

Leave granted to Judicially Review the decision not to introduce an interim Personal Injury Discount Rate in Northern Ireland

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On 16th December 2020, Mr Justice McAlinden granted an applicant leave to Judicially Review the Department of Justice's (DOJ) decision not to introduce an Interim Personal Injury Discount Rate (PIDR).

On the 22nd October, the DOJ announced that it would not proceed with a planned move to change the PIDR to -1.75% or -2% in line with *Wells v Wells*, the existing legal framework for setting the PIDR Northern Ireland. The DOJ officials advised that a "rate set under *Wells v Wells* was likely to lead to over-compensation, which is contrary to the principle of 100% compensation" and, it is further noted that a *Wells v Wells* approach has been rejected in all other UK regions.

Instead the DOJ sought to proceed "as quickly as possible" towards a new legal framework for setting the rate in line with the statutory framework that now exists in Scotland. The Scottish PIDR, is currently at -0.75%, and higher than the current rate set for England and Wales at -0.25%. The Department asked the Committee for Justice (CfJ) to grant "accelerated passage" of the planned framework which would have, in their view, provided a new PIDR by the end of 2021.

To date the CfJ has not been persuaded of the need for "accelerated passage" and Members of the Committee have raised "serious concerns" about the plan to bypass an interim rate. The DOJ advised that without accelerated passage, it could be late 2022 before a new PIDR would be introduced and that four letters of claim, threatening judicial review proceedings against the decision not to proceed with an interim rate, had been received. It was accepted that this decision would have to be reviewed if the planned timetable for the introduction of a new framework was seriously disrupted. Options for passage of the proposed Bill within the current legislative timetable are to be discussed.

A formal application for leave to proceed with a judicial review hearing was subsequently lodged and granted. The solicitors acting for the applicant claim that "*the present Rate is patently untenable and must be adjusted as a matter of urgency so as to avoid any further prejudice to existing Plaintiffs within this jurisdiction whose cases fall to be determined by the Court in advance of any legislative change.*" A full hearing has been scheduled for the final week of January.

Impact

The impact of the JR proceedings cannot be overstated. It will serve to place further pressure on the DOJ to reconsider their plans to bypass setting an interim PIDR under *Wells v Wells*.

If the Judicial Review is successful the DOJ may be forced to introduce an interim rate under the existing legal framework. The introduction of a -1.75% or even -2% rate, could in the short term result in the "overcompensation" predicted by the DOJ. In turn this will have a detrimental financial effect on NI consumers, businesses and their insurers, as well as Health Trusts and other claims handling public authorities, at an already very difficult time.

This latest turn of events is disappointing; however DACB continue to work with key stakeholders to ensure the legislative changes required are introduced just as soon as possible to ensure much needed certainty in this area to the benefit of all.

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