

EAST AYRSHIRE COUNCIL

CABINET – 18 FEBRUARY 2009

PROPOSED DISESTABLISHMENT OF CUMNOCK DISTRICT COURT

Report by Depute Chief Executive/Executive Director of Corporate Support

1. PURPOSE OF REPORT

- 1.1 To apprise Cabinet of the Scottish Court Service's proposal to disestablish Cumnock District Court on 29 June 2009 and to transfer all Cumnock District Court business to the newly established Ayr Justice of the Peace Court and further to seek Cabinet's endorsement of the consultation response issued thereon by the East Ayrshire Justices.

2. BACKGROUND

- 2.1 In January 2007 The Criminal Proceedings etc. (Scotland) (Reform) Act 2007 was unanimously passed by the Scottish Parliament. This act contains the legislative provisions that authorise the replacement of District Courts with Justice of the Peace Courts and unifies the administration of these courts under the management of the Scottish Court Service.
- 2.2 The unification of the administration of courts will be completed on a phased basis over the six Sheriffdoms in Scotland. Three of the Sheriffdoms have already completed the unification process with the remaining three due to unify before the end of 2009. The East Ayrshire local authority area is one of the few local government areas where its District Courts sit within separate Sheriffdoms. Cumnock District Court sits within the Sheriffdom of South Strathclyde, Dumfries and Galloway which is due to unify on 29 June 2009. Kilmarnock District Court sits within the Sheriffdom of North Strathclyde which is not due to unify until November 2009.
- 2.3 As part of the preparatory process for unification the Scottish Court Service has issued a formal consultation document which details the proposals for the future configuration of Sheriff and Justice of the Peace Courts and arrangements for delivery of court related services within the Sheriffdom. Formal comments on the consultation process are invited by 2 March 2009. Thereafter the Scottish Court Service will prepare a report for the Scottish Government on the final proposals and recommend the future shape of court provision within the Sheriffdom.

3. THE CONSULTATIVE PROPOSALS

- 3.1 The consultative proposal is to disestablish Cumnock District Court and absorb the volume of court work currently being processed into the newly established Ayr Justice of the Peace Court. The document justifies this proposal on the basis that Cumnock has a lack of suitable and sufficient court accommodation and also has a low volume of court business.
- 3.2 The East Ayrshire Justices have had the opportunity to consider the consultation proposals and attended a meeting in Council Headquarters late in 2008 to deliberate

on their response. The outcome was that the Justices determined to issue a response to the consultation expressing their concerns and general dissatisfaction at the proposals. They regard the conclusions reached as flawed and based more on cost saving measures rather than seeking to ensure that access to local criminal justice services be preserved. Accordingly, an appropriate response was issued on 4 February 2009 a copy of which is enclosed with this report. **(Appendix 1)**

- 3.3 In all of these circumstances, Cabinet are requested to consider whether to approve the issue of correspondence to the Scottish Court Service endorsing the views expressed by the East Ayrshire Justices on the consultation issues with particular reference to the proposed disestablishment of Cumnock District Court and transfer of business to Ayr Justice of the Peace Court.

4. FINANCIAL IMPLICATIONS

- 4.1 The potential impact of the administration of the District Courts transferring to the Scottish Court Service on the GAE has still to be clarified but Cabinet is asked to note that the Cumnock District Court facility lies within the ownership of the Strathclyde Police Joint Board. East Ayrshire Council currently uses the facility in terms of an agreement reached with the Joint Board in 1996 which was to the effect that, subject to payment of an agreed proportion of operating costs, the Council would have a right of perpetual use of the facility. Accordingly, in the event that it is no longer required for the purposes of a court facility it would simply revert to Strathclyde Police at no additional cost to the Council. Dialogue with legal services at Strathclyde Police has been ongoing for some time on this issue.
- 4.2 In addition, a number of administrative staff are due to transfer to the employment of the Scottish Court Service under the auspices of TUPE. However it has been agreed that the transfer of all staff potentially involved will be deferred until unification of the North Strathclyde courts in November 2009. This will allow East Ayrshire Council to continue to fully service the operation of the District Court until all unification formalities have been concluded.

5. LEGAL/POLICY IMPLICATIONS

- 5.1 There are no legal or policy implications arising directly from the contents of this report although Cabinet is asked to note that when the consultation documents were issued late in 2008 details of the proposals in relation to Cumnock District Court were issued to all members representing wards 7,8 and 9 as well as the leaders of the individual political groups. Responses received are to the effect that there would appear to be general support for the conclusions reached by the East Ayrshire Justices.

6. PERSONNEL IMPLICATIONS

- 6.1 As explained in paragraph 4.2 above a number of administrative staff are due to transfer to the employment of the Scottish Court Service in November 2009 under the auspices of TUPE. Detailed consultation and discussions with the members of staff concerned and the Scottish Court Service will continue until that time.

7. COMMUNITY PLANNING IMPLICATIONS

- 7.1 The proposed disestablishment of Cumnock District Court and transfer of all court business to the Ayr Justice of the Peace Court could potentially have an adverse impact on community safety theme of the community plan.

8. RISK IMPLICATIONS

- 8.1 Nil

9. RECOMMENDATIONS

It is recommended that Cabinet:

- (i) Determine whether to approve the issue of correspondence to the Scottish Court Service endorsing the views expressed by the East Ayrshire Justices with particular reference to the proposed disestablishment of Cumnock District Court and transfer of business to the Ayr Justice of the Peace Court; and
- (ii) Otherwise note the contents of this report.

Elizabeth Morton
**Depute Chief Executive/
Executive Director of Corporate Support**

SMcC
9 February 2009

BACKGROUND PAPERS

1. Summary Justice Reform – Delivering a Unified Courts Administration in the Sheriffdom of South Strathclyde, Dumfries and Galloway

Anyone wishing further information should contact David Mitchell, Head of Legal, Procurement and Regulatory Services on 01563 576061

Head of Legal, Procurement and Regulatory Services APPENDIX 1

Solicitor to the Council: David Mitchell

Council Headquarters, London Road, Kilmarnock KA3 7BU

Legal Post : LP 18

DX : KK 23

Direct Dial: (01563) 576085

Fax: (01563) 576179

E mail: stuart.mccall@east-ayrshire.gov.uk

If telephoning or calling please ask for: Stuart McCall

4 February 2009

Our Ref: L/DC/SMcC

Your Ref:

Mrs Elizabeth Bergen
Scottish Court Service
Filed Services Directorate
Court Unification Team
Hayweight House
23 Laurieston Street
Edinburgh
EH3 9DQ

Dear Mrs Bergen

Following a recent meeting of East Ayrshire Justices, I have been asked to convey their unhappiness and considerable concern at the consultation proposal to disestablish Cumnock District Court. Reference at the meeting was also made to the minutes of the Unification Working Group of 23rd October 2008 attended by Mr David I Lyell. In considering their proposed response to the consultation exercise the East Ayrshire Justices requested that the following issues be highlighted.

In general terms, the East Ayrshire Justices are collectively of the view that the basis for what they regard as a retrograde move in the provision of local summary justice services seem to be based on grounds which can be easily refuted, namely

- The unsuitability of facilities at Cumnock District Court;
- The apparent preference for the facilities available at Ayr District Court;
- The conclusion that requiring service users to travelling to Ayr will not prove to be inconvenient; and
- The current relatively low usage of Cumnock District Court in terms of sittings and numbers of prosecutions initiated.

Ayr and Cumnock Facilities

The draft operational plan is critical of Cumnock District Court for having no detention facilities, yet it must be noted that being part of the police station complex there are unused

cells in the next corridor. This point was refuted, in that Reliance cannot use them, yet they sit permanently unused. The Justices are of the view that there must be some negotiated route whereby custody facilities could be agreed with Strathclyde Police.

The Justices would also wish to point out that it is understood that the lack of accommodation at Ayr District Court also results in those in custody having to be held by Reliance staff in a van as at Cumnock.

It is stated that Cumnock's witness accommodation is regarded as insufficient. In relation to this point it should be noted that:

- Mr Peter Lockhart, representing the Ayr Faculty of Solicitors, pointed out at a recent meeting that there are no interview facilities in the Ayr premises, nor is there any disabled access.
- Disabled access is not a problem at Cumnock District Court.
- The draft operational plan and subsequent consultation exercise appears to dismiss or minimise the concerns about Ayr District Court as not being new problems, the inference being they can be lived with.
- Cumnock Justices indicate that they are prepared unanimously to live with similar problems, but are perplexed as to the reasons why the suitability of Cumnock can be apparently disregarded in the face of similar or more serious suitability issues with Ayr District Court.

The proposals further state that the deliberations of the Justices can be heard in the well of the Court. This is regarded as a gross exaggeration. It is accepted that muffled voices may, on occasion, be heard from the courtroom but it not accepted that any conversational detail can be overheard. Such a criticism has never been raised throughout the life of Cumnock District Court.

Another criticism is that there is no administrative support on court sitting days. This is not always the case as admin support has been provided by East Ayrshire Council in the past at court sittings. It is however accepted that there is currently no facilities to pay fines at Cumnock with all payments requiring to be made at Council Headquarters in Kilmarnock. However, the new proposals would require payments to be made in Ayr. The distance for over the counter payments for many service users would actually increase.

In these circumstances the question must be asked as to where the cumulative advantage in moving Cumnock District Court business to Ayr would actually lie?

Time and Distance

Additional travelling distance and travelling time were two of the main concerns evinced by the East Ayrshire Justices.

The proposals state – The travel distance from Cumnock to Ayr is minimal-

At a recent unification meeting it was also stated that public transport times between Cumnock had been checked and were hourly. East Ayrshire Justices would question the accuracy of these statements as they completely overlook the factual situation which is that outlying villagers, particularly those living in Muirkirk and New Cumnock, will be severely inconvenienced. The factual position is that in order for persons resident in either of these settlements to reach Ayr by means of public transport for a 10am start it would be necessary to set off no later than 8am.

The public transport choice is a straight through bus every two hours, or to change at Cumnock. There is obviously increased expense involved as well. If non appearances at Cumnock District Court are at present unsatisfactory, the question must surely be asked as to what attendance rate does disestablishment forebode?

Local Knowledge

Notwithstanding the recommendations in the original McInnes report relative to the future of JP's in Scotland, the ultimate decision to retain the office of JP was influenced to a significant extent by the emphasis and importance placed on the knowledge of and links with the local community enjoyed by Justices. It would seem to be fairly evident that Justices currently sitting in Ayr and dealing with cases previously heard in Cumnock will simply not have this advantage.

Similarly, Cumnock Justices will be in the same position as regards Ayr district cases. Both areas are wide and disparate. It is regarded as somewhat ironic that part of the consultation paper on the proposals emphasises the factors informing the proposals which include local access to justice. The East Ayrshire Justices are firm in their contention that the proposal to disestablish Cumnock District Court would result in a marked reduction in local access to justice as the consequence would be that the provision of justice services in the former Cumnock and Doon Valley and Kyle and Carrick local authority areas would be centralised in Ayr.

Frequency of Sitting

In relation to this issue, the proposals place some emphasis on the apparent under utilisation of Cumnock District Court in that it sits only 4 days per month. The Justices have expressed some disquiet on this issue. The Justices are of the view that Kilmarnock District Court, in which proceedings are instituted by the Procurator Fiscal in Kilmarnock has an ever increasing workload and is dealing with more serious cases than hitherto. This situation does not appear to be mirrored in Cumnock District Court where proceedings are instituted by the Procurator Fiscal in Ayr. The Justices have therefore asked whether such disparity is unintentional or is this a matter of policy? It cannot be that the Cumnock area is more law abiding than the Kilmarnock area. If this disparity were to be addressed the inevitable result would be an increased number of sittings at Cumnock which would in addition assist in relieving the pressures on the Sheriff Court timetable.

Although concern over inconvenience to Justices resident in the Cumnock area was quite properly not regarded as an influencing factor in the proposals Justices have expressed the view that, in some cases, Justices resident in the Ayr area would be able to attend the court with greater ease than those resident in outlying areas. This could result in an increased workload on Ayr resident Justices, a situation which does not bear the hallmark of fairness.

In conclusion therefore the East Ayrshire Justices are of the view that unification was intended to offer the public an enhanced service but regard the proposals as detrimental. The facilities will not improve, and in some cases will actually deteriorate. The actual increased travelling time and distance have not been satisfactorily examined or appreciated. The overwhelming contribution of local knowledge will suffer and the Justices can see no benefit in the disestablishment of Cumnock District Court and transfer of business to the new Ayr JP Court.

Overall the Justices are firmly of the view that the implementation of these ill thought out proposals will lead to a deterioration of the Justice service in the southern East Ayrshire local government area.

Yours faithfully,

Stuart McCall
Depute Clerk of Court