

WHIPLASH REFORMS EFFECTIVE 31 MAY

(ENGLAND AND WALES JURISDICTION ONLY)

BUSINESS INFORMATION UPDATE FROM LOCKYERS

There are significant changes being made regarding the handling of Low Value RTA injury claims. The cost reduction benefits that these are intended to bring will be closely monitored, as will any emerging risks that may evolve.

One of the biggest challenges our industry will face in 2021, is the change to the Civil Procedure Rules concerning Whiplash injury.

The measures being put in place, are intended to reduce insurance costs and hopefully tackle the continuing rise in Whiplash claims.

There has been the development of the new portal, that will allow individuals to manage their own claim, rather than rely on legal representation where the injury suffered in an RTA is minor with no complications.

However, there is concern that there will be an increase in claims management companies filling the void left by solicitors, who will no longer see this as a profitable area for them. Also, there is a view that there will be new injury types emerging that will try to avoid the tariffs and exceed the new Small Claims Track limits.

The Motor Insurance Database

It will be essential that the database is kept up to date with all the changes. This is to ensure claims are pursued against the correct insurers. On receipt of a claim through the portal, if the insurer is unable to re-direct, a signed statement of truth will be needed, causing additional work.

What changes from 31st May?

- **The limit for Small Claims Track claims will increase from £1,000 to £5,000.** If an individual hires legal representation to pursue their bodily injury claims below the £5,000 limit, their legal fees will not be recoverable from the compensating insurer. Minors, protected parties and any vulnerable road users will be exempt from this, as they will need assistance to pursue their claim.

The insurance industry is expecting to see more unrepresented claimants known as Litigants in Person (LiPs). The ABI code of conduct will protect these individuals and it is now believed they will require extra support, which will increase the use of Claims Management companies.

Introduction of two new tariffs (see table below)

- There is fixed compensation for "whiplash" type injuries, with a recovery period of up to 2 years. The tariffs are applicable to pure "whiplash" and include minor and psychological injuries. An uplift of up to 20% to the tariffs may be applied **only in exceptional circumstances** by a Court, where the degree of Pain, Suffering and Loss of Amenity (PSLA) makes it appropriate to use the uplifted amount

Ban on Pre-Medical Offers

- Where injuries fall within the "whiplash" definition. There will be a ban in place, no longer allowing an offer to settle claims, without appropriate medical evidence

The Official Injury Claims (OIC) Portal goes live.

- This allows individuals injured in RTAs occurring on or after 31 May to use the portal to pursue a bodily injury claim

Medical Evidence

- This must be obtained for 'whiplash injury'. Insurers are responsible for these medical experts' fees

Duration of Injury	Lower Tariff	Higher Tariff
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

There will be liability disputes which may be a full denial of liability or partial denial. The new rules allow 30 working days for a decision on liability to be made***, after receipt of the Small Claims Notification Form.

This denial must be accompanied by

- Defendants version of events
- Signed Statement of Truth (legal document, any false detail could result in contempt of court proceedings)

*****This is a fundamental change as insurers were allowed 3 months to obtain the signed statement of truth and investigate, this is now restricted to just 30 working days.**

Insurers must have immediate access to drivers and their passengers.

When liability is not accepted, the new rules entitle the claimant/plaintiff to start legal proceedings. Drivers and witnesses will be required to attend court in person, (subject to Covid restrictions), to provide their version of events, in a liability-only litigation hearing.

Where liability is accepted, but the injury is questionable, such as low speed impact claims, insurers can accept liability, i.e. primary liability, but not admit that any injury was sustained.

The insurer must ensure they have the version of events and a statement in support. These must be passed to the medical experts for consideration, during the medical assessment. Concerns can be raised following any completed medical assessment, but insurers are liable for the cost of the medical report for unrepresented claimants.

Insurers can defend fraudulent claims as they do now and the cost of doing so will remain unchanged. However, this may be disproportionate to the cost of the injury claim itself. It is helpful that the insurer's concerns will now be known by the medical expert.

Insurers will still need to ensure they select the right cases to defend, ensuring they have the required signed statements of truth within the 30 working days.

The information contained in this bulletin is based on sources that we believe are reliable and should be understood as general risk management and insurance information only. It is not intended to be taken as advice with respect to any specific or individual situation and cannot be relied upon as such.