



Briefing for the Public Petitions Committee

Petition Number: [PE1234](#)

Main Petitioner: Peter Brown (ad hoc spokesperson for the Leith Links Residents' Association)

Subject: Calls on the Parliament to urge the Scottish Government to instigate a class action procedure or similar in Scots Law to correspond with the legal systems of many other countries including England and the United States.

Background

The Scottish Consumer Council (now Consumer Focus Scotland) describes a class action as “a court procedure which enables a number of individuals with similar complaints against the same party to seek a remedy from the courts in one action instead of each raising separate actions”¹. Procedures to enable class actions exist in the [English court system](#), a number of Commonwealth and European countries as well as, most notably, in the U.S.A. The perceived advantages of allowing class actions are that they:

- allow individuals who cannot afford to take legal action, or who have suffered a loss that is small in value, to band together to share the costs of litigation
- make efficient use of court resources by allowing cases which have similar aspects to be considered together, rather than individually
- benefit legal consistency by ensuring that the same decision is reached in similar cases
- provide a deterrent to those who might act unlawfully, by improving the means of redress for victims

The perceived disadvantages are that class actions can encourage frivolous or malicious claims and that there are numerous practical difficulties in grouping together cases involving people with very different personal circumstances. These practical difficulties may result in individuals being treated unfairly.

Terminology

Class actions are part of a wider group of court actions known as “multi-party actions”. They can be differentiated from “test cases” (or “representative actions”) in that parties to a test case agree to be bound by the decision in

¹ O'Neill, S. (2003) *SCC reviews class actions debate*. Scottish Consumer Council Public Affairs Newsletter (1) 2003, p1.

one case, whereas parties to a class action retain their right to have their individual circumstances considered. “Public interest actions” are where a statutory or private body takes a case to protect public rights without necessarily knowing who may benefit from their action. An example would be the “supercomplaint” by the National Consumer Council to Ofcom about the high cost of prison telephone calls. In class actions, only the people named in the action will directly benefit from it.

Scottish Government action

The then Scottish Executive established a root and branch [review of civil justice](#) in February 2007, to be chaired by Lord Gill, the Lord Justice Clerk. The remit of the review is to examine ways of making civil justice more proportionate, efficient and accessible. The review group issued a wide-ranging consultation paper which included consideration of whether procedures to support class actions should be developed. Lord Gill is due to issue his final report in Spring 2009.

The Scottish Law Commission was asked to investigate the feasibility and desirability of introducing class action procedures to the Scottish legal system in 1988. It conducted a detailed consideration of the issue, and its final report, “[Multi-party actions](#)” (1996) concluded that there was indeed a need for such procedures. Appendix A to the report includes draft rules of court to support multi-party actions.

Other action

Consumer Focus Scotland (previously the Scottish Consumer Council) has been a particular advocate for the introduction of class action procedures. They have been active in campaigning on this issue since 1982, and the arguments they put forward are contained in their 2003 publication “[A class of their own: why Scotland needs a class actions procedure](#)”. Their 2005 report “[The civil justice system in Scotland – a case for review?](#)” (the findings of which prompted the Government to set up the Gill Review) also made the case for class action procedures.

Scottish Parliament action

The matter of class actions has not been a substantive topic of discussion in the Scottish Parliament. It has been raised in one Parliamentary question ([S2W-2886](#)). The Justice 1 Committee also included a recommendation as part of their 2001 [Legal Aid Inquiry](#) that the then Scottish Executive investigated ways of extending the scope of legal aid to cover class actions.

There have been no previous petitions on this subject.

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29 January 2009

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