



**PUBLIC PETITION NO.**

**PE01063**

### **Name of petitioner**

Robert Thomson

### **Petition title**

Speculative fee arrangements between solicitor-advocates and clients

### **Petition summary**

Calling on the Scottish Parliament to investigate the apparent conflict of interest which exists between solicitors/advocates and clients in the present system of speculative fee arrangements (no win - no fee) and to urge the Scottish Executive to overhaul the existing speculative fee arrangement framework and procedures in order to make solicitors/advocates more accountable to their clients.

### **Action taken to resolve issues of concern before submitting the petition**

During 2004, wrote to Ms. Jamieson explaining my request for change in system. Reply was to invite me to contribute to consultation document as debate on Scottish legal system was forthcoming – not encompassed.

Had chat with West Fife MSP – could not assist as I didn't reside in her constituency. Interview with Sir Menzies Campbell – Advised me to contact relevant Justice Committee dealing with forthcoming debate.

Eventually found Mr David Davidson MSP. Was convenor of Justice 2 Committee dealing with legal debate – no joy here.

Interview with Mr Ian Smith MSP – asked him to intervene on my behalf. It was he who recommended I contact the Public Petitions Committee.

### **Petition background information**

Solicitors, being commercial entities, will, after initial investigations, only take cases they deem to have high success rates. When Legal Aid was available, solicitors sometimes tended to steer clients away from this facility, inferring that the procedures involved may not be beneficial to clients. It is, however, strongly suspected solicitors don't want interference of the Legal Aid Board.

Solicitors can only take these cases to a certain level, then they employ the services of an advocate. Presently, solicitors have no control over advocates and can't be held responsible to the client, for advocates actions or inactions.

One of the main conflicts arising from no win – no fee, is that the legal team will always take the easy option to secure a “win”. This SECURES THEIR FEES. There can be a significant difference between a “win” and the expectant results of the fee paying

client. In my case, the large company, whose negligence caused my considerable injuries, were not sued, but my former employer, a small firm – the easy option – was. His contribution to my accident was minimal. It is common knowledge how easy it is to sue an employer.

Again, under the present system, it is not incumbent upon solicitors to explain in detail, at the initial stages, the full implications of raising such an action. Examples include, involvement of C.R.U. also estimating the possible value of the claim. Apparently, advocates also escape this vitally important element of quantifying a claim. Also, neither is it incumbent on solicitors to advise clients of potential pitfall in raising an action eg: The possibility of defender placing a TENDER, which prevents any further opportunity of negotiating a settlement out of court.

There is something radically wrong with a system which allows a legal team to refuse a client representation in court whilst still claiming their full fees, especially when such an incident takes place inside a court building, sheriff waiting to go to proof.

#### COMPLAINTS PROCEDURE

1. Law Society of Scotland only have very restricted powers and can't act if THEY consider solicitor acted within present framework, albeit on the fringes.
2. Advocates are supposed to be self regulating. Recent events vindicated my choice not raise a complaint in this quarter.

One of the main components in assessing the value of a claim is the present earnings of the claimant. If this factor became widely known, I suspect there would be a public outcry for higher wages/salaries particularly from people on low incomes and employed in potentially dangerous jobs e.g. anyone working with any type of machinery or working in a rough environment. This situation would be particularly of interest to the middle aged, since age is also a prime contributory factor in evaluating a claim.

#### Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01063>

#### Related information for petition

**Do you wish your petition to be hosted on the Parliament's website to collect signatures online?**

NO

**How many signatures have you collected so far?**

15

**Closing date for collecting signatures online**

N/A

**Comments to stimulate online discussion**