



THE LAW SOCIETY
of SCOTLAND

www.lawscot.org.uk

Atria One
144 Morison Street
Edinburgh EH3 8EX
Legal Post 1 Edinbnburgh 1

T: 0131 226 7411
F: 0131 225 2934

Textphone: 0131 476 8359

Margaret Mitchell MSP
Justice Committee Clerks
Room T2.60
Scottish Parliament
Edinburgh
EH99 1SP

Ref BS/JC
Date 10 Oct 2016

Dear Convener,

Re: Brain injury and offending

Thank you for your recent correspondence of the 19 September 2016, relating to brain injury and offending and the recent report published by the Prisoner Healthcare Network. The questions which the Justice Committee raise have been considered by the Society's Criminal Law Committee and Health and Medical Law Sub-committee.

In relation as to **whether defence solicitors consider that they have the information and training they need to recognise when brain injury may be present in clients they represent**. Defence solicitors are not required to, or generally receive, training on how to recognise or screen *any* medical conditions. Currently no information or guidance is provided to defence solicitors to help in identifying brain injuries. It has never been the role of a defence solicitor to ask clients screening questions for undetected medical conditions, including potential brain injury. While solicitors must satisfy themselves that their clients are fit to give instructions, this is different from medical screening for any kind of brain injury.

In relation to the second question, **whether the possibility of a client having a brain injury is a factor commonly taken into account by defence solicitors during early contact with their client**. A competent defence solicitor will routinely enquire of the client whether there is any existing medical condition that might be relevant. It is common for persons appearing from custody or presenting with a new complaint to reveal that they are in receipt of a form of state benefit awarded only to those with a disability (Disability Living Allowance, Employment Support Allowance), and this inevitably puts the solicitor on notice that there needs to be further enquiry.





THE LAW SOCIETY
of SCOTLAND

www.lawscot.org.uk

Atria One
144 Morison Street
Edinburgh EH3 8EX
Legal Post 1 Edinburch 1

T: 0131 226 7411
F: 0131 225 2934

Textphone: 0131 476 8359

Such enquiry might reveal the existence of organic brain damage, commonly through long-term substance misuse, and/or traumatic brain damage through falls, the sustaining of serious head injury in assault, or a road traffic accident or similar. It is not unknown for clients to present with a combination of these. Such issues arise sufficiently often in practice that it can be said with some confidence that in many, if not most, cases where an accused is found to have a brain injury, this has been the subject of enquiry at an early stage in proceedings.

If it would be helpful to the Justice Committees discussions, we would be happy to arrange a meeting and discuss any other questions the Justice Committee may have.

Yours faithfully

Brian Simpson

Legislative Change and Policy Executive

DD: 0131 476 8184 E: briansimpson@lawscot.org.uk

