

Briefing for the Public Petitions Committee on petition PE2243: Refund legal expenses for those acquitted of a crime, lodged by Andrew Muir

Brief overview of issues raised by the petition

- The petitioner believes that those who are acquitted of a crime should be returned to the financial position they were in if they had never been arrested. This would prevent further harm and allow people to move on. The petitioner thinks there should be re-imbursement of legal expenses, regardless of whether the accused person paid privately for a solicitor or received legal aid.
- Legal aid is available to people who have been accused of committing a crime, if they meet the qualifying criteria. It is likely that most people going through the criminal justice system are receiving legal aid. There are different types of criminal legal assistance, depending on the situation of the accused person. The SPICe briefing [Legal aid – how it works](#) contains more information.
- Broadly, Criminal Legal Aid is the main type of legal aid available for people who plead not guilty. The financial eligibility test for Criminal Legal Aid is an all or nothing test – so people who qualify do not have to pay any financial contribution. However, some people seeking initial advice about a criminal offence may access Advice and Assistance. Depending on their circumstances, recipients of Advice and Assistance can be required to make a financial contribution to their legal costs from their own income.
- People who do not meet the eligibility criteria for legal aid will have to pay privately if they engage a solicitor. The amount they pay will depend on the extent of work needed and the fee scale of the solicitor they use. However, expenses can be considerable.
- In England, it is possible to recover legal “costs” in criminal cases. As well as accused people being able to recover costs, people who are found guilty can also have costs awarded against them (so that they face paying some or all of the costs of the prosecution). This is a dynamic entirely missing from the Scottish system.
- In England, a range of public bodies, as well as private individuals, can bring prosecutions. Prosecutions in Scotland are almost always taken by the Crown Office and Procurator Fiscal Service on behalf of the state. There are rare examples of prosecutions by private individuals, but these need the consent of the Crown Office and Procurator Fiscal Service.
- Broadly, costs awards in criminal cases in England should be made unless there is a good reason not to. However, the courts usually have wide

discretion as to what approach is appropriate in a particular case. [Practice Direction \(Costs in Criminal Proceedings\) 2015](#) has further information.

- The main types of costs orders in criminal proceedings in England are:
 - **defendant's costs orders** – paid out of central (i.e. UK Government) funds to someone who has been acquitted, or where charges have not been proceeded with, in criminal cases. Recovery is usually limited to legal aid fee rates, rather than what the defendant may have paid
 - **costs for private prosecutions** – can be awarded from central funds
 - **costs against people who are convicted** – the sum which can be awarded is usually limited by the defendant's ability to pay and the size of any fine imposed
 - **costs in relation to unnecessary or improper actions** – costs can be awarded against various parties (including a solicitor representing the accused) responsible for unnecessary or improper actions.
- As far as SPICe is aware, this issue was last raised in the Scottish Parliament during scrutiny of the Scottish Civil Justice Council and Criminal Legal Assistance Bill in 2012/13. Views from stakeholders on the issue of recovering contributions if acquitted are discussed in paragraphs 162 to 178 of the [Stage 1 Report](#).
- Several Stage 2 amendments were proposed on the issue of recovering expenses on acquittal. On the Scottish Government's position, the [SPICe prior to Stage 3 briefing](#) (see page 10) states:

"The Scottish Government stated that the refund of defence costs had never been a feature in Scots criminal law. Instead, prosecutions were considered to be brought in the public interest. It also considered that the issue of refunding costs where the defence was privately funded would have to be addressed as part of any solution.

"The Scottish Government considered that such provision would be beyond the scope of the current Bill. The Scottish Government argued that if, as proposed by the Committee, defence costs were only refunded in some cases, this may be perceived by the public as an indication that a not guilty verdict had more weight where someone received a refund than where they did not."

Key Organisations and relevant links

- Scottish Government
- Scottish Legal Aid Board
- Law Society of Scotland

- Scottish Solicitors' Bar Association
- There may be views on this issue among justice campaigning organisations such as [Justice Scotland](#).

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The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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