

## Introduction

Part 2 of the Civil Liability Act 2018 (“the CLA”) amended the Damages Act 1996 (“the Damages Act”) to specify a new methodology for the setting of the Personal Injury Discount Rate (PIDR). The CLA specifies that the Lord Chancellor must review the rate within the five-year period following the last review (beginning with the day on which the last review is concluded) and determine whether it should be (a) changed to a different rate, or (b) kept unchanged. The Lord Chancellor must conduct that review and make that determination within the 180-day review period.

The Act requires the Lord Chancellor, in conducting the review, to consult the Expert Panel established for the review and the Treasury.

This document sets out the terms of the Lord Chancellor’s statutory consultation with the Treasury.

## Background

The PIDR is a statutory method for the way lump sum compensation for future financial loss is calculated in serious personal injury cases (i.e., those whose impacts are expected to last for a period of years). In such cases, some or all of the compensation is received in the form of a lump sum payment which claimants often invest. The purpose of the PIDR is to reflect the return that a claimant could reasonably be expected to receive from investing the lump sum element of damages which, along with the nature of the injury and its expected duration, will determine the final size of the lump sum.

The Lord Chancellor must make the PIDR determination on the basis of the rate of return that, in the opinion of the Lord Chancellor, a recipient of relevant damages could reasonably be expected to achieve if they invested the relevant damages for the purpose of securing that —

- a) the relevant damages would meet the losses and costs for which they are awarded;
- b) the relevant damages would meet those losses and costs at the time or times when they fall to be met by the relevant damages; and
- c) the relevant damages would be exhausted at the end of the period for which they are awarded.

In determining the rate, the Lord Chancellor must make (but is not limited to) the following assumptions —

- d) that the relevant damages are payable in a lump sum (rather than under an order for periodical payments);
- e) that the recipient of the relevant damages is properly advised on the investment of them;
- f) that the recipient of the relevant damages invests them in a diversified portfolio of investments;
- g) that the relevant damages are invested using an approach that involves—
  - i. more risk than a very low level of risk, but
  - ii. less risk than would ordinarily be accepted by a prudent and properly advised individual investor who has different financial aims.

The Lord Chancellor must also have regard to the actual returns available to, and actual investments made by, investors of relevant damages, and make such allowances for taxation, inflation and investment management costs as the Lord Chancellor thinks appropriate.

The practice to date has been to set a single rate for all cases, but it has always been, and continues to be, within the Lord Chancellor's gift, under the Damages Act, to prescribe different rates of return for different classes of case. In 2019, on receipt of the Government Actuary's advice, the then Lord Chancellor committed to launching a Call for Evidence (CfE) to explore the option of a dual or multiple discount rate in greater depth and "inform the next discount rate review". The Expert Panel and the Treasury should consider the responses to the CfE in providing their respective advice to the Lord Chancellor.

## The Treasury's role

The purpose of the Treasury's response to the Lord Chancellor's consultation is to provide advice to the Lord Chancellor on matters relevant to the setting of the rate. When deciding what response to give to the Lord Chancellor the Treasury must take into account the duties imposed on the Lord Chancellor by the CLA and may want to also consider:

- The portfolios for consideration in the setting of the rate;
- The relevant economic and financial forecasts for the UK economy as a whole over the short, medium and long term;
- The rates of inflation that, in the opinion of the Treasury, are to be expected in the short, medium and long terms for (i) prices and earnings generally; and (ii) on the cost of care and treatment;
- Whether, in the opinion of the Treasury, there is reason to change from a single rate to multiple rates, by reference to the duration of the award or heads of loss; and
- Any other matters that the Treasury considers relevant to the setting of the rate.

The Treasury will consider the responses to the Call for Evidence and the further research and analysis carried out by the Expert Panel in considering the Lord Chancellor's request, but is entitled to decide what other evidence, including oral evidence, to consider while preparing its response to the Lord Chancellor's consultation and what weight to give to the evidence that it considers. It may also draw conclusions from its own experience.

Acting as a statutory consultee will not restrict or inhibit the ability of the Treasury to provide advice to the Lord Chancellor and his department outside the scope of the statutory consultation at any time, including during the statutory consultation period.

It is expected that some of the Treasury's advice to the Lord Chancellor will be made public when the Lord Chancellor announces the outcome of the review.

Upon announcing the start of the review, the Lord Chancellor must make a determination within 180 days. In doing so, as per the CLA, the Lord Chancellor must consult HM Treasury and the Expert Panel. The Expert Panel must respond to the Lord Chancellor's request for consultation within 90 days, beginning with the day on which its response is requested, and HM Treasury should respond to the Lord Chancellor at the same time as the Expert Panel.

## Terms of Reference - PIDR review 2024 – HM Treasury

In line with the sharing of information and analysis, HM Treasury should have sight of the Expert Panel's final advice in advance of submitting their own advice. The response must contain a reasonable explanation of the advice provided. All conclusions set out in the response must be presented in such a way as to make clear the reasoning and evidence on which they are based.

The format of the response is to be agreed between the Treasury and the Ministry of Justice prior to completion.