

The Whiplash Reforms Explained!

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Amanda McCarthy, Technical Claims Manager, Allianz Insurance plc, explains the Ministry of Justice's Whiplash Reforms and what actions brokers need to do going forward.

"Whiplash reforms", which form part of the Civil Liability Act 2018, are a package of measures designed to reduce insurance costs for ordinary motorists and tackle the continuing high number of whiplash claims. As part of the reforms the Ministry of Justice (MoJ) has commissioned the Motor Insurers' Bureau (MIB) to develop a new online portal for managing low value road traffic accident (RTA) claims. The intention is that the new portal will be suitable for individuals to manage their own claims rather than rely on legal representatives.

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 [THE WHIPLASH REFORMS EXPLAINED](#)

SMALL CLAIMS TRACK (SCT) LIMIT

Historically, the limit for the Small Claims Track (the route to bring low value claims to court) was £1,000. The reforms will increase this limit to £5,000. This will mean that if a person hires a legal representative to make a bodily injury claim below £5,000, their legal fees will not be recoverable from the compensating insurer. Claims for minors, protected parties and vulnerable road users will be exempt.

WHIPLASH DEFINITION

A legal definition of what constitutes a "whiplash" injury is contained in the Civil Liabilities Act: "Injury of soft tissue in the neck, back or shoulder that is 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."

WHIPLASH COMPENSATION TARIFFS

The reforms will also introduce two new tariffs of fixed compensation for "whiplash" type injuries with a recovery period of up to two years (subject to certain exclusions). These tariffs are applicable to pure "whiplash" and "whiplash including minor and psychological injuries".

BAN ON PRE-MED OFFERS

The new legislation introduces a ban on offering to settle, or settling claims without obtaining appropriate medical evidence for injuries falling within the definition of "whiplash".

PROCEDURAL RULES

The new procedural rules were published at the end of February 2021 giving the industry 12 weeks to prepare for launch. During this period compensators are working hard to understand how the rules impact their processes, technology and strategies. While much of the build of the OIC portal itself is complete, development and testing continues to create challenges.

NEW PORTAL

The Official Injury Claim (OIC) portal will open for use on 31 May 2021. Individuals injured in RTAs occurring on or after this date will then be able to use the portal to make a bodily injury claim.

TRANSITION PERIOD

The changes to the Civil Liability Act 2018 Act will apply to RTAs occurring from 31 May 2021. This means that there will be a transition period during which our Claims teams will manage pre and post reform claims in our portfolio.

LITIGANTS IN PERSON

The increase in SCT limit means we expect to see more unrepresented claimants known as Litigants in Person (LiPs). These claimants will require additional support and there is an ABI Code of Conduct to protect them. The proportion of LiPs that will choose to pursue their claim personally is currently unknown. Some commentators speculate that the new process will increase the use of Claims Management Companies (CMC). We're committed to ensuring that unrepresented claimants are treated fairly and are not at a disadvantage to represented claimants.

MARKET CHANGES

We expect the market will adjust to these changes. Claims Management Companies (CMCs) are likely to fill the void left by exiting lawyers whose profit margins will fall. We also expect to see a change in our injury mix, as new injury types become more prevalent to avoid/supplement fixed tariff damages and exceed the new SCT limit. We do not expect frequency of claims to reduce as a direct result of the reforms.

TARIFF+

The introduction of what has become known as Tariff+ damages pose a risk as there is currently no judicial guidance on how to value them. These are a combination of whiplash (tariff damages) plus other damages as a result of other injuries such as: bruising to the chest, leg, or a strained wrist (non-tariff damages). There is a process under way with a group of compensators and claimant representatives to establish whether and how greater clarity to the issue of 'tariff plus' claims could be achieved as soon as possible through the courts. These discussions are still ongoing.

NON-INJURY CLAIMS

We may also see an even greater focus on non-injury claims such as credit hire to replace income lost through non recoverability of legal costs within the Small Claims Track.

LIABILITY DISPUTES

If a compensator intends to deny liability (either fully or partially), the new rules require this to be done within 30 working days of receiving a Small Claim Notification Form. A denial should be corroborated by the defendant's version of events, and must include a signed Statement of Truth. This differs from the current timeline whereby a statement of truth must be submitted within three months of receipt. This shorter deadline means that we'll rely on your cooperation to provide swift access to drivers and their passengers.

A statement of truth is a legal agreement by the signatory that they believe their version of events to be true. Any knowingly false statement in a document verified by a statement of truth could result in contempt of court proceedings.

If a claimant does not accept our position on liability, the new rules entitle them to start legal proceedings for a decision by the court. Drivers (and witnesses) are required to attend in person and provide their version of events. We need your support to ensure that your driver attends the hearing in these circumstances.

In the event that we receive notification of a claim that should be redirected, we'll still have 30 working days to provide evidence for the need to redirect; otherwise we'll only have the option to dispute liability with the portal or accept the claim in full. To help us manage this towards the best possible outcome, we'll need evidence that insurance cover is held elsewhere at the earliest possible opportunity.

If we're unable to provide evidence for the need to redirect, but it's clear that the claim should be redirected, we'll need a signed Statement of Truth from our customer to that effect in order to submit the formal dispute of liability. This Statement will be collected by one of our Claims Investigators, so we'll need contact details for our customer as soon as possible following notification of the incident.

PREPARATION

The Allianz UK Whiplash Reforms Working Group project has been preparing for the Reforms for some time. The project scope includes integration with the new portal via Claims Outcome Advisor (COA), claims handling strategy for new opponents, processes, operational structure and MI requirements to help develop new strategies.

ALLOCATION OF NEW CLAIMS

The OIC portal will use the entries on the Motor Insurance Database (MID) to automatically route claims to compensators. There is currently no functionality within the new system to enable compensators to reject claims to alternative insurers if they've received a claim in error.

We're working on a solution for managing this scenario and we're actively lobbying the MIB to add this functionality to the OIC portal. In the meantime, one of the most effective ways of avoiding mis-directed claims is to ensure that policyholders and their brokers regularly update MID to ensure that entries are correct so that claims aren't made against the wrong policy.

HOW BROKERS CAN SUPPORT THESE CHANGES

Please provide swift access to your drivers and their passengers so we can obtain a signed Statement of Truth within the new shorter deadline.

In the event of legal proceedings to deny a liability position, please ensure that your driver attends the hearing.

If a claim needs to be redirected, please provide proof that cover is held elsewhere as quickly as possible.

In the absence of evidence for redirection, please provide contact details for the customer as quickly as possible following notification.

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