

NORTH LANARKSHIRE COUNCIL

REPORT

To: CORPORATE SERVICES COMMITTEE		Subject: RESPONSE TO THE CONSULTATION ON THE INTEREST (SCOTLAND) BILL
From: EXECUTIVE DIRECTOR OF CORPORATE SERVICES		
Date: 2008	Ref: JOH/GD	

1. **PURPOSE OF REPORT**

1.1. The purpose of this report is to seek Committee homologation of the response made to the proposed Interest (Scotland) Bill. The consultation period closed on 4 April 2008.

2. **SUMMARY OF CONSULTATION PAPER**

2.1. The Scottish Government sets out its rationale on the proposed Bill in respect of interests on debt and damages. General comments on the proposals and the paper have been sought and the Council has prepared a response.

2.2. The consultation document from the Scottish Government is available on the Scottish Government website at www.scotland.gov.uk/Publications/2008/01/interestondebt. A hard copy has also been placed in the Members library.

2.3. The Bill has been developed from the Scottish Law Commission (SLC) Report on Interest on Debt and Damages published in September 2006. The SLC report recommended the creation of a general statutory entitlement to interest, to run from the time when a sum of money becomes due by one person to another, whether for debt or damages. Currently Scots law restricts the interest that can be claimed in a considerable number of types of court actions and often interest only can be claimed from the date of raising a court action rather than when a debt fell due or when the loss was sustained. This can be some considerable time after the loss occurred and in some cases many years.

2.4. The five main areas of concern in the existing law are as follows:-

2.4.1. The treatment of interest is inconsistent between claims arising from debt and claims arising from damages.

2.4.2. In debt claims interest is not payable until the sum has been wrongfully withheld. In contractual debts this means that the interest does not begin to accrue from the date the payment fell due but rather from the date on which court proceedings were commenced.

2.4.3. There is currently uncertainty of when interest starts to run on particular heads of claim for damages particularly in personal injury actions.

2.4.4. The current rate of judicial interest is eight per cent which is higher than the usual commercial rates of interest.

2.4.5. Generally the law is unclear in relation to interest.

- 2.5. The rationale behind the Bill is to enable interest to accrue from the same date and at same rate whether it is a claim for payment of a contractual debt or a non contractual debt or a claim for damages. The Bill also attempts to ensure that interest should be a realistic compensation to the creditor for the loss of the use of the money and that interest should not, as a general rule be payable at a punitive rate. It is also proposed that rather than having a statutory rate of interest which is currently 8% that the rate of interest would fluctuate in line with the Bank of England rate. It is anticipated that the rate of interest will be approximately 1.5% above the Bank of England interest rate which is currently 5.00%.

3. **EQUAL PAY CLAIMS**

- 3.1. The consultation paper invites consultees views on whether the draft Bill will have an impact on equal pay claims and the likely financial impact on the organisation. The Council has prepared a comprehensive response stating why the draft Bill should exempt equal pay claims from the statutory interest regime. If the statutory interest regime were to apply to equal pay claims the financial implications to Local Government and to the public sector generally could be very significant.
- 3.2. Attached in Appendix 1 are the questions posed in the consultation document and attached in Appendix 2 is the Council's response. As the response to the consultation document was required by 4 April this has been submitted as representing the views of the Council.

4. **RECOMMENDATION**

- 4.1. That the Committee homologate the response made to the consultation.


Executive Director of Corporate Services

Appendix 1

Ref	Question	Yes	No	Don't know	Comments
Q1	<p>Do you agree that utility debts should be exempt from the statutory interest regime?</p> <p>Please provide reasons for your answer.</p>				
Q2	<p>Do you agree that rent arrears due to public sector landlords should be exempt from the statutory interest regime?</p> <p>Please provide reasons for your answer.</p>				
Q3	<p>Are there other categories of debt which should be excluded from the statutory interest regime?</p> <p>Please provide reasons for your answer.</p>				
Q4a	<p>Do you think the draft Bill will have an effect on the provision of insurance for individuals?</p> <p>If yes, what do you think that effect would be?</p>				
Q4b	<p>Do you think the draft Bill will have an effect on the provision of insurance for businesses?</p> <p>If yes, what do you think that effect would be?</p>				
Q4c	<p>Do you think the draft Bill will have an effect on the insurance industry?</p> <p>If yes, what do you think that effect would be?</p>				
Q5a	<p>Do you think that statutory interest should run on late payments under contracts of employment?</p>				
Q5b	<p>If so, do you think that the statutory interest</p>				

	should run from the date on which payments are due?				
Q6	Do you think that statutory interest should begin to run 30 days after the end of the period in respect of which the service under the contract is remunerated?				
Q7	If you think that statutory interest should run on late payments under contracts of employment, do you think there are any particular circumstances when interest should not run on late payments? If so, then what would these be?				
Q8a	Should the rate of statutory interest be simple interest? Please provide reasons for your answer.				
Q8b	Should the rate of statutory interest be compound interest? Please provide reasons for your answer.				
Q9a	Should the draft Bill contain provisions for complete judicial discretion in awarding interest? Please provide reasons for your answer.				
Q9b	Should the draft Bill contain provisions for limited judicial discretion in awarding interest? Please provide reasons for your answer.				
Q10a	Should the draft Bill allow for any retrospective effects?				
Q10b	If so, what should have retrospective effect and why?				
Q11	Should there be a difference in transitional arrangements for contractual debts, non-contractual debts or damages?				

	If so, please give reasons.				
Q12	Do you think the draft Bill will have an effect on individuals? Please provide reasons for your answer.				
Q13	Do you think the draft Bill will have an effect on businesses? Please provide reasons for your answer.				
Q14	Do you think the draft Bill will have an effect on backdated pay? Please provide reasons for your answer.				
Q15	Do you think the draft Bill should exempt backdated pay from the statutory interest regime? Please provide reasons for your answer.				
Q16	Do you think the draft Bill will have implications for future pay negotiations? Please provide reasons for your answer.				
Q17	Do you think the draft Bill will alter behaviour and negotiating positions? Please provide reasons for your answer.				
Q18	Do you think the draft Bill will have an impact on equal pay claims?				
Q19	If yes, what would be the likely financial impact on your organisation or the organisations you represent?				
Q20	Do you think the draft Bill should exempt equal pay claims from the statutory interest regime? Please provide reasons for your answer.				

Appendix 2

North Lanarkshire Council's Response to the Interest (Scotland) Bill Consultation

Q1 No comment.

Comments:

Q2 No.

Comments: There is a strong public policy argument to seek to ensure that late payment of rent does not unduly affect the financial resources available to the Council as Housing Authority. This view would apply, for the avoidance of doubt, to Housing Associations and other registered social landlords.

Q3 No comment.

Q4 No comment.

Q5(a) No.

Comments: There is a balancing of interests to be considered between employers and employees but the conclusion of the Council is that this is an area better left outwith this proposed regime.

Q5(b) No.

Comments:

Q6 Yes.

Comments: Statutory interest running from 30 days after the end of the period in respect of which the service under the contract is remunerated seems reasonable.

Q7 No.

Comments:

Q8(a) + (b) North Lanarkshire Council are of the view that simple interests should be applied as this is largely the current regime for the application of interest in damages claims and the process of quantifying interest is an easier process than that with compound interest particularly where the amount spans a number of years.

Q9(a) Yes.

Comments: That the courts should be able to take into account factors such as the conduct of the parties to any litigation.

- Q9(b) No.
- Comments: Complete judicial discretion is the preferred option.
- Q10(a) No.
- Comments: North Lanarkshire Council are firmly of the opinion that there should be no retrospective application of the Act. Parties should be aware of their obligations whether contractual or otherwise and the right or responsibility to meet any additional sums in respect of interest for debts prior to the commencement of the Act.
- Q10(b) Not applicable as North Lanarkshire Council are of the view that there should be no retrospective effect in respect of the Bill.
- Q11 No comment.
- Q12 No comment.
- Q13 No comment.
- Q14 Potentially. The Council's rationale is commented upon in question 15.
- Q15 Yes.
- Comments: Often lengthy discussions can take place over pay negotiations particularly within the public sector. This is not necessarily as a consequence of any delay on the part of the employer but the requirement to balance a number of factors where agreement is required from a number of different unions and also taking into account the fact that unions may require to take their members views on matters.
- Q16 Yes.
- Comments: If employers in the public sector have limited or capped resources to deal with annual pay demands then a liability to pay interest will require to be factored into this and will affect the level of pay settlements.
- Q17 Potentially. Please refer to the Council's response to question 15.
- Q18 Yes.
- Comments: See comments for Q19 and Q20.
- Q19 If the statutory instrument regime were to apply to equal pay claims the financial implications to Local Government and to the public sector generally could be very

significant. This is the aspect of the consultation paper which is of most concern to the Council as a local authority employer facing significant numbers and levels of equal pay claims which will have an abnormal effect on the public purse.

Q20 Yes.

Comments: Potential Forum Shopping

North Lanarkshire Council are of the opinion that, in the event that the provisions of the Bill were to apply to equal pay claims, there could be a disparity between the position in relation to equal pay claims within different jurisdictions in the UK, in particular where the claimants were in a position to pick a forum within the UK where the claimant may maximise the award. There should be parity across all UK jurisdictions in relation to equal pay claims in particular as employment law is a reserved matter. In addition there is a very small but real risk that employers concerned with the implications of the Bill and future equal pay claims may elect to use the choice of law and jurisdiction clause within employment contracts to pick a jurisdiction and law other than that of Scotland and the Scottish Courts.

Delay

North Lanarkshire Council are of the opinion that local authorities such as the Council should not be prejudiced by the application of interest as proposed by the Bill through the delay in claimants seeking redress in respect of equal pay claims. The Equal Pay Act 1970 came into force in 1975. For a considerable number of years the issue of perceived disparity in respect of equal pay has been a contentious issue and has been a matter of common knowledge and debate among local authorities and employees alike. The employees unions and legal advisors have only in the past two years commenced proceedings against North Lanarkshire Council. Due to the delay in commencing proceedings it is submitted that claimants should not be entitled to interest. In exercising discretion over interest to be awarded the Courts have previously taken into account delays in pursuing their claim for damages and restricted interest accordingly. There is authority for this in the case of *Nacap Limited -v- Moffat Plant Limited* 1986 SLT 326.

Public Interest

In the event that a local authority such as North Lanarkshire Council were required to meet the additional burden of interest on equal pay claims this would have a significant impact on Council services. Unlike the private sector local authorities have limited means of raising resources. Given the freeze on Council Tax any additional burden in terms of interest on the equal pay claims would require to be met directly from monies currently allocated to the provision of Council services. Accordingly not only would Councils require to review their financial planning and budgeting but in addition the users of Council services would be adversely affected as a consequence of the financial impact.

Government Assistance

On 5 February 2008 local authorities in England and Wales were told by the Government that it would continue to support them in meeting their equal pay obligations through a further equal pay capitalisation round in 2008/09. This builds on £500 million issued to 46 authorities on 28 September 2007 for the current financial year. It should be noted that authorities in Scotland have not been provided with such support, nor does there appear to be a prospect of such resources being made available.

Distinction between a recognised known Obligation and Equal Pay Claims

Equal pay claims require to be distinguished from other types of claims. Whilst North Lanarkshire Council acknowledge that not all claims are known to a party at the time of the claim arising, most claims of a contractual nature will be known to a party. Equal pay claims were not known and could not be quantified until recently. In some respects this is akin to industrial disease claims. However employers have a legal requirement to have employers liability insurance in force and accordingly can manage the risk of claims by employees arising out of the accident, injury or disease. Equal pay claims are being met entirely within the existing finances of local authorities and the application of interest spanning over a number of years is not something which could have been easily foreseen or insured against.

Starting Date

North Lanarkshire Council note that clause 7(1) of the Bill states that where interest is due on a sum of money payable as damages the starting date is the date on which the loss in question is sustained.

Similarly sub-section 2 allows a Court to treat a loss in respect of which an award of damages is made as having been sustained over a period of time. It is likely a Court may regard an equal pay claim as "damages" as the claim arises not to any breach of the contract of employment but due to a potential failure by an employer to comply with discrimination legislation. It is noted that in paragraph 69 of the Consultation document there is a proposal that the legislation should apply to all claims for interest, except those in respect of which an action has been raised before the commencement date. Whilst North Lanarkshire Council's primary position is that equal pay claims should be excluded from the legislation, the Council is of the opinion that in the event that equal pay claims fall under the legislation, transitional provisions should be included. The purpose of these would be to exclude equal pay claims for a period of time to enable those authorities currently assessing and evaluating both claims and posts to ensure that they are compliant with any discrimination laws. This is a remarkably expensive and time consuming process and cannot expect to be completed shortly. Further the Council is of the view that there should be no discretion for a Court or Employment Tribunal to make any award of interest which would cover a period predating the commencement of the Act.