

COUNTRY REPORT - SCOTLAND

42nd 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.

Constitutional change

The referendum on Scottish independence took place on 18 September 2014. The electorate rejected independence voting 1.6 million for and 2.0 million against.

The Law Society of Scotland took an active but neutral role in this important constitutional debate by publishing two major discussion papers and holding two important conferences during the course of the campaign. We lobbied successfully for changes to improve the Independence bill in the Scottish Parliament. We played a clear role as an impartial professional body raising questions about law and policy which were addressed to all political parties.

Following the referendum result the UK Government appointed Lord Smith of Kelvin to bring together the 5 major political parties and publish heads of agreement which would form the basis for further devolution to Scotland. That happened in November and in January the UK Government published draft clauses intended to implement the Smith Report with a view to consulting on them in advance of the UK General Election in May 2015.

The Society is about to publish a list of priorities for the next UK Government. These include bringing forward legislation to implement the Smith Report. The Society is engaging with politicians from the major parties so that the legislation which gives the Scottish Parliament more powers is consistent, comprehensive and workable.

We are also just about to publish our priorities for the UK General Election. These include encouragement to the political parties to protect Human Rights and the European Convention on Human Rights, the creation of a devolution settlement for Scotland that stands the test of time, the provision on long term clarity on the UK's membership of the EU and the retention of legal services at the heart of a growing economy.

Legal Aid

We have published a new discussion paper to generate debate on how to improve publicly funded legal advice and services. This comes ahead of an expected new white paper on legal aid from the Scottish Government.

The current legal aid system is almost 30 years old. In that time there has been extensive change which has resulted in a system that is hugely complex, with even highly experienced solicitors reporting that they find it difficult to navigate.

We do not believe that the current system is fit for purpose and, with the ongoing reforms to modernise the wider court and justice system, the time is right for root and branch change. We need to rethink legal aid as a whole and look at where efficiencies can be made and how savings can be reinvested to ensure that people can obtain legal advice when they need it most, regardless of their status or wealth.

Our new discussion paper sets out ideas covering both criminal and civil legal aid, including:-

- Streamlining the block fee system and introducing a single criminal legal assistance certificate to replace the current range of categories.
- Reinvesting savings made in the legal assistance system
- Creating a system to encourage early resolution of cases
- Provision of affordable loans for civil cases to replace the current client contribution system administered by the Scottish Legal Aid Board.

The Consultation closed on 30 January and we are considering the responses.

Alternative Business Structures

The Legal Services (Scotland) Act 2010 allows, for the first time, solicitors to set up business with non-solicitors in so called licensed legal service providers 'LPs'. The Society wants to be able to regulate these new entities, which have been up and running in England and Wales for over three years.

We know there is interest within the profession in terms of new business models which would bring in external capital or involve working with other professionals, such as accountants, to broaden the range of client services offered. ABS is already up and running in England and Wales so continuing delay risks placing Scotland at a real competitive disadvantage. Our aim throughout has been to have a robust system of regulation that protects the public.

After receiving feedback from the Scottish Government on our initial regulatory scheme, we have now prepared a revised draft which we are discussing with the Government and the Lord President's office. The Lord President is Scotland's Chief Justice and has an important role in approving the scheme. We are in deep negotiation over the terms of the draft scheme with the Lord President.

Corroboration – abolition of requirement in criminal cases

The Scottish Government's 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.

Following considerable criticism in and out of Parliament, the then Justice Secretary Kenny MacAskill MSP decided to appoint a retired Judge Lord Bonomy to investigate the issues arising from the proposed removal of corroboration. Lord Bonomy is due to report in April 2015. The Bill has been put on hold until then.

Commonwealth Law Conference

From 12-16 April 2015, the Society will be hosting the 19th 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.