

## PE1695/C

Law Society of Scotland submission of 18 July 2018

Thank you for your correspondence regarding access to justice and the protection of human rights in Scotland.

Human rights are a crucial safeguard for people in Scotland and are bound into the ways in which public bodies discharge their duties through the provisions of the Scotland Act. It is a recognised principle that these rights need to be “practical and effective”, as stated by the European Court of Human Rights in *Artico v Italy* [1980] ECHR 4, 6694/74. One of the main ways in which this is ensured is through the provision of legal aid, helping people who are otherwise unable to afford to take action.

### *Legal aid*

Legal aid is available to help people on any matter of Scots law, including around human rights. The financial eligibility includes up to two thirds of the population of Scotland, though this may involve contributions from the claimant or repayment following a successful outcome. Some changes to the ways in which the legal aid system operates in Scotland have been recommended in the recent report, *Rethinking Legal Aid*, by the independent strategic review of legal aid, though these do not directly relate to human rights actions. We have also suggested that funding for actions to the European Court of Human Rights, albeit in very rare circumstances, needs consideration<sup>1</sup>.

There are over 500 firms across Scotland registered to provide civil legal aid and many of these will undertake human rights work. Equally, with the range of areas that human rights touch on in Scots law and society, some of these firms will specialise in other areas, such as mental health, or immigration and asylum.

To help members of the public find solicitors to provide this advice, we provide fully up-to-date details of all firms and solicitors across Scotland, searchable by geographical location, by whether they are registered for legal aid, and by area of law via our website at [www.findasolicitor.scot](http://www.findasolicitor.scot). Our public communications team can also provide details of local firms and can be reached via [lawscot@lawscot.org.uk](mailto:lawscot@lawscot.org.uk) or on 0131 476 8186 (option 1).

Our team helps suggest firms most likely to be able to assist, but cannot guarantee that a firm will take on a case nor compel any individual solicitor to do so. Where a firm is displayed as carrying out legal aid, this indicates their status on the legal aid register, but firms may only carry out legal aid work in certain areas of law.

### *Other forms of funding*

There are other forms of funding available, including work undertaken on a speculative fee basis. The enactment of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 introduces a further form of funding, in the form of success fee agreements, where the costs of litigation can be met from any damages received on success. We believe that this new funding model will offer an additional way for claimants to fund court actions and promote access to justice.

### *Public legal education and alternative dispute resolution*

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<sup>1</sup> Section 6 of the Legal Aid (Scotland) Act 1986 limits funding to matters of Scots law, and the European Court of Human Rights is a supra-national institution outside that scope: *Donaldson v Scottish Legal Aid Board* [2014] CSIH 31

The petition discusses the ways in which legal education could help to promote a culture of human rights in Scotland, and we believe that there is a role for these. We work with schools across Scotland, through our Streetlaw programme, helping pupils to understand more around their legal rights and responsibilities. We have also looked at the potential through technology to help people to understand the law, for instance, by hosting an access to justice themed hackathon.

Some human rights are absolute, others qualified or limited. The right to property, for instance, at Article 1 of Protocol No. 1 to the European Convention on Human Rights, is not absolute: interference with this right is permitted if prescribed by law, in the public interest and necessary in a democratic society. States are provided a wide margin of appreciation – or administrative discretion – in how they deal with such rights. There may be potential, particularly for rights in the latter category, to be resolved through informal settlement, mediation or other means. Some have suggested that establishing a new forum for resolving equality and human rights disputes, either as a tribunal or ombudsperson, could provide more effective access to justice.

#### *Group proceedings*

A potentially significant change to the way in which human rights can be resolved is the advent of group proceedings in Scottish courts. As a result of the Civil Litigation Act (Expenses and Group Proceedings) (Scotland) Act 2018, court rules will be developed to allow people sharing an interest in proceedings to bring these in common. These group proceedings may be organised, depending on the determination of the court, on either an opt in or opt out basis. The benefit to access to justice is that individuals or communities could bring actions under these new group proceedings rules, sharing the costs and risks of the litigation. There is no current legal mechanism for these group proceedings yet, though the independent strategic review of legal aid recommended that there should be.

Potentially in concert with the development of group proceedings, another development which may assist in public interest litigation is the increased use of online crowdfunding to finance actions, where small donations from large numbers of backers has seen a number of cases brought around equality law, constitutional principles and human rights.

I hope that this information is helpful to the committee's scrutiny of the petition and feel free to contact me if you would like any further information.