

Stuart Todd
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Scottish Parliament
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27 July 2012

Dear Stuart

Thank you for your letter of 3 May 2012 seeking the Scottish Government's views on the issues raised in Petition PE1427 regarding access to justice for non-corporate multi-party groups.

Multi-party actions

The Petition asserts that a procedure for multi-party actions may be set down without primary legislation. There is, however, a common understanding between the Scottish Court Service, the judiciary and the Scottish Government that any special multi-party action procedure would require to be underpinned by primary legislation. The development of multi-party action procedure is likely to be complex and the procedures which would be appropriate in relation to, for example, a common disaster or an environmental nuisance claim might not necessarily be the same. The adoption of multi-party procedure would therefore require some careful consideration, beyond the requirements of one dispute.

That said, the introduction of a multi-party, or class, action procedure is an important recommendation of the Scottish Civil Courts Review led by Lord Gill, the then Lord Justice Clerk. The Government agrees with that recommendation and will introduce legislation in the lifetime of the current Parliament to allow that to happen.

Pre-Action Protocols

The adoption of the particular pre-action protocols suggested in the Petition would be a matter principally for court rules rather than primary legislation, and so would primarily be the responsibility of the Lord President and the Court of Session.

The Scottish Civil Courts Review included proposals to allow the Court of Session to make pre-action protocols compulsory, where appropriate. The Scottish Government is giving careful consideration to the adoption of Lord Gill's suite of recommendations on case

management and is working closely with the Lord President, the judiciary, and the Scottish Court Service on developing the detail of proposals in this regard.

Common Law Right of Nuisance

The Scottish Government is not currently of the view that the common law right of nuisance requires clarification. We would, however, welcome any further information the Petitioner might wish to provide as to why this is considered necessary.

Legal Insurance

The independent Review of Expenses and Funding of Civil Litigation in Scotland, under the leadership of Sheriff Principal James Taylor, is considering the issue of legal insurance (also raised in the Petition) and other alternative options for improving access to the courts. Further details are available at: www.taylorreview.org.

I hope the Committee finds the information in this letter, the terms of which have been cleared by Kenny MacAskill MSP, Cabinet Secretary for Justice, of assistance in its further consideration of PE1427.

Civil court reforms

We plan to consult by the end of this year on a number of aspects of court reform to take forward many of the recommendations of the Scottish Civil Courts Review. We would encourage the petitioners to contribute a response to the consultation.

Yours sincerely

Robert Sandeman
Head of Courts and Legal Services Reform