

Scottish Government

Consultation on the creation of a Scottish Civil Justice Council



A response by the Association of Personal Injury Lawyers

December 2011

The Association of Personal Injury Lawyers (APIL) was formed by pursuers' lawyers with a view to representing the interests of personal injury victims. APIL currently has over 160 members in Scotland. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

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APIL welcomes the opportunity to respond to this paper. In some cases our response relates to more than one question; in this instance we have provided our answers to more than one question together.

Q1 Do you agree or disagree that there should be a Scottish Civil Justice Council?

APIL agrees with the proposal to create a Scottish Civil Justice Council (SCJC).

Q2. Do you agree or disagree with the proposed functions of the Council, including that it should have a policy remit? If you disagree, please give reasons for your answer.

A rule and policy making body that has the viewpoint of the whole civil justice system could, in our view, improve civil justice and ensure there is greater consistency and harmonisation with rule making across the sheriff courts and Court of Session.

We agree that the SCJC should be tasked with taking forward procedural change, and continuous improvement. There is also an indication in the paper that the proposed SCJC would be more proactive and we would welcome this. We would however, warn against change for change's sake.

There is a suggestion within the consultation paper that one of the specific roles of the SCJC would be to develop mediation. We would simply wish to draw to the Government's attention that insofar as personal injury cases are concerned, the existing case flow system has proved extremely effective in resolving cases without taking up any significant amount of judicial time. The concern about mediation is that it introduces an additional, costly layer to proceedings which in the substantial majority of cases will add little, if any, benefit.

It is not entirely clear from the consultation paper what the relationship between the SCJC and Scottish Law Commission will be. It should be made absolutely clear from the outset what the remit of the SCJC will be and how that will dovetail with the Scottish Law Commission.

Q3. Should the Council be able to make recommendations in relation to administrative justice and tribunals? Please give reasons for your answer.

Extending the SCJC remit to include administrative and tribunal justice seems sensible given that the Ministry of Justice is planning to abolish the Administrative Justice and Tribunals Council (AJTC). Someone from the tribunal service should also be represented on the SCJC committee.

Q4. Do you consider that the Council should have the ability to make rules of court? If so, what process should be adopted for making them? Please give as much detail as possible.

We would be happy for the SCJC to take over responsibility for making rules of court. We believe that this would lead to greater consistency. We would also hope that it would remove the development of local rules at sheriff court level which can cause procedural quiriness. Some practitioners will currently seek to avoid these difficulties by issuing cases in the Court of Session.

APIL supports a single procedure for all personal injury actions across the different courts. Such an approach will help with uniformity and prevent to some extent jurisdictional shopping.

Q5. Do you agree or disagree that the overall responsibility for the Council should lie with the Lord President rather than Scottish Ministers?

We agree that the overall responsibility for the SCJC should lie with the Lord President as this will make it apolitical.

Q6. Do you agree or disagree that the Council should be able to make recommendations to the Scottish Ministers as well as the Lord President?

In our view if the SCJC is to have any real impact on civil reform at all the Council must be able to make recommendations to ministers as well as the Lord President.

Q7. Do you consider that the role and functions of the Council should be conferred upon any other body or bodies instead? If so, which? Please give reasons for your answer.

The Council's proposed functions should not be conferred upon any other body. Our only comment is that the distinction between the role of the SCJC and the Scottish Law Commission should be absolutely clear from the outset.

Q8. Do you consider that the proposed membership is appropriate? If not, what alternative would you suggest?

Q9. Should any other person / category of person be included in the membership? Please give reasons.

It is important that Council representatives selected from members of the legal profession are drawn from the main business of the civil court, namely, personal injury, family, and commercial disputes. There is also, in our view, some merit in including an employment lawyer too because of the suggestion that the tribunal service will be included within the Council's remit.

The CJC for England and Wales includes a trade union representative. We would recommend that a trade union representative nominated by the Scottish Trade Union Congress would be sensible.

Finally we would suggest that a representative of the Scottish Law Commission would ensure appropriate co-ordination with the SCJC.

Q10. Do you agree or disagree that the Lord President and Scottish Ministers should be able to appoint other members to the Council as they see fit? If not, why not?

In our view responsibility for appointment of members should remain with one person. That should be the Lord President. There is nothing however to stop the co-opting of

additional members with different areas of specialism for particular projects or rule changes.

Recommendations for Council members could come from Council members themselves with the ultimate decision making and power of appointment resting with the Lord President.

Q11. Do you consider that members should receive expenses only, or should members be paid?

Given the current economic climate reasonable expenses only should be offered to Council members.

Q12. Do you agree or disagree that there should be a general requirement for the Council to consult and work with other groups and bodies with an interest in the civil justice system?

We think it is important that the SCJC works with other groups with an interest in civil justice. There will be times when they need to draw on that expertise and breadth of knowledge. This could of course be done by formal consultation or roundtable meetings.

Q13. Do you agree or disagree that the requirements for the provision of an annual report are appropriate?

Q14. Do you consider that any additional or alternative reporting arrangements would be appropriate? Please give reasons for your answer.

In our view an annual report will make the Council accountable and transparent and reporting should be encouraged.

Further reporting on what current projects are being undertaken along with a timeframe for completion will also help the profession plan for changes. A dedicated website could be developed to provide this information limiting cost and encouraging engagement between the profession and the Council.

Whether formal written interim reports are needed on big projects should be a matter for the Council.

Q15. Do you agree or disagree that the Scottish Ministers and the Lord President should be able to direct the Council to consider and advise upon any matter falling within its general remit?

We agree that Scottish Ministers and the Lord President should be able to direct the Council to consider certain issues, providing that they fall within the Council's remit.

Q16. Do you have any other comments on the proposals outlined in this paper?

We are content for our response to be made available to the public and for it to be shared with other Scottish Government policy teams as appropriate. We are happy to be contacted further about this consultation.