



## **ASLEF Response to the Scottish Civil Courts Review**

### Introduction

ASLEF is Britain's trade union for train drivers. Its 18,000+ members are employed in the Train Operating Companies, the Freight Companies, London Underground and some Light Rapid Transport. We have 1,500+ members in Scotland.

The union's day to day direction is overseen by its Executive Committee. Each of its 8 regions has a District Organiser and Committee, while the main negotiations with employers are undertaken by Company Council Representatives.

### The Process

ASLEF are very concerned at the lack of involvement of the Trade Union movement in the review process. The Trade Union Movement is one of the major stakeholders in Civil Justice and engagement with them has been limited. The entire review document only mentions them once and this reference is in fact wrong.

ASLEF feel that the makeup the review team is of concern. Other than the Scottish Consumer Council no other stakeholders have been invited to take part. It is not right that parties with commercial interest in the use of mediation have been invited on to the team whilst others have not.

The review looks to answer many questions that are of a political and commercial nature and deals with social and economic issues. Whilst judges play an important role within our society, these issues are not within their remit. Therefore, the fact that the review team is so heavily composed of judges is concerning.

### The Basic Principal from which the review proceeds

ASLEF is very concerned about the starting point of the review paper. The review is looking to address issues of costs and proportionality of costs associated with Civil Justice. However the review assumes that "value" only relates to financial value of the damages obtained. It neglects the most fundamental aspect of Civil Justice, the rights of people and whether they should be protected or advanced through the Civil Courts.

The value of a Civil Court case is not simply the financial compensation but the wider consequences of the case. A personal injury case has the ability to make a workplace safer for all employees and has the potential to make a difference in every workplace in

the country. ASLEF believes that this is of great value and that this has not been recognised in the Civil Justice review.

ASLEF believes that the starting point for analysis should be the European Convention on Human Rights which has become a modern day constitution. This would base the review on rights based analysis. The Scotland Act requires all Scottish Legislation to be compliant with the European Court of Human Rights (ECHR). On top of this, society also demands that we must ensure that not only do we comply with the ECHR but we positively promote our peoples rights. Therefore the review should not only ensure that the Civil Justice System complies with ECHR but that it is designed to promote and allow individuals to fully exercise each right enshrined in the convention.

Article 2 of the Human Rights Convention is the most fundamental right of them all, the right to life. It is therefore essential that the Civil Justice System should serve to ensure that matters of health and safety, which serve to protect life, are open to being pursued without restriction or barrier in Scottish Courts to demonstrate the importance to society.

ASLEF have always ensured that personal injury cases are a means to ensure that health and safety is improved across the whole industry and are therefore used to protect life. The review should consider giving Trade Union's robust means by which workers can begin Court action where rights to life have been infringed in the workplace, but prior to an accident taking place. This should involve proper and effective sanctions.

Article 6 ensures the right to a fair trial. This can be more accurately expressed as the right to access justice. The paper demonstrates that only 57% of solicitor's legal fees are recovered from the other side in Scotland as opposed to 89% in England. This will effect the poorest in society. Those who win personal injury cases should receive their full legal fees and not have to pay 43% out of their own pocket.

#### Existing Policy which Conflicts with Areas of the Civil Justice Review Paper

The Scottish Government has a policy of eradicating homelessness by 2012. However, under the current Civil Justice System, it is relatively easy to evict people from their home for very small arrears in rent. These people are not entitled to the correct legal representation. This must be examined by the review.

The review suggests that individuals should be empowered to peruse court action on their own behalf and without legal assistance. In many cases there is no opportunity for them to receive legal assistance. However, by the Scottish Government own admission, 25% of the adult population lack basic numerously and literacy skills. Clearly this section of the population would not seek empowerment but would rather have access to legal assistance and support.

#### Concerns over the Agenda of the Civil Justice Review Paper

ASLEF is concerned that there appears to be an underlying agenda throughout the review. The paper frequently promotes demoting personal injury cases from the Court of Session and promotes a so called "consumer agenda" in which individuals take action on their own behalf and without the fear of having to pay legal costs. This may well benefit those who are privileged and therefore are likely to be confident, intelligent and articulate. This will

create a two tiered justice system that will give greater benefit to the middle and upper classes. ASLEF disagree with the removal of access to Civil Courts as suggested in the document, and fear that the review may have come to this conclusion before the consultation process began.