

## EAST AYRSHIRE COUNCIL

### DEPARTMENT OF EDUCATIONAL AND SOCIAL SERVICES

#### RESPONSE TO SCOTTISH CIVIL COURTS REVIEW CONSULTATION

##### Chapter 2 Access to Justice

**Q1** Any contribution which public legal education could make to improving access to justice would tend to be limited to individuals who were more capable and confident in the context of reading, understanding, appreciating the importance of and subsequently responding appropriately, to any advice provided through self help material. In all probability however, this would make very little or possibly no contribution to assisting the most vulnerable individuals.

**Q2** The northern portion of East Ayrshire is served by Kilmarnock Sheriff Court and comes under the Sheriffdom of North Strathclyde, while the southern portion is served by Ayr Sheriff Court and comes under the Sheriffdom of Dumfries and Galloway. An ICA, managed by East Ayrshire Council has been based within Kilmarnock Sherriff Court since 2004 and although help in the form of advice and assistance is offered to those from the south of the authority, because there is no ICA presence in Ayr Sheriff Court, those turning up at court there unrepresented and unprepared on the day are likely to be disadvantaged through being unable to access ICA advice or assistance.

Although obviously other parts of Scotland also have no ICA available within their local Sheriff Courts, this can be perceived as a particular problem for those East Ayrshire residents who live in the southern half of the Council's area and are outwith the catchment area for Kilmarnock Sheriff Court.

Furthermore, it is interesting to note that while those living in the south of East Ayrshire have no direct access to any ICA within Ayr Sheriff Court, residents of North Ayrshire do have access, as Kilmarnock Sheriff Court also covers the whole of North Ayrshire.

**Q3(a)** In terms of potentially reducing costs in the medium to longer term and providing an opportunity for litigants to assume increased ownership and responsibility for playing a more active part in the process, designing court procedures to facilitate this would be particularly desirable.

**(b)** The difficulty in the above would be that current court procedures are based on the law and while the procedures themselves may be open to a degree of simplification, the same cannot be said for the law itself.

**Q4(a)** For some party litigants, self help services would indeed be useful, however, as previously mentioned, such help would only ever make a limited contribution and for many people, especially the most vulnerable,

such an option would be of little or no assistance.

- (b) In Court Advice Services on the other hand, are ideally placed to offer advice and assistance to all those who require it, either through reacting to demand at the last minute for crisis intervention or further to contact made as a result of the litigant responding to pro active early intervention procedure.

**Q6** It could be argued that in the context of the question posed here, what really requires to be examined is the suitability rather than the value of the cases, with the relevant question being whether or not the **types** of cases seen by In Court Advisers on a weekly basis, would be suitable for a separate court. The answer to this, in principal at least, is probably yes, with the cases in question being separated into two categories.

Firstly in the context of Small Claims, it is questionable whether Sheriffs, with their expertise and knowledge of law, should be required to deal with what are often the most basic of disputes, as there seems to be a significant number of consumer debt cases passing through court which in reality appear to require very little “legal argument” and on this basis, a more a pragmatic approach to the situation would seem sensible. However within this scenario, scope would require to remain for more challenging cases to be remitted to a “higher court” where if necessary a sheriff could deal with the case.

Mediation has proved very successful in the courts where it is offered and perhaps some sort of “pre judicial” intervention in relation to such cases would be beneficial, particularly in situations where matters could be resolved to the satisfaction of both parties, without the need to raise a court proceeding or to involve a sheriff.

Secondly, in relation to housing cases passing through courts, there is little doubt that the volume of undefended cases is both alarming and increasing, with relevant statistics indicating that tenants find the court process intimidating and off putting, with very few turning up to defend their rights. In the light of this therefore, it would seem appropriate to have different arrangements in place for dealing with housing cases.

It is evident that while some Sheriffs are familiar with the complexities of housing law and have a particular interest in this area, most seem to see Summary Cause (heritable) as a chore and have a tendency to pass decree as a matter of course without any real debate as to the circumstances behind the tenants situation, particularly in when the tenant does not appear or cannot get anyone else to defend their rights or speak on their behalf.

A more efficient and effective service could therefore be delivered if specialist Sheriffs, with the time, commitment and passion to deal with these types of cases, were to be made available to deal with housing cases

If less informal “hearings” were to be held, with a dedicated time slot for each tenant (at present court starts at 10am and the tenant can still be waiting for their case to be called long into the afternoon), specialised persons making decisions and looking not only at the cause of the impending eviction but also focusing on the through care of the situation, then in all probability, the number of cases would dramatically fall.

As a precursor to this, a suggestion worth considering may be early intervention through partnership working with all tenants having access to proper advice and assistance e.g. In Court Advice service, which has a proven track record of success, particularly in the Sherifdom of North Strathclyde, in reducing the volume of cases calling in court, and subsequent evictions. There is clearly an argument for ensuring that landlords have exhausted all means of recovery of rent arrears, etc before taking court action, with the suggestion again that compulsory referral for proper advice should be demonstrated prior to court action being raised.

To summarise, while it may be desirable to have a different setting for certain types of cases, with more specialised decision makers, for this to operate effectively, compulsory advice and assistance at the earliest possible stage (both by defender and pursuer) would require to be built in, along with a clear plan regarding how clients would avoid ending back at square one again.