



Forum of Scottish Claims Managers (FSCM) response to Consultation Paper:

Making Justice Work - Courts Reform (Scotland) Bill – A consultation paper

<http://www.fscm.org.uk>

Section 1 Who are the Forum of Scottish Claims Managers and who do we represent?

Section 2 Consultation Response Document



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.

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.

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.

Alan Rogerson
Chairman of the Forum of Scottish Claims Managers

Aviva Insurance
139 West Regent Street
GLASGOW
G2 2SG

 Tel: 0141 301 3122
 Mobile: 07800 691465
 Alan.Rogerson@Aviva.co.uk

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**** 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

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
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COURTS REFORM (SCOTLAND) BILL



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Forum of Scottish Claims Managers

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Rogerson

Forename

Alan

2. Postal Address

c/o Aviva Insurance

139 West Regent Street

Glasgow

Postcode G2 2SG

Phone 0141 301 3122

Email

Alan.Rogerson@Aviva.co.uk

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

CHAPTER 1

Moving civil business from the Court of Session to the sheriff courts

Q1. Do you agree that the provisions in the Bill raising the exclusive competence and providing powers of remit will help achieve the aim of ensuring that cases are heard at the appropriate level?

Yes No

The Forum of Scottish Claims Managers (FSCM) welcome the provisions in the Bill and fully agree that this will achieve the aim of ensuring that the courts deal with cases at an appropriate and proportionate level.

The provisions of remit will allow any discrepancies to be dealt with by the courts and cases properly directed accordingly

Q2. Do you think that the Court of Session should retain concurrent jurisdiction for all family cases regardless of the value of the claim?

Yes No

We have no view to offer as this is outwith our area of expertise

Q3. Do you think that the Court of Session should retain concurrent jurisdiction in any other areas?

Yes No

FSCM believe that consistency and proportionality are fundamental principles and we are unaware of any other area where concurrent jurisdiction should be retained (we accept family law may be different and that is outwith our area of expertise)

Q4. What impact do you think these proposals will have on you or your organisation?

These proposals, if properly implemented, supported and managed correctly will have a positive impact on our members and other court users by allowing for quicker and more proportionate access to justice.

The proposed change to the privative limit gives greater certainty of the route to justice for Pursuers and Defenders alike.

CHAPTER 2

Creating a new judicial tier within the sheriff court

Q5. Do you think that the term "summary sheriff" adequately reflects the new tier and its jurisdiction?

Yes No

We agree that the term 'summary sheriff' reflects the nature of this new role and is appropriate and suitable

Q6. Do you agree with the proposal that the qualifications for appointment as a summary sheriff should be the same as that for a sheriff?

Yes No

We agree that the qualifications for appointment should be the same for summary sheriff and sheriff to ensure the correct calibre of candidate and also so that the role of a summary sheriff is not seen as a fast track or easy route into the judiciary and potentially undermining the role

Q7. Do you agree with the proposed competence of summary sheriffs in family cases?

Yes No

We agree it makes sense to draw summary sheriffs from areas of expertise and competence and utilise the knowledge they have gained as practitioners to find better ways to deal with such matters and make the courts more user friendly

Q8. Do you agree that summary sheriffs should deal with referrals from children's hearings?

Yes No

We have no view to offer as this is outwith our area of expertise

Q9. Do you think that in addition to summary crime, summary sheriffs should have powers in other areas of criminal jurisdiction?

Yes No

We have no view to offer as this is outwith our area of expertise

Q10. Do you agree that the allocation of cases where there is concurrent competence between sheriffs and summary sheriffs should be an administrative matter for the relevant Sheriff Principal?

Yes No

We believe the Sheriff Principal should have administrative control over such matters within their Sheriffdom

Q11. What impact do you think these proposals will have on you or your organisation?

These proposals if properly implemented would ensure that actions are heard and managed by summary sheriffs who have expertise and competence within that area of practice.

It can only be a positive impact to our members to have summary sheriffs who are able to manage cases more closely, make key decisions and hear matters more quickly and provide a more proportionate system of civil justice

CHAPTER 3

Creating a new sheriff appeal court

Q12. Do you agree that criminal appeals should be held in a centralised national appeal court?

Yes No

We agree that both criminal and civil appeals should follow a similar model and the best route for this to be achieved, whilst retaining proportionality is to have centralised national appeal courts

Q13. Do you think that civil appeals should be heard in the sheriff appeal court sitting in the sheriffdom in which they originated?

Yes No

We believe a centralised national civil appeal court would bring greater consistency as well as efficiency savings and would be the best course of action

Q14. Do you agree that the sheriff appeal court should be composed of appeal sheriffs who are Sheriffs Principal and sheriffs of at least five years experience?

Yes No

We agree with this proposal so the sheriff appeal court has the correct level of specialist and appropriate expertise to deal with the work

Q15. What impact do you think these proposals will have on you or your organisation?

These proposals if properly implemented would reinforce consistency of justice and proportionality of the issues.

Central appeal courts would bring greater clarity for Pursuer and Defender alike with consistency of decisions

CHAPTER 4

Creating a specialist personal injury court

Q16. Do you agree that establishment of a specialist personal injury court?

Yes No

We wholeheartedly agree with the establishment of a specialist personal injury court to ensure that what is already a specialist area, is given even more focus and the processes made more efficient

Q17. Do you agree that civil jury trials should be available in the specialist personal injury court?

Yes No

We do not believe that civil jury trials should be available in the specialist personal injury court.

Civil Jury Trials lead to a duality of justice or a two tier system of justice which leads to manifest uncertainty and unfairness for pursuers and defenders alike.

This can be best demonstrated in the conjoined appeal cases of ***Kirsty May Hamilton v Ferguson Transport (Spean Bridge) Ltd*** and ***Gilbert Dennis Thomson v Dennis Thomson Builders Ltd [2012] CSIH 52*** where all these issues were considered by a five judge inner house appeal court, chaired by the then, Lord President Hamilton.

In the judgement, reference is made at paragraph 46 to what occurred in England and Wales, namely trial of personal injury actions by juries was effectively abolished by judicial decision in the 1960s (*Sims v William Howard & Son Ltd*)

At pages 415–6 of the report of that case Lord Denning MR said:

“It is now recognised that in these personal injury cases there should, as far as possible, be some degree of uniformity. This is desirable so that there should be justice between plaintiff and plaintiff and between defendant and defendant. It is not fair or just that one injured man should get twice as much as another for very similar injuries. The judges have therefore over the years evolved a scale which is well known and is applied daily up and down the country. This scale can be applied on a trial by judge alone. But never on trial by jury.”

Thus the principle of consistency of awards trumped any advantage that trial by jury might have in such cases.

We would submit that the consistency, efficiency and proportionality that a specialist personal injury court would bring, could be devalued or lost if this

duality and manifest unfairness of justice was built in to the new proposals.

The Court of Session in the conjoined appeal cases detailed above ultimately chose to provide a new framework for jury trials whereby the judge presiding over a Jury trial presents the jury with a 'range' within which to make an award.

This goes some way to removing some of the unfairness faced, but it does not address the equality of justice issue completely.

For example, a Pursuer could choose to have a jury trial in a case where liability is not disputed and be awarded a large amount on quantum because the jury are sympathetic to the Pursuer because of the injuries sustained.

In a very similar case where liability is at issue, a similarly injured Pursuer could feel obliged to opt for a proof before a judge rather than face the uncertainty of a liability trial before a jury with the end result being awarded less by way of damages.

Such overwhelming uncertainty can make it extremely difficult for a legal representative of either a Pursuer or Defender to give their client proper advice in a case and there are numerous examples (in the experience of our members) where Counsel for the Pursuer in the present system have said they simply cannot advise what a Jury may award therefore actions simply carry on.

In addition, Jury trials are not reported in the same way as judicial decisions and the facts of the case cannot be held to judicial scrutiny on appeal.

Furthermore, Jury trials create an administrative burden on the courts in ensuring sufficient numbers of the public are cited for jury service well in advance and that ultimately, there are sufficient numbers to serve on a jury otherwise trials simply cannot proceed for solely that reason.

All of these reasons take civil jury trials away from being a proportionate and efficient route to justice for all parties concerned

Q18. What impact do you think these proposals will have on you or your organisation?

We believe if properly implemented a specialist personal injury court would deal with cases more proportionately, efficiently and with greater consistency.

Such a specialist court will provide pursuers and defenders alike with faster access to justice.

Civil Jury Trials, if implemented in this court, could derail such objectives and outcomes by leading to a two tier justice system and uncertainty and

unpredictability for all parties.

CHAPTER 5

Improving judicial review procedure in the Court of Session

Q19. Do you agree with the three month time limit for judicial review claims to be brought?

Yes No

We agree with the proposal as stated

Q20. Do you agree that the introduction of the leave to proceed with an application for judicial review will filter out unmeritorious cases?

Yes No

Such a process appears to be sensible and appropriate

Q21. Do you agree that these proposals to amend the judicial review procedure will maintain access to justice?

Yes No

Such a process appears to be sensible and appropriate

Q22. What impact do you think these proposals will have on you or your organisation?

We have no view to offer as this is outwith our area of expertise

CHAPTER 6

Facilitating the modernisation of procedures in the Court of Session and sheriff courts

Replace the existing rule making powers with more general and generic powers

Q23. Do you agree that the new rule making provisions in sections 85 and 86 of the draft Bill will help improve the civil procedure in the Court of Session and sheriff courts?

Yes No

We believe that the provisions in sections 85 and 86 will allow flexibility to improve civil procedure as issues arise and take action to negate any unintended consequences

Q24. Are there any deficiencies in the rule making provisions that would restrict the ability of the Court of Session to improve civil procedure in the Court of Session and sheriff courts?

Yes No

We do not believe there any such deficiencies

Q25. What impact do you think these proposals will have on you or your organisation?

We believe if properly implemented and managed correctly, these proposals will allow the civil justice system to be adapted and altered quickly and efficiently

The creation of new powers in the Inner House of the Court of Session to sift and dispose of appeals with no reasonable prospects of success.

Q26. Do you agree that a single judge of the Inner House should be able to consider the grounds of an appeal or motion?

Yes No

We agree this is a sensible and proportionate proposal

Q27. What impact do you think these proposals will have on you or your organisation?

The proposals would have a limited impact on our members, but where it does, it would allow faster resolution of cases

The abolition of the distinction between ordinary and petition procedure in the Court of Session.

Q28. Do you agree that the distinction between ordinary and petition procedure should be abolished?

Yes No

We have no view to offer as this is outwith our area of expertise

Q29. Do you foresee any unintended consequences for this change?

Yes No

We have no view to offer as this is outwith our area of expertise

Q30. What impact do you think these proposals will have on you or your organisation?

We have no view to offer as this is outwith our area of expertise

New procedures for dealing with vexatious litigants.

Q31. Do you agree that the new procedure will ensure that courts are able to deal appropriately with vexatious litigants?

Yes No

We believe the proposals appear to be sensible and proportionate

Q32. What impact do you think these proposals will have on you or your organisation?

We believe that this will free up valuable court time and resource from dealing with spurious matters

Scotland-wide enforcement of interdict and interim orders

Q33. Do you agree that an order for interdict should be capable of being enforced at any sheriff court in Scotland?

Yes No

We agree with this proposal

Q34. Should interim orders and warrants have similar all-Scotland effect and be capable of enforcement at any sheriff court?

Yes No

We agree with this proposal

Q35. What impact do you think that these proposals will have on you or your organisation?

We believe this simplifies matters and saves on court time and resource

CHAPTER 7: THE PROPOSALS: Alternative Dispute Resolution

Q36. Do you think that ADR should be promoted by means of court rules?

Yes No

We believe that the civil justice system and resorting to the use of court time and resource should be a last resort and alternative dispute resolution should be encouraged. It is a matter for judicial discretion to take into account a parties refusal to enter into ADR with regard to costs

Q37. What impact do you think these proposals will have on you or your organisation?

We believe ADR if approached correctly by the parties, should be less expensive and resolve matters quicker

ASSESSING IMPACT

Equality

Q38. Please tell us about any potential impacts, either positive or negative, you feel any or all of the proposals in this consultation may have on a particular group or groups of people.

None

Business and Regulatory

Q39. Please tell us about any potential economic or regulatory impacts, either positive or negative, you feel any or all of the proposals in this consultation may have.

None

Legislation

Q40. Please give any comments on the legislation as set out in the Draft Bill. Are there any omissions or areas you think have not been covered.

None