



Civil Liability Act 2018

2018 CHAPTER 29

PART 1

WHIPLASH

Whiplash injuries

1 “Whiplash injury” etc

- (1) In this Part “whiplash injury” means an injury of soft tissue in the neck, back or shoulder that is of a description falling within subsection (2), but not including an injury excepted by subsection (3).
- (2) An injury falls within this subsection if it is—
 - (a) a sprain, strain, tear, rupture or lesser damage of a muscle, tendon or ligament in the neck, back or shoulder, or
 - (b) an injury of soft tissue associated with a muscle, tendon or ligament in the neck, back or shoulder.
- (3) An injury is excepted by this subsection if—
 - (a) it is an injury of soft tissue which is a part of or connected to another injury, and
 - (b) the other injury is not an injury of soft tissue in the neck, back or shoulder of a description falling within subsection (2).
- (4) For the purposes of this Part a person suffers a whiplash injury because of driver negligence if—
 - (a) when the person suffers the injury, the person—
 - (i) is using a motor vehicle other than a motor cycle on a road or other public place in England or Wales, or
 - (ii) is being carried in or on a motor vehicle other than a motor cycle while another uses the vehicle on a road or other public place in England or Wales,

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- (b) the injury is caused—
 - (i) by the negligence of one or more other persons, or
 - (ii) partly by the negligence of one or more other persons and partly by the negligence of the person who suffers the injury, and
 - (c) the negligence of the other person or persons consists in an act or acts done by the person or persons while using a motor vehicle on a road or other public place in England or Wales.
- (5) The fact that the act or acts constituting the negligence of the other person or persons is or are also sufficient to establish another cause of action does not prevent subsection (4)(b) being satisfied.
- (6) For the purposes of this section references to a person being carried in or on a vehicle include references to a person entering or getting on to, or alighting from, the vehicle.
- (7) In this section—
“act” includes omission;
“motor cycle” has the meaning given by section 185(1) of the Road Traffic Act 1988;
“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads;
“road” means a highway or other road to which the public has access, and includes bridges over which a road passes.

2 Power to amend section 1

- (1) The Lord Chancellor may by regulations amend the definition of “whiplash injury” in section 1, but not so as to include an injury of soft tissue other than soft tissue in the neck, back or shoulder.
- (2) Before making regulations under subsection (1), the Lord Chancellor must—
 - (a) review the definition of “whiplash injury” in section 1,
 - (b) as part of the review, consider whether to amend section 1,
 - (c) prepare and publish a report of the review, including a decision whether or not to amend section 1 and the reasons for the decision, and
 - (d) lay a copy of the report before Parliament.
- (3) After laying the copy of the report before Parliament and before making regulations under subsection (1), the Lord Chancellor must consult—
 - (a) the Lord Chief Justice;
 - (b) the General Council of the Bar;
 - (c) the Law Society;
 - (d) the Chief Medical Officer of the Department of Health and Social Care;
 - (e) the member of staff of the Welsh Government designated by the Welsh Ministers as the Chief Medical Officer for Wales;
 - (f) such other persons or bodies as the Lord Chancellor considers appropriate.
- (4) The Lord Chancellor may not carry out the first review under subsection (2) before the end of the period of three years beginning with the day on which section 1 comes into force.

- (5) After the first review, the Lord Chancellor may not carry out a review under subsection (2) before the end of the period of three years beginning with—
- (a) if regulations under subsection (1) were made following the previous review, the day on which those regulations came into force, or
 - (b) if no regulations under subsection (1) were made following the previous review, the day on which a copy of the report of the previous review was laid before Parliament.
- (6) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure.

Damages

3 Damages for whiplash injuries

- (1) This section applies in relation to the determination by a court of damages for pain, suffering and loss of amenity in a case where—
- (a) a person (“the claimant”) suffers a whiplash injury because of driver negligence, and
 - (b) the duration of the whiplash injury or any of the whiplash injuries suffered on that occasion—
 - (i) does not exceed, or is not likely to exceed, two years, or
 - (ii) would not have exceeded, or would not be likely to exceed, two years but for the claimant’s failure to take reasonable steps to mitigate its effect.
- (2) The amount of damages for pain, suffering and loss of amenity payable in respect of the whiplash injury or injuries, taken together, is to be an amount specified in regulations made by the Lord Chancellor.
- (3) If the claimant suffers one or more minor psychological injuries on the same occasion as the whiplash injury or injuries, the amount of damages for pain, suffering and loss of amenity payable in respect of the minor psychological injury or the minor psychological injuries, taken together, is to be an amount specified in regulations made by the Lord Chancellor.
- (4) If regulations made by the Lord Chancellor so provide, the amount of damages for pain, suffering and loss of amenity payable in respect of—
- (a) the whiplash injury or injuries, and
 - (b) a minor psychological injury or injuries suffered by the claimant on the same occasion as the whiplash injury or injuries,
- taken together, is to be an amount specified in regulations made by the Lord Chancellor (notwithstanding subsections (2) and (3)).
- (5) Regulations under this section may in particular—
- (a) specify different amounts in respect of different durations of injury;
 - (b) specify amounts in respect of minor psychological injuries by reference to the duration of the related whiplash injury or injuries.
- (6) Regulations under this section may provide for a person to be treated as if the person had taken reasonable steps to mitigate the effect of the person’s whiplash injury or minor psychological injury.

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- (7) Regulations under this section amending or replacing earlier regulations may increase or reduce amounts payable in respect of injuries.
- (8) Nothing in this section prevents a court, in a case where a person suffers an injury or injuries in addition to an injury or injuries to which regulations under this section apply, awarding an amount of damages for pain, suffering and loss of amenity that reflects the combined effect of the person's injuries (subject to the limits imposed by regulations under this section).
- (9) Nothing in this section prevents the amount of damages payable being reduced by virtue of section 1 of the Law Reform (Contributory Negligence) Act 1945.
- (10) This section does not apply in relation to damages payable by a person because of the person's breach of the duty under section 143(1)(b) of the Road Traffic Act 1988 (duty not to cause or permit any other person to drive without insurance or security in respect of third party risks).
- (11) The Lord Chancellor must consult the Lord Chief Justice before making regulations under this section.
- (12) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure.

4 Review of regulations under section 3

- (1) The Lord Chancellor must carry out reviews of regulations made under section 3.
- (2) The first review must be completed before the end of the period of three years beginning with the day on which the first regulations under section 3 come into force.
- (3) Subsequent reviews must be completed before the end of the period of three years beginning with the day on which the previous review was completed.
- (4) The Lord Chancellor must prepare and publish a report of each review.
- (5) The Lord Chancellor must lay a copy of each report before Parliament.

5 Uplift in exceptional circumstances

- (1) Regulations made by the Lord Chancellor may provide for a court—
 - (a) to determine that the amount of damages payable for pain, suffering and loss of amenity in respect of one or more whiplash injuries is an amount greater than the tariff amount relating to that injury or those injuries;
 - (b) to determine that the amount of damages payable for pain, suffering and loss of amenity in respect of one or more whiplash injuries and one or more minor psychological injuries, taken together, is an amount greater than the tariff amount relating to those injuries;
 - (c) in a case where the court considers the combined effect of—
 - (i) an injury or injuries in respect of which a tariff amount is specified by regulations under section 3(2) or (4), and
 - (ii) one or more other injuries,to determine that an amount greater than the tariff amount is to be taken into account when deciding the amount of damages payable for pain, suffering

and loss of amenity in respect of the injuries mentioned in sub-paragraphs (i) and (ii).

- (2) The regulations may require a court to be satisfied, before making the determination mentioned in subsection (1)(a), (b) or (c), that—
 - (a) the degree of pain, suffering or loss of amenity caused by the whiplash injury or injuries in question makes it appropriate to use the greater amount, and
 - (b) it is the case that—
 - (i) the whiplash injury is, or one or more of the whiplash injuries are, exceptionally severe, or
 - (ii) where the person’s circumstances increase the pain, suffering or loss of amenity caused by the injury or injuries, those circumstances are exceptional.
- (3) The regulations must specify the maximum percentage by which the greater amount mentioned in subsection (1)(a), (b) or (c) may exceed the relevant tariff amount.
- (4) Regulations under this section amending or replacing earlier regulations may increase or reduce the maximum percentage.
- (5) The Lord Chancellor must consult the Lord Chief Justice before making regulations under this section.
- (6) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure.
- (7) In this section “tariff amount” means—
 - (a) in relation to one or more whiplash injuries, the amount specified in respect of the injury or injuries by regulations under section 3(2);
 - (b) in relation to one or more whiplash injuries and one or more minor psychological injuries, the amount specified in respect of the injuries by regulations under section 3(4).

Settlement of whiplash claims

6 Rules against settlement before medical report

- (1) A regulated person is in breach of this section if—
 - (a) the regulated person knows or has reason to suspect that a whiplash claim is being made,
 - (b) the regulated person does, or arranges or advises the doing of, an act mentioned in subsection (2), without first seeing appropriate evidence of the whiplash injury or injuries, and
 - (c) the regulated person is acting as such when the regulated person does, or arranges or advises the doing of, that act.
- (2) The acts referred to in subsection (1) are—
 - (a) inviting a person to offer a payment in settlement of the claim;
 - (b) offering a payment in settlement of the claim;
 - (c) making a payment in settlement of the claim;
 - (d) accepting a payment in settlement of the claim.

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- (3) The Lord Chancellor may by regulations make provision about what constitutes appropriate evidence of an injury for the purposes of this section.
- (4) The regulations may in particular—
 - (a) specify the form of any evidence of an injury;
 - (b) specify the descriptions of persons who may provide evidence of an injury;
 - (c) require persons to be accredited for the purpose of providing evidence of an injury;
 - (d) make provision about accrediting persons, including provision for a person to be accredited by a body specified in the regulations.
- (5) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure.
- (6) In this section “whiplash claim” means a claim that consists only of, or so much of a claim as consists of, a claim for damages for pain, suffering and loss of amenity caused by—
 - (a) one or more whiplash injuries suffered by a person on a particular occasion because of driver negligence and in relation to which section 3 applies, or
 - (b) a whiplash injury or injuries within paragraph (a) suffered by a person on a particular occasion and one or more minor psychological injuries suffered by the person on the same occasion as the whiplash injury or injuries.

7 Effect of rules against settlement before medical report

- (1) The relevant regulator must ensure that it has appropriate arrangements for monitoring and enforcing compliance with the restrictions imposed on regulated persons by section 6.
- (2) The relevant regulator may make rules for the purposes of subsection (1).
- (3) The rules may in particular provide that, in relation to anything done in breach of section 6, the relevant regulator may exercise any powers that the regulator would have in relation to anything done by the regulated person in breach of another restriction (subject to subsections (5) and (6)).
- (4) Where the relevant regulator is the Financial Conduct Authority, section 8 applies instead of subsections (1) to (3).
- (5) A breach of section 6—
 - (a) does not make a person guilty of an offence, and
 - (b) does not give rise to a right of action for breach of statutory duty.
- (6) A breach of section 6 does not make an agreement to settle the whiplash claim in question void or unenforceable.

8 Regulation by the Financial Conduct Authority

- (1) The Treasury may make regulations to enable the Financial Conduct Authority, where it is the relevant regulator, to take action for monitoring and enforcing compliance with the restrictions imposed on regulated persons by section 6.

- (2) The regulations may apply, or make provision corresponding to, any of the provisions of the Financial Services and Markets Act 2000 with or without modification.
- (3) Those provisions include in particular—
 - (a) provisions as to investigations, including powers of entry and search and criminal offences;
 - (b) provisions for the grant of an injunction in relation to a contravention or anticipated contravention;
 - (c) provisions giving Ministers or the Financial Conduct Authority powers to make subordinate legislation;
 - (d) provisions for the Financial Conduct Authority to charge fees.
- (4) The power to make regulations under this section may not be used to make provision inconsistent with section 7(5) and (6).
- (5) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure.

Interpretation

9 Interpretation

- (1) For the purposes of this Part, in relation to an act mentioned in section 6(2), a regulator listed in the first column is the relevant regulator in relation to the regulated person listed in the corresponding entry in the second column.

<i>Regulator</i>	<i>Regulated person</i>
The Financial Conduct Authority	An authorised person (within the meaning of the Financial Services and Markets Act 2000) of a description specified in regulations made by the Treasury
The Claims Management Regulator	A person authorised by the Regulator under section 5(1) (a) of the Compensation Act 2006 to provide regulated claims management services
The General Council of the Bar	A person authorised by the Council to carry on a reserved legal activity within the meaning of the Legal Services Act 2007
The Law Society	A person authorised by the Society to carry on a reserved legal activity within the meaning of the Legal Services Act 2007
The Chartered Institute of Legal Executives	A person authorised by the Institute to carry on a reserved legal activity within the meaning of the Legal Services Act 2007

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<i>Regulator</i>	<i>Regulated person</i>
A licensing authority for the purposes of Part 5 of the Legal Services Act 2007 (alternative business structures)	A person who is— (a) licensed by the authority to carry on a reserved legal activity within the meaning of the Legal Services Act 2007, and (b) of a description specified in regulations made by the Lord Chancellor
A regulatory body specified for the purposes of this subsection in regulations made by the Lord Chancellor	A person of a description specified in the regulations in relation to the body

- (2) A statutory instrument containing regulations under subsection (1) is subject to negative resolution procedure.
- (3) In this Part—
- (a) a reference to making a claim against a person includes a reference to notifying a person of the basis of a claim;
 - (b) a reference to making a payment to a person includes a reference to conferring a benefit on a person or a third party.
- (4) In this Part—
- “benefit” means—
 - (a) any benefit, whether or not in money or other property and whether temporary or permanent, and
 - (b) any opportunity to obtain a benefit;
 - “claim” includes counter-claim;
 - “whiplash claim” has the meaning given by section 6(6).