

**WRITTEN QUESTION TO THE CHIEF MINISTER
BY SENATOR B.E. SHENTON
ANSWER TO BE TABLED ON TUESDAY 18th JANUARY 2011**

Question

Does the Royal Court currently have the power to issue periodic payment orders in respect of personal injury claims and, if not, will the Chief Minister advise whether there are plans to introduce the periodic payment order option available in the UK whereby awards are made as a traditional lump sum; a mixture of a lump sum and a periodic payment order or a provisional damages bolt-on to either of the aforementioned, and, if not, why not?

Answer

This question relates to the Royal Court's powers to award damages in very serious personal injury claims. By serious, it is understood that the injury is so significant and permanent that the plaintiff will continue to be materially disabled well after the conclusion of the civil action. Tetraplegia is an obvious example of such a condition.

In these cases, the plaintiff is entitled to future damages reflecting, *inter alia*, future lost earnings and costs of care over the plaintiff's remaining lifetime. At present, the Royal Court makes an award of such future damages as a lump sum, calculated by reference to established legal principles. The damages awarded for future loss can be considerable.

The Royal Court also has the power to award provisional damages pursuant to Article 3 of the Administration of Justice (Interim Payments and Damages) (Jersey) Law 1993. That is to say, the award of damages at the conclusion of a civil action is not necessarily final. If, as a result of the act or omission which gave rise to the cause of action, it is proven that the plaintiff may develop some serious disease or suffer some serious deterioration in physical or mental condition in the future, then the Court can order that the case be returned to the Court in the event of such an occurrence so that further damages can be awarded as appropriate.

In April 2005, the Courts in the UK were given the power to order the payment of periodic payments in respect of future losses. Previously, only the parties to an action could agree to such a course of action. As a result, the UK Courts can, when assessing damages in respect of future loss of earnings and care, order the defendant to make suitable annual payments over the plaintiff's lifetime to cover the plaintiff's annual losses rather than the payment of a one-off lump sum to the plaintiff to cover their entire lifetime.

At present, the Royal Court has no power to make periodic payments.

Periodic payments are not automatic in the UK not least because the Court is obliged by law to ensure that there exists sufficient guarantee and security that the payments will be made. There will still be cases in the UK when the order of a lump sum is appropriate and indeed there will still be cases when the plaintiff indicates that they would prefer a lump sum.

There is a practical consideration here. In the UK, there is an insurance scheme in place to protect the plaintiff in the event that the defendant or their insurer could not longer make the periodic payments. It may be that this could be extended to Jersey.

There are no plans at present to introduce the periodic payments option to Jersey.