

Justice Committee

Scottish Civil Justice Council and Criminal Assistance Bill

Written submission from the Association of British Insurers

The UK Insurance Industry

The UK insurance industry is the third largest in the world and the largest in Europe. It is a vital part of the UK economy, managing investments amounting to 26% of the UK's total net worth and contributing £10.4 billion in taxes to the Government. Employing over 290,000 people in the UK alone, the insurance industry is also one of this country's major exporters, with 28% of its net premium income coming from overseas business.

The ABI

The ABI is the voice of insurance, representing the general insurance, protection, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has over 300 members, accounting for some 90% of premiums in the UK.

The ABI's role is to:

- Be the voice of the UK insurance industry, leading debate and speaking up for insurers.
- Represent the UK insurance industry to government, regulators and policy makers in the UK, EU and internationally, driving effective public policy and regulation.
- Advocate high standards of customer service within the industry and provide useful information to the public about insurance.
- Promote the benefits of insurance to the government, regulators, policy makers and the public.

Reform of the Civil Legal System

The last formal assessment of the entire civil legal system in Scotland was conducted by Lord Gill in his *'Report of the Scottish Civil Courts Review'* in 2009. The ABI believes that the majority of the proposals put forward will ensure that litigation in Scotland is more efficient, ensuring that the cases are dealt with expeditiously and cost effectively, in accordance with their value and complexity. The ABI supports in particular:

- Lower value cases being held in a specialist Sherriff Court, with a view to reduce the costs of pursuing these cases. This, in turn should give the Court of Session more capacity to deal with higher value cases. Similarly the creation of district judges will allow lower value complex cases to be dealt with more efficiently. The ABI suggests that district judges hear cases with a value of £10k or less.
- The increase in privative jurisdiction be set at £150k and raised thereafter to £250k to avoid the alienation of litigants in the first instance. It is also

suggested that more specialist courts be established in Scotland to ensure access to justice on a wider geographical scale.

- The introduction of compulsory pre-action protocols, providing they include provisions which enable the defenders to make fast decisions on liability based on an initial submission of basic information by the pursuer's solicitor, which is reflected by lower legal costs. This should ensure that the simpler cases are appropriately dealt with in terms of work done and costs incurred at the early stages. A good example of a compulsory pre-action protocol operating in England and Wales is the RTA Portal, introducing staged fixed costs in April 2010 to those matters where liability is admitted, and where there is focus on early disclosure of information and enhanced communications between the parties to bring about a quicker resolution.
- The revision of the rules of offers of settlement, to ensure such offers are effective and provide an equal position for pursuers and defenders.
- The introduction of more formalised case management as the increased power of courts to manage the pace and process of cases will ensure that where possible, they are dealt with more efficiently and cost effectively. The ABI suggests a formal judicial training scheme in regard to this proposal.
- The encouragement of mediation and other forms of alternative dispute resolution can be an effective means of resolving a dispute, which is most effective where all parties are willing participants.

We understand that a body should be responsible for the implementation of those reform proposals outlined in Lord Gill's report. The ABI therefore supported the creation of a Civil Justice Council in their response to the consultation in September 2011.

Summary

The ABI welcomes the creation of a Scottish Civil Justice Council ("the Council") as proposed in the Scottish Civil Justice Council and Criminal Assistance Bill ("the Bill"). The creation of the Council will ensure that the system is kept under review so that procedural problems can be identified early and addressed in an expeditious manner.

We particularly welcome the proactive step of including non-legal members on the Council, referred to in the Bill as "LP members" and "consumer representatives". However, the proposed membership of the Council must accurately reflect those who utilise the Scottish Court System which includes not only legal representatives but insurers, consumer groups and local authorities. Presently, insurers have a fiscal interest in 80% of litigated cases, making them the largest user of the Scottish Courts System; this must be accurately reflected in the composition of the Council by appointment at least one or even two representatives from the insurance profession. At present insurers are not specifically identified in the Bill as an interested group, despite being the predominant user group of the Courts.

Written evidence on the Scottish Civil Justice Council and Criminal Assistance Bill

1. The ABI largely agrees with the proposed functions of the Council, including reviewing practice and procedure, preparing draft rules for procedure, as well as broader considerations including how to make the civil system more accessible, fair and efficient. It is essential to view the litigation system in conjunction with other methods of dispute resolution, in order to fulfil that responsibility.

2. The ABI agrees that the Council should have the ability to draft and submit rules of Court as the Council would be in the best position to do so for two fundamental reasons; relating to the purpose and composition of the Council. First, a key duty of the Council would be to keep the civil system under review, when a procedural issue is identified then it would appear that the Council would also be the best body to deal with proposing a practical solution, namely by way of draft rules. Secondly, the composition of the Council should ensure that a sufficiently wide body of opinion has been involved in the drafting of those rules.

3. The ABI agrees that the overall responsibility for the Council should remain with the Lord President as set out in the Bill. This preserves the current position in which the Scottish Government is not responsible for the formulation of new rules of the Court and ensures that the statutory responsibilities conferred on the Lord President are fulfilled.

4. As highlighted in our consultation response in December 2011 the ABI believes that in order to have a full spectrum of opinion from the legal profession; those practising advocates and solicitors appointed should be from both pursuer and defender representative backgrounds.

5. Insurers fund or have a financial interest in approximately 80% of litigated cases, making them the single largest user group of the Scottish courts system. Moreover, on average, 9 out of 10 personal injury claims are settled at the pre-litigation stage, circumventing the necessity and added cost of taking a claim to Court. The ABI believes it is vital to ensure that the composition of the non-legal Council members accurately reflects the interests of those who utilise the Court system. There needs to be clear and lasting channels of communication between all parties involved in both the pre-litigation stages and when a claim is taken through the Court process. The Bill states that the following non-legal representatives should be appointed:

“(h) at least 2 persons (“consumer representative members”) who, between them, appear to the Lord President to have—

- (i) experience and knowledge of consumer affairs,
 - (ii) knowledge of the non-commercial legal advice sector, and
 - (iii) an awareness of the interests of litigants in the civil courts, and
- (i) up to 6 other persons considered by the Lord President to be suitable to be members of the Council (“LP members”).”

6. The ABI believes that there is an integral need for at least one representative from the insurance industry on the Council. The representative from the insurance

industry would not only have knowledge and experience of the court system, but also the pre-litigation measures that should be followed and exhausted before resorting to the Courts. This is particularly important if pre-action protocols are to become mandatory. For the reasons given above, a member from the insurance industry would be well placed to give the industry perspective on how proposed legislative/procedural change could be implemented, and what likely impact any change in legal procedure would have.

7. The ABI believe there should be a general requirement for the Council to consult and work with other groups and bodies when carrying out their responsibilities. This is to some extent outlined at clauses 3(2)(d) and 3(2)(e) of the Bill. This would mirror the system which currently operates within the Civil Justice Council of England and Wales ("CJC"). For example, the CJC have been assigned the task the implementing the package of measures recommended in Lord Justice Jackson's Review of Civil Litigation Costs. In response to this task a CJC expert working party was set up to help develop the practical proposals to assist with the implementation of secondary legislation. The working group consisted of both CJC and non-CJC members. It would be prudent to adopt a similar system by employing those persons with more specific knowledge to assist with the implementation of the Gill proposals for civil reform in Scotland. This approach should ensure that issues are examined with sufficient expertise and improve the efficiency of the process.

8. The ABI agrees, as outlined in clause 5 of the Bill that the Council also construct an annual plan as an additional means of reporting, this measure should focus the Council as to their objectives. With this in mind, the ABI would also be in favour of a Code of Practice for the Council which sets out the goals and guiding principles of the body. Such a code can be cross-referenced when the Council drafts or amends the business plan; this should ensure that the Council fulfils its spectrum of responsibilities.

9. Whilst the ABI has previously made comparisons between the existing CJC in operating in England, it is important to note that there is also a Civil Procedure Rules Committee (CPRC), responsible for drafting up new Civil Procedure Rules, direction is taken from the CJC. The CPRC sit nine times a year and deal with the implementation of recommendations of the CJC, they do not have a policy objective to fulfil. It is composed of both senior and lower level members of the judiciary, legal practitioners, a representative with knowledge of consumer affairs and one member with experience of lay advising. As the proposed Council is to encompass policy, administrative and drafting responsibilities as outlined in the draft bill, this remit which would appear to be very wide there must be sufficient time and resources available for the Council to deal comprehensively with the wide ranging responsibility before them.

Association of British Insurers
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