

# Friends of the Earth Scotland case will change the law

- ✘ Friends of the Earth Scotland's intervention has led to changes in Scots law

Friends of the Earth Scotland this week celebrated a ruling from the UK Supreme Court in London, which changes the interpretation of 'title and interest' in Scots Law, and will now allow campaigning groups to more easily and effectively challenge poor decisions in the courts in the public interest.

The question of whether or not sufferers of pleural plaques could be involved in the court action between Axa and The Scottish Government opened a window of opportunity to question the out-dated practice of how Scottish courts decide on who should or should not be allowed to take a case to court.

Friends of the Earth Scotland is understood to be the first Scottish NGO to intervene in a case at the UK Supreme Court. The organisation took the decision to intervene in the case as it provided an opportunity to challenge the restrictive interpretation that courts in Scotland have traditionally placed on 'title and interest', which is the Scots Law test of standing: the right to have your case heard by the court. Despite supporting the involvement of the pleural plaque sufferers, The Scottish Government opposed Friends of the Earth Scotland's intervention.

Juliet Swann, Head of Campaigns at Friends of the Earth Scotland, said:

"We are delighted that two of Scotland's most eminent judges have recognised the inequality in the Scots law interpretation of 'standing' and the damaging effect decades of judge-made law has had on the development of public law in Scotland. It is only right that a judicial ruling should correct the

failings of the current system.

“We would challenge the Scottish Government to take heed of this decision, speed up the implementation of the Gill Review, which suggested both that standing be reformed and that the costs of accessing the courts be decreased, and act to ensure the law adequately provides for easy and affordable access to justice.”

For many years the courts have required individuals to show a private, often property-based, interest in the impacts of the decision being challenged in court. Today’s ruling states that the test used in private injury cases should not apply where there is an impact of general concern to the wider public. Instead, Scottish courts should now apply the same test used by the courts in England and Wales, which enables representative organisations, such as community, campaigning or welfare groups, to take forward court challenges in the public or wider interest.

‘Title and interest’ has been an issue in a number of high-profile environmental cases in recent months such as when local resident, Molly Forbes, was deemed not to have ‘title and interest’ in her judicial review against Donald Trump and Aberdeenshire Council.

More recently, local Ayrshire resident Marco McGinty’s case, against the inclusion of the proposed new coal-fired power station at Hunterston in the National Planning Framework, saw Scottish Ministers challenging his title and interest to sue. Mr McGinty’s case was backed by a number of organisations who felt the development was not in the public interest, but were unable themselves to challenge the decision in the courts.

Frances McCartney, the solicitor who acted for Friends of the Earth in the intervention, said: “This ruling provides clarity on the interpretation of ‘title and interest’ in Scots law and is a massive step towards people in Scotland having the same

rights as people in England and Wales to challenge public body decision making.

“Lord Hope and Lord Reed both explicitly recognise that it is necessary for the rule of law that courts be able to consider cases affecting the public interest. For that to happen, groups acting in the public interest and representing those affected by such issues should be able to take cases to the court, even if the group has not been personally affected.

Whilst no-one wishes to rush to litigation, it is important that courts do have a last resort mechanism for wrongful decision making being brought to their attention.”

Lord Hope’s decision that “a personal interest need not be shown if the individual is acting in the public interest and can genuinely say that the issue directly affects the section of the public that he seeks to represent” vindicates the work of Friends of the Earth Scotland and the Environmental Law Centre Scotland to convince the Scottish Government and the courts that a property or a geographic interest shouldn’t need to be shown to be able to challenge decisions in court.