Dear Bob,

CIVIL LIABILITY BILL

I am writing to let you know that Lord Keen will today introduce the Civil Liability Bill into the House of Lords. The Government’s response to the Committee’s pre-legislative scrutiny of the discount rate measures, published today, will have been shared with you separately. I am very grateful for the Committee’s work on this important issue. We have carefully considered the Committee’s recommendations and have accepted many of them. Thank you for your input. Lord Keen and I would be delighted to discuss the Government’s response with you and the Committee further, ahead of the Bill being introduced into the House of Commons.

The Bill makes important changes to the personal injury compensation system. It reforms how the personal injury discount rate is set, aiming to ensure claimants get full and fair compensation to meet their expected needs, while reducing the pressure of meeting excessive compensation claims on the NHS. The Bill also tackles the issues behind the continued high number and cost of whiplash claims.

The Bill will generate savings for motorists and consumers. The high number and cost of whiplash claims, along with the current framework for setting the discount rate, is creating pressure that is driving up insurance premiums, particularly for motorists. Without reform motor premiums could continue to rise at a rate of about 10% annually. The whiplash reforms will deliver around £1.1bn of consumer savings per annum and could see motorists’ insurance policies cut on average by about £35 a year.

The Bill will also generate important benefits for the NHS. Current over-compensation means that the NHS is overpaying on claims for clinical negligence, putting increasing pressure on the public purse. Last year the NHS spent £1.7 billion on clinical negligence cases. The annual cost has almost doubled since 2010/11 with an average 13.5% increase every year. Every pound that is being spent on over-compensation could be spent, for example, on frontline public services, such as the NHS, our schools or our armed forces.

About three quarters of the UK motor and liability insurance market have already committed to pass on to consumers savings arising from Government reforms to whiplash and the discount rate.

The Bill follows previous government reforms aimed at removing costs from the civil justice system, banning referral fees, and builds on action to ban cold-calling in personal injury cases and to establish a tougher regulatory regime for claims management companies in the Financial Guidance and Claims Bill currently before Parliament.

Whiplash Measures
It is not right that it has become increasingly acceptable to make unmeritorious claims for whiplash. The Bill will seek to address the continuing high number and cost of whiplash claims in England and Wales, and the impact they have on the price of insurance premiums for all motorists.

The measures will ensure that genuine claims will be supported by good quality medical evidence and that claimants will receive proportionate compensation for their pain and suffering. The measures will also act to disincentivise unmeritorious claims, which fuel the wider compensation culture.

The Whiplash measures in the Bill will:
- Provide for a tariff of compensation for pain, suffering and loss of amenity for whiplash claims. The final tariff figures will be set in supporting regulations to be debated via the affirmative procedure by Parliament following Royal Assent.
- Introduce a regulatory ban on seeking or offering to settle whiplash claims without medical evidence.
- Provide for the Judiciary to increase the compensation payable by up to a certain amount in exceptional circumstances. The cap for exceptional payments would be set in supporting regulations.

Personal Injury Discount Rate Measures
Our reforms are about providing full and fair compensation. At the centre of this system are individuals who have been unlawfully injured. We need a system that protects claimants and provides them with 100% of the compensation they need to meet all their expected future financial losses, including medical and care costs.

Changes to the personal injury discount rate will not affect all claimants. 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 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.

PPOs are nearly always an available choice. They are available in all negligence cases against the NHS and in almost all cases where the defendant is insured by a UK regulated insurer.

The discount rate reforms maintain the long established 100% compensation principle. The reforms change the basis for the setting of the rate so that it will reflect more closely the reality of how claimants who chose to take their compensation in lump sums actually invest their money.

The reforms also create a new procedure for the regular setting of the rate, including the introduction of an independent expert panel to advise the Lord Chancellor in its setting. This will ensure the rate is set regularly, fairly and more transparently, providing certainty for claimants and defendants.

The proposal for the Lord Chancellor to consult an independent expert panel ensures that he or she takes expert advice before setting a new rate. The requirement on the Lord Chancellor to provide reasons for their decision and to publish the report of the panel will ensure that the decision-making process is transparent, objective and impartial. Intervals of many years between reviews which cause uncertainty for claimants and defendants will no longer be possible.

Under the current approach, the rate results in systematic over-compensation. Evidence indicates that on average awards (before deductions for investment management and taxation are made) are producing 135% of the expected compensation. Our reforms will continue to protect the vulnerable whilst being fair to those that bear the costs, particularly the NHS.
The NHS Confederation and other influential bodies such as the British Medical Association and the Academy of Medical Royal Colleges refer to the 2017 change to the discount rate having exacerbated the existing upwards trend in litigation costs which are now unsustainable, and have explained that vast amounts of resource which could be used more effectively have to be diverted elsewhere.

Our proposals are in line with international comparators - our current discount rate of minus 0.75% is the lowest of any country we know of. We are not aware of any other country which bases their discount rate so closely on returns linked to Government Index Linked Stocks.

The discount rate measures in the Bill will:

- Retain the 100% compensation principle which has long been a central part of the law, but modernise the calculation of the discount rate so that it reflects the reality of how claimants actually invest their money.
- Put the process of setting the rate on a statutory footing, with expert independent advice and a requirement for the Lord Chancellor to set it every 3 years, giving clarity and assurance to claimants and to those who underwrite the costs.
- Create an independent expert panel to advise the Lord Chancellor in order to ensure that the rate is set fairly and transparently in future, protecting the interests of claimants. The regular setting of the rate will make sure that vulnerable people who have had life-changing accidents have their compensation adjusted by an up to date rate.

These changes are market sensitive and were announced to the London Stock Exchange at 7.00 a.m. today.

I am writing in similar terms to the Chairs of the Health, Transport, Economic Affairs and Treasury Committees.

Your sincerely,

[Signature]

RT HON DAVID GAUKE MP