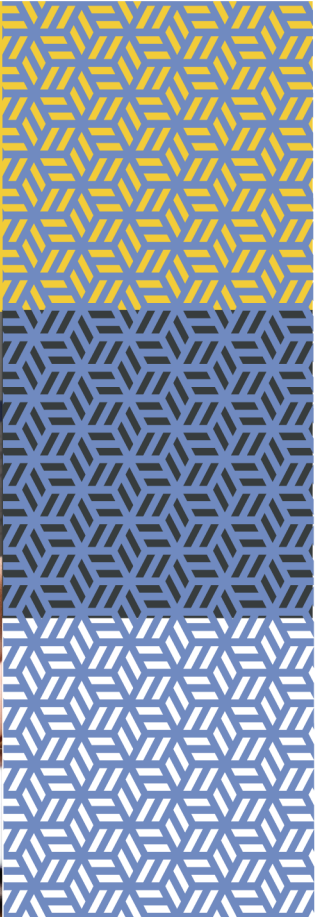




Risk control

Discount Rate Review Announcement



In partnership with



Discount Rate Review Announcement

Introduction

On 15 July the much anticipated announcement was made by David Gauke, the then Lord Chancellor, on the Discount Rate to be used in calculating future loss damages claims. The outcome, a negative 0.25% is to be used for any settlement occurring after 5th August¹.

This figure is lower than many defendant insurers had expected and the reaction from the industry has been somewhat negative².

The change in 2017 to a rate of -0.75% made by Liz Truss saw reserves having to increase exponentially in order to meet the vastly increased lump sum settlements that claimants with future loss elements would receive. Part 2 of the Civil Liability Act brought about a transformation as to how the Discount Rate would be set in the future.

We now know that as of 5th August 2019, the new rate will be -0.25%. The statement issued by the Lord Chancellor following the outcome of the review sets out the basis of the decision, having considered the advice of the Government Actuary Department and submissions from various stakeholders.

The advice provided by the Government Actuary Department was that the rate should be set at +0.25%. The Lord Chancellor stated that this was the "starting point of his determination rather than an end point"³ and that in his view a positive 0.25% would have resulted in too high a risk of undercompensating claimants. The degree of under/over compensation at -0.25% was felt to be more appropriate.

This cautious approach taken by the Lord Chancellor suggests that concerns over economic stability, including Brexit, may have played their part.

The Government's Impact Assessment suggests that the insurance industry would benefit from the change to the sum of £400m a year. This however is based on the comparison to claims settling on a -0.75% rate, the reality has been that many claims have settled on the basis of a then expected rate of somewhere between 0 and 1%. Whether reserves for future claim settlements had been set along the same lines is not known⁴.

¹ <https://www.gov.uk/government/news/lord-chancellor-announces-new-discount-rate-for-personal-injury-claims>

² <https://www.insurancebusinessmag.com/uk/news/auto-motor/oqden-rate-review--how-the-insurance-industry-has-reacted-172666.aspx>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816819/statement-of-reasons.pdf

⁴ <https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/discount-rate-impact-assessment.pdf>

The Lord Chancellor also considered it inappropriate to adopt a dual rate due to a lack the quantity and depth of evidence to support one. Whether future reviews bring a dual rate is to be seen but a consultation is to commence on this very issue to inform the next review and the work of the expert panel.

Periodical Payment Orders (PPOs)

The current PPO framework is not to be amended. PPOs may be more attractive to a claimant under the new rate compared to a -0.75% however with a continued negative discount rate which ultimately leads to a higher lump sum, we are likely not to see an increased uptake in PPOs from claimants as there is little financial benefit in them doing so.

Ogden Tables

The Ogden tables themselves have now been updated showing results for all 28 tables at a -0.25% rate, ironically the 7th edition had not accounted for such a rate when first published.

Scotland

The Damages (Investments Returns and Periodical Payments) (Scotland) Act 2019 came into force this month, the forecasted Discount Rate based on changes made to the Act is expected to be set a negative -0.25%, the same as England and Wales⁵.

Reserves

Open claims with an element of future loss will need to be reviewed, any amendments on those reserves to be adjusted accordingly.

Part 36 offers

A review of all Part 36 offers currently on the table need to be reviewed, any defendant offers that had been made pre-empting a positive rate being announced will offer no protection on costs. Any claimant offer made based on a -0.75% rate will mean the same. Conversely there may be offers made by claimants at a higher rate than has now been set, they are likely to be withdrawn and consideration should be given as to whether to accept those offers.

⁵ <http://www.legislation.gov.uk/asp/2019/4/enacted>

Related issues

Judicial College (JC) guidelines are also due to be updated in September. We can expect a blended increase of circa 3.5% on Pain, Suffering and Loss of Amenity (PSLA) awards.

Jackson Part II – it may well be that some lower cases effected by the rate change are caught up in the proposed further extension of Jacksons fixed costs regime with claims up to £100,000. However the majority of cases effected will of course be of much higher value.

In accordance with the Civil Liability Act the Lord Chancellor will commence the next review cycle within five years; effectively it must be started by 14th July 2024. This next review will be undertaken with assistance from an independent expert panel, post Brexit and with possibly a more stable economic outlook on which to base it.

Whiplash reforms

Although not impacted by the Discount Rate review it is important to note the Government at this stage are still looking at an April 2020 launch, whether this timetable is kept to is dependent on the need to iron out the remaining aspects of the reforms, including the CPR and protocol amendments, portal development, whiplash tariff and MedCo.

Worked example showing the potential impact of the varying discount rate as below*.

30 Year old male earning £25,000 PA unable to work following injuries sustained in an accident, requiring ongoing care and assistance;

Pre 2017 DR 2.5%	£1.5m
Pre 5 August 2019 DR -0.75%	£2.5m
Post 5 August 2019 DR -0.25%	£2m

*illustrative figures only based on the varying amendments to the discount rate.

References

- 1 <https://www.gov.uk/government/news/lord-chancellor-announces-new-discount-rate-for-personal-injury-claims>
- 2 <https://www.insurancebusinessmag.com/uk/news/auto-motor/ogden-rate-review--how-the-insurance-industry-has-reacted-172666.aspx>
- 3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816819/statement-of-reasons.pdf

- 4 <https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/discount-rate-impact-assessment.pdf>
- 5 <http://www.legislation.gov.uk/asp/2019/4/enacted>

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