Ministry of Justice

Government Response to the Call for Evidence on the Personal Injury Discount Rate:

Exploring the option of a dual/multiple rate

11 September 2023

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A Call for Evidence response produced by the Ministry of Justice. Copies of the Call for Evidence and this response are available at:

https://www.gov.uk/government/consultations/personal-injury-discount-rate-exploring-the-option-of-a-dualmultiple-rate

About this Call for Evidence response

To:	All stakeholders with an interest in the setting of the personal injury discount rate. **Published on:** 11 September 2023
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A Welsh language summary of this response paper will be made available at:

https://www.gov.uk/government/consultations/personal-injury-discount-rate-exploring-the-option-of-a-dualmultiple-rate

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Introduction

On 17 January 2023 the Government published a Call for Evidence relating to the personal injury discount rate (PIDR). The purpose of which was to explore the pros and cons of adopting a dual/multiple PIDR[1].

During the last PIDR review in 2019[2], the Government Actuary prepared a detailed analysis[3] to inform the rate-setting decision and, as part of this work, looked at the potential effects of applying a dual rate to claimant outcomes.

His analysis looked at how the discount rate might be set to provide fairer outcomes for more claimants. The then Lord Chancellor considered that this was a worthwhile option, but he also felt that more work was required to identify the appropriate structure and practical impact of introducing a dual or multiple PIDR in England and Wales and decided not to pursue this issue at that time.

However, whilst the available evidence base in 2019 was insufficient to justify such a change at that time, the then Lord Chancellor did commit to seeking additional views and evidence ahead of the next review of the rate in 2024. This Call for Evidence gave effect to that commitment, and submissions from all stakeholders were welcomed.

The Call for Evidence closed on 11 April 2023 and the evidence and opinions received from stakeholders have been reviewed and summarised in this response document. As previously noted, it is not the Government's intention to use this document to formulate a policy position on whether a dual/multiple PIDR should be introduced.

However, an independent Expert Panel has recently been set up to advise the Lord Chancellor as part of the next PIDR review which must be commenced by 15 July 2024. All Call for Evidence responses received will be passed to this Panel for their consideration ahead of the next PIDR review.

The purpose of this response document is to summarise the evidence submitted by respondents to the Call for Evidence on this important issue and to provide further detail on the next steps in relation to the consideration of a dual/multiple PIDR.

Personal Injury Policy Team
Ministry of Justice
11 September 2023

1 https://www.gov.uk/government/consultations/personal-injury-discount-rate-exploring-the-option-of-a-dualmultiple-rate

2 https://www.gov.uk/government/consultations/setting-the-personal-injury-discount-rate-call-for-evidence

3 https://www.gov.uk/government/consultations/setting-the-personal-injury-discount-rate-government-actuarys-advice-to-the-lord-chancellor

Statistical Analysis of Responses

A Call for Evidence on 'Exploring the option of a dual/multiple rate' was published on 17 January 2023 and ran for 12 weeks, closing at midnight on 11 April 2023. Evidence and views were sought on how a dual or multiple rate system might be applied to the setting of the personal injury discount rate (PIDR), and what the effects of such a system would be.

The Call for Evidence was aimed at people with an interest in high value personal injury claims in England and Wales and how the damages awarded are invested. Views from other stakeholders, however, were welcomed and received.

In total, **65** submissions were received from a wide range of stakeholders, with **21** responses received through an online questionnaire and a further **44** responses via email to the Personal-Injury-Discount-Rate@justice.gov.uk inbox. Of these, **5** responses were identical submissions from different offices of the same law firm.

Most stakeholders directly answered some or all of the questions posed, but **13** respondents chose to provide general views via a single response/letter. In addition, not all stakeholders provided evidence to support their submissions and/or opinions.

The table below provides an illustrative breakdown of the responses received by sector:

Sector	Responses received	% of total responses received
Actuaries and Representative Groups	3	5%
Barristers/Chambers	4	6%
Claimant Lawyers and Representative Groups	11	17%
Cross Sector Representative Groups	3	5%
Defendant Lawyers and Representative Groups	8	12%
Medical Sector and Representative Groups	4	6%
Economists	2	3%
Financial Service Providers	6	10%
Insurers, Re-insurers and Representative Groups	23	35%
Other	1	1%
Total	**65**	**100%**

We are grateful to everyone who took the time to respond and provide evidence or share their expertise, experience and insights into the questions asked in this Call for Evidence. All the responses received have been analysed and are summarised in this response.

Selected International Models

1. The Call for Evidence provided stakeholders with several example case studies of jurisdictions where a variety of dual/multiple PIDR models were in operation. Specifically, information was provided on those jurisdictions which set different rates based on the **duration of the award** (the Canadian province of Ontario, Bailiwick of Jersey and the Chinese Special Administrative region of Hong Kong) or on a **heads of loss** approach (the Republic of Ireland).

2. Respondents were asked to indicate a preferred model for the operation of a dual/multiple PIDR based on consideration of the case studies provided. In addition, evidence was sought on the pros and cons of both the duration and heads of loss approaches. Stakeholders were also asked to provide evidence based on any direct experience they or their organisations had of operating in international jurisdictions where a dual/multiple PIDR was used.

Summary of responses received to questions 1 and 2:

Question 1: Do you have a preferred model for a dual/multiple rate system based on any of the international examples set out in the Call for Evidence paper (or based on your or your organisations experience of operating in other jurisdictions)?

Please give reasons with accompanying data and/or evidence.

3. Overall, **59** respondents answered this question. Responses were received from **3** actuaries, **3** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **8** defendant law firms/representative bodies, **2** economists, **5** financial service providers, **21** insurer/re-insurer/representative bodies, **4** medical sector organisations and **1** other.

4. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

    - If pursued, dual/multiple rates via a heads of loss approach with rates for care/care management costs, medical costs and earnings would be preferable (Actuary, Medical);

- A single rate is less complex than the dual rate approach and often results in fairer outcomes (Claimant Lawyers, Defendant Lawyers, Barristers, Insurers, Financial Advisors);
- If a dual rate is adopted, the blended approach is best as it will avoid cliff edges and is fairer to claimants (Claimant Lawyers/Barristers);
- The 'switched' model is best similar to the model implemented in Ontario (Defendant Lawyers, Insurers, Medical) as well as support for the heads of loss approach as implemented in the Ireland model (Claimant Lawyers);
- A dual rate based on duration is preferred but a variation on the Ontario model should be used (e.g., fewer reviews of short-term rate), as this would best meet the 100% compensation principle (Insurers, Defendant Solicitors, Medical);
- The margin of prudence applied by the Lord Chancellor should be removed (Insurers, Defendant Solicitors, Medical);
- Whether a dual/multiple or single rate is used there should be a common PIDR across all UK jurisdictions with no variation based on whether the accident occurred in England, Wales, Scotland or Northern Ireland (Insurers); and
- No overall preference and the biggest impact will not be from the regime chosen, but from what the rate(s) are set at (Medical).

Question 2: What do you consider to be the main strengths and weaknesses of the dual/multiple rate systems found for setting the discount rate in other jurisdictions?

5. **56** respondents provided submissions in relation to this question. Responses were received from **3** actuaries, **2** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **8** defendant law firms/representative bodies, **1** economist, **6** financial service providers, **20** insurer/re-insurer/representative bodies, **3** medical sector organisations and **1** other.

6. Of the **56** respondents, **4** referred to their responses to **Q1** (**1** actuary, **1** cross sector representative body and **2** insurers). The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

   - A heads of loss approach would be easier to implement than duration-based approaches although calculations would be more difficult with the additional Ogden tables required (Actuary);

- Duration-based approaches allow more flexibility over the longer term but would need to include higher care and care management costs and inflation. However, setting a longer-term rate is likely to be speculative (Actuary);
- Ireland allows for fairer calculations based on heads of loss such as earnings inflation and care costs, plus more accurate lump sum payments (Claimant Lawyers);
- Hong Kong and Jersey are simple to calculate but the stepped approach means they provide unfair outcomes and large cliff edges at switch over points (Claimant Lawyers);
- Ontario is too complex and yearly reviews of short-term rate can result in issues with agreeing settlements (Claimant Lawyers, Cross-sector Representatives);
- Ontario is better for short term claimants but risks overcompensating long term claimants. However, Ontario is also moving away from using dual rates (Claimant Lawyers, Cross-sector Representatives);
- The Hong Kong/Jersey systems are better than a single rate for short-term claimants, as they would require no change to Ogden Tables, and would be easy to apply, but there are risks of cliff edges, under-compensating long-term claimants and disputes around longevity (Defendant Lawyers);
- The Hong Kong model makes sense from an investment perspective because it considers short, medium and long-term rates but it adds complexity and ‘cliff edges’ (Cross-sector Representatives);
- The type of rate needs to match the aims of the Civil Liability Act 2018 (CLA) and may also depend on economic conditions at time of next review (Defendant Lawyers);
- If a dual rate were set, it would need to be simple, certain and duration-based with a switching point at 10-15 years. The long-term rate should reflect relevant yields and be stable, with no margin of prudence and not blended (Defendant Lawyers and Insurers); and
- If a single rate were set, short term economic factors such as inflation rates at the date of review should be ignored with returns appropriate for average expected term of the award with claimants neither over nor under-compensated; inflation accounted for when setting the rate should be based on forecasts with no additional prudence applied (Defendant Lawyers and Insurers).

Exploring the option of a dual/multiple rate

Dual/multiple rates based on duration

7. The Call for evidence provided respondents with an overview of a dual rate process based on the duration of the claim. It also noted that in some cases, this duration will be based on the best estimate of a claimant's life expectancy. There are different levels of investment returns available and the usual approach is to have a lower rate for the short-term, with a higher long-term rate.

The Switch-over Point

8. A key aspect of designing a system based on duration is establishing the switch-over point from the short to the long-term rate. Therefore, the Call for Evidence sought input on both the optimal switch-over point and on what stakeholders considered the absolute minimum and maximum periods should be before a switch-over should be considered.

Summary of responses received to questions 3 and 4:

Question 3: What do you consider is the optimal point for the switch-over from a short to a long-term rate on a duration-based dual rate model?

Please give reasons with accompanying data.

9. **54** respondents provided submissions in relation to this question. Responses were received from **3** actuaries, **1** barrister, **10** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **7** defendant law firms/representative bodies, **1** economist, **6** financial service providers, **21** insurer/re-insurer/representative bodies, **3** medical sector organisations and **1** other.

10. A variety of switchover points, with reasoning, were suggested by stakeholders. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

    - 5 years - no specific reasons provided (Claimant Lawyers);
    - 10 years - to account for the resolution of adverse economic cycles (Insurers, Claimant and Defendant Lawyers);

- 10-15 years depending on rationale (Defendant Lawyers, Insurers);
- 15 years - for the reasons set in the GAD report or if the Ontario model were to be adopted (Defendant Lawyers, Insurers);
- 15 years - to ensure claimants with a shorter life expectancy are not under compensated (Insurers);
- 15 years - but optimum point would be different for different claimants as at some point returns available are outweighed by cash flow needs (Financial Advisors);
- 15 to 20 years – but does not consider dual rate with a switchover point to be an appropriate model (Actuary);
- 18 years - due to the probability of equities outperforming cash and gilts over specified periods (Claimant Lawyers); and
- 25 years - preferable in light of evidence of low and volatile investment returns on comparable portfolios (Claimant Lawyers).

11. Additional points made, included:

- It is difficult to suggest an optimal switchover point, as this is the point at which there is most likely to be full compensation with the least undesirable side effects for claimants (Cross Sector Representative Body);
- There is not enough available data to identify the optimal switchover point as it will depend on the final model implemented (i.e. it will be different for the blended, switched or stepped approaches) (Medical);
- No comment on the appropriate switchover points, but we do agree with the general position that claimants should be neither over or under compensated (Medical); and
- There is no net benefit to operating a split PIDR by duration so make no comment on switchover points (Economist).

Question 4: What would you consider an absolute minimum and maximum point for the switch-over between two rates to be?

Please give reasons.

12. In regard to question 4, **54** respondents provided submissions. Responses were received from **3** actuaries, **2** barristers, **10** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **6** defendant law firms/representative bodies, **1** economist, **6** financial service providers, **21** insurer/re-insurer/representative bodies, **3** medical sector organisations and **1** other.

13. Of the **54** respondents, **14** referred to their responses to **Q3** (**1** actuary, **1** claimant solicitor, **1** cross sector representative body, **2** defendant solicitors, **1** economist and **8** insurers).

14. A variety of suggested ranges were provided. The following list is a summary of the ranges and points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

- 5 years minimum - no reasoning provided (Insurers);
- 5 - 10 years - no reasoning provided (Claimant Lawyers, Medical);
- 5 - 15 years - no reasoning provided (Defendant Lawyers, Insurers);
- 6 - 15 years - no reasoning provided (Defendant Lawyers);
- 8 - 12 years - no reasoning provided (Insurers);
- 10 years minimum - no reasoning provided (Insurers);
- 10 years minimum, 15 years maximum - no reasoning provided (Defendant Lawyers, Insurers);
- 15 - 25 years - suggested in agreement with GAD's recommendation in 2019 advice to LC. (Barristers, Claimant Lawyers, Financial Advisors);
- 18 - 20 years - related to the probability of equities outperforming cash and gilts over specified periods (Claimant Lawyers); and
- 20 - 25 years - suggested as appropriate range to account for unanticipated events/costs. (Barristers).

15. The following additional point was also made:

- It's not possible to provide a reasonable test to produce minimum or maximum switchover points as it is not possible to predict a claimant's future real investment returns with any degree of accuracy (Claimant Lawyers).

Dual/Multiple Rates based on Heads of Loss

16. Another approach explored in the Call for Evidence was the option to set rates by heads of loss (as in Ireland). For example, there could be a higher rate for loss of future income and a different rate designed to address care costs.

17. This has the benefit of flexibility to tailor the PIDR to the needs of claimants. For example, claimants whose awards include a large future care costs element would be better protected against future earnings inflation or adverse market changes.

18. The Call for Evidence asked several questions around the duration and heads of loss approaches, seeking input on which system was preferable. It also sought evidence on assumptions made on the volatility/stability of different rates and whether there should be more frequent reviews.

Summary of responses received to questions 5, 6 and 7:

Question 5: If a dual rate system were to be introduced, would you advocate it was established on the basis of the duration of the claim with a switchover point, on duration based on length of claim or its heads of loss (or a combination of the two)?

Please give reasons for your choice.

19. **57** respondents provided submissions in relation to this question. Responses were received from **3** actuaries, **2** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **8** defendant law firms/representative bodies, **1** economist, **6** financial service providers, **21** insurer/re-insurer/representative bodies, **3** medical sector organisations and **1** other.

20. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

- If a dual/multiple rate is adopted, we have a strong preference for a heads of loss (HoL) approach to be implemented (Actuary);
- We support a dual rate based on heads of loss which should centre around care/case management costs, and which would also be compatible with use of Periodical Payment Orders (PPOs)[4] (Barristers, Claimant Solicitors);
- The duration-based approach is preferable due to short, medium and long-term levels of investment return being available which could lead to fairer claimant outcomes (Financial, Medical, Claimant and Defendant Lawyers);
- The duration-based approach is better than the HoL option, which is too complex, carries a risk of satellite litigation and does not address short-term claims issue (Defendant Lawyer, Insurers);

[4] Periodic payment orders (PPOs) are where damages are paid to a claimant for life via regular smaller payments. PPOs can be requested, offered or imposed by the Court and can be paid in combination with, or as an alternative to, a lump sum award of damages to personal injury claimants.

- If system is to be changed then the Ontario duration-based model is favoured (Insurers);
- A duration-based approach using a blended rate is preferable as it is simpler and potentially provides fairer outcomes, the stepped rate approach would lead to unfairness whilst switched rates would be balanced but would also increase complexity (Claimant Lawyers);
- A duration-based approach using a switched rate is the best option if it is calculated appropriately (Defendant Lawyers);
- A dual rate set using the HoL approach offers greater potential for accuracy along with limited but manageable additional costs (Economist);
- If a duration-based approach is introduced, then a blended rate is necessary to avoid cliff edges and access to justice issues for claimants (Economist); and
- The HoL approach carries a lower risk for claimants, but it could also lead to delays in litigation whilst the duration approach could also lead to under-compensation over time (Financial).

Question 6: In dealing with volatility of markets over the short-term is it a reasonable assumption that short-term rates in a duration-based system should be more variable and set at a lower rate; and long-term rates more stable and set at a higher rate?

If you agree or disagree that this assumption is reasonable, please say why.

21. In total, **52** responses were received to question 6, of which responses were received from **3** actuaries, **2** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **6** defendant law firms/representative bodies, **1** economist, **6** financial service providers, **20** insurer/re-insurer/representative bodies and **3** medical sector organisations.

22. Of the **52** respondents, **3** referred to their responses to **Q6** (**1** defendant law firm and **2** insurers). The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

    - The proposition in the question is an oversimplification as short-term rates can vary but are visible and measurable, whilst long-term rates can also have different assumptions and a wide range of projections which can become uncertain over time. The short-term rate could be adjusted annually, as in Canada and both rates should be kept under regular review (Actuary);

- The assumption is reasonable but there may not be as great a difference as is suggested, short-term needs would need to be weighted towards cash/PPOs and be variable to account for changing returns in low-risk assets. (Financial, Medical, Barristers and Claimant Lawyers);
- Decisions must be based on investment evidence and not assumptions and the short-term rate should not be reviewed more often than now due to impact on settlement process (Defendant Lawyers, Insurers, Medical);
- The short-term rate needs to avoid being set so low as to be low risk (Defendant Lawyers, Insurers);
- Short-term rates are volatile on a day-to-day basis and long-term rates are volatile on a cross-section basis and each projection comes with a wide margin of error (Economist);
- It is likely that short-term rate will be lower than the long-term rate, but the methodology used, and the prevailing market conditions will also have an impact (Insurers);
- The short-term rate should be lower but the later the switching point the higher the short-term rate should be (Insurers); and
- The assumption may be affected by market conditions and as short-term claimants invest in different asset classes which could imply a lower yield than in the long-term which removes need for prudence (Insurers).

Question 7: If short-term rates are more volatile, should frequency of review be increased?

Please explain your reasoning.

23. Submissions were received from **57** respondents regarding this question. Responses were received from **3** actuaries, **2** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **8** defendant law firms/representative bodies, **1** economist, **6** financial service providers, **21** insurer/re-insurer/representative bodies, **3** medical sector organisations and **1** other.

24. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

- Any new review period should be set at three-year intervals to allow sufficient time to avoid uncertainty with settlements and interim payments (Barristers);

- The rate should be reviewed either every year (or alternatively if it moves by 0.5%) to avoid volatility driven by inflation. (Barristers, Claimant Lawyers);
- No view on whether the frequency of reviews should be increased, but noted that the more regular the review period, the more likely there will be delays, satellite litigation and unpredictability (Cross-sector Representative Bodies, Medical, Economists, Defendant Lawyers);
- In a duration approach the short-term rates would need to be reviewed more frequently as they are more sensitive to inflation and interest rate movements (Economists, Cross-sector Representative Bodies);
- Reviews may need to be annual, but if so, this will impact significantly on inflation and interest rates as well as effecting the ability to settle cases (Financial);
- The short-term rate should be reviewed more frequently than the long-term rate. The more stable the instruments used the less frequently they'll need be reviewed (Financial);
- The short-term rate should not be reviewed more often than now, as it will adversely impact on the settlement process as well as creating additional costs, backlogs and the need for extra practitioner resources (Defendant Lawyers, Insurers);
- Keep the current 5-year review period for both rates. Theoretically, the short-term rate could be reviewed more frequently but this would lead higher operational costs due to volatility, and increased potential for misunderstandings and mistakes. The long-term rate is likely to be very stable as demonstrated by the Ontario model (Defendant Lawyers, Insurers);
- The volatility of short-term rate is an argument to stay with a single PIDR, otherwise there will be resource implications, a reduction in certainty, an impact on premium prices and the provision of insurance (insurers); and
- Reviewing a short-term rate more regularly would affect claimant behaviour and could cause a shift away from PPOs to more lump sum payments (Medical).

Advantages/Disadvantages of a Dual/Multiple Rate System

25. Views were also welcomed from respondents on the perceived advantages and disadvantages of adopting a dual/multiple rate system for the PIDR. Summaries of both the pros and cons of such systems, as suggested in previous Call for Evidence responses and in the Government Actuary's analysis for the 2019 review, were provided to aid stakeholder considerations on these points.

Summary of responses received to questions 8 and 9:

Question 8: What would you regard as the advantages of a dual/multiple rate system?

26. **56** respondents provided submissions in relation to this question. Responses were received from **3** actuaries, **2** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **9** defendant law firms/representative bodies, **1** economist, **6** financial service providers, **19** insurer/re-insurer/representative bodies, **3** medical sector organisations and **1** other.

27. Of the **56** respondents, **7** referred to their responses to **Qs1&2** (**4** defendant law firms and **3** insurers). The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

- It would improve the accuracy of the overall calculation but due to the multiple uncertainties involved, we also need to guard against spurious accuracy (Actuary);
- The advantage of a dual rate duration-based system would be that claimants with short term losses would likely be better compensated (Barristers and Claimant Lawyers);
- Theoretically, a multiple rate could provide a more accurate assessment of damages, whilst a dual rate would provide a more accurate reflection of rates of interest over longer periods (Cross-sector Representative Body);
- The main advantage of a dual rate is that the long-term rate would allow for returns rising over time while the lower rate is fairer to short-term claimants (Defendant Lawyers, Insurers, Medical, Financial);
- The advantage pf a dual/multiple rate stems from the fact that a single rate is biased toward long-term claimants (Defendant Lawyers);
- The case for a dual rate set by duration is strong and is set out in the Government Actuaries 2019 advice, but the case for a dual rate by HoL is equally as strong and already implemented within the current single rate system (Economists);
- The key advantage is potential gain in the accuracy of different rates which can be used to match characteristics and circumstances to the claim (Economists);
- None, there are only disadvantages arising from switching to a dual/multiple rate (Insurers);

- The benefits can be divided into three groups which are reasonable settlement amounts, greater fairness, and long-term certainty (Insurers);
- Generally, we agree with the advantages set out in the Call for Evidence although the overall benefits are not easily measurable and could be marginal (Medical);
- This might reduce the cost to defence organisations who operate a larger book of PPOs with a portfolio of claims that have a longer life expectancy. In turn, this suggests that this might make PPOs a more attractive solution for non-public sector defence organisations (Medical);
- A dual rate would negate the need for additional prudence to be considered by the Lord Chancellor when setting the rate (Insurers); and
- Claimants with a short life expectancy may benefit from a lower short-term rate, however, this is only a small percentage and should not be at the expense of those with longer life expectancies (Financial).

Question 9: What would you regard as the disadvantages of a dual/multiple rate system?

28. **57** stakeholders responded to question 9. Responses were received from **3** actuaries, **2** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **8** defendant law firms/representative bodies, **1** economist, **6** financial service providers, **21** insurer/re-insurer/representative bodies, **3** medical sector organisations and **1** other.

29. Of the **57** respondents, **9** referred to their responses to **Qs 1&2** (**3** defendant law firms, **5** insurers and **1** medical sector).

30. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

    - The main disadvantage would be to make the calculations more complex without increasing their accuracy. However, this is less likely to occur under a HoL approach (Actuary, Economists, Medical);
    - Revising dual/multiple rates would take longer and be more complex, introduce uncertainty and add delays and cost to the settlement/litigation process (Barristers, Cross-sector Representative Bodies, Defendant Lawyers, Economists, Insurers);

- Dual/multiple rates would prejudice younger and more seriously injured claimants, increasing the risk of under-compensation for this group (Barristers and Claimant Lawyers);
- Dual/multiple rates would be difficult for those with mental capacity issues to understand (Defendant Lawyers).
- Generally, agree with the disadvantages set out in the Call for Evidence (Medical);
- Changing to a dual/multiple rate may only benefit a small group of claimants and disadvantage the rest (Claimant Lawyers);
- It would add complexity and create uncertainty as to right rate to use, causing delays in settlements and making it more difficult for legal representatives to provide advice and insurers to reserve accurately (Claimant Lawyers, Insurers);
- A single rate is easier to understand and apply and the current system is best in relation to adhering to the 100% compensation principle (Insurers);
- If the short-term rate is not set too low, the duration of the rate not too long and that they reflect relevant returns there are no disadvantages from dual rates, but multiple rates based on HoL would be too complex and would create delays and uncertainty (Insurers); and
- Setting dual/multiple rates is a more complex process for largely similar outcomes and better use of PPOs can address some of the issues arising from using a single rate (Insurers).

Effects on implementation of a Dual/Multiple Rate

31. Comments were sought from respondents on the degree to which the implementation of a dual/multiple PIDR would create challenges for the personal injury sector. Specifically, whether it would impose new financial burdens, or whether it would be relatively easy for practitioners to reformat their existing systems.

32. For example, what challenges would be created by the need to handle claims under a new process including calculating the total damages payable, updating the Ogden tables used and what training would be required for practitioners and/or the judiciary to operate effectively under a new system.

Summary of responses received to questions 10, 11 and 12:

Question 10: What do you consider would be the specific effects on implementing and administering the discount rate if a dual/multiple rate is introduced?

33. **50** stakeholder submissions were received in relation to question 10. Responses were received from **2** actuaries, **2** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **8** defendant law firms/representative bodies, **1** economist, **4** financial service providers, **18** insurer/re-insurer/representative bodies, **2** medical sector organisations and **1** other.

34. Of the **50** respondents, **1** referred to their response to **Q11** (1 insurer). The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

- A duration-based approach could result in cliff edges, increased duration of settlement time, greater complexity in calculation and a need for new Ogden tables (Actuary, Claimant Lawyers, Medical);
- Additional practitioner training, new IT, new Ogden tables would be required, and more appeals and new satellite litigation will add cost to the process. (Claimant and Defendant Lawyers, Insurers, Financial);
- There will be uncertainty about both the new system and the frequency of the reviews of the different rates which could inhibit settlements and interim payments as well as effecting the level of investment risk that claimants at the end of their life could be expected to take. (Barristers, Claimant Lawyers);
- There are practical implications of having to calculate each element of a claim against two rates (some items may need to have this done multiple times), also injury schedules will increase in length leading to increased costs for preparing and agreeing settlements with defendants (Barristers);
- On introduction, all open cases would need re-calculating and new insurance reserving positions taken, there is also potential for balance sheet stress and the need for additional Government support (Insurers);
- A HoL multiple rate could lead to additional satellite litigation due to the uncertainty as to how specific items should be categorised (Cross-sector Representative Bodies);

- A duration-based rate would be ok to implement but HoL would be far harder and would need guidance on how the rates are derived (Insurers); and
- To make a change worthwhile, the benefits of greater accuracy must be clear and greater than the cost of the additional complexity, this condition is likely to be satisfied by the HoL process but not by a dual rate by duration system (Economists).

Question 11: In addition to specific effects, do you consider there will be additional consequences as a result of implementing a dual/multiple rate?

Please give reasons with accompanying data/evidence if possible.

35. **54** stakeholders responded to question 10. Responses were received from **3** actuaries, **2** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **8** defendant law firms/representative bodies, **1** economist, **4** financial service providers, **20** insurer/re-insurer/representative bodies, **3** medical sector organisations and **1** other.

36. Of the **54** respondents, **5** referred to their responses to **Q10** (**1** cross sector representative body, **1** financial services provider and **3** insurers). The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

    - A duration-based approach will divert attention away from the underlying issues including assessment of mortality (Actuary);
    - Seriously injured claimants will be prejudiced due to reduced lump sums and increased risks of funding shortfalls before death as a consequence of introducing a dual/multiple PIDR (Barristers and Claimant Lawyers);
    - In a duration based dual system cases will be delayed due to need for frequent reviews of the short-term rate with additional costs accrued from need to recalculate value of ongoing cases annually (Barristers and Claimant Lawyers);
    - Directions/court hearings may be delayed to account for need to negotiate/recalculate schedules related to rate changes; it would also be unfair for claimants to be penalised for rate changes leading to issues with Part 36 offers made/received (Claimant Lawyers);
    - There will be issues with claims within a duration-based system around the switching point and further uncertainties about the use of PPOs, there is also

potential to reduce public confidence in the claims process (Defendant Lawyers, Insurers, Medical);

- Consequences include greater uncertainty, the need for additional experts, increased costs, more gaming of the system and increased tailoring of evidence, incentivised dependence if relevant rate is favourable, additional satellite litigation, more delays and disputes (Defendant Lawyers, Economists);
- There will be higher tax rates for higher investment returns, higher fees for more active fund management, more frequent reviews, more recourse to experts, uncertainty and there will be a need for a contingency fund to cover bad timing of any collapse in market values in the long term (Economists);
- A time-based dual/multiple rate system may result in unequal insurance pricing across different industry sectors, depending on the level of exposure to short or long-term awards (Insurers); and
- Insurance companies and indemnifiers would need to reassess their actuarial provisions for existing and incurred, but not reported claims, there would also be increased volatility in their financial results, capital requirements and prices (Medical).

Question 12: If a dual/multiple PIDR were to be introduced would it be helpful to provide a lead in period to prepare processes, prepare IT changes etc. and if so, how long should this be?

Please provide reasons for your answer.

37. Overall, **52** stakeholders provided responses to question 12. Responses were received from **2** actuaries, **2** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **8** defendant law firms/representative bodies, **1** economist, **3** financial service providers, **20** insurer/re-insurer/representative bodies, **3** medical sector organisations and **1** other.

38. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

    - A lead in time of 6 to 12 months is necessary to prepare new Ogden tables, additional guidance, update software/IT systems and to evaluate/finalise settlements and/or existing Pt 36 offers (Financial, Medical, Barristers and Claimant Lawyers);

- An 18 month lead in time to prepare new Ogden tables, additional guidance, update software/IT systems and to evaluate/finalise settlements and/or existing Pt 36 offers (Claimant Lawyers);
- A short lead-in time would be sufficient for practitioners to come to terms with the new methodology, but not so much time as to allow for tactical manoeuvring to occur (Cross-sector Representative Body);
- 3 to 6 months is a sufficient lead in time, as too long a lead-in time would have a negative effect the settlement process (Defendant Lawyers, Insurers);
- A 3 to 6 month lead in time would be needed for a dual rate, but a longer period would be needed for multiple rates (Insurers);
- No specific comment on a lead in time other than to note that as soon as the new approach is announced it will be de facto in effect as claims will stall and reserves will need to be reset (Insurer);
- Little/no preparation will be needed to adopt a HoL multiple rates process as heads are already separated in the schedule of damages, and Ogden tables currently publish multipliers over a range of PIDRs (Economist, Actuary);
- A duration-based process would involve more work and different tables, which will need to change more frequently, so the Ogden Working Party would likely need a 12-month lead in time (Economist, Actuary); and
- A reasonable starting point might be a comparable time period to the notice of the last PIDR change (Medical).

Effects on investment returns/portfolio of a Dual/Multiple Rate

39. The Call for Evidence also set out several assumptions related to the expected behaviour of claimants in relation to their portfolio of investments. Assumptions included (but were not limited to) that:

    - claimants would select assets that paid regard to the expected period of their investment;
    - setting rates on the basis of duration would mean that different degrees of investment risk may be assumed by claimants in relation to different parts of the award; and
    - the portfolio for a short-term claimant would differ from that for a long-term claimant as they may take a more passive investment approach, while a long-term claimant may take a more active and riskier approach and consult a financial adviser.

40. Respondents were asked to consider these assumptions and provide evidence and comment.

Summary of responses received to question 13:

Question 13: What do you consider would be the effects of a dual/multiple rate on a claimant's investment behaviour and what would this mean for the design of a model investment portfolio?

41. Overall, **48** respondents provided submissions in relation to this question. Responses were received from **3** actuaries, **2** barristers, **11** claimant law firms/representative bodies (includes 5 identical responses from one law firm), **4** defendant law firms/representative bodies, **1** economist, **5** financial service providers, **19** insurer/re-insurer/representative bodies and **3** medical sector organisations.

42. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

- The effect of a dual or multiple rates is limited, as it is the overall amount of damages awarded which affects investment behaviours (Barristers, Claimant Lawyers, Financial);
- Some assumptions may need revising but it is doubtful that a dual rate will have much impact on investment behaviour. That said, more data on claimant investments is needed to be able to fully answer this question (Defendant Lawyers, Insurers);
- The investment risk related to a claimant's lump sum is the claimant's risk, greater use of PPOs may mitigate this (Claimant Lawyers);
- Depending on the level of the long-term rate, claimants would need to invest in a riskier portfolio for their long-term fund (Barristers, Defendant Lawyers, Insurers, Economists, Claimant Lawyers);
- To protect investments against issues of poor timing or a decline in market values, there would need to be a low-risk contingency fund (Economists);
- We expect investment advisors to advise claimants to reduce their risk to stock market fluctuations in the short-term but to accept a level of investment risk in the longer-term which would make 100% compensation more likely (insurers); and

- Under a dual rate, investments are likely to become more complex and costly. However, given importance of personal circumstances, the relationship with the PIDR is unclear (low PPO demand suggests adequate returns are currently being achieved) but in general, short-term claimants will invest differently than long-term ones (Insurers).

Effects on tax and investment management expenses of a Dual/Multiple Rate

43. Stakeholders were also asked to provide submissions on the assumptions to be considered relating to the tax and investment management expenses applicable to damages awarded arising from the adoption of a dual/multiple PIDR.

44. For example, are longer-term claimants vulnerable to increased tax costs given the higher level of the damages? Additionally, longer-term claimants have a larger pot and advisor charges/fund management fees may reduce as a percentage over time. So, in terms of investment management expenses, will short-term claimants be disadvantaged?

Summary of responses received to question 14:

Question 14: What do you think would be the effects of a dual/multiple rate on drawing up assumptions for tax and expenses when setting the discount rate?

45. In all, **45** stakeholders replied to question 14. Responses were received from **3** actuaries, **1** barrister, **6** claimant law firms/representative bodies, **6** defendant law firms/representative bodies, **1** economist, **6** financial service providers, **20** insurer/re-insurer/representative bodies, **1** medical sector organisation and **1** other.

46. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

    - The tax and management assumptions for the long-term element of a dual/multiple rate would need to be much higher than previously assumed (Actuary);
    - The current assumptions are incorrect and do not reflect a typical claimants investment practice (Barristers, Claimant Lawyers);

- It would be correct to use different deductions for tax and investment management in relation to a dual rate by duration process (Claimant Lawyers);
- If a HoL based multiple rates is implemented, the tax and investment management expenses should apply to all HoL as the claimant will not invest each HoL differently (Claimant Lawyer);
- The approach used in 2019 PIDR review is fine for both single and dual/multiple approaches and should only change if claimants can evidence a need to do so (Defendant Lawyers, Insurers);
- Implications arise where interest earned breaches the tax threshold and attracts a higher rate – the risk of such a breach increases where it's required that more of the cashflow is to be earned from the interest. A higher-risk higher-return investment strategy for the long-term rate can be expected to increase tax liability for claimants. (Economists); and
- Any impacts will be limited as properly advised long-term claimants already pay little tax while short-term claimants will be less exposed to tax risks, the current deduction is also too high and should be reduced for short-term claimants (Insurers).

Effects of inflation of a Dual/Multiple Rate

47. Historically, economic cycles can be expected to last for approximately 5 years, but longer cycles have been known to last for up to 10 years. Information was provided on the different inflationary measures such as RPI, CPI and ASHE and on the measure used during the last PIDR review in 2019.

48. The document also noted that the adoption of a dual/multiple rate system, especially one based on heads of loss, may give rise to calls for different inflationary measures and assumptions to apply to the short-term and the long-term rates. Additionally, it noted that if a single rate PIDR were maintained, there would also need to be consideration given to the appropriate inflation measure when a PPO is used.

49. The Call for Evidence therefore, sought views on whether longer-term claimants could be expected to be less susceptible to inflationary fluctuations than short-term claimants.

Summary of responses received to question 15:

Question 15: What do you consider would be the effects of a dual/multiple rate on analysing inflationary pressures and trends when setting the discount rate?

50. In summary, **44** stakeholders responded to question 15. Responses were received from **3** actuaries, **2** barristers, **6** claimant law firms/representative bodies from one law firm), **5** defendant law firms/representative bodies, **1** economist, **5** financial service providers, **20** insurer/re-insurer/representative bodies, **2** medical sector organisations and 1 other.

51. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

    - Forecasting long-term inflationary pressures would be harder and more speculative for a duration-based dual rate approach (Actuary);
    - Short term rates will create volatility so long-term forecasts should be used for setting both longer and shorter duration rates, but more data on claimant investments would be helpful (Defendant Lawyers, Insurers, Financial Advisors);
    - Short-term rates would be heavily impacted by inflation but long-term rates in a multiple rate regime could be confined to the care and case management HoL as this is subject to easily identifiable inflationary pressures (Barristers, Claimant Lawyers);
    - If a duration-based dual rate system rather than a HoL based system is chosen, then more weight should be given to earnings related losses to ensure fairer compensation for claimants receiving a full lump sum payment (Claimant Lawyers);
    - In a HoL based multiple rate system it would be appropriate to link care costs to ASHE SOC and all other HoL to CPI or RPI (Claimant Lawyers);
    - One of the additional costs involved in a split PIDR by HoL is the need to estimate real earnings growth e.g. earnings inflation above CPI inflation (Economists);
    - The Office of Budget Responsibility long-term forecast should be used to set the differential between CPI-based heads inflation and inflation in earnings-based heads of damages (Economists);

- A dual rate by duration requires long term (15-20 years) projection of returns on a higher risk portfolio but there is no reliable means of achieving this (Economists);
- The difficulties in forecasting inflation for different HoL is another reason for a duration-based dual rate to be introduced. This will allow broad assumptions regarding future inflation trends to be made allowing the rates to remain unadjusted in the longer term (insurers);
- It may be appropriate for the short-term rate to be calculated using CPI with the long-term rate using ASHE, as the majority of long-term losses relate to care and case management costs (Insurers); and
- A single rate is comparatively easy to assess and having different rates for different durations creates complexity as each assessment would be subject to greater uncertainty and increase the risk that decisions taken do not match economic reality (Insurers, Defendant Lawyers).

Effects on claimant outcomes of a Dual/Multiple Rate

52. Previously, the Government Actuary had advised that, overall, the calculations indicated that a dual rate would offer fairer claimant outcomes, including addressing the under-compensation of short duration claimants. Therefore, the Call for Evidence sought views and evidence on whether a dual/multiple rates could deliver fairer outcomes for a wider range of claimants or if this would place too much emphasis on catering for the needs of short-term claimants.

Summary of responses received to question 16 and 17:

Question 16: What do you consider would be the effects on claimant outcomes of a dual/multiple rate being adopted for setting the discount rate?

53. Submissions were received from **49** respondents regarding this question. Responses were received from **3** actuaries, **2** barristers, **8** claimant law firms/representative bodies (includes **2** identical responses from one law firm), **6** defendant law firms/representative bodies, **1** economist, **5** financial service providers, **21** insurer/re-insurer/representative bodies and **3** medical sector organisations.

54. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent

from that sector making that comment and does not mean all representatives of that sector shared the same views):

- Under a dual/multiple rate different groups will benefit or be disadvantaged relative to a single rate. An overall improvement would require addressing issues around mortality risk, the higher share of care costs in longer awards and the higher tax and investment management costs associated with them (Actuary);
- The overall impacts will depend on the approach adopted (e.g. dual by duration or multiple by HoL) and the economic conditions applicable at the time (Defendant Lawyers);
- A duration-based dual rate system will improve outcomes for short and long-term claimants, but short-term claimants are only a small proportion and care must be taken to ensure the whole system is not skewed in their favour (Defendant Lawyers);
- The damages paid under a dual/multiple rates system would be more accurate which will reduce the inflation risk (Economists; Insurers);
- Claimants have incentive to game the current single rate system by taking earnings-based heads of loss as a PPO and prices-bases HoL as a lump sum, introducing multiple rates by HoL would remove this incentive (Economists);
- For larger claims, the settlement length would significantly increase if multiple rates were used due to added complexity for all parties, this would also lead to claimants being less confident and increased costs (Insurers, Actuary);
- The approach should not be too complex to operate and either a (more familiar) single rate or alternatively a switched duration-based model to more accurately reflect the specific needs of short and long-term claimants, will bring us closer to 100% compensation - an Ontario-style approach will produce the fairest outcomes (Insurers);
- A duration based dual rate adds more risk to claimants than from a single rate with a higher long-term rate impacting negatively on claimants in the latter stages of their life expectancy, but if implemented the improvement in outcomes for short-term claimants is greater than the worse outcome for long-term claimants (Financial, Barristers, Claimant Lawyers);
- Short-term claimants would be better off under a dual rate system but long-term claimants would have an increased risk of running out of funds, leading to potential additional financial pressure on the State (Claimant Lawyers, Barristers); and
- Under a multiple HoL approach we would expect fairer settlements for both short and long-term claimants (Claimant Lawyers).

Question 17: If a dual/multiple rate was adopted would it be possible to return to a single rate in future reviews, or would a move be too confusing and complex and seen as irrevocable?

Please give reasons.

55. Overall, **50** stakeholders provided responses to question 12. Responses were received from **3** actuaries, **2** barristers, **9** claimant law firms/representative bodies (includes **2** identical responses from one law firm), **1** cross sector representative body, **6** defendant law firms/representative bodies, **1** economist, **6** financial service providers, **21** insurer/re-insurer/representative bodies and **3** medical sector organisations.

56. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

- There is no reason why we could not revert to a single rate although it could be disruptive and create additional costs, confusion and have a practical impact on behaviours (Actuary, Claimant Lawyers, Defendant Lawyers, Insurers, Medical, Financial);
- There should be an underlying presumption towards stability in the methodology used and going back to a single rate is not a good option without a convincing case that such a change would bring a net benefit (Economists, Insurers, Medical);
- Claimants require a period of stability and the current single rate system under the CLA 2018 should be allowed to bed in before further change is considered (Claimant Lawyers);
- There is no reason why a return to a single rate would be confusing or complex but regular switches between single and dual rate would lead to gaming, increased costs and uncertainty for reserving and planning (Insurers, Barristers, Defendant Lawyers); and
- It would be possible to return as all involved are familiar with a single rate system but if the decision is taken to move to a dual/multiple rate it should be clearly communicated that it may revert to a single PIDR in the future (Insurers).

Multiple Rates

57. In addition to the options around dual rates the Call for Evidence also considered the multiple rate system. There are no legislative barriers to awarding damages via multiple rates and the Damages Act 1996 (“the Damages Act") allows for the Lord Chancellor to “prescribe different rates for different classes of claim”, and also for courts to take different rates of return into account where appropriate.

58. The Call for Evidence noted that, arguably, multiple rates could provide a range of rates offering criteria to which different classes of case could be applied. This would address some of the criticisms of the PIDR as being a blunt instrument. Against this, given that even a dual rate approach could lead to confusion, complexity, litigation, costs and delays the prospect of multiple rates could increase such concerns.

59. Views were therefore also sought on whether the prospect of multiple rates could also lead to increased confusion, complexity and litigation as compared to a dual rate. Stakeholders were also asked for input on whether these issues also apply in relation to moving to a multiple rate process. In particular, whether they would be likely to, in the main, only be present around the initial implementation period or if they would be expected to last for a more extended period.

Summary of responses received to question 18, 19 and 20:

Question 18: What do you consider the respective advantages and disadvantages of adopting multiple rates would be, when compared with either a:

- **single rate; or**
- **dual rate.**

60. In total, **44** stakeholders submitted replies to question 18. Responses were received from **2** actuaries, **11** claimant law firms/representative bodies (includes 5 identical responses from one law firm), **1** cross sector representative body, **7** defendant law firms/representative bodies, **1** economist, **4** financial service providers, **17** insurer/re-insurer/representative bodies and **1** medical sector organisation.

61. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent

from that sector making that comment and does not mean all representatives of that sector shared the same views):

- A heads of loss approach would not involve much additional complexity, but a duration-based approach would, especially if more than two rates are adopted (Actuary);
- Multiple rates for HoL would be easy to calculate and would provide fairer outcomes but would be more complex leading to increased costs to the parties as well as delays in reaching settlements (Actuary, Claimant Lawyers);
- Multiple rates would generate problems which would not be justified by the greater degree of rate setting precision they would provide (Defendant Lawyers);
- The issues for dual and multiple rates are the same and claimants with short life expectancies would be disadvantaged from the constant reviewing of the short-term rate which also does not deal with the longevity risks (Claimant Lawyers);
- No more than two rates should be adopted as multiple rates would create even more complexity, longer settlement periods, greater use of court time, extra costs in calculating settlements and in explaining them to the parties, gaming and satellite litigation (Defendant Lawyers, Insurers, Medical);
- Multiple rates shift the balance too far against simplicity and efficiency, and are not compatible with the standardised tabular system applied by lawyers in England and Wales (Economists);
- A dual duration-based rate is relatively simple, but a more complex system will only benefit niche experts in the insurance supply chain among whom there is often little competition (Insurers); and
- The advantages of a multiple rate are that they would be better able to deal with different levels of inflation and the ability to apply PPOs to heads with similar inflation. Disadvantages include gaming, complexity, need for expert advice and delay to settlement (Insurers).

Question 19: If a heads of loss approach were adopted, what heads of loss should be subject to separate rates – care and care management costs, future earnings losses, accommodation, or any other categories?

62. **55** stakeholder submissions were received in relation to question 19. Responses were received from **3** actuaries, **3** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body,

8 defendant law firms/representative bodies, **1** economist, **5** financial service providers, **20** insurer/re-insurer/representative bodies and **3** medical sector organisations.

63. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

- The main losses are loss of earnings, care, case management, therapies, other medical services and household services with all other heads which are not strongly linked to real earnings growth indexed to CPI inflation (Economists, Claimant Lawyers);
- A way of identifying HoL needing a separate rate is to look at whether they would be linked to the ASHE SOC index if settled via a PPO (Claimant Lawyers);
- Care and case management only (Claimant Lawyers);
- Do not support the HoL approach, but if adopted, separate heads should be used only if reliable inflation measures exist and there is confidence that these will remain valid with the size of the head being sufficient to justify a different rate (Insurer);
- Four HoL suggested, which are care and case management, health care costs (other than cost of carers), future earnings loss and other - assuming the CPI inflationary measure is appropriate (Actuary);
- Do not support the HoL approach as PPOs enable a claimant to remove certain heads of loss from the lump sum settlement (Insurers);
- Do not support the HoL approach as there would be issues with inflation, more disputes/litigation and more frequent review, but if pursued it should have:
    - two heads - care and all other (Defendant Lawyers, Insurers);
    - three heads - care and case management, earnings, other (Insurers); and
    - six rates including a mix of two duration rates and the rest based on other heads (Defendant Lawyers).
- Our main concern is that such an approach would drive litigation activity around what losses are captured under the respective heads of loss which has implications both for the costs of litigation on all sides and delays for claimants seeking compensation (Medical);
- If a HoL approach were adopted, we consider that care and case management (which is often the largest head of loss) should be subject to separate rates (Financial, Defendant Lawyers, Barristers);

- No specific views offered but concern flagged in relation to the possibility that 'earnings loss' may be singled out for a higher PIDR (Barristers); and
- No view offered on single, dual or multiple rates but issue flagged regarding the impact on claimants of the often-delayed timing of accrued pension pay outs and how this affects the discount rate (Barristers).

Question 20: Introducing a dual/multiple PIDR could result in increased levels of complexity for both claimants and compensators. Do you agree with the assumption that this complexity will stabilise and ease once the sector adapts to the new process?

Please give reasons.

64. **56** respondents provided submissions in relation to this question. Responses were received from **3** actuaries, **2** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **8** defendant law firms/representative bodies, **1** economist, **6** financial service providers, **21** insurer/re-insurer/representative bodies and **3** medical sector organisations.

65. Of the **56** respondents, **7** referred to their responses to **Qs1&2** (**4** defendant law firms and **3** insurers). The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

    - The sector will adjust but additional complexity could create extra costs and delays to the settlement process (Actuary, Defendant Lawyers, Insurers, Medical);
    - Things will stabilise and ease over time, but calculators and tables will still be required to verify the results (Barristers);
    - In a dual rate system by duration the need for an ongoing yearly review of the short-term rate will cause complexity and uncertainty in the industry and will impact on claimants (Barristers, Claimant Lawyers);
    - There may be some easing, but the result may not be a better system as we need a PIDR which is stable and certain, and which provides fair outcomes for claimants (Claimant Lawyers);
    - Parties would become familiar with the system, but it would remain inherently more complex than a single rate (Defendant Lawyers, Insurers, Financial);

- Depends on approach adopted. A multiple HoL approach will create complexities which will not subside over time, but a dual rate duration-based approach is likely to settle down if it is not too complex (Defendant Lawyers);
- Added complexity is one-off and comparatively modest for the multiple HoL approach but there are doubts about the workability of a split PIDR by duration (Economists);
- There would be more complexity, but the impacts would stabilise over time for compensators/claimant representatives but not for claimants (Insurers);
- A well-balanced switched dual rate model will only be marginally more complex than the current single rate model (Insurer); and
- There will be an increase in complexity but the stability and fairness a dual duration-based rate provides will outweigh any of the short- or long-term costs required (Insurers, Medical).

Periodic Payment Orders

66. In addition to seeking stakeholder input on the issue of a dual/multiple PIDR, the Call for Evidence also included questions on the use of Periodical Payment Orders (PPOs) which may be paid in combination with, or as an alternative to, a lump sum award of damages to personal injury claimants. This is because PPOs remain relevant to the issue of any changes made in relation to damages for personal injuries.

67. Therefore, we welcomed submissions, data and/or other evidence from stakeholders relating to the use of PPOs since the 2019 PIDR review. In addition, we also sought input on a specific issue around the application of inflation to PPOs.

Summary of responses received to questions 21 and 22:

Question 21: The Government remains interested in exploring the use of PPOs in relation to high value personal injury settlements. We would therefore welcome any submissions, data and/or evidence stakeholders may have in relation to the effective use of PPOs.

68. **53** stakeholders responded to question 21. Responses were received from **2** actuaries, **2** barristers, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **7** defendant law firms/representative bodies, **1** economist, **6** financial services providers, **19** insurer/re-insurer/representative bodies, **3** medical sector organisations and **1** other.

69. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

- PPOs are generally less attractive to insurers due to their specific financial considerations e.g., the unavailability of excess loss reinsurance. Despite being preferred by many claimants, it's unusual for a PPO to be agreed outside of NHS clinical negligence claims (Cross-sector Representative Bodies, Actuary);
- PPOs can offer security to claimants but should not be forced on them as they don't always want one (Cross-sector Representative Bodies);

- NHS Resolution and the Motor Insurers' Bureau regularly use PPOs, but the Government should also encourage greater take up and use of PPOs by general insurers (Claimant Lawyers, Barristers);
- Sometimes a low PIDR makes a lump sum more attractive than a PPO, as it affords greater flexibility and can be sufficient to generate the required income. Lump sums can also provide flexibility of use as well as a clean break with the defendant and take account of any contributory negligence (Cross-sector Representative Bodies, Defendant Lawyers);
- We do not agree that a higher differential PIDR be used for cases with a PPO as this will discourage use of PPOs for no policy benefit (Barristers, Claimant Lawyers);
- PPOs should be incentivised, so they are the norm, not the exception, and any PIDR change which makes them less attractive would be a backward step (Cross-sector Representative Bodies);
- Claimants like the certainty of PPOs but they are routinely opposed by insurers, but a lower PID for care and case management costs would provide an incentive for insurers to offer more PPOs (Barristers);
- PPOs are beneficial to claimants as they provide regular payments which enable seriously injured claimants to meet their care cost needs and remove the risks posed by life expectancy, inflation and tax (Claimant Lawyers);
- Demand for PPOs has fallen since the 2017 PIDR change, and usage is still very low due to the current low discount rate (Defendant Lawyers, Barristers);
- PPOs are mainly used by those with low capacity and if a dual rate reduced long-term over-compensation, demand for PPOs might rise (Defendant Lawyers, Insurers);
- If more PPOs were offered, it would reduce uncertainty for claimants and the impact of the risks of managing and investing a lump sum (Claimant Lawyers);
- PPOs offer many advantages to claimants (with NHSR and MIB more likely to offer them than an insurer) but the differential won't be addressed by dual/multiple rates as the issue is the cost to the insurer of reserving for an earnings-indexed annual payment over a lifetime (Economist);
- The level of the PIDR has little influence on the decision of a claimant to opt for a PPO and it not desirable to set the PIDR in a way that encourages the use of PPOs. This implies setting it at a level which artificially reduces the size of a lump sum (Insurers);
- CPI+1 is appropriate for the PIDR even in cases involving a PPO as it is rare for a PPO to be for any other HOL than care and case management costs (Claimant Lawyers);

- Claimants are reluctant to reject Part 36 offers even if they would prefer a PPO, as if they did not better the offer they may face a high costs order, Part 36 of the Civil Procedure Rules should be amended to deal with this (Claimant Lawyers);
- Re-insurers view PPOs unfavourably, due to the uncertainty of the final settlement figure and the ongoing costs of monitoring. Any increase in their usage may lead to reduced re-insurance availability and increased re-insurance costs (Insurers);
- Administration costs related to PPOs are high relative to lump sum payments the introduction of a vehicle to transfer their liabilities could address this, but overall, we don't agree a change in approach on PPOs is needed (Insurers);
- Claimants need a balance between a lump sum and a PPO to pay for equipment up front, but insurers are reluctant to offer PPOs (Financial); and
- A lump sum is likely to be inaccurate for the majority, if not all, cases and a PPO is more likely to achieve full compensation with less risk for either side. The only variables are the manner and mechanism of indexation and the need to keep up with care costs (Financial).

Question 22: Do you agree that using a higher PIDR to calculate the real rate of return in settlements which include a PPO element would result in a more appropriate way to adjust nominal investment returns for future inflation?

Please give reasons.

70. Submissions were received from **49** respondents regarding this question. Responses were received from **2** actuaries, **1** barrister, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **1** cross sector representative body, **8** defendant law firms/representative bodies, **1** economist, **6** financial service providers, **16** insurer/re-insurer/representative bodies, **2** medical sector organisations and **1** other.

71. Of the **49** respondents, **5** referred to their responses to **Q21** (1 claimant solicitor firm, 36 Insurers and 1 medical sector). The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

    - The issue would not arise using a HoL approach but for a duration-based approach or a single rate, the argument is not self-evident and could also complicate the settlement process and deter claimants from seeking PPOs (Actuary);

- If a substantial part of the overall award of damages were made subject to a PPO and if the heads of loss in the lump sum element would more appropriately attract a different PIDR, there would be a case for adjusting the PIDR to reflect that reality, but the lump sum would be difficult to set (Cross-sector Representative Body);
- No, the PPO element deals with long-term more stable HoL but would leave short-term HoL which are susceptible to short-run volatility (Barristers);
- No, fairest way would be to have different rates for different HoL, such as care and case management, which solves the problem of needing to allow for earnings inflation in the general PIDR removing the risk of over-compensation (Claimant Lawyers);
- Yes, by applying a deduction in the PIDR calculation for the differential between CPI and earnings. However, there is a potential risk of 'double counting' which could lead to over-compensation (Defendant Lawyers);
- Yes, in our view, a higher rate for settlements which include a PPO element would reduce the risk of over-compensation (Medical);
- No, it would create additional complexity and reduce demand for PPOs further and may not be possible under the current law (Defendant Lawyers, Insurers);
- Claimants for whom PPO is inappropriate would be unfairly disadvantaged (Economists);
- Yes, a PPO removes a significant proportion of any investment risk from the claimant and places it on to the compensator but more data on investments is needed to better understand the proposal (Insurer);
- There is a lack of transparency about the inflationary assumptions used in the current PIDR (Insurers); and
- There should be no barrier to PPOs and the PIDR needs to be calculated in a fair and reasonable manner (Financial).

Equality Issues

72. The core issue in the Call for Evidence was to explore the option of adopting a dual/multiple PIDR. Section 149 of the Equality Act 2010 ("the Act") requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

73. In carrying out this duty, Ministers and the Department must pay "due regard" to the nine "protected characteristics" set out in the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity. Therefore, the Call for Evidence included an analysis of the equality impacts associated with the introduction of a dual/multiple PIDR and sought the views of respondents on this issue.

Summary of responses received to question 23:

Question 23: What impact would a dual/multiple rate system have on protected characteristic groups, as defined in the Equality Act 2010?

74. In all, **37** respondents provided submissions in relation to this question. Responses were received from **2** actuaries, **11** claimant law firms/representative bodies (includes **5** identical responses from one law firm), **5** defendant law firms/representative bodies, **1** economist, **5** financial service providers, **12** insurer/re-insurer/representative bodies and **1** other.

75. The following list is a summary of the points made in response to this question (please note that the sectors listed against each point are indicative of one or more respondent from that sector making that comment and does not mean all representatives of that sector shared the same views):

- All claimants should be treated equally but a duration-based approach could discriminate against those with more severe disabilities (Actuary, Defendant Lawyers, Insurers);

- There will be no additional impacts for any protected characteristic group (Defendant Lawyers);
- Claimants have the common characteristic of generally being disabled by their injuries and a change in the methodology of the PIDR would generate gains and losses across all claimants (Economists);
- The longer the claimant's life expectancy, the greater the damages awarded, and the greater the additional investment risk. So, the claimants with the greatest care needs are likely to be those most damaged by their injuries (Economists);
- An overly complex approach will mean all claimants will find the process harder to understand but those with limited capacity will be most impacted (Insurers);
- If compensation for the loss of future earnings is linked to prices instead of the earnings inflationary measure, this could be discriminatory against many seriously injured claimants whose injuries mean they are disabled (Claimant Lawyers);
- Claimants are legally represented so any change will have no impact (Insurers);
- A duration-based dual rate will benefit shorter-term claimants/those with shorter life expectancy, the latter being more common amongst older claimants (Insurers); and
- There is a possibility the most seriously injured will have at least one protected characteristic and will be adversely impacted by a change to the PIDR (Claimant Lawyers).

Summary and Next Steps

76. The evidence gathered from this Call for Evidence has been reviewed by the Ministry of Justice and this response document provides a high-level summary of the submissions provided by stakeholders. **As previously stated, the Government will not be recommending a policy position or deciding on whether a dual/multiple PIDR should be introduced at this time**.

77. All submissions and additional evidence submitted in response to this Call for Evidence exercise will be provided to the PIDR Expert Panel[5], which is required by the Damages Act, as amended by the CLA, to advise the Lord Chancellor on the rate review. The responses and evidence received will be passed on in full to the panel who will consider them prior to providing advice to the Lord Chancellor.

78. The feedback and evidence provided by respondents to this Call for Evidence will, however, be used to inform the options available to the Lord Chancellor as part of the next review of the PIDR which under the statutory provisions included in the Damages Act is due to be commenced by 15 July 2024. Further information in relation to this review will be announced in due course.

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[5] Following the completion of a rigorous appointment exercise, the Lord Chancellor announced on 27 June 2023 the statutory PIDR Expert Panel members. Further information in relation to the work of the Expert Panel and the next review of the PIDR can be found here: https://www.gov.uk/guidance/personal-injury-discount-rate

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://www.gov.uk/government/publications/consultation-principles-guidance

List of Respondents*

7 Bedford Row
Association of Consumer Support Organisations
Admiral
Adroit Financial Planning
Advantage Insurance
Ageas Insurance
Allianz
American International Group UK Ltd.
Association of Personal Injury Lawyers
Arch Re
Association of British Insurers
Aviva
Axa
British Insurance Brokers Association
Browne Jacobson LLP
Capsticks Solicitors LLP
Chase Devere
Clyde & Co
Consultant
DAC Beachcroft
Deka Chambers
Direct Line Group
DWF
esure
Everest
Exchange Chambers
Forum of Complex Injury Solicitors
Forum of Insurance Lawyers
Frenkel Topping
Gallagher Re
Great Lakes
Hilton Sharp & Clarke Forensic Accountants
Hugh Gregory
Institute and Faculty of Actuaries
International Underwriting Association
Irwin Mitchell
Kennedys
Keoghs
Law Society
LV=
Lyons Davidson Solicitors
Medical & Dental Defence Union of Scotland
Medical Defence Union
Medical Protection Society
Motor Insurers' Bureau
Munich Re
NFU Mutual
NHS Resolution
Personal Financial Planning
Personal Injury Barristers Association
RSA
Society of Clinical Injury Lawyers
Somers
St John's Chambers
Stewarts Law
Thompsons Solicitors LLP
Zurich

*List includes responding organisations only - no individual stakeholder respondents are named here