

Justice Committee

Scottish Civil Justice Council and Criminal Legal Assistance Bill

Written submission from the Forum of Scottish Claims Managers

Summary

We agree that an over-arching Scottish Justice Council would be a progressive, forward thinking step which will facilitate court reform and if the Council includes not simply legal profession court users (also insurers, consumer bodies and champions, local authorities and the like) the council could enable change that users and consumers want and would fully endorse.

The proposed membership should reflect a fair representation of the actual users of the court system, by which we mean not only the legal professionals, but insurers, consumer bodies, local authorities and specific interest groups representing areas such as family law which together with insurance matters would account for the majority of court time.

About the Forum of Scottish Claims Managers (FSCM)

The Forum exists as a lobbying organisation on behalf of its members and to represent their interests in the handling of insurance claims.

It is the Forum's desire to be actively engaged, with all interested parties, in discussions and debate relating to Third Party claims** in Scotland including Pre and Post-litigation.

A membership list and more information on the Forum is appended below.

Evidence on Scottish Civil Justice Council and Criminal Legal Assistance Bill

1. Contrary to popular belief, Insurers do not benefit by delaying settlements or by creating unnecessary delays in getting compensation to Consumers.
2. In fact, the exact opposite is true and insurers actively seek to reduce the time taken to get fair and reasonable compensation to the affected Consumer.
3. Our trading experience has shown that the longer claims remain outstanding, the more they ultimately cost and the more overheads are incurred as a result.
4. On average, 9 out of every 10 of our Personal Injury claims settle pre-litigation – in other words, settle without the need for intervention by the Courts.

5. In terms of current civil court usage in Scotland, we fund or have a financial interest in approximately 80% of cases which makes us the single largest user group of the courts in Scotland.
6. The present system is reactive in that when change occurs, we have to simply adapt or adhere to the proposed changes. The Scottish Civil Justice Council is a leap forward to making the system more proactive and if it is made inclusive of users like ourselves, it will bring a more forward thinking and robust system.
7. It is vitally important that the proposed Scottish Civil Justice Council comprises members who understand what precedes the litigation process and what factors ultimately lead to litigation and the Court service being the last resort. As such, the Council can safeguard against unintended consequences of any changes being detrimental to consumers and all court users.
8. Non-legal members of the Council with this dual understanding of litigation and what precedes litigation would make it more inclusive and lead to wider acceptance of change that court users and consumers want and would fully endorse.
9. The proposed membership should reflect a fair representation of the actual users of the court system, by which we mean not only the legal professionals, but insurers, consumer bodies, local authorities and special interest groups representing areas such as family law, which together with insurance matters would account for the majority of court time.
10. In Clause 6 of the draft Bill dealing with the composition of the Council, we believe that there is an omission in that in addition to the Consumer representative members, there should also be non-legal members who represent and reflect other areas of court usage.
11. We would submit that for the reasons outlined above, Insurance should be represented and recognised within the Council as one such important area and that member(s) should be sought from FSCM.
12. In the alternative, Insurance should be represented and recognised as an area of importance within the body of "LP Members" as set out in Clause 6 (1) (i) and member(s) should be sought from FSCM.
13. One example of this understanding would be the proposal of mandatory Pre-Action Protocols to assist all parties in achieving quicker settlement of claims by introducing a framework for narrowing areas of dispute and encouraging early dialogue between both sides. They would enable the Courts to consider pre-litigation conduct by both parties and impose sanctions on either party who fail to properly engage in compensating the Consumer. This would lead to more cases

settling without recourse to the courts and a smoother process for the Consumer.

14. The voluntary Pre-Action Protocol was a big step forward and has, by clear consensus, been a success. I think it is worth pointing out that this arose directly from many meetings between FSCM and the Law Society of Scotland. It therefore serves as a perfect example of a successful change implemented when insurers, in particular FSCM, are involved and inclusive discussions take place.
15. We can bring a wealth of experience to support any proposed changes to the law, legal processes or pre-litigation practices and conduct in Scotland to the benefit of the Consumer.
16. Our experience derived from other legal systems (and their pitfalls) where we operate can assist in modernising the Scottish Courts to adapt to the changes outlined and proposed by Lord Gill making Scotland a forum of choice.

In conclusion, to properly consider change for the better and adapt the courts, the Council must have members who understand what processes and drivers precede litigation to ensure that the courts do not become clogged up with unnecessary litigation or rules which promote same.

Any reforms or changes made by the Council will influence pre-litigation behaviour and ultimately influence the volume of cases entering the judicial system. Insurers are well placed to inform of any unintended consequences before proposed reforms are implemented and therefore inclusion of Insurers within the Council would lead to more improved, forward thinking procedural change.

Inclusion of insurers must not be viewed as advancing the interests of one particular class of litigant over another as we submit that the Council membership should be balanced and fair.

To decide not to include non-legal court users or view them as special interest groups rather than members would in our view, hamper reform and give the Civil Justice too narrow a view on the effects and ramifications of future change.

Alan Rogerson
Vice Chairman of the Forum of Scottish Claims Managers
20 June 2012

**** Third Party Claims definition:**

Personal injury or damage to property arising out of a party's negligence – be it a personal (consumer) matter or a commercial (business) matter, road traffic accidents and accidents in the workplace.

Further information on the Forum of Scottish Claims Managers (FSCM)

1. The Forum aims to promote improvements to the law to enable consumers easier and quicker access to justice.
2. The forum membership covers a number of major insurers, financial institutions together with claims handling companies and Local Authorities.
3. The individual members of FSCM are all senior professionals being Claims Managers or equivalent within their respective organisations with a wealth of experience in Insurance claims matters.
4. To provide some context of the size and scale of our membership:
 - We directly employ approximately 5,550 people in Scotland, solely in insurance
 - We generate over £1.9 billion annually in respect of insurance premiums collected in Scotland (Personal and Commercial business premiums)
 - Solely on claims, we spend £1.257 billion annually in Scotland
 - Glasgow is the largest insurance centre in the UK, outside London and is seen as core pool of talented resources
5. Insurance companies exist to provide financial protection for consumers and businesses in the event that the unforeseen happens.

Membership:

ACE European Group Ltd
 Allianz
 Aviva Direct
 Aviva Insurance
 AXA
 Chartis
 Churchill
 Direct Line
 Eagle Star Direct
 Esure
 Equity Red Star
 Halifax
 Liverpool Victoria
 More Than
 NFU Mutual
 NIG
 Pearl
 Privilege
 Prudential
 PSV Claims Bureau Ltd

QBE
RAC Insurance
Royal & Sun Alliance
Travelers Insurance
UKI Insurance
Zurich Municipal
Zurich Insurance plc

Glasgow City Council
North Lanarkshire Council
Motor Insurers Bureau