

Mr Bill Butler MSP
Room MG. 14
Scottish Parliament
Edinburgh

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30 October 2009

Dear Mr Butler

We are writing in response to your consultation paper on the proposed Damages (Scotland) Bill, which was published on 3 August 2009.

We welcome the opportunity to reply to this consultation, having already responded to the discussion paper which the Scottish Law Commission published in 2007. Our response to this consultation will, therefore, focus on the issues which were not covered by the original discussion paper.

In our submission to the Scottish Law Commission, (copy attached) we stated that we believed 'the discussion paper succinctly summarises the current law and makes proposals which will be of significant benefit to people whose relatives have been wrongfully killed'. We still believe that there is a case for the Damages (Scotland) Act 1976 to be amended, and broadly welcome both the final report and draft Bill produced by the Scottish Law Commission.

In response to questions two and three in the consultation paper, we agree that there should be set deductions from an assessment of damages for living costs. A fixed deduction would spare bereaved families the current trauma of a deeply intrusive enquiry into the financial history of the deceased, and possibly other family members, at a time of severe emotional strain.

A set deduction of 25 per cent will also save time in the process of calculating the award, as there will be reduced investigations into the finances of the deceased, and should provide the bereaved family with the compensation they need more quickly than is the case under the current arrangements. It will increase the predictability of awards and improve the prospects of settlement without litigation. There should also be an additional saving in lawyers' costs by removing the need for lengthy investigations into the financial arrangements of the deceased, and his family.

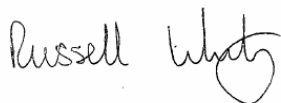
We also believe that a deduction of 25 per cent would better reflect the changing arrangements within households, where women are much more likely to be working than has been the case in the past.

We agree that damages for non-patrimonial loss should not include damages in respect of any mental illness suffered. Close relatives of the deceased will, of course, experience emotions of extreme grief, and it is difficult to separate those feelings from a psychiatric disorder, brought on by the loss of their loved one. Where psychiatric disorders are taken into account, there are difficulties with recognition and definition of such disorders. Lawyers currently have to consider whether there might be a diagnosis of psychiatric illness, leading to bereaved relatives having to undergo psychiatric examination, which is the last thing they should endure in the circumstances. Taking psychiatric disorders into account also leads to some relatives receiving higher damages than others based on the severity of their psychiatric disorder, and we believe any "ranking of grief" on this basis is invidious.

We are not immediately aware of any additional costs associated with the proposed Bill, and have no further comments on the details of the consultation document, or the draft Bill.

The proposals are timely and proportionate and APIL expresses its strong support. This is one of a number of areas where the Scottish Law Commission has made proposals to bring the law of Scotland up to date and we wish the Bill a speedy progress through Parliament.

With very best wishes

A handwritten signature in black ink that reads "Russell Whiting". The signature is written in a cursive style with a large, looped 'W'.

Russell Whiting
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