Justice Committee

Scottish Court Service recommendations for a future court structure in Scotland

Supplementary written submission from Sheriff T A K Drummond QC

Proposed Closure of the Sheriff Courts at Peebles and Duns

This submission should be read in conjunction with my principal submission dated April 2012 (copy attached for convenience.)

Now that Selkirk Sheriff Court has been removed from the list of courts proposed for potential closure, the pattern of court business proposed for the Borders Region becomes clearer.

I formally answer the questions posed as follows:

Q16. Do you agree with the proposal to close the Sheriff Court at Duns/Peebles and transfer the business to Jedburgh/Edinburgh?

Answer: No. See below.

Q17. If you disagree, please say why and how you would prefer the Sheriff Court business of Duns/Peebles Sheriff Court to be dealt with?

Answer: See in particular paras. 7.1-8.3 below.

Q18. How would closure of the Court at Duns/Peebles affect you?

Answer: See below.

1. Generally

1.00 One of the issues which arises, at least indirectly if not directly, from this consultation process is how SCS should continue to facilitate the provision of rural justice services in a changing technological and fiscal climate for the 21st Century.

The tests against which those services fall to be provided for the purposes of the consultation are twofold viz. (i) the Lord President’s Statement of principles of Access to Justice and (ii) a pragmatic and arbitrary (but not unreasonable) test relating to volume of business and proximity to another court.

1.01 In a country like Scotland where the majority of the population reside in a geographically small central belt, a sizeable proportion of the country is made up
of small rural communities spread across a large area and commonly having an identifiable “market” town as its main centre of population. Local services (medical, dental, social etc) have traditionally been located in that market town which commonly was also the location of the courthouse.

1.02 Accepting that that is a model which can no longer be sustained, and while the work which has gone into the present consultation must be admired, it is respectfully suggested that while the consultation document recognises that:

“2.43 We agree that one size does not fit all and that we will need to find the right balance between achieving specialist centres and a network of smaller courts delivering local service. For those services that are not local we will look to technology to provide a different kind of access and opportunities to share accommodation with other public bodies,”

there may be a flaw in the process to the following extent:

(i) The proposals for court closures, whilst being addressed sympathetically, are proceeding only upon the two understandable pragmatic ad hoc tests identified at (1.00 above) and
(ii) Courts found to fail the twofold test are identified for closure without consideration of alternatives courses being an explicit part of the test.

1.03 It is respectfully suggested that notwithstanding the advanced stage of the consultation process, the approach to be adopted before final decisions are taken should explicitly include an additional test to the following effect viz:

“To determine whether any effective alternative structure can be devised within which justice services can be provided to rural communities within an acceptable cost structure.”

In addition, it would be a worthwhile exercise to examine how other jurisdictions approach the problem of the provision of rural justice services.

In this connection I myself have carried out a limited exercise in exploring the provision of Justice services in Montana, USA, with which I am familiar; it is an enormous geographical area with a very small population.

It is respectfully suggested that Norway might also be a useful jurisdiction for examination.

1.04 I respectfully suggest below, however, that there is already within our own system a model upon which an appropriate strategic objective can be formulated and that that model is to be found in Peebles Sheriff Court where a court operates cost effectively within a single multi-use structure serving a sizeable rural area.
At its opening on 10 June 2005 the Deputy First Minister described it as “...a blueprint for service delivery in other locations in the future.”

2. Background

2.0 It is perhaps helpful to bear in mind that in Borders Region we are dealing with a geographical area of some 1800 square miles and a population of the order of 110,000.

2.1 (i) In summary, there are two principal courts serving the Borders Region, namely Selkirk, with responsibility for the western area, and Jedburgh with responsibility for the eastern area.

(ii) For over 20 years Jedburgh Sheriff Court has had responsibility for the operation of the court in Duns; there are no staff (either PF or Sheriff Clerk) based at Duns and the court is serviced by the Sheriff and Sheriff Clerk from Jedburgh travelling to Duns with the court papers.

2.2 Until 2010 there was a single resident Sheriff of the Borders Region based in Jedburgh who covered the three courts in Jedburgh, Selkirk and Duns on a rolling court programme.

Peebles Sheriff Court had been, up until that time, covered from Edinburgh Sheriff Court involving Edinburgh Sheriffs travelling to Peebles Sheriff Court. (It is notable that what is now proposed, inter alia, is that the people of Peebleshire should travel to the Sheriff in Edinburgh).

2.3 In January 2010, a floating sheriff was assigned to the Borders Region; this was specifically to enable Peebles Sheriff Court to be brought within the Borders scheme of courts and thus freeing Edinburgh Sheriffs from manning responsibilities for Peebles.

Although Edinburgh based Sheriffs had been presiding over the court in Peebles, the administration, i.e. the provision of a Clerk, the framing of interlocutors and the handling of e.g. commissary and other court functions, was carried out by the Sheriff Clerk at Selkirk who retained the court papers and records.

2.4 From that date, 2010, the informal arrangement which was put in place was that the new floating sheriff was based at Jedburgh and retained responsibility for the satellite Court at Duns while the resident Sheriff was based in Selkirk with responsibility for Peebles.

2.5 There are accordingly, two principal courts each with a satellite court covering the Borders Region.
There are no staff, either PF or Sheriff Clerk, based in either of the satellite courts.

The Current Proposals:

(i) That Peebles Sheriff Court should close and its business be transferred to Edinburgh.

(ii) That Duns Sheriff Court should close and its business transfer to Jedburgh: there is a subsidiary position which could involve business from Eyemouth being transferred to Edinburgh.

3. The proposed closure of Peebles Sheriff Court

3.00 Staffing

3.1 There are no permanent staff, either PF or Sheriff Clerk, in place in the court facility at Peebles.

There is one part-time bar officer (grade SGB2) who is required only on those days that the court is sitting. That post is capable of being covered by the Selkirk bar officer (SGB2) on days when the court is sitting.

The administration of the court is currently handled by the Sheriff Clerk’s office in Selkirk, which will remain operational.

3.2 The court at Peebles sits on only two days per month, one of these days being for civil business and the other for criminal business. On those days the Sheriff travels to Peebles and Sheriff Clerk staff attend bringing the supporting paperwork.

On the criminal day, Peebles deals with custodies on behalf of all four Borders courts; on both court days, appointments are made for members of the public in respect of small estate interviews for assistance in completion of the forms, lodging and checking of small claim/summary cause summonses etc. General enquiries are also made at the court on these days.

Peebles Staffing Conclusion

3.3 Assuming that the part-time SGB post at Peebles were dispensed with and the work done by the existing SGB2 from Selkirk there would be no staff savings resulting from a closure of Peebles Sheriff Court.

4.00 The court building at Peebles
For illustration purposes photograph 1 shows the bar and bench in Peebles Sheriff Court demonstrating, it is suggested, a distinguished court room. It will be borne in mind that the principal use of this room is as a Council Meeting Chamber.

Photograph 2 shows the dock viewed from the bench

4.1 The building is, in part, a purpose built facility incorporating the local Police Office and holding cells together with a number of other Local Authority
functions. Prisoners do not require to be taken outwith the structure to enable them to be brought to the court room.

4.2 The Court room itself at Peebles doubles as Council Chambers for the remainder of the calendar month. The only court furniture is a dock which is mobile and is able to be, literally, rolled out for the one day per month when it is required.

4.3 The Court room is rented from Borders Regional Council. There are no maintenance costs.

The rent was paid in advance for something of the order of 20 years by an arrangement between SCS and Borders regional Council arising from a proposed closure of the original court building in Peebles. (See original submission for further details.)

(The foregoing information relating to the advance payment of rent was provided to me from within SCS; information emerging in the course of this consultation suggests that this information may not be correct but equally it may be that the book entries which are made in relation to the payment of rent are not actual cash debits but a formal reflection of what would be the annual recurring rent. That is a position which can be easily clarified.)

4.4 At para 3.60 of the consultation document it is said that “…provision for custodies is poor…” I do not understand that assertion; the custody arrangements are part of the police station which has appropriate holding cells.

For convenience I attach as Appendix A a specification of the existing facilities at Peebles Sheriff Court.

**Peebles court building conclusions**

4.5 There may be no building related savings which will result from the closure of the Court building at Peebles.

**An alternative Peebles proposal**

4.6 The proposal in the consultation document is that the work of Peebles Sheriff Court should be transferred to Edinburgh.

There is, in my opinion, a much more satisfactory alternative which I now deal with.

4.7 When the original Peebles Sheriff Court building was closed in 2004 the work of the court was transferred to Selkirk Sheriff Court. That work was “ring fenced” at that time and was still dealt with by a Sheriff travelling from Edinburgh.
Since 2010 when Peebles was brought within the work of Selkirk Sheriff Court all proofs and Jury trials emanating from Selkirk have been dealt with at Selkirk.

4.8 In is not uncommon that in the course of the routine Peebles civil or criminal court day business will be encountered which may require a continuation for any one of infinite reasons. Rather than continue the case for a month to the next Peebles court day I will commonly invite parties and their agents to consider whether it would be convenient to continue the case for, say, one week, to the next civil court at Selkirk.

Invariably such a proposal is welcomed.

4.9 Peebles public and agents have accordingly become accustomed to the business of their court being handled at Selkirk. The administration of Peebles Sheriff Court has been organised from Selkirk for many years.

It is a much more welcome arrangement than having to travel to Edinburgh.

4.10 In the event that my primary submission that Peebles Sheriff Court should remain open does not find favour, it would be my alternative proposal that instead of the business being transferred to Edinburgh it should be transferred to Selkirk.

**Peebles submission**

(i) the existing situation at Peebles is capable of being viewed as a highly efficient model for the provision of rural justice services generally.

There are no resident staff, the building is rented from the local authority and yet the existing arrangement enables a full range of court services to be provided to the population of Peebleshire.

(ii) In contrast, the proposed closure of Peebles Sheriff Court with the consequent proposed transfer of its business to Edinburgh will give rise to a number of significant and additional actual costs, some of which I specify below, together with a substantial order of inconvenience and expense both to the public and other agencies involved in the court process.

(iii) in the event that the foregoing submissions are not viewed favourably, the work of Peebles Sheriff Court should be transferred to Selkirk Sheriff Court.

(iv) For convenience I attach as Appendix B the report of the debate in the Scottish Parliament in January 2000 showing the views expressed on a number of aspects of the proposed closure at that time; there has been no material change in that situation.
5.00 Costs arising from the proposal to close Peebles Sheriff Court

5.1 The proposal is that Peebles Sheriff Court should be closed and its business transferred to Edinburgh Sheriff Court.

5.2 Police Costs

(i) In 2011 there were 138 Summary Complaints registered at Peebles: these involved the attendance of 111 accused persons.

The police witnesses involved in these cases have been able to continue with at least limited and, in many cases, full time police duties awaiting their call, if necessary, as witnesses in the court.

The police station is part of the court building.

The transfer of the business to Edinburgh can reasonably be asserted to result in the loss of a significant number police days and significant additional costs to the public purse.

To give but one example, albeit an exceptional case, the court this year dealt with one notable case in which there were nine local accused youths facing a number of, effectively, mobbing and rioting charges. The number of police witnesses was more than half of the number constituting an entire police shift for the whole Borders Division.

The consequences for that case being dealt with in Edinburgh would have been significant for police resources in Borders Region.

For information I append as Appendix C the result of an investigation which I carried out in September and October 2008 into police costs and attendance of police witnesses at Borders Courts. That showed that 32 police officers had given evidence in those two months and that the consequential annual expenditure for the Division at that time was £15,909. That figure would require to be multiplied a number of times if those officers required to attend in Edinburgh.

(ii) Witnesses and accused will commonly be persons in receipt of benefits; the cost and time of travel to Edinburgh from Peebles will inevitably result in a number of witnesses or accused simply not turning up giving rise to increased “churning”, court costs, and warrants requiring to be executed by police, and a consequential increase in custodies.

5.3 Domestic abuse cases and Family Cases will involve parties travelling to Edinburgh causing additional stress, delay and expense.
5.4 Drug Treatment and Testing Orders: below is an extract from my principal submission on the first part of the consultation:

“...Ensuring the attendance of the addict/subject is a vital part of the process; it is common that particularly in the early stages of such a regime that attendance at Treatment, Testing and Review appointments is problematic; such attendances are recorded on the Review Report and, along with attendance at the Case Reviews with the Sheriff, form an important part of the process.

There are many cases where I have terminated Orders by reason of failures to maintain this important part of the process.

Before the most recent reorganisation (Jan 2010) I was presiding over such cases in Duns, Jedburgh and Selkirk. Each of these cases was handled by a different area Supervising source.”

In the interests of brevity I do not repeat my whole submission in relation to DTTO’s but would invite that it be read into this addendum for its relevance.

5.5 It would appear to me to be inevitable at first sight, that transfer of Family, DTTO and all other court business to Edinburgh will have cost and resource implications for the Social Work Department.

5.6 Local solicitors will not be able to justify the routine expense of travelling to Edinburgh Sheriff Court for routine court appearances in both civil and criminal matters. This will inevitably lead to the additional instructing of Edinburgh agents as "local agents" for such appearances and will lead to additional expense in both legally aided and privately funded litigation.

6. Duns Sheriff Court

There is only one significant difference between the situations at Peebles and Duns, namely, that where Peebles is rented accommodation, the court room at Duns is owned by SCS.

Description of the court

6.1 It is necessary that there should be a clear understanding of the structure of the court itself.

The court room and a suite of four rooms (sheriff’s chambers, clerk’s room, jury room and witness room) is contained within the Borders Regional Council building in Duns. Similarly to Peebles, it is physically connected to the Police
Station where there are holding cells and secure parking along with a secure private route for prisoners being brought from custody.

6.2. In order to access the court room the only entrance is through the main door of the Council building. Visitors then access a main common staircase to the first floor where the court room is situated sharing that floor, corridors and staircase with other Local Authority accommodation. There is no rear or other access.

6.3. The result of this is that the court suite is realistically unsellable on the open market except to the Local Authority. They could not permit a third party business to have unrestricted access to their building. On an open market basis the court suite has, at best, a severely restricted value.

**Consequences arising from the nature of the courtroom**

6.4 The court sits on only two days per month. It was formerly four days but reorganisation of the business has resulted in the reduction to two days.

There are no resident staff, either PF or Sheriff Clerk.

The court is serviced by the sheriff and sheriff clerk travelling from Jedburgh with the court papers for the day’s business.

6.5 The court serves a sizeable landward area extending to the east coast; its jurisdiction extends 12 miles into the North Sea and, e.g. diving deaths, boatbuilding/repair etc issues are an occasional feature of its business.

It serves the whole of the County of Berwickshire and by reason of its proximity to English centres of population in the North East region of Northumberland has a greater proportion of cross-border issues than any of the other Borders Courts.

Eyemouth (pop. 3500) is the main centre of population.

6.6 The court deals with the full range of criminal and civil business including Family business and DTTO’s.

The travelling time from Eyemouth to Jedburgh is 1 hr. 9 mins (43.2 miles) at a cost of £10.70.

The travelling time to Edinburgh (49.4 miles) is 1 hr. 20 minutes at a cost of £10.70.

6.7 This is one of the courts where consideration is given to a boundary change to result in part of its business transferring to Edinburgh Sheriff Court (para:3.87page 46) where it is said “...Those in the coastal settlements to the
east of Edinburgh, down to the Border south of Eyemouth, may be better served by the journey on the A1 trunk road and east coast rail link to Edinburgh, than by a cross country journey on rural roads to Edinburgh.)

That proposal is, in itself, a recognition of the access to justice problems which will flow from the proposed closure of the court.

Reference is again made to the debate in January 2000 at Appendix A for some of the consequences flowing from the closure of Duns.

7. An alternative proposal

7.1 If the court suite at Duns was not in the ownership of SCS with all of the consequent maintenance and repair issues but rather, was able to become a multi use facility in the ownership of Borders Regional Council, in precisely the same way as the situation at Peebles, then it would be possible to continue to provide the full range of judicial services to a significant geographical area within the costs of maintaining Jedburgh Sheriff Court which is to remain open.

7.2 All of the other incidental additional expenses addressed under the heading of Peebles Sheriff Court would arise from Duns but to an even greater degree by reason of the distances and times involved.

7.3 I have already discussed this counter proposal informally with officials and members of Borders Regional Council. I understand them generally to be favourably disposed towards such a solution.

7.4 I would accordingly recommend that (i) SCS sells the court suite at Duns to BRC (ii) the sale price be returned to BRC in the form of advance payment of rent and (iii) that Duns Sheriff Court should remain open at no additional cost to SCS and providing (a) the existing judicial services to the population of Berwickshire and (b) significant savings in costs and efficiencies to police, Social Work and other agencies.

8.00 Peebles and Duns JP Courts

8.1 I have restricted my observations thus far to the shrieval functions at Peebles and Duns with which I am intimately familiar.

Within each of these courts a local JP Court also sits.

8.2 The current proposals would also result in the closure of the JP court functions in Peebles and Duns thereby removing even the most minor court business from the locality and requiring attendance at Edinburgh.
8.3 Bearing in mind that the longer term aim is to devolve work from the Sheriff Court to the JP Court it is my respectful opinion that it makes sense that the JP Court function should also remain locally based in Peebles and Duns.

Conclusion

It is respectfully suggested that the situation in the Borders provides material which supports the proposition at 2.43 ...that one size does not fit all and that we will need to find the right balance between achieving specialist centres and a network of smaller courts delivering local service. ...we will look to ...opportunities to share accommodation with other public bodies.”

Before any irrevocable decisions are taken in relation to Peebles and Duns those opportunities, including my own proposals mentioned above, should be explored and exhausted.

TAK Drummond
December 2012

Appendix A

In the interests of brevity and for the purposes of the digital copy only:


http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=4201&i=27276
Specification of facilities at Peebles Sheriff Court

Appendix B

Description of new facilities at Resolute Road

Phase 1 Development

- Two reception areas have been created. One to serve the court on sitting days and the other to provide access to the full range of SBC and SCS services on non-court days.
- A Sheriff's chambers providing access to the SCS computer network and library facilities.
- Striatal access to court room through hidden door in pendant.
- IT links on bench and into well of court.
- Mobile dock constructed to enable it to be removed for Council business as and when required.
- Crown and Defence witness rooms.
- Reception point for court days with IT and telephone points.
- Solicitors room.
- Interview / holding room.
- Disabled toilet.
- The court room is equipped with an electronic presentation kit. The cabinet is robust, 4' tall with lockable front door to contain the various components. Switching between input sources is very straightforward with clear push-button selectors on the front of the unit. The unit is mounted on castors so that it can be easily moved about for rotation between rooms although it may well be located permanently in one courtroom in a number of courtrooms.
- Video Cassette Player - The VCR player will display tapes in VHS, SVHS and MiniDV format now used by most of the 8 police forces including Strathclyde. It allows frame by frame display and slow motion replay using a remote control unit.
- Audio Tape Player - The audio tape player with audio cassette media player and optional minicassette media player.
- TV monitor - The TV is a Sony Flat screen that, when not in court use, is also used in the video conference facility.
- Amplifier - The amplifier has 60W / Channel 2 compact speakers.
- Additional display screens - The unit has three additional BNC connectors to allow composite video output to additional screens. It will also allow output to projectors and can be used to feed into current court display systems.

Video conference unit - This is equipped with state of the art equipment that is shared by the Justice partners and Scottish Borders Council but is primarily to allow public to video conference with a Sheriff Clerk in Edinburgh.

Phase 2 Development

Preparation being constructed to the rear of the Resolute Road building. Work is due to start on site early next month with a completion date towards the end of the current financial year.

MPA05101
LOTHIAN and BORDERS POLICE

MEMORANDUM

To: T/Ch Supt Gardner,
DHQ,
Hawick

From: T/ Supt 2852-G Fosyth,
DHQ,
Hawick

Ext/Team: 4433

Ref:

Date: 28th November 2008

Study of Time Spent at Court

I refer to Sheriff Drummond’s recent request for an informal short-term study to be undertaken of time spent by officers at all the courts within the Division.

The attached questionnaire was sent out by our RDU staff to all officers cited for court during the months of September and October 2008 in an effort to gauge both the number of officers cited to appear and the number of hours they spent at court, based on whether or not they actually gave evidence.

The two spreadsheets (one for September and one for October) which are attached, give a breakdown by individual courts of the raw figures involved. The following synopsis of the data collected over the two-month period is provided:

<table>
<thead>
<tr>
<th>Court</th>
<th>Total no. of officers cited</th>
<th>No. of officers who gave evidence</th>
<th>% of officers who gave evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jedburgh</td>
<td>63</td>
<td>12</td>
<td>19%</td>
</tr>
<tr>
<td>Duns</td>
<td>29</td>
<td>8</td>
<td>40%</td>
</tr>
<tr>
<td>Selkirk</td>
<td>37</td>
<td>9</td>
<td>24%</td>
</tr>
<tr>
<td>Pooles</td>
<td>24</td>
<td>3</td>
<td>13%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>144</td>
<td>32</td>
<td>22%</td>
</tr>
</tbody>
</table>
It should also be noted that there are considerable financial implications for the Division in terms of backfill costs for those officers required to attend court and this expenditure can vary depending on the amount of notice given. In relation to the two-month period under review, the following costs were incurred by the Division:

<table>
<thead>
<tr>
<th>Month</th>
<th>Cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 2008</td>
<td>£2,133</td>
</tr>
<tr>
<td>October 2008</td>
<td>£2,679</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>£4,712</strong></td>
</tr>
</tbody>
</table>

To date, the total spend for the current fiscal year is £15,909

For your consideration.

[Signature]

Doug Forsyth
Tr/Supt