



## **Key changes made to the Civil Liability Bill at House of Lords report stage – 12 June 2018**

### **Definition of whiplash**

- The Government has amended clause 1 to include the definition of whiplash on the face of the Bill.
- An injury falls under the definition if it is a 'sprain, strain, tear, rupture or lesser damage of a muscle, tendon or ligament in the neck, back or shoulder, or an injury of soft tissue associated with a muscle, tendon or ligament in the neck, back or shoulder'.
- In our briefing to peers ahead of report stage, we argued that medical experts should set the definition of whiplash. We warned peers that the proposed definition would capture more serious injuries than those traditionally associated as 'whiplash'.
- The amendment was approved without a vote, and no peers other than the Government minister spoke about the amendment.

### **Whiplash definition review**

- The Government has added a new clause to the Bill which will allow the Lord Chancellor to review and amend the definition of whiplash by regulations.
- The first review and any change in the definition must not take place within three years of clause 1 coming into force.
- Once the Lord Chancellor has decided to amend the definition, and before making regulations, he must consult the Lord Chief Justice, the General Council of the Bar, the Law Society, the Chief Medical Officer of the Department of Health and Social Care, and the Chief Medical Officer of the Welsh Government, and other such persons the Lord Chancellor considers appropriate.
- In our briefing to peers we warned that this consultation would be little more than a tick-box exercise, as it would take place after the Lord Chancellor has made his decision to amend the definition.

- The amendment was approved without a vote, and no peers other than the Government minister spoke about the amendment.
- This clause is clause 2 in the amended Civil Liability Bill.

### **Tariff review**

- The Government has added a new clause to the Bill which requires the Lord Chancellor to review the regulations made under clause 2 (now clause 3 in the amended Bill). These regulations set the tariff amount.
- The first review must be completed within three years of the regulations in clause 2 coming into force. Any subsequent reviews must also be completed within three years of the previous review.
- As currently drafted, the Lord Chancellor does not need to consult with any person or organisation as part of the review.
- In our briefing we said it is inconsistent that the Lord Chancellor must consult the Lord Chief Justice, among others, on the definition of whiplash, but not on the level of appropriate compensation.
- The amendment was approved without a vote, and no peers other than the Government minister spoke about the amendment.
- This clause is clause 4 in the amended Civil Liability Bill

### **Uplift in exceptional circumstances**

- The Government has amended the wording in the Bill which allows the court to award an uplift on the tariff amount.
- Speaking during the report stage debate, Lord Keen said the amendment is a “technical” amendment. Speaking at report stage, he said –

“It aims to tighten the drafting of the Bill to clarify our intent with regard to the circumstances that might be considered exceptional by the court when it determines whether to app an uplift. It captures both where the injury itself is exceptionally severe or where the circumstances of the injured party increase the pain, suffering or loss of amenity caused by the injury, and where those circumstances are exceptional to the particular claimant”.

- In our briefing we warned the amendment creates yet more hoops through which injured people must jump. We told peers that the amendment does nothing but add confusion, create barriers for injured people, and will lead to costly and time-consuming satellite litigation.
- The amendment was approved without a vote, and no peers other than the Government minister spoke about the amendment.
- This clause is clause 5 in the amended Civil Liability Bill.

### **Personal injury discount rate**

- The Government accepted a Liberal Democrat amendment which would exclude the proposed expert panel from the first review of the discount rate. This is despite the Government's agreement to involve the expert panel following the recommendations of the Justice Select Committee.
- The amendment also reduces the maximum time period within which the first review must be completed, from 180 days to 140 days. The Lord Chancellor must also announce his decision within the 140-day period.
- The Lord Chancellor must also consult the Government Actuary within 20 days of the commencement of the review.
- The Government Actuary must respond to the consultation within 80 days of his response being requested.
- The amendment received support from crossbench peer the Earl of Kinnoull and Conservative peer Lord Hunt of Wirral. Lord Beecham, Labour's shadow justice minister, did not comment on the amendment. The amendment was approved without a vote.
- This is clause 10 paragraph 2 in the amended Civil Liability Bill

### **Commitments made by the Government during report stage**

- Lord Keen has committed to tabling an amendment at House of Lords third reading, the Bill's next stage, to require the Lord Chancellor to consult the Lord Chief Justice before setting or amending the tariff amounts. Third reading will take place on Wednesday 27 June.
- Lord Keen confirmed that the Government is developing an amendment designed to provide an effective means for reporting on the commitment by the insurance industry to pass savings to policyholders. This amendment would be tabled by the Government in the House of Commons.

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