New Ogden rate widely criticised

The government's decision to make only moderate changes to the system which sees courts determine how much insurers should pay out to claimants in cases of life-changing injury has received widespread criticism.

On 15 July the Lord Chancellor, David Gauke, announced the outcome of the first discount rate review under the new methodology provided for in the Civil Liability Act 2018.

Under the changes, the so-called 'Ogden discount rate' applicable to personal injury lump sum compensation payments will change from the current rate of minus 0.75% and move to minus 0.25%.

The new rate, which follows a similar review and change in the Scottish Parliament under the Damages (Investment Returns and Periodical Payments) (Scotland) Bill, will come into force on 5 August 2019.

The Ogden discount rate is a crucial factor in determining personal injury awards. When claimants with severe injuries accept lump sum compensation payments, the actual amount they receive is adjusted according to the interest they can expect to earn by investing it.

The rate is linked, by law, to returns on supposedly low risk investments - in practice index-linked government bonds, known as gilts.

In the first change since 2001, this rate was controversially slashed by then Lord Chancellor Liz Truss by 3.25 percentage points to minus 0.75 percent, effective from 20 March 2017. Truss said she calculated the new rate on the basis of a three-year average of real returns on gilts.

The maintenance of a negative rate will continue to leave insurers with a significant financial burden as it effectively increases the level of compensation for claimants. This in turn will in all likelihood lead to higher insurance premiums and could even make it more difficult for certain sectors to obtain insurance cover.

Indeed, according to David Nichols, Chief Claims Officer at Zurich Insurance, *"the Government's failure to change the discount rate to a balanced level will only serve to increase the cost and, therefore, affordability of certain types of insurance".*

"This rate is likely to reduce both market coverage and affordability for higher risk customers such as road hauliers, commercial fleets, young drivers and older drivers," he added. *"It will also have a financial impact on public liability cover for the public sector and businesses."*

Huw Evans, Director General of the Association of British Insurers, labelled the decision *"a bad outcome for insurance customers and taxpayers that will add costs rather than save customers money".*

"A negative rate maintains the fiction that a claimant and their representatives will knowingly choose to invest their damages in a way that would guarantee losing them money," Evans said.

Meanwhile Charles Ashmore, Head of Catastrophic Injury at law firm DWF suggested that the decision will be seen as *"hugely disappointing"* by insurers, adding: *"It will be considered to be at the very lowest end of expectations and at a level which many believe will still result in overcompensation to claimants."*

Your cover

Despite the potential difficulties caused by the government's decision, as a business you can be assured that as the UK's leading commercial insurance broker we will still be able to find you the most appropriate cover in the market. If you have any queries about how these or any other changes which might affect your insurance requirements please do not hesitate to contact your usual Towergate Insurance Brokers Advisor.

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