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A comment on Case and Comment

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Comment on commentary is a curious creature. Sure, there is a place for writing about writing, perhaps for stylistic and motivational reasons, but is there a place to clog up a journal with a possibly self-indulgent comment about content? Up to a point. For those who disagree with me, I pray your forbearance, and also offer some assurance that I will be brief and not self-over-indulgent. Further, I can find some succour from recent contributions to this journal that articles about articles can indeed have a place.¹

In 2017, the Juridical Review reintroduced a regular “Case and Comment” feature.² This was to play host to contributions of 2,000-3,000 words of targeted analysis. Three of its four issues that year carried notes on matters including criminal law, employment law, access to justice, human rights, and family law. Further topics followed in 2018, with the previous issue offering insight on topics such as delictual liability for the negligent acts of the police, minimum unit pricing for alcoholic drinks (and the related EU law implications), and the law of landlord and tenant. The majority of these have scrutinised a recent judgment, but it is not just about cases. There have also been comments on legislative developments (in relation to the rights of third parties to a contract, and the new private residential tenancy) and law reform proposals (on the important work of Scottish Law Commission on moveable transactions).³

Writing as one of two co-editors of the Case and Comment section, I acknowledge that I am somewhat invested in what I am about to sing the praises of. I must also acknowledge there are other places for short notes to be published, including the Scots Law Times (News), the Edinburgh Law Review’s “Analysis” section, and the Journal of the Law Society of Scotland (to name but three),

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¹ Jane Mair, “The Juridical Review: Some Reflections on its Past, Present and Future” 2017 Jur. Rev. 3; Alisdair MacPherson and Alasdair Peterson, “The Rise of Student Law Journals in Scotland” 2017 Jur. Rev. 207.

² Nominate “Case and Comment” pieces were a feature of the Juridical Review in previous years, although there were none in 2006, 2010 and 2011. 2009 was the last year to carry pieces branded as “Case and Comment”, but there were some short contributions in the years that followed that might legitimately have been branded as such.

³ In order of appearance, these various contributions are: Kirsteen Shields, “*McMaster v Scottish Ministers – The Tenant Farmers Case*” 2017 Jur. Rev. 113; Gillian Black, “Crossing the Threshold: Judicial Clarity on Permanence Orders and the Adoption and Children (Scotland) Act 2007” 2017 Jur. Rev. 169; Isla Callander, “*AB v HM Advocate: Rationalising Restrictions on the use of the ‘Reasonable Belief’ Defence*” 2017 Jur. Rev. 179; Tikus Little, “The Contract (Third Party Rights) (Scotland) Bill: Resetting the Law” 2017 Jur. Rev. 195; David Christie, “Construction Contracts and the Contract (Third Party Rights) Bill” 2017 Jur. Rev. 195; Emily Rose, “*R. (on the application of UNISON v Lord Chancellor: A Masterclass in the Constitutional Right of Access to the Courts*” 2017 Jur. Rev. 261; Philip Glover, “The Admissibility of Covert Video Data Evidence in Wildlife Crime Proceedings: A ‘Public Authority’ Issue?” 2017 Jur. Rev. 269; Kieran Buxton, “Searching for Clarity: *Green v SIG Trading Ltd*” 2017 Jur. Rev. 279; Alisdair MacPherson, “The Future of Moveable Security in Scots Law? Comments on the Scottish Law Commission’s *Report on Moveable Transactions*” 2018 Jur. Rev. 98; Peter Robson, “Reviving Tenants’ Rights? The Private Housing (Tenancies) (Scotland) Act 2016” 2018 Jur. Rev. 108; Mitchell Skilling, “*St Andrew’s Forest Lodges Ltd v Grieve: The Lease’s Fifth Element in Action*” 2018 Jur. Rev. 122; Sarah Arnell, “*Robinson v Chief Constable of West Yorkshire Police: A Re-interpretation by the Supreme Court*” 2018 Jur. Rev. 128; Darren Harvey, “*Scotch Whisky Association v Lord Advocate*” 2018 Jur. Rev. 133.

and it might be wondered why such coverage is needed in a small jurisdiction like Scotland where there are is relative paucity of decided cases.

Be that as it may, the range and quality of contributions to the Juridical Review's Case and Comment section demonstrates the revival of Case and Comment was worthwhile. The fact that Scotland is a small jurisdiction can also be turned into justification to make space for suitable coverage.

Commentators need to make the most of what there is. And in any event, we should not downplay the need for informed comment in our small jurisdiction. There is a great deal of new law (from the Scottish Parliament and elsewhere) to contend with.

Regarding our approach to the Case and Comment section, we have managed to allow a certain flexibility to ensure quality content has not been constrained by word count restraints, with several pieces winding up longer than our ostensible word limit. Meanwhile, the very existence of Case and Comment has also allowed for further work to be created: anecdotally, I can confirm that some contributors started what they thought might be a shorter note only to realise more words were necessary than even our slightly elastic upper word limit would provide; this was the case with my own contribution on short-term letting.⁴

As for the discipline of offering shorter notes in this era of the (UK) Research Excellence Framework (the REF),⁵ which allocates monies in a way that generally favours longer pieces, the pressure to write such longer articles is clear. That being the case, I would submit that, away from the REF, this internet era coupled with associated and independent competition for everyone's precious time creates a climate that is still suitable for short, punchy, surgical writing.⁶ The bumper crop of Case and Comment in the previous issue offers an object lesson in that. A short note can also offer a first route to publication for an emerging researcher, which could be quite a fillip for someone at a crucial stage, or it might offer a way for a more-established commentator to get some initial ideas out there in a way that has a bit more cachet than, for example, a self-published blog post. Case and Comment also offers a place for informed dialogue on topical issues, a point ably illustrated by a contribution in this issue that offers another perspective on short-term letting.⁷ Returning to the REF, short notes can be a way of bringing research to the attention of policy makers and indeed courts, which can feed into knowledge exchange and impact.

I am biased, but I think I have offered just a few reasons why a recharged Case and Comment section is to be welcomed. In conclusion, I will opportunistically note that further submissions to it will also be welcomed. If content of a similar standard to what we have seen recently continues to flow in, there is no reason why Case and Comment should not play a useful role in relation to the development of the law in Scotland and beyond in the future.

⁴ Malcolm M. Combe, "Land Law Responses to the Sharing Economy: Short-Term Lets and Title Conditions" 2017 *Jur. Rev.* 219.

⁵ <http://www.ref.ac.uk/> [Accessed 30 July 2018].

⁶ See, for example, this note by Andrew Jensen Kerr, "Writing the Short Paper" (2016) 66 *Journal of Legal Education* 111, at <https://jle.aals.org/home/vol66/iss1/12/> [Accessed 30 July 2018]; cf. Douglas Cusine, "The impact of publications in legal journals" 2018 *SLT (News)* 77.

⁷ Andrew Todd and Hannah Leslie, "Short-term lets and title conditions: a house builder's perspective" 2018 *Jur. Rev.* 210.