Justice Committee

Courts Reform (Scotland) Bill

Written submission from the Union of Shop, Distributive and Allied Workers

Summary

1. Usdaw is a general Trade Union with members in retail, distribution, manufacturing and financial services. Our current membership in Scotland is 45,784.

2. We understand the need for civil court reform and have been supportive of many of the proposals such as the establishment of a specialist personal injury court.

3. However, there were some aspects of the review which gave us cause for concern, and our concerns have considerably increased since the radical change to the law on workplace injuries introduced by Section 69 of the Enterprise and Regulatory Reform Act 2013 (the Enterprise Act).

4. We believe that the current drafting of the Bill will be damaging to workers' rights by reducing access to justice for workers with work-related injuries or disease. This will have a negative impact on workers' health and safety generally.

5. We believe that, with a couple of amendments, these problems could be resolved. Instead of exacerbating the damaging effects of Section 69 of the Enterprise Act, the Bill could greatly reduce its impact and ensure that, in Scotland, workers continued to benefit from the protection of the civil justice system.

Access to justice

6. In 2013, Usdaw's Legal Service dealt with 535 work-related personal injury claims for our Scottish members. Compensation totalling £2,425,000 was recovered in 313 of those cases. However, only two cases were settled for amounts in excess of the £150,000 exclusive competence limit. The median level of settlement was £3,275 and 73% of cases were settled for £5,000 or less. Even complicated disease claims for musculoskeletal conditions such as upper limb disorders caused by repetitive work resulted in low settlements.

7. Under the Bill as currently drafted, many of these cases would be likely to be referred to the lowest tier of the court system presided over by Summary Sheriffs, and even in those cases that went to Sheriff Court, there would be no automatic right to employ Counsel.

8. As a Trade Union, Usdaw depends on the membership fees for funding. Many members work in low-paid jobs so our fees have to be kept low. We are not in a position to be able to afford costs such as those involved in employment of Counsel unless we can be assured that the cost can be recovered in successful cases.
Impact of section 69 of the Enterprise Act

9. Our concerns about access to justice have greatly increased since this legislation was passed. While the intention, according to the Coalition Government, was the removal of strict liability, which in itself would have been bad enough, the effect of Section 69 is far more wide-reaching than that. By severing the link between breach of statutory duty and civil claims for compensation, they have greatly increased the complexity of civil litigation in work-related claims. Where it was often relatively straightforward to make a case for breach of statutory duty based on the facts of an accident, proof of negligence is much more difficult and, as a result, more evidence will often be required and more complex arguments will be involved, even in cases which would otherwise have been ‘routine’.

Impact on workers' health and safety

10. Historically, there has always been a strong link between civil compensation cases and workers' health and safety. There are occasional 'landmark' cases which cause changes to employers' policies because of the widespread publicity they receive. In Scotland, for example, the case of Collins v First Quench Retailing Ltd, 31 January 2003, Court of Session, where the Sheriff ruled that single-staffing of an off-licence at times of higher risk was unacceptable had a major impact which lasted many years on the approach of retail employers in similar circumstances such as petrol filling stations and small convenience stores. In addition, there is the pressure from insurers when they realise that liability will be difficult to contest unless certain basic health and safety precautions are followed.

11. In the absence of strong enforcement action by HSE and local authorities, the effect of civil compensation cases is even more significant.

Suggested amendments

12. For the reasons outlined above, Usdaw believes that the Bill could be considerably strengthened by the introduction of two straightforward amendments:

- First, that victims in work-related injury and disease claims should be entitled to raise their action through the specialist personal injury court and that such cases should not be referred to the Summary Sheriff system, even when they are low-value claims.

- Second, that victims of work-related injury and disease should have automatic right to employ Counsel.

13. We believe that these simple changes would not have any adverse impact as far as the terms of reference set for the original review led by Lord Gill are concerned. But they would go a long way to protecting workers' access to justice and countering some of the worst effects of Section 69 of the Enterprise Act.

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