

Minister for Community Safety and Legal Affairs  
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Ian Moir  
Legal Aid Committee (Criminal)  
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Your Ref: GM/IM of 5 January 2018

Dear Mr Moir

Thank you for your letter of 5 January 2018 and the opportunity to respond to some of the issues regarding The Criminal Legal Assistance (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI2017/466).

As you are aware, the implementation of these Regulations followed an extensive process of engagement both with the Law Society of Scotland and local Bar Associations. As we have discussed and as set out in my evidence to Parliament, changes were made to the legal aid arrangements to support the new police duty scheme to reflect issues raised by the Society, including to the level of proposed fees; travel time; etc. As part of the preparations, eight stakeholder events were conducted across the country and 50 individual solicitors and firms were consulted on the draft regulations. Of these 50, only 3 responses were received from the legal profession. On the basis of the responses to the consultation and at the stakeholder events, it could not have been assumed that mass intimations of withdrawal were imminent.

Since Parliament approved the regulations there have, of course, been a number of resignations from the police station duty scheme, which I recognise is a matter for each firm or Association. I also appreciate there has not been agreement amongst the profession across the country on how the police station duty scheme should work and whether to participate. Despite this, the new provisions have now commenced and early indications are that the volume of requests for legal advice have been managed effectively. Concerns raised by some solicitors about anticipated increases in the volume of requests have not been realised.

We are keen to continue to engage with the Society and with solicitors at local level about the police duty scheme, including those solicitors that have previously chosen to withdraw from the scheme.

We recognise that there are issues relating to the operation of the police duty scheme that can be relevant to particular local circumstances and that a 'one size fits all' solution may not be appropriate to resolve these local issues. I have advised SLAB, therefore, that they should conduct further engagement with local solicitors and Associations across the country to discuss ways in which the duty scheme can operate in each area to ensure that people held in police custody have appropriate access to legal advice, whether from a private or SLAB employed solicitor.

These engagement events will take stock of the local issues that have affected the ability or willingness of bar associations to engage in police station duty. I have asked SLAB to report back to me with recommendations informed by these discussions.

While I appreciate your proposal on a further financial adjustment, aside from any other consideration, it is not by any means clear that your proposal might satisfy your colleagues and encourage them to continue to support the police station duty scheme.. One point I would like to correct in your letter is how the anticipated expenditure on police station duty has been reported. I should make clear that the figures presented do not include the costs for the Solicitor Contact Line and solely relate to payments to private solicitors from the legal aid fund. Therefore, the estimated increased expenditure from around £520,000 to £3.2 million relates to fees for private solicitors, assuming private solicitors are willing to take on this work.

I am aware that the position of wider legal aid fees is one that your colleagues are very keen to resolve. As you know I established an Independent Review of Legal Aid in February last year to look at all aspects of legal aid, to identify reforms and ensure there is a flexible and progressive system that is sustainable and cost effective. From the evidence published by the Review, I am aware that the Law Society of Scotland and other solicitors' representative bodies have made representations to the independent Review, including evidence regarding fee levels and the profitability of firms.

The independent review is due to report at the end of this month. Whatever the final recommendations of the Review, I am keen to ensure that there is an opportunity for the Scottish Government, SLAB and the legal profession to engage together to consider the recommendations. This will include consideration of recommendations made by the Review about fees. As I set out when I established the independent review, my aim is to ensure a publicly funded legal aid system that can meet the changing needs of Scotland's justice system and those who rely on it.

In moving this agenda forward, we recognise the vital importance of communication with the profession and the role the LSS have to play in that. I hope that we can work together to ensure the best outcome for those who need solicitor advice while we go forward to safeguard a sustainable legal aid system in Scotland.

Annabelle Ewing

**ANNABELLE EWING**