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Dear Colleague,

**Quarterly Report of the Law Society Legal Aid Negotiating Team (Criminal) 1st
January 2010 to 31st March 2010**

As you may know, at the end of last year the Society changed the way it deals with Legal Aid issues. There is now a Legal Aid Convener for the Society and there will be two Vice-Conveners - one who deals with criminal matters and one who deals with civil matters. There will then be two small negotiating teams dealing respectively with these issues.

This is the first Quarterly Report of the Criminal Negotiating Team. During the course of the last quarter, we gave evidence before the Justice Committee at the Scottish Parliament on 26th January regarding summary justice reform. There were a wide range of questions but the main focus was on diversion. The Society reiterated its position that diversion should only be made where appropriate and certainly not for recidivist criminals and also stressed that we thought that the change to opting out of the system was flawed. We also supplied supplementary written evidence having received further enquiries from the Committee in relation to the effectiveness of early disposals.

On 12th March we met with Lord Bach, the Secretary of State for England & Wales dealing with Legal Aid issues. There was comparison between the respective systems and the Minister made favourable comments regarding various aspects of the Scottish system and creating a healthy and positive relationship right across the board between the Society, SLAB and the Scottish Government. He respected that there would be differences of approach and opinions but thought that the inclusive structure was a good one. As an outcome of Lord Bach's visit, Helen Edwards, Director General Criminal Justice at the Ministry of Justice will be visiting Scotland later in April and meeting with the Society.

On 15th March the Society's representatives attended the most recent Summary Criminal Legal Aid Monitoring and Evaluation (SCLAME) meeting. This is a group consisting of representatives from the civil servants representing Scottish Government, COPFS, SCS, SLAB and the Society. It originally was set up to deal with summary justice reform but it so has developed to include decisions on a variety of issues relating to the criminal justice system. It provides the Society with the opportunity to make its views known at



the highest level and at an early stage. The Cabinet Secretary himself has agreed to attend if that would prove fruitful and has in fact attended at the Society's request on at least two occasions.

There have also been two operational meetings with SLAB and amongst the topics currently being discussed are the verification of financial eligibility in summary cases and payments for first deferred sentence for good behaviour. There have also been discussions regarding the appointed solicitor in custody cases: the Society and SLAB have agreed that the Regulations require to be amended to meet their original intention, so that any existing professional obligation will be an acceptable reason to delegate first appearance, irrespective of when that obligation arose. We are also due to meet with the Board to discuss time recording and how that could be affected by summary justice reform issues.

We have also been engaged in the discussions regarding the new solemn regulations, which will have been laid by the time that you read this. In the course of the most recent drafting, we were able to persuade Scottish Government to make a number of changes, including preserving the right for a solicitor to precognise at an enhanced rate and also ensuring that the enhanced payment is available for both stages of VIPER parades in solemn cases.

There has also been discussion regarding the instruction of the payment for bail appeals in certain cases, where they were inadvertently excluded originally. This had been agreed with the Government. In principle, the Government were prepared to backdate such a provision but they have received legal advice that that may not be compatible with the terms of the primary legislation. This matter is still being discussed and the Profession will be kept informed.

The negotiating team intends to meet on a regular basis to discuss these and other ongoing issues. The membership of that team is as undernoted and if you wish to have a Faculty meeting please contact Andrew Alexander (andrewalexander@lawscot.org.uk or 0131 332 3542) at the Society. Alternatively any member of the Profession should feel free to contact any member of the Team individually, contact details overleaf.

Yours sincerely

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Legal Aid Convener
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