

Potential impact of the opt-in to opt-out class action on Scottish local authorities

APSE Roundtable with Fair Civil Justice

To: All Chief Executives, Main Contacts and APSE Contacts in Scotland.
For information only: England, Northern Ireland and Wales.

1 Executive Summary

The potential introduction of an opt-out system for class actions in Scotland could have significant implications for local authorities and the delivery of frontline public services. APSE recently held a roundtable with frontline services, insurance and legal officers and elected members from Scottish local authorities to consider the potential implications of this change and the associated litigation risks for councils.

The discussion was led by Seema Kennedy OBE, Executive Director of Fair Civil Justice, who provided an overview of the proposed changes and the potential impact of mass litigation on organisations providing public services.

The Scottish Civil Justice Council (SCJC) is currently considering whether to extend Scotland's existing group action framework to allow for opt-out group actions. Under the current opt-in system, individuals must actively choose to join a group action. An opt-out system would instead allow individuals who meet the relevant criteria to be automatically included unless they actively choose to withdraw. The SCJC has indicated that a public consultation will be launched in late 2026, following its consideration of the evidence gathered earlier in the year.

Given the potential scale and financial challenges of mass litigation, APSE is encouraging local authorities to ensure that relevant legal, governance and risk officers are aware of the forthcoming consultation and consider engaging with the process.

2 Potential implications for local authorities

While group proceedings can provide an important route to collective redress, the potential move towards an opt-out model could materially alter the litigation environment in Scotland. For local authorities, this could increase exposure to large-scale claims relating to services, decisions or

historic practices affecting significant numbers of residents or staff.

The potential consequences extend beyond individual legal claims, particularly at a time when councils are already managing significant financial pressures and increasing demand on services. Large-scale litigation could create further substantial financial liabilities and legal costs, while also placing additional demands on council legal teams, senior officers and frontline service providers. Councils may therefore wish to consider the potential implications for existing risk management, governance and legal processes as the proposed framework develops.

This is particularly relevant given the breadth of services delivered by local government and the large numbers of residents who interact with council services. The introduction of an opt-out mechanism could make it easier for claims involving a large group of individuals to proceed without each individual having to actively join each action.

3 Next steps

The SCJC's Group Procedure Working Group has been considering whether the existing rules should be extended to cover opt-out group proceeding. Its [earlier call for evidence](#) closed in January 2026, with responses intended to inform the development of proposals. The SCJC has stated that a public consultation will take place before any changes to the court rules are introduced.

APSE will continue to monitor developments and will alert members when the consultation is published. Local authorities are encouraged to engage with the consultation when it opens and to consider the potential implications for their own services and organisations.

The presentation delivered by Seema Kennedy OBE at the APSE roundtable is available to members [here](#).

APSE would particularly welcome feedback from members on the potential implications of opt-out group proceedings for local government, which can help inform future APSE activity and engagement on this issue.

4 How can APSE help?

All APSE members can access the APSE Scotland network, which provides updates, information, and opportunities to engage with colleagues across local government in Scotland. Members can keep up to date with regional activities, events, policy developments, and networking opportunities by visiting the Scotland members' area. You can access the network using this link: [APSE Scotland](#)

David Hinds,
Research and Information Officer
dhinds@apse.org.uk

Louise Melville,
Principal Advisor (Scotland)
lmelville@apse.org.uk

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Association for Public Service Excellence
3rd floor,
Trafford House,
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