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Third Party Capture

1 Introduction

This paper was commissioned by the Committee for Enterprise, Trade and Investment following concerns raised by a number of groups regarding third party capture. The paper provides an analysis of figures on Compensation Recovery for Northern Ireland released by the Minister for Social Development and a discussion regarding the available data on third party capture.

As defined by the Financial Services Authority, third party capture is:

When an insurer deals directly with a person who has a potential claim against their policyholder, in order to investigate and settle the claim¹.

In this situation an insurance provider will typically offer a compensation payment to settle the claim directly to the third party rather than negotiate the amount via a solicitor.

Concerns have been raised by a number of bodies, such as the Law Society for Northern Ireland (LSNI) and the Consumer Council for Northern Ireland (CCNI), that the practice of third party capture could mean third parties do not receive the fair

¹ Financial Services Authority Third party capture – what you need to consider
http://www.fsa.gov.uk/pubs/other/third_party_capture.pdf (first accessed 01/06/2010)

treatment and compensation they would if they followed the standard existing practice for making an insurance claim.

2 Key Points

- In February 2010, the Chair of the Committee for Enterprise, Trade and Investment requested data from the Department for Social Development regarding Compensation Recovery rates;
- The data available on third party capture is currently quite limited and as such it is not possible to provide an analysis of CRU statistics against the level of third party capture in order to ascertain any correlation between the two pieces of data;
- However, there is some information available on third party capture, but this is largely qualitative in nature;
- In 2006 Frontier Economics was commissioned by the ABI to provide an independent evaluation of the outcome for consumers when legally and not legally represented in personal injury claims;
- The report found that, on average, for all three claim types the data provided did not support a link between legal representation and higher compensation awards;
- It must be noted that the Frontier Economics report examines a very narrow area within a complicated industry and fails to take into account a number of important factors such as severity of underlying injury, type of claim, legal representation and the demographics of the claimant;
- A report by the Law Society of Northern Ireland (LSNI) regarding third party capture was published in August 2009²;
- In broad terms the study found that insurers were:
 - Misleading injured parties;
 - Approaching injured parties when they are in a vulnerable position;
 - Impacting on an individuals right to legal representation;
 - Undermining the importance of medical evidence;
 - Approaching minors; and
 - Lacking compliance with Compensation Recovery regulations.
- The FSA³ also explored the issue of third party capture and produced a factsheet for senior management and staff of insurance firms involved in the practice;

² Law Society of NI, August 2009 Report into Third Party Capture

³ Financial Services Authority Third-party capture – what you need to consider
www.fsa.gov.uk/pubs/other/third_party_capture.pdf (first accessed 01/06/2010)

- The FSA concluded that:

Although an insurer approaching third parties directly to settle claims does not necessarily cause detriment, there is a risk that in some cases third parties may settle directly with an insurer without considering all of their options.

- There is a distinct lack of data regarding the prevalence of third party capture as a practice amongst insurers. This makes it difficult to assess its level amongst existing compensation claims.

3 Discussion of Research into Third Party Capture

In February 2010, the Chair of the Committee for Enterprise, Trade and Investment requested data from the Minister for Social Development regarding compensation recovery rates.

The Compensation Recovery Unit, which retrieves this data, works with insurance companies, solicitors and the Department of Work and Pension customers to receive:

- Amounts of social security benefits paid as a result of an accident, injury or disease, where a compensation payment has been made. This is known as the Compensation Recovery Scheme; and
- Cost incurred by NHS hospitals for treatment of injuries for road traffic accidents. This is known as recovery of NHS charges⁴.

The data received from DSD consisted of a single table detailing claims received, claims settled, benefit recoveries and NHS recoveries. It covered the period from 2000 to 2009 and all road traffic accident cases.

In addition, the figures reflect all claims relating to individuals. A copy of the data can be found in Appendix 1 at the end of this paper.

The data provided is difficult to compare and analyse as a result of the nature of the figures. The data for claims settled contains a time lag and as such it is not possible to conduct a year on year analysis.

In addition the data available on third party capture is quite limited. A number of groups were contacted, including the Law Society for Northern Ireland, CCNI and the Association of Personal Injury Lawyers (APIL) and it was found that there was little or no data on third party capture. As such it is not possible to provide an analysis of CRU statistics against the level of third party capture in order to ascertain any correlation between the two pieces of data.

⁴ Department for Social Development Compensation Recovery Unit February 2008 Recovery of Benefits and Health Service Charges <http://www.dsdni.gov.uk/z1.doc> (First accessed 10/06/2010)

However, what information is available on third party capture and which could be found is discussed below.

In 2006 Frontier Economics was commissioned by the ABI to provide an independent evaluation of the outcome for consumers when legally and not legally represented in personal injury claims. The report examined information from over 100,000 personal injury claims⁵. Of these, 88% were motor claims, 10% employer's liability and 2% public liability.

Frontier Economics identified that of the personal injury claims examined, 76% were represented by solicitors and 24% were not.

The report found that, on average, for all three claim types the data provided did not support a link between legal representation and higher compensation awards.

When the three types of data collected are considered individually:

there appears to be no empirical link, on average, between compensation received by represented and unrepresented individuals⁶.

This suggests that a claimant asking for an average settlement will receive it, whether they have representation from a solicitor or not. In situations where a claimant is receiving representation the case also appears to last longer.

Using a simple analysis of the averages of compensation reviewed by represented and unrepresented claimants, Frontier Economics found that unrepresented claimants do better on average than represented claimants. They also found that it took an average of 95 days longer for a claim to be processed for representative claimants. See table 2 below for a copy of the findings.

This would initially suggest that claimants will receive a higher payment quicker without representation. On a closer examination once the claims are split into their three component parts it is found that the difference in payments for a motor vehicle accident is only £85 pounds although there is still a significant delay in the length of time it takes to get processed (90 days).

For employer and public liability claims the differences are much more significant with employers liability claims £666 higher for unrepresented claimants and Public Liability claims £607 higher if a claimant has a solicitor.

This suggests that the benefits of being represented or unrepresented vary according to the type of claim which is being made.

⁵ Frontier Economics July 2006 Outcomes for legally represented and unrepresented claimants in personal injury compensation.

⁶ Ibid

Table 2: Average Differences for all Claims above £1000⁷

	Represented	Unrepresented	Difference
Net Compensation	£5,477	£5,766	-£289
Lifecycle (days)	598	503	95

Frontier Economics went on to carry out a more detailed statistic analysis which further backed up the findings of the investigation. It states:

Formal statistical analysis confirms the findings from the averages:

- *Legally represented claims are, on average over the entire sample, not associated with higher compensation payments, indicated by the negative regression coefficients.*
- *Only in the case of public liability claims is legal representation associated with higher net compensation.*

The study also found that, on average, the size of legal costs is more than half the size of the compensation. Depending on the definition of compensation the relative size of legal cost varies⁸.

Limiting the comparison to personal injury compensation (i.e. removing bent metal and property damage compensation) results in legal costs that are, on average, about 85% of the size of the injury compensation payment, for claims between £1,000 and £25,000.

This is significant when taking into consideration the argument that a large portion of premium costs is a result of the high cost of legal representation during the claim process. It must be noted however that for claims that amount to more than £1,000 the legal fees are paid for by the insurance company, not the claimant⁹.

⁷ Please note, the Frontier Economics report did not take into consideration claims below £1000 as insurance companies are not responsible for paying court costs.

⁸ Frontier Economics July 2006 Outcomes for legally represented and unrepresented claimants in personal injury compensation.

⁹ Ibid

Figure 1: Claimant’s legal costs as % share of personal injury compensation

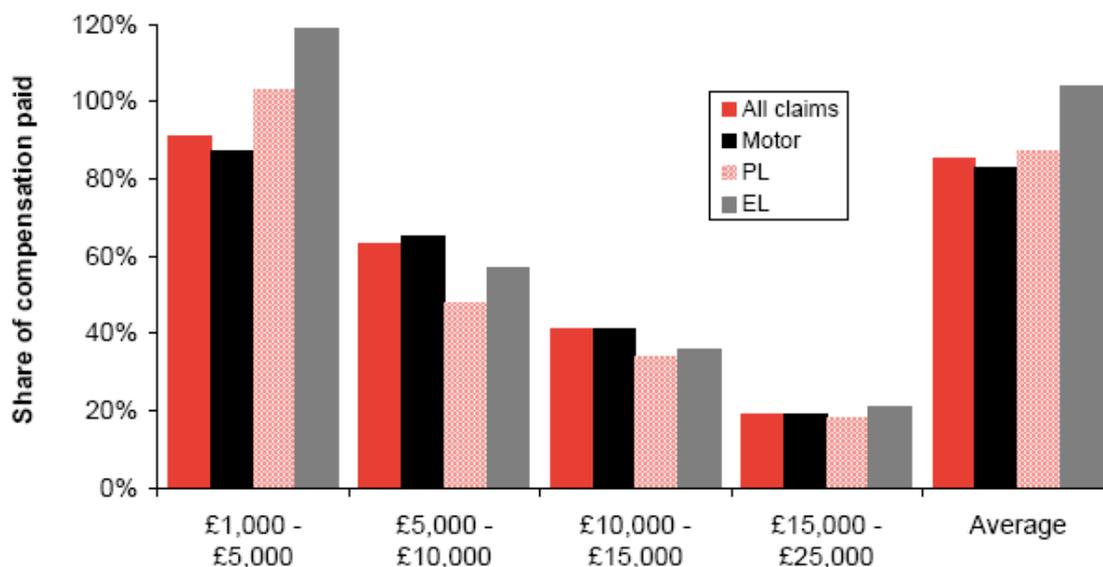


Table 3 below highlights that for a claim of £1,000 to £5,000, as much as 87% can be legal costs and that this amount reduces as the claim figure rises.

Table 3: Claimants legal costs as share of personal injury compensation

	All claims	Motor	Public liability	Employer’s liability
£1,000 - £5,000	91%	87%	103%	119%
£5,000 - £10,000	63%	65%	48%	57%
£10,000 - £15,000	41%	41%	34%	36%
£15,000 - £25,000	19%	19%	18%	21%
Average	85%	83%	87%	104%

Note: the £15,000 to £25,000 band contains very few observations because it requires personal injury compensation to have exceeded £15,000.

However, it must be noted that the Frontier Economics report examines a very narrow area within a complicated industry and fails to take into account a number of important factors such as severity of underlying injury, type of claim, legal representation and the demographics of the claimant. As this is a highly complicated area, care should therefore be taken in drawing conclusions from the results. A number of other studies into the cost of insurance have highlighted these factors as having a significant impact on premiums¹⁰ and insurance claims.

¹⁰ Including Europe Economics, November 2009 Retail Insurance Market Study, The Automobile Association October 2009 AA Quarterly Insurance Premium Index http://www.theaa.com/motoring_advice/news/aa-british-insurance-premium-index-oct09.pdf and Consumer Council for Northern Ireland March 2009 Quote...Unquote – The Cost of Insurance in Northern Ireland

Indeed, Frontier Economics itself states that the report...:

...represents a starting point using data available on corporate management information systems¹¹.

A report by the Law Society of Northern Ireland (LSNI) regarding third party capture was published in August 2009¹².

In order to gather data for the report the LSNI asked members to provide evidence regarding third party capture. It did this through requests for information in two publications – the ‘e-former’ and ‘The Writ’, the LSNI periodical journal.

The report notes that as its data source was via solicitor firms, the results only reflect cases where an injured party has received legal representation at some point during negotiations with an insurer.

In total the LSNI received written submissions from twenty firms with forty cases focussed on as part of the report.

The information provided by the LSNI is qualitative, with examples given of people who have been approached by insurers following an accident and being offered compensation. In all cases the individual subsequently contacted a solicitor who took over negotiations with insurers. In a number of examples cited this resulted in significantly higher compensation payments than those previously offered.

In broad terms the study found that insurers were:

- Misleading injured parties;
- Approaching injured parties when they are in a vulnerable position;
- Impacting on an individuals right to legal representation;
- Undermining the importance of medical evidence;
- Approaching minors; and
- Lacking compliance with Compensation Recovery regulations.

The LSNI concludes by making a number of recommendations including: requesting a full investigation into the impact of third party capture; recommending that compensators be placed under a legal obligation to inform injured parties in writing of their right to consult with an independent legal representative of their own choosing;

¹¹ Frontier Economics July 2006 Outcomes for legally represented and unrepresented claimants in personal injury compensation.

¹² Law Society of NI, August 2009 Report into Third Party Capture

and that compensators be placed under a legal obligation not to initiate direct contact with an injured party until ten days following an accident¹³.

The FSA¹⁴ also explored the issue of third party capture and produced a factsheet for senior management and staff of insurance firms involved in the practice. As part of this the FSA examined the issues surrounding third party capture and found that:

- of the total motor and employers liability claims insurers dealt with, only a small proportion were settled by the insurer directly with an unrepresented third party;
- most insurers had processes aiming to safeguard the interests of vulnerable third parties, for examples minors or those with complex injuries;
- the data the FSA gathered was inconclusive in determining if unrepresentative third parties may have achieved higher compensation if they had legal representation; and
- some insurers do not track their own activities in this area and the standards of record keeping in relation to offers being made and accepted vary significantly.

The FSA concluded that:

Although an insurer approaching third parties directly to settle claims does not necessarily cause detriment, there is a risk that in some cases third parties may settle directly with an insurer without considering all of their options.

Summary

There is a distinct lack of data regarding the prevalence of third party capture as a practice amongst insurers. This makes it difficult to assess its level amongst existing compensation claims.

APIL and The Motor Accident Solicitors Society (MASS) have initiated a more in-depth inquiry into third party capture¹⁵, requesting members to forward any examples they have of the practice. However this only began in May 2010 and as such will not be completed for a number of months.

Based on the reports discussed above and the lack of quantitative data, significant additional research is needed in order to identify how prevalent third party capture is and its effects, in terms of whether or not it reduces insurance premiums, how it affects profit, for insurers and, importantly, its impact on claimants and third parties.

¹³ A full list of recommendations from the Law Society report can be found at

¹⁴ Financial Services Authority Third-party capture – what you need to consider www.fsa.gov.uk/pubs/other/third_party_capture.pdf (first accessed 01/06/2010)

¹⁵ Law Society Gazette 13 May 2010 PI lawyers asked to report 'foul play' by Insurers <http://www.lawgazette.co.uk/news/pi-lawyers-asked-report-foul-play-insurers> (first accessed 08/06/2010)

Appendix 1: CRU data received from the Department for Social Development

CRU (NI) RTA Statistics from 1 April 2000 – 31 March 2009

	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	Grand Total
Claims Received	25,575	24,813	22,719	19,473	18,012	17,423	16,482	16,138	17,207	177,842
Claims Settled	Not available	Not available	31,586	23,038	20,677	17,293	15,216	14,337	13,488	135,635
Benefit Recoveries	Not available	£2,972,351	£2,971,257	£3,090,007	£2,445,602	£2,582,977	£3,496,204	£2,770,695	£2,833,308	£23,162,404
NHS Recoveries	Not available	£606,930	£3,461,501	£4,584,884	£4,953,538	£5,833,242	£5,568,896	£5,836,523	£6,257,547	£37,103,063

Notes:

This table covers all Road Traffic Accident (RTA) cases. Please note that these figures differ from those given by GB for NI, as the stats GB provided related only to those cases where accidents were reported to the PSNI, whereas the above figures include all claims relating to individuals.

For those categories contained within the 2000/01 and 2001/02 years where it is detailed data "not available" this is due to the relevant Recovery Legislation not having been in place at that time.