Damages (Return on Investment) Bill – Call For Evidence – NFU Mutual Insurance Society Limited Response

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?**

NFUM do not believe that the new statutory methodology is the most appropriate to achieve the desired result. The assumptions made in adopting the "Wells -v- Wells" approach do not reflect the accurate investment appetite of plaintiffs in receipt of a significant compensation award, It assumes sole investment in Index Linked Government Securities (ILGS) which is not borne out in reality and would not be advised or recommended by any financial investment expert.

As per our response to the earlier consultation, NFU Mutual is fully committed to the "100% rule" of compensation and welcomes a revision to the personal injury discount rate which best achieves this overriding principle.

It is vital that the methodology of determining the personal injury discount rate is transparent and truly reflects the reality of investment decisions of claimants considered "low risk" investors which factors in sufficient caution to ensure the "100% rule" of compensation is consistently attained whilst also addressing the interests of justice for all parties.

In our response to the DoJ consultation, NFU Mutual supported adoption of the E&W model as we consider this is the framework which best achieves the 100% compensation rule and delivers a fair and reasonable outcome to plaintiffs and defendants alike.

The methodology from the Scottish legislation adjusts a further margin below the recommendation from the Government Actuary's Department for the PIDR by a further 0.5% and therefore, will inevitably lead to compensation in excess of 100%.

This level of overcompensation shall on balance be of significant financial terms given the nature of the damages awards which include an element of future loss compensations impacted by the application of the PIDR.

Arguably the level of overcompensation shall be disproportionate to the level of "risk" of not achieving 100% compensation the additional 0.5% reduction applied in the Scottish model seeks to achieve.

The notional investment portfolio adopted by the bill is over-cautious and so will lead to a lower PIDR which will exceed the 100% compensation target.

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

   If a cautious portfolio is appropriate to meet the needs of the hypothetical investor, then this additional 0.5% adjustment downwards by definition goes beyond the needs of the plaintiff and therefore beyond the 100% compensation principle. If this aspect is removed we consider it will rectify some of the risk of over compensation.

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

   We do not consider there is a risk of under compensation.

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

   Yes, it is recognised that a properly advised claimant would invest their award in a low risk portfolio however there is little research on how these are invested and how these investments perform.

   We consider research on this, via consultation with claimant solicitors, could provide insight which can be used in future to assist in the methodology for setting the PIDR to enable this to reflect the actual investment choices and outcomes and thus lead to a PIDR which satisfies the 100% requirement.

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?**

Yes, by using a longer investment period we consider a more realistic model will be reached as this is more reflective of how seriously injured people invest their settlements.

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?**

The Government Actuary is well place to determine the appropriate discount rate considering the investment return data and following consultation with an appointed expert panel. However, there must be political accountability for the decision to set a rate.

We therefore consider that in consultation with an expert group, made up of the Government Actuary, economists, financial advisers and representatives for claimants and compensators, the Justice Minister should have the power to exercise their judgement over the final decision on the PIDR taking into consideration investment portfolio and any adjustments.

April 2021

Send to Damagesbill@niassembly.gov.uk