



**MOTOR ACCIDENT  
SOLICITORS SOCIETY**

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By email - [scottish.ministers@scotland.gsi.gov.uk](mailto:scottish.ministers@scotland.gsi.gov.uk)

By post –

Kenny MacAskill MSP  
Cabinet Secretary for Justice  
St. Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

Dear Mr MacAskill

### **s70 and s70A- Court Reform (Scotland) Bill**

We are aware that the Court Reform (Scotland) Bill is due to be considered by the main chamber for Stage 3 in October 2014 and we would be grateful if this communication could be considered by the Justice Committee prior to this stage.

The Motor Accident Solicitors Society (MASS) is a Society of solicitors acting for the victims of motor accidents, including those involving Personal Injury (PI). MASS has 150 solicitor firm members and we estimate that member firms conduct upwards of 500,000 PI motor accident claims annually on behalf of the victims of those accidents. The Society's membership is spread throughout the United Kingdom including a number of members in Scotland.

The objective of the Society is to promote the best interests of the motor accident victim. This is at the core of our activity. We seek to promote only those policy and other objectives which are consistent with the best interests of the accident victim. We seek to set aside any self interest in promoting these arguments, recognising that we are in a position of trust and uniquely placed to observe the best interests of motor accident PI victims first hand. We are a not for profit organisation, which requires specialism in motor accident pursuer work as a pre-requisite for membership. We also have a Code of Conduct which member firms are required to abide by, which is directed to the best interests of the motor accident victim.

MASS has 14 member firms in Scotland and represent the majority of solicitors who deal with motor accident cases that occur in Scotland. Scotland is considered a separate region from the rest of the UK for the purpose of membership. The vast majority of Scottish member firms are volume businesses acting for victims of road traffic accidents and this response does not necessarily reflect the view of the individual member firms.

### **Amendments to s70 and s75**

MASS notes that an amendment to the Bill was made by John Finnie MSP and we are concerned about the effect of this amendment on access to justice in Scotland. The amendment is that "*Section 70(3), so far as requiring any relevant proceedings to be brought subject to simple procedure, does not apply to any such proceedings in an all-Scotland sheriff court, and no such proceedings may be brought or continued in such a court subject to simple procedure.*"

Our understanding was that the new tier of summary sheriff would not be dealing with PI work. Schedule 1 of the original Bill made no specific reference to PI and we have significant misgivings about the effect of s70 and s70A of the proposed amendments.

MASS firmly believes that the underlying principles of MASS as an organization are being served in Scotland by PI work being dealt with under the current procedure, namely that there are court rules in place which allow victims to have local access to justice by court actions being raised in local sheriff courts. It is important that injured people feel that they are being properly represented and have local access to justice that is fair and consistent.

It is important that the victims of road traffic accidents continue to receive a high quality and consistency of decision making and these civil cases are dealt with under a procedure that is fit for purpose and appropriate. There is no doubt that a huge amount of work will be shifted from the Court of Session to the Sheriff Courts and whilst we are concerned that Sheriff Courts are adequately resourced in terms of number of staff and processes to deal with the increased workload, we are concerned that the injured people throughout Scotland continue to have local access to justice. It is important that there is proactive case management in place for PI cases and this requires adequate resourcing and accountability.

The implementation of the Coulsfield reforms and enhanced process into PI procedure in the Court of Session and Sheriff Courts both for Ordinary and Summary Cause procedures has worked very well in terms of case management and timetabling and also in encouraging parties to discuss settlement terms and providing a framework of disclosure in advance of any scheduled Court hearings.

We do not support a system where the process of justice is compromised according to postcode and the operation of inadequate court procedure for the victims of road traffic accidents.

MASS supports the proposal that some sheriffs within each Sheriffdom should be designated as specialists in particular areas of practice. MASS supports and welcomes the creation of specialist PI courts. Moreover, MASS believes that there should be multiple centres of excellence throughout Scotland. MASS supports the creation of multiple specialist PI courts in major Scottish cities, especially Glasgow. It is simply unacceptable from a local access to justice point of view for simple procedure to apply to all PI under £5,000 except where these have been raised in the new specialist PI court (to be based in Edinburgh).

MASS submits there is no perceived need for an additional procedure in PI work and the current Summary Cause rules for PI operate very well for clients, practitioners (pursuer and defender) and the court system. The current Summary Cause PI rules should not be disregarded for an alternative model which is unlikely to bring any additional benefit and arguably detriment to those people who choose to raise court actions outwith Edinburgh.

We support a system where PI operates using specific rules regardless of what Sheriffdom it is raised in and we support the use and extension of the existing PI rules and processes that operate well currently in the Court of Session. In addition, we fully support the continued use of PI Summary Cause Rules for PI actions under £5,000.

Our concern is that the simple rules outlined in s70 are not intended for PI cases under £5,000 and in terms of access to justice the proposed amendments run contrary to what was intended in terms of access to justice. Why should injured people who choose to raise a court action outwith Edinburgh be subject to a simplified procedure?

We understood that Scottish Government accepted that PI cases under £5,000 were not appropriate for simplified procedure. Indeed you previously stated that the small claims court should not be a place for PI cases and this is supported by the recommendations made by Sheriff Principal Taylor in the Review of Expenses and Funding of Civil Litigation in Scotland.

The proposed legislation should make it explicit that actions under £5,000 and cases dealt with under simplified procedure exclude PI cases.

We are concerned that without the position being made explicit and the perhaps unintended effect of this amendment, challenges could be made by those solicitors representing insurers in the future in relation to choice of forum, procedure and related costs issues and justice for injured people in Scotland is significantly compromised. Indeed, we urge you to consider this matter as a matter of urgency given the potential for denial to access for justice for the people of Scotland.

## **Contact**

If you have any queries or would like further information, please contact Jane Loney at:

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Yours sincerely

Elaine J Russell  
Scottish Regional Coordinator- MASS

cc. Lord Jones, Civil Justice Council  
cc Christine Grahame, Convenor of Justice Committee