



SCOTTISH POLICE FEDERATION

Established by Act of Parliament

[REDACTED]
The Scottish Government
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Ref: CS/KB

17 March 2014

By email to: [REDACTED]

Dear [REDACTED]

Courts Reform (Scotland) Bill - Consultation

The Scottish Police Federation (SPF) represents 99% of Police Officers in Scotland and thanks you for inviting us to contribute to this consultation. The SPF response effectively falls into four areas; Health & Safety; Cost Limits; Capacity of the Sheriff Courts; and Section 69 of the Enterprise Act 2013. We are content for our response to be published.

Health & Safety

The SPF believes securing the ability for any worker to be able to pursue an employer for an accident, injury or disease for example should be a core consideration for any representative body. We also believe this is essential not only for the impact single events can have on individuals but also for the collective benefits that are introduced to a workplace or practice through greater awareness for Health and Safety. The Civil Court Review chaired by Lord Gill stated "In our view the Court of Session should deal only with the most complex and important cases". The SPF contends that workplace and working practice health & safety, especially for a body such as the police service whose actions (or inactions) can have a disproportionate impact on ordinary members of the public in addition to our members, are indeed squarely in the category of "important cases". It is also worth noting that important and complex may not necessarily mean very expensive.

The SPF also understands that remarkably few cases of health and safety breaches are prosecuted by the Health and Safety Executive and whilst this may be a by-product of a claim, restitution through the civil courts is an effective enforcement and 'policing' method in this area.

Cost Limits

The Bill proposes to increase the value of cases to be raised in the Court of Session from £5,000 to £150,000. We see no logic for this figure being applied. £150,000 represents a 3000% increase and is far in excess of the equivalent provisions in England, Wales and Northern Ireland.

This change will have a detrimental impact on our members' ability to access justice. Many of our member's cases involve complexities on both liability and quantum. Under the new proposal, these cases will be excluded from the Court of Session if the value is less than £150,000. The Court of Session is widely regarded as a centre of legal excellence, throughout the United Kingdom and further afield. It produces high quality and consistent decisions, and has promulgated a body of case law which is highly regarded and frequently referred to with approval throughout the UK Courts. Setting an entry threshold of £150,000, in our view, restricts access to this judicial forum unnecessarily.

The majority of actions pursued by members of the SPF are below the £150,000 threshold and will be directed through the Sheriff Courts. This will remove the automatic right to Counsel. Additionally, when pursuing action on behalf of our members, the SPF effectively pays as we go. Most defendants in civil claims invariably always instruct Counsel as they tend to have their fees underwritten by insurance. Should a Sheriff not sanction the use of Counsel that additional cost will be borne by the SPF whereas the defender will have the comfort of insurance. This places our members and organisation at a further disadvantage as the inevitable requirement arising from this reality would be an increase in individual member costs and increase in organisational risk.

Whilst permitting an automatic right for Counsel could be permitted, the SPF is unclear if this would address the increased risk of expenses liabilities not being full recovered even in the case of a "win". This is particularly problematic as in our view one of the greatest influencers of a collaborative solution and settlement driven approach between both pursuer and defender is the potential of being left with all the legal fees should you lose.

Capacity of the Sheriff Courts

It is vital that the Sheriff Court infrastructure is adequately resourced to cope with this influx without noticeable delay. There must be sufficient allocation of resources, accommodation and Sheriffs to function in a similar manner to that operated via the Court of Session presently. At present the SPF is of the view this is often lacking. For example should a case require to proceed to a Proof, the Court of Session is able to provide consecutive days for the hearing. In contrast our experience is that a number of Sheriff Courts are simply not able to offer consecutive days for proof diets because of insufficiency of resources or personnel.

Without sufficient resourcing allocated to an already stretched shrieval system we fail to see how it will cope with this proposal and prevent delay inevitably creeping into the process. We would argue that any significant transfer of business to the Sheriff Court should be deferred until such time as the shrieval system has the resources to cope with this level of work (whilst not diluting its ability to deal with current workload).

Section 69 of the Enterprise Act 2013

Section 69 of the 2013 Act makes it more difficult for workers to pursue employers for compensation following the sustaining of a workplace injury or disease. The SPF recognises it is not in the gift of the Scottish Parliament to repeal or overcome this provision but we do believe the current proposals would compound those difficulties and reduce access to justice. If the Scottish Government is a believer in the right for workers to be able to access justice in the event they sustain injury or disease as a consequence of a work place or working practice failure, this could be demonstrated by guaranteeing specialist Sheriffs could hear such cases in conjunction with a guaranteed right to Counsel in specialist courts.

Yours sincerely



Calum Steele
General Secretary