



Association of Personal Injury Lawyers

Briefing: The Whiplash Injury Regulations 2021 – April 2021

Introduction

The payment of fair damages for pain and suffering after a needless injury is an important acknowledgement that the injury inflicted was avoidable. It can help atone for the negligence which caused the injury, and it holds the wrongdoer to account. The most devastating aspect of any car crash is not damage to the vehicle, but damage to the person's body, and the very purpose of insurance is to provide recompense for that damage.

The Whiplash Injury Regulations 2021 will put into force a new tariff of compensation for pain and suffering for some people with whiplash injuries after a car crash. The amounts in the tariff which have been produced by the Government, however, are derisory, offensive, and certain to result in under-compensation.

Under-compensation for injury

The current law, where compensation payments are set in brackets for different types of injury, recognises the need for judicial discretion to take individual circumstances into consideration. Instead of compensation being an amount based on legal precedent, it will now simply be an amount from an arbitrary tariff.

The imposition of the tariff fails to reflect the fact that a similar injury can produce very different effects on, for example, a young mother nursing a baby, a professional fitness instructor, or someone who suffers a complete loss of confidence as a result of the injury and the incident that caused it. This is more likely to apply to those who are already vulnerable, such as elderly people. To remove judicial discretion from awards will inevitably lead to under-compensation in many circumstances. Tariffs are appropriate for mobile phone contracts and taxi fares, not injured people.

In most cases where the symptoms last up to three months, £240 will not be anywhere near an appropriate level of compensation. Someone who has their flight delayed or cancelled is

entitled to up to £520 in compensation¹. A cancelled flight is an inconvenience, but it is nothing compared to three months of pain, three months of sleepless nights, or three months of not being able to look after a young child properly because of the injury.

Only the insurance industry will benefit from this tariff. It allows insurers to save money at the expense of injured people who will no longer receive full and fair compensation.

Hyperbole about whiplash claims and fraud

These regulations follow the passage of the Civil Liability Act 2018, which was largely the result of hyperbole, misinformation and misunderstanding about whiplash claims and fraud. At the time the Bill was debated, Government and insurance industry rhetoric would have had the public believe there was a whiplash epidemic in this country. This was not true then and it is not true now. The Government's own Compensation Recovery Unit (CRU) confirmed in a Freedom of Information request response to APIL that between 2016/17 and 2017/18 the number of whiplash, neck and back claims had fallen by 18 per cent – at that time the biggest annual drop ever recorded.

The CRU no longer publishes details of the number of whiplash claims, but data does show a fall in the number of all motor personal injury claims between 2018/19 and 2019/20². There is no evidence to suggest the number of whiplash claims are any more of a problem now than they were when the Civil Liability Bill was passed.

There was also no concrete evidence about the extent of fraudulent whiplash claims, but the Association of British Insurers (ABI) did publish data on fraudulent motor claims. That data revealed that in 2016, 0.17 per cent of all motor claims were “confirmed” (or “proven”) to be fraudulent. Personal injury fraud will have just been a fraction of that, while fraudulent whiplash claims will have been an even smaller fraction. Since 2019, the ABI has started to publish data on all motor-related personal injury claims confirmed as fraudulent. It would be impossible, however, to compare these figures with the fraud data from 2016, because this covered all motor claims, and not just personal injury claims.

People who claim for whiplash injuries they don't have are fraudsters. They should be caught and punished, but the vast majority of people are completely genuine. We agree with former Lord Chief Justice Lord Woolf, who told peers during report stage of the Civil Liability

¹ <https://www.citizensadvice.org.uk/consumer/holiday-cancellations-and-compensation/if-your-flights-delayed-or-cancelled/>

² <https://www.gov.uk/government/publications/compensation-recovery-unit-performance-data/compensation-recovery-unit-performance-data>

Bill that the proposed tariff “offends an important principle of justice, because it reduces the damages that will be received by an honest litigant because of the activities of dishonest litigants”³.

Comparison with the CICS

Previously the Government has attempted to defend the tariff by comparing it with the Criminal Injuries Compensation Scheme (CICS). In June 2017, Lord Keen of Elie told the House of Lords Delegated Powers and Regulatory Reform Committee that a tariff is “consistent with other areas where the Government already controls and sets the rates of damages”⁴. Lord Keen cited the CICS as an example. It is an irrelevant comparison.

The CICS is administrated by the Criminal Injuries Compensation Authority, an executive agency of the Ministry of Justice, and compensation is paid by the taxpayer. Whiplash compensation, however, is paid by the insurer of the person who caused the injury, out of premiums collected. The Government does not, and should not, have a duty to protect the profits of private companies, and introduce tariffs which will protect those who are negligent from paying full and fair compensation. There is no precedent for this.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit campaign group which has been committed to injured people for more than 30 years. Our vision is of a society without needless injury but, when people are injured, they receive the justice they need to rebuild their lives. We have more than 3,200 members who are committed to supporting the association’s aims, and all are signed up to APIL’s code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

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³ Civil Liability Bill report stage, House of Lords, 12 June, column 1594, [https://hansard.parliament.uk/lords/2018-06-12/debates/BAD8CBC4-5E52-48F1-93D8-6992453ABFFB/CivilLiabilityBill\(HL\)](https://hansard.parliament.uk/lords/2018-06-12/debates/BAD8CBC4-5E52-48F1-93D8-6992453ABFFB/CivilLiabilityBill(HL))

⁴ <https://publications.parliament.uk/pa/ld201719/ldselect/lddelreg/152/15204.htm>