Justice Committee

Scottish Court Service recommendations for a future court structure in Scotland

Written submission from the Law Society of Scotland

Scottish Court Service recommendations on a future court service

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and out with the solicitor profession.

The Law Society of Scotland’s Access to Justice welcomes the opportunity to consider the call for written evidence from the Justice Committee on the Scottish Court Service (SCS) recommendations on a future court service.

We believe that a number of the recommendations will have a significant impact on access to justice for people in a number of areas across Scotland, particularly in the North East and in the Borders and also affect the most vulnerable.

Principles

We believe that a sustainable network of courts, accessible to all involved, is the foundation for the effective administration of justice in Scotland. Our citizens participate at court in a range of ways, as pursuers, defenders, victims, witnesses, jurors and accused, seeking advice from court staff, paying fines, or attending court proceedings. Our nation is geographically diverse, as are its courts, which have served our citizens well.

The Access to Justice Committee has established four principles for the justice system in Scotland. Our justice system should:

- Meet the needs of everyone and be based only upon legal need;
- Provide a comprehensive range of services to meet the needs of our population;
- Work with others to provide a holistic service to people in need; and
- Support and value those who use and work in the legal advice and information services.

A justice system must meet the needs of everyone and be based only upon legal need. Access to courts and to justice has to be universal and some of the most vulnerable in our society are involved in court proceedings. We are concerned that there does not appear to have been an equality impact assessment conducted for
these closures, which are likely to affect a range of court users, such as the young and the old, who are more reliant on public transport.

In its analysis of consultation responses, SCS notes "widespread and deep concern was expressed about the impact that the implementation of this set of proposals would have on access to justice, and on the quality of the justice system more generally." On the issue of closing Sheriff Courts, for instance, 95% of respondents disagreed, only 2% agreeing. These responses came from a number of different groups, a quarter of which were from solicitors’ firms and the remainder from community groups, local authorities, elected representatives and others. There is clearly broad consensus that these recommendations will reduce access to justice for communities across Scotland.

**Access to justice**

The closure of courts will have a significant impact for people living in rural Scotland, where access to justice will be significantly reduced. The number of cases involved at the courts recommended for closure may be small at around 5% but the number of courts to close is significant: 10 of the 49 Sheriff Courts. This is a large scale closure programme, with a number of risks. We believe that a gradual or pilot approach should be adopted, to allow these risks to be evaluated: once a court has been closed, it would be very costly to reconsider that decision.

We believe that there are challenges around capacity. We appreciate the work that SCS has done in modelling capacity and have also seen the Sheriffs’ Association response, which highlights some omissions around this data. We anticipate challenges to capacity in Aberdeen, which has recently some of its sheriff and jury cases to Stonehaven and which does not currently meet processing targets for criminal cases. Capacity in Edinburgh may also be challenging, as it will host the new specialist personal injury tier to the Sheriff Courts: we estimate that around 2,500 personal injury cases will now be heard in the Sheriff Courts as a result of the proposed increase of the privative jurisdiction limit to £150,000 in the Court of Session. The amount of civil cases has been reducing in recent years and SCS considers that case volumes will remain static for civil work and see around 6% increase in criminal case volumes as a result of the proposed abolition of corroboration. We believe that these assumptions may not be reliable. Though case volumes have been decreasing for civil work, there has been volatility, for instance, a 40% increase in the number of personal injury cases between 2008-09 and 2009-10. Civil litigation, overall, may increase as a result of the reforms proposed in the current Courts Reform (Scotland) Bill consultation and the upcoming reforms to criminal cases may also have an unpredictable effect.

It is suggested that, in addition to court closures leading to case congestion in parts of the country, there may also be increased churn as a result of accused or other parties to a case failing to attend. We understand that when contemplating court closures in New Zealand, the rate of non-attendance was considered as a factor. A recent Audit Scotland report suggested that churn in the criminal justice system may be wasting up to £40m per annum. 

1. *An Overview of Scotland’s Criminal Justice System*, Audit Scotland, September 2011
Many of the participants in the justice system are not doing so by choice, and these recommendations add a number of additional challenges. The restriction of sheriff and jury and ordinary cause cases to 16 centres will create additional travel. For instance, there are three trains from Oban, where sheriff and jury cases for the area would currently be heard, to Dumbarton, where sheriff and jury cases will be heard following these recommendations. Only one train arrives early enough for travelers to participate at court: it arrives at eleven in the morning, while the next train arrives at around half past three. There is also one bus service that would bring travelers from Oban to court in Dumbarton that morning. Sheriff and jury cases may not be frequent in the Oban area, though in such instances, the prospect of victims of crime and accused using the same public transport, with all of the attendant risks, is high. It would also necessitate around five hours’ travel time each day from a location with a court that will still be open.

The travel time between Oban and Dumbarton is significant, though some are larger still. A return train journey from Wick to Inverness requires a travel time of around nine hours. SCS are cognizant of the travel challenges faced by some courts, which is why each of the island courts in Scotland will remain open and also hear the full range of business. We had recommended the same for courts like Wick, because we believe the challenges in travelling are of a similar nature. The SCS recommendations do not specify where jury catchment areas will be following the closures. With such large travel times, and with many people unable to overnight in Inverness because of childcare commitments, it appears that people in rural areas will be disenfranchised from participating in the justice system as jurors. Losing local knowledge, whether from jurors, justices or sheriffs, can have a significant impact on the quality and efficiency of the justice system. Following similar court closures in England and Wales, research suggested variability in sentencing – either more lenient or more severe – increased adjournment for particular types of cases and increasing rates for failure to attend.² It may be that some of these issues are a short-term effect of the wide-scale court closure programme in England and Wales: the more reason, we believe to take a gradual or pilot approach to the same task in Scotland.

Costs

We have submitted evidence to the Justice Committee previously, on the Scottish Government Draft Budget 2013-14 and in particular, the impact on the court estate. The scale of the challenge facing SCS is significant. In evidence to the Justice Committee in October 2012, Eric McQueen, Chief Executive of SCS, described the capital budget available to SCS:

“[I]t is basically getting by. By the end of the spending review, our capital budget will be £4 million… predominantly £2 million will be for investment in IT and £2 million will be available for buildings. Our programme on the capital side for those areas will see us complying with our legal and health and safety obligations and carrying out essential repairs. It will not allow any additional funding for investment, improving

² Pressure, Budgets and the Courts, NAPO, August 2012
facilities or any major disasters in the court estates… It would be a very tight budget that would be about compliance.”

In correspondence to the Justice Committee that month, it was confirmed that the maintenance backlog across the court estate was £57.1m. This places suggestions regarding the deployment of new justice centres into context: there is little in the recommendations to prevent these in the future, but likely not in the short or medium term.

The savings suggested for the closure of courts are significant in the context of this reduced capital budget, though the statement of depreciation is a nominal rather than in cash terms. We believe that the cost savings estimated are unlikely to be achieved. For instance, it will be difficult to dispose of closed courts. In England and Wales, the Ministry of Justice proposed the closure of 141 courts: in response to a freedom of information request from the Law Gazette, it was confirmed that 121 had closed, 69 remained vacant and only five had been sold. Maintaining these buildings while vacant was costing around £2.5m per annum, compared to savings of £15m in running costs and £22m in backlog maintenance that was the savings target from the closures.

The transfer of costs to local authorities and professional court users will be significant. The faculty in East Lothian commissioned a forensic accountant to consider the overall costs: it was found that while SCS aimed to save £84,000, the additional costs to court users would be £87,000. Many people will face significant additional costs: this can be difficult to find for court users on benefits, and will be more challenging with the introduction of universal credit, which will be paid monthly in arrears.

**Videoconferencing and other reforms**

A broader deployment of videoconferencing across the justice system is expected to mitigate the effect of court closures on access to justice. We believe that the wider deployment of videoconferencing will have a positive impact, though it will not convincingly address many of the concerns around access to justice. It will, however, assist the justice system in meeting the requirements of EU Directive 2012/29/EU on minimum standards for victims of crime.

Some caution may be required. The experience from other jurisdictions has been mixed, particularly around the possible costs and benefits of videoconferencing. The Ministry of Justice recently reported on the outcome of its virtual courts pilot in London and Kent:

> “The evaluation evidence indicates that, overall, the Virtual Court pilot added cost to the delivery of criminal justice in the London pilot area, compared to the traditional court process… Economic modelling suggests that a roll-out of Virtual Courts across

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4 Millions Spent on Empty Court Buildings, Law Gazette, 23 February 2012
5 Virtual Court Pilot: Outcome Evaluation, Matthew Terry, Dr Steve Johnson and Peter Thompson, Ministry of Justice, December 2010
London based on the structure and performance of the pilot would cost more than it would save over a ten-year period.”

We believe that there is also potential for other reforms to the court estate. We see many benefits to the introduction of centralized electronic warranting, similar to the facilities available in England and Wales. We believe that there could be benefits in also centralizing clerking resources. There are clear benefits to the wider use of technology and many ways in which access to justice can be enhanced; however, we firmly believe that in rural areas, these proposals will reduce access to justice.