

## Civil Law Reform Bill Consultation

### List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please email your completed form to: [charles.stewart@justice.gsi.gov.uk](mailto:charles.stewart@justice.gsi.gov.uk) or fax to: 020 3334 4035. Thank you.

#### Damages

Question 1. Do you have any comments on the draft clauses of the Bill relating to the law of damages?

Comments:

**Dependency Damages** – We support the proposals for reform

**Damages for Bereavement** – We express our concern about the possible consequences of the proposed amendments to S1A(2)(b) and (4A). Whereas under existing provisions, on the death of a child whose parents have never been married, the mother will receive the bereavement damages, the effect of the proposed amendments will be that henceforth the mother will have to share the damages equally with the father who has parental responsibility.

This would entitle, for example, a father with parental responsibility who (i) may never have had contact with the child, (ii) may not have had contact with the child for many years and/or (iii) may never have contributed financially to the maintenance of the child, to 50% of bereavement damages.

Quite apart from the resentment that this may cause to the mother who has been the primary/sole carer of the child, we are concerned about what will be the duty of the mother to trace the absent parent or to take steps to ensure that the absent parent receives the 50% of the damages to which he will have a statutory entitlement. Will the mother or the paying party have to hold the father's share on trust pending the appearance of the father? Will the mother be entitled to the father's share if the absent father does not appear and if so when will she obtain such entitlement?

Perhaps a compromise solution might involve a clear definition of the qualification of a father with parental responsibility to an entitlement to share bereavement damages. Such a definition might be centred on what contact he has had with the child and/or whether he has made regular financial contribution to the maintenance of the child.

**Gratuitous Care** – We agree the proposed reforms.

**Aggravated damages and restitutionary awards** – We agree the proposed reforms

Question 2. In particular, do you have any views on how the concept of additional damages pursuant to the 2004 Directive should be expressed in terms appropriate to Scots law?

Comments: We have no view

Question 3. Do you agree with the impact assessment on the proposed reforms relating to the law of damages at Annex C?

Comments: We have no knowledge on which to base an opinion

Interest

Question 4. Do you have any comments on the draft clauses of the Bill relating to the setting of pre- and post-judgment interest?

Comments: **Pre-judgment interest** - We note with approval clauses 10(2), 10(3) and 11(5) so that the relevant court will have appropriate discretion regarding interest according to the facts of each individual claim.

We are concerned about what might be the nature of the cases that the Lord Chancellor will have in mind when making orders under clause 12(1)(a) and 12(2). We believe that the wide discretion that the court has in regard the award of interest is an important tool in the operation of CPR1 (the Overriding Objective) to ensure that each case is dealt with justly. To impose a restriction on that discretion should be exceptional and require clear definition in order to avoid satellite litigation.

Clause 12(3) is disappointing. The Law Commission Consultation Paper No 167 on “compound interest” recommended that the power to award compound interest, as opposed to simple interest, should not be limited to or excluded from particular categories of claim and in its response to this Paper, the ADJ agreed with this recommendation. Clause 10(5) appears to limit the power to award compound interest to the Lord Chancellor who will specify by order the cases to which that power will apply. If he uses that power, then to the extent that compound interest is claimed or ordered, we repeat the points we made in our response to the 2002 Consultation Paper about clear provision for the method of and procedure for calculating the interest, namely

1. It should not be for the court staff to calculate the interest
2. The amount of interest should be dealt with at the end of the trial, as part of the trial.
3. The parties should be required to exchange calculations of interest to facilitate agreement and if they have not done so, the issue of interest should be adjourned with no costs allowed at the next hearing. Alternatively, if the Claimant is at fault, simple interest only should be ordered.

**Post- judgment interest** – The following observations apply to both pre- and post-judgment interest rates.

Given the range and fluctuation of market savings and lending interest rates since 1993, it is difficult to understand why no order has been made during the last 16 years to vary the prescribed (post-judgment) rate of 8%. During that time the courts have been able to use discretion in the rates applicable to awards of pre-judgment interest and that discretion has been exercised in order to do justice to the position of both the paying and the receiving parties.

If the court’s discretion as to the rate of interest to be applied is to be removed, and Clause 12 gives the Lord Chancellor power to fix the rates, then in our opinion there should be provision in the legislation for appropriate review of the prescribed rates.

It is not clear what will be the transitional arrangements will be in the event that the Lord Chancellor chooses to defer making any order under Clause 12. We wonder whether it is intended that there will be any consultation with interested parties prior to prescribing the interest rates.

Question 5. Do you agree with the impact assessment on the proposed reforms relating to the setting of pre- and post-judgment interest at Annex D?

Comments: We have no view

#### Succession

Question 6. Do you have any comments on the draft clauses of the Bill in relation to the distribution of estates of deceased persons?

Comments: We agree the draft clauses of the Bill

Question 7. Do you agree with the Impact Assessment on the proposed reforms relating to the law of succession at Annex E?

Comments: We have no view

#### Rights of Appeal

Question 8. Do you have any comments on the provisions of the draft Bill relating to rights of appeal?

Comments: District Judges have no involvement in appeals relating barristers' disciplinary hearings and accordingly, we do not offer any comment.

Question 9. Do you agree with the impact assessment on the proposed reforms relating rights of appeal at Annex F?

Comments: We have no view.

## About you

Please use this section to tell us about yourself

<b>Full name</b>	District Judge Richard Chapman
<b>Job title</b> or capacity in which you are responding (e.g. member of the public etc.)	Chairman, Civil Committee of the Association of Her Majesty's District Judges
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If you would like us to acknowledge receipt of your response, please tick this box	Y
Address to which the acknowledgement should be sent, if different from above	By email

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

Association of Her Majesty's District Judges

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All District Judges in England and Wales

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