

The Civil Liability Act 2018 - what now?

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The Civil Liability Bill finally received Royal Assent and completed the Parliamentary process on the 20th December 2018 becoming the Civil Liability Act 2018 ("the Act"). This has now set in motion the processes to bring into force the reforms within the Act. Only part of the Act has come into force straight away and there are aspects of the reforms that are yet to be finalised.

There is much that we still don't know about how the Act and related reforms will be implemented. This note considers what we do and don't yet know and what the next steps might be.

The Discount Rate

We know that:

- The provisions within the Act for the review of the discount rate commence upon Royal Assent.
- The first review must commence within 90 days of Royal Assent i.e. on or before 19th March 2019.
- The review will be conducted by reference to the new process detailed in the Act and not by reference to ILGS.
- The first review must be completed and the Lord Chancellor must determine the new rate within 140 days of the review commencing i.e. on or before 6th August 2019.
- The Ministry of Justice has already called for evidence on issues of relevance to the setting of the discount rate, the deadline for submissions being the 30th January 2019.
- Following the completion of the review, the Lord Chancellor will publish an Order setting the new rate.
- The Lord Chancellor has the power to make an order which will prescribe different rates of return for different classes of case.
- As now, the rate in the Order does not prevent the court taking a different rate of return into account if any party to the proceedings shows that it is more appropriate in the case in question.

We do not know:

- Precisely when the review will commence and be completed - although Parliament has stressed the need for the review to be swift.
- What the new Discount Rate will be (current predictions are in the range 0 - 1%).
- Whether the Lord Chancellor will exercise his power to prescribe different rates for different classes of case (not expected in the first review).
- In what circumstances a court may apply a different rate of return - although this provision was already in the Damages Act 1996 and there is no reason to believe the Courts will adopt a different approach.

The Whiplash reforms

We know that:

- For accidents occurring after the date Part 1 of the Bill comes into force, damages for whiplash injuries lasting up to two years will be set by reference to a tariff to be set by the Lord Chancellor following consultation with the Lord Chief Justice.
- A "whiplash injury" is defined by the Act as *"an injury of soft tissue in the neck, back or shoulder that is... a sprain, strain, tear, rupture or lesser damage of a muscle, tendon or ligament in the neck, back or shoulder, or an injury of soft tissue associated with a muscle, tendon or ligament in the neck, back or shoulder. The definition does not include an injury of soft tissue which is a part of or connected to another injury and the other injury is not an injury of soft tissue in the neck back or shoulder"*.
- The Lord Chancellor has the power to review and amend the definition of "whiplash" but cannot do so until 3 years have elapsed from this reform coming into force.
- The tariff will include cases where there is also a minor psychological injury (not defined).
- The tariff will not apply to claims by motorcyclists or their passengers, cyclists, pedestrians or other road users who are not using a motor vehicle

- The regulations setting the tariff are to be kept under review. The first review must be completed within 3 years of the regulations first coming into force and thereafter within 3 years of the previous review date.
- The regulations may provide for the court to apply an uplift to the tariff in exceptional circumstances. The uplift is expected to be a maximum of 20% but this will be set by regulations.
- The Act contains provisions banning the settlement of whiplash claims before a medical report has been obtained.
- The Treasury has the power to make regulations enabling the Financial Conduct Authority to monitor and enforce compliance with the rules as to the requirement for there to be a medical report prior to settlement.
- A portal system is being created to handle whiplash claims. The system will be designed for use by Litigants in Person (LiPs) and will be simple and user friendly. Large scale testing of the portal is currently due to commence in October 2019.

We do not know:

- What the regulations will say. Draft regulations were published early in the process that will need substantial revision in light of changes made as the Bill progressed through Parliament.
- The date of commencement of these reforms. The Government's stated intention is for the reforms to come into force in April 2020. It has also committed to a robust testing of the new portal being developed to handle such cases. The reforms will not come into force until the necessary infrastructure is fully operative.

Costs Savings

We know that:

- The Act contains provisions for the Treasury to make regulations requiring insurers to report to the Financial Conduct Authority information concerning savings made as a result of the reforms within the Act and the impact of the savings made on premium charged.
- Before the expiry of one year from 1st April 2024, the Treasury must provide to Parliament a summary of the information provided and how policyholders have benefitted from any reduction in costs to insurers.

We do not know:

- What regulatory enforcement powers the Treasury will create to give enforcement powers to the Financial Conduct Authority.
- The date from which insurers will be required to provide the information required by the Financial Conduct Authority.
- The exact form and nature of the information required and the manner and form of how it is to be provided.

The Small Claims Limit

Although not a part of the Act, an increase in the Small Claims Track Limit is part of the Government's overall package of reforms.

We know that:

- When the whiplash reforms come into force, the intention is that the small claims limit will increase to £5,000 for RTA claims (excluding vulnerable road users) and to £2,000 for all other personal injury claims.

We do not know:

- It is currently expected that the increase will take effect in April 2020 at the same time as Part 1 of the Act comes into force, but there is no guarantee that this will be the case.

In conclusion, while much is known and reforms are moving forward, clarification is awaited on timeframes and some aspects that will be clarified in regulations. Importantly we do now have a latest date for the announcement of the new Discount Rate which will apply to all cases settled on after the date the rate is set and by no later than 6th August 2019.

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