



Committee for Justice

OFFICIAL REPORT (Hansard)

Damages (Return on Investment) Bill:
Clause-by-clause Consideration

7 October 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
Ms Sinéad Ennis (Deputy Chairperson)
Mr Doug Beattie
Ms Sinéad Bradley
Ms Jemma Dolan
Mr Robin Newton
Miss Rachel Woods

The Chairperson (Mr Storey): That brings us to item 6, which is the formal clause-by-clause consideration of the Damages (Return on Investment) Bill. I beg your indulgence as we make our way through this.

Following the informal deliberations on the clauses and schedules of the Damages (Return on Investment) Bill at its meeting on 23 September 2021, the Committee agreed that it was content with the provisions of the Bill and that it does not wish to bring forward any amendments at this stage. Although they advised that they were content with the schedule as drafted, members indicated that they may want to come back to the provision of the:

"0.5 of a percentage point, as the further margin"

of error in paragraph 10. Members also indicated that they may wish to give further consideration to the issues relating to the periodical payment orders (PPOs).

The Committee noted that officials confirmed that the Department does not intend to bring forward any amendments to the Bill at Consideration Stage. Following the discussions on the issue of the periodical payment orders at our meeting on 23 September 2021, the Department of Justice, as we asked, reviewed Hansard and provided further information and clarification on the process for PPOs to assist the Committee in our consideration of the issue. The Department's response is at pages 3 to 7 of the tabled pack and was emailed to members yesterday. The Department has set out the requirements placed on the court by the Damages Act 1996 and related court rules on periodical payment orders. The Department is of the view that, in an individual case, it is a matter for the parties, based on legal and financial advice on their specific circumstances, to assess whether a PPO is preferable to a lump sum, and, ultimately, where a case proceeds to a hearing, it is a matter for the court.

The Department has suggested, however, that the Committee write to the court rules committee, chaired by the Lady Chief Justice, to recommend that it consider adding to the factors that the court is required to take into account when considering whether to make a PPO and that it invite the Lady Chief Justice to consider a judicial studies training event on PPOs.

That is a helpful and useful response to our previous consideration of that matter. Are members content for us to write to the Lady Chief Justice, as suggested by the Department, and for that to be covered in our report on the Bill?

Members indicated assent.

The Chairperson (Mr Storey): Following the consideration of further information provided by the Department of Justice on funding pressures in the current financial year, the Committee agreed to write to the Department of Finance to request information on the funding pressures arising from the change in the personal injuries discount rate (PIDR) that have been highlighted by other Departments, the Department of Health in particular, and whether those have been reflected in discussions with the Treasury to secure additional funding.

The response from the Department of Finance is at pages 8 to 11 of the tabled pack and was emailed to members yesterday. The Department of Finance has indicated that the change in the PIDR will have a significant impact on the Department of Justice and the Department of Health. Forecasted costs are based on a number of assumptions, and, due to the uncertainties, the actual costs may change, depending on the number and type of cases settled during the financial year.

Discussions have been taking place between officials in all three Departments, and discussions between the Department of Finance and the Treasury are ongoing to secure funding for 2021-22 pressures. The Department of Finance has also advised that, while the PIDR may be higher than the current rate when the legislation is implemented and therefore lead to a reduction in the cost to Departments, it will still represent an increase from the previous rate of 2.5%. From 2022-23 onwards, no additional funding will be provided by the Treasury to offset any pressures arising from the PIDR, and the Executive will have to manage the cost through the normal budgetary process. Members are asked simply to note the information provided by the Department of Finance, unless any other clarification is required.

Correspondence has been received from the Forum of Insurance Lawyers and BLM on the further margin of adjustment of the 0.5% in paragraph 10(2)(b) of the schedule to the Bill. The letters cover the same issues raised by the Association of British Insurers in correspondence that was provided for the meeting on 23 September on the adjustment. Both organisations ask the Committee to consider removing or moderating it. The relevant correspondence may be found at pages 12 to 17 of the tabled pack and was emailed to members yesterday.

If members wish to raise or propose anything relating to the 0.5% further margin of error provision before the formal clause-by-clause consideration, they should do so. If members do not want to comment or make proposals on that, we will move to clause-by-clause consideration of the Bill.

Ms S Bradley: Chair, we are receiving conflicting information. I am alert to the fact that we have been told to keep our focus on the 0.5%. I am unapologetically on the side of leaning any favour towards the applicant — the victim, in this case — but it is being presented to us that a few decisions that were made along the way tip the scales in favour of the victim or applicant. Given that we are knowingly doing that and that is how it is being presented to us, is there any danger of our landing in a place that could be legally challenged? Does the Committee have access to legal advice or support?

The Chairperson (Mr Storey): I take the view that, if anything that we decide ultimately ends up in the legislation, the legislation is more likely to be legally challenged than the decisions of the Committee. At the end of the day, we are public organisations, individuals or a corporate body. Somebody could feel that they have a case to make, but we have endeavoured to ensure that all the relevant information is at our disposal. We have asked all the pertinent questions and have sought to be proportionate and fair across our consideration. Ultimately, if organisations or individuals feel that the legislation has landed in the wrong place, it will be for them to challenge it in the courts. We have no more recourse to legal advice than anybody else.

Ms S Bradley: That is a fair comment. We have put our thinking clearly on record. It has been well recorded by the Clerk and the staff. I thank them for that.

Miss Woods: As Sinéad said, in the past couple of days, there has been significant correspondence to all members, I believe, and to the wider Assembly membership, about concerns. We have heard from people whom we were advised at the start not to consider, and we have done a job of work in

asking questions. I have nothing else to say on that. I wondered about our access to legal advice, but you have answered that sufficiently, Chair.

The Chairperson (Mr Storey): OK. Members, if there are no specific proposals contrary to where we are on this issue, we will undertake the formal clause-by-clause consideration of the Bill. I beg your indulgence and will do it as expeditiously as I can. We will proceed through the Bill's clauses and schedule, and I will put the Questions formally to the Committee. I will take silence as consent, unless someone says something. If I go too quickly, shout at me. Members may be afraid to be the one who says, "Content". However, I want to make sure that we manage this.

Question, That the Committee is content with clause 1, put and agreed to.

Question, That the Committee is content with clause 2, put and agreed to.

The Chairperson (Mr Storey): Schedule C1 to the Damages Act 1996, as inserted, has been dealt with.

Question, That the Committee is content with clause 3, put and agreed to.

Question, That the Committee is content with clause 4, put and agreed to.

Question, That the Committee is content with clause 5, put and agreed to.

Question, That the Committee is content with clause 6, put and agreed to.

Question, That the Committee is content with the long title, put and agreed to.

The Chairperson (Mr Storey): Thank you, members, for your cooperation. The draft report on the Bill will be prepared and circulated for consideration and agreement at our meeting on 21 October 2021.