Justice Committee

Scottish Court Service recommendations for a future court structure in Scotland

Written submission from Traprain Consultants Ltd

Summary

- Cost savings may be illusory or overstated.
- Access to justice is removed from substantial areas of rural Scotland
- While the courts may only cover 5% of the total case load in Scotland, they cover 100% of the case load in their own areas.
- Closure of adjoining courts (e.g. Haddington and Duns) leaves large parts of the country without any cover for the provision of criminal or civil justice.
- Removal of the court system may prevent businesses and individuals from enforcing their rights to civil justice on an economic basis.
- Closure of sheriff courts appears to run counter to other proposals to move more civil business from the Court of Session to the sheriff courts.

Submission

It is recognised that the provision of sheriff court services within Scotland cannot remain set in stone, and that services should be provided which are appropriate to the requirements from time to time, and are delivered in as economic a manner as possible. For this reason it is not suggested that there should be no change to the provision of sheriff court services.

However, the concern is that the number of closures anticipated could lead to significant parts of the country not having acceptable levels of access to justice. The report produced does indicate that the closures only relate to 5% of the business in sheriff courts in Scotland. It is accepted that this is probably true, but rather misses the point. Our local Sheriff Court at Haddington, for example, provides 100% of the Sheriff Court Services in East Lothian, and any calculation based on volume of cases will be swamped by the fact that Glasgow Sheriff Court is regularly stated to be the busiest court in Europe, and possibly distorted by the volume of criminal business in some courts.

My company and I rarely have cause to use the sheriff courts, but this representation is made because it is felt wrong in principle to close so many sheriff courts at around the same time. This is particularly the case when the current civil justice reforms propose that a greater volume of civil work should be moved from the Court of Session to the
Sheriff Court. I support this position, but to couple that with actually closing the Sheriff Courts in a number of areas seems rather to defeat the exercise, and is taking place before the new Civil Justice Council has held its first meeting.

In the area where I live, and my company is based, the closure of the courts at Haddington and Duns will mean that there is no provision of civil or criminal justice between Edinburgh and the English border. It is noted that the business in Duns is to be moved to Jedburgh, but the list of potential specialised Sheriff and Jury Courts in the longer term does not include Jedburgh, and appears to suggest that the only Sheriff and Jury Court south of the central belt will be at Dumfries. It might have been that companies in the Borders Region could have solved this problem by making their contracts subject to English law, and giving jurisdiction to the Berwick-Upon-Tweed County Court. Unfortunately, it is understood that the Berwick Court has now been relocated to Morpeth, and accordingly, there is probably a distance of over 100 miles down the A1 in both Scotland and England where no court services are provided.

I do not feel able to comment on the impact on the criminal law in any particular detail, save to say that the amount of additional travelling time and costs for parties, witnesses and lawyers will have to be borne by somebody and it would appear likely that this will either be the legal aid budget, or the individuals concerned, who will therefore have to subsidise the relocation of Sheriff Court services into the Central Belt.

On the civil side (which is the area where I have more interest) companies in East Lothian and the Borders will now have no access to any court to provide remedies in civil matters but will have to travel to Edinburgh to an already overstretched Sheriff Court, which seems likely to be overwhelmed by the level of criminal cases that have to be heard, to the possible detriment of the civil courts.

It may be that a possible solution is the provision of Alternative Dispute Resolution services in locations such as Haddington and Duns, where courts are being closed, but this will require civil users to be prepared to pay for commercial arbitration or mediation, in the latter case without the certainty of a decision, when they are already providing taxes to pay for a court system.

It is accepted that every area will be unhappy about having its local court closed, and that it is unrealistic to expect that all courts can remain open. However the situation in the south east of Scotland is particularly severe, and the closure of two adjoining courts (Haddington and Duns) does seem to be unreasonable. The relatively poor communication links in parts of the Borders will make it particularly difficult for anybody wanting to access justice to do so.

We would urge that consideration be given to modifying the current proposals perhaps by providing good quality video links to the main Sheriff Courts (e.g. Edinburgh) and/or at least some basic office facilities for lodging papers, paying fees or fines etc.
The current financial savings claimed also need to be carefully examined. Unless the court buildings can be easily re-used (which seems relatively unlikely) then the capital, security, insurance and maintenance costs associated with those buildings will continue, at least to some extent. Also, where buildings are leased, the savings will only be achieved if the landlords are prepared to allow the lease to be terminated, which in the present climate is not very likely. Staffing levels are unlikely to achieve major savings on the basis that the total volume of business will not change, and therefore while there may be savings in the regional courts, these will be balanced, at least in part, by additional staff being required (presumably at higher salaries) in the city centres.

Peter Foreman
Traprain Consultants Ltd
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