

can make an exception in a particular case. In other words, unlike sickness or unavoidable cause, leave is not a defence but part of the definition of the offence. Viz, you attend when you are required to, not merely 'sufficiently regularly'.

The intervention of the secretary of state for education was visible in the court's reasoning (in respect of the legislative history and the policy arguments) and may have made the difference.

Local authorities and the Department for Education will be relieved and, as emphasised by Lady Hale, parents now know with greater certainty where they stand in relation to their responsibilities and can regulate their conduct accordingly; namely, there is no 'failure to attend regularly' if your child attends 'in accordance with the rules prescribed by the school'. **SJ**

need should arise; and

- Rehearse and revise your communications plans, protocols, and statements in light of your firm's risk profile, new legislation, and wider technological and economic developments.

All the planning in the world won't prevent these attacks from happening, as the criminals who perpetrate them become ever more sophisticated. However, having a suite of information ready to send out in an emergency means a firm will be much better equipped to communicate effectively during a crisis situation.

A cyber attack or a data breach can have a profound and negative impact on a firm's business. Good communication planning and response in such situations can at least help to mitigate against enduring damage to your reputation. **SJ**

Ignore the discount rate at your peril

The courts are readily applying the new lower rate, leading to increased damages for claimants, advises **Kishan Mangat**

The Lord Chancellor's 'seismic decision' to cut the discount rate to -0.75 per cent from 2.5 per cent led to ministers urging Liz Truss to consider a 'fair and more balanced framework' for calculating personal injury awards.

On 30 March 2017, the Ministry of Justice responded by publishing a consultation entitled: 'The personal injury discount rate: How it should be set in future'. Despite the consultation, we are now starting to see the courts decide some cases in accordance with the new rate.

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The government has set aside approximately £6bn to cover the increased cost of settling clinical negligence claims

On 16 March, the High Court approved the agreed quantum settlement in *LMS v East Lancashire Hospital NHS Trust*, a cerebral palsy case, on the basis that the claimant was to recover 50 per cent of the full value of her claim calculated at the new rate. At the joint settlement meeting in January 2017, the parties agreed that the claimant, aged ten, would receive a lump sum of £1,320,575, periodical

payments of £50,000 per annum to the age of 19, and thereafter £73,500 per annum. The new rate increased the lump sum to £2,122,398. The total value of the settlement under the old rate was £3,772,500. The new rate increased this to £9,296,673. The application of the new rate saw a significant increase in compensation of £5,524,173 at the approval hearing.

In *Harriet Thompson v (1) Sam James Reeve (2) Motor Insurance Bureau (3) Mid Essex Hospital Services NHS Trust* the claimant was successful in withdrawing her part 36 offer to take advantage of the new discount rate. The claimant suffered significant injuries arising out of a road traffic accident in 2008 when she was 14 years old. The claim is complicated further by receipt of negligent treatment for those injuries.

Master Yoxall allowed the claimant to withdraw a part 36 offer of £340,000 following a defective attempt to withdraw it by email and the subsequent acceptance by the defendant. He was of the view that while the defendant had not indicated a willingness to accept service by email, CPR 3.10 could be widely applied to remedy the issue of defective service.

Yoxall recognised that the withdrawal of the part 36 offer was prompted by the reduction in the discount rate. With revised multipliers, the claim increased in value to £602,500. Yoxall stated that in his view 'it would not be consistent with the overriding objective that a technical breach of the rules

should impede the proper assessment of damages in this case'.

The consultation paper acknowledges the significant costs for both the public and private sectors that the reduced discount rate has brought about. It has been widely reported that the government has set aside approximately £6bn to cover the increased cost of settling clinical negligence claims and the Office for Budget Responsibility has stated that car insurance premiums may increase by as much as 10 per cent, thereby jeopardising any potential savings to customers accrued by the proposed whiplash reforms.

The cases above show that the courts are readily applying the new rate, leading to increased damages for claimants. Responses to the consultation are due by 11 May 2017 and it will be fascinating to see whether an improved legal framework for setting the rate is identified. **SJ**



Kishan Mangat is communication officer for Tomorrow's Forum of Insurance Lawyers and a solicitor in the catastrophic injury and insurance team at DWF @TomorrowsFOIL www.tomorrowsfoil.org.uk