Department of Justice
An Roinn Dlí agus Cirt
Männystrie O tha Laa
www.justice-ni.gov.uk

Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
[redacted]

FROM: DAVID GRAHAM

DATE: 03 MAY 2024

TO: CAROLINE PERRY

SL1: PERSONAL INJURY DISCOUNT RATE – REQUEST FOR FURTHER BRIEFING

<u>**Summary**</u>

Business Area:	Civil Justice and Judicial Policy Division
Issue:	The Damages (Process for Setting Rate of Return) Regulations (Northern Ireland) 2024
Restrictions:	None.
Action Required:	The Department invites the Committee to consider this further written briefing, as requested by the Committee at its meeting on 25 April.
Officials Attending:	Andrew Dawson – Head, Civil Justice and Judicial Policy Jane Maguire - Civil Justice and Judicial Policy Martin Moore - Civil Justice and Judicial Policy

BACKGROUND

When a person suffers personal injuries caused by the negligence of another, they are entitled to be fully compensated by the negligent party - but no more and no less - for any future financial losses and expenses arising from the injury (e.g. loss of future earnings, care costs, etc.). This is the legal principle of 100% compensation.

Where the claimant suffers very serious, perhaps life-changing, injuries, these losses and expenses will run for many years into the future and the claimant may be completely dependent on their damages award to meet their needs.

Damages for future financial losses and expenses are usually paid as a lump sum that can be invested by the claimant and therefore earn a return pending its expenditure.

The discount rate gives effect to the 100% compensation rule by making a percentage adjustment to a lump sum damages award to take account of the expected return on investment.

As the purpose of the discount rate is to give effect to the legal principle of 100% compensation, the impact for defendants and compensators <u>cannot be taken into account</u> when deciding how the rate is set.

WORKED EXAMPLES

A positive discount rate means that returns on investment are expected in the long term to increase the value of the lump sum, and therefore the lump sum is reduced. So, for example, if a claimant is awarded **£1m** damages for future financial losses or expenses, and the discount rate is **1.5%**, then the total amount to be paid by the compensator (usually an insurance company) on behalf of the defendant would be £**1m - 1.5% = £0.985m.**

A negative discount rate means that returns on investment are expected in the long term to be insufficient to overcome the effects of inflation, and therefore the lump sum is increased. So, for example, if a claimant is awarded **£1m** damages for future financial losses or expenses, and the discount rate is **-1.5%**, then the total amount to be paid by the compensator (usually an insurance company) on behalf of the defendant would be **£1m + 1.5% = £1.015m.**

HOW IS THE DISCOUNT RATE SET?

The discount rate is set by the Government Actuary according to the methodology set out in the legislation the (Damages Act 1996 as amended by the Damages (Return on Investment) Act (NI) 2022), which assumes investment of the lump sum in a low-risk portfolio over a period of 43 years.

The discount rate is currently **-1.5%** as set in March 2022. The main reason the rate in Northern Ireland is presently lower than the current rates in the other UK jurisdictions is that it was set at a different time – the rates in the other jurisdictions were set in 2019. There were also some small differences in the methodology used.

The Government Actuary **must** start a new review of the Northern Ireland rate on **1 July 2024**.

IMPLICATIONS OF THE PROPOSED REGULATIONS

The Regulations the Department is proposing, if affirmed by the Assembly, will make some modifications to the statutory methodology used by the Government Actuary to set the rate, to ensure the way in which it is set continues to give effect to the 100% compensation rule.

In particular, the proposed changes to the methodology for setting the rate will change (i) how the effect of inflation is taken into account and (ii) the allowance for tax and investment advice and management expenses. The changes are proposed following consultation with stakeholders and professional advice from the Government Actuary's Department. All other aspects of the statutory methodology will remain the same.

If the proposed regulations are not approved, then the Government Actuary will review the rate under the current statutory parameters. However, this would not give effect to the 100% compensation rule, as some of the parameters would not reflect currently projected economic conditions.

The new rate will not be known until the Government Actuary completes her review (which must be completed within 90 days of starting). The rate could increase, decrease, or remain the same.

IMPACT OF ANY FUTURE CHANGES IN THE RATE ON INSURANCE COSTS

Any change in the rate will affect the amount of damages payable to claimants and therefore the amount payable by insurers on behalf of defendants.

While this means that any future change in the rate could have an impact either way on the cost of insurance, the Department is not in a position to say the extent to which this may be the case, as there are many factors that affect the cost of insurance.

Department of Justice
An Roinn Dlí agus Cirt
Männystrie O tha Laa
www.justice-ni.gov.uk

In any event, as noted above, **the impact for defendants and insurers is not a factor that can be taken into account in how the rate is set because any impact flows from the liability of the defendant to pay the claimant 100% compensation.**

I trust the committee find this helpful.

[redacted]

DAVID GRAHAM
DALO