Justice Committee

Scottish Court Service recommendations for a future court structure in Scotland

Written submission from Eric M Baijal

I write in response to the committee’s call for evidence.

Background

I am an experienced civil litigation solicitor. I am a partner in a specialist litigation boutique firm. Although I undertake work throughout Scotland, my practice is based mainly in the Highlands and Islands and much of my time is spent in my firm’s Wick office. I am a member of the Sheriff Court users group at Wick Sheriff Court. I regularly litigate and appear before that court.

Limited scope of my evidence

In this letter I only attempt to give evidence in relation to Wick Sheriff Court. As the committee will appreciate there are three main areas in relation to which the consultation affects Wick Sheriff Court. Firstly, it is recommended that the JP Court in Wick ceases to exist, with the business being transferred to the Sheriff Court at Wick. Secondly, it is recommended that Sheriff and Jury business is moved to Inverness Sheriff Court. Thirdly, it is suggested that in due course a summary Sheriff replaces the Sheriff at Wick and ordinary civil business is transferred to Inverness Sheriff Court. It is not entirely clear to me from either the Gill review or the consultation paper exactly what civil business would then still be capable of being litigated before the summary Sheriff in Wick. I am taking the papers to mean that only small claims, summary cause and perhaps some limited family work would be capable of being litigated before the summary Sheriff in Wick.

The problem with the proposals

I am personally not opposed to the business of the JP court being transferred to the Sheriff Court in Wick. As the consultation suggests that is in keeping with the practice in both Lerwick and Kirkwall where there have not historically been JP courts.

I have a big difficulty with the idea that Sheriff and Jury business, and ordinary civil business is transferred to Inverness. The Law Society of Scotland’s response to the original consultation (together with other individual responses including my own) highlighted the particular geographical and “access to justice” issues that arose so far as the proposals related to Wick. These were not mentioned, so far as I can see, in Scottish Court Service response to the consultation, and seem to have been largely ignored. They are so serious that I regard that as unacceptable.

To reiterate those concerns I would firstly remind the committee that the distance between Wick and Inverness is 106 miles (and some parts of the jurisdiction of Wick Sheriff Court are in the region of 125-130 miles from Inverness). The road is not good. Even travelling by road two and a half hours would have to be left from the
majority of places within the jurisdiction of Wick Sheriff Court in order to arrive on time for a hearing at Inverness Sheriff Court. Public transport links are not good. The train from Wick takes over four and a quarter hours to reach Inverness. The bus takes approximately three and a half hours. Links are not as frequent as in the central belt.

In practical terms this means that in any ordinary civil litigation, or in any Sheriff and Jury trial, a litigant or witness may well have to travel the day before a potential court hearing.

As well as the obvious inconvenience, and unacceptable cost to many people, I have real public safety concerns. Prosecution/pursuers and defence witnesses are kept apart for a reason. The idea that they will potentially sitting adjacent to each other on public transport is not acceptable.

In solemn criminal cases police officers will also have to leave Caithness to give evidence in Inverness. Litigants will probably have to pay more to have solicitors travelling to Inverness to conduct Proofs and Sheriff and Jury trials, if solicitors in Caithness are being instructed in the case.

It is also unsatisfactory that the citizens of Caithness will no longer be able to serve on a jury (or if they do, it will involve travelling to Inverness, causing disruption for jurors and their employment).

There is also a concern that Inverness Sheriff Court is going to become increasingly busy with the transfer of business from Dingwall Sheriff Court when it is closed. Inverness already has trouble at times providing capacity and I understand anecdotally that cases are often adjourned because of lack of court time. I would suggest that it is more likely than not that that position will get worse with the influx of other work. I would simply make the point that it is going to be far more inconvenient for litigants from Caithness to face a last minute adjournment when they have travelled to Inverness, than if they have travelled to a court in Wick (which at the moment generally operates a very efficient service).

The solution

I understand the Scottish Court Service is facing budget difficulties. However, the changes proposed to the service at Wick Sheriff Court seem nonsensical. The building is to be retained. A service is to be provided. It surely makes best use of the capital budget and reduces the proportional overhead if the asset is used as much as possible (for example the Northern part of the Dornoch Sheriff Court district could, in my view, be transferred into the jurisdiction of Wick Sheriff Court).

The recommendations of the Scottish Court Service provide special treatment for the island courts in Lochmaddy, Stornoway, Portree, Kirkwall and Lerwick. In those cases the geographical difficulties are recognised. It is clear to me that Wick should be treated like the island courts and continue to provide full service. Given the existence of the bridge it does not make sense at all if Portree or Kirkwall remain full service courts (particularly given the volume of business at Wick).
My evidence represents my own personal opinion and view. I am happy to try and clarify it if need be.

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29 April 2013