

Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux

www.cas.org.uk



Courts Reform (Scotland) Bill

The benefits of advice in courts – supplementary briefing for Stage 1

Introduction

Court can be a daunting environment – the complex forms, the buildings and courtrooms, the language used and the proceedings themselves are alien to most. This can cause users considerable anxiety:

'I was actually shaking to be quite honest with you....What was going to happen to me, was I going to go to jail?...I was sitting outside the court room and I was biting my nails...and I was actually crying.... Nobody had said what would happen to me'¹

(court user in a housing action)

Across Scotland, advice and support is offered to users of the court system by the Citizens Advice Service – primarily through funded projects which focus on courts but also through advice given by the Citizens Advice Bureau (CAB) offices themselves. In 2012/2013, bureaux represented clients in over 11,000 civil court and tribunal cases but – as outlined below – the number of clients they advise and support through the process is far higher.

While some clients rely on the support which a CAB or project can offer to lead them through the process, other more confident users may only seek advice to guide them. There is no 'one size fits all' model for advice, and it is important that different options are available which can be accessed by clients for the level of help they need and at the stage of the process they need it.

It is also important to note that the projects attached to bureaux have developed individually and as such, no two court-related advice projects are the same. The projects are not always physically based in a court building, and they do not all offer advice and support on the same topics: some deal with housing, some small claims, and some will cover everything.² The thing they all have in common at their core, however, is ensuring access to justice for clients.

Pre-court advice

In some cases clients will be referred by the main CAB and in others clients may self-refer to court-advice services for advice. The pre-court stage is a key opportunity to improve the overall experience for the client and, if required, the court.

¹ Consumer Focus Scotland/Scottish Legal Aid Board, 'The Views and Experiences of Civil Sheriff Court Users' from 2009 available at <http://www.consumerfocus.org.uk/scotland/files/2010/10/Court-Users-Research-Final-Ipsos-MORI-report.pdf>

² The projects may also refer to themselves by different names – for example some will use the terminology 'In Court Advice Project' (ICAP) while some will use 'Lay Representation Project'

This stage may involve:

- Advice:
 - What a potential claim might involve (process, costs, etc) and highlighting **options** to a client – emphasising that court is only an option
 - Advice on the merits of a case and whether a claim has a legal basis to proceed
 - Advice on what evidence would be needed so a client can gather this prior to raising an action
 - Help with defending an action raised against a client
- Negotiation on behalf of the pursuer with the aim of settlement
- Help with processes e.g. completing forms/identifying or outlining arguments

In practical terms, one of the most significant benefits of advice at this stage is the opportunity for negotiation. In many cases, this can stop a claim before it escalates into the court. This prevention is a crucial element in ensuring cases are addressed proportionately – cases which need not be before a court are solved outside court process and clients experience a quicker, cheaper and less daunting situation:

An East of Scotland CAB reports of a client who was referred to the in-court advice project by a generalist adviser in the CAB. The client had bought a mobility scooter which had subsequently broken down. The client was an elderly gentleman and relied upon the scooter to get about. The sellers refused to take responsibility for it despite the scooter having a two year warranty. The client had written to the sellers several times himself threatening court action, and the bureau had written on the client's behalf too but all to no avail. As such, the client came to the ICAP seeking to raise an action. First the ICAP tried to negotiate and, after their intervention, the sellers agreed to repair the scooter at no cost to the client. This was a positive result for the client which saved him considerable cost and time. It also saved court time.

When preventative action can be taken and is successful, there are all round benefits for both client and court. Preventative negotiation does not always produce positive outcomes however. The pre-court stage of the process is also crucial in managing the expectations of the client in what they might achieve from the process, the costs involved and the timescale ahead as well as helping clients to frame their argument in legal terms.

The focus of court process is the law and even at the lowest tier of process, sheriffs still expect party litigants to understand how the law operates. The motivation of the court user however revolves around the problem they have experienced and it is difficult for a user to separate the strictly legal parts of an issue from the interrelated aspects which are not legal. Although there is guidance on Small Claims/Summary Cause Summons on Scottish Court Service website clients often struggle to draft the summons or fully understand court process. A key element to the progression of, and sometimes success of, a case is in helping a client to draft and submit clear and concise documents:

A West of Scotland CAB reports of a client who was referred to the service with an ongoing issue against a local trader for the supply of goods and services, namely building work and landscaping in her garden. After the work was completed, the client complained that it was not done to a satisfactory standard, but the trader refused to rectify the matter, so the client went to local Trading Standards and asked them to intervene. The trader failed to respond to their correspondence, so was referred to this service to raise a small claim. The parties were offered the option of mediation, but the trader again refused to cooperate. The service attempted to communicate with the trader but this was unsuccessful and the client was assisted to draft and submit a small claims summons which identified the legal basis for her claim.

The trader responded informing the matter would be defended, so the client was given advice on each stage of the proceedings at the relevant point in the process (hearing; submission of evidence; hearing on evidence) and advised on how to prepare and present a claim (including advice on the court personnel and processes). The client was successful in the end and was assisted by the service to serve the extracted decree on the trader in order to obtain the sum sued plus any expenses and interest applied.

The court receives appropriate documentation which focuses on the relevant (legal) aspects of a problem while the client knows what to expect and the likely outcomes of an action. Even where an action is likely not to result in payment of decree granted, it is important to give clients the chance to make an informed decision about pursuing court action:

A South of Scotland CAB reports of a client who was referred by a Sheriff clerk. The client had engaged a decorator to carry out work at her home but the work was not up to standard and the decorator would not return to rectify the problems. The project explained the process of taking out a small claim plus the costs involved. The client was advised that even if she was successful in her case there was no guarantee that she would receive payment after we carried out some research and found out that the decorator had several outstanding claims against him. He appeared to be notorious in the area, had no assets, was self-employed and his van was worth very little. The adviser explained to client the difficulty she may experience in collecting her money if she won the case, but the client was adamant that she wanted to proceed. The Project assisted the client in preparing and lodging her claim to which the decorator did not respond. A Decree was granted in chambers. The client did not pursue diligence, and said it was enough that she had obtained decree.

Assistance at the pre-court stage produces clear benefits for both the client and the court. In facilitating early settlement, court time can be saved. When this does not happen, the advice and support in drafting documents is crucial in producing clear and concise legal arguments and preparing clients for the processes ahead.

Advice at the doors of court and representation

While some clients engage with available services at an early stage, there are some who will engage at the doors of court. As such, the typical features of this stage of advice share some hallmarks with the pre-court advice stage but with an added element of immediacy:

- Advice:
 - What the coming hearing will involve – for example advising clients that a first hearing is not a hearing on evidence, and the case will not be resolved at first hearing if it is being defended. Court users are not often aware of this and expect full resolution that day
 - What argument (if any) the Sheriff needs to hear – helping a client to present a coherent and relevant case
 - Practicalities like where to stand/when the case might be called/that other cases will be in the same court
- Lay Representation
- Enter discussions/negotiations with representatives on the other side to assess what issues can be agreed or possible options for settlement
- Moral Support

For court users, the point of being in court with a case due to call imminently often brings the full realisation of their situation. Small details like where to stand when their case is called can be totally alien and make the experience terrifying, especially when a user has not previously engaged with advice or support services. Advice at the doors of court can make a massive difference to the experience of court a user has:

An Central Scotland CAB reports of a client who is a 36 year old single parent who works part time and is the main carer for her disabled child. The In-Court Adviser met the client at the doors of the court prior to her hearing to recall decree against her. The client's former landlord raised an action for payment of money regarding rent arrears and damage to the property. The client was extremely nervous and tearful as the experience of being at court was very daunting for her and reminded her of the last time she appeared at court, which was in a domestic abuse case. Advice was provided to the client about the court process and specifically what would happen at first hearing and the length of time it could take.

Representation was provided for the client as she was particularly anxious about the whole process. Decree was recalled and the case was continued for defences to be submitted. The ICAP assisted the client with drafting and submitting her defence to the court. A payment agreement was negotiated with the landlord and the amount claimed was reduced by £124.72. The client was relieved that an agreement had been reached and she could now move on.

While there is clear benefit to the client in being supported through the process, there is also benefit to the court. The Sheriff is presented with a relevant and coherent account of the information they need during the stage of hearing before them. This is a huge strength of the lay representation offered through bureaux in these court projects facilitating a smoother process all round.

It is not always the case that representation will be needed however and the projects acknowledge and support this. In many cases advice is given about the process and the relevant points to outline and the client will then represent themselves at the hearing. In these cases the Sheriff may not know of the adviser's involvement but their intervention has made a marked difference to the presentation of the case.

The work of the CAB in court advice is clearly welcomed and valued by Sheriffs – in some cases where a client has not had a chance to engage before their case is called, a Sheriff will re-call a case later in the roll to allow time for advice to be given:

An East of Scotland CAB reports of a client who the court adviser met in court. The client was being sued for £250 in relation to a road tax disc. The client (defender) had sold a car to the pursuers who said that a renewed tax disc was part of the contract in buying the car. The sheriff suggested they speak to the court adviser and re-called the case later in the roll to give the parties time for this. In the intervening time, the adviser managed to resolve the issue, and when case called again she appeared for both parties which allowed the action to be dismissed. The Sheriff thanked the adviser for her help. Court time was saved by streamlining the process and the need for proof diet was negated.

At the doors of court what is done both in front of the Sheriff and behind the scenes is crucial to the effective operation of the court and, most importantly, the client.

Beyond court proceedings

Court proceedings are not necessarily the end of the journey for a court user. There is an element of work to be undertaken in supporting a user towards the end of their journey:

- Advice:
 - immediately after a case to give the client some context as to how the case went (eg although that was short it was quite a normal hearing...)
 - on what to do next – for example how to enforce a decree
- Offer further involvement if the case is ongoing:
 - Drafting defences
 - Preparation for proof hearing
 - Research
 - Negotiation
- Referral to the main body of a CAB for generalist advice to help solve non-legal elements of an issue

Much of the work undertaken when beyond initial court proceedings is cyclical with pre-court advice. However, there are practical interventions which may happen after each court hearing:

A Central Scotland CAB reports of a client who was appearing in court at a first hearing in a small claims case. Before the case the adviser met the client and outlined what would happen at this hearing and that the case would not be resolved that day. The client was also advised which side of the court to stand on and which key points to highlight to the Sheriff. After the client's case was called, the adviser followed the client out of court to advise him of next steps. The adviser was also able to confirm that the hearing had gone quite normally, as the client was concerned that his time had been so short.

A date had been set for a proof which the client had not written down as he assumed this would be sent to him in a letter. The court adviser pointed out that this was not the case, there would not be a letter from the court. The court adviser had noted the date so gave this to the client and made an appointment for the client to come for further advice before the proof.

When cases are ongoing there is a continuing body of preparation work for processes which lie ahead. However, towards the end of a user's journey there is work which may be undertaken to help a client achieve closure with proceedings or, potentially, awards. For example, advice on how to enforce a decree is commonly asked for in relation to court and also tribunal proceedings. The court adviser may also, when necessary, work with other branches of their CAB to solve the non-legal elements which have arisen for the client in conjunction with the legal aspects:

A South of Scotland CAB reports of a client who has arranged a payment plan with their landlord after the landlord raised an action for eviction because of arrears. The court adviser has assisted the client in the legal aspects of their case but it has become clear that the reason for arrears was related to payday loan debt. There are also potentially issues with the client not receiving the benefits he is entitled to. The client has been referred to the CAB for money and benefits advice. This should ensure the payment plan is kept.

Lord Gill's recommendation and the views of CAS

The Gill Review considered that *"in-court advice services make a useful contribution to improving access to justice for those who are able to make use of their services."* Gill recommended that *"...such services should be developed and extended."*

Citizens Advice Scotland fully support this recommendation. In relation to pre-court advice, we would strongly recommend that funding is made available for the development of these services in areas where there is not a court or where courts are due to close. Pre-court advice offers many benefits: the very real possibility of negotiation leading to settlement; clients knowing what to expect from the process in terms of cost and time; the drafting of clear, competent and legally-focused arguments for the court. This advice does not have to be attached to a physical court building yet makes a positive difference for both the court and the client. CAS feel strongly that options should be explored to expand the benefits of funded pre-court advice to areas where there is not a court.

Where there is a court, CAS believes that there should be a consistent availability of funded in-court advice. In-court advice and representation offer benefits which are much wider than perhaps they are traditionally understood to offer. The service is variable however. The Sherifffdom in which you live can make a big difference to the service you may be able to access and CAS would recommend strongly that there should be a service attached to each court – with links to the pre-court stage of advice in the wider geography of Scotland – to provide a consistent service wherever you live.