

THE **LAW SOCIETY**
OF NORTHERN IRELAND



Committee for Justice
Call for Evidence on
the Damages (Return on Investment) Bill

**Response of the Law Society of
Northern Ireland**

April 2021

*96 Victoria Street
Belfast BT1 3GN
Tel: 02890 23 1614
Fax: 02890 232606
Email: enquiry@lawsoc-ni.org
Website: www.lawsoc-ni.org*

ABOUT THE LAW SOCIETY

The Law Society of Northern Ireland (the Society) is the professional body for the solicitor profession in Northern Ireland.

The Society represents over 2,800 solicitors working in approximately 480 firms, throughout Northern Ireland, in the public sector and in business. Members of the Society represent private clients, Government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

The Society plays an important role in helping to shape the legal system in Northern Ireland.

April 2021

RESPONSE

The Law Society welcomes the opportunity to offer written submissions on the Damages (Return on investment) Bill.

To fully compensate a Plaintiff, a court must take into account the discount rate which applies to the compensation awarded to the Plaintiff. The current rate of 2.5% was set in 2001 and the Society previously voiced concerns that this rate should have been adjusted before now. Failure to do so has been disadvantageous to Plaintiffs.

The Society takes the view that in setting the personal injury discount rate the overarching objective should be to ensure that the Plaintiff receives full compensation in real terms. The outcome should also be fair to the Defendant in not requiring him to over compensate the Plaintiff.

The Society responded to the Department's Consultation conducted in the summer of 2020 and suggested the following hybrid model –

“The LSNI suggest that a Northern Ireland model might be moulded by blending elements of the English and Scottish models. A mathematical exercise carried out by the Government Actuary (having fully consulted with all interested parties) with the Minister of Justice having an overriding discretion to approve or vary the rate (again only after having consulted on any proposed variation away from the rate proposed by the Government Actuary).

Such a model should be subject to the following caveats:

- (1) The power for the rate to be set in the absence of a sitting Assembly; and*
- (2) The courts retaining a discretion to take a different rate of return into account if any party in the proceedings shows that it is more appropriate in the case in question.*

The Department has opted to follow the Scottish model on the basis that it is clear and transparent and once parameters are set to determine the rate, setting the actual rate becomes an actuarial exercise.

The Society supports the Department's intention to give effect to the principle of 100% compensation.

The Justice Committee have identified six issues they propose to consider whilst scrutinising the Bill. Although the views of the Society are sought on these six issues, the methodology to calculate a discount rate so as not to under or over compensate a Plaintiff, and the means by which this may be corrected are not within the Society's area of expertise. Likewise, the period of investment to be adopted so as to accord with the typical investment period.

The Society takes the view that the method of setting the discount rate should be such that the process is free from political influence or interference. This will provide certainty for insurers as well as for Plaintiffs.

The Society suggests that the Justice Committee may wish to consider whether an extension of the legislation governing Periodical Payments Orders would be appropriate in high value catastrophic injury cases. This may result in a degree of greater certainty and fairness to both Plaintiffs and compensators. Periodical payments obviate reliance on estimates of future returns and inflation rates. This approach would rely upon the Court and Plaintiff being satisfied that the Defendant is in a position to meet the payments going forward. Periodical payments can help mitigate the risk of over or under-compensation.

The Society would want the Committee to be aware that the failure to update the statutory discount rate in Northern Ireland has led to a number of high value cases having to be delayed.

It is hoped by the Society that by setting an interim rate of -1.75% on 31 May 2021, the Department will move to a permanent rate more quickly.

Overall the Law Society favours an approach which offers a Plaintiff a 'full compensation' position without under or over compensation.

CONCLUSION

The Society welcomes the opportunity to submit a response in respect of the call for evidence on the Damages (Return on Investment) Bill.

We trust our contribution is constructive and we are happy to meet with officials to discuss any of the issues raised in our response.