

dispute resolution news

October 2009

The Gill Report

On 30 September the Report of the Scottish Civil Courts Review (The Gill Report) was published. This is the biggest review in recent years of civil court procedure outlining recommendations to improve the structure of the courts as well as their procedures, working methods and access to justice.

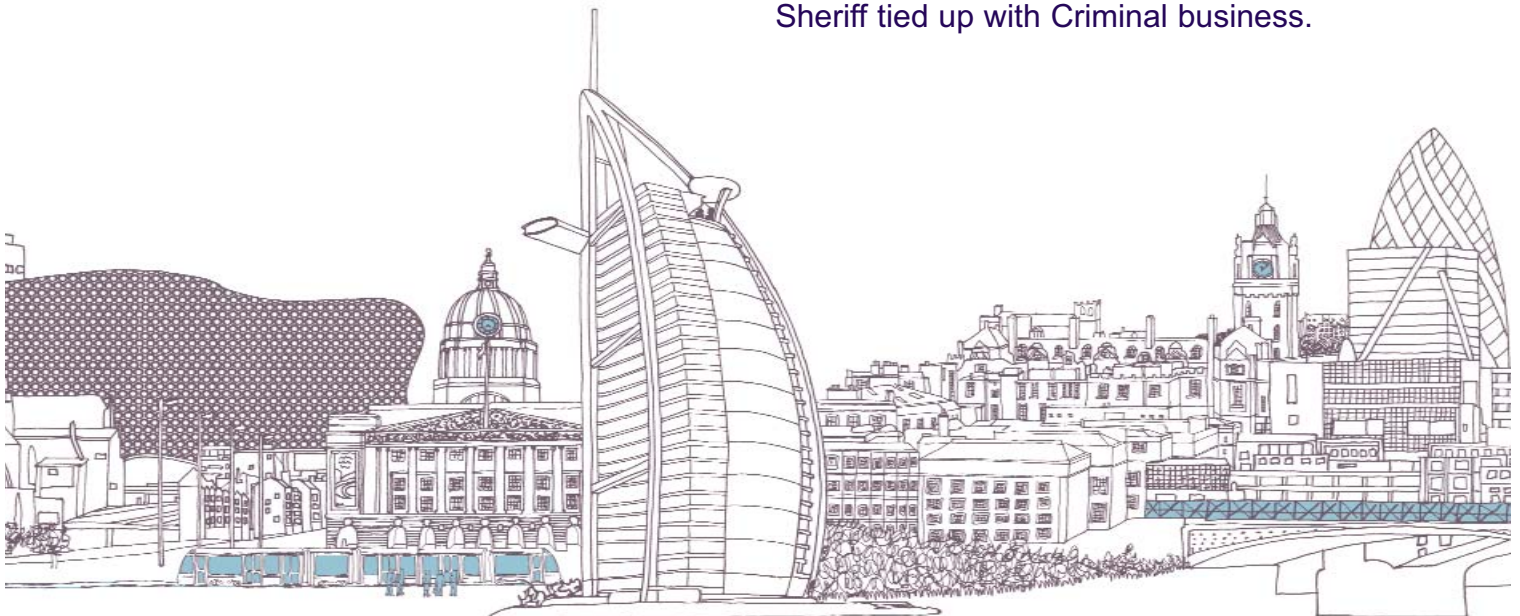
In particular, the recommendations aim to improve the speed with which cases can be dealt, as well as decreasing the cost to the client. It remains to be decided when and how these recommendations will be implemented. However Lord Gill has emphasised that they should be implemented as a whole and not individually. Once implemented the changes will have a far reaching impact on any party who intends to litigate in the Scottish Courts.

The Recommendations

Court structure

Sheriff courts would have the exclusive jurisdiction to deal with all cases with a value up to £150,000, saving clients the increased cost of the Court of Session. Specialist Sheriffs would sit throughout Scotland to lend their expertise to cases concerning their particular subject matter.

A specialist personal injury court would be created in Edinburgh to deal with cases from throughout Scotland but pursuers would retain the right to litigate in their local Sheriff Court. The new position of district judge would be created to hear claims of modest value in the sheriff court more quickly than they can currently be heard. Appeals in Civil and Criminal cases would lie in the first instance to a new Sheriff Appeal Court. Appeals to the Court of Session would only be with the leave of the Sheriff/District judge. Where possible, Civil and Criminal business should be scheduled for different days to avoid delays in the civil courts caused by Sheriff tied up with Criminal business.



Case management

Cases would be allocated to a particular judge or sheriff, instead of each stage of the action being heard by a different person. Case management hearings will allow the Sheriff to focus issues at an early stage by considering matters such as the issues that require to go to proof, the extent of pleadings required, disclosure of information and remit to experts.

Procedural business and some hearings would be conducted by email, telephone, video conferencing or in writing in order to save the expense of court appearances.

New rules would be written, in plain English, for actions for £5,000 or less in order to simplify procedure. Party litigants may appoint a “McKenzie friend” ie an individual who cannot address the court but can provide support and advice through litigation.

A Code of Conduct for Expert Witnesses will be developed. There will be a presumption that an expert report will form the evidence in chief with only the need for cross examination. A new procedure which is open to both parties for summary disposal of cases with no prospects of success will be introduced.

A new multi-party (class action) procedure will be developed. There will be a register of Judgements pending for over 3 months and the judge will be required to indicate when such judgements are likely to be issued.

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Expenses

There will be no full overhaul of the expenses system at the moment but a proposed re-assessment of the block fees for pre-litigation work and proof preparation. A Judicial table of fees for Counsel is proposed. There will be provision to seek sanction for the instruction of Solicitor-Advocates in Sheriff Court cases with fees to be on the same scale as Counsel and to be recovered as an outlay.

Other forms of dispute resolution

There would be more emphasis on allowing parties to settle cases early, rather than proceeding through court. A free mediation service would be offered for actions for £5,000 or less.

While it may take some time for these proposals to be implemented they are a welcome move towards reducing delays in litigation by allowing issues to be focussed early and allowing actions to be dealt with by judges with specialist expertise. The development of the register of outstanding Judgements will no doubt serve to increase the speed at which opinions are issued after a hearing.

The issue of recoverable fees remains one to be addressed another day but the introduction of a Judicial Scale for Counsel/Solicitor-Advocates fees will assist in predicting the likely costs of litigation and the formal introduction of sanction for Solicitor-Advocates in the sheriff court is a welcome development.