

Adam Tomkins MSP
Convener, Justice Committee

Justice Committee Clerks
Room T2.60
The Scottish Parliament
Edinburgh
EH99 1SP

3 February 2020

Dear Convener,

Legal Aid – Reform and Covid Response

As you will be aware, the Scottish Government has just laid the Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2021.

I thought it would be helpful to provide the Committee with some helpful context in connection with this instrument, as well as the wider support that is being made available to support the legal aid sector through the Covid pandemic.

Legal Aid Reform

I think it is important to note that prior to the Covid pandemic, the Scottish Government had been working with the Law Society, Faculty of Advocates, Scottish Legal Aid Board and other relevant stakeholders to take forward a series of reforms to legal aid.

It had been intended for this instrument to also deliver substantive reforms to the fee structures for summary and solemn criminal legal assistance, that would be beneficial to criminal defence solicitors, and that could also help with operational efficiencies for the Scottish Legal Aid Board and the Scottish Courts & Tribunal Service. These reform proposals were themselves based on proposals developed by the Law Society of Scotland in 2015, and reflect several years of engagement with both the Society and the profession at large. The key objectives of the reforms were: to deliver simplification, to reduce bureaucracy, and to better reward the legal profession for early preparation and resolution of cases where appropriate.

Regrettably, the proposed reforms, or rather aspects of them, were not welcomed by Bar Associations. Given the lack of available time for further substantive engagement, it was decided to progress these reforms at another time, rather than by way of this instrument.

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The Scottish Government does remain committed to delivering reforms, on the basis that significant benefits to the profession, clients, victims, witnesses and the wider justice system could be delivered.

We will continue to seek constructive engagement when there is an opportunity to return to the issue of criminal fee reforms, with a view to agreeing and implementing reforms in the coming year.

Covid Response – Support for the Profession

During the course of the Covid-19 pandemic the Scottish Government has worked collaboratively with the Scottish Legal Aid Board and the Law Society of Scotland to identify and provide appropriate support for those in the solicitor profession providing legal aid services.

At the outset of the pandemic, Coronavirus legislation was used to expand the ability to make interim payments to solicitors (and advocates) from the Legal Aid Fund, to assist with cash-flow. Thereafter provisions were introduced to allow for named solicitors to be paid the full court fee when the duty solicitor covered the court, rather than a half fee, facilitating criminal solicitors to comply with travel restrictions and assist with social distancing.

During the latter half of 2020, the Scottish Government engaged in a series of discussions with representatives of the Law Society of Scotland, the Scottish Legal Aid Board, and also from the Bar Associations of Aberdeen, Edinburgh and Glasgow, to develop a significant package of support for solicitors providing legally aid services. Since the outset of the pandemic the Scottish Government has recognised the important role of legal aid providers in supporting their clients and the justice system in Scotland, and also recognised the financial difficulties and changing work practices faced by these providers as a consequence of the Coronavirus pandemic. We have sought to develop measures to support resilience in the legal aid sector in direct response to the pandemic and, where possible, to introduce beneficial changes to progress a wider programme of legal aid reform.

In December the Scottish Government announced a further package of support to include: a 10% uplift in fees, over the next two financial years; the development of a Covid resilience fund of up to £9m through which grants can be paid; and funding to help support approximately 40 legal traineeships.

This instrument will put in place the first 5% uplift in all legal aid fees for the coming financial year, with a further 5% uplift due in financial year 22/23. The uplift will apply to fees payable to both solicitors and counsel. Each percentage increase in legal aid fee equates to approximately £1m in expenditure to be met from the Legal Aid Fund. Accordingly, a 10% uplift represents an investment of approximately £10m.

Additional Support

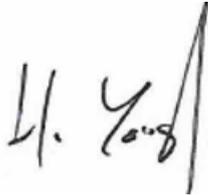
Another element of support is the opening of the Scottish Government Resilience Fund for the legal aid sector. This is designed to target assistance at those firms who need it most, to enable them to continue to make a contribution to the delivery of legal aid during and post-pandemic. We are currently liaising with the Law Society of Scotland and the Scottish Legal Aid Board on the operation of the Resilience Fund, and we hope to open up the application process very soon. Given the data it holds and its expertise in assessing grant applications,

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the Scottish Legal Aid Board will operate the application process and appraisal of applications. Importantly the operation of the Fund will reflect the impact on sheriff court business of recent decisions made by the Lord President on managing court business during this time of further restrictions.

A traineeship fund will also be established to expand opportunities for lawyers to enter the legal aid profession. This fund, to be managed by the Law Society, will enable Scottish Government to meet 50% of the costs borne by firms employing a trainee solicitor for the two year period prior to becoming fully qualified.

I hope the Committee found this letter helpful. I will of course keep the Committee updated.



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