Northern Ireland Department of Justice

The personal injury discount rate: taking account of inflation

A response by the Association of Personal Injury Lawyers (APIL)

January 2026

Introduction

APIL is grateful for the opportunity to respond to the Northern Ireland Department of Justice's consultation on the inflation index for the calculation of the personal injury discount rate (PIDR) and the methodology for calculating the judicial rate of interest.

We welcome the alignment of schedule C1 of the Damages Act 1996 with the approach used to calculate the PIDR in England and Wales. We support option A outlined in the consultation, which would provide rate setters with flexibility to apply an adjustment to the index used. This will prevent issues where decision-makers are limited to one index, promote consistency of methodology between the UK jurisdictions and avoid unfairness between the citizens of Northern Ireland, England and Wales.

We believe the most appropriate index is CPI, as accommodation costs should be excluded when determining the appropriate inflationary index for the PIDR. Since *Swift v Carpenter*[1], the cost of buying alternative accommodation is no longer dependent on PIDR, as the reversionary interest is calculated using the life expectancy, not a PIDR-derived multiplier. The same approach has been adopted by Northern Ireland's judges, hence why we believe CPI is preferable to CPIH.

APIL has responded to the questions within our remit.

Consultation Question 1 In principle, should the Damages Act provide more flexibility in relation to how the impact of inflation is to be taken into account by the Government Actuary when setting the personal injury discount rate for Northern Ireland? Please give reasons for your answer.

APIL agrees with this. We welcome the alignment of the approach to the calculation of the PIDR in Northern Ireland with the approach in England and Wales. Allowing rate setters to apply an adjustment to the index used will provide a closer match to the losses and prevent issues where decision-makers are limited to one index, which may not be the most suitable measure to ensure full compensation. A flexible approach to setting the index and the adjustment will allow for the closest match to inflation and the costs incurred by injured people.

Consultation Question 2 If more flexibility is to be provided, how should this be achieved?

(a) Prescribe an index, such as the consumer prices index, in the primary legislation, with the ability for the rate-setter to make an adjustment to that index;

[1] Swift v Carpenter [2020] EWCA Civ 1295

(b) Prescribe an index, such as the consumer prices index, and an adjustment in the primary legislation, with the ability for the Department to amend the adjustment; or

(c) Another way (please explain)? Please give reasons for your answer.

APIL supports option A. As above, we welcome alignment between the jurisdictions in the approach and methodology to set the PIDR. This alignment promotes consistency of methodology and avoids introducing unnecessary divergence in how the PIDR is calculated, which could create an unwarranted unfairness between the citizens of Northern Ireland, England and Wales. It would also likely increase jurisdictional disputes in high-severity injury claims with mixed connections to these UK jurisdictions.

We have concerns that option B would still limit the flexibility of rate setters. Embedding the percentage point adjustment in the legislation can impede timely responses when setting the rate if changes to the legislation are required. This would unnecessarily slow the ability of decision-makers to respond to real-world inflationary or legal trends and could lead to periods in which pursuers are not fully compensated because the statutory adjustment no longer reflects the inflationary pressures affecting their losses.

The rate assessor should have discretion to determine the relevant adjustment to the index to ensure it remains fit for purpose and closely matched to economic conditions.

Consultation Question 3 Which is the best inflation index to prescribe in the legislation: CPI, CPIH or another index? Please explain why.

We believe the most appropriate index for discount rate calculations is CPI rather than CPIH. The CPI in conjunction with the appropriate percentage adjustment, is in the round, the closest match 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.

Housing costs are a major head of claim, but we contend should be excluded from the future loss total before considering the inflationary weighting of the heads of loss that remain. Since the Court of Appeal's decision in *Swift v Carpenter*[2] the cost of buying alternative accommodation is no longer dependent on PIDR, as the reversionary interest is calculated using the life expectancy, not a PIDR-derived multiplier. Our members reported that the courts in Northern Ireland are following the same approach regarding accommodation costs, one of the reasons why we believe CPI would be the best index. In addition, the accommodation award funds are rapidly spent on purchasing and adapting a property to meet the claimant's needs. In fact, due to the reversionary interest deduction, they often have to effectively be supplemented for other components of compensation (e.g. the general damages awards). Hence, there is usually no balance left to invest.

Disability aids and equipment do predominantly relate to purchasing goods, but many of them are low production specialist equipment, which is not included in the CPI basket and are not subject to a fully competitive market for goods. Many of them are imported and are so specialist that they fall outside of the scope of the limited number of post-Brexit trade deals. Producers will often need to recoup significant research and product development costs across a relatively small number of customers. A prime example of this is to consider the comparative cost of the prosthetic that the same prosthetist would recommend today

[2] Swift v Carpenter [2020] EWCA Civ 1295

when contrasted to that recommended 20 years ago to a claimant with the same level/type of amputation. That cost has almost tripled, so significantly more than CPI inflation.

Future loss of earnings is a loss that obviously rises in line with earnings inflation. We would be surprised if any reputable expert economist would argue otherwise and in the common law jurisdiction cases in which this point has featured, the defendant's experts have not even seriously attempted such an argument. It would also be contrary to the full compensation principles to expect claimants to take more investment risk with their future loss of earnings. That would not be putting them back into anything like the position they would have been in had they never suffered the negligence inflicted by the defendant.

Future medical treatment and therapies are another major head of loss for seriously injured claimants, the majority of which is earnings related and where historically inflation is on average materially higher than CPI.

Claimants who lack mental capacity will often have a significant head of loss for the cost of a professional deputy. Once again, that is an earnings-related cost as it predominantly relates to the cost of time spent by that professional (usually a solicitor).

Our secondary reason for preferring CPI is that it would be preferable to have a consistent approach across the UK jurisdiction, absent any evidence to suggest there are material differences between them on the impact of inflation on seriously injured pursuers/claimants.

Consultation Question 4 Do you agree that the balance of inflation affecting lump-sum awards of damages in Northern Ireland is likely to be the same as that experienced in England and Wales? Please provide evidence for your view either way.

APIL agrees with this.

Any questions in the first instance should be addressed to

Ana Ramos, legal policy officer at APIL ana.ramos@apil.org.uk