Introduction

1. I welcome this opportunity to submit some initial thoughts on the Scottish Court Service’s “Shaping Scotland’s Court Services” report.

2. As a layperson I do not intend to make a detailed response to each recommendation as I believe that there are those within the Scottish legal system better qualified to do so.

3. That said as an ex police officer and now justice campaigner I have a valuable insight into the workings of our justice system and our courts and believe that great care must be taken to ensure that any changes do not result in lower standards and an increased threat of miscarriages of justice.

4. In effect, I want to go behind the two questions posed in relation to the local impact on access to justice and on court users and argue that much requires to be done before legitimate answers can be given and recommendations implemented.

Discussion

5. As my submission makes clear I see no sense in examining court structure in isolation. Changes in one area inevitably have a knock on effect elsewhere in the system. My general concerns therefore relate to the twin issues of Sheriff Court closures and the plans to divert certain High Court business to the lower courts.

6. They also relate to the effective administration of both civil and criminal business because in the Sheriff Courts both are intimately related.

7. I would in fact go further and say that other changes within the criminal justice system such as the abolition of corroboration cannot be isolated and must also be taken into consideration. In short an holistic approach is required and frankly I see little evidence of it.

8. This call for submissions comes at a time when I was about to launch a request via the Scottish Government’s Justice Analytical Services Division for statistics on certain aspects of the criminal courts operation (see Para 13 below) and I recommend that the Justice Committee cause this enquiry to be made as part of its overall review.

9. For the purposes of this submission however I will bring together some information I have gathered from personal experience and trusted sources. I have spoken to Sheriffs and those working in the courts as part of my assessment. My
conclusion is that many Sheriff Courts are already struggling to cope with the present workloads.

10. Over 20 years ago, as a Police Superintendent, I carried out some research which showed that the level of time wasted by police and other witnesses at court was far greater than officially admitted and represented a serious waste in financial and police manpower terms. Despite claims to the contrary over the years it appears little has changed.

11. My current enquiry among those working within our courts system has identified a number of issues which cause me grave concern.

- Workload and maladministration issues and unrealistic ‘plea bargaining’ are leading to ‘the pen being put through’ hundreds of cases.

- Waiting times are adhered to by calling cases and then adjourning them. As was uncovered with hospital waiting lists this allows targets to be achieved. Worryingly this appears to apply to some Domestic Abuse cases.

- Prosecution and defence lawyers still appear unprepared for cases having left case preparation until the last minute.

- Day after day witnesses and jurors are turning up at court only to be sent home because some aspect of their case is not ready.

- Witnesses including vulnerable ones have to return to court time after time as their cases do not proceed for one reason or another.

- Information previously in the hands of court officials which would allow witnesses to be countermanded is not being passed on until the witnesses are in court.

- Ineffective precognition of witnesses is leading to their turning up at court unable or unwilling to give reliable evidence or speak to the testimony already passed onto the police or PF.

- Late pleas even on the morning of sentence are earning a reduced sentence as if they had pled guilty at an intermediate diet. There is no incentive here to save court time.

- Unrealistic pleas are being accepted to save court time.

- Because of inefficient administration victims of domestic abuse are having to return to court and relive the trauma of facing their abusers yet again.

- Remarkably given the level of mismanagement claimed complaints appear to be relatively low. A suspected unforeseen consequence of this inefficiency however is an apparent increasing reluctance by people to ever identify themselves as witnesses again.
12. If these claims, or even some of them, are valid then this points to a court administration service already under severe pressure being expected to cope with the increased workloads which appear inevitable under the proposed changes. They also carry with them the possibility of statistical manipulation or misrepresentation in a system so patently under pressure.

13. It appears to me to be an exercise in futility to embark on structural and workload recommendations without having detailed statistics on, and an awareness of, how effectively the present system is operating.

14. Do statistics exist on the issues reviewed above and if not why not? I am not even aware if there are accurate statistics on the Sheriff Court current workloads. Even if there are, what is their value without statistics on, and an understanding of, the issues raised above?

**Conclusion**

15. While a strong supporter of change I fear the justice system (yet again) is embarked on half thought out measures which coming in the wake of changes in corroboration, double jeopardy etc does not bode well for justice.

16. Only last week in one Sheriff Court in Scotland, on one single day, only one of 7 cited trials started and dozens of police and civilian witnesses and jurors were sent home. The next day there were no trials cited. This pattern had apparently been repeated many times. In the same court recently an unwell witness travelling from England tried unsuccessfully on a number of occasions to ascertain if the trial was going ahead. When he appeared in court he was told to go home as the sitting had been adjourned some time previously. Worryingly it appears as if such incidents are in no way unusual.

17. The issues I have highlighted affect justice in this country and no-one in the system appears willing or able to do anything about it. Closing courts and transferring workloads will only serve to exacerbate an already critical situation. The overall consequence of this is a system which is extremely inefficient and arguably in meltdown in some areas.

18. Further enquiry is obviously urgently needed before such fundamental changes are agreed to. Should the court services publish statistics which prove my fears to be groundless then I will be the first to apologise however if change takes place without a detailed understanding of current workloads and their severe impact on service delivery then it is for others to apologise.

19. What is certain, however, is that reform on the scale envisaged should not proceed without these statistics being available and their veracity investigated.

Iain AJ McKie
20 May 2013