

Justice Committee

Scottish Civil Justice Council and Criminal Legal Aid Bill

Written submission from the Church of Scotland

1. The Church of Scotland is committed to supporting a justice system which is available to all. The Gospel has a bias to the poor, and our priority is always the most marginalised people in society.
2. The Church of Scotland has not considered the details of the proposals, and so we do not have a firm view on the specific measures in this Bill. However, we have some questions arising from our principle of bias to the poor which we would urge the Committee to consider during its work.

Criminal Legal Aid – Test in relation to income

3. Given the pressures on public finances at this time, it would be unwise to call for additional expenditure without indicating where resources would come from. However, changing criteria for something as fundamentally important as criminal legal aid must only be done if the reasons are right – and that no-one should be denied justice or made impoverished because they have had to unfairly bear a financial burden themselves. We welcome the fact that people who receive the key means-tested social security benefits would not be required to contribute.¹ Our question is whether it is fair to ask people with a disposable income of £68 per week or more, and / or £750 capital, to contribute, or if this threshold is too low; what is the strength of the argument which says that this is the appropriate level? A comparison is made to the similar thresholds for civil legal aid – is it right to compare the two? To some extent, civil litigation can be discretionary (with family law being a notable exception), whereas if an individual is being prosecuted, he or she does not have a great deal of choice. If our priority is to ensure that the least well-off and those least empowered to respond to the complexities of law are given access to justice, how far do these proposals take this into consideration, and how much is it about simplification or cost-cutting?

The treatment of contributions where the accused is acquitted

4. We note the concern outlined by the Faculty of Advocates and others that there is no proposal in the Bill for the refund of contributions in the event of acquittal.² We would be concerned that people who are poor or vulnerable may feel a perverse pressure to plead guilty or even to move out of work and onto benefits in order to be eligible for non-contributory legal aid. We would urge the Committee to seriously consider this issue and to put this question to the Scottish Government.

¹ SPICe Briefing 12/36: Scottish Civil Justice Council and Criminal Legal Assistance Bill (7 June 2012) (Abigail Bremner), p. 21 -

http://www.scottish.parliament.uk/S4_Bills/Scottish%20Civil%20Justice%20and%20Criminal%20Legal%20Assistance%20Bill/SB_12-36.pdf

² *Ibid.*, p. 25

Solicitors to collect contributions in summary cases

5. In summary cases it is for solicitors to collect the contributions; if they fail to do so then it is they and not SLAB who will bear the loss. If there is significant non-recovery then it may cause solicitors to rethink whether to be involved in criminal legal aid at all. Might this have important repercussions about the availability of legal services to accused persons?

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30 July 2012