

By Email Only

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Our Ref: MJB/SJC
Your Ref:

15 August 2012

Dear Ms Ellman

**Transport Select Committee report "Cost of Motor Insurance: Whiplash"
(HC 117, published 31 July 2013)**

Berrymans Lace Mawer is an insurance litigation law firm which acts for many leading motor insurers. The firm comprises around 162 partners and 1450 staff and approximately 25% of our £85m turn over for 2012/13 was derived from defending motor claims. We have 153 people working in our office at Castle Chambers L2, in your Liverpool Riverside constituency.

Given the basis of our practice, we have followed the Select Committee's enquiries into motor insurance very closely. We note that the recent report refers (at paragraphs 55 - 58) to the 2012 Supreme Court case of *Summers v Fairclough Homes*. That case, which was handled by my partner David Spencer, turned on whether the courts should strike out entirely a claim which had been tainted by substantial fraudulent exaggeration.

We fully support your recommendation that "*the Ministry of Justice should give its view on the issues involved in limiting the right to compensation where it can be shown that a claim is grossly exaggerated.*" This is not an easy point, as the judgment shows and as is evident from the examination of the case by your Committee. *Summers* is a Supreme Court decision and hence the end of that line - there is no prospect of further judicial activity. The legislative route would thus appear to be the only realistic path to change, as your report indicates.

It is our view that the legal issues raised, which are captured in the Committee's recommendation quoted above, would be well-suited to independent examination by the Law Commission possibly in conjunction with, or as part of, the Ministry's response to your recommendation. It happens that the Law Commission is currently seeking proposals for areas of the law that it might examine in its next (twelfth) programme of law reform (<http://lawcommission.justice.gov.uk/consultations/2441.htm>). It has requested that ideas are submitted by the end of October.

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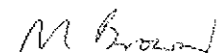
We think the Commission should fully examine the case for legislative change regarding substantially fraudulent third party claims. The timing of the Commission's call for ideas may well be helpful, as it coincides with the period during which a formal response is expected to your Committee's recommendations in the whiplash report. Passing this topic to the Commission would not be consigning it to 'the long grass': any examination could be time-limited to ensure that momentum for reform is preserved.

I wanted to bring all of this to your attention and to let you know that we will quote your Committee's recent recommendation in support of our submission to the Commission proposing that it should review this topic. It is also worth mentioning that the Commission is nearing the end of a major project of insurance law reform, with a report and draft legislation expected to be published by the end of this year. It seems to us entirely possible that any legislative recommendations on the point at hand could be accommodated in the draft Bill emerging from that wider work.

David Spencer and I would be pleased to meet you and/or other members of the Committee and its secretariat to discuss any of the matters raised here in greater detail. We very much look forward to hearing from you after the summer break.

Kind regards

Yours sincerely



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