

## **To all Criminal Legal Aid Practitioners**

Our Ref: LS203/oa/la  
Date: 12<sup>th</sup> February 2009

Dear Colleague

### **THE DUTY SOLICITOR SCHEME AND THE PDSO**

You will be aware that the Scottish Legal Aid Board ("SLAB") is shortly to carry out a full review of the duty solicitor scheme. This comes at a time when some parts of the country have seen an apparent expansion of the use of Public Defence Solicitors Office ("PDSO") solicitors on duty lists. This expansion has been brought to the attention of the Summary Legal Aid Review Group.

### **CABINET SECRETARY FOR JUSTICE**

At various meetings with the Cabinet Secretary for Justice ("the CSJ") he has emphasised his support for private legal aid practices. At our meetings with him there has been no suggestion of PDSO expansion.

### **GLASGOW BAR ASSOCIATION "INDUSTRIAL ACTION"**

So what has happened to cause the apparent change of mind on the part of the CSJ? This seems to relate to the "industrial action" taken by members of the Glasgow Bar Association from May last year (the term "industrial action" was used by the GBA in a press release which stated: "At a meeting of Glasgow Bar Association on 23rd April 2008 solicitors voted unanimously in favour of industrial action. Members view the Scottish Government's current proposals for the reform of summary criminal legal assistance as unacceptable. The industrial action planned is likely to cause chaos within the courts.")

The "action" involved Glasgow solicitors leaving the duty solicitors to deal with all custodies, rather than assisting with this process as they would usually do. In advance of this action the CSJ agreed to meet representatives of the GBA. The meeting took place on 5.5.08. The following is an official summary of the meeting as it relates to the PDSO and the GBA's "industrial action":

*The Cabinet Secretary met with Sara Matheson and Gerry Considine of the Glasgow Bar association this afternoon following Sara's letter to him of 29 April. He made the following point:*

*On the disruptive action being taken by GBA from 6 May Mr MacAskill reiterated his point that he considers justice is best served by maintaining a thriving independent private bar. However, he noted that he will not abandon justice in Glasgow and will consider expanding the use of PDSO solicitors in the area if necessary to allow the justice system to operate.*

The shift in position and tone is clear. In response to the GBA action SLAB arranged for a solicitor from the Edinburgh office of the PDSO to help to deal with custodies. This and other responses to the action generated much ill-feeling.

From discussions with even well-informed Glasgow practitioners it is unclear whether the CSJ's position on PDSO expansion was fully appreciated.

The increased presence of the PDSO on the Glasgow duty list cannot be said to be a surprise. It is exactly what the CSJ said would happen. Despite a recommendation from its committee the GBA membership voted against forswearing further "industrial action". This has meant that there is still no place for them in the Review Group. Sadly it has also meant preventative action being taken to avoid the Glasgow courts being affected by "industrial action".

### SLAB PLANS

It is worth considering the minutes of recent meetings at SLAB. These are available on its website at [http://www.slab.org.uk/about\\_us/board\\_members\\_senior\\_staff/boardminutes.htm](http://www.slab.org.uk/about_us/board_members_senior_staff/boardminutes.htm).

These make clear the Boards intention regarding the duty scheme and are worth studying.

### DUTY SCHEME OUTWITH GLASGOW

In its press release recently for a Newsnight Scotland item about the PDSO and the duty scheme SLAB said:

*Using the PDSO to fill vacant duty solicitor slots, in Glasgow or other parts of the country, is a pragmatic and equitable solution, which is also cost effective for the taxpayer. Additional PDSO involvement in duty plan means savings for taxpayers as PDSO solicitors are paid an annual salary, rather than being paid on a case by case basis as private solicitors are. This enables us to achieve better value for money, both in terms of the duty plan and PDSO itself, as the more cases the PDSO deal with, the greater the economies of scale that are achieved. This is consistent with the Cabinet Secretary for Justice's stated expectation that the Board should work to ensure the financial viability of the PDSO network and to*

*optimise the investment of public money in the service while minimising potential negative impacts on suppliers in any area.*

Whilst there is an argument that for reasons of market failure Glasgow can be treated as a special case our position is that the proposals for expansion of the PDSO generally through duty schemes go too far. We do not accept the “value for money” argument in relation to the PDSO is an acceptable or convincing argument for any further erosion of the work done by, and available to, private solicitors. In areas where the PDSO already has offices they would be entitled to a proportionate share of the duty scheme. There should however be no unfair weighting, nor any expansion into other areas without PDSO offices.

The duty scheme is an official version of a safety net of legal representation which has always been available (or at least since the 15<sup>th</sup> century) in Scotland, albeit usually provided entirely through the goodwill of private practitioners. The GBA “industrial action” highlighted the extent of reliance on this goodwill. Leaving aside the difficulties caused by the GBA “industrial action” we have all made the duty scheme work, through involvement in it and supplementing its services. It is therefore unfair for duty scheme work to be directed to the PDSO at a time when the number of cases being prosecuted has been reduced.

Part of the review of the duty solicitor scheme will have to involve consideration of *Salduz v Turkey* 2008 ECHR 1542. The Scottish Government is no doubt also considering the terms of this Strasbourg decision with a view to amending the law to allow a right to access to a solicitor at the earliest stages of police custody. It would be unfortunate if other changes to the duty scheme hampered the necessary support for such access.

We are not asking for special consideration. Indeed it appears to be the PDSO that is doing so. We simply ask that previous arrangements be allowed to continue. Solicitors will then continue to ensure that accused people and the courts are well served.

#### WHERE TO?

As the recent changes to duty schemes have not been the subject of agreement or discussion we will be seeking an early meeting to discuss our concerns. It would be useful if colleagues in each area could keep us advised of any changes to duty arrangements. We need to ensure that local concerns are communicated to the Government as well as to SLAB. We must all take part in the consultation process.

Yours sincerely

A handwritten signature in black ink, appearing to read "Jim Adair". The signature is written in a cursive style with a long, sweeping underline.

**Oliver Adair**  
**Convenor, Legal Aid Solicitors Committee**