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## Personal injury discount rate should be based on evidence



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Eagerly anticipated recommendations from the Justice Committee to improve the draft clause that the UK government intends to use to amend the personal injury discount rate for catastrophic claimant awards have been issued.

The Justice Committee urged the government to clarify its aims, gather proper evidence about how claimants invest lump-sum damages and whether investment covers their future losses, and ensure adequate safeguards to prevent under-compensation of the most vulnerable claimants.

The personal injury discount rate, currently set at -0.75%, should no longer be set with reference to returns from very low risk index-linked government securities, according to the government.

Instead, the draft legislation provides that the personal injury discount rate should be set on the assumption that claimants will invest lump sums in 'low risk' investments, and having regard to actual investments made by claimants.

Bob Neill MP, chair of the Justice Committee, which was asked by the government to **scrutinise** the draft legislation before it comes into effect, said: "Setting the personal injury discount rate is much more than a technical decision. It is about how we as a society treat people who have been seriously injured, whether through medical negligence, road traffic accidents or by other means."

"It involves balancing the interests of claimants with defendants, and also balancing the social costs of increased clinical negligence payouts and increased insurance premiums with protecting the interests of vulnerable claimants."

"If the government remains convinced that it must change the assumptions it makes about how damages will be invested, to adjust the balance between the interests of different groups in society, it should say so. It is vitally important that we get this right, and that changes are evidence-based."

Reacting to the recommendations, David Johnson, member of the Forum of Insurance Lawyers (FOIL) and partner at Weightmans, commented: "The Justice Committee's recognition of the impact of the personal injury discount rate on wider society, and the suggestion that that might legitimately be taken account of when future reviews are carried out, will be welcomed by compensators."

"Overall the report does not prevent government from moving forward with the legislation. Some notes of caution are set out within the report and will need to be addressed before the industry can move away from the current -0.75% discount rate towards a higher rate. If the government acts on the recommendations within the report, there will be further delays, which in turn, is not good news for insurers."

Graeme Trudgill, executive director of the British insurance Brokers' Association (BIBA), welcomed the Justice Committee's recommendations, saying: "Currently, a personal injury discount rate of -0.75% suggests that claimants lose money from investments, rather than them attracting an investment income. This is clearly not the case and underlines why this legislation is urgently needed."

"The committee has indicated it would like to see more evidence of how claimants invest their damage awards if the government wants to maintain the objective of 100% compensation—something which is fundamental to the principle of indemnity in insurance."

"While more evidence may be useful to provide confidence that claimants will not be under-compensated, we feel that the government already has much evidence to demonstrate that in the real-world, claimants do not lose money from their investments. Any further delay would exacerbate the wider social impacts that a change to a negative rate value has already had."