Justice Committee

Scottish Court Service recommendations for a future court structure in Scotland

Written submission from JUSTICE Scotland

By way of background, we should explain that JUSTICE is a British-based human rights and law reform organisation, whose mission is to advance access to justice, human rights and the rule of law. JUSTICE is regularly consulted upon the policy of human rights implications of, amongst other areas, policing, criminal law and criminal justice reform. It is the British section of the International Commission of Jurists. On Scottish matters it is assisted by its branch, JUSTICE Scotland.

We would wish to take this opportunity to raise certain matters in relation to the proposals which may be of assistance to the Committee in the consideration of the evidence and witnesses who are to appear before it. It is, we would contend, important for the Committee to have regard to the proposals contained within the Courts Reform Bill which is currently under consultation. The proposals within the Bill will have a significant impact upon the existing court structure, and the changes proposed within the court closures document require to be assessed in light of that.

The matters that we wish to raise can be summarised as follows:

**Capacity of the Sheriff Court**

We are concerned about the capacity of the Sheriff Court system to absorb the likely volume of both criminal and civil business that will result from the different proposals.

Our members' experience is that there has been a noticeable trend of cases that once would have been prosecuted in the High Court, now being prosecuted in the Sheriff Court. This has had an impact upon the capacity of the Sheriff Court to cope with criminal business. By way of example, we understand that it is not unusual at each Sheriff and Jury sitting at Edinburgh Sheriff Court for five or six cases to be adjourned due to pressure of court business. The proposals will entail even more criminal business being dealt with by the sheriff court.

The analysis carried out by the Scottish Court Service in relation to court capacity seems simply to relate to the physical capacity of the courts to accommodate sitting days. That, however, only deals with one aspect of capacity. In addition to having the physical courts available there require to be sheriffs, court clerks, and, in criminal cases, procurator fiscals, available to attend. The constraints in respect of each of these are such that a lack of availability in only one of these areas leads to the court being unable to sit.

**Implications of closures**

We wish to make the point that the consequences of the closure of certain courts will be that witnesses, complainers, accused, and parties to civil actions, will require to travel further. This will certainly have implications in relation to expense incurred by those groups. In criminal cases, there is concern about witnesses, complainers and accused travelling by the same means of transport to court. Concerns have been
raised by family practitioners in relation to family cases where parties will require to continue to attend for child welfare hearings and additional travelling distance and time has implications in terms of childcare.

**Consequences of Courts Reform Bill**

There are a number of proposals within the Courts Reform Bill which require to be considered in assessing the impact of the closure of the Sheriff Courts.

The increase in the privative limit to £150,000, will result in a significant increase in Sheriff Court business. Around 75% of first instance business in the Court of Session is personal injury work. The proposed increase in the privative limit will lead to more than 90% of those cases coming out of the Court of Session and into the Sheriff Court. There are currently around 2,500 personal injury cases raised each year in the Court of Session. Consequently an extra 2,250 cases will require to be dealt with.

It is proposed that a specialist personal injury court be set up to deal with personal injury cases. The likelihood is that this court will be located in Edinburgh Sheriff Court. It is proposed that two specialist sheriffs be appointed to deal with these cases. While in principle, a specialist personal injury court may work, it requires to have sufficient capacity, technology and resources to work effectively. We note that in the Shaping Scotland’s Court Services document, when considering the impact of business being transferred from Haddington Sheriff Court to Edinburgh Sheriff Court, there is no mention whatsoever of the likely introduction of the special personal injury court at Edinburgh. It is uncertain whether two sheriffs will be sufficient to deal with the likely level of business.

The current position is that as far as personal injury actions are concerned, there is a centre of excellence based at the Court of Session using the specialised personal injury procedure. While in principle, we have no difficulty with accepting that cases of a certain value should be dealt with at the appropriate level, and a specialist personal injury court may well be appropriate, to ensure that the same level of service and access to justice remains, there will be require to be significant investment in resource and technology within the Sheriff Court.

Similarly, there will be a transfer of commercial and other civil cases, as a result of the change in privative limit. There are currently specialist Commercial Courts in Aberdeen and Glasgow Sheriff Courts, as well as the Commercial Court based within the Court of Session. These operate by way of a case management model which has proved to be reasonably successful though is time intensive. While it is appreciated that specialist sheriffs are envisaged to be appointed within the new structure, there will require to be appropriate resource provided to ensure the same level of service.

We hope that these matters are of assistance in your consideration of the Government’s proposals.

JUSTICE Scotland
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