



Damages (Scotland) Bill

The UNISON Scotland Submission to the Scottish
Parliament Justice Committee

August 2010

Introduction

UNISON Scotland welcomes the opportunity to respond to the Justice Committee's call for written evidence on the Damages (Scotland) Bill proposed by Bill Butler MSP.

UNISON Scotland represents over 160,000 members working mainly in the public sector. We support claims from members who are injured in the course of their work.

UNISON Scotland supports the general principles of the Bill. We are pleased that the Bill is being taken forward as a Private Member's Bill given that no action has been taken to implement the Law Commission's proposals.

Bill Provisions

We supported the Law Commission's view that there are a small number of important areas where improvements can be made in the present law. The main elements of the existing law, which allows for claims by injured parties and their relatives when fatal injuries or illness is sustained through the negligence of others, are sound.

We entirely agree with the Commission's recommendations that the court should make a fixed deduction of 25% of net annual income during the lost period to represent the victim's reasonable living expenses. The state of the current law is unsatisfactory and leads to uncertainty as no-one really knows what "living expenses" includes.

The uncertainty also aggravates resolution of such a claim and delay can be to the severe prejudice of the dying person because it may prevent their case being resolved before they die. There can also be too much delving into the personal circumstances and lifestyle of the individual concerned.

What is proposed is a simple rule based on the principle that the living expenses which are deductible from future income are expenses of necessity/living expenses not expenses of choice or lifestyle. We believe the 25% rule is a realistic estimate which can be applied easily to most cases.

UNISON Scotland also supports the second reform in the Bill that addresses the position where dependents are seeking loss of financial support where a loved one has died, a deduction for living expenses is also made. The loss of financial support can also be assessed at nil because the dependents are allowed to take into account the spouse's or partner's earnings. It would be consistent to also limit the reduction to 25% and would also prevent a loss of financial support being wiped out by consideration of a spouse's or partner's earnings.

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