



## **The Law on Damages - A DCA Consultation Paper**

On 4<sup>th</sup> May 2007 the Department of Constitutional Affairs issued their latest consultation paper entitled “The Law on Damages” outlining their proposals to amend some aspects of Civil law in relation to damages. The consultation period will run until 27<sup>th</sup> July 2007 and a paper summarising the responses will be published in October 2007.

A copy of the consultation paper can be obtained via:

<http://www.dca.gov.uk/consult/damages/cp0907.htm>

The principal aspects under review relate to:

- Claims for Wrongful Death
- Bereavement Damages
- Liability for Psychiatric Illness
- Collateral Benefits
- Cost of Private Care
- Accommodation Expenses

If the Government’s recommendations as outlined within the consultation document are accepted, the following changes to the law would be made:

### **Claims for Wrongful Death**

- Those wholly or partially maintained by the deceased immediately before death will be entitled to claim for financial loss under the Fatal Accidents Act.
- A persons remarriage, entry into civil partnership or financially supportive cohabitation of at least two years following death will be taken into account when assessing damages under the FAA in respect of claims made by them or on behalf of eligible children.
- The prospect of divorce, dissolution or breakdown in the relationship between the deceased and their spouse or civil partner will only be taken into account where the couple were no longer living together at time of death or where one partner had petitioned for divorce or dissolution of the civil partnership.



- Section 3(4) of the FAA will be repealed and the **prospect** of a breakdown in the cohabiting relationship between the parties will not be taken into account when assessing damages under the FAA.

In addition, the Government is seeking views on ways to improve the handling of mesothelioma claims to remove the uncertainty on the part of claimants in deciding whether to pursue a claim during their lifetime or whether to postpone a claim and allow their dependants to bring a claim under the FAA.

### **Bereavement damages**

- The list of those entitled to claim for bereavement damages would be extended to include:
  - Children under the age of 18 for the death of a parent
  - Unmarried fathers with parental responsibility for the loss of a child under 18 years of age.
  - People who had lived with the deceased as husband or wife (or same sex equivalent) for not less than two years immediately prior to the accident.
- The current award of £10,000 will be available to the deceased's spouse, civil partner or cohabitant.
- An award of £5,000 will be made to each eligible child under the age of 18.
- RPI will be applied to these sums with an increase every three years.
- Contributory negligence on the part of the claimant would reduce such awards.

### **Psychiatric Illness**

Contrary to the recommendations of the Law Commission, the Government do not propose making any changes, preferring instead to allow the courts to continue to develop the law on liability rather than introduce legislation



## **Collateral Benefits**

Defined as “a payment or benefit in kind which the tort victim would not have received but for the tort” (e.g. accident insurance, gratuitous care by a relative or friend, local authority care and ancillary services or voluntary and charitable payments).

The Government’s aim is to increase consistency in the treatment of collateral damages, whilst ensuring that there is not dual compensation.

Whilst various options have been considered, the one proposed by the Government for adoption is to ignore collateral benefits in the assessment of damages (i.e. not to deduct them from any award of damages) and for any obligation to make further collateral benefits in respect of that loss extinguished.

Any benefits already paid would be made recoverable from the claimant.

## **Private Care**

Consideration is to be given to a proposal to repeal Section 2(4) of the Law Reform (Personal Injuries) Act 1948, which provides that a claimant is able to claim for the cost of private medical treatment without consideration being given to whether NHS treatment is available for the particular injury involved. The Government puts no proposals forward but sets out at length the various arguments in favour of and against repeal and seeks views.

## **Accommodation Expenses**

Briefly this relates to the need for a claimant to purchase a new property or convert their existing one as a result of their injuries. The issue for the Government is how to address the calculation of damages to avoid over or under compensation where such purchase/conversion results in an increase or decrease in the value of the claimant’s property.

The two options under consideration are:

- The defendant to pay the extra capital cost of the property at the time of trial and to receive a charge over the property for the amount paid.
- Awarding the appropriate extra capital cost to the claimant.



## **Summary**

The DCA consultation paper is a vast document running to 135 pages and as a consequence we can offer no more than a flavour of the proposals.

It would seem that the intention of Government is to tidy up a number of inconsistencies, either in the way in which damages are calculated or simply in determining who is entitled to claim. To this extent the proposals deserve our broad support, if only on the basis that a streamlining of the legal process is a positive step hopefully leading to greater consistency and certainty in the claims process and possibly reduced legal costs.

However, insurer's outlay in certain areas will increase. The Government's Regulatory Impact Assessment predicts that the proposed changes to claims for wrongful death and bereavement damages will result in an estimated maximum cost to the Insurance industry of £6,675,000 per annum. Therefore Insurers will need to review reserves in certain categories of cases.

We will provide an update once the paper summarising the consultation responses is published in October.

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