Shaping Scotland’s Court Services

The Law Society of Scotland’s response
December 2012
Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and out with the solicitor profession.

The Access to Justice Committee welcomes the opportunity to consider and respond to the Scottish Court Service (SCS) consultation, *Shaping Scotland’s Court Services*, and has the following comments and responses to put forward to the questions posed within the consultation document.

The committee’s response has also been considered by our other committees, including the Civil Justice and Criminal Law Committees, and has also been considered by our Council, which has contributed to and agrees with the response. Our response has also been hugely assisted by discussions with faculties of solicitors, firms and individual members, as well as with organizations across civic Scotland.

In addition to this response, our written evidence to the Scottish Parliament’s Justice Committee on the budget for courts is contained at Annex A and our interim response to the SCS dialogue events is contained at Annex B.
Summary

We believe that a sustainable network of courts, accessible to all involved, is the foundation for the effective administration of justice in Scotland. Our citizens participate at court in a range of ways, as pursuers, defenders, victims, witnesses, jurors and accused, seeking advice from court staff, paying fines, or attending court proceedings. Our nation is geographically diverse, as are its courts, which have served our citizens well.

SCS recognizes this, though believes that the current programme for reform and the fiscal constraints to the SCS budget require a reconsideration of the operation of the court estate: “the status quo is not a sustainable option for the SCS.” ¹

The Cabinet Secretary for Justice spoke about the challenge for SCS in oral evidence to the Justice Committee:

“We must operate within the budget, which is challenging… We must also ensure that the court estate is best placed to deal with the challenges of the 21st century and the changes that have taken place in our communities and towns… In the second decade of the 21st century, we need to consider what courts we require and where, and whether our courts can deal with the challenges of the modern technology that we all want to bring in.” ²

We believe that the proposals raised in the consultation paper will reduce access to justice for citizens in Scotland, though we understand that the budget for SCS to the financial year 2014/15 and beyond requires change.

The consultation will see court users travel further distances, at greater expense and with the result that access to justice is limited. There are a number of courts proposed for closure that we believe deserve further consideration, including some of the busier courts such as Alloa, Cupar, Haddington and Stonehaven. While the decisions around closure

¹ Shaping Scotland’s Court Services: A Dialogue on a Court Structure for the Future, Scottish Court Service, May 2012, p. 3
² Official Report, Scottish Parliament Justice Committee, 6 November 2012
have been made largely on the basis of capacity, there are a range of other factors that should be considered, local employment, transport infrastructure, local development plans and the like. We believe that further discussion around these courts is required and that there needs to be wider engagement with local authorities, community groups and the public who will be affected by these changes.

The unintended consequences and costs from such closures also need to be recognized. It has been stated that there will be no significant overall cost to SCS’s justice partners, but the assumptions for this are broad and untested. In any event, we have seen that there will be costs to local authorities, professional court users and to the public.

We think that the proposals for a ‘hub and spoke’ system where specialist sheriffs sit only in around 16 of our courts will increase challenges around travel. For instance, travelling from Wick to Inverness by train (a shorter bus journey, but not currently wheelchair accessible) can be a round trip of around nine hours to visit a sheriff and jury centre in Inverness. The journey times for High Court work on a reduced circuit will be even more challenging, though fortunately less frequent, and there will be discretion for cases to be heard in local courts where the interests of justice dictate.

We welcome the range of reforms planned for the justice system in the coming years, through the implementation of the Scottish Civil Courts Review and other reforms. We are concerned that the SCS budget, particularly capital, will not match the ambition of these reforms. That the capital budget is targeted at compliance and cannot reach to improvements to buildings is concerning.

We believe that the consultation process through the dialogue events was productive and we were happy to see a number of changes, including the retention of Lanark, Selkirk and Tain Sheriff Courts. We trust that the responses to this consultation, including our own, can offer some feedback on the future direction of a sustainable court estate.
Principles

We appreciate the fiscal pressures for SCS as budgets across the public sector contract. Our own members have felt the effect of cuts, particularly those providing legal aid. Expenditure on legal aid had reduced in real terms by around 10% between the financial year 1998/99 and 2009/10, while savings of around £12 million were made in 2011/12 and there are further cuts to be made for the budgets for the financial years 2012/13 to 2014/15 to be met. The proposals in the consultation paper will entail further economic challenge to legal aid practitioners, particularly around travel fees. We are also acutely aware of the effect of the cuts on the public, who our members advise and represent.

We believe that despite the financial outlook, or, indeed, specifically because of it, it is critical that cuts to public services do not impede the overarching principles of a sustainable court system. The Access to Justice Committee has established four principles for the justice system in Scotland. Our justice system should:

- Meet the needs of everyone and be based only upon legal need;
- Provide a comprehensive range of services to meet the needs of our population;
- Work with others to provide a holistic service to people in need; and
- Support and value those who use and work in the legal advice and information services.

A justice system must meet the needs of everyone and be based only upon legal need. Access to courts and to justice has to be universal and some of the most vulnerable in our society are involved in court proceedings. The equality impact assessment accompanying the consultation suggests that a number of groups will be adversely affected by these proposals, in particular, women, those under 29 and above 60, and who are more likely to use public transport. Socio-economic disadvantage is not considered in such

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3 International Legal Aid Conference Helsinki 2011: National Report from Scotland, Scottish Legal Aid Board
4 Annual Report 2011-12, Scottish Legal Aid Board
5 Equality Impact Assessment Record, Scottish Court Service, August 2012
assessments, though the increased travel costs to a smaller number of courts, whether through closure or consolidation, will affect those who least can afford it. 6

We believe in holistic and comprehensive services and that there are a number of ways in which courts can be changed to ensure that we have a sustainable court estate and justice system that meets the needs of citizens in Scotland. There are benefits to be found in the centralization of civil cases, the overwhelming majority of which are undefended, and in deploying other new technologies, in extending virtual case management, in wider integration of mediation and other alternative dispute resolution services, and a range of other improvements.

We also broadly endorse the principles of access to justice articulated by the Judicial Office for Scotland:

- The provision of services by SCS must be compliant with Article 6 of the ECHR;
- Subject to the efficient disposal of business, it is desirable that criminal justice be delivered locally;
- SCS should ensure that most people will be able to travel to their local court by public transport so as to arrive at the start of the case in which they are concerned, and be able to return home by public transport on the same day;
- Within each courthouse appropriate facilities must be provided for criminal trials, civil proofs or other hearings where the physical presence of parties or witnesses is required;
- SCS should seek to provide services that allow the administrative business of the courts (submission of documents in civil cases, payment of fines etc.) to be undertaken without the need for physical attendance at a court or courthouse;
- Save where the exceptions provided in Article 6(1) of the ECHR apply, judgment should be pronounced publicly; and

6 There are initiatives, such as Bus For Jobs (www.busforus.co.uk/busforjobs) that offer free bus transport for the unemployed during January for citizens receiving “Jobseekers’ Allowance, Incapacity Benefit, Employment and Support Allowance or Income Support and… [are] actively engaged with a Jobcentre Plus adviser in returning to work.” There are also other facilities, such as crisis loans from the Social Fund: attending court to participate in the justice system, however, should not need to be considered a crisis.
SCS must ensure that the accommodation or service is fit for purpose, accessible, safe and secure, and consistent with future arrangements for expenditure of public funds.  

In our discussions, we heard concerns that our courts currently do not meet all of these requirements, around the accessibility of buildings, the facilities available for separate accommodation of victims, witnesses and others, areas for private consultation and the like. We do believe that our court system has served the people of Scotland well - though there is scope for improvement and innovation - and we know that there is a considerable backlog in capital expenditure on the court estate. Though it will be difficult to address concerns around the suitability of buildings within the current budget, we know that work is ongoing to ameliorate these issues. We also clearly heard that the future proposals contained in the consultation paper will present major concerns and these are detailed in this response.

The principles articulated around the provision of access to justice do not demand that courts are closed. The reforms to the court system described in the consultation paper, such as the recommendations of the Scottish Civil Courts Review (the Gill Review), the Independent Review of Sheriff and Jury Procedure (the Bowen Review) and the Carloway Review do not demand that courts are closed. We believe that the imperative is financial, and we sympathise with SCS in the task that it faces in ensuring that the budget is met.

The dialogue events offered an opportunity for SCS to receive feedback from a range of representative bodies and groups. In six locations across the country, these events were well organised and a useful opportunity to provide feedback on the proposals being considered by SCS. Changes between the dialogue events and the consultation paper, such as the retention of Lanark, Selkirk and Tain, are welcomed. The overwhelming response from the groups and individuals attending these events, however, was that while these proposals would reduce expenditure for SCS, this would involve the transfer of costs to a range of other bodies and to the public.

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7 Principles for Provision of Access to Justice, Judicial Office for Scotland, February 2012
We stated at the events, and were present at each of the six venues, that it was a key principle of the reforms to court structures that the public were involved in these discussions. While there is the opportunity for members of the public to respond to the consultation paper, and there are also a range of organisations and groups who appreciate the challenges that the public face in accessing courts and accessing justice, we recommend that there are focused discussions with communities that will be affected by the changes.

**Scottish Court Service Budget**

The budget for court services to the financial year 2014/15 is challenging. The outcome of the spending review process for the financial years to follow 2014/15 is unlikely to offer significant additional resources.

The operating expenditure and capital budgets for SCS to the financial year 2014/15 are:

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<th>2012/13 Budget</th>
<th>2013/14 Draft Budget</th>
<th>2014/15 Plans</th>
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<td><strong>Operating Expenditure</strong></td>
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<td><strong>Capital</strong></td>
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<td>£73.3m</td>
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In common with public expenditure more generally, there is a significant reduction in the capital budget available to SCS. As the consultation paper notes, the capital budget for SCS in 2010/11 was £20.3 million, reducing to £4.0 million in the financial year 2014/15.

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Scottish Budget: Draft Budget 2013-14, Scottish Government, September 2012
The value of the court estate is £416.7 million. By comparison, the capital budget for Crown Office and Procurator Fiscal Service (COPFS) in 2014-15 is £3.6m.

Since the financial year 2008/09, there has been a significant decrease in funding for SCS (the years from 2008/09 to 2010/11 are outturns, 2011/12 estimated outturn and 2012/13 onwards budgets).

We appreciate the difficulty that SCS faces in ensuring that a sustainable court estate can be managed. Eric McQueen, Chief Executive at SCS, described the capital budget to the Scottish Parliament’s Justice Committee:

“[I]t is basically getting by. By the end of the spending review, our capital budget will be £4 million… predominantly £2 million will be for investment in IT and £2 million will be available for buildings. Our programme on the capital side for those areas will see us complying with our legal and health and safety obligations and carrying out essential repairs. It will not allow any additional funding for investment, improving

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9 Annual Report & Accounts 2011-12, Scottish Court Service, December 2012 (the net book value includes buildings, £354.6 million, land, £33 million and assets under construction, £25.5 million)
facilities or any major disasters in the court estates… It would be a very tight budget that would be about compliance.”¹²

It is deeply concerning that the budget has been reduced to a level at which legal compliance is the aim. One rationale for reducing the court estate would be that the funding required to improve facilities for court users would be shared across a smaller pool of buildings, increasing the resources available to each. The budget available, however, clearly does not allow this. The consultation paper states, “It is important that we continue to develop our world renowned legal system so that it is fit for the 21st century.” A capital budget for courts that allows only for compliance does not easily meet this ambition.

The ability and resources available to improve the court estate are already limited by the backlog of maintenance across the court estate, confirmed to the Justice Committee at £57.1 million¹³ and incurred over a timescale of “zero to five years”¹⁴ and, by comparison, the consultation envisages estimated backlog maintenance savings of £4.3 million. The maintenance backlog is around three times the capital budget held in 2010-11, and is around 14 times the capital budget available in 2014-15.

The consultation paper notes that there will be negligible cost increases or possibly small savings for COPFS, for the Association of Chief Police Officers in Scotland (ACPOS), for the Scottish Prison Service (SPS) and for the Scottish Legal Aid Board (SLAB). The consultation paper recognises that for COPFS, there will be an increase in expenditure on witness expenses as a result of greater travel distances, though this is expected to be offset through judicial specialization and reduced churn. For ACPOS, the reduction in the High Court venues will involve “some travel implications for police and other witnesses and the movement of productions, particularly in the Northern Constabulary area” and for the reduced sheriff and jury venues, “it is acknowledged that this will have some impact on increased travel distances for police officers and witnesses and might discourage some witnesses from attending court.” For the transport of prisoners to and from courts, “SPS

¹³ Scottish Government’s Draft Budget 2013-14: Supplementary Written Submission from the Scottish Court Service, Scottish Court Service, 31 October 2012
noted that any routine increase in the court sitting day as a consequence of using fewer court locations would have a significant operational impact on the prisons and the escort contractor, with consequential resource implications.” These are all significant risks to any effective cost saving for the justice system.

We believe that there will be significant displaced costs, which will not fall evenly. Some local authorities may find savings from the proposals, though others will see substantial increases in costs as staff will need to travel much further distances. Some local authorities would no longer have a court within their jurisdiction and we have seen consultation responses from several local authorities expressing these concerns.

There will be increased churn in court business. Further travel distances will see more failures to attend, and more warrants for arrest. We are interested to see that the latter has been a key criterion for the consideration of court closures in New Zealand, for instance. The cost of churn in the criminal justice system is already substantial. In September 2011, Audit Scotland published *An Overview of Scotland’s Criminal Justice System*, which estimated that for summary crime, repeating stages at court cost the criminal justice system around £10 million, and late decisions to proceed around a further £30 million. We may disagree with Audit Scotland’s methodology, such as considering continuation without plea as churn, when the experience of summary justice reform is that it can create overall savings, but agree with the broad emphasis: we heard at a number of the dialogue events and in wider discussion that a focus on improving system efficiency rather than closing courts would be a more sustainable approach.

However, SCS has stated that immediate action to address its budget reduction is required. The concern will be that unintended consequences from that action. In short, SCS may be able to make savings, but these savings may result in an overall cost to the justice system.

Above all, there will be additional cost to the public. There will be further distances to travel and at greater cost. We will see journeys now being required that could take almost nine hours, or cost up to £50 for a return trip.
Assumptions

The proposals outlined in the consultation paper proceed on a number of broad assumptions about future levels of business. First, it is suggested that the number of criminal cases will not change significantly: there will be more cases dealt with by direct measures, and an estimated 6% increase in the number of solemn cases should changes be made to the requirements for corroboration. Second, it is suggested that civil business will remain static, subject to the effect of reforms, such as the change to the privative jurisdiction limit between Sheriff Courts and the Court of Session.

The number of criminal reports received by COPFS has reduced from 306,770 in 2007-08 to 276,080 in 2011-12, around a 10% decrease over the period. While the number of non-court disposals has only increased from 112,907 to 118,000 for the same period, there have been variances in the number of court disposals and the venues in which they are dealt with: 15

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15 Case Processing – Last 5 Years, Crown Office and Procurator Fiscal Service (http://www.copfs.gov.uk/About/corporate-info/Caseproclast5)
The overall number of court disposals has reduced from 127,418 to 101,606, with the reduction in the number of sheriff summary disposals the most notable, reducing by 26% over the period. There are a number of reasons for the decline in court disposals, the reduction in reported crime, the effect of summary justice reform and other factors. Criminal case volumes have been in flux, and will be so again with the implementation of the Bowen and Carloway recommendations. It is also suggested in the consultation that civil case volumes will remain static. There has been a significant decline in civil actions in recent years: for instance, the number of ordinary actions raised in 2007-08 was 55,987 and in 2011-12, had reduced to 26,021. It is unclear whether this decline will continue, halt or reverse. We expect that if litigants are far further from their local courts, numbers will decline.
Proposals

The consultation paper makes proposals in four main areas: the closure of Sheriff Courts, either having insufficient business or being close to another court; the closure of Justice of the Peace Courts; the introduction of summary sheriffs, and the consolidation of criminal sheriff and jury and civil ordinary cause work in around half of the remaining courts; and the reduction of the High Court circuit to three locations, Aberdeen, Edinburgh and Glasgow.

There are also other proposals contained within the paper, such as the introduction of a Sheriff Court Appeal Court in each Sheriffdom and a new Personal Injury Sheriff Court.

We have discussed these proposals with members and organizations across civic Scotland: a number of issues around the proposals and also new ideas have been suggested. With reforms around the Gill, Bowen and Carloway Reviews to be implemented during the current budget period to the financial year 2014/15, there was concern about proceeding with these proposals before and during, rather than after these reviews have been implemented. A number of the changes proposed by SCS, especially closing courts, cannot be easily reversed.

Closure of Sheriff Courts

There are a number of Sheriff Courts proposed for closure. Dornoch, Duns, Kirckudbright, Peebles and Rothesay Sheriff Courts are considered for closure because of the low volumes of criminal and civil business heard in these courts. Alloa, Arbroath, Cupar, Dingwall, Haddington and Stonehaven Sheriff Courts are considered for closure because there is another court within close vicinity that can accommodate the business heard.

We believe that, in order to justify the closure of any court, there needs to be far greater detail in terms of capacity, facilities and cost than the consultation paper provides (and it may not be the role of a consultation paper to provide such detail).

Low volume of business

For the courts with low volumes of business, we heard a number of concerns. In the Highlands, it was unclear why Dornoch had been suggested for closure while Tain would
remain open. The standard of facilities at both courts could require improvement, particularly accessibility, though it was clearly felt by members that the standard at Dornoch was superior to Tain. With nine miles between the two courts, we accept that retaining both courts would be unsustainable, particularly since the construction of the Dornoch Bridge.

For both Rothesay and Peebles Sheriff Courts, though neither court meets the threshold of 200 criminal cases and 300 civil cases annually, the level of savings made is not substantial: £6,000 per annum for Rothesay Sheriff Court and £17,000 for Peebles Sheriff Court. As will be seen, closing courts risks system costs as increased travel distances and costs.

The Sheriff Court in Rothesay is convened in a room in the council headquarters. It has reasonable accessibility, though the one interview room available is not suitable for longer consultations. Peebles Sheriff Court is a building with the local authority, police and court sited in the same building. There is only one courtroom, which has reasonable accessibility. The feedback from members about its coordinated operation is positive and was also noted in a Scottish Government report. 16

Kircudbright Sheriff Court is also considered for closure. The only court between Dumfries and Stranraer, it provides access to justice to a number of rural communities in the south west of Scotland. Neither court room is accessible currently, however, with cases involving disabled court users being heard instead in Dumfries currently. The concern, though, is that a Sheriff Court in a rural area with limited public transport availability is to be closed.

Proximity to another sheriff court

It is understandable that, in order to reduce capital costs, there should be a focus on courts that operate with low volumes of civil and criminal business. The second category of Sheriff Courts proposed for closure is those above the threshold of 200 criminal and 300 civil cases.

16 Inspection of the Conditions in which Prisoners are Transported and Held in Sheriff and JP Courts while Under Escort, Scottish Government, May 2012: “There are good relationships between the police and Escort staff [at Peebles Sheriff Court] and sharing the police station is also a positive feature. Similarly, court staff work well with both agencies to ensure that any problems that may occur do not interfere with the running of the court.”
cases, but within 20 miles of another court, including Alloa, Arbroath, Cupar, Dingwall, Haddington and Stonehaven.

As the consultation paper states, Alloa Sheriff Court is a busy venue, with two courtrooms, and dealing with 1,115 criminal cases and 603 civil cases in 2011/12, significantly higher than the thresholds for courts being considered for closure due to low volumes of business. It has two court rooms, and lift facilities, though some stairs still need to be navigated. We understand that around £3 million has been invested in the Sheriff Court building in the last five years. The consultation paper, however, suggests that there is a further £1.1 million in backlog maintenance, and also that additional court facilities would be required in Falkirk to ensure capacity for the transfer of Alloa’s sheriff and jury and ordinary cause work; its summary business would be transferred to Stirling. We understand from members in Alloa that the estimated backlog maintenance cost has been challenged, that there is no current impediment to Sheriff Court business from the state of the court currently and also that there is not capacity at Stirling to accommodate the work from Alloa, particularly criminal.

The closure of the Sheriff Court in Alloa will leave the Clackmannanshire Council area without a court. Though the smallest council area in Scotland, the Council is regularly involved in court proceedings. Council Leader, Gary Wormersley, expressed opposition to the proposals for Alloa Sheriff Court:

“The closure of the Alloa court would mean witnesses and their families having to travel to Stirling or Falkirk with the associated extra cost and inconvenience. It would also have implications for local solicitors and council staff who attend court such as lawyers and social workers and other staff who attend court such as police officers… Our court social workers often attend at Alloa Sheriff Court at short notice and have in depth knowledge of local circumstances, needs and vulnerable groups such as young offenders and those with health issues.”

The council stated that its Criminal Justice Service was “responsible for handling 743 requests for reports, 400 community supervision orders, and 466 requests for bail

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17 Council Fights to Keep Court in Alloa, press release, Clackmannanshire Council, 26 November 2012
information from Alloa Sheriff Court in 2011-12.” The need to conduct this work outside Alloa will have a clear financial impact for Clackmannanshire Council, as it will for some others. We believe that the proposal to close Alloa Sheriff Court should be considered again in light of these views, to ensure that the implications are fully understood.

The Sheriff Court in Arbroath is considered for closure, with its summary business to be transferred to Forfar and its sheriff and jury and ordinary cause work transferred to Dundee. In the proposals shared at the stage of the dialogue events in the summer, it had been Forfar rather than Arbroath that would close. As with Alloa, Arbroath is a busy court, with 955 criminal cases and 927 civil cases dealt with in 2011-12. The rationale for the retention of Forfar rather than Arbroath is that the former has room for expansion and better facilities, particularly for processing prisoners; at the latter, prisoners are escorted around 15 feet across a pedestrianised section of Arbroath High Street. There is also room to expand the court facilities in Forfar, unlike the Sheriff Court building in Arbroath, which is part of the High Street. However, Arbroath is far better connected to transport links, including rail, unlike Forfar. We recommend that users of both courts are surveyed on the effect that the proposed closure will have on their court activity.

Cupar Sheriff Court is considered for closure, with its summary work allocated to Kirkcaldy and the remainder of its business to Dundee. As with the other courts, the cost of retaining Cupar as a court location is modest, at £39,000 per annum (though there is also depreciation to factor). We have been told that Cupar and East Fife have a character distinct from either Kirkcaldy or Dundee, with a larger proportion of civil work and particularly commissary business. Transport links are not good, and the court is often busy, with 439 criminal cases and 758 civil cases dealt with in 2011-12. We understand that a proposal to return police staff to the County Buildings in Cupar and if the court were retained, there would be efficiencies in having police staff readily on call.

Though only 14 miles from Inverness, and having only 156 sitting days in 2011-12, Dingwall Sheriff Court plays a vital part in its community. It holds one court room and has a lift to provide accessibility. We heard that it should be retained, especially because the court

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18 Police station may move into County Buildings, Fife Today, 30 July 2012
facilities in Inverness were felt unlikely to be able to deal with the consolidation of sheriff and jury and ordinary cause work from as far away as Fort William, Wick and Elgin, as well as being the venue for a Sheriff Court Appeal Court. The prospect of new court accommodation in Inverness, similar to the justice centre in Livingston, had been raised on a number of occasions: it is unlikely in the short-term due to the current capital budgets. The removal of High Court work from Inverness may alleviate capacity, though it was estimated only by around eight weeks of sitting time each year. A new court in Alness had also been mooted, though would be unlikely for similar reasons. It was suggested that until such stage that Inverness had its capacity upgraded, the closure of Dingwall should be postponed. A further suggestion had been that Dingwall could offer spare capacity for Inverness, or that it could be used to host a specialist sheriff, possibly in commercial, as the additional journey time would be unlikely to impact on the pursuers and defenders of commercial actions.

Haddington Sheriff Court provides court facilities to the people of East Lothian, an estimated population of around 97,500, which is likely to increase in the next two decades. It has two court rooms and disabled access through the adjoining council building. With the court connected to the Council headquarters, and police and fiscal’s office in the immediate vicinity, there is a coordinated approach at the Sheriff Court. We are concerned about the transfer of its business to Edinburgh Sheriff Court. We know that there have been concerns raised, particularly around domestic abuse and permanency. There will be a number of parts of East Lothian, such as Dunbar, where citizens will face far further travel distances. We have seen the response to the consultation paper from East Lothian Council, and agree with the points raised. In particular, the Council queries the backlog maintenance of £471,000, noting that it has a responsibility for a proportion of these costs. We believe that there should be further dialogue between SCS and the Council on the impact of the proposed closure: furthermore, we recommend that such discussions take place between SCS and all local authorities affected by the proposals.

It is also proposed to close Stonehaven Sheriff Court, in order to save around £70,000 per annum (including depreciation) and £383,000 in backlog maintenance. We understand that Stonehaven may be retained in some form, to act as an overspill for Aberdeen Sheriff Court, with a number of sheriff and jury cases from Aberdeen due to be heard in
Stonehaven from 2013. The court shares its six cells with the police station, which may impact upon the building’s likely disposal. As the local authority has noted, there may be a new town, Elsick, in South Aberdeenshire and it is important that the court is able to deal with the additional demand of new towns or larger populations. The views from members in Aberdeen have also been critical about the proposed closure of Stonehaven Sheriff Court, noting that there is not the capacity in Aberdeen to be able to accommodate the additional business, and also that Stonehaven has more consultation rooms than are available in Aberdeen. A permanent High Court presence in Aberdeen will compound issues over capacity and it is feared that this additional criminal work will impact on the conduct of civil business. Cancellations of civil hearings proofs at short notice in Aberdeen to make way for sheriff and jury work have been cited by a number of practitioners.

Overall, in our discussions, there have been concerns raised around almost all of the courts proposed for closure. SCS needs to meet its budget and the status quo is not an option. However, we believe that there are important factors to consider when considering whether to close courts, the same principles as for the introduction of summary sheriffs and the reduction of the High Court circuit, and we recommend reconsideration of these proposals.

Closure of Justice of the Peace Courts

The consultation paper proposes the closure of a number of Justice of the Peace courts, in Annan, Coatbridge, Cumbernauld, Irvine and Motherwell and the disestablishment of Justice of the Peace courts in Portree, Stornoway and Wick. Some of the cost savings from these closures are small, such as Annan, which would save around £8,000 per annum; some are larger, such as Cumbernauld, which would save around £101,000 as well as £252,000 in backlog maintenance. While we have some concerns about the capacity to absorb the work between Cumbernauld, Coatbridge and Motherwell, there are some savings that could be made from these proposals without undue impact on access to justice.

The disestablishment of Justice of the Peace courts in Portree, Stornoway and Wick has precedent in Kirkwall and Lerwick, where no Justice of the Peace courts were ever

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19 Local authority responds to Stonehaven Court plans, Mearns Leader, 15 December 2012
established. We would be keen to see that this process was well-managed, and that the transition to Sheriff Courts did not see a significant increase in sentences, through the wider powers possessed by a sheriff.

Introduction of summary sheriffs

The introduction of district judges formed a key recommendation of the Gill Review. As the Review stated, Scotland was almost unique in English-speaking jurisdictions in having only two civil judiciary tiers. We endorsed this recommendation in our response to the Review.

There were several concerns around this new judicial tier in our discussions. It was felt that the division between summary sheriffs and specialist sheriffs who would deal with all sheriff and jury work could be perceived poorly, particularly in cases around domestic abuse. It did not seem clear how this division between the tiers would allow domestic abuse cases to receive the specialism that they currently do, as the overwhelming majority of these are summary complaints and unless it was suggested that summary sheriffs might also specialise. We ask SCS to clarify how it intends to deal with domestic abuse cases under these new structures.

There was also wider concern that these new roles would be seen as ‘justice on the cheap’. We note the suggestion that these roles are intended for fixed terms, and would, according to the consultation paper, attract those who are looking for a break from private practice or have recently retired. We would prefer to see these new roles as a career step into judicial office.

It is unclear from the consultation paper what the boundaries of the jurisdiction between summary sheriffs and specialist sheriffs will be, particularly in family matters, where jurisdiction will be shared. Clarity on how adults with incapacity, fatal accident inquiries and other specialist areas would be welcomed. With this new judicial role, it is also unclear how this will interact with Justice of the Peace courts. We had suggested in our response to the Scottish Civil Courts Review that in civil jurisdiction, there should be the ability for summary sheriffs to ‘push up’ cases to the next tier, or for specialist sheriffs to ‘pull up’ from the tier below: cases should be judged not only on value but also complexity. It may be that similar arrangements could be considered for criminal jurisdiction, for the same reasons.
The fundamental issue, however, is the location of these summary sheriffs. The consultation paper suggests a ‘hub and spoke’ model, with specialist sheriffs located in around half of the courts proposed to remain, with other courts operating on only a summary basis. It is unclear how these specialist sheriffs will be located within the centres of specialism. If there are to be specialists in crime, family, commercial and other practice areas, it is unclear whether each centre will hold a full complement, or whether these specialists will travel for deployment to centres when required. With the often large distances for court users to travel, a large number of whom will be reliant on public transport, the idea that specialist sheriffs will not travel beyond these centres is challenging. We believe that the model of circuit court judges in England and Wales has some merit, with judges travelling to courts on one of seven circuits. We recommend that, bearing in mind the significant distances that some court users would face to reach a centre of specialism, for instance, Wick to Inverness, that it should be the sheriffs travelling to the courts, rather than the opposite. That approach may be unacceptable, though, if so, then we believe that there should be wide discretion available to Sheriffs Principal to reallocate sheriffs beyond the centres where the interests of justice require.

Reduction in High Court venues

The reduction to three permanent High Court venues, Aberdeen, Edinburgh and Glasgow may present some challenges. We are already aware of High Court cases taking place at great distance from the locale of the witnesses involved, which has presented challenges and likely increased costs. The consultation paper recognises this: “There is a degree of travelling under the current arrangements, with examples of Aberdeen cases being held in Perth or Inverness, and a Stornoway case being heard in Paisley.” As there will be discretion to the Lord Justice General and the Lord Advocate to hold High Court sittings in other venues where the interests of justice require, this may mitigate the effect of this change. We believe that the ability for the defense to request that discretion to be exercised may be helpful.

As with the proposals for the reduction in the number of sheriff and jury locations, there may be an unfortunate consequence that citizens in rural areas are, to a large extent, disenfranchised from jury service.
Other proposals

We note the proposal to establish a Personal Injury Sheriff Court, based in Edinburgh. While the majority of cases do not reach the hearing stage, this proposal raises the same concerns around travel that the other proposals do. Pursuers and witnesses travelling to Edinburgh from across the diverse geography of Scotland may present challenges. However, the same would also be true of arrangements at the Court of Session currently.

We did raise, in our response to the Gill Review, the fact that we believed the privative jurisdiction limits, proposed to be raised to £150,000 for Sheriff Courts, would see a dramatic reduction in Court of Session business. Having confidentially surveyed a range of firms specializing in Court of Session litigation on settlement figures, we believe that as little as 3% of current business before the Court of Session might remain before the Court of Session following the change.

We will be interested in finding out more about the specific detail of Sheriff Court Appeal Courts. With a mixed civil and criminal appellate jurisdiction, and assuming that Sheriffs Principal do not sit alone, there may need to be legislative change to ensure that the judgments of Sheriffs are binding on others with this appellate function. There will be no direct route of appeal to the High Court or to the Court of Session under these arrangements, though, as with the jurisdictional divide between summary sheriffs and specialist sheriffs, we think that the ability to ‘push up’ or ‘pull up’ may have merit. Some cases may involve extremely complex points of law, and there could be limited circumstances in which moving work to the next appellate tier would avoid administrative inefficiencies.

Challenges

There are three major challenges for the proposals outlined in the consultation paper: they are likely to increase travel for a large number of court users; they are likely to increase costs for individuals and for organizations; and they are likely to see a reduction in access
to justice. We agree with SCS that videoconferencing and other technology may mitigate this but, we believe, only to a limited extent.

**Increased travel**

There will be increased travel as a result of three or the consultation paper's proposals: the closure of courts, the introduction of summary sheriffs with sole jurisdiction in around half of the remaining courts; and the reduction of the High Court circuit to three main venues. We were presented with a number of examples of the arduous travel that would be required under these proposals, and also experienced some of these journeys while travelling to meet members across Scotland. For instance, the proposals see Wick's sheriff and jury business being heard in Inverness. By train, it would require leaving on the 0620 train to arrive in Inverness by 1035, late for the start of the court day. At the end of the court day, the 1754 train could be taken from Inverness to arrive in Wick by 2211. This would see an eight hour and thirty two minute round trip, not including waiting in Inverness at the end of the court day and also any onward travel from Wick. The Stagecoach X95/X97 bus service is faster, under six hours in part because of the road bridge at Dornoch: it is, however, not wheelchair accessible. Also, with the frequency of public transport services, this illustrates a second issue: it is entirely possible that parties to a dispute, witnesses, jurors and other maybe sharing the same transport service. This already takes place, but the reduction of court provision in rural areas will make this challenge more acute. Wick is an example of the challenge.

We have island courts which will retain sheriffs and hear the full range of business. Because of the geographic challenges of the far north of Scotland, we recommend that Wick is treated in the same way and retains a sheriff to hear the full range of business. It is already treated this way in part by the consultation, with the disestablishment of its Justice of the Peace court, in line with other courts such as Kirkwall and Lerwick.

**Increased cost**

We were also told about the logistical challenges for citizens living in the Borders and on the West Coast of Scotland and how travel costs in these rural areas can be expensive, particularly when changing bus service operators. The cost to the public will be significant if these proposals are implemented.
The cost to other groups and organizations will also be wide-ranging. For our members, travel can be both a financial cost and an opportunity cost: under current legal aid rates for travel, it is uneconomic to travel large distances. It could involve passing across cases to solicitors based in one of the sheriff and jury or High Court centres.

There is already substantial churn in the court system, particularly in criminal cases. While summary justice reform has reduced the incidence of failure to appear – the Short-Term Working Group on Outstanding Warrants cited in their report a sample from Strathclyde where of 108 individuals, there were 30 instances of the accused being previously arrested on warrant in respect of the same case - it is remains fairly prevalent.

There will also be a significant cost while SCS look to dispose of court buildings that they close. In England and Wales, the Ministry of Justice proposed the closure of 141 courts: in response to a freedom of information request from the Law Gazette, it was confirmed that 121 had closed, 69 remained vacant and only five had been sold. Maintaining these buildings while vacant was costing around £2.5m per annum, compared to savings of £15m in running costs and £22m in backlog maintenance that was the savings target from the closures. Between a depressed property market, listed building status, shared ownership with local authorities, and the inability (broadly) to dispose of the buildings at below market value will present significant challenges.

Reducing access to justice
Local courts are an integral part of communities across Scotland. The court offers the opportunity to see justice done and, for instance, to bridge the gap between crime in local communities and its detection and resolution. There has been an emphasis on local delivery for other public services and the same has applied for justice. One benefit of local courts serving local communities is that much is a matter of judicial or jury knowledge, whether the locus is a busy thoroughfare or a quiet alleyway, for instance.

20 **Millions Spent on Empty Court Buildings**, Law Gazette, 23 February 2012
The courts themselves will be affected. A recent report from NAPO on courts in England and Wales suggested that sentencing had become more lenient as a result of the cuts to budgets and the closure of courts. \(^{21}\) There may be risks in the consolidation of sheriff and jury work that this is no longer a jury of peers. Juries in urban centres may have entirely different attitudes to different types of offence and may be unfamiliar with the locus being described.

For legal firms in rural areas, in the longer-term, there would be less exposure to higher-level cases. The overwhelming majority of our trainees work in four cities across Scotland, Aberdeen, Dundee, Edinburgh and Glasgow. Without being able to see local justice being done in rural towns across Scotland, there will be less engagement with the law and less likelihood of an interest in studying or practicing law as a career.

Most important, though, is whether a justice system serves its citizens well. The programme of reforms currently underway will improve the quality of justice. It will be for naught if citizens cannot afford the time and cost of travel, or do not want to be travelling to court on the same bus service that witnesses or opposing parties have to use. Our responsibility, both government and professional court users, does not commence at the doors of the court.

**Opportunities**

There are a number of opportunities to improve the way in which court services are provided. Greater use of technology is particularly welcome.

**Technology**

In our discussions with SCS, it was suggested that videoconferencing would not generate significant savings, but would offer new ways of working for around 10% of all hearings. We believe that there are more procedural hearings, particularly for civil matters, that can be dealt with by videoconference and other collaborative tools. There is also a wider role for videoconferencing in giving evidence at hearings. The experience of the virtual court pilot in

\(^{21}\) Pressure, Budgets and the Courts, NAPO, August 2012
England and Wales saw a number of improvements to the quality of service provided: unsurprisingly, a reduction in the period between charge and first appearance, and prisoner transport costs. However, the overall cost of the pilot significantly exceeded the other efficiency gains made.  

We welcome the investment being made by SCS in this area and look forward to working with them on its implementation. We do not expect significant savings from these measures, but videoconferencing may mitigate some of the travel distances otherwise required. It may be able to bring parties before a specialist sheriff at short notice, particularly in family matters.

We also see significant potential in the deployment of a bulk processing centre, similar to the Northampton model in England and Wales. With most civil proceedings being undefended, this would allow the opportunity for central processing to deliver efficiencies of scale, improved experience and lower court for pursuers. If a case is defended, however, it leaves the bulk processing centre and is added to the work at the court local to the defender.

Indeed, we see ways in which electronic filing across both civil and criminal business would produce huge benefits. There are few firms currently that do not have a case management system of some kind, criminal firms are now familiar with the COPFS electronic disclosure system and many of our members have seen, through the introduction of Legal Aid Online, how a paper-based process can become electronic without significant difficulty in transition. Our court processes are still invariably paper-based, the majority of actions needing to be raised by physically signing a form and delivering to a court. There may need to be legislative change to allow for wider use of electronic signatures, but we would see a faster, more coordinated court system as a result. There are a number of ways in which such technology could be deployed, one example being intermediate diets in criminal cases.

With the purpose of these being to clarify the state of preparation for trial, that the client will attend and the like, an online questionnaire could establish these details, only bringing parties to court if an issue had been identified.

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22 Virtual Courts Pilot: Evaluation Outcome Report, December 2010
There are also simple changes that could be made. With more professional court users working with mobile technology – laptops, smartphones and tablets – it would increase productivity and efficiency if courts had wi-fi facilities. This would allow far more efficient ways of working.

**Alternative Dispute Resolution**

We also think that the integration of alternative dispute resolution more widely into the court process will improve the experience for court users that are willing to resolve their dispute less adversarially. It will not significantly reduce the number of cases before the courts, nor will it have a significant financial saving. It will, however, offer a viable alternative to the traditional court process. We strongly support alternative dispute resolution, including mediation, in appropriate cases as an alternative to the court process. This provides an opportunity to divert suitable disputes from the court system. However it is important to note that this is not an effective or desirable policy for controlling the volume of cases in a court. Mediation has a wide range of potential benefits for the public, from potentially saving time and money in the dispute resolution process, to providing an alternative means for parties to participate and express themselves and greater flexibility in the options available to resolve their complaint. 23 This may include remedies not typically available through the courts, such as an apology. Mediation is often especially well-suited to disputes where it is important to preserve an on-going relationship between parties.

However, not all cases will be appropriate for mediation. In particular, mediation is clearly unsuitable in situations where there is a significant power imbalance or a relationship of fear or coercion between the parties which would frustrate the goal of meaningful negotiation. In addition, the voluntary nature of mediation is central to its operation, and unwilling parties will therefore be unsuited to this form of dispute resolution. Mediation therefore is not an automatic alternative to the court process.

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Studies show that parties to a successful mediation tend to report high levels of satisfaction, and time and cost savings compared to the court process. Understandably, unsuccessful mediations are seen to lead to added expense and time.  

Mandatory mediation schemes are contentious due to the fundamental requirement of voluntary participation. Schemes which require the consideration of mediation, without any compulsion to participate or to reach an agreement, have had mixed evaluations. A major report on English schemes did not show significant benefits to mandatory mediation, but may be due to the many exceptions allowed, and a lack of meaningful sanctions. Other mandatory schemes, for example in Canada, have received more positive evaluations. There remain concerns over the compatibility of mandatory mediation schemes, in particular where sanctions are applied for failure to cooperate, with the right of access to the courts.

Although we strongly support the further development of in court and court linked mediation schemes, it must be recognised that these schemes still require court resources – space, administrative support, and judicial time will all be necessary for a successful scheme. In addition, the cost of mediation itself needs to be covered. Reliance on volunteer mediators is unlikely to be sustainable over the long term. When considering charging the cost of mediation to the parties, it is important to recognise the court fees already paid, which could act as a disincentive to paying further fees for mediation, and the comparative value of claim compared to the cost of court fees and mediation fees.

We fully support the need to further develop and improve the alternative dispute resolution options for parties to a dispute in Scotland, and believe that the future court structure of Scotland should incorporate access to services such as mediation. However, we do not

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believe that this can or should be relied upon to reduce the volume of court business and generate savings to the court budget, or to restrict access to the courts for those who do not wish to pursue alternative methods of dispute resolution.

In line with the focus of the Christie Commission on preventative expenditure rather than demand failure, we believe that there may be ways in which public legal education could be deployed, to help court users to understand the court process better, particularly around small claims. Again, while this will not reduce demand or deliver significant savings, it may assist with the presentation and preparation of litigants-in-person. There may be ways in which court buildings can be kept, but also used for other purposes within the community.

We will look forward to discussing the potential of these proposals with SCS and others in early course.
For further information and alternative formats, please contact:

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Annex A – Written Evidence to the Justice Committee: Scottish Government Draft Budget 2013-14 (extract)

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and out with the solicitor profession.

The Law Society of Scotland’s Access to Justice welcomes the opportunity to consider the call for written evidence from the Justice Committee on the Scottish Government Draft Budget 2013-14 and has comments in three areas: the courts budget; the budget for police reform; financing the Commission on women Offenders’ recommendations.

Courts

Department Expenditure Limits

The Scottish Court Service budget will see a significant reduction in 2013-14: from £77m in 2012-13 to £73.3m in 2013-14 (a 4.8% reduction), with plans for £69.4m expenditure in 2014-15 (a 9.9% reduction over the three financial years); in cash terms at 2012-13, this equates to a reduction from £77m in 2012-13 to £71.5m in 2013-14 (a 7.1% reduction) and £66.1m in 2014-15 (a 14.1% reduction over the three financial years).

The Scottish Government Draft Budget 2013-14 distributes expenditure between operating expenditure and capital as follows:
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</thead>
<tbody>
<tr>
<td>Operating expenditure</td>
<td>£68.5m</td>
<td>£67.3m</td>
<td>£65.4m</td>
</tr>
<tr>
<td>Capital</td>
<td>£8.5m</td>
<td>£6.0m</td>
<td>£4.0m</td>
</tr>
<tr>
<td>Total</td>
<td>£77.0m</td>
<td>£73.3m</td>
<td>£69.4m</td>
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In common with other budgets across the range of public finances, there is significant reduction in the capital budget, from which the maintenance a court estate valued at £413m. In 2010-11, for instance, £8.8m was spent on building maintenance and impairment, and the reduction of the capital budget is likely to place significant pressure on the maintenance of the court estate.

**Policy Proposals**

The Draft Budget outlines a range of proposals that will be taken forward by Scottish Court Service in 2013-14. These include: the reforms from the Scottish Government’s *Making Justice Work* programme; the recommendations of the Carloway Review, the Bowen Review and others; the implementation of the Gill Review, including the introduction of a Scottish Civil Justice Council, the legislation for which is currently being scrutinized by the Justice Committee; and the development of a range of ways in which technology can promote access to justice. It is clear that this is a dynamic and wide-ranging programme of work. Previous responses from the Law Society have broadly welcomed and indeed contributed directly to the work of these reforms.

The reductions in operating and capital expenditure will have an impact on the development of these reforms. Scottish Court Service does not intend to meet these challenges with redundancies, and this is welcomed. A reduction in experience and staff capacity at this critical stage in the transformation programme for our court systems could only damage the implementation of these changes. However, the reduction in the capital budget, though common across the public sector, will present a number of challenges to Scottish Court Service.

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28 *Scottish Court Service Annual Report and Accounts 2010-11 (property plant and equipment net book value; of which buildings constitute £359m)*
Service. Capital expenditure does not solely include ‘bricks and mortar’ but also spending on IT and other services: an ambitious proposal to increase the use of videoconferencing may be challenged by the significant reduction in capital spending.

**Shaping Scotland’s court services**

Scottish Court Service has published a consultation paper that outlines the strategy for meeting the twin challenges of remaining within budget and also implementing the reforms required: responses are required to Scottish Court Service by 21 December.

There are four separate proposals: first, the rationalisation of the High Court circuit to three permanent venues (Aberdeen, Edinburgh, Glasgow); second, the introduction of summary sheriffs; third, the closure of court buildings where there are more than one in a town; and fourth, the closure of a court in a town.

It should be noted that, in looking to manage the twin objectives of budget and reform, there is little correlation between the two in the proposals made in the consultation paper. For instance, the implementation of the Carloway or Bowen Reviews does not require the closure of courts. The development of videoconferencing does not make the closure of courts imperative, though may facilitate consideration of how the estate should operate and where it should be located in the medium to long term.

The closure of courts is planned. Sheriff courts are proposed for closure: Dornoch, Duns, Kirkcudbright, Peebles and Rothesay as these have low volumes of business; Alloa, Arbroath, Cupar; Dingwall; Haddington and Stonehaven. Justice of the Peace courts are proposed for closure: Irvine, Coatbridge, Cumbernauld, Annan and Motherwell (and three further JP courts would be disestablished).

The closure of courts, simply, will damage access to justice. Court users will have to travel further and with greater cost, or may be disincentivised to attend at all, with the attendant churn that this could create for the court system. This will affect the public, lawyers, police,

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29 Shaping Scotland’s Court Services – A Public Consultation on Proposals for a Court Structure for the Future, Scottish Court Service, September 2012
social workers and others. The proposals will have a far more significant effect in rural Scotland and will, as the Equality Impact Assessment being conducted by the Scottish Court Service indicates, impact more on those with protected characteristics.

In England and Wales, the Ministry of Justice announced the closure of 142 courts in December 2010. The Law Society Gazette reported in February 2012 that just five courts had been closed. The cost in maintaining unsold buildings was around £2.5m annually (the expected savings from the closures had been around £15m annually).  

Courts closed had included specialist domestic violence courts (SDVCs) and family courts rated as centres of excellence.

A number of issues arise around the sale of court buildings. These are listed buildings and often difficult to sell. There are complexities around the pricing and bidding processes for these buildings. Sale below value may trigger issues around breach of state aid provisions. Any capital receipts from their disposal have limited use for both time and purpose.

Scottish Court Service estimate the closures will save around £1.4m annually, as well as providing maintenance backlog savings of around £4.3m and capital receipts of around £2.3m. However, there is some expenditure that would be incurred: one-off restructuring costs to prepare the buildings for disposal at around £645,000, additional court capacity at £1.4m, and short-term recurring retention costs of £155,000. These are significant costs for such a range of closures.

The cost for individual courts to remain open varies. Peebles, for instance, is considered for closure and the only cost to be saved is £17,000 each year in running costs, while Rothesay would be closed only to see a saving of £6,000. Others have more significant costs, Arbroath, for instance, with a recurring saving of £125,000 (£70,000 of which is running costs, the remainder depreciation) and a one-off saving of £132,000 in backlog maintenance. We believe that some of these courts, with the level of savings being negligible, should certainly not be considered for closure.

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30 Millions Spent on Empty Court Buildings, The Law Society Gazette, 23 February 2012
31 Scottish Public Finance Manual, Scottish Government
Also, there are complex issues around capacity (closing one court may lead to delays in another court which may already be busy, with resulting system costs) and the displacement of costs into other budgets. It is appreciated that in discussions with the police, with Crown Office and with Scottish Legal Aid Board, Scottish Court Service have been assured that there will be no or negligible additional costs. It is anticipated, however, that there will be costs elsewhere, to the public, to local authorities, to lawyers and to others.

We fully appreciate the economic climate in which the Scottish Court Service budget is set and have sympathy for the difficulty that the Service face in providing proposals to meet the twin challenges of budget and reform. However, we believe that a reconsideration of the unintended consequences likely and the costs to the public and other justice sector groups is critical. Once a court is closed, there is no easy or cheap way to address the issues that its closure has caused.
Annex B – Interim Response to Scottish Court Service Dialogue Events

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession.

Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

The issues raised in the Shaping Scotland’s Court Service paper (the dialogue paper) have been considered by our Council, by several of our committees, including Access to Justice, Civil Justice, Criminal and Family Law, and have been informed by the views expressed by our members and our discussions with groups across Scotland representing court users.

Principles

There is clearly a need to reform our court system, articulated by the Report of the Civil Justice Review in 2009, and also to drive efficiencies as a result of the spending settlement for SCS in the period to 2014-15 and likely beyond. The dialogue paper identifies that Scotland’s court system has served the nation well, and considers how the system can be reformed to meet the needs of the citizens of Scotland in the future.

We believe that any changes to the court system should be driven by principle, obviously tempered by the need to ensure that SCS can meet the significant budget reductions that it faces. At the dialogue events, SCS saw to the access to justice principles established by the judiciary as the guide to the changes considered, and we agree with this principle-led

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approach. As will be considered later in this paper, we broadly agree with the terms established in the Judicial Office for Scotland document.

**Rule of Law**

Our court network is a crucial element of a democratic society, a key element in protecting the rule of law. For the United Nations, the rule of law is “…a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”

Courts provide participation in decision-making, for instance, through juries, and procedural and legal transparency through public hearings, where local citizens can see the administration of justice in person, and where the presence of media publicises the same, for instance, reporting of criminal judgments that was considered at the dialogue events to be a key link between local communities and the justice system. Simply, justice needs to be seen to be done.

**Convention Rights**

There are Article 6 requirements under the European Convention on Human Rights which need to be met, including “a fair and public hearing within a reasonable time”, the requirement that “judgment shall be pronounced publicly”, though the press and the public may be excluded in certain circumstances and, in criminal cases, the right “to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

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Delay in criminal proceedings has been a particular focus. In 2004, for instance, failing to provide a hearing within a reasonable time constituted over a third of all devolution minute complaints. 34 Much work has been done since to address these concerns, though with a considered reduction of 15 Sheriff Courts and the consolidation of sheriff and jury work contemplated, ensuring that sufficient capacity is available to avoid delay will be crucial. There is a requirement in civil and criminal matters to pronounce judgments publicly, excluding press and public in certain circumstances. Discussion at the dialogue events considered sheriffs at police stations or at prisons for accused in custody, or civil hearings at alternative locations. It is arguable that the ECHR obligations would prevent such reforms, unless there was a viable mechanism for public participation.

The provisions regarding witnesses apply only to criminal matters. However, there may be a risk with a reduced court estate and increasing travel distances that obtaining the attendance and examination of witnesses in criminal matters may be challenging with this reduced estate, not only in terms of ECHR requirements but also system costs if witnesses do not attend, which summary justice reform shows to be substantial.

We agree with the judicial principles around Article 6, which are critical to the successful functioning of the court system. As will be considered below, the Carloway Review has considered the Article 6 implications of Salduz, Cadder and other cases on access to a lawyer while detained, and the proposed reform of the laws of evidence and the removal of corroboration, in particular, may have an impact on case volumes and the courts’ capacity, and the suggestion that weekend courts may be required would also present challenges.

Access to Justice

Our Access to Justice Committee has established four principles for the justice system in Scotland. We believe that the system needs to meet the following fundamental principles. Our justice system should:

- Meet the needs of everyone and be based only upon legal need;

34 The Use of Human Rights Legislation in the Scottish Courts, Scottish Government (Miller, Craig, Greenhill), 2004
● Provide a comprehensive range of services to meet the needs of our population;
● Work with others to provide a holistic service to people in need; and
● Support and value those who use and work in the legal advice and information services.

The emphasis on need, the full range of services and a holistic approach are particularly relevant to the resolution of civil disputes. The adversarial process is paradigmatic, but there may be a variety of other ways that disputes can be considered, whether through the less formal processes of a tribunal, through mediation, or through a process that involves other agencies in intervention, to alleviate problems around debt, addiction, discrimination and the other problems that face the most vulnerable in our society.

General principles
We believe that the court system must follow the principles required of a democratic society, complying with the requirements of the European Convention and providing access to justice for citizens in Scotland.

The following principles should be considered with the changes proposed by SCS:

● Courts should be public – confidence in the justice system is fostered by its functioning in public, a vital surety of the fairness of the system (whether in person, by videoconferencing, Court TV or other technology);
● Courts should be local – allowing citizens to participate on juries, and for community sentences to have a clear impact, which provide a clear mandate for the administration of justice from citizens in areas across Scotland;
● Courts should be efficient – citizens should be able to have their case heard promptly, to reduce the anxiety of uncertainty in criminal cases, and the possible escalation or clustering of issues in civil matters;
● Courts should be accessible – courts should have access for those with a disability and, in a broader sense, courts should be accessible to a community, a reasonable travel distance by car or by public transport.
These principles provide confidence in the justice system. As an example, confidence in the criminal justice system currently sees 73% of adults either very or fairly confident that the system makes sure everyone has access to the criminal justice system if they need it; 57% that the system doesn’t treat you differently depending on where you live in Scotland; 49% that the system provides a good standard of service for witnesses; 45% that the system provides a good standard of service for victims of crime; and 42% were very or fairly confident that the system deals with cases promptly and efficiently. The link between criminal justice and the community is also strong, with 72% agreeing that community sentencing is an effective way of dealing with less serious crime.  

While overall confidence has increased, it is clear that if we are to deal with these perceptions, there is room to improve services for witnesses and victims, increase consistency across Scotland, and deal with cases more promptly. We hope that a principle-based approach to the changes to the court service will address these concerns.

**Background**

**Spending Review**

The government’s budget plans will see the Scottish Court Service budget reduced from £79.9m in 2011-12 (£69.5m resource and £10.4m capital) to £69.5m in 2014-15 (£65.5m resource and £4.0m capital). This is in addition to spending on courts, judiciary and tribunals, which includes, for instance, JAB, the Tribunal Service and judicial salaries. The significant reduction, in particular, on capital expenditure during the spending review period places significant pressure on the court estate, a portfolio of buildings valued at over £400m. From capital expenditure, the costs of implementing a successful videoconferencing programme will also need to be met.

We have sympathy for the task facing SCS in meeting these stringent budget targets. Our members are also experiencing the effects of public expenditure cuts, particularly those working in civil and criminal legal aid.

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35 [2010/11 Scottish Crime and Justice Survey, Scottish Government, November 2011](#)
Justice Reform

There will be significant changes to the court system in the coming years. The implementation of the Gill reforms is underway, with the introduction of a Scottish Civil Justice Council in a Bill before Scottish Parliament, and legislation expected in 2013 to change court structures, with a new role of summary sheriff, hearing summary crime and family matters, while sheriffs hear solemn sheriff and jury and also a range of civil matters. The outcome of the Taylor Review is expected to see further legislation, reforming the funding of civil litigation.

For crime, the recommendations of the Bowen Review will be implemented and a consultation on the Carloway Review recommendations is imminent, which could see an increase in prosecutions without the need for corroboration, or the introduction of weekend courts to deal with accused detained outside normal court hours.

The Commission on Women Offenders reported in April, with a range of proposals including diversion from court and problem-solving courts to avoid bringing women unnecessarily into the ambit of the criminal justice or prison systems. In May, the government announced a consultation on the provisions of a Victims and Witnesses Bill and will be looking to introduce new protections, such as the right to give evidence by videolink in a range of cases.

We have commented on the various reforms suggested, and have taken a broadly supportive view of the changes contemplated. Some issues we found more challenging and meriting further consideration, including: the proposed privative jurisdiction limits and the ensuing caseload of the Court of Session, which we anticipated could reduce dramatically; the changes to criminal evidence and the removal of corroboration, which we felt could not be considered in isolation, with implications for verdicts and jury splits, which fell outside the remit of this review; and the return to weekend courts, which would place additional burdens on a criminal bar already transforming as a result of the right of access to a solicitor post-Cadder, with its significant burdens on work often at anti-social hours.
Managing risk

A concern raised at the dialogue events was that there was little cost information available to attendees to allow for informed discussion. It is appreciated that providing a full cost/benefit analysis for the changes considered could be counter-productive to the wide-ranging discussions that took place at these events.

We support the approach of evidence-based policy-making. There are aspects of the changes considered that could easily be reversed, such as High Court venues or the consolidation of sheriff and jury or other business. The disposal of the court estate could not be reversed in that way, so carries a significant risk. Having the best evidence practicable in order to make that decision is crucial.

There have been, for instance, academic studies looking at the effect of distance, travel and other logistics on the uptake of public services and this could be pertinent to discussions about court closures and proportionate distances.

Policy proposals are often over-optimistic about the outcomes and benefits and it may help to examine optimism bias. It was questioned at the events whether SCS would have the operational and organisational capacity to implement such a range of reforms in this economic climate and this may be an area to consider. A number of possible unintended consequences were also raised, such as court closures resulting in increased costs through growing numbers non-attendances and the issue of warrants for arrest, and these along with other risks may feature.

There are other ways in which risk is commonly managed, including trialling or piloting of proposals. For instance, the consolidation of sheriff and jury business could be trialled in a sheriffdom, to understand what the impacts would be and to mitigate the risk of changing on a national basis. Simple risk valuation or more complex Monte Carlo analysis may prove helpful, and may be instructive to professional court users and to justice organisations.

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Four proposals

While the ambit of the changes proposed is likely to change to some degree by the stage of a formal consultation, there were four proposals considered at the dialogue events:

- Reducing the High Court circuit, possibly to either three locations (Aberdeen, Edinburgh, Glasgow) or six locations (the previous three and also Ayr, Inverness and Perth);
- The introduction of summary sheriffs, an additional judicial tier, that will hear summary crime and some civil work, with sheriff and jury business being consolidated into around 14 court venues;
- The closure of court buildings where there is more than one court building in a town or city;
- And the closure of courts which have insufficient business or which have another court within a reasonable travel distance.

High Court circuit

We heard from a range of groups at the dialogue events, and the objections to the reduction in the High Court circuit were limited. Clear benefits in programming of business in Sheriff Courts were identified. Of the six venues that the events were taking place in, however, five would or could be retained as a High Court venue.

There are clearly improvements that can be made to the High Court venues and the ways in which business is allocated: for instance, business is regularly not dealt with locally with the wide, current circuit, and there is significant travel required as a result.

We will be consulting with our members on this change over the summer, and will be looking for views. There may also be some benefit in having a less rigid approach to this issue. While the number of High Court venues might be restricted, having a residual discretion to hold High Court proceedings in a Sheriff Court outside that circuit, depending on the nature of the case, the number of witnesses, the current capacity elsewhere and the like.
Summary Sheriffs

In our response to the Civil Courts Review, we accepted the principle of a third judicial tier, and indeed considered the merits of separating criminal and civil business in the court system. The implementation of this proposal will take place over a significant time period, and it is unclear what the benefits and drawbacks would be if business were reallocated at this stage along the sheriff and jury/summary division.

We also broadly supported the recommendations of the Bowen Review, though this did not recommend the consolidation of sheriff and jury business into the 14 venues proposed. We have some concerns about the deskilling of the bench, with this new judicial role being significantly different to the role of a sheriff. Deskilling of court practitioners may also take place with solicitors in more rural areas less likely to receive experience of sheriff and jury work, which is more likely to be passed to specialist firms in urban areas.

Closure of court buildings – more than one building

This proposal seems broadly sensible. If accommodation and capacity can be found in one building rather than, for instance, a Sheriff Court and a Justice of the Peace Court in the same town, then this would be appropriate.

There are some court buildings that would fall into this category which we would have some concerns around. Birnie House, for instance, in Hamilton provides a significant additional capacity to Hamilton Sheriff Court and without which it would be very difficult to conduct business in a timely fashion.

Closure of court buildings – insufficient business or another court nearby

We believe that the current closures considered would have a significant impact on the administration of justice: 15 Sheriff Courts from 41 is a very substantial closure programme. This would impact on our principles, including that justice should be accessible and that it should engage with local communities. This is not to say that there is some room to rationalise the court estate. However, large population centres and large geographic areas would be without access to a court under these proposals.

East Lothian, for instance, would lose its only court in Haddington. There are currently around 95,000 people in the region, and this is projected to increase over the next two
decades. In Lanark, the Sheriff Court covers a jurisdiction of over 510 square miles. In the Borders, the closure of Peebles, Selkirk and Duns would leave no courts between Edinburgh and Jedburgh, a significant stretch of the country. In the Highlands, the proposals would see no courts between Inverness and Wick, with Dingwall, Dornoch and Tain to be closed. It is in these rural areas that transport links are poorest and the cost of such travel should also be considered, as courts need to be accessible to the most vulnerable in society, who may little afford the cost of public transport. Lengthy journeys on infrequent public transport also run the risk of both parties to a dispute sharing the same vehicle and it is easy to see the risks in a criminal or domestic abuse case, for example, that could be raised.

We believe that there is a reasoned discussion to be had on the location of courts, not to preserve each and every location, but to provide a reasonable spread of courts, so that the citizens of Scotland are least deterred from attending.

**Fresh ideas**

A number of ideas have been mentioned, at the dialogue events and elsewhere, including:

- **Electronic raising and case management** – the use of email to raise actions, or videoconferencing to hold case management discussions was considered and the use of chapter 40 procedures across a range of other actions was suggested.
- **Bulk processing** – warranting is carried out centrally in England and Wales for many cases, reverting to a local court if an action is defended and this offers efficiencies to pursuers and savings to court administration.
- **Increased mediation** – the use of ADR could divert civil cases from court hearings and the consideration of mediation by the parties could be a condition of the award of judicial expenses.
- **Reducing churn** – join working by defence and prosecution to ensure prompt disclosure and early pleadings to reduce churn.
- **Centralised resourcing** – the idea that clerking services could be centralised, with more of the work in court currently done by clerks done instead by bar officers.
We believe that there are a number of opportunities to drive through efficiency savings to the current court administration and we will be costing and evaluating these before providing them to SCS for further consideration.