Ministry of Justice
Setting the Personal Injury Discount Rate
Response from AXA UK

AXA UK

1. AXA UK (AXA) is part of the AXA Group, a worldwide leader in financial services. AXA Group operates in 62 countries with over 160,000 employees and 105 million customers. AXA has around 11 million customers in the UK and operates through specific operating companies – AXA Insurance and AXA PPP healthcare.

Executive summary

2. We welcome the opportunity to submit to this Call for Evidence. Whilst the questions in the consultation are predominately best answered by Independent Financial Advisors and claimant lawyers, in our answers we have highlighted key points which we hope are helpful to the decision-making process ahead of the first review of the Discount Rate. AXA also supports the response of the Association of British Insurers (ABI) to this consultation.

3. AXA has supported the Civil Liability Act, especially the Discount Rate section, as we believe it will ensure that people who have been injured through no fault of their own receive fair and just compensation. We hope that a new Rate will be set at the earliest opportunity.

4. We believe the Ministry of Justice should consider that a period of 30 years as an overall projection period for long-term investment returns is not reasonable and that a longer period should be adopted. It is also important to note that there are a range of asset classes available to claimants and that we would suggest that investment management charges would be between 0.5% and 1%.

Question 1
(a) What asset classes are generally available to claimants investing lump sum damages and suitable for the hypothetical "low-risk" investor envisaged in the setting of the discount rate?
(b) What asset classes are not generally available in practice to such an investor, for example due to reasons of scale, liquidity, cost-efficiency or unsuitability?

5. While this question is best answered by Independent Financial Advisors (IFAs) who advise claimants, we understand that a wide range of asset classes are available for claimants to invest. We are not aware of any asset class that is not available to claimants.

6. Examples would include the 7IM Personal Injury Fund (Appendix 1A) and the Wealth Management Association and The Personal Investment Management and Financial Advice Association conservative indices (Appendix 1B) which use a range of UK and international equities, cash and bond, real estate and hedge funds.

Question 2

(a) Please provide information regarding how recipients of lump sum damages awards for future financial loss are typically advised to invest, when they are normally advised and why?

(b) Is there any regulatory material or guidance available to those providing such advice? If so, what?

(c) Does such guidance help advisers achieve a suitable and consistent approach?

(d) Do claimants follow the advice given? If not, please explain to what extent and why.

7. This question is best answered by claimants' legal advisors. However, from experience of attending settlement meetings of high value claims we understand that claimants are advised of the advantages and/or disadvantages of lump sum award or Periodical Payment Order (PPO). Rarely, a Financial Advisor is also present at such settlement meetings and we have also come across occasions where we have been told that the claimant has been speaking to their IFA by telephone during the settlement meeting. Most often the investment advice will be provided post settlement.

Question 3

(a) To what extent do changes to financial conditions affect investment advice provided to claimants who receive a lump sum award?

(b) Is there any evidence available to show how the change to the discount rate in March 2017 directly impacted upon investment advice provided to claimants?

8. Inevitably, economic conditions will change over time and many personal injury awards are invested for several decades. For further comment and analysis, we would refer you to the report of Oxford Economics annexed to the ABI response to this consultation.

9. In our experience the change in the Discount Rate in 2017 has not directly impacted the choice between a lump sum award or PPO. Indeed, those claims that AXA Insurance have settled by way of a lump sum have been negotiated with a discount rate of between 0.5% and 1%. Accordingly, we do not believe that the discount rate has been a factor in the investment advice offered to claimants.

Question 4

(a) Please provide evidence of how recipients of lump sum damages awards actually invest, and why?

(b) What sources of balanced reliable data on investments actually made by claimants are available?

10. We do not directly have access to this information and the question is best answered by claimant solicitors and Financial Advisors.

11. That said, in AXA's response to the 2017 consultations on the Discount Rate we provided information sourced from two separate specialist Court of Protection law firms (Appendices 2A

and 2B). For ease we append that information to this response. Some further information is provided in table 3 of the report of Mark Quilter which was also appended to AXA's 2017 response (Appendix 3).

Question 5

(a) What data is available regarding the profile of claimants of lump sum damages?

(b) How are claims of loss typically split between loss of earnings and care needs, for notional investors with lump sums of around £0.5m, £1.0m and £1.5m respectively?

(c) Is a period of 30 years a reasonable overall average projection period to consider when analysing long-term investment returns from such portfolios, or would an alternative period or a range of periods be more suitable, and if so, which and why?

12. Attached (Appendix 4) are details of claims settled by AXA Insurance with damages of over £1million during 2017 and 2018. From this most claimants are male and aged 50 or less. Even where there is a reduction of life expectancy, given the age of claimants it can be anticipated that their life expectancy and period over which any lump sum will be invested is longer than 30 years.

13. For claims settled in the £500,000 to £1million bracket, the majority of the award relates to pain suffering and loss of amenity and past losses with approximately 21% of the award related to future loss of earnings. For further detail, we refer to the ABI response.

14. We do not accept that 30 years is a reasonable average projection period for investment returns. A longer period should be adopted. The Discount Rate should not be weighted to accommodate the minority cases where there is a short life expectancy and consideration should be given to a stepped or dual rate to protect such claimants.

Question 6

What evidence is available to illustrate how the following characteristics affect investment behaviours in practice?

(a) Age and expected future lifetime (e.g. longevity risk)

(b) Size of lump sum

(c) Initial and ongoing funding requirements (e.g. care or accommodation costs)

(d) Existence and requirements of financial dependants (e.g. spouse, civil partner, children)

(e) Other protected characteristics under the Equality Act 2010 (race, sex, disability, sexual orientation, religion and belief, marriage and civil partnership, gender reassignment, pregnancy and maternity);

(f) Availability of PPOs or other sources of income.

15. This question is best answered by Wealth Managers and Independent Financial Advisers. However, in our experience the choice between lump sum or PPO remains difficult to predict. Inevitably, the size of the lump sum and the life expectancy of the claimant are likely to be the biggest determinants of investment behaviours.

16. Where required, choices a claimant may make in respect of alternative accommodation and the cost of it may also have an influence on investment choices. This can be particularly the case where claimant's damages have been reduced by their contributory negligence.

17. We do not believe that other protected characteristics of claimants have a bearing.

Question 7

(a) What taxation rates typically apply to claimants on their investment returns, and how does the distribution of these vary across ranges of different claimants?

(b) How is the effect of taxation taken into account in determining what investments to make?

(c) What might typical average current tax rates be for notional investors with lump sums of around £0.5m, £1.0m and £1.5m respectively (and no other taxable income)?

18. We refer the Ministry of Justice to the response of the ABI for this question. Anecdotally, in dealing with compensation claims subject to the Discount Rate we do know from claimant lawyers that they will establish a Personal Injury Trust for the claimant so as to protect the claimant's damages and to minimise tax liabilities.

19. We support the ABI's suggestion that consideration should be given to the exemption from taxation of income earned investment returns on awards for future losses in personal injury claims.

Question 8

What evidence is available regarding the average long-term rates of inflation which apply to costs typically experienced by claimants in aggregate, and how do these compare to each of RPI, CPI, CPIH and earnings inflation?

20. We refer to the ABI response and the report of Oxford Economics, and support that RPI should be used as the measure of inflation.

Question 9

(a) What investment management costs would notional investors with lump sums of around £0.5m, £1.0m and £1.5m respectively pay in practice and how are these costs broken down into different areas?

(b) To what extent would a "properly advised" investor need to incur all of these costs, for example in relation to active or passive investment of funds?

21. Charges will vary by fund and be dependent on the size of sum invested. Typically, we would suggest that charges would be between 0.5% and 1%. For example, 7IM charge 0.5% on their Personal Injury Fund (Appendix 1A) and 0.82% on a Cautious Fund (Appendix 5). Investec operate

a sliding scale dependent on the amount invested but the highest charge is 1.25% and less in the aggregate for larger amounts invested (Appendix 6).

22. The ABI's response contains further information.

Question 10

(a) Please outline your views on how well each of the notional investment portfolios (i), (ii) and (iii) set out above would match the criteria for the investment approach to be assumed under the Civil Liability Bill (as summarised in paragraph 18 of this call for evidence).

(b) Please provide your views of an asset class distribution of a portfolio which would best meet those objectives (which may or may not be aligned with one of the notional portfolios (i), (ii) or (iii) listed above).

23. We refer to the ABI response and the report of Pannells annexed to it.

Question 11

Please outline your views on how the appropriateness of the portfolios outlined in Q10 would alter for claimants within a reasonable range of different characteristics under the following criteria (all other things being equal):

(a) Age and expected future lifetime

(b) Size of lump sum

(c) Initial and ongoing care funding requirements

24. We refer to the ABI response and the report of Pannells annexed to it.

Question 12

(a) Are there similarities between the ways that lump sums awarded in personal injury cases are invested and how individuals choose to invest other funds, for which data might be more readily available?

(b) For example, would data regarding defined contribution pension investments be of relevance – both in the way that funds are invested prior to initial withdrawal, and how these funds are managed in retirement (for example through income drawdown)?

(c) Would any other financial products be useful to consider, and if so, what data and information is available on investment decisions for such products which could be useful in this exercise to develop a proxy for how personal injury claimants might invest lump sums?

25. We refer to the ABI response and the report of Pannells annexed to it.

Question 13

Do you have any other data or evidence to provide that you consider to be relevant to this call for evidence? If so, please provide it and explain its relevance.

26. We have no further data to provide.

Question 14

Please provide evidence of how the setting of the discount rate under the new law will affect persons with protected characteristics.

27. Consideration should be given to exempting investment income derived from awards in personal injury claims for future pecuniary loss from taxation.

If you have any questions regarding this submission, please contact AXA UK's Senior Public Affairs Executive, Sophie Bonnel, on Sophie.bonnel@axa-uk.co.uk or 07815 708247.