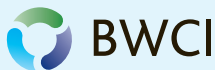


# Personal Injury Claims



**“A lump sum could potentially under or overstate the actual loss suffered”**

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After suffering a serious personal injury, with adverse long-term consequences for their quality of their life, an individual will often be entitled to compensation. These damages reflect the financial impact of the injury on the individual; these could include the cost of future care needs, as well as compensation for the loss of future earnings and pension rights.

In the UK the courts have flexibility to award either a lump sum payment or a periodical payment order (PPO). A PPO provides a series of compensation payments potentially for life. Until now Guernsey and Jersey courts have only been able to award lump sum damages, but legislation to allow periodic payments is being introduced.

### Which is better?

There are arguments for and against either option. A lump sum could potentially under or overstate the actual loss suffered. However it has the advantage of a “clean break” settlement for both parties. The main drawback with lump sum damages is that the amount is dependent on the assumptions used to estimate the loss; how long the injured party is expected to live and the rate of interest, after adjusting for expected inflation (ie the discount rate). The discount rate estimates the investment return above inflation from investing the damages at the outset.

### Setting the discount rate

The UK’s discount rate is set by the Lord Chancellor. Since March 2017 it has been -0.75% pa, but previously had been +2.5% pa since 2001. The UK rate is expected to change again as the methodology used to set it is under review. The Isle of Man’s statutory discount rate remains at 2.5%pa, but this is expected to be reviewed once the outcome of the UK review is known.

The position is different in Guernsey and Jersey; in the absence of a statutory discount rate the Courts used to adopt the UK discount rate until 2010 when this was successfully challenged in the Guernsey case of Helmut v Simon. The judgement in this case went on to set out guidelines for future Guernsey cases.

### The impact of uncertainty

The discount rate used can have a significant impact on the level of damages awarded. The lower the discount rate, the higher the damages.

Since the Helmut case, the uncertainty over what discount rate would be used in Guernsey and Jersey cases has meant that insurance premiums, particularly for cover for medical professionals, are higher than in the UK. However, the situation is expected to become clearer as both Guernsey and Jersey are set to introduce legislation to implement statutory discount rates, in addition to the introduction of a PPO option.

### Jersey Changes

In January 2019 a draft Damages Law implementing a statutory discount rate in personal injury claims was approved.

The discount rate is dependent on the period that the award is expected to cover, as follows:

- +0.5%pa if period is 20 years or less
- +1.8%pa if period is over 20 years

The higher discount rate for longer term awards reflects the higher expected return from longer term investments.

Going forward the Chief Minister will be able to change the discount rate by Order, after consulting the Bailiff. In addition, the legislation permits the States to introduce regulations to change the discount rate in future.

The UK’s current approach to setting the statutory discount rate assumes that damages will be invested in “very low risk” investments, eg index-linked gilts, which currently have negative returns. In practice, analysis by the UK’s Government Actuary’s Department shows that lump sum damages tend to be invested in a low risk diversified strategy, resulting in a slightly higher expected rate of return. Jersey have taken this analysis into account in setting its discount rate. However, it has not yet been reflected in the UK rate.

### What is happening in Guernsey?

Guernsey has also recently approved proposals for a statutory discount rate. It is anticipated that this would be set by the States Policy and Resources Committee, but no detailed proposals have yet been put forward. Consultation with interested parties is expected in the second quarter of 2019.

### What happens next?

Jersey is some way ahead of Guernsey, with draft legislation already approved. At this stage, the timeframe for the implementation of any legislation in Guernsey is unclear.

The hope is that, once implemented, having statutory discount rates in Guernsey and Jersey will reduce uncertainty on the size of lump sum damages claims, relative to the UK position and have a downward effect on insurance premiums, striking a better balance between the interests of insurers (and those paying premiums) and the needs of potential claimants.

Jurisdiction	Current discount rates
UK	-0.75%pa
Jersey	+0.5%pa for losses covering periods of 20 years or less  +1.8%pa for losses covering periods of over 20 years
Guernsey	Courts use Helmut method