

A close-up photograph of a lawyer's hands in a dark suit, holding a silver fountain pen over a blue folder containing documents. The background is softly blurred, showing another person and a scale of justice.

# Whiplash Reforms

February 2021

# Introduction

In his Autumn Statement 2015, the then Chancellor of the Exchequer, George Osborne, announced that the government were to end the right to cash compensation for minor whiplash claims and cut legal insurers costs – thus the “Whiplash Reforms” were born.

Since that time the implementation of the reforms have been the subject of numerous delays, most recently as a result of COVID, although yesterday, in The Civil Procedure (Amendment No. 2) Rules 2021 it was confirmed that the “reforms” would come into force on 31st May 2021.

Save for the implementation date, the published Rules reveal little that wasn't already known. At the time of writing we continue to await the associated Protocol and Practice Direction which will provide the details of how the new process will work and we will provide a further update once we have received those rules.



We have also now been provided with the revised tariff in the form of a draft Statutory Instrument, The Whiplash Regulations 2021, which details the fixed amount of damages as:

Duration of Injury	Whiplash Injury Only	Whiplash Injury & Minor Psychological Injury
Less than 3 months	£240	£260
More than 3 months, less than 6 months	£495	£520
More than 6 months, less than 9 months	£840	£895
More than 9 months, less than 12 months	£1,320	£1,390
More than 12 months, less than 15 months	£2,040	£2,125
More than 15 months, less than 18 months	£3,005	£3,100
More than 18 months, less than 24 months	£4,215	£4,345

**This tariff represents a modest to moderate increase from the tariff initially published in 2017:**

Duration of Injury	Tariff
0-3 months	£225
4-6 months	£450
7-9 months	£765
10-12 months	£1,190
13-15 months	£1,820
16-18 months	£2,660
19-24 months	£3,725



The regulations that set the tariff are subject to the affirmative resolution procedure which requires the positive endorsement of both Houses of Parliament. Whilst the approved tariff will be definitive in relation to whiplash injuries and minor psychological injuries the assessment of damages in respect of all other injuries will continue as now – by reference to Judicial College Guidelines and case law. The interplay between “tariff” and “assessed” damages will be an area that all stakeholders will have a keen interest on as case law develops.

It was already known that children and protected parties would be allowed to recover the costs of legal representation. The issue that these claims could still fall under the Small Claims Track (SCT) limit has been addressed by a new rule stating that the Fast Track is the normal track for these claims and they must not be allocated to the SCT. These claims will therefore remain attractive to claimant solicitors and we would not be surprised to see increased frequency of infant claims.

Claims from “vulnerable” claimants, including motor and pedal cyclists are excluded from the increase in the SCT limit. There has been a large increase in those road users as a result of COVID 19 through food deliveries etc and drives to get the public to cycle instead of taking public transport.

The rules provided for Fixed Recoverable Costs (FRC) apply to cases which exit the new Small Claims Protocol (and do not proceed under the existing RTA Protocol). We anticipate, therefore, that FRC will continue to apply to cases where injury is denied.

Whilst the further information that has been received is welcomed, we continue to await the Protocol and Practice Direction and will provide a further update and guidance once this has been received.

# Key contacts

For further details on these scenarios or to obtain more information in relation to our costs services, please do not hesitate to contact us.



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