Justice Committee

Scottish Court Service recommendations for a future court structure in Scotland

Written submission from Graham Garden

I would ask that you place this email before the members of the Justice Committee.

I am a court partner in James and George Collie, who trade as "Kinnear and Falconer" in Stonehaven, one of the courts earmarked for closure to conform to the Sheriff Court District Amendment Order 2013. I would invite the committee to annul the said Order.

I have been practising in courts throughout Scotland, particularly in Aberdeen and Stonehaven for almost 34 years and am concerned about the effect on access to justice if Stonehaven Sheriff and Justice of the Peace Courts are closed. I am concerned as a solicitor as to the adverse effect which it will have on my clients in attending courts. I am the only solicitor in Stonehaven who provides a full Civil Legal Aid service to clients. While the extra distance to be travelled to Aberdeen Court is, on the face of it, minimal, many of my clients are amongst the most vulnerable in society and live in rural locations with little ready access to public transport and no access to private transport and will find this prohibitive in the extreme. I am also concerned as a resident of Stonehaven as to the effect which the closure of the Court will have on the economy of the many small businesses in the town who benefit from the added trade which the court brings as well as the fact that justice will not be seen to be done in the community in which crimes are committed.

Finally I am concerned as a taxpayer as I simply do not accept the figures put forward by Scottish Court Services (SCS) as to the supposed savings which will result from the proposed closure. Without doubt the added travelling and waiting time, the delays which will inevitably occur in cases having to be postponed through lack of court time and the various direct and indirect costs which SCS have not yet addressed will more than outweigh any supposed savings.

I have attended two national conferences in the last six months and have lost count of the number of times solicitors from throughout Scotland, advocates (both senior and junior) and sheriffs from other parts of Scotland have commented not only that they were surprised that a busy, efficient court such as Stonehaven was being considered for closure, but more surprisingly to them that it was considered that Aberdeen was capable of absorbing the Stonehaven work-load in addition.

The SCS review considered courts for closure on the grounds that it had insufficient work to justify it remaining open or that it was situated sufficiently close to another court to which its work could be transferred without materially prejudicing the recipient courts efficiency.

At a recent meeting of Kincardine and Deeside Faculty of Procurators, members from the Aberdeenshire Council Social Work Department, Aberdeen Bar Association, the Reporter to the Children's Panel and the Public Services Union all indicated
strong opposition to the proposed closure on the basis that such closure would materially and substantially prejudice their ability to provide a cost effective, efficient service. It is also interesting to note that this viewpoint is backed up by the Sheriff's Association who described the proposals to close 10 courts as "fundamentally flawed" which is quite a damning indictment from the people who will be at the sharp end of delivering justice. It is difficult, if not impossible to accept the SCS contention that Aberdeen Court has the capacity to absorb Stonehaven's work bearing in mind that the Sheriff Principal recently ordered that 60 (SIXTY) solemn cases, amongst the most serious which come before our courts, attracting as they do maximum imprisonment terms of 5 years to be heard at Stonehaven as there was no reasonable prospect of Aberdeen having capacity to deal with them. This begs the question as to what would have happened to these cases if Stonehaven had been unavailable and more importantly, where was the excess capacity which Aberdeen apparently has. Questions must be asked of the basis on which SCS compiled their figures as to the current workload of Stonehaven and Aberdeen Courts, bearing in mind the transfer of these cases and also bearing in mind that as a matter of course Solemn matters which should be raised in Stonehaven begin life in Aberdeen. Last week Sheriff Cowan raised this point in respect of an alleged serious embezzlement case which was raised in Aberdeen Sheriff Court and which should have been raised in Stonehaven. No satisfactory explanation was given by the Procurator Fiscal Depute, but it can be seen that, if it was the intention of Crown Office the figures could be "massaged" to show that Stonehaven was less busy than might actually be the case.

Court 5 at Aberdeen Sheriff Court, which holds Family Court, is chaotic to say the least. On occasions one finds 15/20 solicitors, a similar number of clients, and regularly friends of the clients attending in support standing in a narrow corridor outside court. In a highly charged atmosphere it is not unusual for tempers to become frayed and I have had a client punched and spat on by his former partner while standing outside this court. There is nowhere else for clients to go. There is nowhere for solicitors to discuss cases with the clients. There is nowhere for solicitors to discuss cases with their opponents. There is nowhere for "four way" meetings to take place to facilitate resolution. The implementation of Child Welfare Hearings has been a welcome and important part of taking children out of matrimonial disputes but the situation at Aberdeen to a great extent negates that. On the other hand Stonehaven Court can comfortably handle a number of Child Welfare Hearings as a result of the provision of various waiting and other rooms which regularly results in resolution of disputes without the need for shrieval intervention. The transfer of Stonehaven family cases to Aberdeen will simply exacerbate the already bad situation in Aberdeen and that to the prejudice of the situation in relation to Stonehaven cases.

I also have considerable reservations as to the basis of the SCS calculations as to the supposed savings which will be achieved by the various court closures. No calculations have been provided. It is interesting to note that in the case of Haddington a town approximately the size of Stonehaven, the net savings are stated by SCS as being £81,000. A forensic accountant, I understand, recently looked at the figures and concluded that there would in fact be a cost to the public purse of £534,000 and a financial impact to the community of £307,000 in the event of the
town’s court closing. This clearly suggests that someone has their figures radically wrong.

Other factors which must be taken into account are the recent significant changes to criminal and civil legal aid which will have a huge impact on the length of time which it will take for cases to come to court and for them to be processed. The situation regarding criminal legal aid has been reported widely in the media. The likely effect is that more accused persons will be unrepresented and will therefore have to conduct their cases themselves or, if they are being represented, there will be delays until such time as all instalments payable by the client has been paid. The position in respect of civil legal aid results from the recent capping of cover which is to be made available to clients. These were implemented without warning or consultation and will result in agents being forced to resign when funding levels are reached. Clients will then have to represent themselves, often against opponents who have the benefit of legal representation. If, as expected, the Board follows the lead of England, legal aid will not be available for family actions which will further exacerbate the problem.

SCS state that, as and when Stonehaven work is moved to Aberdeen, Aberdeen will operate at 97% capacity, which, of course, leaves next to no room for lengthy trials, fatal accident inquiries, health and safety trials and the like. In addition SCS do not appear to have taken into account the fact that permission has now been granted for a new town to be built 5 miles north of Stonehaven at Elsick. This town will have a population equivalent to Stonehaven, Portlethen, Newtonhill and Muchalls combined. Is it safe to assume therefore, that this town will produce no crimes, no social work referrals, no separations, divorces etc. If this is not the case, it is clear that the “slack” in Aberdeen capacity will be overwhelmed.

Finally, no account has been taken of the Gill review which will see Aberdeen as one of the permanent hubs for High Court sittings and for Sheriff and Jury cases. This begs the question that if Aberdeen cannot cope with its current work load, how is it going to be able to cope with a significantly increased work load in addition to that which will result from the transfer of Stonehaven's work.

Graham A Garden
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