AVIVA

Submission from Aviva to the Committee for Justice call for evidence on the Damages (Return on Investment) Bill

Respondent:

Full Name:	Mr Alan Rogerson
Organisation:	Aviva
Job Title:	Senior Claims Manager, Technical Claims
Email Address:	

Question 1

- Is the new statutory methodology to calculate the personal injury discount rate the most appropriate to achieve as close to 100% compensation as possible?

Answer

No, in our submission to the DoJ consultation "The personal injury discount rate: How should it be set?" we recommended the adoption of the England and Wales methodology for calculating a Personal Injury Discount Rate for Northern Ireland as this would be a more equitable model. A majority of respondents to the consultation agreed[1].

There are two main reasons for our answer:

1. The new proposed statutory methodology follows the same model that Scotland introduced previously meaning the suggested rate of return from the notional portfolio is then adjusted twice as illustrated in the table below: (the third column contains the appropriate reference where this appears within the Bill being considered)

	% pa	Reference
A. Gross return above RPI inflation from notional portfolio before standard adjustments	tbc	
B. Standard adjustment for tax and costs of investment advice and management	-0.75%	10. (2) (a)
C. Standard adjustment for further margin involved in relation to the rate of return	-0.50%	10. (2) (b)
PI discount rate	tbc-1.25%	

The adjustment C. (which is peculiar to the Scottish model) was a conscious decision by Scottish Ministers to over compensate claimants and go well beyond the aim of achieving as close to 100% compensation as possible.

2. The Bill also adopts a notional investment portfolio from the Scottish legislation that is overcautious and so will lead to a lower discount rate. (which will then lead to over compensation rather than achieving the aim of as close to 100% compensation as possible)

[1] https://www.justice-ni.gov.uk/publications/summary-response-personal-injury-discount-rate-how-it-should-be-set

We believe that further consideration should be given to adopting or mirroring the methodology from England and Wales to achieve a fairer outcome.

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Alternatively, the adjustment C. should be removed from the Bill as it will lead directly to over compensation and further consideration should be given to the over-cautious nature of the notional portfolio.

Question 2

- Has the new methodology the potential to veer towards over compensation and if so how can this be rectified?

Answer

Yes, for the reasons as set out in our answer to Question 1.

The over-cautious portfolio and the -0.5% adjustment for further margin (at 10. (2) (b) of the Bill) guarantee that the discount rate will deliver over-compensation to claimants. There is no evidence in the Bill or supporting documents to support such a policy decision for Northern Ireland.

The costs associated with paying more than 100% compensation will ultimately fall on Northern Ireland's consumers, businesses and taxpayers to fund.

Question 3

- Has the new methodology the potential to veer towards under compensation and if so how can this be rectified?

Answer

No, the new methodology will not veer towards under compensation.

We believe re-consideration of the notional portfolio and removal of the -0.5% adjustment for further margin (at 10. (2) (b) of the Bill) would still not veer towards an outcome of under compensation.

Question 4

- Does the new statutory methodology reflect how a claimant would be advised to invest their award?

Answer

Yes, we believe so.

The proposed methodology does represent how a low risk investor would be advised, with the caveat that we believe the portfolio to be more cautious than a claimant would ordinarily be advised.

We do recognise there is a lack of evidence on how claimants invest their compensation settlements. It is essential that any new discount rate methodology for Northern Ireland delivers a clearer system that strikes a fair balance between the interests of claimants and the requirement for affordable access to insurance for consumers and businesses.

Question 5

- What are the likely effects of using an investment period of 43 years rather than 30 years in the model and do you agree with this approach?

Answer
We agree using an investment period of 43 years is an objective one, backed up by evidence in the form of analysis from the Association of British Insurers that concluded that the average investment period (from 2,500 settlements) was 46 years – therefore, 43 years errs on the side of caution.

Question 6

- What are the advantages or disadvantages of transferring responsibility for setting the rate from the Department of Justice to the Government Actuary and is there an appropriate level of accountability in the new statutory methodology?

Answer
The answer depends on what you view as advantages or disadvantages.

Transferring responsibility for setting the rate to the Government Actuary reduces political accountability for setting the rate and creates a more rigid and inflexible approach to the process.

The investment market and decisions a claimant will be making are the same UK wide and as such, we would maintain our recommendation that the framework for England and Wales be followed or mirrored with the advantage that political accountability can be maintained in Northern Ireland at the same time as gaining the insight of the periodic reviews that will come from the England and Wales expert panel.

The framework used in Scotland is based on a policy decision taken by Scottish Ministers to overcompensate claimants. This has the consequence of generating additional costs for compensators including HSCNI and other public bodies as well as insurers.