

Personal Injury Discount Rate – Outcome of Review

Statement placed by the Rt Hon Shabana Mahmood MP, Lord Chancellor, in the libraries of the Houses of Parliament on 2 December 2024

1. As Lord Chancellor, it is my duty under Section A1 of the Damages Act 1996, as amended by the Civil Liability Act 2018, to periodically determine the rate of return that claimants could reasonably be expected to receive from the investment of lump sum damages payments, more commonly known as the Personal Injury Discount Rate ('the rate'). This is the rate that the court must consider when determining the final value of such damages payments for future pecuniary loss in personal injury cases, so that they may order damages that are expected to fulfil the full compensation principle: no more, and no less.
2. The legislation requires that I review this rate at least every five years. Therefore, on 15 July 2024, I met this obligation by commencing a review of this rate. This is the fourth time that a Lord Chancellor has reviewed the rate, and the second time that a review has been carried out under the new framework that was introduced by the Civil Liability Act 2018. As prescribed by this framework, this was the first review in which an Expert Panel was established and consulted. This Expert Panel is an independent advisory body whose role is not to set the rate, but to provide evidence-based advice and options to inform my consideration of the rate during this review only. I am very grateful for their extensive advisory report, which has been invaluable in assisting me in this determination.
3. During my review, I have considered all the material provided to me, including the advice of the two statutory consultees to the review, the Expert Panel and HM Treasury; responses to the 2023 Call for Evidence concerning the benefits of a dual or multiple rate; responses to the 2024 Call for Evidence which the Ministry of Justice published on behalf of the Expert Panel; and the Equalities Statement published alongside this Statement; together with analytical and legal advice from Ministry of Justice officials. I have been guided in my consideration of this evidence by my duties under the Damages Act 1996, and have only considered relevant factors within this legislative framework. I am confident that the review has been comprehensive and thorough, in-keeping with the complexity of this exercise and the importance of the rate.
4. This statement sets out the decision I have reached following my review and summarises my reasons for that decision.

Decision

5. **Following careful consideration of the evidence and advice, I have determined that the rate should be set at a single rate of positive 0.50%.**

Reasons

6. In reaching my determination, I followed the procedure set out in the Damages Act 1996, which specifies certain requirements and analytical assumptions that must be taken into account when determining the assumed rate of return that a recipient could reasonably expect to make from an investment of a lump sum damages payment.
7. It is my duty to set the rate at the level which I believe most reasonably reflects the rate of return that claimants could be expected to receive from their investment of relevant lump sum damages. The objective of such payments is to put claimants back into the same position as they were before the accident, as far as possible with monetary compensation, and the purpose of the rate is to adjust the value of these payments to better ensure this outcome. Therefore, in determining the rate, I have sought to set a single rate that supports the principle of full compensation while fulfilling the requirements and purposes of the Act.
8. To achieve this aim, I have paid careful regard to the need to avoid significant under-compensation for claimants, while simultaneously aiming to minimise excessive over-compensation. Achieving the appropriate balance between these aims across all claimants is an extremely complex and difficult exercise, and one in which the expert analyses of the consultees to the review have been invaluable. It is very important to recognise that the Personal Injury Discount Rate will always be a relatively blunt instrument, since no one choice of rate can ever ensure that all claimants receive exactly their full compensation. When setting this rate, it is inevitable that some degree of over- or under-compensation of claimants will occur in individual cases.
9. In reaching my determination, I have paid close regard to the advice of the independent Expert Panel. In their advice to me, the Expert Panel undertook this complex exercise by framing their analysis around a set of core principles which their recommendations aim to satisfy. I am in full agreement that these principles are appropriate and instructive. In my determination, I have likewise aimed to satisfy the principles that, as far as is achievable: claimants should receive at least sufficient compensation; a high risk of significant under-compensation should be avoided; significant over-compensation should be limited; and that it is appropriate to prioritise the mitigation of significant under-compensation to the injured party.
10. In making my decision, the legislation requires that I have regard to the actual investment approaches of claimants, the actual returns on these investments, and the appropriate allowances and expenses borne by these claimants. I am content that the Expert Panel has paid full and proper regard to these requirements, and they are reflected in my decision.
11. Whereas the analytical recommendation that underpinned the previous review of the rate was based on an assessment of the investment decisions, returns, and expenses of a single 'representative claimant', I welcome the Expert Panel's decision to base its advice to me on an assessment of several 'core claimant types' from within a range of modelled claimants. As is clear from their ensuing analysis and advice, this approach has allowed

me to be cognisant of the impacts that different rates would have across a broad range of claimants.

12. I am content that these core claimants, which for ease are referred to by their investment terms of 20, 40 or 60 years, appropriately reflect a comprehensive range of the key characteristics of real-life claimants, including the size and term of their damages award, their investment strategy, and other taxable income. I note the Expert Panel's approach in defining distinct portfolios for three appropriate core claimant types. This approach suitably models the actual investment practices of a broad and representative range of claimants and allows me to pay appropriate regard to the actual returns that are available to claimants. I am content that this approach complies with the required assumptions set out in the legislation: that these portfolios are suitably diverse and indicative of claimants having been properly advised, and that the assumed approach is indicative of more than a very low level of risk but less risk than would ordinarily be accepted by a prudent and properly advised individual investor.
13. Based on the responses to the 2024 Call for Evidence, I am in agreement with the Expert Panel's interpretation of inflation to mean damage inflation (the rate at which a claimant's costs are expected to rise over time). The Panel's advice takes into account all earnings-related costs for claimants, including care workers' costs. I have accepted the conclusion of the Expert Panel that all claimants' damages should be assumed, on average and in general, to inflate by CPI plus 1% per annum.
14. I also note and approve of the Expert Panel's approach of making assumptions of tax and investment management expenses that are specific to each core claimant type. I am content that the resulting calculations of these allowances are comprehensive and appropriate. I also wish to make it clear that, while the initial advice of the consultees was provided to me ahead of the recent Budget Statement on 30 October, I have been able to fully consider the impact of the resulting changes to taxation regimes in my decision. I am very grateful to the Expert Panel for providing supplementary advice which was based on further analysis by the Government Actuary's Department. I note that these taxation changes will only have a very minor impact in reducing the expected investment returns for each of the core claimant types, which the Expert Panel advises is negligible, and I have considered this as part of my determination.
15. Overall, I am satisfied with the Expert Panel's assessment of the net rates of return that each of these core claimant types would expect to receive. I am also grateful for the Panel's rigorous sensitivity analysis of their advice in relation to a wide range of claimants which gives me confidence that an appropriate degree of prudence is built into their analysis and their recommendations. This allows me to take the Panel's proposed net rates of return for the core claimant types as the starting point for my determination, and to scrutinise the appropriateness of rates within their core recommended range. In doing so I have drawn on the valuable advice of both the Expert Panel and HM Treasury with the support of Ministry of Justice officials.
16. I note the Expert Panel's recommendation of a rate in the range of positive 0.50% to 1%. I consider the likelihood of under-compensation with all rates above 0.50% to be too high

and detail my reasons for this conclusion below, with reference to the potential for a rate of 0.50% or 0.75%.

17. I note the Expert Panel's report finding that, at a rate of positive 0.75%, the majority of their core principles are met. At this rate, the three core claimant types of 20, 40, and 60 year terms, would each have no more than a 30% likelihood of receiving significant under-compensation. However, these core claimants would be expected to receive at least full compensation with a 47%, 69% and 58% likelihood, respectively. While I appreciate that these results are sensitive to the Panel's modelling assumptions, I consider that this produces too high a risk of under-compensation, particularly for the 20 year core claimant.
18. I note the Expert Panel's report finding that, at a rate of positive 0.50%, the three core claimants modelled will have, at least, an approximately 55% chance of receiving full compensation or more. They also each have no more than a 25% chance of significant under-compensation. At this rate, no core claimant is more likely to be under-compensated than over-compensated, which I consider an appropriate outcome.
19. I have also been mindful of the likelihood of over-compensation at these potential rates. At a rate of positive 0.50%, two of the three core claimants modelled have at least a 40% chance of being significantly over-compensated, as defined by the Expert Panel as 120% of sufficient compensation. While this is a high chance of over-compensation for some claimants, I consider it to be an acceptable and necessary trade-off given the risks of under-compensation at a higher rate.
20. **For all these reasons, I have decided that the rate will be positive 0.50%.**
21. The Expert Panel has also provided an analysis on the potential for a dual or multiple rate. They do not recommend a dual rate by term or multiple rates by heads of loss, as the limited benefits do not outweigh the additional complexity and expense it would introduce in the claim process. HM Treasury agreed with this conclusion. This advice was informed by the consultees' analysis, and also by the responses to both the 2023 and 2024 Calls for Evidence, where evidence across all stakeholder groups indicated a preference for the retention of a single rate.
22. Therefore, I do not consider that it would be appropriate to adopt a dual or multiple rate for this review.
23. I have considered and noted the possible impact that the prescribing of this single rate may have on protected groups under the Equality Act 2010 and consider any impact reasonable and justified in the light of all the matters set out above.

The Rt Hon Shabana Mahmood MP

Lord Chancellor

2 December 2024