



The Lord Watson of Invergowrie
Chair
Secondary Legislation Scrutiny Committee
House of Lords
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31 March 2025

Dear Lord Watson,

Whiplash Injury (Amendment) Regulations 2025

The Motor Accident Solicitors Society (MASS) are a membership organisation dedicated to representing the interests of road traffic accident victims and claims experts across the UK. As a non-profit organisation formed in 1991, MASS is widely known as the expert voice on all matters relating to road traffic accident claims and the 70 firms of solicitors that we represent act for the majority of victims of motor accidents involving personal injury.

I am writing regarding the Whiplash Injury (Amendment) Regulations 2025, laid before the House on 20 March 2025. On the face of it, this SI simply raises the whiplash tariff compensation figures by around 15% to account for the effects of inflation since 2021 and to include a buffer for expected inflation until 2027.

However, the introduction of the tariff has had a very significant and fundamental impact upon small claims resulting from motor accidents and we believe raises sufficient policy issues that it deserves to be debated by the wider House.

As background, Part 1, Section 3 of the Civil Liability Act 2018 provides for the Lord Chancellor to set a tariff of damages for whiplash injuries of up to two years in duration and to make regulations to do so. The Civil Liability Act 2018 was opposed by both Labour and the Liberal Democrats during its passage.

During the Report Stage of the CLA in the House of Lords on 12 June 2018, Lord Woolf, former Lord Chief Justice of England and Wales, described the tariff as:

“[Clause 2, the tariff] results in injustice and it is known to result in injustice. Indeed, no one can deny that it results in injustice. There has never been a case where legislation deliberately introduces injustice into our law. It may be that it is only in regard to small claims, but surely it is important that we pause before we do that.”

The tariff of damages was first introduced by the Whiplash Injury Regulations 2021 and were debated in the House of Lords’ Grand Committee on 26 April 2021. The issue has not been debated in the House since 2021.

The tariff of damages, the centrepiece of the CLA 2018, has been implemented through a new online portal, the Official Injury Claims Portal (OICP), operated by the insurance industry through the Motor Insurers' Bureau (MIB) on behalf of the Ministry of Justice.

It is our view that the tariff and OICP has damaged access to justice, is not working for the benefit of consumers and has failed in many of its objectives. Designed for Litigants in Person, officially only 10-11% of users are LiPs, although we suspect that the real number is significantly smaller. Settlement times have increased by at least 50%.

The tariff was set too low from inception – significantly lower than awards recommended by the Judicial College Guidelines for injuries sustained outside a motor vehicle – and has ensured that awards to injured motor accident victims have been progressively eroded. The inflationary buffer significantly underestimated the real rates of inflation and we anticipate that the buffer built into the 2025 regulations will fall short as well.

During the passage of the legislation, it was claimed that the reforms would result in a £35 reduction in motor insurance premiums, but HM Treasury's assessment, published on 27 March 2025, revealed that in the final reporting year to March 2023, policyholders only saved an average of £15 per policy due to lower claims costs.

We very much hope that you and the Committee agree that there are significant policy issues behind this statutory instrument and that the Committee recommends that it is worthy of more detailed consideration by the House.

Yours sincerely,

Susan Brown

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Chair, Motor Accident Solicitors Society
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Response from the Ministry of Justice

With regards to the concerns raised by the MASS, these mainly relate to fundamental policy questions which are out of scope of these amending regulations. Generally, the question of whether to have a tariff in this area was settled following extensive debates in both Houses during the passing of the Civil Liability Act 2018 by Parliament. The purpose of the Whiplash Injury Regulations 2021 was to implement this legislation and set the levels of the tariff.

The original whiplash tariff values were updated for inflation from the values debated by Parliament in 2018 when they were implemented in 2021. These were then debated again by both Houses and approved as proportionate. The Whiplash Injury (Amendment) Regulations 2025 contain an inflationary increase based on a factual analysis of industry data and stakeholder evidence with a further inflationary buffer to account for predicted economic scenarios to May 2027. They make no attempt to comment on or amend any of the underpinning policy objectives. That said, please see our comments on each of the MASS points in turn:

The tariff and OICP has damaged access to justice, is not working for the benefit of consumers and has failed in many of its objectives.

We do not agree that either the whiplash tariff or the Official Injury Claim (OIC) portal contribute to reduced access to justice. OIC is a free, accessible, easy-to-use process for road traffic accident-related personal injury claims valued under £5,000 which can be used to settle a claim with or without the help of a lawyer.

Data published on the OIC website shows that the portal works with claimants achieving similar average settlements. The data for the most recent quarter (October to December 2024) shows that in terms of damages, unrepresented claimants secured on average £759 for whiplash tariff injuries and £1,026 for non-whiplash tariff injuries as compared with the represented claimant averages of £753 and £1,033, respectively.

Designed for Litigants in Person (LiPs), officially only 10-11% of users are LiPs, although we suspect that the real number is significantly smaller.

The purpose of the OIC system is to provide greater claimant choice in how to take forward a claim and to enable claimants to either use a lawyer or represent themselves if they choose to do so. The data demonstrates that there is a demand for the greater choice the service provides with over 105,000 unrepresented claimants choosing to run their own claim via OIC between 31 May 2021 and 28 February 2025.

This compares to around 75 unrepresented claimants applying to use the old Claims Portal (the online system used prior to 2021) in the 3 years leading up to the reforms. The proportion of unrepresented claims made via the OIC in year one was 9% with this figure increasing to 11.5% as of 31 December 2024.

Settlement times have increased by at least 50%.

The portal is operating well with over 1,005,000 claims registered and around 322,000 settlements made between 31 May 2021 and 28 February 2025. Settlement times have increased over the last 3 years. However, this appears to be related to user behaviour rather than any system issues with the process. Overall, it's important to note that unrepresented claims (185

days) proceed through the system almost twice as quickly as represented claimants (360 days). Despite this, as noted above, the outcomes achieved by each claimant group are almost identical.

The tariff was set too low from inception – significantly lower than awards recommended by the Judicial College Guidelines (JCG) for injuries sustained outside a motor vehicle – and has ensured that awards to injured motor accident victims have been progressively eroded.

The number of claims involving a judicial determination is relatively small with liability accepted in around 90% of cases and of these the vast majority settle pre-court. I should also explain that the levels in the JCG are developed using outcomes of cases heard by the judiciary, which are the more complex and therefore higher value cases.

There was extensive consultation on the issue of implementing a tariff with the pros and cons of the tariff also fully debated in Parliament before being passed into legislation. The then government proposed that the existing system led to overcompensation and that the Lord Chancellor should set tariffs as an alternative.

Parliament ultimately agreed that this was a proportionate approach. It is though also important that the judiciary has the discretion to increase damages where appropriate, which is why the Whiplash Injury Regulations 2021 also enable the Court to increase a tariff payment by up to 20% in exceptional circumstances or exceptional injuries.

The inflationary buffer significantly underestimated the real rates of inflation and we anticipate that the buffer built into the 2025 regulations will fall short as well.

The real rate of inflation from May 2021 has been accounted for in the calculation of the new tariff values. Similarly, the anticipated rate of future inflation has been determined using the most appropriate Bank of England forecasts. The Lord Chancellor detailed these calculations in her report of the statutory review of the tariff.

The assessed period of 2021 to 2024 saw unique economic circumstances. However, as noted above, were there to be a significant fiscal episode leading to higher than anticipated inflation, the Lord Chancellor has the powers under the governing legislation to conduct a review and increase the tariff at any point within 3 years of the previous tariff being implemented.

During the passage of the legislation, it was claimed that the reforms would result in a £35 reduction in motor insurance premiums, but HM Treasury's assessment, published on 27 March 2025, revealed that in the final reporting year to March 2023, policyholders only saved an average of £15 per policy due to lower claims costs

The £35 figure quoted by MASS was not a government prediction or commitment. It was an estimate of potential savings which could be passed on as a result of the implementation of the Civil Liability Act 2018. We estimated that the reforms could lead to savings of around £1.2bn per year and the insurance sector subsequently pledged to pass on savings through lower premiums.

A report has been published by HM Treasury (HMT) on these savings following the completion of their work with the Financial Conduct Authority to fulfil their statutory obligation under section 11(7) the Civil Liability Act 2018. In addition to this, the MoJ will be undertaking a full post implementation review of the whiplash reforms later this year. This will likely undertake our own analysis of the savings situation which will be verified by our analysts. Scoping work for this review is currently underway and we aim to confirm details of what it will include in due course.

1 April 2025