



Tariff and Valuing a Claim

1. Why are there no provisions for the tariff to be revised on a regular basis, e.g. every year or three years by a suitable inflationary measure?

Part 1, Section 4 of the Civil Liability Act (CLA) 2018 requires the Lord Chancellor to review the tariff within 3 years and then within every 3 years after that. Following the completion of each review the Lord Chancellor must publish a report and lay it in Parliament.

2. What is the approach on mixed tariff cases?

Ultimately the courts will need to determine how mixed injuries are addressed.

3. It has previously been asked how claimants are expected to know their claims are worth more than £5000 from the outset but more information is needed on how this issue be addressed.

The vast majority of RTA injury claims are for less than £5,000 and the application of the new tariff is unlikely to change that. The ultimate value of an injury claim cannot, of course, be known with certainty at the start of a claim. The user will be assisted by the service and the guide to help them understand what level of tariff may apply. The medical report will help an unrepresented claimant know the value. The Official Injury Claim service will also link users through to relevant extracts from the Judicial College Guidelines to help them estimate the potential value of any claim for non-whiplash injury at that early stage.

4. If a Claimant has a standard whiplash injury (neck, back and shoulder) but has a separate injury to the knee I am assuming this can't be dealt with in the new Portal. Are Claimants able to use the old system - and will old Portal costs apply?

The protocol and Official Injury Claim service is designed for this situation (where there is a whiplash injury and another injury, or even another injury on its own), unless the overall value of the injury element is worth more than £5000, in which case the existing portal may well be the right place to start a claim subject to the scope of the current RTA protocol.

5. Will further guidance be released about exceptionality?

It is not possible to provide further guidance; this is as set out in section 5 of the Civil Liability Act and what is 'exceptional' will be particular to individual claimants. Ultimately the Act will be interpreted by the Courts.

6. When dealing with a soft tissue whiplash and a secondary injury (wrist/elbow). Surely the secondary injury is now the primary injury in relation to the compensation it will attract. Are we expecting to see a continued increase in non-whiplash injuries?

The Official Injury Claim service will be monitoring trends on what is claimed. Ultimately the claimant must claim for the injuries they have genuinely sustained and is required to sign a statement of truth when submitting their claim. The courts will determine the level of damages to be applied for the non-whiplash injury alongside the tariff.

Credit Rehab

- 7. Can a claimant include a claim for rehab in the Portal and list of losses under ‘other protocol damages’ as these are stated to include ‘any liability for the claimant to repay another person or business’ and ‘costs of treatment, including rehab arranged by the representative with deferred payment’?**

Yes, rehab can be claimed through the Official Injury Claim service as a normal protocol loss, including where the loss is ongoing. Credit rehab is included within this; the exclusion elsewhere for claims made in respect of a liability to repay another organisation is targeted at vehicle costs and not rehab.

- 8. You say the Portal will signpost claimants on what to do to get rehab? Signpost to where?**

The Guide to Making a Claim confirms that a claim can be made for any losses arising as a result of the injury/injuries including rehabilitation treatment and advises that evidence will need to be uploaded (for example a receipt for physiotherapy treatment sessions). Where treatment is not yet started, the guide makes clear that the claimant may wish to directly contact the compensator to discuss whether they can arrange this.

Whilst we acknowledge the Official Injury Claim service will not ‘signpost claimants on what to do to get rehab’, it will ask claimants some detail around their injuries and further treatment required, for example “Did your GP recommend any further treatment (such as Physiotherapy)?” and following that, it will share this with the compensator who in turn will take this forward with the claimant outside of the service.

Court Process

- 9. In cases that are denied on liability, are the courts ready for an influx of these liability-only cases where the claimant is a LiP?**

The courts currently deal with unrepresented claimants at small claims hearings across a variety of disputes. However, MoJ officials continue to work closely with HMCTS to understand, mitigate and resolve any additional operational impacts of these reforms on the courts system.

Fees

- 10. When will court fees be published?**

We will publish details of how court fees will apply shortly.

Medical Reports

- 11. Will the medical experts know the tariff bands? Will they know not to advise of an injury prognosis that stretches across 2 bands? If they do provide a prognosis across 2 bands, which band would be used to value?**

Yes, the medical experts will be aware of the different bands. We have engaged with MedCo throughout this process and the necessary training will be provided to experts and Medical Reporting Organisations (MROs). If a prognosis was to ‘stretch across two bands’, then we would expect the higher band to apply.

- 12. If a second report is required such as an orthopaedic or psychological, will Medco offer this service on the portal. If not, how will unrepresented claimant know where to obtain this?**

MedCo will not offer this service through the portal. The first expert should identify the need for a second report and also specify the type of report to be obtained. An unrepresented claimant will be able to source this themselves or request that this report is organised by the compensator, although the report will still go to the claimant first for them to consider before it is disclosed.

- 13. The Official Injury Claim service FAQs state a Direct Medical Expert (DME) or MRO should send their bills for the first report to compensators to pay for unrepresented claims. Where are the rules relating to payment terms by Compensators and what body is responsible for Compensators who do not pay?**

The reality is that many MROs already send invoices direct to compensators. Whilst responsibility for disbursements remains the users, and there is a bespoke process within PD27B to allow any issues around dispute or non-payment of disbursements to go to court, no doubt if compensators are regularly not paying then MROs or DMEs will raise this issue with MedCo and it will become very apparent which insurers are abusing the process. Given the Financial Conduct Authority will have enforcement powers in relation to the ban on settlement before a medical report, they will have a particular interest in insurers behaviour.

Online Injury Claim Service/ RTA Portal

- 14. Do you have any plans to link the Official Injury Claim service and the RTA portal at any stage for cleaner claims flow?**

There are no current plans to link the two.

- 15. The current portal is not designed for LiPs. What changes will be needed to it to make it useable?**

The Claims Portal is not designed to support litigants in person. If a claim starts off in the RTA Protocol, or exits the new RTA SCT Protocol on valuation grounds, the claimant will have access to legal representation, as now.

- 16. What do you suggest an insurer does that cannot obtain notification of RTA from a PH? There is no provision to a claim without prejudice as RTA insurer and there is no option to allow the Claim Notification Form to time out, further, there is no option to deny liability without your PH version of events.**

The Official Injury Claim service does allow an insurer to set their status to RTA insurer when providing their response: see paragraph 6.16 of the protocol which explains the effect of such response. If proceedings become necessary, the portal will take the claimant through the process of issuing against the driver and against the insurer as second defendant. The court will then make a standard direction allowing the RTA insurer to exercise the rights of the first defendant. The standard directions in the Practice Direction are being updated to include this.

- 17. It looks like the Official Injury Claim service final code will now be released in May and not April - how are API companies expected to be linked and to have staff trained on new systems in such a small timeline. Are they really 98% ready?**

We have seen some questions referring to the Official Injury Claim service code releases. These are points for the MIB and we have passed these questions on to them to cover in their updates.

- 18. Please explain why you did not allow any provision to return a Small Claims Notification Form to the service where the compensator is identified incorrectly? It is wrong to**

assume that DVLA/Motor Insurance Database will be correct every time as bad data in will equal bad data out.

We concluded that in a service where some claimants are unrepresented, the claimant cannot be left in limbo with two different insurers arguing about who is responsible. If the insurer is identified on Motor Insurance Database and the case passed to them, they will have to deal with it unless they can persuade another insurer to take over from them. Also, in this way the claimant only faces one set of time limits for the liability response.

19. When negotiating it is expected that offers will be made within 10 days, however, there are no time limits/sanctions on this. Why?

Apart from the initial time limit for a first offer, there is no formal time limit and the parties should engage sensibly. They are encouraged to negotiate without additional rules. Experience of online systems suggests people will respond quite quickly.

20. Will there be advice provided to Claimants on fundamental dishonesty during the process?

It is not for the Official Injury Claim service to assess the accuracy of claims, but merely to provide an accessible method for bringing them. Claimants will need to attest to the truth of their claim as is already the case, and it will be for insurers/respondents to assess.

21. What industry level data will be made available post 31st May and when can we expect the first distribution of this?

The Official Injury Claim service will of course capture a significant amount of data as cases progress through the service which will enable analysis of both the performance of the service and also of behavioural change by all users. We are committed to publishing helpful data, but final decisions are yet to be taken on the data to be shared. Publication of data will also be kept under review.

22. Please can e-scooter riders be added to the list of vulnerable road users? They are legal forms of transport on public highways when part of an official trial using a docking scheme.

This is a decision for the Department for Transport (DfT) at the conclusion of the trials later this year. MoJ are already in contact with DfT about this.

23. When will the guide for LIPs be made available?

We intend to publish the guide in April. This is a guide intended and written very much for unrepresented claimants. The legal profession is expected to read the Protocol and rules and there are indications that they are indeed doing so.

24. What about the 'murky world' of commissions?

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 deals with referral fees, and the Solicitors Regulation Authority (SRA) and Financial Conduct Authority (FCA) are there to regulate behaviour.

Pre-Action Protocol/Practice Direction

25. Do you expect to make any further changes / updates to the CPR rules? If so, when would you expect this to happen?

The rules will be kept under continual review by the Civil Procedure Rules Committee (CPRC) and will be updated as and when required.

26. Currently we can deal with innocent parties without prejudice (WP). The new rules state that an admission on one claim, may be binding for other claims related to the same accident. Does this mean that we can no longer deal with innocent parties on a WP basis where there is a driver dispute?

The rules do not say that, see Practice Direction 27B (PD27B) paragraph 1.9(2). The court will take account of an admission in another claim but will decide what evidential weight to give it. Paragraph 6.7(2) of the new Protocol applies the admission only to the extent of the claim made by this claimant in the protocol and, if proceedings are started, to any claims made by the claimant in those proceedings.

27. The PAP talks about sending the Claims Notification Form to the defendant by 1st class post? Why? This goes against the online approach being advocated. Will the defendant even understand what it is? Won't it lead to more questions?

It is important that the defendant is made aware that a claim is being made against them. This is done in the Claims Portal now. The defendant is not a user of the Official Injury Claim service, so there is no alternative to sending the Small Claims Notification Form by post.