

Personal Injury Compensation – Reforms in Progress



“the full impact will still take time to emerge”

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Whiplash Definition

...“a sprain, strain, tear, rupture or lesser damage of a muscle, tendon or ligament in the neck, back or shoulder” ...



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In the Quarter 4 2017 edition of Bandwagon we looked at the implications of the significant reduction in the discount rate used for damages claims in UK Courts, from 2.5%pa to -0.75%pa (a change of 3.25% which pushed up compensation claims substantially). The subsequent insurance industry challenge to this material change has resulted in reforms introduced by the Civil Liability Act 2018.

Civil Liability Act 2018 (“the Act”)

The Act, which received Royal Assent on 20 December 2018, is to be implemented in stages. Key changes relate to the determination of the discount rate to be used in personal injury cases, as well as the approach to dealing with whiplash claims.

The Discount Rate

For many years the discount rate was determined by reference to yields on index-linked gilts. This was considered a “risk free” approach to investing. However, this has led to the rate being -0.75% pa since March 2017. Using a negative rate increased the value of compensation claims and was criticised as being unnecessarily severe. The impact was a particularly significant step-change, as the rate had not previously been reviewed since 2001.

The Act sets out a new approach which is based on a “low risk” investment portfolio, rather than index-linked gilts. It is forecast that this approach would currently result in a discount rate of between 0% and 1%pa. While this is still low, it would be materially higher than -0.75% pa.

The Act requires the discount rate to be reviewed within 90 days of Royal Assent and the Lord Chancellor has a further 140 days to determine the rate. This means that the new rate should be effective no later than 6 August 2019.

The Act permits different rates to be set for different classes of cases (for example, the type of loss or length of time over which it is paid). However, this discretion is not expected to be applied immediately. As always, the Court retains the power to set a different rate, although this power is not expected to be widely used.

Whiplash

Whiplash compensation has become a controversial issue; individually claims are usually fairly modest. However as medical evidence can be inconclusive, it can be difficult to refute them, resulting in insurers paying out large amounts in aggregate claims.

Under the Act, whiplash injury compensation will be set by a tariff determined by the Lord Chancellor. The tariff will cover cases where there is also “minor psychological damage”, which is not further defined. The tariff does not apply to claims by motorcyclists, cyclists or pedestrians. The Lord Chancellor will have the power to amend the definition of whiplash, but not until three years have passed.

The regulations setting the tariff, which have yet to be published, will have to be reviewed at least every three years. In addition, settlements prior to obtaining appropriate medical evidence will be constrained by regulation. Claims will be processed via a portal system which is intended to be simple and user friendly for claimants.

It is unclear when the new process will be introduced. A target date of April 2020 has been discussed, but the implementation will depend on having the regulations published and the portal functioning well.

Small Claim Track Limit

Cases which are defended are allocated to one of three tracks. Claims under a certain monetary limit are allocated to the Small Claims Track. While not strictly part of the changes being introduced by the Act, an increase in some of the small track claims limits is expected at the same time as the other reforms are introduced. Currently personal injury claims above £1,000 do not form part of the Small Claims Track. It is expected that this limit will be increased to £2,000 generally, with a higher limit of £5,000 for road traffic accidents.

Summary

The Act represents a significant step in introducing further legal reforms to try to manage increases in claims’ costs. However, the full impact will still take time to emerge. The impact is likely to be limited for existing claims, but it has been suggested that it could reduce motor premiums by an average of £35 pa.

