




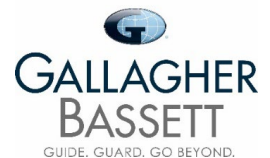
## Risk Control

Legislative Changes to Claims Handling, Impact and Market Influences



LEGISLATION

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# Risk Control

## Legislative Changes to Claims Handling, Impact and Market Influences

### Introduction

There has been a flurry of recent Government activity affecting liability claims across all coverages in recent weeks. In this briefing note, we take a look at those changes and at factors currently impacting motor vehicle damage claims and their rising costs.

### Rise of the Small Claims Track Limit in Non-Motor Claims

On 6th April 2022 the Small Claims Track limit for non-road traffic accident (RTA) claims rose to £1,500 as per the ministerial written statement made in April last year<sup>1</sup>.

Some 10 months on from the whiplash reforms coming into force sees the Government press on with the amendment to cover all other types of injury claims, including employers and public liability claims as well as RTA claims not caught by the whiplash reforms and the new Official Injury Claims Portal.

The original intention was to raise the limit to £2,000. However, having considered the views of a number of stakeholders, including from a wide range of representatives from across the insurance industry and the personal injury and trade union sectors - the government decided to both limit the proposed increase in the small claims limit for all other personal injury claims to £1,500 instead. They also deferred the increase to April this year to allow for the whiplash reforms to bed in first...

Amendments to the Civil Procedure Rules (CPR) will be made in the latest update and the knock on effect this will then have on recoverable costs for claims where damages remain under £1,500.

- The full ministerial written statement can be found here: <https://questions-statements.parliament.uk/written-statements/detail/2021-04-26/hlws934>
- The announcement to amend the CPR can also be found here: <https://www.justice.gov.uk/courts/procedure-rules/civil>

### The Damages Claims Portal (DCP) – Digital Claims in the County Court

The DCP is an online claims process for county court claims that facilitates the digital issue of a claim for damages<sup>2</sup>.

From 4th April 2022, the use of the DCP is mandatory for claimants wishing to issue proceedings for applicable cases. The DCP is designed to allow defendants to reply via the system and will be mandatory for use by defendants from June 2022.

The overall aim of the DCP is to provide legal professionals with an efficient and fast service that is fully accessible:

- 24/7 access to the digital service
- A self-service system with the ability to instantly see the latest activity on claims
- Introducing email notifications throughout the process
- The ability to create, manage and maintain a firm's MyHMCTS account - no need to contact HMCTS to add or remove users
- The ability to add a correspondence address when a claim is issued so any paper correspondence can be sent to local offices
- The ability to allocate unlimited litigators to individual claims as shared access.

The DCP currently allows a claimant's solicitor to issue a claim and the defendant's solicitor to acknowledge and respond to the claim via the portal, which includes the completion of direction questionnaires by both sides.

By the end of 2022, the government has stated that the service will introduce the ability:

- To issue and respond to claims where there is 1 claimant versus 2 defendants, or 2 claimants versus 1 defendant, (multi-party) when legally represented
- For a judge to provide Standard Directions Orders/allocate to a track on a case after reviewing the digital case file
- For a legal representative to request and receive an Interim Judgment with subsequent Judges Directions Order for damages
- For a legal representative to issue a 'general' application, facilitate the respondent to reply to the application (when required) and for the judge to make an order.

Users therefore wishing to issue a claim from 4th April will be required to:

- Register with the MyHMCTS digital platform
- Issue the claim via the damages claims portal.

<sup>1</sup> <https://www.judiciary.uk/announcements/civil-procedure-amendment-rules-2022-140th-practice-direction-update/>

<sup>2</sup> PRACTICE DIRECTION 51ZB - THE DAMAGES CLAIMS PILOT ([justice.gov.uk](https://www.justice.gov.uk))

If a claim is issued on paper rather than via the new portal, it will be for the court to determine whether it should have been issued online and, if so, what (if any) sanction should be imposed.

Going forward to streamline the process claims handlers and insurers will need to ensure that the correct email address for DCP purposes of their client's chosen legal representative is provided to claimants preparing to issue proceedings via the DCP<sup>3</sup>.

## Annual Increase to Recoverable NHS Charges

The Department for Work and Pensions (DWP) has issued their annual update to the tariff relating to the recovery of NHS charges. This uplift in the level of charges is an annual event to reflect Hospital and Community Health Services inflation.

The tariff applies to England, Scotland, Wales, Jersey and Guernsey and is applicable depending on the date of incident as always. The uplift for April 1st 2022 (compared to claims from April 2018) is listed below<sup>4</sup>;

Incident date (on or after)	Out-patient	In-patient	Cap	Ambulance charges
01-Apr-18	£688	£846	£50,561	£208
01-Apr-19	£725	£891	£53,278	£219
01-Apr-20	£743	£913	£54,566	£224
01-Apr-21	£744	£915	£54,682	£225
01-Apr-22	£766	£941	£56,260	£231

## Government Response to Part 2 of the Whiplash Consultation

The now 5 year wait for the response to the further issues raised in the whiplash consultation is over. However, with changes made within the industry to some of the aspects that further consultation covered the response is not necessarily as defendants would have wished for, in particular in the field of credit hire and rehabilitation.

<sup>3</sup> <https://kennedyslaw.com/zh-hans/thought-leadership/article/damages-claims-portal-mandatory-for-defendants-from-2-june-2022/>

<sup>4</sup> Recovery of NHS charges: tariff and cap increases from 1 April 2020 - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>5</sup> [Title] ([publishing.service.gov.uk](http://publishing.service.gov.uk))

The areas also covered include the Notification of referral source of claim and Qualified One Way Cost Shifting (QOCs). With movement occurring in both these areas (in respect of notification of the referral source of a claim rather unsatisfactorily within both Claims Portal and the Official Injury Claims Portal - OICP) it is unsurprising to see no recommendations made, however it is widely agreed issues remain with QOCS that were not covered in this consultation<sup>5</sup>.

### Credit Hire

The call for evidence in this consultation allowed for further arguments to be put forward following the Competition and Markets Authority (CMA) investigation in 2014. The government however decided against intervening in the murky world of credit hire giving reasons of various developments in this area in the last 5 years

The response states that continued work with key stakeholders is the best approach to monitor and improve the use of industry agreements. This includes the GTA, with further consideration being given to whether it would be beneficial to make their use mandatory in the future albeit as primary legislation is likely to be required little is likely to be done in this area for the foreseeable future.

### Rehabilitation

The government response in the rehab arena noted, "The MOJ will continue to engage with the sector, through FOIL, ACSO and other key stakeholders, to support the development of an industry Rehabilitation Code with a view to agreeing a cross sector approach to rehabilitation. Additionally, we will continue to monitor the provision of rehabilitation and how this may be impacted by the implementation of the new Official Injury Claims Service for unrepresented claimants. Further consideration of the feasibility of expanding the MedCo system to support the provision of rehabilitation option will be considered as a longer-term option"<sup>6</sup>.

### Barème System of Compensation

Consideration has been given to whether a Barème type system should be developed for UK claims.

Effectively a combination of fixed tables of damages alongside scoring systems to identify where a claim fits in terms of vehicle damage, injury severity and compensation.

<sup>6</sup> MOJ finally responds to Part 2 of Whiplash Consultation | DWF Group

The Government stated it will continue to monitor the impact of the recent whiplash reforms on the sector before considering further action in this area. There do, however, remain good arguments for pursuing the implementation of a Barème system and this option will be kept under review. The development of the issue surrounding 'mixed injury' in the new OICP and the general impact on reducing overall motor insurance premiums is therefore an interesting one to see whether argument that a Barème system gathers more weight or not<sup>7</sup>.

### Other Suggestions to Control the Costs of Civil Litigation

The Government ended by thanking stakeholders for contributing to the Call for Evidence and for providing several helpful suggestions for reform. They stated, "No specific actions will currently be taken forward in relation to the points put forward, but they will be used to help inform future policy decisions. The Government will continue to monitor several of the activities covered by this response document in case further action is required. Where possible, officials will liaise with appropriate representative bodies to seek feedback and ensure that where issues have been identified that industry agreed solutions can be developed and taken forward."<sup>8</sup>

The full response can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1062009/whiplash-consultation-response-part-2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1062009/whiplash-consultation-response-part-2.pdf)

### Judicial College (JC) Guidelines

The sixteenth edition of the JC Guidelines (formally JSB) were published on 11th April.

The publishers cite the following as being new to this edition:

- Updated to account for inflation since the last edition and also to reflect decisions of the higher courts on quantum
- Two new categories: sexual abuse and work-related limb disorders
- New guidance in relation to the application of the tariff-based awards for general damages under the Civil Liability Act 2018
- Pre-Simmonds v Castle figures have been removed for nearly all injuries, providing readers with a single, clear figure (or range) incorporating the 10% uplift.

<sup>7</sup> [MOJ finally responds to Part 2 of Whiplash Consultation | DWF Group](#)

<sup>8</sup> [MOJ finally responds to Part 2 of Whiplash Consultation | DWF Group](#)

A further update will be given in respect of the updated guidelines once it is released<sup>9</sup>.

### Remote Examinations - MedCo

The ban on remote examinations was suspended as part of MedCo's response to Covid-19. In light of the government's lifting of all remaining restrictions, MedCo has now decided that the suspension will be stopped and the ban reinstated. The suspension will no longer apply to examinations that take place on or after 1 July 2022.

MedCo is aware that for a small group of claimants' remote examinations may still be required as a result of Covid-19. Therefore, MedCo has decided that in circumstances where the claimant remains vulnerable due to Covid-19, they may in those limited circumstances, have a remote examination.

Experts are required, if carrying out a remote examination because the claimant is vulnerable due to Covid-19, to record in their report the nature of the claimant's vulnerability and why that has resulted in the examination being carried out remotely<sup>10</sup>.

### Rising Costs of Motor Vehicle Damage Claims

Inflation rises, pressure on the availability of motor parts as well as workforce shortages across the UK has resulted in an increase in repair costs as well as a prolonged period of time that a vehicle is 'off the road' being repaired. We have also seen an increase to the value of used cars (which has outstripped inflation in the last 2 years) due to the delay in new vehicles being built and put on the road; this in turn means more and more vehicles are a repairable proposition as opposed to being an economic total loss.

The knock on effect of longer repair times also extends the length of time a replacement vehicle is needed, driving up the cost of credit hire and loss of use claims.

Some of the current challenges being faced in the market are highlighted below;

- Ukraine – Large amount of wiring looms impacted, particularly for German manufacturers such as Mini where they have already suspended production due to this issue. The country also produces steel – although this does not appear to be an issue at the moment the longer the crisis continues, the greater the chance of supply issues.

<sup>9</sup> [JC Guideline for General Damages 16th edition published this week | LexisNexis Blogs](#)

<sup>10</sup> [MedCo Approves Remote Examinations - Insurance - UK \(mondaq.com\)](#)

- Repair Demand – it has been reported that over 100,000 vehicles are currently waiting repairs with drivable vehicles taking 5 weeks longer to repair.
- Repair Delays –
  - Many contributing factors to take into account here
    - Staff shortages
    - Parts delays – may last for next 2 years
    - Lack of courtesy cars
    - Cash shortages within the repair network
    - Payment delays from work providers
- Key 2 key times are on average 7 days longer than before the pandemic.
- Currently new car production is being prioritised over supplying parts.

Insurers are continuing to address the issues being faced, but increasing repair costs are likely to continue as pressures across the industry rise and contracts are renewed and renegotiated.

## Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

## Get in touch

For more information, please contact your broker, RMP risk control consultant or account director.

[contact@mpartners.co.uk](mailto:contact@mpartners.co.uk)



### **Risk Management Partners**

The Walbrook Building  
25 Walbrook  
London EC4N 8AW

020 7204 1800  
[mpartners.co.uk](http://mpartners.co.uk)

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