



WHIPLASH REFORMS 2021: AN OVERVIEW

Matthew E. Mawdsley

Barrister

St John's Buildings

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What are they?

A collection of legislative provisions to give effect to the Civil Liability Act 2018

<https://www.legislation.gov.uk/ukpga/2018/29/contents/enacted>

The regulations are:

The Civil Liability Act 2018 (Commencement No. 1 and Transitional Provision) Regulations 2021

<https://www.legislation.gov.uk/uksi/2021/195/regulation/2/made>

The Whiplash Injury Regulations 2021

<https://www.legislation.gov.uk/ukdsi/2021/9780348220612>

The Civil Procedure (Amendment No.2) Rules 2021

<https://www.legislation.gov.uk/uksi/2021/196/contents/made>

What do they do?

In simple terms they reduce the amount of damages and costs payable in so-called “whiplash” claims.

How do they do this?

A tariff is now provided for whiplash injuries up to 2 years in duration

Damages for whiplash injuries**2.—(1) Subject to regulation 3—**

(a) the total amount of damages for pain, suffering and loss of amenity payable in relation to one or more whiplash injuries, taken together (“the tariff amount” for the purposes of section 5(7)(a) of the Act), is the figure specified in the second column of the following table; and

(b) the total amount of damages for pain, suffering and loss of amenity payable in relation to both one or more whiplash injuries and one or more minor psychological injuries suffered on the same occasion as the whiplash injury or injuries, taken together (“the tariff amount” for the purposes of section 5(7)(b) of the Act), is the figure specified in the third column of the following table—

<i>Duration of injury</i>	Amount – Regulation 2(1)(a)	Amount – Regulation 2(1)(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.

(2) In this regulation, “duration of injury” means—

(a) the duration, or likely duration, of the whiplash injury a person has suffered; or

(b) where a person suffers more than one whiplash injury on the same occasion, the whiplash injury of the longest duration, or likely longest duration, suffered on that occasion,

if the person were to take, or had taken, reasonable steps to mitigate the effect of that injury or those injuries.

The above tariff is subject to uplift in “exceptional circumstances”:

Uplift in exceptional circumstances

3.—(1) Subject to paragraphs (2) and (3), a court—

(a) may determine that the amount of damages payable for pain, suffering and loss of amenity in respect of one or more whiplash injuries is an amount greater than the tariff amount relating to that injury or those injuries;

(b) may determine that the amount of damages payable for pain, suffering and loss of amenity in respect of one or more whiplash injuries, or one or more whiplash injuries and one or more minor psychological injuries, taken together, is an amount greater than the tariff amount relating to those injuries; and

(c) in a case where the court considers the combined effect of—

(i) an injury or injuries in respect of which a tariff amount is specified in regulation 2(1); and

(ii) one or more other injuries,

may determine that an amount greater than the tariff amount is to be taken into account when deciding the amount of damages payable for pain, suffering and loss of amenity in respect of the injuries mentioned in paragraphs (i) and (ii).

(2) Before making a determination under paragraph (1)(a), (b) or (c), the court must be satisfied that—

(a) the degree of pain, suffering or loss of amenity caused by the whiplash injury or injuries in question makes it appropriate to use the greater amount; and

(b) it is the case that—

(i) the whiplash injury is, or one or more of the whiplash injuries are, exceptionally severe, or

(ii) where the person's circumstances increase the pain, suffering or loss of amenity caused by the injury or injuries, those circumstances are exceptional.

(3) The greater amount in paragraph (1)(a), (b) or (c) may not exceed the relevant tariff amount by more than 20%.

Whiplash claims worth up to £5,000 are now allocated to the Small Claims Track and thus are no longer cost bearing (see CPR 26.5(A))

How does this work in practice?

A new pre-action protocol will come into force: PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS BELOW THE SMALL CLAIMS LIMIT IN ROAD TRAFFIC ACCIDENTS

<http://www.justice.gov.uk/courts/procedure-rules/civil/cpr-pap-update-feb-2021.pdf>

As with the current system, if the matter cannot be resolved within the protocol, it will proceed through the Small Claims Track

Who does it apply to?

Best way of looking at this is to say, who does it NOT apply to?

The excepted parties are under CPR 26.6A

- (i) a child; or
- (ii) a protected party;
- (c) when the accident occurred, the claimant was—
 - (i) using a motor cycle;
 - (ii) a pillion passenger on, or a passenger in a sidecar attached to, a motor cycle;
 - (iii) using a wheelchair, a powered wheelchair or a mobility scooter⁽²⁾;
 - (iv) using a bicycle or other pedal cycle;
 - (v) riding a horse; or
 - (vi) a pedestrian;
- (d) unless rule 26.6B applies, on the date that proceedings are started—
 - (i) the claimant is an undischarged bankrupt; or
 - (ii) the claimant or defendant acts as a personal representative of a deceased person; or
- (e) unless rule 26.6B applies, on the date of the accident, the defendant's vehicle was registered outside the United Kingdom.

In the case of a child or a protected party, such claims are allocated to the Fast Track irrespective of value and the other excepted parties will be subject to the £1,000 Small Claims Limit and proceed in the usual way.

When does it come into force?

The above will apply to accidents after the 31st May 2021

Outstanding issues?

There are a number of practical issues which may arise:

Hybrid injuries (where there are both whiplash and non whiplash injuries): how will they be valued?

How are rehabilitation costs to be provided for? Straightforward for represented Claimants, not so clear for those acting in person

Will litigants in person be able to use and understand the portal?

Does the tariff apply? What if the psychological symptoms are more marked or reach the threshold for a defined condition?

How will “exceptional circumstances” be applied?

Matthew Mawdsley

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clerk@stjohnsbldings.co.uk