



NEWS RELEASE
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Insurance companies to pay out more - Supreme Court decision to benefit citizens

For over a decade insurance companies in Scotland have been able to reject breach of contract claims for inconvenience and distress not raised within 3 years. Scotland's Supreme Court overturned that rule today and confirmed that citizens have the right to raise proceedings within a 5 year period.

It is not uncommon for insurance companies to delay and haggle over consumer claims. Your house is ruined by a flood, possessions are damaged or stolen. You think you are covered, but the insurance company drags its heels. By the time a citizen sues the insurance company they discover they are time barred to claim for hassle, distress and inconvenience suffered. So insurance companies have less incentive to settle.

Govan Law Centre's case of **Mack v. Glasgow City Council** clarifies and advances the law of damages in favour of ordinary citizens.

Until today, insurance companies have relied on the case of **Fleming v. Strathclyde Regional Council** 1992 SLT 161 to reject many claims for distress and inconvenience. Such claims were treated as 'personal injuries' from Fleming, and only recoverable if claimed within 3 years. The Inner House of the Court of Session overturned Fleming and confirms that citizens can now pursue such claims for up to 5 years.

In delivering the Court's Opinion in Mack, Lord MacFadyen said: "[17] In our opinion Fleming was wrongly decided ... we conclude that the claim is not properly to be regarded as a claim for personal injuries".

The Mack decision has implications not only for the insurance industry, but also for Glasgow City Council – who lost the appeal - and social landlords across Scotland. Glasgow City Council had argued their former tenant could not claim for the inconvenience and distress of having to live in unpleasant damp and mouldy living conditions because this was a claim for 'personal injury', and the former tenant was outwith the 3 year time limit.

If Glasgow City Council had won its appeal it would have meant no tenant in Glasgow could have sued them for having to live in poor housing conditions – because the Council transferred all of its stock to the Glasgow Housing Association on 7 March 2003 – so its liability would have ended on 7 March 2006.

The consequence of Mack is that Glasgow City Council is still liable for claims for inconvenience and distress of former tenants until 6 March 2008. Likewise, all former landlords will be subject to a 5 year claim period after stock transfer, now and in the future.

Govan Law Centre's Principal Solicitor, Mike Dailly, said:

"Govan Law Centre believes that the case of Mack is potentially good news for thousands of citizens across Scotland. If your insurance company refused to pay you money for distress or

inconvenience in the last 2 years on the grounds of timebar, you should immediately consult your solicitor in light of Mack.

Likewise former tenants of Glasgow City Council should be aware that they have until 6 March 2008 to recover damages from the Council for the inconvenience and distress of having to live in damp, cold and unpleasant living conditions”.

ENDS

NOTE TO EDITORS

The judgment of the Court was published in full on the Scottish Courts Service at lunchtime today (it runs to 13 pages).

It is available here: <http://www.scotcourts.gov.uk/opinions/2006CSIH18.html>