



The Scottish Parliament
Pàrlamaid na h-Alba

PUBLIC PETITION NO.

PE01695

Name of petitioner

Ben and Evelyn Mundell

Petition title

Access to justice in Scotland

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to take action to ensure that access to justice, including access to legal advice from appropriately trained lawyers and financial support through legal aid, is available to enable people in Scotland to pursue cases where they consider a human rights breach has occurred.

Action taken to resolve issues of concern before submitting the petition

Most recently we have raised this issue with David Stewart MSP.

Before this we have taken a range of steps to try and access justice. These include:

- Asking the Law Society of Scotland for a list of firms undertaking human rights cases and a list of firms undertaking legal aid work. Lists were provided but were out of date.
- Contacted over 50 law firms. The majority of these did not take on human rights cases and most of those that did indicated they would only take on human rights cases involving 'prisoners or immigrants' (their words, not ours).
- Being told by the few firms that may take on human rights cases that they would only do so providing they were paid a fairly considerable amount of money in advance of any work. (Including comments such as needing to pay £25,000 before even reading the papers on our case or not taking on the case on a legal aid basis as they would receive only £27 per hour compared to the £175 per hour they charge.)

Petition background information

This petition stems from our own experiences in relation to the application of ring fencing of milk quotas in the Southern Isles of Scotland both before and after devolution.

Milk quotas and ring fencing

Milk Quotas were introduced throughout Europe in 1984. "Ring Fencing" of milk quota was introduced in Scotland at the same time.

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On the 1st November 1994, the UK Government, in the name of the “free” market, forced the Milk Marketing Boards to disband, removing the statutory duty that boards had to uplift farmers milk, regardless of size or location. After that, there was no longer a “guaranteed” market for any farmer’s milk. Milk buyers could and did impose whatever terms they wished. One of their first actions was to get rid of their smaller and outlying milk producers.

The Secretary of State for Scotland removed the ring fences from Scotland, other than the Scottish Islands.

This meant milk quota, owned by individual dairy farmers, could be sold or leased UK wide. There were over 36,000 dairy farmers in the UK who were allowed to sell, buy or lease their milk quota on the open UK market, whatever suited their individual business. For example, in 2000, over 6,000 dairy farmers in the UK leased out all of their milk quota, because that suited their individual business.

The retained milk quota ring fences in the Scottish Island areas, denied the Island area dairy farmers access to the full UK milk quota market. They could only sell or lease their quota on the limited island market – in fact, sometimes there was no market at all. This was particularly devastating post 1996 when the BSE crisis escalated, meaning there was virtually no market for dairy cattle over 30 months old, no market for dairy calves and the price of milk was unviable for most dairy farmers. Government did, at different times, remove The Western Isles, Islay and Shetland from the ring fences. Dairy farmers in the Southern Isles, who were having to give up or reduce production, were therefore not treated equally with the rest of dairy farmers in the Scottish Island areas, let alone the rest of the UK, and were denied the ability to use their own property to run their own business.

The original aim of the milk quota ring fence had been 3-fold - to ensure a supply of milk to the Island creameries, to ensure the survival of dairy farmers in the Island areas and to ensure a supply of liquid milk to the Island consumer. Unfortunately, the end result was 2 out of 4 creameries closed, only about 20% of dairy farmers left producing milk and little liquid milk from the Island areas going to Island consumers. Latterly Government appeared to say the only aim was to keep the creameries in business, because they were important to the local economy.

Dairy farming is very capital intensive, and requires hundreds of thousands of pounds to be invested in land, stock, buildings and machinery. Thus the vast majority of dairy farms have a substantial overdraft. The ring fence put an enormous burden on any dairy farmer in the Southern Isles of Scotland who was either, having to give up production, or cut back production. This could be for various reasons, illness, financial pressure from their milk buyer etc. For example, small producers were charged 10p/litre for haulage, despite only being paid 17p/litre for their milk. Conditions, such as requiring the construction of second access roads (to separate cows from tankers), were put in place by dairy companies and put some farmers in an impossible situation. With no market for their milk, these farmers obviously needed the full value of their quota to go towards their overdraft and/or diversify either within or out with agriculture. The result was catastrophic for some, many farmers were struggling to survive, some were forced into impoverished retirement and some were forced out of their farms.

As Jamie McGrigor MSP said to the PPC on 15/02/11:

“My view remains that retaining the Southern Isles ring fence negatively and disproportionately affects the individuals concerned. It is disproportionate to the extent that it seems to have been considered acceptable for my constituents to bankrupt themselves to support the wider community, I struggle to find other examples of the Government, through its direct actions, forcing individuals or businesses to make serious financial sacrifices for the greater good of an area or sector – at least in peacetime.”

Some consultations were carried out by Government but none were done according to Government’s own criteria and sometimes the wording of the consultation pre-empted the result. 64 organisations were consulted, but not the individual farmers who owned the milk quota. Sometimes farmers did not know the consultations were taking place.

None of the “consultations” even explained to those being consulted who actually, owned the quota. SAC carried out three (as far as we are aware) “reviews” on behalf of Government. Again, the ownership and the rights of the individual owners were ignored.

In our opinion, to be correct, the Consultations on Southern Isles Ring Fencing of Milk Quota should have been worded similarly to Government’s Consultation on the Trading of Single Farm Payment Entitlements, which was as follows:

“It would be possible to restrict the transfer of entitlements by ring-fencing within Scotland. Regions would need to be defined at an appropriate territorial level in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.”

Jim Mather MSP, saying “any normal person can see this situation is unfair” advised us to complain to the Ombudsman, which we did. At first, the Ombudsman’s office said they dealt with human rights, months later they said they did not. At first, they said they could deal with our case as it was an ongoing issue – again it was some time before they said they could not deal with our case as it was not an ongoing issue. (That was untrue, it was an ongoing issue.) They gave no ruling, whatsoever, on Government’s handling of the issue.

We spoke to a Human Rights Lawyer who said “This was a Political decision. Go back to the Politicians, they should sort it out. You should not have to.”

We submitted, supported by others in the Southern Islands who had suffered similar catastrophic discrimination re the ring fencing of their milk quota, 2 previous Petitions (PE1263 and PE1542) to the Scottish Parliament.

In response to the PPC, Government did accept that the milk quota was the property of the individual farmer and that the Human Rights Act was invoked (having previously not accepted that this was a human rights issue), but said they had acted in the “public interest”. We contend that if Government does something in the “Public Interest”, a fair balance has to be struck between the right of the individual and that of the state. As the SHRC stated in a letter to the PPC, dated 05/01/10 “a fair balance will not have been struck where the individual property owner is made to bear an individual and excessive burden.”

Peter Peacock MSP described how we felt when we submitted our first Petition and we quote “To say that the Mundells feel grievously offended by what has happened to them or that they feel upset, angry, dismayed, victimised, unfairly treated, discriminated against and impoverished as a result of their experience would be grossly to understate what they feel”. Nothing has happened since to improve that situation.

Human rights and access to justice

We hear Government continually profess to support Human Rights and the Single Market.

On 12 May 2015, Alex Neil, then Cabinet Secretary for Social Justice, Communities and Pensioners Rights said in the Chamber “On human rights we are all vulnerable, irrespective of our social or economic status, human rights are a fundamental which affects every individual in our society.”

Alex Salmond told the Leveson Inquiry:

“The Human Rights Act applies mostly, you might argue, to Scotland, because it is embodied in the Act which established the Scottish Parliament, which means that the Parliament and indeed Ministers have to act at all times in accordance with the Human Rights Act. It is, if you like, a written constitution in that sense.”

Nicola Sturgeon, First Minister said on 20 April 2017 “We will oppose, vigorously, any attempt to scrap the 1998 Act. One of the worst things that the UK could do and the worst message it could send internationally is to be seen to roll back on human rights. The SNP will always oppose that and will always stand up for human rights.”

However, it is meaningless if people are denied access.

At the European and External Relations Committee on 28 May 2015, in response to a

question from Jamie McGrigor MSP and supplementary questions from Hanzala Malik MSP, Bruce Adamson, Law Officer with the Human Rights Commission, commented, specifically, on access to justice as follows:

“The State is required to set up a legal framework to ensure that people can access justice and get a remedy for breaches of their human rights.

There is also a wider point about legal education, alternative dispute resolution methods and the way in which we provide for remedies through the court system. There is significant work to be done on each of these aspects.

On legal education, the experience of Mr McGrigor’s constituent, in being unable to find a lawyer to take on their case, is not unique. The legal community needs to do more to improve legal education in Scotland.

There is also scope to look at alternative ways of resolving disputes. All those things form part of the solution.

There are not enough lawyers in Scotland trained in human rights issues. The pool of people you can ask to take on your case is smaller than it should be. We can do a lot to improve legal education and lawyers understanding of human rights, which would allow individuals to approach more lawyers than they currently can. At the moment very few lawyers take on that type of case.

In order to best protect human rights, you need to have in place good law, policy and practice. By the time you need a lawyer, something has gone wrong. Given the legislative competence of the Scottish Parliament and the Scottish Government there is a requirement on them to put in place laws that protect people’s human rights.

A lot of positive things can be done to ensure that people do not end up being forced to go to the courts to enforce their rights. There is a problem when you get to that stage, particularly with some types of cases.

The most recent high level conference in Brussels focused on what Parliaments should be doing to ensure that human rights are respected through their roles as legislators and in serving constituents.

There are massive concerns, domestically, about sending a message that some people or issues do not matter in terms of human rights.”

Speaking at the same meeting, the now former MSP Roderick Campbell said “The Parliament, the Justice Committee and others have been looking at alternative dispute resolutions and ways of funding that. The essential point is that if you cannot access your human rights they are of lesser value.”

It is very clear from the foregoing that some cases involving Human Rights find it impossible to achieve justice in Scotland. We ask for action to be taken to change this.

Unique web address

<https://www.parliament.scot/GettingInvolved/Petitions/PE01695>

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