FOCIS

The Forum of Complex Injury Solicitors

Government Actuary's Department
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4 October 2024

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Dear Government Actuary

Review and determination of the personal injury discount rate in Scotland and Northern Ireland

On behalf of the Forum of Complex Injury Solicitors (FOCIS), Association of Personal Injury Lawyers (APIL) and the injured claimants that our members represent, yesterday we made the attached Freedom of Information Act (FOI) request for documents and details relating to a single aspect of your identical reviews and determinations of the personal injury discount rate (PIDR) in Scotland and Northern Ireland on 24 September 2024.

The aspect in question is the long-term differential between the Average Weekly Earnings (AWE) index and Consumer Prices Index (CPI). We seek by way of FOI request documents and any other details that you relied on when at paragraph 3.10 of your reports for both Scotland and NI you determined:-

3.10 I have assumed that AWE will increase in line with CPI + 1.25% p.a. I have considered long-term historical rates of real earnings growth (since 1970s) and allowed for lower levels in more recent years. I have also considered other sources of information for this assumption such as the Office for Budgetary Responsibility's (OBR) assumptions and other views on earnings provided to GAD directly. Further information on this assumption *can be found in Appendix B.*

You further explained this determination in Appendix B as follows:-

B11. Given the investment period is 43 years, I have considered the future outlook for AWE from a number of sources, alongside the historical long-term average rate of increase relative to CPI.

B12. The Office for Budgetary Responsibility (OBR) produces assumptions around earnings over the long term. The OBR's medium-term forecast for average earnings inflation which ranges from CPI - 0.5% p.a. to CPI + 1.4% p.a. over periods to 2028. The OBR's longer term outlook has earnings stabilising at CPI + 1.8% p.a. from 2036.

B13. I have also considered information from academic and other sources on general future earnings inflation. These sources suggest a rate anywhere between CPI + 1.25% to CPI + 2% could be justified.

B14. Therefore, my assumption of CPI + 1.25% for AWE has been set taking into account the longer- and shorter-term historical rates of earnings inflation relative to CPI and a range of forecasts of future earnings inflation.

We query the basis on which you were able to reasonably make this determination for a long-term (assumed 43 year average period of loss) at a rate that is materially (0.55 percentage points) lower than the closest matching long-term projection of the OBR. We further observe that:-

1. In the 2019 GAD report for England and Wales at paragraph 8.12 the then Government Actuary said "my assumption that earnings will exceed CPI by 2% pa is therefore intended to be a neutral assumption over the long-term". We note there was no equivalent section in the GAD reports for Scotland and Northern Ireland.

2. The Government Actuary's latest review of the National Insurance Fund was published on 17 March 2022. Future earnings and prices assumptions are in Table D4 (page 40) and are as follows: CPI 2% pa throughout Earnings 3.7% for 2027-2035 and 3.8% for 2036-2085, namely 1.7% and 1.8% p.a. real earnings growth.

3. More recently the GAD has published reports on the actuarial valuations of the NHS and Teachers Pension Schemes. The economic assumptions are set by the Treasury rather than determined by GAD. In both reports, published within a couple of days of each other in April 2024, CPI is assumed to increase at 2% pa and earnings at 3.8% pa for the long term (i.e. 2028/20 onwards), namely a real earnings increase of 1.8%.

You will appreciate that the 0.55 percentage points differential between the OBR's long term projection for earnings inflation and your recent determination will make a very significant difference to claimant's with long term disabling injuries. If you have materially underestimated the long term earnings inflation differential that will likely result in many of the most seriously injured claimant's running out of funds to meet their high level care needs in their latter years. Not only will that be disastrous for them and their families, it will also likely increase the incidence of such claimants falling back on the State to meet their care needs, at a significant cost to the tax payers.

We also observe that if your determination of this aspect were correct then it would have significant economic ramifications for many governmental departments. Consequently, we also request clarification of whether you have consulted with the OBR, Treasury and/or Bank of England concerning your assessment of the long-term differential between earnings and prices inflation. If so have any of them endorsed your assessment?

We look forward to hearing from you in response to this letter.

Yours faithfully

FOCIS & APIL

The Forum of Complex Injury Solicitors (FOCIS) are a group of pre-eminent solicitors who specialise in acting for seriously injured people in personal injury and clinical negligence claims. For further information see https://focis.org.uk/home. The FOCIS postal address is c/o Stewarts, 5 New Street Square, London EC4A 3BF