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A Ruling on Mixed Injury Personal Injury Damages

The recent Court of Appeal judgment on personal injury damages involving mixed injuries within the Official Injury Claims process has been both welcomed and condemned in equal measure.

All sides were certainly hoping for greater clarity around how compensation should be calculated where the claimant has suffered both a whiplash injury and one or more non-whiplash injuries. The absence of any regulatory guidance on mixed injuries, from either Government or Parliament, was one of the glaring holes in the Government's whiplash reforms. Instead, the job of resolving this was passed to the judiciary. This hole in the new regulatory structure has undoubtedly led to delays in a number of claims settling, and the increased risk of under-compensation.

In a majority decision, the CoA agreed that damages for a whiplash injury should be calculated in accordance with the tariff, and that an award for a non-whiplash injury should be assessed on common law principles. The judge should then 'step back' and apply a discount for overlap, broadly along the lines applied by District Judge Hennessey in her first instance judgments. The only real point of difference from the first instance judgment was that the Court of Appeal stated that the discount should not leave the claimant with an award for the non-whiplash injury lower than the valuation of that injury.

Some were clearly disappointed that the judgment did not declare a more precise formula for calculating a deduction from the overlapping cases. Personally, I think the guidance given by the Court of Appeal is helpful. Practitioners and judges - who are quite accustomed to dealing with a degree of overlap - will probably find it workable, certainly in cases of injuries similar to those considered by the Court of Appeal. For unrepresented claimants however, the whole exercise may prove slightly bewildering.

