

SCOTTISH COURT SERVICE
CONSULTATION ON PROPOSALS FOR A COURT STRUCTURE FOR THE FUTURE

Response Form
Incorporating the Respondent Information Form

September 2012

**SCOTTISH COURT SERVICE CONSULTATION
PROPOSALS FOR A COURT STRUCTURE FOR THE FUTURE**

RESPONDENT INFORMATION FORM

Please return this form with your response to ensure that we handle your response appropriately.

1. Name/Organisation

Organisation Name

Whelan & Co., Solicitors

Title

Mr

Surname

Whelan

Forename

Nicholas

2. Postal Address

105 High Street

Arbroath

Postcode: DD111DP

Telephone:

E-mail:

3. Permissions

I am responding as:

an individual

a group or organisation

Please enter an X in the appropriate box

If you are responding as an **individual**, please answer question 4(a) and, if appropriate, question 4(b).

If you are responding as a **group or organisation** the name and address of your group or organisation will be made available to the public and published on the Scottish Courts web site. Please mark the appropriate box in question 5 to indicate whether you are content for your response to be made public.

4. Permissions as an individual

(a)

Do you agree to your response being made available to the public (in paper copy and/or on the Scottish Courts web site)?

YES

NO

Please enter an X in the appropriate box

(b)

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

Please enter an X in ONE of the following boxes

Yes, make my response, name and address all available

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

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

5. Permissions as a group/organisation

Are you content for your response to be made available?

YES

NO

Please enter an X in the appropriate box

CONSULTATION ON PROPOSALS FOR A COURT STRUCTURE FOR THE FUTURE

RESPONSE FORM

The proposals and questions are set out on the following pages of this form.

Please enter your response within the box of the question you are responding to. The box will expand to allow for your text.

Please return the completed respondent information form and your response to the consultation

by e-mail to: courtstructures@scotcourts.gov.uk

by post to: Scottish Court Service
Field Services Directorate
Court Structures Consultation
1A Parliament Square
Edinburgh, EH1 1RF

Your response should reach us by noon on Friday, 21 December 2012.

The High Court Circuit

Pages 23 to 25 of the Consultation Paper.

Proposal 1

The proposal for change to the court structure supporting the High Court Circuit is that:

- (a) the High Court should sit as a court of first instance primarily in dedicated High Court centres in Edinburgh, Glasgow and Aberdeen;
- (b) additional sitting capacity should be provided only in designated sheriff courts in the east and west of the country;
- (c) there should remain the opportunity for a sitting of the High Court to be held at another location when the Lord Justice General or the Lord Advocate considers that to be in the interests of justice;
- (d) these changes to the current arrangements should be phased over the period to 31 March 2015, and that during this period, additional capacity, when required, could be provided from a bank of courts, which would be Greenock, Paisley, Dumbarton, Livingston and Dunfermline.

Question 1 Do you agree with the proposed structure of sittings of the High Court at first instance?

Response

Yes

Question 2 If you disagree with the proposed structure of sittings of the High Court at first instance, or a specific aspect of the proposal, please say:

(a) why you disagree, and

(b) how you would prefer the sittings structured, being as specific as you can about how your preference would operate in practice.

Response

Question 3 What impact would our proposals for High Court sittings at first instance have on you?

Please give reasons for your answer.

Response

Additional travel

Consolidating sheriff and jury business and other shrieval specialisation

Pages 27 to 31 of the Consultation Paper.

Proposal 2

The proposal for changes to the supporting structure for sheriff and jury business and the exclusive civil, administrative and miscellaneous jurisdiction of the sheriff is that:

- (a) in the mainland jurisdictions, sheriff and jury business should routinely be held only at the sheriff courts of: Glasgow, Aberdeen, Inverness, Edinburgh, Livingston, Paisley, Dumbarton, Kilmarnock, Airdrie, Hamilton, Ayr, Dumfries, Perth, Dundee, Falkirk and Dunfermline;
- (b) in the mainland jurisdictions, as the body of summary sheriffs became established, the sixteen sheriff and jury centres would become centres of shrieval specialism in the civil, administrative and miscellaneous jurisdiction of the sheriff, where business in those jurisdictions would be dealt with;
- (c) the sheriff courts at Lerwick, Kirkwall, Stornoway, Lochmaddy and Portree would continue to hear all business within the jurisdiction of the sheriff;
- (d) the changes, being dependent on the deployment of sheriffs and summary sheriffs, court capacity becoming available and the development of the use of video and other communications technology in court proceedings, would be progressively introduced over a period of ten years.

Question 4 Do you agree with the proposals for a supporting court structure for sheriff and jury business?

Response

No

Question 5 If you disagree with the proposals for sheriff and jury business, please say:

(a) why you disagree, and

(b) how you would prefer the provision of court facilities for sheriff and jury business to be structured, being as specific as you can about how your preference would operate in practice.

Response

Will impact on access to justice for accused, witnesses and complainers. Will significantly undermine the basis of "being judged by a jury of your peers" when the jury does not consist of local individuals.

Question 6 Do you agree with the proposal that the sheriff and jury centres should become centres of specialism in the civil, administrative and miscellaneous jurisdiction exclusive to sheriffs?

Response

No

Question 7 If you disagree with the proposal that sheriff and jury centres should become centres of shrieval specialism, please say:

(a) why you disagree, and

(b) how you would prefer the exercise of the sheriff's exclusive civil, administrative and miscellaneous jurisdiction to be structured, being as specific as you can about how your preference would operate in practice.

Response

Question 8 What impact would the hearing of sheriff and jury business only in these sixteen centres have on you?

Please give reasons for your answer.

Response

Additional travel

Question 9 What impact would shrieval specialisation based in the sheriff and jury centres have on you?

Please give reasons for your answer.

Response

Additional travel

Justice of the peace courts in towns where there is no sheriff courthouse

Pages 34 to 36 of the Consultation Paper.

Proposal 3

The proposal for the five justice of the peace courts in towns where there is no sheriff courthouse is that:

- (a) the justice of the peace courts at Coatbridge, Cumbernauld, Annan, Irvine and Motherwell should close and the business be transferred to a justice of the peace court sitting in the sheriff courthouse for the district;
- (b) these changes, which are dependent on there being sufficient capacity in the respective sheriff courthouses, should be phased over the financial years 2013/14 and 2014/15.

Question 10 Do you agree with the proposals for the justice of the peace courts at Annan, Coatbridge, Cumbernauld, Irvine and Motherwell?

Response

I do not believe i am in a postion to answer this question

Question 11 If you do not agree with the proposals, please say:

- (a) why you disagree, and
- (b) what court structure would you prefer to support the business of these justice of the peace courts, being as specific as you can about how your preference would operate in practice.

Response

Question 12 What impact would the closure of these justice of the peace courts have on you?

Please give reasons for your answer.

Response

The Justice of the Peace Courts at Portree, Stornoway and Wick

Page 37 of the Consultation Paper.

Proposal 4

The proposal for the justice of the peace courts at Portree, Stornoway and Wick is that these courts should be disestablished and that all summary criminal business be heard in the local sheriff court.

Question 13 Do you agree with the proposal to disestablish the justice of the peace courts at Portree, Stornoway and Wick?

Response

As above

Question 14 If you disagree with the proposal to disestablish these justice of the peace courts, please say

(a) why you disagree, and

(b) what alternative proposal you would prefer to see in place, being as specific as you can about how your preference would operate in practice.

Response

Question 15 What impact would the disestablishment of the justice of the peace courts at Portree, Stornoway and Wick have on you?

Please give reasons for your answer.

Response

Sheriff courts with low volumes of business

Pages 38 to 40 of the Consultation Paper.

Proposal 5

The proposal for the five courts falling below our measure for low volume is that:

- (a) sheriff courts and justice of the peace courts should cease to be held in Dornoch, Duns, Kirkcudbright and Peebles, a sheriff court should cease to be held at Rothesay, and the court buildings and court accommodation in those places should be closed;
- (b) the business from these courts should be transferred to the neighbouring sheriff court districts and be heard at the sheriff courthouse in Tain, Jedburgh, Dumfries, Edinburgh and Greenock respectively;
- (c) the changes be achieved during the year 2013/14.

Question 16 Do you agree with the proposal to close the sheriff courts and justice of the peace courts at Dornoch, Duns, Kirkcudbright, Peebles and the sheriff court at Rothesay and transfer the business into the neighbouring sheriff court districts of Tain, Jedburgh, Dumfries, Edinburgh and Greenock respectively?

Response

As above

Question 17 If you disagree with the proposals regarding these courts, please say:

(a) why you disagree, and

(b) how you would prefer the sheriff court and justice of the peace court provision for these districts structured, being as specific as you can about how your preference would operate in practice.

If you are commenting on only some of the courts affected, please indicate to which court(s) your answer relates.

Response

Question 18 How would the closure of any of these courts affect you?

Please give reasons for your answer and indicate to which court(s) your answer relates.

Response

Sheriff courts in proximity to each other

Pages 38, 39 and 42 to 44 of the Consultation Paper.

Proposal 6

The proposal for the sheriff courts that are in proximity to another sheriff court where there is capacity to take additional business, or that capacity will become available as a consequence of other changes, is that:

- (a) sheriff courts and justice of the peace courts should cease to be held in Alloa, Cupar, Dingwall, Arbroath, Haddington and Stonehaven and the court buildings and court accommodation in those places should be closed;
- (b) the business from these courts should be transferred to the neighbouring sheriff court districts and be heard at the sheriff courthouse in Stirling (solemn business in Falkirk), Dundee, Inverness, Forfar, Edinburgh and Aberdeen respectively;
- (c) the changes should be phased over the two years 2013/14 and 2014/15, or as the necessary capacity becomes available.

Question 19 Do you agree with the proposals to close the sheriff courts and justice of the peace courts at Alloa, Cupar, Dingwall, Arbroath, Haddington and Stonehaven and transfer the business into the sheriff court districts of Stirling/Falkirk, Dundee, Inverness, Forfar, Edinburgh and Aberdeen respectively?

Response

No.

Question 20 If you disagree with the proposals to close these courts, please say:

- (a) why you disagree, and
- (b) how you would prefer the sheriff court and justice of the peace court provision for these districts structured, being as specific as you can about how your preference would operate in practice.

If you are commenting on only some of the courts affected, please indicate to which court(s) your answer relates.

Response

I am only responding in relation to the courts of Angus. I believe Forfar Sheriff Court should be closed and it's business transferred between Arbroath and Dundee. Please see detailed paper apart attached for full submission

Question 21 How would the closure of any of these courts affect you?

Please give reasons for your answer and indicate to which court(s) your answer relates.

Response

Additional travel, see full submission.

Sheriff court district boundaries

Page 46 of the Consultation Paper.

Question 22 If you consider that the boundary of any sheriff court district should be redrawn, please specify what changes you would like to see made, and give your reasons for the changes you propose.

Response

General Questions

Question 23 If there are any aspects of this consultation paper about which you wish to comment and an opportunity to do so has not arisen in any of the earlier questions, please let us have your comments here.

Response

Question 24 If there are any aspects of the provision of court services in Scotland about which you wish to comment, express a view or offer an idea, and an opportunity to do so has not arisen any of the earlier questions, please let us have your comments, views and ideas here.

Response

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Paper Apart Submission for "Shaping Scotland's Court Services".

The author of this submission is a practising court solicitor with a High Street office in Arbroath. The firm employs three solicitors and four support staff. The firm has been practising in Arbroath for ten years, and the employed solicitors conduct all forms of civil and criminal court business primarily within Arbroath and Forfar Sheriff Court but also in various other courts throughout Scotland.

It is entirely accepted that resources for the Court service are not unlimited and that available scarce resources ought to be applied to maximise efficiency and deliver a court service that can be the best available to the people whom the court serves. However, I do not agree that the proposals that has been made to close Arbroath Sheriff Court and transfer the main business of this court to Forfar will offer neither the best allocation of scarce resources nor provide a level of service to court users that can be provided by Arbroath Sheriff Court remaining in operation and Forfar Sheriff Court being closed.

Arbroath is the largest town in Angus and has a population of 22,000. The court also serves the adjacent town of Montrose that has a population of 11,000. Including the rural areas, and Carnoustie (Ward with population of around 12,500), at present it is estimated that Arbroath Sheriff Court currently serves a population of around 55,000. Forfar is Angus's second largest town with a population of 13,000. It is estimated that Forfar Sheriff Court currently serves a population of around 25,000 people.

Arbroath's links with Scottish Legal tradition date back to the signing of the "Declaration of Independence" in 1320. It consisted of a letter sent to Pope John Paul XXII which intended to confirm Scotland's independence as an individual sovereign state. Speaking during a launch of "Tartan Day" in 2008, George W. Bush, then president of the United States spoke of the great debt of honour that America owed to the Scot's nation for the part Declaration played in forming the American Constitution. Many people state that the Declaration formed the basis of individual rights being recognised and enshrined in the western world. It is of some significance therefore at with the on-going debate of Scotland's independence that the historical significance of Arbroath and the Declaration being the foundation of Scotland's separate and independent judiciary.

Suitability of Current Buildings

It appears that the consultation document makes much of the suitability of Forfar Sheriff Court to be adapted to meet the needs of the additional work and the planned reforms for the future. However, whilst these adaptations may be possible, this will involve significant expenditure by SCS. In order to

accommodate the changes, I would submit that the following changes will be required to be made to the Court building at Forfar:

1. At present Forfar only has one suitable court room. Court 2 is a small room where members of the public are seated around three walls of the court room in very close proximity to the sheriff's bench, the agent's desk and the dock. For criminal matters, this room is not secure. Witnesses require walking past the dock in close proximity to the accused. This room will require significant upgrading to become a fully functioning second court that will be required should Arbroath Sheriff Court be closed. In contrast Arbroath Sheriff Court has two fully equipped and functioning court rooms which could accommodate the additional business of Forfar were to be closed.
2. Within Forfar Sheriff Court, access to the court rooms, cell areas and witness rooms are by shared public corridors. Custodies are currently being brought into the building via the main public entrance and taken up the entrance steps to the cell areas. This results in custodies coming in close proximity to victims, witnesses, staff and members of the public. Additionally, for jury matters, the jury room in Forfar is situated in an adjoin corridor for the cell area. In contrast, Arbroath has a secure separate corridor for access to the jury room. Further Arbroath has a separate private secure entrance and corridor for custodies to ensure that victims etc. will never come into contact with those accused. There are secure corridors for the witness rooms. Both Forfar and Arbroath have two chambers for sheriff's which will be required to accommodate the level of business. However, only in Arbroath area to both chambers by secure separate chambers. It will never be possible for Forfar to be changed given the design of the building to address these security issues.
3. Presently, the Scottish Government recognises the need to address the needs of vulnerable witnesses and victims of crime. At present, Arbroath has a secure remote site for vulnerable witnesses, including victims, situated out with the court building. It is of vital importance that vulnerable witnesses are supported to ensure they give their evidence in the most effective manner. This is currently being addressed by Arbroath with this facility. In contrast, the remote site in Forfar is situated in a turret at the top of the building. The room is a small antiquated room and the link to the court on many occasions has failed and the audio quality is poor. Access to the room requires witness to enter the court building, sit in a mixed witness room until the trial commences and then walk through the public corridor, and ascend several steep stairs to reach the room. There is no doubt that a remote site will require to be established and equipped in Forfar. It is noted later in this submission the inevitable extra costs of doing so. It is submitted that at no additional cost, Arbroath is well equipped to address the needs of vulnerable witnesses and victims of crime given the facilities currently available within the court house.
4. It appears that some criticisms have been made of the cell areas of Arbroath in relation to their suitability. At present, Arbroath has three separate secure cells with two secure separate interview rooms for agents / social workers etc. Forfar has two Victorian cell areas with one interview room. The insecurity of this facility was recently highlighted when a prisoner escaped during a court sitting. Although custodies at present access the court building in Arbroath across the public pavement, the sand modern cell area is far superior to Forfar and would not require being adapted to meet the additional business. On several occasions in recent weeks, Forfar custodies have been dealt with Arbroath Sheriff Court and

this has been accommodated without any difficulties. This is proof therefore that Arbroath can accommodate additional workloads for custodies should Forfar be closed. In contrast, SCS has recognised that significant expenditure will require to be made to Forfar cell area.

I would therefore submit that given the above, Arbroath Sheriff Court is the most suitable building with the most appropriate facilities to accommodate the closure of Forfar Sheriff Court.

Access to Justice

Arbroath Sheriff Court currently deals with around 60% more court business than Forfar. For example the following are statistics obtained under a recent FOI request provided by SCS:

Criminal business:

Number of summary complaints registered:

	2010	2011	2012 (to 31/10/12)
Arbroath	943	975	721
Forfar	520	450	322

Summary Trials where evidence led:

	2010	2011	2012 (to 31/10/12)
Arbroath	216	256	235
Forfar	174	153	86

Solemn Matters:

Petitions Registered:	2010	2011	2012
Arbroath	98	86	58
Forfar	29	32	17

Solemn Trials where evidence led:	2010	2011	2012
Arbroath	17	30	22
Forfar	8	12	7

Civil Business:

Actions under Children (Scotland) Act 1995	2010	2011	2012
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Arbroath	75	83	47
Forfar	55	48	37

Child witness notices granted by court	2010	2011	2012
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Arbroath	66	47	77
Forfar	5	6	10

Civil Proofs:	2010	2011	2012
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Arbroath	12	27	41
Forfar	14	22	24

Summary Cause Heritable Actions:	2010	2011	2012
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Arbroath	216	225	142
Forfar	107	81	85

The above statistics clearly show that Arbroath Sheriff court conducts significantly more business than Forfar Sheriff Court in each and every field of court business.

The impact of the closure of Arbroath will therefore be more significantly impacted upon the court users served by Arbroath Sheriff Court than the impact upon the users of Forfar Sheriff Court if it were to close. Far more witnesses, victims and court users will be significantly impacted than would be the case if Forfar were to close.

The impact will be more keenly born by children and their families and supporters given the numbers of cases involving them that will require to be transferred to Forfar if regard is had to the statistic for children's cases and the amounts of vulnerable witness notices granted by the respective courts. At a time when we are recognising the needs of vulnerable witnesses and victims of crime, the closure of Arbroath as opposed to Forfar appears to be directly conflicting with a number of bills that are soon to be presented to parliament.

In relation to transportation of court users, this appears to have been recognised the Consultation document. At present, Arbroath is served by purpose built Bus and Train stations, Forfar has neither. Court users from Montrose currently have the option of travelling to Arbroath by bus or train. For a court user to travel from Arbroath to Forfar by public transport, they will require to use the one bus from Arbroath to Forfar at 0755 hrs. to ensure they arrive by 10 am. This involved a journey time of 1 hour 35 mins each way at a cost of £6.50 return. For a court user in Montrose to travel to Forfar, they will require travelling by bus with the only service being at 0728 and endure a 2 hour bus journey at a cost of £6.50. Both bus services to Forfar from Arbroath and Montrose only use one bus. Accordingly, this will result in witnesses, victims and accused all travelling on the same bus for a considerable period of time at significant expense. Conversely, a court user travelling from Forfar can use the service leaving at 0905 to travel to Arbroath. Given the statistics above, it is apparent that by closing Arbroath there will be a significantly higher proportion of users put to considerable inconvenience to attend Forfar sheriff court rather than attending at Arbroath. There is also the obvious security risks involve led with the court users travelling on the same bus to court in Forfar.

In terms of the court statistics, it's recognised that sheriff and jury business by its nature involves a significantly greater number of people than summary trials. Again, having regard to the statistics the proposal will inconvenience significantly more people for this type of court business than closing Forfar.

Budget Considerations

The consultation document recognises that we live in times of significant pressures on public service budgets and we require making best use of available resources, and regard must be made to the significant reduction primarily to the capital budget being imposed upon the SCS. However, it is my submission that the closure of Arbroath as opposed to Forfar will result in a significant expenditure by the capital budget that will be required as opposed to closing Forfar and maintaining Arbroath.

The savings identified in closing Arbroath are estimated to be in the region of £125,000. However, this figure includes an allocation of £25,000 for depreciation that has not been properly vouched for. No inventory of assets has been identified as to the pool of assets this figure is calculated upon. Nor

does it include the figure of £15,000 that it will cost per annum to maintain Arbroath as an empty building for the foreseeable future.

However, the SCS have confirmed that Forfar Sheriff Court currently has a backdated maintenance total of **£892,651**, whilst Arbroath's amounts to £177,000. In addition the SCS have recognised that they will require spending at least £113,000 to upgrade the facilities at Forfar. This figure does not include the planned installation of the new fire alarm system that has been identified at a cost of around £45,000, nor does it include the figure for the acquisition of the adjacent annexe building that has been identified as to be required to accommodate Arbroath's closure. The figure also does not include the upgrading of the vulnerable witness suite that will be required. If regard is has to the costs incurred by Arbroath for this facility this will result in additional expenditure of around £65,000. It would appear therefore, that the financial implications to the capital budget of SCS in implementing the closure of Arbroath and upgrading of Forfar will be a cost of £1.2 million. However, of Arbroath is maintained and Forfar is closed, then the cost implications will only be £177,000 for the backlog maintenance cost.

Impact on other Public Sector Budgets

Given the statistics provided earlier, there will be considerably more costs incurred to the Scottish Legal Aid Board with additional travel and waiting time for solicitors, witness's expenses and travel costs. It has not been possible to calculate with any degree of accuracy what these costs will be but given the significant numbers of cases involved it is submitted these costs will be substantial.

At present, the Criminal Justice Social Work Department employs 32 full time members of staff between Forfar and Arbroath. In Arbroath, 30 of these staff members are employed, as opposed to two in Forfar. The implications for this department are financially significant. The department will require to relocate a large amount of staff to Forfar, identify suitable accommodation for the staff, all of which will have significant implications for their budgets.

It also is apparent that given the greater inconvenience will be incurred by extra travel time and users living in Arbroath and Montrose, this will add a significant financial burden on a higher proportion of the users in times when families budgets are being squeezed by the current economic climate and welfare reforms.

Economic Impact

Arbroath Sheriff Court is situated on the High Street surrounded by small local retail business. Many of these small business rely upon passing trade available from the court users such as cafes and newsagents. The closure of this building will result in a large area of the High Street being blighted by a closed building that is likely to remain so for a considerable period of time. Many small business, already struggling in the current financial climate are gravely concerned about the impact the closure will have on their business. In contrast, Forfar Sheriff Court is situated outwith the High Street, and users provide very little business to the high Street businesses. The closure of Arbroath is likely to be more keenly felt to the local business in Arbroath than the corresponding impact should Forfar close.

Conclusion

It is therefore my submission that in order to secure the best possible facilities for access to justice by court users, and make best use of scarce resources, the SCS should revert to the original discussion paper proposals and close Forfar Sheriff Court and retain Arbroath Sheriff Court as a valuable asset that it has proven to be in the past. Arbroath Sheriff Court is in a position to accommodate the additional business, is best served by public transport links, is more efficient than Forfar Sheriff Court and this option provides for the best value for tax payers funds.