



Civil Liability Act 2018

2018 CHAPTER 29

PART 1

WHIPLASH

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

Status: This is the original version (as it was originally enacted).

- (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.
- (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).