

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1983](#): Improve the transparency and accountability of Scottish legal courts, lodged by Daniel Osula

Brief overview of issues raised by the petition

The petition argues that there is a lack of transparency in the processing of court applications and states that

“There are two sections to the courts: the appointed Judges, and court staff (civil servants), and in my experience, court staff appear to have the authority to provide a case to a specific Judge at a time of their own choosing.

Without transparency in the processing of court applications, I believe court staff are being allowed to bypass accountability. In my view, this has created a super body of public executives, with any communication by an MSP to any public service institution being reluctantly ignored or replied to at the convenience of the public servant.”

It calls on the Scottish Parliament to urge the Scottish Government to improve the transparency and accountability of the Scottish legal system by ensuring:

- clear information is provided to members of the public about how their case will be considered; and
- information is made available to members of the public about the processes for making a complaint about court staff.

Processing of court applications

It is not clear from the face of the petition which court, or courts, the petitioner is referring to. It also isn't clear what specific issue the constituent has been confronted with in the processing of their application to the court.

However, in very general terms the process of a particular case is governed by different procedural rules and practices depending on the type of case and the court in question. Procedural rules can be very detailed in scope and their application to a particular case can be a complex matter.

[The Scottish Courts and Tribunal Service \(SCTS\) has more information on the various rules on its website.](#)

Court officials known as “clerks of court” who are appointed by the SCTS manage the day-to-day business of the courts and schedule court business in line with the relevant procedural rules and the needs of the court. In the Court of Session and the High Court of Justiciary (Scotland’s highest civil and criminal courts) the head of this role is [the Principal Clerk of Session and Justiciary](#). In the sheriff courts there is a sheriff clerk in each sheriffdom (i.e. court area).

As regards allocation of specific cases within a court, [the website of the Judiciary of Scotland](#) states that:

“Cases are primarily allocated based on a judge’s availability. The specialisations and expertise of individual judges may also be a factor, such as in commercial matters.”

Judges decide on the outcome of proceedings and have a number of other roles, including in relation to the management of cases ([for details see the information on the website of the Judiciary of Scotland](#)).

In the sheriff courts [the sheriff principal](#) (i.e. the judicial head of each sheriffdom) has responsibility for the efficient disposal of business in the sheriff courts including the allocation of business among the judiciary of the sheriffdom (section 27 of the Courts Reform (Scotland) Act 2014).

Complaints about court staff

The SCTS has a [webpage entitled “SCTS Complaints Procedure”](#) which explains what its complaints procedure is.

The procedure covers court staff and has two stages involving:

1. A front line response within five working days
2. A more detailed investigation for cases which appear to be complicated or serious.

The SCTS’s Complaints Procedure indicates that complaints can be made about matters such as:

- delays in responding to enquiries and requests
- failure to provide a service
- SCTS’s standards of service
- SCTS’s policies
- treatment by or attitude of a member of staff
- failure to follow proper procedure.

However, it also states that that:

“There are some things we can’t deal with through our complaints handling procedure. These include:

- an initial request for service, e.g. asking us for a form, or to accept payment of a fine
- a request for an explanation of our policies
- a complaint about or an appeal against a court or tribunal decision
- a complaint about the conduct of a judicial office holder or tribunal member
- a complaint about the conduct of other organisations in the public sector.

If other procedures or rights of appeal can help you resolve your concerns, we will give information and advice, though not legal advice, to help you.”

People who are dissatisfied with the SCTS’s decision in a complaint can ask the Scottish Public Service Ombudsman to consider it.

[A separate process exists for making complaints about judges.](#)

28 October 2022

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP