



Equalities, Human Rights and Civil Justice Committee
The Scottish Parliament
Edinburgh
EH99 1SP

By email only: ehrcj.committee@parliament.scot

Date: 17 March 2023
Our Ref: Policy/LAC/FM

Dear Convener,

Legal Aid and Advice and Assistance (Miscellaneous Amendment) (S) (No. 2) Regulations 2023

We thank you, on behalf of the Legal Aid Committee of the Law Society of Scotland, for this opportunity to submit our thoughts on the above named regulations, having noted with interest that your committee has invited the Minister to speak to the instrument at your meeting on Tuesday 28 March.

Firstly, it's important to acknowledge that the passing of these regulations, providing an increase in spend across both civil and criminal legal aid fees, is a step towards much needed, and long awaited, progress. It is, however, clear that this remains a sector in crisis.

There are deep-rooted problems in legal aid after decades of underfunding, and solicitors are leaving this area in droves, with access to justice eroding at an alarming rate whilst demand increases. We must reverse this trend to ensure there are solicitors able to offer civil, children's and criminal legal aid across the country and across all types of work, another concern being that the criminal fee reforms may not deliver the increases equivalent to those proposed for civil and children's legal aid. We would call for a review to take place twelve months following implementation to fully assess if the reforms have effectively addressed the crisis in legal aid provision, and identify additional action that may be required.

The system is in need of full-scale reform. Until this happens, it is vital that fee increases are implemented, the priority then turning to ensuring a robust fee review mechanism. This will be essential to ensuring the long-term sustainability of the legal aid sector and access to justice. The Scottish Government have committed to implementing this mechanism, but not before a benchmarking process is carried out. Whilst we can see the need for this benchmarking process, our view would be that consideration should be given to the fee



review mechanism being dealt with independently of the benchmarking process to provide some confidence to the profession, and to avoid the perception that the benchmarking review is adding further delay to much needed change.

In terms of timescales, there has been suggestion that the output of the benchmarking research might not feed into the budgeting process until as late as 2025-26. It is simply not palatable to wait this length of time for a mechanism to review fees, and thought must be given to how the government will review fees in the interim as it is not sustainable for fees to be frozen in any intervening period. Much evidence is already available to the Scottish Government from previous work, and from SLAB, and there is widespread acknowledgement of the scale of the problem that exists. Legal aid is a fundamental part of Scotland's justice system. We can't afford any further delay in taking the necessary steps to safeguard it.

We also want to take this opportunity to highlight that a lack of legal aid funding is not solely an issue for Solicitors, it's a problem for all of society. Legal aid is there to help those who need, but cannot afford, a Solicitor. If there is not enough legal aid provision to help all of these people, their access to justice is denied. This is the case now for thousands of Scotland's most deprived families, further exacerbated by the fact that legal aid fees agreed in 1999 have only increased by 10%, compared to an inflation increase of 55%, alongside the impact of the pandemic and the cost of living crisis. It's also the case that fewer people are financially eligible for legal aid as inflation rises.

Analysis carried out for a campaign the Society ran last year showed that the 139 most deprived communities in Scotland, resident to around 100,000 people, shared just 29 civil legal aid firms between them. There were no civil legal aid firms at all in 122 of the 139 areas. Of the legal firms in these areas, 87,064 people were left without any local access at all. The most common civil court cases include dealing with divorce and child contact or custody; adoption; adults with incapacity; immigration and asylum cases; and deportation. They might also involve cases such as securing compensation for medical negligence or securing social welfare payments. This demonstrates the breadth of situations where any one of us could require a Solicitor and might face the prospect of acting for ourselves against an experienced practitioner. This highlights inequalities and the need to ensure those vulnerable in society are protected. We must secure longer term, lasting investment in legal aid services.

Retention should also be mentioned as a contributing factor to these issues. We welcomed the Scottish Government's £1 million fund to support legal aid traineeships in Scotland, launched in 2021, which provided support for up to 40 new legal aid trainees and paid for up to half of their salaries. In addition, trainees' regulatory costs, National Insurance, Practising Certificate costs and Trainee CPD were all half-funded by the grants for the full



term of the traineeships. We would welcome further schemes such as this one, however would highlight the wider problem of retention into this field of work. Young solicitors are interested in this work, start their careers doing this but don't stay. There are many factors to this, including work/ life balance, one's constant availability to clients, pressures from court backlogs and pay; in-house, some private firms and the Crown will offer better pay, hours and benefits. We have to work together with those involved in this sector to think of long term solutions to this issue, however investment will always be needed and will always be a key factor in improving retention.

We hope the above demonstrates that, while the fee increases in the regulations are a start, much more is still to be done, and to be done urgently, to stop ever diminishing numbers, decreasing confidence and curtailment of access to justice. We'd be happy to provide further evidence to the Committee, either in writing or in person, if helpful.

Thank you and the committee for your consideration.

Yours sincerely,

Ian Moir and Pat Thom
Co-Conveners of the Legal Aid Committee
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