



Scottish Law Commission

promoting law reform

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DISCUSSION PAPER ON DAMAGES FOR PERSONAL INJURY

The Scottish Law Commission today publishes a Discussion Paper on Damages for Personal Injury.

Damages for personal injury are a sensitive type of civil claim because they involve a delicate balance of interests. The principle of *restitutio in integrum* (putting a person in the position they would have been but for the accident) remains a fundamental principle of the law of delict in Scotland. However, applying that principle can be far from straightforward.

It is appropriate to review the Administration of Justice Act 1982 now because there has been significant societal change since its enactment. Case law has also developed considerably in this area and has demonstrated that some of the provisions may be unduly complex and may be in need of clarification, and perhaps even reform. We also consider that it is appropriate to review the provisions in the Children (Scotland) Act 1995 concerning the management of damages awarded to children, especially given that children may be dependent on these awards for the rest of their lives.

The Commission announced in our Tenth Programme of Law Reform (February 2018) that we would examine the law of damages for personal injury to consider whether, and if so how, any clarification or reform of the law to reflect societal change should be undertaken.

This Discussion Paper therefore considers and asks for views on four areas of the law of damages for personal injury:

- Awards of damages in respect of services provided to and by an injured person and specifically whether the restriction to relatives should continue to apply;
- What deductions should be made from awards of damages;
- The operation of provisional damages, particularly in the context of asbestos-related disease;
- The management of damages awarded for the benefit of children so that the children's interests can be best safeguarded.

The Scottish Law Commission invites comments from anyone with an interest. Responses to the Discussion Paper can be made until 15 June 2022.

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Following consultation, the Commission will assess consultees' views and commence work towards publication of a Report.

Lady Paton, Chair of the Scottish Law Commission and lead Commissioner on this project, said:

“It is important that the law on damages for personal injury is fair and reflects modern society; and also that it operates in a clear, consistent and transparent way. When someone is injured through another person’s negligence, it is crucial that damages can be assessed in a way that is equitable to both parties in order to enable them to move forward. This Discussion Paper examines four specific areas of the law of damages in order to suggest some ways in which it may be modernised so that it is fit for today’s society.

We are keen to hear from anyone interested in the law of damages for personal injury, ranging from legal practitioners, insurance specialists, academics, interest groups, people who have been injured through another person’s negligence, through to the wider general public. The responses we receive now will help us to shape policy and make any necessary proposals for future reform of the law.”

FURTHER INFORMATION

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. We recommend changes that will improve, simplify and update the law of Scotland. The Chair of the Scottish Law Commission is the Rt Hon Lady Paton, a Senator of the College of Justice. The other Commissioners are David Bartos, Advocate; Professor Gillian Black; Kate Dowdalls QC and Professor Frankie McCarthy. The Interim Chief Executive is Charles Garland.
2. Further information can be obtained by contacting the project manager Alison Fraser, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131; email info@scotlawcom.gov.uk).
3. The paper will be available on our website at <https://www.scotlawcom.gov.uk> as early as possible on Wednesday 23 February 2022.