



The Driving Instruction (Suspension and Exemption Powers) Act 2009

Compensation scheme

A response to consultation report

*An executive agency of the
Department for
Transport*

June 2011

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Glossary

Item	Definition
ADI	Approved Driving Instructor
DSA	Driving Standards Agency
DfT	Department for Transport
IA	Impact Assessment
PDI	Potential Driving Instructor
Register	Register of Approved Driving Instructors
Registrar	Registrar of Approved Driving Instructors
The 2009 Act	The Driving Instruction (Suspension and Exemption Powers) Act 2009

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Executive summary

1. The purpose of this package of proposals is to introduce a compensation scheme which will take forward the Driving Instruction (Suspension and Exemption Powers) Act 2009 (the 2009 Act). The 2009 Act introduces a power to suspend the registration of Approved Driving Instructors (ADIs) and the trainee licence of Potential Driving Instructors (PDIs) (apprentice instructors operating under a trainee licence) in certain circumstances. Compensation applies where the instructor's registration or authorisation is suspended but not subsequently revoked. Further references in this document to the suspension of the registration of an ADI should be read as references also to the suspension of the trainee licence of a PDI.
2. Between March and May 2010, the Driving Standards Agency (DSA) consulted on the content of the compensation scheme. There was strong support for the proposals, including from representative bodies of the driver training industry.
3. Ministers have decided to introduce proposals 1 – 4 and 6 broadly as described in the consultation paper.
4. Proposal 5 offered consultees a choice as to how non-income losses were to be calculated, based upon either
 - Option (A) the actual amount lost by the particular instructor, based on documentary evidence (this was the recommended option); or
 - Option (B) fixed daily rates prescribed from time to time based on market rates.Ministers have decided to introduce Option (A).
5. Ministers have also decided to incorporate small modifications to the way the system will operate with regard to proposals 1 – 5. In the light of comments made, DSA will seek to include as much flexibility as possible in assessing claims, whilst observing the overriding duty to protect public money and to ensure that compensation is only paid in respect of valid claims.

Introduction

6. On 8 March 2010, DSA published a Consultation Paper: *The Driving Instruction (Suspension and Exemption Powers) Act 2009 – Compensation Scheme*.
7. DSA wrote to over 950 driver training associations, trade associations, individuals, special interest groups and those associated with the police and judiciary system. The Consultation Paper was posted on the DSA website, an email alert was

issued and a poster was placed in driving test centres. The closing date for responding was 31 May 2010.

8. The proposals in the Consultation Paper relate to provisions in the 2009 Act, which received Royal Assent on 12 November 2009. The 2009 Act introduces a new power to allow the Registrar of ADIs (an official of DSA) to suspend the registration of ADIs for public protection purposes. The power can only be used alongside existing removal or revocation procedures.

9. DSA envisages that the Registrar might use these new powers where an ADI had been:

- convicted of a serious sexual or violent offence; or
- found to be giving a dangerously low standard of instruction.

10. The 2009 Act also requires a compensation scheme to be available for ADIs whose registration or trainee licence has been suspended and that revocation or removal does not take place. This could occur either because the Registrar decides that removal or revocation is inappropriate, or because the ADI successfully appeals to the First-tier Tribunal.

11. Under the 2009 Act the compensation scheme can cover income and non-income losses arising from, and during the period of, the suspension.

Responses to the consultation exercise

12. 45 responses were received by DSA including ones from the Motor Schools Association, the ADI National Joint Council, the British School of Motoring and the Institute of Master Tutors of Driving.

13. Ministers would like to thank everyone who contributed to this consultation.

General observations

14. The proposals were widely supported, with the majority of replies being made by individual ADIs and the driver training representative bodies. Most respondents also agreed that the assessment made in the Impact Assessment (IA) was reasonable and that the consultation had been conducted in accordance with the Consultation Criteria as set out in **Annex B** to the Consultation Paper.

Disclosure of information

15. As part of the consultation, we made a commitment that, at the end of the consultation period, we would publish the responses received unless the respondents made clear their responses were to be treated as confidential.

16. 13 of the 45 respondents asked for their response to be treated as confidential. A copy of each response, which the respondent was content to be made available, has been posted on the DSA website: www.dft.gov.uk/dsa.

17. This Report summarises all comments and does not identify specific respondents. The statistical analysis includes replies from all respondents who indicated the strength of their support for each of the proposals. Few of the respondents commented on every proposal or replied to every question.

Impact assessment

18. The initial IA at **Annex A** to the Consultation Paper is being reviewed in light of comments received as part of the consultation process. The final document will be published when the regulations are made.

19. Further information about IAs is available from the Better Regulation Executive's website: <http://www.berr.gov.uk/bre>

Next steps

20. The changes will be implemented by secondary legislation. We will introduce the necessary regulations in due course. These will apply to Great Britain in line with the scope of the powers in the Road Traffic Act 1988 – the principal legislation affecting driving instruction.

21. Further information about the changes will be given on the DSA website: www.dft.gov.uk/dsa. We will also issue email alerts.

The decisions

22. Most respondents supported the proposals for implementation of the compensation scheme. There were few actual comments made, with the majority being content to indicate the level of their support for the way the scheme should be implemented.

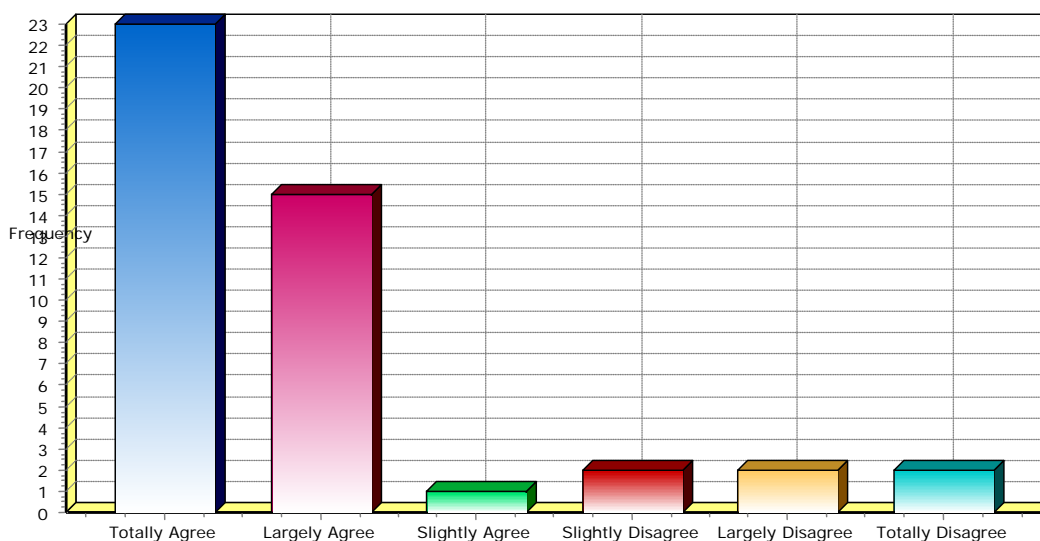
23. Commonly expressed views of those who commented were:

- a timescale for making claims was reasonable but there were individual preferences as to the length of the period;
- it was reasonable to require claims in writing. But we should be prepared to accept them electronically;
- it was reasonable for DSA to ask for more detail and to seek consent to contact third parties but failure to provide these should not prevent the claim from being accepted;
- the proposal to reimburse actual amounts more accurately reflected losses incurred and was therefore fairer - but an arrangement where fixed amounts were payable was simpler and offered more certainty about the level of payment;
- we should consider making interim payments.

24. Ministers have decided to implement the proposals broadly as detailed in the Consultation Paper, with some small modifications in response to comments made, which are summarised below.

Proposal No. 1 - To require claims to be made within two years.

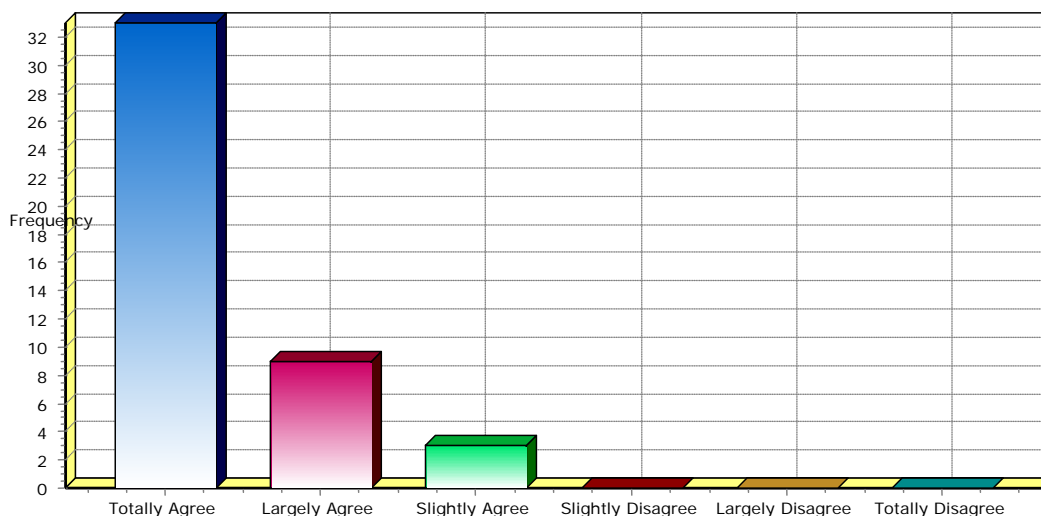
Breakdown of responses



25. 45 responses expressed an opinion on this proposal. 39 were in favour.
26. Some ADIs considered that the timescale should be less than two years, with proposals of one year, six months and three months. One commented on the need for claims to be processed quickly.
27. Others took the opposing view, mentioning the need for safeguards and proposing that claims be allowed outside this period in exceptional circumstances, such as where evidence became available about an instructor’s activities during the suspension after the period had expired.
28. Ministers have decided to implement a timescale of two years. However, in view of comments received, there will be provision for claims to be accepted outside this timescale at the Registrar’s discretion. This is likely to be only in the most exceptional cases, where there are valid reasons for consideration outside the standard period.

Proposal No. 2 - To require claims to be submitted in writing with relevant supporting documentation.

Breakdown of responses



29. 45 responses expressed an opinion on this proposal. All were in favour.
30. Whilst there was overall support for claims to be submitted in writing, there were a variety of other points made. Some considered that electronic format should be acceptable, especially due to unreliability of postage. Some felt that the inability to provide documentation should not automatically preclude the claim from being considered, especially when this was outside the instructor’s control. There may be a variety of reasons for documentation not being available - for example that it had

been stolen from a vehicle, or was held by the police. There was concern that the process for applying must not be excessively complicated and clarification of what constituted acceptable documentation was sought.

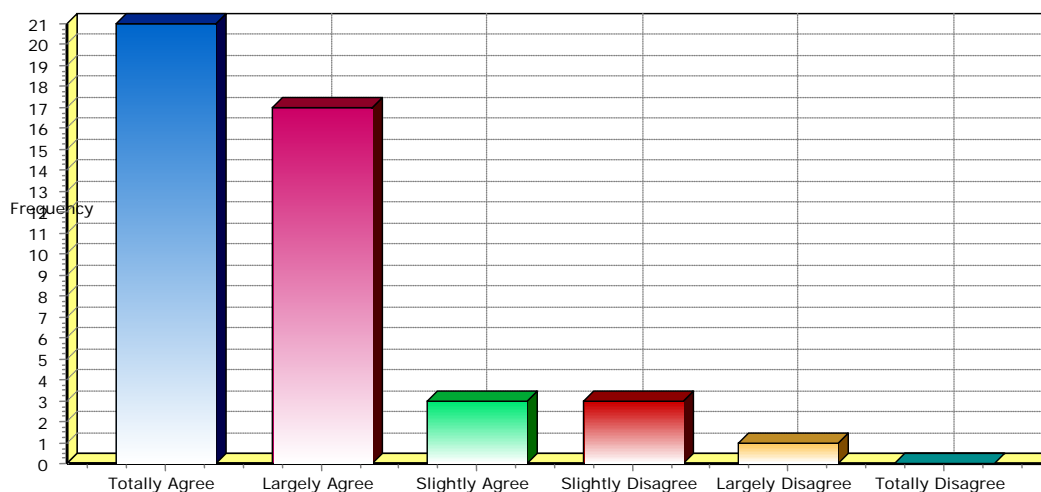
31. One ADI expressed concern that new ADIs would not have previous year's papers to refer to. Longer established ADIs would work irregular and seasonal hours.

32. Ministers have decided to implement as proposed, with claims being made in writing. We will seek to develop a system that is capable of accepting hard-copy and emailed applications, provided that data protection requirements can be met, and administrative costs kept to a minimum.

33. When the applicant is unable to provide the papers requested by the Registrar, because they do not exist, the applicant should provide such evidence as he has available to support his claim. The Registrar will consider the claim on that basis. Inability to provide information would not necessarily mean rejection of the whole claim, only that element that could not be substantiated. Including this sort of flexibility in the provision of evidence would avoid an overly prescriptive arrangement which did not take account of the inevitable differences between claims. However, whatever is provided will need, as a minimum, to contain sufficient information to enable the Registrar to make a reasoned decision on the claim. If an applicant considered that a part, or whole, of a claim had been unreasonably rejected by the Registrar, he or she could appeal to the First-tier Tribunal.

Proposal No. 3 - To allow reasonable further information or documentation to be requested from the claimant to facilitate validation or processing of the claim and to make payment conditional on its provision.

Breakdown of responses



34. 45 responses expressed an opinion on this proposal. 41 were in favour.

35. In spite of the strong support for allowing DSA to ask for reasonable further information, there was some opposition in the comments to making payment conditional on this. It was felt that there may be valid reasons why an applicant could not obtain information. These included circumstances where the information had been stolen from a vehicle or given to the police.

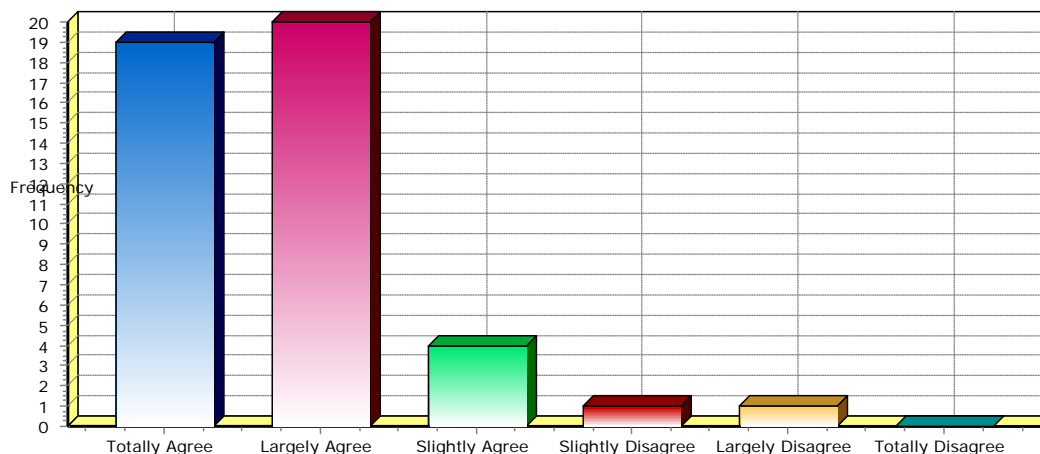
36. The need for this requirement to supply additional information to be “reasonable” was also stressed by some of those commenting, although one considered this to be open to interpretation. It was also thought that there should be no cost in providing the extra details, that additional documentation should be accepted on face value and that the claim should be honoured in full without delay.

37. One ADI felt that this could be undermined by newly qualified ADIs not having previous documentation and longer established ADIs working more seasonal hours.

38. Ministers have decided to implement as proposed. We wish to avoid an overly prescriptive arrangement. However, it will be necessary to provide whatever evidence is reasonably needed to process each part of the claim - the overriding duty is to protect public monies and to ensure that claims are correct. This will need to be observed when assessing all claims. As indicated above, an applicant who considered that part of a claim had been unreasonably rejected could appeal to the First-tier Tribunal.

Proposal No. 4 - To allow the consent of the claimant to be sought for reasonable enquiries to be made of third parties to assist in validation or processing of the claim. Payment of compensation to be conditional on such consent.

Breakdown of responses



39. 45 responses expressed an opinion on this proposal. 43 were in favour.

40. Whilst there was very good support for making enquiries of third parties, most were opposed to consent being compulsory and for payment to be dependent on its provision. However, one ADI felt that refusal should automatically lead to the claim being dismissed. Clarification was sought as to what entailed a third party. Data protection and human rights were mentioned and there was concern that it could be used as a way of stopping the application from being processed. It was suggested that the terms could be reworded to consent not being “unreasonably withheld”.

41. One ADI was concerned that making enquiries of third parties, who may not know about the issue, would add adverse publicity to the suspension, which the ADI would wish to avoid. He pointed out that many ADIs did not employ accountants.

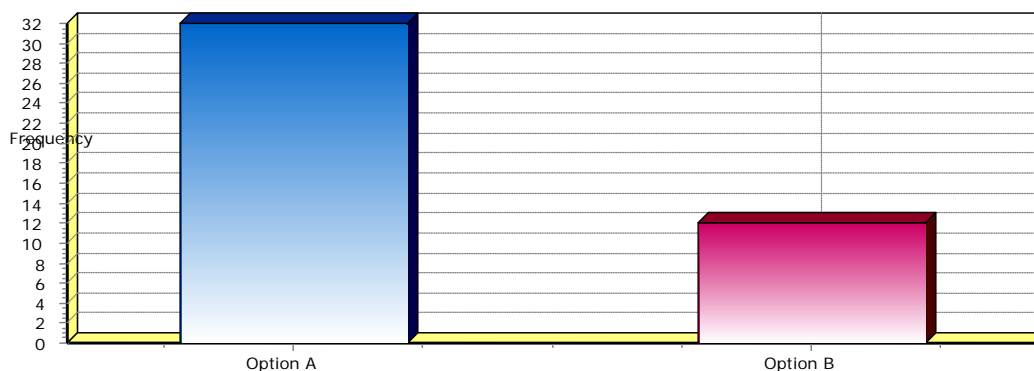
42. Ministers have decided to implement as proposed but for as much flexibility and sensitivity as possible to be exercised in the contacting of third parties, with the overriding requirement that sufficient information is available for proper consideration of the claim. We do not intend to advise the third party about the reason for the information request. Third parties are defined as persons, other than the claimant or Registrar, holding information relating to the claim – such as pupils or financial institutions. Those who considered that part of a claim had been unreasonably rejected could appeal to the First-tier Tribunal.

Proposal No. 5 - For the amount of compensation to be paid in respect of income lost, based upon either:

Option (A) the actual amount lost by the particular ADI or PDI, based on documentary evidence; or

Option (B) fixed daily rates prescribed from time to time based on market rates.

Breakdown of responses



43. 44 responses expressed an opinion on this proposal. 32 were in favour of Option A (actuals).

44. Those in favour of actuals considered that it would more fairly reflect losses, taking into account differences in the fees charged and would avoid the difficulty of determining a fixed rate. It would ensure that those whose loss was greater than that available from a fixed rate were not penalised and, conversely, that those whose loss was smaller did not make a profit.

45. It was thought that this arrangement would encourage better co-operation from individuals for quick resolution, be less of a financial burden to DSA and most would have no difficulty producing papers. It was considered that there should be no upper limit for payments. Suggestions were made about the mechanics of assessment, such as using the previous years' accounts, analysis of appointment diaries and specific time periods, such as 16 weeks, for the basis of claims. One suggestion was that an additional payment should be made to take account of the time to rebuild the business, perhaps 6 weeks, which would be reduced by earnings, during the period.

46. Those in favour of fixed amounts felt this would be simpler and quicker to operate, avoiding the need for documentation, difficulties in evaluating actuals and reducing administrative costs for DSA. Such a system would enable claimants to know with certainty what amount of compensation to which they were entitled, which could be important to them in a period of financial pressure. The basis of the example

in the consultation was queried, with a small number of respondents saying that the typical working week was more than 28 hours and the average was more likely to be closer to 35 hours. Some proposed basing assessment on realistic earnings lost, that it should be calculated over a seven day week, and that average weekly earnings over the previous two years could be considered.

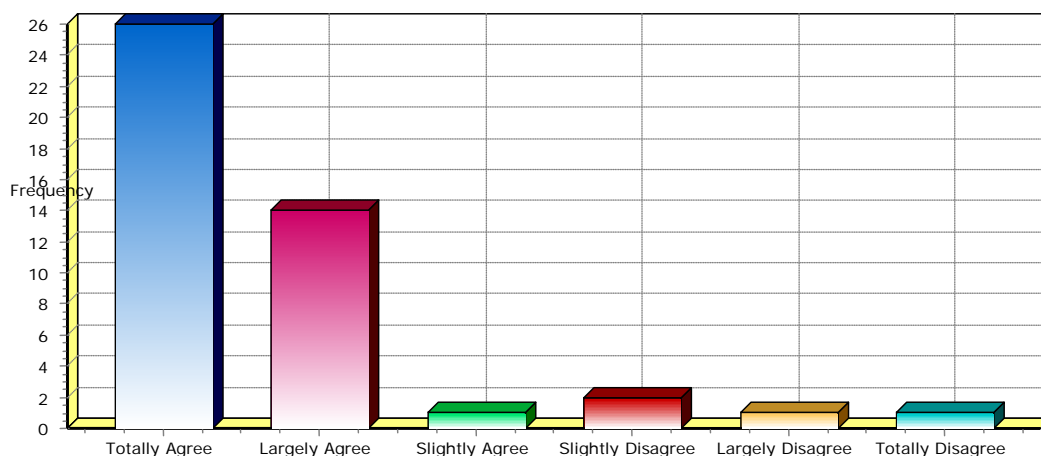
47. Some suggestions comprised elements of both systems. One considered that actuals could be used with fixed amounts being available as a fall back position if evidence required to support the claim was not available. Representative organisations of the driver training industry considered that an interim payment may be helpful as this would be paid quickly and would avoid an ADI who was in need of money waiting for a long period. One organisation was concerned that a smaller amount may be offered with the incentive that it was paid quickly.

48. A dual system, whereby an ADI could choose to claim fixed amounts if evidence to support a claim for actuals was not available, would add confusion and may encourage acceptance of a smaller amount to speed up payment of claims. This would also offer an incentive for lower earners to claim fixed amounts rather than actuals.

49. Ministers have decided to implement Option A. Applications for compensation must be supported by adequate documentation. In many instances, the supporting documentation will include the type of records which small businesses must retain for commercial and taxation purposes. Ministers have agreed that applications for interim payments, made at the time of the claim, may be considered in cases of exceptional financial hardship. An applicant who disputed the amount of compensation awarded could appeal to the First-tier Tribunal.

Proposal No. 6 - For the amount of compensation to be paid in respect of non-income losses to be based upon the actual losses incurred by the claimant, supported by documentary evidence.

Breakdown of responses



50. 45 responses expressed an opinion on this proposal. 41 were in favour.

51. Comments expressed the belief that the proposed system would require documented proof but would be fair on the individual and any proven losses should be recompensed. Another considered that non-income losses should be based on predicted losses rather than actual losses. It was felt that the amount to be paid as consequential losses, as a result of reputational damage, may not be easy to quantify - it should be monitored over two years.

52. One ADI felt that any payment should take into account the years as an instructor, perhaps on a sliding scale.

53. Ministers have decided to implement as proposed. Non-income losses can take many forms and it is likely that each case will be different. Consequently, the mechanism for calculating the scale of the loss should not be overly prescriptive and must be capable of taking into account individual circumstances. It will be for the individual to make a comprehensive case for the type, and amount, of loss he has suffered. In some cases, the Registrar may choose to make use of external experts, to help accurately assess losses. A claimant who disputed the amount of compensation awarded would be able to appeal to the First-tier Tribunal.

General comments

54. The general comments received included the view that the Consultation Paper was informative and thorough, and a fair and reasonable assessment of the position. However, there was some concern that DSA had recommended certain courses of action. Some considered that the paper contained some closed questions, which may be seen as limiting the scope for new creative solutions and influencing responses on a subliminal level for those submitting comments.

55. In addition, queries were made about how integrity could be regained after an allegation and concern was expressed that costs should not be recovered from ADI fees. One ADI felt that a dispute over amounts to be paid would not be helpful for an instructor who had been reinstated, as it would involve discussions with third parties and provision of documentation. It could be avoided by a system of fixed rates.

Response to comments

56. Where DSA supported a specific proposal, we sought to make clear our position. This enabled respondents to make their point in the full knowledge of the point of view being followed by the Agency. This is normal practice in consultations. Respondents were free to support the proposal, or oppose it, depending on their view. All comments made, whether in favour or not, were taken into account when assessing responses to the consultation.

57. DSA appreciates that some may oppose the use of ADI fees to fund the compensation scheme. But it is important that monies are available to recompense an ADI who suffers hardship as a result of suspension that does not result in removal from the Register. DSA, as a Trading Fund, generally only has access to the monies it collects in fees. However, we would stress that the suspension power will be only be used in exceptional circumstances and the number of occasions where a person is eligible to claim compensation will be miniscule. There should, therefore, be no significant impact on ADI fees resulting from the payment of compensation.

58. Whilst DSA appreciates that contacting third parties may not be popular with claimants, this is likely to be unavoidable if the Registrar is to make a reasoned decision on a claim. Enquiries of third parties is fairly routine in financial matters (eg for mortgages). As indicated at Proposal No 4, the Registrar will always seek to make enquiries sensitively.

Impact assessment

Cost

59. The hours worked by an ADI each week was queried, with some considering that 28 hours was too low. One suggested that ADIs worked between 6-8 hours a day but it was not specified whether this was in a calendar or working week. Another felt that so long as the figures were no more than estimates and compensation packages were tailored to individuals, this should be a good working figure.

Other

60. The point was made that the effect of allegations on an ADI should not be underestimated and that this could be devastating. There was also concern that making the information public could accentuate the effect. One ADI suggested that calculation of the amounts could be undertaken by a fixed sliding scale based on the number of years in the profession, which would eliminate costs and result in wronged parties being paid out far quicker. One response queried the value of referring the claim back to the Registrar where further evidence had emerged, believing this should remain with the First-tier Tribunal.

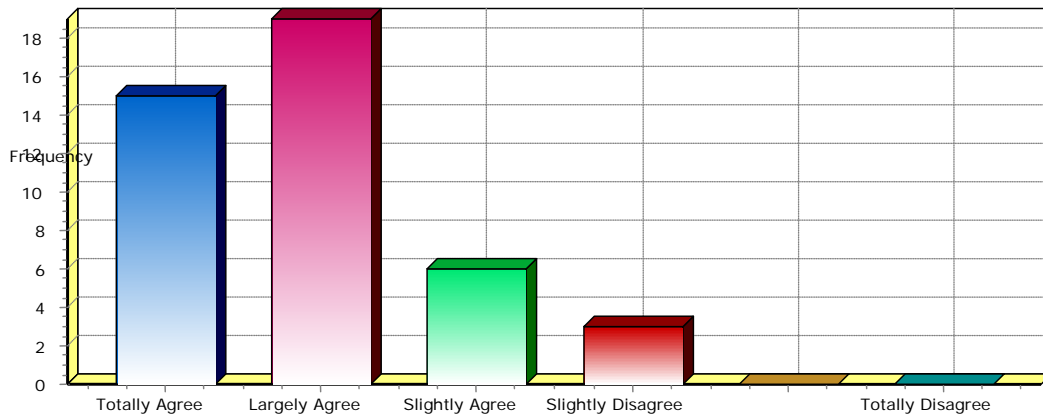
Response to comments

61. The figure of 28 hours was used as an example in the consultation because it reflected the average working patterns of driving instruction professionals. It was intended to set a balance between amounts earned by those ADIs who worked full time and those who worked part time. Requiring claims to be based on actual losses, ensures that the working patterns of individual instructors are taken into account when calculating the amount of compensation due.

62. It is not our intention to make public, information about a suspension. Approaches to third parties would be to determine accuracy of information supplied by the claimant and the reason for the request would not be given. As indicated at Proposal No 6, we prefer to avoid an overly-prescriptive process, such as a sliding scale, which may not adequately address individual circumstances. The provision for referring a claim back to the Registrar from the First-tier Tribunal is in the 2009 Act.

Consultation criteria

Breakdown of responses



63. 43 of the responses expressed an opinion. 40 felt that the consultation had been conducted in accordance with the Consultation Criteria as set out in **Annex B** to the Consultation Paper.

Anything particularly liked or disliked

64. A variety of opinions were expressed about the Consultation Paper. It was seen as “straight to the point”, with comments only needing to be added where these were relevant, and that it was a positive step to allow ADIs to be involved in policy. Conversely, some ADIs considered that the paper was too complex on administration of the scheme and that it would be useful for there to be procedural guidance on the documentation required.

65. One respondent felt that that the paper did not actively encourage creative alternatives to the options presented, another suggested that decisions on the way forward may have been taken and another that questions were “woolly”. It was hoped that instructors would not have to claim unnecessarily and that DSA would advise the ADI of the scheme on their reinstatement.

Response to comments

66. The paper was written in such a way as to clarify the main points, while explaining the full background and the issues involved. The questions were those which needed to be considered to inform the way the scheme is to be introduced. We feel that respondents had an adequate opportunity to propose alternatives – including more creative alternatives - in the free text parts of the consultation reply.

67. Guidance will be published on the operation of the scheme. In addition, everyone who is eligible to submit a claim will be advised of the existence of the compensation scheme at an appropriate time.

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