

Submission to the
Transport Select Committee
(17.1.2014)

I. Executive Summary

Our submission focuses on four issues:

- the broken market for car insurance;
- the lack of transparency in the motor insurance sector;
- the need for car insurers to contribute to information sharing and investment to improve road safety;
- the need for the impact of existing legal reforms to be analysed before further changes are introduced.

Our central point is that the public is being poorly served by the car insurance industry. Our submission produces evidence that the major car insurers have used their strong position in one of only two legally-required insurance markets in the UK to boost their profits and returns to their shareholders at the expense of consumers and access to justice.

Some car insurers are now admitting they over-stated the problem of personal bodily injury and are releasing hundreds of millions pounds from their reserves in the form of huge pay outs to shareholders.

The letter (29.10.13) from the Transport Select Committee chair, Louise Ellman MP, to the Secretary of State for Justice, Chris Grayling MP, asks the government to explain how it will monitor whether or not insurers will honour their commitment to ensure that any cost reductions resulting from legal reforms are passed through to consumers. In the absence of proper regulation of this broken market, we believe motorists will not gain any benefit from a reduction in the number of accidents and claims. Car insurers should operate transparently and should not seek to influence public policy using information that cannot be independently verified.

The lack of transparency on the part of the leading car insurers is most clearly evident in the failure of AVIVA and AXA to provide information on the profits they make from this captive market. We believe that their failure to report trading figures for car insurance is a clear breach of International Financial Reporting Standards, which require public companies to report separately on an operating segment contributing 10% or more to overall reported profit. We urge the Transport Select Committee to seek an explanation for their failure to comply with this basic reporting requirement.

As a short-term measure, we argue that the car insurers should share some of their inflated profits with the public through a windfall tax that would be ring-fenced for investment in measures to improve road safety.

This submission consists mainly of new information that has emerged since the Transport Select Committee's consultation in April 2013, to which we also made a submission, a copy of which is attached. The arguments we put forward in that submission still stand. The information that has emerged subsequently serves only to reinforce them.

2. About Thompsons

Thompsons Solicitors has been standing up for the injured and mistreated since the firm was founded by Harry Thompson in 1921. We have fought for millions of people, won countless landmark cases and secured key legal reforms.

We have more experience of winning personal injury and employment claims than any other firm – and we use that experience solely for the injured and mistreated. We do not work for insurance companies or employers, and we have never taken part in the merry-go-round of referrals between the insurance industry, claims companies and some lawyers.

3. Motor insurance – a broken market

As car insurance is a legal requirement for motorists, it is vital the provision of this product functions in a way that is competitive and treats consumers fairly both in terms of value and their ability to make genuine claims.

In our view, motorists are ill-served by a market dominated by a handful of providers who have an agenda to persuade politicians and government of the need to introduce further legal reforms that will serve to boost their already substantial profits.

Five key facts underpin our analysis of the broken state of this market, from a consumer's point of view:

- The market is dominated by four providers – Direct Line, Admiral, Aviva and AXA – accounting for more than half of motor premiums in the UK;
- Car insurance is highly profitable and profits are growing;
- Car insurers over-provided for or, it could be argued, exaggerated bodily injury claims in previous years as a result of which they are now able to make substantial releases from reserves and are predicting (in shareholder communications) that claims will continue to fall (not that they have sought to highlight either, unlike their very public campaign about a supposed 'compensation culture' and a 'crisis' in whiplash claims);
- The main beneficiaries of rising profits and falling bodily injury claims are shareholders in the form of substantial and rising dividend payments – and not motorists;
- The car insurers have fuelled problems in the market by trying to have it both ways: avoiding genuine claims while making profit themselves from the claims process. In the case of post-accident services, the Competition Commission has identified a moral hazard problem. Meanwhile, one insurer, Admiral, is circumventing the ban on referral fees, from which it made millions, by setting up its own legal services operation.

We will look at each of these points in turn and substantiate them.

3.1 Market domination

The Association of British Insurers says there are 23.8 private vehicles insured in the UK. Published financial information shows sales of motor policies by the four market leaders in 2012 were as follows:

Company	Policies	Share
Direct Line	4.05m	17%
Admiral	3.55m	15%
AVIVA	2.50m	10.5%
AXA	2.00m (estimate)	8.5%
Total	12.10m	51%

AXA is French owned and does not disclose the details of its trading activities in the UK car insurance market. However, we estimate from the limited information available that they are not far behind AVIVA in sales.

3.2 Profits – substantial and rising

Direct Line – In the first nine months of 2013, Direct Line made an operating profit of £418m, a 20.1% increase on the same period last year (£348m). In its annual accounts, Direct Line gives a separate figure for operating profit from UK motor insurance. In 2012, this was £262m, a 3% increase on 2011 (£255m).

Admiral – In the first half of 2013, the second largest car insurer saw its profits from the UK market increase 5% to £192.7 million (H1 2012: £183.3 million). This follows a bumper year in 2012 when its profit from the UK car insurance rose 19% to £373m (2011: £314m).

AVIVA – The third largest car insurer does not divulge its profits from selling motor insurance, despite – like Direct Line and Admiral – being listed on the London Stock Exchange. Its 2012 annual report did, however, say that it had increased the number of motor insurance policies sold by 250,000 to nearly 2.5 million customers. It also said the group had generated £448m in operating profit from selling general insurance in the UK, which included ‘good profitability in personal lines’ (motor and homeowner insurance).

International Financial Reporting Standards (IFRS) require public companies to report separately on an operating segment that contributes 10% or more to overall reported profit. Given that AVIVA achieved a better ‘combined operating ratio’ for motor insurance than Direct Line (97% versus 101.6%) – albeit on a smaller customer base – it seems very likely that UK motor insurance on its own accounted for more than 10% of AVIVA’s 2012 operating profit of £1.888 billion. On this basis, we would argue AVIVA is in breach of IFRS segmental reporting requirements. Indeed, once non-operating and restructuring costs are added back, AVIVA made a profit before tax of only £25m, which suggests profits from motor insurance have been propping up an ailing company and funding mouth-watering pay outs to shareholders (see below) and executives (including a £5m plus remuneration package for new chief executive Mark Wilson).

AXA – The French-headquartered insurance group, which is listed on the Paris Bourse, does not give separate profit figures for UK motor insurance. However, AXA UK & Ireland did issue a press release on 21st February 2013 saying: “Motor profitability improved in 2012.” As with AVIVA, we would argue AXA is in breach of IFRS and should be required to provide segmental trading information for this market.

3.3 Over-provision and ongoing decrease in bodily injury claims

Direct Line – The market leader was able to make substantial releases from its overall claims reserves in 2012 mainly because of ‘favourable bodily injury experience for recent accident years’ and admitted claims ‘continue to be’ lower than ‘actuarial expectations’. In the first nine months of 2013, Direct Line released a further £311.1 million from reserves and said: “The bulk of the release arose in the Motor division where the Group has experienced favourable development on bodily injury claims, which is currently expected to continue”.

Admiral – The second ranked player released £23.5m in 2012 from its reserves for UK car insurance claims, 128% more than in the previous year. Then, in the first half of 2013, it was able to make even higher releases of £29.7m in just six months. Like Direct Line, Admiral admitted it had over-provided and that it was seeing an ongoing reduction in claims. Its half year statement said: “These higher releases were possible due to the positive claims experience during 2012 and the first half of 2013, which resulted in improvements in the projected ultimate loss ratios, especially for the 2010 to 2012 underwriting years.” Chief executive Henry Englehardt added: “We were able to increase profits largely due to excellent claims experience”.

AXA and AVIVA do not disclose information on reserves releases.

3.4 Dividend payments rising

Dividends paid this year:

	Date	Amount	Period
Direct Line	11 June 2013	£101.4m	Final 2012
	26 Sept 2013	£62.8m	Interim 2013
	31 Dec 2013	£59.8m	Special
Admiral	24 May 2013	£123.0m	Final 2012
	11 October 2013	£132.2m	Interim 2013
Total		£478.2m	

Dividend payments this year are equivalent to £63 for each of their 7.6 million policy holders. Both Direct Line and Admiral have indicated to shareholders that they expect dividend payments to continue to increase.

AVIVA does not pay a dividend directly attributable to its UK car insurance division. However, it is interesting to note that the group's latest market (7.11.13) update says: "Our focus is on improving dividends paid by our business units to Group". In 2012, AVIVA group paid dividends to shareholders and coupon payments to bond holders worth £847m (the dividends being for a two-year period). In 2013, AVIVA has paid shareholders a total of approximately £430m. Given car insurance is a highly profitable revenue stream in a largely unprofitable group, it is fair to say motorists have served as a cash cow for shareholders at a time when they might otherwise not have received any dividends.

Similarly, AXA UK pays dividends to its French parent, which are in turn paid out to shareholders.

3.5 Having it both ways

Vehicle repair referral fees – The current Competition Commission investigation into the private motor insurance market has provisionally concluded that "the separation of cost liability and cost control in the provision of post-accident services to non-fault PMI (personal motor insurance) claimants does appear to give rise to a moral hazard problem, whereby the ultimate costs paid by the fault insurer are higher than they would otherwise be."

The investigation has found that this can increase the average cost of a non-fault repair by 'up to around £270 if the non-fault insurer manages the repair'. However, while these inflated costs are passed on to the motorist in higher premiums, the insurance companies have been banking the referral fees to boost their bottom line. Direct Line, for example, benefited to the tune of £25.9m in 2012 from revenue for vehicle recovery and repair services, according to its annual report.

Legal referral fees go in-house – Admiral has responded to the ban on personal injury referral fees, from which it earned £18.6m in 2012, by setting up its own legal businesses, Admiral Law and BDE Law. Admiral says 'new and proposed reforms to the handling of bodily injury claims mean that the businesses are not expected to make a material contribution to Group profits in the foreseeable future'. However, Admiral is clearly trying to gain a competitive advantage following the Jackson reforms by creating a legal business that has a guaranteed income and no marketing costs for cases that are, in effect, referred in-house.

Online driving records – Cabinet Office Minister Francis Maude told the media this month (9.1.14) that most of the UK's 40 million motorists would see premiums fall as a result of the introduction of online driving records by the middle of next year. The Association of British Insurers said 'honest' motorists could see premiums fall by up to £15 a year. But no one produced a shred of evidence to support these assertions, and there is every reason to assume – based on the financial behaviour of the car insurers outlined above – that any cost saving to the insurers from accessing online driving records will simply boost their profits. This is yet another case of the car insurers wanting it both ways: taxpayers funding systems that help them make more profit for distribution to shareholders. **Car insurers should be charged for accessing online driving records with the proceeds earmarked for road safety** (see below).

4. Transparency and political lobbying

The facts outlined above add up to a market that serves consumers poorly, to say the least. We believe this situation has come about because the car insurers have gained a disproportionate influence over government policy and the lack of a regulatory framework means that there is insufficient transparency and accountability.

4.1 Lobbying

The car insurers are brazen about their lobbying activities. Direct Line, for example, said in its annual report: “With the ongoing debates in the motor market surrounding referral and legal fees, the increase in whiplash claims and the implementation of the gender directive, we aim to be leaders through this period of change and lobby for reform to provide the best outcome for our customers and shareholders”.

Being ‘leaders’ appears to mean a regular flow of emails to MPs from individual insurance companies and from the ABI and the holding of meetings on parliamentary premises about a ‘whiplash pandemic’ and a ‘compensation culture’ without no apparent embarrassment at the inconsistency – to put it euphemistically – that they are at the same time saying in their shareholder communications that bodily injury claims have been falling in recent years.

It is a lobbying activity that would not be covered by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill in its present form.

4.2 Transparency and accountability

Car insurance is a necessity yet, unlike other necessities such as utilities, it is not regulated in a way that ensures the public and policy makers have the facts they need to make informed decisions.

The evidence in this submission has been painstakingly extracted from various published sources but it is far from complete because the car insurers are not required to provide information about their finances and claims in a consistent and comprehensive way. In our view, any company selling insurance to UK motorists – whether private or public, foreign or UK owned – should be obliged to conform to the same reporting standards.

In the short term, the Select Committee may wish to ask AVIVA and AXA why they are not meeting international accountancy standards for public companies by reporting separately on the UK car insurance market.

5. Road safety

Louise Ellman’s letter raises the important question of information sharing between the Department for Transport and police about accidents so that spending on road safety can be better targeted.

The UK has 77 cars per kilometre of road compared to a European average of 43. Congestion is bound to increase the risk of road accidents and therefore personal injury. Car insurers are in possession of vital data that could be used to highlight accident trouble-spots and prioritise the allocation of funds for investment in road safety. **In our view, it is without question that they should therefore be required to take part in any information-sharing arrangements.**

At the same time, there is a strong case for levying a windfall tax on car insurers so that some of the profits bonanza they have enjoyed in recent years is channelled into investment in road safety. The money raised could be ring-fenced and used to tackle the worst trouble-spots as a matter of urgency.

6. Access to justice

Raising the small claims track limit – The car insurers are actively lobbying for the small claims track limit to be raised to £5,000 from the current level of £1,000. Our arguments against the raising of the small claims limit can be summarised as:

- More unrepresented injury victims would have to deal with experienced insurers and their solicitors and counsel;
- More claimants will have the Hobson's choice of fighting the insurers on their own, having to pay legal fees out of their compensation, or opting for a representative owned and run by insurers, who will be compromised by their lack of independence from those insurers;
- The raising of the limit may further reduce the numbers of whiplash and RTA claims, not because people aren't genuinely injured but because they will choose not to represent themselves or decide they will lose such a significant proportion of their probably much-reduced damages as to make pursuing a claim not worthwhile.

At the very least, we fully support the view expressed in Louise Ellman's letter that the government should analyse the impact of the electronic portal before it considers whether or not to increase the threshold. **It is clear from our evidence above that the number of bodily injury claims is not as high as was claimed by the car insurers and therefore there is no case for rushing into further legal changes until the facts and all the implications are much clearer.**

From our own work, we know that people with genuine claims are often pressurised into accepting less compensation than they deserve by insurers and lawyers acting for them. We attach as an appendix the case of Donald and Enid Winterbottom, which highlights how raising the threshold for the portal could undermine access to justice for genuine claimants.

Information for motorists on their legal rights – The Competition Commission's recommendation that motorists should automatically be provided with information on their legal rights in the event of an accident is very welcome (Private Motor Insurance Market Investigation – Notice of Possible Remedies, 17.12.13). We are, however, concerned that the Commission suggests in 21(c) that this should be provided by the Association of British Insurers. In our view, this would be a travesty. The ABI exists to protect the interests of car insurers, whereas any statement of consumer rights must be seen to be entirely independent.

7. Recommendations

7.1 Regulation and transparency

- AVIVA and AXA should be reported to the Financial Conduct Authority for a review of their adherence to IFRS Standard 8 on segmental reporting;
- A comprehensive regulatory framework should be established for motor insurance;
- Providers should be required to register and meet minimum product and service standards;
- All providers should be required to provide a minimum level of financial information about their trading activities in the UK market.

7.2 Access to justice

- There should not be an increase in the small claims track limit at all but certainly not before the impact of the existing changes has been fully independently analysed;
- The Competition Commission's recommendation that motorists should receive a statement of their legal rights in the event of an accident should be implemented through an independent body and not the ABI.

7.3 Road safety

- Car insurers should pay a proportion of their substantially increased profits into windfall tax to create a ring-fenced fund for investment in road safety;
- Car insurers should be required to share information on accidents to assist with the identification of trouble spots;
- Car insurers should be charged £15 each time they access the online drivers' records provided at taxpayers' expense by DVLA and the revenue should be ring-fenced for road safety measures.

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Appendix A

Case study: Donald and Enid Winterbottom

Donald and Enid Winterbottom, aged 81 and 79 respectively, were injured on 12 January 2012 when a car overtaking from the opposite direction hit their car head-on. Mrs Winterbottom was airlifted to hospital with a severe whiplash injury. The next day while Enid was still in hospital, and with no discussion with her, their legal expense insurers, Cogents, started a claim.

The medical 'expert' appointed by Cogents estimated that both Donald and Enid would recover from their injuries within seven months and the company estimated damages for Mrs Winterbottom at £1,800 – £2,000.

Donald and Enid rejected the offer and moved their claim to Mr Winterbottom's old union, Unite Legal Services, in November 2012. In July 2013 Thompsons Solicitors settled Mrs Winterbottom's case for £8,000, four times the estimated damages.

The lawyer at Thompsons who ran the case, Hazel Webb, found that Cogents had failed to take proper instructions from the Winterbottoms and referred them to the wrong type of medical expert who missed the long-term impact of one of Mrs Winterbottom's injuries – namely, numbness in her hand which needed an orthopaedic specialist to whom Thompsons referred her.

Enid Winterbottom said: "We didn't ask for Cogent and we can only assume they got our details from our car insurance company. We were in shock after the accident yet we were harassed with phone calls from Cogents pushing us to make a claim and then, when we agreed, the way we were dealt with was so impersonal we felt like we were just a statistic. Their letters were in legal mumbo jumbo, and we struggled to make sense of them.

"The disinterest of the doctor they appointed was shocking. He was clearly just there to tick boxes. I had an imprint of the seat belt across my stomach and the doctor didn't even look at it.

"In the end they only offered us £1,800. For all the trauma of the accident and the knock-on effect it had on our lives, it just seemed far too low.

"It was at this point we saw a Unite leaflet which said we could pursue a claim with them because Donald had been a member when he was working as an engineer. Immediately we felt a relief because a solicitor from Thompsons came to see us in our home. With no children it was such a relief to know and feel that our case was being handled correctly.

"The accident made us realise we are not as invincible as we once thought we were. It's been a very traumatic period in our lives, especially as the accident wasn't our fault. Our confidence completely collapsed, and it is only in past few months that we have started to feel like we are on the way to recovery.

"What happened to us is a real warning to others – don't allow yourself to be pushed into having your insurers appoint people to act for you and get a second opinion if you are in any doubt."

Appendix B

References and sources:

- Louise Ellman's letter, October 29, 2013
- Competition Commission, Private Motor Insurance Market Investigation, Issues Statement, July 5, 2013
- Competition Commission, Private Motor Insurance Market Investigation, notice of Possible Remedies, December 17, 2013
- Admiral Insurance – 2012 Annual Report
- Admiral Insurance – Interim results for the half year to June 30, 2013
- Direct Line – 2012 Annual Report
- Direct Line – Results for 9 months to September 30, 2013
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- Thompsons Solicitors, Whiplash and the cost of motor insurance: what's behind the insurance industry claims, Submission to the Transport Select Committee by Thompsons Solicitors (April 2013)
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