

Prisons and Courts Bill

Whiplash – Tariff of predictable damages

Introduction

1. The Government is committed to tackling the high number and cost of minor road traffic accident (RTA) related soft tissue injuries, the vast majority of which are known as whiplash injuries. Whiplash injuries are difficult to diagnose and diagnosis is often based on subjective factors and reporting from patients. There are over a million personal injury claims made a year, of which around 770,000 are road traffic accident (RTA) related and around 90% of these are for whiplash injuries. The high volume of these low value claims lead to increased costs for consumers in their motor insurance premiums.
2. The Government is concerned that these claims are over 50% higher than ten years ago, despite there being fewer accidents and safer cars on our roads. For example, research shows that, in 2006, 19% of new vehicles had integrated seat and head restraints with a safety rating of 'good', and by 2012, 88% of new vehicles had this 'good' rating. Yet despite these significant advances in vehicle safety in an increasing number of new vehicles, the number of whiplash claims are not declining. We are committed to tackling the high number and cost of these claims and we have now concluded a wide-ranging consultation on our plans for reform, which will benefit consumers through lower premiums. Following implementation, motorists could see their car insurance cut by about £40 a year.

What is the current position?

3. In the vast majority of cases, liability for an accident is admitted early in the post-accident process. The amount of compensation awarded for pain, suffering and loss of amenity (PSLA) for RTA related soft tissue injury claims is usually negotiated between the insurer of the at fault driver and the solicitor of the injured claimant, often with reference to the suggested compensation ranges included in the Judicial College Guidelines. The payment of PSLA in a small number of claims, where the claimant and defendant cannot agree, is determined by the Court. In 2015, the average compensation paid out for a whiplash claim with an injury duration of around six months was £1,850.
4. All claims must follow the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (RTA PAP), before any claim enters the court system. Claims can drop out of the RTA PAP process for a number of reasons, but the majority of the claims which exit the process, do so due to disagreements over quantum and liability.
5. If a medical report is required in support of a RTA related soft tissue injury, then the RTA PAP provides the following definition for such injuries:

RTA PAP - 16(a) *“a claim brought by an occupant of a motor vehicle where the significant physical injury caused is a soft tissue injury and includes claims where there is a minor psychological injury secondary in significance to the physical injury”.*

What are the proposed changes?

6. The Bill's provisions will bring forward a tariff of predictable damages for all whiplash claims with an injury duration of between 0 and 24 months. The tariff will provide a

single figure setting out the value of the claim, based on injury duration. Claimants will be able to identify the amount of compensation due based on the prognosis period data contained within their medical report.

7. Medical reports will continue to be sourced through MedCo¹, to ensure the reports are provided by accredited, independent experts and meet minimum standards. In addition, in exceptional circumstances and upon application by the claimant, the judiciary will be able to apply a discretionary uplift of up to 20% to the amount set out in the tariff.

This publication was archived in June 2017.

¹ MedCo is an industry owned 'not for profit' company which oversees the improvement in medical reporting standards through the accreditation of medical experts, and which also operates the IT Portal used to independently source initial fixed cost medical reports in support of RTA related soft tissue injuries.

Whiplash - Banning offers to settle without medical evidence

Background

In some RTA related soft tissue injury claims, offers to settle are made by compensators without medical evidence. These are known as pre-medical offers. Some argue that these offers are an efficient way to help control the costs of claims. However, they can encourage minor and fraudulent claims and lead to the under-settlement, as well as further litigation if the lack of a medical examination results in a more significant injury going undetected.

In 2014, changes were made to the Civil Procedure Rules to discourage such offers from being made.

What is the current position?

The Government is of the view that pre-medical offers to settle can incentivise minor, exaggerated and fraudulent claims to be made, and that unintended consequences from such offers can also be harmful to genuine claimants. The Government has kept this issue under review since 2013 and has consulted on the introduction of a ban on the making, soliciting and receiving such offers.

What are the proposed changes?

The proposed changes introduce a prohibition on the ability to offer, solicit or accept offers to settle RTA related soft tissue injury claims without medical evidence. This does not provide any exemption from the ban. There will also be a provision for enforcement of this ban through the relevant regulators.

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