

**PE1525/D**

Public Petitions Clerks  
Room T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Ref: A2J/AA7

Date: 9 October 2014

Dear Ned,

**Public petition 1525: access to justice**

Thank you for your letter of 7 August, asking us to comment on Public Petition PE1525 on access to justice. We have consulted our Access to Justice Committee and our civil legal aid team on the terms of the petition and believe that this may be an area for the Scottish Government and the Scottish Legal Aid Board to review.

Until 2007, civil legal aid was broadly unavailable for defamation actions. With the European Court of Human Rights judgment in *Steel & Morris v United Kingdom*, legal aid was made available on a more limited basis than for other areas of law. The availability of legal aid for defamation was subsequently revised in 2010 by the Scottish Government.

We believe that it may be useful to reconsider the overall availability of legal aid in this area. The emergence of social media platforms, in particular, has created an environment in which it is far easier to distribute views to a wide audience than ever before. Defamatory statements can have severe financial consequences, for instance, affecting employment.

Legal aid, as with public services in Scotland more generally, is facing significant financial pressure. The Scottish Government's budget for legal aid in 2014-15 is £132m and expenditure in 2013-14 was £150m. Harmonising the scope of legal aid for defamation with other areas of law would incur additional cost, and it is a matter for Scottish Government and the Scottish Legal Aid Board to decide whether this is both practical and a priority.

Mechanisms do already exist to control the availability of legal aid overall: applicants must satisfy the Scottish Legal Aid Board of probable cause and reasonableness. Also, as funder of last resort, successful cases are likely to be funded through judicial expenses or recovery of property rather than incurring a cost to the taxpayer.



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We hope that this information is helpful and if we can assist the committee further, please do get in touch.

Yours faithfully,

Andrew Alexander,  
Head of Access to Justice.