Scottish Justices Newsletter – January 2018

Welcome to the January 2018 edition of the Scottish Justice. Included in this edition is an update on the **SJA Executive Committee**, a note regarding the recent change to the **S.J.A. Constitution**, an important article outlining forthcoming changes to the presentation and administration of **Utility Warrants** which all JPs are encouraged to note, and a short article about the background to the **Bangalore Principles of Judicial Conduct** (but not the Principles themselves. These apply to all Scottish Judges, and details regarding how to access them are given at the end of the article).

In addition the *'Scottish Justice'* editorial team received information from the Judicial Institute regarding forthcoming courses. These will be sent out in a separate document through the SJA channel to all our members, and all members are encouraged to ensure that they do meet their training requirements including attendance at a JI Course.

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.

Any communication to the Scottish Justice can be sent to our email address

editor@scottishjustices.org

SJA AGM 2017 and the Executive Committee 2017/18

The SJA Annual General Meeting was successfully held on Sunday 19th November 2017, at the Golden Jubilee Hotel and Conference Centre in Clydebank. A total of 24 members attended, and a quorum was thereby achieved. The Executive Committee were pleased to note that several members attended from Sheriffdoms other than North Strathclyde and two were able to claim travelling expenses in accordance with the offer from the Executive Committee.

At the AGM the SJA Executive Committee welcomed its newest recruit, Mr Phil Cropper, representing Grampian, Highland & Islands. This means that GH&I now have their full complement of Executive Committee members; however there is still a vacancy in South

Strathclyde, Dumfries and Galloway Sheriffdom, and one vacancy in Tayside, Central & Fife. Furthermore, Lothian and Borders have a sole Executive Committee representative leaving two vacancies in the Sheriffdom. It is hoped that all four vacancies will be filled in the 2018 elections to the Executive Committee. The full list of Executive Committee members is as follows:-

Glasgow & Strathkelvin – John Lawless, Neil McKechnie, Dennis Barr

Grampian, Highland & Islands – Brian Wood, Tom Davis, Phil Cropper

Lothian & Borders – Dr. John Burns

North Strathclyde – Tom Finnigan, Marella O'Neill, Grace MacLeod

South Strathclyde, Dumfries & Galloway – Gordon Hunter, David Ferguson

Tayside, Central & Fife – John Whyte, David Donaldson.

Immediately following the AGM the Executive Committee met to appoint the office bearers for the forthcoming year. The results were essentially to maintain the positions from the previous year and are as follows:-

Chairman – Mr Tom Finnigan

Vice-Chairman – Mr Gordon Hunter

Treasurer – Mr John Whyte

Secretary – Mr Dennis Barr

Other post holders and representatives to Judicial bodies were also appointed and are as follows:-

Membership Secretary – Mr John Lawless

Web-Master – Mr John Lawless

Judicial Council Representatives – Mr Tom Finnigan and Mr Dennis Barr

Conduct Committee of the Judicial Council Representative – Dr John Burns

Welfare and Support Committee Representative – Mrs Marella O'Neill

ICT Committee Representative – Mr John Lawless

SJA/SCTS Liaison Committee Representatives – Mr Tom Finnigan and Mr Gordon Hunter

***'Scottish Justice'* Sub-Committee –** Mr David Ferguson, Mrs Marella O'Neill, Mr Brian Wood and Mrs Grace MacLeod.

SJA - Constitutional Amendment

At the AGM held on 19th November 2017 the meeting unanimously approved the proposed change to the SJA Constitution, which effectively eliminated the age limitation on membership of the Association and from serving on the SJA Executive Committee. The

amendment had been proposed by the SJA Executive Committee in recognition of the fact that several Sheriffdoms were offering extensions of appointment to some JPs, beyond the normal retirement age of 70, due to the pressure of business in specific courts. In addition, it was apparent to the Executive Committee that the existing Constitution could be challenged on the basis that it was explicitly discriminatory on the basis of age. Accordingly, the Executive Committee proposed the following amendment to the SJA Constitution, which was to replace the existing Clause 4a. with the following wording which makes no reference to the age of a JP who may wish to apply for election to the SJA Executive Committee:-

> 'Any member may stand for election as a member of the Executive of the Association (hereinafter called "the Executive"). If a member of the Executive ceases to hold office as a Justice of the Peace, in accordance with Clause 3c. of the Constitution, then they will immediately cease to be a member of the Executive as well as the Association.'

The amended Constitution can be viewed in full at any time on the SJA website. It is in the members section within the 'Minutes and Files' sub-section.

Dennis Barr

Secretary SJA

Utility Warrants – Important Changes

Regular readers of the '*Scottish Justice'* will be aware that the SJA has been in regular contact with Ofgem in recent months expressing the concerns of Scottish JPs about Utility Warrants. Our concerns related to the limited information provided with many Utility Warrant requests, the inconsistent approach by the various energy supply companies, and the additional costs associated with the Warrant implementation which, when added to the customer's debt are disproportionate to the level of initial energy debt. We have always recognised the right of the energy supply companies to manage their debt, but did express the view that Utility Warrants should be viewed in the same light as every other type of warrant application; so that the JP was provided with full and accurate information in order to make an appropriate judgement as to whether or not the Warrant application was justified and reasonable.

In addition the SJA did enquire as to the potential impact of 'smart meters' which the Government had previously announced would be installed in all domestic premises by 2020, and whether this would impact on the requirement to install pre-payment meters.

It was in this context that the SJA and a number of other interested parties responded to a formal Ofgem Consultation on 'Prepayment meters Installed Under Warranty'. The results of this consultation were published in November 2017, and as a consequence Ofgem have introduced new regulations covering Utility Warrants requests. These new regulations are imposed on energy supply companies as part of their licence to supply customers, and are therefore mandatory. These new regulations came into force on Monday 8th January 2018.

The new regulations are detailed below and are taken directly from the Ofgem report 'Decision to modify gas and electricity supply licences for installation of prepayment meters

under warrant'. It should be noted however that Ofgem explicitly expressed concern in three specific areas which gave rise to the new regulations:-

- Ofgem are concerned about failures to identify vulnerability during the warrant application and execution process, resulting in some customers in vulnerable situations suffering traumatic experiences.
- Ofgem are concerned about suppliers' approaches to charging vulnerable customers for warrant-related costs, particularly where customers' ability to engage with their supplier is impaired due to their vulnerability or where they are already in severe financial difficulty.
- Ofgem are concerned about the level and inconsistency of warrant related charges for all consumers, with different suppliers charging a widely differing range of amounts for conducting the same processes and in some cases, levying excessively high charges.

The changes that came into effect as of Monday 8th January are:-

1. **A prohibition on suppliers using warrants in certain exceptional cases.** Ofgem requires that suppliers do not install Prepayment Meters (PPM) under warrant for the purpose of recovering debt where the process would be severely traumatic due to a consumer's mental capacity and/or psychological state. This measure will have the effect of protecting these consumers from having these traumatic experiences. It will also direct suppliers to pursue other, more suitable debt recovery methods.

2. **A prohibition on suppliers levying warrant-related charges in certain other cases.** Ofgem requires that suppliers do not levy charges associated with the installation of a PPM under warrant where either the consumer's vulnerability has significantly impaired their engagement with the supplier during the debt recovery process or where the charges would exacerbate a consumer's existing financial vulnerability by requiring them to pay additional warrant-related charges. This measure should also incentivise suppliers to pursue other, more suitable debt recovery methods given that they will not be able to recover any warrant- related costs in these instances.

3. **A cap on warrant-related charges of £150 in all other cases.** Ofgem are capping the amount that suppliers can levy for warrant-related costs in all cases where a warrant is used to force-fit a PPM to recover debt to £150. The cap is designed to encourage greater engagement with indebted consumers, to incentivise suppliers to explore alternative debt recovery methods, and only to use warrants as a last resort. Another intended effect of the cap is that all consumers will be protected from facing disproportionate costs where a warrant is used, and will be clear on the maximum amount they may be charged if a warrant is used.

4. **Proportionality principle.** Ofgem are introducing a principle of proportionality, covering costs and actions of suppliers, for all customers in the debt recovery process.

The intended effect of this measure is to ensure that suppliers take actions and levy charges that are proportionate in all cases where they seek to recover debt from customers.

5. **Smart meters.** Ofgem recognise that smart meters can operate in both credit and PPM mode, removing the need to access people's homes and physically change their meter when they move between credit and PPM tariffs and the resultant cost. The smart meter roll-out is due to be completed by the end of 2020, so the rules relating purely to warrant-related activities will cease to apply at the end of 2020, unless Ofgem later specify another date to reflect any changes to the smart meter roll-out timetable.

The SJA do believe that this is a significant step taken by Ofgem to protect vulnerable customers, and it can be reasonably expected that there will be a significant reduction in the number of Utility Warrants being presented to JPs in Scotland. However, we do note that there could be changes to the warrant handling processes undertaken by SCTS, and clarification may be required as to the steps taken by energy supply companies to assess customer's vulnerability, prior to submitting a warrant application. Accordingly, the SJA will be holding further discussions with SCTS and other interested parties as to appropriate systems for managing Utility Warrant applications, and further details will be forthcoming.

In the short term, you should notice a reduction in the number of Utility Warrants presented, and we now do have confirmation from Ofgem that subject to the smart meter roll-out meeting its target, then Utility Warrants will be consigned to the history books in 2021!

Dennis Barr

Secretary

The Route to the Bangalore Principles of Judicial Conduct

It would seem obvious that all holders of Judicial office should be seen to be of impeccable character, yet a formal adoption of principles was adopted only comparatively recently. Since the Act of Settlement in 1701 Judges were appointed and were permitted to remain as judges

"quamdiu se bene gesserit"

literally "as long as he shall behave himself well" and this admonition served well enough in the UK and indeed internationally, particularly where local legal practices were modelled on UK law and practice. In the UK as a whole, and Scotland in particular it was acknowledged that a high standard of Judicial ethics had been attained over time without the need for written guidance.

On an International basis however, there were some instances where judges fell short of this standard. Judicial corruption and indeed the perception of corruption in effect deprived citizens of the protection which should have been afforded by law, and this was clearly in violation of their rights as identified in the UN "Universal Declaration of Human Rights" in 1948.* Such corruption could be the result of various antecedents. For example, in some systems judicial appointments were made by political patronage or cronyism which, it was alleged, compromised impartiality. Indeed, the primary drivers of Judicial Corruption were

acknowledged to include political interference either by appointments or direct instruction, and bribery of officials.

It was against this background that the United Nations Centre for International Crime Prevention set up the Judicial Group on Strengthening Judicial Integrity (subsequently The Judicial Integrity Group). From the outset the group was set up as an independent, not-for-profit organisation of Chief Justices, former Chief Justices and other senior judges), tasked to respond to evidence that the public was losing confidence in their respective judiciaries because

"*they were perceived to be corrupt or otherwise partial. This evidence had emerged through service delivery and public perception surveys, as well as through commissions of inquiry established by governments".*

The Judicial Integrity Group met in Vienna in 2000. They considered that national judiciaries should assume "an active role in strengthening judicial integrity, and recognised the desirability of a universal code of Judicial Ethics." To this end they examined a wide variety of published codes in an effort to establish common standards. This exercise enabled a draft of principles to be formulated and distributed to national and international judiciaries for their comments.

There were some criticisms, for example it was pointed out that the draft had been formulated by Judges from countries with primarily common law traditions, and there was wide consensus that judges from other traditions should scrutinise, contribute and amend. Other criticisms included the order of precedence of the proposed principles. For example. It was questioned whether '**propriety'** should really have precedence over **independence, impartiality, and integrity** (in that order) as it appeared in the draft. Should the source of judicial authority be "public acceptance of the moral authority and integrity of the judiciary", or the (various) national constitutions? Should overt political activity be disallowed (in one European country Judges were appointed on the basis of party membership)?

Over subsequent meetings such widespread consultations and criticisms were evaluated and addressed. It should be emphasised however that the areas of common agreement far outweighed the differences.

A 2002 meeting in Bangalore, India further examined this draft and after long discussion finally agreed on what is now known as the "Bangalore Principles of Judicial Conduct". These principles were:-

1. **Judicial independence** is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

2. **Impartialit**y is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

3. **Integrity** is essential to the proper discharge of the judicial office.

4. **Propriety,** and the appearance of propriety, are essential to the performance of all of the activities of a judge.

5. Ensuring **equality of treatment** to all before the courts is essential to the due performance of the judicial office.

6. **Competence and diligence** are pre-requisites to the due performance of judicial office.

These principles were endorsed at the 59th session of the United Nations Human Rights Commission at Geneva in April 2003 and again more fully by the United Nations Social and Economic Council (Resolution 2006/ 23), which invited Member states to '*take the Bangalore principles into consideration*' when reviewing ethical standards for their respective judiciaries".

This at last gave a formal, international endorsement of the principles.

Application to Scotland

The widespread adoption of the principles internationally led the Judicial council of Scotland to review them and to recommend that the guidance be endorsed and be available in Scotland. This led to the publication in 2010 of the **Statement of Principles of Judicial Ethics for the Scottish Judiciary 2010**.

Its Introduction states, inter alia:

While the Scottish Judiciary have an honourable tradition of the attainment of high standards of judicial conduct, that has been achieved without the benefit of written guidance. However, in recent years, written guidance has been developed in many other jurisdictions. Furthermore, a recognition of the need for such guidance in relation to judicial conduct has emerged in the international context with the development of the Bangalore Principles of Judicial Conduct, endorsed at the 59th session of the United Nations Human Rights Commission at Geneva in April 2003. Against this background, it is considered that it is now appropriate for such guidance to be available in Scotland. To that end this document has been devised, after consideration, by the Judicial Council for Scotland. It is intended that, from time to time, it should be reviewed in the light of experience and changing circumstances.

The document was further revised in 2013 and 2016

This document explains and elaborates the above principles, and is the definitive exposition of standards for Scottish Judges.

D. Ferguson

*(A later survey by the group 'Transparency International' found (2006) that 21% of respondents in Africa and 18% of respondents in South America who interacted with the Judicial system reported paying bribes. Corresponding figures for US and Europe were 1% and 2% respectively. It should be noted on methodological grounds that these respondents are

likely to be self-selecting. These data are unlikely to be absolute, nevertheless the relative values are interesting.)

Further reading:-

The document which is of most relevance to Scottish JPs is the above Statement of Principles of Judicial Ethics for the Scottish Judiciary. It can be viewed at

http://www.scotland-judiciary.org.uk/21/0/Principles-of-Judicial-Ethics or www.scotland-judiciary.org.uk/Upload/Documents/Principles.pdf

Also of interest is the document

Commentary on the Bangalore Principles of Judicial Conduct, (2007) by the UN Office on Drugs and Crime, available at https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf

A wider overview of the subject is the document

"Judicial Corruption: Some Consequences, Causes and Remedies"

Bedner J 2002., available at http://bit.ly/2F3dhAQ

The organisation 'Transparency International addresses contemporary problems

http://www.transparency.org/

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