

**frenkel
topping**
SPECIALIST FINANCIAL ADVISORS

The PIDR – Rationale, Reactions and (Judicial) Review?

Mark S.Holt MLBF DipFA
Managing Director
Frenkel Topping Limited

PROUDLY **DELIVERING EXPERT ADVICE** FOR OVER 30 YEARS.
We are passionate about maximising life enhancing outcomes for our clients. www.frenkeltopping.co.uk

Frenkel Topping House View Discount Rate Assumptions and Predictions

"I thoroughly recommend Frenkel Topping, they are approachable and knowledgeable advisors. They are always happy to spend time understanding my clients' needs and have always provided extremely high quality"

Discount Rate Assumptions and Predictions

- **Surprise - a Governmental decision 21 days ahead of deadline!**
- **Frenkel Topping contributed to the Call for Evidence**
- **Claimant and Defendant – a balanced perspective**
- **Insurers reserving at 0%**
- **Predicted rate of +0.75% to +1.25%, or a dual/tiered rate**
- **The reality... -0.25% (no, we didn't see that coming either!)**

PROUDLY DELIVERING EXPERT ADVICE FOR OVER 30 YEARS.
We are passionate about maximising life enhancing outcomes for our clients.

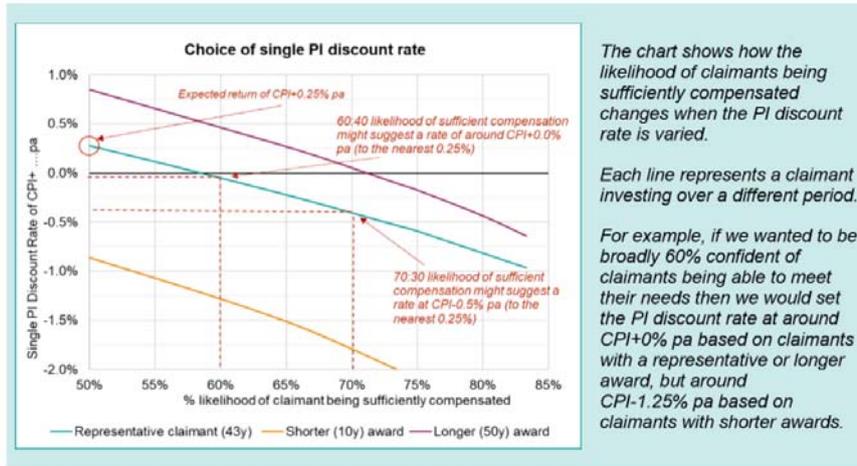


Rationale – 'Full compensation'

+0.25%	0%	-0.25%
Under-compensates claimants	Under-compensates claimants	Fully compensates the claimant
Only 50% chance of being fully compensated	Only 60% chance of being fully compensated	66.6% chance of being fully compensated
65% chance of receiving at least 90% compensation	72% chance of receiving at least 90% compensation	78% chance of receiving at least 90% compensation
		2x more likely to be overcompensated than under. 4x more likely to receive at least 90% compensation as they are to be under-compensated by 10%



Rationale – ‘Full compensation’



Source: Setting the Personal Injury Discount Rate – Government Actuary’s advice to the Lord Chancellor - 25 June 2019

PROUDLY DELIVERING EXPERT ADVICE FOR OVER 30 YEARS.
We are passionate about maximising life enhancing outcomes for our clients.



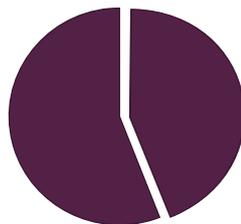
Expected returns and deductions

% pa above CPI	Representative claimant
Expected gross return before deductions	CPI +2.0% pa
Deduction for tax and expenses	0.75% pa
Deduction for damage inflation	1% pa
Expected net rate of return	CPI +0.25% pa

With a further 0.5% downward reduction for prudence

Assumed low risk portfolio split

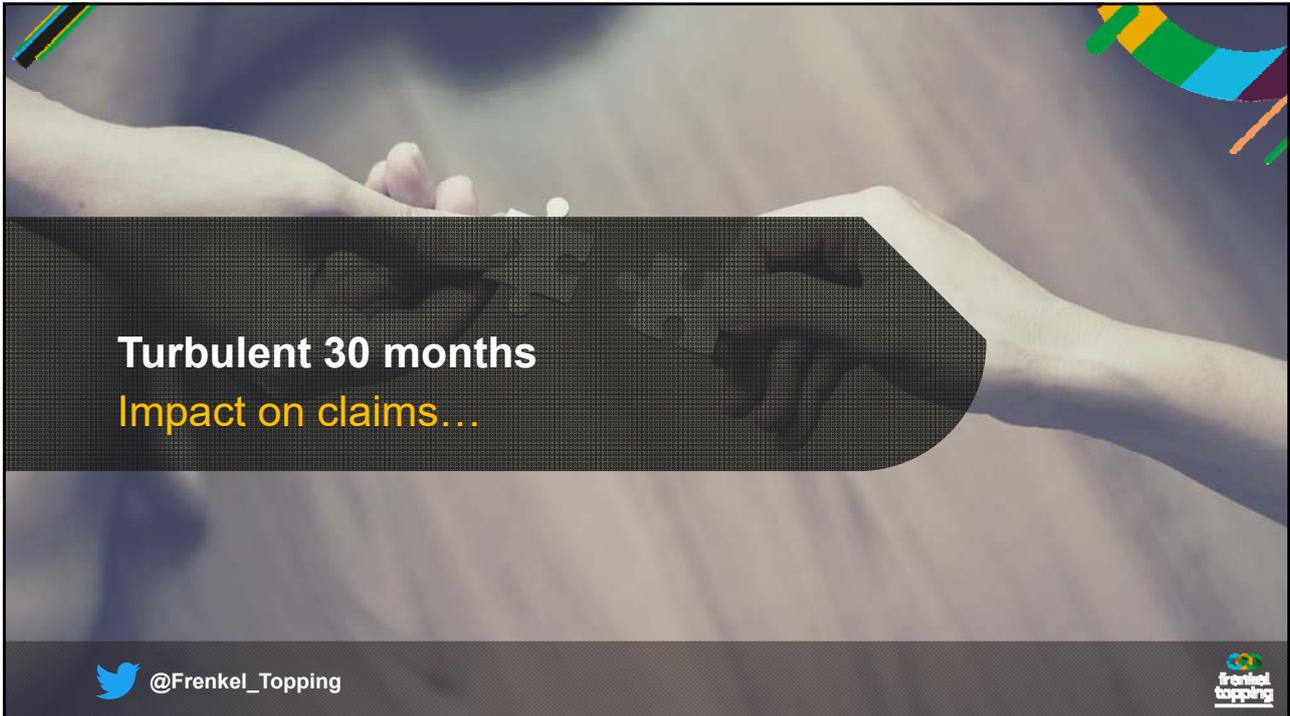
57.5% matching assets



42.5% growth assets

PROUDLY DELIVERING EXPERT ADVICE FOR OVER 30 YEARS.
We are passionate about maximising life enhancing outcomes for our clients.





Turbulent 30 months
Impact on claims...

 @Frenkel_Topping





Impact Continued

PROUDLY **DELIVERING EXPERT ADVICE** FOR OVER 30 YEARS.
We are passionate about maximising life enhancing outcomes for our clients.



Our Challenges to the Rationale

Missing pieces...

"I thoroughly recommend Frenkel Topping, they are approachable and knowledgeable advisors. They are always happy to spend time understanding my clients' needs and have always provided extremely high quality"

A call for greater clarity...

1. The rate assumes that a claimant will now take 'more risk than very low risk'. However, are the relevant asset classes:
 - Directly accessible to a claimant?
 - Suitable e.g. are there minimum investment terms or amounts?
 - Understandable – particularly to a vulnerable client who has undergone a life-changing event?
2. There is a composite figure of 0.75% assumed for tax, expenses and investment advice (investment advice constitutes 0.5%).
 - Does this figure include the cost of independent financial advice? If not, where should these costs be factored in?

PROUDLY DELIVERING EXPERT ADVICE FOR OVER 30 YEARS.
We are passionate about maximising life enhancing outcomes for our clients.

Setting the Discount Rate - Scotland

- March 2019 – Suggested by Scottish Government that PIDR could be 0%
- Since then they have reviewed their view on investment charges increasing the allowance for these from 0.5% to 0.75%
- Using the same logic suggests the rate in Scotland could be -0.25%
- Scotland have used RPI as their inflation rate but this is no longer a recognised index and as such CPIH is likely to be used instead when formally setting the rate in Scotland
- PPOs currently only by agreement of both parties in Scotland, this could now fall under the remit of the Scottish Court who could impose PPOs moving forward

PROUDLY DELIVERING EXPERT ADVICE FOR OVER 30 YEARS.
We are passionate about maximising life enhancing outcomes for our clients.



Setting the Discount Rate – Jersey & Guernsey

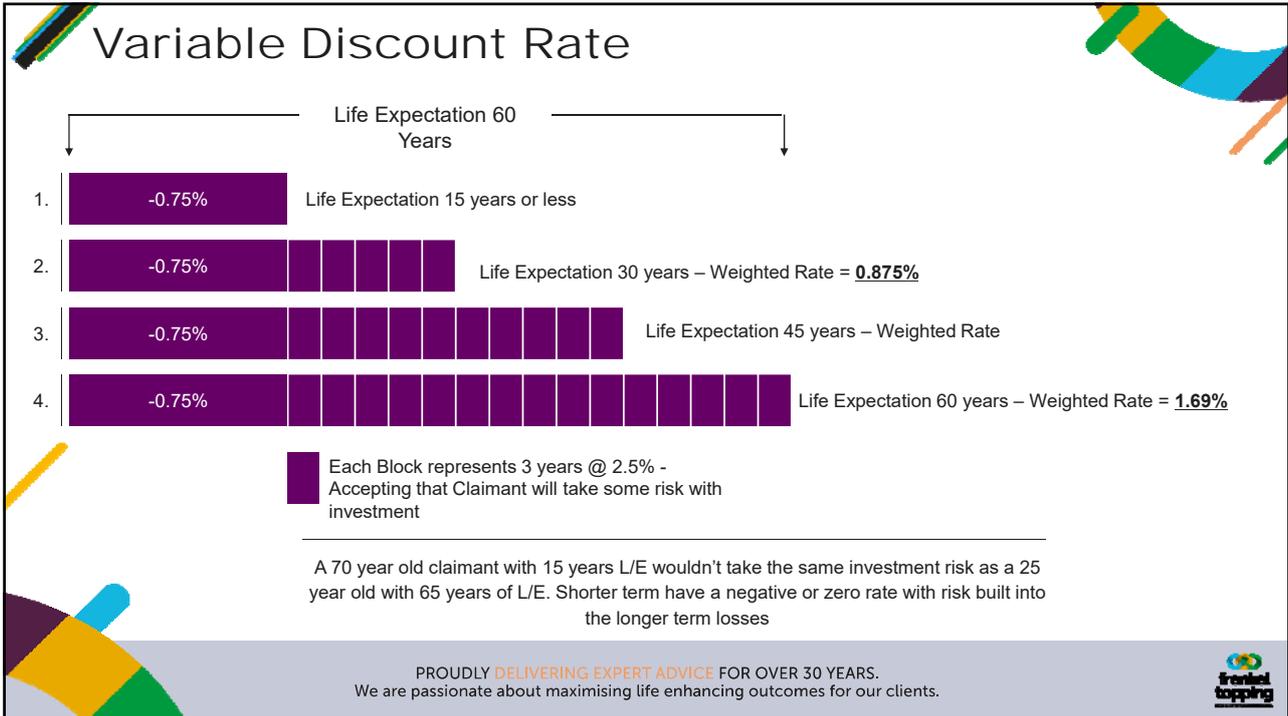
- On 3rd May 2019 a new law regarding the Personal Injury Discount Rate came into force in Jersey
- The Law introduces a new statutory, two-tiered, discount rate and creates a statutory power to award damages by way of a Periodical Payment Order to cover future care costs and loss of earnings
- This is similar to the methodology in Canada and Guernsey recently announced that they would be aligning themselves with the Jersey Methodology and historically the UK have followed the Channel Isles lead!

The discount rates which the Law implements are as follows:

- +0.5% - where the lump sum is to cover a period of up to 20 years
- +1.8% - where the damages will cover a period of more than 20 years (applicable to the whole of the award, not just the costs arising after the first 20 years)
- This is based on an inflation rate of 1% and investment charges of 1% (so higher than the Scottish assumptions).

PROUDLY DELIVERING EXPERT ADVICE FOR OVER 30 YEARS.
We are passionate about maximising life enhancing outcomes for our clients.





Reaction on the PIDR from Defendants

“I have always found Frenkel Topping a delight to work with. They always take time to understand and get to know a client's needs and wishes and provide sensible, clear and timely advice. Their expertise in relation to court of protection

What were the Defendants saying?

<https://youtu.be/VRLDPQg8-mg>

PROUDLY DELIVERING EXPERT ADVICE FOR OVER 30 YEARS.
We are passionate about maximising life enhancing outcomes for our clients.

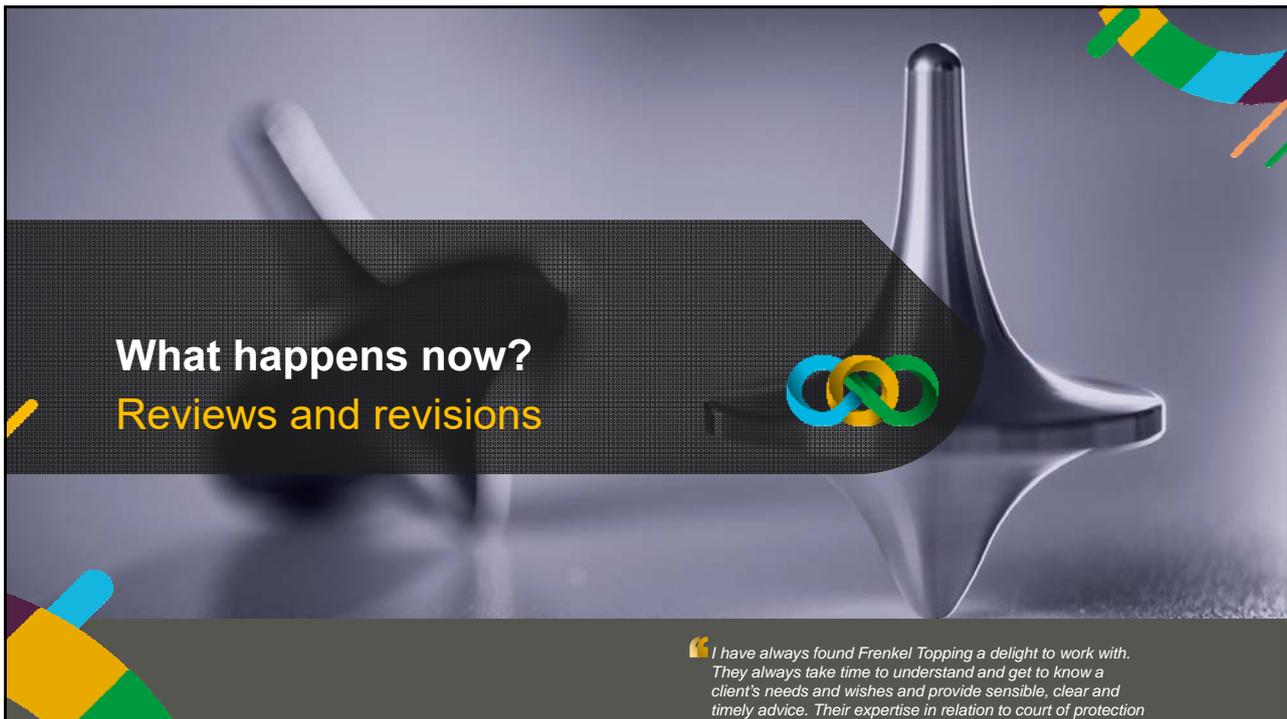


What are Defendants saying?

- The rate is clearly favourable to claimants. A rate of +0.25% would equate to a 50:50 chance weighting between over and under-compensation of claimants.
- The Lord Chancellor's 'margin of prudence' infers that it is better for claimants to receive 110% compensation than less than 100%
- The estimated reduction in lump sum awards by £310m to £400m is not a saving! The reduction is merely 'righting a wrong'.
- Clarity is needed around accommodation claims – calls made by defendants to use Swift v Carpenter as a test case in the Court of Appeal to decide the new Roberts v Johnstone calculations. This goes to full trial in 2020.

PROUDLY DELIVERING EXPERT ADVICE FOR OVER 30 YEARS.
We are passionate about maximising life enhancing outcomes for our clients.





What happens now?

Reviews and revisions

"I have always found Frenkel Topping a delight to work with. They always take time to understand and get to know a client's needs and wishes and provide sensible, clear and timely advice. Their expertise in relation to court of protection"

What can we expect now?

- Under the terms of the Civil Liabilities Act 2018, the rate must be reviewed at least every 5 years.
- Next Rate Change wont be until 2024 and will involve the 'Expert Panel'....whoever they are (Yet to be appointed other than GA)
- Consultation to be undertaken on the potential to adopt a dual rate – indications are that the Government Actuary was, and remains keen for this to be explored in greater depth.
- Judicial Review? Still a possibility, but 3 month window means that action must be taken by early Autumn.

PROUDLY DELIVERING EXPERT ADVICE FOR OVER 30 YEARS.
We are passionate about maximising life enhancing outcomes for our clients.



