Law Society of Scotland

Consultation Response

Personal Injury Discount Rate: Inflation Index and Determining the Judicial Rate of Interest

January 2026

Photo: Eilean Glas Lighthouse, Scalpay

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Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Civil Justice Committee welcomes the opportunity to consider and respond to the Scottish Government Consultation on Personal injury discount rate: inflation index and determining the judicial rate of interest.

The Committee has the following comments to put forward for consideration.

Question 1 – Do you have a preference for the Consumer Price Index (CPI) or Consumer Price Index including owner occupiers' housing costs (CPIH) or another index as the appropriate inflation index to be referenced in the legislation?

The Civil Justice Committee had no strong views but considered that a blended rate of both CPI and CPIH would perhaps be the appropriate inflation index to be referenced in the legislation.

Question 2 - Do you agree that the Damages Act 1996, schedule B1, should be amended to enable the possibility of a modified or adjusted inflation index to be used in the calculation of the discount rate?

The Civil Justice Committee had no strong views.

Question 3: Do you prefer Option A or Option B as a means of enabling the possibility of a modified or adjusted inflation index to be used in the calculation of the discount rate?

The Civil Justice Committee had no comments on this question.

Question 4: Do you have an alternative option for enabling the possibility of a modified or adjusted inflation index to be used in the calculation of the discount rate?

The Civil Justice Committee did not have an alternative option to propose.

Question 5: Do you agree that the mix of inflationary pressures affecting lump-sum awards of damages in Scotland is likely to be the same as that in England and Wales?

In the absence of evidence (and it was noted that the Civil Justice Committee is not aware of any evidence to the contrary), the Committee are inclined to agree.

Question 6: What do you think the appropriate inflation index should be for PPOs?

The Civil Justice Committee had no strong views but considered that a blend of both CPI and CPIH is perhaps most appropriate inflation index to be referenced in the legislation.

Question 7: Do you agree that provision should be made to enable the possibility of a modified or adjusted inflation index to be used for PPOs?

The Civil Justice Committee had no strong views.

Question 8: Are you aware of any subsequent case law or legislation which impacts the Scottish Law Commission's recommendation on determining the judicial rate of interest?

The Civil Justice Committee are not aware of anything impacting the Scottish Law Commission's recommendation on determining the judicial rate of interest.

Question 9: Are you aware of change in practice which impacts the SLC's recommendation on determining the judicial rate of interest?

See our answer to question 8 above.

Question 10: Do you agree that the Bank of England base rate should be used to establish the Judicial Rate of Interest?

The Civil Justice Committee observed that the Bank of England base rate is volatile and subject to frequent change. If the Judicial Rate of Interest was set with reference to the Bank of England Base Rate, the Committee foresees practical issues arising. For example, in claims for damages extending over a significant time period, practitioners would be required to work out interest rates for each period as there would likely be variations over the years.

Despite these concerns, the Committee do not agree that the judicial rate of interest should remain fixed for a significant period without any mechanism to change or review it.

Accordingly, the Committee proposed that the judicial rate of interest should be linked to the Bank of England base rate with a percentage increase on top but that this rate should be fixed for a reasonable period. The Committee proposed that a reasonable period should be no less than three years.

Question 11: If the Judicial Rate of Interest is to be pegged to the Bank of England base rate what should the percentage increase on the base rate be?

The Civil Justice Committee considered that a 2 to 3% increase would be appropriate in the circumstances.

Question 12: Is there suitable, published and accessible data which would inform what the percentage increase to the base rate should be?

The Civil Justice Committee looked at the historic discussions in 1993, when the current rate of judicial interest was set and were happy with the approach used. When the rate was set at 8%, the Committee noted that the base rate was slightly over 5%, so adding around 3% on top brought the judicial rate of interest to the current figure of 8%.

Question 13: Should the Scottish Ministers have power to amend by regulation the percentage modification of the base rate, either upwards or downwards? If not, please provide reasons for your answer.

The Civil Justice Committee are of the view that the Scottish Ministers should have the power to amend by regulation the percentage modification of the base rate either upwards of downwards, but only in exceptional circumstances such as in a global financial crisis, for example.

Question 14: Do you have an alternative option for determining the Judicial Rate of Interest?

The Civil Justice Committee had no comments on this.

For further information, please contact:

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