

Whiplash reforms: an overview of the recent changes

By Adrian Smith & James Stonehouse

This month one of the most anticipated pieces of legislation of recent years came into force. First proposed by George Osbourne in 2015, dramatic reforms to the personal injury sector have survived two general elections and a global pandemic to finally become enacted by the Civil Liability Act 2018. With the stated aim of tackling fraud, whether or not the Government's whiplash reform programme can be welcomed by motorists as achieving the stated £30 average savings on their premiums remains to be seen.¹

This article examines the key elements of the reforms.

The Civil Liability Act 2018 together with The Whiplash Injury Regulations 2021 and The Civil Procedure (Amendment No. 2) Rules 2021, bring significant changes to the way claims for personal injury arising out of road traffic accidents are brought and compensated. The changes apply to all cases arising out of accidents occurring after 31 May 2021. A 'tariff' will now apply to the valuation of whiplash injury claims, in place of the JC Guidelines, and the scope of the small claims track has been increased to include claims for personal injury up to £5,000. The changes have also brought a new portal to manage the relevant claims pre-issue.

The changes do not apply to vulnerable road users, defined as pedestrians, wheelchair users, cyclists, horse riders and motorcyclists and their passengers.² Infant claims are subject to the tariff but not the costs limitation and the current exceptions for deceased parties, bankrupts and accidents involving vehicles registered outside the UK are preserved.

It is to be noted that the new regime applies only to personal injury claims, such that claims for vehicle-related damage will be dealt with outside the protocol, although claims for rehabilitative treatment will fall to be dealt with under the protocol as 'injury-related damages.'

A major aspect of the new regime is that (given the limited costs that can be recovered) injured Claimants are encouraged to act in person. There has been some early indication that the system may be more difficult for litigants in person to use than may be seen as desirable.³

Unless a respondent (eg, third party insurer) responds to a claim on the Portal within 30 days (40 in the case of the MIB), liability is deemed to be admitted. An admission is binding on the insurer in respect of any claim for personal injury but not in respect of any credit hire or repair claim. However, any such hire or repair claim must be included in any proceedings when issued, at which stage any Portal admission will, in fact, be binding on the respondent.

In the event that liability is disputed, a litigant can elect to issue proceedings without first obtaining a medical report, in order to obtain a decision of the Court on the issue of liability.

A causation or fraud-related allegation can be raised at any stage, whereupon the claim will exit the Portal. However, if breach of duty is admitted within 30 days but there is no admission that any injury was sustained by the Claimant, the matter will remain in the Portal and provision is made for the reporting expert to comment on issues of causation.

If following receipt of medical evidence causation remains in dispute, the claim will exit the Portal and the claimant may abandon the claim or issue proceedings, which are likely to be allocated to the fast track.

¹ *Reforming the Soft Tissue Injury ('whiplash' Claims Process: Impact Assessment*
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/581388/whiplash-impact-assessment.pdf

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/965270/cpr-pap-update-feb-2021.pdf

³ https://www.lawgazette.co.uk/news/key-questions-remain-over-new-claims-portal/5108687.article?utm_source=gazette_newsletter&utm_medium=email&utm_campaign=Claims+portal+confusion+%7c+Court+order+forger+jailed+%7c+%27Victims+in+limbo%27_06%2f01%2f2021

A striking element of the reforms is the introduction of a tariff for whiplash injuries. A whiplash injury is defined by section 1 of the 2018 Act as “a sprain, strain, tear, rupture or lesser damage of a muscle, tendon or ligament in the neck, back or shoulder,” or “an injury of soft tissue associated with a muscle, tendon or ligament in the neck, back or shoulder.”

The tariff as provided for by the 2021 Regulations is as follows:

Duration of injury	Amount – Regulation 2(1)(a)	Amount – Regulation 2(1)(b)
Not more than 3 months	£240	£260
More than 3 months, but not more than 6 months	£495	£520
More than 6 months, but not more than 9 months	£840	£895
More than 9 months, but not more than 12 months	£1,320	£1,390
More than 12 months, but not more than 15 months	£2,040	£2,125
More than 15 months, but not more than 18 months	£3,005	£3,100
More than 18 months, but not more than 24 months	£4,215	£4,345

Provision is made for the figures shown above to be uplifted by up to 20% in exceptional circumstances.

It is important to reiterate that any outstanding claim for vehicle repair and hire charges will need to be added to the portal claim before any proceedings are issued, although it remains to be seen the extent to which litigants in person will be alert to the need to include such ‘non-protocol vehicle costs’ in their Portal claim. A failure to include any such claim “may mean that any claim for non-protocol vehicle costs is not considered by the court and the claimant’s right to bring any such claim may be affected.”⁴

It remains to be seen how the new rules will impact the industry and how many claims will be taken through the new portal system. Certainly, there will continue be a relatively lengthy run-off of cases concerning accidents that pre-date the changes, affording practitioners some time to adjust to the new landscape.

⁴ See *Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents*, para 11.1

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Both Adrian and James have extensive experience in the area of Personal Injury Law and are available for instruction via 25CSC. Please email clerks@25csc.co.uk or call us on 0207 889 2525 for further information.