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NOTE TO ALL PERSONAL INJURY PRACTITIONERS –
H.C.P.I. 888 of 2001
INTERIM PAYMENTS

1. It has come to light in a recent case that at least one firm of solicitors acting on behalf of Defendants has made a practice, it says, of imposing, as a condition of making an interim payment, that the Court should not be informed of the fact of such a payment. All interim payments are on account of damages claimed. An interim payment is made as such and is intended for the Plaintiff, not for his or her lawyers. It is not a payment in respect of costs nor is it a payment to which the Legal Aid Department's First Charge can be secured. It is a payment which must be directly and without deduction remitted to the Plaintiff.

2. In the case concerned, the Plaintiff was under a disability having suffered a severe head injury. He brought the action by his wife as next friend. The Legal Aid Department obtained an interim payment for him, accepting a condition imposed by the Defendants' Solicitors that the Court not be informed of the fact of such. Instead of paying the sum into Court or passing the payment to the Plaintiff or his next friend, the Legal Aid Department kept the payment in a non-interest bearing account, for five months until it applied to the Court for its approval of a compromise reached in respect of the Plaintiff's overall claim.

3. It is wrong to seek to exclude the Court's jurisdiction in such a matter. It is a neglect of a Plaintiff's interests to:

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(1) withhold the payment from the Court where the Plaintiff is under a disability and the Court's protection of such a Plaintiff's funds is thereby nullified; and

(2) to deprive the Plaintiff of his or her entitlement to such sum by retaining it in an account which bears no interest.

Henceforth Solicitors acting for a Plaintiff must notify the Court of any interim payment received, and account to the Court for the sum in the appropriate circumstances or to the Plaintiff himself or herself, and Defendants' Solicitors must not seek to impose any such condition, which is ultra vires, as the basis for an interim payment.

4. Since Defendants, in making such an interim payment, are entitled to bring the sum into account for the purposes of calculating its liability for interest, the holding by the Plaintiff's Solicitors of the sum in a non-interest bearing account effectively diminishes the damages to which a Plaintiff is entitled.

Conrad Seagroatt
(Judge in Charge of the Personal Injury List)
5 May 2003

Director of Legal Aid for the Plaintiff
Messrs Tong & Tsoi, Solicitors for the Defendant