

Citizen Participation and Public Petitions Committee

4th Meeting, 2023 (Session 6),_Wednesday 8
March 2023

PE1983: Improve the transparency and accountability of Scottish legal courts

Lodged on 21 November 2022

Petitioner Daniel Osula
Petition Calling on the Scottish Parliament to urge the Scottish Government
summary to improve the transparency and accountability of the Scottish legal
system by ensuring:

- clear information is provided to members of public about how their case will be considered; and
- information is made available to members of the public about the processes for making a complaint about court staff.

Webpage <https://petitions.parliament.scot/petitions/PE1983>

Introduction

1. This is a new petition that was lodged on 21 November 2022.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 13 signatures have been received.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

Action

The Committee is invited to consider what action it wishes to take.

Clerk to the Committee

Annexe A

PE1983: Improve the transparency and accountability of Scottish legal courts

Petitioner

Daniel Osula

Date lodged

21 November 2022

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to improve the transparency and accountability of the Scottish legal system by ensuring:

- clear information is provided to members of public about how their case will be considered; and
- information is made available to members of the public about the processes for making a complaint about court staff.

Previous action

I have written to the First Minister and to the Cabinet Secretary for Justice, Keith Brown MSP.

I have also made a number of complaints directly to the Scottish Courts and Tribunal Service (SCTS).

Background information

There are two sections to the courts: the appointed Judges, and court staff (civil servants), and in my experience, court staff appear to have the authority to provide a case to a specific Judge at a time of their own choosing.

Without transparency in the processing of court applications, I believe court staff are being allowed to bypass accountability. In my view, this has created a super body of public executives, with any communication by an MSP to any public service institution being reluctantly ignored or replied to at the convenience of the public servant.

Annexe B

The logo for SPICe (The Information Centre) is a purple rounded rectangle. The text 'SPICe' is in white, with 'The Information Centre' and 'An t-Ionad Fiosrachaidh' in white text to its right.

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1983](#): Improve the transparency and accountability of Scottish legal courts, lodged by Daniel Osula

Brief overview of issues raised by the petition

The petition argues that there is a lack of transparency in the processing of court applications and states that

“There are two sections to the courts: the appointed Judges, and court staff (civil servants), and in my experience, court staff appear to have the authority to provide a case to a specific Judge at a time of their own choosing.

Without transparency in the processing of court applications, I believe court staff are being allowed to bypass accountability. In my view, this has created a super body of public executives, with any communication by an MSP to any public service institution being reluctantly ignored or replied to at the convenience of the public servant.”

It calls on the Scottish Parliament to urge the Scottish Government to improve the transparency and accountability of the Scottish legal system by ensuring:

- clear information is provided to members of the public about how their case will be considered; and

- information is made available to members of the public about the processes for making a complaint about court staff.

Processing of court applications

It is not clear from the face of the petition which court, or courts, the petitioner is referring to. It also isn't clear what specific issue the constituent has been confronted with in the processing of their application to the court.

However, in very general terms the process of a particular case is governed by different procedural rules and practices depending on the type of case and the court in question. Procedural rules can be very detailed in scope and their application to a particular case can be a complex matter.

[The Scottish Courts and Tribunal Service \(SCTS\) has more information on the various rules on its website.](#)

Court officials known as “clerks of court” who are appointed by the SCTS manage the day-to-day business of the courts and schedule court business in line with the relevant procedural rules and the needs of the court. In the Court of Session and the High Court of Justiciary (Scotland's highest civil and criminal courts) the head of this role is [the Principal Clerk of Session and Justiciary](#). In the sheriff courts there is a sheriff clerk in each sheriffdom (i.e. court area).

As regards allocation of specific cases within a court, [the website of the Judiciary of Scotland](#) states that:

“Cases are primarily allocated based on a judge's availability. The specialisations and expertise of individual judges may also be a factor, such as in commercial matters.”

Judges decide on the outcome of proceedings and have a number of other roles, including in relation to the management of cases ([for details see the information on the website of the Judiciary of Scotland](#)).

In the sheriff courts [the sheriff principal](#) (i.e. the judicial head of each sheriffdom) has responsibility for the efficient disposal of business in the sheriff courts including the allocation of business among the judiciary of

the sheriffdom (section 27 of the Courts Reform (Scotland) Act 2014).

Complaints about court staff

The SCTS has a [webpage entitled “SCTS Complaints Procedure”](#) which explains what its complaints procedure is.

The procedure covers court staff and has two stages involving:

1. A front line response within five working days
2. A more detailed investigation for cases which appear to be complicated or serious.

The SCTS’s Complaints Procedure indicates that complaints can be made about matters such as:

- delays in responding to enquiries and requests
- failure to provide a service
- SCTS’s standards of service
- SCTS’s policies
- treatment by or attitude of a member of staff
- failure to follow proper procedure.

However, it also states that:

“There are some things we can’t deal with through our complaints handling procedure. These include:

- an initial request for service, e.g. asking us for a form, or to accept payment of a fine
- a request for an explanation of our policies
- a complaint about or an appeal against a court or tribunal decision
- a complaint about the conduct of a judicial office holder or tribunal member
- a complaint about the conduct of other organisations in the public sector.

If other procedures or rights of appeal can help you resolve your concerns, we will give information and advice, though not legal advice, to help you.”

People who are dissatisfied with the SCTS's decision in a complaint can ask the Scottish Public Service Ombudsman to consider it.

[A separate process exists for making complaints about judges.](#)

Senior Researcher
28 October 2022

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C

Scottish Government submission of 13 January 2023

PE1983/A: Improve the transparency and accountability of Scottish legal courts

The Scottish Government considers both matters raised in the petition as operational matters which lie completely within the statutory responsibility of the court and the two bodies who assist the court in making new rules – The Scottish Civil Justice Council and the Criminal Court Rules Council.

The Scottish Courts and Tribunals Service (SCTS) is the independent public body which is responsible for the administration of the courts and tribunals of Scotland. The operation of the courts is the responsibility of the SCTS under the leadership of its independent board headed by the Lord President.

The Lord President is the most senior judge in Scotland and the Head of the Scottish Judiciary, with overall responsibility for making and maintaining arrangements for the efficient disposal of the business of all the courts in Scotland. He has statutory responsibilities in relation to areas including judicial conduct, training, welfare and deployment.

The Scottish Government regards the independence of the courts as an important constitutional principle and independence of the courts is enshrined in legislation by the Judiciary and Courts (Scotland) Act 2008.

As outlined in the SPICe briefing, the Scottish Courts and Tribunals Service provides information regarding the complaints process and court rules.

It may also be helpful to the Committee to describe the functions of the Scottish Civil Justice Council and the Criminal Court Rules Council

The Scottish Civil Justice Council

The Scottish Civil Justice Council was established on 28 May 2013 under the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013. It prepares draft rules of procedure for the civil courts and advises the Lord President on the development of the civil justice system

in Scotland. The Scottish Civil Justice Council also has a wider role to advise and make recommendations on the civil justice system.

The creation of a single civil rules council for Scotland was one of the recommendations of the Scottish Civil Courts Review. Many of the review recommendations required new rules of court and the Scottish Civil Justice Council, which has oversight of the entire civil justice system, has taken this work forward over a number of years. The Council is also responsible for keeping the civil justice system under constant review.

The Council's functions include:

- keeping the civil justice system under review;
- reviewing the practice and procedure followed in the Court of Session and in civil proceedings in the Sheriff Appeal Court or the sheriff court;
- reviewing the practice and procedure followed in inquiry proceedings under the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016;
- preparing and submitting to the Court of Session draft civil procedure rules, draft fees rules and draft inquiry procedure rules;
- advising and making recommendations on the development of and changes to the civil justice system in Scotland.

The Council has broad powers to help it carry out its functions, including the ability to make recommendations to the Scottish Ministers, conduct consultations and commission research. It is also able to take into account proposals for reform when preparing draft rules.

Guiding principles

In carrying out its functions, the Council must have regard to the following principles:

- the civil justice system should be fair, accessible and efficient;
- rules relating to practice and procedure should be as clear and easy to understand as possible;
- practice and procedure in the civil courts should be as similar as possible, where appropriate; and
- alternative methods of dispute resolution should be promoted, where appropriate.

Criminal Court Rules Council

Rules for criminal proceedings (known as Acts of Adjournal) are made by the High Court of Justiciary and are prepared by the Criminal Court Rules Council.

The Criminal Courts Rules Council was established under section 304 of the Criminal Procedure (Scotland) Act 1995 with the following functions:

- to keep under general review the procedures and practices of the courts exercising criminal jurisdiction in Scotland;
- to consider and comment on any draft Act of Adjournal submitted to it by the High Court.

The Criminal Courts Rules Council is an advisory body which may undertake public consultations to assist it in, for example, drafting rules or making recommendations.

I hope this reply is helpful in outlining the Scottish Government's position.