



Bob Neill MP
Chair, Justice Select
Committee
House of Commons
London
SW1A 0AA

7 September 2017

Dear Bob,

PERSONAL INJURY DISCOUNT RATE

I am writing to inform you that I have today announced the Government's intention to reform the law relating to the setting of the personal injury discount rate in England and Wales. I will today be laying before Parliament a command paper containing draft legislation to give effect to the proposals.

These proposals have been developed in the light of responses to the consultation paper "*The Personal Injury Discount rate: How it should be set in future*", on which public consultation took place between the end of March and 11 May.

The Government's proposals aim to ensure that the discount rate meets the core objective of the law of damages, that claimants should receive full compensation for the injury suffered, no more and no less. Analysis of the feedback to the consultation and other research indicates that claimants do not invest in the way assumed in the current law – so as it stands, the rate may produce significantly larger awards than is necessary to provide 100% compensation. In practice, the artificially high discount rate resulting from these assumptions means the NHS spending millions of pounds extra every week on compensation and significantly higher motor insurance premiums for drivers. The proposals aim to ensure the assumptions used in setting the discount rate are realistic and awards are therefore fair. They will also ensure the rate is reviewed regularly so that it continues to achieve the aim of the law of damages even if investment conditions change. The first review will be held shortly after the legislation comes into force and thereafter there will be a statutory requirement on the Lord Chancellor to review the rate following consultation with an expert panel at least once every three years.

I enclose a short note setting out more detail on the context of the proposals and their key points.

I have chosen to publish the legislation in draft to allow the detail of the Government's proposals to be examined before legislation is introduced, and to this end would welcome the views of the Committee. As you will no doubt anticipate I am keen to make progress with the proposals because of the significant financial impact of the unrealistic assumptions reflected in the current rate and to minimise the length of the period of uncertainty as to what the law will be. I know that the Committee will need adequate time to consider the issues and formulate its views, but I wondered if it might be possible for the Committee's review to be timetabled to be completed before the end of November. If it would assist the Committee I would be happy for my department to provide the Committee with copies of comments on the draft

legislation provided to us by stakeholders. Our intention is to engage with them pro-actively with a view to collecting their opinions by the end of the Conference Recess.

I hope this scrutiny will help ensure that the provisions are technically effective and provide assurance to interested parties that the Government is committed to ensuring that compensation remains full, fair and reasonable in the light of changing investment conditions.

The Ministry of Justice's response to the consultation, impact assessment and equality statement in relation to the proposals will also be published today alongside research papers from the Government Actuary's Department and the British Institute of International and Comparative Law, which were used to inform the Government's review. I will arrange for copies of all these documents to be delivered to the Committee.

The department will be pro-actively engaging with stakeholders to seek their views over the next month. If you would be interested in the views we receive during this engagement, or if there is any further information you or your Committee would find helpful regarding these proposals please do let us know. My Ministers and officials will also be pleased to engage with you and the Committee on these proposals if that would be helpful.

The proposed changes to the law relating to the discount rate are market sensitive and were announced to the London Stock Exchange at 7.00 a.m. today.

I am copying this letter to the Chairs of the Treasury and Health Select Committees.

Yours ever,

A handwritten signature in black ink, appearing to read 'David Lidington'. The signature is fluid and cursive, with a large initial 'D'.

RT HON DAVID LIDINGTON CBE MP

NOTE

Personal Injury Discount Rate

The proposed legislation will alter the way the personal injury discount rate prescribed by the Lord Chancellor under section 1 of the Damages Act 1996 is set. The prescribed rate is applied by the court in calculating the size of lump sum awards of damages for future financial losses caused by personal injuries. The application of the rate is intended to ensure that claimants receive 100% compensation, neither more nor less, taking into account the opportunity they will have of investing the lump sum before the losses which it compensates occur. The present system for the setting of the rate results in the rate being set by reference to rates of return on Index Linked Gilts. This does not reflect how claimant investors invest in practice and may result in artificially large lump sum payments having to be paid by defendants or their insurers.

The unrealistic assumptions used in the current law do not, therefore, achieve the objective of the law of damages, which is to provide full compensation for the injury suffered, neither more nor less. They also add significantly to the cost of damages paid out by public sector defendants, such as the NHS, and drives up the cost of insurance policies, particularly for young drivers.

Under the new system the rate will be more closely based on how claimants invest in practice. This more realistic approach will support the objective of full and fair compensation whilst ensuring that unjustified financial pressure is not placed on the NHS and that the cost of insurance policies remains reasonable. The legal principle that claimants should be compensated in full (neither more nor less) for all the losses caused by the injury will continue to apply and will not be changed by the legislation.

The new system will also ensure that the rate is reviewed in timely and regular fashion and bring additional expertise to bear on the setting of the rate.

The principal changes made by the draft legislation are that:

- a. The rate will be set by reference to rates of return on “low risk” rather than “very low risk” investments as at present.
- b. The rate is initially to be reviewed promptly after the legislation comes into force and, thereafter, at least every three years, with that period being re-set when a review is concluded. Reviews will be completed within 180 days of commencing. Until the initial review is completed the rate in force immediately before the new law takes effect will continue to apply.
- c. The rate is to be set by the Lord Chancellor following consultation with an independent expert panel (other than on the initial review which will be by the Lord Chancellor following consultation with the Government Actuary). HM Treasury will remain a statutory consultee at all reviews.

As the draft provisions give effect to these provisions by amending the Damages Act 1996, it will be necessary if legislation is taken forward to make some very minor drafting changes to the wording of the 1996 Act to accommodate the new provisions. Technically, these drafting changes extend to the whole of the United Kingdom (because the 1996 Act does so) but our view is that they will not require a legislative consent motion.

Copies of the Command Paper (including the draft legislation and explanatory notes) and the response to the consultation (including the equality statement) together with the impact assessment and the research reports prepared by the Government Actuary’s Department and the British Institute of International and Comparative Law referred to in the response will be available on the Gov.uk website.