

## **EAST AYRSHIRE COUNCIL**

### **COUNCIL MEETING - 24<sup>TH</sup> JUNE, 2004**

#### **CONSULTATION RESPONSE ON THE REVIEW OF SUMMARY JUSTICE**

##### **Report by Head of Administrative and Legal Services**

#### **1. PURPOSE OF REPORT**

- 1.1. To advise Council of the proposed consultation response on the Report of the Summary Justice Review Committee and to seek approval for its submission to the Scottish Executive.

#### **2. BACKGROUND**

- 2.1 In September, 2001, the Scottish Ministers initiated a comprehensive review of Summary Justice in Scotland to be carried out by a Review Committee lead by Sheriff Principal McInnes.
- 2.2. The Report of the Review Committee was issued by the Executive on 16<sup>th</sup> March, 2004. At the same time a consultation period was initiated to obtain the views of organisations and individuals with an involvement in the Criminal Justice System on the significant issues and recommendations contained within the Report including the structure of the Summary Justice System and the procedures to be followed in the Summary Courts.
- 2.3 At the Council Meeting of 11<sup>th</sup> December, 2003, members approved a proposed response to COSLA on three specific issues arising from the Review. Following that Meeting a response was issued on 11<sup>th</sup> December, 2003.

#### **3. THE MAJOR ISSUES**

- 3.1 The Report itself has 33 chapters, 4 Annexes and 140 separate recommendations including a note of dissent on one of the most significant recommendations contained in the Report being that of the removal of Lay Magistrates from the Summary Justice System.
- 3.2 In the Council's response of 11<sup>th</sup> December, 2003 it was submitted that the concept of Lay Magistracy should be retained on the basis that Lay Magistrates make a vitally important contribution to the administration

of Summary Justice in Scotland. It is proposed that Council's support for the retention of Lay Magistracy be reaffirmed in the response albeit with an acknowledgement that a significant investment in terms of future training of Justices will be required to promote increased judicial consistency in Summary Court.

- 3.3 The second major recommendation in the Report is that of the proposed unification of the Summary Courts which would, in effect, result in the transfer of the operation of the District Court function from Local Authorities to the Scottish Courts Service. The December, 2003 response from this Council broadly supported this concept subject to clear caveats on the issues of financial loss to the Council and the protection of staff employment rights on transfer. These issues still require to be fully addressed and therefore it is proposed to continue in support of the unification proposal subject to the existing caveats.
- 3.4 In addition, consultees have been specifically asked to comment on a whole range of other recommendations in the Report including new alterations to prosecution such as the increase of the scope of Fixed Penalty Notices, the introduction of Fiscal Compensation Orders, the introduction of measures to increase the use and levels of fiscal fines, fine enforcement and a range of procedural issues including the creation of a new Summary Appeal Court.

#### **4. CONSIDERATION**

- 4.1 A proposed draft response to the Review Committee is set out in Appendix 1 for consideration by members.

#### **5. FINANCIAL/POLICY/LEGAL IMPLICATIONS**

- 5.1 If the proposed unification of the Summary Court proceeds it is envisaged that this will potentially involve some level of staff transfer which would require to be dealt with in terms of the prevailing TUPE Regulations.
- 5.2 The specific details of any relevant financial issues arising from the recommendations have not been finally determined at this stage and accordingly it is envisaged that further information on this matter will be submitted to Council at a later stage.

## 6. **RECOMMENDATIONS**

6.1 It is recommended that the Council:-

- (i) Consider the terms of the proposed consultation response set out in Appendix 1, and
- (ii) remit to the Head of Administrative and Legal Services to advise the Scottish Executive of this Council's views as appropriate.

David Mitchell  
Head of Administrative & Legal Services

DM/SMcC

16<sup>th</sup> June, 2004

### **LIST OF BACKGROUND PAPERS**

1. Letter of 11<sup>th</sup> December, 2003 from East Ayrshire Council to Cosla.
2. The Summary Justice Review Committee Report to Ministers.
3. Letter of 17<sup>th</sup> May, 2004 from Justice Department, Scottish Executive regarding Research Commissioned on Costs.

Any person wishing to inspect the background papers above should telephone 01563 576061 and ask to speak to David Mitchell, Clerk of Court or Stuart McCall, Depute Clerk of Court

Implementation Officer - Stuart McCall

i/report - council meeting 24<sup>th</sup> june, 2004/smcc/mj

The Summary Justice Review Team  
Criminal Procedure Division  
The Scottish Executive  
Room 1WR  
St Andrew's House  
Regent Road  
EDINBURGH  
EH1 3DG

Dear Sir,

**CONSULTATION ON THE REPORT OF THE SUMMARY JUSTICE REVIEW COMMITTEE**

I refer to the above consultation and to the correspondence issued by the Minister for Justice on 16 March 2004. On a preliminary basis, I would confirm that this response is submitted on behalf of East Ayrshire Council and that the East Ayrshire Justices Committee is currently in the process of formulating their consultation response which will be submitted in due course.

For ease of reference, this response broadly follows the pro forma consultation response form.

**A. Lay Involvement in the Summary Justice System**

At an earlier stage of the review process, this Council expressed the view that the concept of lay magistracy should be retained on the basis that lay magistrates make a vitally important contribution to the administration of summary justice in Scotland and are in a unique position to provide an effective response to particular community concerns.

Accordingly, the recommendation that the summary justice system move to a system that employs only professionally qualified judges as opposed to the current mixture of professional judges and lay magistrates is not supported by this Council. However, in reaching this conclusion, the Council would be supportive of the contention that “a stand-still” of the present situation would be inappropriate. It is fully accepted that if lay involvement is to be retained the lay magistracy will require to be trained to a nationally agreed standard which would in turn promote consistency across Scotland.

The Council would submit that the District Courts Association has sought to lay a substantial level of groundwork in terms of training which, subject to the availability of adequate levels of future support, could be built on and enhanced to produce the level of judicial competence envisaged by the review committee. A robust and transparent recruitment and selection procedure for justices would further supplement such enhanced training.

The Council has also noted that the review committee, in reaching its recommendation on the issue of continuing lay involvement, considered comparative cost issues principally arising from research carried out by Professor Frank Stephen of Strathclyde University in 2003. Following the recent letter issued on this issue it is further noted that the conclusions reached will not be used as a basis for decision making in respect of the court administration unification proposal. This Council would also be of the view that the conclusions should not be used in the context of decision making on the future of lay magistracy.

## **B. The proposals for a unified summary court**

This Council previously indicated that it would be prepared to support a proposal for unification of the summary courts under the control of Scottish

Court Service subject to a clear caveat that such a proposal would not give rise to any financial detriment to the Council nor any diminution of the terms and conditions upon which the existing district court staff are currently employed.

Given the undertaking given by the Executive in respect of the use of the comparative figures contained in the report as a basis for decision making, the Council would anticipate being given the opportunity to comment on any subsequent comparative figures produced and would therefore not intend to comment on financial issues at present.

In relation to the second point concerning existing district court staff the terms of paragraph 5.40 of the report are perhaps the most pertinent. As local authorities' own figures indicate that a figure of 180 FTE non-legally qualified staff and around 55 FTE legally qualified staff are currently involved in running the district court system the Scottish Court Service estimates that around 70-80 additional staff would be required to run a unified summary court. On the basis that these figures are accurate the potential difficulties to be addressed by local authorities should unification proceed are obvious. It is however noted it is recommended that discussions between the Executive and COSLA on this matter should begin as soon as possible.

Notwithstanding these issues, analysis of the matters identified and conclusions reached in chapter 5 of the report, read in conjunction with paragraphs 44 and 45 of the note of dissent, would continue to hold the support of this authority subject to the existing caveat as mentioned above.

### **C. Alternatives to prosecution**

The recommendations contained in the report relating to alternatives to prosecution by way of fixed penalty notices and other diversion schemes are of a dynamic nature and, it is contended, merit detailed consideration.

At an initial level, the extension and enhancement of provisions which permit either police or Procurators Fiscal to act quasi-judicially should be approached cautiously. Such alternatives appear to take little (if any) account of such issues as:

- (a) the means of the offender;
- (b) the existence of any mental health/drugs/alcohol problems;
- (c) human rights considerations i.e. *Clark v Kelly*;
- (d) transparency – Justice should be seen to be done;
- (e) concerns of victims;
- (f) The effectiveness of diversion in terms of crime prevention;
- (g) The availability of unlimited compensation orders to the PF – arguably more of a judicial function that should lie with an independent sentencer;
- (h) The appropriateness of diversion for persistent offenders.

Overall, the underlying impetus for the proposed increase in the range and extent of alternatives to prosecution have their basis in the requirement to free up judicial time. Is there not an argument to the effect that an enhanced and effective lay magistracy could adequately deal with the types of cases the committee viewed as being appropriate for diversion, thus largely preserving the independence of the judicial function?

## **D. More effective summary justice**

### **Sentence discounting**

It is recognised that one of the greatest sources of dissatisfaction and frustration arises in situations where pleas of guilty are tendered on the day of the trial. The judiciary, police and witnesses regularly express concerns on this topic. Against this background it would seem to be logical that the law on sentence discounting be clarified further.

### **Witnesses – Attendance at trial – agreement of pleas**

The attendance of witnesses whose evidence appears to be undisputed should not be necessary. However, it is suggested that, on occasion, the opportunity to formally agree evidence can be somewhat limited. This is perhaps a greater issue in busier courts. The concept of “optimum efficiency” for courts should prove popular.

### **Extension of the use of trial in absence**

The increased use of trial in absence, subject to the type of safeguards identified in chapter 25 of the report, is supported.

### **Summary Appeal Court**

The concept of a summary appeal court is supported. Factors which may be relevant to the introduction of such courts are;

- (a) Speed of process;
- (b) Potential for greater levels of consistency in approach; and
- (c) Greater levels of accessibility for appellants and respondents;

## **Social Enquiry Reports**

The recommendations contained in chapter 29 of the report on social enquiry reports are supported by the Council. On occasion the delays which result as an unavoidable consequence of the current requirements seem unnecessary.

## **E. National Fines Enforcement Agency**

To re-iterate the Council's earlier position, there is no objection in principle to the establishment of a national agency for the collection of fines which are in default. The Council would suggest that at least some of the recommendations contained in chapter 32 of the report will require further detailed consideration. One particular aspect which is of concern is the recommendation concerning the deduction from benefits scheme. It must be recognised that any deduction from benefits, however small, may have an ongoing impact on defaulters and their dependents.

It is further suggested that the use of SAO's can be effective, if the offender is willing to participate. The recalcitrant offender will not participate – usually despite ardent assurances to the contrary given in court. There is little doubt that sentencers are keen to impose SAO's but when the order is breached on several occasions all involved become somewhat frustrated.

## **F. Other issues**

One other issue which is worthy of comment is contained in chapter 33 of the report concerning the collection of prosecution data. From time to time, the inability to obtain data in cases where warnings are issued, fixed penalties and fiscal fines are offered and perhaps most significantly those cases marked “no proceedings” causes some concern. This Council would support the recommendation that relevant information on these matters be collected and made available whether through the proposed National Criminal Justice Board or some other relevant agency

I trust that you will find the foregoing of assistance in the consultation process.

Yours faithfully