Written submission from the Chartered Society of Physiotherapy Scotland

The Chartered Society of Physiotherapy (CSP) is the professional, educational and trade union body for the UK’s 52,000 chartered physiotherapists, physiotherapy students and support workers. More than 95% of all physiotherapists are members of the CSP. Physiotherapy is the largest health care profession in the UK after nursing and medicine and is the largest of the allied health professions.

The CSP has around 4,000 members in Scotland. The majority of CSP Scotland members are employed in the NHS, but chartered physiotherapists are also employed in education, independent practice, the voluntary sector and with other large employers, such as sports clubs and businesses.

CSP Scotland works closely with Thompsons Solicitors in Scotland to support its members in legal support and services, particularly when members seek legal redress or compensation from their employer.

Chartered physiotherapists are experts in rehabilitation following injury. Physiotherapy helps restore movement and function when someone is affected by injury, illness or disability. Chartered Physiotherapists help people affected by injury, illness or disability through movement and exercise, manual therapy, education and advice.

CSP Scotland therefore has a primary interest in workplace health and safety, from a health professional and trade union perspective.

General principles of the Courts Reform (Scotland) Bill

The Society would relate the concerns that Thompsons Solicitors have raised with us, and which relate to the impact of the proposed legislation on the rights of workers to access and receive justice.

CSP Scotland notes that the health and safety of workplaces must be maintained through a commitment by employers to comply with regulations, and that the deterrent effect of potential prosecution and compensation remain important factors in protecting the welfare of workers. While only a fraction of breaches of health and safety regulations result in a criminal prosecution, compensation claims remain an essential aspect of health and safety enforcement.

The rates of workplace injury in Scotland remains a clear cause for concern for our members, who are not only employees but also health professionals that treat and rehabilitate many of those that suffer workplace injury. The Society therefore takes seriously any measures that might lead to an increase in workplace injuries through breeches of health safety, and believes that civil court reform must not reduce the prospects of compensation for those that suffer injury.
CSP Scotland understands that the Courts Reform (Scotland) Bill, as introduced, proposes the following key changes:

- An increase in the minimum financial value of cases that may be brought at Scotland’s most senior court, the Court of Session, from the current limit of £5000 to £150,000
- Creates a specialist personal injury court to be presiding by specialist personal injury Sheriff Court judges
- Effectively withdraws the automatic right of victims of accidents to employ Counsel (Advocates and QCs) to represent them through the increase in the Court of Session limit, which is the only court where there is the automatic right to use Counsel.
- Creates a new procedure to deal with all cases with a value of less than £5000 (including personal injury cases) and which cases are to be judged by a new ‘third tier’ of judges, namely Summary Sheriffs.

**Impact on safety and access to justice**

The Scottish Government must ensure that all work related injury (and disease) claims are heard by the specialist personal injury court. CSP Scotland would express concern that and that workers retain the automatic right to be represented by Counsel. In brief, the proposals present the prospect that workers will face

- Reduce access to justice
- Have a negative impact on workers’ safety
- Increase the damage caused by Section 69 of the Enterprise Act to workers’ rights when the Bill could and should lessen its impact.

In particular, CSP Scotland would highlight the need for the following:

- Victims of every workplace injury and disease must be entitled to raise their actions at the specialist personal injury court
- Victims of workplace accidents and disease must have the automatic right to employ Counsel.

**Detailed provisions**

CSP Scotland is grateful to Thompsons Solicitors for highlighting the following detailed concerns. The technical and legal nature of these concerns reflects the importance of ensuring that workers retain access to legal support and representation, and that Trade Unions are able to adequately support members who suffer industrial injury.

The following detailed summary reflects the concerns that have been highlighted. Due to either a lack of understanding of trade union funding models, or an unwillingness to recognise the profound impact of Section 69 of the Enterprise and Regulatory Reform Act 2013, the current drafting of the Bill will do more damage than good, certainly in relation to workers’ rights.
Trade union funding

- The trade union funding model relies on costs recovery. Trade unions cannot fund court outlays such as employing Counsel if that cost cannot be recovered at the end of the day, even if the defenders are using Counsel.
- We have no doubt that insurers will employ Counsel in all cases before the specialist personal injury court, particularly in the next five years ahead while the courts require to grapple with the impact of Section 69 of the Enterprise Act.

A clear link between civil court compensation claims and workplace health and safety

- This clear link has always been known to the trade union movement and was brought into sharp focus during the debate around Section 69 of the Enterprise Act
- 0.5% of breaches of health and safety regulations result in any form of enforcement action being taken by the Health and Safety Executive (HSE)
- Civil court actions are therefore the only meaningful way of policing and enforcing health and safety breaches but this means of ensuring safety will be lost if the civil court system does not provide an appropriate means of bringing cases
- The civil court review, chaired by Lord Gill, said “In our view the Court of Session should deal only with the most complex and important cases and that most routine litigation should be conducted in the Sheriff Court”. As far as we are concerned, there is no case more important than a case involving a workplace accident and those cases have no place in the lowest tier of the court system being presided over by Summary Sheriffs.

There are no simple workplace cases because of Section 69

- The impact of Section 69 of the Enterprise Act cannot be understated
- It will make it substantially more difficult for every victim of a workplace accident and injury to secure just recompense and many victims who previously would have been able to obtain compensation will have lost that right
- More than ever, it is essential that workplace cases are heard by specialist Sheriffs in the specialist personal injury court with the benefit of Counsel.
- The Scottish Parliament may believe that they do not have the legislative competence to reverse Section 69 of the Enterprise Act but the civil court reform Bill presents the Scottish Parliament with a very simple, black and white, political choice:
  - will the Scottish Parliament use the powers that it does have to ensure that the impact of Section 69 is fully as mitigated as possible; or
  - allow the Bill to pass in its current format which will actually make the impact worse for workers.

Necessary amendments

- Victims of every workplace injury and disease must be entitled to raise their actions at the specialist personal injury court
• Victims of workplace accidents and disease must have the automatic right to employ Counsel.

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