Further to the Committee's previous interest in this issue and the letter of 11 January 2011 from Fergus Ewing MSP, the then Minister for Community Safety, to your predecessor, I am now writing to record the outcome of our consultation. I am also writing in similar terms to the petitioners, Margaret and Jim Watson.

The consultation exercise, which drew on the recommendations of law reform bodies in other jurisdictions ran, for 12 weeks from 11 January 2011. As well as being sent directly to those thought potentially to have an interest, the consultation paper was also made available on the Scottish Government website. A total of 23 responses were received: 20 of these gave permission for publication and are now on the Scottish Government website, together with a summary analysis of the responses. This material can be viewed on the Scottish Government website: www.scotland.gov.uk/Topics/Justice/law/damages/defamationresponses.

In essence, responses were split between those from individual members of the public and victims' organisations (which supported a change to the law) and those from academics, lawyers and media organisations (which opposed a change to the law). The proponents and opponents of reform both argued strongly for their respective positions, but there was little by way of firm factual evidence that the current position is either demonstrably ineffective or demonstrably effective. The opponents, however, did raise a number of significant concerns regarding the practicality of a reformed approach. Amongst this group, there were a number who also argued for a wider review of the law on defamation and privacy.

At this point, our view is that it is right to support the objective of ensuring that the reputation of a recently deceased person cannot be defamed with impunity, but that an extension of the law may not be the most appropriate way of delivering the requisite protection. The potential
of regulatory regimes for the media – either currently, or with further development – needs to be taken into consideration amongst the options.

This is something of a provisional position, however, because it is relevant in considering this issue that, since the consultation was undertaken, the context has changed significantly. I refer, of course, to the revelations and allegations over the summer about phone hacking. The result of these developments is that media standards and regulation are now firmly in the spotlight and a range of inquiries have been established. Amongst these is the inquiry under Lord Justice Leveson, which was set up by the UK Government and covers amongst other matters "the culture, practices, and ethics of the press". We will want to consider carefully the outcome of that inquiry (in which, I understand, the petitioners have been designated 'core participants') and, indeed, the work being undertaken by the UK Government in order to inform our final conclusions as whether the regulatory regimes relating to the media are, or can be made, robust and reliable.