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To: All criminal practitioners

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Our Ref: LM/JG

*Please quote the department
above and our reference:*

28 June 2011

Dear Colleague

We are writing to clarify the Board's views about the Police Station Duty Scheme and, in particular, to comment on some apparent misunderstandings of our position.

The Board now has a duty under the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011, to arrange for solicitors to be available for the purpose of providing advice and assistance to suspects to whom section 15A of the Criminal Procedure (Scotland) Act 1995 applies. The purpose of the scheme is to provide timeous advice.

The scheme is to replace the current informal arrangements which have been operating since June 2010.

The Board did not develop the scheme in isolation. We engaged with the Law Society of Scotland through several meetings and took on board virtually all their comments before circulating the scheme to the profession. We also worked closely with ACPOS. The scheme was also discussed at the Senior Cadder Working Group which is chaired by the Scottish Government and its membership includes the Law Society of Scotland, ACPOS and the Crown Office Procurator Fiscal Service and the Board. The Society's involvement in the scheme has been very valuable.

There are several important aspects to the scheme.

- It is an interim scheme. It has always been clear to the members of the Senior Cadder Working Group that although now a regulatory scheme, it would be an interim arrangement until the outcome of Lord Carloway's Review is known and the Scottish Government has decided on the way forward. The scheme is also designed to provide robust information on police station advice which will complement the information collected by ACPOS.
- No change to fees. It was not the Government's intention to make changes to the feeing arrangements with the introduction of the new scheme. This was understood by members of the Senior Cadder Working Group. However, it was recognised that all aspects of the scheme (including feeing arrangements) would be reviewed once the outcome of Lord Carloway's Review was known.

- The scheme was designed to have substantial private practice involvement. In developing the scheme, the Board made clear to the Law Society our preference for substantial private practice involvement alongside some employed solicitors and limited PDSO involvement. The scheme was certainly not designed to increase PDSO numbers, or change their role, as has been suggested by some. The scheme aims to have wide involvement from firms across the country to help limit the impact on individual solicitors and firms of their duty plan responsibilities and to enable named solicitors to engage with their clients. It does not prevent named solicitors being contacted or giving advice to their clients. In addition, a telephone helpline is being introduced to provide greater certainty of contact with named solicitors and access to timely telephone advice for those suspects who do not have a solicitor or their named solicitor was unavailable.

Given the position in some areas of Scotland where local faculties have decided not to participate in the scheme, the Cabinet Secretary for Justice has asked the Board to ensure suspects' access to a solicitor by greater use of employed solicitors and public defenders. We share the Cabinet Secretary's regret that this course of action is necessary. This will lead to increased costs on the legal aid fund which is already under great pressure.

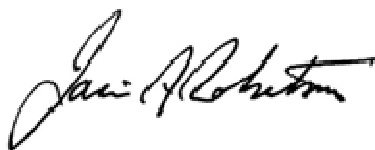
Legal aid expenditure increased by around £11m in 2010-11. During 2011-12, we are continuing to see very high levels of expenditure, notwithstanding the Scottish Government's legal aid savings package which was agreed with the Law Society. Applications for civil legal aid are around 30% higher than they were 4 years ago. We also continue to see increasing numbers of firms registering to undertake legal aid (civil and criminal). However, those doing work on criminal cases may be aware of the reducing volume of criminal applications. There are real challenges ahead for all involved in legal aid given the restricted public finances.

We recognise and appreciate the efforts and commitment of many firms across Scotland to provide good quality legal aid services. We are also aware of the potential impact of the Cadder decision on firms in relation to out of hours work. Thus far, the volume of personal attendances by solicitors have been small - around 5 a day across the whole of Scotland. We know that being called out at night can have significant impacts, particularly for sole practitioners. In developing the scheme we have tried to recognise these difficulties whilst at the same time providing certainty of timely access for suspects to telephone advice or attendance at the police station.

The scheme will have to be implemented on 4th July and we will make the necessary adjustments to take account of the different approaches by local faculties. Around 217 solicitors are registered to take part in the police station duty plan. We will issue plans for July - September only at this stage and monitor the situation on a monthly basis.

We would very much hope that local faculties and solicitors would reconsider joining the scheme. This will keep cost to a minimum and will help spread the load. Board staff have spoken with some local faculties would be happy to speak with other local faculties if this would be helpful.

Yours sincerely



Iain A Robertson
Chairman



Lindsay Montgomery
Chief Executive & Accountable Officer