



Neil Rennick  
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Sent by email to [Neil.rennick@gov.scot](mailto:Neil.rennick@gov.scot) and [ceu@gov.scot](mailto:ceu@gov.scot)

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Dear Neil,

Along with colleagues I was pleased to attend the meeting on 13 January in the hope of progressing work to address the current crisis in the provision of legally aided advice and representation to the people of Scotland.

I have written to you previously to express my concerns that a critical point has now been reached. I remain of the view that if urgent action is not taken the result, by way of a diminished legal aid sector with consequential impact on the ability of citizens to access justice, will be irreparable. Subsequent to the support committed to by the former Cabinet Secretary for Justice in November 2020 there has been no further action by Scottish Government and at the meeting of 13 January very little was added to the discussion from 20 December 2021.

You have asked that the Law Society assist in the provision of information that will strengthen your position in securing additional government funding for the justice sector. I would respectfully refer you to the representations already made. You are aware of the parallel problems identified in England and Wales which are the subject of the Bellamy Report and of the concerns which have been voiced in the recent report of the Scottish Parliament's Criminal Justice Committee.

You have asked that the Law Society survey its members to gather salary information that could be shared with the Scottish Government for the purposes of comparison with the public sector. Having reflected on this I do not believe that such a process would be of material benefit. Whilst there remains a number of purely legal aid practices the fact is that, as the value of legal aid work has been allowed to diminish, the "legal aid" sector has diversified - often using privately funded court work to subsidise that which is government funded. In these circumstances I can only conclude that it would be impossible to draw direct comparisons between private firms delivering a legally aided service and public sector employers such as the Crown. What I would emphasise is the clear picture of recently, and not so recently, qualified solicitors departing the private sector for jobs with COPFS, or simply turning their back on court work altogether. This is something which the additional funding, quite properly, made available to the Crown in the hope of post COVID "backlog clearing" has only accelerated. As noted recently by the Lord President,



investment in the prosecution of cases will not provide a return unless there is a balancing resource for the defence. (Comments at the Opening of the Scottish Legal Year 27 September 2021)

The need for firms operating in the legal aid sector to offer salaries that compete with COPFS, PDSO and Scottish Government as well as other private and public sector bodies and businesses should be obvious. As should the fact that the majority of competing employers will offer pension and other entitlements that for “legal aid” firms are simply unaffordable.

Additionally, I believe that any further attempts to survey the profession is likely to be met with cynicism and ridicule. As will be obvious to you from the observations made by my colleagues from the Scottish Solicitors Bar Association there is a prevailing view that the Scottish Government is simply “kicking the legal aid can down the road”. In the current climate, I very much doubt that there would be a meaningful response from members who feel worn out, let down and, indeed, incensed by a lack of strategic action to address a history of neglect. I am telling you nothing you should not have anticipated when I observe that the SSBA is already laying plans for a “road map” of escalating actions.

Separately you have asked for specification of the benefit to be derived by Scottish Government from additional investment in legal aid at different levels. Having considered again this request, I fear that my first instinct on that matter has been confirmed. Even were it possible to guesstimate such matters I see no value in the exercise or in the product of it. The truth, in my view, is simple: following a generation of underfunding the time has come for significant additional resources to be committed to the provision of legally aided work. Underfunding has seen firms withdraw from legal aid or aspects of it. It has seen solicitors leave the legal aid sector for better pay and conditions elsewhere. It has meant that few new solicitors have any appetite to work in this field. It has meant and will mean that those who cannot afford to pay for legal advice and representation will find it increasingly difficult to instruct a solicitor. All of this has a cost to the country far beyond the money unspent.

And all of this can only be addressed by a significant increase in the sums committed by the Scottish Government by way of legal aid fees. Such an increase will not only secure the viability of legal aid practices, reasonably remunerating solicitors and the staff within solicitors firms (albeit, inevitably, at rates still below private client firms) but will also allow the legal aid sector to be sustainable and to attract new solicitors.



I refer you again to the recommendations of the Parliament's own committee and its call for short term action. I note your assurance that work is ongoing regarding fee reforms and I look forward to early, constructive engagement in that regard - all of that, however, must have at its core an increased investment in legal aid.

Kind regards

A handwritten signature in blue ink, appearing to read 'Ken Dalling'.

Ken Dalling  
President