



By email:

Annabelle Ewing MSP  
Minister for Community Safety & Legal Affairs  
Scottish Government  
St Andrew's House  
Regent Road  
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Our Ref: KL/IM/LB

Dear Minister,

### **Criminal Legal Aid**

Thank you for meeting with me and others from the Law Society of Scotland on 14 March 2017. We appreciated the open and frank discussion on the legal aid implications in respect of the introduction of Part I of the Criminal Justice (Scotland) Act 2016. The Law Society office bearers, chief executive and I found the meeting helpful and constructive. We undertook to follow up that meeting with suggestions on where we can move forward and develop a consensus.

### **The proposed legal aid fee for Part I of the Criminal Justice (Scotland) Act 2016**

On the 8 March, the Scottish Government and the Scottish Legal Aid Board (SLAB) met with representatives from the Criminal Legal Aid Committee (the Committee) to provide their proposals for the legal aid fee for Part I of the Criminal Justice (Scotland) Act 2016 (the 2016 Act).

As we discussed, Part I of the 2016 Act is expected to commence in July 2017, and will introduce a number of changes to police investigation and police station procedures. At the meeting of 8 March, members of the Committee expressed disappointment and concern about the late timing of the fee proposal and have repeatedly asked for detail of the fee. Given the significant changes to the law on Police Station Advice, we view the introduction of Part I of the 2016 Act as a major area for criminal legal aid reform.

Amongst our initial concerns raised were the wholly inadequate figures contained in the proposal, along with the definition of anti-social hours. Between the volume of the work post-implementation and a new set of fees that offers little more (and, indeed, sometimes less) remuneration than currently, there are concerns that practitioners will stop providing advice on both an own client or duty basis. Legal aid must be adequately funded for the scheme to be sustainable.



The definition of “antisocial hours” covers work between the hours of between 2200hrs and 0700 hours. Weekends, Bank Holidays and even Christmas Day are not included within the current or proposed definition of antisocial hours. It was our understanding that the fee change in 2010 was an interim measure until the implications of the regime could be fully considered.

We appreciated you recognising the shortcomings in the current definition of anti-social hours and asking us to come back to you with proposals for the legal aid fee for Part I of the 2016 Act. These are set out below: -

- Attendance Fee for police station advice as a result of section 44 of the 2016 Act: We suggest that a more suitable arrangement for police station advice payments would be the existing fee structure for VIPER parades at £114 per hour. We propose a block fee of £114 for an attendance under section 44 which includes a fee for personal attendance by a solicitor provided in relation to a period of police custody, where the client has exercised right to consultation and where (i) the client has been assessed by the police to be a vulnerable person in terms of section 42, and (ii) the client has not exercised the right to have a solicitor present at interview in terms of section 32 in respect of that period of police custody.
- Attendance Fee for police station advice as a result of section 32 of the 2016 Act: Similar to the above, we suggest that a more suitable arrangement for police station advice payments would be the existing fee structure for VIPER parades at £114 per hour. In respect of the inclusive fee for all work in relation to personal attendance by a solicitor in relation to a period of police custody where the police have intimated an intention to interview and the client has exercised the right to have a solicitor present, we propose a block fee of £228 for up to two hours attendance (time engaged and waiting) at a police station, excluding travel time. For attendance over two hours, there should be a block fee of £228 for each additional two hour increment, for example an additional £228 for 2-4 hours, £228 for 4-6 hours etc. For the avoidance of doubt, if a solicitor is asked to attend under section 44 when the client is taken into the police station and then later asked to attend for an interview under section 32, both attendances should be chargeable.
- Telephone calls: the current proposed fee of £30 per telephone call represents a cut. At present, the fee for similar types of telephone calls where solicitors provide advice is £34. We propose a fee of £50 per telephone call to reflect the nature of the advice that the solicitor may be required to give as a result of the changes introduced by Part I of the 2016 Act.
- Definition of “antisocial hours”: This should cover work undertaken between the hours of 1900 hours and 0700 hours. It should include weekends, Bank Holidays and Christmas Day. We accept the proposed 33% uplift for working antisocial hours.



- Travelling Time in relation to personal attendance with client in police custody: In certain cases, the current fee rate for travel to interviews is half the rate it was 25 years ago. We believe full travel time should be paid under the existing provisions for VIPER parades which is £12.67, that being part of the trial process which currently takes place in the police station, not half travel as currently proposed. We note that travelling time for other types of work may be revisited by the Scottish Government as part of future negotiations under the medium-term budget proposals. In order to simplify the fee we propose all travel time accrued under this Part of the Act is paid at £12.67 per quarter hour, including travel (to out of town courts) to the court hearing for review of conditions. We do not anticipate that there will be large numbers of courts hearings for review of conditions and therefore it would not be a significant additional cost.
- The preparatory work required for application and court appearances for review of conditions of investigative liberation, bail conditions and post-charge questioning (Sections 19, 30 and 35-36(1) of the 2016 Act): We propose that the inclusive fee for all work where a matter does not proceed to a court hearing should be £75. This would be likely to cover at least two meetings, numerous phone calls and the gathering of supporting documentation. The inclusive fee for all work where a matter proceeds to a court hearing should be £125. Further, where the case is continued to a subsequent hearing we propose an additional fee of £50 for each hearing, this being comparable to the fee for appearances at the Drug Court. For attendance at court, travel time should be paid at £12.67 per quarter hour as set out above.

## **SLAB Consultation on the Code of Practice for Criminal Legal Assistance**

During our meeting, we also discussed the Board's Draft revised Code of Practice for Criminal Legal Assistance. This was launched on 6 February 2017 with a consultation deadline of 3 April 2017.

This consultation covers a number of areas, including court and police station duty requirements. I understand that the Board plans to introduce a revised Code of Practice to coincide with commencement of Part I of the 2016 Act.

On the 14 March 2017 and, in light of the ongoing discussions in respect of the fee of Part I of 2016 Act, I wrote to the Board to ask that they 1) extend the deadline for all respondents to the consultation and 2) delay the implementation of the Code of Practice.

During our meeting, you recognised the potential merits of the Board suspending the current consultation or delaying the introduction of a revised Code of Practice, pending a decision on the legal aid fee for Part I.



Whilst this is ultimately a matter for the Board, we believe such a suspension and delay would allow the profession the opportunity to have a meaningful and informed discussion about the proposed fees for Part I of the 2016 Act. This is important to preserve the integrity of the criminal legal aid system. In the absence of a decision about the proposed fees, it will be difficult to provide a full and informed response to certain significant elements of the SLAB consultation.

I hope this additional information is helpful.

We look forward to hearing from you.

With best wishes,

Ian Moir  
Co-Convener (Criminal)  
Legal Aid Committee  
Law Society of Scotland