In response to the question “In evidence today the Law Society suggested that it may inequitable that any payment previously made to a victim as a result of a court process, even as little as one pound, could under the drafting of 17C in the Bill debar the victim from re-opening their case while in the absence of that nugatory payment they would be able to. They suggested as an alternative that it might be reasonable to allow the re-opening of the case and discount previous payments, other than of expenses, from any payment now made. What is your view?”

Police Scotland highlighted in its original written response that ‘where previously there had been settlement of a personal injury claim, perhaps with the knowledge that the time bar could prevent a successful outcome, then except where any “financial “settlement involved only a sum equating to an individual claimant’s expenses in connection with bringing and settling the action, such claimant will not have the benefit of the legislation and be allowed to seek any further compensation. In effect any sum (nominal or otherwise) paid out in excess of what might reasonably be regarded as expenses will prevent a further action’.

Our interpretation of Section 17C, therefore, highlighted the same point raised by the Law Society during the recent evidence sessions, in that the definition of settlement according to the Bill, at present, may penalise certain survivors who previously received nominal financial settlement. We, therefore, view the Law Society’s suggestion as pragmatic.

Notwithstanding, our understanding is any broadening of Section 17C of the Bill would not impact on the provisions outlined in Section 17D, which could still be applied on a case by case basis in relation to prejudice.

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