

FAO: Anthony Jeeves
Department for Constitutional Affairs

Dear Anthony

Interim payments and further damages in personal injury cases

Thank you for giving the Association of Personal Injury Lawyers the opportunity to respond to the above consultation.

Question one of the consultation asked if rule 25.7(2) should be amended to allow interim payments to be ordered where an uninsured defendant has sufficient resources to make the payment. Our answer is 'yes', as we believe that this must happen if an injured person with a claim against an uninsured defendant is not to be placed in a worse position than someone with a claim against an insured defendant.

We also believe that rule 25.7(3) should apply where the order *could* be made against an uninsured defendant before liability has been determined. We stress our preferred option of the word 'could' rather than 'would' (as written in question two) because the order does not *have* to be made, but it *could* be made before liability is determined.

In answer to question three, we do not consider that any additional factors, such as any adverse effect on the defendant) should be taken into account. Paragraph nine of the consultation stipulates that an interim payment should only be allowed to be ordered where the defendant has sufficient resources to make the interim payment, and we believe this is all that should be taken into account.

In answer to question 4, we do agree that the proposed changes to rule 25.7(2) should apply to further damages. We would add that we believe the jurisdiction to make an interim payment award should also apply to an application for provisional damages.

Question five asks: if the proposed changes are not made to rule 25.7(2) do you agree that the link between further damages and rule 25.7(2) should be removed in any event?

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APIL believes the link should be removed and that rule 25.7(2) should say that any application for interim payment against an uninsured defendant can be paid in respect of an application for further damages under rule 41.3

I hope this provides a satisfactory answer to your questions. If you have further queries or follow-up points, please don't hesitate to contact me.

Yours sincerely

L Gwinnutt

Lorraine Gwinnutt
Head of Legal and Public Affairs