



Law Society
of Ireland

Minister Jim O'Callaghan TD

Minister for Justice, Home Affairs and Migration
Department of Justice
51 St Stephen's Green
Dublin 2

31 July 2026

Dear Minister,

Thank you for your letter of 28 July and for the meeting held on 27 July. I welcome the clarification meeting and engagement that has taken place in recent days.

The Law Society has consistently supported reform. Our concern has never been with change itself, but with ensuring that any new model is practical, evidence-based, and capable of protecting the constitutional rights of accused people, while remaining sustainable for those who provide publicly funded legal representation.

I would like to acknowledge the clarifications and proposed changes outlined in your letter.

Several positive developments are welcome, including splitting the fee into two instalments; confirming that travel, photocopying and subsistence expenses are payable; committing to continued engagement with the profession as the new arrangements take effect and reviewing extended cases.

The Law Society also welcomes your expressed commitment to greater engagement through the forthcoming Criminal Legal Aid Bill and the wider review of the criminal justice system.

While practitioners acknowledge some of the changes outlined in your letter as progress, the feedback we have received from criminal law solicitors nationwide is that these changes do not, of themselves, address significant practical concerns underlying the current difficulties.

The consistent message we continue to receive is that most practitioners would likely participate in the Scheme on an interim basis if a small number of targeted corrections and adjustments were made while the broader review is undertaken.

The Law Society believes there are two issues in particular which remain critical.

Separate cases with distinct facts

The first concerns the treatment of separate and distinct cases which, for efficiency, happen to be before the court on the same day.

It is important to acknowledge at the outset that criminal practitioners understand the concern you have identified regarding the previous operation of the scheme, wherein numerous certificates could arise from what is, in substance, a single set of circumstances.

The Law Society's view is that the current proposal moves too far in the opposite direction by treating fundamentally different criminal cases as though they were one matter solely because they happen to be listed before the court on the same date.

A solicitor instructed on multiple separate cases is not dealing with a single body of evidence or a single set of allegations or a single Garda or a single expert witness. Each matter requires separate preparation, consultation with the client, examination of evidence, legal analysis, and

representation, with each case involving different complainants, different witnesses, different Garda investigations, different CCTV footage, separate and distinct disclosure obligations, separate and distinct legal issues and different factual circumstances.

For example, a defendant could be charged with a burglary that was alleged to have taken place in Dun Laoghaire in February, an assault that was alleged to have taken place in Swords in April, and a public order incident that was alleged to have taken place on Grafton Street in June.

These cases involve entirely separate and distinct locations, times and victims; yet they could be brought against the one defendant on the one day.

Under the current Scheme these cases would result in just one Legal Aid Certificate if commenced in court on the same date, whereas three Legal Aid Certificates would issue if these three cases commenced on separate dates. The workload involved in both scenarios is the same. The workload involved does not diminish or disappear merely because the cases happen to be listed before the same judge on the same day.

Commencing cases on the same date saves valuable court time and ensures efficient use of Garda resources but as outlined above, it does not reduce the amount of preparation that the defence solicitor has to undertake in order to ensure defendants receive their constitutional right to adequate legal representation.

The Criminal Justice (Legal Aid) Regulations 1962 never envisaged that a solicitor would defend several separate prosecutions under a single Legal Aid Certificate.

Following on from our consultations with practitioners, a possible compromise is that legal aid certificates should only be issued for separate and distinct cases committed on separate dates and placing a cap of five on the number of certificates that can be granted to one defendant in one court on one day. I believe this is reasonable and workable.

The Law Society believes this approach directly addresses the core concern you have identified, while also recognising the genuine and substantial work required in preparing and conducting a defence for genuinely separate and distinct matters.

Cases of extended duration

The second issue concerns cases of extended duration. As you note in your letter, there are known categories of cases where the length of proceedings, due to the number of court appearances, is considerably longer.

Typically, these type of cases deal with children, people with mental health issues and people remanded in custody by judges. For cases involving children, the court exercises a more supervisory, rehabilitative role and there is often multi-disciplinary involvement from different state bodies such as TUSLA, the Probation Services and the Garda Youth Diversion Programme.

For cases involving people with mental health or capacity issues, questions of fitness to plead can arise. In such cases numerous adjournments are necessary to await psychiatric reports or for delays in securing a bed in an appropriate care facility. In such cases, where an accused is remanded in custody and unfit to plead, you will be aware that, the law dictates the maximum adjournment is for two weeks leading to many appearances before the courts.

Where defendants are remanded in custody by judges they are entitled by law to return to court every two weeks and may consent to extend that to every four weeks. There can be significant delays in these cases for example waiting for a certificate of analysis in drugs cases, directions from the Director of Public Prosecutions (DPP) or delays in obtaining books of evidence.

These cases almost always require additional time, additional appearances and patient, repeated engagement with a solicitor - none of which is factored into the new Scheme.

Under the new Scheme a solicitor who represents someone in court for a non-complex matter will be paid the same as someone who represents a troubled child in a complex case involving 20+ court appearances. Adjournments in these cases are not discretionary: they are driven by statutory and welfare obligations. In practical terms, this equates to an average of €26 per appearance before any account is taken of the substantial work carried out outside court. That work includes consultations with clients and their relatives and other third parties, consideration of witness statements, examination of CCTV and other exhibits, legal research, correspondence, court preparation and ongoing case management over what may be a lengthy period. I have attached two anonymised cases in an Appendix to this letter that demonstrate the points made.

Criminal solicitors acknowledge the commitment to review the operation of the scheme and the indication that changes may be considered where evidence demonstrates that particular categories of case routinely involve substantially higher numbers of appearances.

However, practitioners remain concerned that the scheme, as currently structured, places all of the financial cost associated with prolonged proceedings on the solicitor, even where delays arise entirely outside the control of either the defendant or the defence legal team.

More generally, as the Law Society has previously observed, adjournments are very frequently driven by matters such as delays in DPP directions, delays in disclosure from Gardai and the DPP, delays in serving books of evidence by the DPP, delays in obtaining reports from the Probation and Welfare Service, psychiatrists and state agencies, interpreter availability and other systemic factors. All of these are completely outside the control of defence practitioners.

As an interim measure, pending completion of the review you have announced, the Law Society believes that a practical and proportionate solution would be to issue a further legal aid certificate where a case exceeds 10 court appearances.

Such an approach would provide a safeguard against the most extreme examples of elongated proceedings while still allowing the Department to gather evidence and assess the operation of the new scheme during the review period. It would also allow any future changes to be informed by the data generated through that review and by the wider reform programme currently underway.

Conclusion

The Law Society's objective is to support a criminal legal aid system that is sustainable, fair, and capable of ensuring access to justice across the country. We acknowledge the movement reflected in your recent proposals and are committed to continued engagement with you.

The clear feedback we have received from practitioners is that the two adjustments outlined above would alleviate the principal remaining concerns regarding the operation of the scheme. It is our understanding that a significant majority of criminal legal aid solicitors would regard the scheme as workable and viable if these measures were adopted on an interim basis, pending the outcome of the comprehensive review of criminal legal aid and the wider criminal justice reforms currently being undertaken by your Department.

The Law Society stands ready to continue engaging constructively with you and your officials to support that review process and to assist in the development of a criminal legal aid system that commands the confidence of practitioners, serves the public interest and ensures the effective administration of justice.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rosemarie Loftus', with a stylized flourish at the end.

Rosemarie Loftus, President

Appendix

Case Example - client Conor

1. **24 April 2025**

Conor appeared before Cloverhill District Court after the execution of a bench warrant. The judge remanded him in custody in Cloverhill prison for 2 weeks.

2. **08 May 2025** – Conor's solicitor explained to the judge that issues had arisen in relation to his fitness to plead (meaning his ability to understand the criminal charges, the court process or the capacity to instruct his legal team). The court sought an update in relation to fitness and the availability of a bed in the Central Mental Hospital. The case was adjourned for 2 weeks as required by the law.
3. **22 May 2025** - The Mental Health Team from prison attended court and sought a date to be fixed for a fitness to plead hearing. Psychiatric reports assessing Conor's mental capacity were to be prepared.
4. **29 May 2025** – A psychiatric report dated 27 May 2025 determined he was unfit to plead. He was remanded in custody by the judge and the case was adjourned to 05 June to fix a date for a fitness to plead hearing. (By law the case must be mentioned in court every 2 weeks.)
5. **05 June 2025** – Conor is remanded in custody and the case is adjourned to 19 June to fix a date for a fitness to hear pleading.
6. **19 June 2025** - Conor is remanded in custody and the case is adjourned for one week for an updated psychiatric report.
7. **26 June 2025** Conor is remanded in custody and the case adjourned for one week for the preparation of an updated psychiatric report.
8. **03 July 2025** – Conor is remanded in custody and the case is adjourned for an updated psychiatric report and to fix a date for a fitness to plead hearing.
9. **11 July 2025** – The updated psychiatric report indicates Conor is still unfit to plead. Conor is still awaiting a bed in the Central Mental Hospital. There are no beds available. The case is adjourned to fix a date for a fitness to plead hearing.
10. **17 July 2025** – A date is fixed for the fitness to plead hearing for 14 August. The case is adjourned to 31 July for mention and Conor is remanded in custody.
11. **31 July 2025** – The case is listed for mention as the law only allows for an adjournment of 2 weeks maximum. The case is adjourned to 14 August for fitness to plead hearing. Conor is remanded in custody.
12. **14 August 2025** – The witness expert, a professor psychiatrist from the Central Mental Hospital, is unavailable to give evidence on the date of the hearing. The case is adjourned to 28 August 2025 to fix a new date for a fitness to plead hearing and Conor is remanded in custody.
13. **25 August 2025** - The case is adjourned to 11 September for the fitness to plead hearing and Conor is remanded in custody.
14. **11 September 2025** - A report dated 10 September 2025 indicates that he is still unfit to plead and remains on a waiting list for bed in the Central Mental Hospital. On foot of this report a representative from the DPP seeks an adjournment to allow them the time to decide how they wish to prosecute the case.
15. **18 September 2025** - The court fixes 03 October 2025 for a fitness to plead hearing with a mention date 2 weeks later on 25 September

16. **25 September 2025** - The case is listed for mention as the law only allows for an adjournment of 2 weeks maximum. The case is adjourned to 09 October for mention with a fitness to plead hearing listed for 20 October. Conor is remanded in custody.
17. **09 October 2025** - The case is listed for mention as the law only allows for an adjournment of 2 weeks maximum. The case is adjourned to 20 October for a fitness to plead hearing. Conor is remanded in custody.
18. **20 October 2025** – The case is listed for fitness to plead hearing. A report dated 16 October 2025 from a consultant psychiatrist indicates that he is still deemed to be unfit to plead and is still on a waiting list for a bed in the Central Mental Hospital. The case is adjourned for a day.
19. **21 October 2025** – The fitness to plead hearing takes place. The psychiatrist confirms Conor is still unfit to plead and there were still no beds in the Central Mental Hospital. The District Court Judge adjourn the case to 24 October to consider the evidence and keeps Conor in custody.
20. **24 October 2025** - The District Court Judge deems Conor is unfit to plead and makes an Order for his transfer to a designated Centre (a mental health facility) and held in custody in the meantime. The case is adjourned for progress.
21. **06 November 2025** - Conor was not in the Central Mental Hospital and still in custody. The case was postponed.

(Conor is not the name of the child and was used to preserve his anonymity).

Case Example - client Finn

1. **30 January 2025** – Remanded in custody due to the fact that he did not attend court on multiple occasions.
2. **06 February 2025** - Finn presents in court with mental health issues. Urgent medical attention was sought.
3. **19 February 2025** - A psychiatric report recommends transfer to an approved centre for assessment under the Mental Health Act when a bed became available.
4. **20 February 2025** – An application for bail is made to allow Finn to be admitted to an approved centre for mental health treatment. The judge grants bail subject to availability of a bed and adjourns the case for 2 weeks
5. **06 March 2025** – There is still no bed available. The case is adjourned for 2 weeks and Finn is remanded in custody.
6. **20 March 2025** – A bed becomes available but Finn did not wish to sign the Bail Bond to be transferred there. An accused who has been granted bail must sign the bail bond to be released. If they do not, they cannot pick up bail. The psychiatric team recommends a High Court application to allow him to be transferred to the facility without the necessity to sign the bond. The case is adjourned.
7. **10 April 2025** - The case is adjourned to consider the appropriate next legal steps. Finn is remanded in custody
8. **17 April 2025** - The lawyers representing Finn apply to the High Court asking permission to transfer Finn to the appropriate treatment centre without signing a Bail Bond.
9. **24 April 2025**- The High Court grants the application allowing for Finn to transfer to the appropriate treatment centre as soon as a bed becomes available. There is still no bed available. Finn is remanded in custody.

10. **01 May 2025** - Finn is transferred to a hospital and escapes later.
 11. **08 May 2025** - Finn returns to hospital and a psychiatric evaluation is carried out.
 12. **22 May 2025** - The case is mentioned in court. The judge requests the preparation of a Fitness to Plead Report by a psychiatrist.
 13. **04 June 2025** – The case is adjourned to 12 June 2025 for an updated report. Finn is remanded in custody. The Prison Psychiatric Team applies for a warrant to return Finn to Cloverhill prison from the treatment centre.
 14. **12 June 2025** – The report dated 5 June 2025 indicates that Finn is fit to plead. Finn pleads guilty to the offences. The judge imposes a sentence on the same day.
- (Finn is not the name of the defendant and was used to preserve his anonymity).