



The Forum of Complex Injury Solicitors (FOCIS)

Response to

The Guernsey Policy and Resources Committee

The Personal Injury Discount Rate – Consultation of the recommendations of the Personal Injury Discount Rate Expert Panel

About us

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. The objectives of FOCIS are to:-

- Promote the highest standards of representation for claimants with life-changing injuries;
- Increase understanding in the wider community of issues which arise for those who suffer serious injury;
- Use members' expertise to promote debate and improvements to the law and legal process; and
- Share knowledge and information among members of the Forum.

Further information is available here: <https://focis.org.uk/>

Membership of FOCIS is intended to be at the most senior level of the profession. The only formal requirement is that members are recognised by their peers as having achieved a pre-eminence in one or more specialist types of serious injury claim. We currently have 24 members, including members from England, Scotland, Wales and Northern Ireland. Nine of the past presidents of APIL are members or Emeritus members of FOCIS. Firms represented by FOCIS members include:

Anthony Gold	Hugh James
Ashtons Legal	Irwin Mitchell
Balfour + Manson	JMW Solicitors
Bolt Burdon Kemp LLP	Leigh Day
Dean Wilson LLP	Moore Barlow
Digby Brown	Osbornes Law
Fieldfisher	Slater and Gordon
Fletchers	Stewarts
Freeths	Switalskis Solicitors
Gadsby Wicks	Thompsons Solicitors
Hodge Jones & Allen	

Introduction

FOCIS is grateful for the opportunity to respond to the Guernsey Policy and Resources Committee's 'The Personal Injury Discount Rate Consultation on the Recommendations of the Personal Injury Discount Rate Panel'. In summary, our response below endorses the recommendations of the Expert Panel ('the Panel') made in the Report. We agree with the Panel's recommendation that the Guernsey PIDR should be reviewed on a regular basis, either on a 3-year basis or earlier where there has been a shift of more than 1.5% on real yields on UK ILGs.

We endorse the Panel's recommendation to adopt three rates for different heads of damage: price inflation, earnings related inflation and care cost inflation. This approach is likely to reduce the number of catastrophically injured claimants being under-compensated and reduce the likelihood that claimants will need to rely on the Guernsey States to meet their care and therapeutic needs. The proposed triple discount rate by reference to heads of loss also provides greater flexibility and precision, producing fairer outcomes for claimants than a single fixed rate and fairer outcomes for defendants than a dual rate.

As outlined in FOCIS' 2024 response to the UK Ministry of Justice's call for evidence on the PIDR in England and Wales ('our 2024 response'), we would like to take the opportunity to remind the Committee that each seriously injured claimant has just one claim in which they need to provide for life-long injury-related needs. We continue to warn against changes to any PIDR methodology that run the risk of exacerbating under-compensation. Whilst insurers can offset any perceived over-compensation of some claimants against under-compensation of others, seriously injured claimants are not in that position. The Committee must avoid, as far as possible, any scenario which increases the likelihood of any claimant not receiving full compensation as a result of the PIDR or which unfairly places investment risks on seriously injured claimants.

Q1: Should the Committee adopt by regulations a discount rate split into three, as recommended by the Report? Please explain the reasons for your answer as fully as possible.

Answer: Yes.

As stated above, FOCIS endorses the recommendations made in the Report in full. The Report outlines the vulnerability of the care sector in Guernsey to significant levels of inflation, exacerbated by Guernsey-specific pressures relating to recruitment difficulties, visa and immigration related complications, care as an unregulated sector and difficulties sourcing complex care services. Any concerns relating to the accessibility and affordability of care will

have a particularly acute impact on claimants with serious and complex injuries including birth related injuries, brain injuries and spinal cord injuries. As advocated for in our 2024 response, FOCIS supports the setting of a distinct rate for care cost inflation. We also strongly support the recommendation of the Expert panel that that be inclusive of medical treatment and therapy costs. We endorse the approach of setting the adjustment for future real costs of care at the top of the UK forecast range. For those who have been catastrophically injured, care, case management and medical therapies typically make up well over half of the total award for future losses. We therefore support the Panel's conclusions that a single PIDR is likely to lead to under-compensation for claimants with more significant care and medical needs.

We believe any complexity as a result of the adoption of three rates to be modest and unlikely to cause undue difficulty for lawyers with experience of catastrophic injury claims. Any simpler methodology, which risks departing from the principle of full compensation, and thereby significantly impacting seriously injured claimants, should not be adopted. It is our position that the introduction of three rates by heads of loss best ensures claimants secure as close to 100% compensation as possible.

Q2: Should the Committee adopt by regulations a discount rate split into two, as recommended by the Report? Please given comments to explain the reasons for your answer.

Answer: No.

We restate our position above that, whilst a dual rate would more closely follow the current methodology in Guernsey, any additional complexities from a triple-rate approach are modest and immaterial when weighed against the risks of under-compensation for claimants. The adoption of a triple-rate approach increases accuracy and fairness for both claimants and defendants in relation to the damages awarded, which is particularly important in the context of earnings growth being in excess of prices inflation and the care sector in Guernsey experiencing particular challenges in relation to accessing and affording complex care.

We believe consistency with the approach to calculating consensual Periodical Payment Orders (PPOs) to be an additional benefit of adopting a triple-rate, albeit we acknowledge that Guernsey does not yet have a statutory regime for PPOs. Many cases involving seriously injured claimants will include a pleading for PPOs in the alternative. In calculating PPOs, practitioners frequently include multiple heads of loss, each with reference to a different index. The adoption of a triple-rate approach will align with this approach and likely reduce the scope for either party to prefer a lump award over PPOs. We continue to call for the increased

utilisation of PPOs by insurers to reduce uncertainty for claimants and to reduce the inherent risks in managing and investing a lump sum award.

FOCIS endorses the triple PIDR rate as the optimal approach in setting the methodology for Guernsey. Any modest additional complexities or concerns regarding Guernsey differing from other jurisdictions will not create any difficulty for experienced legal practitioners, and such concerns are outweighed by the need to set a methodology that preserves the vital importance of full compensation for injured claimants and accounts for the Guernsey-specific challenges faced by injured claimants in accessing care.

FOCIS

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