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Assembly

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# Justice Related Issues Regarding Car Insurance Costs

**NIAR 642-11**

This paper provides information on the legal processes, legal fees and compensation levels involved in personal injury cases in NI and other jurisdictions. It also considers car crime and fraudulent claims and any impact on insurance premiums

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## Key Points

- The Consumer Council suggested there were two areas that the Department of Justice could take pragmatic action to bring down the costs of care insurance: compensation levels and the cost of the legal system.
- This paper provides the Committee with some information on these issues.
- A number of sources were considered and on the basis of the evidence the conclusions are as follows:
- Information is not disaggregated in such a way that allows for an analysis of factors that influences costs;
- Information is not readily available or collated in a way that allows for direct comparisons to be made between Northern Ireland and other jurisdictions;
- The OFT has said it has received evidence from insurers that average compensation paid out is higher in Northern Ireland than in Great Britain. Furthermore the OFT has said that insurers have explained that the legal processes led to higher legal costs in NI compared with GB and that the absence of a compulsory pre-action protocol in Northern Ireland may have the effect of making litigation more prevalent.
- Methods for calculating legal costs differ in Northern Ireland and England and Wales which make direct comparisons difficult;
- Information is contested, for example there are differing views of experts about the number of cases that reach courts in NI compared to England and Wales;
- The Access to Justice Review Team has considered models from other jurisdictions which would impact on legal costs and have made recommendations on these.

## Executive Summary

This paper considers the justice related issues that may have an impact on car insurance costs in Northern Ireland.

The Consumer Council highlights that the method for calculating legal costs in compensation claims cases in NI may cause a disparity between the two jurisdictions, focusing on the County Court Scale. Whilst the methods for calculating legal fees differ in Northern Ireland from those used in England and Wales, there is insufficient evidence to conclude that the method for calculating fees results in higher or lower costs than in England and Wales.

The ABI and Consumer Council suggest that the rate of cases proceeding to litigation rather than being settled is higher in NI than in England and Wales and that this might contribute to insurance costs. The research shows there is a debate emerging on the number of compensation cases that reach court in NI compared to England and Wales. The Consumer Council and ABI figures differ from the figures provided by the Law Society of Northern Ireland. The Department of Justice has provided information on the disposal of civil bills, including the rates of non-court disposal; however this does not indicate the numbers of cases settled before the issuing of a civil bill. Unfortunately it is not possible on the basis of this information to give definite figures on the number of RTA cases settled out of court in Northern Ireland as compared to the number that proceed to litigation.

England and Wales and the Republic of Ireland have introduced claims handling systems. In England and Wales this is a portal system intended to secure more speedy and cost effective settlement of claims. In the Republic of Ireland this is a statutory body to consider personal injury claims. The Access to Justice Review Team considered the Irish model and concluded it was not appropriate to introduce it in Northern Ireland. The OFT has suggested that one possible reason for higher car insurance costs in Northern Ireland is that the absence of a compulsory pre-action protocol leads to more litigation.

The Consumer Council has suggested that compensation levels in NI could be higher than elsewhere. The guideline figures for assessing damages in Northern Ireland are frequently higher than the guidelines figures in England and Wales. The Law Society of Northern Ireland emphasises the need to look beyond the guidelines and examine the actual levels of awards. Unfortunately it has not been possible to discover whether actual awards are higher or lower than in England and Wales. The OFT has said that according to evidence from some insurers, the average amounts of compensation paid out is higher in Northern Ireland than in Great Britain.

The Consumer Council called on the Department of Justice and the Justice Committee to assess the impact of car crime on car insurance premiums in NI over the past eight

years. Car crime in NI has been decreasing during the period 2002 to 2009. Figures provided by the ABI show that the average spending on motor insurance per household in NI has fluctuated up and down, without any apparent correlation to the overall steady decrease in detected car crime. Earlier papers also indicated that there seemed to be no direct correlation between levels of car crime and insurance costs.





## Contents

Key Points .....	1
Contents.....	6
1 Introduction.....	7
2 Court Jurisdiction- Small Claims Court and County Court.....	7
3 Legal fees.....	10
4 Procedures for Settling Cases Out of Court.....	13
4.1 Pre- Action Protocols.....	13
4.2 Rates of settled cases .....	15
4.3 Claims Handling Schemes in England and Wales and the Republic of Ireland .....	16
5 Compensation Levels .....	20
6 Car Crime and impact on car insurance premiums in NI .....	24
7 Levels of Fraudulent Insurance Claims.....	24
Annex 1- Solicitors' Guidelines Hourly Rates in England and Wales .....	26
Annex 2-The Number of Queen's Bench Writs and Originating Summons Disposed of in 2009 .....	29
Annex 3-The number of ordinary civil bills and applications disposed of in 2009 for 'Personal Injuries' or 'Road Traffic' .....	30
Annex 4- Number of ordinary civil bills cases and applications disposed of between 2005-2010 which had a cause of action of personal injury or RTA.....	31
Annex 5-Road Traffic Accident Claims registered with the Compensation Recovery Unit Northern Ireland .....	32
Annex 6- The Number of Ordinary Civil Bills and Applications for Personal Injury (PI) and Road Traffic (RT) Cases by Amount awarded 2006- 2010.....	33



## 1 Introduction

The Consumer Council has indicated in its report “Quote Unquote” that proportionally the costs of private car insurance claims are higher in Northern Ireland (NI) than the rest of the United Kingdom (UK). The Consumer Council noted that consumers in Northern Ireland were quoted premiums of £282 more or 84% higher than comparable consumers in other UK regions.<sup>1</sup>

The Consumer Council suggest four reasons why insurance premiums could cost more in NI:<sup>2</sup>

- The cost of the legal process could be more expensive than elsewhere in the UK;
- Compensation levels in NI could be higher than elsewhere;
- There could be proportionately more claims made by consumers in NI;
- There could be a higher level of fraudulent claims.

The Consumer Council highlighted in a briefing to the Justice Committee that there are two areas in which the Justice Department could act to bring down the costs of car insurance. These are compensation levels and the costs of the legal system in Northern Ireland.<sup>3</sup>

This paper will consider the legal processes and costs associated with car accident claims as well as compensation levels. Car crime and levels of fraudulent claims will be considered and whether there is evidence they contribute to these higher insurance premiums.

## 2 Court Jurisdiction- Small Claims Court and County Court

The Consumer Council in its report “Quote... Unquote” indicated that the cost of the legal process could be more expensive than elsewhere and highlighted that the system for handling personal injuries cases in Northern Ireland differs from England and Wales.<sup>4</sup> The Consumer Council suggests in its report that the fact that personal injury claims are excluded from the Small Claims Court in Northern Ireland unlike England and Wales may be one of the factors that causes a disparity between the costs of the processes in the two jurisdictions. It would therefore be useful to consider the costs involved in initiating proceedings in the Small Claims and County Court in Northern Ireland.

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<sup>1</sup> The Consumer Council “Quote...Unquote: The cost of Insurance in Northern Ireland: A Research Report from the Consumer Council” March 2009, 11.

<sup>2</sup> The Consumer Council “Quote...Unquote: The cost of Insurance in Northern Ireland: A Research Report from the Consumer Council” March 2009, 33.

<sup>3</sup> The Consumer Council “Briefing for the Department of Justice on the Cost of Insurance in Northern Ireland” September 2011

<sup>4</sup> The Consumer Council “Quote...Unquote: The Cost of Insurance in Northern Ireland” March 2009

In Northern Ireland, claims for personal injuries and claims for property damage arising from road traffic accidents are excluded from the small claims court in NI, whereas in England and Wales, personal injuries claims with a financial value of £1000 or less can be heard in the Small Claims Court.<sup>5</sup> In England and Wales, the Small Claims Track Procedure typically deals with cases including property damage arising from car accidents ('metal on metal') that have an upper limit value of £5000, except in personal injury claims where the value of the case is not more than £1000.<sup>6</sup> Projected figures obtained from the Ministry of Justice for 2009 indicate that 2% of road traffic cases involved claims for less than £1000, while 90% involved claims of between £1000 and £25000.<sup>7</sup> This needs to be caveated: first these figures are based on assumptions; second, this is not to say that 2% of road traffic cases are heard in the small claims court as that court's jurisdiction in 'metal on metal' cases extends to £5000. It is not possible to determine if these cases are property damages cases or personal injury cases as a result of RTA as the information is not recorded in such a way that would specify the type of claim.<sup>8</sup>

In Northern Ireland, the majority of cases heard in the County Court are claims for compensation for personal injury cases associated with Road Traffic Accidents and accidents at work.<sup>9</sup> It is more expensive to initiate proceedings in the County Court than the Small Claims Court. Small Claims Courts allow for certain types of claims to be heard by the County Court, normally without the need for a solicitor or barrister.<sup>10</sup> The Small Claims court currently deals with claims up to a value of £2000, however it has been proposed that the jurisdictional limit of the Small Claims Court will increase to £3000.<sup>11</sup> At present, the application fee for small claims is:<sup>12</sup>

- £30 if the claim does not exceed £300;
- £50 if the claim exceeds £300 but does not exceed £500;
- £70 if the claim exceeds £500 but does not exceed £1000; and
- £100 if the claim exceeds £1000.

The jurisdictional limit of the County Court is currently £15,000; however it has been decided following a public consultation to increase the jurisdictional limit of the county

<sup>5</sup> The Civil Justice Reform Group "Review of the Civil Justice System in Northern Ireland" Final Report 2001, para 19-20

<sup>6</sup> This was confirmed with the Ministry of Justice via telephone on 21/10/11

<sup>7</sup> Information obtained from the Ministry of Justice via email, 21/10/11. These are projected figures based on a number of assumptions.

<sup>8</sup> Information received in a telephone conversation with the Ministry of Justice via email

<sup>9</sup> Northern Ireland Courts and Tribunals Service "Increasing the Jurisdictional Limit of the County Courts in Northern Ireland" Consultation paper March 2010, 10

<sup>10</sup> Northern Ireland Courts and Tribunals Service "Small Claims Guide: A Guide to the Small Claims Process"

<http://www.courtsni.gov.uk/en->

[gb/publications/usefulinformationleaflets/documents/small%20claims%20guide/small%20claims%20guide.pdf](http://www.courtsni.gov.uk/en-gb/publications/usefulinformationleaflets/documents/small%20claims%20guide/small%20claims%20guide.pdf)

<sup>11</sup> NICTS "Increasing the Jurisdictional Limit of the County Courts in Northern Ireland: Summary of Responses and Proposed Way forward" December 2010, 20.

<sup>12</sup> Fees in respect of applications for small claims under article 30(3) of the County Court Fees (Amendment) Order (Northern Ireland) 2007

<http://www.courtsni.gov.uk/SiteCollectionDocuments/Northern%20Ireland%20Courts%20Gallery/Services/County%20Court%20Civil%20Business%20Court%20Fees.pdf>

court from £15,000 to £30,000.<sup>13</sup> There are a number of costs associated with initiating proceedings in the County Court. To issue a Bill for a sum of money which exceeds £1000 but no more than £5000, the cost is £165 and the cost to issue a witness summons is £30. It costs £250 to issue a Certificate of Readiness if a case goes to court.<sup>14</sup>

The issue of the exclusion of personal injury claims arising from road traffic accidents from the Small Claims Court has been subject to discussion. In 2001, the Civil Justice Reform Group considered the issue of the exclusion of action for damages for personal injury and property damage arising from RTAs from the jurisdiction of the Small Claims Court. The Reform Group recommended that these types of claims should continue to be excluded from the jurisdiction of the Small Claims Court.<sup>15</sup> The Group concluded that most claimants who are involved in road traffic accident litigation will continue to want and require legal support. Furthermore the Group suggested that allowing such cases to come into the jurisdiction of the Small Claims court could reduce rather than increase access to justice.<sup>16</sup> The Review Group stated:

“Claimants in Northern Ireland are facilitated by a County Court system that allows low value road traffic claims to be litigated before district judges at a reasonable (and recoverable) cost and with the minimum of delay.”<sup>17</sup>

The Northern Ireland Courts and Tribunals Service (NICTS) recently conducted a consultation on increasing the jurisdiction in the County Courts. The consultation invited views on whether road traffic accidents should continue to be excluded from the Small Claims Court. Some respondents to the consultation argued that this exclusion should be removed as some road traffic accidents claims are simple low value claims which are capable of being dealt with using the small claims procedure. Other respondents suggested that the approach in England and Wales should be adopted in Northern Ireland where personal injuries cases with a value below £1000 can be dealt with by the small claims court. It was reported by the NICTS that one respondent was opposed to change highlighting that individuals would be on an uneven playing field as they would be against insurance companies and at a disadvantage. The NICTS did not come to firm conclusions on this issue but indicated they would forward all the comments to the County Court Rules Committee for consideration.<sup>18</sup>

The Minister for Justice was asked in an Assembly question whether his Department would look at some way in which insurance claims could be heard by a lower court,

<sup>13</sup> NICTS “County Court Rules Committee Consultative Document on Scale Costs”, 7 July 2011, 32-33

<sup>14</sup> County Court fees as updated by the County Court Fees (Amendment) Order (Northern Ireland) 2007, <http://www.courtsni.gov.uk/SiteCollectionDocuments/Northern%20Ireland%20Courts%20Gallery/Publications%20-%20Services/County%20Court%20Civil%20Business%20Court%20Fees.pdf>

<sup>15</sup> The Civil Justice Reform Group “Review of the Civil Justice System in Northern Ireland” June 2000, para 19-20

<sup>16</sup> The Civil Justice Reform Group “Review of the Civil Justice System in Northern Ireland” June 2000, para 20

<sup>17</sup> The Civil Justice Reform Group “Review of the Civil Justice System in Northern Ireland” June 2000, para 20

<sup>18</sup> Northern Ireland Courts and Tribunals Service “Increasing the Jurisdictional Limit of the County Courts in Northern Ireland: Summary of Responses and Proposed Way forward” December 2010, 25.

similar to the position in other jurisdictions.<sup>19</sup> The Minister responded that he did not think that moving things to a lower court would necessarily result in big savings in the level of damages awarded; however there is the option of removing the matter out of the courts entirely, as is the position in the Republic of Ireland. The Minister acknowledged that there are concerns regarding the operation of the current system, particularly around personal injuries and compensation levels and how this is reflected in premiums.<sup>20</sup> The Minister indicated that it is not an easy issue to resolve but the Department is prepared to look at the options.<sup>21</sup> The Law Society of NI reported that experience from other jurisdictions indicates consumers representing themselves in personal injury and RTA cases are often unable to financially value their claim. The Law Society cautions against moving cases to the scope of the Small Claims Court which could lead to an “uneven playing field”.<sup>22</sup>

The Consumer Council suggests that the exclusion of road traffic accidents from the Small Claims Court in Northern Ireland may make the processing of such cases more expensive. It has not been possible to ascertain precisely how many road traffic accident cases are dealt with in Small Claims Courts in England and Wales. There has been consideration in Northern Ireland of allowing Small Claims Court to hear road traffic cases, but the result of such consideration so far has been to continue to exclude such cases from the Small Claims Court.

### 3 Legal fees

The Association of British Insurers (ABI) identifies the cost of legal fees as contributing to the costs of car insurance generally in the UK.<sup>23</sup> The ABI conducted a survey over 50,000 low value motor accident claims in 2009-2010 and found that for every pound paid on compensation, 87p was paid in legal costs.<sup>24</sup> According to the ABI, consumers in the UK are paying £2.7 million a day to the legal profession through their motor insurance premiums.<sup>25</sup> The ABI in evidence to the Committee of Finance and Personnel

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<sup>19</sup> Mr Wells AQO 358/11-15, see the Official Report of the Northern Ireland Assembly, Tuesday 20 September 2011, <http://www.niassembly.gov.uk/record/reports2011/110920.htm#AQO358/11-15>

<sup>20</sup> Official Report of the Northern Ireland Assembly, Tuesday 20 September 2011

<sup>21</sup> Official Report of the Northern Ireland Assembly, Tuesday 20 September 2011

<sup>22</sup> The Law Society of Northern Ireland Briefing on Personal Injury Claims attached to a letter to the Justice Committee. 7 October 2011

<sup>23</sup> The ABI is “the voice of the insurance and investment industry,” Its members constitute over 90% of the Insurance Market in the UK.

<sup>24</sup> The Ministry of Justice’s Consultation Paper “Solving Disputes in the County Courts: Creating a Simpler Quicker and More Proportionate System” Response from the Association of British Insurers, 2.

<sup>25</sup> The Ministry of Justice’s Consultation Paper “Solving Disputes in the County Courts: Creating a Simpler Quicker and More Proportionate System” Response from the Association of British Insurers. The ABI also commissioned a report from Frontier Economics on the “Outcomes for Legally Represented and Unrepresented claimants in personal injury compensation” (June 2006). This UK wide research suggested that legal costs were about 85% of the size of the compensation payment in personal injury compensation cases for claims between £1000 and £25000. [http://www.abi.org.uk/Publications/ABI\\_Publications\\_Outcomes\\_for\\_legally\\_represented\\_and\\_unrepresented\\_claimants\\_in\\_personal\\_injury\\_compensation\\_fc1.aspx](http://www.abi.org.uk/Publications/ABI_Publications_Outcomes_for_legally_represented_and_unrepresented_claimants_in_personal_injury_compensation_fc1.aspx)

indicated that in an insurance premium of £400, £40 pays for personal injury lawyers.<sup>26</sup> The ABI highlighted that legal fees are a general problem in the UK stating “In the rest of the UK, a lawyer can take a great deal more money than the person who is being compensated” and “it is compounded in Northern Ireland by the way in which the system operates and by the higher compensation that is paid.”<sup>27</sup> A committee member asked a representative of the ABI why there were no Northern Ireland specific figures for the cost of fraud, cost of personal injury and legal costs. The representative replied that the ABI did not collect those figures generally and that they were not straightforward figures to collect.<sup>28</sup>

Legal costs will depend on which court is involved and whether the case is settled out of court. The Consumer Council has focused on the legal costs in the County Court. The Consumer Council highlighted in its research report that the method for calculating payment for legal costs in Northern Ireland differs from England and Wales. They suggest that this may be one of the differences which cause a disparity between the costs of the processes in the two jurisdictions.<sup>29</sup> In Northern Ireland, solicitors and counsel fees for a claimant’s legal costs are set out in the County Court Scale. The County Court Rules Committee may make rules specifying costs applicable to proceedings before the court.<sup>30</sup> The costs for solicitors’ fees in County Court Proceedings for a claim between £2500 and £5000 is currently £1552 and for counsel £368.<sup>31</sup> Solicitors’ costs for a claim not exceeding £1000 are £517 and £173 for counsel.<sup>32</sup> The Consumer Council highlighted that the same costs are payable whether a claim is £100 or £1000.<sup>33</sup>

Fees are calculated on the amount of the claim, not the amount of work undertaken or time spent on a case. The Law Society indicates that this means the legal costs are predictable in advance.<sup>34</sup>

It is proposed in a consultation in the County Court Rules Committee Consultation on Scale costs to increase the existing scales in line with inflation as there had not been an inflationary increase applied to scale costs since 2007.<sup>35</sup> It is proposed that an inflationary increase of 4.925% should be applied to existing scales with a further 4.925% to take effect in 2013.<sup>36</sup> The ABI highlighted concerns that proposals to

<sup>26</sup> Committee for Finance and Personnel Official Report (Hansard) 16 June 2010  
<http://www.niassembly.gov.uk/record/committees2009/FinancePersonnel/100616Cost%20of%20Insurance%20in%20NI.pdf>

<sup>27</sup> Committee for Finance and Personnel Official Report (Hansard) 16 June 2010

<sup>28</sup> Committee for Finance and Personnel Official Report (Hansard) 16 June 2010

<sup>29</sup> Consumer Council “Quote...Unquote: The Cost of Insurance in Northern Ireland: A Research Report from the Consumer Council” March 2009, 34

<sup>30</sup> NICTS “County Court Rules Committee Consultative Document on Scale Costs”, 7 July 2011, 32

<sup>31</sup> NICTS “County Court Rules Committee Consultative Document on Scale Costs”, 7 July 2011, 32

<sup>32</sup> NICTS “County Court Rules Committee Consultative Document on Scale Costs”, 7 July 2011, 32

<sup>33</sup> NICTS “County Court Rules Committee Consultative Document on Scale Costs”, 7 July 2011, 4

<sup>34</sup> The Law Society of Northern Ireland Briefing on Personal Injury Claims attached to a letter to the Justice Committee. 7 October 2011

<sup>35</sup> NICTS “County Court Rules Committee Consultative Document on Scale Costs”, 7 July 2011, 3.

<sup>36</sup> NICTS “County Court Rules Committee Consultative Document on Scale Costs”, 7 July 2011, 22.

increase scale costs would have a detrimental impact on the insurance industry and in turn consumers through increased premiums. The ABI suggests that the proposed increase of 10% by 2013 does not appear to take into consideration the wider economic context.<sup>37</sup> In cases that fall within the jurisdiction of the High Court, there are two sets of guidance to determine legal fees, one set produced by Insurers and a set of guidance produced by the Belfast Solicitors Association (BSA) and the exact costs are negotiated by the legal teams. The guidance by the BSA provides for an hourly rate of £100 payable to solicitors which the Law Society said “compares favourably with regions of England and Wales.”<sup>38</sup> In England and Wales, legal fees in the civil cases are based on hourly rates. These are determined by recommendations to the Master of the Rolls by the Advisory Committee on Civil Costs.<sup>39</sup> The fees are based on grades of solicitors depending on experience and on location, see **annex 1** for further details. For example in some areas such as Birmingham the costs for a solicitor with 8 years’ experience can cost over £200 per hour and in parts of London, over £400 per hour.<sup>40</sup>

The Law Society of Northern Ireland indicate that in England and Wales, the value for claims for special damages for loss of income and other costs is much higher than in Northern Ireland. In Northern Ireland, claimants will usually seek general damages for physical pain and suffering and special damages for loss of income only. The Law Society suggest that claims for special damages are cost intensive because vast amounts of legal time are spent investigating these matters and therefore legal bills in England and Wales can vastly exceed those for similar cases in NI.<sup>41</sup> The Law Society provides an example of a civil case in Birmingham County Court, *Allen v Balkan Holidays Ltd* where a claimant spent £61,547.92 on contesting a claim of £13,053.79 which was disproportionately 3.5 to 4.75 times the value of the claim.<sup>42</sup> For a similar claim in Northern Ireland, the County Court Scale fees provide that a claim in the range of £12,501-£15,000 would incur solicitors’ fees of £2,759 and counsel fees of £690.<sup>43</sup> However this is only one case. The Ministry of Justice (MoJ) has highlighted other examples of disproportionate costs in its consultation paper “Solving Disputes in County Courts”. The MoJ highlighted issues in Sir Rupert Jackson’s report “A Review of Civil Litigation” that in a case where compensation paid for personal injury was between £2000 and £3000, the claimant’s costs were on average 160% of the compensation paid. The MoJ highlighted other disproportionate costs raised by District

<sup>37</sup> County Court Rules Committee Consultative Document on Scale Costs- Northern Ireland (June 2011). Response by Association of British Insurers

<sup>38</sup> The Law Society of Northern Ireland Briefing on Personal Injury Claims attached to a letter to the Justice Committee. 7 October 2011 para, 6.3

<sup>39</sup> The Master of the Rolls is one of the Heads of Division and is Head of Civil Justice, <http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/judicial+roles/judges/profile-mor>

<sup>40</sup> <http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guideline-hourly-rates-2010-v2.pdf>

<sup>41</sup> The Law Society of Northern Ireland Briefing on Personal Injury Claims attached to a letter to the Justice Committee. 7 October 2011

<sup>42</sup> *Allen v Balkan Holidays Ltd* (2010) EW Misc 12 (EWCC) 27 May 2010. This case and another are also mentioned in the NICTS “County Court Rules Committee Consultative Document on Scale Costs”, 7 July 2011, 17.

<sup>43</sup> NICTS “County Court Rules Committee Consultative Document on Scale Costs”, 7 July 2011, 32

Judges in Cardiff where it is not uncommon for the claimants' bill to be 10-15 times the amount of damages recovered.<sup>44</sup>

In cases that fall within the financial threshold of the County Court, but settle out of court, solicitors use the County Court Scale as a guide to calculate legal costs. In cases that settle prior to proceedings being initiated in the County Court, two thirds of the scale costs are payable to the claimant's solicitor. In cases that settle after proceedings are initiated but before the first day of trial, 75% of scale costs apply.<sup>45</sup> In cases that fall within the financial jurisdiction of the High Court, solicitors use the BSA High Court Guide to calculate costs. This guidance sets out legal costs for cases that settle at various stages of the process. For example, in a case where the financial value falls within the range of £0-£14,999, but settle prior to the issue of proceedings, solicitors can claim £2,590 for costs. If a case with the same financial value settles on the opening day of the trial, the guide for legal costs is £6,870. In England and Wales the Civil Procedure Rules deal with RTA cases involving claims of up to £10,000 which settle prior to proceedings being issued. In such cases costs may include a fixed recoverable amount of £800, 20% of the damages agreed up to £5,000; 15% of the damages agreed between £5,000 and £10,000; plus certain disbursements (i.e. expenses for reports) and where there has been an agreed funding arrangement a success fee of 12.5% of the fixed recoverable amount.<sup>46</sup>

Whilst the methods for calculating legal fees differ in Northern Ireland from those used in England and Wales, there is insufficient evidence to conclude that the method for calculating fees results in higher or lower costs than in England and Wales.

## 4 Procedures for Settling Cases Out of Court

### 4.1 Pre- Action Protocols

The Consumer Council and the ABI suggest that the relevant pre-action protocol in Northern Ireland is ineffective.<sup>47</sup> The Pre Action Protocol for Personal Injury Litigation has the following aims:<sup>48</sup>

- More pre-action contact between the parties;

<sup>44</sup> Ministry of Justice "Solving Disputes at County Court", 20 <http://www.justice.gov.uk/downloads/consultations/solving-disputes-county-courts.pdf>

<sup>45</sup> Information obtained in a telephone conversation with a legal representative from the Law Society of Northern Ireland, 25/10/11

<sup>46</sup> Civil Procedure Rules 45.7-45.11 <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/parts/part45.htm#DAQZ0HC>.

<sup>47</sup> The Consumer Council "Briefing for the Department of Justice on the Cost of Car Insurance in Northern Ireland" September 2011, 5; Access to Justice Review- Northern Ireland: Submission from the Association of British Insurers, November 2010.

<sup>48</sup> In the High Court of Justice Northern Ireland Queen's Bench Division Pre Action Protocol for Personal Injury Litigation, [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Practice%20Directions/Documents/Pre%20Action%20Protocol%20for%20personal%20injury/j\\_i\\_Pre%20Action%20Protocol%20\(Revised\).htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Practice%20Directions/Documents/Pre%20Action%20Protocol%20for%20personal%20injury/j_i_Pre%20Action%20Protocol%20(Revised).htm)

- Better and earlier exchange of information;
- Better pre-action investigation by both sides;
- Placing the parties in a position where they may be able to settle cases fairly and early without litigation;
- Enabling proceedings to proceed according to the court's timetable and efficiently, if litigation becomes necessary;
- The promotion of an overall 'cards on the table' approach to litigation in the interest in keeping the amount invested by participants in terms of money, time, anxiety and stress to a minimum, consistent with the requirement that the issues be resolved in accordance with accepted standards of fairness and justice.

The ABI suggests that in recent years, pre-action protocols in England and Wales have "promoted a culture of negotiation, encouraged early disclosure of facts and evidence and imposed sanctions if these and the other stages in the life of a claim or not carried in the correct manner".<sup>49</sup> Whereas, the ABI suggest that the pre-action protocol has not had the same impact in NI.<sup>50</sup> The ABI in its submission to the Access to Justice Review highlighted concerns that it is not compulsory to adhere to the protocol and it is generally viewed as good practice by the legal profession. The pre-action protocol only applies in the High Court and therefore cases which end up in the Small Claims Court or the County Court need pay no attention to the protocol. Furthermore the ABI suggested that sanctions do not necessarily apply where the protocol is not followed.<sup>51</sup> The ABI called for a "fully functioning and compulsory pre-action protocol" that would apply to all courts, not just the High Court. It suggested that a fully effective pre-action protocol would require sanctions be available to the court when protocols are ignored or the purposes of the protocol were subverted (eg unreasonable delay or refusal to consider negotiation); full and early notification and disclosure; detailed pleadings.<sup>52</sup> In summary, there is a Pre Action Protocol for Personal Injury Litigation in Northern Ireland concerning High Court cases; the ABI has suggested that this needs to be extended and made more robust. In December 2011, the OFT has also said that one possibility for the higher cost of car insurance in Northern Ireland is the absence of a compulsory pre-action protocol procedure.<sup>53</sup>

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<sup>49</sup> Access to Justice Review- Northern Ireland: Submission from the Association of British Insurers, November 2010, paragraph 5

<sup>50</sup> Access to Justice Review- Northern Ireland: Submission from the Association of British Insurers, November 2010, paragraph 5.

<sup>51</sup> Access to Justice Review- Northern Ireland: Submission from the Association of British Insurers, November 2010.

<sup>52</sup> Access to Justice Review- Northern Ireland: Submission from the Association of British Insurers, November 2010., 2

<sup>53</sup> OFT, Private Motor Insurance: Summary of responses to OFT's call for evidence, December 2011,30.



## 4.2 Rates of settled cases

The Association of British Insurers (ABI) claimed in evidence to the Finance and Personnel Committee that more cases go to court in Northern Ireland than in England and Wales: about 40% of claims in Northern Ireland reach the courts, whereas in England and Wales, the figure is 3.5%.<sup>54</sup> It is not clear how the ABI calculate their figures for cases that settle out of court. Unfortunately the ABI were unable to provide a calculation for the figures provided to the Department of Finance and Personnel Committee.<sup>55</sup> The Consumer Council also highlights this figure in a briefing to the Department of Justice in September 2011, stating that twelve times more motor insurance cases end up in court. The Consumer Council suggests that this equates to 60% of claims being dealt with out of court compared to 97% in England and Wales.<sup>56</sup> The Consumer Council confirmed they based their figures on those provided by the ABI.<sup>57</sup>

The Law Society of Northern Ireland questioned the basis for these figures in correspondence to the Committee for Justice. The Law Society suggests that there were 29,467 personal injuries cases registered at the Compensation Recovery Unit in 2009, 768 civil bills registered for personal injury cases lodged in the County Court and 350 writs issued in the High Court. The Law Society suggests that 3.8% of all compensation claims resulted in litigation, not the 40% figure suggested by the Consumer Council.<sup>58</sup> The Law Society suggests that this figure requires further consideration due to double registrations with the CRU and delays in bringing litigation, but the figures demonstrate the need for close scrutiny of issues relating to the legal process.<sup>59</sup> In recent correspondence, the Law Society have reported that they have received some further figures from the Northern Ireland Courts and Tribunals Service on the total number of disposals for road traffic accidents and personal injury cases before the County Court and High Court in 2009 (See **Annexes 2 and 3**). It should be noted that these figures include the number of non-court disposals. The Law Society stated "These figures demonstrate that our earlier estimate of the number of cases going to full litigation, although an accurate analysis of the figures available at the time, was an underestimate, as we had anticipated."<sup>60</sup>

The Department of Justice has provided information on the number of civil bills disposed of for personal injuries and road traffic accidents between 2005 and 2010. This information also provides figures of non-court disposals (see **Annex 4**). According to the NICTS, non-court disposals include claims which are lodged with the court office

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<sup>54</sup> Committee for Finance and Personnel Official Report 16 June 2010

<sup>55</sup> Information obtained in a telephone discussion with the Policy Advisor at the ABI on 17.10.11

<sup>56</sup> Consumer Council for Northern Ireland "Briefing for the Department of Justice on the Cost of Insurance in Northern Ireland, September 2011

<sup>57</sup> In a telephone conversation with a representative of the Consumer Council on 20/10/11

<sup>58</sup> The Law Society of Northern Ireland Briefing on Personal Injury Claims attached to a letter to the Chair of the Justice Committee, 7 October 2011

<sup>59</sup> The Law Society of Northern Ireland Briefing on Personal Injury Claims attached to a letter to the Chair of the Justice Committee, 7 October 2011

<sup>60</sup> In personal correspondence received from the Law Society of Northern Ireland, 25/10/11

but the parties settled before a hearing is required.<sup>61</sup> The Department of Justice indicates that when a civil bill is taken for compensation for an injury sustained, information is not recorded in such a way in that would specify whether the action was taken as a result of a car accident or accident at work.<sup>62</sup> Furthermore the Department has been unable to provide figures on the number of cases settled out of courts over the last 10 years as the courts will never be aware of the cause of action if matters are settled out of court.<sup>63</sup>

Information from the Department of Social Development indicates that in 2009/10 there were 18,520 claims registered with the Northern Ireland Compensation Recovery Unit in relation to Road Traffic Accidents, (see **Annex 5**).<sup>64</sup> It should be noted that the figures for claims registered with the Compensation Recovery Unit would only include those cases where there was compensation for an accident causing injury to a person; this would therefore not include all RTA for example those involving property damage only.

It can be seen that the Consumer Council and ABI figures differ from the figures provided by the Law Society. The ABI has not provided an explanation as to how it arrives at its figures for the rate of cases that reach court. The Department of Justice does not record information on the number of cases that settle out of court before proceedings are initiated. Unfortunately it is not possible on the basis of this information to give definite figures on the number of RTA cases settled out of court in Northern Ireland as compared to the number that proceed to litigation.

#### 4.3 Claims Handling Schemes in England and Wales and the Republic of Ireland

In England and Wales, the Ministry of Justice introduced the Road Traffic Accident Personal Injury Scheme in April 2010 and an electronic portal has been established to support the claims process in the exchange of information. The process currently applies to claims valued between £1000 and £10,000. Within the first 12 months of its launch 600,000 claims have been processed which the ABI highlights compares favourably with the number of motor claims logged at the Compensation Recovery Unit for 2009/10.<sup>65</sup> In 2009/10, 674,997 claims were registered with the Compensation Recovery Unit.<sup>66</sup> A majority of Road Accident Claims are dealt with through the Portal.<sup>67</sup> The Scheme reflects the Pre-Action Protocol for Low Value Personal Injury

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<sup>61</sup> Via email from the NICTS on 28/10/11. The Law Society also provided information on this via email on 25/20/11

<sup>62</sup> Information obtained from the Department of Justice via email, 5 October 2011

<sup>63</sup> Information obtained from the Department of Justice via email, 5 October 2011

<sup>64</sup> Information obtained via email from the Department of Social Development on 14/10/11

<sup>65</sup> Ministry of Justice's Consultation Paper "Solving Disputes in the County Courts: Creating a Simpler Quicker and More Proportionate System" Response from the Association of British Insurers, 4.

<sup>66</sup> Department for Work and Pensions' Performance Statistics

<sup>67</sup> This was confirmed in a telephone discussion with a policy advisor at the ABI

Claims in Road Traffic Accidents.<sup>68</sup> However the ABI highlights that they are not one and the same, the portal does not impose the protocol or restrict its users and should rather act as an aid through which any protocol is followed by claimants and compensators.<sup>69</sup> The scheme introduces fixed time periods and fixed fees which are recoverable by the successful party to reduce the time and costs involved in settling disputes. There are three stages to the scheme:<sup>70</sup>

- **Stage 1-Providing Early Notification to Defendants and Insurers-** a claim notification form is sent to the defendant's insurers electronically and the defendants' insurer has 15 days in which to respond with the exception of the Motor Insurers Bureau who have 30 days to respond. Fixed recoverable costs of £400 are payable at the end of stage 1 where liability is admitted and a 12.5% success fee is applied to fixed recoverable costs however the success fee element will only be payable at the end of stage 2. If liability is not admitted at this stage, the case goes to normal litigation. However if liability is admitted, the claim proceeds to stage 2 in the process.
- **Stage 2-Medical evidence, offers to settle and negotiation-** When the defendant's insurer has admitted liability, the claimant's solicitor will obtain a medical report. There is no fixed timetable for obtaining the medical report. The claimant's solicitor will send a stage 2 Settlement Pack along with the medical report and receipts/evidence of special damages claimed. The insurer has 15 business days from receipt of the Pack to consider and either accept the claimant's offer or make a counter offer. Where the defendant's insurer makes a counter offer, there will be a further 20 business days for consideration and negotiation. The total consideration period for Stage 2 is 35 days. Where agreement on quantum has not been reached at the end of this period, the claimant solicitor will prepare the Stage 3 Court Pack for a hearing. Prior to completing the Stage 3 Court Pack, any Additional Damages being claimed must be consolidated into the existing Stage 2 Settlement Pack and presented back to the defendant insurer for them to agree a further offer or make a counter offer. Fixed recoverable costs of £800 will apply to all claims taken forward under this process from the beginning to the end of Stage 2. This will attract a 12.5% success fee uplift when the case settles. According to the ABI, cases generally settle at stage 2; however where quantum cannot be agreed, the case will go to court.<sup>71</sup>
- **Stage 3-Where quantum cannot be agreed-**Where quantum cannot be agreed by the end of Stage 2, an application will be made to the court to

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<sup>68</sup> [http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/protocols/prot\\_rta.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/protocols/prot_rta.htm)

<sup>69</sup> Ministry of Justice's Consultation Paper "Solving Disputes in the County Courts: Creating a Simpler Quicker and More Proportionate System" Response from the Association of British Insurers, 4.

<sup>70</sup> [http://rtapiclaimsprocess.org.uk/moj\\_guidelines.html](http://rtapiclaimsprocess.org.uk/moj_guidelines.html) accessed on 06/10/11

<sup>71</sup> Information obtained in a telephone conversation with a policy advisor at the ABI on 06/10/11

determine quantum. There will be separate fixed recoverable costs for claimant solicitors for Stage 3 of the process for paper (£250) and oral hearings (£500). There will be a fixed success fee of 100%, which will only apply where the claim concludes at trial and the claimant has won.

Where an offer is made and settlement is reached between the issue of the claim and before the trial commences, fixed recoverable costs of £250 will apply and there will be a fixed success fee of 12.5%. The agreed damages and fixed costs should be paid within 10 days of a settlement being reached.

The RTA PI scheme is relatively new, however the ABI suggests that preliminary data shows that it is successful in providing compensation to claimants more cost effectively and quickly. However the ABI reported that a number of benefits have started to emerge. In 51,880 claims settled between the 1<sup>st</sup> September 2009 and 31 March 2010, average legal costs were £2097, much higher than permitted by the RTA PI scheme.<sup>72</sup> Early indications also show that the life cycle of claims has more than halved since the introduction of the scheme. The average life cycle of claims settled since the introduction of the RTA PI scheme is 132 days compared to 294 days for claims settled between 1<sup>st</sup> September 2009 and 31 March 2010.<sup>73</sup> The Access to Justice Review in Northern Ireland reported that the RTA scheme was particularly noteworthy with its focus on the use of an electronic portal as a means of early exchange of confidential information between insurance companies and solicitors.<sup>74</sup> The Review Team recommended that the Department of Justice keeps in touch with the evaluation of the scheme being conducted by the Ministry of Justice to assess whether there are lessons for NI.<sup>75</sup>

In the Republic of Ireland, the issue of assessing claims for personal injury arising from car accidents is dealt with by a statutory body, InjuriesBoard.ie rather than the courts. The body was established under the Personal Injuries Assessment Board Act 2003. It costs the applicant €45 to submit an application for assessment. The applicant is also required to pay the costs of the medical report from the treating doctor, which is submitted along with the application. However these costs will be repaid to the applicant if both parties agree to the assessment when it is made.<sup>76</sup> If the respondent does not agree to the assessment of a claim, Injuries Board.ie will provide the claimant with an Authorisation to enable them to pursue their case through the courts if they

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<sup>72</sup> Ministry of Justice's Consultation Paper "Solving Disputes in the County Courts: Creating a Simpler Quicker and More Proportionate System" Response from the Association of British Insurers, 5.

<sup>73</sup> Ministry of Justice's Consultation Paper "Solving Disputes in the County Courts: Creating a Simpler Quicker and More Proportionate System" Response from the Association of British Insurers, 5.

<sup>74</sup> Access to Justice Review Northern Ireland "The Final Report". August 2011, 89 [http://www.courtsni.gov.uk/en-GB/Publications/Public\\_Consultation/Documents/Access%20to%20Justice%20Review%20Northern%20Ireland%20-%20The%20Report/Access%20to%20Justice%20Review%20FINAL%20REPORT.pdf](http://www.courtsni.gov.uk/en-GB/Publications/Public_Consultation/Documents/Access%20to%20Justice%20Review%20Northern%20Ireland%20-%20The%20Report/Access%20to%20Justice%20Review%20FINAL%20REPORT.pdf)

<sup>75</sup> Access to Justice Review Northern Ireland "The Final Report" August 2011, 89 [http://www.courtsni.gov.uk/en-GB/Publications/Public\\_Consultation/Documents/Access%20to%20Justice%20Review%20Northern%20Ireland%20-%20The%20Report/Access%20to%20Justice%20Review%20FINAL%20REPORT.pdf](http://www.courtsni.gov.uk/en-GB/Publications/Public_Consultation/Documents/Access%20to%20Justice%20Review%20Northern%20Ireland%20-%20The%20Report/Access%20to%20Justice%20Review%20FINAL%20REPORT.pdf)

<sup>76</sup> <http://www.injuriesboard.ie/eng/FAQ/#7>

wish to do so.<sup>77</sup> The majority of the cases dealt with by InjuriesBoard.ie are motor liability claims, accounting for 74% of all awards in 2010.<sup>78</sup> In 2010, the average time to process the claim was 6.9 months. Prior to the introduction of InjuriesBoard.ie, cases took on average 36 months to be resolved through the litigation system.<sup>79</sup> The Chief Executive Officer of InjuriesBoard.ie suggests that significant costs savings are emerging for insurance providers. InjuriesBoard.ie indicates that reducing processing costs could result in a €205 saving per claim for insurers in 2011. This is in addition to existing annual savings of up to €100m arising from the Board's non-adversarial model. The Chief Executive of InjuriesBoard.ie has suggested that these savings should translate to lower insurance premiums for consumers and businesses.<sup>80</sup>

The Access to Justice Review Team considered a statutory body to determine the quantum of damages along the lines of the Injuries Board model. The Review Team highlighted that whilst this body works well, it was established to meet the particular requirements of that jurisdiction. The Review Team concluded that the circumstances in NI do not warrant the potential expenses and risks associated with setting up such a scheme.<sup>81</sup>

Concerns have been raised by the Law Society for Northern Ireland on the InjuriesBoard.ie scheme. The Law Society suggests that complications in preparing a letter of claim and complying with the procedures of the scheme have led to 90% of applicants seeking legal assistance.<sup>82</sup> Furthermore the success of the scheme is called into question due to the high number of claimants who seek assistance from the court once the scheme's procedures have been exhausted. The Law Society suggests that the scheme removes the costs of legal advice and assistance from the insurance industry and places it with injured parties. In 2009, InjuriesBoard.ie reported that in the early part of the decade over 30,000 personal injury cases went to court but the number of cases which proceeded to litigation reduced to 14,000. These are cases which InjuriesBoard.ie has no authority to deal with the case or where liability is disputed.<sup>83</sup>

England and Wales and the Republic of Ireland have introduced claims handling systems. In England and Wales this is a portal system intended to secure more speedy and cost effective settlement of claims. In the Republic of Ireland this is a statutory body to consider personal injury claims. The Access to Justice Review Team considered the Irish model and concluded that whilst the model appeared to be working

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<sup>77</sup> <http://www.injuriesboard.ie/eng/FAQ/>

<sup>78</sup> [http://www.injuriesboard.ie/eng/News\\_Press\\_Releases/InjuriesBoard\\_ie\\_Publishes\\_Review\\_of\\_2010\\_.html](http://www.injuriesboard.ie/eng/News_Press_Releases/InjuriesBoard_ie_Publishes_Review_of_2010_.html)

<sup>79</sup> <http://www.injuriesboard.ie/eng/Statistics/>

<sup>80</sup> [http://www.injuriesboard.ie/eng/News\\_Press\\_Releases/InjuriesBoard\\_ie\\_Publishes\\_Review\\_of\\_2010\\_.html](http://www.injuriesboard.ie/eng/News_Press_Releases/InjuriesBoard_ie_Publishes_Review_of_2010_.html)

<sup>81</sup> Access to Justice Review Northern Ireland "The Report", August 2011, 84.

<sup>82</sup> The Law Society of Northern Ireland Briefing on Personal Injury Claims attached to a letter to the Justice Committee. 7 October 2011

<sup>83</sup> InjuriesBoard.ie "Annual Report and Accounts 2009",

13. [http://www.injuriesboard.ie/eng/Forms\\_and\\_Publications/Annual\\_Reports/InjuriesBoard\\_ie\\_Annual\\_Report\\_2009.pdf](http://www.injuriesboard.ie/eng/Forms_and_Publications/Annual_Reports/InjuriesBoard_ie_Annual_Report_2009.pdf)

well “we do not think the particular circumstances here warrant the potential expenses and risks associated with setting up such a scheme.”<sup>84</sup>

## 5 Compensation Levels

The Consumer Council reports that compensation payments are more generous in personal injury cases in Northern Ireland than in England and Wales.<sup>85</sup> Currently awards in Northern Ireland are determined by a judge referring to the Judicial Studies Board of Northern Ireland’s ‘Green Book’ which sets out guidelines for the assessment of damages in personal injuries claims.<sup>86</sup> On academic highlighted “there is general agreement that compensation awards are on average slightly higher in Northern Ireland than in comparable cases in England and Wales, factor contributing to higher insurance premiums in Northern Ireland.”<sup>87</sup> The Law Society for NI acknowledges that the guidelines for general damages for physical pain and injury are higher than those in England and Wales and there have been calls to bring them into line with England and Wales.<sup>88</sup> The reasons given for higher compensation levels in Northern Ireland have been attributed to the fact that until 1987, compensation for personal injury claims were determined by a jury.<sup>89</sup>

In England and Wales, the Judicial Studies Board sets out guidelines for the assessment of damages. In the Republic of Ireland, InjuriesBoard.ie and the courts are required to look at the Book of Quantum which is a general guide as to the amounts that may be awarded in respect of specified types of injuries.<sup>90</sup> The Law Society of Northern Ireland highlights that the levels of compensation payable in England and Wales have been consistently criticised for being too low and that it was recommended by the Law Commission in 1999 that damages should be increased by 50-100%.<sup>91</sup>

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<sup>84</sup> Access to Justice Review Northern Ireland “The Report”, August 2011, 84

<sup>85</sup> Consumer Council for Northern Ireland “Briefing for the Department of Justice on the Cost of Insurance in Northern Ireland, September 2011

<sup>86</sup> B Dickson (2005) “The Legal System in Northern Ireland” 5<sup>th</sup> Edition, SLS Publications, 332: See the Judicial Studies Board “Guidelines for the Assessment of General Damages in Personal Injury Cases in NI” 3rd Edition, SLS Publications 2008

<sup>87</sup> B Dickson (2005) “The Legal System in Northern Ireland” 5<sup>th</sup> Edition, SLS Publications, 332

<sup>88</sup> The Law Society of Northern Ireland Briefing in Personal Injury Claims attached to a letter to the Chair of the Justice Committee. 7 October 2011, para 7.1

<sup>89</sup> Mr Roy Beggs AQW 6837/10

<sup>90</sup> The Book of Quantum can be found at [http://www.injuriesboard.ie/eng/Forms\\_and\\_Publications/Book\\_of\\_Quantum.pdf](http://www.injuriesboard.ie/eng/Forms_and_Publications/Book_of_Quantum.pdf)

<sup>91</sup> The Law Society of Northern Ireland Briefing in Personal Injury Claims attached to a letter to the Chair of the Justice Committee. 7 October 2011, para7.2

**Fig 1: Comparative information on guidance on assessment for damages in respect of some types of injuries in each of the jurisdictions.**

<b>Injury</b>	<b>Northern Ireland</b>	<b>England and Wales</b>	<b>Republic of Ireland<sup>92</sup></b>
<b>Neck Injuries</b>	Severe whiplash £21,000 to £42,000	Severe whiplash £9,000-£16,400	Serious and permanent £51,891-£68,508
	Moderate whiplash where period of recovery is protracted £9,000-£22,000	Moderate whiplash where period of recovery is protracted £5150-£9,000	Significant ongoing £13,895-£56,367
	Minor Whiplash with full recovery within two years up to £9,500	Minor Whiplash full recovery within two years £2,850-£5150	Substantially recovered within two years £10,048-£15,205
	No figures for recovery within a year.	Minor whiplash recovery within a year £875-£2,850	Substantially recovered within one year Up to £12,233
<b>Lower leg fractures (Simple Fractures of Tibia and fibula)</b>	Completely recovered Up to £12,000	Completely recovered Up to £6,000	Substantially recovered £13,496 to £30,323
<b>Broken Nose</b>	Serious £18,000-£30,000	Serious- £7000 to £15,200	Substantially recovered (only one category included)

<sup>92</sup> Compensation levels converted from Euro to GBP -1 GBP = 1.14104 EUR, Universal Currency Converter <http://www.xe.com/ucc/>, accessed on 11/10/11

			£13,043-£17,158
	Displaced where recovery complete but after surgery Up to £12,000	Displaced where recovery complete but after surgery £2600 to £3350	
	Displaced requiring no more than manipulation Up to £9000	Displaced requiring no more than manipulation £1650-£2050	
	Simple with full recovery Up to £9000	Simple with full recovery £1125-£1650	

From the table above it would appear that the guidance for assessing damages is more generous in Northern Ireland than in England and Wales. In some cases (e.g. severe whiplash) the minimum level in the Northern Ireland guidance is higher than the maximum level in the England and Wales guidance. The Consumer Council suggests it is timely to debate the levels of compensation suggested by these guidelines and their effect on insurance costs.<sup>93</sup> The Public Accounts Committee, in a report on Management of Personal Injury Claims, has recommended that the DFP and the Court Service consider how to harmonise the Northern Ireland guidelines with those in England and Wales.<sup>94</sup>

The Department of Justice has provided figures for the number of civil bills by the amount awarded in road traffic and personal injuries cases in the County Court for 2006 to 2010 – the figures are in **Annex 6**. The Department emphasised that in those civil bills listed as personal injuries, the cause of personal injury cannot be attributed.<sup>95</sup> The ABI were also contacted about the levels of compensation awarded in Northern Ireland awarded in the last 10 years; however they were unable to provide this information broken down by region.<sup>96</sup>

The Law Society for NI points out that traditionally the judiciary in NI has been conservative on the level of damages awarded, often awarding damages *below* the

<sup>93</sup> The Consumer Council "Quote...Unquote: The cost of Insurance in Northern Ireland: A Research Report from the Consumer Council" March 2009, 36.

<sup>94</sup> Public Accounts Committee, Report on the Management of Personal Injury Claims, NIA 48/09/10R, [http://www.niassembly.gov.uk/public/2007mandate/reports/2009/report\\_48\\_09\\_10r.htm#3](http://www.niassembly.gov.uk/public/2007mandate/reports/2009/report_48_09_10r.htm#3)

<sup>95</sup> Correspondence from the Department of Justice .via email, 26/10/11

<sup>96</sup> In a telephone conversation with a policy advisor at the Association of British Insurers (ABI) 6.10.11



guidelines.<sup>97</sup> Statistics provided by the Law Society indicate that in 2010, 87% of awards in the County Court for personal injuries were for less than £5000.<sup>98</sup>

The Law Society stated that it is essential the Committee looks beyond the Green Book and suggested in the briefing that the Committee may wish to investigate total awards for personal injuries made in Northern Ireland, compared with those in England and Wales.<sup>99</sup> The Ministry of Justice were contacted to obtain a breakdown of awards by the courts in personal injuries cases in England and Wales in order to make a comparison, however were unable to provide similar information as it is not recorded in such a way on the court computer system.<sup>100</sup> It has therefore not been possible to determine if *actual* awards for personal injuries are higher in Northern Ireland than in England and Wales.

In December 2011 the Office of Fair Trading published its document "Private Motor Insurance: Summary of responses to OFT's call for evidence."<sup>101</sup> The OFT indicated that car insurance premiums were on average 11% higher in Northern Ireland than in Britain, though the difference has lessened in recent years.<sup>102</sup> The OFT says that there seem to be three possible reasons for this.<sup>103</sup> The first possibility is that fewer consumers shop around in Northern Ireland, and the third is road safety. The second possibility relates to the costs of insurance claims as a result of compensation levels and the legal process. The OFT says that it has received evidence that compensation levels are higher in Northern Ireland than in Britain; as well as referring to the guidelines, the OFT says that it has received information from some insurers that the amounts of compensation paid are considerably higher.<sup>104</sup> A second aspect of this is that there are differences in the legal process that could lead to higher costs, specifically the absence of a compulsory pre-action protocol.<sup>105</sup>

The guideline figures for damages in Northern Ireland are frequently higher than the guidelines figures in England and Wales. Unfortunately it has not been possible to discover whether actual awards are higher or lower than in England and Wales. However the OFT indicates it has received evidence from some insurers that the amounts of compensation paid out are higher than in Great Britain.

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<sup>97</sup> The Law Society of Northern Ireland Briefing on Personal Injury Claims attached to a letter to the Justice Committee. 7 October 2011, para 7.4

<sup>98</sup> The Law Society of Northern Ireland Briefing on Personal Injury Claims attached to a letter to the Justice Committee. 7 October 2011, para 7.4

<sup>99</sup> The Law Society of Northern Ireland Briefing on Personal Injury Claims attached to a letter to the Justice Committee. 7 October 2011, para 7.5

<sup>100</sup> Response from the Ministry of Justice via email 18/10/11

<sup>101</sup> Available at [http://www.offt.gov.uk/shared\\_offt/markets-work/private-motor-insurance/Motor\\_Insurance.pdf](http://www.offt.gov.uk/shared_offt/markets-work/private-motor-insurance/Motor_Insurance.pdf)

<sup>102</sup> OFT, Private Motor Insurance: Summary of responses to OFT's call for evidence, 4.

<sup>103</sup> OFT, Private Motor Insurance: Summary of responses to OFT's call for evidence, 29..

<sup>104</sup> OFT, Private Motor Insurance: Summary of responses to OFT's call for evidence, 30..

<sup>105</sup> OFT, Private Motor Insurance: Summary of responses to OFT's call for evidence, 30.

## 6 Car Crime and impact on car insurance premiums in NI

The Consumer Council asked the Department of Justice and the Committee to determine what impact a reduction in car crime has had on insurance premiums in Northern Ireland over the past 8 years.

Figures from the PSNI suggest that offences against vehicles have reduced over the past eight years.<sup>106</sup> The total number of offences against vehicles in 2002/03 was 20,850 and steadily reduced to 7,906 offences against vehicles in 2008/09. There was an increase in offences against vehicles in 2009/10 (8,221), decreasing to 6,933 offences in 2010/11. Figure 1 below shows that whilst car crime has been decreasing during the period 2002 to 2009, that figures provided by the ABI show that the average spending on motor insurance per household in NI has fluctuated up and down, without any apparent correlation to the overall steady decrease in detected car crime.

**Fig 2: Average spending on of motor insurance per household, compared with total offences against vehicles in Northern Ireland, 2002 – 2009<sup>107</sup>**

	2002	2003	2004	2005	2006	2007	2008	2009
Average Spending on Motor Insurance	686	682	837	761	560	498	730	603
% change from year to year		-0.58	22.72	-9.08	-26.41	-11.07	46.58	-17.39
Offences against Vehicles	20850	15962	12333	10135	9256	8301	7906	8221
% change from year to year		-23.44	-22.73	-17.82	-8.67	-10.31	-4.75	3.98

Earlier Papers also indicated that there seemed to be no direct correlation between levels of car crime and insurance costs.<sup>108</sup>

## 7 Levels of Fraudulent Insurance Claims

The ABI highlighted in evidence to the Committee for Finance and Personnel that insurance fraud is a problem across the UK, estimating £2 billion worth of undetected insurance fraud in a year.<sup>109</sup> The ABI indicated that in a car insurance premium worth £400, £40 pays for generalised insurance fraud.<sup>110</sup> The ABI were unable to provide

<sup>106</sup> Offences against vehicles include aggravated vehicle taking, theft from a vehicle, theft of unauthorised taking of a motor vehicle and interfering with a motor vehicles.

<sup>107</sup> Figures for average spending on motor insurance per household in NI obtained with thanks from the ABI via email on 17/10/11 and statistics on total offences against vehicles obtained from PSNI "Trends in Police Recorded Crime in Northern Ireland 1998/99 to 2010/11" Annual Bulletin published 30 June 2011, 18

<sup>108</sup> "Update: Comparative Car and Home Insurance Costs in NI" 25 February 2011, 4; "Cost of Car Insurance in NI Scoping Paper" 6 October 2010, 7.

<sup>109</sup> Committee for Finance and Personnel Official Report, 16 June 2010

<sup>110</sup> Committee for Finance and Personnel Official Report, 16 June 2010

figures on fraudulent car insurance claims in Northern Ireland compared to the rest of the United Kingdom as their data is not broken down by region.<sup>111</sup> The Insurance Fraud Bureau (IFB) was contacted to see if they could provide such information. It was not possible to obtain overall figures for fraudulent claims in Northern Ireland compared to the rest of the UK. The ABI informed the Committee for Finance and Personnel that figures are not straightforward to collect because 'by definition fraud is undetected, and we cannot detect where it is happening.'<sup>112</sup> The IFB produces a quarterly bulletin which records hotspots based on the volume of claimants by postal area. The last quarterly bulletin suggests that Belfast is ranked in the top 40 post area hotspots in the United Kingdom in relation to volume of claims.<sup>113</sup> The IFB advise these figures should be caveated as the postal areas in the top 10 are larger cities and the volume is skewing the figures. Furthermore these figures include all insurance claims with a big sway towards motor insurance claims.<sup>114</sup>

It is therefore difficult to assess the precise levels of fraudulent claims in Northern Ireland in car accident claims and whether this contributes to higher premiums in NI.

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<sup>111</sup> Via email and telephone on 17/10/11

<sup>112</sup> Committee for Finance and Personnel Official Report, 16 June 2010

<sup>113</sup> IFB Quarterly Hotspot Analysis, date analysis was run 9 August 2011, information obtained via email Via email, 18/10/11

<sup>114</sup> Via telephone conversation with an analyst from the IFB, 18/10/11

## Annex 1- Solicitors' Guidelines Hourly Rates in England and Wales<sup>115</sup>

### SOLICITORS' GUIDELINE HOURLY RATES 2010

#### Key to costing grades

- A Solicitors, over 8 years qualified experience.
- B Solicitors or Legal Executives (FILEX) over 4 years qualified experience.
- C Other qualified Solicitors or Legal Executives.
- D Trainee solicitors, paralegals or equivalent

#### National 1

##### Grades

- A £217
- B £192
- C £161
- D £118

Aldershot, Farnham, Bournemouth (including Poole)  
Birmingham Inner  
Bristol  
Cambridge City, Harlow  
Canterbury, Maidstone, Medway & Tunbridge Wells  
Cardiff (Inner)  
Chelmsford South, Essex & East Suffolk  
Chester  
Fareham, Winchester  
Hampshire, Dorset, Wiltshire & Isle of Wight  
Kingston, Guildford, Reigate & Epsom  
Leeds Inner (within 2 kilometres radius of City Art Gallery)  
Lewes  
Liverpool, Birkenhead  
Manchester Central  
Newcastle City Centre (within 2 mile radius  
of St Nicholas Cathedral)  
Norwich City  
Nottingham City  
Oxford, Thames Valley  
Southampton, Portsmouth  
Swindon, Basingstoke  
Watford

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<sup>115</sup> <http://www.judiciary.gov.uk/publications-and-reports/guidance/guideline-hourly-rates/guideline-hourly-rates-2010>

## National 2

## Grades

A £201  
 B £177  
 C £146  
 D £111

Bath, Cheltenham & Gloucester, Taunton, Yeovil  
 Bury  
 Chelmsford North, Cambridge County, Peterborough,  
 Bury St Edmunds, Norfolk & Lowestoft  
 Cheshire & North Wales  
 Coventry, Rugby, Nuneaton, Stratford & Warwick  
 Exeter, Plymouth  
 Hull (City)  
 Leeds Outer, Wakefield & Pontefract  
 Leigh  
 Lincoln  
 Luton, Bedford, St Albans, Hitchin & Hertford  
 Manchester Outer, Oldham, Bolton, Tameside  
 Newcastle (other than City Centre)  
 Nottingham & Derbyshire  
 Sheffield, Doncaster & South Yorkshire  
 Southport  
 St Helens & Wigan  
 Stockport, Altrincham, Salford  
 Swansea, Newport, Cardiff (Outer)  
 Wolverhampton, Walsall, Dudley & Stourbridge  
 York, Harrogate

## National 3

## Grades

A £201  
 B £177  
 C £146  
 D £111

Birmingham Outer  
 Bradford (Dewsbury, Halifax, Huddersfield, Keighley, Skipton)  
 Cumbria  
 Devon, Cornwall  
 Hull Outer, Grimsby, Skegness  
 Kidderminster  
 Northampton & Leicester  
 Preston, Lancaster, Blackpool, Chorley, Accrington, Burnley,  
 Blackburn, Rawenstall & Nelson  
 Scarborough & Ripon

Stafford, Stoke on Trent & Tamworth  
Teesside  
Worcester, Hereford, Evesham&Redditch  
Shrewsbury, Telford, Ludlow, Oswestry  
South & West Wales

London 1 (EC1, EC2, EC3, EC4)

Grades

A £409  
B £296  
C £226  
D £138

London 2 (W1, WC1, WC2, SW1)

Grades

A £317  
B £242  
C £196  
D £126

London 3 (W, NW, N, E, SE, SW and Bromley, Croydon, Dartford, Gravesend & Uxbridge)

Grades

A £229-267  
B £172-229  
C £165  
D £121

## Annex 2-The Number of Queen's Bench Writs and Originating Summons Disposed of in 2009<sup>116</sup>

Queen's Bench writs and originating summons disposed 2009

	High Court Judge	Master	Office disposal	Default judgement	Total
Road Traffic Accident	360	8	379	15	762
Personal Injuries	103	7	59	4	173
<b>Total</b>	<b>463</b>	<b>15</b>	<b>438</b>	<b>19</b>	<b>935</b>

Queen's Bench writs and originating summons disposed by amount 2009

	Unliquated	£1,000-2,999	£3,000-14,999	Over £15,000	Total
Road Traffic Accident	450	3	71	238	762
Personal Injuries	125	2	20	26	173
<b>Total</b>	<b>575</b>	<b>5</b>	<b>91</b>	<b>264</b>	<b>935</b>

NB. includes court disposals, office disposals and default judgements.

NB. personal injuries does not include personal injuries due to medical negligence

NB. In Queens Bench a new practice direction came into effect 1/4/08 which set out new procedures trial. An exercise was carried out to dispose of old cases which were withdrawn or settled out of court.

<sup>116</sup>Obtained from the Law Society of Northern Ireland via email, 24/10/11

Annex 3-The number of ordinary civil bills and applications disposed of in 2009 for 'Personal Injuries' or 'Road Traffic'<sup>117</sup>

Number of ordinary civil bills cases and applications disposed in 2009 for 'Personal Injuries' or 'Road Traffic'

		Court result - CCJ	Court result - DJ	Non court disposals	Default judgement	Office disposal	Total
Road Traffic	Antrim	188	183	142	1	62	576
	Ards	286	183	143		77	689
	Armagh and South Down	180	100	89		37	386
	Belfast	627	542	324	6	224	1723
	Civil Processing Centre			51	99	31	181
	Craigavon	156	156	115	3	63	493
	Fermanagh and Tyrone	191	101	87		51	430
	Londonderry	145	130	108	1	47	431
	Total	1753	1395	1059	110	592	4909
Personal Injuries	Antrim	52	19	51		6	128
	Ards	97	16	51	1	11	176
	Armagh and South Down	43	18	11		4	76
	Belfast	245	61	81	4	25	416
	Civil Processing Centre			16	7	4	27
	Craigavon	51	21	44		11	127
	Fermanagh and Tyrone	45	11	23	1	8	88
	Londonderry	67	21	18		13	119
	Total	600	167	295	13	82	1157

Number of ordinary civil bills cases and applications disposed in 2009 for 'Personal Injuries' or 'Road Traffic' by amount awarded

		Unliquidated	£1000 or less	£1001-2000	£2001-3000	£3001-4000	£4001-5000	£5001-6000	£6001-7000	£7001-8000	£8001-9000	£9001-10000	£10001-11000	£11001-12000	£12001-13000	£13001-14000	£14001-15000	£15000 or more	Total
Road Traffic	Antrim	238	56	73	51	54	28	24	20	16	8	4		2	2		1	1	576
	Ards	219	90	82	81	96	50	31	15	8	5	7	1				1		689
	Armagh and South Down	131	50	35	42	42	31	17	6	11	9	4	3	2	3				386
	Belfast	757	212	171	144	153	121	96	41	34	16	4	7	6		1			1723
	Civil Processing Centre	172	3	1	2	1		2											181
	Craigavon	180	77	50	42	43	35	29	6	8	8	8	1	3	3				493
	Fermanagh and Tyrone	176	36	37	39	39	32	23	20	11	9	4	1	1		1	1		430
	Londonderry	158	48	57	48	42	35	12	7	11	5	3	2	1	2				431
	Total	2029	572	506	449	473	332	194	115	99	60	34	18	15	10	2	3	1	4909
Personal Injuries	Antrim	64	2	5	15	12	11	8	5	2	2				2				128
	Ards	60	6	22	24	26	11	8	7	5	2	2			2	1			176
	Armagh and South Down	44	3	8	6	2	2	3	2	2	1	2						1	76
	Belfast	215	15	36	48	29	29	11	9	14	2	4	2	1	1				416
	Civil Processing Centre	23	1	1	1	1													27
	Craigavon	62	8	9	12	13	8	7	2	3	2			1					127
	Fermanagh and Tyrone	50	6	7	6	5	6	4	1	3									88
	Londonderry	58	9	12	9	13	4	6	2	4	2				2				119
	Total	574	50	100	121	101	71	47	28	33	11	8	2	2	7	1		1	1157

<sup>117</sup>Information obtained from the Law Society of Northern Ireland, 24/10/11



Annex 4- Number of ordinary civil bills cases and applications disposed of between 2005-2010 which had a cause of action of personal injury or RTA<sup>118</sup>

	Road traffic cases		Personal injury cases	
	Total RTA cases disposals (incl non court disposals)	Number of RTA non court disposals	Total Personal Injuries cases disposals (incl non court disposals)	Number of Personal Injuries cases non court disposals
2005	3321	474	3005	466
2006	3387	498	2182	308
2007	4129	617	2116	356
2008	4128	756	1555	277
2009	4909	1059	1157	295
2010	5519	1472	1284	339

<sup>118</sup> Table based on statistical information obtained from the Department of Justice, via email, 26/10/11

## Annex 5-Road Traffic Accident Claims registered with the Compensation Recovery Unit Northern Ireland<sup>119</sup>

Year	No. of RTA Claims
2000/01	25,575
2001/02	24,807
2002/03	22,719
2003/04	19,473
2004/05	18,011
2005/06	17,423
2006/07	16,481
2007/08	16,136
2008/09	17,209
2009/10	18,520
Total	196,354

<sup>119</sup> Information obtained from the Department of Social Development via email on 14/10/11

## Annex 6- The Number of Ordinary Civil Bills and Applications for Personal Injury (PI) and Road Traffic (RT) Cases by Amount awarded 2006- 2010<sup>120</sup>

Amount	PI 2006	RT 2006	PI 2007	RT 2007	PI 2008	RT 2008	PI 2009	RT 2009	PI 2010	RT 2010
Unliquidated <sup>121</sup>	983	1395	946	1558	713	1755	574	2029	643	2198
1000 or less	182	368	180	495	116	431	50	572	59	613
1001-2000	222	330	229	480	176	413	100	506	127	592
2001-3000	222	356	238	481	166	449	121	449	135	629
3001-4000	226	386	205	451	147	406	101	473	112	534
4001-5000	134	250	123	290	85	264	71	332	80	367
5001-6000	68	122	71	154	49	149	47	194	33	196
6001-7000	52	71	45	77	36	94	28	115	35	139
7001-8000	33	40	38	78	29	81	33	99	33	106
8001-9000	20	24	21	24	18	29	11	60	8	53
9001-10000	22	20	10	16	11	25	8	34	8	44
10001-11000	4	5	1	6	1	13	2	15	3	18
11001-12000	3	4	5	6	1	6	2	15	2	18
12001-13000	6	7	2	7	1	10	7	10	2	6
13001-14000		3		3	1	3	1	2	1	6
14001-15000	3	4	1	2	4			3	1	5
15000 or more	2	2	1	1	1		1	1	2	2

<sup>120</sup> Figures provided by Department of Justice in email on 26/10/2011. The italicised figures are the sum of the numbers in the respective column.

<sup>121</sup> Information obtained from the NICTS via email on 28/10/11 explains that Unliquidated claims are those that are lodged for an unspecified amount. Most personal Injury cases tend to be unliquidated because the value of pain/discomfort etc arising from an injury require an assessment and evaluation before a value can be put on the award

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Totals	2182	3387	2116	4129	1555	4128	1157	4909	1284	5519
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