



BANK OF ENGLAND
**PRUDENTIAL REGULATION
AUTHORITY**

The Committee Clerk
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Damages (Return on Investment) Bill

Sam Woods

Deputy Governor, Prudential Regulation
CEO, Prudential Regulation Authority T

15th April 2021

Dear Ms Darrah

Thank you for sharing the Northern Ireland Assembly's Call for Evidence.

Given the PRA's statutory responsibilities, we do not intend formally to respond to the consultation. However, we welcome the aim of the proposals to bring clarity to the process for determining the personal injury discount rate, and we offer some thoughts in a short Annex to this letter in case they are helpful to the Committee for Justice as it considers the bill.

Best regards

Sam Woods
Deputy Governor and CEO, Prudential Regulation Authority

Annex 1

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?

In the PRA view, the proposed methodology and parameters strike a fair balance between claimants and defendants or their insurers. We note that the Bill includes the 0.5% prudent margin adopted in Scotland but left to the discretion of the expert panel in E&W. We regard it as reasonable either to include this margin (slightly favouring the claimants) or to omit it (for strict balance), and do not offer a PRA preference as this is essentially a political decision for the N. Ireland assembly.

We point out that the current parameters may become inappropriate over time. However, at each review, we expect the Government Actuary to discuss this when reporting. If the report determines that a fair new rate cannot be achieved under the existing parameters, the Northern Ireland assembly should be willing to pass secondary legislation (regulations) to change them.

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

At present, no, it will not veer towards over-compensation in general, other than marginally through the 0.5% prudent margin. It will over-compensate any claimants who successfully follow a risky investment strategy, but this cannot be rectified without under-compensating those who do not. Over time, investment or other changes may cause the current parameters to veer towards over-compensation. Again, if this happens, the Northern Ireland assembly should be willing to pass secondary legislation to change them.

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

At present, no, it will not veer towards under-compensation in general, especially in the light of the 0.5% prudent margin. It will under-compensate any claimants who follow an extremely conservative investment strategy, but this cannot be rectified without over-compensating those who do not. To do this would disproportionately increase liability awards and hence insurance premiums. Over time, the current parameters could veer towards under-compensation and if this happens, the Northern Ireland assembly should be willing to pass secondary legislation to change them.

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

At current investment conditions, the proposed methodology would represent a suitably cautious, though not over-cautious, investment strategy for the bulk of claimants. No two claimants are the same, however; for some, alternative strategies may be preferable because of their personal circumstances.

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 figure of 43 years was adjudged by the Government Actuary in an impartial review to be appropriate given the typical age profile of claimants. The likely effect is therefore to represent the typical investment term. To use 30 years instead would currently be beneficial to victims, since 30-year returns are currently marginally lower, though only if the difference were sufficient to reduce the rounded rate by one 0.25% step. If so, this would move a little away from the balance between claimants and defendants. We therefore agree with the proposed approach, noting again that the investment period may need to be changed over time.

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?

We regard this as essentially a political decision and do not offer a view.