SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

Introduction

The Law Society of Scotland (the Society) welcomes the opportunity to respond to the Public Audit Committee’s call for written evidence on the joint report of the Auditor General for Scotland and Accounts Commission report entitled ‘An overview of Scotland’s criminal justice system’.

The Society notes that the Public Audit Committee seek written evidence on:

1. Paragraph 81 of the above report, the view that ‘churn’ can be attributed to the failure of the accused and witnesses failing to turn up at court diets, failure between the COPFS and defence agents to share evidence, and the failure of both sides to be prepare fully, and

2. what steps the Society are taking, or propose to take to encourage earlier pleas and resolution of cases, as the report highlights that late pleas are estimated to have cost £47m.

The Society is of the view that the intermediate and pleading diets are a fundamental part of the criminal justice process, providing opportunity for the early resolution of cases and significantly reducing any delays at the trial stage. The purpose of the intermediate diet is to ascertain if a trial is to take place, and not likely to be aborted at the trial date, and to ascertain the readiness of both parties for that trial.

Where an accused enters a late plea at this stage, there is often good cause for this. For example, a delay on the part of the Crown to provide information to the defence which impacts on the direction the defence case is to take, or new information comes to light which neither prosecution nor defence were previously aware of, such as new witnesses, of the late delivery by police of forensic reports or CCTV evidence.

A criminal conviction has major implications for an individual; therefore it would be unduly unfair to expect an accused to plead guilty to an offence without being fully aware of the case against him / her. The Society note that Part 6, section 121 places a duty on the Crown to disclose information to the defence. However, although a duty is placed, there is no sanction for a failure to discharge this duty.

In practice, what is often described as a ‘late plea’ is not in fact late. The plea may have been offered at an earlier stage; however, this is not accepted by the Crown until the trial diet. The situation also often arises where the person stands accused of a number of offences and seeks to plead guilty to some, but not all of these, and this is rejected by the Crown, and then subsequently accepted at the trial diet.

In the Society’s response, in 2004, to the Summary Justice Review Committee: Report to Ministers, the Society stated that the effectiveness of these diets depends upon the court culture and management in which they operate.

The Society also set out its concerns that there is little or no time for the Crown and defence to discuss the case directly between themselves before the diet date and suggested that a system be considered and developed which allowed for the parties to meet and discuss, with the aim of being fully prepared for the court appearance,
with the opportunity for the defence to again meet with the Procurator Fiscal depute, if necessary, on the morning of the diet for further discussions about adjournments, agreement of evidence and negotiation of pleas etc.

The Society further suggested at that time, that accused persons should be cited for 10.00 a.m. to enable defence solicitors to take proper instructions at that stage. Citation of witnesses should take place at an early stage to ensure that executions of citation are returned in advance of the intermediate diet. In this way, both parties will be able to make an effective contribution to resolving matters pre-trial and ensuring that when the intermediate diet court commences at 2.00 p.m. issues have already been discussed and, where possible, resolved, thereby minimising the delay in processing court business. If the system is front-loaded to this extent, then there ought to be a reduction in work at a later stage. It is also hoped that such a system would reduce the number of witnesses who would have to attend unnecessarily at court and thereby save further resources throughout the system.

The Society has previously recommended, again in its response to the Summary Justice Review Committee: Report to Ministers, that there need to be an effective management structure and system within the court. The Society recommended:

‘… that efforts should be made to make trial courts more efficient. To help achieve this, the Committee would recommend the introduction of a management structure in the courts which would arrange the business and manage the personnel of the courts in a way which would maximise the efficiency of the system whilst preserving the interests of justice.

The Committee would envisage a two tier system of management development; a manager could be appointed for a particular area with responsibility for strategic planning and macro management issues, while lower level managers could be appointed to individual sheriff courts to arrange the business and manage the personnel in that particular court in a way which would maximise efficiency. If such a system were adopted, then the Chief Executive of the management body would have responsibility to ensure that targets and performance indicators had been met by all parties and agencies involved in the criminal justice system. Such a person could also ensure that where civil or criminal business is completed for the day, then the resources involved in servicing that court could be diverted to deal with other business remaining.’

To adopt such a recommendation would allow Judges and Sheriffs to focus on their judicial responsibilities, leaving the management of the system, including ensuring time limits were met and all parties, including the judiciary themselves, were adhering to the court timetable, although the Society do note that the Judiciary and Courts (Scotland) Act 2008 introduced changes to

the Court structure, appointing the Lord President as head of the Scottish Judiciary, with responsibility for making and maintaining arrangements for the efficient disposal of Cases within the Scottish Court system.
Dear Ms Jack

At its meeting on 5 October 2011 the Public Audit Committee considered its approach to the recent joint Auditor General for Scotland (AGS) and Accounts Commission report entitled “An overview of Scotland’s criminal justice system”. The Committee agreed that it would seek written evidence from the Law Society of Scotland on the costs of churn and late pleas on processing summary cases through the court which was highlighted in the report at paragraphs 80 to 94 and Exhibit 9.

In the report at paragraph 81, churn is attributed to “the accused or witness did not turn up, the procurator fiscal or defence agent were not fully prepared or because evidence had not been shared”. The Committee would welcome the Law Society’s comments on what actions it is taking or could be taken to address this issue both in respect of procurator fiscals as well as defence agents.

This paragraph also highlights that late guilty pleas at the intermediate and trial stage are estimated to have cost around £47 million. I would be grateful if you could also comment on what steps the Law Society may be taking or would propose should be taken to encourage the earlier resolution of cases.

I have attached below weblinks to the AGS and Accounts Commission report as well as the official report of the Committee meeting of 21 September when the AGS provided a briefing on this report.

http://www.audit-scotland.gov.uk/work/central_national.php

http://www.scottish.parliament.uk/s4/committees/publicAudit/meetings.htm

I would be grateful for a response to this letter by 9 November 2011 and I would draw your attention to the Parliament’s policy on the treatment of written evidence attached in the Annexe to this letter.