

Scottish Justices Newsletter – July 2019

Welcome to the July 2019 edition of the Scottish Justice. In this edition SJA Secretary, Dennis Barr, gives a brief update on the SCTS consultation exercise on JPs' expenses. We had hoped to comment on the final report but to date it has not been released. Dennis also reports on an initiative taken by the SJA earlier this year to work with Police Scotland in establishing and maintaining an up-to-date central database of Justices who might be contacted by the Police when seeking an out-of-hours search warrant.

Are you confused by the on-line booking procedures for JPs wishing to attend the courses run by the Judicial Institute? Charles Welsh, Head of Programmes at the JI tries to demystify things for us.

We include an article compiled by SJA Executive member Dr John Burns explaining the value of our links with the European Network of Associations of Lay Justices (ENALJI).

JPs are asked from time to time to explain to various organisations what the role of a Justice of the Peace in modern day Scotland is all about. The SJA has been aware that there is a lack of readily available material to support a JP when preparing such a presentation. The SJA set up a small working group who collaborated with Head of Judicial Communications, Valerie MacGregor, to develop a resource of approved material and we hope that JPs across the country will find it helpful, if they receive such requests.

Any communication to the Scottish Justice can be sent to our email address editor@scottishjustices.org

JP Expenses Consultation

Firstly, The SJA Executive Committee would like to thank those members who shared their response to the SCTS Consultation with the Secretary. These responses were overwhelmingly in accord with the views that the Executive had circulated prior to the Consultation, with regard to the proposed rates.

Despite the consultation period ending on 31st May, there has been no further word from SCTS on the responses received. The SJA were advised in mid-June that they were reviewing the responses and were planning to compile a report, which they would circulate internally before issuing. At the time this article is being written (17th July), no information on the consultation has been released.

The SJA will continue to monitor the situation and will advise members of any information received, although this should appear on the Judicial Institute Hub in the first instance. The SJA would expect to respond as appropriate to the results of the consultation and the proposed actions of the SCTS.

Dennis Barr

Secretary

Centralised Database of JPs for Contact Purposes by Police Scotland

In the past couple of years the Scottish Justices Association (SJA) has been contacted by retired JPs, and sometimes quite distressingly, by families of recently deceased JPs, who have been contacted by the Police seeking an out-of-hours search warrant. This is despite the fact that the JP has been retired from the bench for many months, if not years.

The SJA initially discussed this situation within the Glasgow & Strathkelvin Sheriffdom, and the Sheriffdom Legal Advisor (SLA), Mr Howard Rattray was very helpful and supportive of improving the situation. However, he quite correctly advised, that whilst each Sheriffdom SLA retains a current list of JPs in their Sheriffdom, with all the necessary contact details, they can only distribute this to agreed contacts within the Police and other agencies. The cascading of this information to individual Police Stations, and thereby onto Police Officers, is outwith the control of the SLAs.

Accordingly earlier this year the SJA wrote to the Chief Constable of Police Scotland seeking his assistance to establish a better system for the effective management and distribution of a list of current JPs. As a result of this the SJA was contacted by Inspector Anthony Fitzpatrick who is in charge of the Problem Solving Unit of the Criminal Justice Services Division of Police Scotland and whose role is to liaise with COPFS and enhance the working relationship between the two organisations. Inspector Fitzpatrick quickly recognised the mutual benefits to all parties in maintain current and accurate information that could be used by the Police when seeking an out-of-hours warrant.

Initially, the SJA had thought the best approach would be to trial the concept of transferring an electronic list of current JPs with one Sheriffdom, and if successful, rolling it out to all other five Sheriffdoms. However, on the advice of Inspector Fitzpatrick, and recognising that Police Scotland is a national force, it was agreed that it would be better if we could establish a full list of all JPs across all six Sheriffdoms. Inspector Fitzpatrick agreed to be the initial point of contact for establishing this Scotland-wide list of current JPs. He did advise however that the responsibility for maintaining the list will be passed over to the Divisional Co-ordination Unit, within the Criminal Justice Services Division of Police Scotland, which is based at Falkirk. When the full list has been confirmed and agreed Inspector Fitzpatrick will advise all SLAs of the appropriate e-mail address and contact point for ensuring that the list is updated and maintained by Police Scotland.

Inspector Fitzpatrick advised that the full list of JPs, segregated into the different Sheriffdoms, would be available to all Police Officers through the Police Scotland intranet site, and as such, is a secure site and not within the public domain. He also confirmed that all Police Officers would be advised and reminded of the correct procedure for obtaining an out-of-hours warrant, including the necessity of securing the approval of COPFS prior to contacting any JP.

The SJA Executive Committee is sure that all members will recognise the benefits to all JPs, not just those who have retired. In addition it should reduce the number of wasted telephone calls made by the Police. We also envisage some immediate advantages in maintaining a current and accurate list of JPs in that it will allow taking JPs temporarily off the list of available JPs, due to a period of illness or because of family issues. There are other long-

term potential uses and benefits from such an accurate list of current JPs, but they can be reviewed in due course.

It is hoped that by the end of August, the full list of JPs, plus the notification of the contact points and update procedures will be in place to enable the system to become fully operational. Further information on progress with this project will be made available on the 'Weekly Update' provided by through the Judicial Hub.

Dennis Barr

Secretary SJA

News from the Judicial Institute

In March 2019, Sheriff Principal Derek Pyle of Grampian Highland and Islands convened his first meeting as the new Chair of the Justices' Training Committee of the Judicial Institute (JTCJI). This committee comprises the Director and Depute Director of the JI, the Head of Education, the Head of Programmes, the Conveners of the six Sheriffdom Justices Training and Appraisal Committees and a representative of the Sheriffdom Legal Advisers.

SP Pyle's first task was to introduce Charles Welsh as the recently appointed Head of Programmes at the JI. Charles has responsibility for overseeing the delivery of all training within the Judicial Institute, including training for Justices of the Peace. Several of the Sheriffdom Conveners had reported that some of their Justices had had difficulty in registering for JI courses on the Judicial Hub. The booking process appeared unclear and JPs were left unsure about whether their requests had been approved. Charles was asked to clarify the procedure and he provided the following breakdown:

Booking a JI course on the Judicial Hub

1. A JP submits a booking request to the Judicial Hub. The Operations Manager receives an e-mail with a booking request for approval.
2. The JP's previous attendance is checked. If the JP has not attended a previous course in 2017-2019, approval is given. The JP receives a booking confirmation. This process is usually completed within a few days.
3. If a JP has attended a previous course in 2017- 2019, such booking requests are kept as pending in the system until around a month before the course date.
4. The JP is told that the request is pending.
5. With a month until the course is due to run it may be possible to fill unused places with JPs who have already attended a course.
6. The JP is told that a space has become available.
7. If the JP wishes to take up the place, the Operations Manager approves the request and the JP receives booking confirmation as above.

8. The Operations Manager will respond to a JP who has been unsuccessful in attempting to book a place on a course to advise them that there will be another occurrence later in the year but will not specifically target that JP when spaces become available. She also regularly communicates with Sheriffdom Legal Advisers to inform them about available places on courses and sends flyers to assist SLAs with marketing courses to JPs.

SJA and ENALJ

The European Network of Associations of Lay Justices (ENALJ) is an organisation that the SJA has had periodic contact with, and several years ago we did send a delegate to their early meetings. ENALJ have regularly contacted the SJA and have invited us to formally join their Association and become actively involved with their work and meetings. After some internal discussion it was agreed that we should send two delegates (to give a full and balanced review) to the ENALJI Annual Conference held in Bonn, Germany in May this year. The report below has been compiled by one of our delegates, Dr. John Burns.

The SJA Executive Committee have taken the view that following our attendance at the Annual Conference we should undertake some further due diligence on the organisation to fully comprehend their financial and organisation structure in order that we can clearly establish the benefits and opportunities that membership would provide. Currently annual membership is a very modest 20 Euros, and whilst we are aware that they have received direct funding from the European Commission in the past, it is essential that we do understand the source of their funding. In addition we do need to obtain a better understanding of the organisations objectives and how we both participate in and benefit from these goals.

How do you say ENALJ ?

You may think that ENALJ is an unpronounceable acronym since we in Scotland sound the tenth letter as “Jay” or “Jye”, but most Europeans pronounce it “yuh” making it “en-aye-yuh”. Never mind the sound, what is ENALJ all about?

It is a Europe wide body representing Lay Judges – originally sixteen countries including Switzerland, England and Wales, Northern Ireland and Scotland as well as lots of EU members. (The full list of those who signed the ENALC Charter in 2011 is Austria, Belgium, Bulgaria, Denmark, Germany, England/Wales, Estonia, Finland, France, Italy, Portugal, Northern Ireland, Scotland, Spain, Sweden and Switzerland.)

The role of Lay Judges varies greatly across Europe. Some are purely voluntary, others are paid.

Some are involved only in commercial law, some deal only with juvenile courts, some attend all trials as wingers to professional judges and some, like ourselves, are involved only with

criminal law. Some are appointed through political parties, some are demonstrably independent from politics

Although we are all different, it was felt we shared a common heritage and that there should be a Europe-wide body to represent our interests. After several years of negotiation and development, ENALJ was formed in 2011 at in London and there was a “European Day of Lay Judges” in 2012. Many countries feel (perhaps even more strongly than we in Scotland do) that -

"the participation of lay judges is an essential element of any justice system which wishes to be transparent and comprehensible" (a quote from the London declaration of 2011)

and that lay justice, freedom and democracy are closely linked.

As JPs, we often take it for granted that lay justice is a worthwhile concept without thinking thorough the concepts behind it. The European Charter of Lay Judges puts it on paper, in fifteen clauses and three languages. Clause Three says *“The right of participation by the people in dispensing justice is an element of civil emancipation and a fundamental principle in any democratic society. It helps to increase plausibility and comprehensibility in proceedings and judgements and thus enhances confidence in the legal system. Lay judges bring valuable wide experience of life and familiarity with human nature to justice. It is also a means to improve efficiency in justice and increase acceptance of decisions.”* Would any of us disagree with that interesting statement?

The abolition of lay justice in Finland and Spain was threatened in the years up to 2011, and ENALJ fought a hard but losing battle to preserve lay justice in those countries. It might well be a useful ally if the abolition of lay justice in Scotland was again threatened.

Scotland were represented in the early days by Susan Kirkwood of Aberdeen, first as an SJA member and later as an individual. Tom Finnigan and I were asked to attend the annual ENALC

meeting in Bonn on 11th May 2019 on behalf of SJA and we had an enlightening day. Although we had some concerns about governance and finance matters, we felt that the body had its heart in the right place and that SJA should continue to remain active members.

Presentation Material for ‘The Role of a JP’

On several occasions in recent years the SJA Executive Committee have been approached by a member seeking guidance and assistance with preparing a presentation on the role of a JP. In particular the enquiry was keen to establish whether there is any standard material that they can use. The SJA have been aware that there is a lack of such material and therefore decided that they should establish a small working committee to evaluate the requirement and as appropriate prepare material.

The sub-committee comprised of Dennis Barr, Neil McKechnie, Mandy Shand and Brian Wood and they rapidly confirmed that there are frequent requests for JPs to give a talk or presentation on what a JP does, and what their role is in the judicial system. Having established the need for presentation material the sub-committee used as a starting point, an

excellent presentation that Mandy Shand had prepared and used when giving a presentation to students of the 'Third-Age' on her role as a JP based in Alloa JP Court.

It became evident, however, that it would be essential to approach the Judicial Office to collaborate on the development of presentation material. This was necessary to not only gain their support for this initiative but also to ensure that any information was fully correct and did not breach any copyright issues. Accordingly the sub-committee gained the full assistance and support of Valerie MacGregor the Head of Judicial Communications.

In developing this material the sub-committee felt that the best approach would be to prepare a set of slides and visual material with accompanying notes. These slides would cover background matters such as the basic principles of the law, the role of the various agencies engaged in enforcing and managing the justice system, the structure of the judicial system in Scotland, and importantly, images of local courts and legal facilities and members. The sub-committee did feel it important that the material would be provided in a 'library' format so that each JP when giving a presentation could select the images and information they felt was the most pertinent given their audience. The sub-committee specifically did not want to provide a standard 'script' that had to be followed, as they recognised that the age, interest and background of the audience can vary quite significantly and therefore each presentation has to be crafted for that particular audience.

In discussion with Valerie MacGregor she very kindly offered to assist by ensuring that the material would be loaded and kept on the Judicial Hub. In addition she advised that her staff in the Judicial Communications Section, are available to assist with the collation of slides.

A further consideration of the sub-committee was to identify and clarify what would be appropriate guidelines for the use of the slides and notes, and to confirm certain requirements that JPs have to undertake prior to preparing a presentation. Such requirements include the need to obtain the approval of the appropriate Sheriff-Principal prior to any presentation being given. Accordingly the sub-committee, and again with the help of Valerie MacGregor, have prepared guidelines to assist any JP who is requested to give a talk on the role of a JP. These guidelines will likewise be available on the Judicial Hub.

At time of writing this report, the material for the presentations and the guidelines are being checked and confirmed by the Sheriffdom Legal Advisors and the Sheriffs-Principal. Further information will be made available very soon on the 'Weekly Update' on the Judicial Hub.

The SJA Executive Committee would like to specifically thank Valerie MacGregor and her team in Judicial Communications for all of their assistance in fulfilling the aims of this project.

Dennis Barr

Secretary SJA