Title: The Damages (Personal Injury) Order 2024: The Review of the Personal Injury Discount Rate **IA No:** MoJ014/2024 **RPC Reference No:** N/A **Lead department or agency:** Ministry of Justice (MoJ) **Other departments or agencies:**	**Impact Assessment (IA)** **Date:** 02/12/2024 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** personal-injury-discount-rate@justice.gov.uk
Summary: Intervention and Options	**RPC Opinion:** Not Applicable

Cost of Preferred (or more likely) Option (in 2024 prices)			
Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
N/a	N/a	N/a	Not a regulatory provision

What is the problem under consideration? Why is government action or intervention necessary?

Where damages for personal injury take the form of a lump sum, the award is adjusted to reflect the anticipated return that the claimant is expected to achieve by investing the money in advance of when their needs arise. This adjustment is the personal injury discount rate (PIDR) which is set by the Lord Chancellor. Following the Civil Liability Act 2018 (CLA), the Lord Chancellor is required to set the PIDR with reference to the real returns on a low risk mixed portfolio after making an allowance for taxation, investment management costs and other relevant economic variables. Based on the advice of an Expert Panel (EP), the Lord Chancellor has determined that the previous minus 0.25 per cent PIDR would be likely to result in the significant over-compensation of claimants given expected investment returns and has set a new rate of positive 0.5 per cent. Government intervention is required as the PIDR is using secondary legislation.

What are the policy objectives of the action or intervention and the intended effects?

The Lord Chancellor has a legal duty to set the PIDR at a level which, on the basis of the statutory assumptions, she considers most appropriate to reflect the full compensation principle (that claimants are put into the same financial position as they would have been prior to their accident). Whilst the PIDR is not a policy measure, the objective of the legislation is to set the PIDR at a level which ensures that claimants' expected financial needs are met while reducing the risk of both significant over- and under-compensation. While this cannot be considered when setting the PIDR, setting the PIDR at such a rate will help ensure fairness to both claimants and defendants, typically insurers and the NHS, and wider society. The PIDR applies in England and Wales only as damages law is devolved in Northern Ireland and Scotland.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Two options are considered in this Impact Assessment

- Option 0: Do nothing. Continue with the current negative 0.25 percent rate of the PIDR.
- Option 1: Reset the PIDR to single rate of positive 0.5 per cent.

Option 1 is preferred as it complies with the Lord Chancellor's legal duty to review the rate and to determine a new rate if she considers it appropriate to do so on the basis of the legal tests.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 01/2030

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)	**Traded:** N/a	**Non-traded:** N/a		

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: ------------------------ Date: ------------------------

Summary: Analysis & Evidence — Policy Option 1

Description: Reset the PIDR to a single rate of positive 0.5 per cent.

FULL ECONOMIC ASSESSMENT

Price Base Year N/a	PV Base Year N/a	Time Period Years N/a	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	**High:** NQ	**Best Estimate:** NQ

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised costs by 'main affected groups'

Claimants who settle their case after the new PIDR has come into force and are awarded compensation payments that are subject to the PIDR will experience a reduction in the size of lump sum settlements. We estimate a reduction in the total value of compensation payments of around £350m pa. However, due to claimants experiencing an increase in expected investment return since the previous review, their lump sum payments are still expected to be sufficient to meet their expected financial needs.

Other key non-monetised costs by 'main affected groups'

Society will suffer a cost if claimants need to fall back on the state because the return on their investments fails to match the rate of return specified by the PIDR. In such circumstances, claimants may also need to rely on other assets to meet their needs. However, this outcome is unlikely since the PIDR has been determined with the expectation that damages should meet claimant's losses and costs. There may be some reduction in the availability of Periodic Payment Orders (PPOs) to some claimants due to a fall in the size of total settlements. However, should PPO demand increase, there will be additional reserving costs for insurance companies.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised benefits by 'main affected groups'

Defendants, including public sector bodies (such as NHS Resolution) and insurers, will benefit from lower costs because of the reduction in the value of lump-sum awards subject to the PIDR. The estimated total value of this reduction in costs should equal the total value of the reduction in claimants' lump sum compensation payments (i.e., £350m pa.). Of these, we estimate that around £200m pa. will be savings for the NHS and roughly £150m pa. to insurers. Savings to the NHS are effectively a saving to the taxpayer.

Other key non-monetised benefits by 'main affected groups'

There is a statutory duty on insurers to report on the amount of savings generated by the reforms of the Civil Liability Act 2018, including the changes made to the PIDR methodology, and the extent to which these have been passed on to consumers. Assuming sufficient market competition, there should be benefits to wider society in terms of lower insurance premiums if insurance companies pass on savings by reducing premiums. There will be greater equity if there is a reduction in the current levels of over-compensation which should also help ensure fairness to both claimants and defendants, typically insurers and the NHS, and wider society.

Key assumptions/sensitivities/risks	**Discount rate (%)**	N/a

We assume no change in the volume of personal injury cases following a change in the discount rate or any change in the volume of PPOs made. It is also assumed that there is no change in the costs of reaching a settlement. It is assumed that in an open and competitive market insurance companies will pass on most of the savings derived from a higher PIDR rate onto consumers in the form of lower insurance premiums.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs: NQ	**Benefits:** NQ	**Net:** NQ	N/a

Evidence Base

A. Background

The Personal Injury Discount Rate

1. Under tort law, individuals (‘claimants’) who are unlawfully injured by the actions of others are entitled to compensation for their future financial losses in the form of damages. The aim of this compensation is to achieve ‘full’ or ‘100%’ compensation: to fully meet the current and future needs of the claimant that resulted from their injury, such as care costs and lost future earnings – no more and no less. The object of the award of damages was set out by the House of Lords in Wells v Wells [1999] 1 AC 345, by Lord Hope of Craighead (page 390A-B) and is as follows:

   > “...to place the injured party as nearly as possible in the same financial position he or she would have been in but for the accident. The aim is to award such a sum of money as will amount to no more, and at the same time no less, than the net loss…”

2. In personal injury cases in which the financial losses are expected to last for a period of years (in many cases this period may be for the rest of the claimant’s life), such compensation is often paid as a lump sum which may, in some cases, be combined with Periodical Payments (set out in a Periodical Payment Order (PPO)) where the claimant receives regular payments over time. The Personal Injury Discount Rate (PIDR) is used by the courts alongside the claimant’s expected annual financial needs and the expected duration of their injury to calculate the final value of the lump sum element of this compensation.

3. The PIDR is used because claimants will typically receive their lump sum compensation in advance of when their needs arise and so can reasonably be expected to invest it. The PIDR is therefore used to adjust the size of a lump sum payment to account for the real investment returns that a claimant could reasonably be expected to receive: the higher this real rate of return, the greater the reduction in the size of the initial lump sum payable. The intention is that the overall level of compensation received by claimants, both the initial lump sum and the expected real investment returns, is sufficient to meet their financial needs for the period (‘term’) that their award is intended to relate to.

4. The PIDR therefore takes the form of a percentage figure – normally expressed net of the relevant inflation measure - by which the value of the initial lump sum is discounted. Legislation prescribes that the PIDR must be taken into account by the court when determining the rate of return to apply to lump sum personal injury damages for future pecuniary loss, but it does not prevent the court from taking into account a different rate of return if this is appropriate.

5. There are separate PIDRs in England and Wales, Scotland and Northern Ireland. This Impact Assessment (IA) only relates to the PIDR in England and Wales as damages law is devolved in Northern Ireland and Scotland.

The Lord Chancellor’s duty to determine the PIDR

6. Since the enactment of the Damages Act 1996 (‘the 1996 Act’) it has been a duty of the Lord Chancellor to set the PIDR for England and Wales. Before this time, the PIDR was set by the Courts. Amendments were made to the 1996 Act by the Civil Liability Act 2018 (‘the 2018 Act’) to change the method by which the Lord Chancellor should set the rate and to ensure that the Lord Chancellor reviews the PIDR at least once every five years.

7. Before the 2018 Act, the Lord Chancellor was required to set the PIDR with real yields from Index Linked Gilts (ILGs) using the legal principles laid down in the case of Wells v Wells described above. In particular, the Wells v Wells approach assumed claimants, because of their likely dependence on their award, would invest in assets with very low levels of investment risk and that the real returns to ILGs were the most appropriate measure of the likely returns from doing so.

8. In March 2017, and based on the Wells v Wells approach, the then Lord Chancellor set the PIDR at minus 0.75 per cent relative to the Retail Prices Index (RPI, the inflation measure used to calculate the real returns to ILGs). This represented a decrease from the positive 2.5 per cent rate set in 2001 and reflected the fall in real ILGs yields so calculated over the intervening period.

9. However, both before and at the time of the 2017 reset, evidence was presented by compensators (e.g., insurance companies, NHS Resolution) and their legal representatives that claimants were not normally advised to invest in ILGs alone and that they did not normally do so in practice. This evidence indicated that claimants normally invested their lump sum awards in a mixed portfolio of assets with rates of return higher than those for ILGs. As a result, setting the PIDR with reference to the real returns on ILGs could create the risk that claimants might be over-compensated. Analysis conducted by the Government Actuary's Department (GAD) for the Ministry of Justice (MoJ) also confirmed that over-compensation was a potential outcome of the Wells v Wells approach.

10. This evidence and analysis led to the 2018 Act. The 2018 Act retains the overall policy aim that the PIDR should adjust damages payments so that they provided full and appropriate compensation to claimants without excessive under- or over-compensation. However, the 2018 Act amended the process and the mandatory considerations that the Lord Chancellor must adhere to during each review. The amended framework aims to ensure that reviews of the PIDR take better account of the investments actually made by claimants, with the intention that future reviews would determine a rate that was more realistic and better reflect how claimants invest their awards in practice.

11. In particular and under the 2018 Act, the Lord Chancellor is now required to set the PIDR with regard to the "actual returns that are available to investors", the "actual investments made by investors of relevant damages" and the appropriate allowances for taxation, inflation and investment management costs. This is supported by a requirement that the Lord Chancellor must assume that recipients of relevant damages would invest with "more risk than very low risk" but still less risk than an ordinary prudent investor. The Lord Chancellor is also required to assume that initial amount of the lump sum award is fully exhausted at the expected term of the claimant's injury.

12. However, as was the case under the previous legal framework, the Lord Chancellor cannot take into account any wider social impacts of the level of the PIDR (i.e., any impacts on taxpayers or insurance policy holders) when setting the rate.

13. To assist in these considerations, the 2018 framework also requires that the Lord Chancellor consults two statutory consultees in each review: HM Treasury and the Government Actuary in the initial review under the new framework (which took place in 2019) and HM Treasury and an independent Expert Panel (EP) in all further reviews. The 2018 Act also requires that the PIDR be reviewed within five years of the previous review and that it must be concluded within 180 days.

Problem Under Consideration

14. On the basis on the 2018 Act, the Lord Chancellor reset the PIDR in August 2019 to negative 0.25 per cent. Given the above requirement to review the PIDR within five years of the conclusion of the previous review, the Lord Chancellor is now required to review this rate by the end of 2024.

15. To this end, the current review was begun on the 15 July 2024. As part of this review, the EP required under the 2018 Act was recruited and has been meeting on a regular basis since mid-2023. The EP is chaired by the Government Actuary. As part of its work, a Call for Evidence was issued by the MoJ on the EP's behalf to seek evidence concerning the types of investments normally made and the likely value of the various allowances (for example, for taxation, inflation and investment management costs). The EP also commissioned analysis from GAD. The EP sent its report to the Lord Chancellor on 25 September and HMT responded to this analysis on 18 October 2024.[1]

16. The Lord Chancellor has considered the EP's advice and the HMT response and has determined that the PIDR be reset to a rate of positive 0.5 per cent. The coming into force of the statutory

[1] Personal Injury Discount Rate - GOV.UK

instrument (The Damages (Personal Injury) Order 2024), which this IA accompanies, concludes the 2024 review.

17. This IA provides an overview of the analysis that has informed the Lord Chancellor's decision. Further details of the analysis underpinning her decision can be found in the EP report. However, and while not forming part of the Lord Chancellor's decision, this IA also provides an assessment of the main impacts of the change in the PIDR on the groups most likely to be affected.

B. Rationale & Policy Objectives

Rationale

18. The conventional economic approach to government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate (for example, monopolies overcharging debtors), or if there are strong enough failures in existing government interventions, such as outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g., reallocating resources from one group in society to another).

19. In this instance, the primary rationale for intervention is equity: to ensure that, given changes in the expected rate of return to the assets normally invested in by claimants since the previous review, the rate of the PIDR continues to provide them with a reasonable expectation of '100 per cent' or full compensation while reducing the risk of both significant under- and over-compensation. Government intervention is required because setting the PIDR requires secondary legislation.

Policy objective

20. The Lord Chancellor has a legal duty to set the PIDR at a level which, on the basis of the statutory assumptions, she considers most appropriate to reflect the full compensation principle (that claimants are put into the same financial position as they would be prior to their accident). The policy objective is therefore to set the PIDR at a level which ensures that claimants' expected financial needs are met while reducing the risk of both significant over- and under-compensation. However, and while this cannot be taken into account when setting the PIDR, setting the PIDR at such a level which meets the requirements of the 2018 Act will help to ensure fairness between claimants and defendants (typically insurers and the NHS) and wider society.

21. As noted above, under the CLA, the Lord Chancellor must determine the PIDR on the basis that claimants' investments are made with the objective of meeting the losses and costs expected in full and on time and that their lump sums are exhausted by the end of the term of the award. However, when setting the PIDR, the Lord Chancellor may also adopt an approach that seeks to balance the aims of reducing the level of over-compensation with a desire to not lead to significant levels of 'significant' under-compensation. This means the Lord Chancellor may weight the risk of the latter as being more significant than the risk of the former. This is the approach that has been adopted, although the levels of over- and under-compensation used in this review under the 2018 Act do not set a precedent for any subsequent review.

C. Affected Stakeholder Groups, Organisations and Sectors

22. The following individuals/sectors are most likely to be affected by the proposed change:

- Claimants in personal injury cases whose claims are affected by the PIDR and, in some cases, their personal representatives (e.g., deputies in cases relating to the Court of Protection).
- Defendants in personal injury cases which are affected by the PIDR, including public sector bodies such as NHS Resolution (who negotiate settlements on behalf of the NHS in personal injury cases), other businesses, insurers and Medical Defence Organisations.
- Wider society, either as individuals and groups with views concerning equity and fairness or as individuals who currently pay insurance premiums and taxation, and as potential claimants in future personal injury cases.

D. Description of options considered

23. To meet the Government's policy objectives and comply with the Government's legal duties, the following options are considered in this IA:

- **Option 0/Do nothing**: Keep the PIDR at the current level of negative 0.25%;
- **Option 1: Reset the PIDR to a single rate of positive 0.5%.**

24. This IA therefore considers the impact of changing the PIDR from the rate that was set in 2019 to the rate determined by the Lord Chancellor in her 2024 review. The Lord Chancellor made this determination having conducted a full review of the PIDR in line with the requirements of the legislation, and having considered the viability of all rates within the range recommended by the Expert Panel (EP) as well as the relevant impacts associated with these rates, including those identified by the EP and HM Treasury as consultees to the review.

25. The preferred option is Option 1 as this best meets the Government's policy objectives and the Lord Chancellors legal obligations.

Option 0: Do nothing

26. Under Option 0 the PIDR would continue to be set at the current rate of negative 0.25%.

27. As was set out above, and in line with the 1996 Act, the Lord Chancellor must set the PIDR with the aim of achieving the common law principle of full compensation, neither more nor less. As part of the current review, and as is described in more detail below, the EP has modelled the levels of expected over and under-compensation for three 'core claimant types'. In their report, and as a result of changes in the expected real rates of return in the relevant assets since the 2019 review, the EP report shows that at the current PIDR of -0.25%, the three core claimant types would have at least a 75% chance of receiving at least full compensation, and at least an 80% chance of receiving around 90% compensation or more.

28. The above would mean that the three core claimant groups would be, at least, approximately three times as likely to be over-compensated as under-compensated, and at least four times more likely to receive 90% compensation as to be under-compensated by more than 10%. Given these expected levels of over-compensation, the current PIDR does not meet the Lord Chancellors legal obligations under the 2018 Act and, as a result, does not meet the wider policy objectives.

Option 1: Reset the PIDR to a single rate of positive 0.5%

29. Under Option 1, the PIDR will be reset to positive 0.5% on the basis that this rate reasonably reflects, in the Lord Chancellor's opinion, the return which a recipient of damages could be expected to achieve on investing their lump sum damages in a low-risk mixed portfolio after reasonable adjustments have been made for taxation, the costs of investment management and inflation. The reasoning behind this decision is summarised below. More details can be found in the EP Report.

30. As part of their remit, the EP gathered evidence concerning the type of assets in which claimants are normally advised to invest and the level of the main allowances. While they did not directly reference the assumptions made as part of the 2019 review but instead focused on the evidence received during the current review, the EP made various modelling assumptions. These assumptions are described below with, for reference, the main differences compared to 2019:

- As in 2019, the level of damage inflation was assessed relative to the Consumer Price Index rather than RPI. The level of damage inflation remained unchanged at CPI+1%;
- The allowance for investment management expenses was increased slightly compared to the figure used in 2019 and stated separately from that for taxation;
- The allowance for taxation was also increased. While this is partly due to changes in the tax system since 2019 (including those made in the 2024 budget), this was mainly because, as investment returns have risen, a higher proportion of the damages received by claimants will be in the form of investment income and therefore subject to taxation;
- Based on the evidence received, claimants are now assumed to hold some of their award in a ‘cash reserve’ outside of their investment portfolio for the expected term of their award. This reserve is assumed to be equivalent to three years’ worth of the award. The allowances for taxation and investment management fees were adjusted to account for this reserve.

31. In 2019, the PIDR was set with reference to the levels of under- and over-compensation expected to be received by the median claimant in a single representative claimant type whose characteristics were similar to the average claimant based on the data received. This was then adjusted for a further ‘margin of prudence’. However, while in 2019, the evidence suggested that the average expected term was 43 years, in their advice to the Lord Chancellor, the EP has chosen to model the impacts of various levels of the PIDR using three ‘core claimant types’ with varying claim lengths. The characteristics of the three types are summarised in the EP Report and in Table 1 below.

32. Given the diversity of people who receive lump sum awards, the EP suggests these three core claimant types provide for a more comprehensive assessment of the impacts of various potential levels of the PIDR in terms of under- and over-compensation than the previous single type analysis.

Table 1: Characteristics of the Three Core Claimant Types

	Core claimant type		
	20-year	**40-year**	**60-year**
Investment term	20 years	40 years	60 years
Investment strategy	Cautious	Central	Less cautious
Lump sum size	£500k	£1m	£5m
Other taxable income p.a.	£30k	£7k	£7k

33. However, as table 1 shows, each core claimant type will have to consider a range of different factors when making their investment decisions including the length of their expected award and the likely level of income they will receive from other sources. In addition, as is also shown in table 1, the evidence suggested that, while still investing in low risk assets, the three different claimant types may have some discretion as to the investment strategy to adopt in terms of the required degree of caution (i.e., those with longer awards may be able to adopt a ‘less cautious’ approach as they will have a longer time period over which to recoup any short term losses on their investments). Finally, all these factors will mean that each claimant type will face potentially different levels for the various statutory allowances (i.e., rates of taxation and the level of investment management costs).

34. Table 2 above shows the expected real rates of return for the portfolios of the three core claimant types based on the EP best estimates of the impact on each group of the various factors described above. This suggests that the real rate of return, net of allowances, is highest for the 40 year claimant type, lowest for the 20 year claimant type with the 60 year claimant type in the middle. The precise reasons for these different real rates of return are discussed further in the EP report.

Table 2: Median net return for the Three Core Claimant Types

Claimant types	Investment return p.a. (a)	Expenses p.a. (b)	Tax p.a. (c)	Damage inflation p.a. (d)	Net return p.a. (a-b-c-d)
20-year	CPI+2.9%	0.9%	0.3%	CPI+1.0%	**0.7%**
40-year	CPI+3.5%	0.9%	0.2%	CPI+1.0%	**1.4%**
60-year	CPI+3.8%	0.6%	1.2%	CPI+1.0%	**1.0%**

35. Based on the above estimates of the real rates of return, table 3 sets out the EP's best estimates of the likely levels of over- and under-compensation for each of the three core claimant types using four potential levels of the PIDR relative to the median outcome in each group. To reflect the policy objectives described above, the EP suggests placing a greater weight on avoiding the risk of under-compensation than on the risk of over-compensation, so the former is seen as occurring where a claimant receives 90 per cent or less of their required compensation whereas the latter is seen as occurring where a claimant receives more than 120 per cent of the required compensation.

Table 3: Levels of Over- and Under-Compensation for the Three Core Claimant Types.

<table>
<tr><th></th><th colspan="12">Core claimant type</th></tr>
<tr><th></th><th colspan="4">20-year</th><th colspan="4">40-year</th><th colspan="4">60-year</th></tr>
<tr><th rowspan="2">PIDR</th><th colspan="12">Likelihood of achieving a compensation level of…</th></tr>
<tr><th>at least 100%</th><th>less than 90%</th><th>90-120%</th><th>more than 120%</th><th>at least 100%</th><th>less than 90%</th><th>90-120%</th><th>more than 120%</th><th>at least 100%</th><th>less than 90%</th><th>90-120%</th><th>more than 120%</th></tr>
<tr><td>0.50%</td><td>55%</td><td>17%</td><td>76%</td><td>7%</td><td>76%</td><td>13%</td><td>42%</td><td>45%</td><td>64%</td><td>25%</td><td>34%</td><td>41%</td></tr>
<tr><td>0.75%</td><td>47%</td><td>22%</td><td>74%</td><td>5%</td><td>69%</td><td>17%</td><td>45%</td><td>37%</td><td>58%</td><td>30%</td><td>37%</td><td>33%</td></tr>
<tr><td>1.00%</td><td>40%</td><td>27%</td><td>70%</td><td>3%</td><td>63%</td><td>22%</td><td>48%</td><td>30%</td><td>50%</td><td>36%</td><td>38%</td><td>26%</td></tr>
<tr><td>1.25%</td><td>32%</td><td>33%</td><td>65%</td><td>2%</td><td>55%</td><td>28%</td><td>50%</td><td>22%</td><td>43%</td><td>43%</td><td>38%</td><td>19%</td></tr>
</table>

36. The above estimates of over- and under-compensation are the central ones which emerged from modelling conducted on behalf of the EP by the Government Actuary's Department (GAD). As part of this work, various sensitivity analyses were conducted to test for the robustness of these estimates with regard to the main assumptions used. These are described in more detail in the EP report.

37. To assess the data in table 3, the EP proposed a set of principles. These are as follows:

a. The majority of claimants should be more likely to be over-compensated than under-compensated;

b. A high risk of significant under-compensation should be avoided;

c. Significant levels of over-compensation should be limited to the extent possible; and

d. Subject to the above, limiting the likelihood and extent of under-compensation should be given greater weight than limiting over-compensation. Thus, the likelihood of significant under-compensation should ideally be less than the likelihood of significant over-compensation.

38. In their report, the EP also provide the following assessment of the various rates of the PIDR in light of the above principles:

- A PIDR of +1.25% does not sufficiently meet the principles across the claimant universe.
- A PIDR of +1% satisfies a majority of the principles but has somewhat higher likelihoods of significant under-compensation, and lower likelihoods of at least sufficient compensation compared to lower PIDRs.
- A PIDR of +0.75% satisfies a majority of the principles.
- A PIDR of +0.5% satisfies the majority of principles and has lower likelihoods of significant under-compensation, but somewhat higher likelihoods of significant over-compensation compared to higher PIDRs.

39. A fuller description of the above assessments can be found in the EP report.

40. The Lord Chancellor has considered the above estimates of over- and under-compensation and the principles described above (although she is not required to do so). On this basis, and even after the inherent uncertainties associated with the EP's assumptions have been considered, the Lord Chancellor has determined at a PIDR of positive 0.5% best meets her obligations under the 1996 Act: to provide a reasonable prospect of a claimant receiving full compensation while avoiding a significant risk of significant under-compensation while reducing the expected levels of over-compensation. Given that the approach adopted by the EP more comprehensively reflects the diverse range of claimants than previous reviews, the Lord Chancellor was content not to apply any further degree of prudence in her determination.

41. The above change in the PIDR will be implemented by secondary legislation and will come into effect on 11 January 2025. From that date, the Courts will take the PIDR into account when setting damages awards of lump sums. The Lord Chancellor will be required to start the next review of the PIDR within 5 years from this Discount Rate taking effect: by 11 January 2030.

E. Cost & Benefit Analysis

42. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.

43. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the options under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

44. The costs and benefits of each option are compared to option 0, the counterfactual or "do nothing" scenario. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).

45. All the impacts in this IA have been calculated in 2024/25 prices.

46. As any change in the amounts of compensation calculated using the new PIDR will amount to a redistribution of resources between claimants and compensators. It is normal practice in IAs to ignore effects which only represent the redistribution of resources between individuals ('transfer payments') and to include in the impacts section only those which relate to the use of real resources. Therefore, no NPV calculations are presented in this IA. However, given the nature of the

groups affected and the magnitude of any potential changes, we believe that it is important to include these effects within the IA to properly assess the impacts of the preferred option.

47. In making her determination of the PIDR, the Lord Chancellor was concerned only with factors that the primary legislation provided were to be considered when determining the rate. Therefore, the wider impacts that are discussed below, such as those on the holders of insurance policies and the NHS, were not considered in this determination.

Methodology

48. We have used data provided in the 2024 Call for Evidence and further targeted data collection to calculate the size of the transfer between claimants and compensators. We have summarised the key information that we used to calculate the impacts below.

49. To calculate the impact on insurers we drew on data provided by the Association of British Insurers (ABI) submitted in response to the 2024 Call for Evidence.

- The ABI collected data from its members before the 2024 Call for Evidence. The data relates to the impact of the PIDR on personal motor insurance, and not commercial motor insurance, Employer's Liability insurance, Public Liability insurance, or other types of insurance;
- The ABI data is for the three financial years, from April 2020 – March 2023;
- The information provided by ABI was based on an increase in the PIDR from -0.25% to +1%;

50. The impacts on the NHS are based on data supplied by NHS Resolution. This data relates to the current levels of lump sum settlements made by NHS Resolution, adjusted for a change in the PIDR from -0.25% to +0.50%.

51. On the basis of this data, we estimate that the increase in the PIDR from negative 0.25% to positive 0.5% will bring expected savings to insurers of around £150m per annum and expected savings to public bodies (mainly the NHS) of roughly £200m per annum (both in 2024-25 prices). This will also mean an equivalent reduction in the value of compensation payment for claimants of £350m per annum. It is important to caveat that our estimates, and the corresponding reduction in compensation received by claimants, are based on limited evidence. The above estimates provided try to indicate the scale of the impact given the limitations of our data. Given these limitations the estimates for the size of the expected financial transfer should be considered indicative only.

<u>Option 1: Reset the PIDR to a single rate of positive 0.5%</u>

Costs of Option 1

Claimants

52. As Option 1 will lead to a higher PIDR than under Option 0, this will result in reduced lump sum damage awards to claimants. However, as this reflects higher expected real investment returns, these lumps sums should still be sufficient to meet the claimants expected future needs.

53. Table 4 gives some illustrative examples on the size of lump sum awards between Option 0 and Option 1.

Table 4: Estimated (illustrative) individual awards at current and new PIDR

PIDR	38-year old male with lifetime annual financial costs of £50,000	38-year old female with lifetime annual financial costs of £50,000	38-year old male with lifetime annual financial costs of £30,000	38-year old female with lifetime annual financial costs of £30,000
-0.25%	£2,500,000	£2,658,000	£1,500,000	£1,594,800
+0.5%	£2,074,500	£2,188,500	£1,244,700	£1,313,100

54. As the PIDR under Option 1 reflects the increase in expected real investment returns since 2019, claimants who have a risk appetite equal to or greater than that implied by the new level for the PIDR will still be able to invest in assets which are consistent with their risk appetite. However, a higher PIDR may also lead some claimants (e.g., those with expected terms lower than the 20 year core claimant group) to invest in assets with a higher level of investment risk than they would otherwise would have chosen, to ensure that their lump sum awards meet their requirements.

55. Alternatively, such claimants may invest in less risky assets with lower average rates of return. If so, they risk not fully achieving the streams of income assumed in their settlements and running out of money before the expected terms of their awards. In the event a claimant runs out of money, they could become partly or solely reliant on the NHS, social care support from local authorities and state benefits, with associated costs to the taxpayer. They may also be forced to rely on their other assets or incomes to meet their needs.

56. All claimants are entitled to seek a PPO as part of their final settlement (usually for care and case management costs but not lost future earnings) and may be preferred by some claimants to an equivalent lump sum payment. However, and in practice, PPOs only normally form part of larger settlements (e.g., those worth £1m and above in total). As a result, as a higher PIDR will reduce the total size of settlements, this may reduce the availability of PPOs to some claimants. However, given the likely change in award sizes, any such impact is liable to be marginal and needs to be seen in the wider context of the various factors which determine the overall use of PPOs.

Defendants

57. Compensators (e.g., insurance companies) will incur direct costs of changing the PIDR used in their internal models, calculations, and documentation. This cost is expected to be negligible when compared to the reduction in the lump sum damages payments which the PIDR affects.

58. As noted above, given changes in expected investment returns, the EP report finds most claimants could expect to be over-compensated under Option 0. In turn, this could lead them to seek a lump sum payment over an equivalent PPO. As Option 1 will reduce the chances of over-compensation, a higher PIDR may make PPOs relatively more attractive to claimants relative to lump sum payments.

59. However, as was also noted above, some compensators may be less willing to make PPOs in some cases. In particular, insurers must hold additional capital for PPOs to meet solvency requirements under Solvency II. As a result, were the demand for PPOs to increase under Option 1, there could be an immediate cost to insurers. Although, this additional cost is likely to be partially offset by the reduced lump sum in cases settling by a PPO rather than by a lump sum alone. However, as we are unable to estimate the impact of this option on the uptake of PPOs, in part because the factors leading to the incidence of PPO uptake are complex, this potential impact has not been monetised.

60. NHS Resolution does not have to meet Solvency II requirements so will not be affected in the same way as insurers.

Wider Society including Taxpayers and Insurance Policy Holders

61. Society will suffer a cost if claimants must fall back on the State for support because of their investments failing to match the rate of return predicted by the PIDR. As a higher PIDR will lead to lower lump-sum awards, this outcome may be more likely than under the current PIDR (Option 0).

62. More generally, society will suffer if lump sum settlements are insufficient to meet a claimant's needs given that there is a societal expectation for those who suffer financial losses for reasons beyond their control to receive fair compensation and access to appropriate care.

63. However, as the PIDR under Option 1 is higher due to increased real expected investment returns, neither of the above outcomes is likely to be affected because claimants can still be expected to receive total compensation (including investment returns) which are sufficient to meet their needs.

Benefits of Option 1

Claimants

64. Unexpected increases in investment returns may mean claimants have more resources than anticipated and so increase the chance that they are over-compensated. This would also reduce their chances of needing to fall back on the state for support or draw down on other assets.

65. As described above, a higher PIDR will make PPOs more attractive to claimants due to a reduced chance of over-compensation. However, PPOs may also be better suited for certain claimants, for example, where there is uncertainty concerning their longevity or the expected term of their injury. If so, such claimants may be more likely to seek out, and obtain, PPOs under a higher PIDR.

66. Because we are unable to estimate the likely change in the uptake of PPOs as a result of this option, for the reasons given above, this impact has not been monetised.

Defendants

67. A higher PIDR will reduce the likelihood of over-compensation that would be expected under the current rate and so help ensure that the 100 per cent compensation principle is applied. While this is in the interests of all the parties in personal injury claims, this is especially so for defendants.

68. A higher PIDR will result in reduced lump sum compensation awards by compensators, on behalf of defendants, relative to Option 0. As stated in Section C, compensators and defendants will include insurers, government bodies such as the NHS and uninsured businesses and individuals.

69. In the case of insurers, it is assumed that these benefits will be mostly passed on to consumers in the form of lower insurance premiums relative to the base case. Insurers are also under a statutory duty to report the savings to policy holders from the reforms included in the 2018 Act.

70. NHS Resolution may be better off in cashflow terms in the short term from an increased uptake of PPOs as it will mean lower immediate payments in the cases settling with a PPO rather than a lump sum alone, although its' total future liabilities would also increase if this were to occur.

71. The new PIDR will be the same as those in Northern Ireland and Scotland, which are set under a different framework. The alignment of the three discount rates will likely lead to benefits to compensators and defendants working across jurisdictions.

Wider Society including Taxpayers and Insurance Policy Holders

72. Society will benefit from greater equity (fairness) as the new PIDR will reduce the current levels of expected over-compensation of personal injury claimants. This will help to meet the wider policy objective of maintaining fairness between claimants and those paying insurance premiums or taxation which goes towards funding the NHS.

73. As noted above, individuals and businesses in wider society will also benefit from lower insurance premiums if insurers pass on the reductions in their lower costs. Taxpayers will benefit from lower government spending on compensation payments in clinical negligence cases.

F. Risks, Assumptions and Sensitivity Analysis

74. In this section, we outline the main assumptions that have been made in preparing the analysis presented in this IA and any risks associated with these. We do not cover the assumptions used in the EP's report which was published on the same date as this IA. Below, we describe the other assumptions used to write this IA.

Assumptions

75. In addition to the assumptions used in the EP report, the following assumptions were made to calculate the impact of the preferred option.

- We have assumed that the volume of personal injury claims subject to the PIDR will not change under the preferred option. Claims for which future pecuniary loss is relevant are made regardless of the value of the lump sum expected.

- We assume the volume of claims reaching the latter court stages is constant. It is assumed that the courts and the judiciary will not be affected materially by the preferred option.

- It is assumed that the degree of competition in the insurance market is sufficient to ensure that benefits to wider society from paying out lower lump sums will be passed to consumers in the form of lower insurance premiums.

- We assume claimants are willing to invest their lump sums in assets that are consistent with the risk assumptions underlying the 2018 Act. Where claimants invest in a lower risk portfolio than have been assumed, the expected return would not match the PIDR, and the individual would have a greater likelihood of running out of money before the expected term of the award. This could lead to more individuals relying solely on the NHS and on other government transfers at, or before, the end of their awards with associated costs to the taxpayer.

- An increase in the PIDR may make PPOs more attractive to claimants, which could mean some defendants face higher costs over the long term. This will be offset, however, by the reduced lump sums they will pay in other cases. There may also be a reduction in the willingness of compensators to make PPOs for smaller settlements.

- We assume that the costs to claimant lawyers and compensators from adjusting to the new rate of the PIDR will be minimal and form part of their ‘business as usual’ activities.

- It can be expected that on-going negotiations between claimants or defendants concerning the size of lump sum payments for past injuries will have been affected by the expected change in the PIDR as the parties may seek to delay settlement if they anticipate the review will produce a rate which is more advantageous to themselves. For the purpose of this IA, the impacts of such delays are assumed to be small.

Sensitivity Analysis

76. As they are unlikely to yield material impacts, we have not conducted sensitivity analysis on the above assumptions which underly this IA. A full sensitivity analysis of the assumptions used to set the PIDR is contained in the EP report and the GAD analysis that is annexed to it.

G. Wider impacts

Equalities

77. The policy options outlined above may have equality impacts and we have set these out in the equalities impact assessment. This assessment has been published alongside this IA.

Better Regulation

78. This proposal is not classed as a regulatory provision and is out of scope of the Better Regulation Framework.

Impact on small and micro businesses

79. We do not anticipate that the choice of the new PIDR will have any competition impact. Any effect will be indirect. The new PIDR will apply to all businesses irrespective of their size as any business found liable for a personal injury must pay damages to the claimant.

80. We do not consider that the choice of parameters will affect the operations or performance of small firms or affect them differently from other businesses. This is because the PIDR is applied by the court to its quantification of an established legal liability in personal injury cases, irrespective of the identity of the defendant.

International Trade

81. We have not identified any international trade implications. There are potential benefits to intra-UK trade, as mentioned above, from the alignment in PIDR across the UK. All UK jurisdictions will have the same discount rate following this decision until the next relevant review.

H. Monitoring and Evaluation

82. Under the CLA, the PIDR has to be reviewed by a date no later than five years after the rate has been changed. As the new rate for the PIDR is expected to come in to effect on 11 January 2025, the Lord Chancellor will be required to start the next review of the PIDR within 5 years from this PIDR taking effect: by 11 January 2030.

83. The CLA also provides that the Lord Chancellor may choose to review the PIDR at a date before the expiry of the five-year period noted above. If the Lord Chancellor were to choose to do this, a new EP will also be convened to advise on the issues involved. If the Lord Chancellor were to exercise this option, the next five year review period would commence after any new rate is set.