1. GENERAL Q&A

Q. What will the Civil Liability Bill do?
A. The Civil Liability Bill will make important changes to the personal injury compensation system in England and Wales. It will reduce the number and cost of compensation for claims for whiplash injuries. It will also reform the way in which the personal injury discount rate is set.

Q. Why are the reforms in the Civil Liability Bill necessary?
A. There were around 650,000 RTA related personal injury claims made in 2017/18 (nearly 190,000 more than in 2005/06), despite a fall in reported accidents and improvements in the safety of vehicles.

In 2016/17 whiplash related claims accounted for around 85% of all RTA personal injury claims. The cost of dealing with these claims is passed on through increased insurance premiums, so it is right that we take further action now to reduce this financial burden on motorists.

The discount rate is intended to help ensure that those who suffer life-changing injuries receive 100% compensation, neither more nor less, to meet their future needs, such as medical care and to restore lost earnings. Under the current system, evidence shows that on average awards of 135% of compensation are being made (about 120-125% after deductions are made for tax and investment management expenses). This is because our evidence shows that the way that the rate is calculated under the present system makes unrealistic assumptions about how claimants can be expected to invest their awards when they are taken as lump sums. Change is necessary to return the average payment to closer to 100%, in order to be fair to both claimants and defendants. Current over-compensation means that the NHS is overpaying on claims for clinical negligence, putting unsustainable pressure on the public purse. Every pound that is being spent on over-compensation could be spent, for example, on frontline public services, such as the NHS, schools and our Armed Forces.

Q. How does the Bill link to the Government’s wider programme of civil justice reform?
A. The measures in the Bill are an important part of the Government's wider programme to reform and reduce the costs of civil litigation which include tackling rising insurance premiums for consumers, particularly motorists. They follow action previously taken to implement recommendations made by Lord Justice Jackson, including reducing the costs related to ‘no win, no fee’ conditional fee agreements and banning the payment and receipt of referral fees. The Government has also implemented measures to ban inducements to bring personal injury cases, to require the courts to strike out in full any personal injury claim found to contain fundamental dishonesty and improve the independence and quality of whiplash medical reports.

The Government is also committed, through the Financial Guidance and Claims Act, to establishing a tougher regulatory regime for claims management companies and to banning cold calling.

2. WHIPLASH Q&A
Q. **What is whiplash?**  
A. The Civil Liability Bill defines whiplash injuries as soft tissue injuries affecting the neck, back or shoulder arising from a road traffic accident. The provisions in the Bill will only apply to such injuries suffered by an occupant of a motor vehicle.

Q. **What are the objectives of the whiplash reforms in the Bill?**  
A. The reforms will reduce the continuing high number and cost of whiplash claims as well as simplifying the process for whiplash claimants. The measures will ensure that genuinely injured claimants will receive a proportionate amount of compensation whilst also tackling the impact the current volume of claims have on the cost of motor insurance premiums to the benefit of all motorists.

Q. **How will it do this?**  
A. The Civil Liability Bill:

- introduces a definition for whiplash injuries which will apply to claims for whiplash injuries arising from a road traffic accident as an occupant of a motor vehicle - other road users such as motor cyclists and cyclists are excluded;
- will provide for a tariff of compensation for pain, suffering and loss of amenity for all claims captured by the whiplash definition with a duration of up to two years, which could be increased by the Judiciary by up to a set amount in exceptional circumstances; and
- introduce a ban on settling, or seeking or offering to settle whiplash claims without first obtaining medical evidence.

The final figures to be included in the tariff and the cap on any uplift which the court may award will be set in supporting regulations. The Bill measures will also be supplemented by changes to secondary legislation to raise the small claims track limit to £5,000 for road traffic accident related personal injury claims and to £2,000 for all other personal injury claims.

Q. **What are the savings from the whiplash reforms?**  
A. The whiplash measures will lead to significant savings, and leading insurers covering around 84% of the UK motor and liability insurance market have pledged to pass these savings on to consumers through lower premiums. The full whiplash reform package will save motorists around £35 per policy on average.
3. **DISCOUNT RATE Q&A**

**Q. What is the discount rate?**

**A.** The personal injury discount rate is a percentage applied by the court when assessing lump sum damages for severely injured people which discounts from the award for future losses the amount that they can expect to earn by investing their awards. The lump sum award is intended to meet the future cost of treatment and care, and to restore any future lost earnings, and the discount rate acts to prevent the claimant being under or over-compensated. It is about aiming to give claimants 100% of the compensation they need.

The current rate is minus 0.75%. It was set in March 2017. Prior to that change the rate had been set at +2.5% since 2001. This rate is a real rate, that is, it is on top of inflation.

**Q. Why are we changing the way the discount rate is set?**

**A.** The discount rate is intended to help ensure that awards of compensation for personal injuries give claimants full compensation. At present, it is set on the assumption that the claimant is a very cautious investor. This leads to the rate being largely set by reference to average yields on Index-Linked Gilts. Evidence shows that in practice, claimants invest in diversified low risk portfolios of investments. As a result of this discrepancy between theory and practice, the average award is producing before deductions for taxation and investment management costs about 135% of the compensation required to meet the claimant’s expected needs, or about 120% to 125% after those deductions are taken into account. This is unfair and the additional cost is largely being borne by taxpayers and consumers. The way the discount rate is set therefore needs to be adjusted to make the estimate of the expected returns from the investment of lump sum awards of damages for future loss more realistic and to bring the average award down to closer to 100%.

**Q. How will the Civil Liability Bill change the way the discount rate is set?**

**A.** The main changes are that:

- in setting the rate the Lord Chancellor will be required to assume that the unlawfully injured individual is a low risk investor rather than a very low risk investor as the present law assumes. This will better reflect actual claimant investment behaviour.
- the Lord Chancellor, when reviewing the rate, on the first review, will be required to consult the Government Actuary, and, on the second and subsequent reviews will be required to consult an independent expert panel chaired by the Government Actuary, as well as HM Treasury (rather than the Government Actuary and HM Treasury alone as at present). This will help to ensure a clearer, more transparent and better-informed approach to setting the rate.
- the rate will be required to be reviewed on a regular basis (at least every five years). This will provide greater predictability and certainty than under the current law, which does not provide for a prescribed maximum interval, and also reduce the extent of the impact and controversy of any future change in the rate.
Q. What will the effect of the discount rate changes be?
A. The changes will make the compensation system fairer overall by helping produce awards that are, on average, closer to, 100% compensation than the present system.

Claimants will still be awarded full compensation for all their expected future needs as a result of the injury, but defendants will no longer be required to pay such large amounts over and above the amount expected to be required to meet those needs. This will ease financial pressures on the National Health Service and consumers’ insurance premiums.

Q. Is there an alternative to taking a lump sum subject to the discount rate?
A. Yes. Most claimants have the option of receiving their compensation for future losses in whole or in part by way of a periodical payment order ("PPO"). Compensation is paid as a lump sum, or as a regular Periodic Payment Order (PPO), or as a combination of both. The discount rate only applies to compensation for future financial loss taken in a lump sum rather than as a PPO. PPOs provide a regular income over a claimant’s lifetime, they are not subject to the discount rate and therefore do not expose the claimant to investment risk. For only a small number of claimants would a PPO not be available because the defendant is not able to guarantee payment. PPOs may also not be suitable in cases where there is contributory negligence. In other cases, a court is ultimately able to provide protection by ordering a PPO where it believes it is in the claimant’s interest.

Q. What will the discount rate be under the new system?
A. The rate will be set by the Lord Chancellor following a review when the legislation comes into force. For all reviews following the first review, the rate will be settled in the light of the advice of the expert panel and HM Treasury and the evidence available at the time. This cannot be predicted, but in general terms the rate is expected to be relatively higher than the rate that would have been set at the same time had the present law continued to apply.