



**42<sup>nd</sup> European Conference of Presidents of Bar Associations and Law Societies  
Vienna, 27 February – 1 March 2014**

The Law Society of Scotland is the professional body for Scottish solicitors. Our strategic aim is to lead and support a successful and respected Scottish legal profession, which is underpinned by five objectives:

- Excellent solicitor professionalism and reputation
- Our members are trusted advisers of choice
- Our members are economically active and sustainable
- The Society is the professional body and regulator of choice
- The Society is a high performing organisation

More information on our 'Towards 2020' strategy and 2013/14 corporate operating plan is available via <http://www.lawscot.org.uk/about-us>.

Below are some examples of current work in which the Society is involved.

**Independence referendum and Scotland's constitutional future**

On Thursday 18 September 2014, a referendum will be held on whether Scotland should be an independent country. If Scotland decides to remain part of the UK then further debate is likely on whether additional powers should be devolved from the UK Government to the Scottish Government.

The referendum in 2014 presents Scots with the most significant potential constitutional change in 300 years. We are not taking a position for or against independence, not least because the views of our members will be as varied as the people of Scotland as a whole. We do however believe the debate should be worthy of the question being asked and want to help create an informed and respectful discussion ahead of the referendum. Our recently published discussion paper focuses on some critical areas such as an independent Scotland's membership of the EU and other international organisations, the question of currency and the impact of independence on Scotland's judicial and parliamentary system. However, we also want to think about the implications of a 'no' vote and further devolution of powers to Holyrood.

We held a series of roundtable events in 2013 to explore many of the issues surrounding both a yes and no in next year's referendum. We have since published a discussion paper

which we will use to engage further with our members and stakeholders. We will publish a final position paper later in the year.

### **Access to Justice**

On 11 June 2013, the Justice Committee of the Scottish Parliament voted (5 votes to 4) to support Scottish Court Service proposals to close ten sheriff courts and seven justice of the peace courts in Scotland. The closures commenced in autumn 2013.

This decision to press ahead with court closures represents a major blow to Scottish justice, particularly in our rural communities. A local court offers the opportunity to see justice done and to bridge the gap between crime in local communities and its detection and resolution. Courts also make a significant contribution to local economic activity.

We recognise the financial pressures facing the Scottish Court Service but we remain concerned that this closure programme will fail to provide proper access to justice or achieve significant financial savings in the long term. We had called for further cost analysis and also wanted to see further discussion across the public sector to find out if savings could be generated in other ways, including potential for the wider use of some of our court premises.

We are now working with the Scottish Court Service to ensure these closures are managed properly. We will be helping SCS to ensure that issues around closures are communicated and ensuring that the deployment of new technologies, such as videoconferencing, meets members' needs. We will also be meeting quarterly to check on progress with these plans and also with the range of other reforms being progressed by SCS.

### **Separate Representation**

At the Society's AGM in March 2013, solicitors voted in favour of the principle of changing the current practice whereby a solicitor can act for both buyer and mortgage lender in property transactions. We are now consulting on a specific rule change that delivers separate representation ('sep rep').

The current exception, which allows one solicitor to act for both the buyer and lender, was introduced in 1986 when it was felt the interests of the buyer and lender were more aligned. However, the world is a very different place now. The severe economic downturn, increasingly complex transactions, increasing risk of mortgage fraud and the additional pressures from lenders mean that it is clearly no longer in the public interest to continue acting for both a lender and a purchaser in a secured lending transaction. Removing the exception would ensure both parties would get the truly independent advice they require from the solicitor of their choice.

We don't believe a change would automatically lead to increased costs for consumers. These are the legal costs of mortgage lenders, which are mostly large banks. If consumers are impacted, it will only be because the lenders themselves have allowed it by placing additional costs on their own customers.

We are currently analysing the responses we received during our recent consultation and will bring forward a specific rule change to the autumn special general meeting for members to discuss and vote on. We also continue to engage widely with CML and those groups representing consumer interests.

### **Complaints – the need for reform**

The Legal Profession and Legal Aid (Scotland) Act 2007 established the Scottish Legal Complaints Commission (SLCC) and made substantial changes to the way complaints against the legal profession are handled. Five years on from the opening of the SLCC, there is a strong case for further reform.

We wrote to Scottish Ministers and the Scottish Parliament's Justice Committee last year to highlight areas where we think improvements can be made, particularly around the eligibility stage, conduct/service 'hybrid' complaints as well the processes for appeals. Our concern throughout is to have a robust system that protects the public but a system that is also more efficient and ultimately places less cost on those required to fund it.

We are working in partnership with the SLCC and others, including those representing consumer interests, to build a consensus for change. We have informed the Justice Directorate of the Scottish Government of those areas where there is agreement and we await confirmation as to how they intend to proceed. We are continuing to engage with the SLCC and others about further possible areas for change.

### **Corroboration – abolition of requirement in criminal cases**

The Scottish Government's new Criminal Justice (Scotland) Bill proposes to abolish the requirement for corroboration - the need for evidence in criminal trials to come from two sources. This follows a specific recommendation in a recent review commissioned by the Scottish Government on criminal law and practice in Scotland.

Removing the requirement for corroborated evidence, without including sufficiently strong safeguards, could simply result in a contest between two competing statements on oath and bring increased risk of miscarriages of justice. The requirement for corroborated evidence is not an antiquated, outmoded legal concept, it is a fundamental principle of our criminal justice system. Although the Bill proposes an additional safeguard by moving to a weighted majority of 10 out of 15 jurors (from a simple majority of 8 out of 15 jurors for a guilty verdict), we don't believe this is sufficient to remove the risk of miscarriages of justice

created by abolishing the requirement for corroboration. We would also question why a two-thirds majority has been chosen, when there has been no evidence to show this change would lessen the risk of miscarriages of justice following the removal of corroboration. In any event, the vast majority of criminal trials in Scotland take place following summary procedure without a jury, the Sheriff or Justice of the Peace reaching a verdict alone.

We are scrutinising this legislation and have responded to the Justice Committee's call for evidence. We gave oral evidence to the committee on the sections of the bill relating to arrest and custody, as well as on corroboration.

### **Commonwealth Law Conference**

From 12-16 April 2015, the Society will be hosting the 19<sup>th</sup> biennial Commonwealth Law Conference in Glasgow.

Kicking off with a vibrant welcome reception and opening ceremony the Commonwealth Law Conference is a 4-day event that brings together legal practitioners from all over the Commonwealth for discussion, debate, business and networking. Delegates can expect a varied programme with high-quality keynote speakers, energetic session formats and a lively exhibition area. The conference also includes a moot competition; an initiative of the Commonwealth Legal Education Association (CLEA) which showcases the enormous talent of law students from across the Commonwealth.

The theme for this year's conference is *Resources, Responsibilities and the Rule of Law*. Robust economies depend on the existence of clear, modern and effective laws that govern societies, commerce and the management of resources. A strong, independent judiciary and legal profession are critical to impartially enforce those laws while ethical corporate behaviour and business practice can improve the lives of others in our local and global communities.

In the 800th anniversary year of the Magna Carta, a symbol of the Rule of Law across the Commonwealth, the conference will consider and debate the tension between corporate responsibility and legal risk management approaches; the public policy role of lawyers and the business case for corporate responsibility.

For further information, visit [www.clc2015.co.uk](http://www.clc2015.co.uk).