

March 2014

Introduction

1. The Medical Protection Society is the leading provider of comprehensive professional indemnity and expert advice to doctors, dentists and health professionals around the world.
2. We are a mutual, not-for-profit organisation offering more than 280,000 members help with legal and ethical problems that arise from their professional practice. This includes clinical negligence claims, complaints, medical council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal-accident inquiries.
3. We actively protect and promote the interests of members and the wider profession and we promote safer practice by running risk management and education programmes to reduce avoidable harm.
4. MPS is not an insurance company. The benefits of membership are discretionary - this allows us the flexibility to provide help and support even in unusual circumstances.
5. MPS welcomes Lord Gill's intention to streamline the practice of the courts. We agree with Lord Gill's comment that the current structure is slow, inefficient and expensive.

Increase in privative jurisdiction from £5,000 to £150,000

6. MPS is supportive of section 39 of the Bill, which seeks to increase the privative jurisdiction of the sheriff court from the current level of £5,000 to £150,000. That support is however subject to unfettered judicial discretion to remit complex cases to the Court of Session since a lower value claim does not necessarily equate to lack of complexity.
7. MPS rarely sees court actions where the sum sued is less than £5,000. Raising such claims in the Court of Session leads to unnecessary expense for all parties and a disparity between damages awarded and expenses incurred. MPS supports the view that claims ought to be litigated at the appropriate level, with an appropriately resourced, specialist judiciary.
8. MPS acknowledges the Scottish Government's intention to promote access to justice and believes that access to justice is promoted by lowering the cost of litigation.

9. The swift resolution of cases will only occur if the Sheriff Court receives adequate resources to deal with the higher volumes of work and increased case management.

Establishment of a specialist Scotland-wide court

10. MPS is supportive of the provision contained within Part 1, Chapter 4, section 4 subsection (1), which allows for the establishment of an all-Scotland specialist personal injury court.
11. MPS also welcomes the judicial specialisation amongst Sheriffs and considers that increasing the privative jurisdiction limit to £150,000 will ensure that the appropriate cases are heard before a Sheriff with specialist knowledge of personal injury work. This specialisation could be extended to cover actions for clinical negligence if adequate training and resources were made available.

Civil Jury trials

12. MPS does not support sections 61 to 69 which provide for civil jury trials in certain sheriff courts. We believe that jury trials are costly, lead to significant delays and have historically encouraged inconsistent awards of damages. Such inconsistency deters early resolution by way of extra-judicial settlement.
13. These issues were considered by a five judge bench chaired by Lord President (Hamilton) in *Kirsty Mae Hamilton v Ferguson Transport (Spean Bridge) Limited and Gilbert Dennis Thomson v Dennis Thomson Builders Limited [2012] CSIH*. Judicial direction is now given to juries which stipulates appropriate bands of awards for them to consider during their deliberations. With that in mind, MPS questions the value a jury can bring to a personal injury action.
14. If civil jury trials are to become available within the specialist personal injury court then MPS would welcome:
 - a) The jury being required to give an explanation behind their decision and award; and
 - b) A streamlined appeal process whereby inappropriate or excessive awards can be reviewed and if necessary, corrected by the specialist sheriff/ sheriff appeal court.

Simple procedure

15. Very little of MPS' clinical negligence claims fall into this category, however there is concern that section 77 (5) (a) (ii) denies a defender, who has stated a defence then subsequently offers settlement, the prospect of a restricted award of expenses. In our view this discourages early

resolution of claims. MPS would favour judicial discretion to restrict expenses in such circumstances.

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