



1. **GENERAL Q&A**

Q. What will the Civil Liability Act 2018 do?

A. The Civil Liability Act 2018 makes important changes to the personal injury compensation system in England and Wales. It will reduce the number and cost of compensation for claims for whiplash injuries. It will also reform the way in which the personal injury discount rate is set. The Act also requires insurers to provide information to the Financial Conduct Authority so that the government can assess whether they have passed on savings as a result of the Act to their customers.

Q. Why are the reforms in the Civil Liability Act 2018 necessary?

A. In 2016/17 the number of road traffic accident (RTA) related personal injury claims was around 50% higher than in 2006/07, despite a fall in reported accidents and improvements in the safety of vehicles. In 2016/17 **whiplash related claims** accounted for around 85% of all RTA personal injury claims. The cost of dealing with these claims is passed on through increased insurance premiums, so it is right that we take further action now to reduce this financial burden on motorists.

The **discount rate** is intended to help ensure that those who suffer life-changing injuries receive 100% compensation, neither more nor less, to meet their future needs, such as medical care and to restore lost earnings. Under the current system, evidence shows that on average awards of 135% of compensation are being made (about 120-125% after deductions are made for tax and investment management expenses). This is because our evidence shows that the way that the rate is calculated under the present system makes unrealistic assumptions about how claimants can be expected to invest their awards when they take it as a lump sum. Change is necessary to return the average payment to closer to 100%, in order to be fair to both claimants and defendants. Current over-compensation means that the NHS is overpaying on claims for clinical negligence, putting unsustainable pressure on the public purse. Every pound that is being spent on over-compensation could be spent, for example, on frontline public services, such as the NHS, schools and our Armed Forces.

Q. How does the Act link to the Government's wider programme of civil justice reform?

A. The measures in the Act are an important part of the Government's wider programme to reform and reduce the costs of civil litigation which include tackling rising insurance premiums for consumers, particularly motorists. They follow action previously taken to implement recommendations made by Lord Justice Jackson, including reducing the costs related to 'no win, no fee' conditional fee agreements and banning the payment and receipt of referral fees. The Government has also implemented measures to ban inducements to bring personal injury cases, require the courts to strike out in full any personal injury claim found to have an element of fundamental dishonesty and improved the independence and quality of whiplash medical reports.



The Government is also committed, through the Financial Guidance and Claims Bill, to establishing a tougher regulatory regime for claims management companies and to banning cold calling.

Q. What will the provision for insurers to report on the effects of the Act do?

A. The Act places a statutory requirement on insurers to provide information to the Financial Conduct Authority (FCA), which is responsible for the regulation of insurers. This information must include claims costs, premium income, and other factors which will be specified in follow-up regulations. Insurers must provide information for each year from April 2020 to 2023, which will need to be made available to the FCA once, before April 2024. Using this information about the effects of the Act, the government, with the assistance of the FCA, will make an assessment of whether the industry as a whole have passed on the benefits of the reforms to their customers. The government will present this in a report to Parliament as soon as practically possible after April 2024. This requirement will place completely new requirements on firms to provide data that they generally do not currently compile or share, and will hold insurers to account for their commitment to pass on savings arising from the Act to their customers.

2. WHIPLASH Q&A

Q. What is whiplash?

A. Generally, whiplash injuries are soft tissue injuries, typically affecting the neck and back, arising from a road traffic accident. The provisions in the Bill will only apply to such injuries suffered by an occupant of a motor vehicle. A detailed definition will be provided in secondary legislation subject the affirmative procedure, once the Bill has received Royal Assent.

Q. What are the objectives of the whiplash reforms in the Act?

A. The reforms will tackle the continuing high number and cost of whiplash claims as well as simplifying the process for whiplash claimants. The measures will tackle the impact the current volume of claims has on the cost of motor insurance premiums to the benefit of all motorists.

Q. How will it do this?

A. The Civil Liability Act will:

- introduce a definition for whiplash injuries which will apply only to claims for whiplash injuries arising from a road traffic accident as an occupant of a motor vehicle- road users such as motor cyclists and cyclists will be specifically excluded;
- provide for a tariff of compensation for pain, suffering and loss of amenity for all claims captured by the whiplash definition, which could be increased by the Judiciary by up to a set amount in exceptional circumstances; and
- introduce a ban on settling, or seeking or offering to settle whiplash claims without medical evidence.

The final figures to be included in the tariff and the cap for exceptional payments will be set in supporting regulations in due course. The whiplash measures in Part 1 of the Act will be supplemented by changes to secondary legislation to raise the small claims track limit to £5,000 for road traffic accident related personal injury claims and to £2,000 for all other personal injury claims.

Q. What are the savings from the whiplash reforms?

A: The whiplash measures will lead to significant savings for the insurance sector, and leading insurers have pledged to pass these savings on to consumers through lower premiums. The full whiplash reform package will save motorists around £35 per policy on average. About three quarters of the UK motor and liability insurance market have already committed to pass on to consumers savings arising from Government reforms to whiplash and the discount rate. The Act requires insurers to provide information to the Financial Conduct Authority so that the government can assess whether they have passed on savings made to their customers.

3. DISCOUNT RATE Q&A

Q. What is the discount rate?

A: The personal injury discount rate is a percentage applied by the court when assessing lump sum damages for severely injured people which discounts from the award for future losses the amount that they can expect to earn by investing their awards. The lump sum award is intended to meet the future cost of treatment and care, and to restore any future lost earnings, and the discount rate acts to help prevent claimants being under or over-compensated by reason of the returns they can earn on investing their awards for future financial loss.

The current rate is minus 0.75%. It was set in March 2017. Prior to that change the rate had been set at +2.5% since 2001. This rate is a real rate, that is, it is on top of inflation.

Q. Why are we changing the way the discount rate is set?

A: The discount rate is intended to help ensure that awards of compensation for personal injuries give claimants full compensation. At present, it is set on the assumption that the claimant is a very cautious investor. This leads to the rate being largely set by reference to average yields on Index-Linked Gilts. Evidence shows that in practice, claimants invest in diversified low risk portfolios of investments. As a result of this discrepancy between theory and practice, the average award is producing before deductions for taxation and investment management costs about 135% of the compensation required to meet the claimant's expected needs, or about 120% to 125% after those deductions are taken into account. This is unfair and the additional cost is being borne by taxpayers and consumers. The way the discount rate is set therefore needs to be adjusted to make the estimate of the expected returns from the investment of lump sum awards of damages for future loss more realistic and to bring the average award down to closer to 100%.

Q. How will the Civil Liability Act 2018 change the way the discount rate is set?

A: The main changes are that:

- In setting the rate the Lord Chancellor will be required to assume that the unlawfully injured individual is a low risk investor rather than a very low risk investor as the present law assumes. This will better reflect actual claimant investment behaviour.
- The Lord Chancellor must review the rate on or before 5 August 2019 (i.e. no later than the end of the period of 230 days beginning on the date of Royal Assent (20 December 2018)).
- The Lord Chancellor, when reviewing the rate for the first time under the new law, must consult the Government Actuary and also HM Treasury within a prescribed timetable..
- After the first review, the Lord Chancellor must review the rate on a regular basis (at least every five years) rather than not having a prescribed maximum interval (as under the previous law). This will provide greater predictability and certainty, and also reduce the extent of the impact and controversy of any future change in the rate.
- On the second and subsequent reviews, the Lord Chancellor must consult HM Treasury and also an expert panel, chaired by the Government Actuary. This will create a clearer, more transparent and better-informed approach to setting the rate.

Q. What will the effect of the discount rate changes be?

A. The changes will make the compensation system fairer overall by helping produce awards that are, on average, closer to 100% compensation than under the present system.

Claimants will still receive full compensation for all their expected future needs as a result of the injury, but defendants will no longer be required to pay such large amounts over and above the amount expected to be required to meet those needs. This will ease financial pressures on the National Health Service and consumers' insurance premiums.

Q. Is there an alternative to taking a lump sum subject to the discount rate?

A. Yes. Most claimants have the option of receiving their compensation for future losses in whole or in part by way of a periodical payment order ("PPO"). Compensation is paid as a lump sum, or as a regular Periodic Payment Order (PPO), or as a combination of both. The discount rate only applies to compensation for future financial loss taken in a lump sum rather than a PPO. PPOs provide a regular income over a claimant's lifetime, they are not subject to the discount rate and therefore do not expose the claimant to investment risk. For only a small number of claimants would a PPO not be available because the defendant is not able to guarantee payment. PPOs may also not be suitable in cases where there is contributory negligence. In other cases, a court is ultimately able to provide protection by ordering a PPO where it believes it is in the claimant's interest.

Q. What will the discount rate be under the new system?

A. The rate will be set by the Lord Chancellor following a review when the legislation comes into force. The rate on the first review will be settled in the light of the advice of the Government Actuary and HM Treasury and the evidence available at the time. This cannot be predicted, but, in general terms, the rate is expected to be relatively higher than the rate that would have been set at the same time had the present law continued to apply.

