

## Justice Committee

### Legal Aid and Advice and Assistance (Scotland) (Miscellaneous Amendments) Regulations 2019 (SSI 2019/78)

#### Written submission from Edinburgh Bar Association

##### Proposal:

- (i) Reverse temporary cuts made in 2011;
- (ii) Apply the money pledged in November 2018 along with the underspend in the money allocated for police station work to the summary Legal Aid block fee;
- (iii) Introduce the block fee system of payment for solemn Legal Aid and at the same time abolish the need for time recording

##### (i) Reversal of Temporary Cuts

This is well rehearsed. The fixed fees for summary Legal Aid would return to £515 and £315 and the ABWOR block in the Sheriff Court would also be £515. In solemn Legal Aid, the hourly advocacy and non-advocacy rates would return to £76 and £50.68 respectively. Travel would be paid at the full non-advocacy rate.

A full fee would be payable in respect of all summary cases. Each deferred sentence in summary Legal Aid (beyond the second sentencing diet) would attract a fee of £50.

##### (ii) Application of already allocated monies to summary Legal Aid block payment

The Government has pledged an increase in all Legal Aid fees of 3% from April, 2019. Legal Aid spend on criminal solicitors in the last financial year for which we have confirmed figures was £57,008,000. 3% of that figure is £1,710,000; £1.7 million if rounded down.

Of the money allocated to police station advice for the current financial year, £2.1 million has not been spent. Therefore, allocated/pledged monies aggregate £3.8 million.

If that figure is divided by the total number of summary Legal Aid grants in 2017/18 (43,819), it gives a figure of £86.72. If that is rounded down to £85 and allocated to the summary Legal Aid block fee, it gives payments of **£600** in relation to Sheriff Court cases and **£400** for the Justice of the Peace. ABWOR cases would be unaffected.

##### (iii) Introduction of block fees for solemn Legal Aid and abolition of time-recording

The need for time-recording in the event that block fees are introduced is rendered completely redundant as the only itemised payment would apply to advocacy time which is monitored and recorded independently.

The block fee system which has been proposed was devised specifically with the intention of cost neutrality based on rates applicable in 2016/17. As that post-dates the reductions of 2011, there would require to be some enhancement to those and, therefore, for the purpose of costings, the average case cost from 2010/11 requires to be used.

### **Cost of Proposals:**

#### **(a) Solemn Legal Aid**

The average case cost in 2010/11 immediately prior to the temporary reductions was £3,507. It is now £3,047. There has therefore been an average reduction of £460 per case.

If that is multiplied by the number of grants of solemn Legal Aid in the last financial year (9,772), that gives a cost of £4,495,120.

#### **(b) Summary Legal Aid**

The average case cost in 2010/11 was £653. It is now £595. There has therefore been a reduction of £58 per case.

If that is multiplied by the number of grants of summary Legal Aid in the last financial year (43,819), that equates to a cost of £2,541,502.

#### **(c) ABWOR**

The average case cost in 2010/11 was £499. It is now £458. There has therefore been a reduction of £41 per case.

If that is multiplied by the number of grants made in the last financial year (26,660), that equates to a cost of £1,093,060.

The total cost of these proposals is therefore:

$$£4,495,120 + £2,541,502 + £1,093,060 = £8,129,682$$

To that figure the already allocated £3.8 million then needs to be applied to give a cost of £11,929,682.

From that figure requires to be deducted the total amount rounded down (£10,000 + £75,369 (£1.72 x 43,819)) - £85,369.

That gives a total cost for the full proposals of **£11,844,313**.

This also represents the maximum possible cost because the number of SLAB grants of summary Legal Aid in the last financial year (43,819) includes grants of Legal Aid where a case has been reduced from solemn procedure. Such cases are paid on an itemised basis and would not therefore attract the increased block fee.

To put the total cost of these proposals in perspective, since the temporary cuts were made in 2011, the reduction in spend on criminal solicitors has been **£24,026,000**.

The cost of these proposals is therefore less than half the money which has been saved.

## **Evidence of the Edinburgh Bar Association**

Legal Aid provision in Scotland is collapsing. For half a century following its inception, the system of publicly funded legal assistance played a central role in the development of Scots law and increased respect in which the Scottish system of justice was held internationally. Since 2006 however, the number of solicitors registered to provide criminal Legal Aid has reduced nationally by a quarter. In the geographical arc from East Lothian to Dumfries, there is now not a single solicitor registered to provide either civil or criminal Legal Aid who is under the age of 30. In Edinburgh, whilst the number of criminal courts has increased by a quarter since 2011, in that same period more than one third of criminal solicitors have departed, with two thirds of that figure being women.

It is no accident that the system of Legal Aid now finds itself in this predicament. Since 1992, rates of pay for Legal Aid lawyers have reduced annually in real terms. Whilst it is true that successive governments have refused to adequately fund the system of legal assistance, the problems which the system of justice now faces have become especially acute over the past decade. During that period, whilst Parliament has continued to legislate to introduce new offences, rights and evidential procedures, the Scottish Government - in collaboration with the Scottish Legal Aid Board - has overseen massive cuts in the Legal Aid budget, all in the face of consistent warnings from the legal profession as to the damage which those reductions were inflicting.

For criminal lawyers, the cuts which the Scottish Government made in 2011 have proved to be especially crippling. They were introduced with an intention that they would reduce Legal Aid expenditure by 7% and with a promise that they were temporary and would in due course be reversed. In fact, expenditure on criminal Legal Aid solicitors has reduced by more than 31% since then. In January of this year, the Edinburgh Bar Association wrote to the Minister for Community Safety and suggested to her that the time had now come for the pledge to reverse those cuts to be honoured. In the letter which we received in response, no mention was made of any intention to do so. The failure by the Scottish Government to honour the commitment which was made to Legal Aid solicitors in 2011 has ensured that trust in the Government amongst solicitors has never been lower.

To further contextualise the magnitude of the 31% cut in Legal Aid expenditure since 2011, the cost of the Public Defence Solicitors Office (PDSO) has increased by 49% in the same period. That fact cannot be reconciled with any claim that the reduction in Legal Aid expenditure corresponds to a reduction in reported crime. However, even if that well-rehearsed statement is adhered to, what the latest Legal Aid Annual Report reveals is that the 27 registered PDSO solicitors each now cost the taxpayer £83,481 a year, whereas the cost of the 1,125 in private practice is £50,584. Of course, whilst public sector lawyers work according to set hours, those in private practice have no such luxury.

The Edinburgh Bar Association has developed simple (but fully costed) proposals for criminal Legal Aid fee reform. They are attached to this consultation response. By no means would these proposals save the system of criminal Legal Aid on their own.

However, they might serve to stem the continuing haemorrhage of solicitors from this critical public service. Were they enacted, they would cost the taxpayer less than half the amount which has been saved since the “temporary” cuts were made in 2011 and which have proved to be so debilitating.

The Regulations now before Parliament seek to give effect to the 3% increase in all Legal Aid fees which was announced by the Minister in November. They must be viewed as at least some acknowledgement of the state in which the Government has allowed the Legal Aid system to slip. It would be churlish of us to invite the Justice Committee not to pass them. However, it is the view of the Edinburgh Bar Association that they will do nothing to stem the departure of Legal Aid solicitors, nothing to alleviate the hardships faced by those who remain, and nothing to restore the legal profession’s trust in the Government which has been shattered in recent years.

Edinburgh Bar Association  
13 March 2019