PRESS RELEASE

MASS presses call for an early review into the OIC tariff

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FOR IMMEDIATE RELEASE

The Motor Accident Solicitors Society (MASS) is today renewing its call for an early review of the tariff of damages for low-value Road Traffic Accidents (RTA), as recommended by the Lord Chief Justice of England and Wales.

The Ministry of Justice has argued that there is insufficient data from court judgements to make “an effective assessment of the tariff”. MASS rejects this argument. The tariff is beyond the scope of the courts. Judges cannot change a statutorily set tariff.

MASS has consistently argued that the tariff regime is far too low, does not recognise the pain and suffering caused by accident victims and would detrimentally impact the ability of potential claimants to engage legal advice.

We fully recognise that the purpose of the reforms and the Civil Liability Act was to reduce the number and cost of motor accident claims, but believe that a fall in claims of over 50% suggests that genuine accident victims are being dissuaded from proceeding with legitimate claims. Whilst the process was designed to dissuade claimants from making so-called ‘frivolous claims’, the levels of compensation, also being undermined by steeply rising inflation, mean that many potential claimants are simply unable to seek legal support.

We have today written to both Lord Bellamy, Parliamentary Under-Secretary of State at the Ministry of Justice, and the Lord Chief Justice expressing our views.

Sue Brown, Chair of MASS, said:

> “Court judgements are a separate issue from the tariff of damages being awarded within the OIC Portal. We cannot see how many thousands of further judgements would impact any assessment on the operation of the tariff and OIC. We do not believe that this is a valid excuse for rejecting an early review of the tariff, as supported by the Lord Chief Justice, parliamentarians and stakeholders such as MASS.”
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> “We are also disappointed that the government has rejected the impact of rampant inflation which is further corroding the value of damage awards for accident victims. An 11% increase in the tariff that was supposed to ‘inflation-proof’ the awards for 3 years has now been eroded in a single year.”
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> “The most damaging outcome from the whiplash reforms has been the reduction of damages for motor accident victims to only several hundred pounds. Although the reforms were intended to make whiplash claims less appealing for potential fraudsters and reduce the costs for the insurance industry, reductions in damages of over 70% in some instances, have left motor accident victims feeling deeply aggrieved and a strong sense of injustice.”
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> This is too important an issue to park until the statutory review in 2024. This is a fundamental issue about making changes to the system to better balance the declared policy objectives of the legislation whilst preserving access to justice.”

Background notes and references

Faced with opposition in the House of Lords, two important concessions were drawn out from the government during the passage of the Civil Liabilities Act 2018: the Lord Chancellor must review the tariff of damages after three years and that the Lord Chief Justice must be consulted on the level of the tariffs.

Despite calls from MASS and others, the Lord Chief Justice's response to the government remains confidential.

An early review of the tariff was first raised by Lord Wolfson of Tredegar, former PUS for MoJ, who told the House of Lords on 26 April 2021:

> "*During the passage of the Act we introduced, on the advice of the House, amendments to ensure that the views of the Lord Chief Justice were sought, we have undertaken this consultation, and we are grateful for his consideration of these matters. He was clear that the tariff figures*
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>> *'demonstrate a material divergence in the levels of damages between those proposed and those which are generally currently awarded'.*
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> *He also acknowledged that the tariff figures were similar to those previously tabled before Parliament, when the Government's intent that the tariffs would be lower than the figures in the Judicial College Guidelines was made clear.*
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> *The Lord Chief Justice emphasised that the tariff was a*
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>> *'narrowly defined statutory derogation from the principle of full compensation through an assessment of damages by the courts',*
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> *but considered that it was not appropriate for him to suggest a change. He made it clear that he understood the Government's principles underpinning the uplift, but expressed the view that he would prefer the judiciary to have greater discretion.*
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> *Following receipt of the Lord Chief Justice's response, further discussions with the legal advisers to the Joint Committee on Statutory Instruments led to a need to amend the tariff figures to distinguish between damages for claims for whiplash injuries alone and damages for claims for whiplash injuries and minor psychological injuries. We made the Lord Chief Justice aware of these re-presented figures and he was clear that his response, in substance, remained the same.*
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> *The Lord Chief Justice also considered that it would be beneficial to review the tariffs earlier than the statutory three years. We do not know now whether we will have enough data in a year's time to make an informed assessment, so I cannot commit to an early review, but we are open to the possibility. We must first make sure there is evidence available to undertake a meaningful review from which effective conclusions can be drawn. Having considered the points made by the Lord Chief Justice, we will not change our position on the tariff amounts or the judicial uplift of 20%, but we will undertake an analysis of the available data after a year with a view to considering whether an early review is appropriate.*"
> Whiplash Injury Regulations 2021, House of Lords, 26 April 2021

He also addressed the issue of the tariff taking account of future inflation:

> "*We have reviewed and updated the previously published figures to account for inflation. We have also added a three-year future-proofing element to ensure that they do not move out of*

> *alignment with future inflationary pressures before the required statutory review in three years' time. That leads to an increase of about 11% over the figures previously provided to the House*."
> Whiplash Injury Regulations 2021, House of Lords, 26 April 2021

These statements were repeated on 28 April 2021 by Alex Chalk MP, former PUS for Justice, before a delegated legislation committee considering the whiplash regulations on 28 April 2021.
Draft Civil Liability Act 2018 regulations, House of Commons, 28 April 2021

Following the first anniversary of the new claims process in May 2022, MASS reminded the Ministry of Justice of this ministerial commitment, writing on 27 June 2022.

MASS received a response from Lord Bellamy, Parliamentary Under-Secretary of State, Ministry for Justice, on 11 August 2022. This concluded that "*it is not appropriate to undertake a review at this time*". The Minister argued that whilst "*there is sufficient data available on the pre-court process*", "*with only 2 judgments on quantum disputes in the same period, the available court data is significantly below the threshold for an effective assessment of the tariff*".

The Minister suggested that "*With such a small sample size of court judgments we can have no confidence that they are representative of all cases that will eventually reach court, and as such it would not be appropriate to rely on any conclusions drawn from the analysis*".

He also dismissed any concerns regarding the high levels of inflation: "*Nor is it appropriate now to consider any inflationary adjustments*".

The letter concluded: "*As it will take some time before the courts can consider an appropriate number of claims, we have decided to revert to that statutory timetable and will undertake this review by May 2024*."

Copies of all correspondence are available on request.