



Civil Liability Bill – UPDATE

The Civil Liability Bill has now completed its committee stage in the House of Lords, after a second day of debate. Day two, which focussed on the Government’s proposals for the personal injury discount rate, involved debate on 48 amendments by peers.

The debate opened with a discussion on periodical payment orders (PPOs) with peers tabling amendments in an attempt to promote their use. Peers were united in their desire to see a greater uptake in PPOs. Conservative peer Lord Hodgson of Astley Abbots spoke of his desire to “move towards a position where PPOs might become the default option in cases where compensation for injuries will be paid out over the long term or where the injured party has a low tolerance of risk or is risk averse”. Government minister Lord Keen of Elie confirmed to peers that the Government “is going to look at the question of further guidance in order to encourage their use”.

Lord Keen brushed aside attempts to limit the role of the Lord Chancellor in setting the discount rate. Responding to amendments proposed by APIL which would have achieved this, Lord Keen said the Lord Chancellor does not have an “unfettered discretion”. Lord Keen went on to say that “any decision of the Lord Chancellor as to what the rate should be must be rational, and any failure in rationality can be challenged by way of judicial review”. Responding to earlier attempts to make the expert panel’s recommendation binding on the Lord Chancellor, Lord Keen said the “decision maker should be politically and publicly accountable for the decisions on the rate”.

One of APIL's key arguments – the need for the discount rate to be set based on a “very low level of risk” approach to investments – was introduced as an amendment by Labour's shadow work and pensions minister Lord McKenzie of Luton. Lord McKenzie, who is supporting shadow justice minister Lord Beecham in his work on the Bill, shared with peers APIL's concerns about the Government's move away from the “very low level of risk” approach.

Lord Keen recognised that the amendment to base the setting of the rate on a “very low level of risk” would “return the setting of the rate in this respect to the present law...” and told peers that it would not be an “appropriate or sustainable approach”. Lord Keen warned peers that the Government's research indicates that setting the rate on the present basis results in over-compensation.

In other discussions, there was agreement among peers about the need to review the discount rate as soon as possible. Various amendments to speed up a review were tabled, with one amendment tabled by Liberal Democrat peer Lord Sharkey to exclude the expert panel from the first review. Lord Keen acknowledged that “initially this was the Government's preferred approach...” but it changed as a consequence of the report from the House of Commons Justice Select Committee. Lord Keen added that while it is the Government's belief that the expert panel should be involved in the first review, “if practicable”, he will “certainly reflect on the views of noble Lords...”.

The Bill remains unchanged following two days of committee stage. It will now be scrutinised further at report stage, where peers will be able to debate and vote on amendments. APIL will be reviewing its messages and tactics ahead of the Bill's remaining stages of the Bill in the House of Lords, and members should look out for ways to get involved with APIL's lobbying work.

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