

**PE1525/B**

**Cabinet Secretary for Justice**

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Dear David

**CONSIDERATION OF PETITION PE1525**

*Calling on the Scottish Parliament to urge the Scottish Government to change the law to provide that legal aid is available to defend actions of defamation and challenge judgements in defamation cases.*

Thank you for the letter of 7 August 2014 seeking the Scottish Government's views on the above petition and the discussions that took place on the Public Petitions Committee's meeting of 5 August.

The Scottish Government is determined to protect access to justice by ensuring publicly-funded legal assistance is available to those who need it most. It aims to maintain a fair, high quality and equitable legal aid system which upholds public confidence at an affordable and sustainable level of expenditure. As expenditure from the Scottish Legal Aid Fund is demand-led and not cash-limited, financial eligibility and merits tests play an important role in the sustainable provision of legal assistance across a broad range of matters.

The Civil Legal Aid for Defamation or Verbal Injury Proceedings (Scotland) Direction 2010 ("the 2010 Direction") makes legal aid available for defamation cases subject to the usual tests for civil legal aid of financial eligibility, reasonableness and probable cause where one of the following conditions is also met: legal aid is required for a cross border dispute in terms of Council Directive 2003/8/EC; there is a wider public interest in making legal aid available because the proceedings have potential real benefits for individuals other than the applicant; or legal aid is required to enable the applicant to participate effectively in proceedings.

The effective participation test takes account of the applicant's ability to consider and challenge any document or information before the court, and to present his or her views and

arguments to the court in an effective manner. This test can also be met where the case is considered “exceptional”, meaning that there is some indication that the absence of such funding violates one or more of the applicant’s rights under the European Convention on Human Rights (ECHR).

I understand from the Scottish Legal Aid Board that legal aid has been granted in four defamation cases since 2007. Three were granted because it was required for the applicant to participate effectively in proceedings, and once because it was in the wider public interest to make legal aid available.

The Board has also recently been looking at the operation of the 2010 Direction and is preparing a paper for consideration by its Legal Services Policy Committee. I look forward to hearing more from the Board once that committee has had the opportunity to consider the matter before taking a view on whether a review of the provisions in the 2010 Direction is required.

**KENNY MACASKILL**