



Soft tissue injury ("whiplash") claims process reforms



Frequently asked questions

What is the problem under consideration and why was Government intervention deemed necessary?

The Government has expressed concern about what it says is the continuing high number and cost of Road Traffic Accident (RTA) whiplash related claims. Although the volume of such claims has reduced in recent years, the Government perceives that low value whiplash claims are routinely exaggerated or fraudulent and the cost of dealing with these small claims results in motorists paying a high price for their motor insurance.

What are the objectives of the so called "whiplash" reforms in the Civil Liability Act?

The Government wishes to reduce the volume and cost of whiplash and minor injury claims by restricting the amount of compensation paid to claimants, simplifying the process for bringing a claim for compensation to avoid the use of lawyers and removing the right to recover legal costs incurred for low value claims. The Government says that its measures will ensure that genuinely injured claimants will receive a proportionate amount of compensation and expects that insurers will reduce motor insurance policy premiums by £35 a year in recognition of the expected savings.

How will the Civil Liability Act achieve this?

The Civil Liability Act (often referred to as the “Whiplash Reforms”) will change the personal injury compensation system in England and Wales. The Civil Liability Act will:

- introduce a definition for whiplash injuries which will apply to claims for whiplash injuries arising from a RTA as an occupant of a motor vehicle;
- provide for a low fixed tariff of compensation for pain, suffering and loss of amenity for all whiplash claims with a recovery period of up to two years;
- introduce a ban on whiplash claims being settled without first obtaining medical evidence. This practice, in the past, has led to insurers paying-off low value claims rather than incur the expense of investigating them properly;
- reform the way in which the personal injury discount rate is set. The discount rate being intended to help ensure that those who suffer life-changing injuries receive 100% compensation, neither more nor less, to meet their future needs, such as medical care and to restore lost earnings. Under the current system, evidence shows that on average awards of 135% of compensation are being made (about 120-125% after deductions are made for tax and investment management expenses) due to unrealistic assumptions being made about how claimants can be expected to invest their awards when they are taken as lump sums. Change is intended to return the average payment to closer to 100%, in order to be fair to both claimants and defendants. Current over-compensation means that the NHS is overpaying on claims for clinical negligence, putting unsustainable pressure on the public purse.

How does the Civil Liability Act relate to small claims reforms?

Not included in the Act but still a central part of the Government’s whiplash reforms, is a rise in the Small Claims Court Limits (SCCL) for personal injury cases. The limit would rise from:

- £1,000 to £5,000 for RTA-related personal injury claims, and
- £1,000 to £2,000 for other personal injury claims, such as public and employer’s liability.

The vast majority of whiplash claims are likely to fall within the new £5,000 limit. Legal costs will not be recoverable from the party at fault on successful conclusion of the claim.

Are there any exemptions to this?

Vulnerable road users such as pedestrians, cyclists, horse riders and motorcyclists will be exempt from both the Civil Liability Act and the increase to the SCCL. This means that such parties will be able to claim their legal expenses back from at fault third parties.

What are the key dates?

The Civil Liability Bill received Royal Assent on 20th December 2018 so is now an Act of Parliament. Focus now shifts onto implementation and the detail of the reforms with various regulations expected in the months ahead. Changes, including the rise in the SCCL, were delayed by the realisation that more time is needed to develop and test a claims platform for individuals to file their small claims online. There will be a 6 month test period starting in October 2019 ahead of full implementation in April 2020.

What are the likely implications on “Before The Event” (BTE) Legal Expenses Insurance (LEI), or more specifically “Uninsured Loss Recovery” Insurance (ULR), premiums?

The increase in the SCCL will mean that lawyers will no longer be able to recover legal costs from at fault third parties for ~ 90% of personal injury claims. This is the percentage of such claims that we estimate will fall within the £5,000 small claims limit. The costs of handling such claims will in the future be borne by the ULR legal expenses policy. We can therefore expect ULR premiums to increase by up to £10 to reflect the increased insurance risk.

The precise cost will depend on the cost of handling both low value non-personal injury claims as well as personal injury claims that fall within the small claims court limit. It is widely expected that solicitors will be streamlining their own processes and systems to significantly reduce the cost of handling such claims in the future.

As ULR business written from April 2019 will run into the post reform period, we can expect to see premium increases from this April.

How is this likely to affect demand for Legal Expenses Insurance (LEI)?

Our view is that unless claimants have the benefit of Legal Expenses Insurance, these reforms will have the effect of precluding motor accident victims (in particular) and others, from pursuing legitimate claims for compensation following an injury as legal costs will be deducted from significantly reduced levels of damages.

Unlike some alternatives, BTE LEI enables victims to retain all of their damages so the policy is expected to rise in popularity even though such cover will now be more expensive. For those that now elect not to purchase BTE LEI cover, ATE LEI will be unlikely to be a suitable alternative as there is no opportunity to enter into a conditional fee agreement for cases where costs are not recoverable. The courts are likely to have to accommodate an increase in cases being brought by litigants in person in the future.