



glasgow bar association
established 1959

Room 1.29
Glasgow Sheriff Court
1 Carlton Place,
Glasgow
G5 9DA

8th September 2020

Urgent – By email only
Ian Moir and Mark Thorley
Law Society of Scotland representatives of the Fee Review Panel

Dear Ian and Mark,

Urgent submissions to the Fee Review Panel in light of Covid 19 impact
Meeting on Wednesday 9th September 2020 – (Now postponed)

We, the undersigned, as the Vice President of the Glasgow Bar Association, the President of the Edinburgh Bar Association and the President of the Aberdeen Bar Association, are pleased to be given this opportunity to make these final submissions to you and the whole Fee Review Panel in light of the Covid 19 challenges to legal aid practitioners.

We can each make ourselves or another representative available to participate in a brief presentation to the Panel members for your scheduled meeting if this can be accommodated.

We need not rehearse the submissions already made by the Law Society of Scotland other than to repeat that no other profession given assistance by Government funding has been so inherently underfunded for such a long period of time and indeed, the conclusion of Mr. Evans' Report that he can see no basis for an increase in legal aid fees shows how inherently flawed his report was.

It is increasingly concerning that this whole process has been so long in reaching this final stage, particularly in the challenging times we face with a world wide pandemic, that it may already be too late to undo the damage to legal aid provision caused by this chronic underfunding and exacerbated by the impact of the Scottish Government's approach to managing justice in Scotland during lockdown.

For the sake of the citizens of Scotland who legal aid practitioners represent, we are prepared to continue to highlight our concerns in the hope that action can be taken as a matter of urgency to recognise the essential work that is done to represent their interests, protect their human rights, civil liberties and promote the Rule of Law.

We have each been in communication with one another, other faculties across Scotland and our professional body to raise our ongoing concerns about funding issues during this pandemic. Indeed, to illustrate this, please see a letter dated 7th September 2020 to the Law Society of Scotland Legal Aid Conveners in advance of a Tripartite meeting between the Law Society of Scotland, the Scottish Government and the Scottish Legal Aid Board which we are all counter signatories to. It is apparent that there is no political desire to proceed with a root and branch revision of the Scottish Legal Aid fund prior to the next Scottish Parliamentary election nor the timetable to do so.

We now take this opportunity to make submissions about the state of legal aid provision prior to lockdown. What can be done during this parliamentary term is to set a basic increase in fee provision for the essential work that is being done.

We support the submissions made separately by the Law Society of Scotland for the tripartite meeting that there should be an immediate increase to legal aid fees overall of no less than 50% to take into account the previous lack of investment.

This would address the underfunding of the sector over a decade (and for some fee types, significantly longer) prior to the 3% increase implemented in 2019. We are aware that the underspend of the Scottish Legal Aid budget was over 8% compared to the previous annual spend in the last Annual Report from the Scottish Legal Aid Board. To be able to invest that 5% elsewhere and not reinvest it in legal aid practitioners reinforces the regard with which we have long been held by those in Government. The use of regulations to allow that 3% fee increase demonstrates that there is the means to act in the manner proposed.

The Law Society summarised the situation as follows -

“The legal aid system in Scotland was already facing significant challenges before the current health crisis.

- The number of legal aid providers has declined significantly over the last decade – by around 16% for civil legal aid firms, and around 24% for criminal legal aid firms between 2010 and 2020
- The number of firms that have received a payment from SLAB has also declined, from 822 in 2015-16 to 763 in 2018-19, a decline of 7.2% in four years
- Though there was a 3% increase to fees in 2019, most fee types had remained unchanged, or been cut since 2008 and some unchanged for significantly longer

- Fees for criminal advice and assistance had not been changed since 1992, and the summary fixed fee is currently below that on its introduction in 1999 – a fee set at £500 in 1999 would be £873.03 in 2019 because of inflation over two decades
- There was a 32% increase through inflation between 2008 and 2019 (CPI-H), resulting in a real-terms cut to fees of around 20%.”

There is not an equality of arms with other sectors of the court process, likewise funded by the Scottish Government. Our Law Society colleagues can brief you about that in further detail, such as funding for COPFS to provide laptops and mobile telephones to colleagues to work remotely, funding of IT platforms for remote custodies, jury centres in local cinemas, SCTS investment for PPE and IT, Justice partners like Victim Support and Rape Crisis having budget support for lockdown etc.

We are seeking urgent provision to allow practitioners to survive the current crisis and to invest for the future. As the Law Society states, “the inflationary impact on fees has been severe – inflation since 2007-08 was over 34% at CPI-H, resulting in a cut of over 20% in real-terms.”

To promote the continuity of legal aid provision throughout the whole of Scotland and to allow clients to nominate their solicitor of choice, we require urgent and immediate provision of sustainable fees rates for this essential work.

You should already have been briefed about the landscape of legal aid provision in Scotland. This pandemic has exacerbated those concerns. We are already aware since the commencement of lockdown of redundancies, of members leaving the legal aid sector, of traineeship contracts being cancelled and of financial hardship being caused to members. There are issues of sustainability of this branch of our profession. There is an ageing population of mature (predominantly male) colleagues, less diversity and less young practitioners attracted to this branch nor senior practitioners recruiting the next generation. As detailed within the accompanying letter, with annual premiums for professional insurance, SLCC levy, and Law Society membership due for renewal, with VAT due before the year’s end, we are aware that some of our colleagues will not be able to afford to renew their practising certificates and staff redundancies will be required, loss of investment in communities will arise and there is no prospect of this gap being filled.

We also write to address the concerns that we are adapting of necessity to new ways of working and the pressures brought to bear in this regard should not leave us financially disadvantaged and should be rewarded.

We cite the following examples-

Criminal cases –

(a) Since lockdown, a new step in process has been introduced in summary work for the requirement of a written record. This new step in the process should attract an additional fee.

(b) Remote trials and remote custody appearances – It is estimated by colleagues who have undertaken preparation for and conducted remote trials that an additional 5 hours of work have had to be undertaken to comply with preparations for conduct of a trial by this means. It attracts no additional fee currently and should do so. Such trials, or a combination of remote and actual witness evidence to complete a trial (currently being referred to as a hybrid trial) is actively encouraged by SCTS to assist with ongoing social distancing measures. Additional work for remote representation of clients appearing from custody is also required. The GBA continue to liaise with Justice partners about the current Domestic Court Pilot being undertaken at Glasgow Sheriff court and both Edinburgh and Aberdeen also have experience of remote custody appearances and the many technical difficulties encountered relative thereto. Again, we submit that additional work should attract and additional payment.

(c) Custody court arrangements- Legal Aid practitioners have continued to represent clients for appearances from custody and cancelled holidays to appear in local holiday courts. We are now aware that every other person participating in those appearances for the Justice partnership are given either days off in lieu or are paid double and treble time for their inconvenience. It is not sustainable to recognise the goodwill of each justice partner with the exception of the Defence Agent whose assistance to client and court is crucial to the interests of justice. We ask for the immediate review of duty provision and to allow those Defence Agents appearing for custodies in holiday courts to be remunerated in line with justice partners. This is even more pronounced this year because Agents will work on Christmas Eve, then Boxing Day, then 27th, 29th, 30th, 31st December 2020, 2nd, 3rd and from 5th January 2021, as local jurisdictions have all adopted different days to facilitate holiday courts for custodies cases this Festive period. We believe in parity and that this work should attract suitable remuneration.

Civil cases –

(a) Many cases now proceed with written submissions which are woefully underpaid. There should be parity with oral submissions.

(b) Many hearings now proceed by telephone conference and we anticipate by videoconference as social distancing measures continue and tech support

platforms via SCTS are rolled out. All other service users have IT investment and tech support factored in. Legal Aid practitioners meet this cost from the already diminished legal aid rates.

- (c) Initial meetings with clients. This currently attracts a higher payment rate than a telephone call. While social distancing persists and while the Scottish Government's advice remains to work from home where able to do so, this new form of working and consulting with clients should be recognised and an equivalent fee be set.

Please do not forget that Aberdeen has already been subjected to a stringent local lockdown and Glasgow is the subject of current lockdown measures. To resolve the shortcomings of the current legal aid system in light of the current health crisis, we invite urgent action be taken to ensure the survival of legal aid provision for the people of Scotland.

Kind regards,

Fiona McKinnon, Vice President of the Glasgow Bar Association

Julia McPartlin, President of the Edinburgh Bar Association

Stuart Murray, President of the Aberdeen Bar Association

Post script –

We are now aware this meeting has been cancelled and there will be further drift to assign another meeting. We have considerable concern about the delay being occasioned by the failure to finalise this Report and the implications for legal aid practitioners across the country. We urge the Law Society of Scotland to be proactive in addressing funding issues for legal aid practitioners as a priority.