

Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux



Ensuring effective access to appropriate and affordable dispute resolution

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Citizens Advice Scotland and its 78 CAB offices form Scotland's largest independent advice network. CAB advice services are delivered through 232 service points throughout Scotland, from the islands to city centres.

The CAB service aims:

to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities, or of the services available to them, or through an inability to express their need effectively

and equally

to exercise a responsible influence on the development of social policies and services, both locally and nationally.

The CAB service is independent and provides free, confidential and impartial advice to everybody regardless of race, sex, disability or sexuality.

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Ensuring effective access to appropriate and affordable dispute resolution

1. Summary of key points

The Scottish CAB service are supportive of the Gill Review in that it has reviewed the operation of the civil justice process and made recommendations as to potential improvements for the individual or unrepresented court user and their ability to achieve appropriate access to justice.

The Civil Justice Advisory Group consultation paper has focused on particular areas of the review in terms of Structure and processes and Support to facilitate access to justice and we have made comment / observations in the body of this document regarding:-

- Third tier
- Judicial training
- Alternative Dispute Resolution
- Public Legal Education
- McKenzie friends & lay representation
- In-court Advisors.

2. Introduction

Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland's network of 78 Citizens Advice Bureau (CAB) offices. These bureaux deliver frontline advice services through 232 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.

Last year, the Scottish CAB service dealt with just under a million different client issues – almost one hundred and twenty issues every hour. These issues cover a wide range of topics including welfare benefits, housing, debt, consumer and employment. The Scottish CAB service continues to experience a significant demand for services requiring varying degrees of legal advice and guidance, and in certain circumstances representation in Employment and United Appeal Tribunals.

In 2009/10 the Scottish CAB service provided advice on **18,642** legal issues and out of those, completed court or tribunal documentation for **8,208** clients. Bureaux advisers undertook casework for **3,394** cases, representing **2,150** clients at Employment and United Appeal Tribunals and achieved a financial gain for those individuals of nearly **£10.5m**.

The Scottish CAB service acknowledges that in the current economic environment, the pressures to achieve cost savings and efficiencies are high on the political agenda. We are supportive of initiatives to improve the Civil Justice system that will provide an improved service and overall experience to court users. It is our view that any proposed changes to delivering civil court services must have a positive result or change on:

- Timeliness of service
- Cost to users
- Transparency of process
- Information and assistance

The Scottish CAB service is broadly supportive of some of the proposals outlined in the Gill Review, and believe this to be an important step toward Civil Justice reform, but we have some concerns/ observations in answer to the Consultation questions which will be outlined in the body of this response.

3. Structure and processes

a. Third Tier

The Scottish CAB service acknowledges the assertion in the Gill Review that the current press on court scheduling and time has resulted in Civil business being pressed or shunted out, due to the necessity to deal with more pressing Criminal work, and therefore a restructure of the court service is required to ensure both spheres of work are appropriately administered in a timely fashion. The recommendation of a Third Tier District Court has been proposed to rectify this situation.

While we are generally supportive of this proposal, in relation to the introduction of a more specialist tier in terms of the specific categories of civil cases being heard, there is a real danger that, unless properly managed, criminal business may crowd-out civil cases as is currently the case with the current structure. We propose that if there is to be the instigation of a Third Tier District judge, there should then be one for each category of business and a clear distinction created between the two.

b. Training

If a District Judge post is adopted and established, the Scottish CAB service would strongly recommend that a tailored training programme be established to instruct Judges on the skills required to undertake proceedings in a more inquisitorial manner. We feel that this would be a more appropriate and successful approach to adopt for the categories of cases being heard in the District civil court environment, creating a more informal atmosphere for users which will result in increased feelings of participation and engagement with the process, and so should result in users perceiving the outcome as just.

c. Alternative Dispute Resolution (ADR)

The Scottish CAB service would strongly recommend that whatever changes to the Civil Courts structure is eventually proposed, there must be an increased focus on Alternative Dispute Resolution mechanisms. Although mediation and arbitration mechanisms currently exist, we feel that there should be greater promotion and awareness-raising of the availability and accessibility of this type of service. Although we would not condone this becoming a mandatory pre-requisite to court action, we feel that further investigation is required to determine how this can be introduced as a pre-consideration by litigants before entering into court proceedings.

Historically, there was previously a close connection between In-court Advice services provided by CAB's and mediation workers within the courts which appeared to work successfully in terms of either deflecting cases from the courts to mediation, or from mediation to the courts but with the guidance and assistance of the In-court Adviser. This combined service significantly contributed toward a more efficient operation of the courts within which they were housed. In recent years, these functions have effectively operated as isolated entities due to resourcing with SLAB purely funding In-court Advice services only. The In-court Advice projects have proven value from a court user and court service perspective, as recognised in the Gill Review, however we feel that they could add significantly greater value if these were to be expanded to include mediation services and made available within all Sherriffdoms. The Scottish CAB service recommends that this model be fully investigated in terms of cost and court process effectiveness as part of any Civil Court review.

d. Pre-litigation case review

Although mediation is a preferred option to litigation, there are instances where this may not be acceptable to both parties, such as where one party is using it to gauge the strength of the others case, or where both parties do not want to mediate. Rather than lose the opportunity to resolve unrepresented cases prior to litigation, the availability of some form of independent pre-litigation review service may help focus the thoughts of the parties as to the merits of pursuing litigation. At this review an independent legal professional can review the merits of the case on behalf of either the pursuer or defendant advising of potential success and consequences. Having reviewed the case details the legal professional can make an assessment and recommendation as to the most appropriate course of action.

4. Support to facilitate access to justice

a. Public Legal Information

The Scottish CAB service is in favour of any developments or initiatives that aim to improve the information, assistance and support made available to citizens that will enable them to feel that they have appropriate access to justice in the civil courts. We are supportive of the measures proposed in the Civil Court Review and feel that a co-ordinated approach incorporating a range of measures is required to achieve a holistic service.

The workings and process of the court system is very much a mystery for the first time court user and can often act as a deterrent to the unrepresented litigant from using it for all but the most confident of individuals. The uninformed perception of the civil court system is that it is complicated, very formal, potentially costly to undertake proceedings and remedies unknown. A significant programme of Public Legal education is required to increase awareness and education of the court system and process for judicable issues to include a focus on Alternative Dispute Resolution opportunities.

The Gill Review makes recommendations on the development and improvement of the Court Service website to provide more user-friendly information on the workings of the civil court system. While this is a valuable first step, it makes the assumption that all users requiring to locate information on the court system will

use the internet, and those that do use the internet will automatically know that the information required is on the Court website. Additional materials other than just website must be produced, such as information leaflets that can cater to potential users who do not have internet access, have learning or reading difficulties, or be in languages other than English to assist users from other significant minority groups. These materials can be made available in locations historically renowned for public information such as Libraries, Local Authority offices, Doctors surgeries and Advice providers such as CAB.

In addition to considering informing current potential users of the court system, we feel that a valuable investment can be made in terms of informing the users of tomorrow. The introduction of Citizenship education in the current school syllabus has proven successful in informing and educating young people on topics such as personal finances etc. The Scottish CAB service would be supportive of any initiative that would include practical education to young people of how the civil court system works and how it could help them with future problems.

Although access to information, including mediums, is important, the Scottish CAB service believes that it will be the composition of the content that will have greatest impact on increasing awareness and information to the public. Although information concerning navigation of the court system in terms of the process and procedures is important, greater emphasis is required in terms of producing information of a more practical nature outlining in what ways and what situations the civil justice system can help. A high-level plain English explanation of what is a judiciable problem would greatly assist users in determining whether to pursue court action, as well as assist the courts in acting as a pre-sift to inappropriate actions. Should the litigant feel that they have a judiciable claim, following the review of the guidance, further information should be provided as to the most appropriate places to go for assistance pertinent to their case, be this an ADR channel, directly to the court, or seek the assistance of a qualified legal professional.

b. McKenzie Friends & Lay Representation

The Scottish CAB service supports the use of McKenzie Friends and Lay representation and acknowledges that these have been successfully in operation on an informal basis for some time. We believe that both these roles do and will serve a valuable role in assisting litigants to have access to justice. Although the Lord President has drafted and issued rules, we would recommend that these are reviewed and greater clarification issued specifically defining the role and responsibilities of each to enable consistent application across all courts within Scotland. In either case, McKenzie Friend or Lay Representative we strongly recommend that there should be no payment or remuneration paid to anyone performing either of these roles.

In acknowledging the value of Lay Representatives, in terms of access to justice for unrepresented court users, the Scottish CAB service recognises that this could potentially place an additional burden on charitable advice providing agencies to perform this function on behalf of clients. In these current tight economic times, it is requested that an amount of any potential cost-savings generated from the introduction of Lay Representation be passed as funding or grants to charitable advice providers to assist with the provision of trained resources. Organisations such as the Scottish CAB service are already faced with far more client demand

than there is resource available, therefore increasing the ability for more Lay Representation by itself will not increase access to justice.

c. In-court Advisors (ICA)

The Scottish CAB service has long since recognised the value of the In-court Advice projects, and is gratified that their value and contribution to the court service and user access to justice was acknowledged within the Gill Review. In-court Advisors do provide an invaluable first contact for many court users who require help, advice and assistance with information concerning their case or guidance on court process, procedure and protocol. In a number of cases this extends to undertaking representation for the client and this is potentially likely to substantially increase with the introduction of the Homeowner and Debtor Protection Bill and SLAB's (Funder) expectation that the ICA's will represent these cases. In addition to the huge value to the court users, the ICA's as usually first point of contact, assist the Court service by performing an informal sift process, filtering out inappropriate cases, and also ensuring clients are prepared for hearings in terms of paperwork, case evidence and preparation. This type of assistance is significantly beneficial to the operation of the court but is not quantifiable and not funded as part of the project funding.

The Scottish CAB service strongly recommends that not only should current In-court advice services be maintained, but the funding should be found to increase the availability of such projects within all courts within Scotland. Their value has been proven in terms of the assistance and guidance to clients seeking access to justice in addition to savings in terms of cost and time to the operation of the court in civil cases. In addition to increased geographic reach of In-court projects, we feel that their remit should be extended to include impartial mediation services.

5. Conclusion

The Scottish CAB service broadly supports the proposals identified in the Gill review as outlined in the consultation paper if these were able to be sufficiently investigated and proven to have a positive effect on the accessibility and application of a more just Civil Court service for users.

We would welcome the introduction of a Third Tier if it could be sufficiently proven that this would have a beneficial impact on the proposed cases coming under its remit in terms of timeliness of case progression and sensitivity of administering justice by virtue of more specialist trained judges. We feel that there is a real danger that if this proposal is not sufficiently determined and structured then it will merely degenerate into a copy of the existing structure whereby criminal business will be forced into this tier and so result in the same crowding out of civil cases. The value of Alternative Dispute Resolution mechanisms has been significantly underplayed and advertised as a route to accessing justice and we feel that greater promotion of this functionality is required to heighten public awareness and usage, however we would not support this being a mandatory requirement prior to litigation.

The Civil Court service as with many public bodies has not historically provided a sufficient quantity of understandable information to the general public to both inform on usage and dispel the mystique surrounding the process and systems. The Scottish CAB service recommends that a major overhaul of information

concerning the civil courts is undertaken, going beyond the Gill recommendation of just advising on process and procedure on the Court Service website. This approach is short-sighted and automatically assumes that all court users have internet access and just want to know how the court works. We would recommend that the court service advises the general public in several medium, as to what sort of problems the courts can help with, how do they go about using the service, and who can help them! This programme of education should not only include current users but those future users as part of the educational curriculum by including within the Citizenship syllabus.

A significant contribution has been and can be further derived in terms of access to justice by the usage of non-legal assistance in civil courts. Recommendations in terms of McKenzie Friends and Lay Representation opportunities should be progressed to assist the unrepresented litigant however we feel that greater clarification is required in terms of their role and responsibilities. In-court advice projects have made a valuable recognised contribution to court users over a number of years in their current locations. The Scottish CAB service strongly recommends that Government acknowledge this valued service and looks to make available sufficient future funding to both continue and expand this facility.

Although the imperative for the Gill Review was the reform of the Civil Justice system, due to current economic conditions and public spending cuts, not all the recommendations will likely be implemented. The Scottish CAB service feel that there is a real danger that Government will look to implement only those proposals that either cost nothing or achieve cost-saving under the guise of increasing access to justice. We would strongly recommend that this temptation be resisted and Government be encouraged to financially support programmes such as In-court Advice and Public Legal Education as future investments in the well-being of Scottish court users in terms of knowledge of and accessibility to justice in the Scottish Civil Court system.

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