

CONSULTATION ON THE CREATION OF A SCOTTISH CIVIL JUSTICE COUNCIL



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

Forename

2. Postal Address

C/O John Miles (Chairman)

The Equinox

19 Cadogan Street

GLASGOW

Postcode G2 6QQ

Phone 0141 275 6635

Email John.Miles@esure.com

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

CONSULTATION QUESTIONNAIRE

Q1. Do you agree or disagree that there should be a Scottish Civil Justice Council?

Agree Disagree No preference

Comments

We agree that an over-arching Scottish Justice Council would be a progressive, forward thinking step which could 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

We see the Scottish Justice Council as the catalyst to implement the reforms proposed by Lord Gill and thereafter, maintaining continuous improvement within the judicial system.

Q2. Do you agree or disagree with the proposed functions of the Council, including that it should have a policy remit? If you disagree, please give reasons for your answer.

Agree Disagree No preference

Comments

It's imperative that the Council has the autonomy and authority to make change for the better.

Q3. Should the Council be able to make recommendations in relation to administrative justice and tribunals? Please give reasons for your answer.

Yes No No preference

Comments

It would make perfect sense for the Council to encompass administrative justice and tribunals to make the council a single entity interested in legal reform and especially with the abolition of the SCAJTC, the council would have an important role to play

Q4. Do you consider that the Council should have the ability to make rules of court? If so, what process should be adopted for making them? Please give as much detail as possible.

Yes No No preference

Comments

The Council should have the ability to make the rules of court in both Sheriff Court and the Court of Session (under guidance and control of the Lord President) and any due process for making rules should encompass a democratic mechanism together with a fair and transparent process which would allow interested parties and court users (including non legal users such as insurers, consumer bodies or champions, local authorities and the like) to have their views on prospective changes heard and taken notice of.

Q5. Do you agree or disagree that the overall responsibility for the Council should lie with the Lord President rather than Scottish Ministers?

Agree Disagree No preference

Comments

As previous answers, it's imperative that control and accountability remains the responsibility of the Council, under the guidance of the Lord President.

Q6. Do you agree or disagree that the Council should be able to make recommendations to the Scottish Ministers as well as the Lord President?

Agree Disagree No preference

Comments

Whilst the autonomy and authority is retained by the Council, we believe the Council should have an inclusive approach and be able to share recommendations which promote access to justice with the Scottish Ministers as part of an inclusive approach.

Q7. Do you consider that the role and functions of the Council should be conferred upon any other body or bodies instead? If so, which? Please give reasons for your answer.

Yes No No preference

Comments

The Council should be wholly responsible and independent to ensure fairness and equity.

This would avoid potential conflict situations or unnecessary delays in implementing proposed reforms.

Q8. Do you consider that the proposed membership is appropriate? If not, what alternative would you suggest?

Yes No No preference

If yes, go to question 10.

Comments

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.

We would submit that insurance companies are the single largest body of civil court users in Scotland, funding or having a financial interest in 80% of cases going through the courts.

Also, it is important to recognise that the rules the Council implement not only impact on the cases which go to court, but of course, the cases that can be settled without the need for litigation. (this was recognised by Lord Gill in the discussion regarding Pre-Action Protocols)

The proposed membership as stated makes no allowance for insurance and family law accounting for the majority of court time – both these areas need at least 1 member each to ensure fair accurate representation.

It is clear to us, that to properly consider change for the better and adapt the courts, the Council must have representatives 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 advise the Council of any unintended consequences before proposed reforms are implemented and therefore inclusion of Insurers within the Council would hopefully lead to more improved, forward thinking procedural change.

We would submit that the insurance company body of users should be represented as part of the council in the same way that other non legal areas will be recognised

If the Council is not seen as inclusive it may influence corporate users in their choice of jurisdiction for resolving disputes or regulating contracts, and result in them opting to conduct their litigation under English Law rather than using Scotland as their forum of choice.

Q9. Should any other person / category of person be included in the membership? Please give reasons.

Yes No No preference

Comments

See answer to Question 8 – as the largest body of civil court users in Scotland, insurance companies funding or having a financial interest in 80% of cases should be represented properly on the council.

Court reforms and rule changes have the capacity to affect the cost of cases which flow through the courts.

In straight forward terms, if the cost of litigation were to increase because of rule changes, the costs borne by insurance companies would ultimately be borne by the end consumer and Scottish Businesses by way of higher insurance premiums to compensate.

If insurance companies were to be represented on the Council, perhaps this could be considered as part of the reforms rather than reactive later on after reform takes place.

We also believe that the area of family law requires proper representation upon the Council reflective of the area's depth and importance.

Q10. Do you agree or disagree that the Lord President and Scottish Ministers should be able to appoint other members to the Council as they see fit? If not, why not?

Agree Disagree No preference

Comments

The Lord President and Scottish Ministers should not be able to appoint other members as they see fit. The process of appointing members should be fair and transparent and remain within the terms of reference or constitution of the Council itself.

If specific interest groups or individual areas of expertise are required, then the Council should have the power and responsibility to co-opt or select appropriate additional assistance as and when required rather than change the actual membership.

Q11. Do you consider that members should receive expenses only, or should members be paid?

Expenses only Paid No preference

Comments

Q12. Do you agree or disagree that there should be a general requirement for the Council to consult and work with other groups and bodies with an interest in the civil justice system?

Agree Disagree No preference

Comments

The Council should have the remit to consult as widely as required to make informed decisions and change for the benefit of all court users and interested parties.

Q13. Do you agree or disagree that the requirements for the provision of an annual report are appropriate?

Agree Disagree No preference

Comments

This would be an ideal opportunity for the Council to promote their activities and the benefit their reforms will bring

Q14. Do you consider that any additional or alternative reporting arrangements would be appropriate? Please give reasons for your answer.

Yes No No preference

Comments

A Code of Conduct and operating rules will provide complete transparency for the aims and objectives of the Council, it's members and any other interested party.

Q15. Do you agree or disagree that the Scottish Ministers and the Lord President should be able to direct the Council to consider and advise upon any matter falling within its general remit?

Agree Disagree No preference

Comments

It's for the Lord President to set the strategy for the Council, but the Council should be inclusive and be able to consider matters widely.

Q16. Do you have any other comments on the proposals outlined in this paper?

Yes No

Comments

We feel that the creation of the Council would be a positive step to the implementation of the Gill reforms and as insurers, we would wholeheartedly welcome the opportunity to participate as a member of the Council and assist in any way we can.