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

In September, the UK Government concluded a consultation on the personal injury discount rate (PIDR) commonly referred to as the "Ogden rate" – 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. Subsequently, the Justice Select Committee indicated in a report published on 29 November that it requires work to be done to establish "clear and unambiguous" evidence into claimant behaviour with regards to how they invest their lump sum damages and more evidence that claimants aren't undercompensated before it decides whether or not to change the UK law.

Following a six-month consultation, The UK Ministry of Justice announced in September that it had drafted legislation to reform the PIDR. The press release for the consultation indicated that, had the rate been reviewed at the time, on the new basis, then it would have been between 0% and 1%. This would have meant 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.

In November, the Justice Select Committee called for more fact-finding about how compensation recipients invest their sums before it commits to a new Ogden rate, which is likely to further delay getting a firm decision on the discount rate.

WHEN WILL THE CHANGE HAPPEN?

The change will likely take several months, as the adjustment will have to go through Parliament. Some legal commentators have previously indicated a likely timescale of June to September 2018; however, the latest announcement by the Justice Select Committee will likely push this back further. 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 premium 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.

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