

Justice Committee

Scottish Civil Justice Council and Criminal Legal Assistance Bill

Written submission from the Glasgow Bar Association

This submission is a response from the Glasgow Bar Association on behalf of its members to the terms of the Scottish Civil Justice Council and Criminal Legal Assistance Bill. The Glasgow Bar Association represents legal practitioners in Glasgow practicing in areas that link them with the Scottish Civil Justice Council and also practitioners practising in the area of criminal law in Scotland. The Glasgow Bar itself comprises a significant majority of the criminal solicitors practising criminal Legal Aid in Scotland.

1. The Glasgow Bar Association welcomes the bill insofar as it relates to the Scottish Civil Justice Council and believes that the proposed functions and powers of the Council are adequate.

2. The Glasgow Bar Association is of the view that the Scottish Civil Justice Council in assuming the responsibilities of both the Court of Session and Sheriff Court Rules Councils will be able to work towards a consolidation of the rules and procedures in civil cases in Scotland. Consistency and clarity of procedures will be to the benefit of practitioners and members of the public accessing the justice system alike.

3. The Glasgow Bar Association considers that there should be more than two practising solicitors on the composition of the Council. In this respect it is submitted that there should be at least four practising solicitors two with Court of Session experience and two with Sheriff Court experience. That representation would be more proportional. The number of solicitors appearing in both Sheriff Court and Court of Session with the practical experience and knowledge that they can bring to the Council is invaluable. The Glasgow Bar Association consider it essential that if there are to be only two practising solicitors on the membership of the Council at least one of those practising solicitors should be conducting cases in the Sheriff Court.

4. It should be borne in mind that the legally qualified members of the committee are likely to have extensive other time demands and a higher number of solicitors would allow fairer division of the work that will be required if sitting on the committee.

5. Criminal Legal Assistance – The Glasgow Bar Association accepts that members of the public who are financially able to pay for their defence should pay towards their defence. The Glasgow Bar Association however has significant concerns about the level at which contributions will be payable by accused persons and about the method of collection of those contributions. Notwithstanding requests for confirmation of the levels of contributions to be set and transparency those levels have not been disclosed.

6. The Glasgow Bar Association is concerned that many people who cannot afford to make contributions to their Criminal Legal Aid will be asked to do so as a result of

this bill. There must be a distinction drawn in relation to the innate difference between criminal cases and civil cases. In relation to civil cases Pursuers in particular have the choice about whether to litigate or not. They therefore have a choice about whether on their level of income they wish to take on the level of contribution that they are assessed at in order to litigate. They also if they are successful in their actions either as Pursuer or Defender may well recover their contribution by way of judicial expenses. The same does not apply in relation to those assessed as having a contribution under a Criminal Legal Aid Certificate. The decision on whether to go to court is not taken by them it is taken by the Procurator Fiscal. They have no control over the proceedings. There is no provision whereby if they are acquitted they can recover the cost to them of their contribution.

7. The Glasgow Bar Association has consulted in particular with Capability Scotland and is very concerned that this bill may lead to a discrimination against disabled people who cannot afford to make contributions to their Criminal Legal Aid Certificate. We are advised that 40% of disabled people already view that they do not have an equal access to the justice system. We are concerned that as a result of the contributions and the method being introduced to assess contribution levels this will lead to the creation of further barriers for access to justice by the disabled.

8. The Glasgow Bar Association notes with concern that the bill imposes upon solicitors the burden of taking “regular costs associated with disability” into account when calculating available income. The Glasgow Bar Association is very concerned that solicitors have neither the knowledge nor the expertise to be able to carry out such calculations. We are concerned that there is no specification of what documentation the Scottish Legal Aid Board will require from solicitors to be satisfied that the calculation made by the solicitor is an acceptable one. The Glasgow Bar Association understands from Capability Scotland that the weekly cost of having a disability can range from £7.24 to £1513.00 (figures dating from 2005). In those circumstances we would submit that it will be impossible for a solicitor to be able to assess what the regular costs associated with disability are in order to take these into account when calculating available income. The Glasgow Bar Association would welcome the Scottish Government developing clear and detailed guidance for calculating disability related expenditure for use by its members.

9. The Glasgow Bar Association notes the proposal that there should be a scheme of eligibility drawn up by The Scottish Legal Aid Board setting out the financial circumstances in which the Board considers that paying the fees and outlays of representation will result in undue hardship for a client or the dependents of a client. The Glasgow Bar Association does not consider this appropriate. We view that the scheme of eligibility should be drawn up by the Executive and that any amendments to the Scheme of Eligibility should be by way of Statutory Regulations.

10. The Glasgow Bar Association welcomes that there will be a consistency of approach in relation to ABWOR, Summary and Solemn Legal Aid in relation to the application of the undue hardship test. We are concerned that the bill introduces a two tier step for ABWOR as where there is to be an undue hardship aspect to the application that requires to be determined by The Scottish Legal Aid Board leading to delays in decisions on ABWOR being made.

11. The Glasgow Bar Association is opposed to the proposal within the bill that contributions in Criminal Summary Legal Aid cases should be collected by the solicitor with contributions in Criminal Solemn Legal Aid cases only being collected by the Board. The Board collects contributions in virtually all Civil Legal Aid cases. We see no reason why Criminal Legal Aid cases should be differentiated. The ethos behind the bill was to bring into alignment the treatment of those receiving either civil or criminal Legal Aid in the courts in Scotland. By imposing the collection of contribution on solicitors rather than the Board in criminal summary cases this purpose is defeated. There is no doubt that the vast majority of contributions will be made in summary cases as the vast majority of cases are summary. It is inequitable that the administration costs for collection of these contributions should be imposed upon the solicitor when the board already has the collection facility at its disposal. Further it is incorrect to proceed on a supposition that because there is a solicitor client relationship the client will be more likely to pay the contribution to the solicitor than they would be if the contribution was to be made to the Board. In fact The Glasgow Bar Association considers that the opposite is the case and that clients will be much more likely to pay their contribution to the Board who they will consider as having much greater powers of collection than to their solicitor with whom they may well be very familiar.

12. Unlike Advice and Assistance it is not anticipated that the contribution will be paid as a one off payment. It is anticipated in the bill that the contribution maybe payable by way of instalments potentially depending on the level of contribution over a lengthy period. This places an unreasonable administrative burden on the solicitor in terms of collection who is already working on a reduced fixed rate fee.

13. The Glasgow Bar Association considers that there will be a much higher success rate of collection if the Scottish Legal Aid Board collects all contributions in the same manner as it does in Civil Legal Aid cases. In particular if accused are advised that the Scottish Legal Aid Board will terminate their certificate if they do not pay their contribution it will be a compelling reason for them to ensure that they make payment. As a result of the existing relationship between the solicitor and the accused it will be much more difficult for the solicitor to indicate that they will withdraw from acting than it would be for the Board to simply to terminate the certificate. It is inappropriate to differentiate between Criminal and Civil Legal Aid given the purpose of the bill was to equalise the two.

14. The Glasgow Bar Association is concerned about the impact that payment of contributions in Criminal Legal Aid cases may have on the administration of justice in the courts. They are particularly concerned that the level above which a contribution requires to be paid is fixed at only £68 per week. Whilst contribution levels have not yet been disclosed we are concerned that in the event of non payment of contribution and withdrawal of solicitors from acting this will cause a huge disruption and cost to the Scottish Courts system and those costs will offset against any benefit derived from contributions once those levels are set and assessed.

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