

CREDIT HIRE UPDATE



by

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VASMI PUTTA AND RSA [28.1.20] EWHC 117
(QB)

Fundamental Dishonesty & Costs

Roberts v Kesson & Tesco [20.2.20]

Zameer v Sallah & AXA 3 WLUK 755



BHR evidence

Bunting v Zurich Insurance Plc [2020] EWHC 1807 (QB)



Evidence and pleadings

Diriya v Bojaj [2020] EWCA Civ 1400



Poku v Abedin 8.10.20

Abuse process? Forward trends



See articles also:

see The VOICE of FOIL 5 May 2021 Edition, reproduced on Chambers' website: [Rehabilitation Damages, Fraud, Dishonesty and Wasted Costs - 1 Chancery Lane](#) and [Fundamental Dishonesty & Trials in Lockdown - 1 Chancery Lane](#)

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Whiplash Reforms: 31st May 2021

The background



Whiplash Reforms

The Current system:

- Pre action protocol
- Fixed costs/CFA and ATE
- Broadhurst v Tan [2016] EWCA Civ 94
- CPR 44.16 and CPR 44.15

Whiplash Reforms

Proposed changes: Why change

The government is bringing forward a package of measures to crack down on minor, exaggerated and fraudulent soft tissue injury ('whiplash') claims stemming from road traffic accidents

The proposals are aimed squarely at tackling the compensation culture which has grown up around whiplash claims in recent years. That culture is fuelled by a substantial industry of sustained nuisance cold-calls and targeted advertising which encourages motorists to make claims when little or no injury has been suffered.”

Or as Chris Grayling put it (my emphasis added);

The Government is determined to do more to reduce insurance premiums further to help with the cost of living. Fraudulent, exaggerated and unnecessary insurance claims continue to place a significant financial burden on each and every motorist

Whiplash Reforms

- Civil Liability Act 2018
- Whiplash Injury Regulations 2021 (draft)
- tariff
- New PD 27B :RTASC L, RTASC Q RTASC D
- The Pre Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents.
- Small claims track increase to £5,000
- On line portal - Official Injury Claim
- Not for pedestrians, motorcyclists, cyclists or children

Whiplash Reforms

Civil Liability Act 2018

Whiplash injury means:

Section 1(1) *"an injury of soft tissue in the neck, back or shoulder that is of a description falling within subsection (2) but not including an injury excepted by subsection (3)".*

Section 1(2): *An injury falls within this subsection if it is-
a sprain, strain, tear or 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.*

Section 1(3): *An injury is excepted by this subsection if-
it is an injury of soft tissue which is part of or connected to another injury and
the other injury is not an injury of soft tissue in the neck back or shoulder of a
description falling within subsection (2)*

Whiplash Reforms

- The Act provides for damages for Whiplash to be awarded by reference to Regulations where the injury does not or is not likely to exceed 2 years OR would not have been expected to but for the Claimants failure to reasonably mitigate (s.3(1))
- The Act also allows for Minor (undefined) psychological injuries sustained at the same time as the whiplash injury to be compensated by reference to Regulations
- The Act expressly excludes motorcyclists (s.1(4)).
- It is expressly stated that nothing in the Act prevents the Court from awarding damages for PSLA for any other injury sustained at the same time as the whiplash injury to reflect the combined effect of the injuries (s.3(8))
- There can be an uplift in exceptional (undefined) circumstances - now limited to 20% (s.5)
- A regulated person (insurer) may not settle a claim before appropriate evidence of injury has been obtained to be fixed by regulations- this is a regulatory offence and does not render the agreement void. (s.6).

Whiplash Reforms

Whiplash Injury Regulations 2021

- Includes one or more “minor psychological injuries on the same occasion as the whiplash injury”. Minor is not defined. Is it duration or diagnosis?
- Same sum awarded within each bracket. No distinction for the PSLA actually sustained or the JC Guidelines. Unclear how a 12 month psychological and 3 month whiplash would be compensated.
- Only exception is the exceptional circumstances uplift.

Proposed Tariff

	Whiplash Injury	Plus Psych
Up to 3 months	£240	£260
3 - 6 months	£495	£520
6 - 9 months	£840	£895
9 - 12 months	£1320	£1390
12 - 15 months	£2040	£2125
15 - 18 months	£3005	£3100
18 - 24 months	£4215	£4345

Exceptional circumstance uplift: limited to 20% (reg 3(3))
 More than 24 months - outside of the Act.
 Appropriate evidence of injury - defined as a Medco report?!!

Linked Changes

Linked Changes: 31st May onwards

Amendment to CPR Part 26:

Increase of Small Claims Track Limit to £5,000 ONLY in road traffic accident cases and for accidents occurring after 31st May 2021.

Exceptions (also excluded from the new protocol) - children, protected parties, un-discharged bankrupt, pedestrians, riding a horse, using a wheelchair, mobility scooter, pedal cycle or motor cycle, Def vehicle registered outside of the UK

NB- This is not the same list as those excluded from the Act. So children with whiplash would appear to fall within the new tariff but outside of the increase in small claims track limit.

Linked Changes: Pre Action Protocol

Pre Action Protocol for Personal Injury Claims Below the Small Claims Track Limit in Road Traffic Accidents dated 18th February 2021.

- A new scheme for personal injury RTA claims that fall within the new Small Claims Track Limit (£5,000 - £10,000).
- Sanction for non compliance is Court issue and costs
- Idea is that the entire case can be dealt with using the Protocol with no Court involvement.
- All claims must be submitted to online portal www.officialinjuryclaim.org.
- There is a Portal Support Centre for the computer illiterate
- Ceases to apply if Fraud or FD alleged.

Linked Changes: Pre Action Protocol

- Applies where a Claimant has suffered personal injury not limited to whiplash in an RTA and the award is not more than £5,000 for injury and £10,000 overall
- Distinguishes between Protocol Damages - defined as those that the Claimant personally pays such as an excess and Non Protocol Damages- those not personally paid by the Claimant (includes Repairs and Hire and pre accident value if paid by insurer). The valuation of £10,000 ignores non protocol damages.
- Non protocol Damages are not included in the claim at this stage but they need to be notified to Def as part of the process
- You can only make one claim - the system is supposed to identify linked claims out of the same accident and notify the parties to avoid conflicting decisions on liability. Unsure GDPR Implications.

Linked Changes: Pre Action Protocol

- Does not apply to children (at date of claim), protected parties, vulnerable road users (motorbike, cyclist, horse rider pedestrian, wheel chair or mobility scooter)
- There is a supporting guide - Guide to making a claim (on the website).
- The intention is that liability will be dealt with first.
- Once SCNF entered - a copy is sent to the Defendant (by the Claimant if represented or by the compensator (insurer) if unrep).
- Compensator can admit in full, in part, deny or admit but deny injury caused.
- If denied in full or part - following up to three offers the matter can proceed to Court under the new CPR 27PB B

Linked Changes: Pre

- If no response in time (30 days)- taken to admit liability in full (and cannot argue not injured)
- If liability admitted in full or part admission accepted proceed to quantum.
- MedCo report required for whiplash element of claim - paid for by compensator if unrepresented Cl.
- Doctor also comments on exceptional circumstance when claimed
- Parties seek to agree quantum - if unable the matter returns to court again under CPR 27B
- If Injury denied - can either stop claim or obtain medCo report who will comment on the issue. This is not binding. If Compensator maintains no injury after report obtained the case falls out of the Portal.

Move to litigation CPR 27PD B

Type of case	PD Section	Protocol section	Court Form
○Liability dispute - in full	Section 2	12.9	RTASC L
○Value dispute - no liability dispute no NVC or Uplift	Section 3	12.11	RTASC Q
○Value dispute - liability Part dispute may include NVC or uplift	Section 4	12.10	RTASC D
○Value dispute - liab not disputed, NVC claim may include uplift request	Section 5	12.10	RTASC D
○Value dispute - liab not disputed no NVC uplift	Section 6	12.12	RTASC D
○Interim payment request	Section 7	12.12	RTASC O
○Non payment of interim	Section 8	12.12	RTASC O
○Starting due to Limitation	Section 9	12.12	RTASC O
○Dispute over fees	Section 10	12.12	RTASC O
○Non payment of agreed settlement	Section 11	12.12	RTASC O

CPR 27PD B

- 11 sections depending upon what issue arises.
- Four new forms RTASC D/L/O/Q - must be sent to Court and Money Claims as hard copy together with Court Pack.
- Automatically allocated to Small Claims
- No Defence- AoS in prescribed new form within 14 days - if not no evidence allowed and need permission to take part.
- Non Protocol Vehicle Costs - must be notified to generate the Court Pack and can be pursued in 27PDB claim
- Multiple Claimants - the Court is supposed to spot them and orders can be made for joinder etc.

Whiplash Reforms

Other issues;

- On line portal - no ADR
- Paper version and digital disenfranchisement
- Credit Hire
- Accident Management Companies

Whiplash Reforms - Conclusion



ALL FOR £35!!

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Next webinar: Brexit - Taking Stock with Sarah Prager and Ella Davis, 27th May 12pm