

# SCOTTISH LEGAL AID BOARD

## CRIMINAL JUSTICE ACT (SCOTLAND) ACT 2016 FEES PROPOSALS

### REVISED PROPOSALS DISCUSSED WITH THE LAW SOCIETY ON 23 MARCH 2017

#### 1. ATTENDANCE FEES FOR POLICE STATION ADVICE AS A RESULT OF SECTION 44 OF THE CRIMINAL JUSTICE (SCOTLAND) ACT 2016

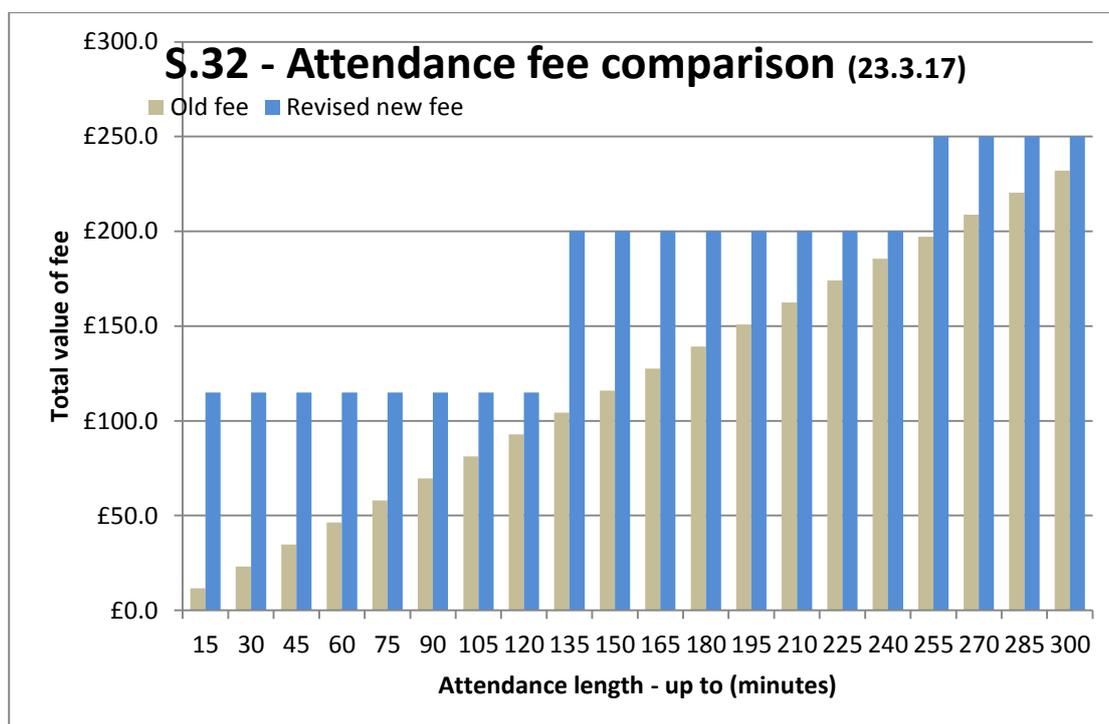
- A single fee of £30, other than for a vulnerable client. It is expected that most of the advice under Section 44 will be by telephone, and that personal attendances (other than as otherwise provided for) will be in the main unnecessary, and rare.
- A single fee of £75 will apply for an attendance where the client has been considered to be vulnerable by the police, either by age (under 18) or if there are comprehension or communication difficulties as defined by Section 42 of the Act. Estimates based on current experience show that this is likely to apply in only around 13% of Section 44 cases.
- Both fees will be increased by 33% if the advice falls within anti social hours (£39.90 and £99.75).

#### 2. ATTENDANCE FEES FOR POLICE STATION ADVICE AS A RESULT OF SECTION 32 OF THE 2016 ACT

Fees increased from the original proposals as follows:

- Up to 2 hours - **£115** (was £100). Increases on the current Advice and Assistance rates range from 396% for 15 minutes to 42% for 2 hours.
- 2 to 4 hours - **£200** (was £175) Increases on the current rates range from 92% for 2 hours 15 minutes to 8% for 3 hours 45 minutes.
- No reductions compared to current time and line fees
- Beyond 4 hours payments will be £200 plus £50 for each hour (or part of hour) thereafter.
- All fees increased by 33% if the advice falls within anti social hours (as redefined in section 4 below). (For example up to 2 hours = £152.95, and 2 to 4 hours = £266.)

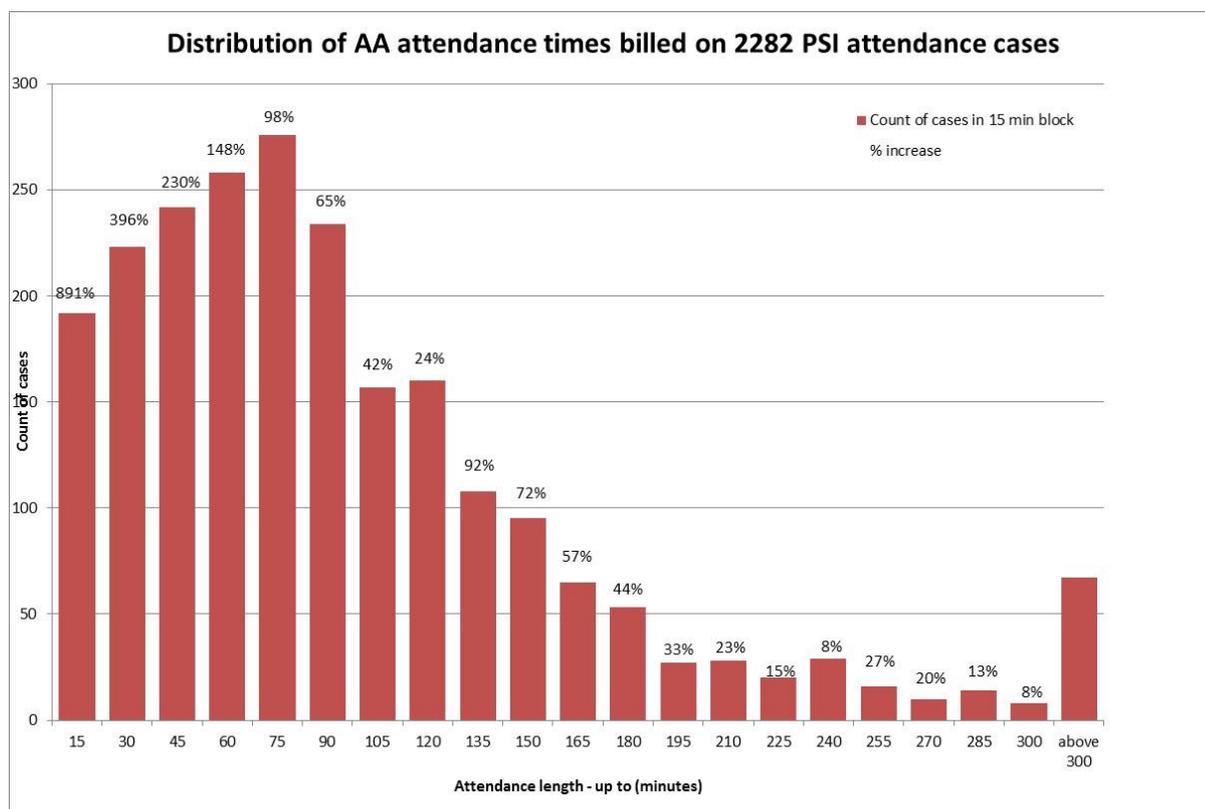
The new fees at standard (i.e. exclusive of any antisocial hours supplement) rates mapped against the existing fees for police station work are shown on the graph below. As can be seen, at every point, the new fee is higher, and at some points, significantly higher.



To assist understanding of how the fees will work, it is useful to analyse accounts lodged for police station work. Current information (from 2,282 accounts paid by SLAB for police station attendances) shows:

- 40% of claims up to one hour
- 36% of claims from 1 to 2 hours
- 14% of claims from 2 to 3 hours
- 5% of claims from 3 to 4 hours
- 5% over 4 hours

The information in chart form is shown below. The chart also includes an indication of the level of increase in fee that will be payable for each length of attendance. The fee payable in relation to a 30 minute attendance is 396% higher than the current rate. The average increase is 190%.



### 3. TELEPHONE CALL FEES

- A single fee of £30 for any telephone calls/advice in relation to Section 44 or Section 32 where no other attendance fee payable and claimed
- Payment will be £39.90 if the call is made within anti social hours

Current telephone payments in Criminal Legal Assistance cases are:

- Solemn cases, a 30 minute phone call would be £24.40. Calls are £2.75 up to 4 minutes, £6.95 over 4 and up to 10 minutes and over 10 minutes £12.20 per quarter hour.
- Advice and Assistance rate - calls are £2.64 up to 4 minutes, £6.60 over 4 and up to 10 minutes and over 10 minutes £11.60 per quarter hour. There's a minimum payment after 22.00 of £30.90,

The £30 fee still represents a substantial increase on the current advice and assistance rates used for police station cases of £11.60 paid for calls up to 15 minutes (159%) and the £23.20 for calls up to 30 minutes (29%). The fee of £30 compares favourably to the telephone fee paid in England of £28.70 in London, and £27.60 elsewhere. In addition, there is no "unsocial hour" premium in E&W for telephone advice.

#### **4. ANTI SOCIAL HOURS**

The definition of anti social hours will be changed to that proposed by the Law Society:

- 7.00pm to 7.00am all days of the week, including weekends.
- All day at weekends - Saturday and Sunday.
- Public Holidays - adding 8 public holidays (for example 2 days at Xmas, New Year and Easter, May Day and St Andrews Day).

#### **5. TRAVELLING TIME**

- Travel time in relation to a police station attendance up to 2 hours per half hour or part thereof at £11.60
- Additional travel time over 2 hours available if authorised by SLAB in advance
- An anti-social hours supplement of 33% will be available in relation to allowable travel, where the attendance itself qualifies for the anti-social uplift (irrespective of whether the travel itself occurs within the anti-social period)

This figure is based on the current travel fees for the vast majority of Criminal Legal Assistance work. In 2011, the half travel fee brought Scotland into line with other UK jurisdictions that all pay half travel fees. In England, waiting time is also half rates. We are not proposing a similar reduction for Scotland. Although introduced as part of a savings measure, it was also introduced to bring Scotland into line with the other jurisdictions as well as allowing more focus on the fees for actual legal work, advocacy, meetings with clients, etc. The proposal was also mindful and consistent with the Scottish Government's commitment to reduce its carbon footprint.

#### **6. CHALLENGES TO INVESTIGATIVE LIBERATION/BAIL CONDITIONS AND POST CHARGE QUESTIONING**

- Fee of £50 where the matter is concluded or disposed of without court appearance.
- Fee of £75 where the matter requires attendance at a court hearing
- For cases continued to a second or subsequent hearing, and fee of £50 per hearing can be paid
- Exceptional provision, whereby, if block fees do not provide reasonable remuneration, and if approved by SLAB on application, a solicitor can elect to claim fees on a time and line basis.

## Annex A - Revised Fee Proposal

### Criminal Justice (Scotland) Act 2016 - Section 32 and 44

#### 1. Attendance Fee

*Only one attendance fee under any of paragraphs A, B or C may be claimed in respect of work done for a client in relation to any single period in which a client is held in police custody.*

A	Inclusive fee for personal attendance by solicitor provided in relation to a period of police custody where the client has exercised right to consultation in terms of section 44 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	£75.00
B	Inclusive fee for all work in relation to personal attendance by solicitor provided 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 in terms of section 32	
(i)	Time engaged or waiting - excluding travel -up to 2 hours	£115.00
(ii)	Time engaged or waiting - excluding travel -over 2 hours and up to 4 hours	£200.00
(iii)	Where time engaged or waiting - excluding travel exceeds 4 hours -additional hours or part thereof	£50.00
C	Inclusive fee for any consultation or advice provision or assistance by any means in relation to a period of police custody where the client has exercised right to consultation under section 44 other than any of the circumstances provided for in paragraphs A or B above	£30.00

#### 2. Anti-social hours provision for attendance and related travel

Supplement for anti-social hours where the attendance at the place of police custody (irrespective of any travel) concludes after 19:00 or starts before 07:00, takes place at weekends (Saturday or Sunday), or on the 8 recognised national public holidays - uplift of fee element per paragraph 1A, 1B or 1C and related travel per paragraph 3

33%

#### 3. Travelling Time in relation to personal attendance with client in police custody

(i)	Travel time engaged up to 2 hours ( per half hour or part thereof)	£11.60
(ii)	Time engaged over 2 hours where authorised by SLAB in advance	£11.60

(per half hour of part thereof)

*Criminal Justice (Scotland) Act 2016 - Sections 19, 30 and 35-36(1)*

<b>1.</b>	<b>Section 19 - Application for review of conditions of investigative liberation</b>	
(i)	Inclusive fee for all work where matter does not proceed to a court hearing	£50.00
(ii)	Inclusive fee for all work where matter proceeds to a court hearing	£75.00
(iii)	Additional fee for second or subsequent court hearing - per hearing	£50.00
(iv)	For attendance at court, travel time may be charged in accordance with standard provisions - per quarter hour	£5.80
<b>2.</b>	<b>Section 30 - Application for review of undertaking conditions</b>	
(i)	Inclusive fee for all work where matter does not proceed to a court hearing	£50.00
(ii)	Inclusive fee for all work where matter proceeds to a court hearing	£75.00
(iii)	Additional fee for second or subsequent court hearing - per hearing	£50.00
(iv)	For attendance at court, travel time may be charged in accordance with standard provisions - per quarter hour	£5.80
<b>3.</b>	<b>Section 35 and 36(1) - Application for post-charge questioning</b>	
(i)	Inclusive fee for all work where matter does not proceed to a court hearing	£50.00
(ii)	Inclusive fee for all work where matter proceeds to a court hearing	£75.00
(iii)	Additional fee for second or subsequent court hearing - per hearing	£50.00
(iv)	For attendance at court, travel time may be charged in accordance with standard provisions - per quarter hour	£5.80

Under this provision a fee for travel time is chargeable only for time necessarily spent travelling to and from a court if the work undertaken is necessary work and otherwise work covered by the inclusive fee chargeable under paragraphs 1(ii) and (iii), 2(ii) and (iii) or 3(ii) and (iii) above, and the court is not in a town or place where the solicitor has a place of business