

Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux

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Consultation on the proposed merging of the Scottish Tribunals Service and the Scottish Court Service

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- 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 over 500,000 new issues in 2011/12 – more than 1,400 new issues for every day of the year. Nearly 200,000 clients brought new issues to a bureau over the year.
- In 2011/12, Scottish bureaux achieved a financial gain of almost £140million for clients based on funding of £16.9million.

Citizens Advice Scotland

Citizens Advice Scotland (CAS) welcomes the opportunity to comment on the proposed merger of the Scottish Tribunals Service and the Scottish Court Service.

The Citizens Advice Service in Scotland continues to support and represent users of the civil justice system and strongly advocates the principle of access to justice. Citizens Advice Bureaux (bureaux) across the country contribute an enormous effort in advice, support and representation in almost all areas of civil justice, but predominantly in housing, debt and welfare benefits.

Specifically funded projects and wider advice work undertaken by the bureaux in Scotland in 2011/2012 recorded 380,000 new issues where the resolution had the potential to involve formal legal methods and systems. This included almost 23,000 issues relating to civil legal process, almost 35,000 housing issues and more than 118,000 debt issues. However, many of these problems were solved before the need to engage with formal legal processes (courts and tribunals).

In assisting some of the most vulnerable clients to resolve their problems, bureaux undertake an invaluable role in preventing issues escalating into the legal system (for example in negotiating a payment plan between a landlord and tenant who is in arrears which stops the landlord bringing an action for eviction).

If an issue does reach the stage of tribunal or Sheriff court, bureaux then undertake vital work to support and represent clients. In 2011/2012, bureaux represented clients in over 5,500 civil court and tribunal cases – this included providing representation in housing, debt and small claims work in Sheriff courts as well as in welfare and employment tribunals.

Key Points

- The Board of the merged organisations should not simply make “changes to the structure of the current SCS Board” but should entail a fundamental review of the overall Board structure –ensuring that at least one member represents consumer interests
- The Board should have keen consideration for the changing civil justice landscape.
- A single gateway for information should be established to provide clear and accessible information to users on court process, tribunal process and the role of ADR.
- Joint training opportunities between the judiciary and tribunal members should be encouraged on commonalities facing users within their specialisms.
- An integration and training programme for all staff will be key to providing an integrated service and facilitating discussion on improvement in practice.
- Maintaining the individual nature of tribunals is important but there are areas where (particularly the civil court system) benefit would come from the sharing of best practice – particularly in IT, user-focused practice and in the development of the role of Summary Sheriffs.
- CAS recommends that an independent review of the merged service happens after three years of operation.

Response to Questions

(1) How could tribunals be appropriately included on a joint board, chaired by the Lord President?

The Board of the merged service will be a key statement of intent signalling the standing of tribunals, courts and users in assuring access to a cohesive structure of justice. The Board should represent the nature of the changed organisation as well as the changing civil justice landscape. CAS does not believe this can be achieved by simply making “changes to the structure of the current SCS Board” (consultation, paragraph 30).

To simply amend the current Board does not send a message of the coming together of justice organisations but rather the absorption of the Scottish Tribunal Service into the Scottish Court Service. A more fundamental review of the Board structure is necessary to avoid the implication that the SCS is the dominant and leading body.

In principle, the membership should represent the civil justice system, criminal justice system and the tribunal system equally. There will be obvious relationships between civil courts and tribunals which do not extend to criminal matters, and discussions which impact on the hearing of civil/criminal matters in shared premises and so it may be beneficial to set up cross-justice committees at the same time as the reviewed Board is established. These could be used to discuss matters in relevant forums (for example a committee for civil/administrative justice and a committee for civil/criminal court administration) which could then be reported back to an overarching Board.

A fundamental review of a desirable Board structure also raises questions about the current level of consumer (user) representation on the SCS Board. At present, although there is potential for appointment as a ‘member from outside the justice system,’ there is no consumer voice on the SCS Board. Those who are not legal professionals are drawn from the business and community justice sectors.

The recognition of the importance of consumer representation in justice policy is clear and most recently visible in the specific requirement for consumer members on the Scottish Civil Justice Council. In the current period of change to the civil justice landscape, and particularly with the loss of oversight of tribunals by the abolition of the Administrative Justice and Tribunals Council, consumer involvement is crucial.

It is also essential that the wider justice landscape is accounted for as changes could have direct consequences for the civil court system. In the CAS vision of an accessible civil justice system, the whole system approach which includes early negotiation and ADR as part of a spectrum of justice is vital. Formal legal process administered by courts should be the forum of last resort in the resolution of most civil disputes. Accessible pathways to alternative means of redress must be established to prevent cases from reaching courts when this form of resolution is not proportionate to the dispute, and not what the user

wants. It will be important that the structuring of the Board also includes the capability to consider and contribute to the development of access to justice in this way, as the impact on the system, and the actors within that system (judges, lawyers and users) could be great.

(2) What steps could be taken along the way to help achieve a joint service to courts, tribunals and their users?

The users of courts and tribunals will include legal professionals, lay representatives and the end-users who are pursuing their rights. These are three distinct groups who all deserve consideration of their needs from a merged service. As the needs of the legal profession will undoubtedly be reflected in other submissions, CAS will not focus on this group.

Single gateway for information

For lay representatives and end users, the provision of information is fundamental. The merger is an opportune time to review the information available to these groups, not only in terms of the content of that information but also how it is presented and the various sources of information which currently exist.

A single gateway of information which is presented in an accessible layout and in plain English would be of clear benefit in supporting users through civil procedure systems. This gateway should exist as an electronic resource and should provide general information about what to expect from the process as well as toolkits to help users in, for example, filling out court forms.¹ There are also possibilities within this gateway for including for example short videos about what a tribunal process or court process might look like: approaching the design from a user-focused perspective and fully preparing a user for the process ahead of them.

For confident consumers, this network of tools and information may provide all that is needed to progress their dispute through formal legal process but those designing the gateway should be mindful of consumers who need support or who do not have access to the internet. It will be important in design to work with users and advice and support organisations to make sure that the electronic gateway is successful in its accessibility as well as ensuring users who require assistance are signposted to advice and support services.

When the information is available in more than one place (for example on multiple websites) all sources should present consistent support in content and materials. Links between the single gateway and other sites will be beneficial in encouraging consumers to access advice and support networks which are available to them. In turn, it will be important to make sure that advice and support organisations have the capacity to cope with such referrals –

¹ An example of this already exists on AdviceGuide, the Citizens Advice Service advice website around taking a trader to the small claims court, available at http://www.adviceguide.org.uk/scotland/consumer_s/consumer_taking_action_e/consumer_legal_actions_e/consumer_small_claims_s/taking_a_trader_to_court_s.htm#filling_in_the_forms_to_raise_a_small_claims_action.

something which including organisations in the design of the information gateway would help with. This capacity within advice and support organisations would also provide an essential point of physical access for consumers who are less confident, or digitally excluded through lack of access or lack of computer literacy.

In addition to providing information about the processes of civil court actions and devolved tribunals, information should also be available through a single gateway about reserved tribunals. This is particularly for the benefit of end users to whom it matters little whether their problem will be addressed by a reserved or devolved process.² This level of understanding often extends to the legal system itself, and so a single Scottish gateway will also add confidence that the information an end-user is accessing is the right information for them.

As systems of early resolution and ADR develop, this system should also incorporate that information and help to facilitate pathways to achieving justice at any point on a spectrum from early negotiation to court proceedings.

Joint training opportunities

Judicial training has progressed greatly in recent years, particularly with the formation of the Judicial Institute. Although members of the judiciary may be considering very different subject areas, there are commonalities which could be identified for the benefit of joint training. Such training has the potential to be innovative in approach, with input from a wide range of organisations.

A good example of this would be in identifying the common ground of welfare benefits in debt and housing cases in the Sheriff court and cases before the private rented housing/homeowner housing committees and potentially the Mental Health Tribunal. Relevant justices and members could have training delivered by bodies such as the Citizens Advice service and JobCentre Plus to provide a picture of how problems with welfare benefits can impact on the lives of end-users.

This would ensure a broad spectrum of understanding from the judiciary and tribunal members about the realities of the situations from which end-users come.

Integration and training programme for staff

In providing a joint service it will be important that staff in the new merged system have an awareness of how all systems operate – tribunal administration, tribunal process and procedure, court administration and court practice and procedure. This is key in providing an integrated service to all users where staff do not work in silos.

² This is the experience of the Citizens Advice Service and also a clear finding of Consumer Focus Scotland, '*Facing up to legal problems: Towards a preventative approach to addressing disputes and their impact on individuals and society*' (December 2012) available at <http://www.consumerfocus.org.uk/scotland/files/2012/12/Facing-up-to-legal-problems-Full-report.pdf>

Such an integration/training programme should also provide a platform from which to build constructive discussions about best practice. As discussed in more detail below, there are opportunities within this merger for the SCS and the STS to learn from each other on aspects of operation. This sharing and learning process should be encouraged for the benefit of all users.

(3) How can the character of both tribunals and courts be maintained whilst served by a joint administration?

While it is important to maintain the individual character of tribunals which have been honed to the needs of users over their years of operation, it should not be forgotten that the merger also provides much opportunity for the sharing of best practice in user experience, IT systems, and more. It also provides development opportunity in the role of Summary Sheriffs.

To safeguard the individual nature of tribunals requires a keen understanding of why they have developed in a certain way and an appreciation of that. It is from this starting point that discussions about best practice could start and improvements could begin to be realised – particularly in relation to courts. CAS believes that lower level civil processes could be well informed by the user-focused principles underpinning the tribunal system.

Summary Sheriffs

This is particularly so in the development of the practice of Summary Sheriffs. CAS believes that the establishment of a new judicial tier within the civil justice system is a rare opportunity to design a forum which understands and acknowledges the needs of consumers. In line with this, CAS agrees with and supports the inquisitorial approach the Summary Sheriffs are to adopt (as outlined in paragraph 72 of the consultation paper and ss 70-78 of the Courts Reform (Scotland) Bill).

However, we strongly believe there would be a missed opportunity in assuming that this tier should represent an extension of current judicial practise. We think the function of civil Summary Sheriff hearings should be designed with accessibility for consumers as the primary consideration. In operational terms, CAS believes that the design of Summary Sheriff practise should strive towards new standards of accessibility and should not be based on current models. Rather, this tier could be best informed by drawing lessons from the accessibility of tribunals.

To achieve a judicial tier fit for the 21st century and fit for consumers requires a new and modern approach including:

- **Hearing civil business in non-court settings:** this would represent an opportunity for the ethos of the Summary Sheriff hearings to be fully aligned with the inquisitorial approach without the squeeze on civil business already extensively experienced within the setting of the Sheriff court. This move would also facilitate and foster the easy promotion of peripatetic Summary Sheriffs – an idea which would significantly

increase proximate access to justice in rural areas and would make best use of Summary Sheriff specialisms.

In the achievement of this aim, cases could be heard in premises shared with tribunals and in this way represent cost benefits in the sharing of administration and the sharing of venue.

- **Separating civil from criminal business**, preferably by hearing civil business in non-court settings or the use of weekend and evening courts so that business is separated by virtue of timing.
- **Requiring Summary Sheriffs to sit without wigs and gowns** which will make this tier of the judiciary accessible to consumers and enhance the inquisitorial role. This would encourage the feel of the hearing to be more in line with a tribunal than a court.
- **Clear and simple process which removes the need for lawyers from the outset.** Lessons can be learned from employment tribunals or small claims – both forums were designed to be accessible for consumers without the assistance of a lawyer, but this intention has been lost over time and the need for a lawyer has escalated into an expectation.

This is an area where the STS could contribute insight into how accessibility for party litigants can best be achieved.

(4) Do you have any further comments that you think should be considered?

A move towards a merged STS and SCS is in line with a similar move in England and Wales which produced HM Courts and Tribunals Service in April 2011. However, the success of this merged operation has not been extensively reviewed: from the perspective of the user, from an operational perspective or from an efficiency perspective.

CAS would recommend that the merged STS and SCS is reviewed independently 3 years after it comes into being. This review would be for the benefit of all users of the system as well as the judiciary and the Service itself. The review should take account of views from the users (end-users, lay representatives and lawyers), from the judiciary, and from staff within the merged Service as well as information systems, IT systems and case management systems.