Motor Accident Solicitors Society (MASS): Written evidence submitted to the House of Commons' Justice Select Committee on 'Access to Justice'

1. The Motor Accident Solicitors Society (MASS) comprises over 50 solicitor firms throughout the UK, acting for the victims of road traffic accidents. Collectively, member firms conduct the vast majority of road traffic accident personal injury claims each year.

2. We represent claimant solicitors on the boards of MedCo and Claims Portal, both organisations we helped to establish. We have led on initiatives around greater co-operation across the sector, directly negotiating with insurers, which has resulted in significant improvements in data sharing initiatives to target fraud, including the establishment of the 'askCUE PI' enquiry service. We served on the Personal Injury sub-group of the Insurance Fraud Taskforce in 2015-2016 and we were one of the stakeholder representatives on the MoJ's Whiplash Reform Steering Group and its four sub-groups.

3. Since the formation of the Official Injury Claims (OIC) Portal service in May 2021, we have served as a member of the OIC Advisory Group, along with the Association of Personal Injury Lawyers (APIL), the Forum for Insurance Lawyers (FOIL) and the Association of British Insurers (ABI).

Summary

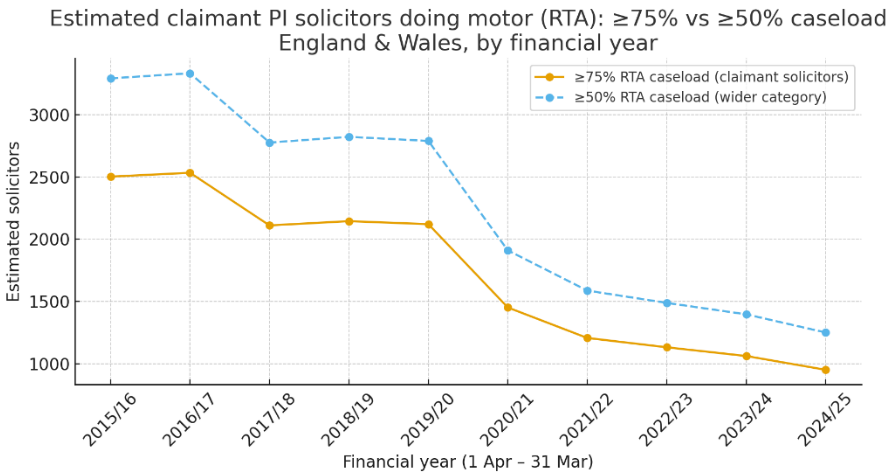
4. We believe that the new claims process for low-value road traffic accident claims introduced by Civil Liability Act 2018 and the Official Injury Claims (OIC) Portal has unfairly denied motor accident victims the justice they deserve and the fair compensation that they pay for through their compulsory motor insurance. Access to justice for motor accident victims has been seriously damaged by the reforms and the current claims system.

5. The undermining of the provision of legal services to support claimants is exacerbated by a damaging spiral of reduced solicitor fees. Many have not been reviewed or updated for inflation since 2013. This has contributed to a decline in the number of solicitors supporting claimants which directly impacts motor accident victims who find it difficult to secure legal representation and so limits access to justice.

Q1. How does the current state of the legal services and representation market in England and Wales, and associated operating pressures, affect access to justice for clients?

6. The PI legal sector has suffered a steady erosion over recent years leading to reduced choice and availability of independent and professional legal advice for claimants, and has certainly risked access to justice.

7. There has been a dramatic reduction in the number of solicitors financially able to offer legal advice, particularly on low-value RTA claims where there are low fixed costs and no recoverable legal expenses.



8. Those claimants who do have legal representation are largely only able to pay for legal advice because they are among the estimated 59% of UK private motor insurance policyholders who have motor legal expenses insurance (LEI/BTE) attached, either as standard or as an add-on.

9. We believe that very many motor insurance holders do not understand the full implications of whether to include LEI, particularly when it is an add-on. With motor insurance premiums continuing to be at historically high levels, it is perhaps understandable that policyholders may seek to make every saving possible on their premium, without fully understanding the implications of not having LEI should they unfortunately be involved in a motor accident.

10. Some solicitor firms focusing on RTA claims have either ceased operating or have reduced the scope of RTA/PI claims they handle due to the economic viability. The reality now is that the number of solicitor firms now supporting RTA/PI claimants has reduced significantly, especially for low value claims.

11. It was estimated by the Ministry of Justice that the whiplash reforms, partly implemented by the Civil Liability Act 2018, would result in a 50% fall in RTA claims with injuries up to 6 months. In fact, there has been a reduction in claims for injuries up to 6 months of nearly 80% (based on an estimated 330,000 claims up to 6 months in 2018/2019 down to 71,000 in 2024/2025 equals 78.48%.)

12. The excessive fall in the number of claims by 80% suggests that many motor accident victims sustaining an injury with symptoms up to 6 months are now no longer receiving the compensation that they should fully deserve from the legal system.

13. It is highly likely either that would-be self-litigants find the OICP process too difficult to make a claim without representation or that they cannot find or afford legal advice given the low levels of compensation under the OICP tariff system.

14. The small claims limit (SCL) for RTA personal injury claims was raised from £1,000 to £5,000, i.e. claims up to £5,000 are no longer able to recover any legal fees if they win. The Justice Select Committee recommended in May 2018 that the SCL for RTA claims should not be raised above the inflationary figure of £1500 and concluded that the

reforms would represent “an unacceptable barrier to access to justice”. One of the architects of the small claims system, Lord Justice Jackson, recommended an inflation only increase to £1500. It is our view that the increase in the SCL has adversely impacted access to justice and the concept of equality of arms, particularly for vulnerable groups.

15. The OICP was specifically conceived and designed for unrepresented claimants over professional users. The Impact Assessment for the Civil Liability Act (para 5.44) stated that it was assumed that the number of “claimants without legal representation would increase from 5% to 30% post implementation of the reforms”. Yet only about 10-11% of claims submitted through OICP are from unrepresented claimants and, taking into account the fact that many claimants are supported through the process by their own insurers, the true figure is likely to be 3-4%.

16. For higher compensation claims outside of OICP, and which cannot be resolved without the last option of going to court, the massive 2015 increase in court fees (64% increase for £20,000 claim, 310% for £50,000 claim and 450% for a £100,000 claim) has likely also impacted the ability of accident victims to access affordable legal advice and impeded the right to a court hearing to achieve the justice they deserve.

17. It is our view that access to justice has been severely damaged by the whiplash reforms and that access to justice continues to be denied to thousands of injured road traffic accident victims every year as a direct result of the Civil Liability Act and the associated reforms.

Q2. What is the role of supplementary advice services in supporting access to justice?

18. There is very limited experience of supplementary advice services for motor accident victims. There is very low awareness amongst accident victims about the existence of OIC in the complete absence of any marketing campaign.

19. In seeking to justify the reforms, justice ministers promised parliamentarians that advice would be available for the digitally excluded and other vulnerable groups. This support has never materialised and has contributed to the challenges faced by accident victims in accessing justice. For instance, Lord Keen of Elie, in providing oral evidence to the Justice Select Committee (16 January 2018), claimed that organisations such as The Good Things Foundation, with a network of 5,000 local community helpers, would be available to provide advice and support to the digitally excluded and other vulnerable groups. Such promises were made to garner support for the reforms from concerned parliamentarians but have never come to fruition.

20. The Citizens Advice Bureau has no internal expertise on advising on motor accident claims and regularly forwards all inquiries relating to RTA claims directly to MASS.

21. According to data provided by the Motor Insurance Bureau (the insurance body that operates OICP on behalf of MoJ), on average over 80% of the calls to the OIC helpline have been from the litigant in person, but the helpline does not provide legal assistance and no data is published as to how many of those who make enquires continue with their claim.

Q3. What is the impact of those acting without legal advice and / or representation having on access to justice?

22. We do not believe that OIC and the new claims process ensures access to justice for every motor accident victim. This in large part is not the fault of OIC but rather a flawed process in concept and formation and shortcomings in the Civil Liability Act 2018 and the subsequent Civil Procedure Rules and Pre-Action Protocol for RTA PI claims. The process as implemented is clearly creating barriers for accident victims to pursue justice.

23. We believe that the PI reforms (the OIC Portal and increasing the small claims track limit from £1000 to £5000) has had a disproportionate impact upon vulnerable groups of society. We believe that it will have directly affected the poorer in society, the disabled, the elderly, those suffering with mental health issues and the young, and indirectly impact on those sections of society who continue to have little or no access to the internet.

24. People on lower incomes will have likely lost access to justice as they will not be able to fund their own litigation costs and will not have opted to have legal insurance in order to reduce the cost of their motor insurance.

25. Given one of the primary purposes for the reforms was to encourage higher levels of unrepresented claimants, predicted at up to 30%, the 9% share of unrepresented claims remain very low and is one of the starkest areas of failure of the whiplash reforms. Indeed, many of these 9% are in fact being supported through the process by their own insurers, so the real figure for claimants navigating the OIC without assistance is even lower and likely at 3-4%.

26. Promised as a frictionless and easy to use claims system, it is in fact a complicated system for self-litigants with a 64-page guidance document. Whilst OICP and the MoJ focus on the 115,402 claims that have been submitted through OICP, these numbers are far below both what was expected and what might be anticipated given the number of motor accidents in the UK. It remains a complex system with 39% of claims from unrepresented claimants that exit OICP are due to “complex issues of law”.

27. The combination of low volumes and low numbers of unrepresented claimants strongly suggests that many accident victims are either unaware of this new process, unsure about how to make a claim, reluctant to make a claim without representation or maybe feel that they lack the IT skills and legal knowledge to pursue a claim through the OIC. The fundamental issue is whether further changes to the system should be made to both protect access to justice and achieve the declared policy objectives.

Q4. Without impacting the public purse, what potential funding options would increase access to justice? e.g. an access to justice fund levy, conditional fee arrangements, third party funding.

28. In the PI sector, there are many ways in which access to justice can be significantly improved and better protected, none of which require public expenditure. These changes - some structural and some relatively minor – require legislative/regulatory change (with the associated costs attached to government departments and Parliament) but would not require further spending.

29. The funding of RTA claims is through the system of compulsory motor insurance premiums. Government currently has no role – for instance, by price capping – in setting motor insurance levels which is entirely in the hands of insurers and the market. Whilst premiums were relatively stable between 2017 and 2022, starting in mid-2022, premiums rose sharply and although they have eased back in early 2025, they are still well above pre-2022 levels. The blame is directed in many directions, including the cost of claim despite the dramatic falls, but the reality is that average UK motor accident

vehicle repair costs have risen by around 120% over 10 years, driven by inflation, labour costs and increasingly complex vehicle technology.

30. Although motor insurance premiums have dramatically increased, the compensation for claimants and the ability of them to solicit legal advice is being reduced, thus undermining access to justice.

31. The undermining of the provision of legal services to support claimants is exacerbated by a damaging spiral of reduced solicitor fees. Coming into force in July 2013, the fixed costs regime sets out the amount that the winning party in civil litigation can recover from the losing party at different stages in the litigation process, covering solicitors' fees, court fees, expert witness fees and other disbursements. It has not been reviewed or updated for inflation since 2013.

32. This has contributed to a decline in the number of solicitors supporting claims up to £25,000 because they cannot afford to take on cases. This in turn impacts motor accident victims who find it difficult to secure legal representation and so limits access to justice.

Q5. If limited funds were available, what would be the priority areas for spending?

33. If funds were available, we would broadly recommend that it should be directed towards modernisation of the court estate to tackle the backlog in claims/cases and problems with the buildings themselves.

Q6. How are the legal services regulators responding to their obligation to improve access to justice under the Legal Services Act 2007?

34. We have no comment on this question.

Q7. How is pro bono work and free legal advice being used to support access to justice and what reliance is placed on it?

35. Given the financial constraints on the UK PI sector with dramatically fewer solicitor firms advising clients on low value RTA claims, we are not aware of any significant pro bono work being conducted on RTA PI claims.

Q8. How can advice, legal support or non-court dispute resolution, such as mediation and restorative justice, help the early resolution of disputes?

36. It is preferrable for all involved if disputes can be resolved quickly, efficiently and cost effectively without the need to go to Court. Alternative dispute resolution (ADR) in any form can provide this and is extremely beneficial but often are not available or appropriate for many reasons, including the limited number and availability of qualified mediators.

Q9. What role is there for digital innovation and data collection in supporting access to justice?

37. We believe that there is considerable scope for digital advances to support access to justice. MASS recognises the aim of inclusion for all and agrees that any digital inclusion must be ‘central to upholding fairness, trust and access to justice’.

38. However, there are considerable current challenges. There are multiple digital systems, portals and advice services, none of which operate perfectly, all have different APIs and Pre-action protocols or Rules and none of which can currently be integrated. Consequently, to have a digital justice system from pre-action all the way through to post-issue (including the Courts) is a huge task and will require significant investment if it is to use and connect the existing digital provisions.

39. We remain concerned whether there is sufficient research and adequate data of the impact on the accident victim from the digital processes already in place and the impact they have had, be it positive or not, on the provision of access to justice. We contend that whilst agreeing that it is important to embrace technological advancement and the benefits that it can provide, before embarking on this digital expansion, full analysis is required on the impact of the current processes, but particularly OIC, to fully understand it's impact, which will then assist the development of a more enhanced system.

40. It is of particular concern how this and any future digital process affects those more vulnerable in society who have limited IT skills or access to the internet, disabilities or a limited command of English.

41. More data is available from OICP and should be made more widely publicly available for all to understand the effectiveness of the claims process and the barriers to justice.

Q10. How could the current system of legal aid be improved to provide a cost-efficient and cost-controlled service, with suitably remunerated legal practice across civil, criminal and family law?

42. Not applicable to the UK RTA PI sector.

Q11. What has been the impact of the Legal Aid Agency cyber-attack, revealed in April 2025, on recipients and providers of legal aid work, and how have the Legal Aid Agency and Ministry of Justice responded?

43. Not applicable to the UK RTA PI sector.