



Whiplash Reforms – Summary of Changes

May 2021

The Civil Liability Act

Whiplash Reforms

Following a prolonged period of review and consideration, changes have been implemented by Government in relation to the claims process for low value injury claims following a road traffic accident (RTA).

These “whiplash claims’ will now be handled via a dedicated “portal” that is managed by the MIB and allows individuals to submit claims directly without the involvement of a legal representative. This new process is effective for accidents that occur on or after the 31st May 2021.

Whiplash Definition

A legal definition of what constitutes a “whiplash” injury is contained in the Civil Liabilities Act:

“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.”

From 31st May 2021, claimants will be able to make a claim using the Official Injury Claim (OIC) Portal Service

Whilst “whiplash” claims are not going away, the headline changes outlined within the Civil Liability Act are:

- A **tariff** has been introduced for whiplash injuries, with compensation fixed in proportion to the duration of injury and a discretion to uplift the award by 20% in exceptional circumstances – Addendum 1
- Pre-medical report offers are now not permitted for whiplash injuries
- The introduction of the **Official Injury Claims Portal (“OIC portal”)** designed to support the customer journey for making a claim. This will apply to accidents occurring on or after 31st May 2021 where the personal injury element of a claim is worth less than £5,000 and the total value of the claim less than £10,000
- The Small Claims Court limit for motor personal injury has been raised to £5,000 which means that lawyers’ fees will not be recoverable from an insurer for those claims below £5,000
- Any cases which fall outside of the Small Claims Track limit (£5,000) or because they are excluded, will continue to be dealt with under the current MOJ claims process

Who does it apply to?

The Act will only apply to accidents in England & Wales after the implementation date of the 31st May 2021, and there will be a transitional period as existing claims are resolved via the current low value soft injury portal and the new OIC portal.

It is worth noting that the new OIC portal is not designed and will not apply to claims arising from accidents involving "vulnerable road users". Those being pedestrians, cyclists, motorcyclists, mobility scooter riders

Liability Disputed Claims

The time for an insurer to respond to a claim with a liability decision will increase from 15 days in the current portal to 30 days in the OIC portal.

Whilst this may look to be favourable a critical difference is that a denial of liability in part or in full, **MUST** be accompanied by a signed statement of truth from the driver, setting out why we are denying liability.

The insurers **MUST** upload the signed Statement of Truth within the 30 working day period if we are to dispute liability.

This is a considerable change to the current MOJ process where liability can be denied within the MOJ Portal without any requirement for evidence.

A failure to abide by these new time scales will be deemed to be an admission of liability which will mean that Direct Commercial will be liable to pay the third party claim having a financial impact of the policyholder's claims experience.

If we repudiate liability fully and the claimant does not accept this position, the claimant can then proceed to a liability-only litigation hearing where the policyholder's driver is required to attend court which will result in the need for the involvement of our own legal representatives and an increase in costs.

Preparation -

DCL have made important changes to our processes to ensure that the policyholder is given earliest opportunity to provide a signed statement of truth which will allow us to protect the position when liability needs to be disputed, however it is imperative that the policyholder provides their complete assistance to ensure that we do not fall foul of the new rules and lose the opportunity to dispute liability

The first notification of loss (FNOL) remains an important factor allowing us to support Claimant's with genuine claims and contesting those claims without merit.

Our preferred method of notification continues to be a direct report, ideally from the scene to our **24 hour reporting line - 01245 678345** or within 24 hours of the incident.

Any delay in reporting the incident to us may hamper our efforts to assist.

How can Brokers and Policyholders support these changes?

- Provide swift access to the drivers and their passengers so that we can obtain a signed Statement of truth within OIC Portal deadline.
- Ensuring that all important evidence such as CCTV/Dash cam footage or tracker information is made available immediately
- It is 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.
- Reporting a claim, ideally at the road side or within 24 hours, to Direct Commercial via the 24 hour claims line on 01245 678345 will provide us with the best opportunity to intervene and settle genuine claims early, controlling the cost of the same and contest those without merit.
- In the event of legal proceedings to deny a liability position, ensure that the driver is available to attend a hearing if necessary.

Addendum 1

The Tariff

| <i>Duration of injury</i> | <i>Amount – Regulation 2(1)(a)</i> | <i>Amount – Regulation 2(1)(b)</i> |
|--|--|--|
| 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 |

Whilst at face value the OIC portal will provide a consistent “tariff” based approach to “whiplash” claims, the claimant will have the option to claim for “additional” injury’s that fall outside of the tariff, which will may be added to the suggested figures above.

Online Resources

We have provided below a links to various online resources which provide further information around the changes that are being implemented due to the Whiplash Reforms

Whiplash Reform Programme: Information and FAQ – GOV.UK

<https://www.gov.uk/government/publications/whiplash-reform-programme-information-and-faq/whiplash-reform-programme-information-and-faq>

Official Injury Claim – Guide to Making a Claim

<https://www.officialinjuryclaim.org.uk/media/1157/guide-to-making-a-claim-version-20-april-2021.pdf>

Official Injury Claim – MIB Guidelines

<https://www.officialinjuryclaim.org.uk/media/1157/guide-to-making-a-claim-version-20-april-2021.pdf>

Civil Procedure Rules

<http://www.justice.gov.uk/courts/procedure-rules/civil>

The Whiplash Injury Regulations 2021

<https://www.legislation.gov.uk/ukdsi/2021/9780348220612>



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