



Personal Injury Discount Rate Review 2024

Expert Panel Terms of Reference

Background

1. The Personal Injury Discount Rate (PIDR) is a statutory method for the way lump sum compensation for future financial loss is calculated in serious personal injury cases (i.e. those whose impacts are expected to last for a period of years).
2. In such cases, some or all of the compensation is received in the form of a lump sum payment which claimants often invest. The purpose of the PIDR is to reflect the return that a claimant could reasonably be expected to receive from investing the lump sum element of damages which, along with the nature of the injury and its expected duration, will determine the size of the lump sum.
3. The PIDR is therefore an essential part of calculating appropriate levels of compensation in cases of serious injury and it is the duty of the Lord Chancellor under the Damages Act 1996 to set the PIDR.
4. Part 2 of the Civil Liability Act 2018 (CLA) specifies a new methodology for the setting of the Personal Injury Discount Rate. The Act stipulates that the Lord Chancellor must establish an Expert Panel, chaired by the Government Actuary, who the Lord Chancellor will consult on the setting of the rate.
5. It was the intention behind the new provisions that the Panel will bring additional expertise into the review process, leading to a better system for the setting of the rate.

Expert Panel responsibilities and scope

6. The PIDR Expert Panel must be established and maintained by the Ministry of Justice.
7. The panel has to be appointed by, and provide independent advice to, the Lord Chancellor.
8. The Lord Chancellor must begin conducting a review of the rate no later than five years after the previous review was completed. Upon announcing the start of the review, the Lord Chancellor must make a determination within **180 days**. In doing so, as per the CLA, the Lord Chancellor must consult HM Treasury and the Expert Panel.

9. The Expert Panel must respond to the Lord Chancellor's consultation within **90 days**, beginning with the day on which its response is requested.
10. As an advisory body, the Panel's role is not to set the rate, but to provide advice with respect to the Lord Chancellor's consideration of the PIDR and it must take into account the duties of the Lord Chancellor under paragraph 4 of Schedule A1 to the CLA in its response.
11. The Lord Chancellor is free to depart from the advice of the Expert Panel, if he or she believes that the fulfilment of his or her statutory duties in relation to the setting of the rate requires it.
12. To help the Lord Chancellor determine the rate, and with due regard to the various methodological approaches available, amongst any other matters the panel considers appropriate, the panel should provide advice in relation to the returns (or range of returns) that it is reasonable to expect the recipients of relevant damages to achieve, and the risk associated with this. In doing so the panel should take into account:
 - a. how claimants invest over differing periods and the investments that are available;
 - b. the extent to which claimants can be considered to be similar to ordinary investors;
 - c. what assets might exist within a low-risk diversified portfolio suitable for properly advised claimants;
 - d. the most appropriate measure of inflation to use when setting the discount rate;
 - e. allowances to be made for management costs, taxation and inflation in the setting of the rate;
 - f. the possibility of setting dual or multiple rates and the implications on a. to d.above of such an approach and;
 - g. wider factors deemed relevant, for example, international comparisons and economic factors
13. In considering their advice to the Lord Chancellor, the Expert Panel may, amongst any other things it considers appropriate:
 - a. invite others (outside of the four members and Chair) to attend or speak at meetings;
 - b. consult externally and;
 - c. commission information or analysis.
14. Ultimately, the Panel will be required to provide options, with varying degrees of confidence, to the Lord Chancellor. These options will be informed by members' expert knowledge and any additional insight gained from the activities of the panel. It will be for the panel to determine, with advice from the Ministry of Justice as appropriate, the format in which options are provided to the Lord Chancellor. The Lord Chancellor may

ask questions, or seek clarification or discussion with the Expert Panel following the provision of options.

15. It is the requirement of the Expert Panel to set out a clear rationale for its advice, positions and any assumptions made.
16. It is expected that some of the Expert Panel's advice to the Lord Chancellor will be made public.

Membership

17. The Expert Panel will be chaired by the Government Actuary, with four other panel members appointed by the Lord Chancellor, as set out in the CLA:
 - a. one member with experience as an actuary;
 - b. one member with experience of managing investments;
 - c. one member with experience as an economist; and
 - d. one member with experience in consumer matters as relating to investments.
18. Acting as a statutory consultee will not restrict or inhibit the ability of the Government Actuary to provide advice independently of the panel to the Lord Chancellor, HM Treasury and the Ministry of Justice outside the scope of the consultation at any time, including during the review period.
19. During any period when the office of Government Actuary is vacant, the Deputy Government Actuary is to be a member of the panel and is to chair it (Schedule A1, paragraph 6(8), Part 2, CLA).
20. Expert Panel members will be appointed for each review only. The Panel will cease to exist once the Lord Chancellor has made a decision and the review has ended. It is expected that the Expert Panel will be convened for approximately 1.5 years in total (July 2023 – November 2024).
21. Some or all of the members of the Expert Panel are likely to be members of representative organisations. Whilst their experience and expertise may be informed by their membership of such an organisation, once appointed, they will be acting in their individual expert capacities and will not be representing any other body.
22. Expert Panel members are required to disclose potential conflicts of interest on an ongoing basis.
23. Panel members have a duty to maintain confidentiality at all times and must not discuss the details of any work or deliberations of the Expert Panel outside of meetings. Panel members must be mindful that, whilst the Lord Chancellor may depart from the advice of the Expert Panel, details of discussions and deliberations are commercially sensitive and could still have an undue impact upon industry and

markets. Further, as the Ministry of Justice is providing the secretariat functions for the Expert Panel, materials produced will be subject to the Freedom of Information Act.

24. The Government Actuary's Department retains the copyright, and rights in the nature of copyright, in works shared with or carried out for the Expert Panel. The disclosure of any such information is strictly prohibited and constitutes a breach of these terms, and may result in termination of panel membership.

25. Panel members have been appointed through an open and competitive process which aligned with the Governance Code on Public Appointments, and are required to adhere to the seven principles of public life:

- a. **Selflessness:** holders of public office should act solely in terms of the public interest.
- b. **Integrity:** appointees must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests and relationships.
- c. **Accountability:** holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- d. **Objectivity:** appointees must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- e. **Openness:** appointees should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- f. **Honesty:** holders of public office should be truthful.
- g. **Leadership:** holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

26. As set out in the CLA, the Lord Chancellor may end an appointed member's membership of the panel if the Lord Chancellor is satisfied that:

- a. the person is unable or unwilling to take part in the panel's activities;
- b. it is no longer appropriate for the person to be a member of the panel because of gross misconduct or impropriety; or
- c. the person has become bankrupt, a debt relief order (under Part 7A of the Insolvency Act 1986) has been made in respect of the person, the person's estate has been sequestrated or the person has made an arrangement with or has been granted a trust deed for creditors.

27. Panel members are expected to uphold and operate in accordance with the stated principles at all times. The Lord Chancellor may terminate an appointed member's membership of the panel if the Lord Chancellor is satisfied that a member is found to be in violation of these principles.
28. As per the CLA, the Lord Chancellor will make arrangements for the appointed members of the Expert Panel to be paid any remuneration and expenses considered appropriate and commensurate with Ministry of Justice policies.

Ways of working

Functioning

29. The quorum of the Expert Panel is four members, one of whom must be the Government Actuary (or the Deputy Government Actuary when the office of Government Actuary is vacant). In the event of a tied vote on any decision, the person acting as chair of the panel is to have a second, casting vote.
30. The Ministry of Justice will provide the Expert Panel with a dedicated secretariat who will take minutes of the meetings, which will be approved by the panel.
31. The Expert Panel is required to reach an official view by majority decision on the options to be provided to the Lord Chancellor in a transparent, effective and efficient way and document the process.
32. If a person appointed ceases to be a member (as per paragraph 25 or otherwise) the Expert Panel can continue to meet if quorum is achieved, whilst a replacement will be recruited. If two persons appointed cease to be members, replacements will be recruited, and the Expert Panel will not be able to meet until quorate. In such circumstances, recruitment of the replacement may be made via direct appointment, to ensure the impact upon the Expert Panel's timeline is minimised.

Activities

33. Prior to the formal request from the Lord Chancellor, the Expert Panel may begin gathering intelligence by commissioning, consulting and meeting as they consider appropriate in preparation for their response. Information and evidence commissioned and gathered by the Expert Panel will be shared with HM Treasury who are also consultees under the CLA.
34. Expert Panel members, in their deliberations, should consider responses to the Call for Evidence on a Dual/Multiple Rate approach. In 2019, this consultation was committed to by the then Lord Chancellor "to inform the next discount review and the work of the Expert Panel".