

STATES OF JERSEY



CHILD ABUSE COMPENSATION CLAIMS: FREEDOM OF EXPRESSION FOR SURVIVORS (P.49/2009) – COMMENTS

**Presented to the States on 11th May 2009
by the Council of Ministers**

STATES GREFFE

COMMENTS

In the “Child Abuse Compensation Claims: Freedom of Expression for Survivors (P.49/2009) – Amendment” it is stated that “*it is very easy to envisage circumstances in which in order to settle one individual's valid claim, without prejudicing the interests of other claimants or the public, the size of the settlement should remain confidential*”.

This document provides clarification as to what the “circumstances” referred to above might be –

- (1) Disclosure of the quantum of any claim may lead to disclosure or debate of underlying calculations and even potentially to data that is by its nature very private and personal to the individual claimant. The States of Jersey will not be in a position to advise one claimant of why one claimant's loss was valued at a certain amount without detailing how a particular quantum was reached. Whilst, in the interests of justice, transparency may be thought by some to be preferred, given the nature of the private civil claims, with claimants' totally differing and unique complaints, losses and aims, a claimant must always have the right to control what should go into the public domain and what is to be kept private. The States must responsibly act to protect the best interests of all claimants. A blanket ban on confidentiality would fail to recognise the various sensitivities and interests involved.
- (2) The States of Jersey must ensure all genuine claimants are fairly and properly handled and to ensure any financial redress paid by the States of Jersey goes to the genuine claimants who have suffered loss and damage by reason of a breach of duty. Not seeking to undermine claims received to date, should the quantum paid to one or more claimants be revealed, there is a risk that less creditable claims could come forward with a view to obtaining a financial payment.
- (3) The civil claims will progress at different paces and discussions regarding quantum will be at different times. There is the risk that the management of the claims could be made considerably more difficult should the agreed quantum placed on any particular claim be revealed. Such disclosure would undoubtedly impact upon the expectations of some claimants, with the risk that expected quantum could increase over time as claims are dealt with and resolved in turn. This could prejudice those claimants where financial quantum is agreed early on. To insist that all claims are delayed until they are in a position to be resolved at the same time would also prejudice claimants who wish to resolve matters as soon as possible and move on.
- (4) Where insurers are responsible for paying all or part of the money agreed by the parties to be payable (as opposed to a court ordering payment), insurers almost always insist on the terms of such a settlement being kept confidential for various reasons. Those reasons include the need to avoid opening the floodgates to invite claims where there has in fact been no breach.

- (5) Disclosure of awards made to claimants would potentially create a situation whereby individual claims could, essentially, be ordered or ranked in degrees of seriousness. It should be considered that it is not necessarily in the best interests of claimants to know where they fall within the range, as this of itself could create further stress and damage.

It is difficult to provide comprehensive clarification on this matter as the civil claims are at a very early stage. Consideration of this matter is necessarily premature as there have not yet been any discussions between the States of Jersey and claimants or respective advisors on the issue of quantum.