

RESPONSE TO THE ONLINE CONSULTATION ON THE WORKING DRAFT OF THE PRESCRIPTION (SCOTLAND) BILL

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THE RT HON LADY PATON

I have one question about the draft bill. In section 4(5), inserting section (3A), would subsection (a) – “the occurrence of the loss, injury or damage” – be more safely phrased as:

“that what had occurred was loss, injury or damage”

(or something similar).

I ask this question simply because in two recent cases (*Gordon’s Trs v Campbell Riddell Breeze Paterson LLP* 2016 SC 548, 2016 SLT 580, and *Heather Capital Ltd v Levy & McRae* 2017 G.W.D. 9-127) circumstances arose in which a person was aware of making an expenditure or outlay, but did not appreciate that the expenditure or outlay was in fact loss, injury or damage until some considerable time later.

It may be that the other facts (b) and (c) will assist in fixing a fair *terminus a quo*: but I just wonder whether the ingenuity of counsel will be such that the “start-date” for the prescriptive period will be fixed as the time of making the expenditure or outlay, whether or not it was understood to be loss, injury or damage until much later.