

The Whiplash Reforms

October 2020



UNCOMMONLY INDEPENDENT

The Civil Liability Act 2018 (CLA 2018) was enacted in December 2018 to great fanfare. The legislation included, amongst a host of other changes, headline grabbing reforms to the civil justice system including the imposition of a tariffs for compensation in whiplash claims and an increase to the small claims track limit.

The fundamental idea of these reforms is to decrease the cost of motor claims for all and finally bring an end to decades of what has been described as a 'whiplash epidemic'.

The reforms however have been the subject of persistent delay and repeatedly postponed implementation. The changes were initially supposed to become law on 6th April 2020, however due to the need for further time to ensure that the system was ready to go live, the Lord Chancellor Robert Buckland, pushed the date back to

1st August 2020. Further delays then arose (not least as a result of the COVID-19 pandemic), leading to the date being pushed back even further to April 2021.

The reforms are still very much on the government's agenda, the Ministry of justice (MoJ) noting that they remain 'firmly committed', and so seemingly it is a question of when, not if, they will be rolled out. When finally implemented they will undoubtedly be welcomed by a myriad of insureds hoping to see associated reductions in their motor policy premiums.

Overview of Key Motor Related Reforms

Whiplash Tariffs

At present, the value of whiplash claims are assessed by comparative reference between the type and severity of the injury (as set out in a medical report) to quantum reports (i.e. Court judgments in respect of other whiplash claims) and the Judicial College (JC) guidelines, which sets out value bands against which different claims are assessed.

The tariffs established by the CLA 2018 will see the average cost of minor whiplash claims (where symptoms last for up to two years) drop by around three quarters as shown in the table below:

Injury Duration (Months)	Maximum Award (JC Guidelines 14th Ed.)	Tariff Amount	Value Change	% Change
0-3	£2,150	£225	£1,925	-90%
4-6	£3,810	£450	£3,360	-88%
7-9	£3,810	£765	£3,045	-80%
10-12	£3,810	£1,190	£2,620	-69%
13-15	£6,920	£1,820	£5,100	-74%
16-18	£6,920	£2,660	£4,260	-62%
19-24	£6,920	£3,725	£3,195	-46%

These tariffs will also include any claims for minor psychological injuries, with the MoJ setting out that:

“The government accepts that the definition should not cover more serious psychological illnesses, for example, depression and post-traumatic stress disorder, which are diagnosable using international standards. The government therefore proposes to limit the scope of this measure to minor psychological injuries, such as ‘travel anxiety’ and ‘shock’.”

Concerns are therefore rife that the Claimant personal injury sector will look to diversify claims to include other injuries not addressed by the legislation. To what extent these concerns are justified will of course not be seen until the reforms are operational.

Expansion of the Small Claims Track

The Small Claims Track is a Court procedure that operates in English and Welsh Civil courts. Essentially it is designed for low value claims (in which the amount sought is less than £10k for property damage, and less than £1k for personal injury). The process is designed to be simple and undertaken without legal representation, although in reality many participants do often have a solicitor or barrister acting on their behalf. Unlike larger claims, those pursued in the small claims track do not come with an entitlement to broad legal costs recovery. So, in other words, if you win your claim you cannot generally recover much of your lawyers’ fees from the at-fault party.

The Small Claims Track has to date had a limited application in personal injury motor claims because most injuries are valued in excess of the £1k limit. However, the package of reforms that will come with the CLA 2018 seeks to change that by increasing the limit for personal injury to £5k, the MoJ noting that:

“The government is of the view that low-value personal injury claims are not so complex as to routinely require a lawyer. Raising the small claims limit to cover PSLA claims of up to £5,000 will not preclude claimants from engaging legal representation, but would mean that they would in future be responsible for paying for their own legal costs if they so choose.”

This will mean that most whiplash claims will fall into this procedure and that a Claimant’s ability to seek significant legal costs in addition to their compensation will be significantly curtailed. A large increase in unrepresented Claimants is expected. This may serve to elongate claims but should, at least in theory, further reduce the cost of whiplash claims and motor insurance premiums.

Vulnerable and Protected Road Users

After a backlash from various groups, the Chancellor confirmed in February 2020 that:

“The increase in the small claims track limit will not apply to those who have been termed ‘vulnerable road-users’, for example, motor-cyclists, cyclists and pedestrians, and who in any event will not subject our whiplash tariff provisions.”

Furthermore, it was confirmed that the increase in the small claims limit with regards to children or legally protected parties would not change. This is not surprising as the settlement of claims pursued on behalf of such Claimants requires specific judicial approval to ensure that their claims are concluded appropriately.

Banning of Pre-Medical Offers

The reforms will see settlement offers made without a supporting medical report banned in England and Wales. This is a relatively common practice where injuries are minor and is seen by insurers as an opportunity for avoiding the costs of instructing a medical expert.

However the practice has been widely criticised for promoting fraud, with Claimants potentially being able to recover for injuries that they have allegedly sustained but which have not been proven by objective assessment by a medical expert.

Official Injury Claim & Litigants in Person

To support the reforms the Motor Insurers Bureau (MIB) was also tasked with implementing a new online system to encourage individuals to pursue their claims electronically using a web based system called ‘Official Injury Claim’ (<https://www.officialinjuryclaim.org.uk/>).

The portal will be accessible for anyone who wishes to pursue an injury claim of a value up to £5,000 (to a maximum total of £10,000 for all losses) without needing any legal support. Whilst the system is intended for litigants in person, it would appear that claimant representatives will also be able to register as users. Full details of the system are yet to be released and many questions remain outstanding, however what would appear certain is that claim costs will fall when the system finally becomes operational.

If you have any questions on the Whiplash reforms please contact:



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