



THE CITY OF LONDON LAW SOCIETY

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RESPONSE TO THE MINISTRY OF JUSTICE CONSULTATION PAPER CP53/09 PUBLISHED ON 15 DECEMBER 2009, REGARDING THE CIVIL LAW REFORM BILL

The City of London Law Society ("CLLS") represents approximately 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response in respect of the Civil Law Reform Bill Consultation published by the Ministry of Justice has been prepared by the CLLS Litigation Committee.

Scope of Response

This paper responds to the Consultation with respect to the proposals regarding interest on civil judgments and rights of appeal in barrister's disciplinary proceedings, which are the subject respectively of Chapters 3 and 5 of the Consultation. The other matters covered in the Consultation fall outside the areas of direct concern and expertise of CLLS Litigation Committee membership and so are not dealt with in this response.

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 recognise that there are competing interests of certainty and flexibility.

Pre-judgment interest: We favour the court retaining full discretion regarding the award of interest, both as to period and rate. We therefore support the original Law

Commission proposal that a default rate should be set annually but with the court retaining the discretion to depart from it.

We also consider that the court should have the general power to award pre-judgment interest on a compound basis. We do not agree that this should be regarded as controversial since it does no more than reflect the everyday commercial reality. We do not see the need for a presumption, but if there is to be a presumption, we do not see why it should only apply to amounts above £15,000.

Post-judgment interest: We consider that the balance comes down differently in relation to post-judgment interest. Such interest is compensatory but also has a function of encouraging prompt compliance with the court's judgment. This element, coupled with the advantages of avoiding the need for court argument on the appropriate rate, leads us to favour a fixed rate of interest with a moderate penal element.

The Court of Appeal should have power to vary the rate applicable to the period between judgment and the disposal of the appeal.

Rate: To the extent that it is decided to adopt a fixed rate or a fall back rate in any reforms, we agree that there should be a requirement for this to be specified annually, to ensure that it is kept up to date.

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 agree with the policy objectives and the intended effects. It is not clear to us that the chosen options for reform reflected in the present draft Bill will improve on the present situation.

Rights of Appeal

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

Comments:

We support the proposed reform. A right of appeal to the High Court appears sound in principle and is consistent also with the disciplinary regime applicable to solicitors.

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

Comments:

Yes.

Date: 8 February 2010

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Its contents should not be taken as legal advice in relation to a particular situation or transaction.

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LITIGATION COMMITTEE

Individuals and firms represented on this Committee are as follows:

Lindsay Marr (<i>Chairman</i>)	Freshfields Bruckhaus Deringer LLP
Duncan Black	Field Fisher Waterhouse LLP
Tom Coates	Lewis Silkin LLP
Angela Dimsdale-Gill	Lovells LLP
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