Justice Committee
Courts Reform (Scotland) Bill

Supplementary written submission from Thompsons Solicitors and Solicitor Advocates

I refer to the above matter and in particular to the evidence session which was held on 25 March 2014. I wish to bring to the Committee's attention two particular errors in fact arising from the evidence of Mr Alan Rogerson, appearing on behalf of the Forum of Scottish Claims Managers. I understand that the Committee is not to hear any further oral evidence and therefore feel that these two particular points must be clarified in writing.

In response to a position from Dave Moxham of the STUC proposing that all asbestos cases remain within the Court of Session, Mr Rogerson stated that all mesothelioma claims would exceed the proposed £150,000 privative jurisdiction limit, and thereby remain within the Court of Session. This is simply not the case. My firm deal with the majority of asbestos related claims in Scotland and I can advise that in the last year alone we have settled 18 mesothelioma claims for less than £150,000. Of this 18, 12 have been cases for people still living and the remaining 6 for the estate and/or families of those who have died. The most important variant factor within mesothelioma claims is the level of income that the victim has as a claim can be made for the future loss of that income. Those on lower incomes with shorter natural life expectancies will have lower value cases. Under the Court Reform proposals, they will require to be advised not only that their claim is not eligible for the Court of Session but they are not automatically entitled to the services of Advocates. Those with higher incomes will find themselves comfortably within the Court of Session's jurisdiction and with automatic entitlement to the services of Counsel.

The cases for the estates and families of mesothelioma victims are generally worth in excess of £150,000 but simply because under Court of Session practice it is expected that all of the family claims be included within one court action. Section 39 of the Bill seems to propose that this cumulative calculation is not to be determinative of the value of case for the purpose of establishing jurisdiction but rather that the individual claims must be considered.

The effect of this will be again that only the estate and family of the better off will benefit from the service of the Court of Session and specialist Counsel. If this is not the correct interpretation of Section 39, and it is not clear, then access to the Court of Session is simply a matter of arithmetic.

Perhaps of greatest concern however is that a claim may be out with the Court of Session's jurisdiction while an individual is alive but fall within it on his death. His solicitors will be required to discuss with him before progressing with a court action whether to proceed during his lifetime and run the gauntlet of the Sheriff Court system without the services of Counsel, or wait until his death when it is more likely he will be in the higher Court with appropriate representation. This is an invidious choice for any individual and one which the Scottish Government previously
obliterated through the Rights of Relatives to Damages (Mesothelioma) Scotland Act 2007.

The second matter on which Mr Rogerson is mistaken is that he alluded to waiting as a matter of course until late 2015 until Proof diets become available in the Court of Session. Statistics from the Lung Disease Department at Thompsons taken from Court diets issued from the start of this year confirm that we now wait an average of 6 - 7 months for a four day hearing from the date defences are received. Moreover the court has recently advised all agents that there are eight day slots available in 2014 and early 2015. As the Committee heard in evidence on 25 March, the Sheriff Court simply cannot offer consecutive dates within these time frames, which in my view is further evidence that the system within the Court of Session works and works extremely well.

I would be grateful if the Committee would accept these points as clarification of the present situation for asbestos victims and their families

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