

The Civil Liability Act

Whiplash & Discount rate reform

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Keoghs Market Affairs Team – what we do



- › Thought leadership
- › Engage directly at political and industry level
- › Recognised stakeholder by Government
 - › Ministry of Justice
 - › Downing Street Policy Unit - No 10
 - › Department for Transport
 - › Claims Management Regulator
- › Targeted parliamentary engagement
- › Extensive industry engagement (ABI, IUA, LMA etc)



Brexit's impact on domestic policy

- › Brexit dominates political landscape
- › Machinery of Government almost at a standstill
- › Civil servants diverted from “BAU” to move into DexEu
- › Recently, reports of up to 4,000 civil servants told to abandon the day job to prepare for a no-deal Brexit



Whiplash reforms – The Civil Liability Act



The Civil Liability Act – Part 1 - whiplash reform



- › Received Royal Assent on 20 December 2018
- › Provides framework for the whiplash reforms
- › Secondary provisions:
 - › SCT increase
 - › New CPR rules & Pre-Action Protocol
 - › Direct Portal access: “LiP Portal”



MOJ Programme – Next Steps

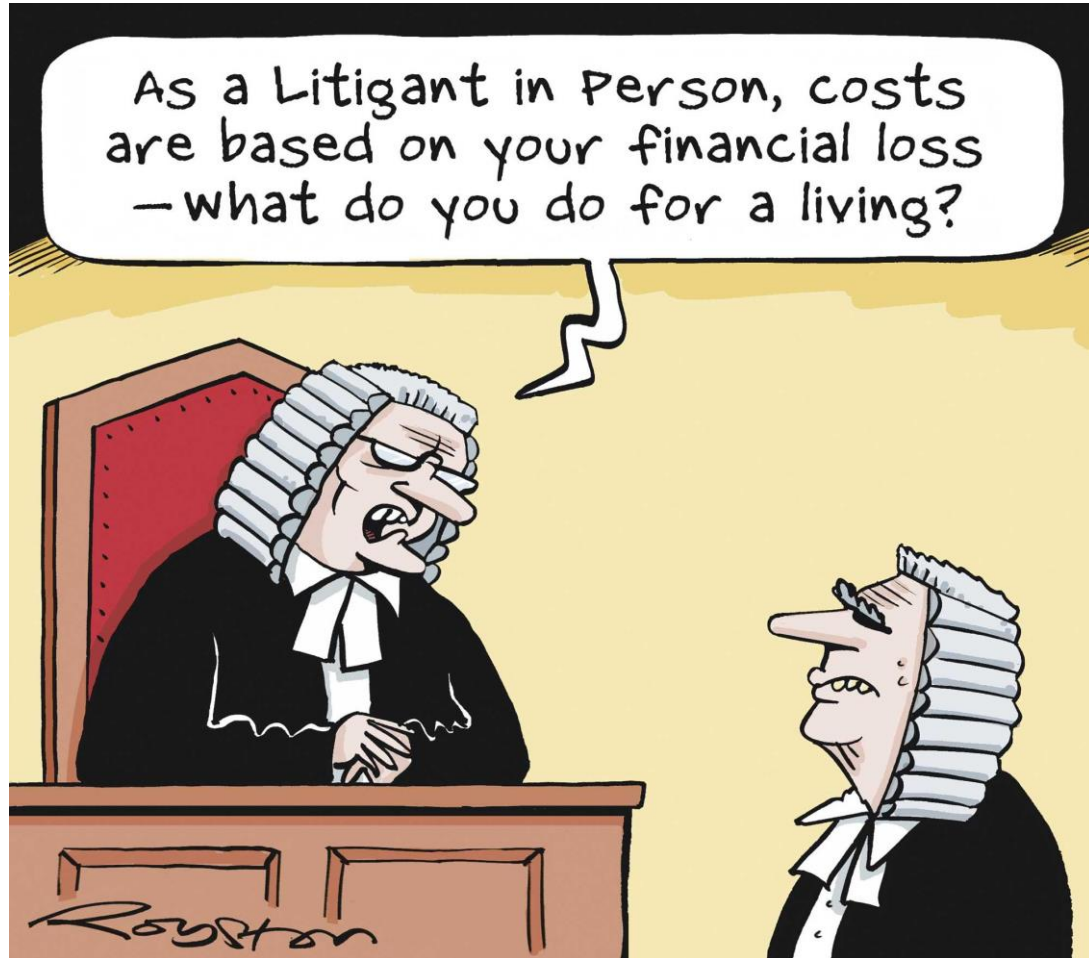
- › Six key work streams:
 - › Technology – portal development
 - › Rules – CPRC to develop new rules / PAP
 - › ADR – develop ADR capability / resource
 - › Medco – deal with expansion of & LiP access to Medco
 - › Operations – how the MIB will support the portal / “service”
 - › Communication – industry and consumers
- › Key industry stakeholder group:
 - › ABI / Insurers / FOIL / APIL / Mass / Medco
 - › Sprint planning workshops



Ministry
of Justice



“Litigant in Person” Portal



- › New Portal to run alongside but separate from the current Portal
- › Will deal with all RTA claims under £5k in scope
- › Recognition that many LiPs may be represented
- › Outstanding issues...
 - › Expansion of MedCo (consultation deadline 17 May)
 - › Appointment of ADR provider(s)
 - › Tariff+ and how to quantify “minor injuries”
 - › Interaction with credit hire claims
 - › Multi-defendant claims
 - › Counterclaims



Whiplash reforms – timings



› Trigger date:

- › Date of Accident (confirmed publicly by MoJ on 7 February 2019)

› Implementation date:

- › Government aim is:
 - › Testing in October 2019
 - › Launch in April 2020
- › Reinforced by MIB's CEO at MASS conference in October 2018 and by MoJ's Deputy Director of Civil Justice at Westminster conference in February 2019



The Civil Liability Act – Part 2 - Discount Rate



- › Received Royal Assent on 20 December 2018
- › Changes the way the discount rate is set at regular intervals
- › Commences the first review of the discount rate



Discount rate – the decision maker



- › David Gauke MP
- › Lord Chancellor/Secretary of State for Justice
 - › Previously Chief Secretary to the Treasury
 - › Familiar with the issues
 - › Not afraid to make unpopular decisions – “Uncork the Gauke!”



The new discount rate setting process

- › Rate will be set with reference to ‘**low risk**’ rather than ‘very low risk’ investments
- › **100% compensation** principle
- › There will be a review of the rate every 5 years
- › The Government will establish an **independent expert panel** to advise the Lord Chancellor on the setting of the rate (this does not apply to the first review).



Discount rate - initial review of the rate

- › The time periods in relation to the first review are:
 - › 90 days to commence the review
 - › 140 days to complete
- › The Lord Chancellor must consult the Govt Actuary and the Treasury:
 - › The Govt Actuary must be consulted within 20 days of the start of the 140 day period; and
 - › Must respond 80 days after the consultation request.



Discount rate - Timings of the first review

- › The Civil Liability Act received Royal Assent on 20 Dec 2018.
- › The timings for the first review, therefore, are:
 - › The review commenced on **19 March 2019**;
 - › The Govt Actuary Dept was consulted by **7 April 2019**;
 - › The Govt Actuary Dept will respond by **26 June 2019**;
 - › **The Review will be complete and the new rate set by 5 Aug 2019**
- › Remember: these are maximum timescales (the Government has its own incentive to expedite this because of the cost to the public purse – but does it have the bandwidth?)



MoJ Call for Evidence

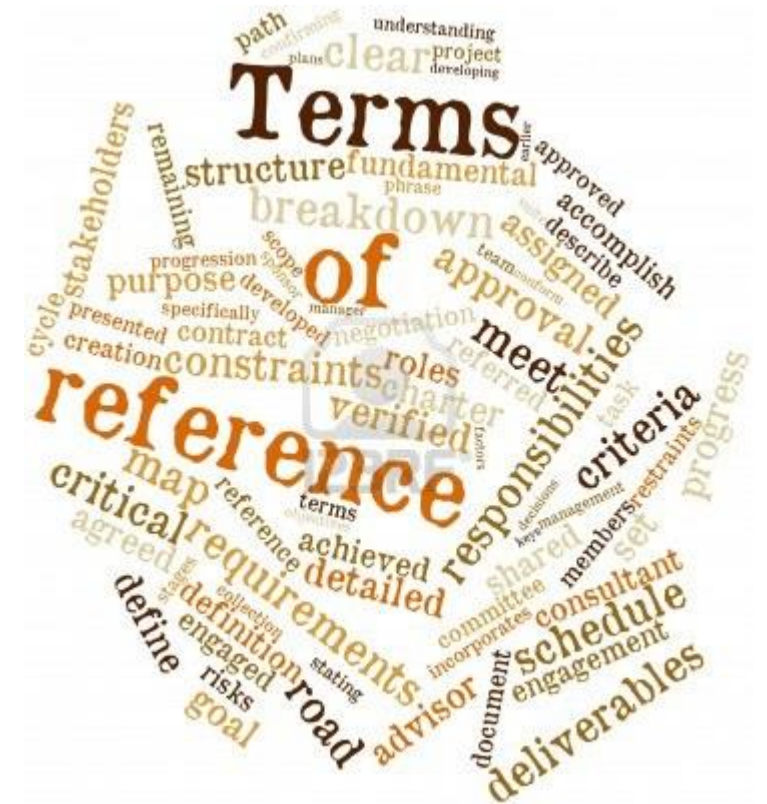


- › Call for evidence published 6 Dec 2018
 - › 8 week timeframe, deadline: 30 Jan 2019
 - › Wide ranging call for evidence covers:
 - › investments available to claimants
 - › investment advice provided to claimants
 - › investments made by claimants
 - › model investment portfolios
- › Keoghs activity:
 - › Draft submission made available to clients in advance of the deadline (includes input from independent investment expert)
 - › Keoghs roundtable event on 23 January 2019



GAD and HMT – Terms of Reference

- › The aggregation approach to outcomes – swings and roundabouts.
- › CPI not RPI is the reference point.
- › Multiple rates for different types of claimant or losses to be considered
- › The issues of cost and affordability are not relevant (however...mustn't forget the politics at play here!)



Where is the rate likely to land?

- › In September 2017, the Government said that *“if a rate were to be set today on the new basis, it would be **between 0 and 1%**”*.
- › Where there is no trial date, we are settling above the official rate (range 0 to 1% - typically 0.5%)



CMC regulation reform

- › The Financial Guidance and Claims Act
 - › Royal Assent: 10 May 2018
- › What now?
 - › Implemented 1 April 2019
 - › How does this fit in with the whiplash reforms?
 - › What about CMC fee caps on PI claims?
 - › Keoghs submission to the Bill Committee Feb 2018
 - › JSC Report May 2018
 - › Garry Hunter, FCA, Feb 2019: stakeholder discussion and “*consultation in due course*”
 - › PPI deadline: August 2019

Are You Owed £2000+

- **Car Accident**
- **Trip At Work**
- **Not Your Fault**
- **No Win No Fee**



(no question of whether or not claimant has actually suffered an injury...)



Jackson LJ – extension of FRC



The consultation seeks views on a number of the recommendations made by Sir Rupert Jackson in his Supplemental report of 31 July 2017. The Government are taking forward a number of those recommendations and are consulting on:

1.

Extending FRC to all other cases valued up to £25,000 in damages

2.

A new process and FRC for NIHL claims

3.

Expanding the FT to include the simple 'intermediate' cases value £25,000-£100,000

› Consultation

- › Consultation launched: 28 March 2019
- › Consultation closes: 6 June 2019
- › Civil Procedural Rules Committee – no primary legislation required.

› Keoghs activity

- › Roundtable in London 30 April 2019 with key civil servant on this issue
- › Draft response to clients in mid-May



What else...?

- › Post legislative review of LASPO
- › Lord Justice Briggs – online court
- › Customer focus – claims inflation (Chap 4 of FCA Bus plan 2018/19, dual pricing, CMA investigation into loyalty penalty following Citizens Advice super complaint)



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