Justice Committee

Scottish Court Service recommendations for a future court structure in Scotland

Written submission from Scotland's Commissioner for Children and Young People

Thank you for the opportunity to comment on the Scottish Court Service recommendations on a future court service. My answers will focus on the impact that I see these reforms will have on children and young people, particularly those affected by domestic abuse. This is a key priority area of work for my office, following ‘A Right Blether,’ the extensive consultation I held with children and young people in 2011.

I am curious as to whether an Equality Impact Assessment (EQUIA) has been undertaken by the Scottish Court Service following its consultation and before the production of its recommendations and I have written to them to seek clarification. I have also suggested that they consider undertaking Children’s Rights Impact Assessments as a matter of course when considering changes to policy and practice. Many of the recommended changes outlined in the Scottish Courts Service Reform proposals (both in terms of the future court structure and wider courts reform) will have a direct impact on some of Scotland’s most vulnerable children and young people, but I see little evidence of how this impact has been assessed.

I fully understand that the Scottish Court Service is under considerable budgetary constraints and that difficult decisions need to be made. I would argue however that it is at times such as these that we must be particularly careful to ensure that those most vulnerable are not disproportionately affected. Access to justice is an important children’s rights issue, enshrined in both domestic and international law and great caution must be exercised to ensure that this is not compromised in the pursuit of savings. Closures on this scale are inconsistent with the Government’s stated commitment to widening access to justice and the overall savings may be insignificant.

Children’s Rights Impact Assessment (CRIA).

In its 2008 Concluding Observations on UK compliance with the Convention, the UN Committee on the Rights of the Child stressed the importance of conducting Children’s Rights Impact Assessments (CRIA) as a useful aid to implementation. When I provided evidence to the Committee on the Victims and Witnesses (Scotland) Bill, I suggested that the Committee commission a CRIA on the proposals. My office provided a CRIA for your perusal and I trust that the Committee have found this to have been of interest. As I noted then and reiterate in this response, children are largely excluded from the decision making process and have limited advocacy powers, except through adults. I believe a CRIA will help make the child’s perspective more visible and ensure that their views are taken into account in decisions affecting them.

I note that there has been limited consultation with families and local communities in this restructuring programme, particularly in those areas where courts have been
ear-marked for closure and I find this unfortunate. I was also surprised to note that in
the SCS’s response to the consultation, little attention had been given to the impact
some of these proposed closures might have on children and young people, notably
those experiencing domestic abuse. This would have been flagged up by a children’s
Rights Impact Assessment (CRIA).

Moreover, many of the submissions and concerns raised appear to have had little
bearing on the subsequent SCS recommendations. I note that the only proposal
supported was the disestablishment of the Justice of the Peace Courts at Portree,
Stornoway and Wick. All the other proposals received little support, with 94%
opposing the closure of the Sheriff and Justice of the Peace Courts ‘with low volume
business’ and 95% opposing the proposals around closure of the sheriff courts in
close proximity to each other.

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

Overall, I regard many of these proposals as having a potentially detrimental effect
on children and young people. They will result in additional time spent in travelling,
additional expenditure for those least able to afford it, additional stress for those
facing these new pressures and arguably a potential reduction in safety for those
most vulnerable. I have serious concerns that if some of the recommendations are
implemented, that access to justice in Scotland could be substantially reduced rather
than improved.

In its analysis of the consultations received, the SCS stated that it

‘recognise(d) the strength of feeling expressed by respondents and (were)
fully satisfied that (our) recommendations meet the Judicial Principles for
Provision of Access to Justice, allowing us to be able to provide services and
facilities that are consistent with the standards of a modern system, capable
of effectively supporting justice reforms that is affordable and contained within
the reduced budget available to us.

They further note

‘that the approach taken ‘allows (us) to preserve the essential judicial and
staff resources to operate the system as a whole, and to allow future
investment, particularly in facilities for jurors, victims and witnesses and in
communication technology, to be targeted across a smaller group of
buildings’.

The judicial principles stress that services should not deny citizens access to the
determination of rights or obligations in civil cases by reason of excessive cost or
inaccessibility of venue (principle 1), that criminal justice should be delivered locally,
in part to engage the local community in the administration of justice (principle 2) and
that most people should be able to travel to their local court by public transport so as
to arrive at the start of their case and return home by public transport on the same
day (principle 4). Many of the recommendations appear to jar with these admirable
principles.
Others are better placed to comment on the specific proposals, relating to their particular area, but I wish to refer to two areas merely to flag up my concerns. These concerns are replicated elsewhere and I draw on these two examples simply to highlight wider issues.

**The Borders proposal to close Duns and Peebles leaving Jedburgh and Selkirk as the remaining courts in the Borders Region. (Sheriff and Justice of the Peace Courts with low volume business)**

I note Sheriff Drummond’s observation that ‘the approach adopted by the proposal is suggestive of someone within the system (i) having looked at a map and (ii) having looked superficially at court statistics. He raises a serious point, namely that of understanding local conditions, such as the availability and accessibility of public transport, the often prohibitive up-front transport costs and the potential for witnesses and those accused to be using the same transport (e.g. a small rural bus) as this is often all there is available to non-car users. The latter point could have serious consequences for children and young people affected by domestic abuse and may impact upon their safety and wellbeing. Many of the scheduled closures across Scotland raise the same issues.

As a result of the above, we may well see an increase in court ‘churn.’ We are likely to hear of witnesses unwilling or being too distressed to travel, or even disembarking before reaching their destination, resulting in cases being re-processed and witnesses possibly facing contempt of court. Such considerations may not have been fully considered by those who have developed the proposals, but they will have a considerable impact on the ability to access justice. Without wishing to sound like a broken record, a Children’s Rights Impact Assessment (CRIA) would have flagged up these issues.

For families with young children and limited means and reliant on public transport, their access to justice will be heavily curtailed. Moreover and as Scottish Women’s Aid point out, organising childcare takes time and planning, and will often cause additional costs, and is an additional issue for women in accessing courts. It will be difficult for women to organize extended child care, often at short notice, for a long journey to a distant court, which will also have a knock-on effect for children in crisis. There may be increased pressure on social work departments to provide the financial shortfall as well as on other support agencies.

**Closure of Cupar Court(Sheriff Courts in proximity to another)**

Discussions around the proposed restructuring has tended to focus mostly around criminal business, yet there also implications around civil matters where speed and efficiency is of the essence and where statutory time limits need to be strictly adhered to. The best interests of the child should be the main consideration in matters such as residency, contact disputes, child welfare hearings and the timely production of curators reports. The increasing complexity and duration of proofs and hearings should not be underestimated and many courts scheduled for closure have been effective in delivery. The closure of Cupar Court is a case in point.

I share the concerns voiced by Anthony Anderson, the solicitor from Cupar, who notes the impact the changes will have on those who would be denied access to that
court’s ‘robust and effective civil court’. He is unconvinced that in the event that all family caseload is remitted to Dundee, that court cannot ‘readily and easily absorb more than the abundance of Child Welfare Hearings and opposed family motions it has present’ and is convinced that the turnover of duration in civil cases from warrant until dismissal will be significantly higher than if remitted to Dundee, thereby inevitably increasing public outlay.

The closure of Cupar also raises issues about the capacity of the Dundee Court to deal with the additional workload and whether that Court has suitable facilities and enough court days to cope with the increased business, the consequence of which could result in delays in proceedings and increased costs. Others have voiced an increase in ‘churn’

which was estimated by Audit Scotland in 2009-2010 to have cost the criminal justice system £10m along with a cost of £30million due to late decisions not to proceed. Similar concerns are being voiced in other areas across Scotland such as Stonehaven and Haddington. I would support a presumption against removing local access, especially if workloads can justify this.

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

My view is that the Scottish Court Service recommendations could undermine the administration of justice delivered locally.

If these recommendations go ahead, we could see the potential de-skilling of SCS staff and local solicitors who are likely to gravitate towards areas where their skills can be better utilised. Those who stay will be unable to service the local community effectively because they will invariably be ‘out of town’ and unavailable.

Removal of a sheriff court may also result in firms closing or retiring partners not being replaced, again impacting on access to legal advice and services in both civil and criminal matters for the community. All of this will have a huge effect on court users and result in many areas in Scotland potentially becoming ‘legal deserts’. I believe access to justice will suffer as a result.

I am also acutely aware through my discussions with those working in the domestic abuse field that it is often problematic for those experiencing domestic abuse to find sensitive and experienced family law practitioners who can deliver legal aid-funded services and offer expertise in areas such as obtaining protective orders, child welfare and contact and residence cases. It would be a great pity to lose this expertise, the result of which will mean women having to travel significant distances to secure protection for themselves and their children, because they are unable to access a suitable solicitor locally.

The importance of local justice cannot be underestimated. Scottish Women’s Aid reinforce the importance of maintaining a local connection and local knowledge of offenders and risk factors through relationships between local courts, judiciary, third sector and statutory services such as the police and social work. This is vital to the ongoing safety and protection of vulnerable court users such as children and young people affected by domestic abuse. I agree that the preservation of such local
relationships is crucial to the proper administration of local justice. An understanding of local support services within a particular areas is also important.

In their previous evidence, ASSIST made the important point that women, children and young people experiencing domestic abuse look to the civil and criminal courts for protection; for their case to be heard by a judiciary which has a good understanding of the nature of domestic abuse and one which is experienced in civil and criminal cases where domestic abuse is an issue. In short, they need to have confidence and trust in the justice system.

They also wish to be able to access justice through local courts with the minimum of disturbance and distress. The point is made that their lives are already disrupted and they have experienced considerable distress through the perpetration of abuse against them. I support these concerns. I would be interested in looking at how this can be achieved and am interested in ASSIST’s proposals to establish a network of remote sites where complainers can feel safe and do not have to come into contact with the accused. This would be an alternative to requiring complainers to travel further to give evidence. It would also encourage more victims to come forward. This should not just be a continuation of the current remote sites but an extension to ensure a better service to court users. The current economic situation requires creative thinking and remote sites in other public sector buildings in rural locations could be a solution that would satisfy a number of concerns.

**Final comments**

I would suggest there are other measures which could be considered apart from court closures and business consolidation to both improve court services and to maintain local justice.

I am interested in SCRA’s suggestion (should there be court closures) to holding children’s hearings court business on SCRA premises. As they note, the Dundee model, which involves Children’s Hearings court proceedings taking place, not in the court itself, but in SCRA’s purpose-built Hearings Centre. This has the advantage of proceedings taking place in an environment which is already known to both child and family. The idea of sharing multiple-use facilities in some local areas may be a solution worth considering and would have the advantage of allowing services to continue to be delivered locally.

Other suggestions may include the extended use of technology, particularly in procedural hearings which the Committee is already considering as part of the Victim and Witnesses Bill. By shifting the emphasis to making improvements to the system administration there is an opportunity to not only look at numbers and locations of Scottish Court Service facilities, but to take a wider consideration of how Court services are delivered throughout Scotland.

I am aware that the SCS faces substantial budgets cuts and restructuring its estate is both necessary and inevitable and I can see that these proposals might result in some savings, not least in the release of old building from the SCS maintenance budget. However, even in the current market, I think that some of these projected savings are optimistic and there may be hidden costs that have not been fully appreciated. I also acknowledge that many of the courts scheduled for closure are no longer fit for purpose and do not meet the needs of a modern justice system.
Nevertheless, I believe that many of the proposals have been unduly influenced by costs saving alone and have failed to consider the wider impact of these proposals on individuals and in particular, children and young people and I would urge the Committee to take a wider perspective in its considerations.

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Scotland’s Commissioner for Children and Young People
21 May 2013