

Revision to Personal Injury Discount Rate Research

Executive Summary – The personal injury process and claimant experiences – page 9

The term 'PPOs' (Periodical Payment Orders) had accidentally misplaced 'Lump sum payments' in the final bullet point in 'The personal injury process and claimant experiences' section in the executive summary. This error has been rectified.

Any enquiries about this revision and wider enquiries about this report should be directed to the Ministry of Justice at:

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of Justice

Personal Injury Discount Rate Research

Ipsos MORI Social Research Institute

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The authors

Ipsos MORI, part of the Ipsos Group, is a leading UK research company with global reach. Our Social Research Institute (SRI) is at the forefront of public sector research, helping policy and decision makers understand what works. The authors of this report, Rachel Worsley, Will Scott, Isabella Pereira, James Stannard and Rachel Burkitt collectively specialise in qualitative and quantitative methods, and justice research.

Consultant

Professor Richard Lewis of the law school at Cardiff University acted as a consultant in connection with the research for this report.

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Abbreviations

AVMA	Action Against Medical Accident
CRU	Compensation Recovery Unit
IFA	Independent Financial Advisor
ILGS	Index-Linked Gilts
MoJ	Ministry of Justice
NHS	National Health Service
NHSLA	National Health Service Litigation Authority
PPO	Payment Protection Order
RPI	Retail Price Index
RTA	Road Traffic Accident
SIA	Spinal Injuries Associations
WRP	Welsh Risk Pool

1. Summary

Background and methodology

This report presents the findings of research designed to explore a range of issues relating to the discount rate, used to calculate lump sum payments paid in personal injury compensation settlements. Personal injury damages may be paid to claimants to provide compensation for injury, which may have resulted from an accident. Claimants can opt to receive the payment as a single lump sum, or as a stream of future payments. Where a lump sum is paid at the outset, a discount rate is applied to the component paid for future financial losses, such as loss of earnings or the cost of medical care. This discount rate takes into account the fact that an investment return could be earned on money which is received now but which is required to cover expenditure at some point in the future. The size of the discount rate affects the size of the lump sum compensation received, as do other factors such as the age of the claimant (for example, those nearer retirement may receive less for loss of earnings). The current discount rate was set at 2.5% (in real terms) by the Lord Chancellor in 2001, and is based on the rate of return on Index-Linked Government Securities (ILGS), also known as Index-Linked Gilts.

Government consultations on the discount rate, and on the methodology for setting it, were launched in 2012. This research was commissioned to support the review of the discount rate, by improving the Ministry of Justice's (MoJ) evidence base in this area. The aims of the research were to:

1. Understand the profile of settlements for future losses to which the discount rate applies.
2. Outline how, in practice, the discount rate is used when agreeing a lump sum settlement and how a change in the discount rate might impact on the process and the final settlement.
3. Obtain a better understanding of how changes to the size of a settlement may affect the claimant's investment and consumption behaviour.

Quantitative and qualitative approaches were used to meet these research aims. The quantitative research comprised analysis of datasets collected from organisations such as the Compensation Recovery Unit (CRU), and various personal injury claimant and defendant solicitors. Descriptive statistics were produced to understand the wider personal injury landscape, and original calculations using the discount rate were revisited to provide case study examples of the impact of changing the rate.

The qualitative research comprised depth interviews with stakeholders and claimants (or claimant representatives), sampled to reflect the diversity of perspectives in the personal injury claim process. The stakeholder sample included claimant solicitors, charity representatives, defendant representatives, Court of Protection officials, financial advisors and case managers. The claimant sample included professional deputies (who could offer both stakeholder and claimant perspectives), and claimants or claimant representatives (including carers and lay deputies).

Qualitative research is valuable in providing in-depth insights into perceptions and attitudes across specific groups. However, qualitative studies cannot be generalised to the wider population. The small sample of claimants in this research should also be borne in mind when interpreting the claimant findings.

The profile of settlements

- Over the financial years 2009/10 to 2011/12, there was an increase in both personal injury claims and settlements paid out. Data from the CRU (with which all claims must be registered), showed that there were 766,417 personal injury settlements in 2011/12. However, only a small proportion of these would have been subject to the discount rate, which is only applied where future losses are calculated. As such, the discount rate may be applied more frequently in higher-value claims.
- Available quantitative data were unable to shed light on the proportion of cases in which the discount rate is used. However, stakeholders in the qualitative research indicated that the discount rate is typically only applied to a small minority (estimated to be around 10%) of personal injury claims, as the majority (around 90%) of personal injury claims are low value. Illustrative calculations based on CRU data indicate that this 10% would equate to approximately 70,000 cases a year (based on data from between 2009 and 2012). Stakeholders also estimated that roughly 70–90% of a lump sum settlement is to cover future loss.
- Although clinical negligence settlements made up a small proportion of the total number of settlements over this three-year timeframe (with only 1% of settlements relating to this type of claim), stakeholders suggested that these cases tend to be higher in value, and are more likely to have the discount rate applied to them.

- Between 2009/10 and 2011/12, motor/road traffic accident (RTA) settlements were more common among males (57% of settlements) and those aged 30 and under (54% of settlements). However, it is unclear from the available data whether these groups are also more likely to receive higher-value settlements and whether their claims are more likely to make use of the discount rate.

The personal injury process and claimant experiences

- While an itemised schedule is drawn up by the claimant solicitor as a starting point for negotiations, stakeholders suggested that the final settlement usually differs from the initial schedule. Claimants and those supporting them may be unaware of exactly how the final lump sum settlement relates to, for example, their initial itemised expected future care costs.
- The negotiation process, while evidence based, was reported to differ from case to case, with many factors being subject to negotiation. However, the discount rate itself was reported to be applied consistently to the claims schedule through the Ogden tables (a set of actuarial tables which detail figures to be used to multiply the annual cost of a damage to be awarded).
- Claimants were generally unaware of the role of the discount rate in determining their final settlement, but felt that generating investment returns equivalent to the discount rate was difficult in the current climate, particularly given their low appetite for risk.
- The decision making process relating to whether payment should take the form of a lump sum or a stream of future Periodical Payment Orders (PPOs) was found to be quite complex. For claimants, lump sums may be beneficial in some cases, for instance if they are felt to offer increased flexibility and a form of 'final closure' to cases.
- There was also a suggestion that defendants may lean towards lump sum payments over PPOs in non-NHS cases. Lump sum payments place the risk of investment and of inaccurate calculations, and the costs of investment management, in the hands of the claimant, and one stakeholder suggested that insurance companies may sometimes offer a larger lump sum (than that implied by strict application of the discount rate) in order to avoid assuming these risks and costs.

Investment and consumption behaviour

- Stakeholders indicated that claimants are generally cautious in their investment behaviour, and tend to cite their vulnerability as making them more risk averse.
- Claimants tended to take on a mixed portfolio of investments, rather than just relying on ILGS. Claimant investment decisions depended on their risk appetite (with most being uncomfortable with high or even moderate risk); the advice given by their financial advisors; and the level of pressure they felt to meet future needs, regardless of how comfortable they were with risk. Those less satisfied with their compensation tended to be less comfortable with risks, yet sometimes felt under greater pressure to take higher-risk investments than they wanted to.
- Many were unhappy with the rates of return they were achieving on their investments, which increased their concerns about managing their lump sum in the future. This was considered particularly relevant given the decline in recent years in yields on ILGS, on which the current discount rate is based, as the rate assumes a higher rate of return than claimants felt they would be able to achieve in the current economic climate.
- Claimants' initial spending priorities included housing and home adaptations. Claimants felt that their consumption behaviour would have remained largely the same if they had received a larger settlement. However, several felt that with a larger settlement they may have had more confidence to spend on their immediate needs, such as housing and care. In addition, they felt that they might select less risky investments.
- Longer-term consumption behaviour revolved around care and treatment. For claimants who felt their compensation was insufficient, meeting care needs was more of a struggle. For example, for parents who were carers of children, this created anxiety as they were required to estimate the healthcare needs of their child many years into the future.
- The care needs of claimants are quantified by solicitors in relation to private healthcare costs, and the majority of claimants spoke about using private sector care. However, the findings suggested that the need to manage compensation settlements due to the impact of the discount rate; the lack of clarity on how the final settlement relates to claimant needs; claimant analysis of state and private health provision; and claimant worries about the money being insufficient to cover regular and long-term needs, sometimes combined to push some claimants towards state healthcare.

The impact of change on the final settlement

- While only a small proportion of settlements were found to be subject to the discount rate, analysis of high-value claim schedules indicated that an apparently small change to the discount rate could have a substantial financial impact on the size of the lump sum.
- Changes in the discount rate may influence behaviour during the negotiation process and the subsequent choice between PPOs and a lump sum. For example, a reduced discount rate may increase the appeal of PPOs to defendants compared to lump sums, if all else is equal.

Further suggestions and implications of potential changes in the future are included in chapter 8 of this report.

2. Introduction

2.1 Background and objective

This report presents the findings of quantitative and qualitative research designed to explore a range of issues surrounding the discount rate, used in calculating lump sum payments paid in personal injury compensation settlements. Personal injury damages may be paid to claimants to provide compensation for injury, which may have resulted from an accident. Where a lump sum is paid at the outset (instead of a stream of future payments) to cover future pecuniary losses, such as loss of earnings or the cost of medical care, as a result of the injury, a discount rate is applied when calculating the size of the lump sum. This discount rate takes into account the fact that an investment return could be earned on money which is received now but which is required to cover expenditure at some point in the future. For example, if part of a settlement involves paying £1,000 in five years time, the present value of this sum could be discounted to an amount that, if invested now, would go on to yield £1,000 in five years time.

The rate at which the amount is positively or negatively discounted greatly influences the amount received, as do factors such as the age of the claimant (for example, those nearer retirement may receive less for loss of earnings).

The discount rate is set under section 1 of the Damages Act 1996. The current rate was set for England, Wales and Northern Ireland by the then Lord Chancellor in 2001, and for Scotland by the Scottish Justice Minister in 2002. The current discount rate is 2.5% in real terms and was set in relation to the rate of return on ILGS.

The MoJ is currently in the process of reviewing the discount rate. In relation to this the MoJ commissioned Ipsos MORI to carry out research into various aspects of the discount rate.

More specifically, this research aimed to:

1. Understand the profile of settlements for personal injury cases, including:
 - the size of settlements;
 - the types of cost covered; and
 - the time period involved.
2. Outline how, in practice, the discount rate is used when agreeing a lump sum settlement and how a change in the discount rate might impact on the process and the final settlement.

3. Obtain a better understanding of how changes to the size of a settlement may affect the claimant's investment and consumption behaviour.

2.2 Methodology

The research design comprised two stages. A feasibility study, which included a review of findings, preceded the second main stage research programme which commenced in September 2012. A mixed method approach was adopted for the research including both quantitative and qualitative methods as outlined below.

Quantitative methodology

In total, nine datasets were collected to assist in the quantitative research. However, a full review of these datasets identified only two of these nine as suitable for further analysis as part of this research. Details of all datasets obtained, and the rationale for excluding some from the analysis, can be found in Appendix A of this report.

Data analysed as part of this research cover personal injury claims opened or settled between 2009 and 2012; after the current discount rate was set in 2001.

These datasets were then used for two distinct types of analysis:

- Descriptive statistics were produced summarising entire individual datasets, exploring the following:
 - claim notifications;
 - number of settlements and closed cases;
 - claim type;
 - settlement type; and
 - demographics (age and gender).
- Assessment of how original claim schedules might change had a different discount rate been used.

Variables included in the files were varied and this dictated which type of analysis was carried out on each of the nine datasets. In some cases the data would not contribute to the project objectives or types of analysis, and therefore was not included in this report.

Qualitative methodology

Qualitative research was carried out across two main audience groups: stakeholders and claimants. The work with stakeholders aimed to explore what stakeholders knew about:

- how the discount rate is taken into account when agreeing how to amalgamate all payments into a lump sum and how a change in the discount rate might impact on this process and the final settlement;
- the profile of settlements for personal injury cases, including the size of settlements, the types of cost covered and the time period involved; and
- likely changes in claimants' behaviour regarding their spending and investing behaviour as a result of a change in the discount rate and average compensation paid, and how this would impact different groups, including different types of defendants and claimants.

For this element of the study, 14 stakeholders in total were interviewed, sampled to reflect the diversity of perspectives in the personal injury claims process. These were:

- 3 claimant solicitors;
- 2 claimant charity representatives;
- 3 defendant representatives;
- 1 representative of the Court of Protection;
- 3 financial advisors to personal injury claimants; and
- 2 case managers to personal injury claimants.

A full explanation of the roles of all these stakeholders is provided in this report, where relevant. Stakeholder interviews were conducted either face-to-face or over the telephone to suit the convenience of the participant.

The second phase of the research aimed to explore the experience of claimants in more detail. The objectives for this element of the research were to understand:

- the experiences claimants had of the processes involved in receiving a personal injury award;
- their investment and spending behaviour to date regarding their lump sum payments and what drives this behaviour;
- their priorities for spending and investment; and
- how they might have behaved if they had received a larger lump sum payment.

Overall, three professional deputies and nine claimants (or those representing them, including carers and lay deputies) were interviewed for this element of the research. All the interviewed claimants (or representatives) reported that they had received compensation which had been affected by the discount rate. Of these, six received their settlement prior to 2001, before the current discount rate was set.

Analysis of the findings from stakeholders and claimant interviews was undertaken throughout the fieldwork period through the writing of detailed field notes for all interviews and in regular face-to-face analysis sessions with the interviewers. In these sessions, findings were discussed and synthesised, and initial hypotheses were developed and explored. The ongoing analysis of findings meant that research materials were adjusted throughout the field period to reflect emerging findings. All interviews were recorded and a proportion of them were transcribed.

Further information on the recruitment, sampling, fieldwork and analysis for the qualitative research is appended to this report, along with discussion guide examples for each element.

2.3 Presentation of findings

A number of caveats should be considered when interpreting the findings presented in this report.

Across both the qualitative and the quantitative data, all financial figures and rates of return provided should be treated as nominal rather than real, unless otherwise stated. Nominal figures express financial value at that given point in time without adjusting for factors that affect the relative value, such as inflation. The discount rate is expressed in real terms throughout.

Quantitative research

When interpreting the quantitative survey findings, it is important to remember that:

- No datasets provided comprehensive data on the application of the discount rate. Therefore, stakeholder findings were used to provide illustrative figures on the scale of the use of the discount rate. This should be borne in mind when interpreting the illustrative findings.
- Some datasets included missing values, which were excluded from analysis. This may have impacted on the accuracy of the reported profile.

- One dataset included three case study examples, rather than the full set of cases claimed for over the reference period. These are presented as illustrative examples, rather than representative of all cases over that timeframe.
- The quantitative findings presented in chapter 3 are based on data covering a three-year period between 2009/10 and 2011/12. Patterns in the data over this time period are outlined, but the data did not allow for inference of trends over a longer time period. This should be borne in mind when interpreting the findings.

Qualitative research

The qualitative research was limited in scale and designed to be illustrative and detailed providing insight into the perceptions, feelings and behaviours of people. In particular, the sample of claimants was limited in size and based on a convenience sampling approach.¹ It is therefore important to note that findings in this report should not be considered to be representative of the views of all personal injury claimants or industry stakeholders. Instead they shed light on a range of possible considerations and explanations which might apply.

Evidence from claimant interviews is typically used to provide descriptive detail about claimants' unique experiences. The perceptions of participants make up a considerable proportion of the qualitative evidence in this study, and it is important to remember that such perceptions may not always be factually accurate.

¹ A convenience sample is one in which the researcher includes any participants meeting the main criteria that are available to participate in the research study, rather than a sample which is representative of the general population.

3. Understanding the personal injury landscape

3.1 Introduction

This chapter aims to address one of the key research objectives – **to profile settlements for personal injury cases**. As part of this, the chapter goes on to explore how many personal injury cases are affected by the discount rate, and which these are. Later chapters will examine in more detail what impact a change to the discount rate may have on these cases.

The work of Lewis *et al* (2006) emphasises that data covering the whole of the personal injury landscape are not collated in an easily accessible and amalgamated format, which means that building a comprehensive and representative picture of claims and settlements is difficult. There are, however, several reliable data sources, such as the CRU² and National Health Service Litigation Authority (NHSLA),³ from which a broader picture of the personal injury landscape can be built. This chapter explores these datasets and reports alongside qualitative stakeholder estimates of the use of the discount rate in personal injury cases.

The quantitative and qualitative findings indicated that:

- The number of claims and settlements increased in absolute terms between 2009/10 and 2011/12, according to quantitative data provided by the CRU.
- However, the discount rate would only have been used in a small proportion of these claims. Several stakeholders highlighted that the rate tends to be applied to higher-value cases involving claims for future pecuniary loss.
- Although there was some variation in where the line between ‘lower value’ and ‘higher value’ was drawn by stakeholders, several stakeholders, across the different stakeholder groups, estimated that the discount rate is used in around 10% of cases. These estimates were derived from stakeholder experiences and perceptions rather than quantitative analysis.
- Of the cases affected by the discount rate, stakeholders estimated that around 70–90% of the lump sum payment is likely to be for future loss, and as such will have the discount rate applied to it.
- While there were fewer settlements in clinical negligence cases than for other case types, as shown in the quantitative data, qualitative stakeholder findings suggested that a larger proportion of clinical negligence cases are affected by the discount rate compared with other claim types, as more of them are higher value.

² Refer to appendices for details on the role of CRU.

³ Refer to appendices for details on the role of NHSLA.

- The quantitative data revealed that females and those aged 36 and over were more likely than males and younger people to have received a settlement for clinical negligence.

3.2 The total number of claims and settlements

Claims

Data showed that the total number of personal injury claims rose year-on-year over the years 2009/10 to 2011/12. However, it is important to note that not all claims lead to a settlement and, in turn, not all settlements apply the discount rate, as will be explored further throughout this chapter.

CRU data covering the period 2009/10 to 2011/12 revealed a 21% increase in claims, from 859,045 claims in 2009/10 to 1,041,146 in 2011/12.⁴ As Table 3.1 shows, the increase was apparent across all types of claim, but was most notable within motor/RTA claims, which rose by 23% between 2009/10 and 2011/12.

⁴ It should be noted that the CRU claims figures contained within this report are not comparable with those published on the CRU website. This is due to the liability types of some claims changing between the time of data being published on the CRU website and the data being provided for this report (where cases previously had an unknown liability). In addition, some differences can also be explained by the change in CRU methodology for identifying new claims between collation of the two datasets.

Table 3.1: Number of claims by year and claim type, 2009/10–2011/12⁵

Claim type	2009/10	2010/11	2011/12	Total
Clinical negligence	10,385	13,068	13,549	37,002
	1%	1%	1%	1%
Employer liability	78,921	81,741	87,637	248,299
	9%	8%	8%	9%
Motor / RTA	675,042	792,801	829,503	2,297,346
	79%	80%	80%	80%
Other	2,840	3,938	4,474	11,252
	*	*	*	*
Public liability	91,265	95,280	105,397	291,942
	11%	10%	10%	10%
Liability unknown	592	546	586	1,724
	*	*	*	*
Total	859,045	987,374	1,041,146	2,887,565
	100%	100%	100%	100%

Source: CRU

Percentage figures are as a proportion of the column total.

An asterisk (*) denotes a finding of less than 0.5%, but greater than zero

Table 3.1 also shows that motor/RTA claims made up the majority of all personal injury claims (80%) over this period. Data presented in the MoJ consultation paper *Reducing the number and costs of whiplash claims* (MoJ, 2012), outlined that 70% of motor claims in 2011/12 were for whiplash; a figure which was higher than in other European jurisdictions.

The 'NHS LA Report and Accounts 2011–12' (NHS Litigation Authority, 2012) indicated that around two thirds (66%) of all claims reported in 2011/12 to the NHS were clinical related, a similar proportion to previous years, as shown in Table 3.2. The general pattern of claims reported across 2009/10 to 2011/12 shows a significant increase year-on-year over this period, with a 6% increase in the number of new claims between 2010/11 and 2011/12.

⁵ In all data tables, where percentages do not sum to 100%, this may be due to computer rounding.

Table 3.2: Number of new claims reported to NHSLA by year and claim type, 2009/10–2011/12

Type	2009/10	2010/11	2011/12
Clinical	6,652	8,655	9,143
	62%	67%	66%
Non-Clinical	4,074	4,346	4,618
	38%	33%	34%
Total	10,726	13,001	13,761
	100%	100%	100%

Source: NHSLA Report and Accounts 2011–2012

Percentage figures are as a proportion of the column total.

Settlements and claims closed

The number of claims made in each financial year is not necessarily related to the claims that have been compensated in those years, as it often takes time to negotiate and settle a claim. Therefore, a greater understanding of the number of claims for which compensation is paid can be gained by looking at settlement records and at the number of cases that were withdrawn each year.

CRU settlement records show that a total of 2,150,797 claims were settled between 2009/10 and 2011/12.⁶ There was a steady increase in the number of cases settled each year over this period (691,989 cases were settled in 2009/10, compared to 766,417 in 2011/12). However, this rate of growth was lower than that seen for claims within the same time period.⁷

A more detailed analysis of CRU settlement records showed that there was not the same proportional increase across all types of personal injury cases. Indeed, the number of motor/RTA settlements increased by 18%, while the number of employer settlements decreased by 32%, as shown in Table 3.3.

⁶ Figures differ from those published on the CRU website for several reasons. Firstly, settlement data presented in this report do not include those settlements which were later withdrawn whereas settlement figures published on the CRU website do. Secondly, the data presented here were collated at a later point in time to those presented on the CRU website and reflect the live data at May 2012. Therefore the figures contained within this report are not comparable with the published data.

⁷ The discrepancy between the number of claims and the number of settlements is likely to be a reflection of the number of cases withdrawn over this time, and the fact that claims and settlements may not be taking place for the same cases within the same timeframe.

Overall, the CRU data showed that motor/RTA claims were also the most common type of settlement. Some stakeholders highlighted that, compared to other case types, motor/RTA claims tend to make up a high proportion of both the lower-value and the higher-value personal injury settlements. This may suggest that some high-value motor/RTA cases are subject to the discount rate, whereas other claim types, such as employer liability, involve claims which may be less likely to be affected by the discount rate (indeed, Fenn and Rickman (2003) recorded average damages of only £3,000 for employers' liability accident claims). With this in mind, it is important to consider in detail the effect that any potential change to the personal injury discount rate would have on the motor insurance industry, as insurers will usually be the defendants to these claims. This point is discussed in further detail later in the report.

Table 3.3: Number of settlements by year and claim type, 2009/10–2011/12

Claim type	2009/10	2010/11	2011/12	Total
Clinical Negligence	6,301	6,999	8,220	21,520
	1%	1%	1%	1%
Employer Liability	90,651	63,041	61,431	215,123
	13%	9%	8%	10%
Motor / RTA	542,840	570,448	641,044	1,754,332
	78%	82%	84%	82%
Other	1,893	2,346	2,708	6,947
	*	*	*	*
Public Liability	50,067	49,272	52,721	152,060
	7%	7%	7%	7%
Liability unknown	237	285	293	815
	*	*	*	*
Total	691,989	692,391	766,417	2,150,797
	100%	100%	100%	100%

Source: CRU

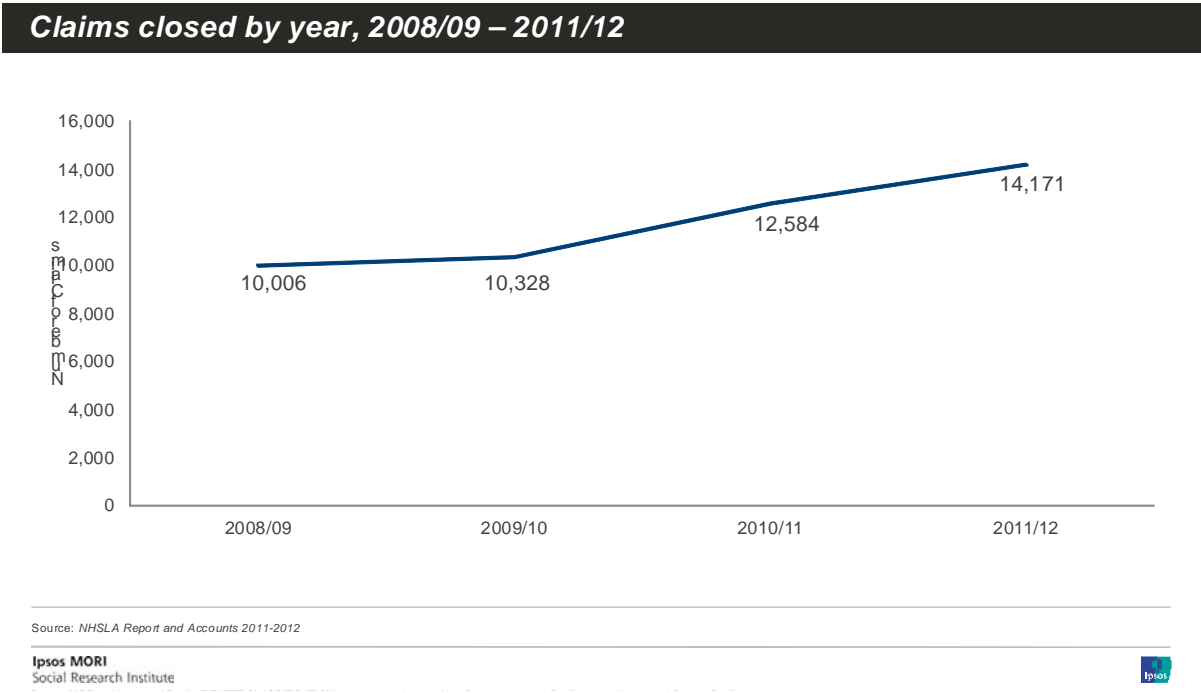
Percentage figures are as a proportion of the column total.

An asterisk (*) denotes a finding of less than 0.5%, but greater than zero

Clinical negligence cases made up a small proportion of the total number of settlements recorded in the CRU database. Only 1% of all settlements between 2009 and 2012 were for clinical negligence injuries. However, some stakeholders reported that clinical negligence cases were more likely than other types of case to be higher-value 'catastrophic' cases, and, as such, the discount rate was potentially more likely to impact on these cases than on lower-value cases.

The findings on clinical negligence are particularly relevant when looking at the profile of NHSLA claims that have been closed. The NHSLA Report and Accounts (2012) shows that they successfully closed 13% more claims in 2011/12 when compared with 2010/11, as shown in Figure 3.1. The report concludes that the increase was partly ‘a result of extra funding from the Department of Health, allowing [NHSLA] to progress the unprecedented volume of claims with appropriate urgency’. Of the total of 14,171 claims closed in 2011/12, 61% were clinical negligence claims.

Figure 3.1: Number of claims closed by year, 2008/09–2011/12



NHSLA figures also showed that the overall total of payments on claims increased, which may reflect the growth in volume of new claims over the three years. The total value of payments made by NHSLA in 2011/12 rose by 46% from the previous year, with the increase being driven by the increase in spend on claims arising from clinical negligence incidents post 1 April 1995 (known as the Clinical Negligence Scheme for Trusts claims, or ‘CNST’). In reporting these figures, the NHSLA Annual Report and Accounts (2012) noted that payments made did not relate solely to new claims reported in that financial year, with most payments involving claims originally received in a prior year.

3.3 The profile of personal injury settlement recipients

This section examines data across personal injury settlements, looking more closely at the demographic profile of those who receive personal injury settlements. Again, the data include all settlements, rather than just those affected by the discount rate. However, exploring the demographic profile of those who have received a personal injury settlement within the different case types provides some indication of which types of personal injury claimants may be more affected by changes to the discount rate.

CRU data showed that there were, on average, more settlements received by males than by females between 2009 and 2012 (57% compared with 43%), and this was fairly consistent year-on-year. The data also showed that males were more likely than females to have received a settlement for employer liability (77% compared with 23%) and motor/RTA claims (57% compared with 43%). In contrast, females were more likely to have received a settlement for clinical negligence (56% of settlements were for female claimants, compared with 44% for males).

As well as these gender differences, the data showed differences in the age of personal injury claimants depending on the type of claim made. Looking at the overall profile of all CRU settlements, Table 3.4 shows that half (49%) of all settlements between 2009 and 2012 were paid to claimants under the age of 35.

Table 3.4: Number of settlements by claim type and claimant age, 2009/10–2011/12

Age at claim	Clinical negligence	Employer liability	Motor / RTA	Other	Public	Liability unknown	Total
<=18	1,875	2,376	174,152	597	13,708	90	192,798
	9%	1%	10%	9%	9%	*	9%
19–25	1,409	19,921	328,253	569	11,948	124	362,224
	7%	9%	19%	8%	8%	*	17%
26–35	3,267	34,657	440,971	1,155	22,235	162	502,447
	15%	16%	25%	17%	15%	*	23%
36–45	4,424	52,395	376,913	1,517	28,327	153	463,729
	21%	24%	14%	20%	18%	*	22%
46–55	3,544	51,385	242,410	1,375	27,068	120	325,902
	16%	24%	14%	20%	18%	*	15%
56–65	3,094	32,225	117,168	920	22,741	87	176,235
	14%	15%	7%	13%	15%	*	8%
65+	3,907	22,164	74,465	814	26,033	79	127,462
	18%	10%	4%	12%	17%	*	6%
Total	21,520	215,123	1,754,332	6,947	152,060	815	2,150,797
	100%	100%	100%	100%	100%	100%	100%

Source: CRU

Percentage figures are as a proportion of the column total.

An asterisk (*) denotes a finding of less than 0.5%, but greater than zero

However, the data also showed some differences in the age distribution of claimants by type of claim, particularly for clinical negligence and RTA/motor settlements. Indeed, more settlements for clinical negligence were received by those aged 36 and over (69%), with 18% being for those aged 65 and over. In contrast, over half (54%) of RTA/motor settlements were paid to those aged 35 or under, with very few older claimants receiving settlements for this type of injury (only 4% were 65 and over, compared with 10–18% across other claim types). Given the prevalence of motor/RTA settlements overall, early indications suggest that those aged 35 and under may be more impacted by a change to the discount rate. Nonetheless, unlike in the case of clinical negligence settlements, where stakeholder findings indicate that these settlements are predominantly higher value, stakeholder findings suggest motor/RTA claims are more likely to be either very high or very low in overall claim value. It is therefore possible that, while those aged 35 and under were more likely to receive a settlement, these may include more lower-value cases for which the discount rate is not used; the impact of any change in the discount rate should be viewed in this context when looking at RTA claims.

In analysing settlements by age group, it is worth noting that the age at which the settlement was received can vary greatly from the time of the accident. For example, stakeholders highlighted that when claims are filed on behalf of a child, the final settlement may not be received until the age of 18 or over, when a full assessment of the impact of injuries to the brain has been made. In such cases, more of the claim would relate to past losses, thereby reducing the impact of the change in the discount rate on any future loss payout.

3.4 Settlements affected by the discount rate

Personal injury damages broadly fall under three types:

1. past pecuniary losses, to which the discount rate is not applied;
2. non-financial losses for pain, suffering and loss of amenity, to which the discount rate is not applied; and
3. future pecuniary loss, to cover elements such as loss of earnings and the cost of care, to which the discount rate is applied.

Therefore, the discount rate applies in settlements where future basic and consequential pecuniary loss forms part of a lump sum settlement. As outlined previously, the rate takes into account the fact that an investment return could be earned on lump sums received now but which are required to cover expenditure at some point in the future.

As mentioned previously, it is clear that the discount rate will not have been applied to all claims and settlements discussed throughout this chapter, as not all will have included an element of future pecuniary loss. None of the quantitative datasets available for this research provided details of the proportion of settlements to which the discount rate applied. As will be discussed later in this report, the negotiation process through which the value of a final settlement is determined also makes the collation of this data for final settlements difficult, further limiting the possibility of deriving a quantified baseline.

In light of this, stakeholders were asked to estimate the proportion of cases that they believed the discount rate applies to. The findings from several stakeholders, including both those representing the claimant and those representing defendants or insurers, indicated that, in their expert view, the majority (around 90%) of personal injury claims are 'smaller value', with the remaining 10% being higher-value cases for which the discount rate is likely to be applied. Again, it is important to note that the estimations provided by stakeholders were based on their experience of personal injury cases, rather than analysis of quantitative data. In addition, there was some variation in where stakeholders drew the line of 'smaller value' cases, with one or two suggesting cases over £10,000 may have had the rate applied,

while for others this was nearer to £25,000 and above. This slight disparity may indicate the differences between the cases stakeholders had been involved in, or the precision with which they were making their estimates. Nonetheless, they suggested that the majority of personal injury claims are for around £3,000 to £5,000, and there was more consistency in the estimate of around 10% of cases involving use of the discount rate. This is a finding reinforced to some extent by other evidence suggesting that a large proportion of settlements are for lower-value cases: in a survey of claims funded by Conditional Fee Agreements in 2011,⁸ half of them received damages of less than £5,000. Therefore, for illustrative purposes, if the 10% figure is accurate, when applied to the CRU data on settlements it would suggest that approximately 70,000⁹ cases on average each year between 2009/10 and 2011/12 were subject to the discount rate.

As outlined earlier in this chapter, stakeholder findings also indicated that clinical negligence cases and motor/RTA cases tend to make up a large proportion of high-value cases and, as such, are likely to make up a greater proportion of cases affected by the rate.

Moreover, some stakeholders also estimated that around 70–90% of a lump sum payment with a future loss element is likely to be for future loss, and as such will have the discount rate applied in the calculation. However, as outlined above, it is not possible to test this assumption using the quantitative data collected by organisations such as the CRU on all personal injury claims. Moreover, as explained in detail in this report, the relationship between the discount rate and the final settlement amount is not easily understood following the discussions that take place in the negotiation process. Therefore, in order to understand the impact of a change to the discount rate, this research explores the impact of changing the discount rate at the point at which a claim schedule is created, using quantitative case studies in chapter 7.

⁸ Insight Delivery Consultancy (2011) *No Win No Fee Usage in the UK*, appendix 5 of the Access to Justice Action Group, *Comments on Reforming Civil Litigation Funding*.

⁹ This figure is for illustrative purposes, rather than being derived from quantitative data, and as such should be treated cautiously.

4. The personal injury claim process

4.1 Introduction

This chapter summarises the different stages of the personal injury claims process, as outlined by stakeholders, claimants and deputies, with reference to the role of the discount rate in this process. Figure 4.1 gives an outline of each of the key stages in this process. Chapter 5 provides important context about claimants' preferences for the different types of settlement and their experiences of spending and investing their compensation, while chapter 6 presents the findings on ongoing claim management (stage 5).

Figure 4.1: Stages in the personal injury claims process



The findings indicated that:

- The claim schedules drafted by claimant solicitors can be very complex and include a broad range of 'heads of damages' for both past and future loss. The discount rate is only applied to future pecuniary loss calculations.
- The process of drafting the schedule is challenging for litigators, as predicting future needs and costs is not straightforward. There is no precise method, but ensuring this is done as accurately as possible is important in ensuring claimants are not under-compensated.
- The involvement of relevant experts is therefore important in establishing the most accurate reflection of potential future loss, to which the discount rate is then applied.
- It is the negotiation process through which future losses and needs are discussed that ultimately determines the final settlement amount.

- The findings suggest that if the input and priorities of those involved in the negotiation process adapt in light of a change to the discount rate this may affect the overall impact of a change in the discount rate.
- As a result of the negotiations, the link between the final total settlement and individual elements of the original claim schedule may be unclear.

4.2 Finding a solicitor

After an injury or an accident, claimants need to find a suitable solicitor to take on their case, which is the first stage of the claim process. Stakeholders who were involved throughout the process reported that the choice of a solicitor was crucial for claimants. This was because **the solicitor would be responsible for engaging relevant experts** who would advise on aspects such as the levels of rehabilitation and care required, the type of equipment and accommodation – all important to the calculations for future loss to which the discount rate is applied.

Claimants also tended to feel that their choice of solicitor was very important. Where claimants reported that they had a good relationship with their solicitor, they emphasised how valuable this was to the success of their case, especially given the **long and stressful process** they had been through.

4.3 Claim schedules and counter-schedules

Stakeholders outlined that one of the key roles carried out by the claimant solicitor in the early stages is to develop the 'claim schedule'. This schedule details all the elements being claimed for. If applicable, future pecuniary basic and consequential losses are calculated, each with their own time period suggested and taking into account the discount rate. As outlined in chapter 3, claims can also be made for past losses (costs to the date of the settlement) and for pain and suffering. The discount rate is not applied to these losses.

Schedules include key 'heads of damages', which are the different future and past costs for which damages may be awarded, such as housing, mobility, equipment, education, rehabilitation and care, among other examples. **The schedules can be very complex and include a broad range of 'heads of damages'**. For example, Table 4.1 outlines the total heads of damages for past loss and future loss in the case of a claimant who was injured two days after birth, was aged 20 at the date of trial, and had an assumed remaining life expectancy of 60.5 years (based on a total life expectancy of 80.5 years). As with all claims, the discount rate would only have been used in calculating the future losses outlined below.

Table 4.1: An example list of the discounted heads of damages for past and future losses included in one claim schedule provided by a solicitor¹⁰

Losses To Assumed Date of Trial (past loss)		
Personal Care Support:	£	236,461.15
Paid Care Costs:	£	4,636.87
Case Management:	£	4,674.96
Travel Expenses:	£	2,725.20
Miscellaneous Expenses:	£	24,569.69
Court of Protection:	£	3,514.05
Special Damages Interest:	£	147,721.87
Total (past loss):	£	424,303.79
Future Losses & Expenditure:		
Loss of Earnings:	£	662,691.40
Personal Care:	£	3,159,243.46
Case Management:	£	288,153.36
Aids & Equipment:	£	151,977.08
Transport:	£	210,266.23
Increased Costs:	£	255,482.42
Assistive Technology:	£	119,041.67
Physiotherapy:	£	47,784.00
Therapies:	£	60,171.40
Accommodation:	£	350,220.83
Court of Protection:	£	314,787.79
Loss of Second State Pension:	£	13,924.62
Lost Years on Pension ^l	£	3,185.24
Total (future loss):	£	5,636,929.50
Total (overall claim):	£	6,485,537.08

For each head of damages for which future loss is being considered, the claimant solicitor will establish a 'multiplier' and a 'multiplicand'. The multiplier is the figure by which the amount of money needed for each head of damages each year (the multiplicand) is to be multiplied. **It is through the multiplier that the discount rate is taken into account.** In order to do this, Ogden tables are used. Ogden tables are a set of actuarial tables which detail multipliers to be used according the discount rate being applied and dependent on

¹⁰ 'Increased costs' refers to anything additional for which the costs are greater as a result of the injuries, such as a prescription prepayment certificate to pay for medication or money to cover additional clothing needs.

varies assumptions about factors, such as life expectancy (Government Actuary's Department, 2011).

For some 'heads of damages' there are several stages to the calculations and several multipliers are established in order to reach the amount to be claimed for. For example, where loss of earnings is concerned, calculations are needed to establish the person's earning potential pre-accident and likely earnings post-injury. To establish potential earnings, both pre- and post-injury, the multipliers need to be adjusted to take into account whether the person is disabled (both pre- and post-injury), whether they were and are employed, and their education level.

Stakeholders reported that, in general, **claim schedules have become more comprehensive in detailing claimants' needs in recent years**. This has tended to mean that their compensation requirements are more fully and clearly outlined, which suggests that claims may now be better designed to meet claimants' requirements. This is important context when considering the relationship between the discount rate and claimant behaviour. Indeed, it was the view of some stakeholders that where claimants received their settlements some time ago, the settlement may not reflect future needs as well as those settlements negotiated and received more recently. In view of this, any under-compensation may reflect a less comprehensive claim schedule, rather than the impact of the discount rate, or a combination of the two.

There is [now] a much better starting point in making sure claimants' needs are met.

Financial advisor

Defendant solicitors also respond with their own 'counter-schedule'. This is sometimes a separately drafted schedule, but may instead consist of comments on the original claim schedule.

Overall, stakeholders typically agreed that the process by which claim schedules are drawn up is complex, diverse and challenging for litigators to agree, as **predicting future needs and costs is not straightforward**. Drafting the schedules relies on the use of the most accurate evidence to calculate the possible future loss to ensure claimants are not under-compensated and not over-compensated.

It [calculating future loss] is very, very varied, there is no precise science.

Defendant stakeholder

However, stakeholder findings also indicated that the future loss calculations can only ever be an approximation because there will always be uncertainties around factors such as life expectancy. Claimants are therefore required to carry the risk that the reality differs from the calculations. For example, even if a lump sum is invested at the 2.5% rate of return assumed through the discount rate, where a claimant lives longer than calculated their compensation would not last long enough.

The litigators do not have a crystal ball ... although it's a scientific exercise ... it's only ever going to approximate what will really happen.

Professional deputy

Case managers and other stakeholders reported that the amount allocated to care is one of the key areas of difference between claims, with a number of experts from both the medical and care professions involved in establishing claimant needs and their potential cost. The experts typically involved in cases include:

- **Specialist medical experts**, on both the claimant and defendant side, who are qualified medical practitioners specialising in the field of the relevant personal injury.
- **Case managers**, who are practitioners devoted to the coordination, rehabilitation, care and support of people with complex clinical needs. They aim to facilitate their independence and improve their quality of life whilst acknowledging safety issues. They may be involved in the process by solicitors on either side.

The involvement of relevant experts is therefore important in establishing the most accurate reflection of potential future loss, to which the discount rate is then applied.

The willingness of claimant solicitors to involve experts and the quality of their evidence and judgement – which may be contested by both sides – is therefore important in predicting future loss as accurately as possible and minimising the risk of under-compensation or over-compensation for the claimant.

4.4 Negotiation

While the claim schedules and counter-schedules can outline in detail the intended claim, stakeholders on both the claimant and defendant side highlighted that **it is the negotiation process which ultimately decides the final settlement amount**. Negotiations over this period not only cover elements of the claim, including special and general damages, but also liability issues (including allegations of contributory negligence) that could reduce the final settlement.

Stakeholders described this process as complex and inconsistent. Many factors are discussed and disputed. The future loss elements, where the discount rate is applied, are typically highly contested. However, stakeholders involved in the process agreed that the **one constant throughout the process is the discount rate**, as this is specified by the Lord Chancellor, always applied in the same way and never disputed.

Despite this, the uncertainties around future loss mean that, while negotiations aim to be evidence based, there is scope for wide variation in the amounts finally agreed depending on the input each side has in the negotiations. This is a key finding in relation to understanding the impact of changing the discount rate, and is explored in more detail in the remainder of this report. Indeed, the negotiation process has a strong impact on the final settlement and unpicking this influence in the context of a different discount rate is complex, particularly given that only a small proportion of personal injury cases are subject to trial and judicial adjudication. Ultimately, the findings suggest that **if the input of those involved in the negotiation process adapts in light of a change to the discount rate this may affect the overall impact of that discount rate change.**

Stakeholders highlighted that the timeframe of the negotiation period is typically several years. Some of the longer cases involve younger claimants where it is thought to be preferable to monitor a child's development where brain injuries are concerned in order to fully determine the seriousness and impact of the injury on the claimant.

The complexity of negotiations and the long claims process – involving periods of waiting, assessment and reviewing of counter-claims – means that the negotiation process often drifts from the focus of the original claims schedule. The greater the time-lag between claim and settlement, the more of the claim becomes compensation for past rather than future loss. In this case, a smaller proportion of the final settlement would be affected by the discount rate. Furthermore, sometimes rehabilitation can take place, or purchases made, during the negotiation period. In these cases, interim payments may be made to meet the needs of the claimant and the cost of these is then deducted from the final settlement.

4.5 Final settlement

Stakeholder findings highlighted that, as a result of the negotiations, **the total final settlement may not easily relate back to individual elements of the original claim schedule.**

It means as a result of the negotiations you end up compromising ... and you're not really certain what the breakdown is.

Claimant solicitor

Ultimately, if there is no agreement between a claimant and defendant, it is the court that has the final decision on what the final settlement looks like and how it is to be paid. However, stakeholders reported that settlements are typically made out of court and that few cases are heard in court for a variety of reasons (including the increased perceived risk that either party will not receive the outcome they desire, and the impact of the process on the claimants).

A key element of the final settlement is the form in which it is to be paid. While past loss and pain and suffering are paid as lump sums, future loss can be paid either as a PPO (since 2005, following the Courts Act 2003) or a lump sum. Prior to 2005, a structured settlement could also be used.

Decisions on this issue depend on the timing of the case (in relation to the availability of PPOs and structured settlements), claimant preferences and the dynamic between the stakeholders involved in the claims process. Claimant attitudes to the payment mechanisms and the dynamics affecting these decisions are explored fully in chapter 5.

5. Claimant experiences of the discount rate, negotiation and settlement

5.1 Introduction

In order to understand claimant behaviour, it is important to reflect on claimant experiences at key stages of the personal injury claim process. In particular, this chapter explores in more detail the claimant experiences of the discount rate, focusing on their awareness of its application and how the decision between a lump sum or a periodic payment (or structured settlement prior to 2005) for future loss is reached. This chapter includes stakeholder perspectives to contextualise the claimant views.

In exploring these issues, the chapter contributes to an understanding of how the current process impacts on claimants, and how this might differ with a change to the discount rate.

Again, it is important to keep in mind the diversity of individual circumstances and outcomes in personal injury cases where claimants' experiences are cited. For this reason, the examples given in the text are illustrative of individual claimants' experiences rather than presenting a generalised view.

The findings indicated that:

- Claimants were typically unaware of the discount rate and its application in the calculation of the future loss elements of their claim.
- They often found the negotiation process distressing, particularly where the calculation of future losses (through which the discount rate is applied) were concerned.
- Personal injury compensation for future loss can currently be paid as a lump sum, a PPO or as a mixture of both. The current PPO system evolved from the previous structured settlements system.
- There are several advantages and disadvantages to PPOs and lump sums. Most notably, a PPO places the investment and mortality risk in the hands of the defendant, while a lump sum places the risk of mortality and a potentially inaccurate discount rate and Retail Price Index (RPI) in the hands of the claimant.
- The decision making process behind the selection of a PPO or a lump sum is complex, with several parties providing input into an agreement which often leans towards lump sums.

5.2 Claimant awareness of the discount rate

Claimants were typically unaware of the discount rate and its application in the calculation of the future loss elements of their claim. This lack of awareness of the discount rate and how it was used may reflect the fact that the rate is a non-contestable aspect of the settlement process, even though it can be crucial in determining the amount claimed for.

Some stakeholders – including financial advisors and professional deputies – suggested that this aspect of the future loss calculations would be challenging for some claimants to understand. As an example, one professional deputy reported that one of the parents of a claimant she supported relied heavily on her advice in order to understand the basis of her lump sum. Although this parent could understand the simple concepts, the more complex ones such as how the discount rate was applied were hard for her to grasp.

Despite low levels of awareness of the discount rate, when presented with information about the rate and its impact on a lump sum award, several claimants had strong views about the issue. Their views on this are addressed in chapter 7 of this report.

5.3 Negotiation and future loss

Claimants tended to find the negotiation process stressful and traumatic, particularly if they felt they were not supported by their solicitor. Stakeholders also reported that claimants (or their families where relevant) found the negotiation process difficult and sometimes distressing, especially where children had been involved in personal injury claims. This was because all family members had typically experienced considerable stress and changes of circumstances as a result of the personal injury and the claims process.

*I've never had a case which didn't involve managing a family's expectations ...
the family has usually sacrificed a great deal.*

Professional deputy

The research suggested that **one of the more stressful elements of the negotiation period for claimants was the process of quantifying future loss elements.** Once again, this feeling was felt particularly strongly by parents and carers of claimants who were children.

How do you bargain over your child's life? You can't put a figure on it because no matter what they give you they can't give you back the time ... Talking about money is almost an insult ... The whole thing is an incredibly upsetting process.

Parent of claimant with brain injuries, RTA

5.4 Claimant preferences for type of compensation payment

The payment mechanisms

A key issue underpinning the system is the question of who is best placed to assume the risks – claimants or insurers – and at what price. The current system offers diverse solutions to this problem as personal injury compensation for future loss can currently be paid as a **lump sum, a PPO or a mixture of both**. The current PPO system evolved from the previous structured settlements system, with the PPO system coming into place in 2005 following the Courts Act 2003.

In the qualitative work for this study, three participants (or those they care for) received compensation after 2005, and were therefore eligible for a PPO instead of or alongside their lump sum. The other six participants (or those they care for) received compensation between 1990 and 2005, and were therefore eligible for structured settlements instead of or alongside their lump sum.

Unlike PPOs, the structured settlement approach included the use of the discount rate. However, payments were made through monthly pension payments, rather than as a lump sum, making them more similar to PPOs as a payment mechanism for claimants. Nonetheless, PPOs do not require a lump sum to be calculated in order to work out what periodical payments must be made, mitigating the need for the discount rate. Instead, using a 'bottom-up' approach, the court assesses the periodical payments the claimant needs for the future irrespective of their capital cost. For claimants, the PPO offers the stability of a regular income (as a structured settlement would also do) and is linked to an earnings index, such as care workers' earnings, so it can change as the index changes and ends when the claimant dies. The defendant must comply with the order to make the specified regular payments for a PPO, no matter how the market performs and even if the claimant lives longer than forecast. In contrast to the traditional lump sum system, therefore, it is the defendant, rather than the claimant, who is exposed to an uncertain financial future by taking on the twin risks of how to fund a future financial liability and of mortality.

A report published by Moody's Investors Service in 2012 (Pavicic, 2012), outlined the key risks for insurers to be:

- PPOs transfer the inflation and risks associated with funding a future financial liability to the insurer.
- The life expectancy of the claimant can make a big difference to the final amount of money paid out where a PPO is used. Insurers can use 'average' life expectancies but these can vary a great deal, with major consequences, particularly when inflation is taken into account.
- PPOs are a particular problem for general insurers as they are not experienced in investing for life-long liabilities.
- General insurers are unlikely to purchase an annuity in order to transfer these risks to the life market because it would be uneconomical and the UK impaired annuity market does not extend to serious injuries.

Under the Courts Act 2003 a judge may impose a PPO on the parties even if they object to compensation in that form: this is one of the key distinguishing differences from the older structured settlement system in which either party could veto the use of a structured settlement.

However, the disadvantage of a PPO for claimants is that it may not provide the flexibility to meet larger occasional costs. A lump sum (to which the discount rate is applied), in contrast, offers flexibility to: pay for large outgoings (such as a house); pay for unpredictable future costs, to provide support for others in the family (as it is not contingent on life expectancy); and 'frontload' expenses. It also provides the opportunity for a clean break from the emotionally demanding claims process. The disadvantage is that the claimant bears the triple risk of inaccurate future loss calculations (including life expectancy being predicted incorrectly), the discount rate being inaccurate and the RPI also being inaccurate – although these risks could go either way and may not always be disadvantageous for the claimant.

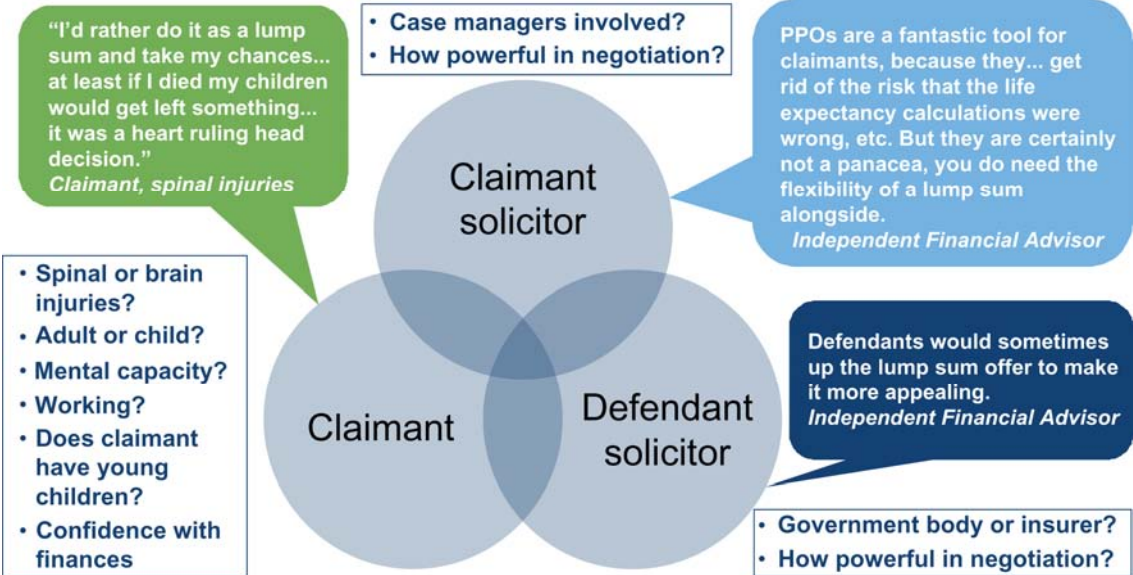
The PPO vs lump sum decision making process

The claimants in this research who were eligible for lump sums, PPOs or structured settlements generally reported they were aware of the advantages and disadvantages of both lump sums and PPOs/ structured settlements at the time of settlement, and they were, at least in principle, the key decision makers. Nonetheless, it is important to add the caveat that the sample size under consideration here is small, and this may be atypical of claimants more widely. In addition, as outlined above, claimants were not generally aware of the

discount rate, and therefore were not able to articulate a detailed understanding of the relationship between the use of the discount rate and the distribution of risk in lump sums. Indeed, claimants in this study tended to report that they followed the advice of their solicitor closely when making a choice between the payment mechanisms. Most claimants reported that they had been advised on the advantages and disadvantages of both by their solicitor, and also, in some cases, by a financial advisor who had been involved in the case through the claimant solicitor. As an example, one participant reported that a financial advisor had presented a report to him on the advantages of PPOs versus lump sums, which he had reviewed before making his decision. Again, he felt that this had been quite difficult to understand, which could explain why claimants tended to report that they adhered to the advice of solicitors on this matter.

This would suggest that the claimant solicitor holds a great deal of influence. However, the claimant and stakeholder research found that the factors influencing the decisions on the type of payment mechanism were more complex than one party having the guiding decision. Figure 5.1 summarises the relationship between the guiding factors for all parties.

Figure 5.1: Stakeholder involvement in lump sums/PPOs outcomes



For interviewed claimants who were eligible for a PPO, there were clear advantages to a lump sum payment when compared to a PPO – although it is important to note that in this study none of those eligible for a PPO were minors – all were adults and two of the three participants had dependents. The over-riding advantage for participants who were eligible for PPOs **was that it provided the flexibility to spend the money as and when they chose** – particularly if they had dependents and were concerned about providing for them. These dependents were typically young children, but for some participants also included adult children and spouses/ partners. Claimant solicitors also noted that their clients would cite the spending flexibility as a reason to prefer lump sums. Overall, the lump sum was seen as an independent income which would allow claimants to provide for their family in the future or retain the independence they had before their accident. This countered many of the risk factors for a lump sum, or the advantages of a PPO for those who would have been eligible for them.

A lump sum is more risky, but it draws a line under it, you've got your money and you spend it how you want ... it provides a contingency for family in case something happens to you: at that stage [settlement of the case] you're quite unhealthy in your mind and I didn't want to take the risk that my family wouldn't get anything. In my mind, if I went for a PPO and I died, my family would suffer, and they'd been through the trauma too.

Claimant with spinal injuries, RTA, settled post-2005

A few claimants also felt that the lump sum offered a point of **emotional closure for a stressful and difficult period** and was a more appropriate and empowering type of settlement because it gave the claimant/ carer freedom to spend the money as they chose. This view was expressed by parents/ carers of claimants who were children as well as adult claimants.

I didn't want to feel my whole life was controlled by this process – like I'm 10, when I'm an independent career person. Maybe [a PPO] is good for someone who is 14, but I would feel like the compensation isn't really mine. You're not free, it's keeping you in the same place.

Claimant with multiple injuries and post-traumatic stress, RTA, settled post-2005

Some claimants also reported **confidence in managing their finances at the time of settlement**, and cited this as a reason for preferring a lump sum as they felt they would be able to manage the money well. However, it is important to keep in mind that only one of the claimants involved in the study had not employed the advice of a financial advisor. For the

rest of the claimants who had engaged a financial advisor, this had often happened early in the claims process. Others had support in place through the Court of Protection and felt that they would be able to manage the fund with the support of a deputy.

I felt confident that I could manage the money – that's what I did for a job. I could control a lump sum ... I knew I could control it.

Claimant with spinal injuries, RTA, settled post-2005

All the claimants interviewed in this study who were eligible for PPOs were adults who had experienced an injury mid-way through their lives. All had had professional carers and two of the claimants had children for whom they felt it was important for them to provide. This, to some extent, may explain their levels of confidence of being able to manage a lump sum, and their reluctance to choose PPOs as part of their settlement. In contrast, stakeholders, including professional deputies, reported that **claimants who were minors or vulnerable were more likely to accept a PPO as part of their settlement**. They were usually advised and supported by the Court of Protection. These tended to be cases where claimant lacked capacity as a result of the accident, where the claimant was a minor and a long life-expectancy was predicted, and/or also where the accident had been 'catastrophic' and care costs were high.

The advantages of lump sums for claimants were reinforced by **a system that stakeholders felt leaned subtly towards lump sum payments, despite awareness of the advantages of PPOs**. Indeed, as outlined earlier in this chapter, PPO settlements placed greater risk with the defendant or insurer, and in view of this several stakeholders reported that insurers preferred to settle claims with lump sums so that they would not be undertaking the life-long liabilities outlined earlier in this chapter. The work of Lewis (2010) suggests that the expansion of the structured settlement system had been hindered by, among other things, 'the refusal by many lawyers to give proper consideration to the merits of the alternative form of payment. In part, this was attributed to the innate conservatism of the legal profession, together with ignorance or misconception about what the periodical payments actually involved' (Lewis, 2010). The removal of the power to veto when PPOs were introduced was in part a response to this. However, stakeholders in this research indicated that many felt the newer PPO system was being used to lean towards lump sum payments still: one stakeholder highlighted that insurers would minimise the risk of a PPO settlement being imposed upon them by increasing their lump sum offer. This would mean claimants would need to reject the lump sum offer and go to court to get a PPO. As previously outlined, the experience of going to court was rarely seen to be preferable for claimants, and solicitors,

through their experience, were aware that a court case may not result in a more advantageous outcome.

The payment mechanisms were also treated differently by claimants when managing their settlement. Chapter 6 of this report discusses in more detail the extent to which claimants felt that their settlement met their requirements.

5.5 The claimant experience: two case illustrations

This section presents two brief case study illustrations which demonstrate the claimant experience of the processes in which the discount rate is used, and the effects of this decision. This includes the drafting of the claim schedule through which the discount rate is applied, and their experiences of the subsequent final settlement. In doing so, the case studies add depth of understanding to the relationship between the discount rate, the personal injury claim process and the claimant's experience.

Case Illustration 1: David's story (settled in 2005)

Injury and approaching a solicitor: At the time of his accident in 2004, David was married with two young children and worked as a senior manager in a large private company. He suffered a spinal injury in a road traffic accident while travelling for work, which left him in a wheelchair. His company offered their solicitor to represent him in his case. The solicitor was very senior and had a good reputation, and, importantly for the claimant, spoke and wrote in terms he could understand.

Claim schedules and counter-schedules: David spent 18 months being assessed by medical and care professionals on both sides. He received financial advice from an IFA, but they remained neutral in the process: 'I was told that the financial advisor couldn't advise me – they could only give me all the information.'

Negotiation: The final negotiation stage was spread out over a number of days because the parties could not reach an agreement. The claimant was told by his barrister to come prepared with a figure in mind based on all the factors he and his solicitor had been discussing for the last year and a half. David described it as a 'bizarre' experience 'pushing pieces of paper across the desk' between the claimant and defendant sides.

Final settlement: David was awarded £2.5 million in 2005, the bulk of which was for future losses. David's settlement date meant his future losses would have been calculated using

the current discount rate of 2.5% at a point in time when the expected yield from ILGS would have been higher than in later cases.

He was able to agree his preferred sum out of court, a figure somewhere midway between the minimum and maximum he was told he could expect. There was a possibility he could have won more, but it was a risk he preferred not to take. He also did not want to draw the case out longer or bring his family into court.

Lump sum or PPO: David preferred a lump sum because he felt that it would leave his family sufficient money to manage if he died. He was confident in his ability to manage the lump sum due to previous work experience. He felt PPOs were relevant ‘if your needs are known’ – but that they might be problematic if needs changed, and a lump sum made him feel more independent and gave him greater autonomy over long-term decisions.

Case Illustration 2: Anna's story (settled in 2000)

Injury and approaching a solicitor: Anna is married with twin children, a boy and a girl. Her son suffered clinical negligence at birth in 1992, and now, at 20 years old, is severely brain damaged and requires a wheelchair. Within six months after his birth, the parents went to a solicitor who was recommended by a friend who had been through a similar case. They had a good relationship with the lawyer because they felt she took charge of a difficult situation. They had a lot of confidence in her ability to help them.

Claim schedules and counter-schedules: Anna and her husband were advised not to take the case further until their son was old enough for the impact of the accident to be assessed. When he was 6 or 7 years old assessments on him began. There was a lot of waiting, but because the hospital was cooperative they were reasonably confident it was going to be a favourable outcome for their son. The experiences of the child's twin sister, now studying for a university degree, were used to calculate his future earnings.

Negotiation: Anna felt the negotiation process was helpful and she was well supported by the lawyer. The settlement figure was decided before they went to court, but they wanted to go to court for a degree of closure, to be part of the process and to hear what the judge said.

Final settlement: Her son received £3.6 million in 2000, 11 years after beginning the case. They felt this was a fair settlement. The timing of Anna's case meant her settlement for future losses would have been subject to a different discount rate to that used currently. Between 1998 and 2001 the discount rate was set at 3% based on a three-year average rate of return

on ILGS. Over the time since Anna's case settled and taking part in the interview the expected yield on ILGS has fallen, as outlined previously. Anna would also not have been able to receive damages for future loss in the form of a PPO, but a structured settlement was available (as well as a lump sum payment).

Lump sum or structured settlement: At the time of settlement Anna preferred a lump sum to a structured settlement and had advised her solicitor of this. However she now regrets not pursuing a structured settlement, largely because care of her son and his finances has become a full-time job. She also feels that, as the money is her son's, she is responsible for conserving the capital, and is therefore very concerned that the money will run out. She finds managing the lump sum is stressful and takes a lot of time, even with the help of a financial advisor. She now feels that were a PPO available she would have preferred this – or indeed the structured settlement that was available to her at the time. She feels this would mean less worry for her and more security.

6. After the settlement – claim management

6.1 Introduction

This chapter presents findings on how claimants managed their money once compensation was agreed, and how satisfied they were that their compensation met their requirements. In doing so, the chapter provides crucial context **to understanding claimant behaviour in light of the current discount rate**. Once again, it is important to be mindful of the huge diversity in individual circumstances and outcomes in personal injury cases: where claimants' experiences are cited, the examples given are typically illustrative of one case rather than a generalised view.

The findings indicated that:

- Claimants did not typically consult a financial advisor unless strongly advised to do so.
- Initial spending priorities included housing and home adaptations. For some this included potential purchase of a new home. Longer-term priorities focused mainly on care and treatment expenditure.
- While claimants reported that they would have been unlikely to change their consumption behaviour significantly had they received a larger compensation amount, several felt they may have had more confidence to spend on their immediate needs, such as housing and care.
- Claimants who were unhappy with their settlement tended to struggle to meet their initial, regular and long-term spending priorities, with long-term needs being a particular concern for many.
- Claimants were generally cautious in their investment behaviour. Despite this risk aversion, some claimants who were less satisfied with their compensation felt under greater pressure to make higher-risk investments.
- Claimants with family or dependents also tended to be concerned with providing for and supporting them adequately through the compensation fund, although this was not an area covered by future loss calculations.

6.2 Support and advice

Personal injury lawyers were typically a point of contact for claimants only until the settlement was agreed. After this point, claimants either managed their claim alone, or, in some cases, with the support of financial advisors, case managers and professional deputies, as appropriate to the claimant's situation and their choices.

Financial advisors

Financial advisors¹¹ reported that there are several stages to helping claimants plan their investments and expenditures.

- First, they **revisit the claimant's needs**, as needs post-settlement could be very different from needs at the point at which a claim schedule was drawn.
- Second, they consider the '**Roberts v Johnstone**' calculation. This refers to the fact that claimants often need to use a large portion of their compensation to buy an adapted house at the outset. This expenditure is not taken into account in the claims process as a purchased house is seen to be an asset rather than an expense.¹² In these cases, financial advisors said they have to look to use the money allocated to other areas to cover the cost of a new house. This reduces the money available to meet the claimant's other needs.
- Financial advisors then **conduct a risk evaluation for each claimant**. Alongside the risk evaluation, they consider the duration of the available investments, which must be related to the life expectancy of the claimant, to ensure that the return on the investment is achieved within the lifetime of the individual.
- Following this, an appropriate **investment portfolio** is devised for each claimant.

As the claimants interviewed in this research were recruited with the help of specialist financial advisors, many of them had used advisors. However, in general, it was thought that **claimants do not consult an advisor unless they are strongly advised to by a solicitor**. Stakeholders suggested that those who lack the mental capacity to make their own financial decisions are more likely to have contact with an advisor, while those who receive under £100,000 tend not to seek financial advice.

In this study, those who had used a financial advisor tended to be very pleased with the services and support they received. Even those claimants who were confident with their finances felt that **specialist investment advisors were invaluable** in ensuring that their long-term needs were met.

¹¹ Financial advisors, including IFAs, stockbrokers or specialist investment managers, provide support for many claimants on the technicalities of procuring suitable investments, and planning financially for future needs. In this study the majority of advisors interviewed were IFAs, who are regulated by the Financial Services Authority (FSA) and can advise on a range of investment products, rather than being linked to an in-house product.

¹² Additional accommodation costs can be taken into account as part of a claim, but not generally in terms of making a new purchase. This is because a claimant can buy a house that could then be owned as an additional asset throughout their life, which would be equivalent to having compensation left over at the point of death.

No matter how confident I am with managing money I'm not an investment expert. You have to be confident to trust them to invest money based on knowing what my needs are going to be.

Claimant with spinal injuries, RTA

Advisors were typically **highly trusted by claimants**, and the advisors themselves reported being in contact with claimants and their families for many years, providing advice and support throughout.

We're 'financial social workers' ... we become like family.

Financial advisor

One claimant had not used investment advisors at all. Her solicitor had advised her to invest her lump sum in a trust fund and seek the support of a financial advisor, but when she met some of the advisors she was not convinced by their approach and was unwilling to pay their charges, so made her own investments.

Case managers and deputies

In comparison to financial advisors, claimant **opinions on the role of case managers**¹³ **were more varied**. One claimant had employed a case manager, but then felt that the case manager had procured care services that he could have procured himself. This claimant had suffered spinal injuries, did not lack capacity and felt very able and confident in managing his own finances and investment needs. In contrast, parents of claimants who were children with severe and complex injuries found the support of case managers very helpful. One participant whose child had complex needs and lacked capacity had employed a case manager to advise on what equipment to buy, benefit applications, to organise a payroll for the carer she employed and provide general advice on special needs. However, not all participants who required this support had access to it: one claimant whose compensation payment was made 20 years ago reported that the support of a case manager would have been welcome at the time of award.

We thought surely there would be a doctor to tell us what to do. We needed somebody to hold our hand and take us through the maze ... we needed practical advice and nobody could do that.

Parent/ carer of claimant, clinical negligence case

¹³ Case managers are practitioners devoted to the coordination, rehabilitation, care and support of people with complex, clinical needs. They aim to facilitate claimants' independence and improve quality of life while acknowledging safety issues. They may be involved in the process by solicitors on either side.

The final group of professionals who offered support and advice to claimants post-settlement were **professional deputies**.¹⁴ Professional deputies typically reported that one of the most challenging aspects of their role was managing the feelings of parents in employing professional carers, and ensuring that suitable professional care was available to claimants. They also reported challenges in protecting the compensation funds of claimants from family members who felt they were entitled to access the money. These issues are discussed in more detail in the section below, which looks at how settlement money is spent.

6.3 Priorities in spending compensation payments

As explained previously, while the original claim schedule outlined the needs of each claimant and the level of funding required for this, the final settlement did not necessarily reflect this breakdown directly because of the negotiation process. Therefore, at the time of settlement each claimant needed to reassess their own needs and prioritise the actual settlement money that they had received accordingly. As such, the compensation payment in itself also raised challenges for claimants: they had learn how to manage the money they needed to meet their immediate needs after settlement, as well as their regular and long-term financial needs, which might change over time. When claimants spoke about their spending priorities, they discussed elements that were likely to have been affected by the discount rate and elements that may not have been directly affected (because they did not necessarily relate to future financial loss).

There was wide agreement among stakeholders that most claimants were conservative and cautious about how the lump sum was spent. Indeed, claimants avoided spending any of the original capital awarded as far as possible. For some this was to ensure they were able to provide for their families as they had previously been able to or were planning to prior to their injury.

My aim is to spend as little as possible to leave money for my kids. If I had a salary this attitude would be the same – I'd still plan to spend as little as possible.

Claimant with spinal injuries, RTA

The few claimants who were generally satisfied with the final settlement upon receipt held slightly different views on how to manage their initial needs compared to those who were

¹⁴ Deputies are appointed by the Court of Protection to manage the affairs of someone who has lost mental capacity and ensure their best interests are protected. They may be legal or financial experts who offer paid advice to a number of families in managing their claim financially, and in planning care and support. Professional deputies differ from lay deputies who are typically members of the claimant's family, such as a parent, who are responsible for making decisions on behalf of the claimant.

unhappy with the amount they had received. This degree of satisfaction with the settlement had the greatest influence on spending behaviour as it dictated confidence in spending – not only on initial priorities, but also on regular and long-term priorities. In contrast, **the claimants who were unhappy with their final settlement tended to struggle to meet their initial, regular and long-term spending priorities, with long-term needs being a particular concern.**

I have to make the money last ... it's my security ... I don't want to get to 75 and have my daughter needing to look after me.

Claimant with head injuries, RTA

The degree of care and support provided under interim payments to some extent shaped claimants' expectations of care and quality of life once they received their final settlement, with a few stakeholders, such as case managers and deputies, noting that some claimants became used to services and therapies under interim payments and were unhappy if no longer able to pay for them once a settlement was agreed. Some stakeholders representing and supporting claimants reported that in recent years claimants were struggling more to meet their regular and long-term needs through the compensation payment.

Without a doubt there is less money to provide the same level of care and therapy that was provided five years ago ... we have to work a lot harder to make the same resources go further and make the money last.

Case manager

When considered in light of the previous finding that claim schedules have become more detailed and accurate in recent times, this suggests that **claimants have to take on greater risk despite compensation payments more accurately reflecting needs.** This would suggest that factors such as the discount rate being further removed from the rate of return that could be expected from ILGS are increasing the risks that claimants need to take.

Initial priorities

Claimants typically reported that **housing and home adaptations** were their highest priority and their immediate concern after settlement. This was because they felt having suitable accommodation was crucial to ensure a good quality of life.

Finding the right house in the right place and converting it is a long process. It's worth it though as it makes a heck of a difference to life ... Being comfortable in your own home is very important.

Claimant with spinal injuries, RTA

Claimants also considered buying a house to be a good investment. As an example, one participant who was the parent of a child who received a compensation payment was advised by her stockbroker to buy a house worth £190,000 in her son's name as a safe way to invest part of the lump sum. She also needed to spend a further £40,000 on renovations.

As outlined previously, the buying of a new home is not generally included in the original claim as, following *Roberts v Johnstone*, a house is seen as a lifetime asset that would essentially mean money is available following the death of the claimant, rather than being used to meet claimant needs over their lifetime. Therefore, when claimants purchase a house they are currently required to take on further risk with the compensation that is left or meet some of their needs in other ways.

Those who were happy with their settlement tended to make sure that their housing needs were dealt with before any other issue, whereas those who were more concerned about how far their lump sum would stretch were more tentative about buying the type of home they would need straight away.

I want to buy somewhere to live – initially this had been the priority, but I'm so frightened about spending money I don't want to make a mistake.

Claimant with multiple injuries and post-traumatic stress, RTA

Mobility and related equipment was also a primary concern for many claimants, especially when the claimant was relatively young. **Rehabilitation** was often another major immediate cost following an accident, and stakeholders reported that **holidays** were typically an important initial priority for claimants, as families needed some time to recover from the stressful years of completing their claim.

In thinking about a change to the discount rate, increased compensation payments may mean that more is spent on initial priorities, such as housing. Indeed, as will be explored in chapter 7, this was one of the changes in behaviour that some claimants felt may result from increased payments. However, it is important to consider this in relation to the findings on claimant behaviour, as discussed further in chapter 7. Moreover, the small sample sizes in this study mean that generalisations about changes in behaviour cannot be made.

Choosing and paying for care and treatment services

All claims for future loss are calculated on the basis of private care being used, provided that it is likely that private care will be sought by the claimant. The existence of the NHS is therefore ignored in calculating most claims. However, claimants were not typically aware of the basis on which their lump sums had been awarded and so planned their care in light of what was deemed affordable given the final settlement. They did not report that their claim was based on using private healthcare only, although they were not explicitly asked about this as part of the research. Given this, it was not possible to determine whether claimants were 'double recovering' their health and care compensation by using public rather than private services, as some insurers feared.

However, the feeling that their compensation was not sufficient to cover regular care and treatment needs did lead **several claimants to speak of the trade-offs between sourcing health therapies, care and education in the private and public sectors**. Most typically, the outcome was that claimants were unable to access the specialised and tailored services they needed in the public sector, so they did in fact use private services, as would be expected. Reasons for this varied: claimants were not offered suitable health services through the NHS; local authorities would not pay for additional social care beyond granting Carers' Allowance to the main carer; local school services were not suitable.

Indeed, case managers interviewed suggested that **brain injuries in particular were less well serviced by the NHS**, and that the relevant therapies were better provided privately. Among claimants, two parents/carers also reported that they needed to pay for private therapies to meet the needs of their adult children with brain injuries.

Good quality support for certain injuries is hard to find and carers often need training.

Case manager

Support to manage certain mental health needs was also not reportedly available from the state: One claimant outlined the challenges of finding affordable support to manage post-traumatic stress disorder (PTSD) after her accident. She was unhappy with the level of compensation she received, and felt she had no option but to sacrifice any expense on leisure or clothing to pay for essential therapies not provided by the NHS.

For a few claimants, however, the state provision of health services was preferable to the private sector. The two **claimants interviewed with spinal injuries reported being able to use the NHS** for spinal injury care alongside private physiotherapy.

All spinal injury services are NHS and you can't get better privately.

Claimant with spinal injuries, RTA

Some of those who struggled to manage regular costs drew on state provision of care and therapy in preference to paying for services, even when this care was considered inferior to that available privately. These claimants typically reported **relying on the state benefits they were entitled to, and managing within their weekly budget rather than drawing on their lump sum**, which they wanted to preserve for their future needs. In one case, the mother of a claimant was beginning to replace private care with NHS care for her son, on the recommendation of her stockbroker, to save money. In our interviews this applied to three of the participants interviewed.

I feel if I am careful, I will be able to manage ... living on benefits is key.

Claimant with head injuries, RTA

Although the original analysis of needs and requirements for cases where claimants spoke about some reliance on state care was not clear, the findings do suggest that the need to re-manage compensation settlements, due to the impact of the discount rate; lack of clarity on how the final settlement relates to claimant needs; claimant analysis of state and private provision; and claimant worries about the money being insufficient to cover regular and longer-term needs, all combine to push some claimants towards state healthcare when the settlement was based on private healthcare. This does suggest that for these claimants a change in the discount rate would potentially reduce burden on state healthcare. In addition, as will be discussed further in chapter 7, the ability to spend more on meeting care needs was seen to be a key advantage to a reduced discount rate among claimants. As such, a potential impact of a lowered rate could be greater expenditure on healthcare, even where private care is currently being sought. The impact of this is most pertinently seen when considering the findings on care and treatment in the long term.

Care and treatment in the long term

Claimants were also typically concerned that their compensation would not last them to the end of their lives, because they believed that health and care costs would rise as they aged, as they would need additional private therapies, care and support, and because gratuitous informal care from family members would no longer be available.

*If necessary I'd make sure I can afford private care to have a proper quality of life
– I'd forgo other things.*

Claimant with spinal injuries, RTA

As a result, all claimants were concerned with preserving their own or their child's lump sum before their health deteriorated further, to ensure sufficient funds to pay for care – either for themselves or for their child because they were no longer able to manage as the primary carer.

Claimants' degree of concern about this depended on how well they felt their compensation payment – and in particular, their lump sum – would meet their needs in the future. Whereas one claimant with spinal injuries who was happy with his lump sum payment reported that he would be able to downsize on his accommodation in order to pay for care later in life, another claimant in a similar situation reported that she relied on her adult siblings to provide low-level care and support for her while she was young, so as not to deplete the money she would need for future care.

I rely gratuitously on friends and family not to deplete the trust fund.

Claimant with spinal injuries, clinical negligence

Reducing the discount rate and increasing compensation payments for these claimants may reduce the level of concern that such claimants feel about future care needs. Simultaneously, those who currently feel under-compensated and so rely on care from wider family members may again look to increase expenditure on care and support services earlier in life.

This is particularly so when considering the findings among **parents/carers of children who had been injured, for whom paying for future care was a particular concern.**

Stakeholders also reported that parents/ carers of claimants who had high care needs but insufficient resources to meet them tended to use informal care within the family in order to save resources for the future when they would be less able to care for their children.

[Parents] are absolutely terrified that when they get to their 50s there won't be enough money [and] that the money will run out when they die.

Case manager

As discussed earlier, a key factor in future expenditure is that it carries a great deal of uncertainty, and claimants bear many of the risks around future uncertainties when compensation is paid as lump sum. For the professionals, establishing claim schedules and negotiating needs can prove to be difficult, as discussed in chapter 4. The findings on the choices claimants need to make in thinking about future care reflect how this uncertainty translates to their risk management in deciding expenditure. For some this was also combined with **a feeling that their compensation was not sufficient, which meant meeting care and therapeutic needs was more of a struggle**. As an example, one parent/carer felt that her son's life expectancy was not correctly assessed during the negotiation of the claim, and would in fact be double that outlined and agreed in the settlement. In view of this she had been advised by her stockbroker to make savings on regular outgoings, and was reducing the amount of therapy her son received.

These concerns are particularly poignant when considered alongside the potential additional risk of an inaccurate discount rate. One of the ways in which claimants could currently counter the decline in the rate of return expected from ILGS, on which the current discount rate is based, would be to take high-risk investment opportunities. Understanding how claimants invested their compensation amount is therefore important in order to establish the level of risk they were comfortable with, and whether they invested in opportunities that would yield greater return than ILGS or indeed the 2.5% reflected in the discount rate.

6.4 Investing compensation payments

In general, there was a strong feeling among claimant solicitors and investment managers that most claimants were typically cautious in their investments, preferring low-risk investments. Claimants using financial advisors typically took on a mixed portfolio of investment, chosen to meet the needs of the individual. Different asset classes with different characteristics were included in the portfolio. Examples from participants included: fixed-interest accounts, property, equities, commodities, hedge funds, gilts, and national savings. As portfolios were mixed it was not clear if certain investments were used more than others, or used to invest a larger proportion of lump sums overall: interviews suggested this varied for each claimant depending on their needs and life expectancy. For those claimants who received their lump sum after 2001, investment decisions would have been made in the context of a decline in return on ILGS, although claimants did not discuss this.

Aside from this, there were thought to be few exceptions to the mixed type of portfolio in general where investment managers were used, and it was thought that personal injury claimants were rarely comfortable with high or even moderate levels of risk.

Most of these people have had a really bad deck of cards ... They all tend to be aware of how things can go wrong in the blink of an eye and they are not people who are inclined to take risks.

Claimant solicitor

High risk is not something for people in our position – [you need] the money for house, pain relief and salary not holidays. That's why you don't want high risk – you can't risk these things.

Claimant with spinal injuries, RTA

This resonates with previous findings about the concerns and choices that claimants in this research said they had to make about spending in relation to care. Indeed, these findings demonstrate that claimants were uncomfortable with the idea of investment risk. The extent of this was highlighted by the three claimants in this study who considered themselves financially literate and felt comfortable managing their finances in general. **Two of these claimants still used financial managers to invest their funds, and all were just as uncomfortable making high- or moderate-risk investments with their lump sums as those who did not consider themselves financially literate.** One participant who managed her own investments used the lowest possible risk investments products she could identify, such as National Savings and Investments bonds, in preference to using an investment manager or managed funds, as she felt these to be too risky for her situation.

In line with this, the most vulnerable claimants (or those acting on their behalf) were extremely uncomfortable with the idea of risk. Indeed, **professional deputies who managed investments on behalf of vulnerable claimants with long-term care and therapeutic needs tended to avoid risk.** This was because the claimants they supported needed considerable funds for the future and had no other means of generating them.

Investing the money at a higher risk would be a complete breach of duty ... My hands are tied, I have such a duty of care to her, I couldn't in any way shape or form give instructions to an IFA to recommend an investment that was anything other than cautious ... I have got to preserve the lump sum.

Professional deputy

In contrast, where claimants were relatively young, able to work or had another income source to pay for their regular needs, they felt slightly more able to consider taking some investment risk than their more vulnerable peers – although this was likely to be more moderate rather than high risk.

As with the spending of the compensation payment, **claimants' or parents/carers' level of satisfaction with the final settlement amount was also a factor in their level of comfort with investment.** Those who were happier with their level of compensation tended to be more comfortable with the idea of risk, whereas those who were less satisfied were far less comfortable. Despite being less comfortable, these claimants sometimes felt under pressure to take higher-risk investments than they wanted to in order to meet their future support requirements. One family reported that they felt they had to take greater risks than they wished to with their finances, as their compensation payment was lower than they had hoped.

We only got half of what we knew he needed, therefore we couldn't invest his money in completely safe options, there had to be a modicum of risk that would produce enough money to last a lifetime. It was moderate risk, we didn't go any higher than moderate ... Since we got the money we've been through two major stock market crashes, so we've probably wiped off at any one time £800,000 from his portfolio. If we'd have been given enough we could have stuck to low-risk investments.

Parent/ carer of claimant, clinical negligence

These findings suggest that claimants are generally a risk averse group, preferring to take low-risk investment opportunities, and uncomfortable with higher levels of investment. Those with the lowest risk appetite included those managing funds on behalf of injured children and those who had to support dependents. The findings also suggest that those who feel most uncomfortable with risk also feel pressured to take risks that they would opt not to given a higher compensation payment. In view of this, a decrease in the discount rate would reduce the pressure on them to take such risks.

Indeed, **most claimants were unsatisfied with the current return on their investment,** which they felt made their future position more precarious than they would like it to be. Many of the claimants reported concerns about their current returns, whether in managed funds or in savings accounts.

My care needs won't kick in until I'm 40, 50, 60 – I should be doubling my fund by then but it's nowhere near.

Claimant with spinal injuries, clinical negligence

The investments are not doing too well – last statement was just 0.6%. This is the problem at the moment as obviously this does not equal the discount rate.

Professional deputy

Based on the above, should the discount rate decrease, resulting in increased lump sums, another impact could be increased claimant satisfaction with investment choices. Claimant views on this impact are explored fully in chapter 7.

6.5 Spending and investing compensation payments: three case illustrations

In this section case study illustrations are presented to show how different types of settlement and personal circumstances lead to varying spending and investment decisions among claimants. The first two of these are continued from chapter 5. It was very hard for most claimants interviewed to be precise about the types of investments they made, as most relied on professional advisors. The findings therefore present reliable information about claimant preferences and general investment behaviour, but do not shed light on the exact profile of their investments.

Case Illustration 1: David

David's initial investment was in a new home. Finding the right house in the right place was very important to him, and it took him a year and half to buy somewhere and adapt it for his needs – for example, putting a lift in. He had also needed to find a property which was close enough to his children's school for him to be able to drop them off and pick them up on school days.

David initially had a case manager but felt that as he was already aware of many of the issues he faced as a spinal injury sufferer, it was 'pointless' in the long term: 'the assumption was, get others to do things because it's paid for, it's part of the lump sum'. He did however receive investment advice and opted for medium-risk investments. He still talks to his financial advisor regularly to tweak these investments according to his needs, and envisages making more drastic changes to his investments as he reaches pensionable age and his financial situation becomes more difficult.

David has relatively few regular outgoing payments associated with his injury and feels confident about his financial situation in the future. He uses NHS spinal injury services as he feels the care he receives here could not be provided better privately. He spends money on physiotherapists and someone to clean the house, and has a specially designed car. He recently separated from his wife, and knows that as he is now living alone, he needs to consider paying for a carer when he is older. He feels that if he were to need social care he would be comfortable in downsizing on his house to pay for this.

Case Illustration 2: Anna

Using interim payments, Anna's family moved into a new house – a necessity as her son grew bigger and heavier. After the settlement they spent a lot on house readjustments, and now the majority of the award is spent on care. For example, all of her son's physiotherapy is privately done as the wait on NHS was too long.

Regarding investment, for the first nine years they left their compensation payment in ILGS. They reported that they had seen the return on this investment decrease significantly over more than twenty years, reportedly falling from 9% to 0.5% (although it was unclear if this was real or nominal), so they decided to remove the money and have since had an IFA to make investments on their behalf. They always choose low-risk investments because they feel that the lump sum is not their money to gamble with and it would be detrimental if it runs out – this is something they worry about constantly.

Anna's son's award is managed by the Court of Protection. The combination of managing the yearly court returns and looking after her disabled son means that she regrets not opting for a structured settlement. She feels it is a constant job but does not want to pay an accountant to take over as she feels it is her son's money to protect and not hers to spend.

Case Illustration 3: Sarah

As with many claimants, Sarah's initial large investment was on her home. She spent £200,000 on adding three separate extensions to create larger spaces for a wheelchair, and added a swimming pool for therapy. These decisions were all made very carefully because she knew that funds were limited.

A large portion of their regular payments goes on her son's therapy. She spends £60,000 each year on this, including on reflexology and an osteopath. Her son's speech therapy, physiotherapy and occupational therapy are partly provided by the NHS, and partly private if she feels he needs more than the NHS can provide. All additional care is paid for by the local

authority. She also reserves up to £10,000 a year for a holiday for the family; her son has brittle bones and so needs the vitamin D in sunlight.

Because she only received half of the full amount that she, and her legal team, believed her son needed, they initially took a modicum of risk in their investments to produce enough money to last their son's lifetime. Since she has received the award she has seen two major stock market crashes, and she thinks she has lost up to £800,000 from his portfolio. Her stockbroker has advised her to reduce their spending, which she has done on therapies and holidays, in order to ensure that the money lasts for her son's lifetime.

7. The impact of a change to the discount rate

7.1 Introduction

As outlined in chapter 3, the findings indicate that the discount rate is more likely to be used in relation to cases with higher damages, of which there are relatively few. Illustrative calculations indicated that this may have equated to approximately 70,000 a year between 2009/10 and 2011/12. The greatest financial impact would therefore be seen in these cases if the discount rate were to be changed. The findings outlined in chapter 3 also indicated that clinical negligence cases, though fewer in number than many other types of claim, would see a greater impact, along with higher-value motor/RTA claims.

However, an understanding of the financial impact of a change to the discount rate also needs to take into account the findings on the processes involved in reaching a final settlement. As discussed, the negotiation process is complex and varied: there are no written rules on how it is conducted and, while the discount rate remains constant at the point of a claim schedule being drawn, calculations are not necessarily revisited as part of the negotiation process. Therefore, it is extremely difficult to get an accurate picture of how the discount rate relates to the final settlement, in terms of all of the heads of damages included, and taking into account the reductions for interim payments, liability and other decisions made. To provide some insight into the financial impact of a change to the discount rate, this chapter explores the impact at the point of the claim schedule through two individual case study schedules.

However, understanding the financial aspect of a potential change to the discount rate is only one element to unpicking the impact of a change, as the subsequent impact on claimant behaviour and the response of the insurance industry and bodies such as the NHS are also important. This chapter moves on to examine claimant attitudes towards the discount rate and what a change would mean to them. Actual investment and spending behaviour is explored before broader impacts are considered to contextualise these findings.

The key findings indicated that:

- Even a small shift in the discount rate would have a significant impact on the amounts for future pecuniary loss calculated in the claim schedule for large-value cases. In the case studies presented, lowering the discount rate to 2.0% would have resulted in a change of tens of thousands of pounds in the amount claimed

for. This highlights the potentially important impact of the discount rate on the insurance industry and bodies such as the NHS.

- A great deal of the impact may rest on the dynamics of the negotiation process and how they adapt. For example, a lowered discount rate may encourage a shift in the preferred outcomes for insurers towards more PPO settlements, rather than lump sums, depending on how they view the increased payment relative to the risks associated with PPOs for defendants.
- Changes to the discount rate would not necessarily mean changes in claimants' attitudes to investment, or changes to spending habits, with many claimants interviewed believing they would remain relatively risk averse in this hypothetical situation. Larger lump sums may however allow slightly increased spending on existing therapies or care, or greater scope to meet increasing care needs in the future.
- The impact may be greater for claimants who felt they had not received what they perceived to be adequate compensation for their injury, as it could afford them the comfort of being more risk averse in their investments and/or having to manage their investments less tightly.

7.2 The financial impact on final settlements

As outlined previously, each claim schedule includes various heads of damages, and, along with care, one of the most complex and largest amounts claimed for within a lump sum is the future loss of earnings. Therefore, loss of earnings calculations are used as case study examples below. In these examples the original loss of earnings calculations are compared with the figures that would have been arrived at if the discount rate had been set at various different levels. However, it should be noted that the calculations for all other heads of damages would also be impacted by a change to the discount rate: loss of earnings is used to provide insight into one head of damages.

Both cases studies were for motor/RTA claims. The following definitions apply within the claim schedules:

- 'Lost years' refers to any consequences of a reduced life expectancy. For example, lost years can be incurred on a pension if life expectancy is reduced.
- 'Increased costs' refers to anything for which costs are greater as a result of the injuries incurred. For example, this could include holidays, home redecoration, etc.

The seventh edition of the Ogden tables were used for analysis of the cases provided. Ogden tables are a set of statistical tables and other information for use in court cases in the UK. Their purpose is to make it easier to calculate future losses in personal injury and fatal accident cases. The tables take into account age at trial, life expectancy (based on projected mortality rates), gender, retirement age, disability status and employment status pre and post injury. They provide multipliers for a range of discount rates from -2.0% to 3.0% (increasing in half percentage point stages). As outlined previously, the multipliers are used to establish the compensation needed for each heads of damages – the annual amount is multiplied by this figure to establish the amount needed to cover future loss of the relevant timeframe (such as all years until retirement).

Future loss of earnings case study one

Table 7.1 details the figures used in the calculations for case study assuming various different discount rates.¹⁵

This case involved a female aged 38 at the date of trial, with a predicted retirement age of 67. It should be noted the seventh edition of the Ogden tables show multipliers for loss of earnings to pension age 65. In this case as the predicted retirement age was 67 and therefore two years were subtracted from the retirement age, as well as the age at the date of trial. Subsequently calculations are based on a female claimant aged 36 at date of trial with a retirement age of 65.

The claimant was not disabled before her accident, but was left with a disability after the accident, though this did not mean she was unable to continue employment. Therefore her projected annual income post-injury was relatively similar to that before she was injured (£26,588 before injury and £25,566 as a projected annual income after injury). Table 7.1 shows the multipliers for this client drawn from the Ogden tables for pre- and post-injury income (based on adjustments relating to employment status and disability). The multipliers based on a 2.5% discount rate and other various discount rates are presented in rows D and H in the table. Row K of Table 7.1 shows the final amount received for loss of earnings. This is based on the total compensation for future loss of earnings the claimant would have expected to receive were she not able to work as a result of the injury, minus the claimant's total projected income after the injury.

¹⁵ Financial figures are rounded to the nearest pound and therefore calculations using the multiplier are not exact.

Table 7.1: Claim schedule breakdown of loss of earnings: case study one

Stage 1 – from 1 May 2013 and thereafter to retirement at age 67								
Pre-Injury Projected Income								
		2.5%	-1.0%	0.0%	1.0%	1.5%	2.0%	3.0%
A	Multiplier (Table 10, female)	20.35	32.93	28.41	24.71	23.12	21.67	19.15
B	Annual net loss of income	£26,588	£26,588	£26,588	£26,588	£26,588	£26,588	£26,588
C	Table C Discount	0.86	0.86	0.86	0.86	0.86	0.86	0.86
D	Adjusted earnings multiplier	17.501	28.398	24.4326	21.2506	19.8832	18.6362	16.469
E	Total	£465,315	£752,964	£649,612	£565,009	£528,653	£495,497	£437,876
Less: Post-Injury Actual Income								
Stage 2 – from 1 May 2013 and thereafter to retirement at age 67								
F	Annual net loss of income	£25,566	£25,566	£25,566	£25,566	£25,566	£25,566	£25,566
G	Loss of earnings multiplier	20.35	32.93	28.41	24.71	23.12	21.67	19.15
H	Table D Discount	0.48	0.48	0.48	0.48	0.48	0.48	0.48
I	Adjusted earnings multiplier	9.768	15.8064	13.6368	11.8608	11.0976	10.4016	9.192
J	Total	£249,728	£404,105	£348,637	£303,232	£283,720	£265,926	£235,002
Stage 3 – expected future loss: difference between projected future earnings pre-accident and projected earnings post-accident								
K	Total loss of earnings	£215,587	£348,859	£300,975	£261,777	£244,933	£229,571	£202,875

Therefore, in this case the original claim schedule outlined a claim for £215,587 for loss of earnings. Based on the different discount rates, the new values range from £202,875 to £348,859. Lowering the discount rate to 2.0% would have resulted in an additional £13,984 being claimed for; an increase of approximately 7%. Lowering the discount rate even further to -1.0% would have resulted in an additional £133,272 being claimed for; an increase of approximately 62%. Therefore, even with small changes to the discount rate, the impact on the lump sum for one element of future loss in this settlement is notable. This was reinforced by the second case examined.

Future loss of earnings case study two

The second case was a male aged 20 at the date of trial. Given that the claimant had not started work at the time of trial, the calculations involved a number of stages that assumed certain earnings for specific periods of work. As in the first case study, the claimant was not disabled before his accident, but was left with a disability after the accident, though this did not mean he was unable to continue employment. Given his age, the calculations for pre-injury loss were based on him following a similar career path to his father. The original claim for loss of earnings was £662,960, based on a 2.5% discount rate; however, lowering the discount rate to 2.0% would have resulted in an extra £59,903 being claimed for loss of earnings – an increase of approximately 9%. Again this reinforces that for high-value compensation payouts, even a small change in the discount rate would have a notable impact on the final settlement amount.

To understand in more detail the extent of the financial impact of a change to the discount rate, these findings should be understood in the context of those outlined earlier in the report. It was noted that stakeholder findings suggested around 10% of settlements were subject to the discount rate: an illustrative calculation suggested that this may have included around 71,700 cases on average a year over the financial years 2009/10 to 2011/12. The number of cases potentially affected, combined with the two case studies above showing that small changes in the discount rate can lead to substantial changes in the value of compensation payments, indicate that the aggregate impact could be very large.

However, the overall impact of a change in the discount rate is difficult to project given the lack of industry-wide financial data and the difficulty in predicting the impact on the claim process undertaken before agreement is reached, and, in particular, the impact on behaviours towards PPO and lump sum payments.

7.3 The impact on claimants

Views of the discount rate

Chapter 6 outlined the findings on how claimants in this research invested and spent their lump sum settlements. It was found that claimants were typically conservative in how they spent their lump sums and cautious with investments. In line with this, while most claimants participating in the research had not heard of the discount rate, when the mechanism was explained to them in the course of the interview, all claimants felt that it was **unfair, given the investment rationale behind the discount rate**. As an example, one claimant found

the assumptions behind the setting of the discount rate confusing as they contradicted his understanding of how large funds should be invested.

You can't have both, you can't take your lump sum and then say in case you make money on it we're taking 2.5%. If you lost money on the stock market would they give you back 2.5%? Is how much you could lose on investments taken into account?

Claimant with spinal injuries, RTA

One claimant also pointed out that their final sum was depleted before any large investment could be made, because they had to spend upfront costs on immediate needs such as housing, yet it was discounted based on the overall sum. While the impact of this depends on individual housing circumstances, this point relates back again to the *Roberts v Johnstone* calculation previously referenced.

You can't just assume that the money will all get put into savings then build up – because that takes time, and that would be a long time without money.

Parent/ carer of claimant with brain injuries, clinical negligence case

Claimant solicitors and professional deputies supported this view; typically they felt that **it was not possible for claimants to find appropriate returns on their lump sum payments in the current financial climate**, and that it would be unfair to expect them to do so.

If you are not actually getting a multiplier that represents the return on your investment and you'll lose all your annual increments in the future, that's a big thing.

Claimant charity representative

People do not want and should not have to take a risk with this money.

Professional deputy

Investment behaviour

When claimants were asked to explore what a larger settlement¹⁶ would have meant for their investment behaviour, they reported that their **attitude to investment risk would not change significantly**. However, it is important to remember that the findings presented here are in response to a hypothetical situation presented to claimants as to how they would respond were they to be awarded a larger lump sum.

Claimants generally felt that a change in the discount rate would reduce the pressure to ensure their compensation payment met their needs and would be most advantageous for those who had not received what they perceived to be adequate compensation for their injury. They felt that these claimants would be in a greater position of security with a larger lump sum, and would be able to invest their compensation in low-risk investments – as was the general preference of claimants. Those claimants who were content with their compensation payment tended not to feel that a change to the discount rate would affect their investment decisions, and they would retain low-risk investments.

If you just got a bigger lump sum you'd just plan it differently ... if I'd have had £200,000 more it would be sitting in a load of investments waiting for me to use it as and when I needed it.

Claimant with spinal injuries, RTA

Investment advisors also suggest that a larger lump sum would not result in them automatically pushing claimants towards riskier investments, as they have a responsibility to the claimant to put their care needs first (although they did not rule out that some significantly higher-sum cases may allow for a small proportion to be allocated to higher-risk investments).

They simply do not want to gamble with this type of money ... [rather] they want a guarantee that they will be able to pay for the care they will need for life.

Professional deputy

Therefore, reducing concern and worry about the future was the main impact of an increased lump sum. Indeed, claimants felt that an increased settlement amount would allow them more of a contingency element for changing needs over a lifetime or changes in life expectancy. In this light, increased settlement amounts simply increased the flexibility element of the lump sum.

¹⁶ Claimants were asked to consider a 20% increase on the lump sum settlement amount they had received.

What is key when you're dealing with someone with severe needs is that you have the flexibility in finances to weather all the storms. Discounting removes this flexibility. And when that happens, the disabled person will suffer.

Parent/ carer of claimant, clinical negligence

You can't predict a lifetime with money. There were illnesses that came after settlement; a lot more problems.

Parent/ carer of claimant, RTA

This was a view also compounded by one stakeholder who referred to the 'known unknowns' which claimants would always need financial resources to provide for in the future.

The main issue is that there are so many unknowns... There are needs that must be met, but we don't know what they are ... we need a mechanism by which enough money is generated for future needs.

Claimant solicitor

Therefore, the findings suggest that a reduction of the discount rate, with potentially increased lump sums, would reduce claimant concerns about investment, but this would not be traded with a focus on higher-risk investment in order to generate higher returns on this increased amount.

Spending behaviour

When spending behaviour was explored several claimants felt that they would potentially change some of their expenditure due to the additional confidence that a larger lump sum would afford them. They suggested that they might **spend more on their immediate needs**, such as investing in a new home and spending more on the care that they need, rather than relying on family members to provide day-to-day care. Deputies also suggest that claimants would be able to invest in more professional help, easing the burden of care that has been left to them due to the anxiety over funds running out.

I wouldn't have tried to do all the care of my son for the first 9 years and would not now have to be considering cutting back on therapists to get the monthly outgoings bill down.

Parent/ carer of claimant with brain injuries, RTA case

Several claimants also felt that the reduction in financial burden would make them more comfortable about paying for certain occasional requirements, such as holidays, to improve their general quality of life.

I would buy a house in the Caribbean where the father of my son lives. We could spend 6 months in the UK and 6 abroad. My son would get to see the rest of his family more and he really enjoys going in the sea.

Parent/ carer of claimant with brain injuries, clinical negligence case

Claimant stakeholders also felt that larger lump sums may mean that claimants – who in their view were struggling to afford the care and therapies they needed – would be able to afford what they required and have greater flexibility to pay for occasional costs, such as holidays or health treatments.

Process would be the same, but we could dampen down the risk which would be a wonderful outcome.

Independent Financial Advisor

Nonetheless, **claimants did not feel their spending priorities would change greatly.** Those claimants currently receiving NHS treatments did not feel that they would be more likely to swap to private healthcare, particularly in the case of those with spinal injuries as they felt that the best care and therapy was offered by the NHS. Moreover, claimants interviewed who were also claiming benefits to help them meet their needs, did not report that they would change their behaviour in this regard; they still felt that **they would need the income benefits for living costs to maximise the potential of the lump sum** when their care needs were highest, or should further unpredictable needs arise. However, one stakeholder did highlight that a change in the discount rate may curb a potential increase in demand placed on state benefit systems as cuts to Disability Living Allowance and the rollout of personal budgets in health and social care for disabled people could result in services becoming more expensive. Without an increase in lump sums claimants may have to realign settlement money and turn to state support more.

When we see commercial organisations providing services, costs will rise in line with inflation ... people's compensation won't be enough for the services they need.

Claimant charity

7.4 The wider impact and context of change

In order to understand fully how a change to the discount rate may impact on claimants and those involved in the claim process it is important to consider the wider context in which changes would take place.

As outlined above, one point of negotiation that may adapt as a result of the change is the decision making around the lump sum or PPO option for future losses. Indeed, one defendant stakeholder suggested that where claimants and their solicitors may currently push for a PPO on treatment elements of care in very high-value cases, an increase in lump sums might cause these claimants and their solicitors to push for this element to be covered by a lump sum.

On the one hand, it is possible to infer that this type of change may be welcomed by insurers who have been identified in the research as leaning towards lump sums when compared with PPOs. However, on the other hand, several insurance stakeholders have warned that a decrease in the discount rate would increase the financial costs of the insurance industry. Overall, several defendant stakeholders were against a change in the discount rate because of these consequences. They felt that the motor insurance industry was already unprofitable, and placing an increased financial burden on this industry by reducing the discount rate was at odds with the pressure the insurance industry was feeling from government to decrease insurance premiums. One stakeholder indicated that a consequence may be that defendants may actually begin to push more for PPOs as part of the negotiation process if they decide the risk of a PPO proves to be lower-risk than the additional costs of a lump sum.

Those in the insurance industry were also hesitant about a change to the discount rate if the change is based on the current economic climate. Rather, they felt that a longer-term view was needed in line with government predictions of an economic turn-around by 2015. Without this long-term view it was suggested that the insurance industry would end up over-paying on compensation for a long period of time.

If we start moving the discount rate on a regular basis just to reflect two or three years worth of difficulty then it becomes a complete lottery for payments ... it really does make life extremely difficult for them.

Insurance representative

For some stakeholders the impact of the change in the discount rate could also not be considered without a full understanding of the methodology and review of other elements of the system as it currently stands. In particular, financial advisors generally felt that the current methodology of a discount rate linked to ILGS was outdated, but that defining an appropriate new methodology would be very difficult. They also felt that any decision could not be based on the 'average' claimant as each case is so individual and unique: the range around the average is broad and so many people would be disadvantaged, which means not having their needs met. One suggestion was that there could be a move to having government securities developed for this market place that are appropriately index linked. This would be a body of gilts that can be bought by the insurance industry that will give the type of return they require.

Without creating something that's bespoke and having that structure backed by the government then it's really difficult to find something that meets the needs of all parties.

Financial advisor

The methodology for setting the discount rate is currently being discussed as part of the wider review taking place on the discount rate.

8. Conclusion

This chapter outlines some of the key messages from the research in relation to the discount rate. It also outlines where there are still evidence gaps that could be explored through further research.

Key messages:

- While the quantitative data showed that the number of personal injury settlements rose over three years to 766,417 in 2011/12, qualitative findings indicated that only a small proportion of these settlements would have been subject to the discount rate.
- Several stakeholders estimated that around 10% of settlements are subject to the discount rate, with the majority being lower-value cases to which the rate would not apply.
- Given that the discount rate is more likely to affect higher-value claims, and affect the majority of each of these awards, even small changes to the rate would have a substantial impact on the values claimed for.
- While all claimants who receive a lump sum with future loss elements would see the impact of a change to the discount rate in their compensation to some extent, the research found that a change might be felt more by some groups of claimants than others:
 - Clinical negligence claimants made up a small proportion of claimants overall, but stakeholders suggested that these cases tended to be of higher value, and were therefore likely to be more affected by the discount rate and any change to the rate.
 - Those claimants who are less satisfied with their settlement in general may find that their concerns about covering care costs in the future are eased as the risk they carry reduces with an increased settlement.
 - Related to this, there was some evidence that those who have more acute concerns about future uncertainties related to a feeling that their current compensation does not meet their needs, currently feel pressured into higher-risk investments than they would like. A change to the discount rate would potentially allow them to utilise the lower-risk investments they feel more comfortable with.

- Indeed, a key message from the research was that claimants overall were cautious and risk averse in their investments. Claimants tended to focus on minimising the risks that they face, rather than seeking opportunities to get higher rates of return. Despite being generally unhappy with the rates of return they currently achieve on their investments, they did not think that they would have taken greater risks had their compensation payments been higher.

Evidence gaps and future research

The findings outlined above and throughout the report indicate that there are several gaps in understanding the use of the discount rate and what the impact of change might be.

- There is no requirement for solicitors to record where the discount rate has been used in cases. Therefore, current estimations on the proportion of cases affected by the discount rate in this report are based on qualitative stakeholder estimates from a relatively small sample of stakeholders. Being able to quantify the indicative finding that 10% of settlements are affected by the discount rate would give a more accurate measure of the number of cases likely to be affected by a change to the discount rate.
- In addition to the above, the research was not able to explore the spread of financial values of settlements, and in particular the proportion of damages paid for future and past financial losses across claim types was not available. Understanding the value of settlements, and the proportion of future and past losses across different claim types, would also allow for greater understanding of where the impact of change would be most felt. This information could be collated through an organisation such as the CRU, and would also address the point above on understanding if the discount rate was used in the calculations. However, it would take some time to build a representative dataset, which may not be possible in time to feed into a potential change to the discount rate.
- The compensation mechanisms and the process behind deciding which mechanisms to use were found to be important as this research progressed. While the structured settlement and PPO options held many similarities for claimants, there were some limitations in the extent to which the claimant experience of this could be explored, due to the sample size of those who were eligible for a PPO. Further research would expand on the findings presented here to understand the claimant experience of how a PPO or lump sum was chosen as the compensation mechanism.

- Similarly, the breadth of the claimant sample for this research was limited by the need to recruit predominantly through financial advisors. In view of this, the claimant sample was likely to include claimants who were more aware or supported in managing their claims. While the findings still indicated that claimants were a cautious and risk averse group, a more purposive sample may capture the most financially vulnerable claimants.

The research also highlighted some areas of potential future research if a change to the discount rate is introduced. For example:

- The report highlighted the complexities of the negotiation process and the potential change in behaviours if the discount rate is changed. However, there is a clear need to understand further how, if at all, the dynamics of the negotiation process change if a new discount rate is established.
- The research also suggested that the response of the car insurance industry to change may impact upon car insurance premiums and the subsequent cost to the public. Therefore, further research would explore subsequent change in the car insurance industry.
- The current understanding of the impact on claimant investment and consumption behaviours is based on hypothetical questions at this stage, given that no change has taken place. Further research would explore claimant behaviours and attitudes among those who receive lump sum damages for future losses based on any revised discount rate.

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Appendix A

Datasets and organisations

The following nine datasets were provided to be potentially used during this research. A full review was carried out on each of these datasets, and those which were suitable for analysis purposes have been used and are referred to where relevant in this report. Details on the organisations responsible for the datasets are provided below:

Table A1.1: Details on contents of datasets

Organisation	Content of dataset provided and rationale for analysis	Inclusion in report status
CRU	2,150,797 settled claims 2009–2012	Included
Personal Injury Solicitor 1	Claim schedules drafted in 2012 for three claims.	Included
NHSLA	30,100 cases closed 2009–2012. Data included cases closed according to the NHSLA definition of 'closed cases'. Cases that were settled but did not have final costs agreed were not included, meaning the data could not be analysed to provide an accurate picture of settlements. Therefore data were not included in the report, and NHSLA published figures were included instead.	Not included
WRP	2,566 claims opened 1997-2012. Cases covered predictions on likelihood that a settlement will be reached. However, there were no details on when a case might be settled even if it was likely to be settled. Therefore, the dataset was not analysed for this study.	Not included
Personal Injury Solicitor 2	11 cases settled 2010–2012. Data were reviewed to establish if a range of assumptions could be developed, in order understand the impact of changing the discount rate to final settlement amounts. Given the number of assumptions that would need to have been made, data were not included in the final report.	Not included
Defendant Solicitor	All 154,570 cases the defendant solicitor dealt with that were settled 2004–2012. Given limitations with the scope of cases this dataset covered in comparison with the personal injury landscape as a whole, analysis of these cases was not included in the report.	Not included
Insurance company	22 cases settled 2008–2012. Data were reviewed to establish if a range of assumptions could be developed, in order understand the impact of changing the discount rate to final settlement amounts. Given the number of assumptions that would need to have been made, data were not included in the final report.	Not included
Court of Protection	300 pages of individual Word documents with varying levels of descriptive information. Given the format data was provided in and the time available for analysis, it was not possible to combine the data further to carry out any summary analysis.	Not included
ABI	Summary breakdown tables of UK motor claims and settlements across the UK insurance industry for the period 2002–2010. Given the format of the summary tables, other datasets were used instead for analysis of motor claims and settlements over a similar time period	Not included

Organisation details:

1. **The Compensation Recovery Unit (CRU):** The CRU administers the scheme which enables the state to recover from tort damages any social security benefit paid as a result of a relevant accident or disease. Compensators must provide notification of claims made against them to the CRU.
2. **National Health Service Litigation Authority (NHSLA):** The NHSLA provides indemnity cover for legal claims against the National Health Service (NHS), assists the NHS with risk management, shares lessons from claims and provides other legal and professional services for members. It records negligence and other cases against the NHS.
3. **Welsh Risk Pool (WRP):** The Welsh Risk Pool is a mutual self assurance scheme for all health bodies in Wales. The risk pooling scheme covers all risk relating to NHS activity. The service has two principal functions:
 - Reimbursement of costs detailed above over the agreed excess levels
 - Provision of support to trusts and local health boards in the development of robust risk management systems.
4. **Personal Injury Solicitor one:** Representing claimants, including drafting claim schedules.
5. **Personal Injury Solicitor two:** Representing claimants, including drafting claim schedules.
6. **Defendant Solicitor:** Representing defendants and insurers
7. **Insurance company:** Representing the insurance industry
8. **The Court of Protection:** The Court of Protection makes decisions and appoints deputies to act on behalf of people who are unable to make decisions about their personal health, finance or welfare
9. **The Association of British Insurers (ABI):** The ABI has an advocacy role and represents the UK insurance industry to government, regulators and policy makers in the UK, EU and internationally, driving effective public policy and regulation.

Appendix B

Qualitative methodological note

Stakeholder perspectives

Most stakeholders interviewed in the study were recruited from a sample generated through desk research and through contacts recommended by the MoJ and our research consultant, Professor Richard Lewis. A few further interviewees were recruited through ‘snowballing’ from these contacts, following recommendations from existing participants of people likely to be interested in taking part in the research.

All interviews with stakeholders were conducted between October and December 2012. When conducting the interviews, interviewers used a semi-structured discussion guide to ensure all relevant topics were covered consistently across all interviews and that all key issues were explored. The discussion guide can be found in Appendix C. An incentive of a £30 donation to charity was provided by Ipsos MORI to stakeholders as a thank you for their time.

Analysis of the stakeholder interviews was conducted using a thematic approach: data were reviewed in the light of key themes emerging from the face-to-face analysis sessions, and emerging hypotheses were refined.

Claimant perspectives

Two types of groups were covered in the claimant research:

1. Professional deputies appointed to support claimants in managing their finances, all of whom were personal injury solicitors who had taken on the additional responsibility of acting as deputy for a number of claimants; and
2. Claimants or those who could represent them (including carers and lay deputies).

Professional deputies

The three professional deputies interviewed were recruited through gatekeepers, and all three interviews were conducted over the telephone. A discussion guide was used for the interviews to ensure all relevant topics were covered consistently across all interviews and that all key issues were explored. An incentive of £30 cash was given to claimants as a thank you for each participant’s time.

Claimants, carers and lay deputies

Nine interviews were conducted with claimants or their carers and lay deputies.

Given that a key focus of the research was to explore the experiences and views of claimants in the time following final settlement, the target population was those who had received their settlement at least six months ago: all participants fulfilled this criteria. Of the nine claimants, carers and lay deputies, six had received settlements paid out between 1990 and 2005. Interviews with participants with a range of injury types was also achieved. Table B1.1 outlines the key characteristics of the sample attained in the claimant interviews:

Table B1.1: Claimant sample profile

Type of participant	Date of settlement	Type of claim	PPO?	Financial advisor contact	Age of claimant	Gender of claimant
Claimant	2006	RTA	No	Yes	52	Male
Claimant	2009	RTA	No	Yes	46	Female
Claimant	2010	RTA	No	No	56	Female
Claimant	1996	Clinical negligence	No	Yes	31	Female
Carer	2000	RTA	No	Yes	25	Male
Carer	2000	Clinical negligence	No	Yes	20	Male
Lay deputy	1990	Clinical negligence	No	Yes	22	Male
Lay deputy	1991	RTA	No	Yes	46	Male
Lay deputy	1992	Clinical negligence	No	Yes	20	Male

The sample did not include a spread of use of financial advisors. This was a result of recruiting through Independent Financial Advisors (IFAs) as gatekeepers: almost all claimants interviewed had received only lump sums and had the support of IFAs. In order to address this, professional deputies were approached, who also supported vulnerable claimants with the management of PPOs. The professional deputies were recommended through IFAs and recruited by telephone.

Personal injury claimants who have received large compensation payments are a small, geographically dispersed population, many of whom are vulnerable due to disabilities. Furthermore, the feasibility study demonstrated that databases of the relevant population with contact details were typically held by individual private organisations (such as solicitors and financial advisors) and it was not possible to obtain permission to access this personal data. For this reason, claimants were approached through gatekeepers – in this case two Independent Financial Advisors (IFAs) – and a request for research participants on the

websites of relevant charities. Seven claimants, carers, and lay deputies were recruited through gatekeepers, and two claimants referred themselves directly in response to website notices.

Given the sensitivity of the subject matter, ethical considerations were foremost when recruiting claimants. An opt-in approach was therefore adopted to fully guarantee informed consent of participants: all those who took part had either consented to take part before being contacted, or got in contact themselves because they wanted to participate.

On first contact, claimants, carers and lay deputies were asked questions on the following issues to determine some key characteristics:

- when the claimant received their settlement;
- the type of personal injury they experienced;
- whether the claimant received a Periodic Payment Order (PPO) alongside their lump sum; and
- whether the claimant spoke to a financial advisor at any point during or after the process.

Interviews with were conducted between December 2012 and January 2013. As with stakeholder interviews, interviewers used a semi-structured discussion guide to ensure all relevant topics were covered consistently across all interviews and that all key issues were explored. An incentive of £30 cash was given to claimants as a thank you for each participant's time.

Interviews were conducted face-to-face or over the telephone to suit the convenience of the participant. In total, of the claimant and carer interviews, eight were conducted face-to-face and one over the telephone.

Analysis of the claimant interviews used a 'case study' approach to the data. This was because the situation and experiences of each participant were highly individual, meaning that each interview also presented us with a distinctive case study. A case study approach raises the question of whether the cases examined should be used for an 'explanatory, exploratory or descriptive' insight. Given the huge differences in circumstances between cases, the claimant interviews did not lend themselves to providing explanatory insights about the impact of the discount rate. However, they proved extremely useful in providing descriptive insight.

Appendix C

Stakeholder depth interviews – discussion guide

1. Background

The Ministry of Justice are keen to assess the impact of a potential change in the personal injury discount rate to more accurately reflect current/ recent performance on investments.

The discount rate affects the size of awards for future damages. For example a lower discount rate means that claimants are likely to receive larger lump sum payments.

Ipsos MORI have been commissioned to conduct a research programme which will feed into the impact assessment and review of any potential change to the discount rate. Many stakeholders will also be feeding back as part of the wider consultation. This research aims to identify further key information, aside from the official consultation, which can help the MoJ in accurately assessing the impact on claimant and defendant behaviour if the discount rate was changed.

Following on from a feasibility study, these interviews are one element of the main stage research project, which also includes data analysis and interviews with claimants.

2. Research scope and objectives

The qualitative research with stakeholders aims to understand what stakeholders know about:

- **How the discount rate is taken into account** when agreeing how to amalgamate all payments into a lump sum and how a change in the discount rate is going to impact on this process and the final settlement;
- The **profile of settlements for personal injury cases**, including the **size of settlements**, the **types of cost** covered and the **time period involved**; and
- **Likely changes in claimants' behaviour** regarding their spending and investing behaviour as a result of a change in the discount rate and average compensation paid, and **how this would impact different groups**, including different types of defendants and claimants.

The interviews are mostly being carried out with stakeholders who are IFAs (although it may also may include case managers) to understand more on their work with claimants and views on investment decisions made by claimants.

3. Advice for moderators

The questions suggested below are to act as a *guide only* for the interviews; researchers will be expected to adapt and tailor the conversation to suit the role of the stakeholder being interviewed. The interview will focus on the research questions; we are not asking for views on MoJ policy more broadly, so please ensure participants remain focused on the issues under discussion.

Where there are probes asking about different 'types of claimant', this refers to differences according to injury or claim type, settlement amount, levels of vulnerability and demographic differences.

1. Introduction	5 mins
<ul style="list-style-type: none"> • Thank participant for taking part • Introduce self, Ipsos MORI – independent research organisation commissioned by MoJ to explore the impact of a potential change to the personal injury discount rate • Explain the stages of the research (feasibility and main stage) • Explain confidentiality and MRS guidelines • What level of attribution would they like? Can we quote them directly, their organisation or do they want total anonymity? • Get permission to digitally record – transcribe for quotes, no detailed attribution and not passed on to MoJ 	<p>Welcome: orientates interviewee, gets them prepared to take part in the interview.</p> <p>Outlines the ‘rules’ of the interview (including those we are required to tell them about under MRS and Data Protection Act guidelines)</p>
2. Background and personal injury settlements	5 mins
<p>Can you start by telling me a little bit about your organisation and its relationship with personal injury work?</p> <ul style="list-style-type: none"> • What kind of role does your work play? • What kinds of people are you representing/ supporting? • How many people are involved in this type of work in your organisation? • What types of personal injury claims do you offer support for? • What other types of work do you do here? TRY AND GET A SENSE OF HOW SPECIALISED THE ORGANISATION/ PARTICIPANT IS IN PERSONAL INJURY WORK <p>Can you tell me about your role within the organisation?</p> <ul style="list-style-type: none"> • What are your main responsibilities regarding personal injury claims? • Which types of people do you regularly deal with/ support? <p>What proportion of your clients would you say are actually affected by the discount rate?</p> <ul style="list-style-type: none"> • Why would you say it’s around that number? • What would you say is the average amount of future loss per <i>individual case</i>? • What proportion of overall claims for personal injury would you say are affected? • Are there any differences by type of claimant? Who is more likely to receive a lump sum for future losses? 	Provides contextual background information about the interviewee and their role and adds to the feasibility findings in helping us to interrogate and contextualise the quantitative data appropriately.

<p>What proportion of your clients would you say are awarded Periodic Payment Orders?</p> <ul style="list-style-type: none"> • How many receive both a PPO and a lump sum for future losses? • How long on average do periodic payments last for people you support/ represent? What does this depend on? • What types of cases tend to be awarded Periodic Payment Orders rather than lump sums? Can you give me an example? • Are there any differences by type of claimant? Who is more likely to receive a lump sum for future losses? • Would you say Periodic Payment Orders are preferable to lump sums – or not? Any why – or under what circumstances? <p>Can you describe the process of reaching a settlement and how the discount rate is used in this?</p> <ul style="list-style-type: none"> • At what point is the rate applied? • Is this ever changed? • What does this mean for the negotiation process? <p>What does this mean for cases where a PPO is included or decided on as part of the negotiation?</p>	<p>MODERATOR NOTE: Periodic Payment Orders rest-of-life structured settlements, known as periodical payment orders (PPOs) are to provide for the long-term care and loss of earnings of severely injured third parties.</p> <p>MODERATOR NOTE: The question on the process of reaching and settlement covers many of the points in the feasibility study – we wish to explore if there are additional elements or if the IFA / case manager perspective differs.</p>
<p>3. Exploring the current claimant experience</p>	<p>20 mins</p>
<p>As I mentioned at the outset, we are keen to understand more on the claimant experience, particularly from the point of receiving their settlement. We would also like to explore your views on the impact of changing the discount rate on claimants.</p> <p>Can you start by outlining your understanding of how claimants experience the process of making a personal injury claim?</p> <ul style="list-style-type: none"> • How involved in the process are they? How does this differ for the various stages of making a personal injury claim? PROBE on different stages including; putting in the claim, establishing losses, the negotiation process, agreeing the settlement, the court process (if involved), receiving the settlement and after the settlement. • Who advises and supports them during these stages? • Is the process always broadly the same? Are there any exceptions and can you describe them? Do these exceptions apply to any specific types of claimant? • What information do they get about how the award is made? Who provides this? 	<p>In this section we aim to gain information from stakeholders which will help shape the claimant element of the main stage research.</p>

What factors influence whether a claimant receives a PPO or a lump sum?

- Who makes this decision? Does it vary?
- Who / which parties influence this outcome? At what points?
- How involved are claimants?
- Which are most beneficial for claimants? Why?
- What levels of advice do they receive?

Can you describe the processes by which claimants come in contact with you?

- At what stage in the process do you become involved? Does this vary ever? Why might this be?
- Is there a referral process? Who refers them?
- Is this process always broadly the same?
- Do clients ever self-refer?
- Is the process always broadly the same? Are there any exceptions and can you describe them? Do these exceptions apply to any specific types of claimant?

Can you tell me about the information you receive on a claimant's settlement?

- Are you told the amount that is a PPO?
- Are you given a breakdown of what the lump sum for future losses are intended to be used for? What does this look like?
- Are you given a breakdown of the number of years each element of future loss is based on?
- What do you think of the level of information you have to advise clients?
- What is helpful? What else do you feel is needed?

What is involved in advising claimants who have received lump sums with future loss elements?

- How does this vary between clients?
- What investment possibilities do you discuss?
- Do you apply different risk assessments in identifying suitable investment options for a claimant? Can you tell me about these?
- Does any support and advice continue throughout their lives, or is it only received at the point of their award?
- What is easy in this process? What is particularly hard? Why?

How do claimants then typically invest their lump sum payment? PROBE FULLY ON ALL INVESTMENT POSSIBILITIES OUTLINED ABOVE.

- What is most important thing to them – and why?
- How do they typically invest lump sum payments for different future losses? (i.e. what financial instruments do they invest in – equities, gilts, corporate bonds etc?) PROBE ON earnings? Care management? Other losses? How does this differ among claimants? PROBE on size of lump sum, age of claimant and other claimant types.
- How do they approach potential risks with different investments?
- What type of investment return are they generally looking for?
- How does this vary among different types of claimant?
- Do you know if this changes over time?
- How do claimants plan for the future?

Can you describe what this experience is like for claimants?

- How do they feel during and after the process?
- How confident are they in talking about investing the money and actually investing the money?
- Does this vary between clients? In what way?
- How do they approach the investments?
- What advice do they particularly ask for?

How do claimants typically spend their lump sum payment?

- What do they tend to spend on first?
- How do they decide?
- What is this experience like for them?
- Does this vary between claimants? In what way?

How do the experiences of investing and spending settlements vary for those receiving a lump sum and those receiving a PPO?

Aside from investment issues, what are the most common care and support needs among claimants?

- What advice/ care packages do you offer?
- Who else might claimants seek additional support or care from?
- At what stages do they need additional care or support? PROBE on all stages including prior to and into the future.

MODERATOR NOTE: if stakeholders are not sure about how claimants spend their settlements ask if they know who would know about this beside claimants themselves

<p>4. Consequences of changing the discount rate</p>	<p>10 mins</p>
<p>I'd now like to talk a little about what you think the implications of reducing the discount rate might be.</p> <p>I'd like to start the discussion on the discount rate with a very general question – what do you think of the way it is currently awarded?</p> <ul style="list-style-type: none"> • Do you feel the discount rate is appropriate? Why? Do you think it is <i>fair</i>? <p>If the discount rate was to be changed and it resulted in larger lump sums, what do you think this would mean for how claimants invest their money?</p> <ul style="list-style-type: none"> • Would it be an improvement, or not – and why? • How might this vary among different types of claimant? Can you give some examples? [probe on differences across the protected characteristics where appropriate] • How might they respond differently? • Conversely, what would be the effect on investments if the discount rate increased and lump sums became smaller? <p>What would a change in the discount rate mean for how you work with claimants?</p> <ul style="list-style-type: none"> • Would it change how you advise them? • How would it impact on the referral processes in place? • Would it change your attitude or approach to Periodic Payment Orders? How – and why? <p>How would a reduction or increase in the discount rate impact on your organisation overall?</p> <ul style="list-style-type: none"> • Do you think there would be additional costs for you? IF SO – what would these be? How would you feel about this – and what would you do to absorb these? • Do you think a reduction in the discount rate would change the way you conduct business? Can you explain – or give me an example? <p>What do you think a change in the discount rate would mean for others involved in the process? PROBE FULLY ON solicitors representing claimants and insurers.</p> <ul style="list-style-type: none"> • Who would support and oppose it? Why? • What impact do you think there would be on insurers' profits and insurance premiums? 	<p>In this section we explore stakeholders' perceptions of the potential changes to the discount rate.</p>

<p>How might it change the way in which settlements are reached – do you think there might be more or fewer settlements as a result?</p> <ul style="list-style-type: none"> • Can you explain why? • Do you think that the way in which these settlements are made may change? Will more or fewer settlements be made out of court? Why? • Would defendants in such hearings be less willing to offer a lump sum (as opposed to periodical payments)? Why? <p>How might it change whether the PPOs or lump sums are awarded for future losses?</p>	
<p>5. Summing up</p>	<p>5 mins</p>
<p>In light of all the things we have discussed today, what do you think are the most important issues for claimants and how they invest claim money regarding a potential change to the discount rate?</p> <p>In principle, would your organisation be happy to contact current or previous claimants on our behalf to ask if they would like to take part in the research? DISCUSS IN FULL IF THIS IS A POSSIBILITY</p> <p>Would you be happy to be contacted again by Ipsos MORI or another research contractor for other Ministry of Justice sponsored research in the future?</p> <p>Finally, as you'll know, we are pleased to offer £30 to a charity of your choice as a thank-you for taking part in this interview. Which charity would you like us to make a donation to?</p> <p>Explain next stages of the research, thank and close</p>	<p>Draws together the key issues from the interview</p>

Appendix D

Deputy depth interviews – discussion guide

1. Background for interviewers

The MoJ are keen to assess the impact of a potential change in the personal injury discount rate. The discount rate affects the size of awards for future damages. For example, a lower discount rate means that claimants are likely to receive larger lump sum payments.

Ipsos MORI has been commissioned to conduct a research programme which will feed into the consultation and review of any potential change to the discount rate. Many stakeholders will also be feeding back as part of the wider consultation. This research aims to identify further key information, aside from the consultation, which can help the MoJ in accurately assessing the impact on claimant and defendant behaviour if the discount rate was changed.

These interviews are one element of this research project which also includes analysis of data sources and interviews with stakeholders. This interview is intended as part of the claimant research element, to understand the experiences of those who have received a personal injury claim.

A Deputy is a person appointed by the Court of Protection to manage the affairs of someone who has lost mental capacity.

- There are two types of Deputy: one for Property and Affairs and one for Health and Welfare.
- The decision as to who to appoint as Deputy is a judicial decision and the Court of Protection will appoint the person it most thinks is in the person's best interest.
- The Court will also look at a range of factors when deciding who to appoint and will appoint a professional to act as a Deputy where there is nobody willing or able to act on behalf of the person lacking capacity.
- Professional deputies may support many families, and in these interviews it will be necessary to speak more generally about their views and experiences.
- Lay deputies may represent only one family, so please use the materials with reference to experiences of the claimant they support.

The deputies interviewed in this research may have been referred to us through an Independent Financial Advisor, solicitor or through the Court of Protection.

2. Research scope and objectives

The qualitative research with claimants for this main stage aims to understand in detail:

- The experiences of claimants of the processes involved in receiving a personal injury award;
- Their investment and spending behaviours to date regarding their lump sum payment and what drives these;
- Their perceptions of their future requirements and priorities in choices around future planning; and
- How they would have behaved – or would behave now – if they had received a larger lump sum payments.

3. Advice for interviewers

The questions suggested below are to act as a *guide only* for the interviews; researchers will be expected to adapt and tailor the conversation to suit the circumstances of the participant being interviewed.

This guide covers interviews with professional and lay deputies. Please use the guide flexibly to meet the requirements of the interview accordingly. It is possible that lay deputies may be sharing experiences of difficult and upsetting times in their lives if the claimant is a family member. It is therefore vital that we do not re-traumatise participants in the research process. Take extra care to listen to and observe cues from participants on what they are comfortable discussing, and consider mirroring the language and approach of the participant to topics under discussion.

It may be that deputies are aware that a consultation and review is happening, and their views may be shaped by this, or they may question whether they would have received more which could prove sensitive. Therefore the interviews are structured to explore participants' views on their own settlement before exploring the idea of the discount rate and changes to it in more detail. This should be borne in mind when introducing the interview and discussing key elements. However, the consultation and use of a discount rate can be discussed with deputies before this point if they arise in the discussion (for example, deputies may be aware that a discount rate was applied as part of the calculation of their lump sum).

The interview will focus on the research questions; we are not asking for views on MoJ policy more broadly, so please ensure participants remain focused on the issues under discussion.

Claimants may also have received **periodical payments and special damages**. It is important to unpick this in the early stages through the journey mapping stage of the interview and then **focus claimants on just their lump sum for future financial losses** in other sections.

The level of input to the processes that each claimant has had and their levels of understanding may vary. There are several terms specific to personal injury claims discussed with the participant throughout the interview and it is important to ensure that they understand these before continuing. Some of the terms to bear in mind are:

- Settlement or award
- Lump sum
- Periodical payment
- Compensation

The interview should take around an hour to an hour and a half. Participants are likely to have very different experiences, and it may be necessary to explain some of the issues under discussion in detail.

<p>1. Introduction</p>	<p>5 mins</p>
<ul style="list-style-type: none"> • Thank participant for taking part • Introduce self, Ipsos MORI – independent research organisation commissioned by MoJ to explore the impact of a potential change to the personal injury discount rate • Explain which organisation we collaborated with to how we made contact with participant if they are not already aware of how they were referred for the work • Explain the study – MoJ are keen to understand the experiences and views of people who have received personal injury settlements, and, in particular, the impact of the amount people receive on their lives. • Explain confidentiality and MRS guidelines Get permission to digitally record – transcribe for quotes, no detailed attribution and not passed on to MoJ 	<p>Welcome: orientates participants and outlines the ‘rules’ of the interview (including those we are required to tell them about under MRS and Data Protection Act guidelines)</p>
<p>2. Claimant experiences – mapping experiences</p>	<p>10 mins</p>
<p>Can you start by telling me a little bit about your role as a deputy?</p> <ul style="list-style-type: none"> • Who are you representing/ supporting? • Do you support one or many claimants? • How did you come into this role? How long have you been doing this now? TRY AND ESTABLISH IF THE PARTICIPANT IS A LAY OR PROFESSIONAL DEPUTY <p>TO PROFESSIONAL DEPUTIES</p> <ul style="list-style-type: none"> • How many people are involved in this type of work in your organisation? • What types of personal injury claims do you offer support for? • What other types of work do you do here? <p>TO ALL</p> <p>I’d like to start by finding out a little about the claimant(s) you support, just so I can understand a little more about their life/ lives.</p> <p>TO LAY DEPUTIES: Can you just tell me a bit about them and their household?</p> <p>TO PROFESSIONAL DEPUTIES: Can you just tell me a bit about a typical case of yours?</p> <p>TO ALL: What would be a typical day for them at the moment? How do they spend their time?</p>	

IF REFERRING TO THE EXPERIENCE OF A SINGLE CLAIMANT:

As you know, I'm here to talk to you about personal injury awards. To do this, it would help me to understand more about the claimant's [USE NAME] experiences/ claimants' experiences in general.

INTERVIEWER TO INTRODUCE JOURNEY MAP AND WORK THROUGH THE STAGES BELOW WITH PARTICIPANT, MARKING AND EXPLORING RELEVANT MILESTONES

Can you talk me through what happened from when the claimant [USE NAME] decided to make a personal injury claim? WORK THROUGH EACH STAGE

- How long did it take from when they put in the claim to when they received the settlement?
- How did they find their lawyer? Why did they choose them?
- Who was involved at each stage?
- At what stages were they involved in the process?
- Did anyone explain what negotiations the insurers and solicitors were having?
- Did they have to go to a court?

Can you tell me about how claimants experience the process of making a personal injury claim?

- How involved in the process are they? How does this differ for the various stages of making a personal injury claim? PROBE on different stages including; putting in the claim, establishing losses, the negotiation process, agreeing the settlement, the court process (if involved), receiving the settlement and after the settlement.
- Who advises and supports them during these stages?
- Is the process always broadly the same? Are there any exceptions and can you describe them? Do these exceptions apply to any specific types of claimant?
- What information do they get about how the award is made? Who provides this?

Can you describe their relationship with their solicitor over this time?

- How much contact did they have with them?
- Was the relationship different at any point in the process?
- What were the best elements? What were the challenges?

Can you tell me a bit more about any advice and guidance they received on their claim?

- Did they speak to an investment or financial advisor? Who did they speak to? What did this involve? At what stages did they speak to them?
- Was there anyone else who helped they make sense of the claim? PROMPT: CASE MANAGERS AND FAMILIES AND FRIENDS
- What advice or support did they provide? Did they seek this advice out or were they approached? When did this happen?
- Did anyone help them assess what was an appropriate settlement figure?
- How did they feel throughout this process?
- ASK ALL: Did anyone talk to them about the difference between PPOs (Periodical Payment Orders) and lump sum payments? How involved in the decision making were they? Who else was involved?
- How did they feel about these different approaches to their compensation?

NOTE TO INTERVIEWERS: If possible/ relevant, try and determine how participants felt about PPOs given they present more security (and less risk), but less flexibility for claimants.

Can you tell me a bit about the final settlement?

- How much were they awarded? NOTE DOWN FOR LATER IN THE INTERVIEW
- What did they think of the settlement when they received it?
- Can they explain how their award was split out?
- Was this awarded to them as a lump sum – or was anything awarded to them as a periodic payment order or for special damages?
- Do they know how much of their lump sum settlement was based on the financial losses they thought they might face in the future because of the injury? For example, how much of the settlement was awarded to compensate for loss of earnings in the future? Do they know how much was awarded for future care costs?
 - IF DON'T KNOW WHAT PROPORTION ARE FUTURE LOSSES: What proportion of the award do they think were awarded for future care costs? Why?
 - Does that affect how they think about the compensation at all? Can they explain how?
- Do they know over what time period the future loss element of their settlement was intended to cover? For example, how many years they calculated until they would retire.
- What did they think of this? Did they think it was fair? Can they explain why?

<p>IF DISCUSSION CLAIMANTS RECEIVING PPOs:</p> <ul style="list-style-type: none"> • What are your views on receiving (part of) their compensation as PPOs? • What are the advantages of PPOs from their perspective? Are there any disadvantages? <p>What kind of advice or support did they receive once they were given the compensation? Who did they talk to about using their compensation? Was there anyone else beside their solicitor? PROMPT: DEPUTIES, CASE MANAGERS, FAMILY AND FRIENDS</p> <ul style="list-style-type: none"> • Were they helpful? Can they explain how? PROBE IN DEPTH for each source of support and advice • Did they take their advice? On which decisions? • What kind of support do they have now? 	
<p>3. Current and future spending and investment habits</p>	<p>15 mins</p>
<p>TO PROFESSIONAL DEPUTIES: I'd now like to discuss details of paying for things that are needed in the household. Thinking again of a typical client...</p> <p>TO LAY DEPUTIES: I'd now like to discuss details of paying for things that are needed in the household.</p> <p>TO ALL</p> <p>I'd like to get a sense of what money is spent on from week to week.</p> <ul style="list-style-type: none"> • Could you talk me through what their regular incomings and outgoings are? • What are the main things they need to budget for on a monthly, basis? <p>I'd like to understand more about what you think about planning for the future.</p> <ul style="list-style-type: none"> • Do you tend help the claimant and their family/ claimants to live day to day or do you help them plan ahead for things? • Are you helping save or plan financially for any particular event now? If so – could they tell me about what you're doing and why? <p>Could you tell me what they feel are the most important things for them and their household to plan for financially in the next year or so?</p> <ul style="list-style-type: none"> • What about looking ahead the next couple of years – can they see any challenges that might come up? What might they need to spend money on then? • And the next 10 years? 	<p>In this section we will explore participants' financial management skills and what drives their behaviour in <i>investing</i> their compensation award. We also explore participants' future needs and how they are planning for them financially.</p> <p>PLEASE NOTE: nearly all (over 98% by number) of Deputies elect for Discretionary Investment Management. As a result the actual investment decisions and actions on behalf of claimants are taken by them, after establishing the individual needs of each client, taking their unique circumstances into account.</p>

<p>IF SPEAKING TO A LAY DEPUTY ONLY: Do you feel you have enough advice and support in planning their finances for the future? IF SO:</p> <ul style="list-style-type: none"> • IF NOT: Do they think advice would be helpful to them? • Who do they think should be offering them advice? • What kind of support would they need – and when? <p>MARK ON JOURNEY MAP IF RELEVANT</p>	
<p>4. Managing the investment – goods and service options</p>	<p>20 mins</p>
<p>Given what we've just talked about, I'd now like to understand a bit more on your views and experiences of managing and investing the lump sum part of a compensation award received for future financial losses.</p> <p>IF SPEAKING TO A LAY DEPUTY ONLY: In general how did you feel about managing the award when they first received it?</p> <ul style="list-style-type: none"> • What did you plan to do first? Can they tell me why? • Did you feel confident in doing so? • Were you concerned about managing the award at all? <p>Have you invested any element of their compensation payment (s), either in a bank account or other investment source, such as a bond or a gilt? IF SO – How? Why did you choose to do this? IF NOT – Why not?</p> <ul style="list-style-type: none"> • Where did you invest the money they were awarded? PROBE IN FULL, including asking about savings accounts or bonds, equities (shares), investment trusts, and property • Why did you choose to invest their money this way? IF NECESSARY: What was more important to them – a high return on their investment, or a lower return but with a lower level of risk? • What type of investments help make it feasible for you to meet the current returns you require? • What kind of return they are getting on their investment at the moment? Are you happy with this? How do you see the prospects of this investment in the future? 	<p>In this section, we explore participants' views on the possible changes to compensation payments, and their priorities on the various good and service options available to them in using their compensation award.</p> <p>MODERATOR NOTE: These investment questions are intended to explore participants' attitudes to investment and risk. Please try to explore this in depth.</p>

I'd now like to show you some of the things we understand that many people find helpful to invest in or spend money on when they receive their compensation payment. FOR EACH GOODS AND SERVICES CARD, ASK THE PARTICIPANT:

- Did you consider planning for this when they received their compensation award?
- Roughly how much of their lump sum payment did you spend on these costs?
- Do you feel the compensation they received took adequate consideration of these costs?
- Can they afford what is needed?
- What do they think of what's available to the claimant [USE NAME]/ claimants at the moment given their needs?
- Who would they look to provide this service? Why?
- Do they prefer a provider from the public sector – or one from the private sector? Can they explain why?

Overall:

- Of all these things, what was the most important to [the] claimant and their family[ies]? Can they explain why that was so important?
- What else was important to them in using the money?
- Do they think they would make the same choices now?

I would like you to imagine they received a larger lump sum than the one they were awarded – say around 20% more than they actually received, for example £_____ [INTERVIEWER TO CALCULATE WHAT A 20% INCREASE ON THE PARTICIPANT'S LUMP SUM WOULD BE AND SUGGEST THIS AS THE POSSIBLE INCREASE TO THE PARTICIPANT]

- What would you have done in this situation?
- Can you explain why?
- Of all the services and goods we've discussed, which do you think would be the most important if they received this lump sum instead? What makes you say this? [PROBE FULLY IF PRIORITIES CHANGE]

If they had been awarded this larger lump sum would they have spent more or less on each service initially? [AGAIN PROBE ON EACH SERVICE TYPE AGAIN]

- What would the claimant and their family have done instead? Why?
- What about in planning for the future?

PLEASE ASK THE FOLLOWING ADDITIONAL QUESTIONS FOR THE RELEVANT TOPICS

Health:

- Would you be more or less likely to spend the compensation on private healthcare treatment? Why?
- Would [the] claimant and their family [ies] be more or less likely to pay for a care manager to help choose and manage the health/ care/ therapy services they use? IF PARTICIPANT WOULD SPEND MORE: Would they consider paying for healthcare from overseas – or when they received their award? What about if they had received a larger lump sum? [GAIN SPONTANEOUS VIEWS ON PAYMENT DIFFERENCES, AIM TO PROBE ON WHAT THE DIFFERENCE WOULD NEED TO BE]

Social Care:

- Would you be more or less likely to seek private treatment over that provided by the local authority? Why?
- Would [the] claimant and their family [ies] be more or less likely to find the relevant care and support from a friend or family member? IF PARTICIPANT WOULD USE MORE PRIVATE TREATMENT/ CARE:
- Would you consider paying for care from overseas now? What about if they had received a larger lump sum?

Thinking again about how the claim money was invested, can you tell me about how they would invest the money if they received this larger lump sum?

- Would you do anything differently?
- Where would you invest the money? PROBE IN FULL, including asking about savings accounts or bonds, equities (shares), investment trusts, and property
- Why would they choose to invest their money this way? IF NECESSARY: What would be more important to you – a high return on their investment, or a lower return but with a lower level of risk?

Do they think you would be more willing to take risks with their investments with a larger lump sum? Can you explain why?

<p>5. Changing the discount rate and summing up</p>	<p>10 mins</p>
<p>In the future the discount rate used to help calculate compensation settlements may alter and, as they may know, the MoJ are carrying out a review of this. This research will provide them with more information. They might know that if the discount rate is decreased, this will result in larger lump sum payments for people like they. EXPLAIN THE CHANGE AND DISCOUNT RATE IN MORE DETAIL IF REQUIRED, USING THE <u>INFORMATION SHEET</u></p> <p>IF NOT ALREADY COVERED: Can you tell me about how the discount rate was used in the claim(s) you manage? [NOTE: IF PARTICIPANT IS NOT AWARE OF WHETHER IT WAS USED DO NOT PROBE FURTHER]</p> <ul style="list-style-type: none"> • Are you aware if the discount rate was used in the claim? • How were you made aware? • What did this mean for the claim? • How did you feel about the discount rate being used? <p>What are your thoughts on the use of a discount rate overall?</p> <ul style="list-style-type: none"> • What are the challenges? What are the benefits? For whom? <p>If the discount rate was to be changed and it resulted in increasing lump sums, what do you think this would mean to claimants?</p> <ul style="list-style-type: none"> • How do you think it might affect people receiving awards? • Would you welcome this change? Why? • How might it affect other claimants? <p>Would it change your views on your preference of a PPO or a lump sum? IF REQUIRED, EXPLAIN THE CHANGE IN MORE DETAIL USING THE <u>INFORMATION SHEET</u></p> <ul style="list-style-type: none"> • Can they explain why? Do you think this might be a good or bad thing? <p>If the discount rate was to be changed and it resulted in increasing lump sums, what do you think this would mean for other people involved in the process? [PROBE on solicitors, the government, support services, wider community, insurers]</p> <ul style="list-style-type: none"> • How might it affect the claimant(s) you support? • Do you think you would welcome the change? • Who else do they might be affected if this were to change? <p>In light of all the things we have discussed today, what do they think are most important issues for claimants regarding a potential change to the discount rate?</p> <p>EXPLAIN NEXT STAGES OF THE RESEARCH, THANK AND CLOSE.</p>	<p>In this section we discuss their views on changes to the discount rate in more detail.</p>

Appendix E

Claimant depth interviews – discussion guide

1. Background for interviewers

The MoJ are keen to assess the impact of a potential change in the personal injury discount rate.

The discount rate affects the size of awards for future damages. For example, a lower discount rate means that claimants are likely to receive larger lump sum payments.

Ipsos MORI has been commissioned to conduct a research programme which will feed into the consultation and review of any potential change to the discount rate. Many stakeholders will also be feeding back as part of the wider consultation. This research aims to identify further key information, aside from the consultation, which can help the MoJ in accurately assessing the impact on claimant and defendant behaviour if the discount rate was changed.

These interviews are one element of this research project which also includes analysis of data sources and interviews with stakeholders.

The claimants included in the research will have already received their settlement and some will be in touch with an investment or financial adviser, a care manager or a lay/ professional deputy from the Court of Protection who manages their funds. They may have been recruited through an IFA, solicitor or through self-referral from a notice on a forum.

2. Research scope and objectives

The qualitative research with claimants for this main stage aims to understand in detail:

- The experiences of claimants of the processes involved in receiving a personal injury award;
- Their investment and spending behaviours to date regarding their lump sum payment and what drives these;
- Their perceptions of their future requirements and priorities in choices around future planning; and
- How they would have behaved – or would behave now – if they had received a larger lump sum payments.

3. Advice for interviewers

The questions suggested below are to act as a *guide only* for the interviews; researchers will be expected to adapt and tailor the conversation to suit the circumstances of the participant being interviewed.

It is likely that participants will be sharing experiences of difficult and upsetting times in their lives and it is vital that we do not re-traumatise participants in the research process. Take extra care to listen to and observe cues from participants on what they are comfortable discussing, and consider mirroring the language and approach of the participant to topics under discussion.

Participants may be interviewed with a carer, or a carer may be the lead participant in interview if the recipient of the compensation claim in the household is unable to take part in the interview. Please take care to include carers fully in the interviews and handle issues sensitively where relevant.

It may be that claimants are aware that a consultation and review is happening, and their views may be shaped by this, or they may question whether they would have received more which could prove sensitive. Therefore the interviews are structured to explore claimants’ views on their own settlement before exploring the idea of the discount rate and changes to it in more detail. This should be borne in mind when introducing the interview and discussing key elements. However, the consultation and use of a discount rate can be discussed with claimants before this point if they arise in the discussion (for example, claimants may be aware that a discount rate was applied as part of the calculation of their lump sum).

The interview will focus on the research questions; we are not asking for views on MoJ policy more broadly, so please ensure participants remain focused on the issues under discussion.

Claimants may also have received periodical payments and special damages. It is important to unpick this in the early stages through the journey mapping stage of the interview and then focus claimants on just their lump sum for future financial losses in other sections.

The level of input to the processes each claimant has had and their levels of understanding may vary. There are several terms specific to personal injury claims discussed with the participant throughout the interview and it is important to ensure that they understand these before continuing. Some of the terms to bear in mind are:

- Settlement or award
- Lump sum
- Periodical payment
- Compensation

The interview should take around an hour to an hour and a half. Participants are likely to have very different experiences, and it may be necessary to explain some of the issues under discussion in detail.

1. Introduction	5 mins
<ul style="list-style-type: none"> • Thank participant for taking part • Introduce self, Ipsos MORI – independent research organisation commissioned by MoJ to explore the impact of a potential change to the personal injury discount rate • Explain which organisation we collaborated with to how we made contact with participant if they are not already aware of how they were referred for the work • Explain the study – MoJ are keen to understand the experiences and views of people who have received personal injury settlements, and, in particular, the impact of the amount people receive on their lives. • Explain confidentiality and MRS guidelines • Get permission to digitally record – transcribe for quotes, no detailed attribution and not passed on to MoJ 	<p>Welcome: orientates participants and outlines the ‘rules’ of the interview (including those we are required to tell them about under MRS and Data Protection Act guidelines)</p>

<p>2. Claimant experiences to date – mapping experiences</p>	<p>10 mins</p>
<p>I'd like to start by finding out a little about you, just so I can understand a little more about your life.</p> <p>Can you just tell me a bit about you and your household?</p> <ul style="list-style-type: none"> • Who lives here with you? • How long have you lived here? IF RELEVANT – Where did you live before? <p>Could you tell me about a typical day for you at the moment? How do you spend your time?</p> <ul style="list-style-type: none"> • Do you or does anyone else in the household work at the moment? What kind of work do you/ they do? • What other things do you spend your time doing? <p>As you know, I'm here to talk to you about personal injury awards. To do this, it would help me to understand more about your experiences.</p> <p>INTERVIEWER TO INTRODUCE <u>JOURNEY MAP</u> AND WORK THROUGH THE STAGES BELOW WITH PARTICIPANT, MARKING AND EXPLORING RELEVANT MILESTONES</p> <p>Can you talk me through what happened from when you decided to make a personal injury claim? WORK THROUGH EACH STAGE</p> <ul style="list-style-type: none"> • How long did it take from when you put in the claim to when you received the settlement? • How did you find your lawyer? Why did you choose them? • Who was involved at each stage? • At what stages were you involved in the process? • Did anyone explain what negotiations the insurers and solicitors were having? • Did you have to go to a court? <p>Can you describe your relationship with your solicitor over this time?</p> <ul style="list-style-type: none"> • How much contact did you have with them? • Was the relationship different at any point in the process? • What were the best elements? What were the challenges? 	<p>Provides contextual background information about the interviewee, their experiences, and what advice and support they received.</p> <p>The section will also put participants at ease in talking about their claim and finances in general before they are asked more specifically about them.</p> <p>The journey maps will provide insight into what participants' understood about their claim and what <i>initial priorities</i> were regarding spending and investing their compensation payment.</p>

Can you tell me a bit more about any advice and guidance you received on the claim?

- Did you speak to an investment or financial advisor?? Who did you speak to? What did this involve? At what stages did you speak to them?
- Was there anyone else who helped you make sense of the claim?
PROMPT: DEPUTIES, CASE MANAGERS AND FAMILIES AND FRIENDS
- What advice or support did they provide? Did you seek this advice out or were you approached? When did this happen?
- Did anyone help you assess what was an appropriate settlement figure?
- How did you feel throughout this process?
- ASK ALL: Did anyone talk to you about the difference between PPOs (Periodical Payment Orders) and lump sum payments? How involved in the decision making were you? Who else was involved?
- How did you feel about these different approaches to your compensation?

NOTE TO INTERVIEWERS: If possible/ relevant, try and determine how participants felt about PPOs given they present more security (and less risk), but less flexibility for claimants.

Can you tell me a bit about the final settlement?

- How much were you awarded? NOTE DOWN FOR LATER IN THE INTERVIEW
- What did you think of the settlement when you received it?
- Can you explain how your award was split out?
- Was this awarded to you as a lump sum – or was anything awarded to you as a periodic payment order or for special damages?
- Do you know how much of your lump sum settlement was based on the financial losses they thought you might face in the future because of the injury? For example, how much of the settlement was awarded to compensate for loss of earnings in the future? Do you know how much was awarded for future care costs?
 - IF DON'T KNOW WHAT PROPORTION ARE FUTURE LOSSES: What proportion of the award do you think were awarded for future care costs? Why?
 - Does that affect how you think about the compensation at all? Can you explain how?
- Do you know over what time period the future loss element of your settlement was intended to cover? For example, how many years they calculated until you would retire.
- What did you think of this? Did you think it was fair? Can you explain why?

IF RECEIVING PPOs

- What are your views on receiving (part of) your compensation as PPOs?
- What are the advantages of PPOs from your perspective? Are there any disadvantages?

<p>What kind of advice or support did you receive once you were given the compensation?</p> <ul style="list-style-type: none"> • Who did you talk to about using your compensation? Was there anyone else beside your solicitor? PROMPT: DEPUTIES, CASE MANAGERS, FAMILY AND FRIENDS • Were they helpful? Can you explain how? PROBE IN DEPTH for each source of support and advice • Did you take their advice? On which decisions? • What kind of support do you have now? 	
<p>3. Current and future spending and investment habits</p>	<p>15 mins</p>
<p>I'd now like to discuss details of what you think about money and paying for the things that you need. Does that sound OK?</p> <p>Can you tell me who is responsible for managing the household budget?</p> <p>How would you describe your approach to your finances? Would you say you are confident managing money?</p> <ul style="list-style-type: none"> • Can you describe your weekly/monthly incomings and outgoings? • How do you keep track of these? Do you keep any records? How often do you review your finances? • Has this always been the case? Did anything change when you received your compensation award? <p>I'd like to get a sense of what you need to spend your money on from week to week. Could you talk me through what your regular incomings and outgoings are?</p> <p>INTERVIEWER TO USE <u>BUDGETING SHEET</u> TO HELP PARTICIPANT CONSIDER THEIR WEEKLY BUDGETS</p> <ul style="list-style-type: none"> • Of all of things in your weekly/ monthly budgets, which are the most important to make sure you pay for? Can you tell me why? • Which is the least important? Or the one you pay with the money you have left after other things? • Have your attitudes to managing your finances and budgeting changed at all since you received your compensation award? <p>I'd now like to understand more about what you think about planning for the future.</p> <ul style="list-style-type: none"> • Do you tend to live day to day or do you plan ahead for things? • Are you saving or planning financially for any particular event now? If so – could you tell me about what you're doing, why and how you feel about this? 	<p>In this section we will explore participants' financial management skills and what drives their behaviour in <i>investing</i> their compensation award. We also explore participants' future needs and how they are planning for them financially.</p>

<p>Could you tell me what you feel are the most important things for you and your household to plan for financially in the next year or so?</p> <p>INTERVIEWER TO USE BUDGETING SHEET TO HELP PARTICIPANT CONSIDER THEIR FUTURE PLANNING IF HELPFUL</p> <ul style="list-style-type: none"> • What about looking ahead the next couple of years – can you see any challenges that might come up? What might you need to spend money on then? • And the next 10 years? <p>Do you feel you have enough advice and support in planning your finances for the future? IF SO:</p> <ul style="list-style-type: none"> • IF NOT: Do you think advice would be helpful to you? • Who do you think should be offering you advice? • What kind of support would you need – and when? <p>MARK ON JOURNEY MAP IF RELEVANT</p>	
<p>4. Managing the investment – goods and service options</p>	<p>20 mins</p>
<p>Given what we’ve just talked about, I’d now like to understand a bit more on your views and experiences of managing and investing the lump sum part of a compensation award received for future financial losses.</p> <p>I’m going to show you two scenarios with people in different situations. Based on what you understand about the claimants, please could you tell me which of the choices makes most sense to you for the people spending and investing the award in these scenarios.</p> <p>PRESENT PARTICIPANT WITH TWO <u>SCENARIOS</u> AND EXPLORE REASONS FOR THEIR CHOICES IN THESE IN DEPTH. PLEASE CHOOSE A FIRST SCENARIO WHICH IS AS DIFFERENT AS POSSIBLE TO THE PARTICIPANT’S SITUATION TO ENCOURAGE COMFORT IN DISCUSSING THE ISSUES. ENCOURAGE PARTICIPANTS TO START THINKING ABOUT WHAT WOULD BE DIFFERENT IF A LARGER LUMP SUM WAS RECEIVED.</p> <p>In general how did you feel about managing your award when you first received it?</p> <ul style="list-style-type: none"> • What did you plan to do first? Can you tell me why? • Did you feel confident in doing so? • Were you concerned about managing the award at all? 	<p>In this section, we explore participants’ views on the possible changes to compensation payments, and their priorities on the various good and service options available to them in using their compensation award.</p>

Have you invested any element of your compensation payment, either in a bank account or other investment source, such as a bond or a gilt? IF SO – How? Why did you choose to do this? IF NOT – Why not?

- Where did you invest the money you were awarded? PROBE IN FULL, including asking about savings accounts or bonds, equities (shares), investment trusts, and property
- Why did you choose to invest your money this way? IF NECESSARY: What was more important to you – a high return on your investment, or a lower return but with a lower level of risk?
- Can you tell me what kind of return you are getting on your investment at the moment? Are you happy with this? How do you see the prospects of this investment in the future?

I'd now like to show you some of the things we understand that many people find helpful to invest in or spend money on when they receive their compensation payment. FOR EACH GOODS AND SERVICES CARD, ASK THE PARTICIPANT:

- Did you consider planning for this when you received your compensation award?
- Roughly how much of your lump sum payment did you spend on these costs?
- Do you feel the compensation you received took adequate consideration of these costs?
- Can you afford what you need?
- What do you think of what's available to you at the moment given your needs?
- Who would you look to provide this service? Why?
- Do you prefer a provider from the public sector – or one from the private sector? Can you explain why?

PLEASE ASK THE FOLLOWING ADDITIONAL QUESTIONS FOR THE RELEVANT TOPICS

Health:

- Would you be more or less likely to spend your money on private healthcare treatment? Why?

Would you be more or less likely to pay for a care manager to help you choose and manage the health/ care/ therapy services you use? IF PARTICIPANT WOULD SPEND MORE: Would you consider paying for healthcare from overseas – or when you received your award? What about if you had received a larger lump sum? [GAIN SPONTANEOUS VIEWS ON PAYMENT DIFFERENCES, AIM TO PROBE ON WHAT THE DIFFERENCE WOULD NEED TO BE]

MODERATOR NOTE:
These investment questions are intended to explore participants' attitudes to investment and risk. Please and try to explore this in depth. The use of scenarios allow us to explore the reason behind their investment choices. Using two scenarios will help us understand if their initial rationale is consistent.

Social Care:

- Would you be more or less likely to seek private treatment over that provided by the local authority? Why?
- Would you be more or less likely to find the relevant care and support from a friend or family member? IF PARTICIPANT WOULD USE MORE PRIVATE TREATMENT/ CARE: Would you consider paying for care from overseas now – or when you received your award? What about if you had received a larger lump sum?

Overall:

- Of all these things, what was the most important to you? Can you explain why that was so important?
- What else was important to you in using the money?
- Do you think you would make the same choices now?

I would like you to imagine you received a larger lump sum that the one you were awarded – say around 20% more than you actually received, for example £_____ [INTERVIEWER TO CALCULATE WHAT A 20% INCREASE ON THE PARTICIPANT'S LUMP SUM WOULD BE AND SUGGEST THIS AS THE POSSIBLE INCREASE TO THE PARTICIPANT]

- What would you have done in this situation?
- Can you explain why?
- Of all the services and goods we've discussed, which would you have thought was the most important if you received this lump sum instead? What makes you say this? [PROBE FULLY IF PRIORITIES CHANGE]

If you had been awarded this larger lump sum would you have spent more or less on this service initially? [AGAIN PROBE ON EACH SERVICE TYPE AGAIN]

- What would you have done instead? Why?
- What about in planning for the future?

Thinking again about how you said you invested your claim money, can you tell me about how you would invest the money if you received this larger lump sum?

- Would you do anything differently?
- Where would you invest the money? PROBE IN FULL, including asking about savings accounts or bonds, equities (shares), investment trusts, and property
- Why would you choose to invest your money this way? IF NECESSARY: What would be more important to you – a high return on your investment, or a lower return but with a lower level of risk?

Do you think you would be more willing to take risks with your investments with a larger lump sum? Can you explain why?

<p>5. Changing the discount rate and summing up</p>	<p>10 mins</p>
<p>In the future the discount rate used to help calculate compensation settlements may alter and, as you may know, the MoJ are carrying out a review of this. This research will provide them with more information. You might know that if the discount rate is decreased, this will result in larger lump sum payments for people like you.</p> <p>EXPLAIN THE CHANGE AND DISCOUNT RATE IN MORE DETAIL IF REQUIRED, USING THE <u>INFORMATION SHEET</u></p> <p>IF NOT ALREADY COVERED: Can you tell me about the discount rate used in your claim? [NOTE: IF PARTICIPANT IS NOT AWARE OF WHETHER IT WAS USED DO NOT PROBE FURTHER]</p> <ul style="list-style-type: none"> • Are you aware if the discount rate was used in your claim? • How were you made aware? • What did this mean for your claim? • How did you feel about the discount rate being used? <p>What are your thoughts on the use of a discount rate overall?</p> <ul style="list-style-type: none"> • What are the challenges? What are the benefits? For whom? <p>If the discount rate was to be changed and it resulted in increasing lump sums, what do you think this would mean to claimants?</p> <ul style="list-style-type: none"> • How do you think it might affect people receiving awards? • Would you welcome this change? Why? • How might it affect other claimants? <p>Would it change your views on whether you would have preferred a PPO to a lump sum? IF REQUIRED, EXPLAIN THE CHANGE IN MORE DETAIL USING THE <u>INFORMATION SHEET</u></p> <ul style="list-style-type: none"> • Can you explain why? Do you think this might be a good or bad thing? <p>If the discount rate was to be changed and it resulted in increasing lump sums, what do you think this would mean for other people involved in the process? [PROBE on solicitors, the government, support services, wider community, insurers]</p> <ul style="list-style-type: none"> • How might it affect them? • Do you think they would welcome the change? • Who else do you think might be affected if this were to change? <p>In light of all the things we have discussed today, what do you think are most important issues for claimants regarding a potential change to the discount rate?</p> <p>EXPLAIN NEXT STAGES OF THE RESEARCH, THANK AND CLOSE.</p>	<p>In this section we discuss their views on changes to the discount rate in more detail.</p>

Appendix F

Discount rate information sheet

Personal injury claimants can be compensated for the loss caused by injury in the form of a lump sum or periodical payments or a combination of both.

When compensation for future losses or expenses (such as care and loss of earnings) is awarded as a lump sum, a discount rate is applied.

What is the discount rate?

- Often lump sum payments are invested (e.g. in property, ISAs, or hedge funds) and receive returns from this investment. The discount rate is applied to take into account the rate of return to be expected from the investment of a lump sum, and ensure that claimants are not over-compensated.
- For example if a person is due to be paid £10,000 in 10 years' time, then paying them £10,000 now would result in over-compensation as they could invest that sum now and benefit from 10 years' worth of investment returns.
- The purpose of the discount rate is to therefore ensure as far as possible that the injured person receives no more and no less than full compensation.

What's happening?

- The current discount rate is 2.5%. It was set for England Wales and Northern Ireland by the then Lord Chancellor in 2001.
- The present Lord Chancellor has decided to review the discount rate, and so the MoJ has launched a consultation on setting the personal injury discount rate.

- *Why is it being reviewed?*

The rate of return from investing large sums of money has changed since 2001, but the discount rate and methodology for calculating it has not. The current discount rate of 2.5% and methodology underlying it therefore needs to change to fit current circumstances.

At the moment, claimants may be receiving compensation awards that do not fully compensate for their future losses. If the discount rate is changed, this will have an impact on the amount of money awarded in lump sums to personal injury claimants.

This research has the purpose of providing MoJ with more evidence on the effect of a change in the discount rate, in particular, the potential changes in claimants' behaviour as a result of a change in the discount rate and therefore amount of compensation paid.