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The challenge of setting the Personal Injury Discount Rate

Julian Chamberlayne – *Partner & Head of Aviation and International Injury at Stewarts, and Chair of the Forum of Complex Injury Solicitors*

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The Personal Injury Discount Rate (PIDR)

- From 27 September 2024 PIDR for **Scotland and Northern Ireland** were both increased to 0.5%, from -0.75% and -1.5%
- The Government Actuary was the 'rate setter'
- From 11 January 2025, PIDR for **England & Wales** increased from **-0.25%** to **+ 0.5%**
- The Lord Chancellor is the 'rate setter'
- First rate setting under the Civil Liability Act 2018 with reliance on a detailed report from an expert panel.

> "In reaching my determination, I have paid **close regard** to the advice of the independent Expert Panel […] I am in full agreement that these principles are appropriate and instructive."
> *The Lord Chancellor, Statement of Reasons*

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The Personal Injury Discount Rate (PIDR)

- PIDR is the biggest single component influencing compensation levels for the most seriously injured claimants
- MoJ have repeatedly reaffirmed that the PIDR is intended to be set in accordance with the **full compensation principle**
- Which aspects of the decision-making process were most contentious?
- Is the framework under the CLA 2018 compatible with the full compensation principle?
- Is it worth the effort?

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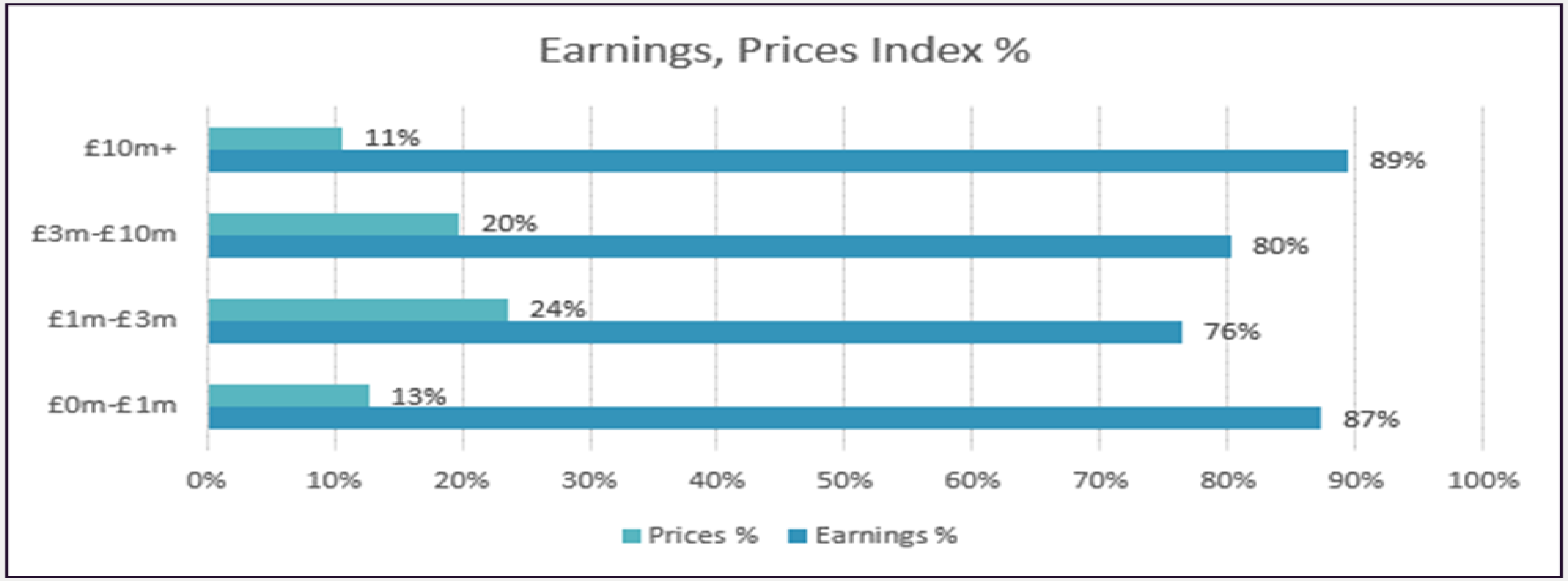
Earnings inflation

- Impacts the majority of the heads of future loss, notably care
- GAD - the **key evidence** on the weighting of heads of future loss was provided by **FOCIS**



Earnings inflation

- Scotland and N.Ireland legislation only allow for an unadjusted index – **AWE**
- England and Wales – assumed CPI +**1.25-1.5 percentage points** (PP)
- Departed from the OBR's projections – stabilising at **CPI +1.8PP** from 2036
- FOI request by FOCIS and APIL in Autumn 2024, relating to decision in Scotland and Northern Ireland
  - Queried the evidence relied on in making this assumption
  - Inconsistency with GAD's own assumptions (1.8PP) used in its valuations of the NHS and Teachers Pension Funds and the National Insurance Fund, as recently as April 2024.

Earnings inflation – GAD's evidential sources in Scotland and NI

- Professor Victoria Wass – current care cost inflation at **CPI +1.77PP**, future cost care inflation at **CPI +2.0PP**
- Oxford Economics (for the ABI) – average earnings growth at **1.25PP higher** than price inflation
- GAD's own technical committee
- Did consult with the OBR (reaffirmed their long-term projection of 1.8PP)
- Did **not** consult with the Treasury

Earnings inflation – Schedule A1, s 2(4) CLA 2018

Conducting the first review

2 (1) This paragraph applies when the Lord Chancellor is required by paragraph 1(2) to conduct a review of the rate of return.

(2) The Lord Chancellor must review the rate of return and determine whether it should be—

(a) changed to a different rate, or

(b) kept unchanged.

(3) The Lord Chancellor must conduct that review and make that determination within the 140 day review period.

(4) In conducting the review, the Lord Chancellor must consult—

(a) the Government Actuary, and

(b) the Treasury.

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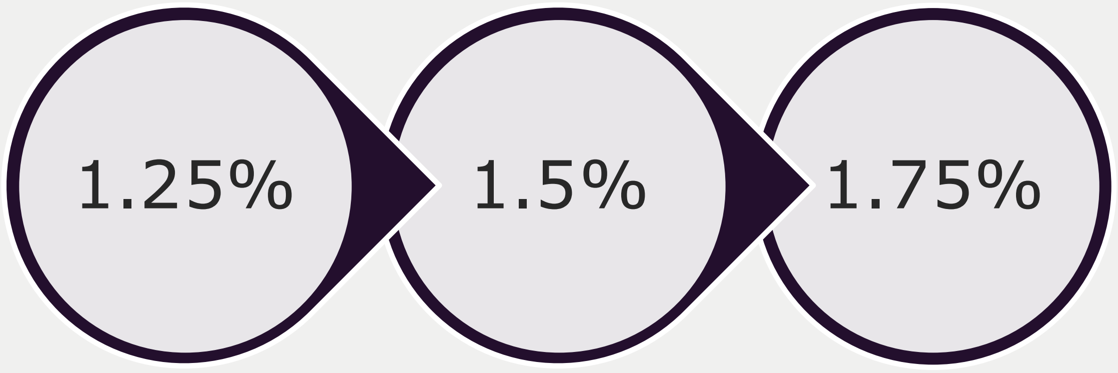
Earnings inflation – varying the assumption

- Methodology - varied most of the other assumptions for each of the 3 core claimants
- Why was this not applied to the earnings inflation differential?



20-year-old **40-year-old** **60-year-old**

Example of possible assumption by core claimant

Assumed investment portfolios

Is the approach for the 60-year claimant compatible with the CLA 2018?

The Lord Chancellor **must** assume Sch A1 (3)(d) that the relevant damages are invested using an approach that involves—

- (i) more risk than a very low level of risk, but
- (ii) less risk than would ordinarily be accepted by a prudent and properly advised individual investor who has different financial aims.

Term (years)	Lump sum size	Investment strategy
20	£500k	Cautious
40	£1m	Central
60	£5m	Less cautious

Extracted from Table 26, Expert Panel Report

Assumed investment portfolios

"I do not consider it **reasonable** to assume that **any vulnerable claimant** investing in a manner that accepts 'more risk that a very low level of risk, but less risk that would ordinarily be accepted by a prudent and properly advised individual investor who has different financial aims' **should be exposed to 60% higher risk assets**….a claimant with a duration of 20 years **should not be advised to hold 40% of their invested capital in higher risk assets**"

Richard Cropper, expert IFA at Personal Financial Planning

	Investment strategy		
Asset class	Cautious	Central	Less cautious
Lower risk	**60.0%**	**50.0%**	**40.0%**
Cash	2.5%	2.5%	2.5%
Gilts	17.25%	14.25%	11.25%
Index-linked gilts	17.25%	14.25%	11.25%
Corporate bonds	23.0%	19.0%	15.0%
Higher risk	**40.0%**	**50.0%**	**60.0%**
UK equity	16.0%	20.0%	24.0%
Overseas equity	16.0%	20.0%	24.0%
Alternatives	8.0%	10.0%	12.0%

Table 22, Expert Panel Report

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De-risking investment portfolio over time

- Assumption and modelling of the same portfolio for the entire period does not reflect the reality of de-risking investment portfolios over time

20 years post-settlement

- 40 years of life remaining
- Portfolio adjusted in line with 40-year model

Reasonable assumption for 60-year claimant

40 years post-settlement

- 20 years of life remaining
- Portfolio adjusted in line with 20-year model

Example provided by Richard Cropper

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Methodology for the core claimants

The use of the ABI dataset

- Used as the primary evidential source for likely period and size of future loss awards
- Largest dataset received
- Assumed normal life expectancy
- **Does not reflect the reality of most multi £million injury claims**
  - Majority involve impaired life expectancy
  - Fatal accident claims – main loss period relating to retirement age
  - FOCIS provided a dataset in which future loss period was adjusted

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Methodology for the core claimants – duration of future losses

- Expert Panel assumed highest value claims = longest duration of future losses
- £5m & £10m claims will have impaired future loss periods of 20-40 years (FOCIS)
- **Reduced life expectancy = higher needs**
- Longest duration = Younger claimants with unimpaired life expectancy
  - who have a wider spread of losses but lower annual loss

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Methodology for the core claimants – pre-determined awards

It is "**inappropriate** to predetermine the size of the award to be modelled, rather than the level of annual need, as the **level of the award will be impacted by the applied PIDR**"

Richard Cropper

	Duration 20 years @£500k	40 years @ £1m	60 years @ £5m
−0.25%	£24,378	£23,770	£77,232
0.50%	£26,274	£27,579	£96,432
0.75%	£26,911	£28,918	£103,413
1.00%	£27,563	£30,303	£110,668
1.25%	£28,233	£31,726	£118,203
1.50%	£28,902	£33,179	£126,040

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Methodology for the core claimants – size of awards

- Expert panel report/ABI :-
  - 80% of claim value relates to claims >£1m
  - By claim value 50% >£3m including 33% >£5m
- FOCIS
  - 69% of total FL value of cases were valued at £3-10m
  - Including 30% at £10m+
- GAD analytical report figure 7 – £10m+ 60Y claimant will have net median returns below the core range if central investment portfolio is assumed
- Does the selection by reference to number of claims discriminate against those with disabling injuries?

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Evidence-based range

- Adoption of the least favourable figures to claimants

Earnings inflation differential: **1.25%-1.5%**

£500k and £1m: **two-thirds** of the core claimants

Higher risk assets: **60%** allocation for 60Y claimant

Investment charges: **0.6% or 0.9%**

Tax for 40Y claimant: **0.2%**

The full compensation principle

Was the approach truly consistent with the 'full compensation' principle?

		Core claimant type					
		20-year		40-year		60-year	
		Likelihood of achieving a compensation level of at least…					
		90%	100%	90%	100%	90%	100%
PIDR	-0.25%	93%	**76%**	95%	**89%**	88%	**81%**
	…						
	0.50%	83%	**55%**	87%	**76%**	75%	**64%**
	0.75%	78%	47%	83%	**69%**	70%	**58%**
	1.00%	73%	40%	78%	**63%**	64%	**50%**
	1.25%	67%	32%	72%	**55%**	57%	43%
	1.50%	60%	25%	66%	48%	50%	36%

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The full compensation principle

- Numerous low-end assumptions, notably for long term earnings inflation
- Absence of modelling of a £10m investment in the cautious portfolio on any of the assumed durations
- The low damages and high longevity of the 3 core claimants results in:-
  - Risk of over-compensation being **overstated** and
  - Under-compensation being **understated**

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Final thoughts

"Determining the PIDR on the basis proposed in the CLA 2018 introduces a **dubious and complex process** which through **obscure and unaccountable decisions** are **open to criticism at every turn**"
Professor Victoria Wass