



26 Drumsheugh Gardens
Edinburgh EH3 7YR
Legal Post LP1 Edinburgh -1

T: 0131 226 7411
F: 0131 225 2934

Textphone: 0131 476 8359

TO ALL PRACTITIONERS IN CRIMINAL LAW

Our Ref: LS203/sd/mmcg
Date: 24th June 2008

Dear Colleague,

SUMMARY CRIMINAL LEGAL AID REVIEW GROUP

This is a note to update criminal practitioners on the current situation with the review of the changes that will take effect on 30th June 2008. The next meeting of the Review Group will take place in early July. The Review Group involves the Society, Government officials and the Scottish Legal Aid Board. At the Society's suggestion COPFS are to be asked to attend also.

Practising criminal lawyers who were involved in the negotiations during the consultation process last year and earlier this year represent the Law Society on the Review Group. They are Ken Dalling from Stirling, Ian Bryce from West Lothian, Vincent McGovern from Hamilton, John Scott from Edinburgh and Oliver Adair (Convenor of the Legal Aid Solicitors Committee). Gerry Considine from Glasgow was on the Group but the recent repeat of industrial action by Glasgow (on 9.6.08) was considered incompatible with continuing membership. The Review Group members have been chosen because of their significant involvement in earlier discussions with Government officials and the Justice Secretary.

The Review Group has now had its first meeting (on 29.5.08) to try to clarify the terms of reference and ensure that the Society can get access to the fullest possible information, in particular the data relating to the assumptions that underpinned the consultation. As with Faculties and Bar Associations throughout the country we believe that those assumptions were totally wrong, perhaps especially in relation to the assumption that there would be 26,600 failed (i.e. challenged) direct measures. We made this point in earlier discussions and will follow this through when the statistics are available. We are sure that we will be proved right in which case the review process will identify any necessary corrections.

We have not forgotten the need to remind the Government that there has been no increase in summary criminal legal aid rates for many years. We are working on the basis that the Review Group should be gathering information with a view to helping us to make the case for such increases. We are also gathering information with a

view to informing the process of preparing primary legislation to try to make sure that any problems with the new regulations identified from 30.6.08 can be corrected. We see the current regulations only as an interim measure on the basis that we were told that there was no slot for primary legislation.

We appreciate that this is uncharted territory and the present is a time of great worry for the profession, especially those practising criminal law. It is our intention to get as much information as possible to the profession once the review gets properly underway. Please get in touch with us if you have information we need or which should be fed into the review process.

It is important to remember that the review is not concerned with diversion per se. That is a matter for COPFS and the Government cannot interfere in an area of responsibility of the Lord Advocate. We are very aware of the issues there but the Review Group is to look primarily at the legal aid implications of the reforms.

There are those in the profession who are cynical about the process when it comes to the review of legal aid. The Society is clear that following a consultation process which was extended there have been significant changes to the original proposals. Even after the consultation process had finished the Cabinet Secretary agreed to make further concessions at the last meeting he held with a representative group of Deans and Presidents of local Faculties and Bar Associations.

We are not asking for blind faith - and each practitioner and Faculty will decide for themselves - but for those of us who have been involved for years in trying to discuss and negotiate with politicians and officials this consultation has been different.

The review process will run for some time, probably well beyond this year, but the first major staging post will be in December 2008. The Cabinet Secretary has indicated that he will meet with us again at that time. In the meantime, we are of the view that we can improve our position best by taking part in the review process and reminding the Government of the flaws we have already pointed out as well as any unforeseen problems.

The Society has met with the Glasgow Bar Association to discuss a joint way forward. Whether this is possible is largely up to them now. We understand that the GBA may proceed with a motion for a Special General Meeting of the Society. With regret we think that such a course would be counter-productive. This is a time for unity in the profession, not division. The GBA has many talents and much energy at its disposal, which should be used to the greatest effect. None of us, or our Faculties, has undertaken that we will merely accept whatever is given to us by Government. Already in the review process we have identified a problem with the draft regulations that related to matters never discussed in the consultation process. The regulations were amended to reflect our concern.

Perhaps through a lack of information there has been some unhelpful division in some areas. While different Faculties have decided in good faith on different approaches we should proceed on the basis that we all agree that the legal aid settlement needs to be monitored and improved. As a first communication we attach at the bottom the contact details for the Review Group members. Please feel free to call us to advise of concerns or give us information you think we need.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stuart Drummond', with a long horizontal flourish extending to the left.

Stuart Drummond
Law Reform Officer
DD: 0131 476 8147
E: margaretmcgregor@lawscot.org.uk

Signed on behalf of the Review Group:

Oliver Adair, Adair and Bryden, 01698 884946
Ian Bryce, Central Criminal Lawyers, 01506 416999
Ken Dalling, Dalling, 01786 448111
Vincent McGovern, McGovern and Co, 01698 359550
John Scott, Capital Defence Lawyers, 07779-328656