

**Justice Committee**  
**Courts Reform (Scotland) Bill**

**Written submission from the Motor Accident Solicitors Society**

We are aware that the Justice Committee expects to consider written submissions and to take evidence during March and April 2014, before reporting on the above named Bill's general principles towards the end of May 2014.

The Motor Accident Solicitors Society (MASS) is a Society of solicitors acting for the victims of motor accidents, including those involving Personal Injury (PI). MASS has 150 solicitor firm members and we estimate that member firms conduct upwards of 500,000 PI motor accident claims annually on behalf of the victims of those accidents. The Society's membership is spread throughout the United Kingdom including a number of members in Scotland.

The objective of the Society is to promote the best interests of the motor accident victim. This is at the core of our activity. We seek to promote only those policy and other objectives which are consistent with the best interests of the accident victim. We seek to set aside any self interest in promoting these arguments, recognising that we are in a position of trust and uniquely placed to observe the best interests of motor accident PI victims first hand. We are a not for profit organisation, which requires specialism in motor accident claimant work as a pre-requisite for membership. We also have a Code of Conduct which member firms are required to abide by, which is directed to the best interests of the motor accident victim.

MASS has 14 member firms in Scotland and represent the majority of solicitors who deal with motor accident cases that occur in Scotland. Scotland is considered a separate region from the rest of the UK for the purpose of membership. The vast majority of Scottish member firms are volume businesses acting for victims of road traffic accidents and this response does not necessarily reflect the view of the individual member firms.

We would be grateful if our written response could be considered by the Justice Committee at their first evidence session, due to take place on 18 March 2014.

**Increase in the privative jurisdiction of the sheriff court from £5000 to £150,000**

MASS believes that PI work has to be safeguarded by being decided in an appropriate forum and recognises that the current powers to the Court of Session and the Sheriff Courts are adequate. MASS supports the aim that all PI business in Scottish courts is heard by a specialist judiciary.

MASS supports the proposition that PI work continues to be dealt with by specialist solicitors and firmly believes that the underlying principles of MASS as an organization continue to be served in Scotland. It is important that injured people feel that they are being properly represented and have access to justice that is fair and consistent.

We are concerned that the proposals assume that no case with a monetary value of £150,000 or lower should be heard in the Court of Session and that the default position will be no certification of Counsel in cases proceeding in the Sheriff Court. MASS considers that there are likely to be cases proceeding with a monetary value below £150,000 where the complexity of matters are such that remit to the Court of Session and/or certification of Counsel should be permitted where the particular circumstances of the case justify. We support the test for remit to the Court of Session and certification of Counsel is one of reasonableness.

### **Judicial specialisation**

The quality of judgments provided by judges in the Court of Session has been high and this has engendered a consistency of decision making. It is important that the victims of road traffic accidents continue to receive this quality and consistency of decision making and these civil cases do not operate in an unsatisfactory culture of adjournment as a result of, for example, resourcing issues in Scotland's sheriff courts.

It is proposed that a huge amount of work be shifted from the Court of Session to the Sheriff Courts and we are concerned that Sheriff Courts are inadequately resourced in terms of number of staff to deal with the increased workload. It is important that the court process is not delayed for clients and that it is resourced in terms of skill and knowledge to ensure that the quality of decision making is not compromised.

It is paramount that victims of road traffic accidents have access to justice that allows transfer of cases between different forums given that the value of cases can change during their lifecycle. We support a Bill that allows for this and also a process that has specialist Sheriffs who hear PI cases. MASS supports the proposal that some sheriffs within each Sheriffdom should be designated as specialists in particular areas of practice.

### **Creation of a new judicial office of “summary sheriff”**

MASS notes that the Bill is presently unclear about whether this new tier of sheriffs will be expected to deal with PI work (albeit that Schedule 1 thereof makes no specific reference to PI). We support a system where PI operates using specific rules and we support the use and extension of the existing PI rules and processes that operate well currently in the Court of Session- eg e-motions). We fully support the continued use of PI Summary Cause Rules for PI actions under £5,000.

MASS wishes the Bill to be clear that PI rules will operate for PI cases and that simple rules as outlined in s70 are not intended for PI cases. As stated previously, it is paramount that PI cases are dealt with by specialist Sheriffs and by a specialized process. Indeed the Cabinet Secretary previously stated that the small claims court should not be a place for PI cases and this is supported by the recommendations made by Sheriff Principal Taylor in the Review of Expenses and Funding of Civil Litigation in Scotland. Legislation should make it explicit that actions under £5,000 and cases dealt with under Summary Cause procedure exclude PI cases. MASS would support Section 70 of the Bill to make clear that PI cases are exempt from this procedure.

We are concerned that without the position being made explicit, challenges could be made by those solicitors representing insurers in the future in relation to choice of forum, procedure and related costs issues.

### **Creation of a new Sheriff Appeal Court**

MASS believes that people in Scotland should have local access to justice where practically possible. It is unusual for a PI case to have an appeal hearing where clients require to attend the appeal hearing.

Clause 55 of the Bill provides for the Appeal Court to determine where it will sit. Whilst we recognize the need to local access to justice we recognize that a central Appeal Court should result in a consistency of decision making that as an organization we are keen to see prevail in Scotland.

Our organization supports a system that is consistent and has a first sift appeal process in place.

### **Establishment of a specialist Scotland- wide court, expected to deal with PI cases**

MASS supports and welcomes the creation of specialist PI courts. Moreover, MASS believes that there should be multiple centres of excellence throughout Scotland. MASS welcomes the provision of power to confer all- Scotland jurisdiction for PI cases.

MASS supports the creation of multiple specialist PI courts in major Scottish cities, especially Glasgow.

It is essential that any specialist PI court is properly funded and resourced. It is important that there is proactive case management in place for PI cases and this requires adequate resourcing and accountability.

Currently the Court of Session PI procedure works with the assignment of a court timetable and a proof diet is allocated at the outset of the timetable. In practice, all parties know when the case is due to call in court and there is a focus and an incentive to drive cases to resolution- this is beneficial to clients, defenders and indeed to the efficient working of the system itself.

Consideration should be given to extending to all PI cases the practice of issuing a Court timetable with a proof diet assigned at the outset of a case.

MASS submits that specialist PI courts must be given sufficient staffing and resources (both financial and in terms of available accommodation for sittings) to ensure civil cases can proceed efficiently and without delay. Specifically, we urge that resourcing is adequate to permit the timetabling of consecutive day proof diets (where required) without any resultant delay to other timetabled cases.

MASS supports the retention of civil jury trials and should be available to all Scottish people where they are deemed appropriate. We support the basis of appeal as having a consistent, fair and accountable decision making process.

Elaine J Russell  
Scottish Regional Coordinator  
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