



Informing Progress - Shaping the Future

FOIL UPDATE 29th August 2023



Personal Injury Discount Rate Review (England & Wales)

The Ministry of Justice has published the minutes of the Personal Injury Discount Rate (PIDR) Expert Panel Meeting held on 21st July 2023.

It was confirmed that the work of the panel and its membership would not be affected by a general election or change in Lord Chancellor.

Following a high-level discussion of the analytical approach taken by the Government Actuary's Department (GAD) in the 2019 review, an overview was provided of the key high level methodology considerations, highlighting that it is a balance of risk and cost between stakeholders. In the absence of sufficient evidence relating to the availability of Periodical Payment Orders (PPOs) and how these work in practice, it was noted that no meaningful retrospective analysis could be made of their impact and the review will proceed on the assumption that the damages are paid via lump sum.

The availability of PPOs did not influence the analysis but did provide some justification for not allowing for other risks, as these could be mitigated by the adoption of a PPO.

There was a discussion centred around the Lord Chancellor's decision to set the rate at -0.25% (as set out in the statement of reasons); and what is meant by "low risk" and how this is measured.

It was confirmed that this review must commence no later than 15th July 2024, which is five years from when the last review was completed. HM Treasury and the Expert Panel, the statutory consultees, must respond within 90 days of the Lord Chancellor's request.

The panel will determine what analytical work may be required and timescales associated with that can be determined by the Panel. The Panel may wish to consider what has been conducted previously, such as a public call for evidence which can be facilitated by Ministry of Justice (MoJ).

It was noted that the MoJ's view is that statutory consultees should proceed independently and separately. However, the MoJ will continue to maintain relationships with both HMT and the Expert Panel and can facilitate sharing of relevant information as required.

An overview was provided of the role of the Expert Panel and the Terms of Reference, noting that the Panel reflects different interests, will convene only for the duration of the review, and set out the expectations of individuals holding public appointments.

It was proposed that, at the beginning of each subsequent Expert Panel meeting conflicts are to be disclosed. The GAD (or Deputy Government Actuary, if required to step in for the Government Actuary) will also recuse themselves from any GAD discussions involving client matters that are affected or may be potentially affected by the PIDR.

The group discussed information management and suggested different options to store information securely. Clarity was sought as to how disclosure under FOIA would work in practice in relation to individual Panel members. A number of options are under consideration.

A discussion took place around the work programme for the next three months. The group asked to see in further detail a summary of the dual/multiple rate call for evidence responses ahead of its September meeting, prior to which an interim meeting of the Expert Panel is to be convened and discuss the analytical approach.

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