Dear Ms Darrah,

The AXA Group is a worldwide leader in financial services, operating in 57 countries with over 160,000 employees and 108 million customers. AXA has around 12 million customers in the UK and Ireland and carry out business through specific operating companies.

AXA operate in Northern Ireland through AXA Insurance dac and AXA UK and are a market leading insurer meeting the insurance needs of thousands of customers. Reference to 'AXA' within this response therefore represent these companies.

Executive summary

AXA welcomes the opportunity to submit to this call for evidence and would encourage the commitment from the Northern Ireland Executive to follow a principle of 100% compensation for personal injury claimants when reviewing and setting the Discount Rate.

However, AXA would like to take this opportunity to also highlight that the new proposed interim personal injury discount rate , to be implemented pending the new legislation, of -1.75% is too low and is the lowest in all of the UK jurisdictions as well as the Republic of Ireland which will result in over compensation. This has come about due to the current outdated Wells v Wells model for setting the discount rate in Northern Ireland.

When implemented the interim rate will have significant implications for consumers, business, key professions and the wider Northern Ireland economy and its competitiveness, therefore it is essential that the new legislation for the setting of the personal injury discount rate is prioritised and accelerated.

In terms of the new proposed legislation, AXA does not support the use of the methodology based on the Damages (Investment Returns and Periodical Payments) (Scotland) Act as this does not meet the principle of 100% compensation which is fair to all parties. When introduced use of the Scottish approach would have a significant financial impact on consumers and organisations that purchase liability insurance, and on insurers, self-insureds and public bodies including the Health and Social Care service in Northern Ireland.
AXA recommends 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 and would align to the principle of 100% compensation.

For the reasons outlined above it is extremely important the process for legislative changes move forward as quickly as possible if the severe financial ramifications of the exceptionally low interim rate are to be avoided. Some illustrations of the impact of this approach, the Scottish model, English and Welsh model and comparisons to other jurisdictions are set out below.

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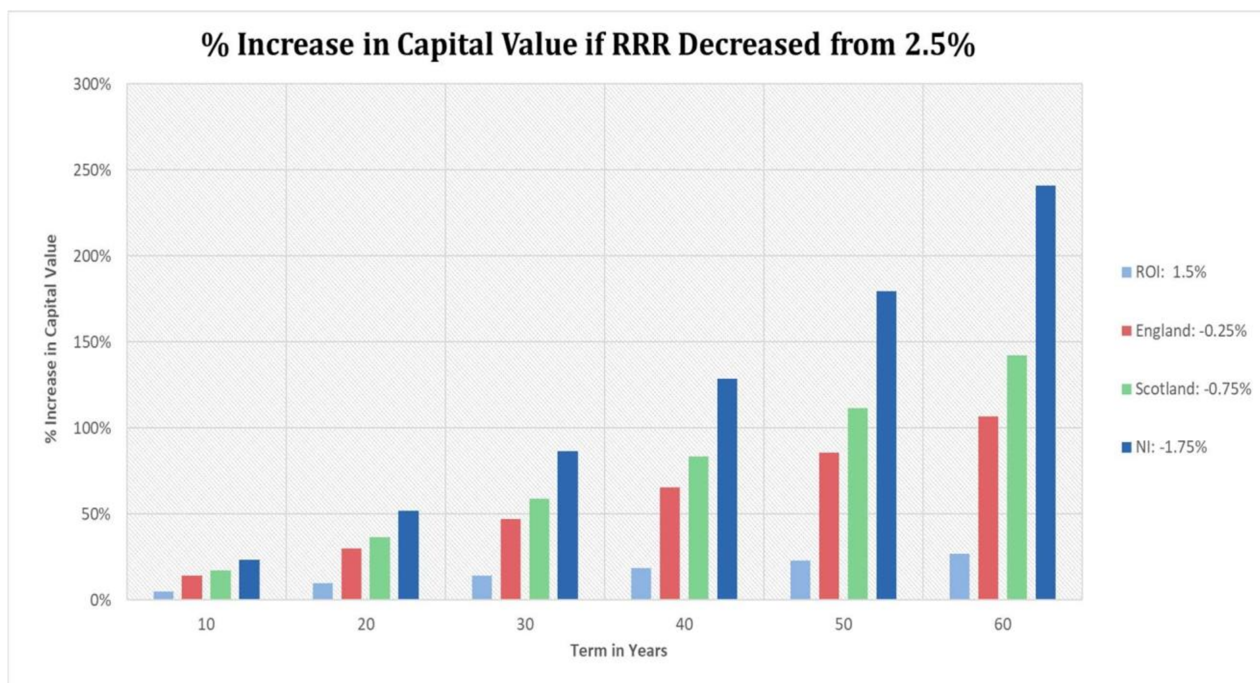

Illustrative Capital Values for a male aged 20 receiving care of £200k per annum

	Real Rates of Return				
	Current NI: 2.5%	ROI: 1.5%	England: -0.25%	Scotland: -0.75%	Propsed NI: -1.75%
	£	€	£	£	£
Future Care - From now for life	6,545,892	8,541,966	15,137,856	18,322,344	27,891,192

There is an imminent financial threat to consumers, businesses, and the State and AXA would therefore urge the Committee for Justice to prioritise legislating for a new approach to this process at the earliest possible opportunity.

We now turn to the specific questions raised.

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?

- A step in right direction has been taken and we are encouraged that moves have been made to change the out-dated law on the topic.

- Whilst the draft bill includes a mechanism for setting the rate in the future, several small but significant changes are needed to achieve 100%.
- Further detail as to the issues we believe require attention are set out in the answers below.

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

- We would urge the committee to challenge the -0.75% deduction made under 10.2 a (1) & (2) as we are not aware of any factual evidence having been supplied to support what are described as Standard Adjustments for taxation and investment advice. The figure should not be accepted at face value, just because another jurisdiction might use similar figures. Indeed, if the investment portfolio is already prescribed in the Bill, investment advice and subsequently the cost of this would not be necessary.

- When AXA pay compensation, we have no input into what adult claimants then do with their lump sum damages. We know some claimants may not seek any independent financial advice or management, some may do so on a one-off basis and others may do so regularly.

- The point to be made is that applying a flat rate adjustment to the rate in a broad-brush approach, unfairly inflates all heads of damage for future losses when such actual costs might be incurred on an intermittent basis only – if at all.

- A better option would be for these standard adjustments to be removed from the draft bill but allow Defendants to consider paying for the reasonable cost of future financial advice as a separate head of claim through negotiation or award at the time of settlement. (We already pay in similar fashion for the cost of case managers who organise claimant's ongoing/future care).

- In relation to 10.2 b, the 0.5% deduction of an extra margin figure completely contradicts the principle and objective of 100% compensation and should be removed. We would emphasise that even a very small % movement in the rate such as this, can have a very significant and detrimental financial impact.

- We understand the reasoning behind the extra margin deduction described is to remove inherent risk. Claimants who want to avoid risk totally can however avail of Periodic Payments which will compensate them for the remainder of their lives, and which completely avoid the need for extra margins. In addition, the notional portfolio assumed is already cautious making the extra margin unnecessary.

- The provision certainly seems to undermine certainty and fairness in the process. The 0.5% reduction appears unduly artificial, inflexible, and likely to promote overcompensation.

- We support the 100% principle where the injured party should be placed in the same financial position as they were before the accident, no more and no less. Damages are agreed or determined by the courts at a given point in time. The calculations are done using theoretical projections as to what the future losses might be.

- For example, the cost of future care might be calculated on the number of hours attendance assessed by experts as being required per day over the claimant's lifetime. Once lump sum damages (particularly those for future losses) are paid however, claimants do then enjoy the prerogative to allocate their funds as they wish. They may decide to accept less hours of care, they may decide that they do not want the

intrusion of a paid care regime or case manager (that were allowed for in the damages award) and instead accept gratuitous care from family and friends.

- We do not suggest that claimants should lose the benefit of choice however simply point out that an extra benefit or compensation through the further 0.5% deduction would be unfair on the paying defendant who does not enjoy such a luxury and in effect would suffer an extra penalty and contrary to the 100% principle.

- AXA would point to the Annual Accounts of the Courts Funds Office (CFO) (A business unit within the Courts & Tribunals Service on behalf of the DOJ). From this reporting in February 2020, it can be shown that any claimants (Including minors and those unable to look after their own financial affairs) whose compensation is looked after by the CFO will have investment decisions made on their behalf.
- Link to full report is below.
- https://www.justice-ni.gov.uk/sites/default/files/publications/justice/cfo-accounts-2018-19-final.pdf

- In addition, and following a consultation into management of funds held on behalf of minors and patients - published on the DOJ website, the Northern Ireland Courts and Tribunals Service issued its conclusions in December 2019 and which stated:
- "46. Currently, where appropriate, funds held in court are invested on the recommendation of a contracted investment manager. The investments are monitored by the Judicial Liaison Group, which includes independent individuals with investment expertise. The returns on the invested funds have consistently exceeded targets and benchmarks; NICTS does not believe that there is any reason to alter these arrangements".
- Link to full publication is below.
- https://www.justice-ni.gov.uk/sites/default/files/publications/justice/management-of-minors-patientsfunds.pdf

- It is evident from the information published that the funds for these claimants are carefully managed and protected with investment returns made. In terms of the methodology to set the discount rate therefore we would suggest that in any claims where damages are managed by the court, the -0.75% investment charges should not apply, the -0.5% extra margin should not apply and the assumed notional investment portfolio [12. (3)] should represent being "no worse" than the basket of investments currently used by the Court Funds office. Over-compensation would therefore be avoided in these examples.

- It has not been made clear if and how the investment portfolio is to be reviewed each time a new rate is to be set to ensure both investment practices and returns are taken into consideration in future years.

- Overall, we suggest there is good evidence to support the removal of the adjustment clauses in clause 10 as these appear to be a major contributor to potential overcompensation.

3. Has the new methodology the potential to veer towards under compensation and if so, how can this be rectified?
    - AXA can find no examples of how the methodology might under compensate.

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- Claimants in N.I. already enjoy the benefits of higher damages for pain and suffering than any other UK. jurisdiction. For example, according to the respective Judicial Studies Board (JSB) Guidelines in the respective areas, a very severe brain injury is valued at £155,000 to £220,000 in Scotland, £185,000 to £265,000 in England & Wales and £360,000 to £670,000 in Northern Ireland.

- Against this background and with judicial and legislative reforms taking place in England and Wales and in the Republic of Ireland designed to lower claims costs and assist consumers, we would submit that great care needs taken not to set back Northern Ireland through ever spiralling damages and Insurance premiums.

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

- AXA's role as an insurer predominantly involves payment of a Plaintiff's damages agreed or awarded against a legally liable defendant. We are not therefore a party to their decision-making process for investing a lump sum payment. Independent Financial advisors engaged, by claimants' post settlement are probably best placed to advise on this.

- As set out in our answers to question 2, we can however see how funds are invested by the Court Funds Office on behalf of minors, patients, and those without capacity.

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?

- The Association of British Insurers (ABI) conducted a settlement review and (as a member of that organisation), AXA would refer to their findings. In particular, that the average length of time for investment of a PIDR award is 46 years.

- Whilst we are not investment experts, we strongly agree it is prudent to assume a longer investment period to ensure a more stable return for added certainty and to the benefit of both the injured claimant and paying defendant.

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?

- This important bill and its methodology will likely be in place for many years to come and have an ongoing financial impact for claimants, defendants, the taxpayer, NHS, the public and businesses alike. It would seem imperative that there is accountability and flexibility (should circumstances change). The model proposed would appear to fall short on both these fronts.

- AXA consider that the decision to set the Discount Rate is one that should lie with the Minister who is able to consider and assess economic realities and the views of all stakeholders and other interested parties.

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- To ensure political accountability, AXA does not consider that the decision to set the rate should lie with an unelected official. Short term issues which may have arisen regarding conflicts of interest should not be used as a reason to transfer responsibility for this Bill which has by its nature, very long-term implications.

- AXA would suggest the Minister, person, or body responsible should be legally obliged to consult with a panel chaired by the Government Actuary and which includes someone with Actuarial experience, Investment Management experience, an Economist and someone with experience of Consumer Investment practice.

- Such oversight would surely give increased confidence to all stakeholders – but particularly the Minister, the DOJ, and the Government Actuary.

Yours Sincerely,

Philip Bradley
CEO – AXA Insurance dac

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