



ABERDEEN POWERS AHEAD

Lisa Gregory reviews Civil Litigation and Personal Injury Law in Aberdeen and the North East of Scotland in 2014.

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Since last year's review, Aberdeen and the North East of Scotland have continued to enjoy growth and to benefit from the resources and skills the region offers.

Ranked as one of the UK's most competitive cities, Aberdeen has a collective turnover of around £14billion. Five of Scotland's top ten businesses are based here. With its "microclimate" economy, it was one of the UK's strongest performing cities throughout the downturn. Strong economic growth, property investment and projects such as Hydrogen Aberdeen continue to attract skilled people, new businesses and sustained investment. For example, the new discovery by GDF SUEZ E&P Ltd and BP in the UK Central North Sea in October demonstrated the better understanding of the exploration opportunities remaining within the sector.

But there is no room for complacency. The Oil & Gas UK Business Sentiment Index captures a snapshot of the industry mood. The 3rd Quarter 2014 Index showed declining optimism. The overall index moved into negative territory for the first time since 2009. While there are still pockets of optimism, rising costs, reductions in drilling and the dramatic drop in oil price are factors curbing optimism. The industry is working with the Department of Energy and Climate Change to implement recommendations of the Wood Report aimed at maximising recovery from the UK Continental Shelf. At the time of writing, announcements are awaited on the 28th Licensing Round, the appointment of the new chief executive officer of the Oil and Gas Authority and the Treasury's fiscal review.

Against that commercial background, we have seen continued consolidation within the legal profession - mergers between local practices as well as mergers with firms new to the area. High street practices continue to play a vital role in North East communities, often working in partnership with specialist firms to provide a local service combined with best advice and value.

In the Personal Injury sector, tensions continue to run high over safety concerns of offshore workers. Increasingly our caseload involves offshore workers assigned to work overseas. As anticipated in last year's Review, more employees are working in remote locations excluded from the UK Health & Safety regime, with limited health and safety provision. A transfer to International Payroll may be lucrative but awareness of the full implications of International Assignments can be poor.

A typical example is a case we have just concluded for an employee injured while working in Africa. Rendered unfit for offshore work, he had no prospect of replicating onshore his pre-accident earnings. Dual proceedings were raised in Scotland and in the US. These cases require specialist knowledge and close liaison with overseas attorneys. Alongside the usual considerations of jurisdiction and applicable law, the negotiations had the added dimension of the potential impact of the Independence Referendum on a US settlement.

The announcement in October that there is not to be a Public Inquiry into the fatal helicopter crash off Sumburgh in August 2013 was met with consternation and disbelief – not least by the passengers who survived and who are continuing to take small steps to try to piece their lives back together.

I was privileged to attend the memorial events held in Shetland to mark the 1st anniversary. While the trauma of the aftermath of the crash was still very raw, the events were a poignant show of respect for those lost and for the rescue workers and local community who provided immeasurable support when it was needed.

Whatever it may bring, 2015 will not be dull. The challenge for those of us practising Civil Litigation, and specifically Personal Injury Litigation, is to be forward thinking and to provide fit for purpose litigation and funding models to ensure access to justice for all.

The Enterprise Act came into force in October. Hopes that the Scottish Government may intervene to reinstate the right to rely upon breaches of the statutory health and safety regime went unanswered and we dusted off old copies of 1960s legislation and authorities to be re-learned or learned of new. The Act will have little impact in the most serious cases with health and safety prosecutions and convictions but, for the vast majority of PI cases, a body of caselaw is needed before agents on both sides of the court can advise with confidence. At the time of writing, no post Enterprise Act cases have come to proof. Fertile ground for pleaders and for experts whose evidence will be pivotal.

Court Reform and the Taylor Review dominate discussions. Aberdeen was an important antecedent to the Scottish Court Service's review of civil courts providing evidence of the success of judicial case management, specialised sheriffs, views of court users and their experiences.

The Court Reform (Scotland) Act received Royal Assent on 11 November. Implementation is expected in 2015. The principal recommendations are the increase in the Privative Limit of the Court of Session and the introduction of a Specialist Personal Injury Court, Summary Sheriffs and Simple Procedure.

The new Privative Limit originally proposed was £150,000, since reduced to £100,000. The statistics suggest that reduction will have little impact. Somewhere in the region of 90% of PI cases are expected to go to the Sheriff Court - around 2,000 - 2,500 additional cases which would currently be in the Court of Session.

Local impact was first felt with the closure of Stonehaven Sheriff Court in May and the transfer of business to Aberdeen. We had hoped that a Specialist Personal Injury Court would be located in Aberdeen but it seems there is to be only one specialist PI Court, probably in Edinburgh, with two Specialist Sheriffs. The combined effect is a very real concern about Court capacity, delays and access to justice.

Implementing the reforms, the Aberdeen Civil Justice Centre and Commercial Court opened in July 2014 in what was the Justice of the Peace Court. The new Centre separates civil and criminal business – the latter remaining in the Sheriff Court House in Castle Street and the High Court in Mercatgate.

Grampian, Highland and Islands Sheriff Principal Pyle said the Centre presented a new vision for the development of commercial litigation which will encourage indigenous and multi-national oil and gas concerns to settle their disputes in Aberdeen.

While the new Centre lacks the grandeur of the Sheriff Court, it provides three newly constructed, dedicated Civil Courts hearing civil business five days a week and enhanced accommodation with more witness and meeting rooms. Inevitably, there are points of detail – not least the layout of the court is such that Agents and Advocates face the witness with their backs to the Sheriff.

The Centre is intended to provide a speedy, specialist forum to resolve disputes and an improved, less formal environment for children's and civil hearings. Stand alone civil and criminal justice centres should permit efficient Court programming – all aimed at reducing delay and expense.

Strict case management by the Bench has greatly reduced the number of cases calling in court freeing up more Diets. The onus is, however, on agents to ensure cases are fully prepared before Diets are allocated. Greater compliance with the Rules is welcomed but inconsistencies in interpretation are causing difficulties.

A key feature of the Centre is the focus on technology permitting, for example, litigants and witnesses to participate by video or telephone conference when the Sheriff so directs. That may be the nub with different Shrieval attitudes. Case Management Conferences are a case in point. Some Sheriffs allow appearance via digital media. Others insist upon personal appearances. Some Sheriffs ask for e-mail submissions. Others hold CMCs in chambers. Flexibility is to be encouraged but woe betide the agent who fails to pay close attention to the detail of the interlocutor. It has been said that some of them should come with a health warning.

In fairness, there was embarrassment when agents were not at their desks when a Sheriff called to convene a Case Management Conference. The Sheriff was left on the Bench in open court listening to muzak until the agents were located and brought to the phone. If we are to properly embrace modern Courts, we must do so in a way that is credible and preserves the dignity of the Court.

Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation was published in September. The key aims are improved access to justice, affordability and greater recoverability and predictability of expenses. The recommendations include now familiar Speculative Fee Agreements and more controversial Damages Based Agreements. Perhaps most controversially, it recommends Qualified One Way Cost Shifting Orders removing, except in very limited circumstances, the risk of contra expenses for Pursuers in personal injury actions. Pursuers would still be exposed to significant financial risk in respect of their own expenses so a comprehensive funding package would still be essential.

The Scottish Government will legislate on the recommendations and consider regulation of referral fees in terms of wider legal services regulation. The Scottish Civil Justice Council Costs and Funding Committee is considering the recommendations in respect of the cost of litigation.

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