



Ministry
of Justice

Personal Injury Discount Rate

Equalities Statement for 2024 Review

1. Introduction

1.1 This Equalities Statement considers the impact on groups and individuals with protected characteristics in relation to the Lord Chancellor (LC) changing the Personal Injury Discount Rate (PIDR) to positive 0.5% following the 2024 PIDR Review.

1.2 The PIDR review is conducted under Section A1 of, and Schedule A1 to, the Damages Act (the Act) 1996, as amended by the Civil Liability Act (CLA) 2018, which sets the methodology for the review. The new PIDR will apply in England and Wales only, as justice is a devolved matter in Northern Ireland and Scotland.

2. Policy Objective

2.1 The PIDR is an important factor used by the court and litigants in personal injury cases to help calculate the size of lump sum payments of damages to be paid by defendants to claimants to meet their expected future financial losses. The LC must determine a rate which reflects the rate of return that a recipient of relevant damages could be reasonably expected to achieve when investing them. The intention is that they should achieve full compensation for the wrongful injuries across a wide spectrum of cases, i.e. they should be put back into the position that they would have been had the injury not occurred; no more and no less.

2.2 The CLA reforms created a specific set of requirements, assumptions and objectives that the LC must consider in a review of the PIDR. The objective of this change in methodology was to ensure that claimants expected financial needs are met and that the PIDR better reflects the actual investment practices and risk approaches taken by recipients of these damages payments. This avoids the risk of

significant under-compensation while mitigating the risk of excessive over-compensation. The LC has a legal duty to set the PIDR at the level which, based on the statutory assumptions, she considers most appropriate to reflect the full compensation principle.

2.3 The LC has set the PIDR in accordance with the obligations under the 1996 Act, and the department has considered the impacts of that PIDR. It considers there is no indirect or direct discrimination.

3. Public Sector Equality Duty

3.1 The Public Sector Equality Duty (the Duty), as set out in Section 149 of the Equality Act 2010 (EA), requires public bodies to pay 'due regard' to the nine protected characteristics, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity. These must be considered under the three limbs of the Duty:

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

4. Equality considerations

4.1 The Government has previously sought information on possible equality impacts from setting the PIDR via public consultations in 2012, 2013, 2017 and 2018, and an Equality Statement was published in 2018 when the Civil Liability Bill was introduced in Parliament. The government made a commitment to the Justice Committee in March 2018 that it would keep the Statement under review and a new statement was published in 2019 following the first review under the CLA methodology.

4.2 In preparation for the 2024 PIDR Review the government issued a Call for Evidence in early 2023 specifically on the option of a dual/multiple rate and a further wider Call for Evidence in early 2024. These sought evidence and data to inform the independent Expert Panel's analysis and advice to the Lord Chancellor. This included seeking specific views on how the setting of the rate could impact people with protected characteristics.

Limb 1: Eliminate unlawful discrimination, harassment and victimisation

Direct discrimination

4.3 The principles behind the setting of the PIDR, as detailed in the Act 1996, are applied equally to all claimants and defendants. Many of the responses to the 2024 Call of

Evidence stated that the full compensation principle should be applied to all claimants no matter the protected characteristics of the individual.

- 4.4 Under Section A1(2) of the Act 1996, the court can depart from the PIDR set by the Lord Chancellor if it is persuaded that another rate is more appropriate in a particular case.
- 4.5 It is our assessment that the PIDR coming into force on 11 January 2025, following a review in line with the Act 1996 is not directly discriminatory and will not result in people being treated less favourably because of any protected characteristic.

Indirect Discrimination

- 4.6 Overall, we do not consider that the proposed new PIDR will result in anyone with a protected characteristic being put at a particular disadvantage compared to someone who does not share that protected characteristic.
- 4.7 The 2024 Call for Evidence asked respondents for any evidence of how the setting of the PIDR may affect persons with protected characteristics. The responses received did not suggest that there were any particular equalities impacts in relation to gender reassignment, marriage and civil partnership, pregnancy and maternity, race, sex, or sexual orientation. However, some respondents did note that claimants affected by the PIDR may be more likely than the general population to have, or raised other concerns regarding, the following protected characteristics: age; disability; and religion.

Age

- 4.8 Life expectancy is a key element in determining lump sum compensation in claims where the claimant's future losses are expected to last for the rest of their lifetime. These claimants are exposed to an element of longevity risk, i.e., the risk that they outlive the expected term of their award and thus their lump sum will be insufficient to cover their needs.
- 4.9 However, it was recognised by both insurers and legal experts via the Call for Evidence that claimants tend to manage longevity risk through their investment approach, taking precautionary measures to stretch or preserve wealth and minimise potential losses, so that their compensation covers losses throughout their lifetime. The assumptions to be taken into account when setting the PIDR include that the recipient of the relevant damages receives proper investment advice, invests in a diversified portfolio of investments, and has a low-risk investment profile.
- 4.10 It is MoJ's view that the longevity risk is inherent to all lifetime settlements.
- 4.11 Under a single PIDR, claimants with a short term award are less likely to achieve sufficient compensation than their counterparts with longer awards. This is because

they are more vulnerable to short term fluctuations in investment returns, with less time to recoup any losses. There is, however, insufficient evidence to shed further light on the cohort of claimants whose short term award is related to age. Some of these short term claimants may have short awards as their future needs are not expected to be lifelong, but others will have a short term because they are older and therefore have a shorter life expectancy at the time of settlement.

- 4.12 The LC's decision to set a single rate was informed by a careful balance of the costs and benefits of making such a significant change to the PIDR framework.

Disability

- 4.13 Due to the nature of personal injury claims, individuals with physical and mental disabilities are likely to be over-represented amongst claimants when compared to the general population. However, there is no evidence to suggest that the LC's chosen PIDR puts those individuals at an unfair disadvantage.
- 4.14 The Government will continue to work with stakeholders to make the court system as accessible as possible for personal injury claimants, including the use of reasonable adjustments to ensure the needs of all court users are met.

Religion

- 4.15 Some respondents to the 2024 Call for Evidence noted that religion can influence investment approaches and decisions. For example, Shariah law prohibits the paying or receiving of interest. It's therefore possible that the PIDR may under-compensate claimants who undertake certain investment approaches for religious reasons, as the underlying analysis assumes that claimants earn interest on their lump sums. No evidence was provided regarding the specific impact this would have on expected net investment returns.

Harassment and Victimisation

- 4.16 The Government does not consider there to be a risk of harassment and victimisation to those with protected characteristics following the PIDR review and setting of the rate.

Limb 2: Advancing equality of opportunity between different groups

- 4.17 Advancing equality of opportunity focuses on removing disadvantages suffered by people due to their protected characteristics; by taking steps to meet the needs of people with protected characteristics where those needs might be different to those without protected characteristics; and by encouraging people with protected characteristics to participate in public.
- 4.18 We consider that the proposed change to the PIDR will continue to advance equality of opportunity by helping ensure the needs of claimants with physical and psychological disabilities from personal injury are met. The needs of those with

other protected characteristics will continue to be met through the regular review of the PIDR, the use of an independent Expert Panel, and the analysis provided by the Government Actuary's Department.

- 4.19 This framework ensures that the needs of the claimants are met by ensuring the rate is more realistic and better reflects how claimants invest their awards in practice. The appointment and consultation of an Expert Panel ensures that the review is informed by appropriate independent expertise.

Limb 3: Fostering Good Relations between different groups

- 4.20 The Government considers that it is unlikely that there will be a particular impact on fostering good relations between people with protected characteristics and those without protected characteristics following the outcome of the 2024 PIDR Review.

5. Conclusion

- 5.1 The objective of the PIDR is to ensure full compensation for those awarded lump sum damages for future losses in personal injury claims.
- 5.2 There is no evidence to suggest that the PIDR, as set following the 2024 Review, itself leads to unlawful discrimination against any individuals on the basis of protected characteristics, either directly or indirectly. We consider that the PIDR is likely to continue to contribute to the advancement of opportunity.
- 5.3 The Lord Chancellor's determination of the PIDR does not prevent courts from being able to take into account a different rate of return if that rate is considered to be more appropriate than the PIDR in a specific case. This allows courts to account for equalities impacts that may arise from the application of the PIDR in individual circumstances.
- 5.4 The PIDR will continue to be reviewed every five years, and we'll continue to assess the equalities impacts of future proposals in the light of any relevant new data.