

Roseanna Cunningham MSP
Minister for Community Safety and Legal Affairs
The Scottish Parliament
Edinburgh
EH99 1SP

Date: 30th September 2011

Dear Ms Cunningham,

Civil Justice Review – Jurisdiction Limits for Court of Session

I am writing in my capacity as secretary to the Society's Civil Justice Committee.

The Committee welcomed the Report on the Scottish Civil Courts Review chaired by the Rt Hon Lord Gill and is supportive of many of the recommendations which were made.

One particular recommendation made in Lord Gill's report is that the privative jurisdiction of the Sheriff Court should be increased from its current level of £5000 to £150,000.

The Committee's view (as expressed in the Society's response to the Civil Courts Review November 2010

http://www.lawscot.org.uk/media/208878/civ_scottish_civil_court_review.pdf)

is that an appropriate threshold for Civil cases in the Court of Session would be not less than £20,000 and not more than £50,000. ie the privative jurisdiction of the Sheriff Court should be increased from the current £5000 to at least £20,000 but should not be more than £50,000.

In December 2010 the Committee's Convener, Kim Leslie of Digby Brown, met with your predecessor, Fergus Ewing MSP. He affirmed the Government's intention to to accept the recommendation made in the Review report. However when we explored the matter further with him it became clear that the Government had not carried out an analysis of the impact this would have on the Court of Session, and Lord Gill himself had done very limited research on the number of cases concerned.

The Committee was concerned to note that no research had been undertaken particularly since this had been recommended by the Civil Justice Advisory Group chaired by Lord Coulsfield which reported in November 2005. The Committee felt that such research needed to be carried out and evaluated before such a radical change is made to matters such as the privative jurisdiction limit.

The Scottish Government have made some figures available in a statistical bulletin published at the end of last year.

<http://www.scotland.gov.uk/Publications/2010/12/17153314/0>

The bulletin comments that there were 6,152 first instance cases initiated in the Court of Session in 2009-10. The number of cases disposed of was 4,356.

The most common types of case initiated in 2009-10 were personal injury (76%) and damages (12%).

The government statistics only reveal information about the sum sued for in these cases and no official analysis is available on the sums at which cases actually settle.

Given the lack of such a statistical analysis the Committee made a Freedom of Information request to identify the 20 law firms who are the greatest users of the Court of Session. The Committee then wrote to these firms asking for settlement figures for all types of case during the period 2009-10.

Of the 20 firms approached 10 have provided information to the Committee.

The figures were sought in a number of different bands and are as follows;

Up to £20,000	13034
£20,000 to £49,999	590
£50,000 to £99,999	208
£100,000 to £149,999	136
Over £150,000	254

The figures suggest that less than 2% of the cases dealt with by 10 of the main users of the Court of Session have a value in excess of £150,000.

If it is assumed that this % is extended across the board, the Committee anticipate that if the jurisdiction limit is changed as proposed, the number of cases raised in the Court of Session will reduce from the 6152 initiated in 2009-10 to less than 150 a year in the future.

When the Committee responded to the Civil Courts Review it wholeheartedly agreed with comments made by the late Lord Rodger of Earlsferry in his keynote address to the conference on “Delivering excellence in Scotland’s Civil Justice system” on 20th June 2008. In particular he commented that the Court of Session “should continue to be a first instance court to which people can take their case in the expectation that it will be dealt with, straightaway, by a judge who is one of the best legal minds”. The Committee are concerned that the proposed jurisdiction limit would almost entirely defeat this objective.

In addition the Committee agree that the relatively small number of Senators of the College of Justice gives an important degree of predictability to judgments in the Outer House of the Court of Session which is extremely useful in allowing solicitors and counsel to give proper advice to clients on settlement. This not reflected in the Sheriff Court where there are more than two hundred Sheriffs, a significant proportion of whom are part-time. The predictability of outcome and the reputation of the Court of Session as a centre of excellence can only be maintained if a reasonable number of cases are litigated and decided by the Court.

The Committee Convener would be happy to meet with you and your officials to further discuss the Committee's research and the clear implications to be drawn from it.

The Committee urges the Scottish Government to consider again the damaging consequences of the proposed change, in particular the shift in resources which would be required to the Sheriff Court, before taking a final decision on this Review Recommendation.

Yours sincerely

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