



**Law Society  
of Ireland**

## **Opening Statement on Criminal Legal Aid**

### **Rosemarie Loftus, President of the Law Society of Ireland, at the Joint Committee on Justice, Home Affairs and Migration on Criminal Legal Aid**

Good afternoon. I would like to thank the Cathaoirleach for the opportunity for the Law Society to address the deeply concerning decision by the Department of Justice, Home Affairs and Migration regarding Criminal Legal Aid in the District Court.

I am joined today by my colleague Dr Shane McCarthy, Chair of the Criminal Law Committee of the Law Society, and Danica Kinnane, member of the Criminal Law Committee.

Criminal Legal Aid is a cornerstone of our justice system, serving as a vital mechanism to uphold the constitutional right to legal representation.

Under the Criminal Justice (Legal Aid) Act 1962, the State is mandated to provide free legal representation for those with "insufficient means" to ensure they are on equal terms with the prosecution's resources.

By facilitating the right of representation and ensuring a fair trial, the Criminal Legal Aid Scheme ensures that justice in Ireland remains a fundamental right for all, rather than a privilege for those who can afford it.

In essence, what the Department is now introducing is a fixed payment for an indeterminate amount of work. A one size fits all approach is particularly problematic for practitioners as it has no regard to the fact that there are certain categories of cases that are known to run for a far longer period of time than the 5 appearances that underpin the Department's model.

The Law Society is deeply disappointed with the Department's decision to impose this model of Criminal Legal Aid.

The changes were developed by the Department without any consultation with the Law Society.

The flat fee approach is said to be grounded in the Department of Justice document entitled *Simplifying Criminal Legal Aid Payment in the District Courts*. A version of this review was provided to the Law Society in October 2025. At that time, in spite of the fact that discussions were ongoing, the existence of the flat fee proposal was not disclosed.

However, it has become clear in recent days that the version of the document provided to the Law Society was a truncated version of a more extensive document. Before the document was provided by the Department to the Law Society key elements were removed, including the very proposal to

introduce a flat fee as well as details of projected cost savings. The complete report was never furnished to the Law Society by the Department.

The full version of the report only came into our possession ten days or so ago, and what is clear is that one of the central aims of the flat fee proposal is to reduce expenditure.

Another very significant feature of the Department's paper is that it recommended a flat fee of €582 based upon six appearances, not €520 based upon five. This means that the current fee represents a 10% cut based on the data on cases and costs outlined in the Department's own review document.

The flat fee approach also conflicts with the Programme for Government commitment to restore FEMPI cuts in Budget 2026.

The Law Society strongly opposes the flat-fee model for several reasons:

- It is based on a fundamental misunderstanding of how the District Court operates. The Minister and the Department have made the assumption that delays are caused by solicitors seeking to maximise fees. In reality, the overwhelming majority of adjournments are sought by the State to allow time for disclosure, DPP's directions, or forensic reports. The Department's desk-based review could never have captured the reasons for adjournments, as these are not recorded.
- It replicates a flawed model that has already failed in civil legal aid. This Committee has previously heard evidence from the Legal Aid Board and FLAC about the exodus of private practitioners from civil legal aid family law practice due to the flat fees that had been imposed there. In a recent Law Society Gazette survey, 81% of respondents believe the same will occur in criminal practice if the flat fee model is imposed.
- The flat fee approach will disproportionately harm vulnerable defendants, including children. And those with complex needs or cases requiring multiple appearances will struggle to secure representation. The Law Society is calling for the postponement of the introduction of the new model until such time as the Department of Justice has received and processed all of the additional data that it has requested from the Courts Service.

The fees that are payable under the new model must constitute fair remuneration for the amount of work that is done.

There are categories of cases where the length of proceedings is known to be considerably longer than the run of the mill cases. A separate fee or an enhanced fee should apply to those categories of cases, which are:

- o Firstly - cases involving children. These cases take longer as the role of the court involves the court exercising a more supervisory, rehabilitative type role. These cases are by their nature, longer in duration as the court will often want to monitor the progress of the child in getting back on the straight and narrow.
- o Secondly - cases involving persons with mental health or mental capacity issues. These are cases where fitness to plead issues may arise and are typically of a longer duration.
- o Thirdly - cases involving people held on remand.

The legal aid model must recognise that charges relating to different offences involving different sets of facts and different evidence, different witnesses etc must be treated as distinct cases, even if commenced in court on the same day.

The Department's flat fee approach don't take into account the fact that the prosecution is responsible for the vast majority of adjournments. The Department must now introduce measures that will tackle prosecution-side delays - such as delays in the production of disclosure, delays with books of evidence, delays with DPP directions, delays with laboratory analysis reports, probation reports, restorative justice reports and so on.

Any new model of Criminal Legal Aid should be subject to ongoing review. We are calling for a post-implementation review to be conducted following the first six months of operation of any new model and a further review again at 12 months. We are also calling on the Department to commit to publishing, every three months, a breakdown on a county-by-county basis of the number of solicitors undertaking Criminal Legal Aid work in the District Court.

We are very concerned that the Minister and the Department appears intent on proceeding with a model of Criminal Legal Aid that many practitioners consider unworkable. Proceeding on this basis risks causing lasting harm to the effectiveness of the criminal justice system.

We believe that this moment and this measure will be looked upon as a pivot point where a crucial part of the criminal justice system was made worse rather than better.