Personal Injury Victims Should Be Compensated Fairly And Transparently

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Those who have suffered the trauma of personal injury should have their compensation calculated in a fair and transparent way, according to a Holyrood Committee. The Economy, Energy and Fair Work Committee carried out an inquiry into the Damages (Investment Returns and Periodical Payments) (Scotland) Bill. The Committee agreed with the principles of the Bill, which would reform the law so that the UK Government actuary would set a discount rate for those receiving compensation.

The discount rate applies to compensation awards for future financial losses - such as ongoing care costs or lost earnings. It adjusts the amount of compensation paid to a victim to reflect the fact that they can invest the money to generate a return.

The discount rate has the biggest impact on those who have suffered the most catastrophic injuries, and on those who pay compensation, such as insurance companies and the NHS.

Victims of personal injury already take on a number of risks in the process of achieving compensation for their personal injury, such as ensuring their award lasts their life expectancy and dealing with increasing inflation costs.

The Committee concluded that the process should be fair and transparent, and that they should not have to carry undue risk.

Convener of the Economy, Energy and Fair Work Committee Gordon Lindhurst MSP said:
'Although the number of personal injury cases where the discount rate applies is small, the importance of the process to the individuals and families concerned is considerable.
'The Committee welcomes the introduction of this legislation and are content that it will in principle achieve fairness and transparency across a range of cases and for both sides.
'We heard compelling evidence for payments which allow those that have suffered a personal injury to receive lifelong compensation instalments. We ask the Scottish Government how it will promote the use of these periodical payment orders.'

In the report it was noted that the Committee:

• welcomes the additional clarity and transparency provided by having the method for calculating the discount rate set out in legislation.
• accepts that the provisions of the bill have been formulated to offer a standardised approach to work in the interests of fairness, and strike a balance between pursuer and defender interests.
• seeks more detail from the Scottish Government on a commitment to regularly analysing the 30-year assumed period of investment, including the degree of divergence that would suffice for it to introduce more than one interest rate.

• believes that the Discount Rate should be reviewed every five years, rather than three.
• welcomes the provision for a court power to impose a periodical payment order (PPO). It asks the Scottish Government how it will promote the use of PPOs.

Background

The Damages (Investment Returns and Periodical Payments) (Scotland) Bill, was introduced in the Scottish Parliament on 14 June 2018.
The Committee heard from a number of witnesses including representatives of the Association of Personal Injury Lawyers; Thompsons Solicitors; Faculty of
Advocates; and Professor Victoria Wass, Professor of HRM, Cardiff Business
School; the Forum of Scottish Claims Managers; the Forum of Insurance Lawyers; NHS National Services Scotland; and the Association of British Insurers; and the Minister for Community Safety, Ash Denham.

A person can claim compensation if they are injured through the wrongful behaviour of another person or organization. The role of compensation is to put the person - to the extent that a financial award can - as close to the position they were in before they were injured as possible.

The law requires that, where a person or body has acted wrongfully, they are liable to compensate anyone who suffers loss as a direct result.

The full report can be read here.

Further information on the background to the Bill can be found in the SPICe briefing.

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