Justice Committee

Scottish Court Service recommendations for a future court structure in Scotland

Written submission from Lovedays

I am responding to your Committee’s invitation to give our views on the proposed reform of Scotland’s Court Services; and in so doing I enclose herein a copy of the response which I submitted to the recent consultation.

The core of what I say in my response is founded on my experiences of having attended, as a Party Pursuer, Sheriff Courts in the Borders on many occasions over many years, including my fairly recent attendance at a Preliminary Hearing in Duns [the Defender being a resident of Eyemouth] at which, to my surprise, the Trial Hearing was listed to be heard not at Duns but at Jedburgh - a Listing which caused me to be, and to still remain, of the opinion that it had been ‘rigged’ in favour of (the figures for) Jedburgh Sheriff Court and against (the figures for) Duns Sheriff Court [see the third paragraph of my Response].

My name is Edwin Sutherland-Loveday and I apologise for responding in this format rather than in the preferred format that you have provided in your Consultation Response Form but my/our response, which you may publish, does not fit ‘comfortably’ within the format that you have provided. Nonetheless, I trust that it meets Lord Gill’s requirement of being constructive.

I own and run a business - Loveday’s - in Berwick-upon-Tweed which (although its Offices are not within the Scottish jurisdiction) owns and rents out properties in various towns within the Scottish Borders and as such I have for well over 20 years been involved in many Cases, usually Small Claims but also Summary Cause, as a Party Pursuer in the Sheriff Courts in Duns, Jedburgh, and Selkirk.

Before going further I refer to the fact that, as an argument for its closure, Duns Sheriff Court is stated within the Consultation document as having heard only 204 Civil Cases during the Year 2011/2012. Is this, I wonder, correct ? Within the Year 2011/2012 I was a Party Pursuer in a Small Claims Case the Preliminary Hearing of which was, because the Defender lived in Eyemouth in Berwickshire, held in Duns in Berwickshire, held in Duns in Berwickshire but its Trial Hearing was listed not for Duns but for Jedburgh in Roxburghshire [a 64-miles 'round trip' (by car) from Duns at a fuel cost (as calculated on 30 November 2012 by Googlemaps) of £16.26 for each Party]. So, one wonders, have Jedburgh’s Civil Caseload figures been perhaps ‘adjusted’ to also include Cases that, in previous years, would have been heard in Duns ?

Insofar as your proposals are concerned, I have three main concerns:

1. To quote from Golder v UK (1975) 1 EHRR 524, ECHR, para 35 “The principle whereby a civil claim must be capable of being submitted to a judge ranks as one of the universally recognised fundamental principles of law; the same is true of the principle of international law which forbids the denial of Justice”.

1
For many Pursuers, certainly Party Pursuers, the capability to submit a civil claim to a Sheriff is often determined by such as the (a) (usually at least two lots of) costs incurred in travelling to and back from the Court, (b) (usually at least two lots of) loss of wages incurred in taking time off work, (c) (usually at least two lots of) costs such as parking fees, and (d) by ‘familiarity’ with/fear of the environment in which the Court is situated (for instance, there is a vast difference between (i) the quiet Border Town of Peebles with its 8,000+ inhabitants and (ii) the bustling, and intimidating to many, City of Edinburgh with its near 500,000 inhabitants), and also by (2) the costs of Court fees, Sheriff Officer fees, and other expenses necessarily incurred including, where Small Claims are concerned, the non-recoverable funding of, should the Pursuer feel that he/she needs it, legal advice. These are, even with the existing Sheriff Court structure, often too much for Pursuers to ‘fund’ and thus (a) many justifiable Cases are never commenced and (b) many would-have-been Defenders thus gain an unjustifiable benefit. Therefore to require Pursuers (a) to have to travel even further than they currently have to in order to access a Court - an extra 64 miles where the transfer from Duns to Jedburgh is concerned and an extra 50 miles where the transfer from Peebles to Edinburgh is concerned, (b) to thus have to take even more time off work, and (c) to have to pay, as doubtless would be the situation were Hearings to take place in Edinburgh, even greater non-refundable legal costs will cause yet more Pursuers, Party or otherwise, to abandon the idea of seeking to obtain that to which they are lawfully entitled thereby denying to them their universally recognised fundamental principle of law Right, as determined in Golder v UK (1975), to have their civil claim submitted to a Sheriff for determination.

2. (a) We live in an age wherein it is possible/likely that the economies of all the constituent parts of the UK will, at least for the foreseeable future, get weaker and weaker. Thus unemployment will increase as will lack of money. Running alongside these scenarios are the facts (1) that peer pressure to obtain unnecessary, and often expensive if not very expensive, items is a constant burden suffered by many children, teenagers, parents, and others, (2) that gambling, usually becoming addictive, is increasingly put forward (by means such as the National Lottery and highly persuasive television advertisements promoting electromechanical gambling machines) as a possible quick fix means of solving money problems, and (3) that attractive to many (seemingly as a means of temporarily escaping/avoiding reality) are the unlawful use of controlled drugs and the overuse of lawful substances such as alcohol. Thus crime, from the minor to the major, is more than likely to increase and to envelope a much wider spectrum of Society than it currently envelopes; and crime, although usually regarded as being the province of Criminal Law, also operates within the province of the Civil Law - For there is little, if any, difference to the sufferer between the person who steals from him by snatching money from a till draw and running off with it and the person who steals from him by not paying his bill for something the value of which is the same as that which was snatched.

[Another 'by-product' of a nation suffering from a worsening economy is increasing stress suffered by its citizens which often manifests itself in violence - violence meted out to partners and friends, violence meted out to complete strangers in pubs and in the streets, violence meted out in such as road rage, violence meted out to those such as ambulance and hospital staff who are only trying to help, and so on. Even when verbally communicating people often adopt an aggressive attitude which in itself causes others involved in the conversation to become aggressive.]
(b) In 1961 when Gordon Stott, who subsequently became Lord Advocate in 1964, was appointed the Border’s Sheriff it was, to use his own words, "a Sherifffdom which involved very little work", and this was the situation which Sheriff James Paterson took over from Stott in 1963: But 37 years later, in 2000, when the current Sheriff, Kevin Drummond, took over from James Paterson "very little work" was a very distant memory. So, after 12 years since the year 2000, during which even the pillar of Society, its Justice system, feels itself being rocked by the financial pressures which increasingly envelope the nations of the UK and their citizenry, is this really the right time to even consider getting rid of Duns' and Peebles' Sheriff Courts or should we not instead be ensuring that, even though other things might suffer and fall around us, the Right of each of the Peoples of Berwickshire and of Peebleshire to access their respective Sheriff Court in order to submit a civil claim for determination remains as sound and as respected as ever? For, whilst when viewed from within the Court Service the removing of Sheriff Courts might seem to be a financially attractive option insofar as the dispensing of, both civil and criminal, Justice are concerned, when the pressures currently building-up in the rest of Society are brought into the equation the removing of Sheriff Courts would appear to be an option that should not even be considered.

3. (a) Insofar as Specialised Courts are concerned: We live in an age of, throughout Society, increasing pigeonholing wherein which things that were once an entity in themselves are now - often purely because "that is the way that things are done nowadays" - divided and divided further with each division and sub-division becoming, or eventually becoming, a specialism in itself and with each division and sub-division eventually requiring, or seeming to require, its own expert each of whom, certainly within a legal framework where representation is the norm, requires a representative. In other words, pigeonholing creates 'empire building' and empire building is both expensive, if not very expensive, to fund and time-consuming to operate, moreso in an adversarial system of conflict resolution. Is that really what is wanted or should the Court system not seek, wherever possible, to retain 'simplicity' and only resort to specialism where specialism is genuinely needed?

(b) Solicitors often refer to Advocates for Advice even though that Advice is readily, and freely, available to the Solicitors via their own Law Libraries (electronic, CD, or otherwise): And once one Party has involved an Advocate it is likely that the other Party will also involve an Advocate thereby giving the impression that, what in reality is a relatively simple matter that requires commonsense to resolve, that which is before the Court is a matter of some complexity which thus requires to be determined by someone who is a 'specialist' in the matter which is the subject of the dispute.

There will, of course, be occasions when debates involving detailed specialist knowledge will be essential in which event referral to determination by a Judge with specialist knowledge of the subject being debated should be able to be undertaken should both Parties require it: But to deliberately create a system that encourages/causes disputes to go before a Specialised Court regardless of the fact that those disputes can be resolved by the use of commonsense debates before Sheriffs such as those who currently operate within the Borders Sheriff Courts will add considerably to the costs, direct and indirect, of such litigation, will add
considerably to the stress put upon litigants, and will thus doubtless cause many a justifiable civil action to never take place - And that will be in opposition to that which Golder v UK requires of the Scottish Court system ["The principle whereby a civil claim must be capable of being submitted to a judge ranks as one of the universally recognised fundamental principle of law; the same is true of the principle of international law which forbids the denial of Justice."].

E Sutherland-Loveday
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