Justice Committee

Courts Reform (Scotland) Bill

Written submission from Zurich Insurance

1. We welcome the increase to £150,000 for the exclusive competence of the Sheriff Court, giving the Court of Session greater capacity to concentrate on Commercial Actions, higher value Personal Injury Actions where it can add the greatest value and cases where it can shape the development of the Law of Scotland. This additional capacity would also allow the Court of Session to attract relevant dispute resolution cases from other jurisdictions.

2. Zurich welcomes the introduction of the office of ‘Summary Sheriff’ to create a hierarchy of judicial office holders and enable cases to be dealt with at a level which is proportionate to the matter at issue.

3. We agree with the establishment of a specialist Scotland-wide court to deal with personal injury cases and enhance the reputation of Scotland’s civil courts by creating an environment where consistency of decision making is to the fore.

4. Judicial specialisation is vital to the Courts Reform package being delivered and we firmly support judicial specialisation being integrated into the Sheriff Court structure. The law is complex and it is unreasonable to expect Sheriffs to be able to be expert in all aspects of various branches of law. Specialisation will aid efficiency of the court process as the Sheriff will narrow the issues at an early stage due to their more specialised knowledge.

5. Zurich supports the creation of a new Sheriff Appeal Court to assist in creating a proper framework for delivery of the judicial system. We support the view of the Scottish Civil Courts Review that cases should be directed to the lowest level at which they can be competently dealt with, avoiding delay and releasing pressure on the Court of Session as an appeal court.

6. We support the creation of a new single set of rules for cases of £5,000 or less to be called ‘Simple Procedure’ and to be dealt with mainly by “Summary Sheriffs”. This would work in tandem with Compulsory Pre-Action Protocols to create a framework where cases follow a set process prior to litigation, so that when they do litigate, the areas of dispute have been sufficiently identified. It is vital in a developed legal system that pre and post litigation processes complement one another and parties not complying with the rules receive appropriate sanctions. This goes to the heart of proportionality. We believe it is fundamental that personal injury cases are included in the “Simple Procedure”.

7. We do not agree with the proposition of Civil Jury trials as they result in a duality of justice or a two tier system of justice which leads to manifest uncertainty and unfairness for pursuers and defenders alike. We submit that the consistency, efficiency and proportionality that a specialist personal injury court would bring could be devalued or lost if this duality and manifest unfairness of justice was built into the new system. For example, a Pursuer could choose to have a jury trial in a case
where liability is not disputed and be awarded a large amount on quantum because the jury are sympathetic to the Pursuer due to the injuries sustained. In a very similar case where liability is at issue, a similarly injured Pursuer could feel obliged to opt for a proof before a judge rather than face the uncertainty of a liability trial before a jury with the end result being awarded less by way of damages. Furthermore, Jury trials create an administrative burden on the courts in ensuring sufficient numbers of the public are cited for jury service well in advance and that, ultimately, there are sufficient numbers to serve on a jury, otherwise trials simply cannot proceed for solely that reason. All of these reasons take Civil Jury trials away from being a proportionate and efficient route to justice for all parties concerned.

8. Any unintended consequences which result in higher cost being incurred would ultimately be passed on to consumers and businesses, so it is vital that the court reforms work to modernise the judicial system in Scotland in the way they are intended.

9. Insurers fund over 80% of Civil Litigation Personal Injury actions and have analysed the cost and volume of litigated cases settled since January 2012 – this now numbers over 8,000 cases. Where there was a compensation payment to the Pursuer of £50,000 or less, the payment for the Pursuer’s legal costs was more than the settlement the Pursuer received in 53% of cases.

10. Within this majority of cases where proportionality was lost, £1.56 was paid out in legal costs to the Pursuer’s Solicitors and Counsel for every £1 the Pursuer received in damages.

11. Recent comments such as ‘trade unions being outgunned by the massive resources of the insurance industry and the big businesses they represent’ are simply not the case – in the reformed system, there will be equality of arms and representation would be on an equal footing – for an insurer to do otherwise would make no commercial sense and the comment is highly misleading.

12. In conclusion, the Court Reform Bill is the most notable revision of the Scottish civil legal framework in over 100 years and is an opportunity to create a legacy of access to justice for the consumer, introduce true proportionality whilst increasing efficiency and providing a fair level of compensation to the injured party as quickly as possible. These are hallmarks of a developed society and well developed legal system.

Zurich Insurance
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