Justice Committee

Criminal Justice and Licensing (Scotland) Bill

Written Submission from the Glasgow Bar Association

We write with our submissions in relation to the Criminal Justice and Licensing (Scotland) Bill as invited by the Justice Committee.

We have restricted our comments to points of principle rather than a detailed review. The headings under which our submission is presented are as follows:-

Definitions
GBA
New Offences Relating to Stalking
Offence of Engaging in Paid-for Sexual Activity
Sentencing for Knife Crime

We submit as follows:-

Definitions
1 GBA means Glasgow Bar Association
2 COPFS means Crown Office & Procurator Fiscal Service
3 The words “we” and “our” refer to the Executive Committee of the Glasgow Bar Association which has approved this submission to the Justice Committee.

GBA
1. The Glasgow Bar Association was formed in 1959. The objects of the Association, as contained in its constitution, include the promotion of access to legal services and to justice; to consider and, if necessary, formulate proposals and initiate action for law reform and to consider and monitor proposals made by other bodies for law reform. The GBA also offers legal education programmes and sponsors and supports legal education and debate at Scotland’s Universities. We are an independent representative body.

2. Today the GBA remains a strong, independent body. It has just amended its constitution to allow Corporate Membership and current member levels sit at around three hundred, by far the biggest Bar Association in the country. Recent membership applications have been received from Govan Law Centre, Messrs MacRoberts and Messrs Thompsons Solicitors. The GBA would encourage the Justice Committee to continue to seek its views on all legislative matters.

3. The contents of the submission are based on GBA members practising in the Summary Sheriff and JP Courts in Glasgow on a daily basis.
New Offences Relating To Stalking
4. In Principle the GBA has no difficulty with this proposed amendment. It is apparent that with the increased usage of mobile phone and internet communication, the capacity for forms of harassment and stalking conducted by means of telecommunications has increased. There are cogent public policy reasons for introducing this new offence which the GBA has considered and accepts. Harassment by e-mail can be a particularly disturbing type of harassment and one which is particularly convenient and easy to perpetrate.

Offence of Engaging in Paid-for Sexual Activity
5. The GBA has no comment to make on this proposed amendment. It supports the general public policy principle of the amendment.

Sentencing for Knife Crime
6. Knife Crime is a particular problem in Glasgow and the GBA welcomes any initiative which might help to address the problem. It is apparent from recent publicity that Strathclyde Police appear to be stopping and searching for knives on a wide-spread basis. We shall address both amendments in the one submission by explaining that, on summary complaint, if convicted of an offence under Section 49 of the Criminal Law Consolidation (Scotland) Act 1995, an accused can receive a maximum sentence of twelve months imprisonment. On indictment, the maximum sentence is one of four years imprisonment. We understand that COPFS has a policy whereby an accused charged with a contravention of Section 49 as aforesaid and who already has a Section 49 conviction, will be prosecuted by way of solemn procedure (maximum four years).

With regard to Mr Baker’s amendment, it seems to us that a likely consequence of this amendment if enacted would be that an individual who is caught in possession of a knife but who had perhaps forgotten that the knife was in his or her possession would be imprisoned for six months. Often a situation is presented to the Sheriff whereby a tradesperson who will use a knife or sharp instrument in the course of his or her employment, will be found in possession of the knife when not in the course of his or her employment. Often it is submitted to the Sheriff that the accused had forgotten that the knife was in his or her possession. It seems to us that Mr Baker’s amendment would result in such an accused person, as a first offender being sentenced to six months imprisonment. It is unlikely that the courts given the circumstances mentioned would treat such a case as “exceptional”.

Similarly, the amendment by Mr Aitken would have the effect of placing an onus on the accused to satisfy the court in mitigation, that a period of two years imprisonment would not be justified.

Generally speaking, we do not think that it is in the interests of justice for pressures to be placed upon Sheriffs with regard to the exercise of their
discretion in sentencing. The recent case of MM v. Watson SCCR 2009 847 explains the difficulties that courts may face when the discretion of the Sheriff is fettered and can only be exercised in “exceptional” circumstances.

Glasgow Bar Association
17 March 2010