

Justice Committee

Scottish Civil Justice Council and Criminal Legal Assistance Bill

Supplementary written submission from the Law Society of Scotland

As you are aware, the Law Society of Scotland has taken an interest in the above legislation because of the potentially significant impact the provisions could have on our members who engage in this work, the system itself and those members of the public who require to access it.

We listened closely to the Committee sessions of 11 and 18 September during which representatives of the Scottish Legal Aid Board (SLAB) and the Cabinet Secretary for Justice gave evidence. In the course of his evidence, Dr Colin Lancaster of SLAB proposed that the "PDSO could act as a safety net". This proposal which we assume relates to unrepresented accused lacks definition, has not been consulted upon and needs further detail regarding its practical application.

We have been discussing the proposed system of contributions with the Scottish Government and SLAB since last October. At no stage has the Government or SLAB ever suggested that the PDSO could act as a safety net. Indeed, the first invitation to the Law Society to discuss this issue came at the evidence sessions. Our representations to the Parliament were provided prior to these suggestions and could therefore only be based on the system as originally proposed.

We have immediate concerns regarding this suggestion. When the contributions system is introduced it is presumably the Government's position that any contribution properly assessed will be commensurate with the applicant's ability to pay and that any non-payment therefore would be a wilful refusal. That is the only situation where a solicitor may feel compelled to withdraw from acting. We have written to the Government to clarify its position on whether such persons, who have wilfully refused to make their required criminal legal aid contribution, should have a "safety net".

We also believe that the suggestion is impractical from a resources perspective. According to the Scottish Legal Aid Board Annual Report 2010-11, the PDSO dealt with 1,812 summary cases in that year at a cost of £1.5 million. For the private bar, there were 42,853 grants of ABWOR and 50,603 grants of summary in 2010-11, 93,456 grants in all. If contributions apply to 18% of these, this will involve 16,822 cases. If there is non-payment in 40% of cases, there will be around 6,728 cases which will see contributions not paid. This number of non-paid cases is 3.7 times the number currently being handled by the PDSO. Therefore the use of the PDSO in cases of non-collection of contributions could cost the legal aid fund more than the contributions system would save.

We would be very happy to assist further as the Bill is considered by the Justice Committee and progresses through Parliament. Please do contact Matthew Thomson at the Society if you require any further information.

Oliver Adair, Legal Aid Convener, Law Society of Scotland
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