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A Fundamental Access to Justice

It is fast approaching three years since the Civil Liability Act introduced a fixed tariff of compensation for whiplash injuries. With that milestone comes the first statutory review of the tariff by the Lord Chancellor.

An upwards adjustment for the historic highs of inflation over the last two years is inevitable, but a great deal has changed and a more fundamental review is needed. There has been a dramatic reduction in the number of motor accident claims, despite the number of road accidents. Motor insurance premiums have increased by well over 50% for comprehensive cover, far outstripping inflation.

The increase in the Small Claims Track Limit has led to an exodus from the claims market, with dramatically fewer firms offering support. It is simply no longer financially viable to support low value claims, exacerbated by the lack of a fully functioning API system denying much needed efficiencies. This is compounded by widening delays for represented claims, compared to admitted liability self-representing claims. There's also the increasing backlog of unresolved cases in the OIC, and court delays are growing, with record highs despite fewer cases entering the system. Claims management for professional users, both claimant and defendant, is still a slow, time consuming and expensive process.

Injured motor accident victims face a growing deficit in accessing justice. Despite fewer available options for accessing legal support, less than 10% of OIC users are the self-representing claimants for whom the system was designed and built. The complexity of the process means that many self-representing claimants simply give up, with perfectly genuine claims not being pursued.

In 2021, the tariff was set absurdly low in the first place, and little has changed since it was first set out in draft form by the insurance industry in 2013. The review says that it will assess changes to the claims sector and the wider economic background as part of this process. The MoJ undoubtedly intends to slap on a modest inflationary increase and be done with the matter, but justice dictates that the review should be far more fundamental than this.

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