

Scottish Civil Courts Review

A Submission

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This submission invites the review committee to consider extending the jurisdiction of the Justice of the Peace Court to include some civil business. In particular, it is submitted that many of the cases that are presently conducted in the Small Claims Court and in the Sheriff's Heritage Court could be dealt with in the Justice of the Peace Court.

1 Background

1.1 The Justice of the Peace Court

1.1 The Justice of the Peace Court (JP Court) is a court of summary criminal jurisdiction. It was created by the Criminal Proceeding *etc.* (Reform)(Scotland) Act 2007 to replace the District Court. The JP Court is presided over by a lay Justice of the Peace (JP) who has been trained to undertake their judicial role. The territorial jurisdiction of a JP is the sheriffdom for which they are appointed. JPs are advised on matters of law and procedure by a Legal Adviser (LA) who must be a solicitor or advocate. Administrative support for JP Courts is provided by the Scottish Court Service (SCS). It is expected that all existing District Courts will have transferred to JP Courts under SCS control by the end of 2009. It seems likely that, under SCS control, the vast majority (if not all) JP Courts will be co-located in Sheriff Courthouses.

1.2 Proceedings before the JP Court are restricted, in two ways, to monetary values not exceeding Level 4 on the Standard Scale (£2,500). The first limitation is that a JP may not impose a financial penalty of more than £2,500. The second limitation is that a crime of dishonesty involving a value of more than £2,500 cannot be prosecuted in the JP Court.

1.3 Historically, the administration of the District Court was the responsibility of the corresponding local authority. There was considerable variation in the standard and quantity of training given to JPs who sat in the District Court. Likewise, there was considerable variation in the extent to which Clerks of Court, who were solicitors employed by the local authority, specialised in summary criminal proceedings.

1.4 Now, all training for JPs is supervised by the Judicial Studies Committee to promote a consistent, high standard across the whole of Scotland. Likewise, all Legal Advisers will be employed by SCS as specialists in the law and procedure that is relevant to the JP Court.

1.2 Small Claims and Heritage

1.5 A substantial proportion of cases in the Small Claims Court and Heritage Court are undefended or, where defended, do not involve complex questions of law. A significant number of parties in these courts are unrepresented.

2 Proposals

2.1 The jurisdiction of the JP Court should be extended to include civil proceedings.

2.2 The JP Court should be given jurisdiction to deal with matters of heritage.

2.3 The JP Court should be given jurisdiction to deal with actions under the Small Claims Procedure.

2.4 There should be a procedure in place whereby actions that involve complex legal arguments can be remitted from the JP Court to the Sheriff Court. In such instances there should be a presumption in favour of the grant of Legal Aid to unrepresented natural persons and small businesses (defined by an upper limit on turnover).

2.5 The maximum financial value of an action before the JP Court should be fixed at an amount corresponding to Level 4 on the Standard Scale (£2,500). (This would involve an increase in the limit on the value to which the Small Claims Procedure applies. Such an increase is likely to have been argued for in other submissions and I shall not rehearse the advantages here.)

2.6 An appropriate appellate procedure should be put in place.

3 Argument

3.1 JPs have taken the judicial oath. They preside over criminal cases. They determine questions of fact, sentence and, after hearing argument and considering the advice of their qualified Legal Adviser, law. JPs are accustomed to the responsibility of taking decisions that substantially affect the reputation and, indeed, the liberty, of accused persons appearing before them. JPs are willing and able to take on additional work.

3.2 All JPs have now attended residential refresher training courses in judicial skills delivered by the JSC. There is expected to be a continuing programme of such refresher training to be delivered by the JSC. All JPs are now also required to undertake minimum amounts of continuing training, delivered locally, every year. The training programmes for JPs are overseen by the JSC and must be approved by the Lord President.

3.3 By late 2009 all JP Courts will be administered by SCS, co-located with Sheriff Courts and the Legal Advisers to the JP Courts will all be specialist solicitors.

3.4 In consequence, JP Courts will be consistently resourced and well advised and JPs are consistently judicially trained. They will be capable of acquiring the additional skills and knowledge required to deal with civil actions.

3.5 The majority actions in the Small Claims and Heritage courts do not involve complex matters of law. They do not require the forensic skills of a learned Sheriff. JPs are accustomed to deciding questions of fact and to applying the law to the facts as found. Where a question

of law does arise, JPs have access to a qualified legal adviser. It would only be in cases where there was genuine dispute and uncertainty as to what the law was that a different forum may be appropriate.

3.6 The law of evidence in criminal cases is much more restrictive than in civil actions, yet JPs are competent in its application. Road traffic law, for example, is regularly the subject of proceedings in the JP Court, yet this can raise complex issues and these are regularly dealt with by JPs.

3.7 Simplified procedures are appropriate in the vast majority of cases where the financial values are restricted and where one or both parties may be unrepresented.

3.8 The less formal nature of proceedings in the JP Court is appropriate to cases of limited financial value. A court presided over by a JP can be less intimidating for those appearing before it and this is appropriate for cases involving unrepresented parties.

3.9 Inexperienced agents often appear in criminal proceedings before the JP Court, particularly in straightforward cases. This gives new members of the legal profession a forum in which they can develop their skills. A similar benefit to the civil branch legal profession may derive from hearing Small Claims and Heritage in the JP Court.