

Via email only

Ms Joanne Bunting MLA
Chairperson
Committee for Justice
Room 345, Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

13 May 2024

Re: Personal Injury Discount Rate

Dear Chairperson

I am writing to you in relation to regulations on the setting of the Personal Injury Discount Rate (PIDR) and to outline our concern that some of the proposed changes could have on the cost of clinical negligence claims both to Health and Social Care and to healthcare professionals.

Medical Protection Society (MPS) is the world's leading protection organisation for doctors, dentists and healthcare professionals. We are a not-for-profit, mutual organisation, with more than 300,000 members around the world, including a large proportion of the doctors and dentists in Northern Ireland. Changes to how the PIDR is set are particularly relevant to us as membership to MPS provides members with the right to request indemnity for claims arising from professional practice.

MPS engages with legislation regarding the PIDR across all parts of the UK and the Republic of Ireland, and I was pleased to be able to provide oral evidence to your Committee in June 2021 on the Damages (Return on Investment) Bill.

Our reason for writing to the Committee again now is that we are concerned that the proposed regulations include two changes which, all other things being equal, would have the effect of increasing the cost of clinical negligence claims. These are:

- Moving from Retail Prices Index (RPI) to Average Weekly Earnings (AWE) to calculate the effect of inflation.
- Increasing the adjustment for taxation and investment advice and management from 0.75% to 1.25%. We agree with the Association of British Insurers that it is likely there is already some over-prudence in the extent to which the discount rates in Northern Ireland currently account for investment expenses and taxation and therefore that further increasing the standard adjustments from 0.75% to 1.25% could therefore lead to over-compensation and create significant additional costs.

These two changes create additional over-prudence in the PIDR that is only amplified by the proposed retention of the Further Margin of 0.5% which further increases the risk of over-compensation.

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As I am sure you are aware, changes to the PIDR can have a profound impact on the cost of clinical negligence claims. A lower PIDR means a lower real rate of return is expected on how lump sum compensation payments are invested and therefore a higher initial lump sum is required to meet a claimant's needs. Our view is that the above proposed changes would have a lowering effect on the rate of the PIDR therefore increasing the cost of clinical negligence claims.

These changes would be made at a time when the cost of clinical negligence claims against Health and Social Care is already very high and rising. Latest statistics show that during 2022/23, £41.7 million was paid on clinical / social care negligence cases in Northern Ireland, with almost three quarters of this cost in 2022/23 paid in damages (74.6%, £31.1 m). This has increased by 42.9% over the past five years (from £29.2 million in 2018/19 to £41.7 million in 2022/23).

Legislative changes that would lower the PIDR also have a significant impact on healthcare professionals. MPS has an obligation - as a responsible and well-managed defence organisation - to reflect the cost of clinical negligence in membership subscription fees so we can be in a position to defend members' interests long into the future. You may be aware that this month the Department of Health announced that it was setting aside £5m to help GP practices meet the cost of indemnifying themselves against claims.

Our aim in writing to the Committee is to caution against these proposed changes. The ultimate outcome we seek is that the PIDR is set in a way that provides patients with appropriate levels of compensation without providing over-compensation, and we urge the Committee to consider the case for not advancing these two changes to how the rate is set.

Yours sincerely,

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