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Barriers Persist In Access To Justice

In November, the Lord Chancellor, Shabana Mahmood, finally published the delayed outcome for the statutory review of the Whiplash Injury regulations. The outcome was fairly unspectacular for both claimants and defendants.

The tariff of damages is being uprated by 15% to account for inflation between 2021 and 2024, with a small inflation buffer for the next three years until the next review (anticipated to take place in 2027). There are no changes to the definitions used, the minor psychological injury element, or the uplift for exceptional injuries.

This is a bare minimum increase to account for inflation, but set on the very low-level baseline installed by the former UK Government in 2021. Given the delay in the process, it will also not be implemented until Spring 2025 at the earliest, following a period of consultation with the Lady Chief Justice and a short Parliamentary process. So, this is a rather stingy four-year settlement rather than three, which does beg the question whether the review will occur in 2027, or even 2028...

Whilst we might quibble over a few percentage points' increases, the real issue for claimants is that the tariff as structured is deeply unfair, was set ridiculously low, under-compensates and is a barrier to access to justice. However, for claimants and compensators alike, the early flagging of a formal post-implementation review of the Civil Liability Act 2018 was probably more interesting. Labour, of course, opposed the reforms (and specifically, the tariff) during the passage of the Act. This review will be the real test of the direction this government wishes to take around access to justice.

