

Capping Damages in Personal Injuries Actions

This Report on [Capping Damages in Personal Injuries Actions \(LRC 126-2020\)](#) follows on from the Commission's 2019 [Issues Paper of the same name \(LRC IP 17-2019\)](#) and forms part of the [Fifth Programme of Law Reform \(LRC 120-2019\)](#).

The Report examines whether it would be constitutionally permissible, or otherwise desirable, to provide for a statutory regime that would place a cap or tariff on some or all categories of general damages in personal injuries cases.

The Report discusses recent developments in the law on general damages, and also the constitutional requirements that the Commission considers are relevant to any legislation on capping general damages. The Report then discusses four possible legislative models, taking account of the constitutional provisions and the views in the submissions received on this project following the publication of the Issues Paper. These four models can be summarised as:

Model 1: a cap set by primary legislation that would take a similar form to how sentencing occurs in most criminal cases, in which the courts impose sentences using a proportionality test.

Model 2: proposes a scheme under which general damages are capped and all awards for lesser injuries are indexed to the cap.

Model 3: proposes that either Models 1 or 2 (or any other method of capping) could be enacted, but in which the Act would delegate determining the details of the cap to, for example, a Minister or some other Regulation-making body.

Model 4: could be described as involving an approach that is closest to the current position, in that it proposes that the courts should continue to determine the level of awards of general damages through case law, as supplemented by the significant new provisions for Personal Injuries Guidelines under the Judicial Council Act 2019.

The Report concludes that, of the four models of legislation capping general damages, two of them appear, in principle, to be constitutionally permissible. It concludes that the capping model recently enacted in the Judicial Council Act 2019 meets constitutional tests discussed in the Report and should be given time to be implemented and that another legislative model, based on a variant of Australian and English legislation, could also be constitutionally permissible.

The Report also emphasises that the Commission is an advisory body, and that the constitutionality of proposed or enacted legislation is primarily a matter for the Government (advised by the Attorney General), the Oireachtas and, ultimately, the courts.

Draft Legislation in Report

Not applicable

Information on Implementation

Not applicable