



Scottish Justices Newsletter - June 2017

Welcome to the second edition this year of the *Scottish Justice*, the in-house publication of the Scottish Justices Association (SJA). The main focus is a report on SJA action undertaken in response to concerns raised by members regarding the signing of Utility Warrants.

It had been hoped to provide links to a recent special edition of the "British Journal of Criminology", which focused on academic work on the important issue of Domestic Violence, and which may have been of interest in view of the rollout of such cases to the JP courts. However free online access to this resource only lasted for a short while. The most relevant input is still that provided by the Judicial Institute. If you have not accessed this resource please do so now.

As before where you see a link given (starting <http://--->) you can access the information by opening a new window in your browser and cutting and pasting the link into the space.

The contents of this edition are as follows:-

- 1) Report on Executive action on concerns regarding utility Warrants**
- 2) Scottish Courts and Tribunals Service – an introduction for JPs**
- 3) Update on Training**
- 4) In Preparation**

1) The SJA Review of Utility Warrants

As previously reported in the *Scottish Justice* the SJA have raised the concerns of some members regarding utility warrants with Ofgem (the regulatory body for the electricity and gas markets in the UK). These concerns are primarily focused on the limited information and inconsistencies that come with the request for a utility warrant made by the different utility supply companies, and by the debt recovery agencies they sometimes employ.

As a direct result of our contact with Ofgem they sent a representative to address the SJA Executive meeting in April. This report provides an update from that meeting and also the proposed next steps.

Prior to the meeting Ofgem were advised that the concerns expressed by the SJA related only to utility warrants relating to domestic debt, and not for those concerning business debt or where fraud or meter tampering is suspected. It was also confirmed that we fully recognised that the utility supply companies are required to manage their interaction with their customers and to act to minimise customer debt.

In addition, we did stress to Ofgem the fact that it is imperative that before any JP puts their name on a warrant they have to be satisfied that the request for the warrant is justified and reasonable; taking into account the action that they are being requested to sanction. We also wanted to clarify that there was no political motivation behind our concerns, particularly as utility company profits had been a recent election issue, and that our concerns were simply to establish that the granting of a warrant was fully appropriate in the circumstances.

It is against this background that Ofgem advised us that they had been working extensively with utility companies on fair and appropriate methods for them to manage customer debt. In 2010 they produced six key principles for the utility companies to adhere to in the management of customer debt, and these are:-

- Having appropriate credit management policies and guidelines
- Making proactive contact with customers
- Understanding individual customer's ability to pay
- Setting repayment rates based on ability to pay
- Ensuring the customer understands the arrangement
- Monitoring of arrangements after they have been set up

Ofgem also advised that they try to monitor each utility company's performance in respect of these key principles when assessing compliance with their supply licence conditions. Indeed they regard the warrant for customer disconnection or for the installation of a pre-payment meter as an act of last resort. Ofgem advised that the average cost across the United Kingdom of granting and implementing a utility warrant was £600, and that *these costs are recovered from the customer*. They also identified that whilst the total number of debtors had fallen since 2013, the average debt level had increased; furthermore there is a higher proportion of utility warrants taken out across Scotland compared with England & Wales.

Ofgem are currently collecting views and comments from all interested parties on the management of customer debt and what steps could be taken to improve the situation for all parties concerned. They also wished that the views of the Magistrates Association (MA) could also be considered; accordingly, contact was made with the MA and a follow up conference call with them and Ofgem was held at the end of May.

At that conference call it was felt by the SJA and MA that frequently we do not receive any indication of compliance with the six principles from utility companies. A further area of concern is the identification of potentially vulnerable customers and whether appropriate special arrangements are in place for handling debt incurred by vulnerable customers. We do recognise that the vulnerability of certain groups of customers can vary with the passage

of time and that the term ‘vulnerable customers’ does require some definition and parameters set around it.

We did therefore propose that a format be prepared and used by the utility companies to detail the actions that they have taken to work with customers to address the six key principles, and that this format should similarly **be used to identify any issues that may lead the customer to be considered ‘vulnerable’**, and any additional steps taken to deal with the individual needs of that customer. This document would be required from the utility company along with the warrant application to allow a better and more appropriate evaluation of the request to be made by the JP.

In addition, a significant inconsistency that our members have noted between the energy suppliers is the level of debt incurred which has instigated the warrant application being made. In instances in Glasgow for example, we have noted that the level of debt has on occasion been less than £100, whereas the average would be several hundred pounds, and sometimes is a four-figure level of debt.

Given that all the costs incurred by the energy supplier in applying for and implementing the warrant are added to the customer’s level of indebtedness, we believe that this situation should be reviewed.

A minimum level of debt could be identified as being the norm before a warrant is applied for. Alternatively there could be a cap on the level of the warrant costs eligible to be recovered, or even a proportionality scale adopted to link the warrant costs to the level of initial debt. These levels, if adopted, could be waived in special circumstances that could be identified in detail on a statement with the warrant application.

A final point of concern that has been raised is in relation to the distance between the domestic premises identified in the warrant and the court to which any relevant hearing would be heard. Whilst this is an area of particular concern to more rural rather than urban areas, the position has been exacerbated by recent court closures across the country, we believe it should be a requirement that any warrant application is made to the nearest court to the customer’s premises.

The SJA and MA were asked by Ofgem to confirm these points in a written submission to them and this is currently in preparation.

There are a couple of other points that should be noted. The legislation which relates to the provision of utility warrants dates back to 1954 and covers the entire United Kingdom. As the legislation was established in an era of nationalised utilities we did raise the question as to whether the legislation should be revised to cover a de-regulated supply industry and bring it more in line with current practice. Ofgem advised that such a review would not have a high priority amongst UK lawmakers at present, and would be overtaken by the second issue that we raised with Ofgem, namely ‘Smart Meters’. These allow the ability for remote disconnection of supply and also the remote variation of tariff rates (to allow debt to be recouped progressively). This would eliminate the need for warrant access for disconnection

or the installation of pre-payment meters. A warrant would clearly still be necessary for meter tampering or fraudulent activity with a utility supply, but the main demand for warrants associated with debt recovery will be eliminated.

The 'Smart Meter' roll-out across the entire country is scheduled to be completed by 31st December 2020, so the good news is that this is only an issue for the next three and a half years!

Dennis Barr,

SJA Secretary

2) Scottish Courts and Tribunals Service – an introduction for JPs

The Scottish Courts and Tribunals Service (SCTS) supports justice by providing business and administrative support to the Scottish courts, the judiciary of those courts, the devolved tribunals and Office of the Public Guardian (OPG). It is an independent public body, chaired by the Lord President with the composition of the Board set in statute. Mrs Johan Findlay JP OBE is our representative on this Board.

SCTS Corporate Plan 2017-20 (<http://bit.ly/2t2emG8>)

This plan, as well as describing the composition of the Board, sets out the purpose, vision and values of the SCTS and the key activities that the organisation will take forward over the coming 3 years. These are organised under 7 strategic priorities:

- A well supported judiciary
- Satisfied courts and tribunals users
- Skilled and motivated people
- A well-managed estate
- Efficiency and best value
- Digital innovation
- Purposeful collaboration with justice partners

For each of these priorities the SCTS have set out key objectives for the next 3 years and these are described in easy to read sections of the Corporate Plan. A separate Business Plan describes how these objectives will be met in more detail on a year-by-year basis, with the 2017-18 Business Plan having been published at the same time as the Corporate Plan. (Available at <http://bit.ly/2tFolzc>)

Progress and performance will be monitored by the SCTS Board and Executive team.

A SCTS locations map is published as an Annex, also a useful list of website addresses for further information.

SCTS Business Plan 2017-18 (<http://bit.ly/2tFolzc>)

In order to provide more detail on the priorities for the coming year the SCTS produces an annual business plan that sets out the key business outcomes that will be worked on during the year, mapped against the 7 strategic priorities. This year's plan includes a focus on:

- Civil Justice – review of the operation and process of the Sheriff Appeal Court
- Tribunals reform – support for the transfer of the Tax Tribunal and Additional Support Needs Tribunal to the Upper Tribunal for Scotland
- Evidence and Procedure Review – further support for vulnerable witnesses and work on pre-trial procedures to bring about more agreement of evidence where possible and ensure trials only focus on areas of dispute
- Impact of Brexit – negotiations will depend on the settlement negotiated by the UK government and other remaining EU states

The plan includes financial information and two pie charts showing expenditure by business area (Sheriff and JP Courts are taken together) and projected income over 2017-18. More detail can be found at Annex B – Summary Financial Plan

The outcomes set down in the Business plan, with timescales, are set out in a 1-page table format on page 13 and described in more detail on the pages that follow.

Annex C gives details of business volumes since 2014. Projections for business in JP Courts in 2017-18 show almost a 4% fall in complaints registered and 7% reduction in trials where evidence is led.

Strategic priorities and objectives for the three-year life span of the Corporate Plan are also included and a summary of Key Performance Indicators is tabled at Annex F.

3) Update on Training - Local and Judicial Institute training.

As I sit down to write my first recurring entry for your SJA newsletter, the partners in JP education are entering the sixth month of delivering a new model of training under the terms of the Justices of the Peace (Training and Appraisal) (Scotland) Order 2016.

JI course places are allocated in a way that is proportionate to the number of JPs in each Sheriffdom. The participant spread contributes to a rich peer-to-peer learning experience. The entire JI team has been delighted to welcome a significant number of JPs, some of whom have never attended a JI course, to participate in learning in our state of the art learning suite.

We have been encouraged by the response to our programmes from these new attendees in particular, and careful to analyse and respond to their feedback. For those of you who may still be considering when to book your JI course over the 2017 to 2019 period, there are some points about our training that I would like to highlight. Firstly, the JI is designed to be a

safe space for learning, where JPs can learn from their peers across Sheriffdoms and the professional judiciary and where Chatham House rules apply. And secondly, our training is intended to enhance and reinforce your local learning. We do not seek to cover new topics but give you the opportunity to further develop knowledge and skills, and most probably take your shot on the bench during our mock courts which feature heavily in all our programmes!

The four courses on offer in the period 2017-2019 are all available twice a year and you must log into the Judicial Hub to book your space personally (telephone bookings are not possible). The remaining dates this year are:

- Road Traffic (8 September)
- Courtroom Communication (17 October)
- The Unrepresented Accused (14 November)
- Decision Making and Sentencing (13 December)

Collette Paterson is Head of Justice of the Peace Programmes for the Judicial Institute and Course Director for all JP courses at the JI. Justices must attend 6 hours (one day) of training at the JI in Edinburgh once every three years. In the year that they attend, the 6 hours will count towards their annual 12 hour training requirement.

4) In Preparation

Space and time considerations precluded some other articles which the editorial board felt could be of interest. In particular SCTS have issued a report on 'Taking child and vulnerable witnesses' evidence out of court' (available at (<http://bit.ly/2s85SN7>))

There is also an important report on the Scottish Sentencing Council (<http://bit.ly/2cYygH2>) in preparation, and a report on performance across the board of JP courts.