

Citizens Advice Scotland

Response to the Scottish Civil Justice Council's Call for Evidence on Group Procedure

January 2025

Background

The Citizens Advice network in Scotland plays a crucial role in supporting people across the country to realise their rights. We inform people of their rights and responsibilities and provide holistic, person-centred advice – including advice on social security, debt, energy, housing, employment, family and relationships, complaints processes and legal proceedings. We empower people to secure access to justice by supporting them to navigate systems and procedures to resolve their issues, prevent detriment, and pursue recourse when things go wrong.

The network provides advice via multiple channels: in person in over 300 locations across the country, as well as by phone, email, and other channels, and via our freely accessible online advice pages.

Our holistic advice and support changes lives. In 2024/25, we supported nearly 200,000 people, leading to £169.4 million back into the pockets of people who need it most. Many of the people we support are from the most marginalised and intersectionally disadvantaged communities and backgrounds in Scotland. Last year

- almost two thirds of people we supported reported having a disability or long-term health condition,
- more than half were women,
- one third resided in the most deprived areas in Scotland,
- and more than 1 in 10 identified as belonging to a minoritised ethnic group.

More people have been coming through our doors for help each year since the pandemic – and the cost-of-living crisis shows no sign of relenting. Just as the volume of need is increasing, so is the complexity. Across the last five years, we have seen one in seven people accessing our advice across multiple years. We see crises that are predicated by chronic injustice, often years in the making, which can take hours to understand and untangle – and achieving justice often requires multiple contacts and building up of trust.

In this context, the **CAB network continues to provide vital, life-changing support on legal issues:**

- The Law and Courts pages on our public advice site were viewed more than 970,000 times in 2024/25 and remain some of the most viewed among all our advice pages.
- On legal proceedings, bureaux provided more than 41,000 pieces of advice in 2024/25, which is, on average, more than 3,400 pieces of advice every month.
- Advisers throughout the Citizens Advice network in Scotland routinely support people in accessing and navigating court and tribunal hearings, whether they be virtual, by teleconference, hybrid or in person. In 2024/25, the network supported more than 1,020 clients at courts and tribunals. This includes CAB advisers acting as authorised lay representatives such as in debt and housing cases or in social security and employment tribunals.

Based on the experiences of the people we support and our advice data, as well as expertise from across the Citizens Advice network in Scotland, our **policy work on Human Rights and Access to Justice** aims to ensure that people's human rights are protected and realised, that people in Scotland have equal access to the justice system, to legal services and to effective remedies; can navigate and engage appropriately in legal proceedings; and that processes are transparent and fair.

We therefore welcome this opportunity to contribute to the Scottish Civil Justice Council's Call for Evidence on Group Procedure. Below we will focus on the questions where we can provide an informed response.

Our response

Q1 – What are your views on the introduction of opt-out group proceedings in accordance with Part 4 of the Act?

CAS believes that Scotland needs urgent and cohesive Access to Justice reforms to ensure that the right to equality before the law, to a fair hearing, and to an accessible, affordable, timely and effective remedy are a reality for everyone in Scotland.

We are supportive of group proceedings as they can provide important mechanisms for strengthening accountability and improving access to justice where a significant power imbalance exists between pursuers/rights-holders and defenders/duty-bearers.

The Citizens Advice network in Scotland regularly sees instances of systemic injustice which involve the same/similar rights breaches and cause multiple rightsholders harm. For example, in recent years our network has supported families and households who were mis-sold UK government-supported energy efficiency measures in Scotland; we have seen similar harms experienced by many vulnerable rights-holders who were subjected by the same energy provider to the forced installation of prepayment meters in their homes; and

CAB are working with a large group of tenants being forced to live in mouldy and damp homes which their common landlord is failing to address.

At the same time, we know that, individually, many people we support do not have the necessary financial, social and health resources to pursue legal claims or protect their rights. Many are faced with multiple barriers to accessing justice such as -

- cost (legal practitioner fees, rising court fees);
- difficulties in accessing legal aid and obtaining legal advice;
- complexity of the legal system and increasing digitisation of the justice system without adequate channel choice and support for digitally excluded individuals;
- fear of retribution or victimisation, negative impacts on health and relationships etc.

This often leaves people feeling isolated and powerless, forcing too many to give up and endure rights breaches. This uphill struggle to access an effective remedy can be particularly steep and traumatic for the most vulnerable, such as people with additional and complex support needs, women and children fleeing domestic abuse, people experiencing extreme poverty, people in detention, and those facing multiple intersecting forms of exclusion.

Allowing multiple claimants with identical, similar or connected claims to bring their actions together against the same defender and for a representative party to take their cases forward can lessen the risk for and strain on affected individuals and enable access to justice for many who would otherwise be denied it.

CAS therefore believes group procedure (both opt-in and opt-out), especially where they enable strategic litigation in the public interest and collective actions for the wider benefit of rightsholders and consumers, can help address systemic issues and mitigate an underlying power imbalance, strengthen the rule of law, and improve people's justice journeys.

However, a properly functioning legal aid system which supports group procedure in the public interest is vital here. As the Evans Report¹ made clear in relation to (then yet to be introduced) group or multi-party actions in Scotland, a "mechanism for funding such actions will be crucial to their success", and CAS continues to argue for urgent reforms of the Scottish legal aid system to improve access to justice for rights-holders, including those pursuing collective actions.

This could be of particular importance if a general opt-out procedure is introduced in Scotland, which would likely create far larger groups of pursuers and higher-value claims than the existing opt-in procedure, potentially attracting third party litigation funders and solicitors specialising in this type of potentially lucrative claims. Some procedural and

¹ Evans, M. Rethinking Legal aid. An Independent Strategic Review (February 2018), p. 43.

substantial safeguards in the interest of rights-holders and consumers may be necessary to ensure group proceedings primarily serve people's right of access to justice and improve accountability.

Q3 – Should group procedure (whether opt-in or opt-out) apply to judicial reviews in Scotland?

In addition to our response to Question 1, CAS believes applying group procedure to Judicial Review in Scotland could be a significant step towards enabling people to hold public bodies to account for decisions, policies, actions/failure to act in violation of the Human Rights Act or the Equality Act and to challenge illegal, irrational or procedurally improper practices and rules which negatively affect multiple rightsholders.

Where group proceedings enable strategic litigation in the public interest and collective actions for the wider benefit of rightsholders, they can help address systemic issues and mitigate an underlying power imbalance, strengthen the rule of law, and improve people's justice journeys.

However, as stated above, a properly functioning legal aid system which supports group procedure is vital, and CAS continues to argue for urgent reforms of the Scottish legal aid system to strengthen access to justice for rights-holders, including making legal aid funding available for groups and organisations taking forward an appropriate case.² Public funding to challenge and secure accountability for human rights breaches will become even more vital as and when more of our international human rights are incorporated into Scots law, and as the Scottish Government is progressing mainstreaming equality and human rights across the public sector.

Question 9 – If the case is resolved by a decision of the court, what role should the court have in approving the distribution of the award?

Given that opt-in group procedure cases have not reached the point of final judgment and distribution in Scotland yet and have mostly stalled or been settled outside of court, some additional information or analysis would be helpful to understand potential positive and negative impacts of the court's involvement in approving distribution of the award, considering also how decisions on the distribution of the award could be made if the court was not involved.

CAS believes that where damages awards in group proceedings remain unclaimed, they should be distributed in a way that improves access to justice for people in Scotland. The

² Reforms of the criteria for Standing in Judicial Review proceedings would likely be required as well to allow organisations to take on strategic litigation in the public interest.

collective actions regime under the Consumer Rights Act 2015 may be a relevant model to consider where a charity is designated to receive all or part of any undistributed damages from opt-out collective actions in the Competition Appeal Tribunal and makes grants with the objective of improving access to justice.

Whatever process is used to determine the distribution of awards, this must be clear and understandable for those involved to ensure that trust in the overall process is maintained.

Question 10 – If the case is resolved by a settlement, what role should the court have in approving the settlement amount and its distribution?

We consider it preferable that the court is required to approve any settlement in opt-out group proceedings and has broad discretion to make a fair order considering the particular circumstances of the case in question. We would suggest, however, that any rules governing unclaimed settlement sums should provide, unless the court explicitly directs otherwise, for a reasonable proportion of unclaimed settlement funds to be paid to a charity/charities which advance access to justice in Scotland, rather than flow back to the defender or be paid in full to lawyers or funders. Again, if the court has a role in approving settlements, this process must be clear and understandable to all involved to ensure overall trust is maintained.

Question 11 – Do you have any views on how unclaimed damages awards or settlement sums should be distributed?

CAS believes that where damages awards in group proceedings remain unclaimed, they should be distributed in a way that improves access to justice for people in Scotland. The collective actions regime under the Consumer Rights Act 2015 may be a relevant model to consider where a charity is designated to receive all or part of any undistributed damages from opt-out collective actions in the Competition Appeal Tribunal and makes grants with the objective of improving access to justice. This ensures that a defender (defendant) who the court found to have breached the law and caused harm or loss to multiple pursuers (claimants) is not benefiting from an unjustified windfall, namely the fact that some individuals with a valid claim may not be aware of the legal action or have not come forward.

Our view is that any rules regarding the distribution of unclaimed damages following a decision in opt-out group proceedings in Scotland should similarly provide that – subject to any contrary order of the court – undistributed damages are not automatically reverted to the defendant but all or part of the amount is paid to a charity/charities which work/s to advance access to justice in Scotland. For this to work efficiently, fairly and transparently, it seems preferable not to burden individual judges with making policy choices between

worthwhile causes and vetting charities as suitable candidates for the distribution; nominating a suitable charity/charities by order as in the CAT opt-out regime or establishing another independent mechanism to improve access to justice outcomes may be options to consider.

Likewise, any rules governing unclaimed settlement sums should provide that a settlement must include arrangements for a reasonable proportion of unclaimed settlement funds to be paid to a charity/charities which advance access to justice in Scotland, unless the court directs otherwise.

Question 12 – What do you regard as being the main issues for the funding of group proceedings in Scotland (whether opt-in or opt-out)? And Question 13 – How do you think that opt-out group proceedings should be funded and what protection measures should be put in place for group members regarding those funding arrangements, in your view?

Reiterating our responses to Questions 1 and 3, CAS believes that a properly functioning legal aid system which supports group procedure in the public interest and to the wider benefit of rights-holders and consumers is vital, and CAS continues to argue for urgent reforms of the Scottish legal aid system to improve access to justice for rights-holders, including those using group proceedings. Public funding to challenge and secure accountability for human rights breaches will become even more vital as and when more of our international human rights are incorporated into Scots law, and as the Scottish Government is progressing mainstreaming equality and human rights across the public sector.

This could be of particular importance if a general opt-out procedure is introduced in Scotland, which would likely create far larger groups of pursuers and higher-value claims than the existing opt-in procedure, potentially attracting third party litigation funders and solicitors specialising in this type of potentially lucrative claims. Some procedural and substantial safeguards in the interest of rights-holders and consumers may be necessary to ensure group proceedings primarily serve people's right of access to justice and strengthen accountability of powerful private firms or public bodies.

Question 17 – Are there any other points which you feel are relevant to the procedures relating to the current opt-in regime or may inform and shape a potential opt-out regime in Scotland?

The consultation paper states that the SCJC deferred consideration of the introduction of opt-out procedure until sufficient experience had been gained from progressing opt-in actions in Scotland. The consultation however provided no link to a report or research on

said experience. It would have also been helpful for respondents to this Call for Evidence to be given more information on potential divergences between the existing opt-out collective actions regime as introduced by the Consumer Rights Act 2015 which is limited to competition law and the proposed general opt-out group procedure in Scotland with a potentially much broader scope.

We are also concerned that the SCJC's Group Procedure Working Group in its current form does not appear to include any users, rights-holders/consumers or organisations representing their interests. CAS believes their interest and voices should be central to the development of a potential opt-out regime in Scotland and would recommend their active inclusion in the Working Group going forward.

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Citizens Advice Scotland (CAS), Citizens Advice Bureaux (CAB) and the Extra Help Unit form Scotland's largest independent advice network. The Citizens Advice network in Scotland is an essential community service that empowers people in every corner of Scotland through our local citizens advice bureaux and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.