

**From the Permanent Secretary and HSC Chief Executive**

Committee for Justice  
The Committee Clerk  
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Our Ref: CORR 1229-2021  
Date: 7 May 2021

Dear Christine

**DAMAGES (RETURN ON INVESTMENT) BILL**

Further to the request for contributions on 26 March 2021, I have attached a copy of the letter which issued from Minister Swann to the Health Committee on the Damages (Return on Investment) Bill.

Yours sincerely

**RICHARD PENGELLY**

## FROM THE MINISTER OF HEALTH

Mr Colm Gildernew MLA  
Chair, Committee for Health  
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Your Ref:  
Our Ref: CORR 1440-2021  
Date: 22<sup>nd</sup> April 2021

Dear *Colm,*

### **DAMAGES (RETURN ON INVESTMENT) BILL**

Further to the request for contributions on the 26 March 2021 the Department of Health wishes to submit the following evidence for consideration.

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?
- The framework for setting the discount rate and subsequent compensation levels is a matter for the Department of Justice to formulate with consideration to ensuring plaintiffs are suitably compensated. Any framework should adhere to the principles of reimbursement to maintain compensation at near 100% levels. The Department understands that in doing so a claimant is properly compensated in accordance with the legal principle set out in *Wells v Wells*, i.e. that there should be full compensation for losses but no more and no less.
2. Has the new methodology the potential to veer towards over compensation and if so how can this be rectified?
  - The methodology chosen by The Department of Justice must adhere to the principle of fair compensation ensuring full compensation for losses but no more and no less.
  - One safeguard against overcompensating would be to ensure cases are settled by means of a Periodical Payment Order with as many Heads of Claim as possible being paid on

an annual basis thus reducing the need for a lump sum payment calculated using multipliers and discount rates.

3. Has the new methodology the potential to veer towards under compensation and if so how can this be rectified?
  - The methodology chosen by The Department of Justice must adhere to the principle of fair compensation ensuring full compensation for losses but no more and no less.
  - One safeguard against under compensation would be to ensure cases are settled by means of a Periodical Payment Order with as many Heads of Claim as possible being paid on an annual basis thus reducing the need for a lump sum payment calculated using multipliers and discount rates.
4. Does the new statutory methodology reflect how a claimant would be advised to invest their award?
  - Application of claimant investment advice is out with the Department's scope.
  - The Department of Health would encourage the use of PPO's would negate the need to consider the investment advice due to the annualised payment of large values made by the Trust.
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?
  - Application of claimant investment returns is out with the Department's scope.
  - The Department of Health would encourage the use of PPO's would negate the need to consider the investment advice due to the annualised payment of large values made by the Trust.

Bearing in mind my department's position, I wish to conclude by restating my continuing concerns about the potential impact of a sharp reduction to the PIDR in relation to health and social care provision in Northern Ireland. I am supportive of the need to strive to honour the '100% rule' of fair compensation to the claimant underpinning the Wells v Wells judgement. I recognise that other jurisdictions have adopted revised legal frameworks which set the PIDR with reference to an investment strategy with a higher expected return and not solely reliant on ILG investments; I accept that this position is reasonable.

However, it is important to note that any decision to significantly reduce the current PIDR as part of the revised legal framework will likely have substantial implications in terms of costs of settlement, subscription costs for healthcare professionals and a potential knock-on effect on the stability of the health and social care workforce which has already faced an extremely challenging year due to the impact of Covid-19.

In this context, I am aware that the Justice Minister intends to adjust the rate to -1.75% in May this year and therefore it is likely that the impact of the implementation of this legislation is in fact likely to be to increase the rate from this level, rather than reduce it

from the current level. With that in mind it will be important for this Bill to pass into law as soon as possible in order to minimise these potential impacts on Health. I would therefore ask the Committee to bear in mind the potential impact on health and social care provision in Northern Ireland during its consideration of the proposed amendment to the methodology for calculating the PIDR.

Yours sincerely

**Robin Swann MLA**  
**Minister of Health**