Analysis of responses - Consultation on the inflation index for the calculation of the personal injury discount rate and the methodology for calculating the judicial rate of interest

26 June 2026

Introduction

1. On 28 November 2025, the Scottish Government published a consultation on the inflation index for the calculation of the personal injury discount rate (PIDR), periodical payment orders, and the methodology for calculating the judicial rate of interest.
2. The PIDR is an adjustment of an award of damages to reflect the fact that the injured person is able to invest the money before the loss or expense for which it awarded has actually occurred. When the Scottish Government considered the PIDR in 2024 the view was taken that there was not the flexibility to prescribe an adjusted inflation index in regulations. The purpose of the consultation was to seek views on this matter so that going forward the legislation has the needed flexibility to ensure that an injured person is fully compensated, no more or no less.
3. The second part of the consultation asked a series of questions about what inflation index should be referenced about periodical payment orders (PPOs) in the Damages Act 1996.
4. The final part of the consultation sought views on the judicial rate of interest which, at 8% on post-decree awards, is, on one view, not at an appropriate level, particularly when interest rates are significantly lower.
5. The consultation closed on 28 January 2026. The Scottish Government received a total of twenty-one responses to the consultation with all but two responses from organisations. Those respondents who completed a Respondent Information Form and were content to have their name published are listed at Annex A.
6. A statistical breakdown of the responses is provided at Annex B.

Personal Injury Discount Rate (PIDR)

7. In the first part of the consultation paper we asked a series of questions regarding the inflation index for the PIDR. We sought views on what stakeholders thought would be the most appropriate inflation index to reference in the Damages Act 1996 and whether the inflation index should be capable of being adjusted when determining the PIDR.

Choice of Inflation Measure

8. We asked consultees whether they had a preference for CPI, CPIH or another inflation index to be referenced in the Damages Act 1996. The overwhelming majority said that CPI should be referenced - over 75% (sixteen respondents). Only two said that CPIH should be used, and three said neither.

9. Of those who said CPIH, only Shackleton Financial Advisors gave a reason: because of its link to Gilts allowing for a market-based price (from February 2030, UK index-linked gilts will have their payments indexed to CPIH).

10. Of those in favour of CPI, it was common a point that CPI is generally the measure of inflation most widely used and adopted by the UK Government, for example, to index benefits and state pensions and for the Bank of England's inflation target. A second reason was because CPI's adoption would result in a more consistent UK-wide measure being used to calculate the PIDR. As DWF said:

    "CPI is based on actual prices paid, not assumed values [CPIH includes housing costs on the basis of an estimate of what a homeowner would pay to rent their home], so reflects the reality of the costs that claimants face. It is the primary index used for government policy, is widely understood by the public, and is based on a framework used across the EU and in many global statistical systems.

    CPI is adopted in England and Wales and choosing the same index will promote consistency in approach between jurisdictions. That is important for both fairness and predictability. CPI is the most reliable and consistent of the available indices."

11. APIL pointed out that although housing costs are a major head of claim they should be excluded from the future loss total before considering the inflationary weighting of the heads of loss that remain. This was because of the English Court of Appeal's decision in *Swift v Carpenter* that the cost of buying alternative accommodation is no longer dependent on PIDR given that the reversionary interest is calculated using the life expectancy, not a PIDR-derived multiplier. APIL reported that the Scottish courts are following the same approach.

An adjusted index

12. We then went on to ask consultees whether they agreed that the Damages Act 1996 should be amended to enable the possibility of a modified or adjusted inflation index to be used in the calculation of the discount rate. There were twenty responses to this question, with nineteen respondents agreeing and none outright disagreeing.

13. A number of those who responded in favour of reform said that inflationary pressures faced by an injured person will mostly lie somewhere between a prices-based or earnings-based index, so an unadjusted index is unlikely to reflect the blend of inflation in real-world damages claims. In addition, it was pointed out that a single inflation index that is likely to under- or over-compensate injured persons undermines the "100% compensation principle" whereby an injured person should receive compensation for their losses to restore them to the position they would have been in before the accident, neither more nor less.

14. For instance, DAC Beachcroft said:

> "Not building in the ability to adjust the index allowing only earnings-based inflation to be reflected in the chosen index will most likely over-compensate pursuers, undermining the principle of 100% compensation, to the detriment of the premium paying public and tax payers."

Options for adjusting the inflation index

15. The Scottish Government presented consultees with two options for how the inflation index may be adjusted. The first, referred to as Option A, would see legislation amended to change the default index from RPI to CPI (whilst retaining the ability for Scottish Ministers to prescribe an alternative source of information). There would then be provision that the default index should be capable of adjustment by the rate-assessor. That is, a number of percentage points could be added or subtracted from the published index, for example, the rate of inflation could be CPI + 1.25%.

16. The second, Option B, would see legislation amended to change the default index from RPI to CPI *and* include a percentage point adjustment. The Scottish Ministers would have the ability to prescribe, by regulations, an alternate index and/or adjustment.

17. The majority preferred that any adjustment would be undertaken by the rate-assessor, at the time the PIDR is being determined (seventeen respondents were in favour). The main reason offered by a number of respondents was that this approach would provide the rate-assessor with discretion to exercise their professional judgement.

18. On Option B, it was said that embedding the adjustment in legislation could impede timely changes as economic conditions fluctuate. For instance, APIL said:

"[Option B] would unnecessarily slow the ability of decision-makers to respond to real-world inflationary trends and could lead to periods in which pursuers are not fully compensated because the statutory adjustment no longer reflects the inflationary pressures affecting their losses."

19. It was also pointed out by a handful of respondents that appropriate adjustments to the inflation index are inherently technical and are better assessed by expert actuarial analysis rather than the Scottish Government.

20. Only one respondent (Clyde & Co.) outright preferred the Option B. It said:

"Our main reason for preferring this approach is that in our view it most closely reflects the policy aim […] that the key parameters of the PIDR should be pre-set within the legislation itself rather than allowing the rate-setter any discretion."

21. We asked consultees whether they had an alternative option for enabling the possibility of a modified or adjusted inflation index to be used in the calculation of the PIDR but none was suggested.

Mix of inflationary pressures affecting lump-sum awards of damages

22. We asked respondents whether they agreed 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. Eighteen respondents agreed while three neither agreed or disagreed.

23. DAC Beachcroft, who neither agreed nor disagreed, sampled a random selection of 10 live claims valued at over £1 million and found that, "these live cases sit squarely within the 65%/85% - 35%/15% that was applied by the expert panel as the split in England & Wales."

24. While agreeing, Professor Victoria Wass also said that:

"[…] the determination of damages inflation in England and Wales is not founded on reliable information and should not be used as a model for the determination of the damages inflation adjustment in another jurisdiction for this reason."

Periodical Payment Orders (PPOs)

25. The second part of the paper asked a series of questions about the inflation index for PPOs.

26. We asked consultees what they thought the appropriate inflation index for PPOs in the Damages Act 1996 should be. Over half suggested that the appropriate inflation index for a PPO should be determined by heads of loss. For instance, ABI said, "Unlike lump sum settlements, periodical payment orders (PPOs) are tailored to each case; for example, a PPO may be earnings-based and/or price-

based. In each case, it will be clear whether the damages are earnings-based or price-based."

27. MDDUS, like some others, pointed out that:

> "Personal injury cases that are settled through the court process will have individual characteristics that would make the application of a pre-determined inflation index inappropriate. The legislation includes provision for the court to vary whatever statutory basis is set. Therefore it seems to us that it does not really matter what the statutory basis is as each case is likely to be considered on its merits."

28. Four respondents suggested an ASHE index should be referenced, while one opted for CPIH and another for a blend of CPI and CPIH. Digby Brown said that, "[…] there is little value in having a default inflation index for PPO's."

29. Of the respondents who said that the appropriate inflation index for a PPO should be determined by heads of loss, most said that ASHE 6115 was an appropriate inflation index for care costs and CPI was the appropriate index for price-based PPOs. For example, on CPI DWF said:

> "Our view is that price-based PPOs should be linked to CPI for the following reasons:
>
> - CPI is generally the measure of inflation adopted by the UK Government (for example, to index benefits and state pensions); and
> - CPI is also used for the Bank of England's inflation target. It is therefore most commonly referenced in contracts with an inflation measure (outside of index-linked gilts), and so there is an argument that heads of losses linked to price inflation are most likely to increase in line with CPI."

30. The Scottish Government then asked whether the published index in section 3(2) should be capable of being modified or adjusted. There were nineteen responses to this question, with fourteen respondents agreeing and three disagreeing.

31. On the one hand, FOCIS said

> "Allowing a modified or adjusted index is […] essential to ensuring that PPOs remain properly aligned with the actual rate of cost increases faced by seriously injured pursuers. A fixed statutory index would not adequately respond to changing economic conditions, creating an inevitable mismatch between the award and the pursuer's needs over time"

32. Clyde & Co., on the other hand, said "We see no need for such a possibility because, with a periodical payment order, it is known what is being compensated for. This contrasts with the more generic nature of setting the personal injury discount rate."

33. Some other respondents expressed disappointment that Part 2 of the Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019 had not yet been brought into force and which they believe has, as a result, meant that uptake of PPOs in Scotland remains very low.

Judicial Rate of Interest

Question Eight

34. We asked respondents if they were aware of any subsequent case law or legislation which impacts the SLC's recommendation on determining the judicial rate of interest? There were eighteen responses to this part of the question, of which sixteen said they were aware of subsequent case law or legislation.

35. The cases of *Farstad Supply AS v Enviroco Ltd*[1] and *F v Gordon Chalmers & Others*[2] (CSOH 2025) were repeatedly mentioned. In *Farstad*, the Inner House of the Court of Session reduced the applicable rate of *pre-decree* interest following the 2008 financial crisis, recognising that the prevailing judicial rate no longer reflected economic reality given sustained low base rates. In *F*, the Outer House of the Court of Session had to consider the application of judicial interest over long time periods which can result in the interest component of an award forming a disproportionate part of the overall award. FSCM referred to the 2009 case of *JM v Fife Council*[3] as the leading authority on the timing of judicial interest.

36. Insofar as subsequent legislation is concerned, a number of respondents referred to the Limitation (Childhood Abuse) (Scotland) Act 2017. It was said that in such cases, interest accruing over several decades can exceed the underlying damages – as happened in the case of *F* - creating affordability and indemnity challenges where historic insurance limits were low or altogether unavailable.

37. MDDUS pointed out that in *Farstad*, the Inner House affirmed the Lord Ordinary's position "that it was not within his power to award interest on a novel basis such as the rate of 1% above base rate" but that a reduced rate of *pre-decree* interest could be applied. It also referred to:

- *McGowan v Springfield Properties Plc*[4] where the defender argued that a rate lower than the judicial rate of 8% should apply to both pre- *and* post- decree interest but the court held that it could not as a generality adopt a novel approach to interest which was at odds with the common law or statute, and should not depart from the prevailing judicial rate of interest except in relation to past losses incurred over time, or in some exceptional circumstance; and,

[1] [2013] CSIH 9.
[2] [2025] CSOH 23
[3] [2009] SC 163.
[4] [2025] CSOH 81.

- *Gillan v Sinclair*[5], the Sheriff Appeal Court underlined that courts should be consistent in their approaches to taxation and, based on Farstad, the court should have primary regard to the judicial rate in the exercise of its overall discretion as to expenses.

38. The Senators of the College of Justice said that the judicial rate of interest is set under general powers contained in section 103 of the Courts Reform (Scotland) Act 2014 and that there is no judicial discretion to reduce the rate awarded from the date of decree. It also said that the Inner House has emphasised that the judicial rate of interest remains the appropriate rate for pre-decree interest, other than in exceptional circumstances. Overall, the Senators said that there are benefits in moving to a judicial interest rate which broadly follows a tracker rate, but any change needs to be considered across the whole range of pecuniary court decrees.

Question Nine

39. We then asked respondents if they were aware of change in practice which impacts the SLC's recommendation on determining the judicial rate of interest. Two respondents said they were aware of a change in practice.

40. Digby Brown said that many pursuers, struggling to have funds to pay for every day expenses following an accident, are often accumulating debt to cover expenses for ongoing cases. It was suggested that the judicial rate of interest should align with the financial costs incurred by pursuers during the litigation process.

41. The International Underwriting Association were the other respondent to agree, saying that case law in recent years demonstrates that the current judicial rate of interest is disconnected from prevailing economic conditions.

Question Ten

42. We asked respondents whether they agreed that the Bank of England (BoE) base rate should be used to establish the Judicial Rate of Interest. Sixteen agreed and 1 neither agreed nor disagreed.

Question Eleven

43. We went on to ask if the Judicial Rate of Interest was to be pegged to the BoE base rate, what should the percentage increase on the base rate be. There were twenty responses to this part of the question.

44. A majority of respondents (ten) agreed that a 1% increase on the base rate was appropriate, with 1 respondent suggesting somewhere in the range of 1-1.5%. Four respondents suggested a percentage increase of 3% while three argued that the increase should be materially higher than 1.5% (as recommended by the Scottish Law Commission) because this does not adequately account for the

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financial realities faced by many pursuers where injured persons often rely on high-interest borrowing.

Question Twelve

45. We asked whether there is suitable, published and accessible data which could inform the percentage increase. Eleven respondents said there was, pointing to published Bank of England data, together with widely available information on average (i) borrowing and savings rates for businesses and individuals and (ii) rates applied to other awards for compensation. Clyde & Co said that relevant market information is available to inform any percentage increase in the same way that the Scottish Law Commission were able to inform its recommendation.

Question Thirteen

46. Finally, we asked whether the Scottish Ministers should have power to amend, by regulation, the percentage modification of the base rate. There were eighteen responses to this question – sixteen agreed, one disagreed, and one did not know.

47. The Senators of the College of Justice, who were the only respondent to disagree, said that:

> "It would be inappropriate for the Scottish Ministers to have power to amend the percentage given the Scottish Government's direct and indirect interest in the outcome of many claims going through the Court. We consider that the power to determine the appropriate percentage should remain with the Lord President but within a framework in terms of periodic reviews and recommendations from the government actuary."

48. Against this, MDDUS said that it is vital that Scottish Ministers are given this power, particularly given the courts' understandable reluctance to exercise its discretion to vary the judicial rate of interest. It pointed out that the Inner House in *Farstad* said:

> "We would add that in our view it is plain that the mismatch between the judicial rate and interest rates prevailing in the financial world which has existed following the crisis of 2008 is a matter of concern. In the absence of a wider reaching reform of the law relating to the awarding of interest such as that canvassed by the Scottish Law Commission in its report, (which must be a matter for the Scottish Government and the Scottish Parliament), the responsibility for updating the current judicial rate, to meet that mismatch, falls to the Rules Council. It is for that council to consider — we would suggest urgently — the clear mismatch identified by the Lord Ordinary, which we ourselves would endorse, and which is widely recognised by all engaged in litigation before this court."

49. While a majority of respondents agreed, a number also said that, prior to any such regulations being made, the Scottish Government should consult on the

appropriate percentage adjustment (some suggesting that consultation should include the Government Actuary) and publish a statement of reasons setting out the rationale for the decision. Clyde & Co. said that rate changes should be made on a five-year review cycle, save for truly exceptional circumstances (much like the PIDR review cycle) while a number of others suggested that reviews should not be frequent as this would create uncertainty and adverse claims behaviours.

Question Fourteen

50. On whether there was any alternative for determining the Judicial Rate of Interest, only one respondent made a suggestion which was that, rather than simple interest, the judicial rate should be compound interest. The reason given was that when sums are due over longer periods the simple interest calculation significantly undervalues the interest payable.

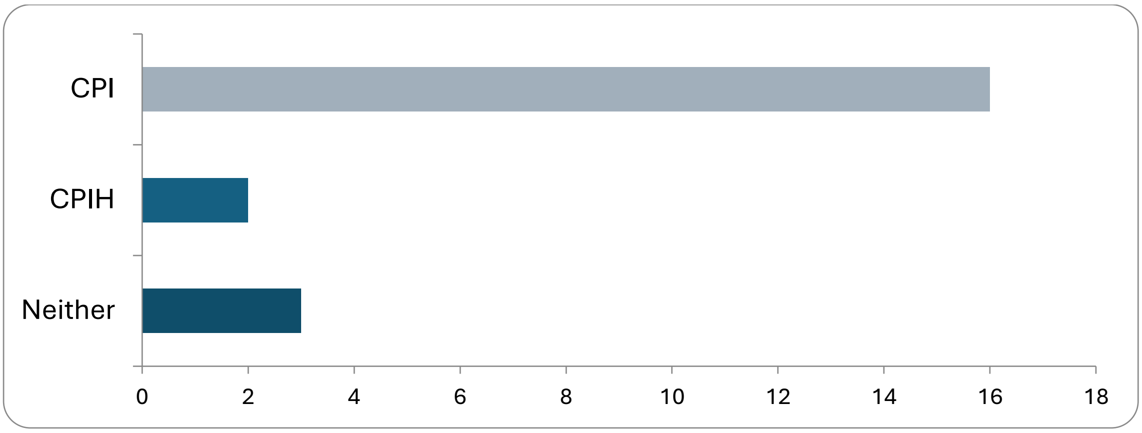
Annex A

List of Respondents

1. Association of British Insurers (ABI);
2. Association of Personal Injury Lawyers (APIL);
3. Clyde & Co.;
4. DAC Beachcroft;
5. Digby Brown LLP;
6. DWF LLP;
7. Forum of Complex Injury Solicitors (FOCIS);
8. Forum of Insurance Lawyers (FOIL);
9. Forum of Scottish Claims Managers;
10. International Underwriting Association
11. Keoghs LLP;
12. Law Society of Scotland;
13. Medical and Dental Defence Union of Scotland;
14. Medical Protection Society;
15. Motor Insurers' Bureau;
16. NFU Mutual;
17. Senators of the College of Justice;
18. Shackleton Financial Advisers;
19. Victoria Wass (Individual); and,
20. Zurich Insurance.

Question One: Do you have a preference for CPI or CPIH or another index as the appropriate inflation index to be referenced in the legislation? Please give your reasons.

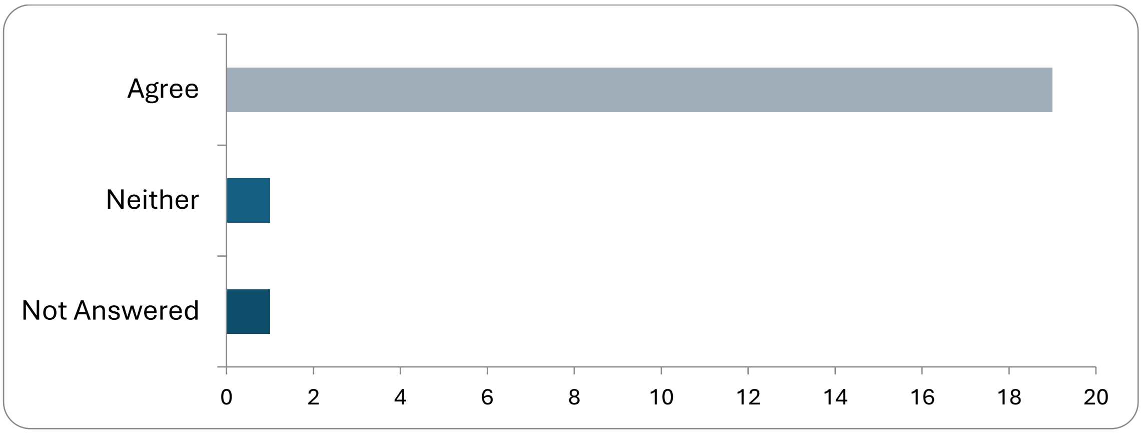
There were 21 responses to this part of the question.



Option	Total	Percent
CPI	16	76.19%
CPIH	2	9.52%
Neither	3	14.29%
Not Answered	0	0.00%

Question Two: 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? Please provide reasons for your answer.

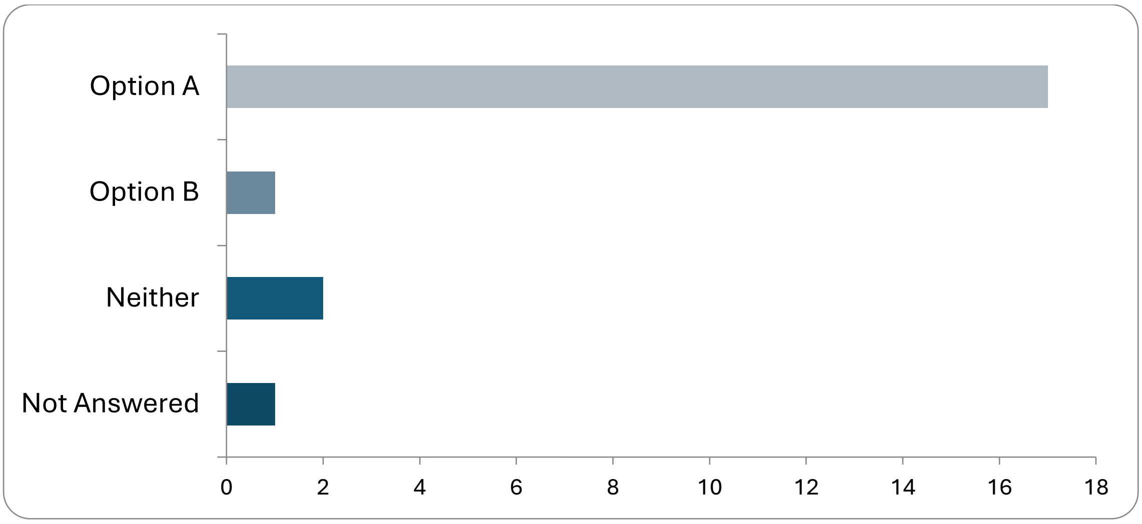
There were 20 responses to this part of the question.



Option	Total	Percent
Agree	19	90.48%
Disagree	0	0.00%
Neither	1	4.76%
Not Answered	1	4.76%

Question Three: 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? Please provide reasons for your answer.

There were 20 responses to this part of the question.



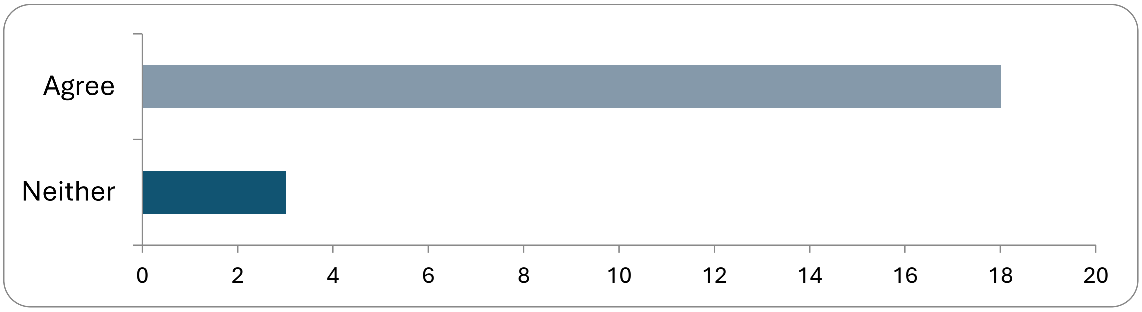
Option	Total	Percent
Option A	17	80.95%
Option B	1	4.76%
Neither	2	9.52%
Not Answered	1	4.76%

Question Four: 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? Please fully describe the alternative option and provide reasons for your answer.

There were 19 responses to this part of the question. This was an open question.

Question Five: 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? Please provide evidence for your view either way.

There were 21 responses to this part of the question.



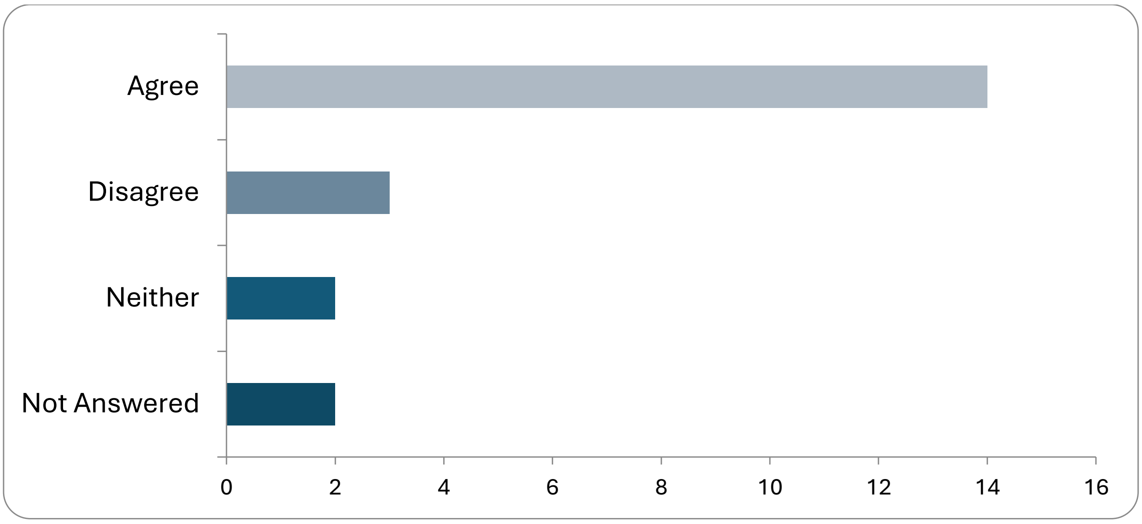
Option	Total	Percent
Agree	18	85.71%
Disagree	0	0.00%
Neither	3	14.29%
Not Answered	0	0.00%

Question Six: What do you think the appropriate inflation index should be for PPOs? Please provide reasons for your answer.

There were 19 responses to this part of the question. This was an open question.

Question Seven: Do you agree that provision should be made to enable the possibility of a modified or adjusted inflation index to be used for PPOs? Please provide reasons for your answer.

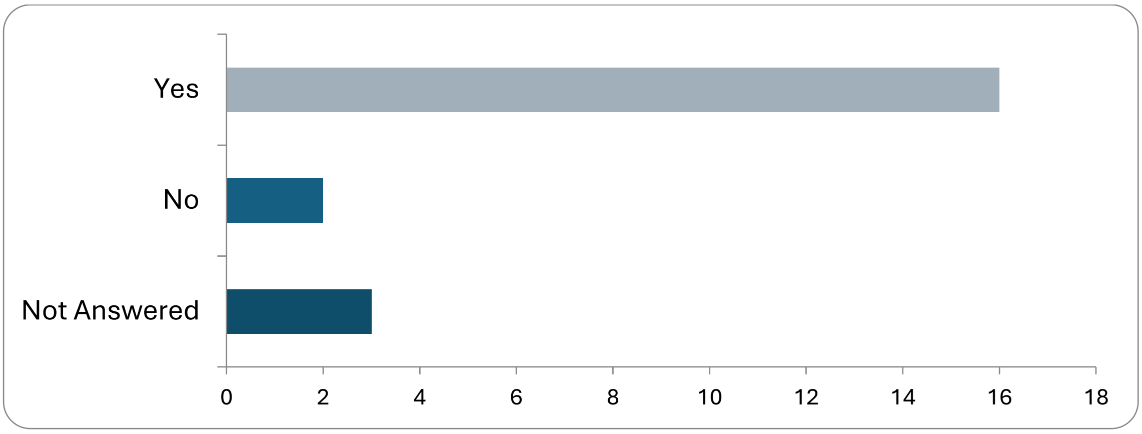
There were 19 responses to this part of the question.



Option	Total	Percent
Agree	14	66.67%
Disagree	3	14.29%
Neither	2	9.52%
Not Answered	2	9.52%

Question Eight: Are you aware of any subsequent case law or legislation which impacts the SLC's recommendation on determining the judicial rate of interest? If yes, please provide details.

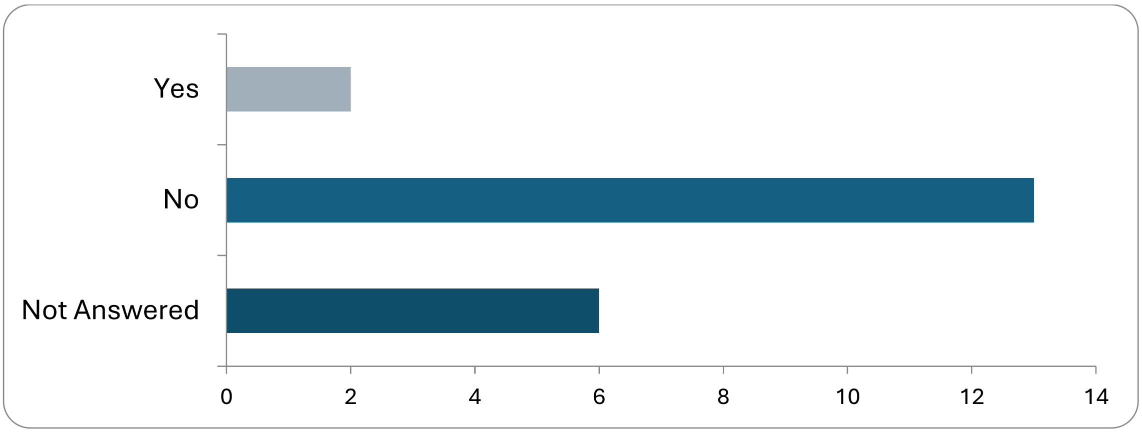
There were 18 responses to this part of the question.



Option	Total	Percent
Yes	16	76.19%
No	2	9.52%
Don't know	0	0.00%
Not Answered	3	14.29%

Question Nine: Are you aware of change in practice which impacts the SLC's recommendation on determining the judicial rate of interest? If yes, please provide details.

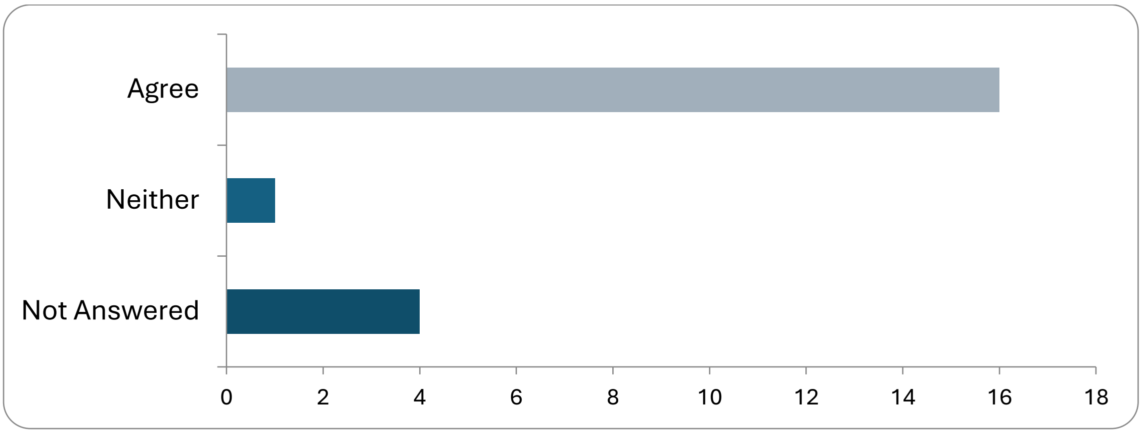
There were 15 responses to this part of the question.



Option	Total	Percent
Yes	2	9.52%
No	13	61.90%
Don't know	0	0.00%
Not Answered	6	28.57%

Question Ten: Do you agree that the Bank of England base rate should be used to establish the Judicial Rate of Interest? Please provide reasons for your answer.

There were 17 responses to this part of the question.



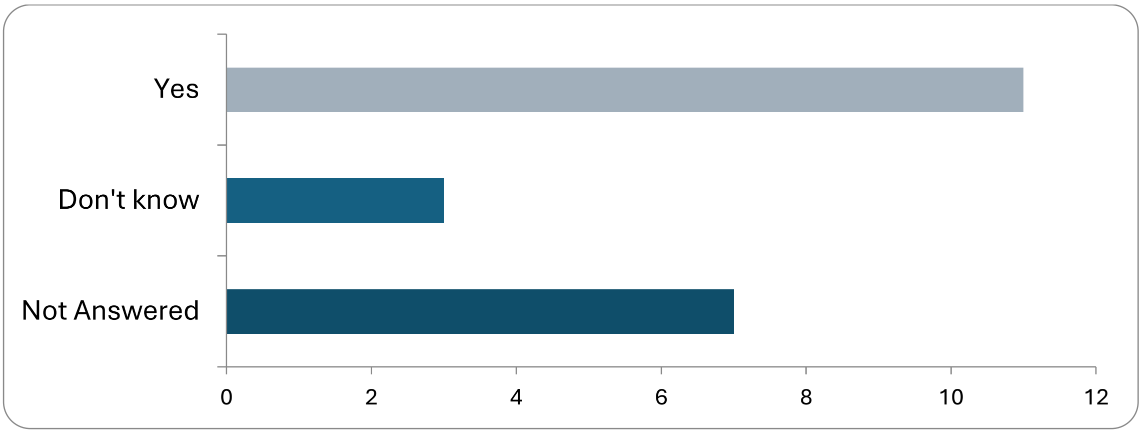
Option	Total	Percent
Agree	16	76.19%
Disagree	0	0.00%
Neither	1	4.76%
Not Answered	4	19.05%

Question Eleven: If the Judicial Rate of Interest is to be pegged to the BoE base rate what should the percentage increase on the base rate be? Please provide reasons for your answer.

There were 20 responses to this part of the question. This was an open question.

Question Twelve: Is there suitable, published and accessible data which would inform what the percentage increase to the base rate should be? Please provide reasons for your answer.

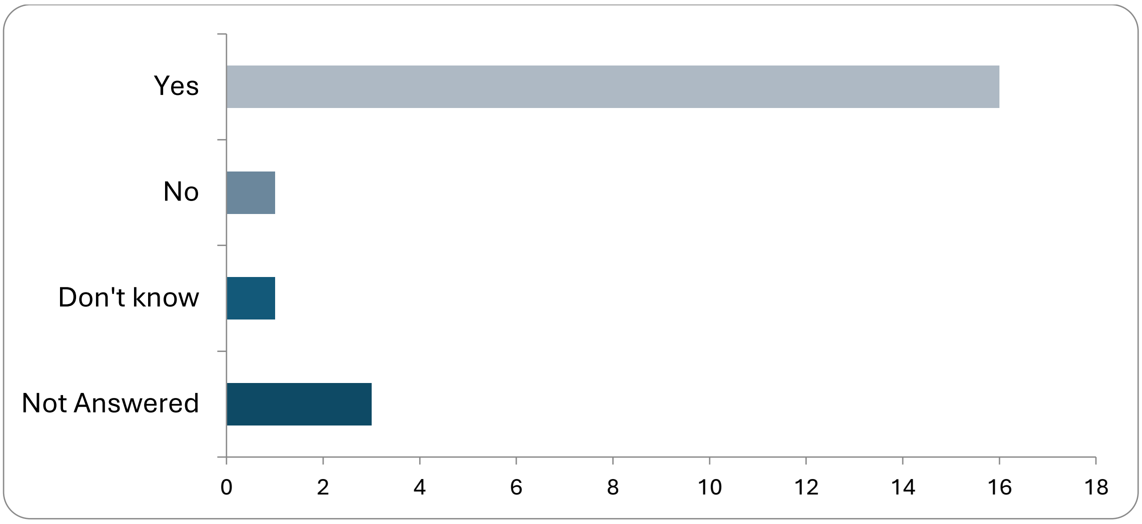
There were 14 responses to this part of the question.



Option	Total	Percent
Yes	11	52.38%
No	0	0.00%
Don't know	3	14.29%
Not Answered	7	33.33%

Question Thirteen: 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.

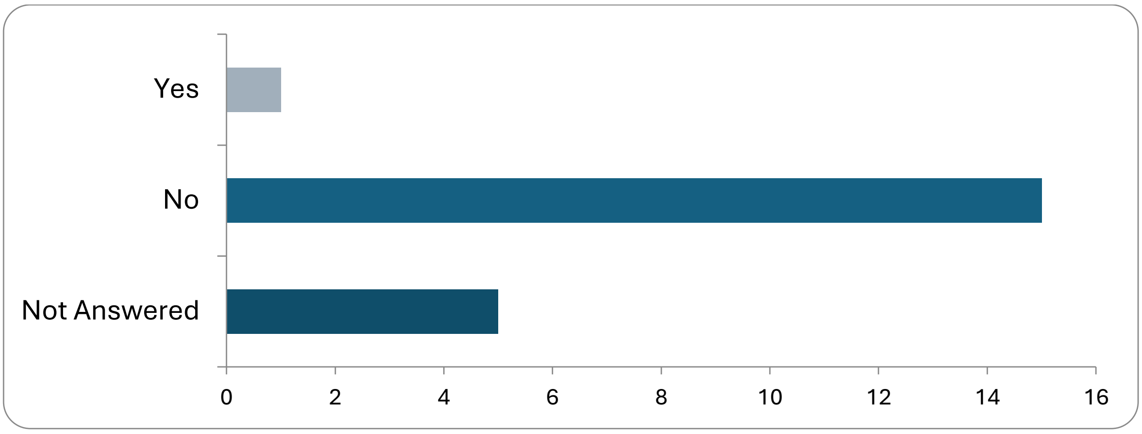
There were 18 responses to this part of the question.



Option	Total	Percent
Yes	16	76.19%
No	1	4.76%
Don't know	1	4.76%
Not Answered	3	14.29%

Question Fourteen: Do you have an alternative option for determining the Judicial Rate of Interest? Please fully describe the alternative option and provide reasons for your answer.

There were 16 responses to this part of the question.



Option	Total	Percent
Yes	1	4.76%
No	15	71.43%
Not Answered	5	23.81%