

## Justice Committee

### Courts Reform (Scotland) Bill

#### Written submission from Iain A J McKie

1. It is not my intention to comment on the detail of the bill or its recommendations but to question the workload analysis and assessment of efficiency in Sheriff Courts which should underpin the recommendations and any new strategy.

2. It is my contention that an apparent failure to do either effectively fatally flaws the Bill's recommendations and seriously compromises their validity.

3. It is a central principle of change management that it is essential before change is recommended or implemented that the current overall health and efficiency of the organisation is determined and that the direct and indirect effect of the proposed changes are assessed. Change introduced into an already struggling organisation can only serve to further destabilise it, lower the efficiency and morale of those working within it and undermine the potentially valuable intended reforms.

4. The knock on effect of change which hasn't been thought through can be seen in the current furore over the Government plans to abolish corroboration. In a rush to implement change the direct and indirect effects were not assessed and the Government is left trying to patch in 'solutions' when this should have been done before rushing to print. As we have dramatically seen ill thought out change is destabilising and ultimately negative.

5. Unfortunately in respect of our justice system (civil and criminal) examples of such ill thought out change are abundant. From 'Cadder' through to legal aid changes, court closures and corroboration the term 'knee jerk reaction' can fairly be applied. I would argue that in developing the recommendations contained in the Courts Reform (Scotland) Bill exactly the same mistakes have been made.

6. The policy objectives of the Bill are stated as, *'to address the problems identified in the Scottish Civil Courts Review<sup>1</sup> headed by Lord Gill, then Lord Justice Clerk, and now Lord President of the Court of Session. The Review concluded that the Scottish civil courts provide a service to the public that is —slow, inefficient and expensive. It went on to say that —minor modifications to the status quo are no longer an option. The court system has to be reformed both structurally and functionally'*.

7. In introducing his proposals for reform Lord Gill stated, *"Delay and cost have been the bane of Scottish justice for decades."These reforms will enable the courts to deliver the quality of justice to which the public is entitled."*

8. While agreeing that the courts (both civil and criminal) provide a *'slow, inefficient and expensive'* service and *'delay and cost'* have made access to justice a lottery, the recommendations appear to be based on the assumption that while changes need to be made and efficiencies introduced, Sheriff Courts in general

terms work efficiently and effectively and with some structural and procedural change can continue to do so. There appears to be an assumption that there are sufficient personnel in place working to well tried and tested policies and procedures and that the Bill's recommendations represent an improvement from an already acceptable standard.

9. As I refer to above, as with the corroboration proposals, this is a poorly researched, considered and implemented reform to our legal system and fatally flawed because it is not underpinned by an accurate assessment of existing workloads and operational efficiency.

10. My interest in these matters goes back over thirty years when as a Police Superintendent I carried out some research at Ayr Sheriff Court into how much police time was wasted in attending court as a witness. The final conclusion that officers spent only 2% of their time in actually giving evidence indicated inefficiency and waste.

11. I have recently spoken to Sheriffs, court personnel, witnesses, lawyers and 'Victim Support' personnel and my findings convince me that little has changed and that court closures and the devolution of civil and some criminal work to the Sheriff courts will put an already creaking system under intolerable strain and lead to an even more inefficient and ineffective system.

12. The history of change within the Scottish Justice System over the past few years has been a classic example of how piecemeal change to one part of the system without the necessary in depth underlying analysis of its effects on other parts of the system only serves to compound the problems not provide solutions.

13. I would offer the knee jerk political responses to issues such as Cadder and corroboration and other change as evidence that ad hoc changes are being administered to our justice system in the name of political expediency and not the overall good of the system.

14. I would argue that the Justice Committee instead of going down the road of asking the Government to provide the usual statistical indicators of workload and efficiency (although they might be valuable) should consider requesting the following statistics.

- i. To what extent has unrealistic plea bargaining led to the pen being put through hundreds of cases?*
- ii. To what extent are Fiscal fines being used inappropriately?*
- iii. Are court waiting times being manipulated by calling cases and then adjourning them in a similar way to the NHS waiting times scandal?*
- iv. To what extent are witnesses and jurors turning up at court only to be sent home because some aspect of their case is not ready?*

- v. *How often is information previously in the hands of court officials and which would allow witnesses to be countermanded not being passed on until the witnesses are in court?*
- vi. *How often is Ineffective precognition of witnesses leading to their turning up at court unable or unwilling to give reliable evidence or speak to the testimony already passed onto the police or procurator fiscal?*
- vii. *To what extent are unrealistic pleas are being accepted to save court time?*
- viii. *What % of police and other witnesses' time in court is actually spent giving evidence?*

15. Effectively case management and court administration is often an embarrassing shambles which affects victims, accused, lawyers, judges, witnesses and all working within the system. It makes mockery of the procedures to ensure that vulnerable witnesses are protected and that victims of domestic and sexual abuse are dealt with speedily and with compassion. I suspect that it is these issues more than those identified in the Bill that are the root cause of excessive delay and cost and unless they are tackled first the Bill's aims will not be realised.

16. You will not find this statistical information anywhere in the official court statistics but effectively these are the only figures which give a true indication of whether our courts are working efficiently or not. The reforms contained in the Courts Reform (Scotland) Bill will not cure these ills and unfortunately the well meaning reforms will be undermined in a system which cannot effectively cope with its present workloads.

17. Nor is a comparatively low level of complaints an accurate indicator of efficiency. Complaining is not encouraged and in essence the 'Majesty of the Law' prevents most people from voicing their feelings as they are only too glad to escape from the system as soon as possible many vowing never to return as a witness or in any other capacity.

18. The Justice Committee is in a position to obtain the necessary information to make these Sheriff Court workload and efficiency assessments.

19. My challenge to the Justice Committee is to ask the questions listed above and to request sight of the workload analysis which was carried out in relation to the proposed changes.

20. It has been reported that the Scottish government has said that. *'sheriff courts could absorb the additional workload; cases which would no longer go to the Court of Session amounted to only 3% of sheriff court business.'*

21. I would challenge this statement and ask the Government to produce accurate and detailed assessments of the present workload of Sheriff Courts and an independent analysis of the operational and administrative efficiency with which to back up these claims.

22. In closing I would echo the Law Society's recent call for a Scottish Law or Royal Commission on the issue of corroboration and would argue that in the face of the current government's piecemeal first aid legal reforms we need such a commission into all aspects of Scottish criminal law including those contained in the Courts Reform (Scotland) Bill.

23. Unfortunately while the overall stated aim of the legislation is to make, *'civil justice more accessible, affordable and efficient'* I also suspect that the financial imperative looms large and that many of the reforms are seen as ways of cutting costs, possibly leading to court closures and staff redundancies.

Iain A J McKie  
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