/ Briefing

Kennedys

Civil Liability Act

Introduction

The Civil Liability Bill was introduced into parliament on 20 March 2018 and aims to reform the claims process for whiplash claims and to make changes to the way in which the personal injury discount rate is set. The Bill replaced what was the Prisons and Courts Bill, which made provision about whiplash claims and which fell with the snap General Election in 2016.

The Bill received Royal Assent on 20 December 2018. It is therefore now an Act of Parliament.

Three core objectives of the Bill

- Additional reform measures to reduce the disproportionate number of whiplash claims, which includes seeking to impose a tariff-based damages system and bans pre-med offers.
- Amend the framework for setting the personal injury discount rate, with a requirement for the Lord Chancellor to review it at least every five years.
- Ensure the discount rate determination is made on the assumption that the claimant is a prudent and properly advised individual.

Key components of the Act

Whiplash measures

- A definition for whiplash. To include soft tissue injury to the neck, back or shoulder. Exceptions include a soft-tissue injury connected to another injury and any other injury. Vulnerable road users are excluded, which includes anybody who is neither driving nor a passenger in a vehicle, i.e. pedestrians, horse riders and motorcyclists.
- The ability for the Lord Chancellor to amend the definition of whiplash every three years.
- A tariff system, set by the Lord Chancellor, for whiplash damages up to two years, to be reviewed every three years.
- Court powers to award an uplift on the tariff for exceptionally severe injuries, or if the circumstances are exceptional.
- A ban on pre-medical offers on whiplash claims that will be monitored and enforced.

The rise in the small claims limit to £5,000 for road traffic accident claims and £2,000 for all other injury claims is not in the Bill, but is inextricably linked and will be achieved by a simple change to the Civil Procedure Rules. In addition, the new online portal for whiplash claims will most likely be supported by rules that are different to the Civil Procedure Rules for the anticipated insurgence of litigants in person.

Personal injury discount rate measures

- The Lord Chancellor is to set the rate.
- The first review must be started within 90 days of enactment of the Bill.
- The Lord Chancellor must decide the rate 140 days after the review period commenced and the Government Actuary and Treasury will be consulted.
- Each subsequent review must be started within five years of the last review and will have a 180-day review period. The Lord Chancellor will consult an expert panel and the Treasury.

Reporting policy holder savings measures

- The Treasury may require an insurer to provide information to the FCA about the effects of the Act on insurers.
- Before 1 April 2025, the Treasury must prepare a report that summarises the information provided about the effects of the Act and to give a view as to whether and how policyholders have benefitted from any reduction in costs for insurers.

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Next steps

The discount rate was set at -0.75% with effect from 5 August 2019 and the next review must take place within five years from that date.

The whiplash reforms have been pushed back a year to April 2020, allowing time to undertake large-scale testing of the online systems.

Contact

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