



**PART-TIME SHERIFFS' ASSOCIATION**

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Lindsey Nicoll,  
Legal Secretary,  
Civil Courts Review,  
Signet Library,  
Parliament Square,  
EDINBURGH  
EH1 1RF

30 March 2008

Dear Ms Nicoll

**Civil Courts Review**  
**Response to consultation document**

The Part Time Sheriffs' Association represents the interests of part-time sheriffs in Scotland. In preparing its response the Council of the Association has restricted itself to considering those areas which affect part-time sheriffs as a whole and where the majority of our members have a shared view. On that basis there are four issues of particular relevance to the Council.

Judicial resources

In the above context the most important issue raised relates to the comments regarding Judicial Resources at para 4.68 and specifically the use of part-time sheriffs.

The Consultation paper indicates that the Review is aware of "*concerns that the present extensive use of such resources may give rise to questions of public confidence in the judiciary*". Having requested more specific and detailed information regarding such concerns the Council has been advised by letter of

20<sup>th</sup> February 2008 from you that the issue relates specifically *“to whether it is desirable for an individual to be seen to appear as both judge and practitioner at the same level of the court structure ...”* and that this *“...reflects the concerns of the Board members themselves and of practitioners and judges who have spoken to them on this issue.”* The Council understands that there have been no actual instances of such questions being raised by members of the public. However the letter goes on to advise *“In summary, clients may find it confusing....”* and further that *“Clients or, indeed members of the public might think that a practitioner who regularly sits as a ... part time sheriff might, when appearing before the court in which he sits as practitioner, have a special status which would give him or her an advantage..”* Since there would appear to have been no instances of clients or members of the public voicing such concerns the matter would appear to be one of perception rather than reality.

An additional matter raised in the letter relates to *“sensitivities”* with regards to the relationship between permanent and part-time sheriffs when the latter appear before their colleagues. The Council is unaware of such sensitivities being expressed by a part-time sheriff. The Council is also unaware of any such *“sensitivities”* being experienced by permanent sheriffs and certainly no actual difficulties appear to have been encountered. The Council believes that the existence of such sensitivities must depend very much on the individual concerned but in practical terms should be easily overcome. In any event it seems unlikely that this could lead to a question of public confidence arising.

As noted above only one specific matter is mentioned in the Consultation paper as possibly giving rise to a question of public confidence and that is that *“it may be undesirable for an individual to be seen to appear as both judge and practitioner at the same level of the court structure”* The Council appreciates such a concern regardless of whether it is perceived or real. It is fundamental to our judicial system that members of the judiciary make, and are seen to make, their decisions impartially. Might an individual being seen to act as judge and practitioner at the same level of the court structure impinge upon that requirement of impartiality? The Council’s view is that in isolation it would not. If that situation were combined with a judge being expected to hear a case which involves an opponent in a separate matter in which he is acting as a practitioner, then the judge’s impartiality might be easily questioned. However, even in such circumstances the Council is of the view that there are sufficient safeguards in place in relation to part-time sheriffs.

The first of those safeguards relates to the prohibition against a part-time sheriff who otherwise practises as a solicitor from sitting in a sheriff court in which he or she has a main place of business [Sheriff Courts (Scotland) Act 1971, section 11B(9)]. The second which is more wide-reaching is the ability of either party to an action to propone a declinature i.e. object to a particular sheriff hearing a case on the grounds of potential bias. Such an objection can be taken in any case where the circumstances would create in the mind of a reasonable man a

suspicion of a judge's impartiality. Whilst the occasions when such objections have been raised have been rare, nonetheless the protection remains an important one. It is of course equally possible for any part-time sheriff to decline jurisdiction if he or she felt it was appropriate.

The question being posed by the Review (**Chapter 4, page 43, question 24**) is what are the advantages and disadvantages of reliance on temporary and part-time sheriffs? It is perhaps not for this Council to put forward any disadvantages. However it has attempted to address above the concerns raised by the Review. The advantages however are many and various. Perhaps the most important is the flexibility that part-time sheriffs provide. Each can be deployed to sit anywhere in Scotland depending on court requirements and often at short notice. As a result they are able to ease the pressure on courts both on a short and long-term basis. They provide cover for the absences of full-time sheriffs whether as a result of illness, holidays or attendance at training courses. They provide an experienced pool of high calibre individuals to cover such absences. In addition the majority of full-time posts are filled from the ranks of part-time sheriffs. This is a reflection on the abilities of, and the level of experience gained by, those sitting part-time. The ability to sit part-time provides essential training and experience for those considering a full-time appointment. This is clearly of benefit to the individual as well as to the judiciary as a whole. There is also clearly a cost-advantage in the use of part-time sheriffs. They are paid a daily rate and only for the days that they actually sit. If cancelled before a day's sitting, they are not paid at all. If their number were to be reduced to any significant extent this would result in the need to appoint more full-time judges with associated cost implications and loss of flexibility.

In summary therefore whilst it is important to remain alive to any concerns regarding the use of part-time sheriffs, the existence and grounds for the concerns expressed appear more imaginary than real. In addition, in any event the real advantages in the use of part-time sheriffs outweigh any perceived disadvantages.

#### The relationship between the civil and criminal courts

The next issue of relevance to the Council is raised by the question; "Should (a) some judges of the Supreme Courts and (b) some sheriffs be designated to deal with civil business?" (**Chapter 4, page 41, question 2**)

On the face of it, this question would appear to be directed towards the full-time judiciary. However as noted above, at present the majority of full-time shrieval appointments are made from the ranks of part-time sheriffs. Should there therefore be a similar designation amongst part-time sheriffs? The Council's view is that there should not. Any such designation would have a major impact on one of the key advantages of part-time sheriffs namely their flexibility. At present a

part-time sheriff is able to cover both civil and criminal courts. The only specialism that might be said to exist is as regards those with particular experience of jury trials. The Council believes that with the exception of Glasgow and Edinburgh, the jurisdiction of the courts is too small to justify designing certain part-time sheriffs to deal primarily with civil business.

Sheriffs, whether full-time or part-time, are appointed primarily as decision makers. Clearly when dealing with a specific legal question a pre-existing knowledge of the relevant area of law may be of some assistance. However such questions do not form the bulk of the work undertaken by part-time sheriffs. In any event in our adversarial system of litigation one is, within reason, expected to be able to rely on the submissions of the parties on any particular point of law. It perhaps also should be borne in mind that the vast majority of civil proofs/hearings do not proceed on the day and settle in the days before it. At the moment the use of part-time sheriffs and the ability to cancel at short notice allows the court business to be re-allocated without a cost implication.

#### Specialisation within the civil courts ( Chapter 4, page 41, question 4)

The Council is able to see the benefits of specialisation in certain situations. The Commercial Court in Glasgow works particularly well. However so far as this may impact upon the deployment of part-time sheriffs the comments above apply equally and in some cases with more force.

#### Form of judgment

The question posed is; "Should written judgments be required in all cases?". **(Chapter 6, page 84, question 18)** The Council is of the view that there may be scope for extending the use of *ex tempore* judgments. Clearly the obligation on a judge to deliver a defensible judgment would remain. In some circumstances, for example those involving a novel point of law, a written judgment might always be required. There may however be a number of situations where a judgment delivered *ex tempore* with a restricted period of time within which extended reasons might be requested might be appropriate. For example in a case involving a simple dispute as regards the facts, the parties themselves may prefer an *ex tempore* judgment delivered shortly after the conclusion of the proof rather than to wait several weeks, if not months, for a written judgment.

The Council has been unable to identify any other areas in which there could be said to be a shared view on the part of most members of our Association.

We hope that this response will be of assistance to the Review. If any further information is sought on the points raised in this response, please do not hesitate to contact me.

We are more than happy for the terms of this response to be made available to the public.

Yours sincerely,

*Alastair Thornton*  
*Secretary/Treasurer*