



CIVIL LIABILITY BILL

Fact checker from the Association of Personal Injury Lawyers – October 2018

CLAIM - The number of reported road traffic accidents are going down, but whiplash claims are going up.

FACT – Not all road traffic accidents are reported to the police. This was even recognised by the Association of British Insurers (ABI) as far back as ten years ago, which acknowledged that most road traffic collisions leading to whiplash are not reported¹.

The number of whiplash-related personal injury claims are now at their lowest level in almost ten years, according to the Government's own Compensation Recovery Unit. These claims have continued to fall each year since 2011/2012.

CLAIM - Personal injury claims are the reason why insurance premiums are rising

FACT – In 2017, half the amount spent by motor insurers on settled claims went on vehicle damage claims. The cost of vehicle damage in settled claims has increased by £668.4 million since 2013, according to the ABI. Money spent on bodily injury claims has actually fallen by £855.4 million in the same period.

CLAIM - Most whiplash claims are fraudulent

FACT – In 2017, just 0.22 per cent of all motor claims were proven to be fraudulent, according to the ABI. This includes all motor claims, such as vehicle damage claims, or people caught lying on their policy documents. Fraudulent bodily injury claims will only be a small fraction of that 0.22 per cent, and fraudulent whiplash claims will be an even smaller fraction of that. There is absolutely no evidence that most whiplash claims are fraudulent.

CLAIM - For every £1 paid out in compensation, an additional 50p is paid out in legal costs

FACT – The Government’s own figures in an impact assessment published alongside the Bill show that for every £1 spent in compensation on road traffic accident (RTA) personal injury claims, only 22p is paid out in legal fees. This reflects the fixed fees imposed by the Government in 2013.

This is based on the Government’s assumption that the average amount recovered in legal fees for each RTA claim covered by the proposed reforms is £547², and the average general damages for a whiplash related claim with a medical report is £2,500³.

The ABI has not supplied any evidence for its claim that an additional 50p is paid out in legal costs.

CLAIM - The -0.75 per cent discount rate means the NHS is paying far too much in compensation

FACT – The burden on the NHS was caused by a failure to change the rate for 16 years. The only way to mitigate the financial effect of a change in the discount rate is to have regular reviews of the rate, and the Bill provides for this. Regular reviews will ensure any changes should be more predictable for the NHS.

The cost to the NHS of the change in the rate represents just 0.4 per cent of NHS England’s annual budget, at a cost of £406.3 million⁴. By contrast, missed appointments cost the NHS £1 billion every year and medication errors waste £1.6 billion⁵.

It should be remembered that NHS Resolution is only liable to pay compensation when the NHS has injured a patient through negligence. That is exactly what the patient is entitled to expect. The NHS faces a really serious additional burden, though, when the discount rate is too high and it fails to meet the needs of injured people. The money will run out before the end of their lives, and they will then be forced to rely on the State – ie the NHS.

CLAIM - Nobody invests in Index Linked Government Stock (ILGS) – they make riskier investments than that and are over-compensated as a result. So why should the discount rate calculation be based on ILGS?

FACT - People with catastrophic, life-changing injuries are naturally risk-averse. But under the old 2.5 per cent discount rate regime, injured people could not afford to invest in ILGS (one of the safest investment options) because they would not have been able to generate enough income to last for the rest of their lives. Their funds would have run out and they would have had to fall back on the State to meet their needs. In any event, claimants would never be advised to invest solely in ILGS because putting all their eggs into one investment basket makes no financial sense.

The reason why the discount rate calculation should be based on ILGS is related to the principle of 100 per cent compensation. If you accept the principle of 100 per cent compensation (and the Government insists that it does) you have to accept that injured people should not have to expose their lump sum award to all the risks of market forces.

If you accept that, then it becomes clear that the only way to avoid such exposure is for the discount rate to be set to reflect the safest kind of investment, of which ILGS are the best example. But this is just the benchmark – it is then for the injured person (with the help of his financial adviser) to develop a portfolio of very low risk investments which reflects that benchmark.

CLAIM - People are overcompensated under the current -0.75 per cent discount rate.

FACT – The Government's claim is based on evidence which was gathered while the discount rate was 2.5 per cent, which is the only evidence available. The Government Actuary Department was asked to analyse levels of under and over-compensation based on evidence of claimant investment behaviour. Under the artificially high rate of 2.5 per cent, claimants were often forced into the invidious position of having either to take chances with their compensation by putting it into higher risk investments, or struggling to make ends meet. This analysis is, therefore, highly misleading.

CLAIM - A Periodical Payment Order (PPO) is an acceptable alternative to a lump sum compensation amount

FACT - When a PPO is considered appropriate for an injured person, a lump sum will almost always still be needed to pay for immediate, often high-cost needs. This includes accommodation or transport needs, and equipment such as hoists, wheelchairs and prosthetic limbs. A PPO could never, therefore, replace a lump sum payment: rather, the two forms of payment complement each other.

For further information please contact:

Sam Ellis

Public Affairs Officer, APIL
Email: sam.ellis@apil.org.uk
Tel: 0115 943 5426

Lorraine Gwinnutt

Head of Public Affairs, APIL
Email: lorraine.gwinnutt@apil.org.uk
Tel: 0115 943 5404

References

¹ Tackling whiplash – prevention, care, compensation. Association of British Insurers November 2008

² Civil Liability Bill – Reforming the Soft Tissue Injury ('whiplash') Claims Process impact assessment – March 2018. Page 15

³ Civil Liability Bill – Reforming the Soft Tissue Injury ('whiplash') Claims Process impact assessment – March 2018. Page 16

⁴ NHS Resolution Annual Report and Accounts 2017/2018 page 16

⁵ <https://www.theguardian.com/society/2018/jan/02/patients-missing-their-appointments-cost-the-nhs-1bn-last-year>