Justice Committee

Scottish Court Service recommendations for a future court structure in Scotland

Written submission from Keith Stewart QC

The Justice Committee of the Scottish Parliament has asked for further submissions on two matters to assist in its deliberations on two matters. These are (1) the local impact of closure of Haddington Sheriff Court on access to justice; and (2) the effect of closure upon local people obliged to travel instead to Edinburgh for court hearings (such as witnesses, accused, jurors, people involved in debt or family cases, succession, or guardianship matters).

(i) The presence of the court without doubt assists firms of solicitors in maintaining a presence on the High Street in Haddington and, as a result, a ready source of legal advice for the citizens of Haddington and the surrounding area. It is easy to anticipate that larger practices will not find it convenient to maintain a branch in Haddington without the regular business created by the presence of the court. Smaller firms with a court practice based at Haddington will suffer should business transfer to Edinburgh. Reduced income may make it more difficult to maintain an office presence in Haddington.

(ii) A threat to the existence of local firms of solicitors, and to local branches of larger firms, will naturally reduce access to law, at a time when the amount of legislation coming into force has never been greater, much of it ‘secondary’ legislation by way of statutory instrument which tends not to receive much Parliamentary scrutiny. Such legislation impinges on every walk of life, on commercial as well as private or family activity. In these circumstances, access to justice, by way of a legal system operated by a profession which is as broadly available as possible, to citizens in all walks of life, is an important safeguard of individual rights. Access to law is necessary in the face of increasingly complex legislation emanating from Edinburgh, Westminster and Europe.

(iii) The presence of the court helps sustain other businesses in Haddington- for example cafes and restaurants used by court staff, lawyers, litigants and witnesses. The need to cover the business of the court, and the inherent interest of court proceedings, is stimulating for the local press and helps to maintain circulation figures.

(iv) At a time at which the very future of towns existing as local centres, in the face of commercial pressures on businesses, is in question, the court provides a focus for the town, a sense that it is a centre, a place where important decisions affecting people’s lives are taken. Closure of the court will diminish Haddington as a town in all sorts of ways. Everything that central government can do to maintain and enhance the vitality of towns should be done. Central government should not lightly take decisions which will lessen that vitality.

(v) I harbour grave misgivings as to the ability of Edinburgh Sheriff Court to absorb the additional business which will be created by closure of Haddington (and
other courts). There is a cramped feel already to some of the accommodation there. Car parking around the court is problematic. The High Court of Justiciary frequently requires to take over the main jury court, as a result of lack of space in the court buildings at the Lawnmarket. Edinburgh Sheriff Court lies some distance from bus stops served by East Lothian buses, and the railway station. Experience suggests that there is a limit to the amount of time which can be saved by adjustments to administrative practices. A career in law (including practice as an advocate-depute, full time and ad hoc, since 2002, has left me with little confidence in the ability of the courts' administration to acquire, install and maintain equipment to take evidence by way of remote link: this equipment never works as smoothly as its promoters say that it will. All this will tend to exacerbate delays, which in turn will tend to undermine confidence in the administration of justice, the ability of the legal system to settle disputes, and ultimately, in the rule of law itself.

(vi) It is important not to underestimate this consequence of the closure of local courts such as Haddington. Recently, under reference to restrictions to legal aid in England and Wales, the President of the United Kingdom Supreme Court, Lord Neuberger, has anticipated increasing lawlessness as a result, and described the proposals as a threat to the rule of law. The same arguments can be made in relation to closure of Haddington and other local courts. The attendance of witnesses, in relation to criminal matters and certain civil matters, is already problematic. It gets more difficult to take effective steps to ensure witnesses’ attendance at court, the further from court they live. Furthermore, existing weaknesses in the system of imposing and enforcing penalties, such as fines, suggest that the court will lack effective means to bring all persons before it and to punish their non-attendance. Should witnesses fail to attend, and have that non-attendance punished (eventually) by means of a fine, which will then go uncollected, the perception will arise that the court can be ignored, up to a point, with impunity. Accompanying that perception will be a sense among law-abiding citizens that the court and the law are ineffectual as a means of settling disputes.

(vii) Litigation, and the courts, cannot be equipped with administrative operations. The two things are fundamentally different. Seen from an administrative perspective, courts and legal proceedings are inherently inefficient. But they can never be anything other than inefficient, from that perspective, requiring as they do that each party should be represented and entitled to benefit from independent advice. Reform of the court system must begin from recognition of this difference. The object of reform should be to minimise delay, and to broaden access to justice amongst those who are affected by the workings of the law. A small tradesman within the jurisdiction of Haddington is more likely to write off debts arising out of his business, in the face of the increased delay and inconvenience which will necessarily flow from the closure of his local court and transfer of its business to Edinburgh. He will be more likely to feel that access to justice is restricted to persons with deeper pockets or larger businesses. He will lose confidence in the law as a means of settling disputes. That would be a consequence deeply worrying for society at large.

2 (i) I have acted in litigation at Haddington Sheriff Court. I represented a man who was in dispute with East Lothian Council. The matter gave rise to difficult and involved questions of law. Resolution of the matter lay quite outwith the ability of voluntary organisations, such as the CAB, to accomplish. The sum of money at
stake was small, but the legal questions thrown up difficult, and the importance to the client immeasurable. The matter was sufficiently complex for the defender to instruct counsel. The client had enduring mental health problems. From time to time he had difficulty in attending at Haddington. On occasions when he failed to attend, my instructing solicitor was able to take ready, practical steps to bring him to court, to prevent delay, and to allow the court to deal as efficiently with the matter as was possible. The pursuer would have found it considerably more difficult to attend the metropolitan court, and the solicitor would not have been able to assist as he had at Haddington. That client’s access to justice was facilitated by the presence of a court local to him, on the long-established principle that the administration of justice should be devolved to a local level where possible.

(ii) Persons involved in litigation in the sheriff court are often among the weakest and most vulnerable in society. For such people—mothers with children, the elderly, the infirm, those who are not confident in speaking English—attendance at court may already be a complex and difficult matter, involving the support of others and the making of unfamiliar journeys. Such people are likely to face far greater confusion and anxiety in attending a busy metropolitan court in Edinburgh as opposed to a local, comparatively intimate one in Haddington.

I thank the Committee for the opportunity of making additional submissions. I should be happy to expand upon any of the points raised herein, should the Committee so desire.

Keith Stewart Q.C.
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