

Whiplash Reforms: An update from Travelers

The new Whiplash Reforms (the “Reforms”) take effect in the UK on Monday 31st May 2021 and will apply to all motor accidents involving vehicles registered in the UK where the accident occurs in England and Wales on or after this date.

The Reforms apply specifically to claimants who have suffered a low value personal injury claim as a result of a road traffic collision.

The small claim limit for motor injury claims has been raised from £1,000 to £5,000. This means that claimant solicitors cannot claim costs for claims below this value, and claimants will be able to pursue claims directly against defendant insurers via the new Official Injury Claim Portal.

In addition, the Reforms reduce the awards for whiplash injuries that a claimant will receive. For example, a 0-3 month whiplash is currently valued at circa £2,000 - £2,500 but this will be reduced to £240. A new tariff of financial awards for pain suffered and loss of amenity (commonly referred to as General Damages) for whiplash injuries with a recovery prognosis of up to 2 years will replace the existing compensation award structure. Injuries with a longer recovery prognosis will receive awards in line with the current assessment of damages used by compensators.

These changes relate to whiplash only, or whiplash with minor psychological injuries. Where other injuries are sustained, the non-whiplash element of the claim will fall outside the new award tariff and return to existing compensation awards. So, there will be claims where both the new tariff and existing award methods will be used to calculate the compensation.

Insurers are no longer able to make pre-medical offers to settle whiplash injury claims, even if a claimant would like them to do so. The claimant must obtain a medical report to support all whiplash claims although offers may still be made without a medical report in relation to other injuries. The claimants will be required to organise their own medical evidence via the Official Injury Claims Portal using a company called MedCo.

Importantly, these changes now require insurers to make a liability decision for motor incidents within 30 working days of the incident being reported to them. Failure to respond to liability within this timeframe results in an automatic admission of liability which is binding, subject to medical causation.

If liability is partially or fully denied, or if insurers allege that the accident did not cause any injury, insurers are required to provide the defendant driver’s version of events and a Statement of Truth to support the denial.

In addition to the Statement of Truth Travelers will also require drivers to confirm the exact number of passengers in each vehicle involved in the collision, and whether they appeared to be injured. This will assist in ensuring that fraudulent low value claims are not pursued through the Portal. Importantly, this will also put us on notice of further claims that may be linked to the same accident, which could involve more serious injuries.

Pros

- Claims can be more easily made directly by claimants, reducing the reliance on solicitors
- Possible reduction in both the compensation awards for as well as the frequency of low value motor injury claims
- Insurers have 30 working days, in place of the current 15 days, to investigate the circumstances of the motor incident and determine liability

Cons

- Liability deemed to be admitted, subject to causation, if no liability decision is formally made within 30 days of the claim being submitted in the Portal. This is binding and cannot be appealed
- Potential increase in fraud activity due to the ease of bringing a claim
- Potential increase in other types of claims activity due to ease of access for low value motor claims

These changes affect everyone who holds motor insurance. It is therefore vital that insureds communicate with their insurers immediately following an incident and cooperate fully with investigations. This will help to ensure that liability can be accurately determined within the tight mandatory deadlines under the scheme.

If you have any questions, please contact Alison Manley, Claim Relationship Manager for Travelers Europe at amanley2@travelers.com