

Citizens Advice Scotland

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



Shaping Scotland's Court Services

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- Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using 200 service points throughout Scotland, and are represented in 30 local authority areas.
- Citizens advice bureaux in Scotland helped clients with over half a million issues a year.
- In 2011/12, Scottish bureaux achieved a financial gain of over £140 million.
- A report by the Fraser of Allander Institute, found that the Citizens Advice Service contributes a total benefit to the common good in Scotland of £166.2 million.

**SCOTTISH COURT SERVICE CONSULTATION
PROPOSALS FOR A COURT STRUCTURE FOR THE FUTURE**

RESPONDENT INFORMATION FORM

Please return this form with your response to ensure that we handle your response appropriately.

1. Name/Organisation

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3. Permissions

I am responding as:

an individual

a group or organisation

Please enter an X in the appropriate box

If you are responding as an **individual**, please answer question 4(a) and, if appropriate, question 4(b).

If you are responding as a **group or organisation** the name and address of your group or organisation will be made available to the public and published on the Scottish Courts web site. Please mark the appropriate box in question 5 to indicate whether you are content for your response to be made public.

4. Permissions as an individual

(a)

Do you agree to your response being made available to the public (in paper copy and/or on the Scottish Courts web site)?

YES

NO

Please enter an X in the appropriate box

(b)

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

Please enter an X in ONE of the following boxes

Yes, make my response, name and address all available

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

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

5. Permissions as a group/organisation

Are you content for your response to be made available?

YES X

NO

Please enter an X in the appropriate box

General Comments

Introduction

Citizens Advice Scotland (CAS) welcomes the opportunity to respond to this consultation. Specifically funded projects and wider advice work undertaken by the Citizens Advice Bureaux (the bureaux) in Scotland in 2011/2012 recorded 380,000 legal enquiries including 5,504 civil court and tribunal representations. The Citizens Advice Service in Scotland continues to support and represent users of the court system and strongly advocates the principle of access to justice.

In forming the response to this consultation, CAS undertook a consultation with bureaux to gather their opinions and attitudes towards the proposed restructuring. All comments in this response relate to the provision of civil justice.

The principle of access to justice is a desirable end and we look forward to engaging with the Making Justice Work Programme. At such an early stage in the Programme, it seems premature to discuss court closures but CAS is hopeful that any changes to court structures will be reflective of the innovative approach the MJWP is working towards.

Access

CAS strongly believes in upholding the principle of accessible justice but is also of the opinion that 'accessibility' does not necessarily entail proximity to a court building. However, where proximity is not maintained it is imperative for the individual court user that access is.

A balance between proximity and accessibility should be guaranteed at the outset of any court closures, a balance which CAS see as consisting of four major aspects:

1. Transport

The financial consequences of travel should be considered as a matter of high importance. The consultation paper's attention to travel times is welcome, but:

- In many cases, for example eviction, those who are facing court proceedings are the most financially vulnerable in society. The cost of travel is not just prohibitive, it is exclusionary. It will not help to claim money back at the outcome of a hearing as clients do not have the money to expend and so allowance for up-front travel expenses must be considered.
- Attention should be paid to the variants in public transport patterns throughout the day when there are often significantly more services during peak travel to work times. These patterns may sometimes suggest alternative relocations

are actually more convenient to court users than the reality would be (including in terms of timing and frequency of public transport).

- Total travel time by public transport will also include travel to bus stop/rail station times.

2. Technology/Alternatives to physical court appearances

The inability to reach a court building should never be a barrier to partaking in judicial process – particularly as a result of the proposed closures. There is a positive opportunity to use technology in a way which streamlines court processes and makes accessibility easier for all clients living in rural locations and to include the use of other means which mean appearances in person are not essential.

We broadly support the paper's objective of dealing with as many procedural stages as possible without personal appearances in the courtroom (para. 2.12). However, it is important that:

- The **general presumption** should be that local courts and facilities should not be withdrawn until alternative access facilities are in place; and in particular facilities avoiding the need for physical appearance in court. This is particularly important for party litigants.
- It is essential that a network of reciprocal outlets for any video conferencing or other technological communication methods is established. There will be no benefit from the investment in court technology without equal investment in establishing a network of locally accessible venues where evidence can be given in an appropriate environment. It should never be assumed that clients will be able to access effective telecommunications services from home internet provision.
- No clients should face discrimination from judges, court staff or any other staff for appearances made through technology. The incorporation of appearances in this manner will require a culture change in the way business is structured which must also be allowed for – in particular any implications for court scheduling must be taken into account.
- Access arrangements should take account of such low value claims and party litigants including access to IT for lodging of claims, defences and counterclaims, potentially using video conference appearances where practicable. The consultation paper focusses on proofs and other hearings involving substantial time commitments by judges, litigants, witnesses etc. While this emphasis is reasonable in itself, it overlooks the importance of first hearings – often the only hearings – for small claims and summary causes. First hearings are important for lay pursuers and defenders, who will very often be unrepresented.

- Provision for litigants to choose written as opposed to oral procedures should be considered e.g. for contested decisions on times to pay. This could possibly be done by sheriffs in chambers. It is recognised that (a) this could conflict with the principle of open, public hearings- though the Gill Review saw this as acceptable and compatible with ECHR Article 6, subject to safeguards (Report, ch. 6, paras. 50-64); (b) sheriffs will wish to direct that some “written” cases are heard in court (though consideration in chambers may provide more time for identifying cases requiring hearings). It is also recognised that some party litigants are more comfortable making oral rather than written presentations but in allowing a choice there may be more flexibility for both litigants and the judiciary.

3. Advice Services

The Citizens Advice Service in Scotland provides a range of advice services throughout Scotland including advice on legal issues. This is achieved on many levels, from generalist advice on benefits appeal issues to interventions in repossessions to lay representation before courts and tribunals.

Some bureaux have specifically funded projects through the Scottish Legal Aid Board which have proven to be extremely effective in helping those in crisis. As submitted in the response by Haddington CAB to this consultation we support the view #that a key to the success of these projects is the local nature of the service.

In-court advisers provide both advice and lay representation and the ability of some projects to continue to provide both of these services to the current level would be significantly compromised by some of the proposed closures:

- a) where lay representation would be required in another court to the current one threatened with closure (for example, Haddington CAB’s in-court advice service)
- b) where the demand on advice services and lay representation increases with the consolidation of business into a court (for example, Citizens Advice Edinburgh’s in-court advice and mediation service)

Other bureaux also provide less formally organised services which offer help and advice when clients are in need – often when that need has reached crisis point. One such bureaux is Clackmannanshire CAB in Alloa. Based in the court building, this bureau is an essential resource for many clients who are in crisis need.

Local connections with sheriff officers and clerks means that business can be dealt with swiftly in the most appropriate manner, for example in halting eviction proceedings by lodging paperwork with the sheriff officers or clerks therefore keeping the case from the court. This is made possible in courts because of the local connections with trusted partners. The bureau is then able to help the client with other associated problems they may have (for example debt). The

importance of locally accessible advice services with strong connections to procedural administration should not be underestimated.

4. Procedural Administration

In the CAS consultation with bureaux, a strong theme in maintaining access to justice was maintaining local access to a Sheriff Clerk's Office even if a court were to close. The advice, guidance and assistance offered through this branch of the court service was felt to be invaluable to the preventative work which bureaux may undertake to stop cases from reaching a hearing.

The relationships built between local Sheriff Clerk's Offices and bureaux are links the bureaux are very reluctant to lose and CAS would strongly support the maintenance of local outlets to allow these relationships to continue.

Barriers to Justice

A recent report on legal capability by Consumer Focus Scotland entitled "*Facing up to legal problems – towards a preventative approach to addressing disputes and their impact on individuals and society*" (available at <http://www.consumerfocus.org.uk/scotland/publications/facing-up-to-legal-problems-towards-a-preventative-approach-to-addressing-disputes-and-their-impact-on-individuals-and-society>) showed that even when faced with a 'legal' problem, many consumers do not identify their problem as 'legal.' In this way, court proceedings can present a barrier to justice when this is not the resolution a litigant expected or wanted in attempting to resolve their problem.

In better understanding a person's motivations for seeking resolution to their problem, CAS believes that this presents an opportunity for the SCS to align services to an individual's pursuit of justice. In providing services locally for alternative dispute resolution, many cases (especially small claims) may be resolved in a satisfactory way before a case need be heard before a Sheriff. The ability to opt for mediation, including telephone mediation, at an early stage (possibly before preliminary hearings if both parties agree and subject to the sheriff's power to order an oral hearing where appropriate) is an option which should be positively considered in any review of court services.

Court time

CAS are concerned that the restrictions to the High Court circuit, the availability of venues for Sheriff and Jury trials and the closures will culminate in deterioration of effective civil business. There will undoubtedly be increased pressure on courts that absorb business and we would seek assurances that access to civil justice will not be compromised.

Proposal 1

As this is outwith the area of bureaux experience, CAS will not make comment here.

Proposal 2

As this is outwith the area of bureaux experience, CAS will not make comment here.

Proposal 3

As this is outwith the area of bureaux experience, CAS will not make comment here.

Proposal 4

As this is outwith the area of bureaux experience, CAS will not make comment here.

Proposals 5 and 6

CAS has dealt with these proposals together as we do not think the proposed closures should be considered separately. This is especially so in the consideration of Peebles and Haddington, with the business of both proposed to move to Edinburgh. The consequences of these closures are inextricably linked and so will be discussed as such.

- *Question 16 Do you agree with the proposal to close the sheriff courts and justice of the peace courts at Dornoch, Duns, Kirkcudbright, Peebles and the sheriff court at Rothesay and transfer the business into the neighbouring sheriff court districts of Tain, Jedburgh, Dumfries, Edinburgh and Greenock respectively?*

and

- *Question 19 Do you agree with the proposals to close the sheriff courts and justice of the peace courts at Alloa, Cupar, Dingwall, Arbroath, Haddington and Stonehaven and transfer the business into the sheriff court districts of Stirling/Falkirk, Dundee, Inverness, Forfar, Edinburgh and Aberdeen respectively?*

Citizens Advice Scotland do not agree with the proposals to close the Sheriff courts in these locations.

- *Questions 17 and 20*

If you disagree with the proposals regarding these courts, please say:

(a) why you disagree, and

These courts represent a lifeline to accessible justice for citizens – not only for those in the towns where the courts are based but for the communities and individuals who live on the far rural boundaries of sheriffdoms. CAS is concerned that:

- **Access to justice will be significantly compromised in physical access to judicial processes as well as information directly from a local court.**
- **Users in locations where courts are closing will not experience a comprehensive local network of support services as they do now. This will not only manifest in a marked deterioration compared to current circumstance, but compared to more urban locations where the courts remain it will create a disadvantage. Even where advice services remain their effect will be limited by the inevitable breakdown in relationships between them and Sheriff Clerk's Offices which will come when the local offices close with the courts.**
- **The transport networks in rural locations are extremely poor: travel is made difficult by transport which is infrequent, expensive and lengthy. This could not only lead to a reduction in the pursuit of civil justice (for example small claims cases) but also to an inability to attend hearings resulting in court and potentially police time being wasted.**
- **Small solicitor businesses may move closer to sitting courts or increase prices to offset the travel costs associated with representing their clients in sitting courts. This could lead to a reduction in clients seeking to pursue actions.**
- **In the mid to longer term, it is unknown what the impact of welfare reforms will be. It is possible to say with some confidence however that there is likely to be an increase in the number of housing and debt cases. Limiting access to the courts for clients facing housing and debt actions could mean the most vulnerable in society are excluded from justice.**
- **In the case of Stonehaven Sheriff Court, it was commented in the consultation with bureaux that, "Stonehaven court covers the area from Checkbar Nigg down to just North of Montrose and across to the West of Braemar. Household numbers are increasing significantly in this area with a whole new town of Elsick about to start with a target of 9000 homes. Closing Stonehaven and moving all cases to Aberdeen where capacity is already limited, makes no sense at all."**
- **In the case of Arbroath Sheriff Court, it was commented in the consultation with bureaux that, "public transport from Arbroath to Forfar is exceptionally limited. This will impact on all parties who are required to attend court. Potentially a greater risk of parties not turning up or being late." This raises questions about the appropriateness**

of the re-direction of business which, although it may be within a sheriffdom, is not necessarily in the user's best interests.

- **There is concern about the provision of Sheriff Courts which will be left in the Borders with no visibility of the judiciary on the closure of Peebles Sheriff Court.**

(b) how you would prefer the sheriff court and justice of the peace court provision for these districts structured, being as specific as you can about how your preference would operate in practice.

If you are commenting on only some of the courts affected, please indicate to which court(s) your answer relates.

A preferable scheme of operation could involve a more innovative approach than outright closure. Especially for civil matters, some lessons could be learned from the operation and accessibility of tribunals in rural locations. Some suggestions which came through the bureaux consultation CAS undertook included:

- **A rolling programme of localised courts where the court would be brought to a community on a quarterly or 6 monthly basis**
 - **Embracing the scope for more to be done in alternative fora to in-person appearances such as online and using video conferencing facilities (subject to the discussion above)**
 - **Creating new resource such as in-court advisers and mediators to work with the system making users fully aware of all processes so they can choose the most appropriate path to resolution from the outset.**
- *Questions 18 and 21*

How would the closure of any of these courts affect you?

Please give reasons for your answer and indicate to which court(s) your answer relates.

The biggest level of concern expressed by the bureaux was in their ability to continue to help and support their clients to the extent they currently can. The change in demand on in-court advice projects and changes to the relationships bureaux have built and rely upon with Sheriff Clerk's Offices (as discussed above) could impact on clients in a highly negative way.

Similarly, with opportunities for bureaux to engage in effective preventative work to keep business from courts as they currently do, an unintended consequence of the closures could result in an increased demand on Sheriff time.