

## FOIL

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### | Civil Liability Bill draws claimants' ire

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BY MARK DUGDALE ON MARCH 20, 2018

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The Civil Liability Bill has attracted widespread condemnation from several claimant groups and law firms.

**Announced earlier today**, the Civil Liability Bill will set fixed amounts of compensation for whiplash claims and ban the practice of seeking or offering to settle whiplash claims without medical evidence. It will also change the way the personal injury discount rate is set.

Association of Personal Injury Lawyers president Brett Dixon said: "Any concept of fairness or compassion or help for genuinely injured people has been sacrificed in what the government is now openly calling a 'bill to cut car insurance premiums'."

"All this is for a promise of reduced car insurance premiums, which we know will never stick in the long term. There has been a whole raft of reforms to personal injury over recent years, all with promises from the insurance industry that premiums will fall as a result. Well, guess what? Premiums have not fallen, and they will not fall this time either.

"Insurers have been happy to take compulsory car insurance premiums for years," Dixon continued. "Under these measures, they will now be excused from paying full compensation to people who have been injured through no fault of their own.

"The fact that the government has been seduced by these empty promises shows a gullibility which is beyond belief."

Qamar Anwar, managing director of First4Lawyers, was less scathing in his criticism of the Civil Liability Bill, but decried the government for "taking the insurance industry's propaganda".

"Coming at a time when insurers report having to shrink their claims departments in response to falling claims and reduced fraud, the justice secretary cannot have satisfied himself that reform is actually needed," he said

"Reform should only be based on fact rather than the whim of the Association of British Insurers. Further, the promise that the bill will offer hope of lower insurance premiums to millions of motorists is a fallacy."

#### **'Another sad day for British justice'**

"There remains no clear evidence to the extent of whiplash fraud which would warrant introducing a system designed to make it impractical or uneconomic for any genuine claimant to make a claim," argued Vidisha Joshi, managing partner of law firm Hodge Jones & Allen.

"The reforms will place significant impediments in the way of claimants seeking justice for smaller personal injury claims and would appear to be caught by the Supreme Court's statement in last July's Unison case that, without unimpeded access to justice, the democratic process is in danger of becoming 'a meaningless charade.' This is another sad day for British justice."

Stephen Cavalier, chief executive of Thompsons Solicitors, also criticised the government for its apparent attack on access to justice.

Cavalier said: "This government does not want ordinary people to have access to lawyers or the right to bring a claim. They want injured people to be left alone and forced to take on insurance companies and their lawyers without any advice or representation.

"The proposed increase the small claims limit for those injured on the roads shows that this Tory government is for the money, not for you."

## **'Meet the needs of injured people, not to boost profits'**

Victims of clinical negligence in particular will suffer under the Civil Liability Bill's changes to the personal injury discount rate, according to James Bell, partner in the clinical negligence department at Hodge Jones Allen.

He said: "This legislation will severely impact the seriously injured. It beggars belief that the government is prioritising this legislation over and above the other pressing needs of our society. Claimants who have been seriously injured in accidents should not have to take any risk at all with their finances."

"The discount rate must be set to meet the needs of seriously injured people, not to boost insurers' profits. A life changing injury such as brain damage or a spinal injury could happen to any one of us and bribing the motorists with the thought that they will be refunded £35 per year by their car insurer is nonsense."

Healthcare professional group the Medical Protection Society disagreed with this assessment. Its director of claims policy and legal, Emma Hallinan, said: "The government's plan to create a fairer system for setting the discount rate in England and Wales is welcome news. A balance must be struck between the interests of the claimant, and the affordability of rising clinical negligence costs to society."

"Getting the framework right and ensuring the rate is reviewed at least every three years should mean we avoid further sudden shocks to the cost of compensation at a time when costs are already at risk of becoming unsustainable."

"We hope to see this bill progress through parliament swiftly, and for the independent expert panel to be established straight away so the current discount rate can be reviewed as soon as the legislation comes into force."

Don Clarke, member of the FOIL national committee and director of strategy at Keoghs, also welcomed the introduction of the Civil Liability Bill: "FOIL welcomes the introduction of the Civil Liability Bill as FOIL has always been supportive of the government's desire to tackle the number and cost of whiplash claims."

"FOIL also agrees that a more systematic and rational approach to arriving at the discount rate is overdue and that there is an urgent need to adjust the discount rate to reflect the actual investment practices of claimants, all the while still maintaining the 100% principle."

Clarke added: "We acknowledge that there is a great deal to do if the government is to hit the planned implementation date for whiplash reform of April 2019 whilst at the same time preserving access to justice."

"We look forward to assisting the government along with other interest groups to facilitate that process."