



Scottish Law Commission

promoting law reform

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A review of damages for personal injury in Scotland

Every year many people in Scotland suffer injuries caused by someone's negligence. These injuries can be life-changing and in some cases, fatal.

According to statistics presented by the Scottish Crime and Justice Survey, personal injury claims were the third most common type of civil law action in Scottish courts in 2022-23. It is therefore essential that the law on damages for personal injury is fit for 21st century Scotland.

The Administration of Justice Act 1982 implemented recommendations made by the Scottish Law Commission in our 1978 Report, *Damages for Personal Injuries (Report on (1) Admissibility of Claims for Services and (2) Admissible Deductions)*, introducing damages for services rendered to or by an injured person and also provisional damages (reserving the right to return to the court for a further award of damages in the event of a deterioration in their condition). However, there have been significant social and legal changes in the last four decades, resulting in the need for further reform.

Further reforms considered necessary include: extending entitlement to damages for necessary services to non-relatives (for example, friends and neighbours); clarifying the deductibility from damages of payments made under permanent health insurance schemes; resolving the pleural plaques time-bar problem, whereby the existence of symptom-free pleural plaques may bar an action for damages for a later-developing serious asbestos-related condition; and finally increasing the protection for damages awarded to children.

Following a detailed review and consultation, the Scottish Law Commission has today published a Report recommending changes to the law on damages in Scotland.

The recommendations include:

- In the context of claims for personal injury, updating the definition of "relative" to reflect modern society;

- Extending the class of persons entitled to damages for services rendered to an injured person to include, for example, friends and neighbours.
- Clarifying what qualifies as a “contribution” towards a permanent health insurance scheme, for the purpose of determining whether a payment made to an injured person under that scheme should, or should not, be deducted from an award of damages;
- Confirming that injured persons are entitled to opt for private medical treatment, care, accommodation, and equipment, rather than rely on NHS or local authority support;
- Resolving the pleural plaques time-bar problem, so that an asymptomatic condition such as pleural plaques will no longer result in a time-bar preventing recovery of damages for a later-developing symptomatic condition such as mesothelioma;
- Requiring increased supervision by the courts where damages are awarded to young children.

These recommendations will modernise the law on damages, clarify areas currently causing difficulty, and facilitate and make more transparent the calculation and management of damages for personal injury.

Lady Paton, 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 and consistent way. The Report examines some areas of the law of damages and recommends reforms modernising the law so that it is fit for today’s society.”

FURTHER INFORMATION SECTION

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chair is the Rt Hon Lady Paton, a Court of Session judge. The other Commissioners are Ann Stewart, Professor Frankie McCarthy, Professor Gillian Black and David Bartos. The Chief Executive is Rachel Rayner.

2. Further information can be obtained by contacting Mariel Kaney, Scottish Law Commission, Parliament House, 11 Parliament Square, Edinburgh EH1 1RQ (Tel: 0131 244 6605; 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 4 December 2024.

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