

# Justice in Crisis

**Anyone who has picked up a paper in recent months will understand that our justice system is coming under enormous pressure. The huge IT failure experienced in January, which delayed trials up and down the country, was just a symptom of a much wider malaise that has made it ever harder for people to obtain legal advice and, ultimately, to access justice.**

The Legal Aid budget has seen huge cuts since LASPOA (the Legal Aid, Sentencing and Punishment of Offenders Act) was passed in 2012, falling by more than a third in real terms, between 2011 and 2018.

Over the same period, the number of solicitor firms in England and Wales working on civil legal aid cases reduced by more than 30%, leaving areas of the country and millions of people with no provision at all, for some case types.

Other routes to legal advice have become increasingly difficult to navigate, as numerous Law Centres and Citizens Advice Bureau have been forced to close, following cuts to their funding. The number of not-for-profit organisations offering civil legal aid is less than half what it was in 2011.

Among widespread reports of court buildings falling into serious disrepair, more than 200 courts and tribunals have been closed entirely over the past decade, and the properties sold off. But attempts to modernise the justice system and reduce the number of cases being heard have not been entirely successful.

The fees of up to £1,200 to bring an employment tribunal claim, introduced in 2013, helped to cut the number of claims being submitted by about 70 per cent, but the total has more than doubled since the fee regime was ruled unlawful in 2017, and is now approaching its pre-fee level again. The number of claims being resolved has not kept pace though, resulting in frustrating and costly delays for employees and employers alike.

Of course, all this makes legal expenses insurance more important than ever.

While lauded by many insurers, the passage of the Civil Liability Act, at the end of last year, is just the latest example of access to justice being curtailed, especially for poorer and more vulnerable people.

Whether the Act will do anything to resolve the (in fact, declining) problem of spurious and exaggerated claims or just move it on, remains to be seen, but nobody within our industry or beyond it seems that optimistic about the much-heralded reduction in motor premiums the legislation is supposed to enable.

ARAG's mission seems more relevant, here in the UK of 2019, than ever. As our business grows, steadily and securely, we remain as committed as ever to enabling all citizens, regardless of their means, to access our struggling justice system.



MD Tony Buss

## INSIDE THIS ISSUE

Page 2

Tribunal fees back on the table as claims continue to rise

Page 3

Civil Liability Act

Page 4

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## Tribunal fees back on the table as employment claims continue to climb

It has been more than 18 months since the employment tribunal fee regime, introduced back in 2013, was ruled unlawful by the Supreme Court. While claims numbers have more than doubled in the absence of fees, they are still not quite as high as they were before fees were introduced.

There are many reasons to suspect that the reintroduction of some sort of fee to bring an employment tribunal claim is unlikely to happen in the foreseeable future. Quite aside from the humiliating climbdown the government had to endure when its previous fee regime was found to be unlawful in 2017, there is also the current scarcity of both parliamentary time and political capital to consider.

In November, however, Permanent Secretary to the MoJ Richard Heaton told the House of Commons Justice Committee that a new system of fees was being worked on, while insisting that there were 'no immediate plans' to introduce fees.

The possible reintroduction of fees was hinted at again in December, when the Department for Business, Enterprise and Industrial Strategy published its Good Work Plan policy paper.

### The Good Work Plan

The statement includes some significant changes to employment law that the government intends to implement in response to consultations conducted last year following the 2017 publication of the independent Taylor Review of Modern Working Practices.

Among the reforms that employers need to be aware of are the right for all workers (rather than just employees) to receive a written statement of particulars on the first day of their work; increased penalties of up to £20,000 for aggravated breaches of employment law; and a ban on employers taking deductions from staff tips.

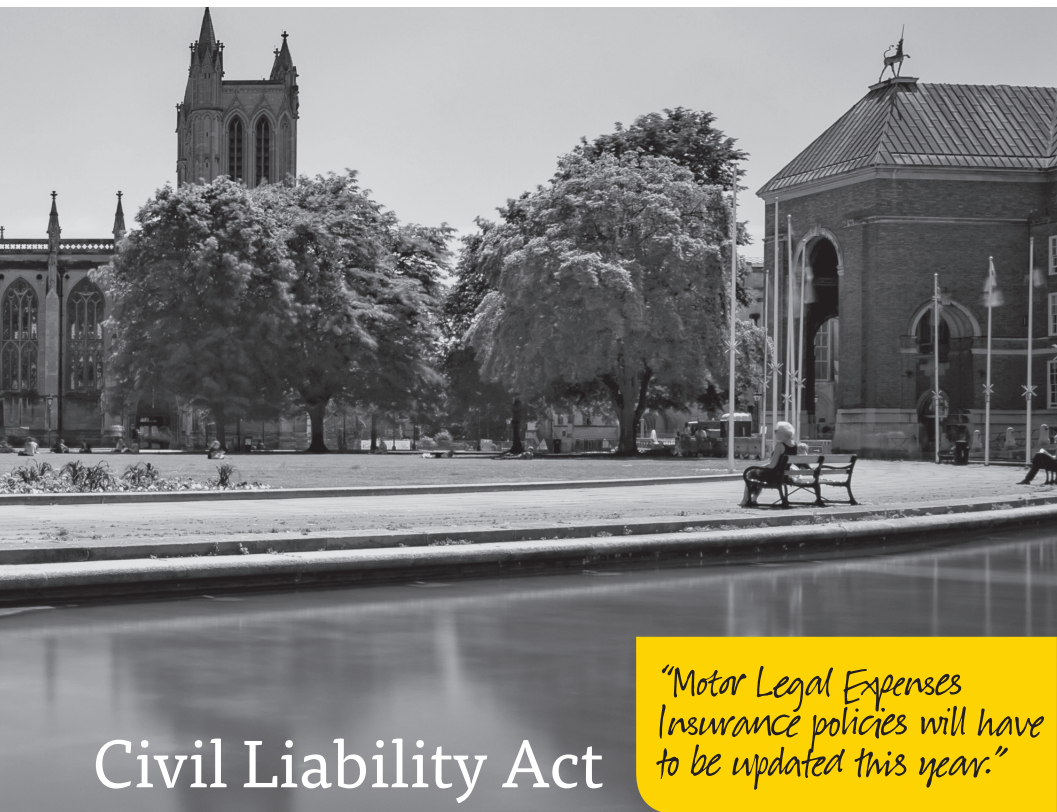
Breaks of up to four weeks will no longer interrupt continuity of employment for purposes such as bringing an employment tribunal claim; the reference period for calculating holiday pay will increase from

12 to 52 weeks; and the so-called Swedish Derogation, which allows employers to pay agency workers less in certain circumstances, will be abolished.

All of these changes and more should be introduced in either April this year or April 2020 with draft legislation already published for some of the proposals. The government has also committed to clarifying the test for employment status, which has been the subject of much debate and litigation in recent years, but this may prove a trickier task.

While the various measures in the Good Work Plan give employers plenty of new regulation to get their heads around over the coming year and should pass into law without any hitch, the possibility of employment tribunal fees being reintroduced seems like a somewhat more distant and uncertain prospect.





# Civil Liability Act

*“Motor Legal Expenses Insurance policies will have to be updated this year.”*

After years of debate, the Civil Liability Bill passed, somewhat quietly, into law at the very end of 2018. The implementation is scheduled for April 2020 following a pilot in October 2019. The impact for motorists who are unfortunate enough to be injured in an accident will be significant. We answer some key questions for brokers:

### What is changing?

The Act creates a separate process for the settlement of soft-tissue injury or ‘whiplash’ claims resulting from a road traffic accident and will fix levels of compensation depending on the severity largely defined by how long the injury lasts.

The reforms also ban the practice of trying to settle such claims without first assessing medical evidence of the injury, as many insurers have in the past.

### What about the small claims court?

While not mentioned in the Act itself, the government intends to increase the small claims court limit to £5,000 for injured motorists and their passengers and £2,000 for other injury claimants. This is likely to be implemented when the other reforms come into force.

### How much will injured motorists get?

While the legislation explicitly defines “whiplash injury”, the compensation for different durations of injury will be set by

the Lord Chancellor through regulations. However, the proposed damages tariff published by the government early in 2017 suggested that the victim of an injury lasting more than four months but less than six, whose injuries may well have prevented them from working for some of that time, would receive just £450.

### Any exceptions?

A small concession was made to exclude the claims of “vulnerable road-users” not in a motor vehicle, such as cyclists, pedestrians, motorbike riders and their passengers.

### When will this be in place?

While the reforms are now on the statute books, when they will come into force is not yet set in stone. The government stated that it plans to implement them in April 2020, which should allow plenty of time for the online claims process, on which the reforms depend, to be properly tested and rolled out.

However, because Motor Legal Expenses Insurance policies issued from April 2019 will still be in force after the reforms are due to be implemented, Motor Legal Expenses Insurance policies will have to be updated this year.

### What about the ‘discount rate’

The subject of some heated discourse, Liz Truss tweaked this variable for adjusting lump-sum compensation payments to benefit

very seriously injured accident victims, back in 2017. Two years and two Lord Chancellors later, the demands for a better mechanism by which to calculate the discount rate have been met and the clock has started ticking on their due date.

Who the Lord Chancellor may be come August is anyone’s guess, but he or she has until the 6th of that month to decide upon a new discount rate, which is likely to fall between zero and one per cent.

### What does all this mean for drivers?

Aside from the obvious reductions in compensation for whiplash injuries and lump-sum payments for very serious injuries, the increases to the small claims limits mean that a lot of injury victims will find it difficult to challenge the minimal compensation they are offered, unless they have Motor Legal Expenses Insurance.

### And for legal expenses insurance?

These reforms obviously make Motor Legal Expenses Insurance more important than ever to motorists. As the legal costs for challenging a contested claim will no longer be recoverable in 90 per cent of personal injury claims, these will have to be met by the policy, so premiums are likely to rise. However, motor insurers have assured motorists that these reforms should bring down motor premiums significantly, which should offset any increase in legal expenses premiums.

**INNOVATION**

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Don't forget: do you need to meet a set number of continued professional development hours? This training could count towards it, to find out please check the FCA guidelines.

## Events CALENDAR 2019

- 7<sup>th</sup> March  
Commercial Insurance Awards
- 10<sup>th</sup> April  
Customer Service Excellence Awards
- 15<sup>th</sup> & 16<sup>th</sup> May  
BIBA
- 19<sup>th</sup> June  
Claims Awards
- 10<sup>th</sup> July  
British Insurance Awards
- 13<sup>th</sup> September  
UK Broker Awards
- 24<sup>th</sup> September  
High Net Worth Forum
- 7<sup>th</sup> November  
Broker Expo
- 22<sup>nd</sup> November  
Insurance Times Awards



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9am-5pm, Monday-Friday  
After-the-Event (Sales): 0117 917 1692  
Before-the-Event (Sales): 0117 917 1685  
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