

23 February 2022



Our ref: L1/12/2

Dear Consultee

**DISCUSSION PAPER ON DAMAGES FOR PERSONAL INJURY
SLC DP No 174**

We invite comment on the Discussion Paper on Damages for Personal Injury which has been published today. The paper is available on our website at <https://www.scotlawcom.gov.uk/law-reform/consultations/> together with a news release.

The main work of the Discussion Paper covers four topics relating to damages for personal injury. Three of these topics relate mainly to provisions in Part II of the Administration of Justice Act 1982 and are covered in chapters 2 to 4. The Discussion Paper considers whether these provisions are in need of reform. The three topics are:

- *Damages awarded in respect of services* provided to an injured person and services provided by the injured person to others. Claims for services under sections 8 and 9 of the Act are limited to “relative”. We examine whether the definition of “relative” in section 13 is still appropriate in a modern context, and whether claims should be restricted to relatives at all.
- *Deductions from awards of damages*, in particular payments of money such as those under permanent health insurance plans, social security benefits and benefits in kind. We aim to identify which of these categories listed in section 10 may be causing confusion. The law in this area has been largely developed by case law, and we consider whether reform or clarification is required. We also consider apparent discrepancies between Scots law and the law of England and Wales on matters which aim for the same results, attempting to reconcile cases which may appear contradictory.
- *Provisional damages in the context of asbestos-related disease*. We consider how the law has developed in this area and whether there are problems with how provisional damages operate in that area and, if so, what potential reform might look like.

Chapter 5 of the Discussion Paper considers the separate issue of the management of damages for personal injury awarded for the benefit of children. We consider the provisions of the Children (Scotland) Act 1995 and whether children’s interests are sufficiently safeguarded under the Act. We also look at personal injury trusts for children, and what they entail.

The paper seeks views from consultees on a wide variety of questions in these four separate areas of the law of damages for personal injury. We aim to find out whether the law needs reform in light of case



law developments as well as societal developments. It might be that some of these areas are simply in need of clarification while others may need statutory reform. Our consultation questions aim to identify the main areas of concern in practice. For example, these questions cover issues such as:

- In terms of services, should the definition of “relative” be widened and, furthermore, should people other than relatives be covered?
- Is there a need for clarification of section 10 of the Administration of Justice Act 1982 in terms of the deductibility or otherwise of payments under permanent health insurance policies?
- Is there a problem with the way provisional damages operate in cases involving asbestos-related disease?
- Should it be mandatory for the parents or a guardian of a child to report to the Accountant of Court, especially where a child will be largely dependent upon an award of damages for the rest of their life? Or is the imposition of such a reporting requirement a matter best left to the discretion of the court?

Consultation is critical in all of our law reform projects to ensure that the final recommendations contained in our report would, if implemented, result in law which is just, principled, responsive and easy to understand.

We would therefore be grateful to receive your views on any or all of the questions in this Discussion Paper. All views will be fully considered and analysed in the course of reaching our final conclusions. The consultation period ends on **15 June 2022**.

Where possible, we would prefer the electronic submission of comments. You can use the electronic response form for this Discussion Paper which is available on our website at <https://www.scotlawcom.gov.uk/publications/archive/discussion-papers-and-consultative-memoranda/>.

The form has a questionnaire format which allows you to comment (briefly or at length) on any of the paper’s questions which interest you. The form can be downloaded and emailed to us at info@scotlawcom.gov.uk, as can comments in other electronic formats.

Alternatively, you may prefer to send your comments on the Discussion Paper by using the general comments form to be found on the website “Contact Us” page (<http://www.scotlawcom.gov.uk/contact-us/>). As noted above, the consultation process concludes on 15 June 2022, accordingly we would be grateful if comments could be submitted by then.

Please note that information about this Discussion Paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act. We may also (i) publish responses on our website (either in full or in some other way, such as, reformatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

More information about the work of the Commission can be found on our website at <https://www.scotlawcom.gov.uk/>.



Finally, should you wish to offer any comments on the way in which we conduct our consultation exercises, we would be pleased to hear from you.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Charles Garland', written in a cursive style.

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