Justice Committee

Scottish Court Service recommendations for a future court structure in Scotland

Written submission from Haddington Citizens Advice Bureau

1. What will be the local impact of the SCS’s recommendations on access to justice?

Haddington CAB provides an in court advice service at the Sheriff Court. The project is funded by the Scottish Legal Aid Board under their increasing access to justice agenda.

The project employs 1 full time In Court Adviser with part time admin support. Following an extremely positive evaluation of the service, SLAB increased the funding to enable us to employ a full time Debt Adviser for the court service, also making up the admin support post to full time equivalent.

The main impact therefore from the CAB perspective is that it is unlikely, if there is no longer a court in Haddington, the Scottish Legal Aid Board will continue to fund an In Court Advice Project in East Lothian with the resultant loss of 4 jobs.

The SLAB evaluation findings included:

“A high volume of clients has been assisted by the project, demonstrating the project has succeeded in providing a valuable service to clients at threat of eviction from their homes, experiencing debt issues or seeking redress for small claims disputes. Key to this project has been the emphasis on resolution of disputes prior to court action through negotiation with local housing agencies and helping clients with financial matters. Where clients appeared at court unrepresented, the project adviser was able to offer support and guidance, ensuring access to justice and improved court process.”

The perception might be that, if the service is centralised, the local Edinburgh CAB would do this work. However, while Edinburgh CAB may currently have an in court representation service, it cannot be assumed that they will be either resourced or prepared to take on the early intervention/casework for people who don't live in their catchment area? CAB are funded by the local authority and most areas only provide casework services for people who live (and in Haddington only’s case, or work) in the area.

Without these posts, CAB in East Lothian would not have the capacity or expertise to provide a casework service for clients facing court action. Court representation is not just about the “on the day/s” of the court hearing but, for the majority of our clients facing court action, about the intensive negotiation and dialogue with the other parties.

This will result in reducing access to justice.

The Home Owner and Debtor Protection Act was introduced by the Scottish...
Government to increase access to justice, to give people an opportunity to appear at
court and defend the action and to assist in prevention of homelessness. The
legislation included formalisation of lay representation.

The decision by the sheriff in whether to grant decree in repossession cases is
determined by the reasonableness test and a sheriff who is not familiar with East
Lothian might take a different view as to what is or is not reasonable and have less
knowledge and understanding of the characteristics of the local community.

The business model of Livingston is often cited as the centre of excellence by the
Minister and the SCS, however, although the building in Haddington is not as new as
this, there is a structure where local organisations are working effectively together.
There would be additional costs on all the services if all the court business is
transferred to Edinburgh, with a genuine concern that many services would be lost or
seriously reduced as the cost and time of travelling to Edinburgh would not make
services viable in this period of reduced budgets.

2. What will the local impact be on court users of the SCS’s recommendations?

Attending court for the majority of clients that we see is a frightening process. Due to
fear of the court process many people find it difficult enough to attend their local
sheriff court. If residents of East Lothian have to appear at a busy city centre sheriff
court there is a genuine concern that there will be a significant number of our client
base simply not appearing. The impact of this will be more repossessions resulting in
families being made homeless and increased costs for the homelessness services. The
Scottish Government quantified the cost to local authorities of rehousing homeless families as £15,000 in 2009 (Code of Guidance in Homelessness). Anecdotal information reports this has increased to between £25,000 to £30,000.

Haddington Citizens Advice Bureau believes the priority must be to protect Scotland’s vulnerable and low income citizens from the worst consequences of unprecedented welfare benefit and public funding cuts. Reducing access to justice through the closure of Haddington Sheriff Court will further disadvantage the most disadvantaged in our community.

We have included separately case studies of two clients of the CAB In Court Advice
Project together with feedback from another client. This evidence is indicative of the
many vulnerable clients who would have major issues attending not only the local
court but a centralised court together with an insight into the worry individuals have
who have no experience of the court process.

Our CAB office is directly opposite the court in Haddington. Daily we see the
high numbers of people going in and out of the court (and the many standing
outside!) and, given these numbers, it is disappointing that the offers from
East Lothian Council to SCS to retain the court service in the community have
not apparently been accepted.

While we can continue to dispute the rationale for the closure and particularly
the basis of the costings and time of travel it would sadly appear that the
consultation was a paper exercise with the decision having already been made, the outcome being that the court service convenience will be everyone else in East Lothian’s inconvenience.

Anne Hastie
Manager
Haddington Citizens Advice Bureau
16 May 2013
CASE EVIDENCE 1

Key Issue
Court action had been raised relating to a £10k loan with a Bank. The defender was unfit to appear due to her health problems but her friend attended on her behalf. The sitting Sheriff referred the case to the Project and granted a 4 week continuation to enable the In Court Adviser (ICA) to contact the client and provide assistance.

Profile:
Client is a single female, 67 years old, suffering from terminal cancer with multiple debts. Her income consists solely of State Retirement and a small occupational pension.

Key facts:
The debts were incurred due to her inability to meet her commitments because of her illness. Due to her medical condition, client is house bound and lives in a mobile home on a rural site. As her mobile home was purchased on hire purchase she was very worried that she would lose her home if decree was granted against her.

The Adviser contacted the client and arranged a home visit accompanied by the Admin Support Worker as the client was vulnerable. Established that client had entered into arrangements with a Debt Management Company the previous year paying them an upfront fee and monthly administration charges to manage her debts but had been given no advice on her options.

The Adviser explained her options to deal with her debts and also explained the court process and consequences of decree. The client decided to be sequestrated (bankrupt). On a further home visit, the Adviser assisted client to make a Low Income Low Asset bankruptcy application and assisted with completion of Forms to verify her income.

The Adviser represented client at Court and, due to the sequestration, the creditor is not able to enforce the debt.

Outcome:
The client has received help at an early stage which has reduced adverse impacts on her [already serious] health condition and improved her well being through removing the worry of her losing her home. The CAB is assisting client with arranging access to a basic bank account and arranged for the CAB Outreach Adviser to visit the client to complete an Attendance Allowance application under the Special Rules (terminal illness) which would increase her weekly income to help with her heating and other costs.

CASE EVIDENCE 2

Profile:
42 year old, single female, with severe mental health issues. Working part time and in receipt of Working Tax Credit.
Key Issue:
Repossession action calling at court and Mortgage to Rent (MTR) application was rejected as the valuation of the property was deemed £1500 above the government’s set criteria.

Key facts:
The property was purchased in 2007 but, due to periods of unemployment caused by a deterioration in her mental health condition, the client has not made payment to her mortgage or secured loan for over 15 months. The client was unaware that she could apply for benefit.

Client wishes to remain in the property and has no other option to prevent the repossession apart from selling the property but, as there is minimal equity in the property and if it were to be repossessed, it is likely the client would have to present herself as homeless to the Local Authority.

Client is being assisted by CAPS, a mental health advocacy service; East Lothian Council Homelessness Team; and Musselburgh CAB (regarding unsecured debts) and was referred to the In Court Adviser for advice and representation.

Both Musselburgh CAB and client’s local MSP requested that Home Owner Support Fund (HOSF) reverse their decision based on the client’s medical condition however they responded stating that they did not consider the client to be disabled nor to meet the criteria for Mortgage to Rent.

Action:
The In Court Adviser (ICA) represented the client at the first hearing and, having secured the agreement of the main lender to allow the Mortgage to Rent application to proceed, the Sheriff agreed to sist the court action.

ICA contacted client’s doctor to request additional medical evidence highlighting the potential impact on the client if the property were to be repossessed.

Letter sent to HOSF along with additional medical evidence requesting that her MTR application be reconsidered and outlining her medical condition, provided a definition of the meaning of disability under the Equality and Disability Act 2010 and demonstrated that there was a clearly established link that if the property was repossessed it would be severely detrimental to her mental health.

HOSF agreed to waive the eligibility criteria as they accepted the medical evidence established that client has a substantial and long term adverse effect on her ability to carry out normal day-to-day activities.

ICA negotiated with the mortgage lender and represented client at court.

Outcome:
The joint working between CABx and other agencies resulted in prevention of repossession.
The Mortgage to Rent application was successful with East Lothian Council purchasing the property.

Musselburgh CAB Money Adviser praised the In Court Adviser for his assistance "He wrote a fantastic letter to HOSF which changed their minds".

Users of the Court come from all walks of life – the following letters demonstrate the concern about using the court process when not "versed in any matters legal" and the value that citizens place on the availability of the In Court Advice Service.

Letter of thanks from In Court Advice Project Client

Dear Anne

How nice to meet you when I came into the Bureau before Christmas to catch up with Christopher Meaden. You will be aware that I originally contacted the Bureau on the advice of the various friends I have in East Lothian – a county to which I make regular visits. As my problem involved a trader in the County I was keen that it should be dealt with locally if at all possible.

Since my first visit I have become very aware of all the services that your volunteers offer and the fact that any member of the community can take advantage of that advice and help free of charge. This is an incredibly valuable service for the community to have.

A particularly valuable part of the Bureau service is the legal advice and ongoing support that is available. On this I have first hand experience and Christopher Meaden has been very supportive in explaining the various options that were available and subsequently putting them in place. I would have made very little progress on the matter in hand without his support.

I am aware that the Bureau is a charity which operates with a large amount of government grants – none more so than through the Scottish Legal Aid Scheme where support is renewable annually and is required to maintain Christopher in his position with you.

It would be a great loss to the community if through lack of funding free legal advice and support was no longer available through your organization. As a grateful recipient of those services and on behalf of those at the HCAB I have therefore written to local MSP Iain Gray asking for his continued support. A copy of my letter is enclosed.

Meantime I wish you and all your team a Happy and Successful New Year. Many thanks for all your support - I hope that many others will continue to benefit from your very necessary services to the community.

Yours sincerely