

Whiplash reforms: ten key points

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Status: **Law stated as at 27-May-2021** | Jurisdiction: **United Kingdom**

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This sector note discusses the key points to know in respect of the reforms to the UK whiplash claims regime, which apply from 31 May 2021.

Scope of this note

A number of reforms to the process for making whiplash claims apply from 31 May 2021. The government's Whiplash Reform Programme, introduced by the [Civil Liability Act 2018](#), aims to control the number and cost of whiplash claims and their impact on the costs of motor insurance. The reform package includes the introduction of:

- Fixed tariffs for personal injury compensation in respect of whiplash injuries lasting up to two years (see below, 7. New awards for whiplash injuries).
- A ban on settling whiplash claims without medical evidence.
- The Official Injury Claim (OIC) service, a new online portal for individuals injured in a Road Traffic Accident (RTA) to claim compensation, where the personal injury claim falls within the new Small Claims Track (SCT) limit, as detailed below, New SCT limit.

In order to implement the whiplash reforms, it was necessary to amend the Civil Procedure Rules (CPR) to, among other things, increase the SCT limit for RTA personal injury claims from £1,000 to £5,000 for accidents on or after 31 May 2021. This change means that the majority of whiplash claims will no longer be subject to the fast track rules, where legal costs are recovered under the "loser pays" principle, subject to qualified one-way costs shifting, but to the SCT rules where only limited costs are recoverable (see below, 10. Costs and [Practice note, Qualified one-way costs shifting \(QOCS\) in claims for damages arising from death and personal injury](#)).

A new [Pre-action protocol for personal injury claims below the small claims limit in road traffic accidents](#) (RTA small claims protocol) also applies, which, supported by the OIC service, sets out the framework for claimants to make and settle RTA personal injury claims for no more than £5,000 at the pre-action stage. A new [Practice Direction \(PD\) 27B](#) details the court procedure

for disputes that have not been resolved under the RTA small claims protocol. See also, [Legal update, The Civil Procedure \(Amendment No 2\) Rules 2021 and 129th Practice Direction update](#).

The regulations implementing the reforms include:

- The draft [Whiplash Injury Regulations 2021](#), which, among other things, introduce the fixed tariffs for personal injury compensation in respect of whiplash injuries lasting up to two years.
- The [Civil Procedure \(Amendment No 2\) Rules 2021 \(SI 2021/196\)](#), which, among other things, increase the SCT limit for personal injury claims arising from a RTA to £5,000, where the accident occurred on or after 31 May 2021, introduce PD 27B and amend the CPR (CPR 35.4) to specify the medical evidence that may be obtained in respect of an RTA claim which consists of, or includes, a claim for whiplash.
- The [Civil Liability Act 2018 \(Financial Conduct Authority\) \(Whiplash\) Regulations 2021 \(SI 2021/594\)](#), which enable the Financial Conduct Authority (FCA) to use its supervisory and enforcement powers under the Financial Services and Markets Act 2000 (FSMA) to monitor and enforce compliance with the requirements of section 6 of the [Civil Liability Act 2018](#). Section 6 restricts the settlement of RTA whiplash-related injury claims without a medical report. The FCA's powers will apply to all authorised persons dealing with whiplash claims, as set out in the [Civil Liability \(Specification of Authorised Persons\) Regulations 2021 \(SI 2021/326\)](#).

This sector note discusses the ten key take-aways from the regime that applies from 31 May 2021.

1. 31 May 2021

The RTA small claims protocol applies to RTAs under the new SCT limit for personal injury of £5,000, which occurred in England and Wales on or after 31 May 2021.

For RTAs before 31 May 2021:

- The £1,000 SCT limit for personal injury claims continues to apply.
- For personal injury claims over £1,000 (up to £25,000) the relevant protocol is the [Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents](#) (RTA Protocol). For further discussion of the RTA Protocol, see [Practice note, Motor insurance: an overview: Procedural matters: RTA Protocol](#).

2. New SCT limit

The RTA small claims protocol applies where the claimant values the overall claim at not more than £10,000 and the claim for damages for personal injury at not more than £5,000. For personal injury claims over the £5,000 limit, the RTA Protocol applies.

The value of any non-protocol vehicle costs is excluded when valuing the claim. For these purposes:

- Vehicle costs include the pre-accident value (PAV), repairs, insurance excess, hire, and recovery and storage.
- Protocol vehicle costs are vehicle costs which:
 - at the time the claim is made, have been paid by the claimant personally or by an individual on behalf of the claimant;
 - in the case of PAV, are claimed by the claimant personally and not payable by the claimant to the claimant's insurers; or
 - in the case of repairs, are the subject of an estimate of the costs the claimant intends to pay personally.
- Non-protocol vehicle costs are vehicle costs which would be payable by the claimant to third party organisations or businesses out of damages recovered. Subrogated claims where the insurer has paid out and credit hire claims are likely to fall into the non-protocol vehicle costs category.

3. Claims where the RTA small claims protocol does not apply and exceptions for children and protected parties

Not all personal injury claims arising from RTAs below £5,000 fall under the RTA small claims protocol. The RTA small claims protocol does not apply to claims:

- In respect of a breach of duty owed to a road user by a person who is not a road user, for example a car going over a pothole on a road.
- Where the injuries were at least partly caused by a breach by the defendant of at least one of the relevant

provisions as defined by section 53 of the Health and Safety at Work etc Act 1974.

- To the Motor Insurers' Bureau (MIB) pursuant to the Untraced Drivers' Agreement 2017, or any subsequent or supplementary Untraced Drivers' Agreements. These cover "hit and run" accidents where the driver cannot be traced.
- Where the claimant is a vulnerable road user. Vulnerable road users are motorcyclists, pillion passengers, sidecar passengers, wheelchair or mobility scooter users, cyclists, horse riders and pedestrians.
- Where the claimant or defendant acts as a personal representative of a deceased person.
- Where the claimant is a child.
- Where the claimant or defendant is a protected party, that is, where they lack capacity to conduct proceedings.
- Where the claimant is bankrupt.
- Where the defendant's vehicle is registered outside the United Kingdom.

For those claims, the SCT personal injury limit of £1,000 still applies. If the claim is made by a child or protected party and is for or includes a claim for a whiplash injury, the normal track will be the fast track and must not be allocated to the SCT.

4. Liability

The claimant can upload photographs, sketch plans, witness statements, dashcam footage, video clips or any other documents to the OIC Portal in support of their claim that the defendant was at fault for the accident anytime up to the point where the claimant creates the Court Pack (see 9. Court Pack). The claimant should normally allow at least ten days for new evidence to be considered before starting proceedings.

The compensator, which can be the defendant or its insurer, or, where the defendant is not insured, an RTA insurer (under section 151 of the Road Traffic Act 1988; see [Practice note, Motor insurance: an overview: Rights of third party claimants](#)) or the MIB, has four options:

- Admit liability in full.
- Admit liability in part.
- Deny liability.
- Admit fault but dispute the accident caused any injury to the claimant.

If the compensator fails to provide a response within the specified time limit, liability will be taken to have been admitted in full.

If the compensator denies liability in full or in part, their response on liability must set out the defendant's version of events and provide any information in support, including photographs, witness statements and dashcam footage. The compensator can upload evidence to the OIC Portal until the point the compensator responds to the contents of the Court Pack created by the claimant. The claimant then needs to start proceedings using the procedure under PD 27B. If the court decides the defendant is liable for the accident in full or in part, the court will stay the proceedings and the claim will then go back into the OIC Portal to comply with the quantum steps of the RTA small claims protocol.

5. Medical reports

Claimants must obtain a medical report before any settlement offer can be made or accepted in respect of the claim for whiplash. A medical report can be obtained once a partial or full admission of liability is made (or determined) or where fault is admitted but the defendant disputes the accident caused injury. The instructions to be sent to the medical expert for the first medical report must:

- Provide the claimant's description of their injuries entered on the OIC Portal.
- Provide the claimant's responses about whether they consider their whiplash injuries to be exceptionally severe or if there are any exceptional circumstances that have had an impact on their pain, suffering and loss of amenity.
- State if the compensator disputes that the accident caused any injury to the claimant and their reasoning.
- State if the compensator argues that the claimant contributed to their injuries by not wearing a seatbelt.
- Include the defendant's version of events where the compensator has admitted liability, but has provided a different account.

The last three requirements need to be provided so the medical expert can comment on the impact on diagnosis and prognosis, including whether the accident caused injury, if the claimant's or defendant's account is found to be true.

The claimant must check the factual accuracy of any report before it is sent to the compensator. Once it is sent, there will be no further opportunity for the claimant to challenge the factual accuracy of the medical report. In cases where the claimant has challenged the factual accuracy of the report but the medical expert has refused to make any amendment, the claimant may send the report and any details of the challenge and response to the compensator and may continue to argue that the report is incomplete or inaccurate.

6. Disputing causation and allegations of fraud or fundamental dishonesty

There are several reasons why the claim may fall out of the OIC Portal, including where the compensator:

- Makes an allegation of fraud or fundamental dishonesty against the claimant.
- Disputes or continues to dispute that the accident caused the claimant any injury following disclosure of the medical report.

Where the compensator disputes (or continues to dispute) the accident caused any injury, they must notify the claimant within 20 days of receiving the medical report(s), the list of losses and documents in support of any claim for other RTA small claims protocol damages and any claim for fees. They must also give reasons for doing so. At this point, unless the compensator makes a final settlement offer for the other RTA small claims protocol damages and the claimant accepts that offer in full and final settlement of all claims for damages for injury and other protocol damages, the claim will be dealt with outside the RTA small claims protocol.

7. New awards for whiplash injuries

The new tariffs, as set out in the table below, are much lower than the awards for whiplash injuries within the Judicial College Guidelines, which apply in respect of RTAs occurring before 31 May 2021.

Injury duration	Judicial College Guidelines (15th Edition)	New tariff: one or more whiplash injuries	New tariff: one or more whiplash injuries and one or more minor psychological injuries
Not more than 3 months	Up £2,300	£240	£260
More than 3 months, but not more than 6 months	£2,300-£4,080	£495	£520

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Injury duration	Judicial College Guidelines (15th Edition)	New tariff: one or more whiplash injuries	New tariff: one or more whiplash injuries and one or more minor psychological injuries
More than 6 months, but not more than 9 months	£2,300- £4,080	£840	£895
More than 9 months, but not more than 12 months	£2,300- £4,080	£1,320	£1,390
More than 12 months, but not more than 15 months	£4,080- £7,410	£2,040	£2,125
More than 15 months, but not more than 18 months	£4,080- £7,410	£3,005	£3,100
More than 18 months, but not more than 24 months	£4,080- £7,410	£4,215	£4,345

A court may apply an uplift of no more than 20% in exceptional circumstances to either tariff category. The court must be satisfied the degree of pain, suffering or loss of amenity caused by the whiplash injury or injuries makes it appropriate to use the greater amount and either:

- The whiplash injury or injuries are exceptionally severe.
- The person's exceptional circumstances increase the pain, suffering or loss of amenity caused by the injury or injuries.

8. Section 152 notices

When the claimant confirms their intention to start court proceedings, the OIC Portal will automatically generate a notice to the compensator that the claimant intends to start proceedings for the purposes of section 152 of the Road Traffic Act 1988.

If an RTA insurer or the MIB has responded to a claim as compensator and has consented to be named as a second defendant, the claimant must include the RTA insurer or MIB as the second defendant to the claim.

9. Court Pack

Before starting court proceedings, the claimant must generate a Court Pack from the documents on the OIC Portal, following which:

- The claimant must send the Court Pack list to the compensator at least five working days before starting court proceedings.

- The compensator has five working days to review the contents. They can add documents, but they cannot remove any documents. If the compensator amends the list, they must send a corrected Court Pack list to the claimant. The claimant must then use the corrected Court Pack list to start court proceedings.
- The OIC Portal-generated court form and the Court Pack must be sent to the court to start proceedings.

If the defendant fails to file an acknowledgement of service, the defendant is not permitted to rely on any of the evidence provided by the defendant in the Court Pack.

Depending on the type of case, for example a liability dispute only, or where an uplift is claimed, there are different documents that should be included in the Court Pack, so it is worth double checking before submitting (see Appendix C of PD 27B).

It is important all evidence that parties wish to rely upon is uploaded to the OIC Portal and included in the Court Pack. The court may decide not to allow new evidence to be considered if it is produced after proceedings are started and the parties will need to prove the new evidence is necessary to determine the claim.

10. Costs

Any claim started under PD 27B will be treated as allocated to the SCT and therefore SCT costs apply. The claimant will be able to recover the fees for a fixed cost medical report or medical records. The defendant has to pay for a further medical report, in addition to the first fixed cost medical report, if the claimant requests and justifies it. The court may also order that the defendant

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pay the cost of any police accident report incurred by the claimant. For further information on SCT costs, see [Practice note, Small claims track: Recovery of costs on the small claims track](#).

For cases which exit the OIC Portal and where proceedings are started, the fixed recoverable costs provisions as set out in section IIIA of CPR 45 will normally apply.

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