



Ministry
of Justice

Call for Evidence on the statutory review of the Whiplash Tariff

Government Response

21 November 2024

A decorative graphic in the bottom right corner consisting of a cluster of overlapping triangles in various shades of blue, forming a larger triangular shape.

**A Call for Evidence response produced by the Ministry of Justice.
Copies of the Call for Evidence and this response are available at:**

<https://www.gov.uk/government/calls-for-evidence/statutory-review-of-the-whiplash-tariff>

About this Call for Evidence response

To: All stakeholders with an interest in the setting of the personal injury discount rate.

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Enquiries (including requests for alternative format copies) to:

Personal Injury Policy Team

Civil Justice & Law Policy

Post point 5.25

Ministry of Justice

102 Petty France

London SW1H 9AJ

Email: whiplash-reform-team@justice.gov.uk

A Welsh language summary of this response paper will be made available at:

<https://www.gov.uk/government/calls-for-evidence/statutory-review-of-the-whiplash-tariff>

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Executive Summary

Part 1 of the Civil Liability Act (CLA) 2018 reformed the process for awarding claimants' damages for pain, suffering and loss of amenity for whiplash injuries arising from a road traffic accident (RTA). Section 3 of the Act¹ provides for the Lord Chancellor to set a tariff of damages for whiplash injuries up to two years in duration and to make Regulations to set the tariff amounts.

Section 4 of the Act² requires the Lord Chancellor to review the implementing Regulations no later than three years after commencement and no later than every three years thereafter. The Whiplash Injury Regulations (the Regulations) 2021 implement the provisions set out in the CLA 2018.³ The Lord Chancellor must also prepare, publish and deposit a report in Parliament and consult the Lady Chief Justice (LCJ) before making new Regulations.

The review has considered a wide range of issues including the:

- component parts of the tariff (the duration bands, and the rates for whiplash only injuries and whiplash injuries with minor psychological damage);
- level of the judicial uplift which may be applied for in cases where the claimant can evidence that their injury or circumstances are exceptional; and
- definitions of what constitutes medical evidence and who can provide it in regard to the ban on seeking or offering to settle a whiplash claim without medical evidence.

To further support the review data has been sought from the Official Injury Claim service, HM Courts and Tribunals Service and MedCo. In addition, a Call for Evidence was published to seek views from stakeholders. This explored how economic factors, such as inflation, have had an impact since the introduction of the tariff on commencement of the Whiplash Injury Regulations 2021 on 31 May 2021, as well as whether any broader factors should be considered.

This document provides a high-level summary of the responses to the Call for Evidence. All submissions and evidence provided to this Call for Evidence have been considered and used to inform and assist the Lord Chancellor.

The Lord Chancellor's report provides further information on the review process undertaken along with details of their decisions regarding the Regulations. This report also provides information on the next steps to complete and implement the review outcomes.

¹ <https://www.legislation.gov.uk/ukpga/2018/29/section/3/enacted>

² <https://www.legislation.gov.uk/ukpga/2018/29/section/4/enacted>

³ <https://www.legislation.gov.uk/uksi/2021/642/contents/made>

Introduction

1. On 6 February 2024 the government published a Call for Evidence (CfE) to support the whiplash tariff elements of the statutory review of the Regulations. The CfE sought views and evidence of the whiplash tariff and its component parts, wider economic factors such as inflation and sectorial and other changes arising in the claims sector since the introduction of the tariff on 31 May 2021.
2. The review of the Regulations does not assess the extent to which the whiplash reform programme measures have achieved their overall policy objectives, which is outside of the scope of the Lord Chancellor's statutory obligations to reviewing them.
3. The purpose of this document is to summarise the evidence submitted by respondents to the CfE. It should be noted that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views.
4. All submissions have been considered and used to inform and assist the Lord Chancellors' report which will be laid in Parliament on the completion of the review. Submissions made to this CfE may therefore be referenced in the report which has been published on the Parliament website and which can also be found on Gov.UK here:

<https://www.gov.uk/government/publications/whiplash-reform-programme-information-and-faq>
5. Whilst many stakeholders used this CfE to provide comment on the government's wider policy objectives for the whiplash reform programme, assessment of the reforms is out of scope of the review of the Regulations. However, these views have been read and, where appropriate, will be used to inform future work in this area. A post-implementation review of the whiplash reform programme will be completed in due course following the completion of this review and the implementation of its outcomes.
6. Copies of this document are being sent to the organisations listed at page 32 for information and it should be noted that this list is not meant to be exhaustive or exclusive. Copies of English and Welsh language versions of this document are available on request to **whiplash-reform-team@justice.gov.uk** or online at the link at paragraph 4 above.

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Statistical Analysis of Responses

7. A CfE on the operation of the Whiplash Tariff was published on 6 February 2024 and ran for 8 weeks, closing at midnight on 2 April 2024. The CfE was aimed at people with an interest in whiplash-related personal injury claims in England and Wales. Views from other stakeholders, however, were welcomed.
8. In total, **32** submissions were received from a wide range of stakeholders, with 15 responses received through an online questionnaire and a further 17 responses via email to the [**whiplash-reform-team@justice.gov.uk**](mailto:whiplash-reform-team@justice.gov.uk) inbox.
9. Most stakeholders directly answered some or all of the questions posed, but 1 respondent chose to provide general views via a single response/letter. In addition, not all stakeholders provided evidence to support their submissions and/or opinions.
10. The table below provides an illustrative breakdown of the responses received by sector:

| Sector | Responses received | % of total responses received ⁴ |
|----------------------------------|--------------------|--|
| Barrister | 1 | 3% |
| Claimant Law Firm | 7 | 22% |
| Claimant Representative Body | 2 | 6% |
| Cross-sector Representative body | 3 | 9% |
| Defendant Law Firm | 3 | 9% |
| Defendant Representative Body | 2 | 6% |
| Insurer | 9 | 28% |
| Medical | 3 | 9% |
| Other | 2 | 6% |
| Total | 32 | 100% |

11. We are grateful to everyone who took the time to respond and provide evidence or share their expertise, experience and insights to this CfE. All responses received have been analysed and are summarised in this response.

⁴ Percentages are rounded to the nearest whole-number.

Tariff structure

12. Several factors were considered in the setting of the tariff in 2021, including the average levels of whiplash compensation paid at that time and the overall objectives to control costs and benefit consumers through reduced premiums. Data, evidence and feedback was gathered on actual settlements made from the insurance industry and claimant lawyers.
13. When set, the tariff amounts also reflected projected inflation over the following three-year period (i.e., 2021-2024) and the most recent (at the time) 15th edition of the Judicial College Guidelines (JCG) for the assessment of general damages in personal injury claims.
14. The views of the then-Lord Chief Justice were sought before the figures were finalised, in line with the statutory requirements provided for in the CLA 2018.
15. The CfE provided respondents with the table which sets out the current tariff structure and compensation split by duration of injury, and by injury type, as set out in the Regulations. It also provided context on how these figures were originally set.
16. Respondents were asked questions to gather evidence on the different parts of the tariff structure, including the amounts, how these figures are split by injury duration, and the distinction between whiplash only and whiplash plus minor psychological injury.
17. This included evidence on how simple the tariff is to navigate, both for professional users and claimants without representation. It is important that the tariff is easy to understand for all those who need to refer to it to value a claim or respond to an offer.

Summary of responses received to questions 1 to 5

Question 1: To what extent do the injury duration ranges in Table 1 reflect the typical duration of whiplash injuries?

Please provide reasons and data, where possible, to support your view.

18. Overall, **31** respondents answered this question. Responses were received from **1** barrister, **7** claimant law firms, **2** claimant representative bodies, **2** cross-sector representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **3** medical sector organisations/professionals and **2** other.
19. Most respondents from across the sector felt that the ranges reflect the typical duration for whiplash injuries (Barrister, Claimant Law Firm, Claimant Representative Body, Defendant Law Firm, Defendant Representative Body & Insurer, Medical, Other). The following reasons were given:

- Most whiplash prognoses fall within the duration of up to 9 months (Claimant Law Firm, Claimant Representative Body, Defendant Law Firm, Defendant Representative Body, Insurer).
- The range of opinion in prognosis has largely disappeared with most experts giving all claimants a 6-month prognosis (Medical).
- Most whiplash claims fall within the duration ranges (Insurer).
- A small percentage of injuries persist for longer than the upper duration band (Medical).

20. Some respondents also provided suggestions for altering the bands, these included:

- There are occasionally issues when the prognosis period overlaps different bands which can cause disagreement and delay to settlement. Two possible solutions could be to
 - (i) split the tariff down by monthly rather than three monthly periods; or
 - (ii) ensure medical reports specify which band applies.

(Claimant Law Firm, Claimant Representative Body, Cross-Sector Representative Body, Insurer).

- The tariff generally uses three-month bands, but the final six-month (18-24 months) band should also be split into two. There is no medical reason why injuries should display in six-month intervals (Insurer).
- Cases should be redefined to reflect Chapter 14 of JCG within categories of complete recovery within 7 days, 28 days and 3 months. If not, there should be broader categories (0-3, 3-6, 6-12, 12-18 and 18-24 months) which are the brackets most frequently used in reports (Cross-Sector Representative Body).
- The severity of an injury could be built into the tariff structure by addition of minor, moderate, severe injury categories (Other).

21. Other comments included:

- Duration ranges capture most cases, but the tariff should not be based on duration alone. The "one size fits all" approach does not accurately reflect the impact on the claimant's life (Claimant Law Firm).
- Each case is different, and it is impossible to know how long injuries will last when first approached for advice (Claimant Law Firm).

22. Some responses contained further comment on the overall whiplash reform policy and existence of the tariff (Cross-Sector Representative Body, Other).

Question 2: In your view, is splitting the tariff into “whiplash only” and “whiplash plus minor psychological injuries” a suitable approach?

Please give reasons to support your view and suggest an alternative if appropriate.

23. Overall, **31** respondents answered this question. Responses were received from **1** barrister, **7** claimant law firms, **2** claimant representative bodies, **2** cross-sector representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **3** medical sector organisations/professionals and **2** other.

24. The following list is a summary of the points made in support:

- Several respondents said that “whiplash plus minor psychological injuries” are presented in most claims, at a higher proportion than “whiplash only”. Some used internal data to support these points “(Defendant Law Firm, Insurer, Medical).
- Maintaining the split ensures that the tariff adequately compensates claimants whilst ensuring the those suffering whiplash only are not overcompensated for injuries that are not present (Defendant Law Firm, Defendant Representative Body, Insurer).
- It is right that there should be recognition as psychological injuries following an accident are not uncommon (Claimant Representative Body) and they are separate injuries (Medical).
- This approach recognises the additional PSLA caused while recognising that this level of ‘travel anxiety’ is common and minor and should be treated as secondary to the main whiplash injury (Insurer, Barrister).
- This process is the most convenient and efficient way of settling claims with a psychological element usually without difficulty (Defendant Law Firm, Defendant Representative Body, Insurer).
- Cannot see any other way of ensuring that non-whiplash injuries are properly compensated (Claimant Law Firm).
- Yes, but a definition of minor psychological injury would be helpful because without, there can be issues when determining what falls under the tariff and what does not (Defendant Law Firm, Insurer).
- Agree but claims with a psychological element should be monitored to ensure that the frequency does not increase further (Insurer).
- Yes but claimants are routinely getting second reports when some experts say that they cannot deal with psychological injuries (Defendant Law Firm, Defendant Representative Body).

- It would be preferable for psychological injuries to be broken down by duration (Other).

25. The following list is a summary of the points made against:

- The definition is vague and unclear on what is encompassed, and a proper definition and guidance should be made available (Claimant Representative Body, Claimant Law Firm, Other).
- GPs or physiotherapists are not comfortable making a psychological injury diagnosis using the definition so they often refer claimants for a second medical report which can add additional time and costs, especially when there is disagreement (Claimant Representative Body, Claimant Law Firm).

26. Some respondents said that psychological injuries should not be compensated by the tariff for the following reasons:

- It does not adequately compensate for them. These are complex injuries which can be debilitating and long-lasting with wider impacts on the ability to work, family life, etc. (Claimant Law Firm, Cross-Sector Representative Body, Medical).
- They are separate injuries so should be separated out or omitted from the tariff altogether (Claimant Law Firm, Other).
- A separate tariff for just psychological injury should be created with increased awards (Other).
- The Judicial College Guidelines should be used (Claimant Law Firm).

27. A small number of respondents made an additional request that the £750 fixed recoverable costs available for additional expert evidence in small claims track cases (often used for obtaining additional psychological reports) should be increased because this limit can be exceeded (Claimant Law Firm). This point has been noted but is outside the scope of this review of the Regulations.

Question 3: How simple is the tariff to understand, use and explain?

28. Overall, **31** respondents answered this question. Responses were received from **1** barrister, **7** claimant law firms, **2** claimant representative bodies, **3** cross-sector representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **2** medical sector organisations/professionals and **2** other.

29. The following list is a summary of the points made in in favour:

- Self-explanatory and could not be simpler (Barrister).
- Simple to understand, use and explain (Insurer, Defendant Representative Body).

- Some respondents agreed that it is only simple to understand and use but not to explain (Claimant Law Firm, Cross-Sector Representative Body, Medical).
- It is only easy to use and understand for professional users (Claimant Law firm, Cross-Sector Representative Body).
- It is generally ok, but confusion can be caused when medical expert gives a range for recovery prognosis that fall into different brackets. It would be useful to have further clarification built within tariff guidance to confirm how prognosis should be approached to reduce areas of conflict between parties and ensure consistency across industry (Insurer).
- The fixed, transparent tariff system aids the effective and swift operational management of whiplash claims. Feedback received from customers and brokers is that the process is easy to understand (Insurer).

30. Some said that it is easy to understand for the unrepresented claimant, giving the following reasons:

- It allows the claimant to identify the applicable tariff amount using the prognosis period from the medical report (Defendant Law Firm).
- Unrepresented claimants are settling quicker and for a higher level which is indicative that it is simple to use, understand and explain (Defendant Law Firm, Defendant Representative Body).
- Some claimants initially dispute the value but when they are pointed to the table, they can apply it. Once they understand it is not a tariff imposed by the compensator, it is easy for them to understand (Insurer).

31. The following list is a summary of the points made in against:

- It is difficult to use and explain as it is impossible to advise claimants whether it is worthwhile to pursue a claim (Claimant Law Firm).
- It is not straightforward to explain the level of the tariff to claimant as they frequently cannot understand why the amount is so low (Claimant Law Firm, Cross-Sector Representative Body).
- The definition for whiplash is too vague and there is ambiguity as to where the line lays with some additional injuries associated with the primary whiplash injury (Insurer)
- Solicitors and judges do not understand it so unrepresented claimants will not (Medical).

- It is not easy to use and understand for unrepresented claimants which is proved by the data on the proportion of unrepresented claimants using OIC (Claimant Law Firm).

32. Further comments were received with criticisms of the reform programme and the existence of the tariff more generally. Some of these were without comment on the ease of use whilst some were accompanied by answers saying the tariff is simple to use and explain.

33. A small number of responses commented on the OIC process which is outside the scope of this question and the review more widely (Other).

Question 4: If you have experience engaging with unrepresented claimants, whether advising, providing support, or responding to claims, what is their experience of using the tariff?

34. Overall, **25** respondents answered this question. Responses were received from **4** claimant law firms, **2** claimant representative bodies, **1** cross-sector representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **2** medical sector organisations/professionals and **2** other.

35. The following list is a summary of the points made in response to this question:

- Anecdotally, there is no reported difference between represented and unrepresented claimants. There is minimal difference between represented and unrepresented OIC average value settled and average time to settle data (Defendant Law Firm).
- Unrepresented claimants are settling faster (Defendant Law Firm, Defendant Representative Body, Insurer).
- Anecdotally, the main issue insurers have experienced is managing unrepresented claimants' expectations regarding the levels of compensation they will receive compared to pre-reform. Once it is explained, they accept it and have no trouble applying it (Defendant Law Firm, Defendant Representative Body, Insurer)
- When the medical report is received, it is usually easy to tie the prognosis period to the tariff bands and the amount of compensation is easily explained (Insurer, Defendant Representative Body).

36. Some respondents did not directly answer the question. For example:

- Some said that they did not have experience of engaging with unrepresented claimants but then made additional comments regarding the overall OIC process for professional users (Claimant Law Firm, Claimant Representative Body)

- Others stated, but did not evidence, that unrepresented claimants are disadvantaged due to difficulties using the portal without a lawyer (Medical, Other).
- Others made comments about the level of tariff, and unrepresented claimants' general experience with bringing claims, but not regarding how they use the tariff (Claimant Representative Body).

37. A small number of respondents made further suggestions to improve the OIC process such as the need for a public awareness campaign (Defendant Law Firm) and more online prompts to assist those who start the claims process without having read the guidance (Defendant Representative Body). These have been noted, but are outside of the scope of this review.

Question 5: Do you have any other views on the structure or component parts of the tariff which are relevant to this review?

38. Overall, **26** respondents answered this question. Responses were received from **1** barrister, **3** claimant law firms, **2** claimant representative bodies, **1** cross-sector representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **3** medical sector organisations/professionals and **2** other.

39. The following list is a summary of the points made in response to this question:

- The tariff has spawned a range of spurious additional 'injuries' that cannot be verified, such as claims of deafness and tinnitus which were unknown for over thirty years prior to the tariff (Barrister).
- It is unclear how an unrepresented claimant would navigate the question of what constitutes an 'exceptional' uplift and any challenge raised by a compensator as there is lack of a clear definition (Claimant Law Firm, Claimant Representative Body, Insurer).
- Practitioners and medical experts also struggle (Claimant Representative Body).
- There has been a greater use of uplifts that was originally expected and the revised Regulations should not provide for any uplift to the tariff for exceptional circumstances (Defendant Law Firm, Defendant Representative Body).
- There is a growing number of tariff settlements in the 9-12- and 12-15-month categories (Defendant Law Firm).
- The tariff should be widened to include other minor injuries (Defendant Law Firm, Defendant Representative Body, Insurer).
- The tariff should be extended to 'radiating pain' which according to most medical experts, is a symptom of the whiplash injury and not a separate injury (Insurer).

- More clarity and detail is required in medical report to ascertain causation and the impact on amenity of non-tariff injuries. It is important to have information on whether ancillary injuries are separate from or related to the whiplash injury (Defendant Representative Body, Insurer).
- Clarification on the whiplash injury definition would be helpful (Medical).
- The impact of the Judicial College Guidelines update coupled with an increase to the tariff could mean that the Small Claims Track limit should be increased (Insurer).
- The tariff should include severity bands and minor psychological injuries should be assessed separately in another tariff with higher amounts included (Other).
- The psychological element of the tariff should be broken down into recovery periods with an additional uplift representing those periods and any neck or back symptoms (Other).

40. The remainder of the responses made arguments against the existence of the tariff and the policy objectives which underpin it, including some comments about it not adequately compensating claimants. These have been noted but are outside of the scope of this review

Changes since the introduction of the tariff

41. This section sought to understand what has changed in the personal injury claims sector since the whiplash tariff was introduced that might be relevant to this review. Whilst the review has drawn on claims data held centrally by OIC and HMCTS, we were also particularly interested in receiving information from respondents in relation to their individual experiences, supported by data wherever possible.

Summary of responses received to questions 6 to 9:

Question 6: Since the introduction of the whiplash tariff, what changes have there been in regard to the following factors that would be relevant to this review?

- a) the volume of whiplash settlements;**
- b) the composition of the claims market;**
- c) caseloads; and**
- d) any other relevant factors related to whiplash claims.**

42. Overall, **31** respondents answered this question. Responses were received from **1** barrister, **7** claimant law firms, **2** claimant representative bodies, **2** cross-sector representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **3** medical sector organisations/professionals and **2** other.

43. The following list is a summary of the points made in response to this question:

a) The volume of whiplash settlements

- The number of cases heard in court has dramatically declined (Barrister).
- The majority of respondents said that the volume of settlements has decreased because there are fewer claims (Claimant Law Firm, Claimant Representative Body, Cross-Sector Representative Body, Insurer).
- In contrast, others said that the volume has not diminished (Claimant Law Firm) or that the volume of settlements is rising (Defendant Representative Body, Insurer).
- There has been a general lack of clarity on mixed injury valuation, and it is uneconomical and complex for claimants to run claims unrepresented (Claimant Law Firm).
- There are a significant number of live claims for reasons such as waiting for the Supreme Court decision, waiting out prognosis, the tariff review and updated Judicial College Guidelines (Defendant Law Firm).

- Settlements are delayed due to lack of medical report disclosure by represented claimants (Insurer).
- The large number of unsettled claims suggests that the system is complex or flawed (Claimant Representative Body, Cross-Sector Representative Body).
- Most settlements are OIC claims and the volume of settlement on Claims Portal has fallen (Defendant Law Firm).
- The combined OIC and CPL claims volumes are lower than before the reforms, but quantification of this drop is harder due to the COVID-19 pandemic and the resultant changes in working and commuting patterns (Defendant Law Firm, Defendant Representative Body, Insurer).

b) The composition of the claims market

- There has been a reduction in the number of personal injury firms in the sector (Barrister, Claimant Law Firm, Claimant Representative Body, Cross-Sector Representative Body, Defendant Law Firm).
- Consolidation in the claims market and law firm closures (Defendant Representative Body, Insurer, Medical, Other).
- It is now uneconomical to run low-value road traffic accident cases (Claimant Law Firm).
- A smaller number of large firms are now representing most represented claimants. Smaller firms have merged or have been bought out by other firms (Defendant Law Firm, Insurer).
- The market appears to be unaffected (Claimant Law Firm).
- There are fewer claims management companies (Claimant Law Firm, Cross-Sector Representative Body, Defendant Representative Body, Insurers, Other).
- There has been an increase in claimants supported by law firms, legal expenses insurance and firms supported by alternative business structures (Defendant Representative Body Defendant Law Firm, Insurer).
- The claims market remains competitive. Claimant law firms are bulk operators, typically acting for legal expenses insurers (Defendant Representative Body).
- OIC was built for litigants in person, not professionals, creating a lack of adequate systems leading to firms exiting the market (Claimant Law Firm).
- The claims market is still dominated by legally represented claimants despite the intention that OIC should be personally serviced by claimants (Defendant Law Firm).

c) Caseloads

- Caseloads are higher and cases are taking longer to settle. Reasons given included:
 - Lack of clarity on mixed injury valuation (Claimant Law Firm).
 - OIC technical issues (Claimant Representative Body).
 - Claims awaiting the Supreme Court decision on mixed injuries (Claimant Representative Body, Defendant Law Firm, Defendant Representative Body).
 - Insurer behaviour: low offers and taking long periods of time to respond (Claimant Law Firm, Claimant Representative Body).
 - Dormant claims: older claims not being progressed which still show as active (Claimant Law Firm, Defendant Law Firm, Defendant Representative Body).
 - Fewer medicals are being sent in due to the Pre-Action Protocol/Rule changes. It can be unclear which cases are being progressed (Insurer).
- Unrepresented claims are settling much quicker than represented claimants (Defendant Law Firm).
- Caseloads have reduced to almost nil as claimants cannot fund legal advice themselves (Claimant Law Firm).
- They have either decreased or remained the same (Cross-Sector Representative Body).

d) Any other relevant factors related to whiplash claims

- There has been an increase in the number of non-tariff claims since the reforms (Barrister, Defendant Law Firm).
- There has been a reduction in recorded business travel since 2019 (Defendant Representative Body).
- There has been a steady and continuous increase in the number of mixed injuries claims (Insurer).
- The consequences of the Supreme Court ruling, and Judicial College Guidelines increase, and the risk of the policy intent of the reforms being undone if the tariff is increased and the Small Claims Track limit is not (Defendant Law Firm, Defendant Representative Body, Insurer).
- Third Party insurers have great difficulty understanding the mechanisms of injuries and making reasonable offers for non-tariff injuries. This leads to extensive negotiations and various communications with medical experts to explain the mechanism of injuries (Claimant Law Firm).

44. Some responses to this question included objections to the wider policy rather than changes since the implementation of this policy. Others included comments about the behaviours of the parties and issues with OIC. These points have been noted but are outside the scope of this review

Mixed injuries

45. Under the CLA, courts can continue to award damages which reflect the combined effect of injuries where there is a mix of whiplash (tariff) and non-whiplash injuries sustained at the same time. We were interested in understanding how the whiplash tariff has impacted claims for mixed injuries.

46. We are aware of the factors influencing the valuation of mixed claims, including the Supreme Court judgment on the valuation of mixed injuries which was handed down on 26 March 2024, and the recent update to the Judicial College guidelines. Both of these have been made available since the Call for Evidence was published.

Question 7: How has the introduction of the whiplash tariff changed the process of valuing injuries for the purpose of making offers/counter offers?

47. Overall, **28** respondents answered this question. Responses were received from **1** barrister, **7** claimant law firms, **2** claimant representative bodies, **2** cross-sector representative bodies, **3** defendant law firms, **1** defendant representative bodies, **9** insurers, **1** medical sector organisations/professionals and **2** other.

48. The following list is a summary of the points made in response to this question:

- The process is now much simpler however some instructing solicitors are still unclear. There have been one or two cases where they have assumed injuries are worth more than the tariff figures (Barrister).
- Unrepresented claimants do not know the value of their claims so they will either accept the insurer's valuation or issue in court as a litigant in person (Claimant Law Firm).
- The process for making offers and counteroffers is simple. Valuation falls within the statutory definition and the timescale for recovery determines the amount (Claimant Law Firm, Defendant law Firm, Insurer, Other).
- The scope for negotiation has been removed entirely except for any uplift amount, and so long as the medical report provides for a whiplash prognosis set out by calendar months (Defendant Law Firm, Insurer).
- It has changed quantum but not necessarily the process of agreeing settlement (Claimant Law Firm).

- It has made negotiation and the exchange of information more difficult (Cross-Sector Representative Body).
- There is sometimes a dispute around a medical expert's opinion or prognosis, but these claims are few (Insurer).
- Offers from compensators can be low and not in line with evidence presented. Claimant is left with choice of accepting low offer or go to court (Claimant Law Firm).
- There is no way for claimants to argue against unfair offers (Medical).

49. Several respondents referred to the valuation of mixed injuries. It should be noted that some responses were submitted before the Supreme Court judgment in Hassam vs Rabot was handed down and some came after.

- The process of valuation of claims with one or more additional injuries has been made more complex (Defendant Law Firm, Defendant Representative Body, Insurer, Cross-Sector Representative Body).
- It should be simpler now that we have clarity from the Supreme Court on mixed injuries (Claimant Law Firm).
- The valuation process has been set out by the Supreme Court. Greater precision is now needed from medical experts to accurately value mixed claims (Defendant Representative Body).
- Due to the reduced volume of claims and tariff payments, claimants rightly claim more for their other injuries now meaning that the number of non-tariff injury claims have increased (Claimant Representative Body).
- Insurers continued to make low offers whilst waiting for the judgment (Other).
- Insurers are continuing to make low offers even after the judgment (Claimant Law Firm).

50. One respondent suggested that the Pre-Action Protocol should be changed to allow claimants to make the first offer in represented claims, saying that this would speed up the process and reduce the need to litigate. This point has been noted but is outside the scope of this review as it relates to the wider claims process.

Question 8: How has the introduction of the whiplash tariff changed the process of agreeing settlements for mixed injury claims?

51. Overall, **32** respondents answered this question. Responses were received from **1** barrister, **7** claimant law firms, **2** claimant representative bodies, **3** cross-sector

representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **3** medical sector organisations/professionals and **2** other.

52. The following list is a summary of the points made in response to this question:

- There has been an increased propensity of these claims due to the introduction of the tariff which has resulted in more causation disputes (Defendant Law Firm, Defendant Representative Body, Insurer).
- It has made valuation more difficult when understanding the mechanics of how these injuries occurred or manifested, whereas they were not seen pre-reform (Insurer).
- It has been more difficult to settle mixed injury claims leading to delays to settlement (Barrister, Claimant Law Firm, Cross-Sector Representative Body, Defendant Representative Body, Insurer, Medical)
- Settlements were slowed down due to parties awaiting the Supreme Court judgment (Defendant Law Firm).
- Represented and unrepresented claimants could continue through the process and settle whilst awaiting clarity from the Supreme Court (Defendant Representative Body, Insurer).
- Compensators feel able to make offers and claimants will frequently accept them. The difficulty arises when offers are not accepted and the case then goes to court (Defendant Law Firm, Insurer).
- Third-party insurers have difficulty understanding the mechanisms of injuries and making reasonable offers for non-tariff injuries. This leads to extensive negotiations and various communications with medical experts to explain the mechanism of injuries (Claimant Law Firm).
- There is now clarity from the Supreme Court and most mixed injury claims should settle (Cross-Sector Representative Body, Insurer).
- There will still be more disputes on valuation than was intended and the outcome of the judgment will take some time to filter through to settlements (Insurer, Claimant Representative Body).
- There is still no clarity since the Supreme Court handed down their judgment. Therefore, addressing the difficulty of mixed injuries and the erosion of the benefits of the reforms is now an issue for Parliament to resolve (Cross-Sector Representative Body, Defendant Representative Body).
- It has changed how medical experts are instructed. Claims handlers try to tell experts how to diagnose and to link injuries, or that a pre-existing condition is linked

to the whiplash injury. Some experts are increasing prognoses and adding more injuries when asked to (Medical).

- The Supreme Court judgment makes it more important that medical experts produce quality reports with clarity on the mechanics or causation of injuries (Defendant Law Firm, Defendant Representative Body, Insurer).

Question 9: What do you think should be taken into account in the review regarding mixed injuries?

53. Overall, **31** respondents answered this question. Responses were received from **7** claimant law firms, **2** claimant representative bodies, **3** cross-sector representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **3** medical sector organisations/professionals and **2** other.

54. The following list is a summary of the points made in response to this question:

- Mixed injury claims should be valued according to the Supreme Court judgment and the overriding factor should be the claimant's right to full compensation (Claimant Law Firm, Claimant Representative Body).
- Mixed injury claims are not straightforward and unrepresented claimants will struggle with valuing them (Claimant Law Firm).
- Third-party insurers disregard the case law regarding mixed injuries which has led to low offers resulting in more matters going to court (Claimant Law Firm).
- Too many non-tariff injuries are being presented that were not seen before the reforms. The market is reacting by claimant lawyers trying to maximise claims. Whiplash will probably disappear as a diagnosis in a few years even though it will persist as an injury (Cross-Sector Representative Body, Medical).
- It is a misconception that non-whiplash injuries are increasing following reform (Claimant Law Firm).
- There are few true mixed injuries sustained in high force accidents. Experts are forced to diagnose injuries that do not exist (Medical).
- The Supreme Court decision will likely drive greater numbers of mixed injury claims, especially if the Small Claims Track limit is not increased (Insurer).
- As a result of the Supreme Court judgment coupled with the Judicial College Guidelines increases, without an increase in the Small Claims Track limit, there is a risk of claims displacement (Defendant Law Firm, Defendant Representative Body, Insurer).

- There should be further legislative reform to extend the tariff to cover non-whiplash soft tissue injuries (Defendant Law Firm, Defendant Representative Body, Insurer).
- Extending the tariff to cover non-whiplash soft tissue injuries would have repercussions for access to justice and it would be inappropriate as the impact of a wide range of non-whiplash injuries could not be accurately reflected by reference to a compartmentalised duration (Claimant Law Firm, Other).
- The quality of medical reports and the instructions that medical experts receive needs to be addressed (Defendant Law Firm, Defendant Representative Body).
- Detailed information is needed on causation and the impact on amenity of non-whiplash injuries. Also, more on the plausibility of the accident causing the injuries described (Insurer).
- The review should consider the impact of requiring any changes to medical evidence and associated costs recovering for this (Medical).

55. The remainder of the responses provided comment on the existence of the tariff and the policy objectives which underpin it, including suggestions that it does not adequately compensate claimants. Comments were also received saying that the OIC system is too complex. These views have been noted but are outside of the scope of this review.

Broader factors

56. This section sought to gather evidence on the influence of broader factors since the introduction of the tariff. This was to understand their impact and consider how these may be accounted for in the context of reviewing the tariff.

Inflation

57. The Government committed to review the tariff every three years and created a three-year “buffer” in the figures to ensure that the rates took account of projected future inflationary pressures.

58. The whiplash tariff amounts were set using the Consumer Price Index (CPI) as a general inflationary measure, in line with advice from the Office of National Statistics for Government. This is consistent with the approach taken elsewhere, for example, benefits, state pensions and business rates which are all set by reference to CPI.

59. The questions in this section sought to understand the real impact of inflation since the introduction of the tariff on 31 May 2021. We were also interested in receiving evidence on any other economic factors which stakeholders felt were relevant to the review, such as unemployment and interest and exchange rates.

Summary of responses received to questions 10 to 13:

Question 10: What has been the impact of inflation on claimants’ damages since 31 May 2021?

60. Overall, **30** respondents answered this question. Responses were received from **1** barrister, **6** claimant law firms, **2** claimant representative bodies, **2** cross-sector representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **3** medical sector organisations/professionals and **2** other.

61. The following list is a summary of the points made in response to this question:

- Nearly half of respondents said that recent levels of inflation had reduced the damages paid to claimants in real terms (Claimant Law Firm, Claimant Representative Body, Cross-Sector Representative Body, Insurer, Medical, Other).
- Non-general damages would have seen inflation in line with earnings and other losses, whilst general damages would not have been affected by inflation (Insurer).
- The Judicial College Guidelines figures have increased by 22% (Barrister, Insurer).

- Although inflation has affected damages, any increase in the tariff needs to be considered against the aims of the reforms (Defendant Law Firm, Defendant Representative Body, Insurer)
- An increase in the tariff may require an increase in the small claims limit to ensure cases stay on the right track (Defendant Law Firm, Insurer).
- Inflation has led to claims inflation, with claimants more likely to ask for an uplift (Insurer).

Question 11: Does CPI remain an appropriate inflationary measure?

If not, why not?

62. Overall, **32** respondents answered this question. Responses were received from **1** barrister, **7** claimant law firms, **2** claimant representative bodies, **3** cross-sector representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **3** medical sector organisations/professionals and **2** other.

63. **22 answered yes** (1 Barrister, 4 Claimant Law Firm, 3 Cross-Sector Representative Body, 3 Defendant Law Firm, 2 Defendant Representative Body, 9 Insurer) and **10 answered no** (3 Claimant Law Firm, 2 Claimant Representative Body, 3 Medical, 2 Other).

64. The following list is a summary of the points made in response to this question:

- Most respondents agreed that CPI remains the appropriate inflationary measure (Cross-Sector Representative Body, Defendant Law Firm, Defendant Representative Body, Insurer). Reasons included:
 - Its use allows funders, solicitors and others to plan and invest appropriately in the necessary IT, business functions and staff (Cross-Sector Representative Body).
 - CPI is widely accepted and used. The Office for National Statistics (ONS) has long opposed using RPI because evidence suggests it likely overstates inflation. CPI replaced RPI from 2011 as the UK Government's preferred measure of inflation (Defendant Law Firm, Defendant Representative Body, Insurer).
 - CPI's broad coverage makes it suitable for whiplash as it considers price changes of a wide range of goods and services, including essential items which are relevant to determining purchasing power of individuals (Defendant Law Firm).
 - CPI is regularly updated and revised to reflect changes in consumer spending patterns. (Defendant Law Firm).

- CPIH could be used instead of RPI, but it is not the ONS' preferred measure of consumer inflation (Insurer),
- Some agreed that CPI is the most appropriate but caveated this by saying an inflationary uplift is inappropriate at this point (Defendant Law Firm, Insurer).
- One respondent said that it does not matter which index is used only that once chosen it remains the index used (Barrister).
- Any proposed increase to the Small Claims Track limit due to an RPI (or CPI) increase would be disproportionate due to the small proportion of claims that would breach the limit (Claimant Law Firm).
- Eight respondents preferred RPI and provided the following reasons:
 - It should be in line with the Judicial College Guidelines to ensure consistency (Claimant Law Firm, Claimant Representative Body, Other).
 - Because the JCG was published before the tariff review, the higher RPI amount should be applied to the tariff (Other).
 - RPI considers mortgage payments and factors interest rates. Ignoring interest rates does not accurately reflect the impact on most people (Other).
 - CPI is always lower than RPI, so the latter should be used (Medical).
- Four respondents preferred CPIH for the following reasons:
 - It better represents the costs experienced by claimants.
 - It more accurately reflects the impact of inflation on injured claimant's damages (Medical).
 - CPIH considers owner occupiers' housing costs and council tax (Medical).

Question 12: Is the three-year inflationary buffer built into the whiplash tariff effective?

If not, what alternative would you propose and why?

65. Overall, **32** respondents answered this question. Responses were received from **1** barrister, **7** claimant law firms, **2** claimant representative bodies, **3** cross-sector representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **3** medical sector organisations/professionals and **2** other.

66. **3 answered yes** (1 Claimant Law Firm, 2 Insurers) and **29 answered no** (1 Barrister, 6 Claimant Law Firm, 2 Claimant Representative Body, 3 Cross-Sector Representative

Body, 3 Defendant Law Firm, 2 Defendant Representative Body, 7 Insurers, 3 Medical, 2 Other);

67. Many respondents did not agree that the three-year inflationary buffer is effective. Opposition was split in terms of their reasons for opposing it:

- Those that would rather the tariff was uplifted annually to reflect inflation rather than having a buffer and reviewing every 3 years (Claimant Law Firm, Claimant Representative Body, Cross-Sector Representative Body, Medical, Other).
- Those that did not want an inflationary increase at all and therefore no new buffer applied (Defendant Law Firm, Defendant Representative Body, Insurer).

68. Comments received on the three-year buffer noted that:

- There should only be a tariff increase and buffer if it supports the overall policy aims (Insurer).
- It is effective, but an inflationary uplift should not be applied if the Government view the volume of whiplash injuries, and their associated costs, as remaining too high (Insurer).
- A two-year buffer should be considered (Claimant Law Firm).
- There should be an annual uplift with a detailed review every 3 years (Other).
- The buffer only works if inflation is steady and predictable (Barrister).
- Any inflationary uplift should be applied retrospectively, to include all existing claims (Claimant Representative Body).
- If an increase to the tariff should be necessary, the buffer is appropriate as it allows for a consistent tariff to exist for appropriate stretches of time, without the need to review it more regularly (Insurer).

Question 13: Are there any other economic factors which should inform the review?

69. Overall, **27** respondents answered this question. Responses were received from **1** barrister, **4** claimant law firms, **2** claimant representative bodies, **2** cross-sector representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **3** medical sector organisations/professionals and **1** other.

70. The following list is a summary of the points made in response to this question:

- Insurance costs have risen since the tariff was introduced and the savings from the introduction of the tariff have not been passed on to consumers (Claimant Law

Firm, Claimant Representative Body, Cross Sector Representative Body, Medical, Other).

- The increase in average earnings could be a good method of setting damages on the basis that the injured should not find themselves either better or worse off than their working counterparts, assuming injuries are sufficient to limit or end their employment (Barrister).
- The insurance industry has experienced other inflationary pressures such as increases in the cost of repairs, parts and car hire. Insurance costs would have increased more without the whiplash tariff reducing the cost of pay outs (Defendant Law Firm, Insurer).
- General damages should not increase with inflation (Insurer).
- Increasing the tariff will lead to an increase in insurance costs (Defendant Law Firm, Defendant Representative Body, Insurer).
- During a cost-of-living crisis, claimants may be willing to accept a low offer early and are at risk of under compensation as a result (Claimant Law Firm, Claimant Representative Body).

Additional factors

71. In looking at what has changed since 2021, we were interested in gathering evidence on any other additional factors that are relevant in the context of the review. Respondents were asked to consider political, social, technological, legal, environmental or other developments since the introduction of the tariff rates that are relevant to the review.

Summary of responses received to questions 14 to 15:

Question 14: What other factors are relevant in the context of a tariff review?

Please provide reasons supported by data where possible.

72. Overall, **27** respondents answered this question. Responses were received from **5** claimant law firms, **2** claimant representative bodies, **1** cross-sector representative bodies, **3** defendant law firms, **2** defendant representative bodies, **9** insurers, **3** medical sector organisations/professionals and **2** other.

73. The following list is a summary of the points made in response to this question:

- The number of claims and compensation has fallen leading to huge savings for insurers, but premiums continue to rise (Claimant Law Firm, Cross-Sector Representative Body, Other).

- The fall in claims volume suggests that accident victims are being dissuaded from claiming (Claimant Representative Body, Medical).
- The tariff should be increased above inflation to take account of the complexity of many OIC claims (Claimant Law Firm).
- Increasing the tariff could reverse the reduction in claims, resulting in greater costs negatively impacting consumer savings (Defendant Law Firm).
- If the tariff is increased using inflation, the Small Claims Track limit must be increased. This should be reviewed at the same time as the tariff and then periodically reviewed in lockstep with CPI inflation and increased in fixed increment (Defendant Law Firm, Defendant Representative Body, Insurer).
- A minor injuries tariff should be introduced to provide certainty and clarity to parties about level of compensation to be received for minor injuries of soft tissue (outside of whiplash definition). Alternatively, the scope of the current whiplash definition should be widened (Defendant Law Firm).
- Judicial College Guidelines use RPI which is contrary to the Government's position on the appropriate inflationary indices. In the long term, this requires intervention by the Government (Defendant Law Firm, Defendant Representative Body).

74. Whilst question 14 sought information to support the statutory review, extensive comment was also received focusing on concerns with the operation of the OIC service. These points have been noted but are out of scope for this exercise

Question 15: Are there any other considerations not already discussed that should be taken into account as part of the review?

75. Overall, **20** respondents answered this question. Responses were received from **4** claimant law firms, **2** claimant representative bodies, **1** cross-sector representative body, **3** defendant law firms, **2** defendant representative bodies, **5** insurers, **1** medical sector organisations/professionals and **2** other.

76. The following list is a summary of the points made in response to this question:

- Claims are no less complex but there is a lack of clarity on the rules and on valuing mixed injuries. The tariff should be increased above inflation to redress some of the imbalance (Claimant Law Firm).
- Despite a fall in claims, there has been an increase in motor insurance premiums (Claimant Representative Body).
- There should be no tariff increase. If tariff amounts should be increased, these should be nominal only and should not be retrospective. Increases should only

apply to accidents on or after the increases are implemented due to practical difficulties for active claims (Defendant Law Firm, Defendant Representative Body, Insurer).

- Due to significant number of claims for non-tariff injuries, it might be appropriate for the Government to revisit the whiplash definition (Defendant Law Firm).
- The Judicial College Guidelines increases will likely push mixed injury claims outside the Small Claims Track limit (Defendant Representative Body).
- We are opposed to any increase in the Small Claims Track limit (Claimant Representative Body).
- Poor quality medical reports are more likely to lead to either over or under compensation (Medical).
- In the event it is clear insurers are not passing premium savings onto customers, the tariff should be withdrawn as a whole (Other).

77. Additional responses were received which were outside the scope of the question/review such as operational issues with OIC and the awareness of the service. Comments were also made regarding the conduct of parties to litigations.

78. One respondent requested that the reforms should be reviewed as a whole, considering access to justice and fairness, in particular: the fall in compensation, the lack of unrepresented claimants, insurer bad behaviour, lack of sanctions for behaviours, savings not being passed on (Claimant Law Firm).

79. These points are out of scope of this review but are relevant to the post implementation review of the whiplash reform programme. This separate exercise will be completed following the completion of the current review of the Regulations and the implementation of its outcomes.

Equality considerations

80. Section 149 of the Equality Act 2010 (“the Act”) requires Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

81. In carrying out this duty, Ministers and the Department must pay “due regard” to the nine “protected characteristics” set out in the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity. Therefore, the Call for Evidence included an analysis of the equality impacts associated with reviewing the whiplash tariff and sought the views of respondents on this issue.

Summary of responses received to question 16:

Question 16: Please provide evidence on how the whiplash tariff review may affect people with protected characteristics.

82. Overall, **23** respondents answered this question. Responses were received from **2** claimant representative bodies, **6** claimant law firms, **6** insurers, **2** cross-sector representative bodies, **1** defendant representative bodies, **1** defendant law firms, **3** medical sector organisations/professionals and **2** other.

83. The following list is a summary of the points made in response to this question:

- We do not consider there will be any impact (Defendant Law Firm, Insurer, Medical).
- There is access to "justice" for everyone. All protected characteristics are and should be immaterial to claims process (insurer).
- Claimants without protected characteristics are more likely to be in work with higher incomes meaning that loss of earnings will increase their claims which is less likely to fall within the Small Claims Track limit (Claimant Law Firm).

- Claimants with protected characteristics have a greater need for legal representation but an increase to the Small Claims Track limit will disproportionately deny them legal advice (Claimant Law Firm).
- Of those without legal assistance, protected parties and those with disabilities may be disadvantaged if their characteristics cause difficulty navigating OIC alone and dealing with the complexities of the tariff (Claimant Law Firm).
- The tariff disproportionately impacts the claimants with lower incomes. The tariff is too low and leaves people undercompensated which is more acute for vulnerable claimants with protected characteristics (Claimant Law Firm, Claimant Representative Body, Other).
- Effectively removing legal representation from victims whilst retaining it for defendant exacerbates the unfairness for those less able to manage (Cross-Sector Representative Body).

84. Several respondents across all sectors answered this question by referencing the OIC process rather than the review of the tariff itself. These answers were a mix of positive and negative feedback on the process however these are outside the scope of this question and the review of the Regulations.

Summary and Next Steps

85. The evidence gathered from this Call for Evidence has been reviewed by the Ministry of Justice and this response document provides a high-level summary of the submissions provided by stakeholders. All submissions have been considered and used to inform and assist the Lord Chancellor in considering the outcome of the review. The Lord Chancellor is required to lay a report in Parliament which has been published separately here:

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

MINISTRY OF JUSTICE

21 November 2024

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

List of Respondents

| | |
|---|--|
| Association of British Insurers | First Central Insurance Management Limited |
| Association of Consumer Support Organisations | Forum of Insurance Lawyers |
| Allianz | Forbes LLP |
| Anexo PLC | Keoghs |
| Association of Personal Injury Lawyers | Knightsbridge Solicitors |
| Aviva | LV= |
| Bott & Co | MASS |
| Carpenters | MIB |
| CILEX | Mobile Doctors Limited |
| DAC Beachcroft | NFU Mutual |
| Direct Line Group | Premier Medical Group Limited |
| Doncaster and District Law Society | Lyons Davidson Solicitors |
| DSM Legal Limited | Thompsons |
| DWF Law LLP | Unison |
| eSure | Wards Solicitors LLP |



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