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By e-mail

Deans of Local Faculties

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Thank you for attending the meeting on Wednesday 26 March and for the constructive way in which all of you put forward your points. Unfortunately, as you know, other commitments prevented me from staying longer.

The main concerns raised at the meeting by the profession were the need for early and regular review of the new arrangements, the subsuming of two deferred sentence diets in the single case disposal fee, the solicitors' ability to grant ABWOR and SLAB's requirement to see disclosable summaries. I said that I would consider these issues and revert to you quickly. I am also aware, from earlier representations, that the inclusion of police custody visits in the disposal fee is also a source of anxiety in some areas.

We have already developed an extensive monitoring programme for summary justice reform, including legal aid. As part of this, we will monitor the Crown Office assumptions on volumes of business on which the legal aid proposals were costed. It is important that the monitoring arrangements can identify in early course any unforeseen or negative consequences and that early corrective action is taken to address these. I have asked my officials in Access to Justice to engage with the Law Society and SLAB to ensure that this can be done in an open and transparent way. It is also important to recognise that it will take some time for the cost consequences of the summary reforms and legal aid changes to fully work through the system.

It was also suggested at the meeting that where sentences are deferred for reports this should not be included within the two deferral diets subsumed within the case disposal fee. It was explained at the meeting that it is the subsuming of these diets, among other changes, which makes the disposal fee affordable at the level proposed. However, I feel it is a valid point that consideration of a social enquiry report is likely to require more input from the solicitor than a straightforward adjournment for sentence. I propose, therefore, to retain the

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subsuming of two deferred sentences in general but for those hearings where a social enquiry report is dealt with at the diet, and is conclusive of the case, to make an additional payment to the solicitor of £25. This will be payable in both the sheriff and JP courts.

The other principal point raised at Wednesday's meeting related to the list of cases in which it would be appropriate for solicitors to grant ABWOR. The list, intended to identify those cases where it would be more likely that the interests of justice tests would be met, was a matter of concern to many attendees who felt that a large number of cases would not fall within the list in the new system. I am happy to agree that solicitors should be allowed to make grants of ABWOR in both the sheriff court and the Stipendiary Magistrates courts but have asked SLAB to keep this arrangement under review. SLAB is happy to offer the profession the opportunity to seek its endorsement of any grant they intend to make, should solicitors have any doubts about a case. However, in keeping with the agreed position in the negotiations with the profession's representatives, and as reconfirmed at our meeting, where SLAB is not satisfied that the means and interests of justice tests have been appropriately applied by solicitors, then it will not be required to make payments at the account stage. We shall retain the list of cases as a fall back position, but it will not be applied if monitoring shows that the process is working in the way we expect it to do.

The original proposals in the consultation included a requirement for SLAB to see disclosable summaries in all cases and the revised proposals removed that requirement from sheriff court cases. SLAB's reason for requesting the disclosable summary has always been that it will help to focus the interests of justice factors in the application and therefore aid the determination process. While it is properly a matter for SLAB to decide what information it needs to determine any application made to it, and while many solicitors already find it helpful to submit the summary in support of applications, I know that the requirement is still a matter of concern to many in the profession. SLAB has taken these concerns on board and decided that it need not insist, as a matter of course, on seeing the disclosable summary in any application regardless of the court in which the case is taken. However, SLAB expects solicitors to provide sufficient information to enable the application to be determined and where this is not provided, the Board will either refuse the application or seek the information it considers necessary.

With regard to payments for police custody visits, I am aware that the subsuming within the case disposal fee of payments for visits up to four hours in duration is also a matter of concern. I am happy to reduce that to two hours.

I hope that you will agree that the further concessions proposed above demonstrate the continuing good faith in which the negotiations have so far been taken forward. I have taken account of the genuine concerns raised by the profession in what is a period of significant change for it and a period of significant financial constraint for Government. Were we to make no changes to legal aid the summary justice reforms would be likely to lead to a reduction in legal aid expenditure of around 18%. By making these proposed changes we will be able to reinvest further savings into additional fees for solicitors and that figure will be nearer 6%. The very tight timescales required for the development both of regulations of applications systems at SLAB mean that this process must now reach a conclusion if we are to have the new legal aid arrangements in place in June.

I am grateful to the representatives from the profession for their constructive engagement in the consultation process and my impression from last Wednesday was that many of the attendees were broadly content with the revised legal aid model, if not to all aspects of the proposed payment regime. We will now move towards implementing these proposals and I hope that the final concessions will make the payment arrangements significantly more acceptable.



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