The Discount Rate: Has the Government gone far enough?

The Lord Chancellor last week announced a change in the discount rate following a review under the Civil Liability Act 2018. As of 5 August 2019, the discount rate will increase from -0.75% to -0.25%.

The discount rate is a figure used to help calculate lump sum compensation payments for high value personal injury claims. It reflects the fact that a Claimant will invest a lump sum payment and receive a return on such investment.

[The Club published an article in 2018] which focused on the ongoing saga of the discount rate, how this rate is applied and the impact in practice of such a rate (set at -0.75% in March 2017) on damages payable in claims for personal injury.

In the recent review, the Government had the opportunity to readdress what many insurers saw as an imbalance between how it is anticipated that Claimants will invest their lump sum personal injury damages awards and how they actually invest them. There is a common acceptance among many in the industry that the current rate of -0.75% has resulted in Claimants being overcompensated. There was no doubt therefore that the review, the first of its kind since the introduction of the Act, would produce an increase in the discount rate. However, in many insurers opinions, this result has not readdressed the ongoing imbalance and therefore is seen as an opportunity missed. It was anticipated that the discount rate would increase to somewhere between 0% and +1%

This rate applies in England & Wales only and will not be reviewed again for five years. A similar review process is currently being undertaken in Scotland with a predicted rate of -0.25% there too. In Northern Ireland the discount rate is currently +2.5%.

As part of the recent review, there was also the possibility of a split rate, reflecting the difference in likely returns over relatively longer and shorter periods. However, this was not pursued. In contrast, earlier this year The States Assembly approved a draft law in Jersey which set a rate of +0.5% in respect of losses for a period of up to 20 years and a rate of +1.8% for losses over a longer period. This is the first time that Jersey will have had a statutory discount rate. Guernsey is likely to follow suit.

Given this disparity, there is increased potential for forum shopping and insurers may find themselves in situations where they will want to focus more than they perhaps have in the past on where proceedings should be taking place.

Essentially this rate change will mean that the level of damages payable on high value claims will fall slightly but damages will continue to be uplifted for accelerated receipt on the assumption that Claimants will invest their damages in a way that will result in them losing money. In practice this is not the case.

Example

Taking example from our previous article, the 30 year old engineer seriously injured during his employment at sea, who will not be able to return to sea but still able to work ashore using his relevant skills and knowledge but with a decrease in his net annual income of £10,000, and an expected retirement age of 60, his loss will now be calculated as follows;

Future loss of earnings using the previous -0.75% discount rate

Multiplicand: £10,000

Multiplier: 32.84

TOTAL: £328,400

Future loss of earnings using the new -0.25% discount rate

Multiplicand: £10,000

Multiplier: 30.44

TOTAL: £304,400

This represents a decrease of only just over 7% to this one element of future loss. As advised previously, in very serious injury cases there are likely to be several elements of the claim to which the multiplicand/multiplier formula will apply. Whilst a move in the right direction it is felt that the Government has not gone far enough.