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Personal Injury Discount Rate

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1 Summary

This paper has been prepared in response to a request from the Committee for Justice for information sought about:

- any wider impacts observed in England and Wales and Scotland following the changes to the legislative framework resulting in changes to the Personal Injury Discount Rate, including the impact on the cost of insurance; the implications for government departments and any relevant information from other jurisdictions; and
- how insurance costs in Northern Ireland compare with other jurisdictions and what type of government-backed indemnity schemes e.g. for GPs are in place in other jurisdictions compared to Northern Ireland.

This paper details the various impacts identified to date by a change in the discount rate in England and Wales and Scotland in recent years. It also looks at Northern Ireland's specific circumstances to provide context to any potential issues that could arise from a change in the discount rate locally.

2 Introduction

The Personal Injury Discount Rate (PIDR) is used to determine lump sum awards of damages to claimants who have suffered a serious life changing personal injury. The PIDR is applied once the Court has assessed the claimant's financial losses arising from the injury – chiefly those relating to loss in future income and any medical care, and equipment expenses. The Court applies the rate, with the assistance of what are known as the Ogden tables, to adjust that lump sum to take account of the return that may be earned from investing it, in accordance with the legal principle that claimants should be fully compensated – but no more or no less.¹ This is known as the 100% rule.

The object of an award of damages was set out by the House of Lords in the leading case of *Wells v Wells [1999]*, by Lord Hope of Craighead (page 390A-B) as:

“...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

If a discount rate was not applied to a lump sum, paid at the time of the claim, then no account would be taken of the effect of the claimant being able to invest the money before the loss has actually occurred. For example, a claimant could invest the money until it is needed and earn a sizeable profit thereby being over-compensated. Similarly, if a claimant did not invest it, then it would leave the award subject to inflation and risk under-compensation.

The effect of the rate differs, depending on the size of the award and the period of time to which it relates (i.e life expectancy): the larger the award and the longer the period of time, the greater effect the discount rate has. Although the discount rate may be a relatively small percentage figure, when applied to the total cost of care in cases that cover long periods, it can mean very significant differences in the amount of the award as indicated in the table below.

¹ Ogden Tables - these are statistical tables used to calculate an appropriate lump sum in personal injury cases. They provide various "multipliers" which can be used to turn an annual loss into an appropriate future award.

² *Wells v Wells [1999]* 1 AC 345:

Table 1: Effect of different discount rates on an award covering annual care costs of £100,000 for the rest of the claimant’s life in two scenarios.³

Discount Rate	Total Award	
	40-year-old male with normal life expectancy	10-year-old female with normal life expectancy
2.5%	£2,652,000	£3,475,000
1%	£3,611,000	£5,557,000
-0.25%	£4,876,000	£9,128,000
-0.75%	£5,566,000	£11,470,000
-2%	£8,005,000	£21,931,000

Wells v Wells also specified that claimants in personal injury cases should be treated as very risk averse investors, reflecting the fact that they may largely be financially dependent on the lump sum awarded, often for the duration of their lives. It led to the conclusion that the PIDR should be based on an investment portfolio that offered the least risk to claimant investors in protecting an award of damages against inflation and against market risk. A portfolio that contains 100% Index-Linked Gilts (ILGS)⁴ was assumed to best meet that criterion at the time that the judgement was given.

The PIDR mainly applies to claims that arise from medical negligence, industrial accidents and road traffic accidents. Often defendants in these cases will have some form of insurance cover. In most cases of clinical negligence, damages costs will fall on the Health and Social Care Northern Ireland (HSCNI) and medical defence organisations and, ultimately, the taxpayer. The higher the discount rate, the lower the initial lump sum awarded because the claimant is assumed to be able to benefit by investing it. A lower discount rate implies lower investment returns, so the initial lump sum must be higher.

Therefore, a higher PIDR implies lower costs to defendants, the HSCNI, insurance policy holders and the taxpayer because lump sum awards are discounted more.⁵ Insurance underwriters take this into account when setting premiums, which means the lower the PIDR, the more inflationary pressure there is on motor and liability insurance premiums. This can impact on the affordability of insurance premiums for health professionals (including GPs), for motorists, and for businesses. As the Justice Minister, Naomi Long MLA, acknowledged:

³ Department of Justice (2020) *The personal injury discount rate: How should it be set?* Pg 8 <https://www.justice-ni.gov.uk/sites/default/files/consultations/justice/Personal%20Injury%20Discount%20Rate%20-%20How%20Should%20It%20Be%20Set%20a%20Consultation.pdf>

⁴ When the UK Government sells bonds, it agrees to pay a set return every six months until maturity. On maturity, the initial investment is also repaid. Index-linked gilts link both the bi-annual return and the repayment to inflation (via the Retail Price Index). Index-linked gilts have traditionally been considered a very safe form of investment to provide a future income stream.

⁵ Ministry of Justice (2017) *Setting the Personal Injury Discount Rate – Impact Assessment* <https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/discount-rate-impact-assessment.pdf>

“higher awards of damages are ultimately funded by businesses and consumers through higher insurance premiums, and by the taxpayer through higher payments made directly by, for example, the health service.”⁶

⁶ Department of Justice (2020) *The personal injury discount rate: How should it be set?* pg 3

3 England and Wales and Scotland – Developments and Impacts to Date

3.1 Background to the Change in PIDR Setting and Associated Impacts

In 2001, the Lord Chancellor set the discount rate at 2.5% for England and Wales under section 1 of the Damages Act 1996 in line with the principles set out in *Wells v Wells*. Scottish Ministers did the same for Scotland in 2002, resulting in a uniform rate across the UK.

In 2012, there was a shared UK-wide consultation on reviewing the rate in each jurisdiction under the *Wells v Wells* framework. This was followed by the joint commissioning of a report by an expert panel to advise on how the rate should be set under that framework, but the panel did not reach any clear agreement. In 2013, all three legislatures published a joint consultation on reviewing the legal framework for setting the rate, but diverging views were expressed and again no consensus emerged.

In 2017, the rates in England and Wales and Scotland were reduced to minus 0.75% under the *Wells v Wells* principles.⁷ This large drop was reflective of the change in market conditions from 2001, which assumed a much lower rate of return on ILGs. The insurance industry expressed dissatisfaction at the sharp reduction in the rate, while it was welcomed as long overdue by those representing claimants. It has been observed that ‘*working out what the rate should be is a technical and demanding exercise. It is also controversial. Almost any change in the rate is likely to provoke different and opposite reactions from claimants and defendants*’.⁸ Indeed, Lord Hutton observed at the conclusion of his judgment in *Wells v Wells*:

*The consequence of the present judgments of this House will be a very substantial rise in the level of awards to plaintiffs who by reason of the negligence of others sustain very grave injuries requiring nursing care in future years and causing a loss of future earning capacity, and there will be resultant increases in insurance premiums. But under the present principles of law governing the assessment of damages which provide that injured persons should receive full compensation plaintiffs are entitled to such increased awards. If the law is to be changed it can only be done by Parliament which, unlike the judges, is in a position to balance the many social, financial and economic factors which would have to be considered if such a change were contemplated.*⁹

⁷ Lord Chancellor (2017) Discount Rate Statement of Reasons

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594972/discount-rate-statement-of-reasons.pdf

⁸ Ministry of Justice and the Scottish Government (2017) *The Personal Injury Discount Rate, How it should be set in future*

https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/supporting_documents/discount-rate-consultation-paper.pdf

⁹ *Wells v Wells*[1999] 1 AC 345

The change of rate was expected to have significant financial effects on claimants, some of whose awards were expected to increase significantly. When introducing the new rate, the Lord Chancellor acknowledged that:

There will clearly be significant implications across the public and private sector. The Government has committed to ensuring that the NHS Litigation Authority has appropriate funding to cover changes to hospitals' clinical negligence costs. The Department of Health will also work closely with General Practitioners (GPs) and Medical Defence Organisations to ensure that appropriate funding is available to meet additional costs to GPs, recognising the crucial role they play in the delivery of NHS care.¹⁰

In Wales, when asked about the potential impact of the changes, the Cabinet Secretary for Finance and Local Government stated:

The announcement of the personal injury discount rate change by the Lord Chancellor will clearly have significant implications across the public and private sector. The Welsh Government had engaged with HM Treasury and received reassurance that all devolved administrations will have access to the same level of support as in England to meet the costs arising from these changes. In line with established funding principles, we would expect the UK Government to meet all costs arising in Wales from the change in rates, as these result solely from a UK policy decision.

For the Welsh Government the primary impacts identified of a change in discount rate will be upon the liabilities of the Welsh Risk Pool (WRP) for clinical negligence and other personal injury claims against the NHS in Wales and the potential impact upon indemnification arrangements for GPs.

Initial broad estimates indicate a potential impact of £60m upon Welsh Government provisions in 2016/17 however, further detailed calculation is required and revised actuarial Ogden tables are anticipated reflecting the new rate towards the end of March 2017. The second supplementary budget tabled on 7 February 2017 included contingency for this cost.

The impact of the discount rate change on GPs in England will be estimated by Department of Health in consultation with GPs and Medical Defence Organisations. Once this has been estimated, the consequential impact for GPs in Wales will be established.¹¹

¹⁰ Lord Chancellor's Written Ministerial Statement, 27 February 2017: <https://questions-statements.parliament.uk/written-statements/detail/2017-02-27/HCWS503>

¹¹ WAQ73157 <https://senedd.wales/archive/written-questions/20-03-2017-written-assembly-questions-and-answers/>

There was a further joint consultation in 2017 by the Ministry of Justice and the Scottish Government on how the rate should be set in future. The consultation paper illustrated the financial effect that a decrease in rate to -0.75% would have on lump sum payments:

The effect of a change in the discount rate is so pronounced because of the working of the principles of compound interest on payments to be made over potentially very long periods. For example, if £100k is invested in a portfolio with an average annual real return of 2.5%, the portfolio will have a real value of £128k after ten years and £269k after 40 years. Invested in a portfolio with an average annual real return of minus 0.75%, the real value of the £100k will be £93k in ten years and £74k in 40 years. That is, a negative return (with respect to inflation) erodes the real value of the portfolio and the effect is greater the longer the term of the investment. This means that, if the investor needs £100k in 10 years, in real terms, he or she should invest £108k if expected to invest in a portfolio with a minus 0.75% real return. If the investor needs £100k in 40 years, in real terms, he or she should invest £135k at the same real return. The difference in capital requirement is particularly pronounced in times of low interest rates.¹²

The consultation paper also provided the following case study for illustrative purposes:

An 18-year-old claimant who suffers a catastrophic injury in a road traffic accident is rendered quadriplegic. She requires 18 hours of daytime care, a night sleeper, some one-off equipment costs and increased care needs in later life. The annual care costs of such a claimant could typically exceed £100k. At 2.5% the total award of a claimant of this type of claim would receive a lump sum of maybe £5m to £6m. At a minus 0.75% discount rate this award could be around £9m, meaning perhaps a 60% increase in the lump sum. The impact of a change in the discount rate can still be significant for older claimants whose earnings potential may suffer post-injury. A claimant aged 38 at the date of trial, with a predicted retirement age of 67 suffers an injury and is left with a disability after the accident. Due to permanent disability, the claimant suffers immediate income loss of (only) around £1k per year. However, owing to post-accident vulnerability on the labour market assumed by the courts for disabled individuals, much of the post-injury earnings is routinely ignored for the sake of calculating earnings compensation. Consequently, the earnings compensation lump sum of such a claimant would be £215k based on a discount rate of 2.5% using standard actuarial tables. The award would approach £350k if the discount rate were minus 0.75%, which means around 60% increase in the lump sum award.¹³

¹² Ministry of Justice and the Scottish Government (2017) *The Personal Injury Discount Rate How it should be set in future*, pg 11

¹³ *Ibid* pg 12

The Office for Budget Responsibility calculated that the reduction in discount rate from 2.5% to -0.75% would increase insurance premium tax receipts by ‘around £0.1 billion a year as the increased costs for the insurance industry, particularly in the motor sector, are passed on in higher premiums’.¹⁴

Commenting on the decrease in rate, the AA said:

*Drivers have had to put up with some sharp premium increases over the past three years, in part due to avoidable government interventions. The dramatic change is attributed to a combination of factors, in particular the review by the government of the so-called 'discount rate' change announced in February 2017, which applies to the payment of injury claims. Insurers, the NHS and others were suddenly faced with losses of millions after a government decision to slash the rate, leading to much bigger compensation payouts and in turn a sharp rise in car insurance premiums.*¹⁵

Following the 2017 consultation, both the Ministry of Justice and the Scottish Ministers decided to move away from the *Wells v Wells* principles and introduced new legislative frameworks in 2018 and 2019 respectively.

3.2 Impacts of the Current Legislative Frameworks

England and Wales

In England and Wales, section A1 of and Schedule A1 to the Damages Act 1996 (as inserted by the Civil Liability Act 2018) provides wide discretion for the Lord Chancellor in setting the PIDR but the overriding assumption is of “low risk” investment. The rate must be set with reference to assumed returns from a diversified portfolio of low-risk investments, having regard to the actual investments made by claimants.¹⁶ It requires the rate to be reviewed every 5 years.

At the second reading of the Bill, the Lord Chancellor explained the impact of reforms to the discount rate-setting framework, particularly on the NHS and the insurance industry:

we continue to support the aim that seriously injured people should receive full compensation to meet their expected needs, including care costs. The problem, however, is that on the evidence we have obtained, our discount rate of minus 0.75%— one of the lowest in the world—is leading to awards in personal injury claims averaging at 120% to 125% of the damages awarded, even after allowances are made for management costs and tax. Such

¹⁴ Office for Budget and Responsibility, Economic and Fiscal Outlook (March 2017), p 96, Box 4.2

¹⁵ AA British Insurance Premium Index – 2017 quarter 3: [car-home-insurance-news-2017-q-3-bipi \(1\).pdf](#)

¹⁶ Civil Liability Act 2018, Part 2: [Civil Liability Act 2018 \(legislation.gov.uk\)](#)

overcompensation is contributing to escalating costs in the NHS, which spent £2.2 billion on clinical negligence claims alone in 2017-18—a figure that is expected to rise to £3.2 billion in 2020-21. This is almost double the amount spent in 2016-17 and seven times the amount spent in 2006-07. This overcompensation is not sustainable. Money is being diverted that could instead have been spent on frontline public services such as our hospitals, schools and armed forces. As well as adding to the financial pressure on the NHS, the current framework for setting the discount rate is also creating pressure that is driving up insurance premiums, particularly for motorists. The reforms that we propose to the discount rate will also save consumers money, as the insurance industry has committed to passing on these savings. The changes that we propose to make in the Bill to how the discount rate is set will make it fairer and more realistic for everyone. We intend to reflect the reality that claimants are more likely to invest their compensation in slightly higher risk diversified portfolios, rather than in very low risk investments under the current test.¹⁷

During the pre-legislative scrutiny of the Civil Liability Bill, the Justice Select Committee specifically asked for evidence about:

How robust is the Government’s analysis of the proposal and of its impact on (i) claimants (ii) insurance companies and (iii) the NHS? (Impact assessment). Who will be the main losers from the proposal and how much will they lose by?¹⁸

It received conflicting evidence about whether an increase in rate would automatically lead to a reduction in motor insurance premiums for customers. As a result, it recommended that:

[...] the Government report each time it reviews the discount rate on how changes in the rate impact on motor insurance premiums and the extent to which increases in the rate are reflected in reduced premiums, to use this information as a guide to setting the discount rate in the future. If changes in the discount rate do not lead to reductions in premiums as forecast by the Government in its impact assessment, it would mean that some of the social benefits of setting the discount rate based on a “low risk” investment rather than a “very low risk” investment had not materialised. The Government would need to take this into consideration when setting the discount rate at later stages.¹⁹

Regarding clinical negligence costs, the Select Committee noted a report by the British Institute of International and Comparative Law which observed ‘that the setting

¹⁷ HC Deb 04 September 2018 cc82-83 [https://hansard.parliament.uk/Commons/2018-09-04/debates/C5C185BA-C520-4561-B4A9-069335D3E41F/CivilLiabilityBill\(Lords\)#contribution-A2414ED5-5282-4F97-977C-67DC119A3D45](https://hansard.parliament.uk/Commons/2018-09-04/debates/C5C185BA-C520-4561-B4A9-069335D3E41F/CivilLiabilityBill(Lords)#contribution-A2414ED5-5282-4F97-977C-67DC119A3D45)

¹⁸HOC Justice Committee Pre-legislative scrutiny: draft personal injury discount rate clause, pg 8 <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/374/374.pdf>

¹⁹ Ibid, pg 27

of the discount rate in other countries was “often not a neutral application of figures” but represents “a balance between competing considerations”, resulting in a:

*compromise between a discount that accurately reflects the real rate of return a tort plaintiff might obtain if investing in reasonably safe investments and one that takes into account the fact that too low a rate of return might have adverse consequences on the provision and cost of liability insurance.*²⁰

The Select Committee was unsure as ‘to what extent the proposed legislation was motivated by a desire to limit growth in clinical negligence costs and insurance premiums’ but thought it ‘reasonable for the Government to take into account the impact of the discount rate on clinical negligence payments and insurance premiums and it should be open about this’. It stated that:

It is clear from past Government action (or inaction) in changing the discount rate that setting the discount rate is more than a technical decision: it involves balancing the interests of the claimants with the defendants and also balancing the social costs of increased clinical negligence pay-outs and increased insurance premiums with protecting the interests of vulnerable claimants and reducing their risk of under compensation through interest rate movements’.

Furthermore, it noted evidence that suggested that if there is under-compensation, the state is likely to bear the brunt of care costs not covered by the award which implied ‘that the savings to the state are likely to be less than anticipated if the discount rate increases to benefit defendants’.²¹

It recommended:

*We believe that the Government should have given an estimate of the costs and benefits of the legislation in its impact assessment, based upon its “assessment” that the discount rate would be between “0% and 1%”. This would have given Parliament and stakeholders a far better idea how this legislation will affect claimants in the short term.*²²

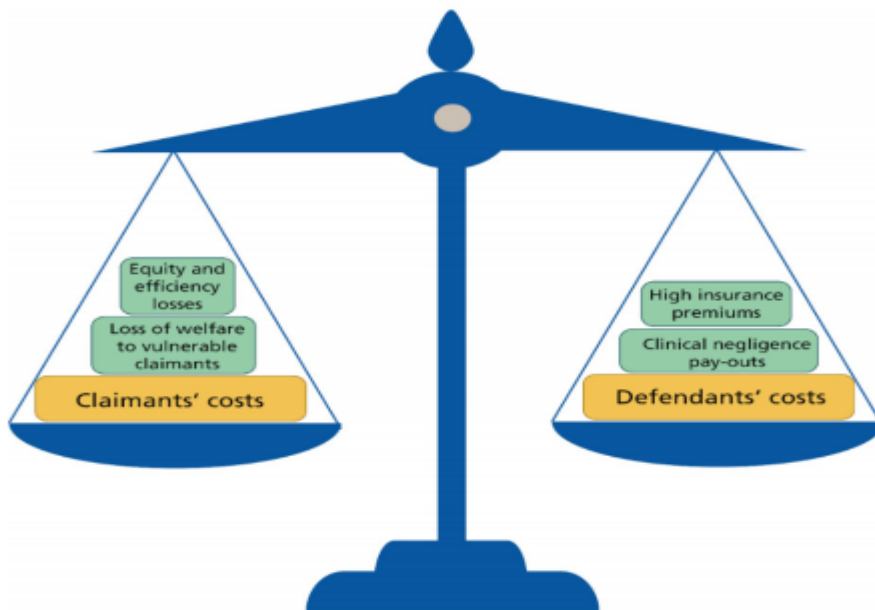
²⁰ British Institute of International and Comparative Law (2017) Briefing Note on the Discount Rate applying to Quantum in Personal Injury Cases: Comparative Perspectives <https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/biicl-comparative-law-report.pdf>

²¹ Ibid at 18, pg 25

²² Ibid at 18, pg 24

The Select Committee provided an illustration of the balancing act which it considered the Government was undertaking with the legislative change:

The Government's Balancing Act



Note: The sizes of the weights are not meant to be a proportional representation of the respective size of costs

The Select Committee also noted that the Institute and Faculty of Actuaries (IFoA) and NHS Resolution were concerned that a periodic review of the discount rate and expectations of how the discount rate would move would hinder the settlement process. In particular, the IFoA were worried that an infrequent change in the discount rate “would lead to a significant change in behaviour of claimants and defendants trying to rush, or delay, settlements to take advantage of any expected change”.

NHS Resolution stated that:

once it is known that a review is underway—and this will be the case if three years have passed since the last one—settlement negotiations will be affected because parties who believe that the new rate will be favourable to them will refuse to settle at the existing rate. That was a feature of 2001, when claimants’ lawyers believed that the Lord Chancellor would make a decision benefitting claimants.

The Government responded agreeing that claimants and defendants should be able to understand the significance of an actual change in the rate. It confirmed that it would prepare impact assessments to accompany secondary legislation every time the rate was changed.

However, it stated that:

The Government considers that the impact assessment process should, as far as is practicable, identify costs and benefits of rate changes in relation to motor insurance premiums and clinical negligence costs, but the purpose of

the setting of the rate is to help ensure full and fair compensation for injured individuals not to strike a balance between their needs and the willingness of society to pay.²³

In December 2018, the Ministry of Justice issued a Call for Evidence to gather up-to-date information on investment rates, returns and other data that would assist in setting a new rate.²⁴ Then in 2019, under the new legislative framework, the Lord Chancellor set a new rate of –0.25% for England and Wales. The Regulatory Impact Assessment that accompanied the change in England and Wales estimated that:

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 be adversely affected by the higher PIDR due to a reduction in the size of lump sum settlements. We estimate a reduction in the total value of compensation payments of between £310m to £400m pa.

On the other hand, for defendants it estimated that:

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 equals the total value of the reduction in claimants' compensation payments (i.e. £310m to £400m pa.). Of these, we estimate that almost £80m pa. will be savings for the NHS and between £230m to £320m pa. to insurers. Savings to the NHS are effectively a saving to the tax payer.²⁵

An example of the increase in rate accompanied the press statement:

In practice this could see an adjustment as follows: 30 year old male with annual financial costs of £50,000. Under existing minus 0.75% he would be awarded £2,935,500. Under the new rate (minus 0.25%) he would be awarded £2,565,250, a difference of £370,250.²⁶

²³ Ministry of Justice (2018) Personal Injury Discount Rate, Response to the Report of the Justice Select Committee: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/689413/personal-injury-discount-rate-jsc-govt-response-web.pdf

²⁴ Ministry of Justice (2018) Setting the Personal Injury Discount Rate A Call for Evidence https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762329/pidr-call-for-evidence.pdf

²⁵ Ministry of Justice (2019) Civil Liability Act 2018: Setting the Personal Injury Discount Rate Impact Assessment https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816906/personal-injury-rate-impact-assessment.pdf

²⁶ Ministry of Justice (2019) Press Release 15th July 2019 <https://www.gov.uk/government/news/lord-chancellor-announces-new-discount-rate-for-personal-injury-claims>

Scotland

In Scotland, section B1 of and Schedule B1 to the Damages Act 1996 (as inserted by the Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019) provides a statutory methodology for setting the rate based on a notional investment portfolio and a hypothetical investment period of 30 years with an adjustment of 1.25 percentage points, 0.75 to take account of expenses and 0.5 to reduce the possibility of under-compensation.²⁷ The Scottish 30-year investment period tends to drive lower yield than compared to the 43-year period modelled in England & Wales. The Act transferred responsibility for setting the rate from Scottish Ministers to the Government Actuary, on the basis that determining the rate is primarily an actuarial exercise, and provided for a five-yearly review. Following a review of the rate under its new framework in October 2019, the rate remained at minus 0.75%.

When introducing the Damages (Investment Returns and Periodical Payments) (Scotland) Bill, the Scottish Government addressed the 2017 reduction in rate from 2.5% to – 0.75%, by acknowledging that:

*the rate change in 2017 caused concern and impacted adversely on defenders and insurers. The severity of impact was attributable to the fact that the rate had remained unchanged for a significant length of time.*²⁸

By way of illustration, it offered three examples of the impact of the March 2017 rate change on the values of claims.

Table 2. Impact of March 2017 rate change on the value of claims

Example	Value of claim at 2.5%	Value of claim at -0.75%
A catastrophic brain injury of a male baby at birth where future pecuniary losses have been calculated at £40,000 a year for life.	£1,416,400	£5,149,200
A 19 year old male following a severe road traffic accident where future pecuniary losses have been calculated at £20,000 a year for life.	£646,200	£1,816,000

²⁷Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019:

<https://www.legislation.gov.uk/asp/2019/4/enacted>

²⁸ Damages (Investment Returns and Periodical Payments) (Scotland) Bill Financial Memorandum

[https://archive2021.parliament.scot/S5_Bills/Damages%20\(Investment%20Returns%20and%20Periodical%20Payments\)%20\(Scotland\)%20Bill/SPBill35FMS052018.pdf](https://archive2021.parliament.scot/S5_Bills/Damages%20(Investment%20Returns%20and%20Periodical%20Payments)%20(Scotland)%20Bill/SPBill35FMS052018.pdf)

58 year old woman severely injured as the result of a workplace accident where future pecuniary losses have been calculated at £25,000 a year for life.	£519,000	£879,250
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The Scottish Government bears the cost of NHS clinical negligence claims. In 2016-17, the total provision made by NHS boards in Scotland for claims was £612 million, which included costs anticipated over a number of years. The average period of time for a settlement in Scotland is just under ten years. This is because these types of claims are ‘regularly intimated shortly after a child is born but then sisted²⁹ by the claimant for several years as the claim cannot be brought to completion until the child is old enough for future care needs to be properly assessed’.³⁰ When the rate dropped in March 2017, provision made by NHS boards was increased by £160 million. Funding to meet the additional costs was provided by HM Treasury.³¹

For NHS clinical negligence claims, a new power in the Act allowed for courts to impose a periodical payment order (PPO). Settlement by PPO allows costs to be spread and managed over a longer period of time. The Minister for Community Safety believed that the impact of the discount rate could ‘be mitigated by the use of periodical payments. The provisions in the bill that relate to PPOs will be helpful to bodies such as the NHS, which will be deemed a secure funder’.³²

The Scottish Government did not settle any claims impacted by the change in the discount rate, between summer of 2016 and June 2018.³³ Consequently it anticipated that:

*the future impact would be minimal and that the number of such cases will continue to be negligible. This reflects the fact that the personal injury cases being dealt with do not involve injuries of sufficient severity that damages are awarded for future losses. It is not therefore anticipated that any consequential change in the rate would affect these claims’.*³⁴

²⁹ This is a Scots law term for stopping or suspending legal proceedings.

³⁰ Damages (Investment Returns and Periodical Payments) (Scotland) Bill Financial Memorandum, pg 8

³¹ Ibid

³² SPOR 19th March 2019: <https://www.parliament.scot/chamber-and-committees/what-was-said-and-official-reports/official-reports/meeting-of-parliament-19-03-2019?meeting=12006&iob=108615&qry=personal%20injury%20discount>

³³ This included not only the Scottish Government and its Agencies but also Non-Departmental Public Bodies and other organisations such as the Scottish Fire and Rescue Service, the Scottish Police Authority as well as the Forestry Commission.

³⁴ Ibid at 30

During its parliamentary passage, the Bill was considered by two committees. The Finance and Constitution Committee issued a call for evidence on the Financial Memorandum for the Bill. Four responses were received, following which it decided that it would give no further consideration to the Financial Memorandum.³⁵

The Economy, Energy and Fair Work Committee was designated as lead committee for Stage 1 consideration of the Bill. The Committee issued a Call for Evidence in June 2018. In evidence to the committee in the context of the relationship between large value claims and customer insurance premiums, the insurance company, AVIVA, wrote to the Economy, Energy and Fair Work Committee in November 2018 with additional evidence stating that large injury claims accounted for 30-40% of the overall cost of all injury claims.³⁶

The Committee noted that:

The number of people affected by personal injury cases where the discount rate applies may be small but the means of calculating their compensation is of vast importance to them and their families, as well as to pursuer and defender interests (the NHS included) and the insurance industry.

³⁵ SP Stage 1 Report on Damages (Investment Returns and Periodical Payments) (Scotland) Bill [Stage 1 Report on Damages \(Investment Returns and Periodical Payments\) \(Scotland\) Bill | Scottish Parliament](#)

³⁶ Ibid <https://digitalpublications.parliament.scot/Committees/Report/EEFW/2018/12/3/Stage-1-Report-on-Damages--Investment-Returns-and-Periodical-Payments---Scotland--Bill#-Further-margin--adjustment>

4 The Current Rate in Northern Ireland

The Department of Justice has the power to set the rate, in consultation with the Government Actuary and the Department of Finance under section 1 of the Damages Act 1996.³⁷ The 1996 Act does not prescribe how the discount rate should be set in Northern Ireland. Rather, it is set in accordance with legal principles established by *Wells v Wells*.

The discount rate in Northern Ireland is currently 2.5%, which is higher than the rates applied in the other UK jurisdictions. It has remained unchanged since it was originally set in 2001 by the Lord Chancellor, before the devolution of justice functions. The Department of Justice has considered the evidence obtained from the consultation and analysis in the other UK jurisdictions since 2017 which ‘found that, while claimants should be treated as more risk averse than ordinary prudent investors, in reality they would be advised to invest in a low-risk diversified portfolio rather than very low-risk ILGs alone’.³⁸ Therefore setting the rate under *Wells v Wells*, risks over-compensating claimants.

The Damages (Return on Investment) Bill intends to provide a new statutory methodology for calculating the PIDR based on the Scottish model of a notional portfolio of low risk investments but over a 43 year period.³⁹ The task of reviewing and setting the rate will fall to the UK Government Actuary every 5 years. As such, the Bill does not specify what the rate should be.

Until the Bill is enacted, the Justice Minister has announced that the PIDR will reduce from +2.5% to -1.75% from the end of May 2021, which represents a significant 4.25% reduction in absolute terms. It means that Northern Ireland will have the lowest PIDR in the UK. This will have a considerable impact on the compensation awarded in personal injury cases. Announcing this change in rate the Minister said:

I had hoped that legislation under the Damages Bill could be enacted by summer 2021 and a rate set under the new framework by autumn 2021. To that end I sought to bring accelerated passage of that Bill through the Assembly. However, an expeditious passage of the Bill through the Assembly has not proved possible.

In view of this significant change in the expected time scale, the Department has reviewed its previous decision not to change the rate and, after careful

³⁷ Damages Act 1996, Section 1: <https://www.legislation.gov.uk/ukpga/1996/48/section/1>

³⁸ Damages (Return on Investment) Bill Explanatory and Financial Memorandum, pg 2: <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/damages-bill/efm---damages-return-on-investment-bill---as-introduced.pdf>

³⁹ Damages (Return on Investment) Bill: <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/damages-bill/damages-bill---as-introduced---full-print-version.pdf>

*consideration, decided to change it to minus 1.75% consistent with the current legal framework.*⁴⁰

The Minister has indicated that this significant reduction in rate would ‘most likely result in overcompensation but that a ‘new legislative framework will [...] allow a stable discount rate to be set that better delivers the 100% compensation principle and provides fairness to all involved’.⁴¹ The rate will be reviewed again once the Bill has been enacted. As it will be linked to a notional portfolio of low risk investments, it is anticipated that the rate will increase from -1.75% as it will not be based solely on ILGs.⁴²

Regarding the reduction to -1.75%, the law firm, DAC Beachcroft, believes that:

*the value of some claims here may be more than double that of England and Wales. For example, an annual lifetime care claim of £100,000 for a 10 year old male in England and Wales, at a -0.25% discount rate would be valued at £8.7M; the same claim in Northern Ireland, at a discount rate of -1.75%, would be worth £17.7M.*⁴³

Therefore, it has advised that ‘it is essential that all complex personal injury claims which are likely to be listed for hearing in Northern Ireland with the next 12 months are carefully reviewed and adequately reserved’.⁴⁴

⁴⁰ Department of Justice (2021) Press Release -Personal injury discount rate set to change: <https://www.justice-ni.gov.uk/news/personal-injury-discount-rate-set-change>

⁴¹ NIA Official Report 9th March 2021: <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/03/09&docID=329455#3314508>

⁴² Correspondence from the Department of Justice to the Committee for Justice, 19th January 2021: <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/justice/primary-legislation/damages-bill/dept-correspondence/use-this-for-19-dept-briefing-paper-no-a-and-b-annex.pdf>

⁴³ DAC Beachcroft Website Article (March 2021): [Interim -1.75% Discount Rate set for Northern Ireland \(dacbeachcroft.com\)](https://www.dacbeachcroft.com/interim-1.75%discount-rate-set-for-northern-ireland)

⁴⁴ Ibid

5 Northern Ireland potential impact

In 2020, the Department of Justice consulted on how the discount rate should be set. It identified the main groups that would be impacted by a change in rate as follows:

- *Claimants (persons who have been awarded damages in compensation for personal injury).*
- *Direct defendants (persons or organisations who have caused a personal injury and who are liable to pay compensation directly to the claimant). These are usually public bodies like Government departments.*
- *Consumers (persons who purchase insurance policies, e.g. motor insurance, to insure themselves against the cost of damages).*
- *Businesses (individual businesses which purchase insurance policies, e.g. public liability insurance or motor insurance, to insure themselves against the cost of damages).*
- *Insurance companies (providing insurance to groups 3 and 4).⁴⁵*

However, the Department stated that it was not possible for it to quantify the costs and benefits of different frameworks for setting the PIDR because:

- there were no available records of the details of damages awards in the courts, or settlements reached out of court;
- it was not possible for the Department to quantify the impact of higher or lower damages awards on insurance premiums; and
- the actual rate set under any new framework is impossible to know as it will be set based on data available at that time.

Although the screening exercise by the Department only examined the policy for providing a legal framework to establish the rate, a number of respondents to the consultation highlighted that:

reducing the discount rate would have a detrimental impact on health services. In particular, the Department of Health noted 'serious consequences' for health and social care by virtue of increased expenditure on clinical negligence claims, and the cost of indemnity of GPs possibly becoming unaffordable, with resulting implications for recruitment and retention'.⁴⁶

Similarly, six respondents representing insurance and wider business interests 'disagreed with the conclusions in relation to screening for economic appraisal or

⁴⁵DOJ (2020) Personal injury discount rate – how it should be set Regulatory Impact Assessment: <https://www.justice-ni.gov.uk/sites/default/files/consultations/justice/personal-injury-discount-rate-consultation-regulatory-impact-assessment.PDF>

⁴⁶ DOJ (2020) The personal injury discount rate: How should it be set? Summary of consultation responses and next steps: <https://www.justice-ni.gov.uk/sites/default/files/consultations/justice/summary-response-personal-injury-discount-rate.pdf>

economic impact, all arguing that it does not identify the economic impact of a lower discount rate'.⁴⁷

The Association of British Insurers (ABI) has indicated that:

*The costs associated with paying people more than 100% compensation fall on insurers, and ultimately their customers; medical professionals; the Department of Health; Health and Social Care Northern Ireland; and other public bodies. It would also be borne by small businesses where claims exceed their insurance limit of indemnity. Ultimately the costs associated with that compensation approach would be met by Northern Ireland's consumers and taxpayers.*⁴⁸

When the potential adverse impact of a substantial decrease in rate on defendants was raised with the Justice Minister, she remained focused on the Department of Justice's obligation to ensure 100% compensation for claimants. She wrote to the Committee for Justice stating:

*The cost for departments and indeed any other defendants arises from their legal liability to compensate fully a claimant and, accordingly, is a matter for them. My department understands, however, that the Department of Finance is engaging with the Treasury in regard to the budgetary implications for the Department of Health, in particular.*⁴⁹

However, she did provide a hypothetical example for illustrative purposes:

It might be helpful to the Committee to demonstrate what difference a 0.25% change would make using an entirely hypothetical case of a thirty-year-old male with an annual requirement of £50k (to meet his loss of earnings and cost of care). In this scenario, as calculated using the Ogden Tables, a discount rate of -0.25% would mean damages of £2,987,500, but with a discount rate of 0.0% then the damages would be £2,773,000. We do emphasise that this example is purely illustrative as we don't know what the discount rate would be under the framework provided for in the Bill. While I understand that some may, understandably, want to know that level of detail, the reason we cannot provide that information is that the discount rate can only be set at the point when it is going to take effect and so any projection provided now will not be the final answer. In addition, the Committee will recall that the Scottish model provides GAD with 90 days to do this work: it is not a simple calculation, but one that takes substantial time and effort (and for which

⁴⁷ Ibid pg 26

⁴⁸ ABI Submission to the Committee for Justice call for evidence on the Damages (Return on Investment) (Northern Ireland) Bill

⁴⁹ Correspondence from Justice Minister to Committee for Justice, 10th February 2021:

<http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/justice/primary-legislation/damages-bill/dept-correspondence/3-r-20210210-min-of-just-letter---damages-bill-acc-pass2.pdf>

there is a charge), which is why we could not ask for this work to be done except at the point of need.⁵⁰

⁵⁰ Ibid

6 Northern Ireland specific circumstances

6.1. Insurance Premiums

In most cases, defendants will have insurance to underwrite the risk of causing someone a personal injury. Car drivers and employers are required by law to have insurance against certain risks. The three types of insurance most likely to be impacted by a change in the discount rate are motor, employers' liability and public liability.

Insurance is based on risk, with insurance companies receiving premiums against various risks. The potential cost of a serious injury claim is incorporated into every insurance policy, so a very low PIDR in Northern Ireland could put inflationary pressure on local insurance premiums.

Motor policies have no upper limit of indemnity, so insurers would have to absorb the increased compensation costs due to a decrease in rate. In doing so, underwriters would consider the risk as against different groups of drivers and charge increased premiums accordingly. According to ABI, young drivers will be disproportionately impacted by this change. As a class, young drivers are at a greater risk of being in an accident and will often have higher passenger numbers in their car. In the event of a catastrophic injury, it is likely that the injured passenger would have significant future losses as the younger the claimant the higher multiplier.⁵¹

Historically Northern Ireland has had higher motor insurance premiums than the rest of the UK. Research conducted by the Consumer Council for Northern Ireland between 2009 and 2018 examined the insurance market. It found that on average consumers from Northern Ireland were quoted the highest premiums for car insurance than comparable consumers in the UK regions.⁵²

Research in 2018, by the AA, on the cost of insurance across the UK found that:

- Claims tend to be greater in Northern Ireland, given the nature of the roads - i.e. there is little in the way of motorways and a lot of country roads, which present the greatest risk of collisions;
- The market is not as competitive as a number of UK insurers do not offer cover in Northern Ireland;
- The Northern Ireland courts tend to make higher serious injury awards in a legal market which is different to England and Wales;

⁵¹ Information provide to RAISE in communication dated 19th May 2021

⁵² The Consumer Council (2018) Retail Insurance in Northern Ireland
<https://www.consumercouncil.org.uk/sites/default/files/2018-08/Research%20Report%20-%20Retail%20Insurance%20in%20NI.pdf>

- Young drivers particularly are more prone to suffering serious crashes, due to the nature of the roads; and
- A differing legal system in Scotland, where it was harder to make personal injury claims, accounted in part for its low premiums.⁵³

ABI has also indicated that:

*The lower the PIDR is set, the more pressure this places on insurers' claims costs and, as a result, puts significant inflationary pressure on motor insurance premiums in Northern Ireland which are already higher than other parts of the UK due to specific local factors such as the costs involved in the civil justice system in Northern Ireland and higher road traffic accident rates.*⁵⁴

Employers' liability and public liability insurances generally have upper limits of indemnity cover. A reduction in the PIDR would increase the value of any compensation settlement leaving a significant risk to the policy holder that they may not be adequately covered to meet claims if they exceed their limit. This could leave businesses having to bear the rest of the costs themselves. In some circumstances, this could potentially bankrupt a business. As well as potentially facing increased premiums, businesses may need to buy additional levels of liability cover or else hold additional funds in reserve to meet potential compensation claims. The level of liability cover they typically buy could increase from £2million up to as much as £10million of cover for claims against their policies.

Furthermore, where there is a high risk business such as a haulage company, certain insurance providers may limit the number of insurance premiums they take on. As a result, some businesses may no longer be able to access an appropriate insurance policy or level of cover within the Northern Ireland market.

Costs are a core part of competitiveness for businesses. A report into the Cost of Doing Business in Northern Ireland published in 2015 found that insurance costs place local companies under cost pressure, as they tend to be higher than in Great Britain.⁵⁵ ABI has highlighted the ongoing pressures to Northern Irish business already at this time:

Businesses in Northern Ireland are required by law to take out Employer's Liability insurance and many also take out Public Liability insurance to cover the cost of liability claims against them. A lower PIDR would put significant inflationary pressure on business insurance premiums at a time when

⁵³ Belfast Telegraph 25th July 2018: <https://www.belfasttelegraph.co.uk/business/northern-ireland/ni-motorists-paying-out-38-more-on-insurance-than-other-regions-aa-37151642.html>

⁵⁴ ABI Submission to the Committee for Justice call for evidence on the Damages (Return on Investment) (Northern Ireland) Bill

⁵⁵ Department for the Economy(2015) *The cost of doing business in Northern Ireland* : <https://www.economy-ni.gov.uk/sites/default/files/publications/deti/Cost%20of%20Doing%20Business%20report.pdf>

*Northern Ireland's businesses are facing the additional costs generated by COVID-19 and Brexit.*⁵⁶

Similarly, the Department for the Economy has indicated that 'local businesses are already facing unprecedented challenges due to the COVID-19 pandemic and the EU Exit transition. Local businesses took on more debt during 2020 using COVID loan schemes and many local businesses have cash flow issues'.⁵⁷ The Department also highlighted the latest Ulster Bank Northern Ireland PMI for businesses which found a record rise in input costs and further acceleration of output price inflation:

The recent surge in input prices continued in March, with the rate of cost inflation the sharpest since the survey began in August 2002. Close to two-thirds of respondents posted an increase in input prices during the month. Higher raw material prices, increased freight costs, Brexit and rising wages all reportedly contributed to inflation. The increase in Northern Ireland was the fastest of the 12 UK regions.

*[...]The rate of output price inflation hit a fresh record high for the second month running in March as higher input costs were passed through to customers. All four monitored sectors posted marked increases in selling prices, with the sharpest inflation seen in manufacturing and retail.*⁵⁸

6.2 Health and Social Care System

The Department of Health has stated that it is concerned that a significant reduction in the PIDR could have an adverse impact on the health and social care system. It has warned that the temporary long term change to the rate 'will result in an increase in settlement rates for the HSC including additional costs associated with third party insurance premium cost increase for contracts e.g increase employers, public liability and vehicle insurance'.⁵⁹

Echoing this warning, the Medical Defence Union has stated that:

*We have experience of the disastrous effect on public services of a large drop in the PIDR. When the rate in England and Wales changed from 2.5% to -0.25% (at one point going as low as -0.75%), a claim that was valued at approximately £4.5m at the previous rate, actually settled for £10.6m.*⁶⁰

The Department of Health has confirmed that it has limited scope to mitigate risks in this area. The Directorate of Legal Services of Health & Social Care NI (which

⁵⁶ Ibid at 54

⁵⁷ Information provided to RAISE in correspondence dated 27th May 2021

⁵⁸ Ulster Bank Northern Ireland PMI April 2021: https://ulstereconomix.com/wp-content/uploads/2021/04/Nire_PMI_2104.pdf

⁵⁹ Letter of Correspondence from the Minister of Health to Raise, dated 17th May 2021

⁶⁰ MDU, A changing personal injury discount rate (PIDR) in Northern Ireland: MDU response <https://www.themdu.com/about-mdu/our-impact/our-impact-archive/a-changing-personal-injury-discount-rate-pidr-in-northern-ireland-mdu-response>

represents the health and social care trusts) has indicated that there are 138 high-value cases outstanding.⁶¹

Professional Indemnity

The General Medical Council requires practising doctors to have adequate insurance or indemnity in place.⁶² Doctors that work for the HSC, receive indemnity through its clinical negligence scheme in each Trust, which is funded by the Department of Health.

Doctors working in the private and primary care sectors (i.e general practice) are responsible for making their own arrangements for indemnity insurance. Doctors carrying out clinical work that is not included within the HSC indemnity scheme, for example providing medico-legal reports and signing cremation certificates may also have to get additional indemnity to cover that.

GPs are independent contractors who contract with the Health and Social Care Board to provide primary medical services to patients. The setting of the subscriptions costs for GPs is a commercial matter determined by the individual Medical Defence Organisations. Subscription costs are based on the type and amount of work carried out by the GP as well as other conditions for example, the type of medical procedures carried out. According to the British Medical Association (BMA), annual indemnity insurance *‘in Northern Ireland is a considerable personal outlay of £8,000 and £12,000 for a full time GP, and can be higher again depending on circumstances, out of hours work undertaken.’*⁶³ There have been some recent one-off funding injections to recognise the increasing costs of indemnity in the GMS contract but these have not in any way fully covered the high personal cost.⁶⁴

Rising indemnity costs have been a source of concern for general practice for a number of years. In 2019, a Royal College of GPs NI survey found that 42% of GPs said that it was either ‘not very’ or ‘not at all sustainable’ to run a GP practice. Of that number, 79% cited indemnity costs as a reason for that instability.⁶⁵

There are approximately 321 GP practices across Northern Ireland.⁶⁶ It is not possible to quantify the number of vacant GP posts. As independent contractors, GPs are responsible for identifying and recruiting the number of GPs and other staff

⁶¹ Correspondence from Justice Minister to Committee for Justice, 10th February 2021

⁶² Paragraph 63 of Good Medical Practice, <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/good-medical-practice/domain-4---maintaining-trust>

⁶³ Information provided to RAISE in correspondence dated 13th May 2021

⁶⁴ Ibid

⁶⁵ https://2sijwunngl41ia7ki31qqub1-wpengine.netdna-ssl.com/wp-content/uploads/2019/11/RCGP_ComRes_Northern-Ireland-GPs-Survey_Wave-4_Tables.pdf

⁶⁶ AQW 15016/17-22 <http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=327351>

required to deliver those services.⁶⁷ Furthermore, there is no accepted ratio for the number of GPs required per head of the population given a wide range of variables that apply, such as the level of health need and socio-economic conditions.

The *General Practitioner Workforce Planning Group Final Report – June 2015*, recommended an increase in the number of commissioned GP training places, from 65 per year in August 2015 to 111 by August 2019, which was achieved.⁶⁸

The Department of Health and the BMA have both advised that a change in rate could ultimately result in GP indemnity becoming unaffordable which could lead to the following adverse outcomes for the profession:

- Approximately 25% of the GP workforce is aged 55 and over, and is expected to retire within the next 5 years. A significant raise in indemnity fees could encourage GPs to retire earlier which could increase the strain on the existing GP workforce.
- The HSC could face difficulties attracting and retaining GPs in the workforce. This is already an issue in some geographical areas. It could also obstruct the ability to encourage GPs to come to Northern Ireland to practice. The BMA is aware of cases where GPs wished to return to practice from England and Scotland but ultimately decided against it due to the higher indemnity costs in Northern Ireland;
- Existing GPs may seek to reduce the number of sessions they work to reduce their costs, putting additional pressure on the primary care system; and
- Secondary care presentations to Primary Care services (Emergency Departments and Out of Hours) could increase, resulting in poorer service quality and higher cost implications.

The Department of Health has further suggested that if GPs were unable to access indemnity insurance, this would give rise to the need for a state backed indemnity scheme with costs being met from the block grant, at the expense of other services. It also suggested that if private medical practitioners could not access indemnity services then that could bring an end to the private healthcare market in Northern Ireland.

The MDU has warned that:

The position for GPs in Northern Ireland would be appreciably worse if the methodology were changed and facilitated the introduction of a discount rate of -1.75% [...] as there are fewer GPs to provide a far smaller pool than their

⁶⁷AQW 18214/17-22 <http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=336071>

⁶⁸AQW 16646/17-22 <http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=332050>

*English or Welsh counterparts to absorb the necessarily dramatic increases in indemnity subscriptions.*⁶⁹

In order to address cost of indemnity concerns, and ensure general practice remained an appealing long-term career option, the Department of Health and Social Care recently introduced two state indemnity schemes in England and Wales. In April 2019, a state indemnity scheme for general practice in England called the Clinical Negligence Scheme for General Practice was introduced. The scheme covers clinical negligence liabilities arising in general practice in relation to incidents that occurred on or after 1 April 2019. In April 2020, the complementary Existing Liabilities Scheme for General Practice, was established to provide indemnity cover for historical NHS clinical negligence claims made against current and former GP members of medical defence organisations in respect of liabilities incurred before 1 April 2019.⁷⁰ GPs do not need to pay a subscription and the costs are met centrally.

The BMA understands that prior to the introduction of the state backed indemnity scheme in England, GPs had indemnity bills of up to £13,000 which it was estimated could have increased to over £30,000 per annum due to a lowering of the discount rate to -0.25%.

In Scotland, there is no state back scheme however indemnity costs are lower. The 2018 General Medical Services Contract in Scotland sets out how the Scottish Government works with partners, including medical defence organisations, to deliver the best solution for indemnity in Scotland.⁷¹

In the short term, two of the three main indemnity providers in Northern Ireland, the Medical Protection Society (MPS) and Medical Defence Union of Scotland (MDDUS) have provided assurances to GPs that they will not see indemnity cost increases this year despite the change in rate at the end of May.⁷² Therefore, while GPs may not immediately see the high costs rises that were predicted for England and Wales immediately, that is not assured in the long term.

⁶⁹ MDU response to Department of Justice consultation on the personal injury rate August 2020
<file:///C:/Users/Lockdown/Downloads/MDU%20response%20NI%20discount%20rate%20methodology%20consultation.pdf>

⁷⁰ NHS Resolution website accessed 24th May 2021: <https://resolution.nhs.uk/services/claims-management/clinical-schemes/general-practice-indemnity/>

⁷¹ Scottish Government (2017) The 2018 General Medical Services Contract in Scotland:
<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2017/11/2018-gms-contract-scotland/documents/00527530-pdf/00527530-pdf/govscot%3Adocument/00527530.pdf>

⁷² Pulse website, accessed 26th May 2021: <https://www.pulsetoday.co.uk/news/northern-ireland/ni-gps-given-short-term-reassurance-on-indemnity-costs-as-new-discount-rate-set/>

6.3 Costs to the Northern Ireland Executive

Where a Department is a defendant in an action for damages involving future losses, they may have to pay more or less in damages in line with changes to the rate relative to the previous rate.

In response to the Committee for Justice's Call for Evidence, the **Department for Infrastructure** confirmed that 'changes to the discount rate will have implications for the Department in terms of personal injury, and property and/or vehicle damage compensation awards and settlements'. However, it does not anticipate that the change in rate is likely 'to have any major budgetary or resource impact in the 2021/22 financial year'.⁷³

The only direct cost impact arising from the Damages (Return on Investment) Bill for the **Department of Justice**, will be the payment for the Government Actuary's role in determining the rate. These costs are not new as the Department would be required to pay to carry out the necessary statutory consultation with them under the existing framework. Given the changes to the frequency of review, the payments will be more regular. An out of cycle review would generate an additional fee. The Department estimates each payment fee will be in the region of £40,000 to £50,000.⁷⁴

⁷³ Information provided to RAISE in correspondence dated 25th May 2021

⁷⁴ Damages (Return on Investment) Bill Explanatory and Financial Memorandum