Law Society of Scotland

Atria One,
144 Morrison Street,
Edinburgh EH3 8EX
T: 0131 226 7411
F: 0131 225 2934
Textphone: 0131 476 8359

www.lawscot.org.uk

Annabelle Ewing MSP (by email to Annabelle.Ewing.msp@parliament.scot )
Minister for Legal Services & Community Safety
Scottish Government
St. Andrew's House
Regent Road
EDINBURGH
EH1 3DG

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Dear Minister

**Criminal Legal Assistance (Miscellaneous Amendments) (Scotland) Regulations 2017 (Regulations)**

I wanted to write to you following the Justice Committee's consideration of the above regulations on 12 December 2017.

Despite the majority decision of committee members to approve the regulations, I noted the significant concerns expressed by some members about the practical impact and the likely implications arising from the regulations.

The Convener of the Committee said that *'very concerning and complex issues'* had been raised relating to the level of solicitors' remuneration and the effective and practical protection of suspects' rights under the Criminal Justice (Scotland) Act 2016. Such concerns reflect those we expressed in our own consultation response to the Regulations dated 15 September 2017 and the written evidence we submitted to the Committee's consideration (J/S5/17/36/1).

Given some of the exchanges made during the committee session and the references made to our evidence, I thought it would be helpful to clarify the Law Society's position on several matters. This is particularly important in light of the recent decisions of a number of bar associations and local law faculties to withdraw from the police station duty scheme.

**Level of remuneration**

During the committee meeting, the current spend on police station advice was correctly stated at £520k and not £300k. Under the new arrangements, such spend is estimated to rise to £3.2m. We are concerned that an impression may have arisen to suggest this reflects increased payments direct to solicitors in private practice. In reality, a raft of changes which will increase the overall cost of providing police station advice including:

- an increase in number of persons (to 163,360) seeking advice at all stages of the process (including the investigative liberation).

- enhanced requirements for solicitors' attendance for vulnerable suspects and children.

- the costs of the Solicitor Contact Line managed by the Scottish Legal Aid Board (SLAB) whose work is exclusively related to police station duty work.

**Concerns from the Profession**

The committee was also told that *'no significant concerns had been raised during the extensive consultation on the proposed regulations'* reflected by your observations that *'we have not received any mass intimations of withdrawal from the duty scheme*.'

However, in our own evidence, we made clear our view that *the level of fee proposed for police station advice in the regulations risked the* ***effective operation*** *(*our emphasis*) of the changes being made in the 2016 Act'.*[1]

I also disagree with the suggestion that the lack of solicitor withdrawals in advance of the Regulations being passed does, in some way, reflect a lack of concern. After all, solicitors would rightly have waited until there was clarity around the final decision of the committee and the Scottish Parliament as a whole before taking any practical decisions on their position on the duty scheme.

As you will know, a number of faculties and bar associations have since met to discuss matters. Edinburgh, Falkirk and Aberdeen have all indicated that their members intend to withdraw from the duty scheme.

SLAB has indicated it will make alternative arrangements for those areas where solicitors withdraw from the duty scheme. Even with such arrangements, considerable delay may result with a significant impact on the right of access of suspects to legal advice. This will be especially so for those that are children, vulnerable or are located at more rural locations (solicitors already are traveling in excess of two hours to cover Elgin duty attendances). There will not therefore be a level playing field for all suspects as required for the effective and fair administration of justice.

**Long distance travel**

During the committee session, the suggestion was made that long distance travel to police stations was considered to be an exception. However, we did not feel this addressed the police's operational requirements in allocating suspects to police stations. The actual location of the suspect depends on the police's own requirements reflecting the number of suspects detained, their gender and police station opening hours.

No cognisance requires to be made with regard to the actual location of the named solicitor but that requires solicitors to travel routinely, significant distances to provide advice to suspects. That position is exacerbated when the rural districts are considered.

The impact on solicitors with the time required not only in providing actual legal advice but on travel which is payable at only half the rate as outlined is significant. The rate of pay for travel was a factor discussed during the Regulation negotiations. I am disappointed that that final travel rate reflects no further increase. There will be a very telling impact on solicitors' personal life for which appropriate remuneration needs to be, and has not been, provided.

[1] Justice Committee Call for Evidence (J/S5/17/36/1)

**Equality impact assessments**

During the evidence session, you indicated that an equality impact screening was completed and that *'the framing exercise has identified that there are no specific negative impacts, either direct or indirect, on protected groups'.*

We would be interested in seeing the underlying evidence for this assessment. Many solicitors fall into the group of 'protected characteristics' in relation to age, disability, pregnancy, religion and race. We would be keen to know how the equality impact was assessed in relation to such groups.

After all, the Regulations will have a considerable impact on our members, in particular for those who have childcare or carer responsibilities or other problems in being available to attend a police station out of hours. The Regulations do not recognise court holidays or other religious festivals which will have anti-social effect for solicitors.

Finally, you advised the Committee that further information was being produced. We would certainly welcome sight of such new information and would appreciate an indication of any timescale that may sit around this work.

You specifically undertook to provide the Committee with details on how many solicitors state that they are unavailable when asked to attend police stations. We would be grateful for receipt of that information too.

As always, my colleagues at the Law Society and I are happy to meet with you discuss these matters further.

Yours sincerely,

Ian Moir

Convener (Criminal)

Legal Aid Committee