

# WHIPLASH REFORMS: THE IMPACT ON COMMERCIAL FLEETS



What the changes are and what they mean for  
your business



**NFU Mutual**  
CORPORATE INSURANCE

# INTRODUCTION

The whiplash reforms contained in the Civil Liability Act 2018 were announced by the Government as long ago as November 2015. The review's objective was to tackle the high number and costs of road traffic accident (RTA) whiplash-related claims, and to ensure that any compensation awarded is proportionate to the level of injury suffered.

Those reforms will now be implemented with effect from **Monday 31st May 2021**, and the package of regulations, rules and other materials to support the reforms have now been published.

It's important to note that these changes will only affect road traffic accident claims that occur in England and Wales.

Please note that this document is to be used for guidance only. It is in no way intended to provide legal advice.

# OVERVIEW OF THE CHANGES

## DEFINITION OF THE TERM 'WHIPLASH INJURY'

The Act introduces a new definition of a whiplash injury.

### **Whiplash injury definition:**

- A sprain, 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.

### **Injuries excluded from the definition are where:**

- it is an injury of soft tissue which is a part of or connected to another injury, and
- the other injury is not an injury of soft tissue in the neck, back or shoulder.

## DAMAGES AWARDS

The reforms increase the small claims track limit for pain, suffering and loss of amenity for RTA injury claims from £1,000 to £5,000 for accidents on or after 31 May 2021. By doing so, legal costs will no longer be recoverable, with the intention to make whiplash injuries less attractive to claims management companies and those making fraudulent claims.

### **However, there are exceptions to the £5,000 limit for:**

- children and others who lack legal capacity (protected parties);
- vulnerable road users, which are motor cyclists and pillion/sidecar passengers, cyclists, pedestrians, horse riders and those in mobility scooters;
- claims where the claimant is an undischarged bankrupt or personal representative of a deceased person;
- claims against the personal representative of deceased persons or drivers of foreign registered vehicles.

To provide clearer guidance over the compensation levels to be awarded, there will now be two set tariffs for whiplash injuries up to 24 months:

- a simple lower tariff under Regulation 2(1)(a), where there is no psychological injury;
- a combined upper tariff under Regulation 2(1)(b), which includes minor psychological injuries.

The tariffs are fixed at a much lower level to awards made previously.

Duration of Injury*	Lower Tariff Reg. 2(1)(a)	Upper Tariff Reg. 2(1)(b)
Not more than 3 months	£240	£260
More than 3 months but not more than 6 months	£495	£520
More than 6 months but not more than 9 months	£840	£895
More than 9 months but not more than 12 months	£1,320	£1,390
More than 12 months but not more than 15 months	£2,040	£2,125
More than 15 months but not more than 18 months	£3,005	£3,100
More than 18 months but not more than 24 months	£4,215	£4,345

\* The duration of whiplash injury refers to the longest in duration, if more than one injury was caused by the same RTA.

**Claimants can also seek an uplift of up to 20% to the tariff amount in “exceptional circumstances”. These include:**

- where the degree of pain, suffering or loss of amenity caused by the whiplash make it appropriate to uplift the amount;
- where the person’s circumstances increase the pain, suffering or loss of amenity caused by the injury or injuries.

## **NEW CLAIMS PORTAL**

The Official Injury Claim (OIC) Portal has been developed with the intention to make it easier for claimants to manage the claim directly, rather than involving solicitors or claims management companies.

The OIC Portal will run separately from the existing Ministry of Justice (MoJ) Portal, but remain integrated with other systems, such as the Motor Insurance Database (MID).

Disputes on causation, such as low-speed impact allegations stay in the new OIC Portal at liability stage, so the claimant can proceed to obtain a medical report. The compensator then has 20 days to dispute causation again (or for the first time) when the claimant requests an offer.

### **Compensator**

The reforms define the compensator as being one of the following:

- The defendant’s insurer whose details appear on the MID
- The defendant themselves if they are handling the claim
- If the defendant is not insured, an RTA insurer, the Motor Insurance Bureau (MIB) or their agents
- A representative of the defendant, insurer, RTA insurer or the MIB

NFU Mutual acts as the compensator for the vast majority of our members’ claims.

## BAN ON PRE-MEDICAL OFFERS

Claims for whiplash injuries can no longer be settled, or an offer made, without the compensator seeing a medical report on those injuries. This is intended to further disincentivise fraudulent claims.

Where the tariff covers whiplash and minor psychological injuries, medical evidence doesn't have to cover the psychological injury, but in practice we expect courts not to award the upper tariff if there is no support for this within the medical evidence.



## FIXED TIMESCALES

Upon receipt of the injury claim, a compensator will now have 30-working days to decide on liability, and to have all evidence uploaded to the OIC Portal if liability is disputed.

Failure to comply with this 30-working day deadline will automatically be deemed an admission of liability. The claim will then proceed to the obtaining of medical evidence stage. It will be extremely difficult to obtain relief from this sanction, and no extensions of time can be granted.

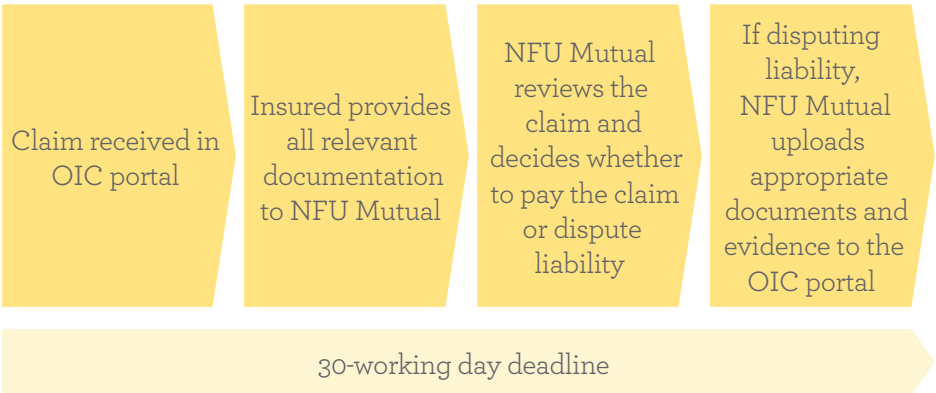
As your insurer, you will need to provide NFU Mutual with all relevant documents and evidence for us to investigate liability. If liability is disputed, we will also need time to upload evidence to the OIC Portal within the 30-working day deadline. This may include:

- Signed statement of truth from the defendant driver;
- Any independent witness statements;
- Additional relevant documents;
- Dash cam or CCTV footage;
- Tachograph data;
- Photos of the accident scene.

⌈⌈ Failure to comply with this 30-working day deadline will automatically be deemed an admission of liability. ⌋⌋

It's important to share all relevant documentation and evidence with NFU Mutual as soon as possible after the accident, ideally at the point of first notification. This will enable us to investigate the claim and consider the best course of action depending on the evidence.

The fixed deadline means that your speed of reporting and document-sharing will be essential for us to defend liability.





# WHAT IS THE IMPACT OF THESE CHANGES ON COMMERCIAL FLEETS?

The Whiplash Reforms offer several potential benefits to businesses running large commercial fleets.

## PRE-AGREED TARIFF DAMAGES

- Compensation awards are fixed for whiplash injuries in accordance with the tariff, which is likely to reduce the cost of the claims.
- The compensation amounts are also considerably lower than previous levels for minor whiplash claims.
- Legal costs will no longer be recoverable for most whiplash claims.

## SPEED OF PROCESSING

- The introduction of the OIC Portal and the 30-working day deadline ensures that this category of claims will be dealt with more quickly.
- Because defendant parties are incentivised to report the incident quickly, drivers are likely to give the most accurate and full accounts of accidents, instead of having to recall details from months ago.
- In cases where the compensator disputes liability, the case can go to a liability hearing earlier in the process. Previously, this has tended to take several years.

# SUMMARY

For businesses running commercial fleets to see these benefits, it's essential that they have the right process in place to notify their insurer and provide all documents and evidence for this class of claim as soon as possible following the accident.

Those that don't get quick reporting mechanisms in place are likely to see their claims costs increase, as failure to upload the evidence required within the timescales is deemed an automatic admission of liability.



# CHECKLIST FOR FLEETS INSURED BY NFU MUTUAL

As soon as possible after an accident, you should send the following to NFU Mutual:

- ☐ The driver's detailed account of events. Our Claims Inspectors will work with you to prepare the witness statement
- ☐ Details of the third party in the accident, including a mobile phone number
- ☐ Details of any witnesses to the accident
- ☐ CCTV footage, or details of where we can source it from
- ☐ Dash cam footage
- ☐ Tachograph data
- ☐ Photographs of the incident and surroundings taken soon after the accident
- ☐ Tracker data for geo-positioning, if fitted
- ☐ Sketch of incident, including pre-accident positions. If the event took place on a roundabout, you should show the intended route
- ☐ Details of any emergency services that attended the scene, including any reference numbers or contact details that they provided.

If a vehicle defect or fire is believed to have been involved in the accident, aim to provide:

- ☐ Vehicle service records
- ☐ Invoices for recent works
- ☐ Drivers' last 2 week's (prior to the accident) daily inspection records for the vehicle

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**DAC BEACHCROFT**

This document was written in partnership with DAC Beachcroft, one of NFU Mutual's panel solicitor firms.



**NFU Mutual**

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