

26 April 2024

Siobhian Brown MSP  
Minister for Victims and Community Safety  
Scottish Government  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

By email only [ministervcs@gov.scot](mailto:ministervcs@gov.scot)

Dear Minister,

### **Legal aid – fee review mechanism**

Over a number of years, the Law Society has expressed deep concern at a growing crisis within Scotland's legal aid system. We know many solicitors are ceasing legal aid funded work because rates of pay offered by the Scottish Government fail to provide the financial return necessary to justify the work involved. Recruiting into this part of the profession has been incredibly difficult, with those doing legal aid funded work feeling overworked and undervalued.

Our concern throughout has been for those who rely most on criminal, civil and children's legal aid. With fewer and fewer solicitors prepared to undertake legal aid work, it is the most disadvantaged and vulnerable in our society who risk losing their access to justice.

It was for this reason that we argued for a proper legal aid fee review mechanism. Our hope was that, similar to parts of the public sector, a structured and fair process would provide independent analysis and recommendations to the Scottish Government for regular uplifts in fees.

We were not alone in arguing for this. In July 2021, the Legal Aid Fee Panel report recommended that research be carried out to provide an evidence guided process for setting legal aid payments and reviewing them regularly. It was even suggested in 2022 that the outcome of research into the establishment of a fee review mechanism would enable the Scottish Government to look at including increases in the 2023/24 budget.

It was encouraging that the Scottish Government made a public commitment in July 2022 to develop a framework for creating a review mechanism. To progress this, we have been a full and committed participant in Legal Aid Remuneration Project discussions with the Scottish Government, and others, and have been committed to being represented on the Research Analysis Group (RAG) for this work.

In September 2022 we asked for a rapid timescale for the development of a fee review mechanism to reassure the profession. In February 2023 we were provided with a draft from Scottish Government on how they envisaged the legal aid payment and remuneration review development project, and collaborative meetings finally began from



April last year to develop the specification for the invitation to prospective researchers to tender for the research work.

However, as of today, no company or organisation has been appointed to undertake the research which the Scottish Government has said is required. The reality is that, almost two years on from the Scottish Government's public commitment to provide a framework for creating a fee review mechanism for legal aid, no tangible progress has been made.

We find this situation incredibly frustrating. We have participated, patiently and in good faith, through regular discussions. Nevertheless, we remain no further forward. Meanwhile, legal aid solicitors continue to work in unprecedentedly challenging times with many closing their businesses, and whole communities being left without locally available legal aid solicitors.

Our concern has now been exacerbated by additional information given to us by the Scottish Government. Last week, officials informed us that while the current project is intended to identify a mechanism for review, there is no guarantee that actual reviews would result in fee increases, even if this was recommended. We consider this to be unacceptable and calls into question the very basis on which the work was to be undertaken to create the mechanism.

**Given this, the Law Society's legal aid committee has decided to withdraw participation from the Legal Aid Remuneration Project and research group. We do so because, regrettably, we have lost confidence both in the delayed process of creating a mechanism and in there being any meaningful outcome if and when a mechanism is agreed.**

Instead, we believe the Scottish Government must now urgently return to address the current level of legal aid fees. In July 2022, the Scottish Government recognised legal aid fees were too low and agreed a 10% across the board increase. Two years of inflation has now completely negated that increase. It means legal aid fees have returned, in real terms, to where they were in 2022.

If fees were too low then, they must logically be too low now. Therefore, taking the Scottish Government's own arguments from 2022, it is clear legal aid fees must now rise. Given solicitors undertaking legal aid are now in the exact same position as before the increase agreed two years ago, a further immediate double digit percentage increase to legal aid fees across the board is now essential.

We believe the Scottish Government must act now - delivering an across the board increase in fees, and an assurance that recommendations from any agreed fee review mechanism will be acted on and **not** ignored.

If and when the Scottish Government is prepared to make these two commitments, we can consider returning to participate in the fee review mechanism work and would do so with the same will and good faith we have shown throughout the last two years.

Yours sincerely

**Ian Moir & Pat Thom**  
**Legal Aid Committee Co-conveners**  
**Law Society of Scotland**