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Edinburgh 2008-03-31

## **SCC/FP 5-2008 – SCOTTISH CIVIL COURT REVIEW**

Victim Support Scotland is the largest agency providing support and information services to victims and witnesses of crime in Scotland. Established in 1985 the organisation currently employs around 140 staff and 900 volunteers. In 2006-2007 our community based victim services and court based witness services supported over 180,000 people affected by crime. In 2007 our witness service extended its remit to include witnesses in civil proceedings. We primarily work in criminal justice cases, and do therefore not have specialized knowledge of civil proceedings. However, some similarities can be drawn and we are pleased to provide a response to this important consultation. We have provided our response under the general headings below.

### **Should the civil justice system be designed to encourage early resolution of disputes, preferably without resort to the courts?**

Victim Support Scotland encourages all parties to use the kind of dispute resolution they see fit their needs, but not all disputes require litigation to be resolved justly. The court experience can be very traumatic and stressful for all parties involved, and an early resolution of any dispute would enable the parties to continue with their lives as soon as possible. We therefore agree that the civil justice system should be designed to encourage early resolution of disputes, preferably without resort to the courts. Key features in such a system would include a variety of dispute resolution options such as mediation facilities and as a last resort the civil court system. This follows the similar thinking of the summary justice reform aimed at fewer cases going to court needlessly. Alternative dispute resolutions, such as mediation, are furthermore cheaper than going through court. The parties themselves, or for example their insurance

company, should meet the costs of any proceedings unless legal aid is applicable. The costs of alternative dispute resolutions should be significantly lower than the cost of court proceedings, which would serve as an incentive making it an attractive alternative to going to court. Up-to-date legal information and advice should be available to all parties, which will enable them to take a decision what procedure would be the most appropriate in their particular case.

### **Proportionality and value for money**

Whilst we agree that proportionality and value for money are important factors in a publicly funded justice system, it is difficult to draw a balance between the importance and value of the issue to the parties and to society in general. We promote caution and open-mindedness when deciding what is seen to be in the interest of society in general, with due consideration given to the situation to all parties involved. Any practice that would evidence added value is worthy of consideration.

### **Geographical jurisdictions of the sheriff courts**

There is no standardised geographical area currently used across all public service areas in Scotland. Instead, public bodies such as Police force areas, Community Justice Authorities, Local Authorities, Scottish Children's Reporter regions and Health Boards all operate within their own geographical 'jurisdictions'. We recognise that the current system of geographically dividing Scotland into sheriffdoms may create delays in certain areas, while other courts may have available courtrooms. We have no preference if and how new geographical jurisdictions should be created, but if a change is to be considered to the current division of sheriffdoms, we recommend this division to be in line with a currently used geographical jurisdiction, for instance the Local Authority Areas.

### **The need for legal representation**

The consultation states that only around half of all households are eligible for legal aid, and of those eligible 60% have to make a contribution to the costs of the case. The high costs of having to pay (in full or in part) for legal representation deter many people from seeking legal advice. The complex proceedings and court language may further discourage people to initiate civil court proceedings. Victim Support Scotland therefore encourages a reasonable relaxation of the current legal procedures and sees it as both desirable and feasibly to design court procedures to enable litigants to take a greater part in the process without legal representation.

### **Legal advice and self-help services**

In-court Advice Projects in several courts have proved to be beneficial and has shown that there is a demand for advice services. "Self-help" services for party litigants in less complex cases would further limit the need for legal representatives and therefore give more people access to a judicial redress without having to worry about paying a hefty legal fee. Court based advice

services also gives party litigants detailed advice about the format and structure of the proceedings. Subsequently, with better informed party litigants, the proceedings would run more smoothly and quickly, which would be beneficial both for the parties, the court system and the public purse. Justice should be available to all people in Scotland, regardless of income or legal knowledge. We therefore believe that self-help services and court based advice service might help to improve citizens' access to justice. However, in complex cases where there is a necessity for legal debates in regard to matters of law, self-help may not provide the litigant with the necessary understanding.

### **Specialist Courts and Judges**

Specialist courts have proved to be a valuable contribution to the general civil court proceedings, for instance the Commercial court at the Court of Session. It has also been proved beneficial in the criminal setting (Domestic Abuse court) and we encourage a consideration of the extension of specialisation within the civil courts in Scotland.

### **Low value cases**

We assume this refers to cases that are currently not deemed worth processing in civil courts and are therefore left without a remedy. We propose that a paper based application process might be introduced for these types of cases, preferably outwith the court. Although this will not give parties the ability to present their case orally, they are at least provided with the opportunity to receive a judicial remedy to their dispute.

I hope these comments will be of assistance to you. If you have any further questions or require any further information, please do not hesitate to contact me.

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