



Andrew Howlett
Public Petitions Committee
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21 December 2012

Dear Mr Howlett

**SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE - CONSIDERATION
OF PETITION PE1455**

Thank you for your letter of 29 November 2012 seeking my views as Chief Executive of the Scottish Court Service (SCS) on matters raised in petition PE1455, brought by James Macfarlane. I note that you are also consulting a range of other bodies about this petition.

Petition PE1455 calls on the Scottish Parliament to urge the Scottish Government to consider the need for new legislation to create a free of charge public right of access to information generated in relation to court proceedings, including all documents which have been read in open court, whether aloud or not, and to proactively publish this information online. The right of access is sought in relation to both criminal and civil matters.

It will be helpful if I explain the aspects of the petition which fall within the Scottish Court Service's competence. The Scottish Court Service (SCS) is an independent statutory body constituted in terms of the Judiciary and Courts (Scotland) Act 2008 and is responsible for the provision of administrative support for the sheriff and JP courts, the Court of Session and High Court of Justiciary, and for members of the judiciary. I can therefore only answer queries about that administrative function. I do not proffer any explanation or comment on the merits of judicial decisions or the means by which those decisions might be reached.

I have been asked to address two particular questions which have emanated from the committee meetings.

What are your views on what the petition seeks?

It is of course right and proper that justice is seen to be done. SCS recognises this as a key principle in maintaining public confidence in our justice system. This principle and the application of it has also to be balanced to ensure compliance with statutory and regulatory provisions as they apply to information generally and, specifically, as

they apply to the proper protection of individuals and the interests of justice; in an overall context and in the context of individual cases.

In both criminal and civil proceedings a great deal of sensitive information is lodged in court papers and the general principle currently applied protects that information until such time as details are revealed in open court. In practice this most commonly occurs once a case proceeds to trial or some form of evidential hearing. In civil matters the pleadings can be subject of significant adjustment and counter adjustment up to and including the point at which evidence is to be led thus necessitating an additional degree of diligence in the way information may be released to the press and the way the press report.

Section 37 of the Freedom of Information (Scotland) Act 2002 provides an absolute exemption in relation to the disclosure of information where that information is contained, or has been created, within court records. This legislative provision reflects the complexities associated with such information and the court's inherent role in determining how that information should be managed. This enables requests for information to be considered fairly in the context of the individual proceedings, the stage the case is at and the potential risks that the disclosure might cause either to personal harm or to the interests of justice. The degree to which the information was read out or referred to in open court is also likely to form part of the consideration.

Currently public interest in court related matters is most often served through members of the media and I note that both appeal cases referenced by the petitioner relate to challenges mounted by the media and the rulings relate to the circumstances of specific cases. The lengthy judgments serve to highlight the complexities of this subject and indeed in the High Court of Justiciary case the challenge was only partially successful. Experienced court journalists are generally familiar with the intricacies of court procedures and exercise judgement in relation to what information to publish and at what stage. In Scotland this process is aided by established practices and case law which have evolved over time and which are presented in the current leading text on this matter *Scots Law for Journalists* by R McInnes (Greens).

In summary, the essential in principle position is that information provision is properly administered in the context and circumstances of the individual case as opposed to blanket provisions. This is necessary for the interests of justice and compliance with the law.

The petition outlines a proposal whereby control over disclosure might be exercised by the court in advance and I have covered this under the second question below.

What are the practical implications of making publically available the information set out in the petition?

Substantial practical and implications would be associated with the administration and policing of the process. In a purely practical sense the logistics would be considerable. It would require the interrogation and extraction of data from up to 200,000 case files with the supporting processes of assimilation and presentation of it.

The petition envisages that applications might be made in advance from parties who would wish to exclude certain information or details from publication. Court documents can contain extensive sensitive statements such as personal finance and banking details, medical reports, commercial contracts, names and addresses of

victims, historical criminal records and proposed arrangements for vulnerable persons and children, some of which may or may not have been referred to in open court or been pertinent to the decision reached in the case. The determination of such applications would likely need to be a judicial as opposed to an administrative one.

It would be realistic to expect that a high proportion of parties in both criminal and civil proceedings would seek to have their details withheld rather than have potentially sensitive personal information published on the intranet. 200,000 new cases enter the system annually and over 70,000 reach the stage of an evidential hearing. Documents may be presented to the court at various stages of those proceedings. Giving fair and reasonable consideration to these applications would be a significant exercise taking up valuable court and judicial time with the potential to prolong proceedings and extend court delays.

I am of the view that what is proposed in the petition would place an unreasonably and disproportionately high administrative burden upon SCS.

Yours sincerely

Eric McQueen
Chief Executive (interim)