



Michaelmas Term
[2025] UKSC 45
On appeal from: [2024] CSIH 14

JUDGMENT

Veale and others (Respondents) v Scottish Power UK plc (Appellant)

before

Lord Reed, President
Lord Briggs
Lord Hamblen
Lord Leggatt
Lord Burrows

JUDGMENT GIVEN ON
10 December 2025

Heard on 3 November 2025

Appellant

Neil Mackenzie

Ewan Campbell

Kevin Clancy

(Instructed by Shepherd and Wedderburn LLP)

Respondents

Robert Milligan

Gordon Balfour

(Instructed by Thompsons Solicitors Scotland)

LORD REED (with whom Lord Briggs, Lord Hamblen, Lord Leggatt and Lord Burrows agree):

1. Introduction

1. This appeal raises a question of statutory interpretation. The statute in question is the Damages (Scotland) Act 2011 (“the 2011 Act”), which is concerned with rights to damages in Scotland in respect of personal injuries and death.

2. The relevant provisions are sections 3 to 5. Section 3 describes the circumstances in which sections 4 to 6 apply. It provides:

“3 Application of sections 4 to 6

Sections 4 to 6 apply where a person (‘A’) dies in consequence of suffering personal injuries as the result of the act or omission of another person (‘B’) and the act or omission—

(a) gives rise to liability to pay damages to A (or to A’s executor), or

(b) would have given rise to such liability but for A’s death.”

3. Section 4 sets out the rules governing the liability in delict of the wrongdoer, B, to members of A’s family following A’s death. It provides, so far as material:

“4 Sums of damages payable to relatives

(1) B is liable under this subsection to pay—

(a) to any relative of A who is a member of A’s immediate family, such sums of damages as are mentioned in paragraphs (a) and (b) of subsection (3),

(b) to any other relative of A, such sum of damages as is mentioned in paragraph (a) of that subsection.

(2) But, except as provided for in section 5, no such liability arises if the liability to pay damages to A (or to A's executor) in respect of the act or omission—

(a) is excluded or discharged, whether by antecedent agreement or otherwise, by A before A's death ...

(3) The sums of damages are—

(a) such sum as will compensate for any loss of support which as a result of the act or omission is sustained, or is likely to be sustained, by the relative after the date of A's death together with any reasonable expenses incurred by the relative in connection with A's funeral, and

(b) such sum, if any, as the court thinks just by way of compensation for all or any of the following—

(i) distress and anxiety endured by the relative in contemplation of the suffering of A before A's death,

(ii) grief and sorrow of the relative caused by A's death,

(iii) the loss of such non-patrimonial benefit as the relative might have been expected to derive from A's society and guidance if A had not died."

4. Section 5 sets out an exception to the general rule laid down in section 4(2). It provides:

"5 Discharge of liability to pay damages: exception for mesothelioma

(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.

(2) Liability arises under section 4(1) but is limited to the payment of such sum of damages as is mentioned in paragraph (b) of section 4(3)."

5. The question raised by the appeal is whether, in order for the condition set out in section 5(1)(a) to be satisfied, it is essential that A was suffering from mesothelioma at the time when the liability to pay damages to A was discharged.

2. *The background*

6. The pursuers are members of the immediate family of the late Robert Crozier, who died of mesothelioma in 2018. He was employed by the defenders, Scottish Power UK plc, between 1969 and 1992. In 2014 he sued the defenders for damages, having developed pleural plaques and contracted asbestosis as a result of being exposed to asbestos in the course of his employment. Part of the damages claimed related to the risk of his developing mesothelioma. The action was settled by agreement between the parties. Mr Crozier was not suffering from mesothelioma at the time of the settlement. The effect of the settlement was to discharge the defenders of further liability to Mr Crozier in respect of the consequences of his exposure to asbestos in the course of his employment. In particular, its effect was to discharge the defenders of liability to Mr Crozier in the event that he went on to develop mesothelioma. That much is common ground between the parties.

7. Following his death, the pursuers raised the present action, seeking damages in accordance with section 4(3)(b) of the 2011 Act. The defenders contend that the action is precluded by section 4(2), since their liability to pay damages to Mr Crozier was discharged by him before his death. In response, the pursuers rely on the exception in

section 4(2): “except as provided for in section 5”. They contend that all three conditions set out in section 5(1) are satisfied. As to section 5(1)(a), the defenders’ liability to pay damages to Mr Crozier was discharged by him before his death. As to section 5(1)(b), the personal injury from which Mr Crozier died was mesothelioma. As to section 5(1)(c), the discharge and the death each occurred on or after 20 December 2006.

8. The defenders accept that the conditions set out in section 5(1)(b) and (c) are met. However, they submit that section 5(1)(a) is not satisfied, because Mr Crozier was not suffering from mesothelioma at the time when liability was discharged.

9. The defenders’ argument was rejected by the Lord Ordinary ([2023] CSOH 50; 2023 SLT 755) and by the First Division ([2024] CSIH 14; 2024 SC 373), which however granted permission to appeal to this court.

3. *The interpretation of the legislation*

(1) Textual analysis

10. Counsel for the defenders sought to argue that the phrase “liability to pay damages” in section 5(1)(a) must be understood as referring to a liability to pay damages for mesothelioma. No such liability existed, it was argued, at the time when Mr Crozier settled his action, as he was not then suffering from mesothelioma. Accordingly, no such liability was discharged.

11. This argument cannot be accepted, for several reasons. In the first place, the claim which Mr Crozier brought against the defenders, and which was settled by agreement, included a claim for damages in respect of the risk that he would in future develop mesothelioma. The effect of the settlement of that claim was to discharge the defenders’ liability to pay him damages in the event that he subsequently developed mesothelioma. Accordingly, even if section 5(1)(a) refers to a liability to pay damages for mesothelioma, that liability was discharged by the settlement of the claim.

12. Secondly, the phrase “liability to pay damages” appears not only in section 5(1)(a) but also in sections 3 and 4. It must have the same meaning in each of those provisions, in view of the inter-connections between them. Section 3 expressly governs the application of sections 4 and 5. Section 4(2) expressly refers to section 5 as creating an exception from its general effect.

13. By virtue of section 3, sections 4 and 5 apply where (1) “a person (‘A’) dies in consequence of suffering personal injuries as the result of the act or omission of another

person ('B)'), and (2) "the act or omission ... gives rise to liability to pay damages to A". There is no conceivable basis for construing the phrase "liability to pay damages" in section 3 as referring only to a liability to pay damages for mesothelioma. Section 3 is not concerned specifically with persons suffering from mesothelioma: it is concerned generally with persons who die in consequence of suffering personal injuries as the result of the act or omission of another person.

14. The circumstances in which section 4 applies are governed by section 3. Since section 3 is concerned generally with persons who die in consequence of suffering personal injuries as the result of the act or omission of another person, and is not restricted to liability for mesothelioma, it follows that section 4 is equally wide in scope. In particular, when section 4(2) excludes liability to relatives following A's death, "if the liability to pay damages to A ... in respect of the act or omission ... is excluded or discharged ... by A before A's death", the "liability to pay damages" to which section 4(2) refers cannot possibly be restricted to a liability to pay damages for mesothelioma. It is plainly a provision of general application.

15. Returning to section 5(1)(a), the phrase "liability to pay damages" must have the same meaning as in section 4(2), since the provision creates an exception to the general rule laid down in section 4(2) and uses identical language. Nothing is said in section 5(1)(a) about mesothelioma. It is section 5(1)(b) which introduces a condition relating to mesothelioma; and the condition is that the personal injury in consequence of which A died was mesothelioma, not that A was suffering from that condition at the time when liability was discharged.

16. The final nail in the coffin of the defenders' argument is that it is self-defeating. If, for the sake of argument, the liability to pay damages to Mr Crozier for mesothelioma was not discharged, with the consequence that section 5(1)(a) did not apply, it would follow that his relatives were entitled to bring a claim against the defenders under section 4(1). Section 4(2) would not operate to bar their claim, since *ex hypothesi* the liability to pay damages to Mr Crozier for mesothelioma had not been discharged.

17. Put slightly differently, if the "liability to pay damages" to which section 5(1)(a) refers is a liability to pay damages for mesothelioma from which A was suffering at the time when liability was discharged, then that must also be the "liability to pay damages" to which section 4(2) refers. On that hypothesis, it follows that section 5(1)(a) does not apply to the case of Mr Crozier, but neither does section 4(2). The consequence is that there is no bar to a claim by Mr Crozier's relatives under section 4(1).

(2) The heading of section 5

18. In answer to these points, counsel for the defenders relied in the first place on the heading of section 5: “Discharge of liability to pay damages: exception for mesothelioma”. This heading was said to indicate that the whole section is concerned with a discharge of liability to pay damages for mesothelioma. That contention is rejected. The heading is entirely consistent with the result of a straightforward reading of the provision: that section 5 is concerned with the discharge of a liability to pay damages (in general, and not restricted to damages for mesothelioma), and creates an exception from the general rule set out in section 4(2) where the personal injury from which the person died was mesothelioma.

(3) Background materials

19. Counsel also relied on a number of materials external to the legislation in order to demonstrate that the mischief which prompted the introduction of the relevant provisions was a dilemma faced by persons who knew that they were suffering from mesothelioma. The dilemma facing them was whether to choose to obtain damages themselves during the short period of life remaining to them, and thereby bar any claim by their relatives after their death; or instead to choose to live without the benefit of any damages and leave their executor and relatives free to claim for the normally greater amount of damages arising from their death.

20. The materials to which counsel referred demonstrate clearly that it was this dilemma which was put forward by the Scottish Government as the justification for introducing the relevant provisions of the Bill which became the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 (“the 2007 Act”): provisions which were subsequently re-enacted in sections 3 to 5 of the 2011 Act. The clearest statement is contained in the Policy Memorandum on the Bill (SP Bill 75) (27 September 2006), prepared by the Scottish Executive to satisfy the Scottish Parliament’s Standing Orders. It stated (paras 8 and 12):

“8. Under section 1(2) of the Damages (Scotland) Act 1976 (the 1976 Act), the immediate family of an injured person is prevented from claiming damages on the death of that person if the deceased has already settled in full a claim prior to death for damages for his or her own loss. Currently, mesothelioma sufferers face the dilemma of either pursuing their own damages claim or not pursuing their claim before they die so that their executor and relatives can claim awards which total more than the award of damages the sufferer was entitled to.

Most sufferers (around 80%) are not pursuing their own claims in order not to disadvantage their families.

...

12. ... The policy behind the Bill is to remove the dilemma which mesothelioma sufferers find themselves in, as described at paragraph 8 above. The Bill will disapply section 1(2) of the 1976 Act so as to allow the immediate family of a mesothelioma sufferer to claim damages for NPL [non-patrimonial loss] under section 1(4) of the Act where the sufferer has sustained personal injuries as a consequence of mesothelioma and dies as a result of those injuries, irrespective of whether the deceased has already recovered damages or obtained a settlement.”

21. It is apparent even from the last sentence quoted in that passage that the approach adopted in the Bill went further than was necessary in order to address the particular problem described in paragraph 8 of the Policy Memorandum, and achieved a wider purpose. Similarly, the effect of sections 3 to 5 of the 2011 Act, as explained above, go beyond addressing that specific problem. That, however, does not mean that the interpretation of the legislation should be distorted so as to confine its effect to what would be strictly necessary to address that mischief. That is so for a number of reasons.

22. First, and most importantly, the courts must faithfully give effect to the meaning of legislation as enacted. That is a principle of fundamental constitutional importance. As Lord Nicholls said in *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 397, “Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.”

23. The identification of the mischief which prompted the introduction of the legislation can be of considerable value in the process of ascertaining its meaning, but it cannot override the meaning of the legislation where that is otherwise clear. As Lord Hodge said in *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, para 30, “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”. In the present case, section 5(1)(a) is unambiguous. Its meaning is clear, even when the background materials are taken into account. As explained below, it does not produce absurdity.

24. Secondly, in order to confine the effect of the legislation to addressing the precise problem identified in the background materials, it would have to be substantially rewritten. Merely inserting the words “for mesothelioma” after “damages”, in section 5(1)(a), would not suffice. It would be necessary to add a further condition to those set out in paragraphs (a), (b) and (c), to the following effect:

“(d) A was suffering, and knew that he was suffering, from mesothelioma at the time of the discharge.”

Section 5(1) as enacted contains no such condition. The court cannot rewrite it so as to insert one.

25. Thirdly, although the dilemma which prompted the introduction of the relevant provisions was one which affected individuals who knew that they were suffering from mesothelioma at the time when the liability to pay damages was discharged, there were understandable reasons why the provisions should be drafted so as to protect the interests of a wider category of individuals. Confining the exception to the general rule in section 4(2) to the relatives of individuals in that precise category would have excluded from protection the relatives of individuals who were suffering from mesothelioma at the time when liability was discharged but did not know that they had developed the disease, either because their condition had not been diagnosed or because they had not learned of the diagnosis. It would also have excluded from protection the relatives of individuals such as Mr Crozier, who died of mesothelioma but developed the disease after the time when liability was discharged. It is understandable that the legislation should have been drafted in a way which avoided the need to draw distinctions of that kind, by excepting from the general rule in section 4(2) the relatives of anyone who died of mesothelioma after having discharged the liability to pay damages.

(4) Avoidance of absurdity

26. Finally, counsel submitted that the court should seek to avoid an interpretation of the legislation which produces an absurd or anomalous result. It was said to be absurd that Mr Crozier’s relatives should be able to claim for loss suffered as a result of Mr Crozier’s mesothelioma, when no such claim was open to Mr Crozier himself. It was also said to be anomalous that the interests of persons at risk of developing mesothelioma should be protected, when no similar protection was afforded to persons at risk of developing other fatal conditions, such as lung cancer, as a result of exposure to asbestos.

27. The short answer to the first of these points is that, on any view, section 5 enables relatives to bring a claim after liability to the person injured was discharged. They can therefore bring a claim which would not have been open to the injured person himself.

That reflects the purpose of the provision: to create an exception to the general rule laid down in section 4(2), under which no liability to relatives arises where liability to the person injured has been discharged.

28. The answer to the second point is that the fact that the exception from the general rule laid down in section 4(1) is confined to the families of persons who die of mesothelioma is also the result of the policy underpinning the legislation. As the heading of section 5 indicates, it creates an “exception for mesothelioma”. It does not create an exception for lung cancer or any other condition. The argument that the exception for mesothelioma is anomalous cannot affect the interpretation of legislation which is plainly designed to create such an exception. It should also be noted that the Scottish Law Commission has considered whether other conditions should be the subject of a similar exception. It concluded that mesothelioma cases were “highly exceptional” and that there was at present no need to extend such an exception to other diseases or personal injuries: Report on Damages for Wrongful Death, Scot Law Com No 213 (2008), paras 3.27-3.28. The draft Bill which formed Appendix A to the Report was enacted as the 2011 Act.

4. *Conclusion*

29. For all these reasons, which are essentially the same as those of the courts below, I would dismiss the appeal.