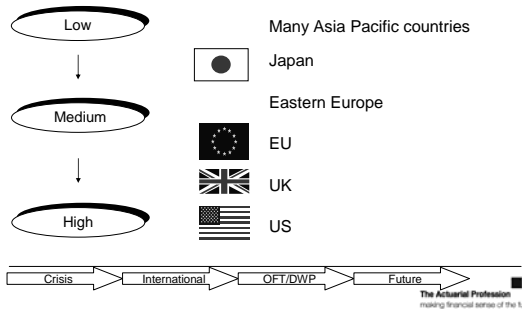
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## Bodily injury awards




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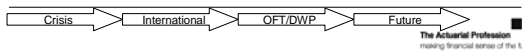
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## Case study – Ireland (1)

- Higher bodily injury awards than UK
- Very long claim development tails
- Reductions in real yields (McEneaney judgement)
- Legal fees are 40% of indemnity (or more)
- Uninsured young drivers




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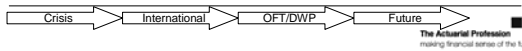
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## Case study – Ireland (2)

- MIAB report
- 67 recommendations
- Personal Injuries Assessment Board
- Transparency regarding legal fees
- Book of quantum
- Road safety initiatives




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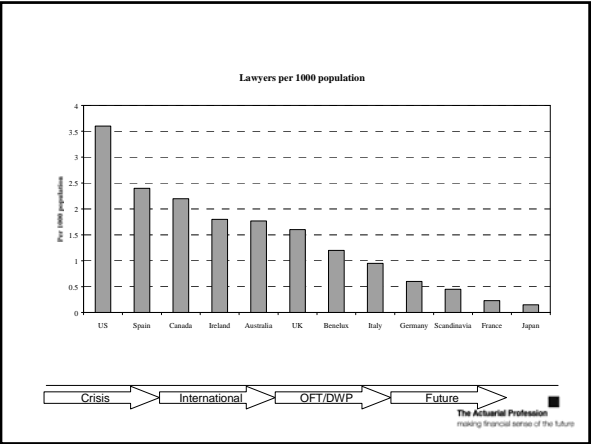
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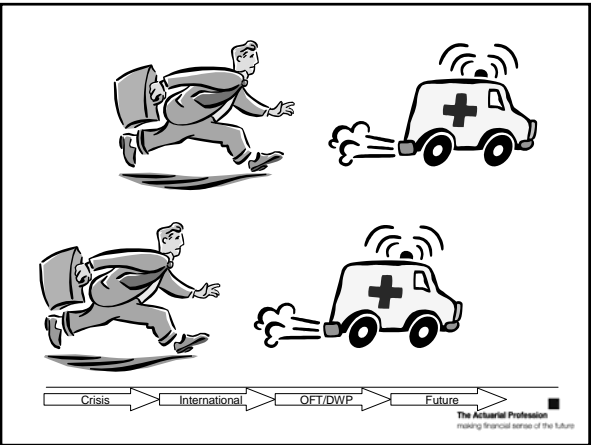
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Crisis → International → OFT/DWP → Future

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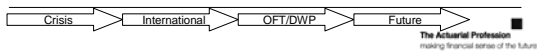
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## OFT report (1)

- Premiums for EL and PL increased by an average of 50%/35% in 2002
- No evidence to support reported concerns that recent increases in premiums were such that many businesses had been unable to secure liability insurance at any price, and were consequently trading illegally or closing down
- Certain types of business have suffered more than others:
  - IFAs
  - SMEs
  - high risk sectors
  - Northern Ireland



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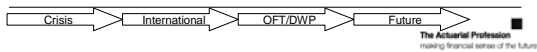
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## OFT report (2) – recommendations

- Longer renewal notice periods
- Improving relationship between health and safety practices and liability insurance premiums
- Increasing use of rehabilitation



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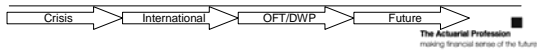
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## DWP report – overall objectives

- Free markets
- Polluter pays
- Access to justice
- Efficiency



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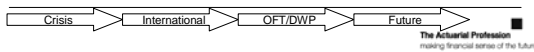
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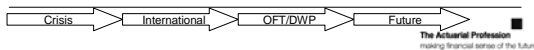
## DWP report – areas to concentrate on

- Risk related premiums and renewals
- Improving enforcement
- Reducing cost of resolving claims
- Addressing long tail disease risk
- Rehabilitation



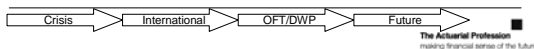
## DWP report – specific proposals

- Engage with stakeholders to further evaluate the evidence for separating long-term occupational disease risks from accident risks
- Work with the Civil Justice Council to consider the feasibility of a fixed fee scheme for EL insurance claims
- Review the operation of any pilot scheme for small claims and if successful will examine ways to extend such approaches to small and medium-sized businesses
- Produce a “Framework for Vocational Rehabilitation”



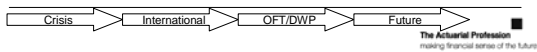
## Recent ABI initiatives

- Code of practice on renewal notifications
- “Making the market work”
- Guidelines on the handling of mesothelioma claims under EL insurance
- Report due shortly on research into whether there should be a radical separation of long tailed disease claims from other EL claims



## Industry reaction

- Mixed
- Realistic commentary
- Lack of firm actions
- Missed opportunity



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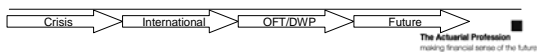
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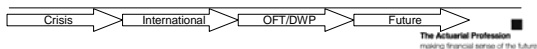
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## Which crisis do we want?

- Unprofitable insurers
- Unaffordable premiums
- Reductions in scope of cover
- Capping of bodily injury claim amounts



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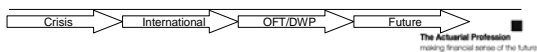
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## Expenditure on EL/WCA as percentage of wage roll (1999)

	%
▪ France	2.25
▪ Germany	1.33
▪ Italy	3
▪ UK	0.2

Source: DWP report



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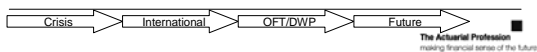
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## What can we do about it? (1)

- Separate funding of long-tail disease claims
  - employer-backed mutual fund
  - levy on EL premiums
  - tax-based arrangement
  - hybrid arrangement
- Objectives
  - polluter pays
  - financially sustainable
  - avoid boundary disputes
  - incentivise health and safety initiatives
  - simple



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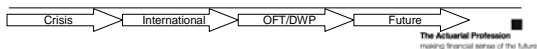
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## What can we do about it? (2)

- Claims made coverage
- No fault based workers compensation system
- Rehabilitation
- Fixed legal costs regime
- Tariff of compensation for specified conditions



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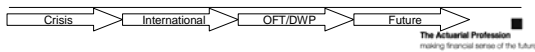
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### What can we do about it? (3)

- Better system for arbitration of disputes
- Case management
- Structured settlements (periodic payments)
- Cap payments for pain and suffering



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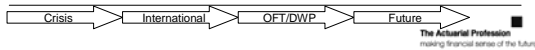
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### Recent developments

- Seventy of Britain's biggest companies are planning a revolt against their D&O insurers, and have established a task force
- Quinn Direct/Illium/Brit Insurance
- Insurers and solicitors have reached agreement on "no win, no fees" deals
- Consultation paper on issue of conditional fee arrangements
- ABI have rejected proposed introduction of a no-fault system of EL
- ABI/TUC have proposed establishment of a Rehabilitation Institute
- More modest increases in EL premiums at recent renewal



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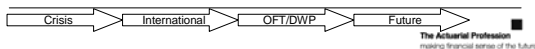
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### Some more recent quotes

- "Employers' Liability Compulsory Insurance has served us well for nearly 30 years. However, as risks evolve, so too must EL and our response to these risks. A lot has been done since June. We are committed to do much more. But we also recognise that there is no simple, quick solution. It is not a problem that Government can take away and fix." (Government – December 2003)
- "I am disappointed these proposals do not go far enough. They only nibble at the problem, which is that insurers don't find EL attractive." (AIRMIC)
- "The document sets out a series of laudable objectives, but gives little indication of how they will be achieved. The postponement of NHS recovery charges ..... merely puts off for another 12 months additional costs that are bound to put up insurance rates even further." (AIRMIC)
- "While the market is working, it remains fragile. We continue to believe that the separation of the funding of claims for long-term occupational disease is the best way to make the EL market sustainable and attract new capital."



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## Discussion

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