Personal Injury Discount Rate

Scottish Government, Justice Directorate

Department for Justice, Northern Ireland

July 2023

Introduction

APIL welcomes the opportunity to respond to this stakeholder consultation examining the range of factors to be taken into account when setting the personal injury discount rate (PIDR). We have a long history of involvement in this this work, campaigning to ensure that the rate is set at the right level to ensure catastrophically injured pursuers receive full compensation.

We recently responded to the Ministry of Justice call for evidence, exploring the option of a dual and multiple rates. Our full response to that consultation can be found here.

The setting of the personal injury discount rate is an emotive one. Whilst insurers will argue about the financial impact any change will have on their shareholders and bottom-line, the setting of the rate has the most significant impact on the injured individual. These are people whose lives have been devastated by negligence. PI awards are compensation, they are not a windfall. Cases where a discount rate is applied will often involve an individual who has suffered a catastrophic injury making them reliant on any award. In the cases with future losses for more moderate injuries that will usually be for shorter duration and/or lower value losses so fine adjustments to the PIDR will not make much difference to the award.

As a general aim when making an award of damages the court is to put the injured party in the same position as they would have been in if the delict had not occurred. Damages in delict therefore aim to restore the pursuer to their pre-incident position. If at any time their compensation in the future does not cover their full losses due to investment risk then we have failed in our ability to give that person the legal compensation they should be afforded under this basic principle of law. If the award in our legal system was a punitive award or a fine imposed where there was a windfall then the balance may shift back to concerns of over compensation but it must not be forgotten when considering the evidence that awards are merely compensation. However, we note that where there is a risk of overcompensation the Court of Appeal in England and Wales in *Swift v Carpenter*[1] said “The principles of law by which this Court are bound can be summarised in two propositions: firstly, that a claimant injured by the fault of another is entitled to fair and reasonable, but not excessive compensation. Secondly, as a corollary of that fundamental principle, in relation to the head of claim with which we are concerned, the award of damages should seek so far as possible to avoid a ‘windfall’ to a claimant, or more realistically to his or her estate … if it were to prove impossible here to award a claimant full compensation without a degree of overcompensation, then it seems to me likely that the principle of fair and reasonable compensation for injury would be thought to take precedence.”

[1] *Swift v Carpenter*[1] [2020] EWCA Civ 1295 at paragraph 205

With that in mind we must stress the importance of ensuring there is minimal investment risk for pursuers and set out our specific comments/responses below.

1. **Adjustment factors**

Make-up of the notional portfolio

It is crucial that the notional portfolio is reviewed. The reform to the way in which the PIDR is calculated exposed pursuers to both investment and inflation risk. Inflation is much talked about today, but historically it was also something that concerned the court in Wells v Wells[2]. One of the reasons for favouring index-linked gilts (ILGs) was as a means of addressing that. The approach under the Wells v Wells regime was that ILGs was only ever intended to be a proxy for an inflation proof low risk investment. It was not intended to reflect or influence how a pursuer invested their award. They were meant to be a simple means for the courts to calculate the losses that would remove the investment and inflation risk.

We remain deeply concerned about the large cohort of individuals that are likely to be under compensated due to the changes to the calculation. There is too much risk assumed in the current notional portfolio. Having moved away from the framework in Wells v Wells to consider how individuals invest is in our view flawed in principle, unsupported by credible evidence and too complex. Too much emphasis was place during the passage of the Bill's on the issue of over compensation. There was no evidence provided, as far as we are aware, on that being the case, nor on how most claimants invest over the long term.

The current notional portfolio in our view carries far too much risk. In 2015 the MoJ commissioned a report[3] on the discount rate from several experts in this field. They agreed that "Only ILGS/risk free investments can provide any certainty of returns relative to RPI, and a predictable level of return relative to other forms of inflation. They are an optimal fit to the view of the Courts that there can be 'no question about the availability of the money when the investor requires repayment of capital and there being no question of loss due to inflation'[4]. The majority view of that panel was that any truly low risk portfolio would require at least 75% of investments in index-linked gilts, with the remaining 25% invested between UK corporate bonds and global government inflation linked bonds and global equities[5]. We endorse this expert view.

Those affected by catastrophic injury must cope with substantial financial uncertainty for the rest of their lives. These are individuals that will be most dependent on their compensation. They are not ordinary investors; in fact, they are regularly inexperienced investors not wanting to take risks with their money. They are often vulnerable and concerned about their ability to provide for themselves and their family. They usually have little or no other financial security to support them and only invest because they must, to meet their lifelong needs.

As well as considering how pursuers approach investment after injury it is important to put at the centre of these considerations the principle of full compensation. In Wells, Lord Steyn referred to the '100% principle'. A principle to ensure that compensation does what it is required to do by law: return the injured person to the position that they would have been in, but for the wrong committed against them (Lord Blackburn in *Livingstone v Rawyards Coal*,

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[2] [2008] EWHC919
[3] The Discount Rate, a report for the Ministry of Justice. Prepared by Paul Cox, Richard Cropper, Ian Gunn and John Pollock. (7 October 2015)
[4] Ibid page 56, paragraph 6.6
[5] Ibid page 103 D.6

1880). The debates in the UK about the setting of the rate focused heavily on overcompensating individuals as we have said, however, the modelling from the Government Actuary Department for England and Wales[6] shows the prevalence of undercompensating. In the absence of the publication of any modelling for Scotland and Northern Ireland we assume a similar level of under compensation, namely that one third of all claimants are under compensated[7]. This is far too high and the adjustment ought to be higher in order to reduce the level of under compensation.

Our member's experience is also that most will leave far in excess of the 10% that is assumed in the notional portfolio in the bank or building society. The notional portfolio assumes 10% cash or equivalents. In addition to that, pursuers often need to spend significant sums of money following the settlement of their claim, eg adapting their home, or purchasing aids and equipment, to make daily living easier. Advice is often given to hold a number of years anticipated expenditure in cash to allow immediate, and unexpected matters to be dealt with. This can mean many of the investments are delayed for several years because of this.

Assumed period of investment

We do not understand the rationale behind the different investment periods in the U.K. From discussion with our members the higher rate in NI (43 years) feels too high particularly when you are focusing on a cohort of individuals many of whom have impaired life expectancy and some of whom may already be over 40. Our member's view is that 30 years seems a more reasonable average projection period based on their experience.

We have not been able to find any data on which this 43 year assumption is made. We have therefore made a freedom of information request to the GAD requesting any materials, information and/ or associated narrative provided to the Government Actuary/ GAD which informed their belief that it was appropriate to assume that a representative pursuer has an investment period of 43 years. And, analysis undertaken by the Government Actuary/ GAD of the above materials and/ or information.

It maybe however, that we do not get a response in the timeframe required to respond to this consultation. We would encourage scrutiny of the evidence on this point.

Cost of taxation and investment advice

It is also crucial that the assumptions made in relation to tax and fees are reviewed as part of this work, if the government is committed to the principle of full and fair compensation. It is vital that these underlying assumptions are correct in order to ensure that the discount rate is set at the right level to avoid under compensation. We would recommend that the GAD's work from 2018 is revisited[8].

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[6] Government Actuary's Department, Setting the Personal Injury Discount Rate. Government Actuary's advice to the Lord Chancellor. 25 June 2019

[7] Even with the Lord Chancellor's 0.5% adjustment to reduce the projected level of under compensation, one third of claimants were expected to be unable to 100% meet their financial losses. See statement by the Rt Hon David Gauke MP, Lord Chancellor, 15 July 2019

[8] Government Actuary's Department, report for Scottish Government 2018

Changes to tax allowances introduced in 2023 for those in Northern Ireland will impact the assumptions made, see appendix A. A basic rate income tax paying claimant will be paying a greater level of tax in future years.

The additional tax bands in Scotland also require extra consideration due to their complexities. Appendix B shows that this along with the proposed tax changes, will both impact a tax paying pursuer in the future.

When compiling APIL's response to the call for evidence from the Economy, Energy and Fair Work Committee[9] we raised concerns about allowance for the impact of taxation and costs of investment advice being too low. We consulted three independent financial advisors in this field who gave a range of fees between 1.5% and 2.5%.

The charges proposed in the 2019 GAD report[10] do not reflect how a pursuer would invest in practice and are significantly lower than those experienced in practice. The Government Actuary Department considered different annual investment management costs ranging from 0.25 per cent to 0.5 per cent[11]. This is based on the client investing statically in low-cost passive funds and includes any VAT payable. Other associated costs of 0.10 – 0.20% are included for transaction and platform fees, however the GAD note that the view of respondents from the initial call for evidence suggested that platform fees alone would be closer to the 0.25% mark. With all of this in mind, GAD's analysis indicates that tax and expenses could be anywhere in the region of 0.60% - 1.70%. They settled on a deduction of 0.75% as they believed it was consistent with the returns analysis they modelled, based on the assumption that there is no active management involved.

Even by the GADs own analysis for expenses, this is a significantly low deduction and does not reflect the expenses associated with a pursuer's investment portfolio in practice. GADs reasoning for using a low level for expenses was that using higher rate would not accurately reflect the return assumptions which are based on a static asset allocation and investment into passive funds. Again, this is not a reflection of how investment portfolios for pursuers are established in practice.

Even if the client had a portfolio which was constructed using passive investment funds, the pursuer would require an investment professional (whether it be a financial adviser or a discretionary fund manager) to set the asset allocation and regularly adjust the portfolio so it does not fall out of kilter with the risk mandate or asset allocation. This would be required even if we were to consider a static asset allocation for the entire investment term as the allocation would naturally move based on market performance. In addition, the pursuers injury related needs are rarely static and adjustments to the portfolio will frequently be required to reflect a change in those needs and the related outgoings.

That said, it is unlikely that a pursuer would hold a portfolio constructed using only passive funds. Whilst passive funds can offer a cheap way to track an investment market, which can add value in times of market growth, there is little protection in a declining market, as the same funds would track the negative performance too. Whilst it would not be a pursuer's intention to achieve a high rate of growth, any individual making an investment would need to achieve a positive return to ensure their damages last their life time in line with the assumptions

[9] Call for evidence: Damages (Return on Investment) Bill – a response from the Association of Personal Injury Lawyers (APIL) – April 2021
[10] Ministry of Justice, Personal Injury discount rate: Exploring the option of a dual/multiple rate; call for evidence – page 2
[11] Ibid para 4.15 page 36

underlying the PIDR. The best way in which to do so is to restrict losses in times of market decline and take advantage of opportunities in times of market growth. To do this they would need to invest in an actively managed portfolio.

To look at what is happening in practice the Forum Of Complex Injury Solicitors obtained data as part of the 2019 MoJ call for evidence on the discount rate, which clearly demonstrated that an over whelming majority, some 64.3%, of the 389 portfolios, incurred investment charges of 1.5% and above (including 6.4% in excess of 2%). In comparison, only a small minority of claimants (4.9%) incurred charges below 1% and only 35.7% of the portfolios incurred charges of 1.5% and below. Furthermore, when looking solely at the 169 portfolios whose value fell below £1.5m, 74% of portfolios incurred charges between 1.5% and 2.0%, only 12.5% incurred lower charges and 13.6% incurred charges of 2% or more[12].

Likewise, in Irwin Mitchell response to the MOJ's 2023 call for evidence, they provided evidence from their Court of Protection team who had analysed investment charges over 953 portfolios collected from 22 providers. This analysis showed average fees of 1.51%. This is a close match to the above 2019 FOCIS data set.

We are also aware that Digby Brown have collated evidence relating to 22 portfolios, arising from Scottish cases, which have been established over the last 4 years. The average fees in respect of investment advice and management charges were 1.76%. In 20 of the cases, 90.9% of the cohort, the charges were over 1.6%. All of the cases involve active management as the needs of each individual client vary, and detailed discussions about risk, and required return are vitally important.

Taken together they are the best body of evidence of the actual investment charges faced by claimants and demonstrate that the current adjustment of 0.75% is around half of what is required before you even factor in the necessary further adjustment for the incidence of tax.

The principal aim of any reasonable financial advice to an injured pursuer is not to generate a greater return but to provide a structured financial plan to limit loss or recover loss where there has been an impact on their investment.

The data clearly suggests that when taken together, the adjustment for the cost of taxation and investment advice ought to be at least 2% and not 0.75%.

Additional margin

Many of the arguments during the passage of the Acts focused around the concern from the governments and insurers that individuals might be over compensated despite there being no credible evidence of that. We are concerned that a significant proportion individuals will be under compensated, and there is evidence of that in the GAD report[13]. Unlike the position for insurers, there are no swings and roundabouts for an individual. If they are one of the individual's that 'loses out' based on the adjustments, the financial impact can be significant and they cannot turn to other claimants who might have been luckier with their investments, nor the families of those who died earlier than expected. 'Losing out' means greater risk

[12] Page 19 FOCIS' response to the MoJ call for evidence on the discount rate 2019. See also Appendix 1 FOCIS data in relation to investment charges.

[13] Government Actuary's Department, Setting the Personal Injury Discount Rate. Government Actuary's advice to the Lord Chancellor. 25 June 2019

must be taken with their money, investing it in riskier assets, placing an additional burden on them.

The Government Actuary acknowledges that they are not currently factoring in the additional mortality risk. All investors and their clients, factor into their financial planning the probability that the individual will outlive their projected life expectancy[14] and then invest according. The mortality data is readily available from the Office of National Statistics. If that is not modelled into the calculations and adjusted for then, we would suggest that there should be an additional contingency applied. This should be looked at.

In England and Wales even with the Lord Chancellor's 0.5% adjustment to reduce the projected level of under compensation, one third of claimants were expected to be unable to 100% meet their financial losses. The financial instability and high inflation that have prevailed since then have in reality, greatly amplified that expected level of under compensation. In absence of the publication of any analysis in Scotland and Northern Ireland to the contrary we assume that this is the case UK wide.

The impact on individual claimants of not getting this right is substantial and ultimately could result it too little money to last their lifetime, shifting the responsibility to the state and failing to meet the fundamental principle of restitution.

Inflation

It is worth noting that the Retail Price Index (RPI) has always been an imperfect measure for the inflation of personal injury damages, primarily because many of the largest aspects of damages are earnings related and others involve items, such as disability related aids and equipment that are not included in the RPI 'basket'.

For personal injury investors who may be awarded damages for their lifetime, inflation creates a 'need' to invest the money rather than a 'desire,' as they must attempt to achieve a return which at least matches inflation simply to preserve the value of their capital.

There is also the added complexity of RPI being dropped as the official national statistic. HM Treasury announced that it would reform RPI by February 2030. RPI will be reformed in line with CPIH (Consumer Price Index including Owners Occupiers' Housing Costs). Since 2010, the annual rate of CPIH inflation has been, on average, one percentage point lower than RPI as currently calculated. The table below published on the actuaries' blog[15] illustrates the issue.

[14] In fact, more than 50% of individuals will outlive the expectation of life (because of the skewed nature of the distribution).
[15] https://actuaries.blog.gov.uk/2021/08/23/measures-of-price-inflation-rpi-cpi-and-cpih/

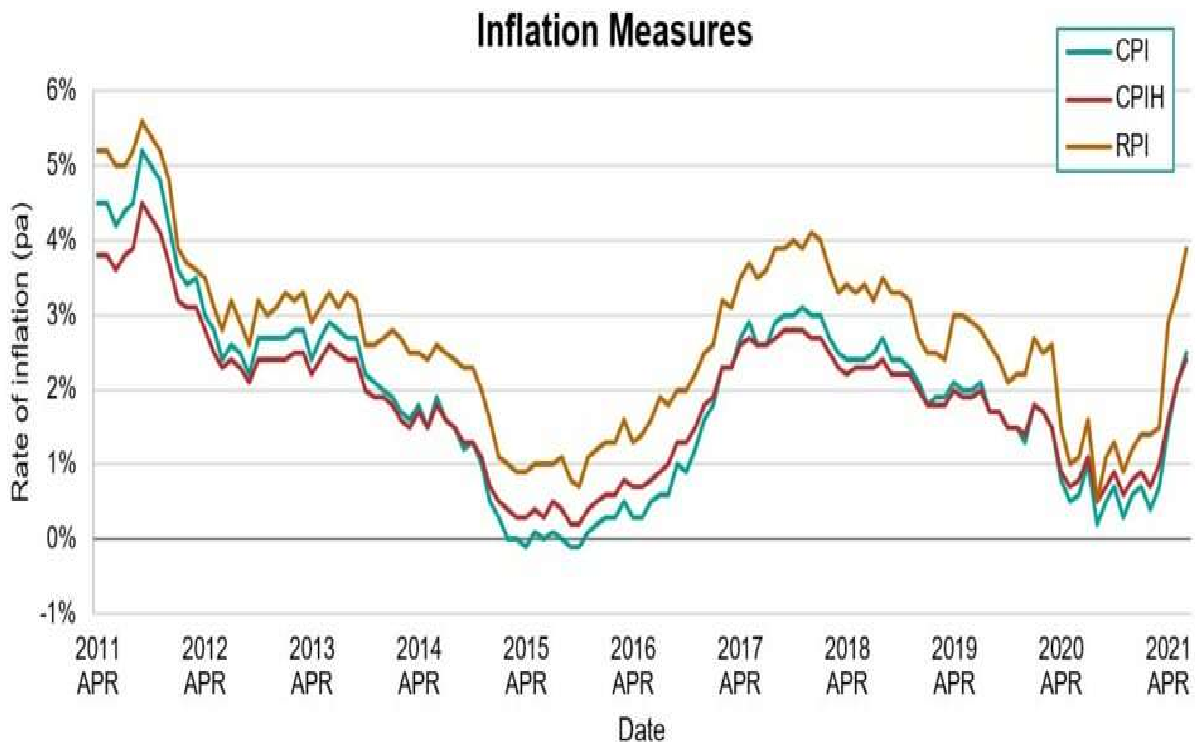

Figure 1, statistics taken from ONS

Figure 1 shows 3 different inflation measures, RPI is consistently higher than both CPI and CPIH but despite expectations that CPIH will be higher than CPI on average, we can see from the past 10 years that this has not consistently been the case[16].

As a result, these proposals are likely to result in a lower rate of inflation.

Inflation operates as a “deduction” from the injured pursuer’s gross rate of return. A lower deduction for inflation will result in a higher personal injury discount rate which will, in turn, reduce the amount of damages paid to severely injured people. If it underestimates the inflation those people then experience in the remainder of their lifetime then their compensation is likely to run out early. It is therefore very important this is set at a fair level for the types of losses they will face.

We agree with the GAD’s recommendation to the Lord Chancellor that CPI (Consumer Price Index) +1% is, in the round, an appropriate inflationary measure for the discount rate as the relevant losses contain a mixture of items many of which are driven by earnings inflation and/or by medical/technological advancements that cause rises in cost well above CPI.

If there is a move to adopt CPIH given the decision on RPI we would recommend that the same adjustment of +1 be adopted.

[16] https://actuaries.blog.gov.uk/2021/08/23/measures-of-price-inflation-rpi-cpi-and-cpih/

2. Consider whether a single or multiple rate should apply and if a multiple rate is preferred which model?

APIL has significant reservations about moving toward a dual/multiple rate system. Our paper to the MoJ in April 2023 sets out in detail why. In summary, it is our view, based on the modelling below, that it has the potential to erode damages and become extremely complex. We would suggest a more detailed consultation with relevant stakeholders be undertaken.

Setting a dual/multiple rate by duration

In the paper produced by Edward Tomlinson [17] for JPIL[18] he examined the impact of a dual/multiple rate. His analysis showed that, based on the figures in the Government Actuary Department report from 2019[19], where ongoing future loss is more than 18 years the claimant will likely recover significantly lower compensation. The report also showed that a claimant with a smaller settlement would be worse off under a dual rate when compared to a single discount rate. This creates an additional burden on this group of claimants to take greater risk with their money to ensure that it lasts for their lifetime.

The analysis assumed the GAD's 2019 example short term rate of CPI-1.75% and a longer-term rate of CPI+1.5% in its calculation as follows and arrived at the following conclusion:

Male Age, with normal LEx	Single PIDR (-0.25%)	Dual PIDR (-1.75% first 15 years 1.5% thereafter)	Percentage Difference
10	£868,900	£503,195	42.1%
20	£735,600	£465,621	36.7%
30	£608,300	£422,452	30.6%
40	£487,600	£373,532	23.4%
50	£373,000	£318,134	14.7%
60	£269,500	£258,943	3.9%
70	£178,100	£179,959	-1.0%

"As can be seen, under a dual discount rate the percentage difference in the value of a claim can be more than 40% and it is only for those aged 70+, with a normal life expectancy, where a dual discount rate may provide a higher settlement. Under the two PIDRs I have compared, the crossover point is a term of 18 years. Where the ongoing future loss is longer than 18 years, a claimant will receive a smaller settlement under a dual PIDR.

Despite the percentage chance of a claimant being able to meet 100% of need being quoted as similar (66% chance for single PIDR & 70% chance for dual PIDR) there is a **40% difference between the two settlement values**. This is one of the challenges of moving to a dual discount rate. If a claimant has a 66% chance of being able to meet all their need

[17] Edward Tomlinson is a Chartered Financial Planner at IM Asset Management Limited. Edward acts as an expert witness on the structure of claimant's settlements and is predominantly instructed by claimant solicitors. Edward also provides financial advice to claimants whose claims have settled. He has very recently been appointed by the MoJ to the 2023 expert panel to advise the Lord Chancellor.

[18] Journal of Personal Injury Law 2022, Issue 3 – Dual Discount Rate, by Edward Tomlinson

[19] Government Actuary's Department, Setting the Personal Injury Discount Rate. Government Actuary's advice to the Lord Chancellor. 25 June 2019

under a single discount rate, how do they have a 70% chance of being able to meet all their need under a dual discount rate with a 40% smaller settlement?

Knowing that both the single and dual PIDR are both "risk rates" then the claimant, under either discount rate arrangement, is expected to invest their compensation within a risk laden portfolio to be able to meet their ongoing need. If a claimant has a smaller settlement under a dual PIDR, when compared to a single PIDR, they will need to achieve a higher rate of investment return, when compared to a settlement under a single PIDR, to be able to meet their need. To achieve a higher rate of return the claimant under the dual PIDR must take more risk and therefore it is counterintuitive to suggest this claimant has the same or higher chance of meeting need."[20]

We are not aware of any similar modelling for Scotland or Northern Ireland, but the broad principles are the same. The GAD report[21] suggests if a dual/multiple rate is to be adopted, there should be a higher discount rate for those with longer life expectancy over which their losses are expected to continue. This of course puts additional pressure on this group of pursuers. It requires them to take additional risks with their damages to ensure their compensation meets their needs for their lifetime. A longer life expectancy should not create an expectation of taking more risk nor that a pursuer would achieve higher returns if he did so. The longer period for which they are having to plan exposes them to greater levels of risk of material departures from other assumptions on which the discount rate is set (e.g. tax, inflation, longevity etc). All this would do is create financial benefits for defendants, many of whom are insured and hence much better placed to take and spread long-term risks.

There is also the issue of short-term investment rates being more volatile, and thus there is a significant risk that in a duration-based system those in the short-term rate cohort will have to avoid investing in higher risk investments. Consequently, the assumed portfolio to meet their short-term needs will have to be heavily based on retaining funds in cash. This volatility would be largely driven by inflation, rather than investment return. So, the short-term rate would need to be reviewed every year. We understand that to have been the position adopted in Ontario and in most years that has required an adjustment to their short-term rate[22].

APIL suggests that if a dual rate were to be adopted based on duration, the minimum and maximum points should be 10 and 25 years. In our view at the absolute minimum a short-term rate ought not to be less than 10 years as severe economic cycles can take 8 years or more to resolve. However, it would probably be more favourable to adopt the position from the GAD[23] report in para 3.18 and Figure 5[24] which suggests that "broadly speaking, the returns settle after around 15 to 25 years".

It is clear that one small change to address a perceived problem for one group of pursuers, impacts on another. Whilst the current single rate is not perfect, if set at an appropriate level, it provides the most stability for pursuers' and minimises the risk.

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[20] Page 174 Journal of Personal Injury Law, issue 3.
[21] Government Actuary's Department, Setting the Personal Injury Discount Rate. Government Actuary's advice to the Lord Chancellor. 25 June 2019
[22] Future pecuniary damage awards | Ontario.ca The table shows an adjustment in 15 out of 23 years.
[23] Ibid
[24] Ibid pages 25 and 26

Setting a dual/multiple rate based on heads of loss

If a dual rate system is to be introduced, APIL would favour the rate based on heads of loss rather than a rate based on duration. However, even then we would favour limiting the change to one head of loss: care and case management, this would align with the approach adopted in the vast majority of Periodical Payment Orders in England and Wales. In our members' experience in pursuing claims on behalf of those with injuries of the upmost severity, care and case management costs account for the most significant proportion of the claim. These pursuers will face regular outgoings to pay for carers, case managers and therapists for their whole life. Those costs are subject to earnings growth and these can be expected to rise at a rate over and above other losses.

Complexity of a dual/multiple rate

There would be considerable practical implications to administering a dual rate. Each item of claim would need to be calculated based on each rate. So, for example, if you are representing an individual who is a paraplegic, they will have a significant schedule of loss. Their claim will often have ten or more heads of future loss. Taking the example of just one of those heads of loss, disability aids, they might have 40 or 50 disability aids listed, some of which are short, medium or longer term use. Some of these will need to be purchased yearly, some purchased at longer intervals such as every 3, 5, 10 or 20 years. If there were two rates based on duration, there would need to be two calculations for each item claimed. This of course would increase further if there were multiple rates. Currently catastrophic injury claim schedules are frequently 50 to 100 pages long with hundreds of individual calculations, so changing the discount model would significantly increase the complexity of these calculations.

These schedules once finalised are shared with the defendant and in most cases a counter schedule will be produced by the defendants' representatives. In large value cases this will be a line-by-line response, especially if a case is getting ready for trial. This will increase the costs being incurred in preparing these schedules significantly, both in preparing the schedule and with arguments over the items claimed. There is also an increased risk of error.

Such a change would almost certainly need for parties to consider using forensic accountants to assist in the drafting of schedules. This, in turn would lead to higher out lays and expenses and increased potential disputes on costs.

We are concerned that, whilst the current rate is not perfect a dual or multiple rate will be no better. There will still be significant groups of pursuers that will be worse off under the reforms.

APIL would welcome the opportunity to discuss these issues further and provide additional information if it is thought that would be useful.

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Appendix A

Tax Rates and Allowances in NI

Northern Ireland follows the same taxation model as England and Wales.

The rates and allowances for the current (2023/24) tax year are as follows:

2023/24 Tax Year:

Tax Allowances:	
Income Tax Personal Allowance	£12,570
Income Tax - Personal Savings Allowance	£1,000 Basic Rate taxpayers, £500 for Higher Rate Tax Payers
Dividend Allowance	£1,000.00
Capital Gains Tax Annual Exemption	£6,000

Income Tax Bands & Rates

Rate	Tax Band	Income tax rate	Dividend tax rate
Starting Rate for Savings	£0 - £5,000	0%	N/A
Basic rate	£0 - £37,700	20%	8.75%
Higher Rate	£37,701 - £125,140	40%	33.75%
Additional Rate	£125,141+	45%	39.35%

The way in which tax is calculated is to combine the income from all sources to determine the individual's marginal rate. The tax after allowances is then applied at the marginal rate. For the current tax year an individual can earn up to £50,270 in income without becoming a higher rate tax payer, and this is now due to be frozen until 2028. However, of this income, a total of £1,000 can be generated from dividends and £1,000 can be generated from savings income without being subject to tax (for a basic rate tax payer).

Capital Gains Tax (CGT)

As with dividend and savings income, the rates of CGT depend on the UK rates and thresholds, with the CGT annual exemption of £6,000 for individuals also applying to the whole of the UK. Therefore, a Scottish taxpayer with both earned income and capital gains will also have to consider both UK and Scottish rates and thresholds.

The rates and allowances which apply are:

Rate	Capital Gains Tax
Basic rate	10% (18% for property)
Higher Rate	20% (28% for property)

Upcoming Tax Changes

The Capital Gains Tax (CGT) annual exemption is being reduced to £3,000 from the 2024/25 tax year. As such any gains realised above these exemptions will be subject to tax at the individual's marginal rate.

The dividend allowance will reduce from £1,000 to £500 from the 2024/25 tax year.

Some personal injury claimants are no longer able to work and may not be in receipt of any earnings income, however some state benefits are taxable. In addition, any ill-health pension benefits may also be taxable, therefore it is difficult to determine the tax drag as tax is a very personal matter.

However, if we consider a claimant who receives £2,000 in dividends from their investment portfolio, £1,000 from any savings they hold and has further income of £15,000, we can investigate how the recent changes in tax rates and allowances would affect their tax position.

The total income in this example would be £18,000 meaning the claimant would be a basic rate tax payer. £12,570 of the further income would be within the allowance, whereas the dividends and savings income would be within the allowances and therefore not subject to tax. The total income tax due would therefore be:

Further Income	-	(£15,000 - £12,570) x 20%	=	£486
Dividend Income	-	(£2,000 - £1,000) x 8.75%	=	£87.50
Savings Income	-	(£1,000 - £1,000) x 20%	=	£0.00
Total	**-**		**=**	**£573.50**

However, the same income would lead to a different tax liability in 2024/25 as illustrated below:

2024/25 tax year:

Further Income	-	(£15,000 - £12,570) x 20%	=	£486
Dividend Income	-	(£2,000 - £500) x 8.75%	=	£131.25
Savings Income	-	(£1,000 - £1,000) x 20%	=	£0.00
Total	**-**		**=**	**£617.25**

The above illustration shows that based on the upcoming changes to the tax allowances, the claimant would be paying a greater level of tax in future years, albeit remaining a basic rate tax payer with the same level of income. In 2024/25 their tax liability would increase by 7.63% compared to the current 2023/24 tax year.

Appendix B

Tax Rates in Scotland

The rates and allowances for the current (2023/24) tax year are as follows:

2023/24 Tax Year:

Tax Allowances:

Income Tax Personal Allowance	£12,570
Income Tax - Personal Savings Allowance	£1,000 Basic Rate taxpayers, £500 for Higher Rate Tax Payers
Dividend Allowance	£1,000.00
Capital Gains Tax Annual Exemption	£6,000

Income Tax Bands and Rates

	Taxable Income	Scottish Income Tax Rate
Starter Rate	£12,571 to £14,732	19%
Basic Rate	£14,733 to £25,688	20%
Intermediate Rate	£25,689 to £43,662	21%
Higher Rate	£43,663 to £125,140	42%
Top Rate	Over £125,140	47%

Dividend Tax

Dividend Tax in Scotland is aligned to the rest of the UK i.e.:

Rate	Tax Band	Dividend tax rate
Starting Rate for Savings	£0 - £5,000	N/A
Basic rate	£0 - £37,700	8.75%
Higher Rate	£37,701 - £150,000	33.75%
Additional Rate	£150,001+	39.35%

However, because of the additional tax bands applied in Scotland, there are some complexities to consider. If the individual has earnings income and dividend income, the earnings income is assessed using the Scottish bands and rates, however the dividends are assessed using UK bands and rates, but taking into account the income that is taxable according to Scottish Rates and Bands.

By way of example, a Scottish taxpayer with earned income of £49,000 and dividend income of £2,000 in 2023/24 will have to work out their tax liability as follows:
Their total income is £51,000, but this is reduced to £38,430 by their personal allowance (£51,000 – £12,570).

This means they have to pay income tax on £36,430 of their earned income (£49,000 – £12,570), according to the Scottish rates and bands – so at 19% on £2,162, at 20% on £10,956, at 21% on £17,974 and at 42% on £5,338.

They also have the £2,000 of dividends, but they must assess this against the UK rates and bands, while also taking into account the income that is taxable according to the Scottish rates and bands. Note that the UK basic rate band is £37,700 – the taxable earned income, subject

to Scottish income tax, has used up £36,430 of this band, leaving £1,270. Whilst the taxpayer is also entitled to the UK dividend allowance of £1,000 for 2023/24, this also uses up the basic rate band, leaving £270 available. Of the remaining £1,000 of taxable dividend, £270 is therefore taxed at the UK basic dividend rate of 8.75%, with the remaining £730 at the higher rate of 33.75%.

Capital Gains Tax (CGT)

As with dividend and savings income, the rates of CGT depend on the UK rates and thresholds, with the CGT annual exemption of £6,000 for individuals also applying to the whole of the UK. Therefore, a Scottish taxpayer with both earned income and capital gains will also have to consider both UK and Scottish rates and thresholds.

The rates and allowances which apply are:

Rate	Capital Gains Tax
Basic rate	10% (18% for property)
Higher Rate	20% (28% for property)

Upcoming Tax Changes

From the 2024/25 tax year. There will be a further reduction to the annual exemption to £3,000. As such any gains realised above these exemptions will be subject to tax at the individual's marginal rate.

From the 2024/25 tax year, the dividend allowance will also reduce from £1,000 to £500.

Some personal injury claimants are no longer able to work and may not be in receipt of any earnings income, however some state benefits are taxable. In addition, any ill-health pension benefits may also be taxable, therefore it is difficult to determine the tax drag as tax is a very personal matter.

However, if we consider a claimant who receives £2,000 in dividends from their investment portfolio, £1,000 from any savings they hold and has further income of £15,000, we can investigate how the recent changes in tax rates and allowances would affect their tax position.

The total income in this example would be £18,000 meaning the claimant would be a basic rate tax payer. £12,570 of the further income would be within the allowance, whereas the dividends and savings income would be within the allowances and therefore not subject to tax. The total income tax due would therefore be:

Further Income	-	(£14,732 - £12,570) x 19%	=	£411
Further Income	-	(£15,000 - £14,732) x 20%	=	£54
Dividend Income	-	(£2,000 - £1,000) x 8.75%	=	£87.50
Savings Income	-	(£1,000 - £1,000) x 20%	=	£0.00
Total	**-**		**=**	**£552.50**

However, the same income would lead to a different tax liability in 2024/25 as illustrated below:

2024/25 tax year:

Further Income	-	(£14,732 - £12,570) x 19%	=	£411
Further Income	-	(£15,000 - £14,732) x 20%	=	£54
Dividend Income	-	(£2,000 - £500) x 8.75%	=	£131.25

Savings Income	-	(£1,000 - £1,000) x 20%	=	£0.00
Total	**-**		**=**	**£596.25**

The above illustration shows that based on the upcoming changes to the tax allowances, the claimant would be paying a greater level of tax in future years, albeit remaining a basic rate tax payer with the same level of income. In 2024/25 their tax liability would increase by 7.9% compared to the current 2023/24 tax year.

<ends>