COSTS ARISING FROM THE SCOTTISH COURT SERVICE’S PROPOSALS ON A FUTURE COURT STRUCTURE IN SCOTLAND

Thank you for your letter of 22 May 2013 asking for details of any extra costs which could be incurred by the Scottish Legal Aid Board as a result of the SCS proposals.

The Board was fully consulted by the Scottish Court Service about the likely impacts on the Board and legal aid of their proposals. Overall we think that the proposals will result in small net savings to the legal aid fund of around £30k-£40k per year.

The High Court

This proposal is to withdraw the current use of the 11 circuit courts, and consolidate High Court cases in Edinburgh, Glasgow and Aberdeen, with two overflow courts in the east and the west. On the basis that the vast majority of High Court solemn work is undertaken by city firms and counsel based in these areas, it is therefore anticipated that there will be a saving to the legal aid fund in respect of travel from this proposal. It is estimated that small savings are likely to arise in circa 50%-66% of cases – an annual monetary saving of around £50K-£65K.

The Justice of the Peace Courts at Portree, Stornoway and Wick

The proposal for the justice of the peace courts at Portree, Stornoway and Wick is that these courts should be disestablished and that all summary criminal business be heard in the local sheriff court. The legal aid payment rates are higher for sheriff court cases than JP court cases. In 2011/12, the average sheriff court payments for summary criminal and ABWOR cases are £669 and £602, while the corresponding JP court payments are £395 and £196. If 50% of the JP cases transferred to the Sheriff courts in these areas are granted summary criminal and ABWOR (at the current plea rates in these courts), then this could lead to an increase in legal aid costs of about £37k per annum, unless the cases transferred to the sheriff courts are be marked as JP cases.

Low Volume Sheriff Courts and Sheriff Courts Suitable for Amalgamation

This proposal would lead to the closure or amalgamation of a number of sheriff courts across the country. The courts affected by this currently conduct only about 7.1% of cases with civil legal aid, and about 4.2% of cases with criminal legal aid. The majority of sheriff court work in civil and summary criminal proceedings is undertaken by solicitors "local" to that court. However, travelling costs form only a relatively small proportion of total legal aid costs in both civil and criminal cases. In summary criminal fixed cases no travel time is paid. We think that the closure of these courts
would result in increased costs to the legal aid fund, but these would be small, we estimate in the region of around £10k - £15k per year.

Centralisation of Sheriff and Jury Business

This proposal would see a gradual move to the centralisation of sheriff and jury business to 14 likely courts, by 2022. These 14 courts already account for about 79% of cases with solemn criminal legal aid. It is anticipated that this proposal will achieve savings to the Legal Aid Fund as sheriff & jury work tends to be undertaken by larger city firms already based in these areas. Our costings suggest there will be a small saving in travel costs, giving a monetary saving of around £25K-£30K.

Overall estimated impact on legal aid costs

We estimate that the overall impact on legal aid costs of these proposals would be a small saving of between £28k and £43k as follows:

- High Court consolidation - savings between £50k and £65k
- JP business transferred to sheriff courts - costs of £37k
- Sheriff court closures - costs of between £10k and £15k
- Sheriff and Jury consolidation - savings between £25k and £30k

In addition to these issues, I notice from the Official Report of the Justice Committee meeting on 21 May, that during the meeting, Eric McQueen, Chief Executive of the Scottish Court Service (at column 2805) indicated that in criminal cases, additional costs including accommodation required for witnesses who need to travel overnight, would be paid for by the Crown. This would be the case for Crown witnesses. The expenses of defence witnesses attending court are covered by the Scottish Legal Aid Board if the accused has criminal legal aid. In civil cases, as Mr McQueen said, for those who are in receipt of legal aid, the Board will pick up the same costs for witnesses.

In our experience, overnight expenses for witnesses are very rare, and are usually in connection with witnesses who reside outside Scotland. However, in the event that an overnight stay was required in a civil or a criminal case, then legal aid would cover reasonable expenses incurred as a result. We would expect that the number of occasions when this would arise to be very small, and as a result this would not have any material impact on overall legal aid expenditure for these cases.

I hope you find this information useful. If I can be of any further assistance, please let me know.

Lindsay Montgomery
Chief Executive of the Scottish Legal Aid Board
31 May 2013