Justice Committee

Scottish Court Service recommendations for a future court structure in Scotland

Written submission from the Faculty of Advocates

1. The Faculty of Advocates is the independent bar in Scotland. Advocates contribute significantly to the quality of legal advice and representation throughout Scotland. By virtue of the cab-rank rule, all advocates are available for instruction to appear in any court in Scotland on behalf of any client. The Faculty responded to the Scottish Court Service consultation, including the proposals in relation to High Court business. In this response the Faculty focuses on the particular questions asked in the Call for Evidence.

2. A properly funded system of courts, accessible to the public, is an essential characteristic of a society governed by the rule of law. The Faculty does not offer evidence on the proposals to close specific courts but it does make the following general observations. If local courts are closed, those who have to attend the sheriff court are liable to incur additional cost and inconvenience, particularly where public transport is limited. Particular difficulties may be experienced by the disabled, the elderly and persons with family and other commitments which require to be accommodated around attendance at court. Many of those who require to attend criminal trials are of limited means – but attendance at court may be required on several occasions: the accused, for example, may have to attend a pleading diet, intermediate diet, trial diet, sentencing diets; and others may have to attend more than once if a trial is adjourned.

3. If a case is being heard at a location which is reasonably convenient to witnesses, they can be put on standby and continue with their daily activities, to be called in when required. If the case is heard more remotely, there may be no choice but to have all the witnesses who might be required attend court and wait. This imposes greater inconvenience on the witnesses concerned, and also requirements as regards the accommodation of witnesses at the courthouse.

4. Travel difficulties may have an adverse impact on the administration of justice. All that is needed to delay the start of a criminal trial is for one of the key participants to miss the bus. Separately, in areas with limited transport options the accused (if on bail), the complainer and witnesses, as well as their supporters, may all travel on the same bus, with a risk of confrontation or interference with witnesses.

5. The proposed concentration of non-summary business to sixteen identified centres (only three of which are outside the central belt of Scotland) would, for parts of rural mainland Scotland, pose particular challenges. By way of illustration:
   (a) a case from Thurso which required to be heard in Inverness would involve parties and witnesses in a 109 mile trip (taking almost 2 1/4 hours) each way;
(b) a case from Fort William, which required to be heard in Inverness would involve parties and witnesses in a 65 mile journey lasting 1 1/2 hours each way;
(c) a case from Hawick which required to be heard in Edinburgh would involve the parties in a 55 mile trip, taking 1 hour 20 minutes, each way;
(a) a case from Stranraer which was tried in Ayr would involve a 50 mile trip lasting 1 ¼ hours each way (or longer if the case was tried in Dumfries).

None of these illustrations (which are taken from Google Map) takes account of difficulties presented by public transport or of particular difficulties which might be experienced in the winter months in some parts of the country. It is evident that this aspect of the proposal would have an adverse impact on the accessibility of justice in rural parts of mainland Scotland.

6. This aspect of the proposals has other potential consequences. It is likely to deprive citizens in some parts of Scotland of the opportunity to participate in jury service. It may make it even more difficult for solicitors outside the designated centres to attract good quality staff, with a knock on effect on the provision of legal services in rural areas. Unless there is a capital investment programme increasing the number of courtrooms at the designated centres, these courts may become more congested, and the ability of the system to achieve the statutory time limits in criminal proceedings may be compromised.

7. The Court Service recognizes that the achievement of its longer term vision would require significant investment: para. 1.9. It proposes that this aspect of the proposals should be "progressively introduced over a period of ten years, being dependent on the deployment of sheriffs and summary sheriffs, sufficient court capacity and the use of video and other communications technologies in court proceedings; and are subject to any opportunity emerging to realize our longer term vision of purpose built justice centres": p. 11(d). It is particularly important to note these qualifications, not least because other proposed changes to the justice system make it difficult to predict future levels of court business.

8. The Faculty welcomes any proposals which would improve the conduct of business in the sheriff court. The current position is unsatisfactory. Criminal trials in the sheriff court are often adjourned on more than one occasion with the result that witnesses and others have to attend court more than once. The Appeal Court recently considered the procedural history of a criminal case from Livingston Sheriff Court in which the trial diet had been adjourned five times because of lack of court time. It is not unusual in the sheriff court for a civil proof to be dispersed over a number of separate hearings, adding to the time and cost of the case.

9. The proposal to restrict non-summary business to the sixteen designated centres is linked to proposals in the Civil Courts Review for shrieval specialization. A "one size fits all" model is not necessarily appropriate for a country as diverse as Scotland: structures of shrieval specialisation in designated centres which might work well in the central belt are not necessarily appropriate for the more dispersed populations of rural mainland Scotland. It appears to be accepted that a different
model is appropriate to Scotland's island communities - which will presumably be served either by a resident sheriff with general jurisdiction or, as required, by visiting specialist sheriffs. Similar flexibility should be considered for rural parts of mainland Scotland. It may be that, where the case merits it and it would be convenient to the parties, a specialist sheriff could travel to hear a case in one of the outlying sheriff courts. Or it may be that some areas should continue to be served by a resident sheriff exercising general jurisdiction.

Faculty of Advocates
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