

<b>Institution:</b> Robert Gordon University
<b>Unit of Assessment:</b> UoA 20 Law
<b>Title of case study:</b> Contribution to legislative change and legal practice
<b>1. Summary of the impact</b> (indicative maximum 100 words) <p>Two particular examples of impact on legislative change and legal practice are described: impact on the parliamentary process and impact on mental health practice and procedure. The first example describes contribution to debate during the parliamentary process for the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill and contribution to the decision to reject rushed emergency legislation. The research team's response to the consultation by the Justice 2 Committee was widely referred to by organisational representatives and individuals in the debates. The second example focuses on the impact from a key text, which has been used by both sides and judges in Sheriff Court appeals. The impact here is in its verifiable effect on the practice of law in courts and in the making of legal determinations.</p>
<b>2. Underpinning research</b> (indicative maximum 500 words) <p>The research which underpins this case largely concerns the work of two individuals within the School of Law in RGU: Dr Sarah <b>Christie</b> (nee Oliver) (Senior Lecturer, 2004 – 2009; Reader in Law, 2009 - present); and Derek <b>Auchie</b> (Course Leader and Senior Lecturer in Law 2002 - 2012).</p> <p>A large part of <b>Christie's</b> research work in the last 16 years has involved looking at the adequacy of common law in the face of attempts to legislate, across a number of areas. The first paper in this vein (<b>UR1</b>) described recent trends in breach of the peace, with particular focus on how the definition and scope of the crime within Scots law had waxed and waned over the decades, and proved itself to be capable of being extremely elastic and capable of being stretched to cover a wide range of types of low to moderate level criminal behaviour. <b>Christie</b> then went onto tackle further issues around the definition of breach of the peace and its inherent flexibility, in the light of the requirements for procedural fairness under Art 6 of the European Convention on Human Rights (<b>UR2</b>). This overall theme of the adequacy of common law and the need to legislate, was further analysed (<b>UR3</b>) in the context of the debate on assisted suicide following the media frenzy prompted by the Diane Pretty case.</p> <p><b>Christie's</b> more recent paper on breach of the peace and offensive behaviour (<b>UR4</b>) again seeks to explore the merits of using existing common law in the guise of breach of the peace over further, rushed, legislation. The paper was based on the position put forward in a written response (<b>CE1</b>) with Dr David McArdle (Senior Lecturer, Stirling Law School) to the Justice 2 Committee consultation on a proposed Bill, <b>Christie's</b> contribution being on criminal law. The paper (<b>UR4</b>) involved an examination of existing criminal law provisions to deal with offensive behaviour in light of major debate following Old Firm (Celtic and Rangers derby) games in the previous season and the Neil Lennon case. It concluded that sufficient common law provisions were already available, contrary to Government stated position, and it was critical of the Government's approach to emergency legislation.</p> <p>The second example of impact, which is largely seen as an impact on legal practice and procedure, is underpinned by <b>Auchie's</b> text on the new Scottish Mental Health Tribunal (<b>UR5</b>). In</p>

## Impact case study (REF3b)

his role as part time tribunal chair on the Mental Health Tribunal for Scotland, **Auchie** recognised the need for a book on tribunal procedure to help those dealing with a system that had been significantly overhauled. The text (**UR5**), looks to explore, explain and put into context an important new development in the law (the reformed Mental Health (Care and Treatment) (Scotland) Act 2003). It attempts to address some of the legal and procedural questions which arose in the context of what was a new process.

The text, (written with Advocate, Ailsa Carmichael), recognises the importance of careful implementation of procedural and evidential rules, where such rules aid fair, balanced decision-making. **Auchie** has been working in the field of legal process and procedure for some time, and has produced a number of outputs on statutory interpretation, in particular, an earlier text which covers summary cause procedure in the Sheriff Court (**UR6**).

### 3. References to the research (indicative maximum of six references)

**UR1** – Christie, S., “Recent Trends in Breach of the Peace” 1997 *Scots Law Times* 292

**UR2** – Christie, S., “Prosecutorial precision and the European Convention on Human Rights” 2000 (2) *Scottish Law and Practice Quarterly* 111

**UR3** – Christie, S., “Assisted Suicide: a patient’s right or ‘a legally questionable medical hypocrisy’?” 2002 *Scottish Law and Practice Quarterly* 261 (with Linda Taylor, then of The Robert Gordon University).

**UR4** - Christie, S., “The Offensive Behaviour at Football and Threatening Communications (Scotland) Bill – strong on rhetoric but weak on substance?” 2011 SLT 185.

**UR5** - D. Auchie (with A. Carmichael) *The Scottish Mental Health Tribunal: Practice and Procedure*, Dundee Uni Press, 2008

**UR6** - Auchie, *Summary Cause Procedure in the Sheriff Court*, 2<sup>nd</sup> edn., Lexis Nexis 2004.

### 4. Details of the impact (indicative maximum 750 words)

In line with the University’s focus on applied, translational research, the main impacts here are within two particular non-academic communities; practitioners (particularly judges and tribunal chairs) and legislators. Here the impact has been in respect of both legal substance and process, and has contributed to debates around effecting change to the existing law, and to how law is interpreted and applied.

The first example of impact describes contribution to the debate during the parliamentary process for the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill and contribution to the discussion about whether to reject emergency legislative procedure. The response (**CE1**) to Justice 2 Committee consultation in 2011 led to discussion in Committee debates of the position put forward by **Christie** and McArdle.

The written submission is referred to and used by various other respondents and by MSPs (**CE2**) during debates. In addition, the consultation response was an agenda item (**CE3**) where it was discussed extensively (**CE4**). The submission added weight to the argument behind rejection of

## Impact case study (REF3b)

emergency legislative procedure, and use of more normal parliamentary process where lengthy debate of the Bill could take place.

The stance taken in the written submission was also discussed in press articles (Douglas Walker, "New hate crime law's an attack on justice", The Sun, 2 Sept 2011; Eddie Barnes "Reality bites", Scotland on Sunday, Jun 26, 2011) meaning the issue, and the researcher's position on the issue, has reached a wider audience than originally anticipated. The work has had further reach into the area of human rights in Scotland, where the submission paper was cited in the Scottish Human Rights Commission's research report (CE5).

**Christie** was also invited to speak to the Fans Against Criminalisation campaign which is made up of the main Celtic supporters' organisations, at a public meeting they organised in opposition to the Bill. An invitation-only symposium, drawing its audience from practitioners and government bodies, was also organised, at which **Christie** was invited to present her research findings. (In both cases, **Christie** was unable to attend for the reasons underlying the special circumstances noted for her) (CE6).

The second example of impact is largely concerned with impact on process and procedure. These fields (process and procedure) are sometimes rather overlooked in favour of substantive aspects of law but are the areas of law that have significant relevance to, and impact on, legal practice, both at the level of practitioners and courts. Evidence of this can be found in the positive citations and reviews of Auchie's work by practitioners in a number of fields, the MHTS book especially was positively reviewed (CE7) in the light of its contribution to practice, as well as academia.

The book has also been utilised in appeal hearings. There is evidence of use made by Sheriff Principal Bowen of specific points relating to the role of curators in appeal hearing in the case of *Gordon Henderson v Mental Health Tribunal and Grant Pagan* (CE8), an appeal to the Sheriff Principal from a decision of the Mental Health tribunal. It was referred to by both sides in their arguments on a particular point of statutory interpretation, and by the judge. In addition, the text was cited in the judgement by Sheriff Principal Young in the case of *Black v MHTS* in 2010 (CE9). The impact here is in its verifiable effect on the practice of law in the courts.

The book has also been cited in consultation responses from Howard League Scotland. (The Howard League for Penal Reform in Scotland is an independent organisation whose members seek improvements to the criminal justice system in Scotland.)

##### 5. Sources to corroborate the impact (indicative maximum of 10 references)

**CE1** - Written response presented to Scottish parliament (Justice 2 committee) for their hearings on emergency legislation (joint with Dr D McArdle). Available from:  
[http://www.scottish.parliament.uk/S4\\_JusticeCommittee/Inquiries/OB1\\_Dr\\_Sarah\\_Christie\\_and\\_Dr\\_David\\_McArdle.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/OB1_Dr_Sarah_Christie_and_Dr_David_McArdle.pdf)

**CE2** – Reference to the written evidence by Graeme Pearson MSP (South Scotland, Labour) in the Official Report of the Justice Committee, Wednesday 22 June, 2011, p. 110  
<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6366&mode=pdf>

**CE3** - Justice Committee Agenda, 2nd Meeting, 2011 (Session 4), Tuesday 21 June 2011  
[http://www.scottish.parliament.uk/S4\\_JusticeCommittee/Meeting%20Papers/jup11-02.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Meeting%20Papers/jup11-02.pdf)

**CE4** – Official Report of the Justice Committee, Tuesday 21<sup>st</sup> June, 2011, pages 18-19; 57-61; 66.  
<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6359&mode=pdf>

**CE5** - Scottish Human Rights Commission, "Getting it Right? Human Rights in Scotland", 2012, Page 173-174.  
<http://www.scottishhumanrights.com/application/resources/documents/SNAP/GettingitRightAnOverviewofHumanRightsinScotland2012.pdf>

**CE6** – Emails on file from symposium organisers and organiser of public meeting.

**CE7** - Book review – 2011 SCOLAG 79 (3) March p401 (back page)

**CE8** - *Gordon Henderson v Mental Health Tribunal and Grant Pagan* (2010 WL 2937508),  
Judgement from Sheriff Principal Bowen:  
[http://www.mhtscotland.gov.uk/mhts/files/Judgements/Henderson\\_v\\_MHTS.pdf](http://www.mhtscotland.gov.uk/mhts/files/Judgements/Henderson_v_MHTS.pdf)

**CE9** - Judgement from Sheriff Principal Young.  
[http://www.mhtscotland.gov.uk/mhts/files/Judgements/Black\\_v\\_MHTS\\_2010.pdf](http://www.mhtscotland.gov.uk/mhts/files/Judgements/Black_v_MHTS_2010.pdf)