

## **Personal Injury Claims: Motor Vehicle Incidents**

Question : House of Lords – 1<sup>st</sup> March 2017

15:22:00

Asked by

### **Lord Hayward**

To ask Her Majesty's Government what progress has been made in tackling the abuse of personal injury claims relating to incidents involving motor vehicles.

### **The Advocate-General for Scotland (Lord Keen of Elie) (Con)**

My Lords, reforms to address road traffic accident-related soft tissue or whiplash personal injury claims have been taken forward through the Prisons and Courts Bill, introduced on 23 February. These include a fixed tariff of compensation for whiplash claims and a prohibition on offers to settle such claims without medical evidence. A number of changes to the small claims limit for personal injury will also be made.

### **Lord Hayward (Con)**

My noble friend will be aware that a year ago to the day I asked a Question in relation to John Elvin, who reported to his insurer, Sheilas' Wheels, an accident that he was convinced would be the subject of a false whiplash claim. It was settled and we now have the figures. Sheilas' Wheels paid £1,500 for damage to a car that was not inspected and the people concerned were given over £6,000 for personal injury, despite the fact that they were able to leap out of the car and protest about a non-existent injury. Is it not the case that the industry has enough to do in putting its position right, as well as dealing with other issues that apply in these cases?

### **Lord Keen of Elie**

My Lords, I quite understand the point that has been made. That is why we have included in the proposed legislation a ban on insurers making offers to settle such claims without medical evidence. We have of course addressed the issue of medical reports through the MedCo scheme.

### **Lord Beecham (Lab)**

My Lords, I refer to my interest as an unpaid consultant in the firm of solicitors in which I was senior partner. The increase in the small claims limit for whiplash cases is likely to lead to greater activity by claims management companies, which will take a substantial cut from any damages. Will the Government take steps to control this parasitic industry? This week, the Lord Chancellor announced changes to the way in which damages for personal injuries are calculated. Such damages are estimated to cost the National Health Service, which recovers the costs of treatment for motor accident claims, an estimated £1 billion a year, and they increase insurance premiums. Is this not a classic example of a ministerial car crash?

### **Lord Keen of Elie**

No, my Lords, this is not a ministerial car crash. I remind the noble Lord that the increase to which he refers arises as a result of the application of the discount rate introduced by the Damages Act 1996, which was last reviewed in 2001. The object of the change in the discount rate is to ensure that those who suffer catastrophic and life-changing injuries are fully and properly compensated for those injuries by reference to the damages calculation for their future care and support.

### **Lord Goddard of Stockport (LD)**

I have a copy of the report. Will the Minister comment on the following two simple statements? The report says that, once this is implemented, savings of £1 billion will be made and the average motor policy will come down by £40. Huw Evans, director-general of the Association of British Insurers, says that a 21 year-old's policy will rise by £1,000 and 30 million other comprehensive policies will rise by £40 to £75 a year. Which is accurate, which is correct and which, in the long run, will prove to be right?

### **Lord Keen of Elie**

My Lords, there are two distinct issues to be addressed in this context. The reforms with regard to whiplash will, on the basis of completed impact assessments, result in very considerable savings in motor insurance premiums of the order of £1 billion. It is estimated by the industry that this will result in an average reduction in motor insurance premiums of about £40. The major operators within the motor insurance industry have undertaken to pass those savings on to the motorist, the consumer. However, the changes in the discount rate will inevitably impact on the cost of insurance, including motor insurance, and that will give rise to certain increases. One may offset the other, but I add that the Lord Chancellor indicated when announcing the change to the discount rate that this will be the subject of consideration and indeed a consultation, which is due to commence no later than Easter.

### **Viscount Hailsham (Con)**

My Lords, I begin with a declaration of interest: I do not now practise as a personal injury lawyer but I have done in the past. Does my noble and learned friend recognise that the reduction in the Ogden tables to a discount rate of minus 0.75 will inflate the damages that are recoverable in personal injury cases to an extravagant and unconscionable extent, which is bound to inflate the numbers of fraudulent or unjustified personal injury cases in motor claims to the prejudice of all drivers? That being so, may I welcome the fact that these proposals are going to be looked at again, I hope constructively?

### **Lord Keen of Elie**

My Lords, the way in which the discount rate is calculated will be examined with some degree of urgency. However, I do not accept that the discount rate will result in the inflation of the value of damages claims. It was designed originally to ensure that those claims would be properly calculated so that those who suffer life-changing injuries are properly compensated for the future.

### **Lord Campbell-Savours (Lab)**

Does that mean that if the interest rate goes up, the discount rate goes up? I am only following the noble and learned Lord's logic.

### **Lord Keen of Elie**

The discount rate is related to the rate of return on government bonds, because there is an underlying assumption that those who receive large damages awards for future care will invest them in a very conservative manner, in bonds. Therefore, as the interest rate drops, so the discount rate will also drop.

### **Lord Faulks (Con)**

My Lords, I should declare an interest in that I practise in this area. May I suggest to my noble and learned friend that one way to get round this difficulty would be for the Government to legislate to reverse the effect of *Wells v Wells*, which was decided on the basis that a notional investor would invest in gilts? That is not realistic and has resulted in this extraordinary change to the discount rate.

**Lord Keen of Elie**

My Lords, I agree with the observation that the level of the discount rate reflects a very conservative assumption about how a person would deal with a large lump-sum payment of damages in order to protect their future position. That has to be the subject of review, because it is clearly outdated.

**Baroness Kramer (LD)**

My Lords, surely the review and the consultation should have come before the change in the discount rate, which is, as the Minister has heard from around the House, absolutely preposterous. As he knows, it is a fixed number based on three-year index-linked government securities, a commodity in which nobody who is investing funds for an injured claimant will put their money—it is less than you would earn by putting it into a local bank account. The fact that the number is preposterous means a big increase in premiums for motorists and a billion pound additional burden for the NHS, as well as an unnamed additional burden for the Ministry of Defence.

**Lord Keen of Elie**

My Lords, I am glad that the noble Baroness acknowledges that the basis of the calculation of the discount rate clearly requires review. However, the Lord Chancellor was under a legal obligation to deal with the discount rate and we are now concerned to ensure that we consult fully and address the question of how it should be calculated in future.