

ENGLAND AND WALES

Annette Morris

**Reducing the Number and Cost of Whiplash Claims:
The Civil Liability Act 2018 and Associated Reforms**

The Background






Number of Road Traffic Collision Claims (Source: Compensation Recovery Unit)

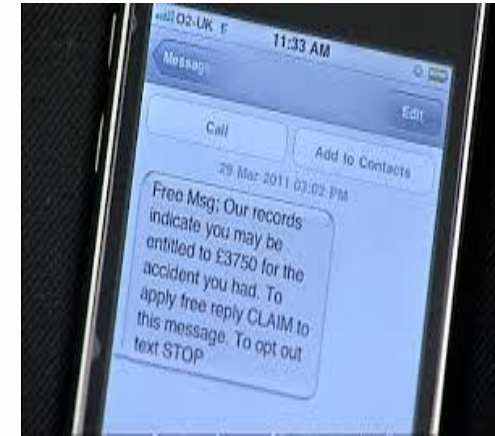
2000/2001	401,757
2004/2005	402,924
2011/2012	828,489

Increased access to justice or an increase in minor, exaggerated or fraudulent claims?

PAINS IN THE NECK

Proportion of personal injury road accident claims relating to whiplash

 UK	78%
 Italy	68%
 Sweden	61%
 Netherlands	35%
 Spain	31%
 France	30%
 Denmark	30%



Estimated that **85+%** of road traffic collision claims are for whiplash

Road Traffic Collision Claims as a Percentage of All Personal Injury Claims

1973	41%
2000/2001	55%
2004/2005	52%
2011/2012	80%

Rising cost of car insurance

- £715** AVERAGE QUOTED PREMIUM
- 19%** RISE IN THE PAST YEAR
- £115** RISE IN THE PAST YEAR
- £44** RISE IN LAST 3 MONTHS

The Reforms: Reducing the Incentive to Claim

- s.6, Civil Liability Act 2018: Introduces fixed tariff of compensation for pain, suffering and loss of amenity for whiplash injuries lasting up to 2 years

Injury Duration	2015 Average Payment	Proposed Tariff	Injury Duration	2015 Average Payment	Proposed Tariff
(Source: House of Commons Library Briefing Paper, <i>Civil Liability Bill [HL]</i> , 2018)					
0-3 months	£1,750	£235	13-15 months	£3,500	£1,910
4-6 months	£2,150	£470	16-18 months	£3,950	£2,790
7-9 months	£2,600	£805	19-24 months	£4,500	£3,910
10-12 months	£3,100	£1,250	24+ months	Out of scope	

- Tariff can be increased (by up to 20%) in exceptional circumstances or reduced for contributory negligence

The Reforms: Increasing Scrutiny of Claims

- s.3, Civil Liability Act 2018: Introduces regulatory ban on seeking/making offers to settle without appropriate medical evidence

**OFFER
ACCEPTED**

Estimated that 7,000 people will no longer be able to pursue a claim because a medical report is required or does not support their claim



The Reforms: Reducing Lawyers' Involvement

- Amendment to Civil Procedure Rules: Will increase small claims track from £1,000 to £5,000 for road traffic collision claims (and to £2,000 for all other personal injury claims)



Estimated that 85%+ of road traffic collision claims will fall within the Small Claims Track – on 2017/2018 figures, that would be 65%+ of all personal injury claims

Estimated that claimant lawyers will lose £80m in legal fees

Estimated that reforms will lead to 60,000 job losses in claims market

The Reaction: The Scope of the Reforms

- s. 1(4): Cyclists and pedestrians excluded after lobbying
- s.1(2): Definition of whiplash injury too broad/political rather than medical
 - a sprain, strain, tear, rupture or lesser damage of a muscle, tendon or ligament in the neck, back or shoulder, or
 - an injury of soft tissue associated with a muscle, tendon or ligament in the neck, back or shoulder.

The Reaction: Impact of Reforms

Other reasons for increase
in insurance premiums

Impede access to justice

Given extent of fraud unknown, less drastic reforms
should have been tried first: estimates range from
0.1%-60% of claims

Damages should be assessed with reference to full
compensation, not political goals

Lead to arbitrary results

Loopholes/ambiguity within the statute will lead to
uncertainty/satellite litigation

Injuries lasting
up to 2 years
are not minor

Lead to inequality of arms
– inexperienced claimants
pitched against well-
resourced repeat-player
insurers

Number and cost of whiplash claims
falling anyway

Even low-value whiplash claims too difficult
for claimants to manage on their own

Genuine claimants will be unfairly affected – honest will
lose out because of the dishonest

Pragmatism over principle...but will it work?

- Government response: public interest outweighs individual rights to compensation
- Reported that reforms will save consumers £35 on their car insurance policy and £1.2 billion overall
- But critics sceptical that cost savings from reforms would be passed on to consumers
- And so s.11 provides for insurers to report to Financial Conduct Authority on effects of reform