

Scottish Hazards Campaign Response to the Scottish Civil Justice Review

The Scottish Hazards Campaign is a network of people active in working for the improvement of occupational health and safety in Scotland. It includes trade union health and safety representatives, occupational health and safety specialists, workplace health and community campaign groups.

Scottish Hazards welcomes the opportunity to respond to the Scottish Civil Justice Review consultation document. However, we are concerned that the voice of those involved in our network is only being heard at this late stage in the process. The Scottish Government emphasises the importance of inclusion and involvement in all aspects of public policy, and yet in this instance key stakeholders, most crucially the trade unions, were not included as members of the review team. We recognise the valid interests of those who have been included, eg the Scottish Consumer Council, but would argue strongly that those representing their members in matters of health and safety – matters of life and death – had at least an equal right to be represented.

The starting point for the review paper is that the basic function which the review must serve is to address issues of costs and the proportionality of costs associated with Civil Justice. In terms of core values, it places main emphasis on the financial value of damages sought and obtained. We would argue instead that the core principles of any review of aspects of our justice system should be:

Our right as citizens to life

Our right as citizens to justice and within that to a fair trial

Our right, enshrined in UK and European law, to work in a healthy and safe environment.

Any review should have as a major aim protecting these rights through ensuring that all individuals have good access to justice.

The first of these rights, the right to life, is given the highest priority within article 2 of the European Convention on Human Rights. We would argue that all matters and legal issues which impact on this article ought to be handled in the country's supreme court, the Court of Session. This would clearly include all investigation of workplace deaths, including FAIs, but also all issues of occupational health and safety.

We would go further and say that this review ought to look at other mechanisms whereby individuals and the trade unions that represent them can take action in the courts to protect life through avoiding unsafe work practices, for example through interdict, but with effective sanction attached.

The key to the last right listed above is prevention. Scottish Hazards argues that a major role of the justice system, civil as well as criminal, is the impact of its findings on prevention of work related injury and ill health. In relation to personal injury cases, the aim of victims of negligence/ failure in the management of health and safety (or their

families) in going to court is not only, and perhaps not even mainly to seek compensation. Rather they go to try to discover the truth of what has happened to them or their loved ones, as far as is possible, and to do what they can to ensure that others working in similar circumstances are protected. We are aware that a number of successful personal injury cases supported by trade unions have resulted in important changes to working practices. It is important that this review recognise the importance of the collective, preventative impact of such cases. It is crucial that individuals and trade unions retain the right to have the opportunity to go to the Court of Session with full legal representation in order to ensure that the facts are as far as possible ascertained.

Many of those involved in the Scottish Hazards Campaign represent low paid workers, without the resources to pay for aspects of the civil justice system. We urge the review to call for a system where access to courts is free of charge and where there is full legal fee recovery for the injured party in personal injury cases.

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Scottish Hazards Campaign
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