

Whiplash Reforms To Be Implemented With Effect From 31 May 2021 PART 1

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The whiplash reforms contained in the Civil Liability Act 2018, announced by the Government as long ago as November 2015, will at last be implemented with effect from 31 May 2021. The Regulations and changes to the Civil Procedure Rules to support these reforms are published today.

In this article we give an overview of the new small claims (SCT) limit, the tariff and other key measures. The main detail of how the new process will work is in the new RTA Small Claims Protocol and in the new Practice Direction 27B, which are yet to be published. We will be producing an updated version of this alert as soon as these important documents are released, plus a handy summary to help you navigate your way through them.

What is a whiplash injury?

A “whiplash injury” is defined by the Act as *“an injury of soft tissue in the neck, back or shoulder that is... 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 definition does not include *“an injury of soft tissue which is a part of or connected to another injury and the other injury is not an injury of soft tissue in the neck back or shoulder”*.

[Click here](#) to read more.

What is the new SCT limit?

The first major piece of these reforms is in CPR 26.6, which increases the SCT limit for RTA injury claims to **£5,000** for accidents on or after 31 May 2021. This limit applies to the figure for pain, suffering and loss of amenity for the injury alone: the overall SCT limit for the value of all parts of the claim remains at **£10,000**.

For RTAs before 31 May 2021 and for EL/PL accidents and all other injury claims before and after that date, the SCT injury limit remains at **£1,000**. (CPR 26.6)

There are some other exceptions to the new £5,000 limit, these are all categories of cases excluded from the new OIC Portal:

- Whiplash claims for children and others who lack legal capacity (known as “protected parties”) are allocated to the fast track irrespective of value (CPR 26.6B);
- The other exceptions in CPR 26.6A stay in the old SCT injury limit of **£1,000**:
 - Other RTA claims for children or protected parties;
 - Claims involving “vulnerable road users” which are motor cyclists and pillion/sidecar passengers, cyclists, pedestrians, horse riders and those in mobility scooters (these are outside the scope of the whiplash tariffs and settlement controls in any event);
 - Claims where the claimant is an undischarged bankrupt or personal representative of a deceased person;
 - Claims against the personal representatives of deceased persons or drivers of foreign registered vehicles.

How do we value whiplash claims?

The second core ingredient is the setting of tariffs for damages for pain suffering and loss of amenity. There will now be two tariffs: a combined upper one under Reg. 2(1)(b) to include whiplash and minor psychological injuries (not defined) and a simple lower one under Reg. 2(1)(a) where there is no psychological injury.

Duration of injury *	Lower tariff (Reg 2(1)(a))	Upper tariff (Reg 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

* this means the duration of the whiplash injury or, if more than one, the longest in duration

The claimant can also seek an uplift of up to 20% to the tariff amount in “exceptional circumstances”. These are loosely defined as when their whiplash injury is exceptionally severe, or where circumstances seen as exceptional have increased the pain, suffering and loss of amenity caused by their whiplash injuries. The uplift applies to either the lower or upper tariff as claimed, even though the circumstances have to be related to the whiplash injury only.

How do we value other injuries?

Apart from minor psychological injuries, which are covered by the tariffs, any other injury suffered by the claimant will have to be valued as now, under the common law and by reference to the Judicial College Guidelines. The concept of an overlap between a statutory figure for damages (the tariff) and common law damages has never been tested in English law before, so we cannot yet predict how the courts will approach such cases and an early definitive decision is needed on the point, probably from the Court of Appeal.

Do I need to see a medical before we settle?

Any claim for whiplash cannot be settled, or an offer/payment made, without the compensator* seeing a medical report on the whiplash injury. If there are other non-whiplash injuries, no medical report is needed on those, so those aspects of the claim could be the subject of an offer without a medical. Where the tariff covers whiplash and minor psychological injuries, medical evidence does not **have** to cover the psychological injury - but in practice we expect courts not to award the upper tariff if there is no support for the same within the medical evidence.

Uplift again does not **have** to be supported by a medical report, but we do not expect the courts will award an uplift without medical evidence of the exceptional circumstances.

Still to come

Our updated version after publication of the Protocol and PD will include information on cases that fall outside the new Portal and points on costs.

* compensator is the new generic term in the Protocol for insurers, MIB and others paying compensation

For more information or advice, please contact a member of our [motor injury team](#).

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