



## Scottish Parliament Stage 1 Debate: The Scottish Civil Justice Council and Criminal Legal Assistance Bill

A briefing from Citizens Advice Scotland

**Lauren Wood**

October 2012

- 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 funding given to bureaux.

## Introduction

Citizens Advice Scotland welcomes the introduction of a Scottish Civil Justice Council (SCJC/the Council) in the Bill. During the period of reform to achieve the Making Justice Work Programme (MJWP), it will be crucial that there is a body to take strategic oversight of civil justice for end-users, the judiciary and the system as a whole.

We welcome the fundamental spirit of the MJWP in its aim to achieve a coherent, accessible and sustainable civil justice system which puts users at the centre of the process. We see the SCJC as an integral body to ensure the success of the reforms and then afterwards as a body to ensure these principles of coherence, accessibility and sustainability are upheld.

CAS also welcomes the intention that appointment to the Council will be in line with the principles associated with public appointments process.

However, there are three areas we remain concerned about:

- Policy – clarity of the type of policy work the Council will undertake
- Functions – concern over the early prioritisation of functions and the consequences of that for users and the longevity of the Council
- Composition – concern about the composition of the Council being compromised as a result of the prioritisation of functions

## Policy

CAS believes that for the proposed SCJC to operate to maximum effect, the primary role of the Council should be as a policy and research body. It is not disputed by the Justice Committee that the Council will have a policy remit,<sup>1</sup> but the extent of this remit in operational terms is still unclear. There remain questions over the type of policy work to be undertaken by the Council which must be resolved before stage three.

We believe that a significant aspect of the Council's work should be through undertaking policy work which pro-actively investigates all elements and aspects of the civil justice system as necessary to the end of ensuring access to justice. The scope of policy work undertaken should be broad: from investigating accessibility for individuals utilising the system, to assessing the interaction between the tiers of the civil justice system, to more specific procedural aspects like court rules. Policy should not be limited to "detailed matters of practice"<sup>2</sup> but should take a wide-ranging approach to the consideration of all aspects of civil justice.

Hand in hand with this type of policy is a research function which we believe the Council should hold and exercise. This research and policy function should be

---

<sup>1</sup> The report of the Justice Committee discusses the boundaries of "policy" in terms of the extent of influence the Council's policy recommendations might have

<sup>2</sup> Scottish Parliament Official Report. *24<sup>th</sup> Meeting of the Justice Committee* 4<sup>th</sup> September 2012

expressly outlined in the Bill and should be utilised to ensure successful reforms to the end of a continuing coherent, accessible and sustainable civil justice system.

We believe that to ensure maximum advantage of the Council's policy outputs, the Council should be required to report to Scottish Ministers as well as the Lord President.

## Functions

CAS is concerned about the Stage 1 outcome where “the Committee notes the Lord President's view that modernising court rules is likely to be the Council's initial priority.”<sup>3</sup>

CAS strongly believes that the Council should not prioritise between its functions. In prioritising the modernisation of court rules (a function of the Council under s2(1)(c) of the Bill), we are concerned that:

- individuals utilising the system will not be awarded sufficient consideration and may be detrimentally under-represented – a view shared by the Justice Committee<sup>4</sup>
- there will not be the objective overview of the civil justice system which is crucial in the upcoming times of change
- there will be no safeguards to ensure the Council moves away from focus on court rules and returns to its intended position of overview of the civil justice system.

The Council is tasked with a wide ranging remit, and so the work of the Council should be equally wide-ranging. There will be extensive change in all aspects of the civil justice system, particularly over the next five years. Monitoring will concern not just the technicalities, but (for example) consideration of how implementation has impacted on the professionals who sit in courts; how alternative dispute resolution and administrative justice have changed as part of the making justice work programme; and how users are accessing the system.

If the Council focuses on court rules and does not take account of the whole civil justice system (including alternative dispute resolution and policy as discussed above) from the outset, it sends a message as to the priorities of civil justice and reform. It therefore will not be the body Lord Gill envisaged when he said “the creation of the council will lay the foundation for the implementation of further projects and will be the vehicle for the implementation of all the legislative reforms we have recommended.”<sup>5</sup>

## Composition

The SCJC will set the tone for wider reforms to the civil justice landscape. We maintain that the composition and function of the Council should be in the spirit of

---

<sup>3</sup> Scottish Parliament Justice Committee. *Stage 1 report on the Scottish Justice Council and Criminal Legal Assistance Bill*. 4<sup>th</sup> October 2012

<sup>4</sup> *ibid*

<sup>5</sup> Scottish Parliament Official Report. *24<sup>th</sup> Meeting of the Justice Committee* 4<sup>th</sup> September 2012

the new civil justice system from the outset – reflective of the end vision of a civil justice system which the MJWP is working towards.

CAS strongly believes that the initial composition of the Council should not flow from the prioritisation of modernising court rules as has been implied. From the inception of the Council, we believe that representation of judiciary and practitioners from all tiers of the new civil justice landscape (Courts, administrative justice and ADR), should be balanced with representation of lay representatives and users. This balance will ensure that the views of all who utilise the civil justice system are represented, and such a balance from the start will ensure the consistency of the Council as a body. Without the consistency of composition, ‘the Council’ will be a different body at different points in time.

The composition of the Council should remain consistent through the life of the Council and should not be influenced by the prioritisation of work streams. We agree with the Justice Committee report that Council Committees will help ensure individuals from a wide spectrum of backgrounds and interests have input into the Council’s work. However, we would go further to say that the appointment of individuals with particularly required knowledge and expertise to undertake particular areas of work should be confined to Committees.

By utilising Committees, the Council can work to its fullest potential from the outset and all Council consideration will be made with a consistent balance of interests.