



Ministry
of Justice

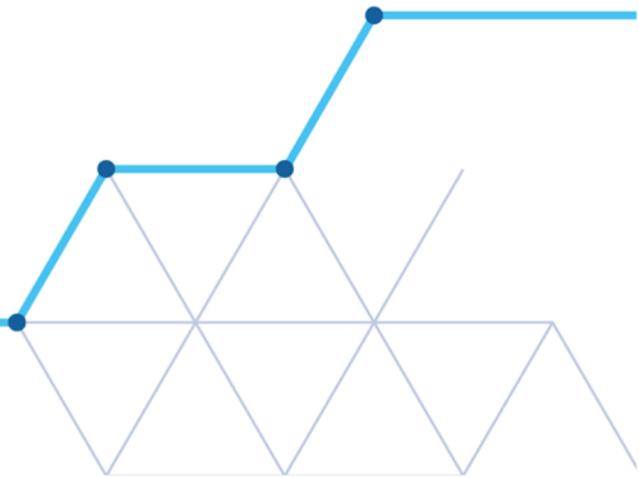
Setting the Personal Injury Discount Rate

A Call for Evidence

This call for evidence begins on 6 December 2018

This call for evidence ends on 30 January 2019

Protecting and advancing the principles of justice



Contents

Foreword	3
Executive summary	4
Background	6
Evidence requested	9
Questionnaire	18
About you	21
Contact details/How to respond	22

Foreword

SETTING THE PERSONAL INJURY DISCOUNT RATE: A CALL FOR EVIDENCE

Awards of damages for serious and long-term injuries are intended to provide victims of these life-changing events with full and fair financial compensation for all the expected losses and costs caused by their injuries. The application of the personal injury discount rate is an essential part of calculating the appropriate amount of compensation in many of these cases.

Calculating what the personal injury discount rate should be is a demanding and technical exercise, but it is vitally important to many of the most vulnerable individuals in our society that the rate is set fairly and accurately. It is the duty of the Lord Chancellor to set the rate and, to do this, I need to have up to date evidence of the investments available to victims, the investments that they make and the other matters that I have to take into account in setting the rate.

That is why I am launching this call for evidence today.

The call for evidence explains the evidence that is needed and sets out a series of questions to help you prepare your response, but you may answer as many or as few as you wish.

I would urge everyone who can provide evidence to do so. Your contribution may make the difference between victims of dangerous driving, clinical negligence or workplace accidents receiving the right compensation and their awards being inadequate or excessive. Excessive compensation unfairly diverts money that could be spent on hospitals and other frontline public services and drives up the cost of insurance, particularly for motorists.

The evidence you send will be used to help inform the decisions that I will have to take in setting of the discount rate. I am very grateful to everyone who takes the time to consider the issues and to respond.

Yours sincerely



RT HON DAVID GAUKE MP,

LORD CHANCELLOR AND SECRETARY OF STATE FOR JUSTICE

Executive summary

1. The purpose of this paper is to obtain evidence to inform the decisions to be taken by the Lord Chancellor in the first review of the personal injury discount rate (“the discount rate”) following the enactment of the Civil Liability Bill (“the Bill”)¹.
2. The Bill has completed its passage through Parliament and is currently awaiting Royal Assent. When enacted, it will make important changes to the way that the discount rate prescribed by the Lord Chancellor under the Damages Act 1996 is set. These changes are intended to ensure that the discount rate reflects the return that, in the opinion of the Lord Chancellor, a personal injury claimant could reasonably be expected to receive from investing a lump sum award of damages for future financial loss in a diversified low risk portfolio.
3. The Bill provides that in setting the rate the Lord Chancellor will have both to consult specified persons² and to have regard to specified factors. These factors include the actual returns available to investors and the actual investments made by claimants; as well as taxation, inflation and investment management costs.
4. It is therefore important that the Lord Chancellor and the statutory consultees have the best available evidence as to these factors and any other relevant matters on which to base their conclusions.
5. Notwithstanding the extensive information received through the responses to earlier consultations, advice and the related analysis, the Ministry of Justice (“MOJ”) would like to improve its existing evidence ahead of the first review of the rate following the enactment of the new legislation.
6. This call for evidence is intended to assist in this process by obtaining further up-to-date data and information regarding a wide range of topics relevant to the setting of the rate.
7. The call for evidence invites consultees to provide evidence of the following issues relating to the setting of the discount rate:
 - Investments available to claimants
 - Investment advice provided to claimants
 - Investments made by claimants
 - Taxation
 - Inflation

¹ <https://www.gov.uk/government/publications/civil-liability-bill>

² For the first review of the discount rate under the new legislation, the statutory consultees are the Government Actuary and HM Treasury.

- Investment management costs
 - Model investment portfolios
 - Other considerations
8. To ensure that the relevant data and information is available in time for the first review to take place within the timescales proposed under the Bill, the Ministry of Justice has decided to issue this call for evidence before the Bill is enacted.
 9. The responses will form part of the evidence to be considered by the Lord Chancellor in determining the discount rate on the first review under the new law. They will also be available to the statutory consultees in preparing their advice to the Lord Chancellor during this process.
 10. MOJ is most grateful to everyone who responds to this call for evidence.
 11. A Welsh language summary will be made available at <https://consult.justice.gov.uk/>.

Background

12. MOJ has taken extensive steps to gather evidence relevant to the setting of the discount rate in recent years through public consultation and research, which has already been summarised and published, including responses to the following previous formal consultations:
 - 2012 consultation: Damages Act 1996: the discount rate – how should it be set;³
 - 2013 consultation: Damages Act 1996: the discount rate – review of the legal framework;⁴ and
 - 2017 consultation: The personal injury discount rate – how should it be set in future.⁵
13. In 2015 MOJ commissioned an independent panel of experts to provide a report on the setting of the discount rate to assist the Lord Chancellor, and his counterparts in the devolved administrations, in their review of the responses to the first of the two consultation papers issued by the Ministry of Justice in 2012 and 2013. The panel's report was published in 2017.⁶
14. In 2017 MOJ also commissioned and published a report, prepared by the Government Actuary's Department ("GAD") analysing the possible outcomes for claimants in receipt of lump sum awards of damages for future financial loss under different illustrative discount rates⁷. These outcomes were intended to reflect the way that claimants invested their awards and the way in which they were advised to do so.
15. On 7 September 2017, the Government announced its intention to bring forward legislation to create a fairer and better system for the setting of the discount rate and published draft legislation⁸ to give effect to its proposals for pre-legislative scrutiny. This followed a consultation issued on 30 March 2017⁹ on possibilities for how, when and by whom the discount rate should be set. A response to the consultation was also published on 7 September 2017¹⁰. The Justice Select Committee ("JSC") published its report on the draft legislation on 30 November 2017¹¹.

³ <https://consult.justice.gov.uk/digital-communications/discount-rate/>

⁴ <https://consult.justice.gov.uk/digital-communications/damages-act-1996-the-discount-rate-review-of-the/>

⁵ <https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/>

⁶ <https://consult.justice.gov.uk/digital-communications/discount-rate/results/discount-rate-report.pdf>

⁷ <https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/gad-analysis.pdf>

⁸ <https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/personal-injury-discount-rate-command-paper-web.pdf>

⁹ https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/supporting_documents/discount-rate-consultation-paper.pdf

¹⁰ <https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/discount-rate-response-consultation-print.pdf>

¹¹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/374/374.pdf>

16. The Government published its response to the JSC on 20 March 2018¹². In the response, the Government said that it would seek further evidence to inform the first review of the discount rate under the new law. In particular, the Government promised that MOJ would issue a further call for evidence and commission GAD to carry out further research and analysis of the assumptions to be made about inflation, tax and management costs.
17. On the same day, the Bill was introduced into the House of Lords. Part 2 of the Bill gives effect to the Government's proposals as to how, when and by whom the discount rate should be set. The Bill has now finished its passage through the Lords and Commons with the final stage, Lords Consideration of Commons' amendments, taking place on 20 November.
18. The principal requirements of Part 2 of the Bill are:
 - The Lord Chancellor must start the first review within 90 days of the Bill receiving Royal Assent and must determine the rate within 140 days of the review commencing. Subsequent reviews will take place at least once every five years.
 - For the first review, the Lord Chancellor must consult with both the Government Actuary and the Treasury. For second and subsequent reviews, the Lord Chancellor must consult with both an expert panel chaired by the Government Actuary, and the Treasury.
 - The Lord Chancellor must make the rate determination on the basis that the prescribed rate of return should be the rate that, in his or her opinion, a recipient of a lump sum award of personal injury damages for future financial loss could reasonably be expected to achieve if the damages were invested for the purpose of securing that they would meet the losses and costs for which they were awarded, at the times at which they fall to be met, and would be exhausted at the end of the period for which they were awarded.
 - In making this assessment the Lord Chancellor may make assumptions but is required to assume that:
 - the recipient is properly advised on the investments;
 - the damages are awarded as a lump sum; and
 - the damages are invested in a diversified portfolio, using an approach to investment that involves more risk than a very low level of risk, but less risk than would ordinarily be accepted by a prudent and properly advised individual investor.
 - In making the rate determination, the Lord Chancellor may take other factors into account but must:
 - have regard to the actual returns that are available to investors;

¹² <https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/personal-injury-discount-rate-jsc-govt-response-web.pdf>

Setting the Personal Injury Discount Rate Call for Evidence

- have regard to the actual investments made by investors of relevant damages;
and
- make appropriate allowances for taxation, inflation and investment management costs.

Evidence requested

19. MOJ invites consultees to provide evidence that they consider may be relevant to the setting of the discount rate under the Bill and, in particular, to reply to the specific questions set out below.

Investments available to investors

20. The Bill provides that for the purposes of determining the rate the Lord Chancellor must have regard to the actual returns that are available to investors. Accordingly, we would like to obtain evidence of the asset classes that are available to investors in practice.
21. Although we are interested in evidence about asset classes available to all investors, we are particularly interested in assets likely to be available in practice to personal injury claimant-investors. We are therefore interested in identifying asset classes that are not in practice available to claimant-investors. For example, the response to the 2017 consultation¹³ noted that it is not generally practical or efficient for individuals to invest directly in certain asset classes (such as index-linked gilts, derivatives, commercial property or private equity) due to issues of scale or liquidity, although indirect investment in these asset classes through index funds is more widely available. When considering an appropriate investment strategy for the setting of the discount rate, it is therefore important to consider the investments which are available to claimants in practice.

Q1:

- (a) What asset classes are generally available to claimants investing lump sum damages and suitable for the hypothetical “low-risk” investor envisaged in the setting of the discount rate?**
- (b) What asset classes are not generally available in practice to such an investor, for example due to reasons of scale, liquidity, cost-efficiency or unsuitability?**

Investment advice provided to claimants

22. The Bill provides that for the purposes of determining the rate the Lord Chancellor must assume that the recipient of relevant damages is properly advised on the investment of the damages. We therefore wish to obtain evidence to help the Lord Chancellor assess what advice would be considered “proper” for such an investor.

¹³ <https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/discount-rate-response-consultation-print.pdf>, see Q 4 and 5.

23. The 2017 consultation¹⁴ requested evidence regarding how, during settlement negotiations, claimants are advised to invest lump sum awards of damages and the reasons for doing so. Whilst some respondents provided suggestions about what investment advice claimants may receive, for example to adopt a low-risk investment strategy, many responses said that financial advice during negotiations is more typically focused more on the type of settlement – either lump sum or Periodical Payment Order (“PPO”) – and there was relatively little evidence provided on investment strategy advice for any resultant lump sums.
24. Responses to earlier consultations have noted that investment advice is influenced by a range of factors, some of which are specific to individual claimants. Such factors include the age of the recipient and the projected future life expectancy – these issues having a large bearing on the duration for which the fund will be invested – and the anticipated cash flow requirements of the recipient during the expected period of the loss being compensated. We are keen to understand how these and other relevant factors influence the investment advice provided to relevant individuals.
25. We are interested in obtaining information on the investment strategies that claimants are advised to adopt – whether such advice is given during initial settlement negotiations or subsequently after claims have been settled – and the extent to which individual circumstances play a role in investment advice provided to claimants.
26. We ask for evidence of how claimants actually invest below, but in the context of assessing what is “proper” advice, we would be interested to know the extent to which claimants follow the advice they have been given and the reasons why they might not do so.
27. Our understanding is that the cost of financial advice to the claimant during negotiations and litigation is generally met by the defendant as part of the general settlement of legal costs and disbursements. We would like to assess whether this understanding is correct and to gain an impression of the sums of money involved as this may be a relevant factor to take into account in the setting of the discount rate.

Q2:

- (a) Please provide information regarding how recipients of lump sum damages awards for future financial loss are typically advised to invest, when they are normally advised and why?**
- (b) Is there any regulatory material or guidance available to those providing such advice? If so, what?**
- (c) Does such guidance help advisers achieve a suitable and consistent approach?**
- (d) Do claimants follow the advice given? If not, please explain to what extent and why.**
- (e) Is the cost of pre-settlement financial advice given to the claimant paid by the defendant as part of the settlement? What sums are involved?**

¹⁴ <https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/discount-rate-response-consultation-print.pdf>, see Q 3.

28. Investment conditions change over time, and the environment for lump sum damages awards has changed in recent years following the change to the discount rate in March 2017 and will change again when the new process for future reviews is instituted. We would like better to understand how investment advice and investment behaviours change over time to reflect developing financial conditions.

Q3:

(a) To what extent do changes to financial conditions affect investment advice provided to claimants who receive a lump sum award?

(b) Is there any evidence available to show how the change to the discount rate in March 2017 directly affected investment advice provided to claimants?

Investments made by claimants

29. In setting the discount rate the Lord Chancellor must have regard to the actual investments made by investors of personal injury damages. We therefore want to obtain up-to-date evidence of how claimants invest, whether or not they are advised to invest in that manner. We would particularly welcome any sources of balanced reliable data on investments that claimants have actually made.

Q4:

(a) Please provide evidence of how recipients of lump sum damages awards actually invest, and why?

(b) What sources of balanced reliable data on investments actually made by claimants are available?

30. We acknowledge that individual circumstances and personal preferences may have a significant bearing on investment decisions, which can vary hugely between different individuals and can lead to very different outcomes. We also acknowledge that the discount rate applicable at the time of the settlement will affect the size of lump sum awarded and this may also influence investment decisions, as noted in responses to the 2017 consultation¹⁵. It would be very useful to us in considering other factors that the Lord Chancellor may take into account in the setting of the rate to understand the reasons why claimants actually invest in the way they do.

31. When analysing the investments made by claimants, we recognise the range of characteristics of different types of claimants – for example, how these vary by age, claim size, care needs and other features. We would like to understand how such factors affect investment behaviour and to consider how best to aggregate the data to help develop an appropriate overall discount rate.

32. Analysis carried out by GAD for MOJ in 2017 was based upon a notional claimant who has to meet damages of £10,000 per annum (linked to RPI) for an assumed period of

¹⁵ <https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/discount-rate-response-consultation-print.pdf>, see Q 2

30 years. Further data about the distribution of the expected length of claim awards, split by different size awards, would also be useful in order to provide further context.

33. Accordingly, we would be interested in data which helps us more fully to understand the range of such circumstances encountered by claimants and to consider the most appropriate time horizons to consider. In particular, we would be interested in information on the profile of claimants which shows how the total lump sums awarded are distributed by age and gender, the average periods for which lump sums are typically invested, how the claims of loss are split between loss of earnings and care needs, and how these various factors affect investment decisions made by individuals.

Q5:

- (a) What data is available regarding the profile of claimants of lump sum damages?**
- (b) How are claims of loss typically split between loss of earnings and care needs for notional investors with lump sums of around £0.5m, £1.0m and £1.5m respectively?**
- (c) Is a period of 30 years a reasonable overall average projection period to consider when analysing long-term investment returns from such portfolios, or would an alternative period or a range of periods be more suitable, and if so, which and why?**

Q6:

What evidence is available to illustrate how the following characteristics affect investment behaviours in practice?

- (a) Age and expected future lifetime (e.g. longevity risk)**
- (b) Size of lump sum**
- (c) Initial and ongoing funding requirements (e.g. care or accommodation costs)**
- (d) Existence and requirements of financial dependants (e.g. spouse, civil partner, children)**
- (e) Other protected characteristics under the Equality Act 2010 (race, sex, disability, sexual orientation, religion and belief, marriage and civil partnership, gender reassignment, pregnancy and maternity);**
- (f) Availability of PPOs or other sources of income.**

Taxation

34. The Bill requires the Lord Chancellor in determining the rate to make such allowance for taxation as he or she thinks appropriate. Claimants are required to pay appropriate levels of taxation on their investment returns – for example through income tax and capital gains tax – and accordingly, allowance should be made for this when considering the total returns available from their investments.

35. The level of taxation payable by individuals on their investment returns depends upon a number of factors, such as the size of fund, total other income levels, expenditure requirements (for example, forced sales and crystallising capital gains) and how their investments are structured. Accordingly, average tax rates can be expected to vary significantly between different individuals.

Q7:

- (a) What taxation rates typically apply to claimants on their investment returns, and how does the distribution of these vary across ranges of different claimants?**
- (b) How is the effect of taxation taken into account in determining what investments to make?**
- (c) What might typical average current tax rates be for notional investors with lump sums of around £0.5m, £1.0m and £1.5m respectively (and no other taxable income)?**

Inflation

36. The discount rate is currently set in real terms, representing a rate of return over and above inflation as measured by the Retail Prices Index (RPI). The legislation requires such allowance to be made for inflation as the Lord Chancellor considers appropriate.
37. In practice, different elements of damages are subject to different inflationary pressures over time, many of which are likely to be different from inflation as recorded in the RPI. For example, salaries for carers will be affected by earnings inflation, which has typically been greater than RPI over the long-term. An earnings inflation measure might also be a closer match than RPI for assessing potential loss of future earnings. However, the inflation measure for other relevant care costs – for example, those related to medical supplies – may be more aligned to the Consumer Prices Index (CPI), which has generally been lower than RPI over the long-term. Other indices may also be relevant when considering long-term cash flow requirements of claimants, for example, the CPIH index includes allowance for inflation of housing costs.

Q8:

What evidence is available regarding the average long-term rates of inflation which apply to costs typically experienced by claimants in aggregate, and how do these compare to each of RPI, CPI, CPIH and earnings inflation?

Investment management costs

38. The Bill requires the Lord Chancellor in determining the rate to make such allowance for investment management costs as he or she considers appropriate.
39. We understand that all claimants who take investment advice will be subject to expense charges related to the setting up and management of their asset portfolio. These costs can include the following different types:

- *Financial adviser fees* – charges levied by independent financial advisers for providing advice about what investments or funds claimants should invest in.
 - *Discretionary fund management fees* – charges deducted directly by the funds which are invested in.
 - *Custodian/platform fees* – charges payable to the platform that administers the investments.
 - *Trading costs* – costs relating to buying and selling assets, such as bid/offer spreads, commission and dealing costs.
 - *VAT* – payable on fees.
40. Total costs may vary considerably between claimants, depending on their approach – for example, around the level of advice obtained, the diversity of the assets included in the portfolio and extent to which funds are actively or passively managed – which is an individual choice for claimants. VAT should also be taken into account.
41. The level of investment management costs experienced by claimants in practice may be hard to establish – for example, some funds will deduct charges from the net yield on the returns. Additionally, the extent of overall investment costs will also depend upon the extent to which claimants manage their investment in different ways.
42. Nonetheless, for the purposes of setting the rate, we wish to obtain evidence about the investment management costs that are incurred by claimants.
43. We anticipate that there will be a wide range of services that claimants could in principle purchase. In setting the rate it may therefore be relevant to consider as an additional factor what investment management costs a “properly advised” claimant investor would be expected to incur. This may turn on the extent to which a properly advised claimant would be assumed to choose to invest in a manner requiring active or passive investment. We are therefore also interested in evidence of the extent to which claimants can properly reduce their exposure to investment management costs.

Q9:

- (a) What investment management costs would notional investors with lump sums of around £0.5m, £1.0m and £1.5m respectively pay in practice and how are these costs broken down into different areas?**
- (b) To what extent would a “properly advised” investor need to incur all of these costs, for example in relation to active or passive investment of funds?**

Model investment portfolios

44. The Bill requires the discount rate to be set on certain assumptions having regard to various factors. This call for evidence is intended to obtain further data to help with the relevant analysis. However, we accept that there may be limits to the amount of empirical evidence that it is realistic to expect to be collectable and that it may be necessary to consider in the course of setting the rate whether account should be taken of more hypothetical information alongside the further evidence gathered. We are therefore interested in views on what an appropriate theoretical investment portfolio assumption would be, based on the assumption in the draft legislation for the relevant damages to be invested in a low-risk diversified portfolio.
45. The table below shows some illustrative low-risk investment portfolios constructed with reference to portfolios specified elsewhere (in particular, independent of personal injury claimant investors):

Asset class	Portfolio (i)	Portfolio (ii)	Portfolio (iii)
cash or equivalents	12.5%	10%	5%
gilts	37.5%	20%	7.5%
UK equities	10%	12.5%	30%
overseas equities	20%	15%	22.5%
corporate bonds	7.5%	20%	17.5%
property	0%	5%	5%
other types ¹⁶	12.5%	17.5%	12.5%

(i) Set broadly with reference to the FTSE UK Private investor conservative index
https://www.ftse.com/products/downloads/FTSE_Private_Investor_Index_Series_Asset_Allocation_Levels.pdf

(ii) Portfolio A from 2017 analysis
<https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/gad-analysis.pdf>

(iii) Set broadly with reference to the PIMFA Income index
<https://www.pimfa.co.uk/private-investor-indices>

46. We would welcome comments on the extent to which each of the notional investment portfolios outlined above would meet the high-level objectives set out in the Civil Liability Bill.¹⁷
47. We would also like views as to what the most suitable notional portfolio might be, which may be different from any of those listed above. When considering this, please provide details on the breakdown of any asset classes you would expect to be included within “other types” (see footnote 16).

¹⁶ “Other types” can include, but is not limited to, investments in hedge funds, absolute return funds, commodities, infrastructure, private equity and structured products.

¹⁷ See clause 10(2) new schedule A1 para 4, summarised at paragraph 18 above.

Q10:

- (a) Please outline your views on how well each of the notional investment portfolios (i), (ii) and (iii) set out above would match the criteria for the investment approach to be assumed under the Civil Liability Bill (as summarised in paragraph 18 of this call for evidence).**
- (b) Please provide your views on an asset class distribution of a portfolio which would best meet those objectives (which may or may not be aligned with one of the notional portfolios (i), (ii) or (iii) listed above).**

48. As discussed earlier in this call for evidence (see paragraphs 30-33), we recognise that in practice a claimant's individual circumstances are likely significantly to influence their investment decisions. We would welcome comments on the extent to which the appropriateness of the notional investment portfolios above would vary according to claimants with certain different characteristics.

Q11:

Please outline your views on how the appropriateness of the portfolios outlined in Q10 would alter for claimants within a reasonable range of different characteristics under the following criteria (all other things being equal):

- (a) Age and expected future lifetime**
- (b) Size of lump sum**
- (c) Initial and ongoing care funding requirements**

Other considerations

49. We are also interested to explore whether there are any other relevant examples of investments made by investors with a similar risk appetite to the hypothetical investor under the Bill (see paragraph 18 of this Call for Evidence), which might be used as a proxy for how claimants invest lump sum damages awards. For example, would information regarding pensions investment be of any relevance here?

Q12:

- (a) Are there similarities between the ways that lump sums awarded in personal injury cases are invested and how individuals choose to invest other funds, for which data might be more readily available?**
- (b) For example, would data regarding defined contribution pension investments be of relevance – both in the way that funds are invested prior to initial withdrawal, and how these funds are managed in retirement (for example through income drawdown)?**
- (c) Would any other financial products be useful to consider, and if so, what data and information is available on investment decisions for such products which could be useful in this exercise to develop a proxy for how personal injury claimants might invest lump sums?**

50. In this call for evidence, we are particularly interested in gathering data or evidence which will help support any decisions being made regarding the setting of the discount rate. We would be interested to receive any further such information which may be relevant.

Q13:

Do you have any other data or evidence to provide that you consider to be relevant to this call for evidence? If so, please provide it and explain its relevance.

51. In setting the discount rate the Lord Chancellor will have to comply with section 149 of the Equality Act 2010 (“the Act”). It requires Ministers and the MOJ, when exercising their functions, to have “due regard” to the need to:

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

52. In carrying out this duty Ministers and the MOJ must pay “due regard” to the nine “protected characteristics” set out in the Act under the Public Sector Equality Duty (PSED), namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

53. We have drawn attention in this call for evidence to the way in which the personal characteristics of the claimant, including the protected characteristics, may influence his or her decisions. We will be reviewing the equality assessment prepared for the Bill during the review of the discount rate under the new law. We would be grateful for any evidence that indicates whether the setting of the discount rate under the new law will affect persons with protected characteristics and, if so, to what extent.

Q14:

Please provide evidence of how the setting of the discount rate under the new law will affect persons with protected characteristics.

Questionnaire

We would welcome responses to the following questions set out in this Call for Evidence.

Q1:

- (a) What asset classes are generally available to claimants investing lump sum damages and suitable for the hypothetical “low-risk” investor envisaged in the setting of the discount rate?**
- (b) What asset classes are not generally available in practice to such an investor, for example due to reasons of scale, liquidity, cost-efficiency or unsuitability?**

Q2:

- (a) Please provide information regarding how recipients of lump sum damages awards for future financial loss are typically advised to invest, when they are normally advised and why?**
- (b) Is there any regulatory material or guidance available to those providing such advice? If so, what?**
- (c) Does such guidance help advisers achieve a suitable and consistent approach?**
- (d) Do claimants follow the advice given? If not, please explain to what extent and why.**

Q3:

- (a) To what extent do changes to financial conditions affect investment advice provided to claimants who receive a lump sum award?**
- (b) Is there any evidence available to show how the change to the discount rate in March 2017 directly impacted upon investment advice provided to claimants?**

Q4:

- (a) Please provide evidence of how recipients of lump sum damages awards actually invest, and why?**
- (b) What sources of balanced reliable data on investments actually made by claimants are available?**

Q5:

- (a) What data is available regarding the profile of claimants of lump sum damages?**
- (b) How are claims of loss typically split between loss of earnings and care needs, for notional investors with lump sums of around £0.5m, £1.0m and £1.5m respectively?**
- (c) Is a period of 30 years a reasonable overall average projection period to consider when analysing long-term investment returns from such portfolios, or would an alternative period or a range of periods be more suitable, and if so, which and why?**

Q6:

What evidence is available to illustrate how the following characteristics affect investment behaviours in practice?

- (a) Age and expected future lifetime (e.g. longevity risk)**
- (b) Size of lump sum**
- (c) Initial and ongoing funding requirements (e.g. care or accommodation costs)**
- (d) Existence and requirements of financial dependants (e.g. spouse, civil partner, children)**
- (e) Other protected characteristics under the Equality Act 2010 (race, sex, disability, sexual orientation, religion and belief, marriage and civil partnership, gender reassignment, pregnancy and maternity);**
- (f) Availability of PPOs or other sources of income.**

Q7:

- (a) What taxation rates typically apply to claimants on their investment returns, and how does the distribution of these vary across ranges of different claimants?**
- (b) How is the effect of taxation taken into account in determining what investments to make?**
- (c) What might typical average current tax rates be for notional investors with lump sums of around £0.5m, £1.0m and £1.5m respectively (and no other taxable income)?**

Q8:

What evidence is available regarding the average long-term rates of inflation which apply to costs typically experienced by claimants in aggregate, and how do these compare to each of RPI, CPI, CPIH and earnings inflation?

Q9:

- (a) What investment management costs would notional investors with lump sums of around £0.5m, £1.0m and £1.5m respectively pay in practice and how are these costs broken down into different areas?**
- (b) To what extent would a “properly advised” investor need to incur all of these costs, for example in relation to active or passive investment of funds?**

Q10:

- (a) Please outline your views on how well each of the notional investment portfolios (i), (ii) and (iii) set out above would match the criteria for the investment approach to be assumed under the Civil Liability Bill (as summarised in paragraph 18 of this call for evidence).**
- (b) Please provide your views of an asset class distribution of a portfolio which would best meet those objectives (which may or may not be aligned with one of the notional portfolios (i), (ii) or (iii) listed above).**

Q11:

Please outline your views on how the appropriateness of the portfolios outlined in Q10 would alter for claimants within a reasonable range of different characteristics under the following criteria (all other things being equal):

- (a) Age and expected future lifetime**
- (b) Size of lump sum**
- (c) Initial and ongoing care funding requirements**

Q12:

- (a) Are there similarities between the ways that lump sums awarded in personal injury cases are invested and how individuals choose to invest other funds, for which data might be more readily available?**
- (b) For example, would data regarding defined contribution pension investments be of relevance – both in the way that funds are invested prior to initial withdrawal, and how these funds are managed in retirement (for example through income drawdown)?**
- (c) Would any other financial products be useful to consider, and if so, what data and information is available on investment decisions for such products which could be useful in this exercise to develop a proxy for how personal injury claimants might invest lump sums?**

Q13:

Do you have any other data or evidence to provide that you consider to be relevant to this call for evidence? If so, please provide it and explain its relevance.

Q14:

Please provide evidence of how the setting of the discount rate under the new law will affect persons with protected characteristics.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this call for evidence (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 30 January 2019 to:

Discount Rate Call for Evidence 2018

Ministry of Justice

Civil Law

Post Point 9.25

102 Petty France

London SW1H 9AJ

Email: discountrate.evidence2018@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the call for evidence process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this call for evidence can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from discountrate.evidence2018@justice.gov.uk.

Publication of response

A paper summarising the responses to this call for evidence will be published when the outcome of the review of the personal injury discount rate is published. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this call for evidence, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.



© Crown copyright 2018

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Alternative format versions of this report are available on request from discountrate.evidence2018@justice.gov.uk.