



Informing Progress - Shaping the Future

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The Scottish Law Commission's recent report on damages for personal injury

The Scottish Law Commission's recent report on damages for personal injury, published on 4 December 2024, represents an effort to overhaul and modernise the legal framework governing awards of damages for such claims in Scotland.

This report, accompanied by a draft Damages (Scotland) Bill, seeks to address perceived complexities and inefficiencies within the current system, proposing reforms which it is submitted are more aligned with contemporary societal norms and legal standards.

Proposed Reforms in Personal Injury Damages

1. Expanding the Definition of "Relative"

One of the most significant recommendations in the report is the expansion of the definition of "relative" to include ex-cohabitants and people accepted into the family of an injured person. In addition, it seeks to permit awards for services provided by people other than relatives, such as friends and neighbours. This proposed change reflects the evolving nature of social support networks and ensures that individuals who provide essential care and services to an injured person, or who receive such services from them, are eligible for compensation. By broadening this definition, it is considered the law would better reflect modern familial and social dynamics by acknowledging that support often extends beyond traditional family boundaries.

2. Clarifying Deductions from Damages

The report addresses the complex issue of deductions from damages awards. Currently, there is ambiguity regarding what should be deducted from compensation, particularly

concerning benefits received under employer health insurance schemes. The Commission recommends that payments made to an injured employee under a permanent health insurance scheme that they have contributed to financially should not be deductible from damages. There is also to be a statutory provision to allow an injured person to claim for private medical treatment, care, accommodation and equipment, rather than requiring them to utilise available NHS or local authority support.

3. Provisional Damages and Asbestos-Related Diseases

A critical area addressed by the report is the treatment of provisional damages, especially in cases involving asbestos-related diseases. Under current legislation, individuals diagnosed with conditions like pleural plaques face a time-bar that can prevent them from claiming for more serious conditions such as mesothelioma if these develop later. The Commission proposes removing this time-bar, allowing claims to be made when symptoms of the more serious conditions manifest. This change is seen as being crucial in safeguarding claimants' rights, ensuring they are not disadvantaged by the progressive nature of certain diseases and avoiding wasted court procedure.

4. Enhanced Management of Children's Awards

To protect the interests of children who receive damages awards, the report recommends increased court supervision over these funds. This measure is designed to ensure that children's compensation is managed prudently and used for their benefit. By implementing stricter oversight, the courts can help prevent mismanagement or misuse of funds intended to support a child's recovery and future needs.

Review of the Personal Injury Discount Rate (PIDR)

In addition to these recommendations, the Government Actuary's review of the Personal Injury Discount Rate (PIDR) has resulted in a new rate of +0.50% per annum. This adjustment reflects changes in investment return expectations and aims to balance the interests of both claimants and defenders by ensuring fair compensation without overcompensation. The revised rate considers inflationary pressures on damages and seeks to provide a more accurate reflection of economic conditions.

Legislative Implementation and Broader Implications

The draft Damages (Scotland) Bill outlines the legislative changes required to implement these comprehensive recommendations. If adopted, these reforms are expected to enhance fairness and transparency in damage calculations, improve access to justice for claimants, and better align Scottish law with contemporary societal values. The proposed changes could lead to increased damages awards in certain cases, impacting insurers, legal practitioners, and other stakeholders involved in personal injury claims.

The implications of these reforms extend beyond individual cases; they represent a potential shift by the Scottish justice system towards what is considered a more equitable legal

landscape, with compensation more closely reflecting societal conditions and needs. There is no proposed timescale at present for consideration of the draft bill at present, and FOIL will continue to monitor and update on its progress through the Parliamentary stages when they commence.

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