



**Informing Progress** - Shaping the Future

## **FOIL UPDATE 12<sup>th</sup> August 2022**



### **Review of the whiplash tariff after one year of implementation**

The Deputy Director of the Civil Justice and Law Policy Division of the Ministry of Justice has written to Stuart Hardy, President of FOIL to provide members with an update on the Government's whiplash reform programme.

The letter records that In April 2021 Lord Wolfson QC confirmed, during a Parliamentary debate on the Whiplash Injury Regulations 2021, that the Government was open to the possibility of reviewing the tariffs earlier than the statutory three years. He also stated that it was important first to make sure that there was evidence available to undertake a review from which meaningful conclusions could be drawn and that the MOJ would undertake an analysis of the available data after a year with a view to considering whether such a review was appropriate.

Having reviewed the data available, relating both to claims which have settled pre-court using the Official Injury Claim (OIC) service and those which have entered the court process, the MOJ has confirmed that Ministers have decided that it is not appropriate to undertake a review at this time.

The letter goes on to say that sufficient data is available from OIC on how insurers have applied the tariff to settle claims pre-court. However, the data from Her Majesty's Courts and Tribunal Service on claims which have left OIC and entered the courts is significantly below the threshold for an effective assessment. It will take some time before the courts consider an appropriate number of claims and undertaking an evaluation without a full set of comparable good quality data would likely lead to inaccurate analysis and outcomes.

It is noted that the purpose of reviewing the whiplash tariff is to understand how it is being applied and interpreted in practice. This by necessity includes looking at evidence on both negotiated settlements pre-court and disputed cases in court for both represented and unrepresented claims.

For that review to be robust it must be able to consider all relevant evidence relating to each application of the tariff. It must also be complete, reliable and up to date to ensure that it is of right quantity and quality to inform accurate and meaningful conclusions.

This decision does not in any way affect the statutory obligation contained within the Civil Liability Act 2018 which requires the Lord Chancellor to undertake an evaluation of the tariff by no later than May 2024.

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