

Recent legislation and its effects on insurance policy liability

Birmingham Insurance and Financial Services Conference
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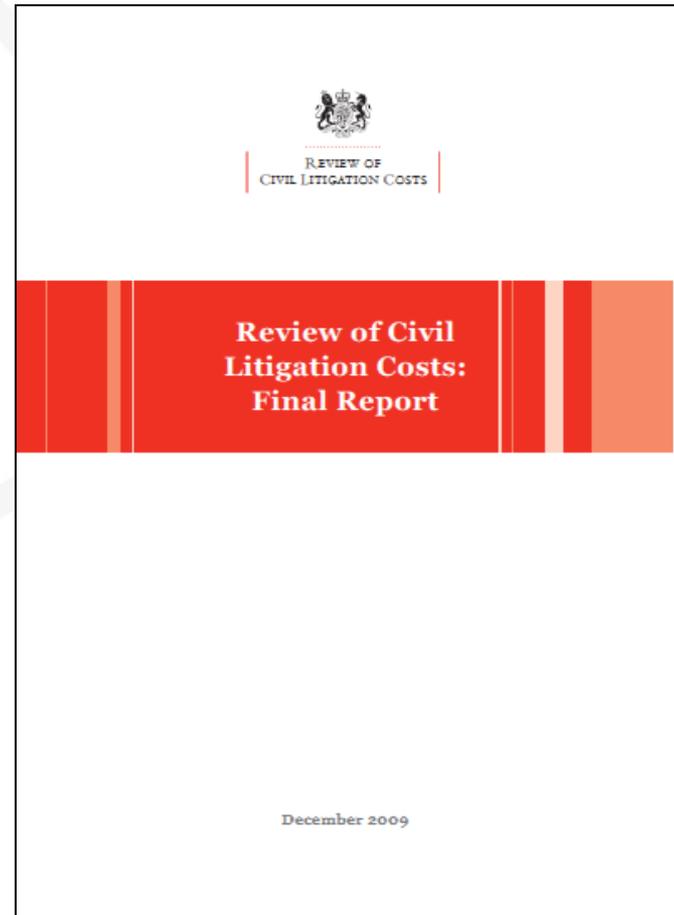
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1. LEGAL AID SENTENCING & PUNISHMENT OF OFFENDERS ACT 2012

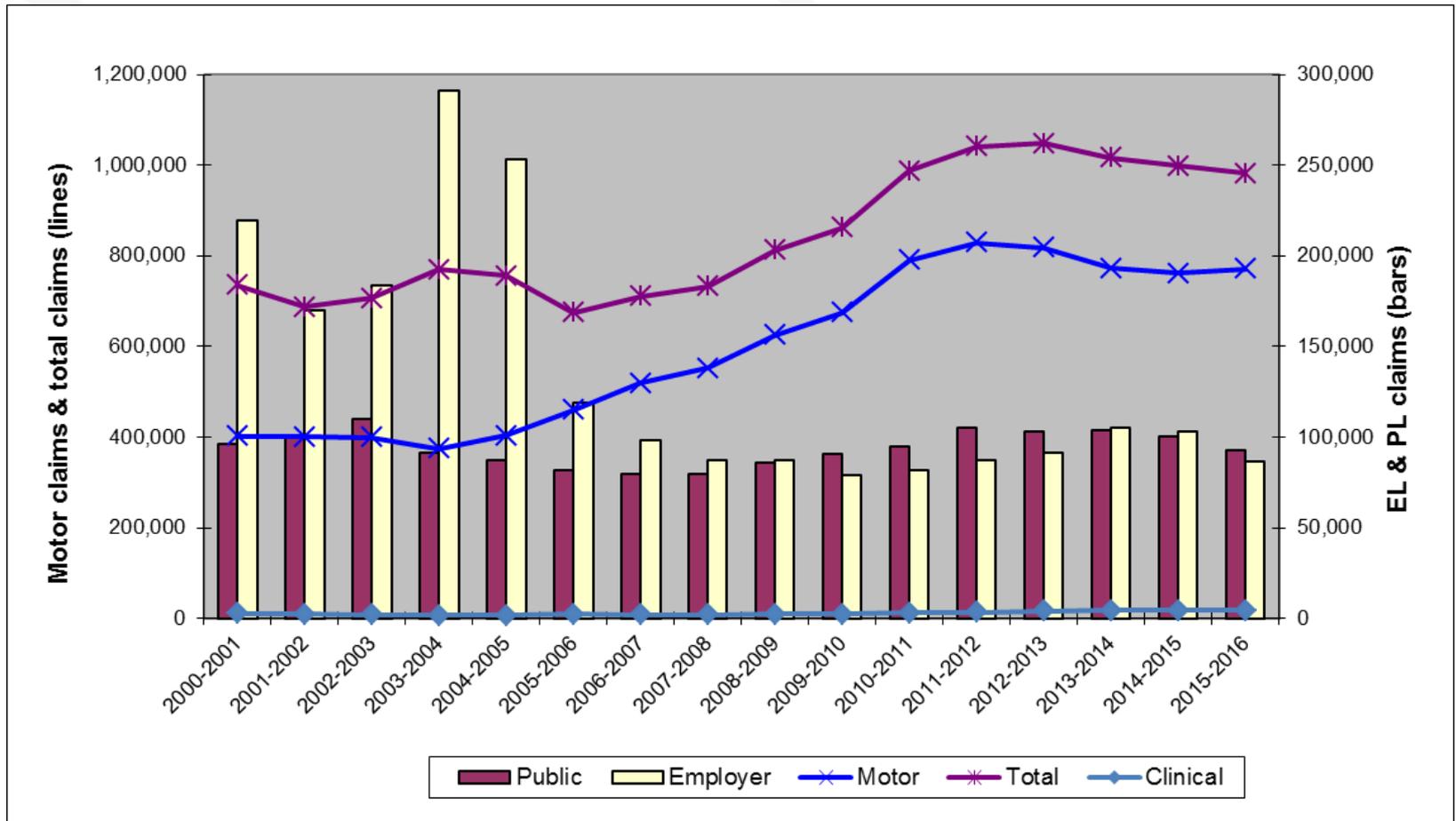


- ▶ CFAs
- ▶ ATEs
- ▶ DBAs
- ▶ referral fees
- ▶ QOCS

- ▶ fixed recoverable costs



numbers of personal injury claims notified

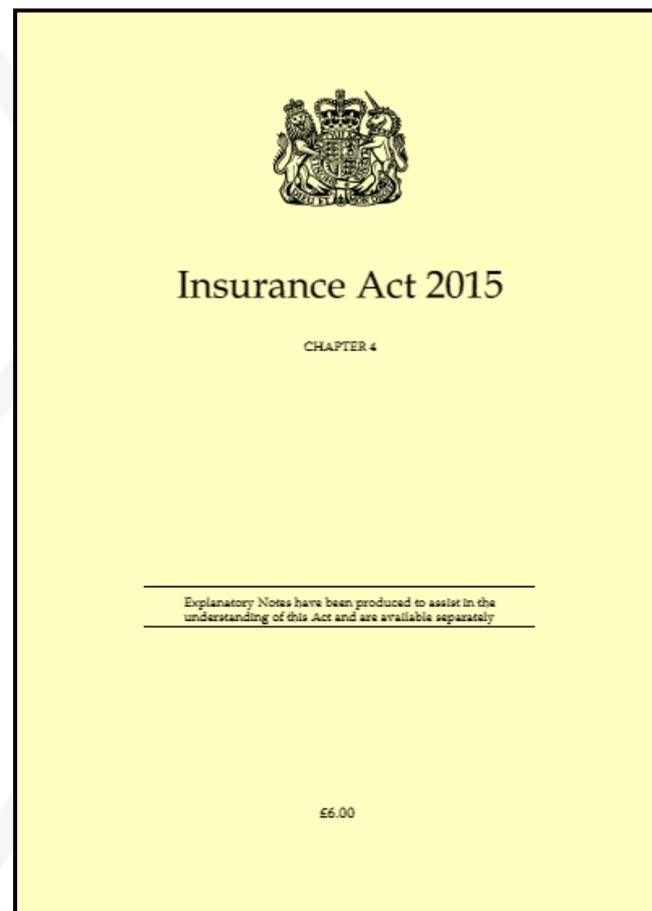


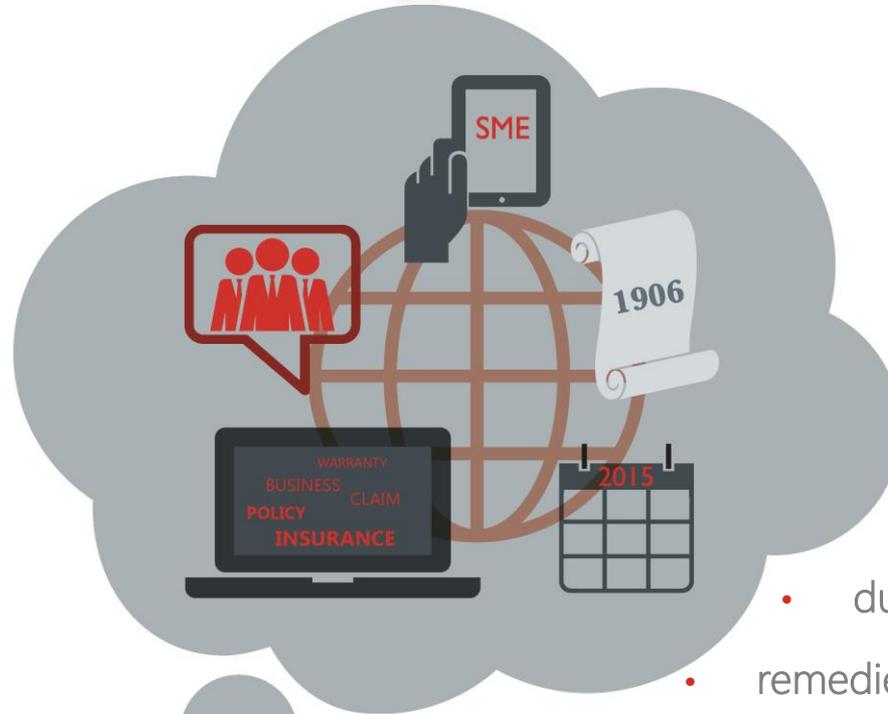
2. INSURANCE ACT 2015



“An Act to make new provision about insurance contracts; to amend the Third Parties (Rights against Insurers) Act 2010 in relation to the insured persons to whom that Act applies; and for connected purposes.”

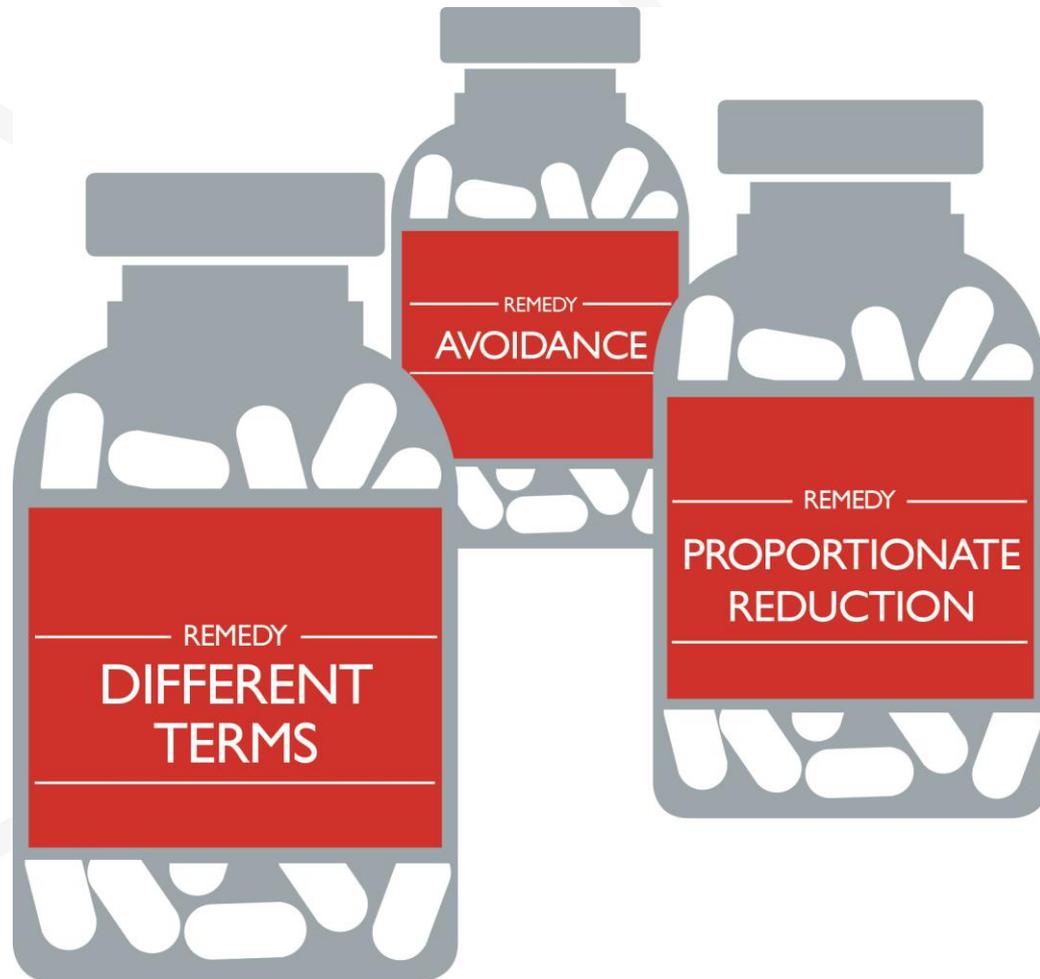
[12th February 2015]



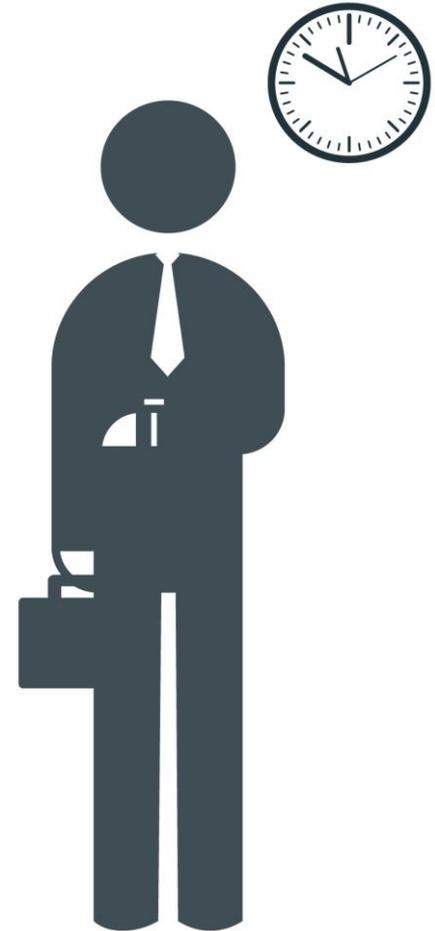


- duty of fair presentation
- remedies for breach
- warranties
- late payment
- contracting out

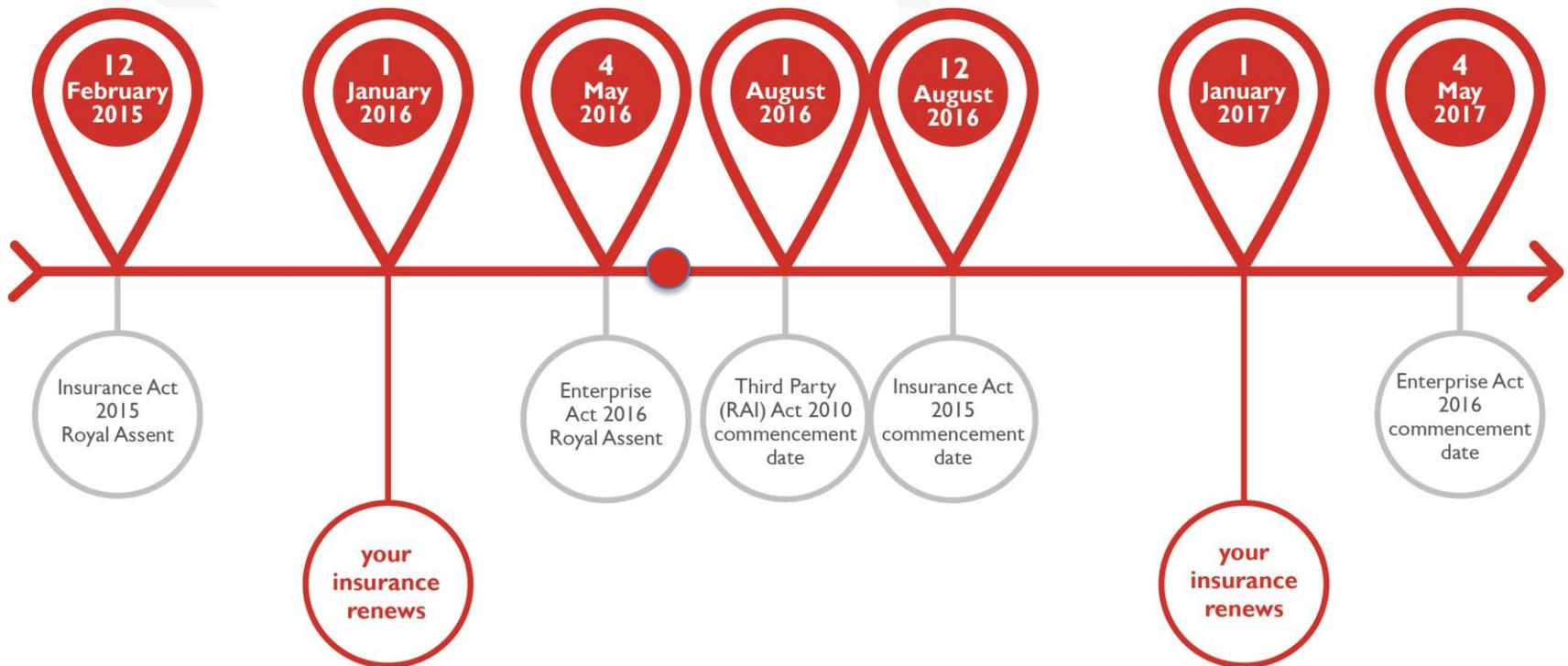
duty of fair presentation & remedies for breach



warranties, late payment of claims



3. ENTERPRISE ACT 2016



4. MOTOR INSURANCE LEGISLATION

- ▶ DEREGULATION ACT 2015 s9
- ▶ MID becomes the record of cover, no need to chase certificate when cancelling (but on risk until MID amended)
- ▶ ROAD TRAFFIC ACT 1988 s143(1)(a)
 - ▶ *"a person must not **use** a motor vehicle on a road or other public place unless there is in force in relation to the use of the vehicle by that person such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part of this Act"*
- ▶ MODERN TRANSPORT BILL?



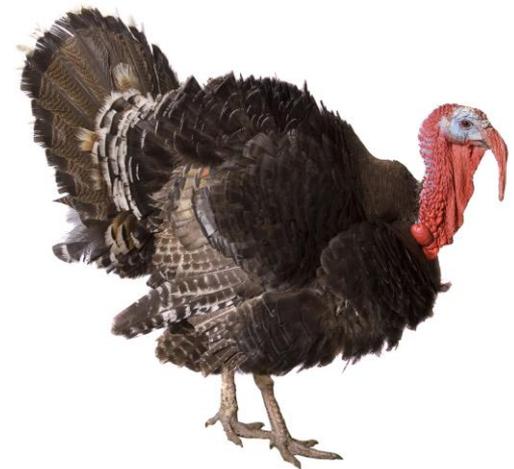
5. SARAH 2015



SOCIAL ACTION, RESPONSIBILITY AND HEROISM ACT 2015

- ▶ The court must have regard to whether the alleged negligence or breach of statutory duty occurred when the person
 - ▶ was acting for the benefit of society or any of its members (s2)
 - ▶ demonstrated a predominantly responsible approach towards protecting the safety or other interests of others (s3)
 - ▶ was acting heroically by intervening in an emergency to assist an individual in danger (s4)
- ▶ *"This always was and it remains the most ridiculous piece of legislation approved by Parliament in a very long time ... a text that would barely muster a pass mark in GCSE legal studies, if there is such a thing."*

Lord Pannick QC, House of Lords, 4 November 2014



Sir John Major: Brexit campaign is squalid and dishonest

Written by: **Kevin Schofield** Posted On: **5th June 2016**

Sir John Major today launched a furious attack on the "squalid" campaign to take Britain out of the European Union.



Caption: **Sir John Major arrive at the BBC this morning** | Credit: **PA Images**

The former Prime Minister accused Brexiteers of lying to voters by conducting a "fundamentally dishonest" bid to secure a Leave vote on 23 June.

Appearing on the BBC's Andrew Marr Show, the Conservative grandee also claimed leaving the EU would amount to playing "Russian Roulette" with the UK's future.

57 Personal injury claims: cases of fundamental dishonesty

- (1) This section applies where, in proceedings on a claim for damages in respect of personal injury (“the primary claim”)
 - (a) the court finds that the claimant is entitled to damages in respect of the claim, but
 - (b) on an application by the defendant for the dismissal of the claim under this section, the court is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the primary claim or a related claim.
- (2) The court must dismiss the primary claim, unless it is satisfied that the claimant would suffer substantial injustice if the claim were dismissed.
- (3) The duty under subsection (2) includes the dismissal of any element of the primary claim in respect of which the claimant has not been dishonest.



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7. FRAUD issues: shipping and back injuries in the SC



- ▶ *Versloot Dredging v HDI Gerling* (SC hearing in March 2016)

“the fact that forfeiture is a harsh, in some circumstances very harsh, sanction does not mean that it is disproportionate to that aim. The rule is only applicable in the case of fraud, from which no insured should have any difficulty in abstaining. The careless or forgetful insured is not affected, nor is the insured who tells some irrelevant lie or whose lie is not told in order to induce payment.”

- ▶ *Zurich Insurance v Hayward* (SC hearing on 16 June 2016)

“The result is that the settlement in the original action remains binding and the judgment must be set aside. The result is unattractive because it means that the Appellant retains the benefit of a settlement far in excess of the value of his actual loss [sic], though I dare say somewhat reduced by the incidence of costs in these protracted proceedings.”

7. FRAUD issues: autumn statement & task force



3.103 Motor insurance – The government will bring forward measures to reduce the excessive costs arising from *unnecessary* whiplash claims, and expects average savings of £40 to £50 per motor insurance policy to be passed onto customers, including by:

- removing the right to *general damages* for *minor soft tissue injuries*
- removing legal costs by transferring *personal injury claims* of up to £5,000 to the small claims court

HM Treasury, Autumn Statement,
25 November 2015



7. FRAUD issues: autumn statement & task force

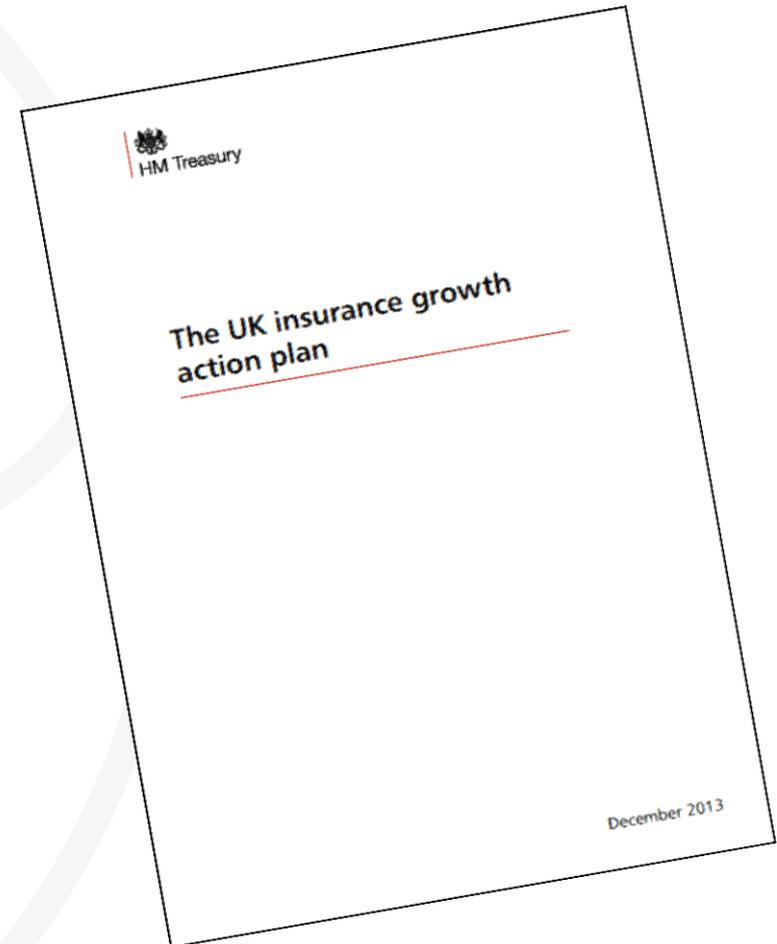


The [Insurance Fraud Task Force] report highlighted **the particular problem of fraud in relation to low value personal injury claims** and the Government has established a programme of reforms in this area, **particularly in respect of whiplash claims**. We are pleased that the report's recommendations reflect and support that reform programme. **The Government accepts each of the recommendations** addressed to it and we will set out in due course how we propose to implement them. However, **there needs to be a concerted effort by all those involved in the insurance process to tackle this serious problem**, which is estimated to cost policyholders up to £50 each per year, and the country more than £3 billion. We therefore expect organisations tasked with taking forward recommendations to do so with urgency. The Government will do what it can to assist and, in order to make sure that all of the recommendations are actively pursued, we will seek an update on progress later in the year.

Harriet Baldwin MP, 26 May 2016



- ▶ a period of sustained legislative change for insurance law, claims and costs
- ▶ more to come, in Statute & practical policy administration / claims handling
- ▶ key challenges in Autumn Statement 2015 (small claims and whiplash) will raise serious reputational issues





CLEAR ► CONCISE ► CONNECTED