

**Financial Services Authority (FSA)**

**Financial Services Compensation Scheme:  
temporary high deposit balances**



**A response by the Association of Personal Injury Lawyers**

**June 2009**

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally of practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

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## **Executive summary**

We welcome the FSA's proposals to extend the financial services compensation scheme (FSCS) to provide protection for court awards or out of court settlements in personal injury cases, for an unlimited amount, for eighteen months. We believe that if implemented, this would provide valuable protection for potentially vulnerable personal injury victims who may be entirely dependent on their damages to provide for the future care and living costs. We applaud the FSA for making such positive proposals but do, however, seek clarification that it is the FSA's intention for awards from the Criminal Injuries Compensation Authority to be protected under these proposals.

## **Introduction**

We welcome the FSA's proposals to extend the protection of FSCS to temporary high deposits, and in particular court awards and out of court settlements for personal injury claims.

People in receipt of damages of over £50,000 (the current limit for FSCS protection) for personal injury have been severely injured. Examples of cases in which large awards of damages are made include serious road accidents where victims are left permanently disabled and unable to work and cases concerning children injured at birth. Damages often include compensation for loss of earnings, and payments to cover the cost of care and medical bills. Court awards and out of court settlements for personal injury claims involving such awards are therefore of critical importance to the injured person.

Personal injury victims in receipt of high value awards usually take financial advice on how best to invest their damages, but however quickly they do this there will inevitably be a period of time when large sums of damages are temporarily deposited in the person's own bank account, or their solicitor's client account.

We note that the consultation paper says the risk of a bank defaulting at the same time as a customer has a temporary high deposit is small<sup>1</sup>, but believe that, given the nature of compensation for personal injuries, even such a slight risk should not be taken. Further more, the estimated cost of protecting against this risk is relatively low<sup>2</sup>.

Personal injury victims who receive large awards of damages are often entirely dependent on their damages to provide for their future cost of living and care and the FSA's proposals will provide them with valuable extra protection. We therefore support the FSA's proposals to extend the FSCS's protection for personal injury damages to cover an unlimited sum for eighteen months and applaud it for proposing to take such positive measures for the protection of injured people.

## **Consultation questions**

As our remit only extends to personal injury cases, we have only answered those questions which relate to this field.

**1. Do you agree that we should make rules to provide an enhanced level of protection, above the current £50,000 limit, to temporary high balances? Please explain the reason behind your answer.**

Yes. Temporary high balances are sometimes unavoidable. If a bank defaults at the same time as an individual consumer has a temporary high balance the consumer is a victim of circumstance.

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<sup>1</sup> Page 7 of the consultation paper

<sup>2</sup> Table 2 on page 19 of the consultation paper estimates the cost of FSCS compensation for temporary high balances, for a bank with 10% share of the market for retail deposits, as less than £1m for compensation payments

It would be grossly unfair if an individual was to suffer by losing a large sum of money if his solicitor's bank happened to default the day after damages resulting from settling a personal injury claim were received in that solicitor's client account.

**4. Do you agree that FSCS protection should be limited to temporary high balances, whether held in customers' own accounts or in client accounts, arising in connection with:**

**g) court awards and out-of-court settlements for personal injury?**

We cannot make any comment on whether FSCS protection should be limited to the items listed as our remit does not extend this far. We do though fully support the FSA's proposals to include court awards and out-of-court settlements for personal injury in the list of temporary high balances that compensation can be claimed for.

Personal injury damages are carefully calculated to reflect the losses an injured person has suffered as a result of the negligence of another. They often include money to replace that which the injured person has not and will not be able to earn, funds to pay for future medical and care costs, and specific allowances to enable the injured person to live, in so far as possible, in the way he did before the injury occurred. To lose these damages would devastate a person's life for a second time. Additional protection for these balances is therefore very welcome.

We hope that the FSA intends to include awards made by the Criminal Injuries Compensation Authority under the scope of sub-paragraph g). Such awards are also made for personal injury and we do not believe that the FSCS should differentiate between CICA and non-CICA based on the source of the compensation. We would therefore welcome clarification that such awards are included in the FSCS's definition of court awards and out-of-court settlements for personal injury and would like to see this specifically included in any draft of the new rules regarding the scheme.

**7. Do you agree that court awards and out-of-court settlements for personal injury should be covered for an unlimited amount, as an exception to the general rule?**

Yes. Very high personal injury awards or settlements are usually only made in the cases where people have suffered the most serious injuries (the exception to this rule are a few cases in which the victim is a very high earner). To limit the amount of protection would mean that the most severely injured and often most vulnerable people would be the ones to lose part of their damages when they are the very people who can least afford to do so.

**10. Do you agree that court awards and out-of-court settlements for personal injury should be covered for 18 months from the date at which the balance is paid, as an exception to the general rule?**

Yes. We welcome the FSA's proposals to allow extra time for personal injury victims to decide how to invest their damages.

**12. Do you agree that the FSCS protection for temporary high balances held in client accounts should be identical to that for such balances held in consumers' own accounts? If not, please give your reasons.**

Yes. Money in solicitors' client accounts is the consumers and as such the protection should be identical to that for such balances held in consumers' own accounts.

**14. Do you have any comments on the draft disclosure wording in paragraph 2.29?**

We welcome the fact that the FSA is making provision to tell consumers about the protection the FSCS offers and believe the proposed wording is clear and easy to understand.

**Association of Personal Injury Lawyers**

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