



Briefing for the Public Petitions Committee

Petition Number: [PE01695](#)

Main Petitioner: Ben and Evelyn Mundell

Subject: Access to justice in Scotland

Calls on the 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.

Background to the petition

The petition is linked to EU milk quotas. In the UK, farmers were permitted to trade their quotas. However, in a small number of ring-fenced Scottish areas, free trade in quotas was not permitted. One aim behind ring-fencing was to support dairy producers and processors in peripheral parts of the country.

The petitioners have claimed in previous public petitions ([PE1263](#) from August 2009 and [PE01542](#) from November 2014) that the Scottish ring-fencing mechanism breached human rights legislation, specifically property rights in the quotas protected by Article 1 of Protocol No. 1 to the European Convention on Human Rights (the Convention).¹

Their general argument was that the ring-fencing mechanism was implemented in an arbitrary way which did not correctly balance the right to property and the public interest. The previous petitions also argue that the policy was economically damaging due to a paucity of buyers of raw milk in ring-fenced areas as well as farm gate prices which were below production costs. Farmers were therefore unable to sell milk economically in the ring-fenced areas, and also could not trade their milk quotas to fund diversification into other areas of agriculture.

More details on milk quotas and ring-fencing can be found in the [SPICe Briefing for Petition PE01542](#).

¹ The Convention is an international treaty which can be relied on in the UK by means of provisions in the Human Rights Act 1998 and the Scotland Act 1998

The current petition is focused on access to legal advice and support on human rights law, rather than the human rights impact of the ring-fencing policy itself. Specifically, it argues that:

- The Law Society of Scotland's list of firms undertaking human rights cases is out of date
- There is a lack of lawyers in Scotland who are willing to take on human rights cases
- The law firms that are willing to take on human rights work will only do so if paid large sums up front and will not consider such work on a legal aid basis

According to the petitioners, these issues mean that it is difficult for individuals such as themselves to bring human rights cases in Scotland.

Access to justice – human rights

The court system is divided into civil and criminal. Criminal courts deal with criminal matters, whereas the civil courts deal with disputes about legal rights and obligations between people or organisations. The human rights issues raised by the petitioner relate to property rights – a civil matter.

An individual can represent themselves in any court (in which case they are known as a “party litigant”). However, in all but the simplest of cases, it is normal to be represented by a solicitor who will often begin by providing his/her client with legal advice on the strength of the case and options which would be available.

Where a civil case is heard by the Court of Session (Scotland's highest civil court), it is necessary to engage an advocate² (also referred to as “counsel”) as well as a solicitor to present a case. Advocates specialise in presenting arguments to the Court of Session.

Lawyers undertaking human rights work in Scotland

SPICe does not have information on the numbers of Scottish solicitors or advocates with experience of human rights law.

There are, however, certain online sources of information (in addition to the [Law Society of Scotland's find a solicitor service](#)). For example:

- [The Legal 500's index of advocates with experience in human rights](#)

² It is also possible to be represented by a “solicitor-advocate” or one of a limited number of other specialists who have “rights of audience” in the Court of Session.

- [Chambers and Partners guide to Scottish human rights and civil liberties solicitors](#)

Bringing human rights cases in Scotland – legal fees

A key issue for anyone considering taking legal action is how much it is going to cost.³ A party must consider their own legal costs in taking an action (which can include the costs of legal advice, expert evidence, fees for using the courts and using an advocate if necessary. In addition, there also the risk that they may have to pay the other side's expenses if they lose as the general rule is that “expenses follow success”.

Like other professionals, solicitors charge fees to cover the work they do. Clients can be charged an hourly rate, a set rate for the whole job, or in various other ways. Different solicitors charge different fees - and clients can negotiate over the price or the way the work is charged for.

In addition, solicitors may also agree to work on a “no win no fee basis” which means that their fees will only require payment if the case is won. Solicitors will usually only be prepared to take on cases on a no win no fee basis where there is a good prospect of success.

Solicitors can also choose to work for free (known as “pro bono” work).

Further details on solicitors’ fees can be found on [the website of the Law Society of Scotland](#)

It is possible to agree on fees in advance with an advocate. In addition, advocates can also act on a speculative “no win no fee” basis. If fees are not agreed in advance, it is possible to challenge an advocate’s fee in the Auditor of the Court of Session, an independent public official, who will determine whether the fee is reasonable in the circumstances.

Further details on advocates’ fees can be found on [the website of the Faculty of Advocates](#).

Bringing human rights cases in Scotland – legal aid

Legal aid is financial help towards the cost of legal advice and representation so that people on low and moderate incomes can gain access to the legal system. It is paid for out of public funds and administered by the Scottish Legal Aid Board.

Civil Legal Aid is a form of legal aid which is available to pay for advice and representation in court from a solicitor on a civil law matter. It can cover judicial review actions – i.e. challenging government decisions - including actions based on human rights grounds.

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The qualifying criteria for Civil Legal Aid are:

- that there is a plausible legal basis for the claim;
- that it is reasonable in the particular circumstances of the case that legal aid is granted; and
- that the applicant meets the financial eligibility criteria.

The financial eligibility criteria for qualifying for Civil Legal Aid are disposable income of up to £26,239 and disposable capital of up to £13,017 (in some cases, it can be more).

Another form of legal aid is “Advice and Assistance”. This can pay for advice, but not representation, in court.

The legal aid rates paid to lawyers are set by statute and can be less than the market rates which lawyers charge for certain types of work.

For more general information on the funding of legal actions in Scotland and legal aid see the [SPICe briefing on the Civil Litigation \(Expenses and Group Proceedings\) \(Scotland\) Bill](#). See also the [SPICe Briefing on Legal Aid](#).

Scottish Government Action

The scope of human rights in Scotland is currently being examined by an expert advisory group set up by the Scottish Government - [the First Minister's Advisory Group on Human Rights Leadership](#). The first meeting of this group took place on January 17 and 18. It is set to make recommendations by the end of 2018.

Scottish Parliament Action

The Equalities and Human Rights Committee is currently carrying out an [inquiry](#) into how the Scottish Parliament could enhance its approach to promoting and protecting human rights.

Angus Evans
Senior Researcher
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