



Neil Renwick
Director, Justice Directorate
Scottish Government
St Andrew's House
Regent Road
Edinburgh EH1 3DG

BY EMAIL

30 September 2022

Dear Neil

Legal aid proposals

Thank you for your letter of 20 September 2022. We have considered these revised proposals through our Legal Aid committee and have taken feedback from the profession.

We appreciate the Scottish Government's recognition that current legal aid fees are too low and that additional investment is needed. A generation of underfunding of our legal aid system has challenged the sustainability of the sector and the access to justice it provides. These challenges have been made more acute by the impact of the pandemic and the historic high inflation that people and businesses across Scotland are now facing.

We have consistently highlighted the reduction in the number of providers for civil, children's and criminal legal aid and the recruitment and retention difficulties that firms are facing. You will also be aware of recent work undertaken by Citizens Advice Scotland and the Scottish Legal Aid Board around increasing geographic problems in the network. At the same stage that the network of legal aid support is diminishing, the demand for help is increasing. This makes the need more urgent to conclude current proposals and to develop a framework for reviewing fees in the future.

The Scottish Government's initial offer on legal aid fees earlier this year was clearly insufficient to even begin to address the problems we highlighted. We argued that a far higher percentage rise was needed, that increases needed to be 'across the board', and that both criminal and civil legal aid needed additional investment. We are pleased the Scottish Government listened to all of these arguments and you are now putting forward a broader set of higher fee increases.



While this new offer will not solve the chronic problems we see in the legal aid system, we recognise the new proposals go some way towards addressing our concerns. It is important that the necessary regulations implementing these increases are tabled as soon as is practicable and it would be helpful to understand more about the timetable to do this.

In our previous correspondence, we argued strongly that the Scottish Government needed to decouple the immediate fee increases from structural fee reforms. We regret that you have chosen not to do this. We remain concerned that the criminal fee reforms may not deliver the increases equivalent to those made available for civil and children's legal aid. It is important to monitor whether this will be the case, and we suggest a review twelve months following implementation. This will also allow the opportunity to review the extent to which these reforms have effectively addressed the crisis in legal aid provision and what additional action may be required. Due to the time taken to conclude a solemn criminal case, there should be the ability for firms to opt in to the new feeing arrangements for work blocks not yet completed and we trust that the regulations can make provision for that.

We believe the revised increase in fees allows us to move the debate forward onto the promised fee review mechanism which the Cabinet Secretary himself recognised as critical to the long-term sustainability of the legal aid sector. Ultimately, we need a robust process that commands the trust of the profession and replaces the current ad-hoc arrangements for fee reviews and uplifts.

We note your comments around inflation not being considered an effective basis for this. At the stage that the fee review panel reported, CPI inflation was 0.4% and is now 9.9%. Though other factors may well be considered, we do not believe that it is realistic in the current financial environment to exclude inflation from the development of a practical model. To do so will inevitably mean a growing gulf between legal aid fees and those charged at commercial rates, will mean legal aid work becomes even more unattractive for solicitors to undertake, and risk further weakening the provision of quality legal advice for those from disadvantaged backgrounds.

We are keen to work with you on the development of an effective mechanism, but more detail around the milestones for this work is needed. It is a concern that significant time has passed since the payment review panel concluded, and the research recommended from that work has yet to even commence. During that period, firms have faced the most difficult financial conditions since the economic downturn, if not longer. Developing metrics to assess the health of the legal aid sector can help to develop a mechanism, but the key indicators are already alarming and an urgent timescale is required.

Bringing forward these regulations and establishing a rapid timescale for the development of a fee review mechanism will provide firms some reassurance about the priority the Scottish Government gives to access to justice and to the legal aid system. As always, it will be a matter for individual firms to make business decisions about whether to continue to provide legal aid, and what types of cases are undertaken.



It is crucial that regulations are implemented without delay. We await confirmation from you around the timescale for the implementation of these regulations and the milestones for the fee review mechanism.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Murray', with a long, sweeping flourish extending to the right.

**Murray Etherington
President**