



FACULTY OF ADVOCATES

15 September 2015

Ref: L01-7/WJW/AT

Christine Grahame MSP,
Convenor,
Scottish Parliament Justice Committee

Dear Ms Grahame,

Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2015

I am aware that the Committee has before it these draft Regulations and that it has called for further evidence.

The Faculty was consulted on the draft Regulations. On the basis that the Regulations simply apply existing legal aid rates, the Faculty decided not to comment one way or the other on them.

In light of the papers before the Committee, it may be useful to the Committee if I briefly outline the Faculty's position in relation to the respective situations, in the Sheriff Appeal Court, of advocates and solicitors with higher court rights of audience ("solicitor advocates") – in order to explain why these are not symmetrical or analogous. I apologise for the lateness of this letter.

In a sheriff court case which is funded by legal aid, an advocate may appear only if the Scottish Legal Aid Board has granted sanction for the instruction of counsel (and, of course, if the solicitor has decided to instruct counsel). The Faculty acknowledges that one consequence of the transfer of summary criminal appeals to the Sheriff Appeal Court is that representation by counsel in a summary criminal appeal will no longer automatically be funded by the Board, but will require to be justified with a view to the grant of sanction.

By contrast with the position of advocates, no sanction is required before a solicitor may represent a client in a publicly funded case in the sheriff court, including the Sheriff Appeal Court. A solicitor with higher court rights of audience is, in that regard, in the same position as any other solicitor. It would be wrong to say that solicitors with higher court rights of audience are excluded from the Sheriff Appeal Court. Any solicitor (including any solicitor advocate) may appear in any summary criminal appeal in the Sheriff Appeal Court.

THE DEAN OF FACULTY

Telephone +44 (0)131 260 5622 Facsimile +44 (0)131 225 5341

ADVOCATES LIBRARY PARLIAMENT HOUSE EDINBURGH EH1 1RF

www.advocates.org.uk

For these reasons, the positions of advocates and solicitors with higher court rights of audience in relation to sheriff court work (including work in the Sheriff Appeal Court) are not symmetrical or analogous. The differences in the legal aid treatment of members of the two professions in the sheriff court (including the Sheriff Appeal Court) follow logically from the fact that a solicitor with higher court rights of audience does not need to exercise those extended rights of audience when he or she appears in the sheriff court.

This question is entirely separate from the question of whether the rates payable to solicitors are appropriate. In order to secure access to justice, it is essential that lawyers should be appropriately remunerated for the work which they do. The Faculty affirms the importance of applying that principle to the work of both solicitors and counsel. The Faculty accordingly welcomes the commitment which the Scottish Government has given that arrangements will be reviewed once the new Sheriff Appeal Court is operational. Inasmuch as the rates provided for in these Regulations reflect existing legal aid rates more generally, it would be desirable that the review should not be confined to work in the Sheriff Appeal Court.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'James Wolfe'.

James Wolfe QC