Justice Committee

Courts Reform (Scotland) Bill

Written submission from Macleod and MacCallum

We are a nine partner firm with about 50 staff based in Inverness. We have a busy court department, including Law Society of Scotland accredited specialists in Personal Injury Law and Family Law. We do a lot of local agency work at Inverness Sheriff Court and regularly appear in other Courts throughout the Highlands. We wish to add the perspective of a more remotely located law firm to the views submitted by others in the profession.

We agree with Lord Gill’s conclusion that the Scottish Courts are slow, inefficient and expensive. We agree that reform is required. To the extent that technology can address the slowness, inefficiency and expensiveness, we would agree with its use being extended. There are, however, limitations on what technology can achieve without appropriate infrastructure. Inverness Sheriff Court is a good example to demonstrate this point.

Scottish Court Service estate – fitness for purpose

Inverness Castle is a beautiful, impressive building, dominating the Inverness landscape. It has the appearance of being a suitable home for the Court. Our understanding is that some of those advising Parliament on the Review believe that the Castle remains suitable for Inverness’ own business and that it also has capacity for the additional work anticipated to come from Dingwall. We disagree. The Court is already at what seems to be “breaking point” in terms of the combined volume of civil and criminal cases requiring to be handled. Sheriffs’ caseloads appear to be excessive. Hearings are over-running or allocated insufficient time. Callings are adjourned or continued unnecessarily. There is a lack of continuity from one hearing to the next. Many cases could be disposed of much more quickly if subsequent hearings could be heard by the same Sheriff as previously. The lack of available court rooms and the disorganised way in which Civil Courts are scheduled (through no fault at all on the part of the Clerks – to our knowledge) means that Inverness experiences a high level of what has been referred to as “churn”.

We agree in principle that specialisation is desirable but the existing court estate is ill-equipped to facilitate it. At Inverness, the Castle may be suitable for criminal business but, perhaps, only if civil business is relocated.

Analysis of the fitness for purpose of the existing Scottish Court Service estate needs to have regard to what is actually happening in court on a day-to-day basis. Statistical analysis of court business from one court to the next is of extremely limited benefit.

Centralised Personal Injury Court

Our principal concern with the Review, is with the Personal Injury Court – and in particular the measures, rules and legislation that will be enacted to ensure that, by relocating the specialist court to Edinburgh, inhabitants of the further away towns and regions are not unduly disadvantaged.
Centralised Personal Injury Court – travel and accommodation for solicitors

Solicitors based remotely, such as in Inverness, should not be disadvantaged when competing for Personal Injury business. In particular, where solicitors are required to travel to the Personal Injury Sheriff Court in Edinburgh, the travel (and, if appropriate accommodation) should be recoverable not from the client but from the party found liable to pay expenses (whether or not Qualified One-way Costs Shifting becomes a reality).

Centralised Personal Injury Court – travel and accommodation for injured persons

There are many difficulties for injured people pursuing claims in Courts which are located a long distance from where they live. These include arranging (and affording) travel, childcare, care of adults, employment, medical treatments for themselves and others. The combination of these may well justify maintaining the status quo.

The prospect of a specialised judiciary is a very attractive and compelling alternative to the status quo. We do not seek to influence the Justice Committee’s stance on striking the right balance between, on the one hand, the practical “day-to-day convenience” of injured persons and, on the other hand, the efficiency, cost saving and other benefits to tax payers. It is proper that Parliament decides where this particular line has to be drawn. But in drawing this line, there are measures that can be taken to (a) reduce the negative effects on injured persons and (b) preserve some of the positive aspects of the existing regime.

Centralised Personal Injury Court – travel and accommodation expenses generally

At the present time, a Solicitor in a Personal Injury claim in Inverness can conduct the entire claim without imposing any charge to the injured person for travel or accommodation. The injured person can choose to litigate the case in the Court of Session in Edinburgh (and if they choose to do so the solicitor and client have to reach agreement on fees and expenses including those associated with travel to and accommodation in Edinburgh). If the outcome of the Review is that injured people in Inverness will lose the ability to choose to sue for personal injury damages in the local Sheriff Court, that loss of choice should be mitigated by enabling the injured person’s solicitor to claim all of the additional expense of travel and accommodation from the compensating party.

Centralised Personal Injury Court – technology

With the use of technology, it should be possible for routine or procedural hearings to be conducted remotely. Our own solicitors have already made use of video-conferencing technology at an administration office located a short distance from the Court in Inverness (for hearings held at Stornoway). The technology worked fairly well and the whole experience was impressive, saving the client considerable expense. Whilst the technology was impressive for use in a procedural hearing, its use in an evidential or other more complex hearing would put the solicitor located remotely at a disadvantage. We do not believe there can be any substitute for personal appearance of solicitors in
an evidential hearing. Agents will have to be trained in where to stand and how to use the technology in a way that ensures everyone can hear and be heard.

**Importance of solicitors living locally – service**

During the course of a Personal Injury claim, there will be several (sometimes numerous) solicitor/client meetings. This is true even where the case settles without court proceedings being raised or before there is a calling in court. The ability of a solicitor and client to meet (and to do so regularly in some cases) is fundamentally important in delivering a quality service. There is often no better way to explain legal advice than face-to-face. An injured person in Dingwall who requires to instruct a solicitor in Edinburgh (because they are less expensive) will find it more difficult to attend meetings with their solicitor than an injured person based in Edinburgh instructing the same solicitor.

**Importance of solicitors living locally – regulatory**

There are strong regulatory reasons why a face-to-face meeting is preferable. These include Anti-money Laundering and identification checks.

**Importance of solicitors living locally – local economy / regional disparity**

If practicing personal injury outside of Edinburgh (or the central belt generally) is made too difficult, unattractive, uneconomic or uncompetitive, specialised solicitors who currently live in remoter parts will either give up their specialisms or move closer to where the work is. There is a danger that, if the legislation giving effect to the reforms is not carefully thought out and balanced, there will be a “brain-drain” effect.

In our view, if there is a way of creating a specialised, centralised Personal Injury Court which preserves local solicitor-client meetings at their current form and at their current level and frequency, that option should be adopted. Enabling the injured person’s solicitor to claim the additional expense of travel and accommodation of both the solicitor and the client from the compensating party would (i) preserve the opportunity for regular solicitor-client meetings during the life of a case (ii) reduce the inconvenience/cost to clients of long journeys for those meetings and (iii) keep accredited specialist solicitors in Personal Injury law in remoter parts of the country.

Ultimately, what we believe Parliament should seek to avoid is the creation of a “postcode lottery” in accessing a high standard of service and expert legal advice on Personal Injury law. We do not see such a lottery being a necessary consequence of creating a specialised judiciary, provided appropriate safeguards are in place to minimise the inevitable cost imbalance associated with additional travel and accommodation (which cannot be entirely mitigated against by the use of technology).

**Privative jurisdiction**

Finally, on the question of Sanction for Counsel, setting the limit at £150,000 seems to be entirely out of kilter with other comparable jurisdictions and the inevitable, massive and sudden loss of demand for skilled advocates could, again, see a migration of talented professionals to those other jurisdictions. We would favour the proposed limit in an uncomplicated case being reduced to £30,000.