

Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux
www.cas.org.uk



Dear Mr. MacDonald,

Please find attached Citizens Advice Scotland's response to the Consultation on the Scottish Government's Proposals for a New Tribunal System for Scotland. Although we could not offer comment on the operational detail of the proposal, we welcomed the opportunity to comment on the principles behind the proposals.

We look forward to tracking the development of a user-focused judicial system which supports access to a wide range of dispute resolution mechanisms; a system which takes the opportunity to address all reforms to the judicial system as a whole to the end of an inter-dependent system of Civil justice.

Yours faithfully,

Lauren Wood

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get advice online: www.adviceguide.org.uk/scotland

- Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using service points throughout Scotland, from the islands to city centres.
- Citizens advice bureaux in Scotland helped clients with almost 550,000 new issues in 2010/11 – almost 1,500 new issues for every day of the year. Over 270,000 clients brought new issues to a bureau over the year.
- In 2010/11, Scottish bureaux achieved a financial gain of almost £126million for clients based on funding of £16.3million (including £7.6million in core funding). This means that CAB clients were better off by £8 for each £1 of 8 funding given to bureaux.

Scottish Association of Citizens Advice Bureaux – Citizens Advice Scotland
(Scottish Charity SC016637)

SECTION 7: THE SCOTTISH GOVERNMENT'S PROPOSAL FOR A NEW TRIBUNAL SYSTEM FOR SCOTLAND



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

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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

No

General Comments

Introduction

Citizens Advice Scotland (CAS) are broadly supportive of reform to the Scottish Tribunal System which incorporates and builds on the positive features of an accessible, independent, user-focused system.

Tribunals play an important role in providing an alternative to the formalities and traditions of Court-administered justice. In complement to the Scottish Court Service (SCS), tribunals contribute to the access to justice landscape and CAS welcomes the broad principle of incorporating the Scottish Tribunal System with the Scottish Court Service – provided the nature of tribunals is maintained.

Centrality of users

Maintaining accessible justice which puts users at the core of the process is a desirable aim and should continue to actively inform any framework for reform. It is important that this aim becomes embedded as an integral part of any reform and is not lost to the emerging practice of a new tribunal system.

Accessibility has many strands, not least accessibility of local access, of cost and clarity of procedural rules. All of these strands come together to allow for accessible justice and all are important in a user-focused system.

Local access

The current locations of tribunals mean that they are physically accessible to all members of the community. The growth of tribunals in Scotland, while to an extent ad hoc with varying legislative and procedural rules, has meant the development of a system without the constraint of accommodation in existing buildings. This has left the legacy of flexibility of accommodation which in turn allows for maximum accessibility for service groups. The Mental Health Tribunal for Scotland for example sits in hospitals, community centres, resource centres and in the offices of an advocacy agency amongst other places. (http://www.mhtscotland.gov.uk/mhts/Venues/Venue_Information).

CAS supports the principle of creating chambers which facilitate specialist knowledge on tribunal areas. We agree with the objective of maintaining the individual characters of tribunals to the end of smooth procedure and consistent decisions but we would seek assurance that chambers should not be constructed at the cost of centralisation. Those users who access tribunals can be amongst the most vulnerable in society, for example those suffering from mental health problems, those on low incomes and those with children.

CAS is of the view that those belonging to these and other vulnerable groups should be supported in accessing justice, and one of the most fundamental ways this can be achieved is continuing to guarantee local outlets for the administration of tribunals.

Cost

While the proposals do highlight the financial aim of judicial offices being cost-neutral, consideration must be given to the potential impact of increasing costs in judicial offices, administration, operation or any other area of procedure.

In some cases tribunals are the solely accessible route to redress for vulnerable users and to introduce a cost at any time would be to introduce a barrier. We do not believe that any cost increases in the structure and administration of tribunals should be passed on to users either now or in the future.

Clarity of procedural rules

Accessing redress by any means can be daunting, especially without prior knowledge of judicial or juridical processes. An important aspect of ensuring a user-focused system is in providing clearly framed rules and processes. We believe the principles of clarity and predictability in procedural rules should form the foundations of assuring civil justice, all the while holding users at the centre of the system.

These rules and processes should be publicised in a way which relates to the experience users can expect. These publicised materials should form an important part of expectation setting in relation to the justice which tribunals administer in the context of and in relation to the wider judicial system.

Wider reforms to the judicial landscape

Tribunals are widely regarded as cheaper, less formal alternatives to court. CAS welcomes the statement of reassurance in the tribunals system offered by virtue of tribunals moving under the wing of the SCS. In that, we also welcome the opportunity of lessons which can be learned from the tribunal system and applied more widely in the civil court context.

This is particularly so in light of the proposals for reform of the SCS. We advocate that equal importance is placed on the reform of civil and criminal business, and that all reforms in the judicial and wider juridical arena are considered together. To isolate the considerations of tribunals from the reforms to the court structure, and in turn to consider reforms without reference to the full parameters of the Scottish Government's Making Justice Work Programme would be to the detriment of policy makers and service users alike.

Togetherness of an effective judicial system

We believe that an inter-reliance between courts, tribunals and Alternative Dispute Resolution (ADR) will strengthen access to justice by providing a structured range of access to proportionate justice. If administrators of justice are confident in the inter-reliance of all aspects of the system, then this confidence will pass to service users. By instilling confidence and support in each aspect of the system from the top down, a culture of focused justice will follow, meaning users can be assured of accessing justice at a level proportionate to their pursuit.

When each level of the system operates to the benefit of the system as a whole, understanding the merits of each judicial and juridical outlet, the system as a whole will work to lessen pluralism of pursuits within one broad process. This may, for example, mean encouraging more business into tribunals or assuring access to ADR before the instance of tribunals or court. In a user-focused system, the principle of togetherness in the judicial system will ensure that the end of appropriate and proportionate justice is achieved for each user.

Lessons to be drawn from the Tribunal experience

The traditions of Sheriff Courts draw civil and criminal processes together with ancient adversarial procedures and etiquette. However, the nature of third tier civil and third tier criminal business is

increasingly divergent and the similarity of their procedures raises questions about the continuing relevance of such procedures in civil cases in terms of service users.

Despite third tier civil business having more in common with tribunals than criminal business of the same level, the nature of civil and criminal processes remain tied to traditions while tribunal processes have developed with users at the core. By design, tribunals are less formal and more accessible, in setting, cost and procedure.

Hearing civil matters within the setting of Sheriff Courts can be daunting, an experience which is compounded by the process of following court rules when parties represent themselves. Those users who attend for example hearings on housing matters, can be very vulnerable with low incomes, little experience of court procedures and no expectation or understanding of the adversarial process with which they are faced.

We believe that reform of the tribunals system and the SCS under the umbrella of the Making Justice Work Programme should be viewed as a positive opportunity to review third tier civil processes from the perspective of service users. Lower level civil processes could be well informed by the user-focused principles underpinning the tribunal system.

Alternative Dispute Resolution

We agree with the objectives of the Making Justice Work Programme that access to justice should mean access to a full range of methods of dispute resolution including ADR and particularly mediation. We believe that mediation should be available to all who wish to pursue a civil complaint, and should form an integral part of reform to the judicial system.

The Citizens Advice Edinburgh In-Court Mediation project has proven success in permeating the adversarial culture of Edinburgh Sheriff Court and delivering consistently high levels of resolution success. Further, resolutions achieved are more likely to be adhered to because both sides of the complaint have been involved in the decision process and contributed to the final resolution.

We strongly believe that Tribunals and Courts should be the resolution mechanism of last resort. Access to justice which puts service users at its core should focus processes which allow users to achieve accessible, proportionate outcomes and we would seek assurances that ADR will be incorporated in reforms as a vehicle to support users in achieving such outcomes.

SECTION 6: CONSULTATION QUESTIONS [continue on separate sheet of paper as required)

Question 1: Should the distinctive tribunals system be capable of reconsidering decisions and hearing appeals and, if so, what grounds of appeal from the First-tier Tribunal to the Upper-tier should be allowed?

Comments:

Question 2: Which functions of judicial leadership in the tribunals system should be exercised by the Lord President, the President of Scottish Tribunals and the Chamber Presidents, respectively?

Comments:

Question 3: Should any restrictions be placed on the ability of an appointed member to sit and hear cases in a chamber other than the chamber of their primary assignment? If so, what restrictions?

Comments:

Question 4: Is this the most appropriate option for judicial remuneration and if not, what other options are there to remunerate fairly the judicial members of the Scottish tribunal system?

Comments:

Question 5: How should procedural rules for the new tribunal system be made?

Comments:

Question 6: What issues/opportunities do the proposed changes raise for people with protected characteristics (e.g. age, disability, gender reassignment, race, religion or belief, sex and sexual orientation) and what action could be taken to mitigate the impact of any negative issues or to capitalise upon opportunities?

Comments: