



Fair Civil Justice

Potential litigation changes in Scotland

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About Fair Civil Justice

- **Fair Civil Justice is a member-led organisation focused** on improving the system of redress, protecting both consumers and businesses from the growing threat of predatory litigation and advocating for stronger safeguards - helping people to keep more of their own pound in their pocket.
- We do that by **promoting alternatives to litigation** that are faster and more effective in resolving disputes.
- **Here in Scotland**, the Scottish Civil Justice Council is considering whether to introduce changes to the rules governing civil litigation cases in Scotland, from the current arrangement of opt in to that of opt out.

The impact of proposed changes in Scotland

Experience elsewhere shows that such a change could risk:

- The delivery of cost effective and timely justice for consumers
- The future of Scottish public bodies, who could be subject to mass action claims
- An overburdening of the Scottish court system
- Business confidence and inward investment in Scotland

Why does this matter?

- Across the UK, no-win/no-fee lawsuits are on the rise.
- But too often the real winners are the predatory litigation funders, not the people directly involved.
- The damages awarded, that are intended for the consumer, are being received by the lawyers and funders involved, leaving individuals, organisations and businesses short-changed.

Litigation funders do not have consumers' interests at heart

Post Office Horizon Scandal

The Horizon IT system led to more than 900 sub- postmasters being wrongly prosecuted for fraud.

Although convictions are now being overturned and compensation schemes established, victims have faced slow redress and limited payouts.

In the original group litigation, funding structures meant that 80% of damages (around £46m) went to lawyers and funders, leaving sub-postmasters with only 20%.

Boundary Fares Collective Action

In 2024, Stagecoach settled claims that it had overcharged London commuters for “boundary fares”, agreeing to pay £25m.

Despite widespread publicity, only £216,000 was successfully claimed by passengers, leaving almost £10m unclaimed.

Much of the remainder now risks being absorbed by lawyers' and funders' costs, with the lawyers applying to recover up to £10.2m in fees.

Risks of relevance to APSE

Cavity Wall Insulation

Thousands of UK homeowners were left with severe damp, mould, and structural damage after cavity wall insulation was installed under government-backed schemes. Many of those affected live in poorer communities.

Several funders and law firms launched group actions against the installers' insurers, persuading tens of thousands of households to join under "no win, no fee" promises.

However, many of these firms have since gone into administration or withdrawn from the legal market, leaving claimants exposed to crippling legal costs that in some cases exceeded the value of their homes.

British Airways - Data Breach

In 2018 British Airways suffered a cyberattack which enabled hackers to capture customers personal information.

The attack affected approximately 429,000 individuals, including around 244,000 customers whose payment card details were compromised.

Thousands of affected customers brought claims against British Airways on a no win no fee basis. This did not proceed to a full trial, but BA reached a settlement with the group out of court.

Alternatives to litigation

Litigation through the courts has its place. However, there are quicker - and fairer - routes to redress.

Fair Civil Justice is working with consumer groups, trade bodies, membership organisations, public bodies and individual businesses to promote:

- Alternative dispute resolution mechanisms e.g. mediation schemes
- Better funded ombudsman services
- Speedier complaint mechanisms

Scotland can do better

We believe that Scotland has the opportunity to go a step further in protecting consumers, setting the standard for the rest of the UK.

We are calling on Scottish businesses and organisations to support our efforts in:

- Backing long-overdue regulation of litigation funders
- Working to open access to justice
- Prioritising alternative dispute resolution methods to achieve more effective redress outside of the court system

What's happening and when

- Late Summer
 - Anticipated 2nd consultation by SCJC
 - Opportunity to get involved and provide responses
- Autumn
 - Potential SSI to the Scottish Parliament committees
 - Potential to raise concerns with politicians
- Early 2027
 - Potential implementation of changes

Get involved in the campaign

There is a broad coalition of groups who have concerns about what this change might mean - and this is growing all the time. This includes:

British American Business

CBI

European Justice Forum

Experian

Food and Drink Federation Scotland

Life Science Scotland

Medtronic

Prosper

ScotlandIS

Scottish Financial Enterprise

You can become part of our strong base of campaign advocates and speak to others about it.

Get involved in the campaign

Stay informed – seema.kennedy@fairciviljustice.org
www.fairciviljustice.org