

# Small Claims Reforms

What do we know?

## Overview

### What happens now?

When someone is injured in a road traffic accident (RTA) that wasn't their fault, they would normally call their insurer to report the accident and their injuries. The injured person would then call on a legal services provider to help them manage their personal injury claim against the at fault party. Many customers today receive this legal support through their Legal Expense Insurance (LEI).

Often the customer will receive physiotherapy or other assistance to help their recovery. Contact would be made with the third-party's insurer to determine liability and they may also see a clinician and obtain a medical report into the extent of their injury.

Evidence would be gathered by the injured person's legal representative and compensation would be calculated. This would be based on case law, personal injury guidelines and the representative's own experience in dealing with similar claims. The validation and valuation of other losses (such as vehicle hire while their own car is repaired) the customer can claim for are also completed by the representative.

Once valued, the evidence would be sent over to the at fault party, and negotiations would begin to agree suitable damages. The legal expert has an important role, both to help guide the injured party through sometimes complex procedures, and to ensure the right settlement is achieved with the at fault insurer. Typically, the legal advisor's fees are paid by the at fault insurer (where the claimant has legal expenses insurance cover in place).

### What happens in 2020?

The Civil Liability Act will, according to ministers, reduce the cost of motor insurance by reducing the volume of fraudulent claims. This will mean claimants will not be able to recoup their legal costs for claims with a value of less than £5,000 (currently £1,000). Injured people who are wishing to bring a claim will have to either fund their own legal support or choose to become a litigant in person.

The Act also introduces a tariff system for pain, suffering and loss of amenity compensation for soft tissue / whiplash injuries with a prognosis of 2 years or below. The tariff system will be based on the how long the injury lasts. The amount of compensation within the tariff is still to be decided.

To put this change into perspective, around 90% of personal injury claims will fall within the new Small Claims Limit (£5k) for which legal costs will now become non-recoverable from the third-party insurer.

From next year, customers making a claim for minor injuries will instead be required to use a new portal which is being developed by the Motor Insurance Bureau (MIB) and paid for by the insurance industry. The go live date for the changes (and the portal) is planned in April 2020 after testing the portal in October 2019.

### What does this mean?

With legal costs under £5,000 no longer recoverable, customers who have claims falling under this value will need to make different choices about how they progress their claim for personal injury. Customers will have limited access to legal representation unless they have legal expenses insurance or are willing to pay for the cost of hiring a lawyer themselves. For most ordinary people, the latter is unlikely given the cost and effort of making a claim that will bring little return under the set tariff system.

Vulnerable road users are exempt from some of the changes and this includes cyclists, motorcyclists, horse riders and pedestrians. Children and protected parties are also exempt from the process for the time being. However, this may change as the MIB chose only to exclude these cases as they tend to be more complex, and the designers of the portal are focused on delivering what is known as a 'minimum viable product' capable of dealing with simple cases only.

The online portal will require a lot more effort from customers representing themselves as they will need to understand their responsibilities under the law and facilitate the gathering of all evidence, including witness statements and police reports. Ministers say there will be help provided, as well as

facilities for customers who do not have internet access, or have other difficulties preventing them from accessing the portal. The contact centre to manage customer queries is likely to be busy, especially in the early days.

### What's happened so far?

There has been limited information from both the MoJ and the MIB to date. In July we received the first real communication of what is being built within the portal to facilitate these claims.

If a customer is unrepresented and they are unable to reach a settlement agreement with the at fault party, they will have access to Alternative Dispute Resolution ('ADR'). This is an online service designed to help parties come to an agreement.

Proponents believe the changes will speed up the claims journey as there will be less time spent on technical costs arguments. Customers will have greater clarity over the settlement figure they will get in hand as there will be a fixed tariff system, and no costs will apply on cases under £5,000.

The party at fault (the third-party insurer) will cover the cost of the medical report (currently priced at £216). However, this would only be for cases where liability is admitted.

### What about the customer?

Independent research conducted by [Minster Law](#) shows that while 50% of the public prefer to settle their claim online, 45% would still prefer to deal with a human with no IT involved whatsoever, even if their claim takes longer. This suggests that there is no universal support for an entirely digital process, or at least for many people a human element is integral to the claims journey.

It has been confirmed that insurers will pay for the medical report if liability is admitted but it is not certain who will bear the cost if claims are disputed or what will happen if the customer is unhappy with the report.

Minster Law's research found that 44% of people making a claim said that simplicity was important. But despite the laudable aim of simplifying the claims process with the portal, there will be obstacles and barriers for customers using it. The danger is that without assistance, customers may well disengage and fall out of the system, with a negative impact on access to justice.

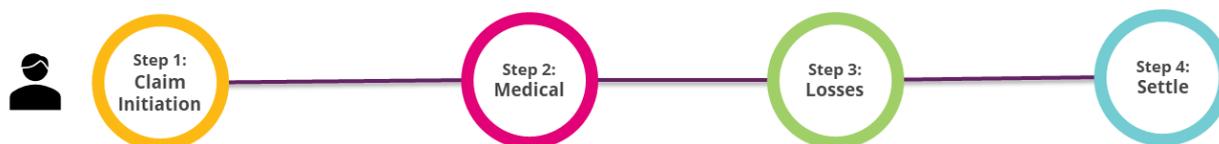
Minster Law will continue to support injured customers who want to claim for compensation and we have been keen to ensure the needs of injured customers are at the heart of this complex change. In seeking to achieve the right customer outcomes, Minster Law has conducted research, debated the issues with insurers, the MIB, defendant law firms and customers themselves to find the best solutions.

In setting out the case for the new portal, the minister said: 'they will ensure that the system really works and that we have tested it again and again before rolling it out, because otherwise a system designed to increase access to justice may inadvertently decrease that access through the malfunctioning of the online portal.'

Minster Law supports this aspiration, but argues that, for the portal to be a success, it must deliver a better customer journey than the present process achieves.

All the above is driven by the following key technical explanations.

## The Claims Process



## Step 1: Claim Initiation

Customers will now have to choose whether to claim themselves through a self-serve portal or instruct a representative to act on their behalf. Either choice will make it likely that there are two different customer journeys. Unrepresented customers will be able to access a call centre to assist with their claim if they are not able to do this online.

### Implications for insurer / broker

Confirmed	Considerations	Unknowns
<ul style="list-style-type: none"> <li>LEI products sold after April 2019 carry the risk of indemnity post the current planned implementation date (April 2020).</li> <li>Insurers and brokers will need to review their LEI offering to ensure it remains TCF.</li> <li>UWs of MLEI will need to adopt a different rating model, based on underlying small claims processing costs.</li> </ul>	<ul style="list-style-type: none"> <li>No win no fee agreements remain.</li> <li>Court proceedings could become the default outcome for disputed claims which will increase costs and court time.</li> <li>High risks of LEI product review following reforms leading to increased costs.</li> </ul>	<ul style="list-style-type: none"> <li>It is unclear when LEI product offerings will be adapted to meet customer needs post reforms.</li> <li>Some LEI providers will exclude small claims from policy coverage or introduce excesses to protect against costs in these cases.</li> <li>The FCA is currently considering whether existing LEI products meet the needs of customers in post-reform world.</li> </ul>

### Implications to claimant representatives

Confirmed	Considerations	Unknowns
<ul style="list-style-type: none"> <li>There will be two portals: the existing portal already used by claimant representatives for fast-track cases, and a new LiP portal. This means that there will be two customer journeys; two different charging structures and two different rules for represented and non-represented claimants.</li> <li>Low customer knowledge and understanding of LEI now, let alone in the future, post-reform.</li> </ul>	<ul style="list-style-type: none"> <li>There is a risk that the two portals will not be congruent and thus systems integration will be problematic.</li> <li>Claims are likely to go on for longer particularly if the default position is court proceedings for all disputed claims which fail ADR.</li> <li>It is currently unclear what will happen if an unrepresented claimant changes to a represented part way through the process.</li> <li>Defendant insurer behaviour and tactics may change depending on which portal the claim is issued within.</li> <li>Children and protected parties as well as vulnerable road users are currently excluded from the new process and portal.</li> </ul>	<ul style="list-style-type: none"> <li>Whether there will be any alternative routes available for represented claimants instead of going straight to court proceedings.</li> <li>What will happen in different case scenarios – for example when a customer’s capacity changes half way through the portal process.</li> <li>Do the MOJ/MIB intend to facilitate closer collaboration between claimant law firms, defendant insurers and customers.</li> <li>The application of tariff based compensation awards have yet to be set.</li> <li>Ministers have yet to confirm that children and protected parties are permanently exempt from the the portal.</li> </ul>

## Step 2: Medical

Where liability is admitted, Ministers have confirmed that the at-fault insurer will pay for the medical report, however if liability is disputed, the customer may have to fund their own medical report. Settlement of a claim is barred without a medical report, meaning the customer may have to pay £180 + VAT to proceed with their claim. For vulnerable groups, this is a considerable financial outlay. If the customer is represented, then the representative may choose to fund the medical report and claim this back at claim settlement stage. Early rehabilitation may not be offered to unrepresented customers, which may increase the recovery period for these customers following an accident.

### Implications for insurer / broker

Confirmed	Considerations	Unknowns
<ul style="list-style-type: none"> <li>Insurers have agreed to fund the mandatory medical reports on liability admitted cases where the customer is unrepresented.</li> </ul>	<ul style="list-style-type: none"> <li>Insurers are likely to argue that rehabilitation is a significant cost when arranged through claimant firms.</li> <li>At present an experienced professional representative identifies the need for physiotherapy. However, there is no sign-posting mechanism for early rehab intervention in the new LiP process.</li> <li>Most legal representatives instruct rehabilitation early in the process to aid early recovery for customers.</li> </ul>	<ul style="list-style-type: none"> <li>Insurers may lobby for a set market rate.</li> <li>The second part to the government consultation on the CLA is due by the end of 2019. This includes rehab and credit hire, and could significantly change the current landscape.</li> <li>The outcome of the consultation into future provision of medical reports in RTA-related PI claims are not yet known (a key element being the introduction of other medical experts into the portal such as chiropractors and osteopaths i.e CAMS).</li> </ul>

### Implications to claimant representatives

Confirmed	Considerations	Unknowns
<ul style="list-style-type: none"> <li>Medco is mandated for all users, whether a customer is a LiP or represented. The reforms introduce mandatory medical assessments meaning the claims cannot be settled without medical evidence being provided for injuries sustained.</li> </ul>	<ul style="list-style-type: none"> <li>Dismantling the process of early rehabilitation intervention may expose customers to liabilities which they currently do not have to consider like the funding of private treatment</li> <li>If early intervention is not arranged this is likely to prolong recovery and increase the costs of treatment on the NHS rather than the at fault party.</li> <li>It is assumed that claimant firms will fund the medical reports for represented customers</li> </ul>	<ul style="list-style-type: none"> <li>How will unrepresented claimants value their claim, particularly if multiple injuries have been sustained?</li> <li>Whether there will be a rehabilitation provision for unrepresented customers, which is vital.</li> <li>How customers will know which medical expert to choose, specific for their injuries (including multiple medical cases).</li> <li>How LiPs will be asked to select their medical agency as the MedCo process is complex and non-customer friendly.</li> </ul>

## Step 3: Losses

If customers remain unrepresented then they will have to evidence their losses and liability themselves and they may find it confusing when it comes to obtaining the correct evidence. If settlement is reached, some losses may be unknowingly left out. Complex losses including multi-site injuries or complex loss of earnings will need to be assessed and evidenced by the customer themselves.

### Implications for insurer / broker and claimant representatives

Confirmed	Considerations	Unknowns
<ul style="list-style-type: none"><li>• Credit hire / credit repair can be claimed by claimants if the total value of the claim does not exceed £10k.</li></ul>	<ul style="list-style-type: none"><li>• Unrepresented customers may unknowingly enter into a full and final settlement with an insurer for their personal injury without considering other losses. This means that hire and/or repairs may not be able to be recovered.</li></ul>	<ul style="list-style-type: none"><li>• It needs to be confirmed what the process will be for claims that are valued over £10k.</li><li>• If legal advice is reasonably required to assist claimants then consideration is required to confirm whether these claims will still be subject to the small claims limit.</li><li>• What the additional burden of effort will be on defendant insurers to ensure evidence received from LiPs is sufficient to process claim appropriately</li></ul>

## Step 4: Settle

If a customer is unrepresented then they will have access to ADR. If they are represented then they will not have access to the ADR process which may result in a longer claims process. Customers will need to assess the entirety of their claim themselves and may inadvertently miss or misrepresent parts of their claim through lack of knowledge. Requests for help risk placing a high burden on the 'call centre.'

### Implications for insurer / broker

Confirmed	Considerations	Unknowns
<ul style="list-style-type: none"> <li>Cases will run for longer if more court proceedings are entered into.</li> </ul>	<ul style="list-style-type: none"> <li>It is suggested that if the customer does not accept the ADR decision then they will have to take the case to court which negates the purpose of dispute resolution.</li> <li>Removing claimant representatives from the ADR places the burden of effort for collating claim evidence on the customer and insurer.</li> </ul>	<ul style="list-style-type: none"> <li>Who will the provider will be for ADR?</li> <li>What the ADR solution will cover or what it will look like.</li> <li>If ADR fails, it is not clear what for the outcome/next steps will be for unrepresented customers.</li> </ul>

### Implications to claimant representatives

Confirmed	Considerations	Unknowns
<ul style="list-style-type: none"> <li>ADR will not be available for claimant representatives. This reduces the likelihood of third party insurers making sensible offers as they know that the customer will be under pressure to either abandon the case or accept what they offer rather than resorting to litigation. The need for counsel on cases under £5k is significantly reduced.</li> </ul>	<ul style="list-style-type: none"> <li>Claims management companies may be able to use the ADR process but law firms cannot, which discriminates against lawyers.</li> <li>ADR is only available for LiPs risking inequality of arms and subjecting LiP customers to potentially longer claim durations.</li> </ul>	<ul style="list-style-type: none"> <li>Assistance will have to be provided to claimants in the sourcing of evidence, e.g police reports and witness statements.</li> <li>Further clarification is required to confirm whether there will be any options similar to ADR available for represented claimants or if the final position is to go to court.</li> </ul>