



Ministry  
of Justice

# Setting the Personal Injury Discount Rate

## A Call for Evidence

This Call for Evidence begins on 16 January 2024

A decorative graphic in the bottom right corner consisting of a cluster of overlapping triangles in various shades of blue, creating a geometric pattern.





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of Justice

## **Setting the Personal Injury Discount Rate**

A Call for Evidence

A Call for Evidence produced by the Ministry of Justice. It is also available at <https://www.gov.uk/government/calls-for-evidence/setting-the-personal-injury-discount-rate>

# About this Call for Evidence

**To:** All those with an interest in personal injury claims

**Duration:** From 16/01/24 to 09/04/24

**Enquiries (including requests for the paper in an alternative format) to:**

Civil Justice & Law Policy  
Post point 5.25  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ  
Email: **Personal-Injury-Discount-Rate@justice.gov.uk**

**How to respond:** Please send your response by 09 April 2024 to:

Civil Justice & Law Policy  
Post point 5.25  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ  
Email: **Personal-Injury-Discount-Rate@justice.gov.uk**

**Response paper:** A summary of responses to this Call for Evidence exercise will be published in due course alongside the documents supporting the Lord Chancellor's decision on the rate at: <https://www.gov.uk/government/calls-for-evidence/setting-the-personal-injury-discount-rate>

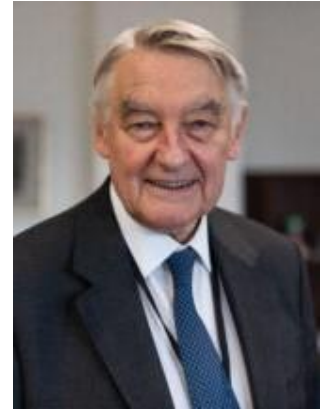
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# Foreword

People suffering from life-changing injuries depend on their compensation to support them through the significant changes to their life.

The Personal Injury Discount Rate (PIDR) is an important mechanism in fulfilling the longstanding common law principle that when someone is wrongfully injured, they receive full damages that meet their current and future needs, including care costs and lost future earnings.

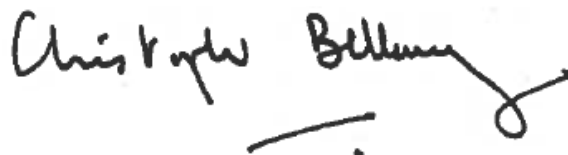


The underlying principle for personal injury claims is that when damages are paid, they should as far as possible put the claimant in the same position as they would have been in if the accident had not happened – no more and no less.

The Government is committed to the principle of full compensation and the aim that seriously injured people should receive damages that meet their current and future needs. This is why we implemented reforms through Part 2 of the Civil Liability Act (CLA) 2018 to create a fairer and more accurate way to set the PIDR, taking account of a range of factors.

The second review of the PIDR using the reformed process introduced in the CLA will take place in 2024. This will be the first PIDR review in which the independent Expert Panel, required under provisions in the CLA, will provide advice to the Lord Chancellor ahead of any new rate being set.

This Call for Evidence is designed to seek expert input from stakeholders to support the work of this Expert Panel. Good quality evidence is vital to this process, and I encourage anyone with an interest in this area with access to appropriate evidence and data to engage with and respond to this important Call for Evidence.

A handwritten signature in black ink, reading "Christopher Bellamy". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Lord Christopher Bellamy KC**  
**Parliamentary Under Secretary of State for Justice**

# Executive summary

The CLA 2018 made important changes to the Damages Act 1996, which prescribes the way that the Lord Chancellor sets the Personal Injury Discount Rate (PIDR). These changes are intended to ensure that the PIDR reflects the return that, in the opinion of the Lord Chancellor, a personal injury claimant could reasonably be expected to receive from investing a lump sum award of damages for future financial loss in a diversified low risk portfolio.

The CLA 2018 stipulated that for the first review under the new methodology there should be a formal consultation with the Government Actuary and HM Treasury. The first review was conducted between March and July 2019 and was also preceded by a Call for Evidence (December 2018 - January 2019). This review resulted in the PIDR being increased from -0.75 per cent (rate set relative to RPI) to -0.25 per cent (rate set relative to CPI).

Additionally, the CLA requires that future reviews of the rate be undertaken by the Lord Chancellor following consultation with HM Treasury and an 'expert panel' to be chaired by the Government Actuary. The PIDR Expert Panel includes members with experience:

- as an actuary;
- of managing investments;
- as an economist; and
- in consumer matters as relating to investments.

The second review must be commenced by 15 July 2024, and it is important that the Lord Chancellor and the statutory consultees have the best available evidence relating to all relevant matters on which to base their conclusions. This paper has therefore been issued to gather evidence and data ahead of the second review of the PIDR under the process introduced through the CLA 2018.

**Ministry of Justice**  
**16 January 2024**

# Introduction

1. This Call for Evidence (CfE) is intended to assist the Expert Panel in the process of obtaining up-to-date data and information on a wide range of relevant topics. It invites respondents to provide evidence that will help the statutory consultees to gain a greater understanding of the:
  - Claimant universe, which we define as a broad spectrum of characteristics pertinent to injured claimants and the damages they are awarded including the:
    - Size and length of damage awards;
    - Differing heads of loss and inflationary increases applied to these;
    - Shape of damages; and
    - Mortality experience.
  - Claimant investment experience, in particular:
    - The typical investment strategy employed by claimants and the factors influencing variations to this for different claimant groups; and
    - How this investment strategy changes, or is expected to change, over claimants' time horizons and how they manage risk over time.
  - Expenses and tax payable by claimants on their investments;
  - Changes since the 2018 call for evidence, including how they impact on the assumptions adopted in setting the PIDR in 2019 and whether these assumptions remain reasonable;
  - Impact and practicalities of adopting a dual/multiple PIDR driven by duration of award, or by heads of loss; and
  - Context around which lump sum payments are awarded, including the factors which influence the award of a lump sum rather than a Periodic Payment Order (PPO).
2. All submissions and additional evidence provided will be considered and used to inform the work of the Expert Panel who will be consulted by the Lord Chancellor as part of the review of the PIDR. In addition, to ensure consistency in the advice provided to the Lord Chancellor by both statutory consultees, evidence and data gathered via this exercise will also be shared with HM Treasury officials.



3. Respondents are asked to consider the issues raised in this document and to provide responses to the questions asked along with any documentary or other evidence available to support their position. We welcome comments from all but accept that some stakeholders may have specialised areas of knowledge and will want to focus on providing evidence in these areas.
4. The CfE will last for 12 weeks and will close on 09 April 2024.
5. An Impact Assessment has not been prepared for this paper, as its purpose is to gather evidence rather than to put forward policy proposals for consultation. A full impact assessment will be carried out when the review has concluded to support the Lord Chancellor in deciding on changes to the PIDR.
6. Copies of the CfE paper are being sent to the organisations listed in **Annex 1**. This list is not meant to be exhaustive or exclusive. Responses are welcome from anyone with an interest in, or views on, any subject covered by this paper.
7. A Welsh language executive summary and question set will be made available at <https://www.gov.uk/government/calls-for-evidence/setting-the-personal-injury-discount-rate>.

# Background

## The Personal Injury Discount Rate

8. The PIDR is used by courts in assessing the size of lump sum awards in significant personal injury cases (i.e., those whose impacts are large and likely to persist for long periods). The PIDR is prescribed by the Lord Chancellor in England and Wales under the terms of the Damages Act 1996<sup>1</sup> (the Damages Act).
9. The underlying principle in law for personal injury claims is that when a claimant is awarded damages, the damages should as far as possible, put them in the same position as they would have been in if the accident had not taken place. This is known as the '100% (or full) compensation principle', with the award intended to be no more and no less than appropriate.
10. This means the victims of life-changing events with serious and long-term injuries should receive compensation intended to provide them with full and fair financial compensation for all the expected losses and costs caused by their injuries. This normally includes damages for loss of earnings and future care costs, as well as other expenses.
11. The PIDR is intended to reflect the real rate of return that a recipient of relevant damages could reasonably expect to receive if they invested their award. It reflects the expected nominal investment returns, adjusted for the expected future rate of inflation applied to claimants' damages and the effects of expenses and taxation.
12. A lower PIDR means a lower real rate of return is expected on the claimant's investments and therefore, all other things being equal, a higher initial lump sum is required to meet claimant's needs – and vice versa.
13. The PIDR has always been set as a single real rate, with three reviews since the Damages Act:
  - 2001 – rate set at plus 2.5%;
  - 2017 – rate set at minus 0.75%; and
  - 2019 – rate set at minus 0.25%<sup>2</sup>.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1996/48/contents>

<sup>2</sup> For the 2001 and 2017 reviews the rate were set relative to RPI, for the 2019 review the rate was set relative to CPI

## The Civil Liability Act 2018 reforms

14. The CLA 2018<sup>3</sup> established a new legislative methodology for reviewing and setting the PIDR. The statute changed the assumption relating to the claimant's risk appetite from 'very low risk' to 'low risk' and required the Lord Chancellor, when setting the PIDR, to consider the returns on a 'mixed portfolio' of investments based upon:
- the actual returns available to investors;
  - the actual investments made by investors of relevant damages;
  - such allowances for tax, inflation and expenses as thought appropriate; and
  - wider factors (the term the Act uses is that the foregoing "does not limit the factors which may inform the Lord Chancellor when making the rate determination").
15. As part of the 2018/19 review, a representative claimant and associated investment portfolio was derived based on evidence collected. Assumptions were also made around tax, inflation, expenses and wider relevant factors. After carrying out analysis based on the above assumptions, the Government Actuary provided a range of possible single PIDR figures to the then Lord Chancellor<sup>4</sup>.
16. In deciding the PIDR, the then Lord Chancellor considered the levels of under and over-compensation under each of these rates, bearing in mind that claimants should also have a reasonable expectation that their awards will be exhausted at the end of award term. No rate or rates derived under a single, dual or multiple rate approach can represent the characteristics of all claimants so when balancing levels of under and over-compensation appropriate representative claimants were considered.
17. Additionally, even if the rate(s) were set with reference to individual claimants' needs no guarantee that they would not be over or under compensated could be made, as investment return (as well as actual damages) would differ from expected. As such, the Lord Chancellor's role also involves considering the range of plausible outcomes, when balancing levels of under and/or over-compensation.
18. The first review was conducted between March and July 2019 with the PIDR being increased from -0.75% to -0.25%. The then Lord Chancellor set out in his Statement of

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<sup>3</sup> <https://www.legislation.gov.uk/ukpga/2018/29/contents/enacted/data.htm>

<sup>4</sup> <https://www.gov.uk/government/consultations/setting-the-personal-injury-discount-rate-government-actuaries-advice-to-the-lord-chancellor>

Reasons<sup>5</sup> the basis of his decision for setting a new rate, and in addition published an impact assessment, equalities statement and a summary of the responses to the call for evidence<sup>6</sup>.

19. The PIDR was increased to -0.25% on the basis that this reasonably reflected, in the then Lord Chancellor's opinion, the return which a sufficient proportion of claimants could reasonably be expected to achieve on investing their lump sum damages in a low-risk mixed portfolio after appropriate adjustments have been made for taxation, expenses and inflation.

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<sup>5</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/816819/statement-of-reasons.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816819/statement-of-reasons.pdf)

<sup>6</sup> <https://www.gov.uk/government/consultations/setting-the-personal-injury-discount-rate-call-for-evidence>

## Claimant universe

20. Setting the PIDR requires an understanding of the universe of claimants and damages that they are awarded. This 'claimant universe' includes a broad spectrum of characteristics including ages, conditions, dependencies, claim sizes, investment periods and other features.
21. It is useful to understand the levels and range of variation around each of these characteristics, to enable a 'representative claimant' to be established.
22. A 'representative claimant' is one whose characteristics aim to reflect the 'average' of those in the claimant universe, and on whom the core modelling of claimant outcomes is based. Since this 'averaging' approach is adopted, the core modelling cannot capture perfectly the impact of the variation between claimant characteristics. As a result, additional modelling with adjustments to assumptions for certain characteristics is carried out (known as scenario testing) to illustrate impacts on claimant outcomes.
23. For example, at the 2018/19 review, the responses to the then Call for Evidence suggest that an average duration for personal injury cases was between 40 and 45 years. As such, in his modelling of claimant outcomes, the Government Actuary assumed that a 'representative claimant' invests over a period of 43 years. In addition, scenario testing was carried out to assess the impact on claimant outcomes of assuming a shorter 10-year and a longer 50-year investment period.
24. In addition to identifying the 'representative claimant', it is also useful to identify whether there are some groups of claimants for whom their characteristics are materially different and who may require separate consideration when modelling claimant outcomes. These groups are known as 'alternative representative claimants'.
25. The following questions are intended to gather up-to date evidence to inform this work.

**Question 1: Please provide evidence relating to the numbers of claims split by value and length of awards<sup>7</sup>.**

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<sup>7</sup> By length we mean the period damages were awarded for in the damages schedule and therefore the period of time a claimant will invest their award. Preferably split into periods of 10, 20, 30, 40, 50, 60, 70, 80+ years.

**Question 2: In relation to the evidence you have provided for Question 1 above, please provide details on the split between:**

- a) The various heads of loss i.e., the value of different components in claimants' damages schedule such as care management and care costs (and how these change over time);**
- b) The shape of these heads of loss before allowing for inflationary increases i.e., flat, increasing or decreasing; and**
- c) The term over which these heads of loss are awarded i.e., for life or a fixed period.**

**Question 3: Based on the evidence supplied in 2018/2019, the Government Actuary's advice to the Lord Chancellor assumed the representative claimant invested over a period of 43 years.**

**Does 43 years remain a suitable assumption (please explain the rationale and evidence for your response)?**

**Question 4: Are there any cohorts of 'alternative representative claimants' that you believe have characteristics which are materially different from the representative claimant defined above, and who should therefore be considered separately when modelling claimant outcomes?**

**Please define the characteristics of these cohort(s).**

**Question 5: Where available please provide evidence or data on actual mortality experience relative to claimant life expectancy when awards are granted.**

# Inflation

26. Building on the points made in the claimant universe section of this call for evidence at paragraphs 19 to 24 in calculating and setting the PIDR, assumptions need to be made regarding the rate at which claimants' damages inflate over time. In practice, different elements of the damages awarded are subject to different inflationary pressures over time.
27. For example, salaries for carers will be affected by earnings inflation, whereas care costs related to other goods and services may be more aligned to the Consumer Prices Index (CPI), and those linked to housing costs may be more aligned to the CPIH index. It would therefore be helpful to draw on the direct experience of respondents in this area to identify what inflationary measures are normally applied to specific heads of loss.
28. The Government Actuary's 2019 advice to the Lord Chancellor assumed that the representative claimant's damages inflated at a rate of CPI+1% on average. This assumed that half of a claimant's damages inflated at CPI and half inflated at earnings inflation (assumed to be CPI+2%). We are interested in hearing views from stakeholders on whether this is still a valid proposition.

**Question 6: Please provide evidence of the rates of inflation which apply to claimants' damages overall and split by different heads of loss (including any projections of damages inflation produced for other purposes – such as reserving at an insurance company).**

**Question 7: Please provide evidence of whether these rates of inflation are linked to defined inflationary measures such as RPI, CPI, CPIH, AWE, ASHE 6115 (or other); and what the reasons for such linkages are.**

**Question 8: Is the 2019 position that the representative claimant's damages are inflated at a rate of CPI+1% (as shown in paragraph 28 above) on average still a suitable assumption and if not, how would you change it (please provide evidence/reasoning for your response)?**

# Investments

29. Part 2, paragraphs 4 (3)(c) and 4 (5)(b) of the CLA 2018 provide that for the purposes of determining the PIDR, the Lord Chancellor must assume that damages are invested in a diversified portfolio and have regard to the actual investments made by (and are therefore accessible to) claimants.

30. Based on the responses received to the 2018/19 Call for Evidence, it was assumed that claimants have access to, and invest in, the asset classes available to most consumer investors, through a combination of:

- Cash
- Bonds – fixed and index linked gilts and corporate bonds (UK and overseas)
- Equities – listed and private, covering the UK and overseas
- Alternative assets (e.g., property, hedge funds, private equity, infrastructure, commodities) and financial instruments such as derivatives.

**Question 9: What asset classes should be included in a “low risk” portfolio, and are there any asset classes that are not generally available and/or suitable for personal injury claimants (please provide reasoning and/or evidence in support of your views)?**

## Investment strategy and advice

31. The 2019 Government Actuary’s analysis, which informed the advice to the Lord Chancellor on the PIDR, assumed that the representative claimant invested in a low risk diversified portfolio of assets. These assets were chosen from the investments available (see paragraph 29 above).

32. This portfolio was split into fixed percentages of ‘growth’ and ‘matching’ assets which applied throughout the lifetime of the investment period. ‘growth assets’ are those which would be expected to generate higher returns over the longer term but at greater risk; ‘matching assets’ are those which would be expected to generate lower returns but with more certainty.

33. The makeup of the portfolio was based on the responses to the 2018/19 Call for Evidence. These were wide ranging in their views on what the allocation to growth



assets should be, and were grouped into three categories – cautious, central and less-cautious portfolios – as set out in Table 1 below.

**Table 1**

<b>Allocation</b>	<b>Cautious</b>	<b>Central</b>	<b>Less-cautious</b>
<b>Lower risk/matching assets</b>	<b>70%</b>	<b>57.5%</b>	<b>45%</b>
Cash	12.5%	10%	7.5%
Gilts	35%	30%	22.5%
Corporate bonds	22.5%	17.5%	15%
<b>Higher risk/growth assets</b>	<b>30%</b>	<b>42.5%</b>	<b>55%</b>
Equities	22.5%	32.5%	42.5%
Alternatives	7.5%	10%	12.5%

34. The central portfolio, with a 42.5% allocation to growth assets (constant % allocation achieved through rebalancing), was assumed in the analysis and this was used to inform advice on the PIDR. Furthermore, it was assumed that a passive approach to managing these investments was adopted. More information relating to ‘passive investments’ can be found at paragraphs 39 to 41 below.
35. Through the following questions, we wish to gain an understanding of whether this approach - i.e., a static growth versus matching split and asset allocation within this, with investments managed on a passive basis - remains appropriate and how recent changes in economic conditions can have an impact. We would also like to understand the prevalence of more dynamic cashflow matching and risk management strategies.
36. We would also like to understand the investment advice provided to claimants, noting that Part 2, paragraphs 4 (3)(b) of the CLA 2018 provides that for the purposes of determining the PIDR, the Lord Chancellor must assume that the recipient of the damages is properly advised on the investment. We note that the actual investments made may differ in practice from those advised to be made, however this evidence is important, and indeed may be the only information available to some respondents in this regard.
37. Specific evidence from experienced industry stakeholders in this area will provide the Expert Panel with clear and helpful data which will be used to inform their advice to the Lord Chancellor as part of the upcoming PIDR review.

**Question 10: Please provide any evidence you may have on how low-risk claimants who receive lump sum damages awards are both advised to invest and actually invest over the length of their award (including changes over this time).**

**Information should be provided on:**

- a) The split between growth and matching assets, as well as specific asset classes;**
- b) The prevalence of active, passive or semi-passive investment approaches and their resulting impact;**
- c) Consideration of liquidity risk<sup>8</sup> and/or the prevalence of matching cashflow approaches with the aim of meeting the claimant's income needs as they fall due e.g., through purchase of 'matching bonds' or annuities to provide a more known income stream; and**
- d) The prevalence of risk management strategies as a claimant's investment horizon changes.**

**Question 11: Do you believe the investment strategy that was assumed to be adopted by the representative claimant in the 2019 Government Actuary's analysis (as described in paragraphs 33 to 36 and Table 1 above), remains appropriate? If not, how would you change it for a current view of the representative claimant or alternative representative claimants?**

**Question 12: To what extent has the way claimants are advised to, and actually, invest been affected by recent changes in economic conditions (e.g., high interest and inflation rates)?**

**Question 13: Please provide evidence which demonstrates how the following circumstances and/or characteristics affect claimant investment behaviours in practice:**

- a) Size or length of award (including the effect of any interactions between these two variables);**
- b) Availability of other income, including PPOs;**
- c) Existence and requirements of financial dependants (e.g., spouse, civil partner, children); and**
- d) Other factors or characteristics you deem relevant.**

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<sup>8</sup> Liquidity risk – the consideration of how readily sellable an asset is for a suitable price.

**Question 14: How have historical changes to the PIDR which impact the size of the award affected how low-risk claimants have been advised to or actually invest their award (please provide evidence and/or reasoning in support of your answer)?**

**Question 15: To what extent do environmental, social and governance (ESG) considerations shape claimants' investment advice and approaches (please provide evidence to support your view)?**

## Investor expenses

38. Part 2, paragraph 4 (5)(c) of the CLA 2018 requires the Lord Chancellor, in determining the PIDR, to make appropriate allowances for expenses incurred by claimants when making their investments. We are therefore interested in gaining an understanding of the level and makeup of these expenses in order to explore what an appropriate allowance would be in the analysis to be carried out ahead of the 2024 review.

39. The Government Actuary's 2019 analysis grouped these expenses into the following three categories:

- **Financial advisor fees** - charged by Independent Financial Advisers for any advice provided on the investments/funds in which the claimant should invest. It is a requirement of the CLA 2018 that the claimant is assumed to be a 'properly advised' investor.
- **Fund management or investment management fees** - the fees charged by asset managers to cover their administrative expenses. These differ between asset class and depend on whether a passive or active approach to managing the investments is adopted.
- **Other associated costs** - e.g., platform fees and transaction charges. These include custodian or platform fees or costs associated with buying/selling the underlying securities e.g., bid/offer spreads, commission and dealing costs. These costs differ between asset class and depend on whether a passive or active approach to managing the investments is adopted.

**Question 16: Please provide any evidence available on the type and level expenses faced by claimants, assuming a low-risk investment portfolio is adopted. Respondents may wish to follow the grouping at paragraph 39 above and should add any other investment related expenses they believe are relevant.**

**Answers should, where possible, highlight any differences in expenses due to the:**

- a) Size of claimant award;**
- b) Adoption of a passive or active investment approach; and**
- c) Claimant time horizon (and how this changes over time).**

40. Based on evidence supplied in 2019, the Government Actuary's advice to the then Lord Chancellor assumed expenses incurred by claimants of 0.6% to 1.2% of their fund value per year, broken down in Table 2 below:

**Table 2**

<b>Expense</b>	<b>Ongoing charge p.a.<sup>9</sup></b>	<b>Approach assumed</b>
Adviser fee	0.25% to 0.5%	Part active advice alongside passive investment management
Fund manager fee	0.25% to 0.5%	Passive investment management
Platform fee	0.1% to 0.2%	Passive investment management

41. These expenses reflected the assumption of a static asset allocation alongside a passive approach to managing the investments. The rationale for assuming fees reflecting passive investment management was that any move away from this, into active management territory, would require an equal adjustment to assumed investment returns. It was assumed that the two effects would offset each other.

42. The adviser fee was described as 'part active', reflecting the fact that advice provided should cover initial investment advice based on an assessment of the claimant's objectives and risk profile, regular reviews of that advice, and monitoring of the portfolio. However, it did not allow for advice which would likely recommend more 'active' decisions to be taken, such as regular changes to a portfolio throughout the drawdown of an award to better reflect a claimant's changing needs.

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<sup>9</sup> Rates before VAT and not including additional platform and access fees (discussed below).

**Question 17: Do the expense groupings, values and approach assumed in the 2019 analysis, as set out in Table 2 above, remain suitable for the representative claimant (or alternative representative claimants)?**

**If not, what do you deem appropriate? Please provide evidence and/or rationale to support your answer.**

# Taxation

43. Under the provisions included in Part 2, paragraph 4 (5)(c) of the CLA 2018 the Lord Chancellor, in determining the PIDR, may also allow for taxation which is reflective of that payable by claimants when investing. These taxes include income and capital gains tax, and accordingly, allowance should be made for this when considering the net returns available from their investments.
44. The level of taxation payable by claimants on their investment returns depends upon several factors. These include the size of fund, other income levels, expenditure requirements (for example forced sales and crystallising capital gains) and how their investments are structured.
45. Accordingly, average tax rates can be expected to vary significantly between different individuals. Responses to the 2018/19 CfE suggested that for some claimants the tax effects were likely to be negligible but were potentially significant for others.
46. In 2019, it was assumed that the appropriate allowance for taxation was between 0.0% and 0.5% per annum (based on the initial award value). Some responses to the CfE suggested a figure towards the lower end of the range, to reflect the reducing tax liability as withdrawals are made from the fund.
47. The Government Actuary recommended that this rate is kept under review, noting that the appropriate adjustment is likely to be higher in a higher interest rate environment. Since then, there have been changes to tax rules regarding capital gains and income tax thresholds have been frozen.
48. We are therefore interested in gaining an understanding of the types of taxes claimants pay and the processes they use to minimise them in order to explore what an appropriate allowance would now be. In addition, we would also like to hear more on the taxation rates that typically apply in order to help inform calculations of an appropriate deduction, and in particular what has changed since 2019.

**Question 18: What types and rates of taxation typically apply to claimants on their investment returns, and how does the distribution of these vary by size, length of award and remaining claimant time horizon? Please consider a current view of the representative claimant or alternative representative claimants.**

**Question 19: How might your answer to Question 18 change if a claimant had other annual taxable income of at least an amount to meet the threshold for personal income tax, or other reasonable level of taxable income? Please support this with any evidence or data on what other taxable income claimants typically have.**

**Question 20: Do you consider that the 2019 deduction for taxation of between 0.0% and 0.5% per annum (based on the initial award value) remains suitable in regard to the representative claimant or alternative representative claimants (please provide evidence and/or reasoning to support your position)?**

**Question 21: In 2019, a total deduction for tax and investment management expenses over the term of the award of 0.75 per cent was applied (derived from a range of 0%-0.5% based on the initial award value for tax and 0.6%-1.2% for investment management expenses.**

**Do you think this total deduction and how its elements are combined remain appropriate (please provide evidence and/or reasoning to support your answer)?**

# Further areas for consideration

## Dual or Multiple Rates

49. The 2019 Government Actuary's advice to the then Lord Chancellor presented analysis on a dual PIDR rate by duration and recommended at that time that the impact and practicalities of such an approach be considered further. This analysis gave insight into how the PIDR might be amended to provide fairer outcomes for more claimants but noted that more work was required to identify the practical impact of introducing such a system.
50. The then Lord Chancellor decided that the evidence base was insufficient to justify such a change in 2019 but committed the Government to seeking additional views and evidence ahead of the 2024 review. As part of the current PIDR review, and to give effect to that commitment, a Call for Evidence on 'Exploring the option of a dual/multiple rate'<sup>10</sup> was published by the Ministry of Justice in January 2023 with a summary response document issued in September 2023.<sup>11</sup>
51. This Call for Evidence provided some helpful data and insight into the suitability of introducing a dual or multiple PIDR. We would therefore like to seek additional input from stakeholders on some specific areas highlighted during this exercise. Views on the relative strengths and weaknesses of different methods for a dual rate by duration approach would be helpful.
52. Paragraph 33 of the dual rate call for evidence outlined three options (stepped, switched and blended). Responses to the call for evidence suggested several variations and we would like to explore these in more detail.

**Question 22: How much additional complexity or difficulty would implementing a dual rate by duration approach add to the litigation process (please provide evidence to quantify this either by time to settlement, additional legal costs and/or any other relevant factors)?**

53. Building on this point, specific feedback provided by the compensator sector as part of the 2023 'PIDR exploring the option of a dual/multiple rate' Call for Evidence indicated that should a dual rate by duration be adopted, a dual rate approach largely based

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<sup>10</sup> <https://www.gov.uk/government/consultations/a-consultation-on-the-reform-to-retail-prices-index-rpi-methodology>

<sup>11</sup> Personal Injury Discount Rate: Exploring the option of a dual/multiple rate - Government response ([publishing.service.gov.uk](https://publishing.service.gov.uk))



around a blended Ontario-type model was generally favoured, with remaining with the current single PIDR as a second preference.

54. The Ontario model is a dual rate with defined short- and long-term rates and a switching point. The short-term rate is intended to reflect current economic conditions, whereas the long-term rate anticipates reversion to a long-term average.
55. Under the Ontario model, cashflows prior to the switching point are discounted at the short-term rate. Cashflows beyond the switching point are discounted at a blend of the short-term rate for a fixed number of years, and at the long-term rate for the years beyond this point.
56. This approach avoids so-called 'cliff edges'. Further detail can be found at paragraphs 40-46 of the January 2023 call for evidence.
57. We would also like to understand, through the following question, how the characteristics of the representative claimant might change if a dual or multiple rate structure, utilising a blended approach with defined short- and long-term rates and switching points, were to be implemented.

**Question 23: Should a dual rate mechanism be implemented, different asset returns would be assumed for the short and long-term.**

**Under this mechanism, what changes to the following characteristics of the representative claimant (or alternative representative claimants) would apply:**

- a) Investment period;
- b) Damage inflation;
- c) Investment portfolio; and
- d) Tax and Expenses assumptions.

58. In addition to the feedback provided on dual rates by duration, a broad cross section of stakeholders also suggested that a model whereby different discount rates are applied to different heads of loss might be a viable alternative in a dual/multiple PIDR option.

**Question 24: Should a discount rate by heads of loss be implemented, different damage inflation assumptions would be assumed for different heads of loss. Under this mechanism, what changes to the following characteristics of the representative claimant (or alternative representative claimants) would apply:**

- a) Investment period (under the single rate methodology, 43 years was previously assumed);**
- b) Investment portfolio (under the single rate methodology, a 57.5% allocation to matching assets and 42.5% allocation to growth assets was previously assumed. Please refer to Table 1 for full details); and**
- c) Tax and Expenses assumptions (under the single rate methodology, a range of 0%-0.5% based on the initial award value for the former and 0.6%-1.2% for the latter, with a total modelled assumption of 0.75% was previously assumed).**

**Question 25: How much additional complexity or difficulty would this approach add to the litigation process, and would this be greater/lesser/about the same as if a dual rate by duration were implemented?**

**Please provide evidence to quantify this either by time to settlement, additional legal costs and/or any other relevant factors.**

**Question 26: Should a discount rate by heads of loss be implemented, do you believe that the concept of modelling one representative claimant remains appropriate or is modelling a representative claimant for each head of loss a better approach?**

**Question 27: Please provide any additional evidence you or your organisation may have on the practical implementation of such a heads of loss rate model.**

**Question 28: Please provide evidence and/or data to support what heads of loss should be separately identified in such a model.**

## **The availability of Periodical Payment Orders**

59. Part 2, paragraph 4(3)(a) of the CLA 2018 specifies that the Lord Chancellor must assume that damages are paid in the form of a lump sum (rather than under a periodical payment order (PPO)). The 2019 Government Actuary report also referenced the availability of PPOs as a justification for not considering risks, other than those relating to investment, such as the claimant living longer than expected (and therefore longer than the lump sum settlement is designed to provide).
60. PPO take up is, however, not as high as may be expected given the increase in income certainty they can provide. Therefore, we would like to ask the following questions about the factors affecting the usage of PPOs both separately and in combination with a lump sum payment.

**Question 29: How readily available are PPOs to claimants in practice and how does this vary by groups of claimants (additional data on groups that are less likely to have a PPO made readily available would be helpful)?**

**Question 30: What factors influence the take up of lump sums versus PPOs? This could include the preferences and behaviours of one or more of the parties involved in the settlement process and associated litigation strategies.**

# Equality considerations

## Background

61. Section 149 of the Equality Act 2010 (“the Act”) requires Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:

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

62. In carrying out this duty, Ministers and the Department must pay “due regard” to the nine “protected characteristics” set out in the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

63. The Government has sought information on equality impacts of setting the discount rate in public Calls for Evidence in 2011, 2013 and 2017, and an Equalities Statement was published in 2018 when the then Civil Liability Bill was introduced in Parliament, and in 2019 to coincide with the setting of a new rate. The Government made a commitment to the Justice Committee in March 2018 that it would keep the Statement under review.

64. The 2019 Review was informed in part by a Call for Evidence held in December 2018 - January 2019. That Call for Evidence sought specific views (question 14) on how the setting of the rate impacted on people with protected characteristics. Views were also sought on how equality considerations affected the investment behaviour of claimants.

## Direct Discrimination

65. The principles for setting the discount rate apply equally to all claimants and defendants. Our assessment therefore is that the proposals are not directly discriminatory within the meaning of the Equality Act 2010.

## Indirect Discrimination

66. The Call for Evidence paper is designed to gather evidence to inform the work of the Expert Panel in their deliberations as part of advice to Lord Chancellor.
67. In the Equalities Statement published for the July 2019 review's rate-setting, the conclusion drawn was that the Government did not consider that the reforms amounted to indirect discrimination within the meaning of the Act. The resulting changes to the setting of the rate were unlikely to result in anyone with a protected characteristic being put at a particular disadvantage compared to someone who does not share the protected characteristic.
68. However, it was observed that the Government does not collect comprehensive information about personal injury claimants in relation to protected characteristics. Also, as limited information was provided as a result of the earlier Call for Evidence that would enable comparison between different protected groups, our understanding of the potential equality impacts of the proposals are limited.
69. The rate must be reviewed at least every five years after the first review in line with the legislative changes to the rate setting methodology. This will include seeking additional evidence and involve a new assessment for each review of the actual or potential impact of the setting of the rate on claimants with protected characteristics and other equality considerations.
70. At present, there is one rate for all claimants, save that the court may depart from that rate when persuaded another rate is more appropriate. In practice the court seems never to have done so.
71. Claimants with longer life expectancy may on average be younger than claimants with shorter life expectancy. Older claimants may therefore be more vulnerable to short term fluctuations in investment returns (with less time to recoup any losses), while younger claimants may be more vulnerable to uncertainty over their future care needs.
72. Claimants with particular religious or other beliefs may be restricted in the type of investments they are able to make, and while there is no conclusive academic research, the logical expectation would be that by narrowing investment options their returns may be affected to some degree.
73. However, the purpose of the legislation is to enable the Lord Chancellor to set a rate or set of rates to reflect the 100% compensation principle. This must be borne in mind and the Lord Chancellor has limited scope to make provision to protect the interests of particular groups.

74. It would be unlikely to be appropriate, for example, to adjust the discount rate if the proper application of the legal tests has a particular impact on protected groups. Even if the impact on protected groups could be relevant to the question of whether a dual rate or multiple rates are more appropriate than a single rate, this should be weighed up against the benefits of a single rate in future reviews.
75. Many seriously injured claimants will have physical and mental disabilities as a result of the injury. People with disabilities are therefore likely to be more highly represented in the population of claimants than among the general population. Among the most seriously long term injured, and in receipt of the largest awards, the proportion of very young children injured at birth and young men injured in road accidents is likely to be higher than the proportion of babies and young men in the general population.
76. Claimants with the protected characteristics of disability (physical and psychological health injuries), age (younger) and sex (men) are therefore likely to be more affected by the choice of methodology for the setting of the rate than others without these protected characteristics.

**Question 31: Please provide any evidence of how the setting of the discount rate may affect persons with protected characteristics.**

# Questionnaire

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

**Question 1: Please provide evidence relating to the numbers of claims split by value and length of awards (By length we mean the period damages were awarded for in the damages schedule and therefore the period of time a claimant will invest their award. Preferably split into periods of 10, 20, 30, 40, 50, 60, 70, 80+ years).**

**Question 2: In relation to the evidence you have provided for Question 1 above, please provide details on the split between:**

- d) The various heads of loss i.e., the value of different components in claimants' damages schedule such as care management and care costs (and how these change over time);**
- e) The shape of these heads of loss before allowing for inflationary increases i.e., flat, increasing or decreasing; and**
- f) The term over which these heads of loss are awarded i.e., for life or a fixed period.**

**Question 3: Based on the evidence supplied in 2018/2019, the Government Actuary's advice to the Lord Chancellor assumed the representative claimant invested over a period of 43 years.**

**Does 43 years remain a suitable assumption (please explain the rationale and evidence for your response)?**

**Question 4: Are there any cohorts of 'alternative representative claimants' that you believe have characteristics which are materially different from the representative claimant defined above, and who should therefore be considered separately when modelling claimant outcomes?**

**Please define the characteristics of these cohort(s).**

**Question 5: Where available please provide evidence or data on actual mortality experience relative to claimant life expectancy when awards are granted.**

**Question 6: Please provide evidence of the rates of inflation which apply to claimants' damages overall and split by different heads of loss (including any projections of damages inflation produced for other purposes – such as reserving at an insurance company).**

**Question 7: Please provide evidence of whether these rates of inflation are linked to defined inflationary measures such as RPI, CPI, CPIH, AWE, ASHE 6115 (or other); and what the reasons for such linkages are.**

**Question 8: Is the 2019 position that the representative claimant's damages are inflated at a rate of CPI+1% (as shown in paragraph 28 above) on average still a suitable assumption and if not, how would you change it (please provide evidence/reasoning for your response)?**

**Question 9: What asset classes should be included in a "low risk" portfolio, and are there any asset classes that are not generally available and/or suitable for personal injury claimants (please provide reasoning and/or evidence in support of your views)?**

**Question 10: Please provide any evidence you may have on how low-risk claimants who receive lump sum damages awards are both advised to invest and actually invest over the length of their award (including changes over this time).**

**Information should be provided on:**

- a) The split between growth and matching assets, as well as specific asset classes;**
- b) The prevalence of active, passive or semi-passive investment approaches and their resulting impact;**
- c) Consideration of liquidity risk and/or the prevalence of matching cashflow approaches with the aim of meeting the claimant's income needs as they fall due e.g., through purchase of 'matching bonds' or annuities to provide a more known income stream; and**
- d) The prevalence of risk management strategies as a claimant's investment horizon changes.**

**Question 11: Do you believe the investment strategy that was assumed to be adopted by the representative claimant in the 2019 Government Actuary's analysis (as described in paragraphs 33 to 36 and Table 1 above), remains appropriate? If not, how would you change it for a current view of the representative claimant or alternative representative claimants?**

**Question 12: To what extent has the way claimants are advised to, and actually, invest been affected by recent changes in economic conditions (e.g., high interest and inflation rates)?**

**Question 13: Please provide evidence which demonstrates how the following circumstances and/or characteristics affect claimant investment behaviours in practice:**



- e) Size or length of award (including the effect of any interactions between these two variables);**
- f) Availability of other income, including PPOs;**
- g) Existence and requirements of financial dependants (e.g., spouse, civil partner, children); and**
- h) Other factors or characteristics you deem relevant.**

**Question 14: How have historical changes to the PIDR which impact the size of the award, affected how low-risk claimants have been advised to or actually invest their award (please provide evidence and/or reasoning in support of your answer)?**

**Question 15: To what extent do environmental, social and governance (ESG) considerations shape claimants' investment advice and approaches (please provide evidence to support your view)?**

**Question 16: Please provide any evidence available on the type and level expenses faced by claimants, assuming a low-risk investment portfolio is adopted. Respondents may wish to follow the grouping at paragraph 39 above and should add any other investment related expenses they believe are relevant.**

**Answers should, where possible, highlight any differences in expenses due to the:**

- a) Size of claimant award;**
- b) Adoption of a passive or active investment approach; and**
- c) Claimant time horizon (and how this changes over time).**

**Question 17: Do the expense groupings, values and approach assumed in the 2019 analysis, as set out in Table 2 above, remain suitable for the representative claimant (or alternative representative claimants)?**

**If not, what do you deem appropriate? Please provide evidence and/or rationale to support your answer.**

**Question 18: What types and rates of taxation typically apply to claimants on their investment returns, and how does the distribution of these vary by size, length of award and remaining claimant time horizon? Please consider a current view of the representative claimant or alternative representative claimants.**

**Question 19: How might your answer to Question 18 change if a claimant had other annual taxable income of at least an amount to meet the threshold for personal income tax, or other reasonable level of taxable income? Please support this with any evidence or data on what other taxable income claimants typically have.**

**Question 20: Do you consider that the 2019 deduction for taxation of between 0.0% and 0.5% per annum (based on the initial award value) remains suitable in regard to the representative claimant or alternative representative claimants (please provide evidence and/or reasoning to support your position)?**

**Question 21: In 2019, a total deduction for tax and investment management expenses over the term of the award of 0.75 per cent was applied (derived from a range of 0%-0.5% based on the initial award value for tax and 0.6%-1.2% for investment management expenses.**

**Do you think this total deduction and how its elements are combined remain appropriate (please provide evidence and/or reasoning to support your answer)?**

**Question 22: How much additional complexity or difficulty would implementing a dual rate by duration approach add to the litigation process (please provide evidence to quantify this either by time to settlement, additional legal costs and/or any other relevant factors)?**

**Question 23: Should a dual rate mechanism be implemented, different asset returns would be assumed for the short and long-term.**

**Under this mechanism, what changes to the following characteristics of the representative claimant (or alternative representative claimants) would apply:**

- b) Investment period;**
- b) Damage inflation;**
- c) Investment portfolio; and**
- d) Tax and Expenses assumptions.**

**Question 24: Should a discount rate by heads of loss be implemented, different damage inflation assumptions would be assumed for different heads of loss. Under this mechanism, what changes to the following characteristics of the representative claimant (or alternative representative claimants) would apply:**

- a) Investment period (under the single rate methodology, 43 years was previously assumed);**
- b) Investment portfolio (under the single rate methodology, a 57.5% allocation to matching assets and 42.5% allocation to growth assets was previously assumed. Please refer to Table 1 for full details); and**
- c) Tax and Expenses assumptions (under the single rate methodology, a range of 0%-0.5% based on the initial award value for the former and 0.6%-1.2% for the latter, with a total modelled assumption of 0.75% was previously assumed).**

**Question 25: How much additional complexity or difficulty would this approach add to the litigation process, and would this be greater/lesser/about the same as if a dual rate by duration were implemented?**

**Please provide evidence to quantify this either by time to settlement, additional legal costs and/or any other relevant factors.**

**Question 26: Should a discount rate by heads of loss be implemented, do you believe that the concept of modelling one representative claimant remains appropriate or is modelling a representative claimant for each head of loss a better approach?**

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**Question 30: What factors influence the take up of lump sums versus PPOs. This could include the preferences and behaviours of one or more of the parties involved in the settlement process and associated litigation strategies?**

**Question 31: Please provide any evidence of how the setting of the discount rate may affect persons with protected characteristics.**

# Annex 1: List of Consultees

AA	Citizens Advice
Admiral	Cloisters
Adroit Financial Planning	Clyde & Co
Advantage Insurance Company	DAC Beachcroft
Ageas Insurance Limited	Deloitte
AIG	Deka Chambers
Allianz	DWF
Aon	EY
Arch Re	esure
Association of British Insurers	Everest Re
Association of Consumer Support Organisations	Fletchers
Association of Personal Injury Lawyers	Forum of Complex Injury Solicitors
Aviva	Forum of Insurance Lawyers
Axa Insurance	Frenkel Topping
Bar Council	Gibraltar Insurance Association (GIA)
British Insurance Brokers Association	Hastings Direct
Browne Jacobson LLP	Hill Dickinson
Capsticks LLP	Institute and Faculty of Actuaries
Carpenters Group	International Underwriting Association
CFG law	Irwin Mitchell
Chase Devere	JMW Solicitors
CiLEX	Keoghs
	Kennedys

Law Society

LV=

Medical Defence Union

Medical Protection Society

Minster Law

Motor Accident Solicitors Society

Motor Insurers' Bureau

MunichRe

NFU Mutual

NHS Resolution

Nicholls Brimble Bhol

Personal Financial Planning

Personal Injuries Bar Association

Personal Investment Management &  
Financial Advice Association

Pollock and Galbraith

PWC

Sabre Insurance Group

Sergeants Chambers

Slater and Gordon

Swiss Re

The Society of Clinical Injury Lawyers

Thompsons Solicitors

WTW

Weightmans

Which?

Zurich

# About you

Please use this section to tell us about yourself.

**Full name:** \_\_\_\_\_

**Job title** or capacity in which you are responding to this Call for Evidence exercise (e.g., member of the public etc.):

\_\_\_\_\_

**Date:** \_\_\_\_\_

**Company name/organisation** (if applicable):

\_\_\_\_\_

**Address:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If you would like us to acknowledge receipt of your response, please tick this box:

☐

Address to which the acknowledgement should be sent, if different from above:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# Contact details/How to respond

## MoJ contact details

Please send your response by 09 April 2024 to:

### **Civil Justice and Law Policy**

Ministry of Justice

Post point 5.25

102 Petty France

London SW1H 9AJ

Tel: 020 3334 3157

Email: [Personal-Injury-Discount-Rate@justice.gov.uk](mailto:Personal-Injury-Discount-Rate@justice.gov.uk)

## Complaints or comments

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

## Extra copies

Further paper copies of this Call for Evidence can be obtained from this address, and it is also available online at <https://www.gov.uk/government/calls-for-evidence/setting-the-personal-injury-discount-rate>.

Alternative format versions of this publication can be requested from:

**[Personal-Injury-Discount-Rate@justice.gov.uk](mailto:Personal-Injury-Discount-Rate@justice.gov.uk)**

## Publication of response

A paper summarising the responses to this Call for Evidence will be published in due course alongside the documents supporting the Lord Chancellor's decision on the rate. The response paper will be available online at:

<https://www.gov.uk/government/calls-for-evidence/setting-the-personal-injury-discount-rate>.

## **Representative groups**

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

## **Confidentiality**

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

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

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



# Impact Assessment

An Impact Assessment has not been prepared for this Call for Evidence paper as its purpose is to gather evidence rather than to put forward policy proposals for consultation. A full impact assessment will be carried out when the review has concluded to support the Lord Chancellor in deciding on changes to the PIDR.

# Welsh Language

## Welsh Language Impact Test

A Welsh language version of the executive summary and question set included in this Call for Evidence is also available on <https://www.gov.uk/government/calls-for-evidence/setting-the-personal-injury-discount-rate>. The contents of this document do not affect MoJ services in Wales.

## Call for Evidence principles

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

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691383/Call for Evidence\\_Principles\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Call_for_Evidence_Principles__1_.pdf)



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