



REFORMING OF SOFT TISSUE INJURY (WHIPLASH) CLAIMS

In October 2015, the then Chancellor of the Exchequer announced plans to reform the personal injury claims sector with a ban on compensation for minor whiplash claims and an increase in the small claims track.

Despite various reports of these reforms being shelved or paused, the Ministry of Justice (MOJ) has launched its consultation on measures

proposed to reform the personal injury and ancillary claims sectors. This proposes a wide variety of civil litigation reform, covering far more than just whiplash, as the consultation title implies.

With a short consultation date, the outcomes are due to be published on 7th April 2017. The MOJ is consulting on a number of key areas, namely whiplash compensation, Small Claims Track (SCT) limit increase, and ancillary matters.

WHIPLASH COMPENSATION

Focusing not just on whiplash, the MOJ is focusing on all soft tissue injuries arising out of road traffic accidents (RTAs). In particular, it is consulting on the definition of a minor soft tissue injury and whether this should be linked to the duration of symptoms:

- **Proposal 1:** For the ability to obtain damages for Pain, Suffering and Loss of Amenity (PSLA) for minor soft tissue injuries to be removed entirely, save for special damages which will still be recoverable (loss of earnings, care, rehab etc.). It is likely that claims for special damages will continue to require a medical report and it may also be the case that medical evidence is required to clarify the duration of symptoms in the event that it is alleged that an injury is close to the threshold before which compensation is payable.
- **Proposal 2:** The introduction of a fixed sum (£400 or £425 with psychological injuries) for minor soft tissue injury claims. This is expanded by the proposal to introduce a tariff for those injuries exceeding the definition of 'minor' set out above up to a maximum of 24 months in duration with a maximum sum achievable of £3,500 (£3,600 including psychological injuries). The MOJ is keen for the tariff to be based on a single figure as opposed to a bracket, perhaps paving the way for the introduction of an automated process.



SCT LIMIT INCREASE

The MOJ is again consulting on two proposals:

- **Proposal 1:** An increase to the SCT PSLA limit for all classes of personal injury claims from £1,000 to £5,000, or
- **Proposal 2:** An increase to the SCT PSLA limit only for claims arising out of RTAs.

Injury Duration (months)	Tariff without psychological symptoms	Tariff with psychological symptoms
0-6	£400	£425
7-9	£700	£740
10-12	£1,100	£1,150
13-15	£1,700	£1,760
16-18	£2,500	£2,575
19-24	£3,500	£3,600

There is also reference to a provision for complex claims to be reallocated in the usual way, although what is complex remains to be seen. These proposals could mean that legal costs are no longer recoverable in most soft tissue injury claims with the exception of limited SCT costs, medical reports and issue fees.



ANCILLARY MATTERS

In light of the proposals, as part of this consultation process, the MOJ has called for evidence on the role of unrepresented claimants, claims management companies and McKenzie Friends (individuals who assist a LIP but do not need to be legally qualified). In addition, evidence is requested on ancillary issues including qualified one-way costs shifting (QOCS), credit hire, rehabilitation, and recoverability of disbursements.



LEGISLATIVE PROVISIONS

While an increase to the SCT requires only a rule change and a Statutory Instrument, the other changes proposed will require an Act of Parliament.



IMPACT

It is clear that the proposed reforms are the most significant set of civil reforms this decade, and would radically alter the personal injury claims market. The following impacts could be anticipated:

UNREPRESENTED CLAIMANTS

We could see a large number of claimants unable to secure legal representation, or those that are perhaps unwilling to share a percentage of a reduced general damages claim with a solicitor. These Litigants in Person (LIPs) could well face difficulties in understanding the process of bringing a claim and may need more assistance from defendant insurers as well as more simplified guidance notes from the MOJ.

SOLICITORS

The proposals inevitably mean that the legal service market will have to adapt. Some solicitors may leave the market due to a reduction in fixed fees from those currently achievable. There may be a greater utilisation of damages based agreements. Solicitors may offer fixed price unbundled services for each part of the litigation process.

CLAIMS MANAGEMENT COMPANIES (CMCS)

In the event that solicitors withdraw from a percentage of the market where they are unable to make sufficient money from these low value claims, there is a real possibility that CMCs will rush to fill the void. The MOJ is consulting on CMCs and McKenzie Friends as part of this consultation process.

COUNSEL

With the proposed reforms seeking to improve the ability of individuals to bring their claim without the need for legal representation, this has the potential to hit the junior bar very hard.

INSURERS

As considered above, should the proposals be adopted, while insurers will see a positive impact on their indemnity spend, their operational expenditure may well increase due to the increase in LIPs. Overall though, insurers should see a positive impact on their indemnity spend as a result of these proposals.

JUDICIAL & QUASI-JUDICIAL BODIES

The removal of damages for a particular type of claim ('minor' soft tissue injuries) or the introduction of a tariff for those claims up to two years in duration may result in the freeing up of judicial time at district judge level. However, this is likely to be tempered against an increase in LIPs, which may lead to court hearings becoming longer as individuals may need more legal assistance and guidance, or more appeals being pursued.

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