

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 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 support the proposals for reform.

Consideration should be given to adjusting the amount of the bereavement award annually so that the award keeps pace with inflation.

Damages for Gratuitous Services:

Serious consideration should be given as to whether a Court should be prohibited from awarding damages in respect of the gratuitous provision of services by the tortfeasor for any period before the date of the award. There is a strong argument that there should be no such prohibition because:

(1) The tortfeasor who provides care will almost always be a family member and as a matter of public policy, they should not be discouraged from providing gratuitous care. If the care is provided commercially, it will almost invariably be at a significantly greater cost.

(2) The prohibition may encourage the claimant and carer to attempt to circumvent the prohibition, which is undesirable. In *Kemp and Kemp, the Quantum of Damages*, volume 1,

tab 13, paragraph 13-012, it is said,

“It might be possible for the claimant to avoid the consequences of this decision¹ by entering into a contract with the tortfeasor for the provision of the services and a claimant’s solicitor should give advice to this effect at the earliest opportunity. It is perhaps unfortunate that the law requires such a device when the tortfeasor/carer is likely to have been injured and is therefore not going to be paying the damages personally.”

If it is considered that Section 7(4) of the Bill should be enacted, in order to avoid satellite litigation, consideration should be given to stating the application of the prohibition where the gratuitous carer is not the sole tortfeasor and is only partially responsible for the claimant’s injury. Should the partial liability in respect of the claimant’s injury serve to extinguish the carer’s claim for gratuitous care or should it only reduce it in accordance with the extent of the carer’s liability? We suggest that it would be unjust if the partial liability in respect of the claimant’s injury extinguished the claim for gratuitous care. It would provide the tortfeasor who has not provided care with an unjust windfall.

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 views.

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 comments on the impact assessment.

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: We are concerned that the secondary legislation should not restrict the discretion of the judge as to whether to award interest.

Provision should be made for the interest rates to be reviewed on an annual basis so that the rates do not become (as they are at present) out of step with market rates.

¹ *Hunt v Severs* [1994] 2 AC 350

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 comments on the impact assessment.

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 support the proposals for reform.

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 comment.

Rights of Appeal

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

Comments: We have no 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 comment.

About you

Please use this section to tell us about yourself

Full name	Master Richard Roberts
Job title or capacity in which you are responding (e.g. member of the public etc.)	Member of the Association of High Court Masters
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If you would like us to acknowledge receipt of your response, please tick this box	<input checked="" type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	<input checked="" type="checkbox"/> By email
	<input type="checkbox"/>
	<input type="checkbox"/>

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 High Court Masters

The Association represents all five High Court branches i.e. the Chancery Masters, the Queen's Bench Masters, the Bankruptcy (and Company) Registrars, the District Judges of the Principal Registry of the Family Division and the Senior Court Costs Judges.

