Justice Committee

Scottish Civil Justice Council and Criminal Legal Assistance Bill

Written submission from Which?

Introduction

Which? welcomes the introduction of the Scottish Civil Justice Council as a key part of the delivery of a better and more modern civil justice system for Scotland. The overarching scope of its remit, the principles by which it operates and a determination that it exists, as the legal system does, to serve the people of Scotland, will be the drivers for important changes and improvements.

Any changes to the Scottish civil justice system should be made with the general public – not the Government or the legal profession – at its core. Legal processes must be transparent, understandable without legal training as far as is possible, as inexpensive as possible and updated to make sense to citizens and to have relevance and meaning to them. Without an accessible and relevant system, the public will not be able to properly enforce their legal rights.

We are hopeful that the SCJC will be set up in this spirit and will have the consumer and public interest at its core, and will constantly seek to inform and communicate with court users and potential court users at every opportunity.

We are commenting only on Part 1 of the Bill, regarding the setting up of the Scottish Civil Justice Council.

Remit of the SCJC

1. The Council should be able to advise Government on policy issues for the development of the civil justice system, as currently happens with the English and Welsh CJC. This is a key function, along with that of pro-actively reviewing the system so that it remains fit for purpose and able to deal with the likely issues of the future.

The SCJC must be independent from Government and its recommendations not subject to political influence.

2. We support the Bill’s intention that the SCJC should promote methods of dispute resolution not involving the courts. Similarly the Council should be charged with making civil justice more accessible and fair.

3. As the intention is now to include administrative justice and tribunals, we hope that no gap will be allowed in service provision as the Scottish Committee of the Administrative Justice and Tribunals Council (SCAJTC) is abolished and before the SCJC is set up.

Engagement and communication with the public
4. We would like to see the SCJC’s proposed powers to consult and co-operate strengthened. They should have a duty to consult the public and communicate legal issues so that the voice of the court user and the public is at the heart of their work and every new system and improvement being considered.

5. We therefore suggest that Clause 3 should read ‘Council should consult’, instead of ‘Council may consult’ on proposed rules changes and on the annual plan.

6. For the same reasons, we believe SCJC must be able to commission research, as currently happens in England and Wales, and that ability should be underlined in the Bill.

**Oversight**

7. We have some concerns about the Court of Session’s right to reject or amend draft rules. It must be made explicit within the Bill that such rejections should be properly explained. There should be transparent criteria set out around how this right to reject or amend is to be used.

8. Similarly the Council’s annual report should go before the Scottish Parliament, as should an annual plan, if there is to be one.

**Composition of the SCJC**

9. In order to change the focus of the civil justice system from provider to user, we believe that half of the Council members must be non-lawyers. The focus must come from the perspective of those seeking to use legal services. If only a minority are lay members, as is suggested, it will be difficult for them to maintain the Council’s focus on issues from the public’s perspective.

10. We question whether it is necessary to have five judges on the Council. And additional lawyers could be on the committee which leads on rule drafting, for instance, so that there is sufficient technical skill available.

11. Lay members will bring outside skills, questions, knowledge and determination that will benefit the Council and legal services in Scotland. They are more likely to challenge existing systems and ideas.

12. We agree with Consumer Focus Scotland that at least the Deputy Chair should be a lay member, and that there is no reason a lay Deputy Chair should not chair meetings in the absence of the Chairperson.

13. The upper limit of 20 on the Council seems sensible in order to aid productivity, with the proviso that a wealth of other expertise can be called upon through the use of committees.

**Establishment of committees**

14. We support the idea of the Council establishing committees and co-opting non-Council members. It is important to bring in breadth and depth of experience from
wider society. We envisage much of the ‘heavy lifting’ of the new Council will be carried out in these committees. We would like more detail on how this would happen and see no reason why this process should not also be transparent.

**Appointments process**

15. Appointments to the SCJC should be in accordance with the public appointments procedures and the Public Appointments Commissioner for Scotland.

**Resources**

16. The proposal to have between five and 11 members of staff on the Council leads to concerns over whether the Council will have enough resource, particularly if taking on responsibility for administrative justice.

**Status of SCJC**

17. The Bill proposes a statutory advisory body rather than an advisory non-departmental public body (NPDB), which was the original proposal in the Scottish Civil Courts Review. We have no particular view on the status, provided that the Council is subject to the public appointments procedures.

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