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## FOIL UPDATE 20<sup>th</sup> January 2023



### Mixed Injury Claims: Has the Court of Appeal provided any useful guidance?

#### IN BRIEF

*Yoann Samuel Rabot v. Charlotte Victoria Hassam: Matthew David Briggs v. Boluwatife Laditan and The Association of Personal Injury Lawyers and The Motor Accident Solicitors Society (Intervenors) (2023) EWCA Civ 19*

The appeals related to the construction of S3 Civil Liability Act 2018 (“the 2018 Act”) the question being: how is the court to assess damages for pain, suffering and loss of amenity (“PSLA”) where the claimant suffers a whiplash injury which comes within the scope of the 2018 Act and attracts a tariff award stipulated by the Whiplash Injury Regulations 2021 (“the Regulations”), but also suffers additional injury which falls outside the scope of the 2018 Act and does not attract a tariff award?

The Court of Appeal has held that non-tariff injury damages should be dealt with separately from the tariff damages and on a common law basis. The court should then ‘step back’ and make any necessary adjustment to avoid over compensation.

The majority of the court held that the legislation was directed to and confined to whiplash injuries. The mischief at which it is directed is to fraudulent claims for whiplash injuries resulting from a motor vehicle accident. The compromise effected by the legislation derogates from the principle of a 100% compensation pursuant to common law in respect of the whiplash injury or injuries. No provision in the 2018 Act, either expressly or by necessary implication, provides that non-tariff injuries should be assessed by reference to anything other than common law principles.

The majority of the court determined that the approach to an assessment of damages in respect of a tariff and non-tariff award where concurrently caused PSLA is present is that the court should: (i) assess the tariff award by reference to the Regulations; (ii) assess the award for non-tariff injuries on common law principles and (iii) “step back” in order to carry out any necessary adjustment so as

to avoid any possible overcompensation. There is one caveat, namely that the final award cannot be less than would be awarded for the non-tariff injuries if they had been the only injuries suffered by the claimant.

FOIL President **Nicola Critchley** Comments:

*The judgment is disappointing and is likely to see an increase in claims for additional injuries and quantum disputes.*

A more detailed analysis of the judgment will be published shortly.

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