

Whiplash Reforms

To be implemented on the 31st May 2021

What does this mean for motor customers?

As part of our commitment to bring you the latest news on the whiplash reforms, we have put together a briefing note to provide you with an update on the changes taking place on the 31st May 2021.

What is it all about?

- A package of measures introduced by the Government to reform the way low-value third-party personal injury claims, arising from road-traffic accidents (RTA), are managed
- Aiming to combat the growing compensation culture, reduce fraud and opportunistic claims, and ensure any savings for the insurance industry are passed to consumers through reduced premiums
- Designed to “reduce insurance costs for ordinary motorists by tackling the continuing high number and cost of whiplash claims”*

Application of reforms

- Will only apply to England and Wales jurisdiction
- Will apply to claims arising out of accidents on or after the implementation date
- Existing claims, or new claims notified with an accident prior to this date, will continue to be subject to historical position and legal processes
- New fixed tariffs of damages for whiplash where the injury prognosis is up to 2 years
- Ban on pre-medical settlements where there is whiplash
- RTA small claims track limit increase to £5,000 for PSLA awards (pain, suffering, loss of amenity)

Fixed Tariff

New fixed tariffs of damages for whiplash with injury prognosis up to 2 years

- For these claims, the whiplash definition is soft tissue injury to neck, back or shoulder
- No minimum period – a claim could be made for symptoms lasting one day
- Exceptional uplift of up to 20% of tariff figure can be awarded if an injury was exceptionally severe or where there are exceptional circumstances that have had an impact on PSLA
- Will not include additional minor physical injuries that can occur alongside whiplash – these will be subject to separate awards
- Will apply where the claimant is in a motor vehicle other than a motorcycle
- Excludes pedestrians, cyclists and motorcyclists

*Source: Ministry of Justice

Whiplash regulations – tariffs for whiplash-only or whiplash plus minor psychological injuries

Duration of injury	Regulation 2(1)(a) for whiplash only Amount:	Regulation 2(1)(a) for whiplash plus minor psychological injuries Amount:
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

RTA small claims track (SCT) limit increase to £5,000 from £1,000

- Increase from £1,000 to £5,000 for PSLA award on RTA injury claims while the current ceiling limit of £10,000 is maintained, inclusive of specials
 - SCT third-party legal costs not recoverable
 - Reasonable disbursements will be recoverable, e.g. medical report fee, court issue fee
 - Includes introduction of a new SCT portal for represented and unrepresented claimants – Official Injury Claims portal (**OIC**)
 - New civil procedure rules – “The RTA small claims protocol”
- Exclusions:
- Vulnerable road users – cyclists, pedestrians or motorcyclists. The SCT limit remains at £1,000 for PSLA for these claimants
 - Minors are currently excluded from this increase – consideration is expected at a later date
 - No SCT for minor claims, even if value is lower than the historic limit of £1,000

Additional points for consideration

Whiplash tariff

The impact of this on average claim costs is expected to be favourable, with reduced damages paid for whiplash:

- E.g. a whiplash-only claim with a 12 month prognosis will be awarded £1,390, compared to a current industry average of around £3,100

However, there are risks which may impact what level of reduction we see.

Additional minor injuries

These previously had minimal impact on overall damages as they were included within the agreed whiplash settlement. There is no clear guidance on how these should be valued going forward, with this to be resolved over time as we see the court approach and possible test cases to the Court of Appeal. In the interim we are likely to see a push for Judicial College guidelines awards. For example, while a 3 month whiplash injury would be worth **£240** on the tariff, a 3 month bruised elbow could be worth £2,300 based on Judicial College guidelines.

Psychological injuries

Although a new definition of whiplash is provided for the tariff, a definition of a minor psychological injury is not provided.

Prognosis creep

We could see longer whiplash prognosis periods as claimants attempt to get higher tariff awards.

SCT limit increase

We should see a reduction in average claim costs but there are risks which may reduce the level of reduction seen:

- We could see an increase in vulnerable user or minor claims as these are still a cost revenue opportunity for claimant solicitors
- Certain claimant entities may still attempt to drive value of the claim above the SCT limit

Are there any changes that directly affect the customer?

Liability decisions:

Insurer will have **30 working days** from receipt of small claims notification form to provide a decision on liability:

- Includes cases where repudiation is likely
- Much shorter timeframe than the current 3 month period for investigations/repudiation
- Non-entry of decisions within the timeframe will be deemed as full admission

Evidence:

The insurer will have 30 days to upload the signed version of events and statement of truth:

- For repudiations
- For admission of partial liability
- For provision of other evidence in support

- If insurer repudiates fully and the claimant does not accept this position, the claimant can then proceed to a liability-only litigation hearing. The policyholder is required to attend court
- The defence filed on behalf of the policyholder will be based on the liability response and evidence already provided pre-litigation
- Essential that insurer, broker and policyholder all work together to ensure representation is most effective, submitting and collating all information efficiently within the initial 30 day limit

In cases where the policyholder is found liable at the hearing, the claim does not exit the Official Injury Claims portal (OIC) process but moves back into the process for a medical to be obtained and quantum negotiated. If agreement cannot be reached with the claimant on the value of their claim, the claim could litigate again for a quantum hearing.

In cases where the Insurer partially admits liability, the claims will proceed to medical and liability. If quantum is not agreed, the claim could proceed to litigation for disputed aspects.

What happens in case of suspected or actual fraud?

Fraud or causation issues will not be heard at a SCT hearing. If a claimant continues to pursue a claim where the insurer has previously raised fraud concerns, it will be cost-bearing. The claim will be allocated to fast-track if the claim litigates (or multi-track if it's of a higher value).

Options when the case exits OIC SCT portal

- Insurer can exit the claim at the 30 day timeframe if there are fraud or complex concerns. The claim will move back into the pre-action protocol and given 3 months for investigations to take place
- Insurer can admit liability but raise causation to keep the claim in the OIC SCT process while medical is obtained to review causation further. The policyholder signed version of events is required within the 30 day timeframe where a medical expert will then review. If causation is still raised and the claimant litigates, the case will move from SCT to fast-track litigation with third-party costs recoverable

Key point

These are significant changes being made to how low value RTA injury claims are to be handled. Impact will be closely monitored in terms of benefits and emerging risks.

For further information on the whiplash reforms, please get in touch with Louise Yates at louise.yates@uk.rsagroup.com.