

Cabinet Secretary for Justice
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Dear Cameron

I am writing in response to the letter sent to me by Ian Bryce on 29 June 2011, whilst you were on annual leave, concerning the police station duty scheme. I am also writing as I am aware that Ian wrote to the profession on 6 July, reiterating the Society's view that the scheme is objectionable and unnecessary and inviting representatives from Faculties to a meeting to discuss the scheme in Edinburgh on 20 July.

My firm view is that the scheme is both necessary and workable. I cannot accept the proposition that we go back to the ad hoc situation we were in before 4th July. Given the situation we faced following the decision taken by the Supreme Court in the Cadder case, Parliament legislated to require that solicitor access be ensured. The scheme we have is necessary to make sure we have as robust a system as possible for ensuring prompt and appropriate access to legal advice is provided to suspects in police custody, in the interim until Lord Carloway reports and we are able to take forward longer term reforms. I was pleased to see in Ian's letter to me a commitment on the part of the Society to continue to engage fully and constructively in the interests of the profession and the public and, in his letter to the profession, the initiative to consult with Faculties to ensure suspects' rights continue to be protected. I trust that the interests of suspects and the wider public interest will continue to be prominent in the Society's thinking, alongside the interests of its members.

I hope you will accept that the Government has acted throughout in a spirit of open engagement, working to the same common purpose of protecting suspects' rights. That was why the Society was invited to join the Cadder Senior Working Group, where the proposed police station duty scheme was regularly discussed and where the Society was on record as being generally supportive of the Scottish Legal Aid Board's proposals. That was why the Board engaged in negotiations with the Society on the details of the proposals and took on almost all concerns raised by the Society before sharing details with the profession. And that was why, when I met you on 2 June, I agreed to take forward several of the further concerns you raised. Given this engagement and the many changes that were made to the scheme proposals as a result of the valuable input from the Society, I was surprised and

disappointed that I informed the profession rather bluntly in his letter that the Government had not listened to the Society or the profession in implementing the scheme.

The scheme has been up and running for little more than a week. However, initial feedback from both the Board and ACPOS is that it is functioning appropriately. The contact line is now operating successfully 24 hours a day, which should produce benefits for suspects, the police and also for solicitors. In the first full week of its operation, the contact line received 458 notifications of requests for advice from suspects, with the solicitors on the contact line providing advice in 213 of those cases. In many cases this meant that suspects were receiving advice in minutes, a major improvement on the previous ad hoc arrangements. Similarly, the contact line arranged for 29 personal attendances in police stations by Board employed solicitors, Public Defence solicitors, duty solicitors, and other named solicitors. The contact line was also able to facilitate speedy advice in one serious case involving multiple suspects in this first week.

The evidence of improvement since 4 July has also been reflected in initial informal feedback from ACPOS, with police seeing improvements in the time it takes to access advice and in the transferring of the sometimes difficult task of securing advice from busy custody suites to the contact line.

I also want to assure you that the legal aid budget is not being singled out for savings. Indeed, the budgets of COPFS, the Scottish Court Service, the Scottish Prison Service and the Scottish Legal Aid Board's administration budget are all seeing major reductions this year - as is the administration budget of the core civil service. Even in those areas funded by the public purse that have received a degree of protection from savings, the numbers employed are falling, pay is being frozen and major reforms to pensions are in the pipeline. In this climate, I cannot realistically give the profession everything they would like. Furthermore, expenditure on the legal aid fund increased by £11m last year and a significant proportion of this was higher payments to solicitors. The reality for everyone funded by the public purse, including solicitors whose income comes primarily from legal aid, is that we are in very difficult times and that we are all being expected to do more with less. I do not pretend this is comfortable or welcome to your members but the profession is not immune to the current trends in public finance.

As you will be aware, we are going through a further spending review covering the period to 2014-15. This will be very challenging indeed. We will need to find further savings and if there are areas where additional expenditure is likely to be required, for example police station advice, then these will have to be funded from within reduced budgets. There may be some scope for rebalancing criminal legal assistance expenditure between police station work and court work and I will be happy to consider such matters once we are clear about the direction of travel from Lord Carloway's Review.

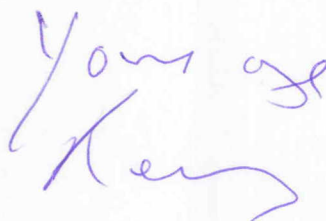
In the meantime, though, my priority must be to make sure that the current scheme continues to work effectively and that suspects receive speedy and high quality advice, spending no longer in detention than is necessary. I will not countenance any changes which would make it less workable from the point of view of the police or less effective in providing advice to suspects. Nor can I commit at this stage to alter the payment arrangements in advance of Lord Carloway's report and decisions to be taken in the Scottish Government's Spending Review over the next three months. However, we and the Board remain happy to discuss the operation of the interim scheme with the Society.

I have always been strongly supportive of an independent criminal bar, predominantly drawn from the private sector. Consequently, I hope the involvement of the private bar in the

scheme will grow. But that is not a choice for me to make. If the private sector does not wish to participate I and the Board have no alternative but to make other arrangements to ensure suspects' rights are protected, including additional cover in particular areas if required. I will be discussing this with the Board in early course.

What I would expect from all parts of the profession as an absolute minimum is the commitment set out in Ian's letter to the protection of the rights of suspects. Therefore, while it is open to solicitors to participate in the scheme or not as they wish, I trust that solicitors will act with integrity and respect the actions of those members of the profession who do choose to offer advice under the scheme. Any attempt to make life difficult for those solicitors taking part in the scheme, either individually or collectively, will be unacceptable to me and, I hope, the Society. Equally, any actions which have the effect of delaying advice to suspects would be unacceptable to me. I therefore hope we can all move forward with a focus both on ensuring suspects' rights are protected and on the efficient operation of the justice system and, I hope, following on from the Faculty meeting on 20 July, that we, the Board and the Society can find a way to work together to this common end.

I am copying this letter to Lindsay Montgomery, Chief Executive, the Scottish Legal Aid Board.



KENNY MACASKILL