

## News Release

# Major review needed into civil justice system in Scotland

**Strictly embargoed until: 18.00 hours on Wednesday 2 November 2005**

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A major review is needed in Scotland of key aspects of the civil justice system to ensure that it is up to date and effective, says an influential advisory group.

There have been complaints that the civil justice system is too slow, too expensive and too complex with the result that many people are put off using it.

Those concerns led the Scottish Consumer Council to apply to the Nuffield Foundation for a grant to examine the future of the system in Scotland. The SCC appointed an advisory group and held a series of seminars with the aim of identifying areas of concern and producing suggestions for change.

The advisory group, chaired by the Right Honourable Lord Coulsfield, has now produced its report which calls on the Scottish Executive to conduct a review of important aspects of the system.

It identifies six issues that the advisory group believes should be the main focus of that review. They are:

- The disproportionate costs of litigation, particularly in cases of lower financial value
- Disruption to civil cases because of the priority given to criminal cases in the court system

- The potential benefits of increased specialisation among courts or judges
- The possibility of increasing the role of the courts in case management which may reduce time taken and costs
- Payment arrangements for lawyers including fixed fees
- Increased powers to ensure court judgments are observed

There is also a need for more research to gain a clear understanding of how the system operates at present. This would include identifying who exactly is using the system, in what kind of disputes and in relation to what sums of money. Other questions include - how long do cases take, what are the outcomes and how much does it cost? At present there is surprisingly little detailed information of this nature, and without it, it is difficult to establish a clear understanding of how the present system is working.

The civil justice system deals with a wide variety of issues including disputes over faulty goods, issues of divorce and care of children, property disputes and claims arising from personal injuries suffered as a result of an accident. It is crucial that the system is capable of securing justice for those who have to use it.

The advisory group says the primary focus of any review should be the issue of disproportionate costs, where crippling legal expenses may make it impractical for people to seek redress for issues that have relatively low financial value. The current civil justice system is based on the traditional adversarial court based approach to solving disputes, which can be both time-consuming and costly. There are, however, other possible approaches to court procedure, as well as alternative methods of dispute resolution, such as mediation, that are gaining ground in other parts of the world.

The report acknowledges that courts should be seen as a last resort within a system that encourages the resolution of disputes at the earliest possible stage. Nevertheless, there has to be an efficient court system to deal with cases which cannot be resolved otherwise, and there is a need for a radical examination of court procedures, particularly for disputes involving sums of up to £5000.

Other possible changes could include allocating some judges and sheriffs to conduct civil cases only. This would give dedicated time to civil matters and avoid the disruption that can take place at present when cases are delayed or cancelled because of the priority given to criminal matters. Courts could also be given greater powers to decide how long cases should run, rather than leaving that largely in the control of the participants and their representatives to decide, as at present. These changes might be capable of bringing particular benefits in family cases. Different ways of providing and paying for legal services should also be considered, possibly including a move towards a system of fixed fees for lawyers.

Lord Coulsfield said: “The civil justice system has served Scotland well for many, many years. However every system needs to be examined from time to time to ensure that it is delivering what is required of it.

“We have heard from many interested parties and have received a number of submissions on the future of civil justice in Scotland. It has been a very worthwhile exercise and we have concluded that there are key issues that need to be addressed. We hope it will result in a review of the present arrangements leading to practical reforms that can build on what is already working well. It is crucial that the civil justice system should be, and be seen to be, capable of securing justice for those who have to use it. It should not be distant and difficult to use.”

Graeme Millar, chairman of SCC said: “The SCC is proud to have been able to support the work of the advisory group. Its report contains many important suggestions which have the potential to improve the way the civil justice system operates in Scotland. We hope the Scottish Executive responds to the report by establishing the review which, on the evidence of the group’s work, is clearly needed.”

Ends

*About the Scottish Consumer Council*

The Scottish Consumer Council was set up by the government in 1975 to promote the interests of consumers, particularly those who experience disadvantage in society. While producers and suppliers of goods and services are usually well organised when protecting their own interests, individual consumers very often are not. The people we represent are consumers of all kinds: they may be council tenants, patients, parents, solicitors’ clients, public transport users, or simply shoppers in a supermarket. We speak up for them by communicating with the professions, industry, business, local authorities and central government, using careful research and persuasive lobbying.

*About Lord Coulsfield*

Lord Coulsfield was appointed to the Bench in 1987 and retired in 2002. Before his retirement, he sat in the Second Division of the Inner House. He was appointed a Privy Councillor in 2000. Lord Coulsfield graduated BA from Corpus Christi College, Oxford, and LLB from the University of Edinburgh. He was admitted to the Faculty of Advocates in 1960 and was appointed QC in 1973. He was Lecturer in Public Law at the University of Edinburgh from 1960-64 and served as Advocate Depute from 1977-79. He was a Chairman of Medical Appeal Tribunals for Scotland from 1985-87, and was the Scottish Judge on the Employment Appeal Tribunal from 1992-96. He was a judge in the Courts of Appeal of Jersey and Guernsey before being appointed to the Scottish Bench. He has chaired a committee that led to the creation of a

specialised court for commercial actions and a committee on procedure in actions for reparation for personal injury. He was consulting editor of the Scottish Law and Practice Quarterly. More recently he was chair of an independent inquiry into alternatives to prison in Britain set up by the Esmee Fairbairn Foundation as part of its Rethinking Crime and Punishment initiative. The inquiry reported in November 2004.

*About the advisory group*

The members of the advisory group are: Laura Dunlop QC, Faculty of Advocates; Martyn Evans, Scottish Consumer Council; Colin Lancaster, Scottish Legal Aid Board; Valerie Macniven, Scottish Executive Justice Department (succeeded by Micheline Brannan in June 2005); Rory Mair, COSLA; Iain McMillan CBE, CBI Scotland; Susan McPhee, Citizens' Advice Scotland; Gordon Nicholson QC, former Sheriff Principal of Lothian and Borders; Professor Alan Paterson, University of Strathclyde; Fiona Reith QC, Sheriffs' Association; Bill Speirs, STUC; and George Way, Law Society of Scotland.