Willis Towers Watson

Ogden Discount Rate

What does this mean for the insurance buyer?

Will the rate of -0.25% announced on 15 July 2019 be a fiscally responsible figure to leave claimants fairly and correctly compensated, and what may it mean for insurance buyers?

Background

In November 2010, the Government, after lobbying from personal injury lawyers, agreed to review the discount rate, and revised this to 2.5% (from June 2001). In recent years, with lower interest rates, there was pressure for this to be reviewed downwards as the perception was claimants could, in certain circumstances, be significantly undercompensated.

The rate remained unchanged until December 2016 when, at the threat of a judicial review, the Lord Chancellor announced a revision of the rate and in February 2017, a figure of -0.75% was announced. This figure shocked the insurance world, as reserves on catastrophic injury cases had the potential to double or worse. It was argued that this figure left claimants grossly over compensated and would inevitably result in significant increases in motor and liability premiums.

Within our **Civil Liability Bulletin** Willis Towers Watson outlined that due to the outrage from the insurance community, a review of the 'Discount Rate' would take place in 2018/9 and a new figure would be announced ahead of a statutory implementation date of 5 August 2019. The figure of -0.25% has been announced on 15 July 2019 again resulting in surprise and disappointment from many commentators.

Since our earlier bulletin, various observers have suggested that the rate should / would be in the order of 0% to 1%. This range was anticipated by many within the insurance and legal professions, indeed recent cases have been settled on that basis in anticipation. We also understand that insurers have also calculated premiums in anticipation of a rate of 0% to 1%.

Whilst on 15 July 2019, commentators have indicated that the Insurance Industry is in 'disarray' it should be noted that in Scotland, the Damages (Investment Returns and Periodical Payments)- (Scotland) Act 2019, received Royal Assent on 24 April 2019 and set the discount rate for Scotland at the same figure of -0.25%. So perhaps we should have anticipated the same figure to be set for England and Wales?

What does this mean for the insurance buyer?

All parties wish for the discount rate to enable claimants to receive 100% of the compensation to which they are entitled, it is universally agreed that the -0.75% figure, in the most severe cases resulted in claimants being significantly overcompensated. The question we must ask is, does the revised figure result in a fair indemnity and what will the impact be on premiums?

High profile claims specialists are quoted in the insurance press, suggesting that the rate increase, whilst welcome, does not go far enough, and it may again result in claimants continuing to be over compensated. Moreover, whilst there will be reserve reductions on some of the most significant injury claims which should have translated into lower premiums, it seems that in anticipation of a figure of 0% to 1%. Insurers have been calculating premiums based on lower overall injury claims settlements. It now seems that as the rate of -0.25% has been set, premiums for policies that include liability coverage for personal injury (Motor, Employers' Liability and Public Liability) may rise significantly.

The future

Statute requires that the discount rate be reviewed 'within 5 years'. It seems unlikely that there will be much change ahead of this. A dual rate was considered but this has not been progressed at this time. It is suggested that there could be further consultation, and this may be implemented at some future date.

A Willis Towers Watson opinion

Edward Castles, Managing Director, GB Retail Division of Willis Towers Watson, has said that whilst any improvement in the -0.75% figure is welcome, the current figure of -0.25% does not go far enough to create a position where both claimant and insurer are treated fairly and equitably, we hope this figure is a 'work in progress' and further developments will occur in the very near future.

If you require any further information, please discuss with your usual Willis Towers Watson contact, or speak with:

Simon Hurst
Technical Claims Director
+44 (0)7825 061176
simon.hurst@willistowerswatson.com

Willis Limited, Registered number: 181116 England and Wales.
Registered address: 51 Lime Street, London, EC3M 7DQ.
A Lloyd's Broker. Authorised and regulated by the Financial Conduct Authority for its general insurance mediation activities only.

FPS666/WTW292181/07/19