

Whiplash Reforms: The Accuracy of the Medical Evidence for Valuing OIC claims

Published 4 August 2022

With litigation arising from claims pursued via the Official Injury Claim (OIC) portal now well underway, there is one element that is taking centre stage: the quality of the medical reports. There has been much criticism by both sides and the judiciary of the clarity of the medical evidence. The failure by many medical experts to address the mechanism of injuries is creating unnecessary disputes over whether the injury is a whiplash injury, attracting a tariff award, or whether there are additional non-tariff injuries (i.e. mixed claims).

Background

According to the claims data published by OIC for the period from 1st April - 30th June 2022, 66.7% of claims in the OIC process included claims for some form of mixed injury (i.e. a tariff and non-tariff injury).

With such a high proportion of mixed injury claims, it is crucial to the smooth processing of claims that the medical evidence is clear and unequivocal.

An issue that frequently arises with claims involving mixed injuries is whether the injuries complained of are in fact 'mixed' injuries, or whether the additional injuries are actually a part of the whiplash injury.

MedCo's Guidance on the MoJ Qualifying Criteria for MROs on clinical quality states that the "*absence of a mechanism of injury being described*" within a medical report would cause a potential clinical concern. Despite this, much of the medical evidence that we have seen does not attempt to address the mechanism of the injury.

Why is this an issue?

The lack of clarity in the medical evidence is causing an issue with settling these claims and creating ambiguity for both sides as well as the Court. In one claim it was noted by Defendant's Counsel that the Court had found the medical evidence "*very difficult to deal with, as there was no insight into how the injuries were caused and whether separate from one another or related and was highly critical of the report.*"

In one example, the medical evidence stated that the Claimant had sustained soft tissue injuries to the neck and right shoulder for a period of 6 months and an injury to the right arm for 5 months. Tariff injuries for the neck and right shoulder were agreed pre-issue at £495.00. The Claimant issued proceedings seeking an additional £2,600 in respect of the pain suffering and loss of amenity resulting from the injury to the arm and argued that this should be considered as a separate injury.

The Compensator made no offers for any non-tariff injury, arguing that the arm injury was part of the whiplash injury. They referred to The Civil Liability Act 2018 s1(2)(b) which states that an injury is a whiplash injury where it is *an injury of soft tissue associated with a muscle, tendon or ligament in the neck, back or shoulder*.

In this example it was noted by the Court that the medical report did not make it clear how the injury to the arm was sustained and provided no detail as to the mechanism of the injury. Without any explanation as to the mechanism for a separate injury, the Court interpreted the medical evidence on the basis that the arm injury fell within the definition of whiplash and within the tariff award.

The failure by the medical experts to address the mechanism of injuries and ambiguities as to whether these are part of the whiplash injury or separate and distinct injuries, is causing an increase in unnecessary litigation, putting further pressure on Court resources.

What can we do about this?

Where presented with inadequate medical evidence, it is necessary to consider whether the injury is in fact distinct, or whether it is more likely part of the whiplash injury. In doing so, it is useful to consider the type of accident and how the accident could have given rise to additional injuries. Where there are arguments on the causation of the injury, further information should be sought from the insured driver on speed and impact as well as obtaining any evidence of the accident damage sustained by both vehicles.

Where there is no evidence that there is a separate injury, this point should be made clear when making pre-litigation offers to the claimant for a tariff only sum.

If you wish to discuss this further, please feel free to get in contact with our Motor Injury team at DAC Beachcroft Claims Limited.

Authors



Sarah Ramadan

Newport
+44 (0)163 365 7878
sramadan@dacbeachcroft.com



Kevan Smith

Birmingham
+44(0)121 698 5361
kjsmith@dacbeachcroft.com



Stephanie Welscher

Newport
+44 (0) 163 365 7882
swelscher@dacbeachcroft.com



Emma Fuller

Newport
+44 (0) 163 365 7891
efuller@dacbeachcroft.com