

Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux



A response to the Scottish Government consultation on the creation of a Scottish Civil Justice Council

Citizens Advice Scotland and its 81 CAB offices form Scotland's largest independent advice network. CAB advice services are delivered through over 250 service points throughout Scotland, from the islands to city centres.

The CAB service aims:

to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities, or of the services available to them, or through an inability to express their need effectively

and equally

to exercise a responsible influence on the development of social policies and services, both locally and nationally.

The CAB service is independent and provides free, confidential and impartial advice to everybody regardless of race, sex, disability or sexuality.

Citizens Advice Scotland
Spectrum House, 2 Powderhall Road
Edinburgh EH7 4GB
Telephone: 0131 550 1000
Fax: 0131 550 1001
Email: info@cas.org.uk
Web: www.cas.org.uk

The Scottish Association of Citizens Advice Bureaux - Citizens Advice Scotland
(Scottish charity number SC016637)
Copyright © Citizens Advice Scotland, December 2011 No part of this publication may be reproduced without prior permission except for purposes of review or referral.

CONSULTATION ON THE CREATION OF A SCOTTISH CIVIL JUSTICE COUNCIL



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Citizens Advice Scotland

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

Spectrum House

2 Powderhall Road

Edinburgh

Postcode EH7 4GB

Phone 0131 550 1000

Email

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

Introduction

1. Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland's network of 81 Citizens Advice Bureau (CAB) offices. These bureaux deliver frontline advice services through over 250 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.
2. Citizens advice bureaux achieve positive social outcomes for hundreds of thousands of clients each year by providing advice across a range of issues, including welfare, debt, employment, housing and utilities. For many clients, good advice has helped them to avoid negative outcomes such as homelessness, unemployment, bankruptcy, and mental health problems.
3. In 2010/11, Scottish CAB dealt with over half a million new issues for clients. During that year, citizens advice bureaux advised on 25,769 new legal issues – an increase of 7% on the previous year. Legal issues is now a more common area of advice than relationship issues.
4. Additionally, bureaux reported a significant increase in the assistance they are providing in benefit appeals. In 2010/11, bureaux helped clients to complete over 12,000 welfare tribunal documents, and represented clients at 3,312 welfare tribunals (an annual increase of 58%). We estimate that representing clients at welfare tribunals took up around 2,366 working days of adviser time over the year.
5. CAS welcomes the opportunity to respond to the Scottish Government consultation on the creation of a Scottish Civil Justice Council.

CONSULTATION QUESTIONNAIRE

Q1. Do you agree or disagree that there should be a Scottish Civil Justice Council?

Agree Disagree No preference

Comments

CAS agrees with the Scottish Government that a Civil Justice Council should be introduced for Scotland.

Q2. Do you agree or disagree with the proposed functions of the Council, including that it should have a policy remit? If you disagree, please give reasons for your answer.

Agree Disagree No preference

Comments

CAS believes that, as the Gill review argued, there is a strong case for a broad ranging body. We believe that it should bring together all the major stakeholders in relation to the courts, tribunals and appropriate dispute resolution. CAS is aware that the English Council's aim "is to help make civil justice increasingly accessible, fair and effective, and that the interests of those who may need to use the civil justice system are central to the system". We agree with the breadth of this remit and believe that it is vital that the new Council has a strategic oversight of the civil justice system on an on-going basis. This would help to obviate the need for another major review of civil justice (Gill Mark 2) in the next fifteen years. For the avoidance of doubt CAS believes that the policy role of the new Council should be its primary function and that its rule making function should be secondary to this function. We also consider that the Council's remit for tribunals and appropriate dispute resolution should be of equal importance with that for the courts.

Q3. Should the Council be able to make recommendations in relation to administrative justice and tribunals? Please give reasons for your answer.

Yes No No preference

Comments

With the proposed abolition of the AJTC CAS believes that it is imperative that the remit of the Council extends to administrative justice and tribunals. We understand that more cases are now heard before tribunals than in the Scottish civil courts. We believe that to the person in the street retaining a policy separation between tribunals and courts in the future would make little sense. It is of crucial significance that this sector should integrate with the wider civil justice system.

Q4. Do you consider that the Council should have the ability to make rules of court? If so, what process should be adopted for making them? Please give as much detail as possible.

Yes No No preference

Comments

Yes but CAS believes that this should be a secondary function, perhaps performed through sub-committees. These sub-committees should have a strong lay membership because of the paramount need for the rules of court and court forms to be in plain English.

Q5. Do you agree or disagree that the overall responsibility for the Council should lie with the Lord President rather than Scottish Ministers?

Agree Disagree No preference

Comments

CAS finds this a very difficult question. The strong policy remit which we recommend for this body pushes towards an NDPB status. However, given the role of the Lord President as Chair of the Scottish Court Service in relation to the efficient disposal of business in the Scottish courts, that would push towards the Lord President having responsibility for the Council. However, the Lord President does not have the responsibility for access to justice in the wider sense for Scotland. This would suggest that as with the Judicial Appointments Board responsibility should be effectively shared between the Lord President and Scottish Ministers. In form, the Council would be an advisory NDPB as recommended by the Gill Review. However, whether the Council is ultimately responsible to the Lord President or Ministers or to both, CAS believes that there must be a line of accountability to the Justice Committee of the Scottish Parliament.

Q6. Do you agree or disagree that the Council should be able to make recommendations to the Scottish Ministers as well as the Lord President?

Agree Disagree No preference

Comments

CAS strongly believes for the reasons given above that it essential that the Council should be able to make recommendations to the Scottish Ministers as well as the Lord President.

Q7. Do you consider that the role and functions of the Council should be conferred upon any other body or bodies instead? If so, which? Please give reasons for your answer.

Yes No No preference

Comments

CAS does not consider that there currently exists a body in Scotland which could more appropriately perform the functions which we would confer on the new Council.

Q8. Do you consider that the proposed membership is appropriate? If not, what alternative would you suggest?

Yes No No preference

If yes, go to question 10.

Comments

CAS considers that the broad make up of the proposed Council set out in the Consultation paper is on the right lines. However, we believe that the proposals are too vague in relation to the size and composition of the Council. We believe that if the Chair of the Council is a senior judge then the Vice-Chair should be a lay person. CAS believes that there should be a strong lay membership as in the SLCC and the Judicial Appointments Board, and that one member should have current experience and knowledge of the CABx service. We believe that the composition and size of the Council should be contained in statute as with the SLCC and the JAB. CAS believes that the definition of “lay” is an important issue that has caused problems in a range of Scottish legislation. Within the advice service are many individuals with law degrees or who are legally qualified but who have never practised. Such individuals should be classified as lay persons for the purposes of Council membership.

Q9. Should any other person / category of person be included in the membership? Please give reasons.

Yes No No preference

Comments

CAS believes that the composition of the Council should reflect the breadth of its functions. If, as we have advocated, it has a broad remit, then its membership should be equally broad, extending to persons from the administrative justice sector and those involved with ADR.

Q10. Do you agree or disagree that the Lord President and Scottish Ministers should be able to appoint other members to the Council as they see fit? If not, why not?

Agree Disagree No preference

Comments

CAS believes that whilst there should be scope for co-option the number of positions on the Council should be established by statute. However, CAS also believes that, with the exception of the judicial members, all members of the Council should be appointed through the standard OCPAS procedures for public appointments. This would accord with the practice in relation to appointments to the JAB. The recommendations of the appointment panel would go to the Lord President and the Ministers, jointly, for ratification.

11. Do you consider that members should receive expenses only, or should members be paid?

Expenses only Paid No preference

Comments

CAS considers that lay members at least should be remunerated with a daily rate akin to that of the SLCC or SLAB. This is to prevent only retired persons being able to apply for membership of the Council.

Q12. Do you agree or disagree that there should be a general requirement for the Council to consult and work with other groups and bodies with an interest in the civil justice system?

Agree Disagree No preference

Comments

CAS is strongly of the opinion that the Council should be required to consult as widely as possible with all groups and bodies with an interest in the civil justice system. Only in that way will it be able to perform its policy and advisory role. It is essential that the Council does not give the impression that only personnel within the justice system should have a say in policymaking in relation to civil justice.

Q13. Do you agree or disagree that the requirements for the provision of an annual report are appropriate?

Agree Disagree No preference

Comments

CAS agrees with the proposals for an Annual Report contained within the consultation paper. The Report should be to the Lord President and the Ministers with a copy laid before the Scottish Parliament.

Q14. Do you consider that any additional or alternative reporting arrangements would be appropriate? Please give reasons for your answer.

Yes No No preference

Comments

As above

Q15. Do you agree or disagree that the Scottish Ministers and the Lord President should be able to direct the Council to consider and advise upon any matter falling within its general remit?

Agree Disagree No preference

Comments

This is the position in relation to the JAB. That model has not been found to be unworkable. Accordingly, CAS agrees that Scottish Ministers and the Lord President should both be able to provide directions to the Council.

Q16. Do you have any other comments on the proposals outlined in this paper?

Yes No

Comments

CAS considers that the new Council should have the power to instruct relevant research into the operation of the civil justice system in Scotland and to monitor the impact of the introduction of the Gill review reforms.