



## The Civil Justice System in Scotland: a case for modernisation?

*'Can the development of more modern methods of communication and case management streamline court procedures and improve efficiency?' This question is being asked in the context of the Civil Justice Review being undertaken by Lord Justice Clerk, the Right Honourable Lord Gill. The answer is not a simple 'yes' but more a matter of how might modern or new management methods be applied in the context of our civil justice system.*

*Justice is – quite rightly – seen as ‘... at the heart of a peaceful, prosperous society. For most of us, most of the time, the legal framework that surrounds us and supports our daily lives is something that we take for granted. But the law and the legal system provide the framework of rights, responsibilities and rules that help individuals, families, communities and businesses live and work together in harmony<sup>1</sup>.’*

Our civil justice system is founded on the rule of law. It should be administered on the basis of best practice and it should be accessible to all those who seek to uphold their individual and collective rights. When undressed *'the development of more modern methods'* will be seen as a change agenda. In some quarters the perception will be that change is not for the better.

Nonetheless, there is a powerful case for doing things differently, changing the culture and adopting new processes if the primary purpose of the Lord Gill Review is to make our Civil Justice System more accessible to the people of Scotland. This paper seeks to state that case and give an insight into what a more modern Scottish Civil Justice System might look like.

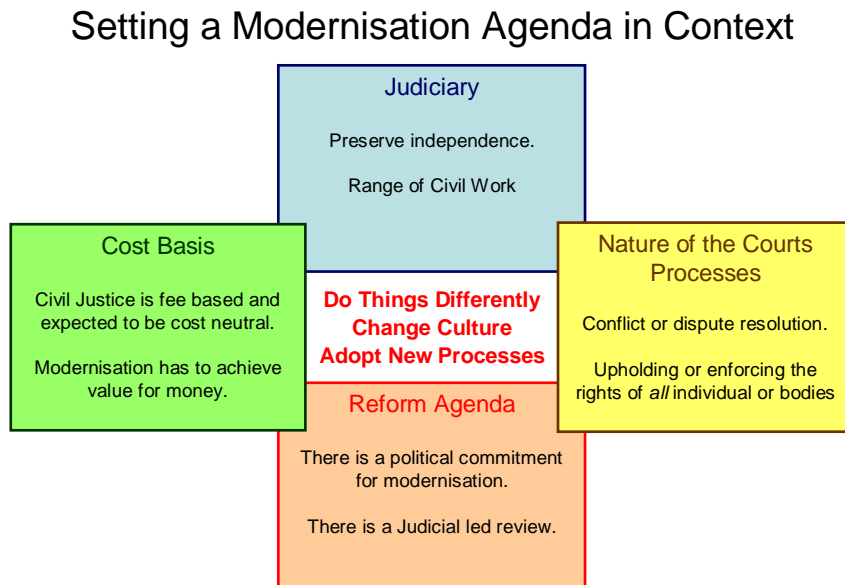
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<sup>1</sup> Report into Scottish Civil Justice February 2007.

## A Modernisation Agenda in Context

For a modernisation agenda to work in the civil justice domain, and bring benefit, it must be set in the context of what it seeks to do and who it seeks to serve. It must also recognize that there is no 'clean sheet' from which to start.

Given this understanding, we believe that a modernisation agenda will be driven by four key considerations:



**The Judiciary.** The independence of the Judiciary is at the heart of the justice system as an absolute that can not be usurped, upset or diluted. The modernisation agenda envisaged would 'enable' the judiciary with modern technology means and thereby reinforce their independence. That same modernisation agenda must also bring benefit to the whole spectrum of both public and private law. Selective application will not serve the needs of the judiciary.

**The Nature of the Courts Processes.** The civil justice system is about dispute resolution. It is also about upholding or enforcing the rights of *all* individuals or bodies. Therefore to be relevant and of benefit a modernisation agenda must retain this equilibrium and not skew the court

processes.

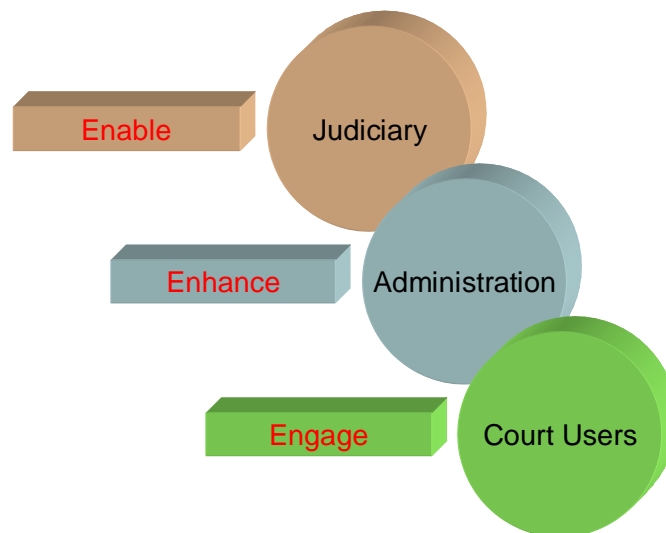
**The Cost Basis.** Civil justice works as a fee paying system which works on a formula of cost recovery. Many observers would expect a modernisation agenda to incur some cost. The reality is that the transformation has to improve the costs recovered and demonstrate value for money.

**The Reform Agenda.** Modernisation and change within the justice arena will only occur when there is political commitment, judicial buy in, administrative ownership and public need. This set of conditions alone determines whether change can be delivered successfully.

Given this context a programme of modernisation can be envisaged.

There are three key groupings – the Judiciary, the Administration and the Courts Users. Each requires something different out of the modernisation agenda. The differences can be adopted as individual measures for improvement but taken together they reinforce to give real benefit.

### A Programme of Modernisation



We would observe that the Judiciary are not well equipped for working within a C21<sup>st</sup> environment and the introduction of new technology would *enable* them to

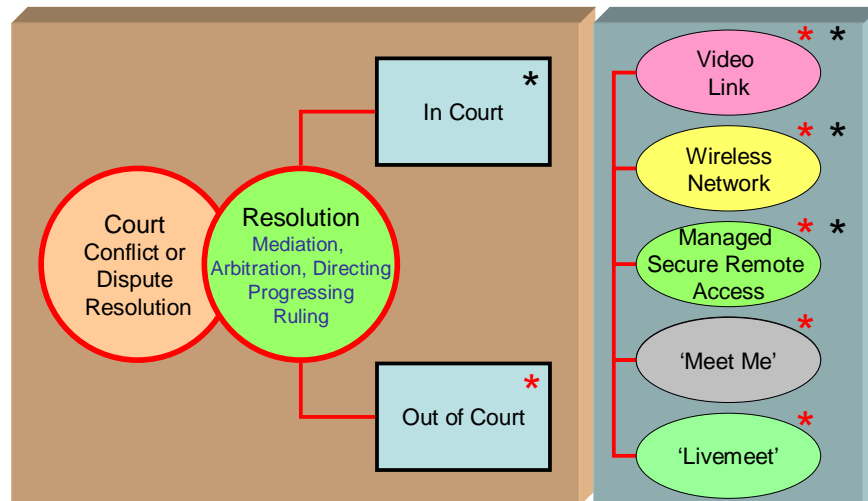
be more in control of the listing and case management processes. For the administration which is predominately based on a paper driven regime, there are modern methods, processes and technologies which when properly combined will serve to *enhance* and speed up the handling of courts business. Similarly technological means can provide a means to *engage* with those who have need to use the civil courts. People do not want to come to court unless they absolutely have to. When they do the experience is invariably daunting, the business of application complex and the access (particularly in the vast rural areas of Scotland) difficult. A spin off from this overall modernisation agenda would be a staff re-configuration to give the civil courts a more human face.

We can illustrate how this modernisation agenda might be applied using three examples of *enabling the judiciary*, *enhancing the administration* and *engaging the court users*.

## Enabling the Judiciary

Enabling the Judiciary is about giving them the technology and the tools to operate in a C21<sup>st</sup> environment. The nature of civil justice is complex and the judiciary are asked to preside over a wide variety of the public and private law cases. We think it unfair to all parties (the judiciary, those acting in a professional capacity, those whose interests have brought them before the court) if the civil courts are unable to hear cases in the most appropriate manner.

## Hearing Court Cases



All civil cases do not have to be heard in court and hearings could be given by way of conference calls or other using commercial products widely used in business<sup>2</sup>. If we moved to the sensible deployment of wireless networks in court practitioners and others can operate in a virtual environment.

The question of cost needs to be addressed.

Evidence suggests that too many parties come to court when they need not. Over listing is a common practice to compensate for last minute out of court settlements or failure to be ready; and those without civil courts close by do no choice but to travel.

Equally the current configuration of computer based support in court is not optimised. A more business focused deployment tailored to the needs of the civil justice system is required. The 'tools' that could be used [video link, wireless network, managed secure remote access, 'meetme' and 'livemeet'] are paid for by use.

We believe that enabling the judiciary could be shown as cost neutral and the benefit to represent value for money.

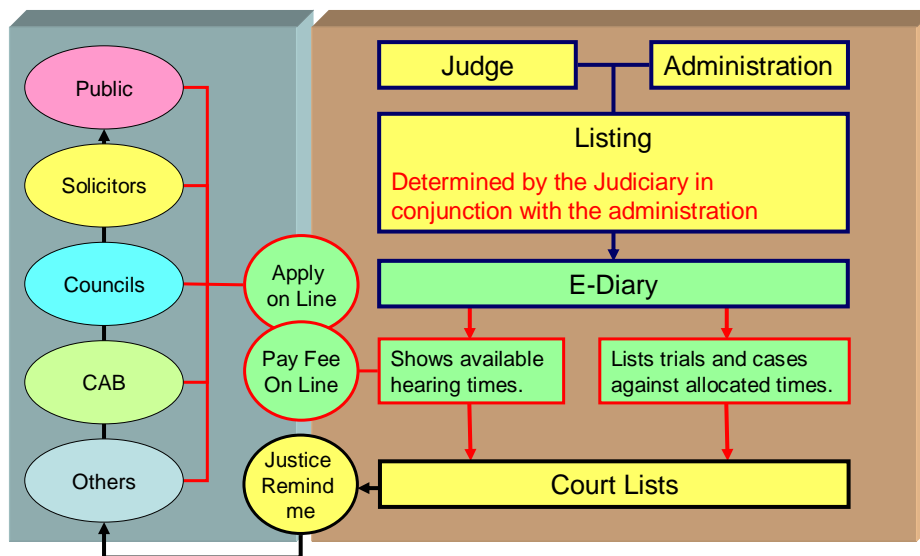
<sup>2</sup> 'Meetme' – a conference call facility which has a transcript capability. 'Live Meet' – a conference cum briefing facility which has the capacity for presenting evidence.

Overall the judiciary would gain significantly – they would have far better control over the manner in which they hear the cases and their independence would be reinforced.

## Enhancing the Administration

Pivotal to the civil justice system is '*listing*'. Listing is a courts function. It is the event at which the Judiciary in dialogue with the administration determine the timetable, nature and manner of hearing civil justice cases.

### Managing Courts Listing



'Lists' are managed in a number of ways. They can be written up as manual entries in a diary or they can be held on an internal database. Access to those lists is restricted to the administration. Where modern systems have been introduced – Possession Claims on Line for example – the list can be accessed by those making the application and court hearings reserved against pre-determined slots.

Preparing lists is a time consuming activity where the administrative staff receive written or paper applications, account for fees, validate correct receipt, allocate hearing times and then process.

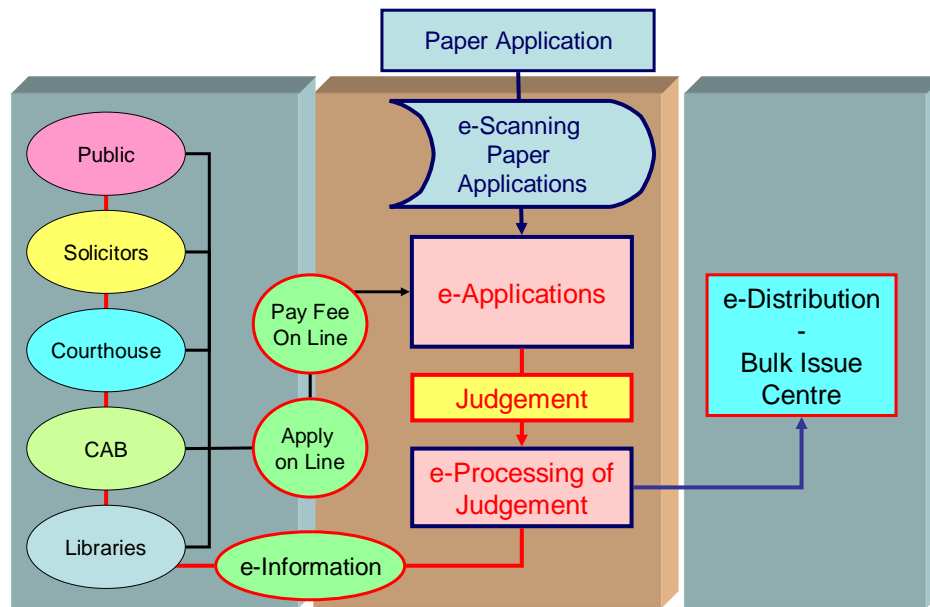
Without compromising the judicial position listing could be made an e-process where the principal practitioners and those who opt not to be represented are able to apply for hearings direct. The technology also exists to pay fees on line and couple the listing process with a reminder service. Such a transformation would enable civil court cases to be heard at a time and place to suit all parties and fees would be recovered at point of application. By freeing up the staff they would be able to concentrate more on core business of preparing cases to go before the judiciary and public facing activities such as help desk advice or mediation. We believe the combination has significant benefit.

## Engaging the Courts Users

Most work that passes through the civil courts is concerned with ordinary cause, summary cause or small claims cases. With both *Money Claims on Line* and *Possession Claims on Line* e-technology exists and has been proven to work.

Given the geographical challenge of communications across rural Scotland, and the drive for greater accessibility, an e-application process offers significant benefits. We envisage any e-process would also have to retain a limited paper transaction capability albeit with an e-scanning system for automation purposes. The overall process would give those who exercise their rights through civil procedures the opportunity to use a speedy and simple procedure. We see this model working with computer terminals in all courts with trained administrative staff on hand for advice. Other public venues could also be similarly configured with on site on line facilities and help staff.

## Managing e-Applications



A properly designed system would also enable the court user to be able to track the progress of their case. The judiciary would benefit from a more standard and better prepared case file format. There would also be economies of scale through the bulk issue of orders. This is a proven model – Northampton handles some 880,000 cases each year for England and Wales. By providing a similar facility for the whole of the civil justice system across Scotland there would be unquestionable benefit.

All parties – the judiciary, the administration, the court user – gain. The civil justice system or any party within it is not compromised.

### A Summary

The primary purpose of the Lord Gill Review into the Civil Justice System in Scotland is to improve access to justice for the people of Scotland. The question is asked whether a modernisation agenda can bring benefit to our civil justice system. We believe the answer is *'yes it can'* if applied in context and the focus is on – *enabling the judiciary, enhancing the administration, engaging the courts users*. Where the modernisation agenda has a part to play we are of the view that it would respect the role of the judiciary, recognize the pivotal role

the administration plays and streamline the process for the benefit of practitioners and other court users. Most importantly we can see this modernisation agenda giving all people in Scotland who seek to uphold their rights through the due process of Civil Justice access to a first class civil justice system.