

**FOIL**

Prepared by Kysen PR

**Date** 30 March 2017  
**Publication** Solicitors Journal  
**Type of publication** Legal Press

**SOLICITORS**  
**JOURNAL**  
*Your voice in a changing legal world*

# MoJ launches consultation for 'fair' discount rate

## Irwin Mitchell calls on ministry to challenge insurers delaying settlements

30 March 2017

[Add comment](#)

The Ministry of Justice's promised [consultation](#) into the personal injury discount rate framework, including whether it should be set by an independent body rather than the Lord Chancellor, has been published today.

The Lord Chancellor, Liz Truss, [announced in February](#) that she would lower the rate from 2.5 per cent to -0.75 per cent, which was, she said, 'the only legally acceptable rate I can set'.



'This consultation will consider whether the current framework is fair to both claimants and defendants,' Truss said today. 'It will also determine whether there needs to be changes in how the rate is set and whether it should be set by an independent body.'

The new rate came into effect on 20 March. Prior to this, the discount rate was last set in 2001. The justice secretary made clear she would consult to review the way in which the rate is set in future.

While not a review of the new rate, measures under consideration include whether: the current methodology to calculate the rate is appropriate; the discount rate should be set by an independent body; more frequent reviews of the rate are needed; and if periodical, rather than lump sum payments, might be a better way to compensate victims.

Following the six-week consultation, the MoJ will bring forward 'any necessary legislation to strengthen the way in which the rate is set'.

Amid criticism that the new rate would adversely impact the health service, the government pledged to ensure the NHS Litigation Authority has appropriate funding to cover changes to clinical negligence costs, and to work with GPs and medical defence organisations to ensure funding is available to meet additional costs to medics.

A day after the new rate was announced, the chancellor of the exchequer, Philip Hammond, met with representatives of the insurance industry to assess the impact of the rate adjustment.

In a statement today, Huw Evans, director general of the ABI, said: 'Only a month after the setting of an absurdly low rate, the government has moved swiftly to consider reform and we need to see this urgency maintained with a firm commitment to legislate in the Prisons and Courts Bill.

'As the only major economy in the world with a negative rate, the UK will face significantly increased insurance and taxpayer costs until the system is reformed and a new rate can be set.'

Also welcoming the consultation, Nigel Teasdale, president of the Forum of Insurance Lawyers, said: 'The gulf in opinion across the insurance and legal sectors exposed when the new -0.75 per cent discount rate was announced demonstrated how vital it is for this framework review to be conducted.

'FOIL will be active in helping the MoJ identify a calculation methodology which is fair to victims, legally robust, and which properly reflects long-term financial investment patterns, so that we achieve a formula which is sustainable and not disproportionately burdensome on any party.'

Meanwhile, Neil Sugarman, president of the Association of Personal Injury Lawyers, said a reduction in the rate was important as 'people with serious, life-changing injuries were not receiving the compensation they desperately need'.

'Having said that, we are always prepared to be involved in constructive debate and so we will be responding to the consultation,' he added. 'Following the insurance industry's hysterical response to the recent rate change, we are also very encouraged by the Lord Chancellor's obvious commitment to the fact that injured people must receive 100 per cent compensation – no more, no less.'

Stuart Henderson, managing partner of Irwin Mitchell, admitted that while the consultation would create a period of uncertainty, he also recognised 'the desire to create a methodology that provides for regular review ensuring that market changes are properly reflected'.

'The government has already consulted on the underlying principles behind the setting of the discount rate in 2012 and 2013 and took no steps to change the present approach as a result,' he added. 'It is worth reminding ourselves that the reason that the change in rate was so significant was because the revision was long overdue.'

Henderson also called on the MoJ to publicly challenge those insurers who are ‘using every possible tactic to delay the resolution of cases in the hope of a better outcome on the discount rate following the consultation’.

‘The judiciary need to be aware of what is happening and be prepared to intervene to push cases forward and apply the current law,’ he said. ‘Present delays and tactical moves by some insurers are damaging to seriously injured individuals, disruptive to the administration of justice, and highly likely to add to costs in the legal process.’

**John van der Luit-Drummond is deputy editor of Solicitors Journal**

[john.vanderluit@solicitorsjournal.co.uk](mailto:john.vanderluit@solicitorsjournal.co.uk) | [@JvdLD](#)