

**IN THE SUPREME COURT OF THE UNITED KINGDOM**  
**UKSC 2025/0002**

**ON APPEAL FROM THE COURT OF SESSION  
(FIRST DIVISION, INNER HOUSE) SCOTLAND**

**RESPONDENTS' WRITTEN CASE**

in the cause

**(FIRST) ELAINE CROZIER or VEALE**, 3 Halsey Drive, Lynefield, Auckland, 1042, New Zealand; **(SECOND) GWEN CROZIER or LAMB**, 50 Oldwood Place, Livingston, West Lothian EH54 6UJ; **(THIRD) GEMMA ELIZABETH VEALE**, 41 Farrand Road, Kumey, 0891, New Zealand; **(FOURTH) KIERAN NATHAN LAMB**, 50 Oldwood Place, Livingston, West Lothian EH54 6UJ; **(FIFTH) CAITLIN ANNE VEALE**, 3 Halsey Drive, Lynfield, Auckland, 1042, New Zealand; **(SIXTH) AIDAN ETHAN LAMB**, 50 Oldwood Place, Livingston, West Lothian EH54 6UJ

PURSUERS

against

**SCOTTISH POWER UK PLC**, 320 St Vincent Street, Glasgow G2 5AD

DEFENDER

**Order Sought**

1. The respondents ask the court to dismiss the appeal and to adhere to the interlocutor of the Lord Ordinary dated 27 July 2023 as corrected by the interlocutor of the Inner House dated 4 June 2024.

**Damages (Scotland) Act 2011**

2. The respondents accept that, if a deceased person settles their claim for damages in respect of an act or omission prior to their death, there is generally no liability to pay damages to their relatives (section 4(2) of the Damages (Scotland) Act 2011). However, section 5 of the 2011 Act makes an exception to this rule:

“(1) This section applies where—

(a) the liability to pay damages to A (or to A's executor) is discharged, whether by antecedent agreement or otherwise, by A before A's death,  
(b) the personal injury in consequence of which A died is mesothelioma, and  
(c) the discharge and the death each occurred on or after 20th December 2006."

3. The exception applies where the three conditions set out in subparagraphs (a) to (c) are satisfied. The respondents offer to prove that all three of those conditions are satisfied in the present case.

***(a) the liability to pay damages to A (or to A's executor) is discharged, whether by antecedent agreement or otherwise, by A before A's death***

4. The deceased's claim for damages in relation to pleural plaques and asbestosis arose in relation to the same acts and omissions of the appellants. The appellants' liability to pay damages to the deceased in respect of those acts and omissions was discharged by the settlement of his previous claim before his death. The first condition is satisfied.

5. The appellants are incorrect in their assertion at paragraph 87a of their Written Case that "the discharged liability and the liability that allows the exception have to be for mesothelioma." The "liability" referred to at sections 3, 4(2) and 5(1)(a) of the 2011 Act is the liability to pay damages to A in respect of the act or omission. It does not require those damages to relate to a specific medical condition. Had Parliament intended that additional requirement, it could easily have been included in the legislation.

6. It is to the defenders' advantage that liability for death by mesothelioma is discharged when a claim for pleural plaques is settled, because those conditions are all treated as part of the same action. Equally, it is to the defenders' advantage that

the triennium starts to run on the diagnosis of pleural plaques (unlike in England, where pleural plaques are not compensatable). The appellants cannot pick and choose whether the liability has been extinguished according to the context and Parliament has not (unsurprisingly) attempted to do so.

**(b) *the personal injury in consequence of which A died is mesothelioma***

7. The respondents offer to prove that the deceased died from mesothelioma. The second condition is satisfied.

**(c) *the discharge and the death each occurred on or after 20<sup>th</sup> December 2006***

8. The discharge and the death in the present case occurred in 2015 and 2018 respectively. The third condition is satisfied.

**Statutory Interpretation**

9. The relevant approach to statutory interpretation is set out at paragraph 14 of the Lord Ordinary's opinion under reference to the pursuers' submissions and paragraphs 29 to 31 of *Regina (O) v Secretary of State for the Home Department* [2023] AC 255; and at paragraph 26 to 27 of the Opinion of the Inner House. Of particular relevance to the present case is the following passage:

“But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity.”

10. The “external aids” referred to in this passage included Explanatory Notes. Headings and sidenotes in a statute should be treated the same as Explanatory Notes (*R v Montila* [2004] 1 WLR 3141 at paragraph 36).

## Ground of Appeal 1

11. The Inner House did not misinterpret the meaning of sections 3, 4 and 5 of the 2011 Act. The Inner House's approach was consistent with the clear and unambiguous wording of sections 3, 4 and 5 of the 2011 Act.
12. It is possible that the words used in section 5 went beyond the mischief identified by the Scottish Executive in proposing the legislation (as set out in its policy memorandum and the Explanatory Notes to the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007). However, that does not mean that the court should ignore the words used and substitute different wording that may be more consistent with any expressed aim of the Scottish Executive. It is not apparent from the words actually used in the 2007 Act (and subsequently included in 2011 Act) that the intention of Parliament when it passed the legislation was the same as that of the Scottish Executive as expressed in the policy memorandum and Explanatory Notes. In any event, any such intention is not set out in the Explanatory Notes to the 2011 Act itself.
13. At paragraph 90 of their Written Statement, the appellants state (emphasis added) that “**Parliament** repeatedly asserted that the exception was not intended to encroach upon the law of damages any more widely than was necessary to fulfil the policy of removing the invidious dilemma faced by an individual suffering from mesothelioma.” However, the sources relied on in support of this proposition are not statements made by “Parliament”; rather they are statements made by the Scottish Executive. The appellants' conflation of the intention of the Scottish Executive and the intention of Parliament is at the core of their erroneous approach in the present case.
14. The appellants are “seeking to recruit the Executive's statement as to what it intended the words used in the Bill to mean as an aid to determining what these words, as contained in the Act, in fact did mean, on a proper construction.” They are not entitled to do (*Comhairle Nan Eilean Siar v Scottish Ministers* 2013 SC 548

per Lord Brodie at paragraphs 62-63). It would be a “confidence trick and destructive of all legal certainty” (*Cora Foundation v East Dunbartonshire Council* 2014 SC 665 at paragraph 32 under reference to a *dictum* of Lord Diplock in *Forthergill v Monarch Airlines Limited* [1981] AC 251) if individuals such as the deceased and his family were not entitled to rely on the clear and unambiguous meaning of the words actually used in section 5, but rather had to search through the legislative history, the policy memorandum and the Explanatory Notes to an earlier piece of legislation in order to see whether Parliament’s real intention had been accurately expressed.

15. As this court recently noted in *For Women v Scottish Ministers* [2025] 2 WLR 885 at paragraph 12:

“Lord Nicholls of Birkenhead’s important constitutional insight in *Spath Holme*, that citizens with the help of their advisers should be able to understand statutes, points towards an interpretation that is clear and predictable.”

## **Ground of Appeal 2**

16. The Inner House did not misinterpret the exception provided by section 5 to section 4(2) of the 2011 Act. The Inner House’s approach was consistent with the clear and unambiguous wording of section 5 of the 2011 Act. In particular, the Inner House was correct to conclude (at paragraph 28) that the 2007 and 2011 Acts simply disapplied “the bar on damages claims which have been settled or otherwise disposed of, where ‘the personal injury in consequence of which the deceased died is mesothelioma’. There is no other relevant condition.”
17. In Ground of Appeal 2, the appellants place particular reliance on the sidenote<sup>1</sup> to section 5: “Discharge of liability to pay damages: exception for mesothelioma”.

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<sup>1</sup> Described as a “heading” in the Grounds of Appeal and the appellants’ Written Case

Although the respondents accept that the sidenote to section 5 is a relevant “external aid”, such an external aid cannot displace the meanings conveyed by the words of the statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity. The meaning of section 5 is clear and unambiguous and does not produce absurdity. The wording of the sidenote cannot displace that meaning. In any event, the sidenote is consistent with the result in this case as Mr Crozier did indeed contract and die from mesothelioma.

18. In any event, the Inner House’s interpretation of section 5(1) is entirely consistent with the wording of the sidenote. On the Inner House’s interpretation, an exception to the normal rule from section 4(2) is made which is limited to cases involving mesothelioma: this is an “exception for mesothelioma”. The sidenote is not specifically concerned with “damages for mesothelioma” as the appellants appear to contend at paragraphs 75 and 79 of their Written Case.
19. The appellants are incorrect in their assertion at paragraph 76 of their Written Case that the sidenote “ought to be applied throughout the section, including section 5(1)(a)”. The sidenote does no more than indicate that section 5 as a whole provides an exception for mesothelioma, which it plainly does by virtue of section 5(1)(b).
20. The Inner House was correct to note (at paragraph 30) that the appellants’ interpretation required the court “to read into section 5(1) words that are not there”. The appellants contend (at paragraph 76 of their Written Case) that “The exception for mesothelioma in s5 ought properly to be understood as only an exception for litigants who have discharged a claim for damages as a result of being an individual suffering from mesothelioma”. Such an interpretation goes far beyond the wording of section 5 and would require additional words to be read into the statute (such as those set out at paragraph 78 of the appellants’ Written Case). Parliament could have worded the second condition to the effect that “the personal injury in relation to which the defender’s liability was discharged was mesothelioma.” Alternatively, Parliament could have imposed a further condition that the pursuer had to have been diagnosed with mesothelioma at the time of the discharge for section 5 to apply.

However, Parliament chose not to limit the provision in this way. The only limitation imposed by the words used is that the death was caused by mesothelioma: nothing is said regarding the condition from which the deceased was suffering at the time of the discharge of the wrongdoer's liability. The appellants are essentially inviting this court to make legislation without the benefit of consultations, parliamentary debates or the assistance of a parliamentary draftsman.

### **Ground of Appeal 3**

21. The Inner House's interpretation of section 5(1)(a) of the 2011 Act does not produce absurdity. There is nothing absurd about a situation where a wrongdoer, through its negligence, has caused the death of an individual and the wrongdoer is required to pay damages to the individual for a non-fatal condition caused by the negligence and to the individual's family members following his death. Even if those circumstances are inconsistent with the general provision set out in section 4(2) of the 2011 Act, it is not absurd for there to be a statutory exception to that general provision limited to those cases where death has been caused by mesothelioma.
22. Insofar as the appellants seek to rely on an "unprincipled anomaly", any such anomaly is of no relevance unless it produces absurdity. Section 5 is specifically designed to produce an anomaly. The anomaly identified by the appellants at paragraphs 24 to 25 of their Written Case, resulting in families being treated differently depending on the cause of death of their relative, is an inevitable feature of Parliament's choice to limit the exception in section 5 to cases of mesothelioma and not to extend it to other conditions such as asbestos-related lung cancer. The rationale for this different treatment (and supposed anomaly) in cases of mesothelioma is summarised at paragraph 43 of the appellants own Written Case. In any event, any such anomaly has no relevance to the issues that arises in the present case.

#### **Ground of Appeal 4**

23. The Inner House did not err in holding that the claim which settled was a mesothelioma claim, insofar as it included damages for the risk of mesothelioma. This is why, when Mr Crozier developed mesothelioma, he was unable to make any claim himself. It was only his relatives, courtesy of the exception contained in section 5, who still had a limited claim.

#### **Ground of Appeal 5**

24. The Inner House did not err in observing that, historically, the relatives' claim was an independent right. The Ground of Appeal omits the word "historically". See the Case Commentary by Simon di Rollo KC at 2024 SLT (News) 197. In any event, the Inner House's observation did not form part of its process of reasoning in disposing of the reclaiming motion.

#### **Provisional Damages**

25. One of the fundamental flaws in the reasoning in the appellants' Written Case is the implication that Mr Crozier gained an unfair advantage in settling his claim on a full and final basis instead of accepting provisional damages. Had Mr Crozier taken provisional damages, he would have been in a much better position than turned out to be the case. Section 5 only preserves the relatives' rights in relation to claims for "loss of society" in terms of section 4(3)(b). It does not preserve the rights to loss of earnings/loss of financial support or loss of services.
26. More importantly, Mr Crozier would have been faced with exactly the same dilemma as any person who contracts and dies from mesothelioma, simply at an earlier stage and before all the risks are known. But for section 5, settling his claim for pleural plaques would discharge any further claim in the event that he contracted mesothelioma. Even if he had taken provisional damages, he would simply have

delayed the dilemma that the appellants recognise as the mischief against which section 5 is aimed. This demonstrates the fundamental point that a claim for pleural plaques and a claim for mesothelioma are treated as part of the same single action in Scotland.

## **Disposal**

27. The Court is invited to dismiss the appeal and to adhere to the Lord Ordinary's interlocutor of 27 July 2023 as corrected by the interlocutor of the Inner House dated 4 June 2024.