



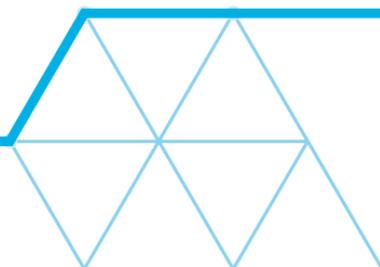
## 1: Whiplash – Tariff of predictable damages

### Introduction

1. The Government is committed to tackling the continuing high number and cost of road traffic accident (RTA) related whiplash claims. Whiplash injuries are difficult to diagnose and diagnosis is often based on subjective factors and reporting from patients. There were just over 850,000 personal injury claims made in 2017/18, of which around 75% are road traffic accident (RTA) related and we estimate that around 85% of these are for whiplash injuries. The high volume of these claims lead to increased costs for consumers in their motor insurance premiums.
2. The Government is concerned that the volume of these claims remains high, 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 has remained relatively stable. We are committed to tackling the high number and cost of these claims and published our response to a consultation on this issue in February 2017. Following implementation, motorists could see their car insurance cut by about £35 on average a year.

### What is the current position?

3. In the 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 either the suggested compensation ranges included in the Judicial College Guidelines or to ranges calculated by industry software systems such as Claims Outcome Advisor. The payment of PSLA in a small number of claims, where the claimant and defendant cannot agree, is determined by the Court. Detailed data for 2015 shows the average compensation paid out for a whiplash claim with an injury duration of up to six months was around £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, as defined in clause 1 of the Bill, with an injury duration of up to two years. The tariff, which will be subject to a triennial review, 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 contained within their medical report.
7. Medical reports will continue to be sourced through MedCo<sup>1</sup>, to ensure the reports are provided by accredited, independent experts and meet minimum standards. Exceptionally, 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.

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<sup>1</sup> 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.

## Civil Liability Bill – Fact Sheet

### 2: Whiplash - Banning offers to settle claims without medical evidence

#### Introduction

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 unmeritorious claims and lead to under-settlement of a claim as a lack of a medical examination can result in a more significant injury going undetected.

#### What is the current position?

In 2014, changes were made to the Civil Procedure Rules to discourage such offers from being made. The Government is however, of the view that the settlement of whiplash claims without medical evidence 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?

Following consideration of the consultation responses on this issue the Government has proposed changes to introduce a prohibition on the ability to offer, solicit or accept offers to settle RTA related soft tissue injury claims without medical evidence. There are no exemptions from the ban provided for in the draft legislation. There will also be a provision for enforcement of this ban through the relevant regulators.