

Justice Committee

Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill

Written submission from Unite Scotland

1. Unite the Union Scotland represents around 152,000 working people and their families throughout Scotland. Unite is the UK's largest trade union with 1.4 million members in a range of industries including transport, construction, financial services, manufacturing, print and media, the voluntary and non-profit sectors, education, local government and the NHS.

Introduction

2. Unite welcomes the opportunity to contribute to this call for evidence and while broadly encouraged by the political objectives contained within the Bill believe that there are aspects which could be counterproductive for trade unions and we would wish to highlight these and have made recommendations where necessary.

Qualified one-way cost shifting (QOCS)

3. Unite recognises the opportunity that the QOCS will have in rebalancing the scales away from the financial power and influence of the insurance industry towards increasing fairness and justice for legitimate claimants.
4. Unite has first-hand experience of the tremendous influence that is wielded by the insurance industry, both financial and professional. For example Unite has been involved in making a number of claims for compensation on behalf of members for industrial injuries such as those involving our member's claims for compensation as a result of asbestos related diseases. Such claims can expose unions and individuals to an extremely large financial cost which can pose a significant barrier to accessing justice.
5. Unite therefore supports the proposals contained within the Bill which will introduce a system where an injured party will not normally be responsible for the defender's legal costs if their case fails.
6. Nevertheless, Unite believes that the circumstances under which an injured person will have the benefits of QOCS removed, is too wide. The proposals as they stand, would allow large insurance companies to argue that the conduct of the pursuer justifies them obtaining their legal costs from the injured party or their trade union.
7. Unite believes, the bar must be raised, not lowered, to above that afforded to defenders seeking redress in England and Wales and accordingly Section 8 (4) of the Bill needs to be amended to reflect this.

Third party funding and QOCS

8. Section (10) of the Bill covers circumstances where a third party has a financial interest in the outcome of the litigation. Unite is concerned that a third party with a 'stake' can have the benefit of QOCS removed.
9. While the Bill is aimed at the type of circumstances whereby a third party takes a stake in a court action for a financial reward, so-called 'litigation venture capital', Unite is concerned that trade union supported cases could be construed in such a way. While this may not be the intention, it is necessary to make it specifically clear that the section does not apply to trade union funded cases.

QOCS and court fees

10. Unite is aware that there can be considerable risk associated with raising and losing a court action, as well as the burden of fees that are required as the case progresses through the courts.
11. Currently both parties to a court action require to pay court fees on a pay-as-you-go basis. The Bill does nothing to change that position.
12. Unite welcomes the Scottish Governments stated commitment to oppose the Trade Union Bill (TU Bill) and to mitigate against its impact. According to Trade Union Congress (TUC) analysis of the cost impact assessment of the TU Bill additional one-off costs of £11 million have been identified together with cumulative costs of £26 million over the next five years.¹
13. The current pay as you go model for court fees in Scotland places further financial pressure on already overstretched Trade Union finances. This Bill is the ideal opportunity for the Scottish Government to reduce some financial pressure on Trade Unions. The Bill as drafted has failed to remove that pressure from Trade Unions.
14. Therefore Unite would recommend amending the Bill to direct that an unsuccessful injured party and his/her trade union will also be protected from court fees. The easiest way to achieve this is by providing that fees will only be payable at the end of the litigation process and only in a successful case (where those fees will be recovered from the defender); resolving the burden of court fees currently faced by trade unions.

Group litigation (Part 4 of the Bill)

15. Unite does not believe that there should be a cap for group litigation cases.
16. While we see it as a positive step that the Bill is seeking to introduce the framework for group litigation orders in Scotland and further recognises that such group litigation should take place at the Court of Session, the Bill proposes that only cases with a value in excess of £100,000 could be raised via the proposed process.

¹ <https://www.tuc.org.uk/union-issues/trade-union-bill/trade-union-bill-will-result-huge-costs-unions-government-impact>

17. We see this as an inconsistency that requires to be changed therefore we would recommend that the £100,000 cap should be removed.

Pat Rafferty
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Unite Scotland
9 August 2017