

## Personal Injuries: Periodic Payments and Structured Settlements

In December 1996, the Commission published a [\*Report on Personal Injuries: Periodic Payments and Structured Settlements \(LRC 54-1996\)\*](#). The Attorney General referred a number of topics to the Commission to formulate proposals for their reform in 1987, one of which was the law relating to compensation for personal injuries. The Commission was asked to examine two aspects of this topic. The first was the application of the Statute of Limitations to cases of latent personal injuries which was addressed in the Commission's [\*Report on The Statute of Limitations: Claims in respect of latent personal injuries \(LRC 21-1987\)\*](#). The second aspect related to periodic payments and provisional awards of damages.

This report includes a brief discussion of how the courts calculate aspects of an award of damages for personal injuries as well as examines reforms that have been introduced in various other jurisdictions, focusing on the way damages are paid in the common law personal injuries action. A number of possible reform options are considered and the Commission ultimately makes the following recommendations:

- (i) That there should be provision in law in the Rules of Court for the interim award of damages and that:-
  - a. such an award should not be based on need;
  - b. the Defendant's resources should not be relevant;
  - c. it should apply to all defendants;
  - d. it should be conditional on an admission of liability;
  - e. it should not be made when an appeal has been lodged against liability. However, the court should have discretion to make an interim award where liability appears clear, even though contested on appeal.
- (ii) The introduction of a facility for provisional awards in cases where a chance of serious deterioration in the plaintiff's health exists as a result of the wrong.
- (iii) That provision be made for the use of structured settlements.
- (iv) That tax relief under Section 5 of the *Finance Act, 1990* should be extended to all structured settlements.
- (v) That it should be made possible for life assurance offices to pay awards under structured settlements directly to plaintiffs.
- (vi) Where an awards appropriate for structuring is made to a plaintiff, that plaintiff's solicitor should be obliged to discuss the advisability of structuring the settlement with the plaintiff.
- (vii) That there is no change in the way awards of damages are calculated by the courts.
- (viii) That the court should not have power to authorize a structured settlement against the wishes of any party to the litigation. This decision should be reviewed by the Commission in five years time. To enable such a review to be grounded on relevant data the Commission recommends that it be given responsibility to develop an appropriate research programme.
- (ix) That the possibility of resort to the structured settlement scheme should not be limited to plaintiffs with particular categories of injury.
- (x) That the structured settlement scheme should be available in fatal accident litigation.

- (xi) That it should be permissible for a structured settlement scheme to operate in cases where provisional damages can be awarded.
- (xii) That consideration be given to extending the structured settlement scheme to (a) self-insurers and (b) cases involving the Motor Insurers Bureau of Ireland.
- (xiii) That the plaintiff should be permitted to commute his or her pension into a lump sum if the court gives its approval.
- (xiv) Where a plaintiff dies shortly after a structured settlement has come into operation, provision should be made for the payment of one year's annuity to the next-of-kin.
- (xv) That the structured settlement process should apply only to future injury and loss.

### **Draft Legislation in Report**

Draft legislative provisions are included in this Report.

### **Information on Implementation**

Recommendations of the Commission were implemented by the *Civil Liability (Amendment) Act 2017* (see also related Report of Working Group on Payments for Catastrophic Injuries: Module 1 (2010)).