MARSH

ADVISER

CHANGE TO THE PERSONAL INJURY DISCOUNT RATE (PIDR): SEPTEMBER 2017 UPDATE

In April, we issued an Adviser profiling the start of consultation on the personal injury discount rate (PIDR) – a calculation used to determine lump sum compensation to claimants who have suffered life-changing injuries – following the introduction of the current minus 0.75% rate, which came into force in March this year. The Government has now announced its response to the consultation, which we profile in this Adviser.

THE NEW DEVELOPMENT

The UK Ministry of Justice has announced that, following the six-month consultation, it has drafted legislation to reform the PIDR. The press release for the consultation indicates that if the rate were reviewed now, on the new basis, then it would be between 0% and 1%. This would mean a reduction in the settlement cost of large personal injury claims from what the cost would have been under the new rate imposed in March. However, the exact rate that will apply will be determined by the economic climate on the date the change comes into effect.

The announcement has been welcomed by the insurance industry, particularly following the decision to reduce the PIDR from 2.5% to minus 0.75% on 20 March, 2017, which resulted in a significant rise in the cost of large personal injury claims.

This was evidenced in the case of JDF v. Hampshire County Council, 2017, in which an award with a capitalised equivalent value of GBP28,000,000 was made to a child suffering profound disability after a road accident. (This consisted of a GBP9,113,074 lump sum, plus a variable periodic payment order to cover future care and case management). Specifically as a result of the March change, the lump sum was increased by 86%, from GBP4,900,000. This is thought to be the record level of settlement for any personal injury claim in the UK.

WHEN WILL THE CHANGE HAPPEN?

The change will likely take several months, as the adjustment will have to go through Parliament. Some legal commentators are indicating a likely timescale of June to September 2018. Going forward, there will be a three-yearly review of the rate, which will be set using a range of investment products rather than pinned to index-linked government bonds.

WHAT IS THE POSITION UNTIL THE CHANGE IS IMPLEMENTED?

Most insurers have already increased reserves on existing claims, to reflect the first PIDR change in March this year. Since the PIDR change was announced, we have seen some insurers, on specific cases, request an increase in rates.

When the new legislation is enacted, it is important that insureds and their brokers ensure these reserves are reduced to reflect the incoming PIDR rate, and any premium increases imposed as a direct result of the previous change are reviewed.

It is possible that claimant lawyers will push to agree settlement of existing claims before the change occurs, in order to maximise settlement level for their client. Insurers are likely to resist this, however. It is important to note that the progress of claims is largely driven by the Court procedures and timescales; therefore, room for manoeuvre may be limited.

CONTACT

Please contact your usual Marsh representative for assistance or email national.enquiries@marsh.com.

 PIDR Adviser_Ref: MC170919109. ExpMar2019 JW