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Dear Convener

LEGAL AID REFORM AND ACCESS TO JUSTICE

Thank you for your letter of 29 March 2023 regarding access to justice and the role of legal aid.

Since taking up my new appointment I have had the opportunity to consider the Official Report from your round-table session of 14 March 2023. I found the evidence from the various viewpoints of those working within the Scottish Justice System incredibly insightful. The Scottish Government recognises the invaluable contribution that all of these organisations make to help the people of Scotland promote and secure their rights.

On 28th March 2023, a copy of a letter and attached paper provided to the Criminal Justice Committee in June 2022 was forwarded to you for circulation to Committee members. This paper addresses a number of topics raised by witnesses at the round-table event including:

- current provision of legal aid; recruitment and retention of solicitors (particularly in criminal defence); newly qualified solicitor salaries; and
- access to a legal aid solicitor.

I trust the Committee found this of assistance. Legal aid is complex but many of the current difficulties experienced by providers of legal services are not unique to those working in the legal aid sector. Evidence provided to the Committee at its meeting of 28th March 2023, during its consideration of The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2023, also touched on some of these issues and I trust that information was of value.

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Funding

Scotland has one of the most generous legal aid systems in Europe, in terms of spend per capita, eligibility and scope. We are one of only a few countries that has a demand led budget for legal aid, covering a wide scope of actions. Expenditure is therefore driven by the number of legal aid applications paid during a financial year. Legal aid expenditure has been decreasing for over a decade, in the main due to a significant drop in criminal case reports progressing to court.

Since 2019 the Scottish Government has delivered 3 uplifts across all legal aid fees and in 2021 £9 million of grant funding was distributed to assist legal aid providers through the pandemic. The aforementioned instrument approved by your Committee on 28th March, will implement a further £11 million package of legal aid reforms including another fee uplift worth 10.25% overall. This will take total additional funding in legal aid to £31m since April 2021.

The Scottish Government remains committed to working with the legal profession to develop an effective and evidence-based mechanism for keeping legal aid fees under review on an on-going basis. Meetings have already taken place in early February and on 24th April to move forward with the tendering process. These were very positive and constructive. A further meeting is scheduled to take place in early June. Considerable work has been undertaken to support and reform legal aid within the confines of the current legislative framework and through a pandemic response.

Access to Legal Advice

Access to legal aid is an important aspect in supporting individuals to claim their rights through the courts, where they choose to. The Scottish Legal Aid Board's (SLAB) most recent annual report shows that the number of grants of civil legal aid in 2021-22 was slightly above the long term (5, 10 and 15 year) averages. Civil solicitors tend to cover a wide geographical area and have always been largely based in town and city centres near to the courts. It will be useful to gain an understanding, when the Law Society publishes its report, of what available evidence is there regarding access to a solicitor in civil matters.

To assist with its statutory obligation to monitor the accessibility and availability of legal services, SLAB is undertaking a research project aimed at exploring how trends in legal aid activity at the sub-national level compare to the national trend and vary between areas of law. The research will analyse data relating to the location of the applicant, solicitor and court.

Through SLAB the Scottish Government funds public legal services through the Civil Legal Assistance Office (CLAO), the Public Defence Solicitors' Office (PDSO) and the Solicitor Contact Line (SCL). All of these services can, and do, operate across a wide geographical area.

Equality and Diversity

The Scottish Government wants to see an independent, strong, diverse and effective legal profession in Scotland of high quality and trusted solicitors with access to justice for all.

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The available data and evidence from a variety of different sources such as the legal profession, consumers of legal services, the Scottish Parliament Justice Committees, and others have identified challenges in recruitment and retention facing the legal profession and the legal services sector at present and in the future.

The Scottish Government has agreed to establish a short life working group entitled “The Future of the Legal Profession in Scotland” which will be co-chaired rotationally between myself, the CEO of the Law Society of Scotland; and the Dean of Faculty of Advocates. The first meeting of the Group was held on 25th April 2023 and future meetings will be held at the end of August, in December 2023 and annually thereafter to review progress. The overarching purpose of the Group is to work collaboratively and holistically to propose changes and agree actions that will increase the diversity, capacity and equality of opportunity within the legal profession and judiciary. This in turn will provide support for the planning, collaboration, and improvement of legal services in Scotland.

The Way Forward

The Scottish Government consulted on potential legal aid reforms before the pandemic. We will be undertaking further targeted engagement, further to our manifesto commitment on legal aid reform, during this year. Such engagement is necessary to further inform the consultation exercise for legal aid reform in 2019. It is important to recognise the post-Covid justice landscape and user need, which has seen much greater adoption of technology by users, courts and legal aid providers.

We remain committed to reforming the current system of legal aid to place the user at its centre. We will give particular consideration to how more targeted and planned interventions can support user need, within a demand-led budget for legal advice and representation, to assist legal aid in being rightly recognised as an invaluable public service.



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