

Insurance Adviser Alert: Calling time on the compensation culture? - Whiplash reform, Round 1

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On 4 August, the Ministry of Justice (MoJ) finally published its long awaited response to the latest consultation on whiplash reform, focusing on the medico-legal reporting process in soft tissue injury claims.

By regulating who provides the report, what evidence they have at their disposal, and what they are paid for producing the report, the MoJ says it will introduce an 'improved, robust system for medical evidence which will deter unnecessary or speculative claims'. As part of the overall package of reform to civil litigation funding and costs brought about by Jackson LJ and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 these changes will, say the MoJ, 'improve the service for those with genuine claims and will also enable further reductions to be made to the insurance premiums of motorists.'

A summary of the key changes are as follows:

Tranche 1

- Fixed costs for both initial and secondary medical reports - the cost of the first report being limited to £180 plus VAT;
- Amendment to the RTA protocol to define 'soft tissue injury' for the purpose of identifying applicable cases to which the new fixed costs medical report regime applies. The definition extends to all soft tissue injuries (as opposed to just whiplash) to vehicle occupants and includes minor psychological injury;
- The cost of a report incorrectly commissioned outside of the fixed costs regime will not be recoverable; any Stage 2 settlement pack will have no effect and the Claimant will be unable to issue proceedings;
- A ban on treating experts providing medico-legal reports, other than in exceptional circumstances;
- Provision for the Defendant to put forward his/her version of events where medical causation is in issue;
- The use of pre-medical offers is to be restricted. As such, a Defendant's offer to settle will carry no costs consequences until such time as a fixed cost medical report has been received.

Tranche 2

- System of accreditation, to include peer review and audit;
- Randomised allocation of work;
- A ban on representatives instructing an intermediary with which they have a financial interest.

For further details, please [click here](#).

The necessary procedural changes were approved by the Civil Procedure Rules Committee (CPRC) on 4 July, and were laid before parliament on 1 August. They will come into force on 1 October by virtue of the enabling Statutory Instrument (SI 2014/2044) - [The Civil Procedure \(Amendment No. 6\) Rules 2014](#), and will apply to all soft tissue injury claims where the Claim Notification Forms (CNFs) is submitted through the electronic portal on or after 1 October 2014.

More change afoot...

In his letter addressed to all interested stakeholders, Lord Faulks made it abundantly clear that the proposed changes to the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (the 'RTA Protocol'), CPR 36 (Part 36 offers) and CPR 45 (Fixed Costs) required to implement the upcoming changes from 1 October represent only the first tranche of reform. Warning practitioners of further changes to come by the end of the year, he confirmed that the second tranche of reform will include a full accreditation process for medico-legal experts who produce reports in soft-tissue injury claims, and reiterated the Government's determination to ban either party from commissioning a report via an intermediary in which they have a financial interest.

For more information click on the links below:

- [The new rules on whiplash reporting](#)
- [Where next for whiplash claims](#)

- The long road to whiplash reform - background/overview