



Ministry  
of Justice

# **Statutory Review of the Whiplash Injury Regulations 2021**

**Lord Chancellor's Report and  
Recommendations**

21 November 2024





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of Justice

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Lord Chancellor's Report and Recommendations

Presented to Parliament pursuant to Part 1, Section 4 of the Civil Liability Act  
2018

21 November 2024



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## Foreword



The Civil Liability Act (CLA) 2018 introduced a number of changes to the claims process for making low value road traffic accident (RTA) related personal injury claims, the majority of which are 'whiplash' claims.

This included measures to introduce a tariff for whiplash compensation, along with a 'judicial uplift' - an amount by which the court can uplift the tariff damages awarded to a claimant. The CLA 2018 also introduced for the first time a legal definition of what constituted a whiplash claim and it also prohibited the practice of offering or seeking a settlement to a whiplash claim without medical evidence.

The Whiplash Injury Regulations 2021 (the Regulations) allow me, as Lord Chancellor, to set the level of both the tariff and the additional judicial uplift allowable in exceptional circumstances. The CLA 2018 places a statutory duty on me to review them within three years of its introduction (and within every three years thereafter) and to lay a report providing details of the review outcomes and next steps before Parliament.

This report fulfils my statutory obligations in regard to reviewing the Regulations, and in compiling it I have considered a robust and broad evidence base. I have also taken into account the broad range of views provided through a stakeholder Call for Evidence exercise.

This report sets out details of my decisions and the necessary next steps to implement them. In accordance with the requirements in the CLA 2018, a copy has been deposited in Parliament.

A handwritten signature in black ink, which appears to read 'S. Mahmood', written over a horizontal line.

**The Rt Hon Shabana Mahmood MP**  
**Lord Chancellor & Secretary of State for Justice**

# Executive Summary

Part 1 of the CLA 2018 reformed the process for awarding claimants' damages for pain, suffering and loss of amenity for whiplash injuries arising from an RTA. Section 3 of the CLA 2018 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 CLA 2018 requires the Lord Chancellor to review the whiplash tariff no later than three years after its implementation and no later than within every three years thereafter. The Whiplash Injury Regulations 2021 implement the provisions set out in the CLA 2018.

The Lord Chancellor must also consult the Lady Chief Justice (LCJ) before making new regulations and prepare, publish and lay a report of each review before Parliament. The purpose of this report is to provide information on the review process undertaken, along with details of the recommendations made.

The review has considered a wide range of issues including the tariff's component parts (the duration bands, and the separation of whiplash only injuries and whiplash injuries with minor psychological damage). It has also examined what has changed since the introduction of the measures, such as exploring how economic factors such as inflation have had an impact since the introduction of the tariff.

Supporting data was provided by the Official Injury Claim service (correct as of 31 March 2024), His Majesty's Courts and Tribunal Service and MedCo (both correct as of 30/04/24). This data has been considered, as have the appropriate future inflationary forecasts published by the Office for Budget Responsibility.

A separate publication providing a high-level summary of the responses to the Call for Evidence which was issued in support of the review exercise has been published separately and can be found here:

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

Finally, this report also provides information on the next steps to complete and implement the outcomes of the review. This includes the broad timetable for consulting with the LCJ and for preparing and laying an updated Statutory Instrument under the affirmative resolution procedure to implement the final changes to the Regulations.

**Ministry of Justice – 21 November 2024**



# Introduction

1. This report is published as part of the statutory review of the Whiplash Injury Regulations 2021. The review includes an assessment of the provisions contained in these Regulations, namely the:
  - whiplash tariff and its component parts;
  - judicial uplift allowable in cases where the claimant can prove either their whiplash injury or circumstances are exceptional; and
  - definition of what constitutes medical evidence and a medical report provider for the purpose of enforcing the ban on the seeking or making of offers to settle a whiplash claim without medical evidence.
2. The review has explored changes specific to whiplash claims, as well as broader factors such as inflation and claims sector changes. Wider economic, sectorial and other changes since the implementation of the Regulations on 31 May 2021 have been considered alongside industry and government data and a Call for Evidence.
3. All submissions and evidence provided to the Call for Evidence were assessed and used to inform and assist considerations of the Regulations. In line with the statutory requirements, a copy of this report on the outcomes of the review will be deposited in Parliament and these stakeholder submissions may be referenced therein. A separate high-level response document covering the Call for Evidence responses has also been published and this should be read alongside this report.
4. In addition, a formal Impact Assessment has not been prepared in relation to this report, as there are no new policy proposals included. It should also be noted that the impacts on amendments to the Regulations in relation to the whiplash tariff and judicial uplift have been considered throughout the review process.
5. This review 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 this statutory review which is only focussed on reviewing the Regulations. Further information on a formal post implementation review of the whiplash reform programme will be provided in due course.
6. Copies of this report are being sent to the organisations listed in Annex 1 for information (please note this list is not meant to be exhaustive or exclusive).

7. An accessible version and a Welsh translation of this document are available for download at:

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

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# Background

## The Whiplash Reform Programme

8. Following its implementation on 31 May 2021, the Whiplash Reform Programme changed the way claimants are awarded damages for low value whiplash injuries. This included the measures included in Part 1 of the CLA 2018<sup>1</sup> to define whiplash, ban pre-medical offers and introduce a whiplash tariff.
9. These reforms were supported by additional secondary legislative changes to increase the small claims track limit for RTA related personal injury claims from £1,000 to £5,000 and the introduction of a new Pre-Action Protocol for Personal Injury Claims below the Small Claims Limit in Road Traffic Accidents (The RTA Small Claims Protocol<sup>2</sup>).
10. At the same time, the industry owned and developed Official Injury Claim (OIC) portal<sup>3</sup> was launched to assist claimants affected by the reforms. OIC is a free to use online service for bringing, negotiating and settling low value RTA-related personal injury claims. OIC has been designed to be accessible and usable by both unrepresented claimants and professional users such as lawyers, insurers and others involved in bringing personal injury claims.

## Pre-reform process

11. Prior to the introduction of the whiplash reforms, personal injury damages in road traffic accident claims were agreed by negotiation or determined by the court. Factors considered, amongst other things, were the severity and duration of the injuries, and previous levels of compensation for similar injuries.
12. Reference was also usually made to a Judicial College publication called the Guidelines for the Assessment of General Damages in Personal Injury Cases. Under this system an average pre-reform award for a whiplash injury with a prognosis period of 9 months was around £2,600.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2018/29/part/1/enacted>

<sup>2</sup> <https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-personal-injury-claims-below-the-small-claims-limit-in-road-traffic-accidents-the-rta-small-claims-protocol>

<sup>3</sup> <https://www.officialinjuryclaim.org.uk/>

## The whiplash tariff

13. Part 1, section 1 of the CLA 2018 introduces a definition of a whiplash injury for the first time, and Part 1, section 3 of the CLA 2018 allows the Lord Chancellor to set a fixed tariff of proportionate compensation for whiplash injuries. The Whiplash Injury Regulations 2021<sup>4</sup> (the Regulations) set the tariff levels and the percentage by which the court can increase the tariff award in cases where the claimant can prove there are either exceptional circumstances or exceptional injury.
14. The tariff presents an ascending scale of fixed sum payments, with the appropriate tariff figure for any given claim being determined by the duration of the whiplash injury incurred. The tariff bands are 0–3 months, 3–6 months, 6–9 months, 9–12 months, 12–15 months, 15–18 months and 18–24 months. More serious whiplash injuries exceeding 24 months in duration are not subject to the tariff and are still issued in the same way as prior to the reforms.
15. The tariff is split, and claims can either be made for whiplash injury only or for a whiplash and minor psychological injury. The compensation a claimant is entitled to depends on the prognosis period for their whiplash injury, irrespective of the prognosis period of any psychological element. This prognosis must be set out in a supporting medical report. The regulations also specify what constitutes appropriate medical evidence for the purposes of settling a whiplash claim.
16. An uplift of up to 20% of the relevant tariff amount can be applied if the claimant can demonstrate that their injury or circumstances are exceptional. No specific definition has been provided as to what constitutes an exceptional circumstance, as this will depend on the individual circumstances of each claimant/claim.
  - a. Several factors were considered in setting these figures in 2021, including the suggested guidelines for compensation as set out in the JCG and the average levels of whiplash compensation paid pre-reform. The overall policy objectives to control the costs of claims and benefit consumers through reduced motor insurance premiums was also a factor.
  - b. Data, evidence and feedback was gathered on actual settlements made from the insurance industry and claimant lawyers. When set, the tariff amounts also reflected projected inflation over the following three-year period (i.e., 2021–2024) and the 15<sup>th</sup> Edition of the JCG (the most recent edition at the time).
  - c. The views of the then Lord Chief Justice were also sought before the figures were finalised, in line with the requirements of the CLA 2018. The final tariff was implemented through the commencement of a Statutory Instrument (SI) laid in

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<sup>4</sup> <https://www.legislation.gov.uk/ukxi/2021/642/contents/made>

Parliament under the affirmative procedure. As such, this SI was subject to debates in both Houses prior to being commenced on 31 May 2021.

## Judicial Uplift

17. Part 1 section 5 of the CLA 2018 allows the court to determine that an amount greater than the relevant tariff figure should be paid for whiplash injuries in exceptional circumstances or where one or more of the whiplash injuries is exceptionally severe. Section 5 further enables the Lord Chancellor to provide in regulations by reference to a percentage of the prescribed sum, the maximum uplift that might be applied by the court to the sums prescribed under the tariff.
18. The judicial uplift was capped at up to 20% following debate in Parliament. This was in line with a similar process implemented in Italy in 2014, in which compensation payable for an RTA-related personal injury claim could be increased by one-fifth (20%) by the Italian Courts.

## Early tariff review

19. Section 4 of the CLA 2018 requires that the Lord Chancellor review the regulations made under section 3 (the whiplash tariff) by no later than three years after implementation (31 May 2024) and to lay a report in Parliament on the review's outcomes and recommendations.
20. Whilst the CLA 2018 requires a review within three years, the then government committed to assessing the feasibility of an early review after one year during the Parliamentary debates on the implementing SI. An assessment was therefore undertaken in 2022 of the available data on settlements made using the OIC service and those which had entered the court process.
21. The purpose of reviewing the whiplash tariff is to understand how it is being applied and interpreted in practice and whether it is appropriate to adjust the tariff bands and/or how they are structured and operate. For such a review to be meaningful there needed to be sufficient and comprehensive evidence and data available. There was otherwise a significant risk that any review would lead to a skewed analysis and inaccurate outcomes, which could be detrimental to all parties.
22. This by necessity meant looking at evidence in relation to both negotiated settlements pre-court and disputed cases in court. The evidence and data considered needed to be complete, reliable, up to date and of sufficient volume to assure that it could be used to inform meaningful conclusions.

23. Having reviewed the data available in 2022, it was identified that there was sufficient data available from OIC on how the tariff had been applied to settle claims pre-court. However, the data from HMCTS on claims which had entered the court service was significantly below the threshold required to effectively assess the tariff. Therefore, the then Lord Chancellor decided that it was not appropriate to undertake a review at that time and that a review after three years would be more appropriate.

## **Appropriate medical evidence for the settling of a whiplash related personal injury claim**

24. Sections 6 to 8 of the CLA 2018 provide for a ban on the seeking, offering, paying or accepting a settlement in respect of an RTA-related whiplash claim without first obtaining appropriate medical evidence of the whiplash injury. Relevant regulators – for example the Solicitors Regulation Authority or the Financial Conduct Authority (FCA) – must ensure that they have arrangements in place to monitor and enforce this ban. This approach is like that taken in banning the payment and acceptance of referral fees in Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.<sup>5</sup>
25. The terms “fixed cost medical report”, “accredited medical expert” and “MedCo” are defined in the regulations. Separate provision is made for where a claimant lives, and is examined, outside England and Wales, albeit that the RTA would have occurred in that jurisdiction, to take account of the fact that these claimants will not in most cases be able to source their medical report via the MedCo Portal.<sup>6</sup>

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<sup>5</sup> <https://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

<sup>6</sup> <https://www.medco.org.uk/about-us/>

# Scope of this Review

## Legislative requirements

26. The CLA 2018 states:

### **4 Review of regulations under section 3**

- (1) The Lord Chancellor must carry out reviews of regulations made under section 3.
- (2) The first review must be completed before the end of the period of three years beginning with the day on which the first regulations under section 3 come into force.
- (3) Subsequent reviews must be completed before the end of the period of three years beginning with the day on which the previous review was completed.
- (4) The Lord Chancellor must prepare and publish a report of each review.
- (5) The Lord Chancellor must lay a copy of each report before Parliament.

27. The Regulations are made under section 3 of the CLA 2018 and they:

- specify, by way of a tariff, the damages payable for PSLA for any RTA related whiplash injury or injuries (as defined by the CLA 2018) lasting up to 2 years, and any whiplash injury or injuries and any whiplash injury and minor psychological injuries suffered on the same occasion;
- allow the court to apply a discretionary uplift (up to 20%) to the appropriate tariff figure where the claimant can evidence exceptional injury or exceptional circumstances; and
- specify what constitutes appropriate medical evidence for the purposes of settling a personal injury claim including a whiplash injury (which must be obtained before the claim may settle) as well as specifying the experts who may provide such evidence.

28. All relevant data, evidence and stakeholder feedback in relation to reviewing the whiplash tariff, the judicial uplift and the definition of what constitutes appropriate medical evidence has been considered. This report provides a summary of the issues and outlines the decisions taken along with recommended next steps, where appropriate, in relation to the areas listed above.

29. This report is not an evaluation of the whiplash reform programme in general or an assessment of its impact on individual claimants, the personal injury sector or court activity, and should not be considered as such. A separate post-implementation review of the reforms will be completed in due course, following the completion of this review and the implementation of its outcomes.

## **Whiplash Tariff – Evidence and data sources**

30. This report has been informed by consideration of multiple sources of data from both industry and government. This includes data provided by OIC, HMCTS, MedCo and via a public stakeholder Call for Evidence.
31. OIC have provided helpful data covering claims volumes split by claimant type, claims distribution split by tariff and non-tariff and by claimant type. In addition, various data sets relating to settlement values and settlement times have also been shared.
32. Full data on the value of the court determined settlements is not retained centrally in electronic files. This means that data on the value of all court awards is not currently available. However, work to implement the HMCTS Reform programme and improve data collection is ongoing and officials will continue to work to improve data quality in this area to inform future reviews.
33. Therefore, for this exercise, HMCTS have provided a representative sample of 100 claims drawn from a manual search of the court files of settled cases heard by courts in Birkenhead, Chelmsford, Manchester and St Helens.
34. This data covers the volume of claims which have applied for a quantum dispute settlement hearing, the volumes which withdraw or settle before a hearing and on the volume of quantum claims which received a court determination. In addition, this data covers the value of settlements for whiplash injuries, whiplash plus minor psychological injuries and non-whiplash injuries.
35. MedCo have provided data on average prognosis periods for both represented and unrepresented claimants. This comparative data has been used in support of considerations related to the tariff structure and bands.
36. Whilst not a statutory requirement, a stakeholder Call for Evidence covering a range of issues related to the operation of the whiplash tariff was also issued in support of this review. The responses, data and evidence submitted to this exercise, where they were within scope of this review, have also been considered alongside the specific data sources described above.



# Analysis of Data and Responses to Stakeholder Call for Evidence

## Tariff structure and component parts

37. Table 1 sets out the current whiplash tariff structure and compensation amounts, split by duration of injury and injury type, as they are set out in the 2021 Regulations. Additional Information on the application of the tariff can be found in the Explanatory Memorandum (EM)<sup>7</sup> which accompanies the Regulations and at section 4.41 of the OIC guide to making a personal injury claim.<sup>8</sup>

**Table 1: Whiplash Tariff**

<b>Duration of injury</b>	<b>Amount (whiplash only)</b>	<b>Amount (whiplash and minor psychological injury)</b>
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

## Duration bands

38. The tariff was designed to allow for an even progression along the scale, dependent on the severity of the injury. The injury duration was set at three-month increments

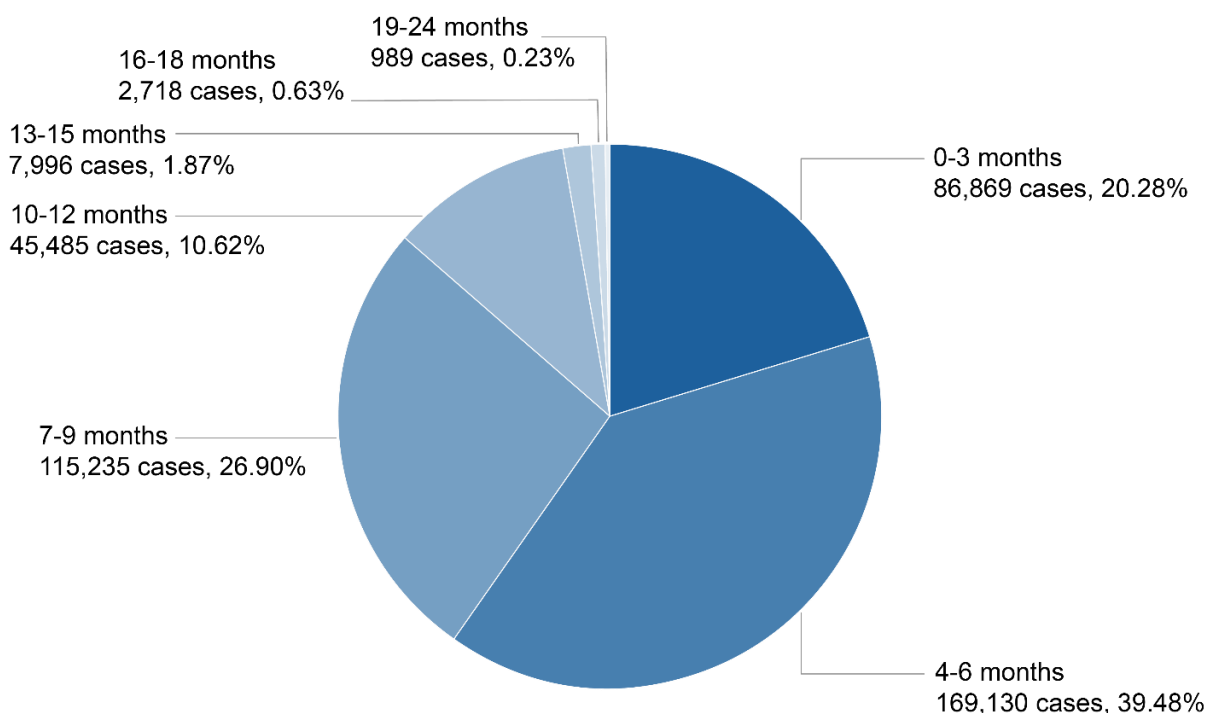
<sup>7</sup> [https://www.legislation.gov.uk/ukxi/2021/642/pdfs/ukxiem\\_20210642\\_en.pdf](https://www.legislation.gov.uk/ukxi/2021/642/pdfs/ukxiem_20210642_en.pdf)

<sup>8</sup> <https://www.officialinjuryclaim.org.uk/guide-to-making-a-claim/>

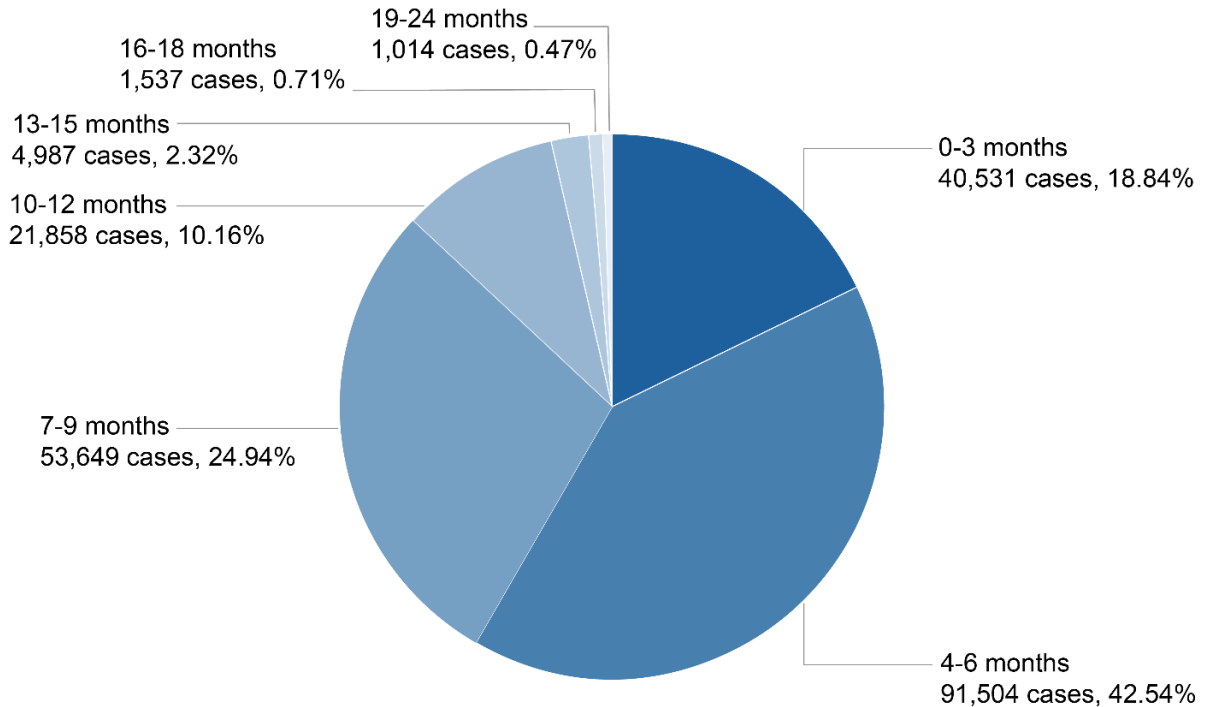
tied to prognosis periods for the injury. A slightly longer 6-month band was included at the upper end of the scale for injuries with a prognosis period of 18 to 24 months.

39. As noted in the EM for the Regulations, the value of the claim for either tariff is based on the duration of the whiplash injury not the minor psychological injury. This enables claimants to identify the appropriate compensation band by reference to the prognosis period included in their medical report.
40. Overall, Call for Evidence respondents agreed that the approach to setting bands in three-month intervals was the right one and generally worked well. Some stakeholders noted issues in agreeing the appropriate band when the prognosis period overlapped with two bands, with claimants arguing for higher bands and defendants suggesting lower bands.
41. A small number of respondents also suggested that there was an increase in the number of 13-month prognosis periods being provided. However, the available data does not support this assertion of a prognosis shift.
42. MedCo data from the pre-reform period of 2019/20 when split by three-month bands closely resembles the proportion of prognosis periods being provided in 2023/24. There are some small shifts, with the largest being a 3% increase in the 3–6-month band, but this is balanced by a 2% drop in the 7–9-month band. Charts 1 and 2 below show the full breakdown.

**Chart 1: Whiplash cases by highest prognosis – cases uploaded March 2019 to February 2020**

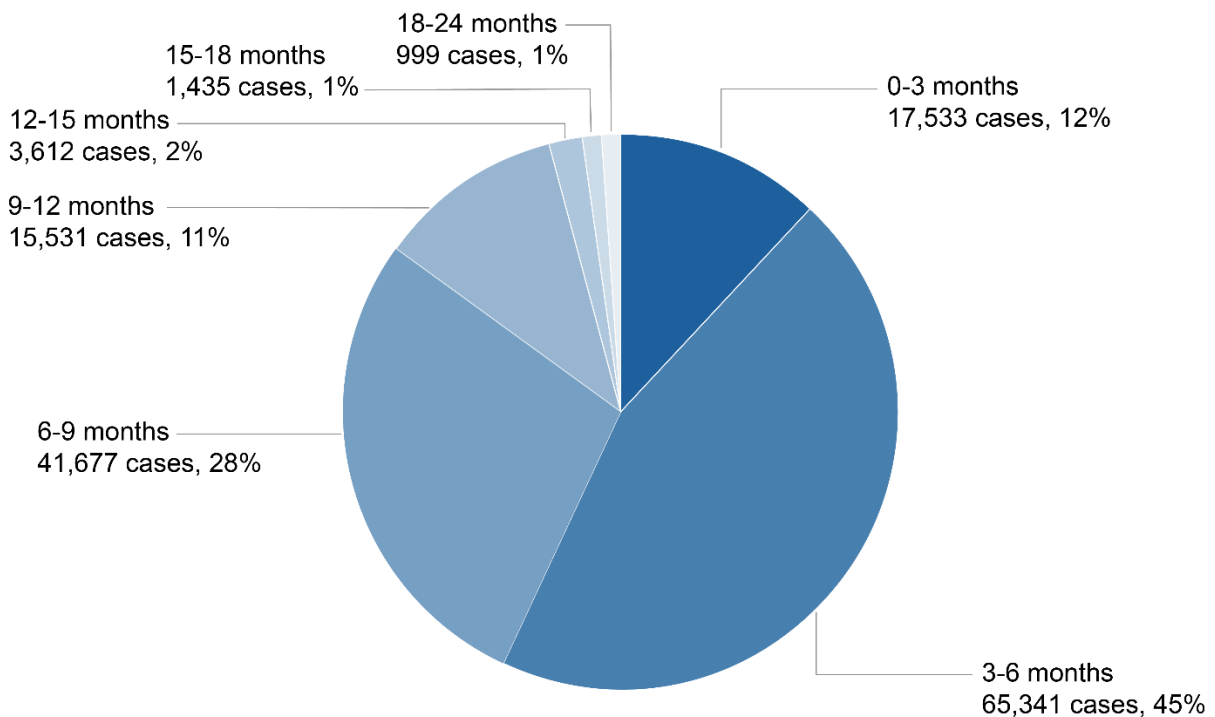


**Chart 2: Whiplash cases by highest prognosis – cases uploaded March 2023 to February 2024**



43. This data breakdown is also supported by looking at OIC claims distribution data for whiplash tariff claims. Chart 3 below details this data, where you see that the data spread is broadly the same as that shown in the MedCo charts.
44. There is a small difference in the data for 0–3 month and 3–6-month injuries, likely related to the data presentation. MedCo data is split slightly differently from the OIC data and so claims with a 6-month prognosis may be allocated on different sides of the line. OIC data is based on settled claims data where the tariff band is agreed.

**Chart 3: OIC – distribution of whiplash tariff claims**



## Minor Psychological Injuries:

45. As shown above, the tariff is split into two sets of figures, one for whiplash injuries only and one for whiplash injuries and any minor psychological injuries suffered on the same occasion. This ensures that damages for a minor psychological injury are paid only where it is present and referenced in the initial medical report (for example, minor shock or travel anxiety where such is attributable to the accident).
46. Stakeholders generally agreed that this tariff split should remain to ensure that psychological injury is only compensated where it is appropriate. However, Feedback from the Call for Evidence also indicates that there can be disagreement around the definition of minor psychological injury, leading to an increase in secondary medical reports to assess psychological injuries.
47. It should be noted that the Minor Injuries chapter of the JCG states that a minor injury is usually one which lasts for no more than three months and that a psychological injury such as travel anxiety may be considered as minor even if it lasts longer than three months (full text below).

Minor injuries are injuries which are of short duration, where there is a complete recovery within three months, and are not otherwise referred to in other chapters. Cases where there is significant pain or multiple injuries albeit full recovery within three months may fall outside this chapter. **Likewise, cases involving, for example, travel anxiety (associated with minor physical injuries) or minor scarring where symptoms last for more than three months may appropriately be included in this chapter.** The awards within each bracket will be dependent on the severity and duration of symptoms. The extent to which the level of symptoms remains relatively constant will also be a relevant factor. Claims solely in respect of shock or travel anxiety in the absence of physical or recognised psychiatric injury will not attract an award of compensation.

48. The government's expectation is that this approach should be applied to minor psychological claims associated with a whiplash injury. As such a second report would normally only need to be sourced if there is a more significant diagnosable psychiatric injury or post-traumatic stress disorder as described in Chapter 4 of the JCG. The minor psychological injuries covered by the tariff should be distinguished from these and officials will consider ways in which further guidance can be provided.

### **Conclusion**

There is no specific evidence to indicate that a change to the tariff structure is required. Evidence and feedback indicate that the three-month bands are appropriate and that the two tariff strands (whiplash only and whiplash plus psychological) operate well and ensure that claimants get the appropriate compensation.

Stakeholder feedback that there can be friction when agreeing settlements where the prognosis period overlaps two bands has been noted. However, this appears to be an issue with the clarity and quality of the medical reports rather than an issue with the tariff bands themselves.

Therefore, I have decided to retain the current tariff band structure. I will also ensure that MoJ continues to work with MedCo and other interested stakeholders to improve the quality of medical reports.

## **Changes since implementation and other broader factors**

49. Feedback was sought from stakeholders on any relevant factors or changes to the claims market which should be considered in reviewing the whiplash tariff. Question 6 of the Call for Evidence sought data on changes in relation to:

- a) The volume of whiplash settlements;
- b) The composition of the claims market;
- c) Caseloads; and
- d) Any other relevant factors.

### Claims volumes

50. Respondents from across the sector agreed on several points in response to this question including on the impacts on settlement volumes. Most respondents agreed that claims volumes overall have reduced by around 50% from pre-reform levels.
51. It was noted that in 2019/20 RTA related claims notified to the Department of Work and Pensions Compensation Recovery Unit (DWP CRU<sup>9</sup>) totalled 653,052. This compares to a total of 269,521 claims started on the OIC system in 2023/24 (238,485 represented and 31,036 unrepresented). However, there are caveats to consider when comparing OIC and DWP CRU data.
52. Claims between £5,000 and £25,000 continue to be registered on the Claims Portal Limited<sup>10</sup> service and these figures<sup>11</sup> should also be considered when comparing pre- and post-reform claims data from sources such as DWP CRU. Taking these into account results in a reduction of around 45%.<sup>12</sup>

### Settlement volumes

53. Stakeholders argue that the fall in overall claim volumes also impacts on settlement volumes. Some respondents also noted that behaviours have changed following the implementation of the reforms, with both claimant representatives and compensators engaging in practices which have resulted to delays in settling cases.
54. In the main, claimant representatives suggested that some compensators provide incorrect tariff offers lower than they would expect based on the claimant's medical report. Some claimant representatives also argued that the prognosis period of the psychological injury should be used rather than that of the whiplash injury as it is longer. Compensators also noted that they can encounter disagreement when a prognosis provided in the medical report straddles two tariff bands.

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<sup>9</sup> <https://www.gov.uk/government/publications/compensation-recovery-unit-performance-data/compensation-recovery-unit-performance-data>

<sup>10</sup> Claims Portal is an industry owned and operated service which provides claimant representatives and compensators with a safe and secure electronic means of communication in line with the provisions of the RTA Pre-Action Protocol and is the mandated route for claims valued between £5,000 and £25,000.

<sup>11</sup> <https://www.claimsportal.org.uk/media/dn3idtnl/rt-a-dashboard.xlsm>

<sup>12</sup> Caution is needed when quoting DWP CRU figures as they cover RTA claims of all values, not just OIC claims valued up to £5,000. Published DWP CRU figures also include data for Scotland, which is not in scope of the reforms.

55. Other behaviours noted include a reluctance to upload and disclose medical evidence by represented claimants as a main cause for delay. OIC data does indicate there is a difference in settlement times; in 2023/24 the settlement times for represented claims (297 days) was more than twice than those for unrepresented claimants (129 days).
56. MedCo and OIC data show that there is a significantly longer period before disclosure of medical evidence by represented claimants. There are legitimate reasons for this, including the claimant's right to wait out their prognosis. However, it does result in longer settlement times for represented claimants.
57. Stakeholder responses from across the sector also noted that many claims have stalled to await the outcome of the *Hassam v Rabot* Supreme Court case on valuing mixed injury claims.<sup>13</sup> However, it was also suggested that more claims will now progress and settle now that the judgment has been handed down.

#### **Composition of claims market**

58. There was also stakeholder agreement in this area, with most respondents noting that the personal injury sector has seen exits and market consolidation. This has resulted in several law firm mergers to enable economies of scale but has also led to a reduction in the overall number of law firms offering their services to claimants following the implementation of the reforms.
59. There was also consensus that Claims Management Company (CMC) involvement in the RTA personal injury sector has reduced considerably. It should, however, be noted that this reduction began following the implementation of the referral fee ban in 2013 and accelerated on the FCA taking over regulation of the sector in 2019. That said, the available data shows that the predicted post-reform influx of CMCs back into the RTA personal injury sector hasn't materialised.

#### **Caseloads**

60. The stakeholder feedback provided here mostly related to the reduction in overall claims volumes. This, it was suggested, has resulted in reduced caseloads, but that view has also been countered by delays in other areas emerging. For example, as noted above, compensators suggested that delays in receiving medical reports from represented claimants meant caseloads were building. Claimants, however, noted that delays were caused by compensators making incorrect and low offers.
61. Stakeholders also agreed that the resolution of the *Hassam v Rabot* litigation will result in caseloads easing as more settlements are agreed. This is an important point, and MoJ officials will continue to monitor settlement data.

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<sup>13</sup> <https://www.supremecourt.uk/cases/uksc-2023-0025.html>

### Other relevant factors

62. The main external factors cited for consideration were the impact of recent high levels of inflation and the associated increases to the cost of living. Where stakeholders differed however, was in what these issues mean for the review.
63. In their comments, compensators and defendant lawyers opposed increasing the tariff, arguing that this would likely result in higher motor premiums. Claimant-focused respondents argued that inflation and cost of living pressures should result in an above inflation increase to the tariff levels.
64. A balance must be maintained to protect Parliament's intention of ensuring claimants receive appropriate compensation. The compensator's suggestion would likely result in under-compensation and the claimant's alternative risks over-compensation.
65. Several respondents pointed to the impact of the recently published 17<sup>th</sup> update of the JCG. The JCG editorial board have also considered issues such as high inflation and have decided on an inflationary increase to the awards of around 22% using the Retail Prices Index (RPI) rather than the Consumer Prices Index (CPI).
66. Compensators argue that any increase to the tariff when coupled with the recent increase to the JCG amounts applicable to non-tariff injuries would result in a significant number of claims being revalued above £5,000. They also suggested that a sizable proportion of claims would exit the small claims track and then be re-started in the costs-bearing Fast Track process, adding increased costs and leading to higher claim volumes.
67. Therefore, compensators argue that the small claims track limit should also be increased to match any increase to the tariff amounts to ensure claims stay in the appropriate court tracks. Again, there is some logic behind this argument, but as well as being out of scope for this exercise caution is also needed in considering acting without regard to all the appropriate data.
68. In addition, an initial analysis suggests that less than 5% of claims using the OIC would be valued above the small claims limit under the new tariff. However, MoJ officials will continue to monitor settlement data to identify whether a significant proportion of claims have been impacted in the way suggested and will consider further action in this area if the evidence justifies doing so.

### Mixed Injury Claims

69. Information was also sought regarding the process for valuing and settling claims which included both whiplash injury and non-whiplash injury elements. Feedback from stakeholders to the Call for Evidence largely repeated arguments set out in the



earlier section, particularly relating to the impact of the *Hassam v Rabot* Supreme Court case.

70. Stakeholders did comment on increased levels of friction in the negotiating process related to valuing claims and making offers to settle. These mirrored the arguments put forward in the Supreme Court case with compensators generally offering lower amounts with tariff awards plus a token sum for other injuries. Claimants on the other hand have been seeking higher amounts with more weight put on additional injuries.
71. Stakeholders noted that these opposing positions have resulted in slower settlement negotiations with many claims being held back to await the Supreme Court judgment on mixed injuries. MoJ will continue to monitor the settlement data and the behaviours of the parties in this area.

### **Settlement values**

72. The available data on average settlement values shows that claimants settling via the OIC portal receive an average settlement of £747 for whiplash tariff claims and an average of £985 for non-tariff injuries. These figures are based on averages across all claims since implementation. In relation to just the 2023/24 year the figures are £778 and £1,055 respectively.
73. The HMCTS data sample, as mentioned, shows that the average settlement value for whiplash tariff claims is £662 and for non-tariff injuries it is £1,566.

**Table 2**

<b>Average Settlement values Comparison</b>	<b>HMCTS Average settlement values</b>	<b>OIC Average settlement values</b>
Average non-tariff injury amount	£1,566	£985
Average Tariff amount	£662	£747

74. Two factors should be noted. Firstly, that the HMCTS data is a smaller sample size than that from OIC, therefore the average tariff payment is likely to be higher due to the increased volume of claims. Secondly, that the higher non-tariff injury values in claims which have gone to court likely reflect the fact that claims which do not resolve pre-court are generally those where agreement has not been reached due to greater complexity and/or contain more injuries and therefore are of higher value.
75. This data is indicative that those settling pre-court via the OIC are not losing out financially in terms of damages received for pain, suffering and loss of amenity. Additionally, where their claims involve whiplash only injuries the OIC system is enabling effective and proportionate settlements to be made for both represented and unrepresented claimants.

# Inflation

76. The impact of inflation was important, and the Call for Evidence explored this in detail and paragraphs 57–68 of the government response sets out feedback received. When implemented the tariff was updated to include a three year 'buffer', designed to account for expected inflation (according to available forecasts). However, inflation over this first three-year period ran at a higher-than-expected rate and most respondents to the Call for Evidence noted that the real value of the tariff has fallen.
77. It is true that some claimants settling during the first year of the reforms would have benefited from the inclusion of the buffer. However, had this buffer not been included the impact on claimants would have been higher than it has been.

## RPI vs CPI

78. If an inflationary uplift is to be made, then consideration must also be given which inflationary measure is the most appropriate one to use. Several claimant representatives argued in their Call for Evidence responses that the Retail Prices Index (RPI) is more appropriate as it is the measure used to update the JCG and it would likely result in a bigger increase to the tariff.
79. However, the Office of National Statistics (ONS)<sup>14</sup> has concluded that for several reasons that RPI is no longer a good measure of inflation and is likely to overstate inflation. It should also be noted that a joint HM Treasury and UK Statistics Authority consultation in 2020<sup>15</sup> confirmed that RPI as a measure will be reformed to align it with how the CPI Housing measure is calculated by 2030.
80. Therefore, the ONS recommend that government use the Consumer Prices Index (CPI) measure wherever possible. This is consistent with the way inflation was calculated for the first iteration of the tariff and in last review of the Personal Injury Discount Rate in 2019 the base measure used was also CPI. In addition, when the small claims track limit for employers and public liability claims was increased in 2022 to £1,500 to account for inflation, CPI was the measure used.

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<sup>14</sup> <https://www.ons.gov.uk/economy/inflationandpriceindices/articles/shortcomingsoftheretailpricesindexasameasureofinflation/2018-03-08>

<sup>15</sup> <https://www.gov.uk/government/consultations/a-consultation-on-the-reform-to-retail-prices-index-rpi-methodology>

## Conclusion

Having considered the available data and evidence I have decided that there should be some level of inflationary increase to the tariff, and that the appropriate measure is CPI. RPI as it is currently calculated would overstate inflation and the use of CPI is in line with common practice across government.

### Three-year buffer

81. Whether to only adjust the current tariff levels to take account of inflation over the last three years or to also apply a buffer (as in 2021) to account for forecasted inflation up to 2027 has also been considered. In terms of the views provided in the Call for Evidence responses, there was general opposition to the use of buffer from both claimant and defendant representatives, but for differing reasons.
82. Claimants opposed the use of a buffer in favour of either an annual review or index linking the tariff to inflation to ensure it increased annually. They argue that this would also protect against unexpected adverse inflationary increases. Defendants, on the other hand, opposed the buffer as they feel it artificially increases the amount of compensation available and undermines the cost savings.
83. Overall, the arguments put forward by stakeholders as to why the buffer should not be applied are not convincing. An annual review process could lead to a cycle of delayed compensation as claimants are advised to wait to settle to benefit from an annual increase. This will likely increase settlement times and costs for potentially no tangible benefit to claimants. The recent high levels of inflation were caused by a combination of specific circumstances, and these are not likely to be a regular event.

### Options

84. The current tariff includes within it an inflationary buffer. This was designed to ensure that claimants weren't under-compensated during the three years between its implementation and this review. Therefore, two options have been considered, these are:
  - a. **Option 1:** uprate the tariff to account for actual inflation up to May 2024 (the date of this review); or
  - b. **Option 2:** uprate in the same way as in option 1 and then add an additional three-year buffer.
85. To apply an inflationary increase to the tariff for this review, we must use the original tariff minus the inflationary buffer as the starting point. Without this step, we would be including both the original forecasted inflation and the actual inflation that has occurred over the last three years, which would massively overstate the impact

of inflation.<sup>16</sup> The 2021 tariff structure and the 2021 base tariff structure without the buffer are shown in the table below:

**Table 3**

Duration of injury	With buffer		Without buffer	
	Whiplash	Whiplash plus psych	Whiplash	Whiplash plus psych
0 to 3 months	£240	£260	£220	£240
3 to 6 months	£495	£520	£455	£480
6 to 9 months	£840	£895	£775	£825
9 to 12 months	£1,320	£1,390	£1,215	£1,280
12 to 15 months	£2,040	£2,125	£1,875	£1,955
15 to 18 months	£3,005	£3,100	£2,770	£2,855
18 to 24 months	£4,215	£4,345	£3,880	£4,000

86. Using the 'without buffer' tariff as the starting point and applying an increase using the available forecasts for CPI would lead to an increase of between 8 to 9%. A revised tariff using option 1 to increase the tariff levels in line with inflation would be as follows (totals also rounded up or down to nearest £5):

**Table 4**

Duration of injury	Increased in line with CPI	
	Whiplash	Whiplash plus psych
0 to 3 months	£260	£285
3 to 6 months	£535	£565
6 to 9 months	£915	£975
9 to 12 months	£1,435	£1,510
12 to 15 months	£2,215	£2,310
15 to 18 months	£3,270	£3,370
18 to 24 months	£4,585	£4,725

<sup>16</sup> The current tariff for a whiplash injury lasting less than 3 months is £240; £20 of this is the buffer added to the original tariff to account for future inflation; applying an inflationary uplift to this tariff without removing the buffer gives a new amount of £280, £220 of which would be the original tariff, £20 would be the existing buffer and £40 would be the inflationary uplift. This effectively accounts for inflation twice, once as a forecast and once as actual inflation.

87. Using the 'without buffer' tariff as the starting point and applying an increase plus a three-year buffer using the available forecasts for CPI, would lead to an increase of between 14 to 15%. Option 2 is to increase the fees in line with inflation as above, and then add a further three-year inflationary buffer on top of this. This would increase the tariff levels as shown below (totals also rounded up or down to the nearest £5):

**Table 5**

Duration of injury	Increased in line with CPI	
	Whiplash	Whiplash plus psych
0 to 3 months	£275	£300
3 to 6 months	£565	£595
6 to 9 months	£965	£1,025
9 to 12 months	£1,510	£1,595
12 to 15 months	£2,335	£2,435
15 to 18 months	£3,445	£3,550
18 to 24 months	£4,830	£4,975

### Conclusion

Following consideration of the available data and the viewpoints put forward by various stakeholders **I have decided that the current whiplash tariff amounts will be increased to account for actual inflation since 31 May 2021.**

Regarding whether to apply an additional inflationary buffer, as noted above the arguments put forward as to why the buffer should not be applied by stakeholders are not persuasive considering the evidence currently available. An annual process could lead to a cycle of delayed compensation as claimants would wait to settle to maximise their award and would inevitably add costs to the process for no significant advantage to the claimant.

The recent inflationary cycle was the product of a specific set of circumstances and is not a regularly occurring event. Claimants should be given the protection that the buffer provides, and three years is the appropriate length of time. In addition, the difference in tariff levels using the buffer is not so great as to risk significantly risk the objectives behind the reforms.

Therefore, **I have also decided that the tariff will continue to be future proofed through applying a CPI rounding over three years**, after which point it will be subject to next statutory review.

# Summary of the Lord Chancellor's decisions and next steps

## Whiplash Tariff

88. In summary, the Regulations set the tariff levels which are a fixed ascending scale of payments. The tariff is split, and claims can either be made for whiplash injury only or for a whiplash and minor psychological injury.
89. Additionally, the appropriate tariff figure for any given claim is determined by the duration of the whiplash injury up to a maximum period of two years. More serious whiplash injuries exceeding 2 years duration are not subject to the tariff.
90. I have considered the industry data provided by OIC, HMCTS and MedCo along with the responses provided by stakeholders to the Call for Evidence in relation to the whiplash tariff and have made the following decisions:

**I will maintain the existing structure and component parts of the tariff, including the duration bands and split between whiplash and whiplash + minor psychological injury.**

**I will explore ways in which further guidance can be provided in relation to defining minor psychological injuries.**

**I will increase the tariff amounts to account for CPI inflation 2021–2024 and to build in a three-year buffer which will lead to a 14-15% increase in each band.**

## Judicial Uplift

91. Part 1 section 5 of the CLA 2018 allows the court to determine that an amount greater than the relevant tariff figure should be paid for whiplash injuries in exceptional circumstances. This figure was set at up to 20% following debate during the passage of the CLA 2018 and implemented via the Regulations in May 2021.
92. Stakeholder comment was received in relation to the uplift, with comment from claimant and defendant representatives that there is a lack of a clear definition as to what constitutes 'exceptional'. It is, however, not appropriate for the government to

dictate what is deemed 'exceptional'. All cases are different, and each claim must be judged on its merits by the parties and/or the courts.

93. Additionally, some feedback from across the sector was received which noted that unrepresented claimants tended to make more frequent applications for an uplift. This is an expected behaviour, but an increased number of applications does not mean that they will necessarily meet the high threshold of 'exceptionality' and as noted above each application should be judged on its evidence and merits. This remains a decision for compensators and courts to make based on the evidence presented in support of such an application. Therefore, I have decided that:

**I am content that it remains appropriate to apply the uplift to the tariff in cases where exceptional injury or circumstances are evidenced by the claimant. The maximum uplift of up to 20% will therefore be maintained.**

## **Appropriate medical evidence for the settling of a whiplash related personal injury claim**

94. The third area covered by this review to Section 4 of the Regulations which relate to the ban on pre-medical offers to settle. These provisions specify what constitutes appropriate medical evidence and who may provide it.
95. The Regulations provide that where a claimant lives in England and Wales, or chooses to be examined in England or Wales, evidence of the whiplash injury or injuries must be provided in a fixed cost medical report from an accredited medical expert selected via the MedCo Portal. Having considered the data on how the medical reporting process has worked I have decided that:

**No further amendment is required to the medical reporting definitions provided in the Regulations at this time.**

## **Next steps**

96. In line with my statutory responsibilities, I will now undertake a consultation on my decisions with the Lady Chief Justice. I expect this exercise to be completed in around 8 weeks. Confirmation of the outcomes of this consultation will be communicated to stakeholders prior to laying the revised Regulations to implement these changes.

97. These Regulations will then be laid and debated in both Houses under the Affirmative Resolution procedure as soon as Parliamentary time allows. The revised Regulations will apply to claims arising from accidents which occur on or after the commencement date of the Regulations. Further information on the final implementation timetable will be published in due course.

**Shabana Mahmood MP**  
**Lord Chancellor and Secretary of State for Justice**



# Contact details, complaints and extra copies

## MoJ contact details

If you have any comments or questions regarding any of the issues included within this report, please contact:

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## Complaints or comments

If you have any complaints or comments about this report, you should contact the Ministry of Justice at the above address.

## Extra copies

Further paper copies of this report can be obtained from this address, and it is also available on-line on **gov.uk** at:

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

And on the parliament website.

Alternative format versions of this publication can be requested from:

**[whiplash-reform-team@justice.gov.uk](mailto:whiplash-reform-team@justice.gov.uk)**

# Welsh Language

## Welsh Language Impact Test

I have completed a Welsh Language Impact Test and a full Welsh language version of this report is also available at:

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



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