General

1. **What are your views on the Bill overall? Is legislation in this area required? How far do you think the Bill will achieve what it sets out to do?**

Stagecoach Group plc (Stagecoach) considers that reform of the methodology for setting the Discount Rate is long overdue and that legislation is required to ensure a fair and transparent process for all parties involved in civil litigation.

Stagecoach supports the need for full compensation. We consider that claimants who pursue claims including a future loss element require compensation that allows them to replace 100% of their loss.

We do have some concerns that the current process for calculating future loss risks overcompensation.

The presumption that a claimant receiving lump sum compensation for future loss will be a cautious investor and invest in “very low risk” investment does not reflect current practice adopted by claimants or their advisers. Our view is that no claimant receiving proper advice to invest a lump sum would invest all of their funds in Index Linked Government Securities as the current law assumes.

We also have concerns that some of the changes to the process proposed in the Bill also risk overcompensation.

The content of the notional portfolio appears cautious.

The assumption that the appropriate period for investment is 30 years appears low.

The provision for an additional adjustment, referred to as the further margin appears unnecessary.

Stagecoach obtains insurance cover with high policy deductibles to provide protection against catastrophic losses.
Stagecoach is concerned that the risk of overcompensation means that the insurance market in which we seek to obtain insurance cover for our business insurances will become rather more expensive and that this will, undoubtedly, lead to an increase in our overall costs and the requirement for bus fares to increase.

**Part 1**

2. **Part 1 of the Bill aims** “to reform the law on the setting of the personal injury discount rate in order to make provision for a method and process which is clear, certain, fair, regular, transparent and credible”. Is it an aim with which you agree? And to what extent do you believe the reform will achieve all these things – a clear, certain, fair, regular, transparent and credible method and process?

Stagecoach is in favour of the overall aim of the Bill to implement a regular review of the Discount Rate. Legislating as to the process to be followed and frequency of reviews will allow clarity and greater certainty for all parties.

We do have some concerns regarding as to how the review will be carried out and the degree to which unnecessary safeguards are proposed in respect of investment behaviour.

As indicated in our response to Q1 above, we do not consider it to be appropriate that a claimant in receipt of a lump sum award of damages for future loss be viewed as a very low risk investor. Our experience of such claimants is that they will have representation and that the advice they receive would not be to invest in very low risk investments. We do not consider that the proposed investment portfolio reflects the likely investment behaviour of such claimants who are likely to accept advice to invest in a range of investments, some of which would be very low risk and others more high risk (though probably not high risk). The assumption that claimants will invest in very low risk investments risks over compensation where investment in less low risk products results in a higher return than the proposal projects.

In addition, we note the proposal that there be an additional adjustment as a safety margin to protect claimants. We have expressed our concern that investment behaviour is likely to be less risk averse than assumed by the proposal and that returns on investment will be higher than expected as a result. The implementation of an additional adjustment as a safety measure against poor investment results compounds the error made by adopting an highly cautious approach and is, therefore, likely to ensure that over compensation will be the result.

Stagecoach is concerned that the risk of overcompensation means that the insurance market in which we seek to obtain insurance cover for our business insurances will
become rather more expensive and that this will, undoubtedly, lead to an increase in our overall costs and the requirement for bus fares to increase.

3. In terms of who sets the rate, the Scottish Government proposes to have the rate reviewed by the Government Actuary rather than Scottish ministers (as is the current situation). It believes that this will remove the setting of the rate from the political sphere “where there is the potential for pressure from external interests to attempt to influence the outcome” and “should provide fairness to all parties involved”. What are your views?

Stagecoach notes that the Bill sets out the role of the Government Actuary in setting the Discount Rate. The Bill also specifies investments to be considered in the notional investment portfolio and that there may be an additional adjustment. That these elements are included in the Bill and the fact that Ministers will retain the power to review the proposed portfolio demonstrates that setting of the Discount Rate will remain in the political sphere.

4. The Scottish Government has chosen to lay down in detail how the rate should be calculated in legislation. Do you support this proposal over the approach taken in England and Wales of leaving much more to the discretion of the Lord Chancellor and an expert panel?

The approach to rate setting proposed in the Bill appears to limit the flexibility of the Government Actuary in relation to setting the Discount Rate to be applied to claims arising in Scotland.

The approach proposed for Scotland does not require that Ministers or the Government Actuary seek the views of an expert panel before reviewing the Discount Rate, though in practise they may elect to do so.

5. With no statutory requirement for the discount rate to be reviewed regularly, currently there can be a 15 year gap between reviews in Scotland. The Government Actuary will start a review of the rate on the date on which the relevant provisions of the Bill are brought into force. Thereafter they will be required to start a regular review every three years and the Scottish Ministers may decide on an additional, out-of-cycle review, but which would not disrupt three-yearly reviews. Do you have any views?

Stagecoach supports the proposal that the Discount Rate be reviewed at regular intervals. We would also support introducing the flexibility to instigate a review in the interim period where circumstances dictate this is required, though we would prefer that any interim review resulted in an adjustment to the interval at which the regular review is undertaken.
Stagecoach offers no view as to the interval at which regular reviews should be undertaken.

6. In changing the methodology to move away from a rate based on Index-Linked Government Stock (ILGS), the Bill makes provision “on the basis of portfolios described as cautious and which we believe would meet the needs of an individual in the position of the hypothetical investor who is described in the legislation”. The Scottish Government also states: “The portfolio does reflect responses to the consultation that investing in a mixed portfolio of assets provides flexibility and is the best way of managing risk”. Do you think the Scottish Government is justified in assuming that injured people have access to the necessary expertise to achieve this?

Stagecoach considers that the Scottish Government adopting the correct approach in moving away from setting the Discount Rate based on the returns available from ILGS. Investment behaviour is such that claimant’s in receipt of a lump sum compensation award would not invest in such products.

In addition, where a lump sum compensation award is imposed or agreed, the claimant would, invariably, be in receipt of legal advice to pursue their claim. Any appropriately advised claimant would be directed toward independent financial advice.

Part 2

7. Where damages for personal injury are payable, the Scottish courts may make a periodical payments order but only where both parties consent. This differs from England and Wales, where the courts have the power to impose such an order. Part 2 of the Bill will give courts the powers to impose periodical payments orders (PPO) for compensation for future financial loss. Respondents to recent consultations overwhelmingly supported courts in Scotland having the power to impose periodical payment orders, seeing this as a way of reducing uncertainty as well as the risk of over-/under-compensating pursuers. What is your position?

Stagecoach have only ever had one claim settled subject to Periodical Payment Order (PPO). We have little experience of such settlements but would not, in theory, have any issue with settlement on this basis where appropriate.

We note that the courts have the power to impose PPOs in England and Wales and we offer no opinion as to whether such powers should be made available to the Scottish courts, however, it would appear sensible to have similar provisions in place in both jurisdictions.

We would comment that, where a claimant is very risk averse, settlement by PPO may be a more appropriate outcome rather than a lump sum settlement.
8. **How well used do you think the provisions would be in practice? What impact do you think the requirement on the court to ensure the “continuity of payment under such an order would be reasonably secure” would have?**

As indicated above, Stagecoach has limited experience of settlements where a PPO is ordered.

We consider that where a claimant prefers the certainty of a PPO over a lump sum award, it is difficult to see why such settlement would not be agreed or ordered.

Where a settlement by PPO is agreed, we would consider that some means of court approval would be warranted.

9. **The proposals in the Bill would allow the courts to revisit a compensation award where there has been a change of circumstances (although only where this has been identified in advance). This would represent a change to the current law. Do you have any comments?**

Stagecoach considers that, where settlement is agreed or ordered and the claimant has been adequately represented, there are limited circumstances where it would be in appropriate to seek to revisit the settlement or award.

While it is accepted that a change in the claimant’s circumstances that can be directly attributable to the injury arising out of the negligent act that gave rise to the claim should be considered, we consider that such change in circumstance requires careful and precise definition.

**Overall**

10. **The Bill overall is intended to support the Scottish Government’s national outcome that: “We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others”. Do you have any comment?**

Stagecoach supports the view that, where a claimant suffers injury giving rise to a future loss claim, any settlement agreed or ordered should reflect, in full, the loss sustained.

Stagecoach supports the need for a mechanism to calculate the full value of the claim and the need for periodical review of that mechanism to ensure that it continues to provide access to 100% compensation.

Stagecoach considers that the current Discount Rate of -0.75% produces a situation where claimants in receipt of a lump sum settlement are over compensated and this inflates the cost of claims and insurance products available to cover the cost of claims.
11. In previous consultations in this area, views have tended to be polarised between pursuer and defender interests. Does the Bill, in your view, manage to balance these interests?

Stagecoach supports the need for claimants in receipt of lump sum compensation awards receiving 100% compensation. In addition, where circumstances dictate, PPOs should be available to claimants.

We have expressed concern at the proposals for setting and reviewing the Discount Rate outlined in the Bill as we have concerns that this may lead to over compensation.

Subject to action being taken to address the concerns we have raised, the proposal will create a clear and fair process.

**Other comments**

12. **Are there any other aspects of the Bill you wish to comment on?**

No