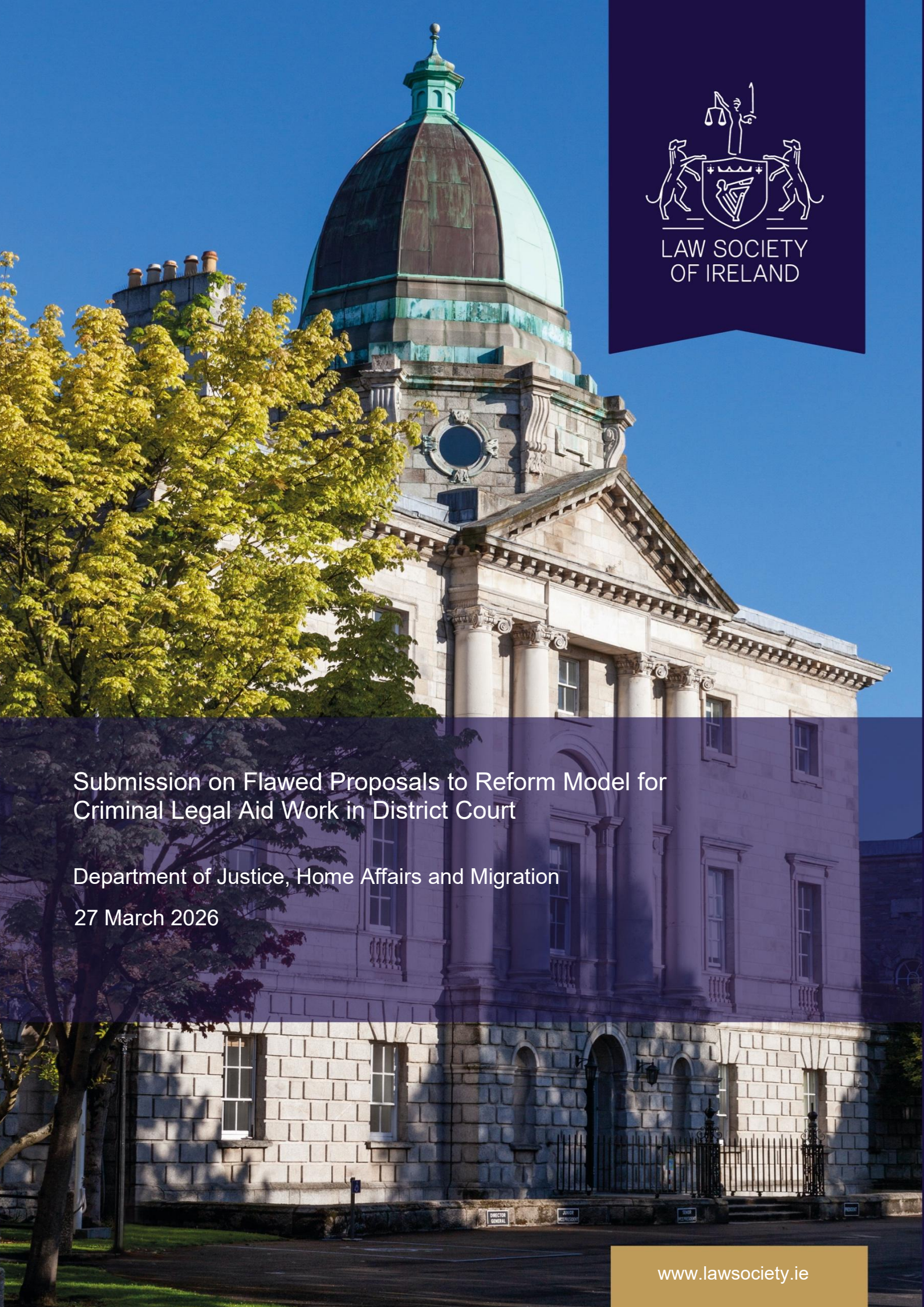

LAW SOCIETY OF IRELAND

Submission on Flawed Proposals to Reform Model for Criminal Legal Aid Work in District Court

Department of Justice, Home Affairs and Migration

27 March 2026

www.lawsociety.ie

Executive Summary

The proposed changes to Criminal Legal Aid in the District Court are seriously flawed and will not work. It is particularly surprising that the Department of Justice would look to impose a model widely recognised as having failed in family law, under the Civil Legal Aid Scheme, when proposing changes to the Criminal Legal Aid scheme.

The Law Society has been proactively engaging with the Department of Justice over the last two years about how to bring about meaningful reforms, that are long overdue, to the Criminal Legal Aid system. It is therefore very surprising that the Department is now imposing this plan without any prior consultation on these proposals with criminal law solicitors who have a practical understanding of how the District Courts and the current Criminal Legal Aid system operates, as well as its flaws.

Criminal Legal Aid protects the constitutional right to a fair trial and has been in place since the 1960s. A flat fee will function as a de-facto cap on advice and representation and risks turning a fundamental right into something "theoretical" rather than "practical and effective."

While a flat-fee approach may be superficially appealing – it is an approach that is too simplistic and wholly unsuitable, because it will undermine an accused's right to a fair trial without any acknowledgment of the complexity, personal circumstances or length of an individual case (see pages 4 to 9 for anonymised real-life examples).

The proposals further undermine the constitutional right to a fair trial by looking to introduce potentially perverse incentives for an early guilty plea. This is not something that should be tolerated by anyone looking to support the fundamental rule of law. For these and other reasons, we believe these proposals will be open to legal challenge.

In addition, the approach of the Department of Justice and the data analysis on which these proposals are based are fundamentally defective because, as the Department have already confirmed, the data used is so blatantly incomplete. The data does not include information on basic issues, such as the reasons for adjournment or delays. Because of this incomplete data it seems impossible to have reached the conclusions drawn in the paper issued by the Department in February 2026.

The Department's proposals are based on the flawed conclusion that the defendant, or their legal representatives, are basically responsible for delays in the courts. The reality is that adjournments are most often driven by statutory requirements and State-side delays such as disclosure (including CCTV/body-cam footage), DPP directions, books of evidence, probation and restorative justice reports, interpreter availability, and judicial oversight of rehabilitation. For very legitimate reasons, and as addressed in this submission, the approach of the court to defendants in some legally aided cases can be different. As is well known to the Department, each one of these adjournments must be granted by judge who is independent of either the defence or prosecution in every case, and the State has every right to object to those requests in each case.

The proposed flat fee approach contains serious gaps and would fail to reflect the realities of the District Courts, the cases involving defendants entitled to legal aid and how criminal law is practiced. These deficiencies underscore the model's unsuitability and the risks it poses to both defendants and the effective administration of justice.

The introduction of a flat fee in Civil Legal Aid cases involving family law has led to an exodus of solicitors working under the Civil Legal Aid Scheme, as it became unviable to provide the service. The Legal Aid Board, which is an independent statutory agency

responsible for the provision of civil legal aid, has described immense challenges in accessing legal support. In its latest Annual Report, the Legal Aid Board stated that this lack of private legal practitioners was affecting its "ability to maintain a consistent, accessible, and uniform service nationwide".

Introducing a flat fee in the area of Criminal Legal Aid imposes an indeterminate amount of work while cutting the fees provided. The move will understandably lead to an exodus of solicitors working in this area, as it has done in family law. This will make it more difficult to secure legal representation. These proposals represent a unilateral cut to Criminal Legal Aid and break the commitment in the current Programme for Government to "fully restore criminal legal aid", which was cut under FEMPI legislation. The flat fee decision does not constitute a restoration of these cuts. Instead, by expressly cutting the payments and seeking to limit the involvement of legal representatives, the flat fee proposal will undermine a defendant's right to a fair trial, without any acknowledgment of the complexity, personal circumstances or length of an individual case.

The likely failure of these proposals would serve no one's interests and certainly not the wider public, whose safety and confidence in the criminal justice system depend on its effective operation. If implemented these proposals will also, perhaps invertedly, limit the legal options available to those who qualify for free legal aid. For these reasons the Law Society remains committed to developing a structure for Criminal Legal Aid that achieves genuine efficiencies, while guaranteeing fairness for all stakeholders in the justice system, as well as protecting the rights of those facing trial. In order to achieve this, the Law Society is calling for an independent, effective, and time-bound mechanism to determine the appropriate Criminal Legal Aid structures.

In relation to the current flat fee proposal, our key concerns can be summarised as follows:

1. **Impact on the functioning of the District Courts – the foundation stone of the Justice System**
    - In 2024, the District Courts handled in the region of 500,000 cases, 70% of which (more than 350,000) were criminal matters – making it the justice system's foundation stone. A flat-fee payment approach ignores the operational reality of criminal cases before the District Court and also ignores the variable complexity and duration of cases and the associated workloads involved.
    - Adjournments are often driven by statutory requirements and State-side delays: disclosure (including CCTV/body-cam footage), DPP directions, books of evidence, probation and restorative justice reports, interpreter availability, and judicial oversight of rehabilitation. A fixed "four appearances" model cannot accommodate this.
    - Paying one fee regardless of the number of appearances will thin out defence cover on busy lists, slow throughput, and increase delays, ultimately undermining the efficient running of the District Courts, and in time will erode public confidence.
2. **Undermining the Rights of People Who Cannot Afford Representation**
    - Criminal Legal Aid protects the constitutional right to a fair trial. A flat fee functions as a de-facto cap on advice and representation and risks turning a fundamental right into something "theoretical" rather than "practical and effective."
    - Vulnerable defendants such as children, people with mental health and addiction issues, those experiencing homelessness or language barriers, invariably require repeated court attendances and intensive engagement. Seeking to compress these cases into a single flat fee will reduce effective advocacy and increase unjust outcomes.

- By limiting meaningful defence work at the earliest stage, the flat fee proposal increases the risk of inappropriate guilty pleas and weaker rehabilitation pathways - contrary to the courts' welfare and justice-focused objectives.

3. Misdiagnoses the Problem: Blaming Defence for Systemic Delays

- The Department's review highlights spending growth and relies heavily on incomplete data and outlier examples, but systemic drivers of adjournments are largely outside the control of the defence. Targeting the entire scheme with a blunt flat fee proposal punishes all for the actions of a few.
- However, the Department has not provided evidence of the true causes of adjournments or delays. The data relied upon by the Department seems to be used to support predetermined conclusions, rather than as the basis of genuine evidence-based decision making.
- Any alleged abuses should be addressed through targeted compliance and audit measures, not by undermining access to effective representation across the board.

4. Flat-Fee Models have Failed

- The flat fee that was introduced in the area of family law led to an exodus of participating solicitors and led to "immense challenges" for the Legal Aid Board. Seeking to replicate this model in criminal law seems grossly ill-judged and will predictably produce criminal legal aid deserts.
- Rural and regional communities will be hit hardest, creating geographic inequality in access to defence services.

5. Practical Effects on District Court Case-flow

- Indictable matters commonly require numerous remands while directions and books of evidence are prepared; the proposal to pay €100 for District Court work in indictable cases profoundly mischaracterises the scale and importance of the work at that stage.
- Real-world practice (see pages 4 to 9 for anonymised examples) shows repeated remands driven by the timing of DPP directions and service of books of evidence. Flat fee models cannot fairly remunerate this essential work and will suppress early, active defence engagement.

6. Proposals break the Programme for Government and Policy Coherence; Cuts not restoration

- The flat fee proposal amounts to a unilateral cut, contrary to the Programme for Government commitment to fully restore FEMPI-era cuts. Presenting the flat fee proposal as "simplification" does not alter its substantive effect.
- The flat fee proposal also undermines policy tools that depend on early defence input (eg. signed pleas) and thereby increasing downstream costs and the pressure on higher courts.

7. Significant impact on Sustainability of Criminal Defence

- Current fees already lag far behind 2008 levels, while the complexity of cases has grown. A flat fee embeds a further real-terms cut and will accelerate the departure of practitioners from criminal work.
- A flat fee approach fails to recognise the substantial out-of-court work carried out by solicitors, such as engaging with clients and families, reviewing disclosure, liaising with agencies, prison and station attendances, and on-call duties. A fee structure that ignores this reality will make criminal defence practice unsustainable for solicitors.

Examples of complexity within cases heard in the District Court

Case examples concerning minors

Case Example 1 – client KO'C

K O'C is an exceptionally vulnerable young person, who suffered a brain injury at a very young age. He currently has approximately 20 separate offences pending before the Children's Court. The matter has been before the court on approximately 40 occasions. The adjournments arose for the following reasons:

1. Adjournments to obtain a Probation Report, as required under the Children Act.
2. Concerns regarding family circumstances, resulting in the court directing a Family Welfare Conference (FWC).
3. Multiple adjournments to facilitate the completion of the FWC, with Tusla joined to the proceedings.
4. Subsequent concerns regarding capacity, leading the court to direct a fitness to plead report.
5. Numerous adjournments to facilitate preparation of that report.
6. Appointment of a Guardian ad Litem due to the difficulty in communicating with and taking instructions from the child.
7. Further adjournments to allow the DPP to consider the fitness to plead report.
8. A hearing to decide if KO'C is fit to plead is being scheduled.

In this case, the progression of the prosecution was necessarily secondary to ensuring that the child's capacity, welfare and rights were properly assessed. The adjournments were not discretionary; they were driven by statutory obligations and welfare considerations.

Case Example 2 – client JT

JT had approximately 30 charges spanning over 20 adjournments. There were serious welfare concerns, including consideration of special care due to risk factors.

The case involved:

1. Probation services;
2. Tusla's direct involvement;
3. Family Welfare Conferences;
4. Adjournments to facilitate deferred detention orders.

The case required sustained engagement from multiple agencies before finalisation.

In these cases, the court exercised its statutory jurisdiction to address welfare concerns. Adjournments were necessary to facilitate probation reports, capacity assessments and service engagement. The prosecutions were effectively held in abeyance while interventions occurred. The eventual outcomes were significantly improved because the parties were afforded sufficient time and the necessary interventions were permitted.

Case examples concerning defendant remanded in custody (Cloverhill District Court)

Case Example 3 - client AOC

1. 15 September 2025: client remanded in custody on foot of four bench warrants and new charges. Bail refused due to warrant history. Remanded in custody to 18th September.
2. 18 September 2025: DPP's directions were outstanding on two matters. Remanded in custody to 02 October offence dates were DDPP's directions are outstanding were 17 August 2024 and 08 January 2025.
3. 02 October 2025 DPP's directions still not available, remanded to 16 October.
4. 16 October 2025: DPP's directions still not available for some charges, remanded on basis of "expect progress" on next date. Pleas of guilty entered on some charges. Not guilty pleas on other charges where a hearing date was reserved for 03 November 2025 in Court number 2 in the CCJ to fix a hearing date. Counsel were instructed to appear.
5. 30 October 2025: Cloverhill DC DPP's directions still not available for remaining charges. The Court marks "time passing".
6. 03 November 2025 some charges are listed in Court 2 CCJ . The Court determines the case should properly be listed in Court 18. It is remanded to the Case Management List in Court 18 CCJ on 07 November 2025.
7. 07 November 2025 a hearing date was fixed in Court 18 CCJ for the 14 January 2026 for the mention date on the 05 December 2026, as he is in custody and cannot consent to that length of remand.
8. 13 November 2025: in Cloverhill DC: DPP's directions still unavailable for remaining charges.
9. 05 December 2025, Court 18 CCJ: he was remanded to the 19 December 2025 so he can then be remanded directed allotted hearing date. Counsel were instructed.
10. 11 December 2025 Cloverhill DC. The DPP's directions were still unavailable for an offence dated 08 January 2025 it was struck out. A second matter for directions was sent to a country court. He was given a four-month sentence on other summary matters.
11. 19 December 2025, Court 18 CCJ: he indicated to the Court that he wished to apply for bail. He was remanded to the 14 January 2026 for a bail application. Counsel were instructed.
12. 05 January 2026, Court 18 CCJ: bail refused he was remanded to the 14th January for hearing. Counsel were instructed.
13. 14 January 2026, two prosecutions were struck out at the hearing, one was withdrawn. He was sentenced to six months imprisonment on other matters back dated to 18 September 2025. Counsel were instructed.

There were a total of 13 appearances, with counsel instructed on five appearances.

Case Example 4 - client BH

1. He was charged on 4th October 2025 and remanded in custody to Cloverhill on 09 October 2025 in relation to an assault case.
2. 09 October 2025 DPP's directions were not available he was remanded to 23 October 2025.
3. 23 October 2025 DPP's direction were still unavailable he was remanded to 06 November 2025.
4. 06 November 2025 DPP's directions were still unavailable the Court marked "time running".

5. 04 December 2025 DPP's directions were still unavailable. Remanded for a further two weeks marking "time passing".
6. 18 December DPP's directions were still unavailable marked peremptorily for directions to 02 January 2026.
7. 02 January 2026 the DPP directed trial and indictment it was remanded for service of book of evidence to the 22 January 2026. Counsel were instructed.
8. 22 January 2026 a Book of Evidence was served and he was returned for trial.

Case Example 5 - client CS

1. 24 April 2025 he appeared before Cloverhill Court after a warrant had been executed and he had been remanded in custody.
2. 08 May 2025 it was indicated that issues have arisen in relation to his fitness to plead. The court sought an update in relation to fitness and the availability of a bed in the Central Mental Hospital.
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.
4. 29 May Psychiatric report dated 27 May 2025 determined he was unfit to plead. He was remanded to 05 June to fix a date for a fitness to plead hearing.
5. 05 June 2025 he was remanded to the 19 June to fix a date for a fitness to hear pleading.
6. 19 June 2025, he was remanded for one week for an updated psychiatric report.
7. 26 June 2025 he was remanded for one week for an updated psychiatric report.
8. 03 July 2025 he was remanded for an update report and to fix a date for a fitness to plead hearing.
9. 11 July 2025 the report indicates he is still unfit to plead, and he is still awaiting a bed in the Central Mental Hospital and there are no beds available.
10. 17 July 2025 the fitness to plead hearing is listed for 14 August with a mention date on 31 July 2025.
11. 31 July 2025 remanded to 14 August for fitness to plead hearing.
12. 14 August 2025 the professor from the Central Mental Hospital is unavailable to give evidence it is remanded to 28 August 2025 to fix a new date for a fitness to plead hearing.
13. 25 August 2025 remanded to 11 September for the fitness to plead hearing.
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 11 September 2025 on foot of this report a representative from the DPP seeks a remand for directions.
15. 18 September 2025 the court fixes the 03 October 2025 for a fitness to plead hearing with a mention date on 25 September as the client is unfit to give instructions to consent to longer than two weeks.
16. 25 September 2025 fitness to plead hearing listed for 20 October 2025 with a mention date on the 09 October 2025.
17. 09 October 2025 he is remanded to 20 October 2025 for the fitness to plead hearing.
18. 20 October 2025 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.

19. 21 October 2025 fitness to plead hearing is conducted. Psychiatrist confirms he is still unfit to plead and there were still no beds in the Central Mental Hospital. Judge Mitchell remands to 24 October to consider the evidence.
20. 24 October 2025 the court deemed he was unfit to plead and made an Order that he be transferred to a designated Centre and remanded for progress.
21. 06 November 2025 the patient was not in the Central Mental Hospital and the case was adjourned generally.

Case Example 6 - client DW

1. 27 August 2025 he was charged with a drugs offence bail was fixed at €30,000.00 he was remanded in custody with consent to bail to 03 September 2025.
2. 03 September 2025 DPP's directions were not available. He was remanded to the 01 October 2025.
3. 01 October 2025 DPP's directions were not available the Judge marks "expect progress".
4. 29 October 2025 DPP's directions were still not available. He was remanded peremptorily for DPP's directions.
5. 26 November 2025 the DPP directed trial and indictment. He was remanded for service for a Book of Evidence.
6. 18 December 2025 the Book of Evidence was not ready it was remanded for service of the book.
7. 08 January 2026 the Book of Evidence was served.

Case Example 7 - client EO'F

1. 04 September 2025 the DPP's directions were awaited on some charges he is in custody in Clover Hill.
2. 18 September the DPP directed trial and indictment on one case and directions were still awaited on a second case. There were some unrelated summary charges also before the court.
3. 16 October 2025 the Book of Evidence and DPP's directions were unavailable.
4. 30 October 2025 the Book of Evidence was served and it was remanded for the DPP's directions on the second charge and to indicate a plea on the other matters.
5. 27 November 2025 the DPP directions summary disposal on a plea of guilty only in relation to the second charge. It was remanded for disclosure and awaiting client's instructions in relation the DPP's directions.
6. 04 December 2025 he pleaded guilty and he was remanded for a Victim Impact Statement and for sentence.
7. 11 December 2025, a sentence was imposed.

Case Example 8 - client FF

1. 30 January 2025 remanded in custody due to warrant history.
2. 06 February 2025 he presents with mental health issues. Urgent medical attention was sought.
3. A Psychiatric Report dated 19 February recommended transfer to an approved centre for assessment under the Mental Health Act when a bed became available. On 20 February bail was granted by the Court subject to availability of a bed.
4. 06 March 2025 there was still no bed available.
5. 20 March 2025 a bed had become available but the client did not wish to sign the Bail Bond to be transferred there. The Psychiatric Team recommended a High Court application to allow him to be transferred to the facility without the necessity to sign the Bond.
6. 10 April 2025 a further remand sought to consider legal action.
7. 17 April the Defence brought a High Court application seeking permission to transfer without the necessity to sign a Bail Bond. On 24th April 2025 the High Court Order sought was obtained by the Defence. There is still no bed available.
8. 01 May 2025 he was transferred to a hospital but absconded.
9. 08 May 2025 he had returned to the hospital and psychiatric evaluation was being conducted.
10. 22 May 2025 there was a Fitness to Plead Report sought by the Court.
11. 04 June 2025 he was remanded to 12th June 2025 for an updated report. The Prison Psychiatric Team was seeking a warrant to return client to custody in Cloverhill.
12. 12 June 2025 the report dated 5th June 2025 indicated the client is fit to plead. A plea of guilty was entered and a sentence was imposed.

Case Example 9 - client GC

1. 09 October 2025 Bail refused on grounds of Section 2 of the Bail Act 1997
2. 16 October 2025 the DPP directed trial and indictment on one matter. Other cases including summary matters were also before the Court.
3. 30 October 2025 the Book of Evidence was not available. There was a plea indicated on summary matters. A Victim Impact Report was sought.
4. 06 November 2025 the Book of Evidence was not ready. DPP's directions were now being sought on one other matter and he was sentenced on some summary matters.
5. 20 November 2025 the Book was ready but could not be served as there was the possibility of a new bail application and the Garda was not available.
6. 27 November 2025 the Book was served. The client was returned for trial.
7. 11 December 2025 he pleaded guilty to the matter where DPP's directions had been sought and summary disposal had been indicated.
8. 15 January he pleaded guilty to all outstanding matters and he was remanded for sentence.
9. 05 February 2026 the client was present. A Victim Impact Report was required.
10. 12 February 2026 it was indicated the victim did not wish to make a Victim Impact Statement and sentence was imposed.

Case Example 10 - client HO'F

Accused under section 15 of the Misuse of Drugs Act (possession of controlled drugs for unlawful sale or supply). The defendant was remanded on bail.

1. There were 6 appearances between August 2024 and February 2026.
2. Adjournments were at all times at the request of the prosecution. First for a certificate of analysis.
3. The matter was then marked peremptory against the prosecution for DPP's directions following defence application.
4. Then once directions conveyed, time had to be extended due to the book of evidence not being ready and the non-attendance of the prosecuting member to further charge the client.

Case Example 11 - client JO'C

Accused in custody for an offence contrary to section 15A Misuse of Drugs Act (Offence relating to possession of drugs with value of €13,000 or more). Value of the drugs outlined in the bail objections by the prosecution to be €339,400.

1. It took 5 appearances for directions between March 2025 and June 2025 for directions to be finally given
2. and a further 4 appearances between June and August 2025 for service of the book of evidence.
3. This is a total of 9 appearances at the request of the prosecution only.

Part 1: The Central Role of Criminal Legal Aid in the Irish Justice System

In criminal law proceedings, the importance of a defendant being able to access legal aid at an early stage of the proceedings is fundamental to safeguard the fairness of the criminal justice process - a process that is underpinned by numerous international, European and national legal instruments.

1.1 Assurance of a Fair Trial and Access to Justice

By ensuring that all defendants have access to competent legal representation even if they cannot afford it, the Criminal Legal Aid system ensures equality before the law, fairness of the proceedings and helps maintain public confidence in the justice system.

Criminal Legal Aid is an essential component of rule of law.

Criminal Legal Aid is more than just a social service - it is a foundational pillar of the rule of law. By enabling fair trials, safeguarding rights, balancing State power, and ensuring equality before the law, Criminal Legal Aid strengthens justice and protects democratic integrity.

Criminal Legal Aid guarantees that a defendant has an adequate opportunity to defend himself or herself against the accusations made. It is particularly important when the defendant is vulnerable, whether by virtue of their age, mental capacity, health or other personal circumstances.

In view of its importance in the criminal justice system, Criminal Legal Aid benefits from a strong protection by various legal instruments. The Law Society is very concerned, that, by restricting the ability of practitioners to be remunerated in a fair manner, the proposed flat fee approach for Criminal Legal Aid at District Court level will discourage practitioners from accepting instructions for legal aid cases, and will consequently make it difficult for a defendant to secure legal representation.

1.2 Obligation to Provide Legal Aid

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

Under the Criminal Justice (Legal Aid) Act 1962 (the 1962 Act), the State is mandated to provide free legal representation to those with "insufficient means" to ensure they are on equal terms with the prosecution's resources. This system ensures that those facing serious charges with a risk of imprisonment are not unduly disadvantaged by a lack of legal expertise - which would otherwise arise from a lack of financial means as they would not be able to afford legal representation.

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.

The importance of the Criminal Legal Aid is marked by its protection by various legal instruments at international, European and national levels.

United Nations Principles

The role of legal aid, and its importance, has been spelled out in *United Nations (UN) Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*[1]. Principle 1 recognises:

> "that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process,"

Principle 1 goes on to require:

> "States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution."

Principle 2 provides as follows:

> "States should consider the provision of legal aid their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system."

Under these UN Principles, a person is entitled to have a lawyer of experience and competence commensurate with the nature of the offence.

It is the view of the Law Society that by adopting a "one size fits all" approach, the proposed flat fee approach is not compatible with these UN principles.

International Covenant on Civil and Political Rights (ICCPR)

Similarly to the UN Principles, Article 14(3)(d) of the ICCPR provides that every person should be entitled:

> "To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it" (emphasis added).

Ireland ratified the ICCPR and is therefore bound by this provision. The Law Society believes that the proposed system will undermine Ireland's obligation under the ICCPR.

[1] Accessible here: https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf

European Convention on Human Rights (the ECHR)

The entitlement to Criminal Legal Aid is encompassed in Article 6§3(c) of the ECHR[2]. It prescribes that Criminal Legal Aid must be granted to the defendant when he or she does not have sufficient means to pay for legal assistance, and the interests of justice require it. Article 6§3(c) provides as follows:

> "Everyone charged with a criminal offence has the following minimum rights:
> (a) ...
> (b) ...
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;"

The caselaw that has developed around the concept of and granting of Criminal Legal Aid adopts a very practical approach. An extensive body of case law was developed by the European Court of Human Rights (the ECtHR) around the concept of "interests of justice" as a requirement. The ECtHR held that, when considering the interests of justice, the courts must take into consideration not only the complexity of the case but also the personal situation of the defendant[3], such as whether or not they speak the language of the court[4], or if they are in custody[5].

In addition, the jurisprudence of the Strasbourg Court is consistent in stating that:

> "The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective; this is particularly so of the rights of the defence in view of the prominent place held in a democratic society by the right to a fair trial, from which they derive."[6]

There is therefore a requirement for the State to ensure that in order for it to be effective, the right to Criminal Legal Aid must not be simply theoretical.

In light of the jurisprudence, it is the firm view of the Law Society that a flat fee that has been calculated by reference to a specific number of appearances (presently initial appearance plus 3) irrespective of the length of time that a case takes to be brought to a conclusion, does not guarantee an effective access to Criminal Legal Aid. By only remunerating a solicitor for a maximum of four appearances, the flat fee proposal effectively constitutes a cap on the extent of advice and representation that a defendant may receive.

---

[2] Article 6§3 (c) ECHR provides that "Everyone charged with a criminal offence has the following minimum rights (…) to defend himself in person or through legal assistance of this own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require".
[3] ECtHR, *Zdravo Stanev v Bulgaria*, 06 November 2012, Application No. 32238/04, §38.
[4] ECtHR, *Twalib v Greece*, 09 June 1998, Application No. 24294/94, § 53.
[5] ECtHR, *Quaranta v. Switzerland*, 24 May 1991, Application No. 12744/87, §33.
[6] ECtHR, *Artico v Italy*, 13 May 1980, Application No. 6694/74, §33.

Irish Law

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

The constitutional right to Criminal Legal Aid that is grounded in Article 38 and 40.3 of the Constitution was recognised by the Supreme Court in *State (Healy) v Donoghue*[7]. In *Carmody v Minister for Justice, Equality and Law Reform*[8], the Supreme Court emphasised that the entitlement to Criminal Legal Aid does not derive merely from statute but from the Constitution. In *Joyce v Brady*[9], O'Donnell J. noted that:

> "It is clear therefore, that the Act of 1962, does merely, confer a statutory right to legal aid, it is the 'practical implementation of a constitutional guarantee' and must be interpreted accordingly."

In *Ward v Minister for Justice and Equality*[10], Baker J. held that the applicants were entitled to a declaration that Reg. 3(1)(g) of the Criminal Justice (Legal Aid) (Amendment) Regulations 1978 failed to respect the applicants' right to be fully and effectively afforded the benefit of legal aid for the conduct of the trial. The Court noted that the Regulations merely provided for the payment of 'any fee' to the solicitors who represented more than one accused at the same trial, which in reality amounted to the payment of 'no fee' at all.

The Court pointed out that under section 10 of 1962 Act, the Oireachtas intended that the Minister fix the rates payable to a solicitor. However, the Act did not empower the Minister to remove the payment of fee altogether. The Court, therefore, held that Reg. 3(1)(g) of the Regulations deprived the applicants of the core right protected by the Constitution as it had failed to allow the fees of the solicitor chosen by the applicants to defend them at trial, and thus, the relevant article was *ultra vires*. The Court then granted a declaration that Reg. 3(1)(g) was *ultra vires* the Minister.

In light of the above, and in particular the decision of Baker J. in Ward, it is doubtful that a flat fee, stated to be covering only four court appearances would be compatible with the decision of the High Court in Ward. The proposal developed by the Department states clearly that the flat fee is calculated to cover four appearances. The inference is thus that "no fee" will be paid for any appearance after the third adjournment. In these circumstances, the Law Society believes that any Regulation made by the Minister adopting a flat fee approach that would fairly remunerate in respect of each court appearance would be made *ultra vires* and therefore lead to substantial litigation by way of Judicial Review challenging its legality.

The proposal to introduce a flat fee is neither practical, nor will it be effective in meeting the needs of a defendant, the administration of justice, the State's obligation under the Constitution, or Ireland's obligations under the UN Principles, the European Convention on Human Rights (and related jurisprudence), and the International Covenant on Civil and Political Rights.

---

[7] *State (Healy) v Donoghue* [1976] IR 325.
[8] *Carmody v Minister for Justice, Equality and Law Reform* [2009] IESC 71.
[9] [2011] IESC 36.
[10] *Ward v Minister for Justice and Equality* [2017] IEHC 656

1.3 Unsuitability of Flat Fee Approach in Criminal Legal Aid

Failure of Flat Fee Approach in Other Areas of the Justice System

When proposing changes to the Criminal Legal Aid Scheme it is astonishing that the Department of Justice would look to impose a model widely recognised as having failed in the Civil Legal Aid Private Practitioner Scheme that operates in the area of family law.

The introduction of a flat fee in family law matters under the Private Practitioner Scheme led to an exodus of solicitors working under this Scheme, as it became unviable to provide the service. Making the same mistake in Criminal Legal Aid will also drive solicitors away from working in this area.

The standard fee payable for family law matters under the Private Practitioner Scheme is currently €339 exclusive of VAT. The only exceptions include categories described as maintenance and custody; access; and guardianship cases which are set at €423 exclusive of VAT. Fees for domestic violence and maintenance cases are also set at €423 exclusive of VAT. The flat fee applies regardless of how many occasions the solicitor is required to attend the District Court or how many interim issues must be decided on these various dates, how many times they must meet with their client or how much time is consumed by drafting the papers.

On many occasions, the Law Society has expressed serious concerns regarding the inadequacy and unsuitability of the Private Practitioner Scheme that operates under the Civil Legal Aid Scheme. Fee levels are grossly insufficient and have not been increased despite the fact that more than 60% of the requests for civil legal aid made to the Legal Aid Board are redirected to private practitioners[11]. Also problematic is the inability of the flat fee to reflect and fairly remunerate solicitors for multiple court appearances, outlays or reasonable travel expenses. The factors have led to a very significant decline in the number of practitioners that are willing to provide family law services under the Private Practitioner Scheme.

The Civil Legal Aid Private Practitioner Scheme is administered by the Legal Aid Board. Under the Private Practitioner Scheme solicitors are effectively empanelled and are assigned to provide advice and representation in specific family law matters. However, the Legal Aid Board has encountered severe challenges in retaining a sufficient number of solicitors on the panel who are prepared to accept work under the Scheme. This point has been highlighted by the Chairperson of the Legal Aid Board Nuala Jackson SC in her foreword to the 2021 Annual Report:

> "the provision of necessary legal aid services requires that there be adequate supply of legal professionals to do so. The mixed model has served and continues to serve the public well, but recruitment challenges are severe in the context of ongoing remuneration constraints, as is the attractiveness of legal aid work for private solicitors under the current fee structure."[12] (emphasis added)

In its Report on the Consultation Process[13] the Majority Report of the Civil Legal Aid Review Group[14] notes that:

[11] See Annual Report 2024, Legal Aid Board, p. 7.
[12] See Annual Report 2021, Legal Aid Board, p. 12.
[13] Appendix 8 "Report on the Consultation Process", Civil Legal Aid Review 2025, Report and Recommendations of the Majority Review Group, p. 2.
[14] Civil Legal Aid Review 2025, Report and Recommendations of the Majority of the Review Group

> "the Legal Aid Board have seen the demand for their services expand, waiting times increase and the supply of lawyers willing to work within the system reduce".

The fact that the inadequacies of the Private Practitioners Scheme have arisen as a direct consequence of the introduction of a flat fee approach was recognised by the Minority Report of the Civil Legal Aid Review Group:

> "Law centre solicitors generally only act in the Circuit Court (presumably due to resource constraints) and it is difficult to get private solicitors to act in the District Court. 'Legal aid deserts' have arisen in counties like Sligo where law centre waiting lists and the private practitioner scheme is unpopular and unsustainable amongst practitioners." [15]

The Minority Report goes on to highlight:

> "A number of structural issues have been identified with the private practitioner model. The current private practitioners' scheme has not altered at all in the last 12 years except for a reduction in the rate of fees paid to the legal practitioners by 12% which led to a reduction in take-up of the scheme." [16]

A flat fee approach also operates in respect of the provision of certain legal services in the area of immigration law. For example. a solicitor who is assisting an international protection applicant may be paid a fee of €300 exclusive of VAT if they assist the applicant in the completion of the questionnaire, and €300 exclusive of VAT if they assist them with the interview[17]. By its very nature, the flat fee does not take into account the actual time involved in the range of additional, necessary tasks such as taking instructions, drafting letters, and preparing for the case. Reports that we have received from solicitors indicate that the amount of work required for the completion of the questionnaire and the interview (review of the papers, multiple meetings with clients, sourcing documents, drafting questionnaire, research facts about countries to support claims etc) is very time consuming and not economically viable. Consequently, far fewer solicitors now provide services under this particular scheme.

As referenced earlier, the proposal put forward by the Department of Justice for the Criminal Legal Aid at District Court level is similar to the system that already applies in respect of family law matters undertaken by solicitors under the Civil Legal Aid Scheme.

Under the Minister's proposal, a flat fee of €455 would be payable to a solicitor for a summary case irrespective of the number of appearances required in court.

A flat fee of €100 would be paid for indictable cases irrespective of whether or not the case can be sent forward on a signed plea or involve a minor, and a third flat fee of €600 applies for summary cases where a barrister is instructed.

It is widely recognised that that the introduction of the flat fee under the Civil Legal Aid Scheme has been a failure.

---

[15] See Civil Legal Aid Review – Minority Report, p. 20.

[16] ibid, pp. 20-21.

[17] The personal interview is a substantive interview between the applicant and personal of the International Protection Office based on the questionnaire completed by the applicant. It is the opportunity for the applicant to present their grounds for their application.

If the Minister proceeds with the introduction of a flat fee in respect of Criminal Legal Aid in the District Court, the Law Society foresees the same negative consequences witnessed in the Civil Legal Aid Private Practitioner Scheme, arising once again in criminal law.

Inadequacy of Fee Levels

The fee levels that are currently payable for Criminal Legal Aid at the District Court were set in 2007. The fees were cut a number of times (in 2009, 2010 and 2011), and those cuts were partially reversed in 2024 and 2025.

Consequently, Criminal Legal Aid fees remain below the level that they were in 2008.

In spite of the fact that inflation over the period 2008 to 2025 was at 26.5%, provision has not been made to increase Criminal Legal Aid fees beyond their 2007 level. Nor has provision been made for the indexation of fees payable under the Scheme.

In short – based upon the current fee structure, the fees payable under the Criminal Legal Aid Scheme are not reflective of the actual cost of the provision of those services.

In *Cully v DPP*[18], Meenan J. was required to consider the Criminal Legal Aid system and he expressly recognised the extent of work involved in the matter before him, and questioned whether the fees payable under the Criminal Legal Aid Scheme (in 2020) constitute reasonable remuneration:

> "The professional work involved in dealing with each charge includes an initial consultation, correspondence with the relevant prosecuting Gardaí, the viewing of disclosure received and taking further instructions in light of the disclosure. It is not for the court to comment on the level of these fees but I very much doubt that a credible case could be made that these fees are reasonable remuneration for the professional work and responsibility involved."[19] (emphasis added)

In the more recent case of *Cawley and Heffernan v Director of Public Prosecutions*[20], Phelan J. referred to the "low level of fees" payable under the Criminal Legal Aid Scheme and alluded to the question of whether fees at such a low level impairs an accused's rights of defence:

> "I am not asked in these proceedings to adjudicate on the adequacy of fees payable under the Scheme or on whether the low level of fees payable impairs an accused person's rights of defence."

It is notable that Phelan J. saw fit to expressly link the level of fees payable with the ability of an accused to mount an adequate defence, and by implication, impinge upon the right to a fair trial.

The flat fee proposal will lead to defendants finding it very challenging to secure legal representation, and if this were to come to pass, it would be in breach of a defendant's constitutional right to legal assistance and the right to secure legal aid, as recognised by the Supreme Court, and will have very significant consequences for the fairness of the Irish justice system and rule of law.

---

[18] *Cully v Director of Public Prosecutions* [2020] IEHC 438.

[19] Ibid, §3.

[20] *Cawley and Heffernan v. The Director of Public Prosecutions and ors* [2026] IEHC 117

Programme for Government Commitment to Fee Restoration

The current Programme for Government commits the Government to "fully restore Criminal Legal Aid" fees. The Law Society welcomed the announcement in Budget 2026 of the proposal to fully restore Criminal Legal Aid fees.

Following the economic crisis in 2008, the fees payable under the Criminal Legal Aid Scheme were severely reduced. Prior to the partial reversal of cuts to fees in 2025, Criminal Legal Aid fees remained almost 30% lower than their levels prior to the FEMPI-related cuts in 2009. Despite the partial reversal of cuts in 2024 and 2025, the fees are yet to be fully restored to their previous levels and have yet to take account of rising inflationary and business pressures.

Legal practitioners remain the only group within the justice system whose 2009 FEMPI legislation cuts have not yet been reversed. On a day-to-day basis, practitioners are working alongside Courts Service staff, members of the Gardaí, State Solicitors and members of the judiciary – none of whom remain subject to FEMPI-era cuts.

The decision to introduce a flat fee approach does not constitute a reversal of the FEMPI-era cuts. Instead, it is a model that seeks to embed a cut in perpetuity.

Impact of a Flat Fee on the Sustainability of Criminal Legal Aid

Solicitors are reporting that it is become increasingly difficult to attract and retain solicitors to work in the area of criminal law in private practice. The State's treatment of practitioners who provide services under the Criminal Legal Aid Scheme has exacerbated an already pitiful situation for practitioners. Coming as it does on the back of the failure to reverse the FEMPI-era cuts, the flat fee proposal is yet another signal to practitioners that the State does not value their work.

Over the last ten years, the Office of the DPP has been successful in recruiting solicitors from defence firms, offering compensation levels and benefits that are becoming increasingly higher than what defence firms can offer by comparison. Moving to the prosecution side enables practitioners to leave behind the obligation to attend out of hours court sittings, garda stations and attend the out of hours emergency phone etc.

By its very nature, a flat fee approach does not cover the actual cost of the delivery of the service. It fails to take into consideration the additional, related work that is involved; it fails to recognise the complexity inherent in many cases. The financial realities of providing services under the Criminal Legal Aid Scheme are such that it obliges solicitors to subsidise their legal aid cases income with non-legal aid case income in order to maintain their practice. This is wholly unsustainable, and all the more so in recent years due to the increased costs of doing business.

It seems highly likely, if not inevitable, that the imposition of a flat fee for Criminal Legal Aid work at District Court level will discourage solicitors from being involved in the provision of these services as they will, in large numbers, find that the fee rates are completely uneconomical, inflexible and fail to in any way reflect the reality of the amount of time involved in a matter.

Even solicitors who wish to continue practising in criminal law will struggle to find employment, as reduced funding will leave many defence practices unable to offer solicitor roles. The proposal, if implemented, is likely to first jeopardise positions held by those more junior members of staff, including trainee solicitors, newly qualified solicitors and other early

career practitioners. Making practice in criminal law more unattractive to this cohort will impact the renewal of the profession in the long term and will contribute in a significant way to the emergence of legal deserts (as has already come to fruition in respect of the Private Practitioner Scheme under Civil Legal Aid) and will ultimately limit the ability of defendants to secure legal representation.

Part 2: Comments on the Department's Proposed Approach

One of the reasons advanced by the Department to justify reform of the District Court Criminal Legal Aid Scheme is the increase of Criminal Legal Aid expenditure over the last decade:

> "While the volume of criminal cases in the District Court has decreased, expenditure on Criminal Legal Aid has nearly doubled — from €19 million in 2015 to €37 million in 2024"[21]

In fact, when the Department's analysis is read closely, a different picture becomes apparent. It reveals that while the overall number of cases prosecuted has decreased, criminal offences that statistically lead to legal aid being granted have increased. For example, drugs, fraud and robbery cases have increased by approximately 20% and public order and assault cases by approximately 25%. And the Report concludes that:

> "The increase in offences attracting Criminal Legal Aid has resulted in a corresponding significant increase in certificates granted, from 64,181 in 2017 to 98,230 in 2024. The increase in certificates granted has automatically resulted in an increase in expenditure on Criminal Legal Aid for District Court cases."[22]

The Law Society expresses profound concern at the Department's manifest disregard for the work and professional expertise of solicitors, as evidenced in the flat fee proposal that has been advanced by the Department.

While the proposal acknowledges some of the difficulties encountered by defence solicitors it seems to wilfully misunderstand and mischaracterise the work carried out by the practitioners in Criminal Legal Aid cases.

The three distinct flat fees outlined in the Department's proposal do not currently, and are not capable of covering, the actual costs of the delivery of the service by practitioners. The Law Society rejects the attempt that is inherent in the flat fee proposal to have the provision of services under the Criminal Legal Aid Scheme subsidised by practitioners.

The Law Society cannot support or in any way endorse a proposal that will remunerate practitioners with a fixed payment for an indeterminate amount of work.

As a fundamental principle, the approach to the payment of practitioners under any legal aid system must be fair. In order to be fair, the system must have a sufficient element of flexibility that ensures that remuneration is reflective of the work done by the practitioner.

A "one-size fits all" approach to remuneration that is blind to the realities of the amount of work done, the duration of the case etc. is not tenable.

---

[21] See *Simplifying Criminal Legal Aid Payment in the District Courts,* Department of Justice, p. 2.
[22] *Review of Criminal Legal Aid in the District Court*, Department of Justice p. 4.

2.1 Misconception of the Work Involved in Legal Aid Cases

The Difference between Legal Aid Cases and Non-Legal Aid Cases

The comparisons that have been made by the Department between the duration of Legal Aid cases and non-legally aided cases are deeply flawed, and the conclusions reached based upon those comparisons do not stand up to scrutiny. At the outset we note that, the data does not clarify whether accused persons representing themselves are included in the category of those cases before the court without the benefit of legal aid. Persons representing themselves can constitute a significant portion of accused in certain areas.

Criminal law cases that proceed without Criminal Legal Aid often relate to road traffic offences such as drink driving, no insurance, parking on a double yellow line etc. It is simply inequitable to compare the duration of these types of cases with serious criminal offences such as assault, burglary, threats to kill etc where the defendant liberty is at stake. Of necessity, the defence of these types of cases will typically take a greater amount of time to be brought to a conclusion.

It should also be noted that the nature of the offences in cases where solicitors are privately retained tend to be cases that concern less serious matters, are less complicated in nature and facts, and those factors mean that the cases where a solicitor is privately retained are more conducive to a quick disposal. Such matters are not, generally speaking, of the most significant category of offences which requires the Director of Public Prosecutions (the **DPP**) to provide directions[23], book of evidence, victim impact report, probation reports and other interventions by the State. This therefore tends to increase the speed at which such cases can be disposed. Another factor that enables such cases to be resolved more quickly is the fact that less adjournments are required by the State in order to fulfil their various obligations.

In addition, there are at least three sets of circumstances that we have identified where it is quite common for judges to encourage the more prompt disposal of cases – those instances are, firstly, where the defendant is self-represented, secondly, where the defendant has retained a solicitor privately (i.e. non-Legal Aid basis), and thirdly, where the defendant is employed or self-employed. Where for instance a defendant is employed or self-employed, it is not uncommon for the prosecution to be encouraged strongly to promptly comply with disclosure requirements and provide directions without delay under the threat of the case being struck out by the judge. Non legally aided cases are also often initiated by way of summons which means that the investigating Garda member will have organised the disclosure at an early stage, and will often only issue the summons when the case is ready to proceed to hearing.

Length of Criminal Legal Aid Cases

In the Department's November 2025 review, it is stated that "cases with Criminal Legal Aid have significantly more court appearances and adjournments than cases without". These comments are, without contextualisation, used as one of the principal reasons for the proposed imposition of a flat fee approach that is calculated by reference to four appearances under the current system.

[23] When an offence can be prosecuted summarily (in the District Court) or on indictment (in the Circuit Court), the DPP must direct in which court the case will be prosecuted. This is referred to as "giving directions" in practice.

Contrary to the impression given in the proposal, criminal defence solicitors are not the only parties to a prosecution who can influence its course. Cases are adjourned for a whole variety of reasons, including:

- an adjournment to a case management list to fix a hearing date instead of remanding the case for hearing directly,
- the prosecution's case not being in order,
- a prosecution witness not being present at the hearing date,
- a victim impact statement being required,
- CCTV footage being sought,
- a certificate of analysis not being available[24],
- the interpreter not present for the hearing,
- the probation and welfare report not being available,
- because the judge wishes to see how the defendant is faring in 12 months' time, or
- because the judge wishes to allow for restorative justice to take place.

It is the case that in very many instances, adjournment or remands are requested by State parties to allow them additional time to comply with their duties such as disclosure or providing DPP's directions.

The Law Society refutes entirely the suggestion that the frequency of adjournment lies squarely on the shoulders of practitioners in an attempt to maximise fees claimed under the scheme. It is unfortunate that grounds for adjournment are not recorded by the court, and one consequence of that is the dearth of objective data. The identity of the party seeking an adjournment is not recorded and nor are the grounds upon which the adjournment was sought or granted. In the absence of concrete data relating to these aspects of adjournments, resort should not be had to assumptions and unfounded assertions.

It is also important to remember that cases are only adjourned if the presiding Judge feels it appropriate and it is difficult to countenance that a Judge would allow his or her list to be abused.

At an earlier point in this paper (pages 4 to 9) we set out real life examples of cases that have been heard in the District Court. These examples demonstrate that proceedings can take longer than might initially appear to be necessary, but upon closer examination there are very clear and justifiable reasons for the length of the cases and the number of adjournments. These cases routinely involve multiple separate offences on different dates, require dozens of court appearances, require extensive preparation and inter-agency communication, or repeated consultations with vulnerable young clients. They cannot be described as linear proceedings.

In addition, an accused who is granted legal aid tends to belong to a vulnerable or disadvantaged section of society. The accused may be unavailable due to hospitalisation or they may be in prison. These individuals may be disadvantaged by education, language, medical or mental health issues or welfare, and this can contribute to difficulties engaging with the process, leading to a need for a higher than might be expected number of adjournments.

If we take the example of a significant drug seisure case, which generated eighteen district court appearances, we can see that the case lingered in the District Court while the investigation was still ongoing. In every one of the eighteen appearances, adjournments

[24] It takes currently approximately 12 months to obtain a certificate of analysis for prosecution under the Misuse of Drugs Acts due to lengthy backlog in analysis at Forensic Science Ireland.

were sought for various reasons. Many of those applications for adjournment resulted in long and difficult argument before the court, with research and preparation required in advance. Under the proposed flat fee approach, the fee that would be payable for eighteen court appearances, various applications and all the related work, would be €100. It hardly needs to be stated that this prospect is not credible or acceptable.

Another real-life example is a case where a defendant was remanded in custody after the execution of four bench warrants and new charges. This case was adjourned six times at the request of the prosecution, as the DPP's directions were not available. It was adjourned another three times as the defendant could not be remanded for any period greater than four weeks. On a further two occasions the matter was adjourned simply to fix a hearing date at the initiative of the court. This matter started on 15 September 2025 and concluded on 11 December 2025. After more than six adjournments for directions, the prosecution, on the day of the hearing, withdrew one charge and three other charges were struck out. The defendant, who had already pleaded guilty on some charges, was convicted of the remaining charges. One remaining charge was sent to another court in a different district. Under the proposed flat fee approach, the fee that would be payable to the solicitor for 12 court appearances, various applications and all the related work, would be €455, or €300 if counsel had been instructed.

Both of these examples illustrate how the proposed flat fee approach does not reflect the reality of District Court work. Complex cases and complex defendants need to be dealt with fairly and equitably by the courts. It should not be the case that undue haste should take precedence over diligence and the right to a fair trial.

Evolution and Increased Complexity of District Court Work

The Law Society previously highlighted the changes in nature of District Court prosecutions. On a gradual basis, solicitors that are involved in providing services under the Criminal Legal Aid Scheme have been asked to take on more unpaid tasks and handle cases that are more complex. Solicitors are now required to attend evening court, Saturday court and out of hours special sittings – all without specific compensation.

The evolution of technology has had a considerable impact on the amount of disclosure provided for cases, even in seemingly 'simple' District Court matters. CCTV, bodycam footage, and lengthy interviews are now common features of District Court cases, that often require a substantial amount of time to review and necessitate meetings or discussions with the client.

One example of how the increased complexity of cases has impacted the prosecution side is the increased staffing requirements of the Office of the Director of Public Prosecutions – where expenditure by the DPP's Office on "Salaries Wages and Allowances" increased by 27% between 2022 and 2024[25].

Any consideration of the reform of the structure of payments for Criminal Legal Aid must take into consideration the change in the nature of the cases before the District Court, and in particular the increased complexity of cases.

[25] See Director of Public Prosecution, Annual Report 2024, Appendix 3.

Supervisory Role of District Court in Certain Cases

Courts frequently adopt a supervisory role over defendants by, for example monitoring compliance with bail conditions, or ensuring that individuals remain out of further trouble while their case progresses.

This approach has proven effective for many clients, reducing the incidence of reoffending and delivering clear public-interest benefits such as preventing further crime and avoiding economic loss to businesses affected by theft and criminal damage, conserving Garda resources, and easing pressure on limited prison spaces.

However, this vital supervisory function depends on solicitors being able to attend court regularly, engage with clients, and gather mitigating material. Under the proposed flat-fee approach, solicitors would not be remunerated for these essential appearances and preparatory steps, making such supervision by the court practically impossible. In this respect the flat fee approach would undermine a mechanism that demonstrably works.

Children and Vulnerable Defendants

Many accused persons in criminal cases at District Court level are themselves vulnerable members of society. The following groups disproportionately constitute a large percentage of the people coming before the criminal courts:

- Children from disadvantaged backgrounds,
- Children in the care of the State,
- Victims of child abuse,
- Victims of both current and past institutional abuse,
- Victims of domestic abuse,
- Victims of human trafficking,
- Homeless people,
- Those labouring under mental health issues or those unfit to plead,
- Those with severe cognitive impairment,
- Neurodiverse children and adults, especially those diagnosed with ADHD, autism etc.,
- People and children addicted to alcohol or drugs,
- Vulnerable people used as drug mules or those taken advantage of by more sinister members of society.

Cases involving vulnerable defendants such as those referenced above are the very type of cases that will not normally be disposed of in four remands due to the needs of the defendants and the procedural rules. The proposed flat fee approach seems intended to bring about a form of “express justice”. However, in practice the proposed flat fee will discriminate and impact these people to a greater degree as often the court adopts a supervisory role or requires the intervention of the Probation Services to engage with the defendant.

In one real-life example, a defendant who was remanded in custody with an issue as to his fitness to plead had to appear in the District Court on twenty occasions over a period of seven months before an order for his remand to the Central Mental Health was made (see example ‘client CS’ at p. 6 for details of the adjournments and grounds). most of the adjournments were granted to facilitate the completion of a psychiatric report or for case management purposes (eg. to fix a hearing date, to facilitate the attendance of an expert or for the mandatory two weeks adjournment).

In the Children's Court, many adjournments are common due to statutory and welfare obligations. Children before the courts are rights holders entitled to special protection in accordance with their age, maturity and best interests. These and other key principles are embedded in the Children Act 2001 and reinforced by Ireland's obligation under the UN Convention on the Rights of the Child (including Articles 3, 12 and 40).

It is beyond dispute that a case that is before the Children's Court takes longer to progress due to matters such as the need for a mandatory Probation Report, delays within the Probation Service, bail supervision, the referral of cases to Tusla, and the need to monitor progress of the defendant.

In Children's Court practice, solicitors routinely liaise with the Garda Case Manager to ensure all charges are dealt with together for efficiency. If separate prosecutions are not separately remunerated unless heard on entirely different dates, this risks discouraging practitioners from consolidating matters, leading to inefficiency and increased court time.

The examples set out at an earlier point in this paper (pages 4 to 9) demonstrate that Children's Court practice is intervention-driven and welfare-focused. Adjournments are frequently mandated by statute or required to facilitate essential services. A rigid flat-fee approach does not reflect the operational reality of these cases. If the Criminal Legal Aid Scheme were to operate so that a flat fee is to be imposed, it will become wholly unsustainable.

Under the proposed flat fee approach, the real-life example that is next outlined would provide a payment of €455 for the solicitor representing the defendant identified as KCC. KCC was a seventeen-year-old minor in circumstances that raised serious welfare concerns. This minor had approximately thirty separate prosecutions dealt with as a whole over twenty court appearances. The judge in the case had serious welfare concerns, and consequently Tusla participated in the proceedings and bail supervision was involved. In addition, KCC was referred to the local addiction services, and the probation services were engaged. Through these interventions, monitored by the judge over multiple adjournments, KCC stabilised and his offending behaviour reduced significantly, indicating a successful rehabilitation. This case demonstrates how the Children's Court operates as a forum for structured intervention and oversight over what can be protracted periods of time. In respect of many cases, it is a court where the interests of the child need to be advanced and protected. It is not a court where matters should be rushed or curtailed in the interests of efficiency or cost savings.

It is clear that the adjournments that had been granted during the case were central to achieving a positive outcome, yet the Department's proposed flat fee approach will jeopardise this system by seeking to end cases prematurely. Under the Department's proposal, a solicitor in a case similar to that just outlined, will be left to subsidise the child's constitutional right to legal representation – as the solicitor will receive zero remuneration for any appearance after the fourth appearance.

The Law Society is firmly of the view that a proposed flat fee approach risks undermining the rehabilitative function of the Children's Court and is likely to discourage the consolidation of prosecutions for efficiency.

In addition, the flat fee proposal does not take into consideration the needs of defendants who are foreign nationals. Proper representation in such cases requires interpreters, careful explanation of procedure and risks, and often liaison with family abroad. Cases involving non-English speaking defendants are frequently adjourned due to the lack of an

interpreter in court, unavailability of an interpreter for consultation with client or delay in obtaining translation of the written evidence.

Practical Realities of Remand Cases

When a defendant is remanded in custody[26] the legislation[27] requires their appearance in court every two weeks (or four weeks if they have the ability to consent to a long adjournment), even if a hearing date is fixed or if the case is to be sent forward.

This means that for a case where the defendant does not consent to a long adjournment, or is unable to so consent, the case will be listed in court every two weeks until it is heard. Under the flat fee proposal, the fee payable would provide remuneration for just 2 months of representation, even though in reality such cases (even what might appear to be the simplest prosecution) can take significantly longer than that.

In Cloverhill District Court (the remand court for remand prisoners prosecuted in the Dublin Metropolitan Area), a practice has developed whereby the court, will allow three "stages" before moving to strike-out the case for failure by the DPP to issue directions in the case. The experience of practitioners on the ground is that the necessary DPP directions will generally issue at the last of these three stages, and this in-turn gives rise to the need for additional adjournments to then be sought.

The availability of beds at the Central Mental Health Hospital (the **CMH**) impacts the number of adjournments requested for remand cases as well. A significant number of vulnerable defendants are remanded in custody awaiting a bed in the CMH for treatment. Their cases cannot progress unless the CMH has cleared them. The current waiting time for a bed at the CMH is approximately 9 months. Considering that these defendants have no capacity to consent to a long adjournment their case must be remanded in court every two weeks. If the wait is nine months, then that suggests that adjournments would need to be sought on at least eighteen occasions during that time.

The following real-life example demonstrates how the prosecution of an offence can be delayed and require multiple adjournments due to the unavailability of directions from the DPP. This is not an unusual or isolated example. The following example was prosecuted in Dublin between August and December 2025 and it required 8 court appearances, as now outlined:

1. 29/08: evidence of arrest, charge and caution. Remanded in custody for a bail application in Cloverhill.
2. 03/09: bail application refused. Case adjourned for 2 weeks.
3. 17/09: DPP's directions are not available. Case adjourned for 2 weeks.
4. 02/10: DPP's directions are not available. Case adjourned for 4 weeks.
5. 30/10: DPP's directions are not available. Case adjourned for 2 weeks.
6. 13/11: DPP's directions are not available. Case adjourned and marked "peremptory" against the prosecution[28].
7. 27/11: DPP directions are available. The Defendant has obtained High Court bail in the meantime. Case adjourned for finalisation.
8. 11/12: sentencing and conclusion of the case.

[26] Accused charged with an offence by way of charge sheet are remanded in custody unless they have been granted bail and have been able to fulfil the bail conditions.
[27] Criminal Procedure Act 1967, section 24.
[28] This is an indication that if the DPP's directions are not available on the next occasion the case will be struck out. This is a formal warning given by the court to the prosecution.

Similarly, an indictable matter which was ultimately sent forward to the Dublin Circuit Court took eight weeks to proceed before Cloverhill District Court. In this example, it was fourteen weeks during which the defendant was remanded in custody (see example of client BH at p. 5 - 6).

The flat fees of €455 or €100 that have been proposed by the Department to cover cases such as those outlined above does not cover each appearance or come close to remunerating appropriately or fairly for the work carried out by the defendant's legal representative.

Indictable Cases

The Law Society rejects outright the proposal that in cases where charges are sent forward for trial in the Circuit Court, a "fee of €100 only is payable regardless of the number of appearances in the District Court"[29].

The proposed €100 fee fundamentally mischaracterises the nature of District Court work in serious indictable matters. The €100 fee does not take into account the importance of the work carried out at District Court level for indictable offences, and even less so when they are sent forward on a signed plea.

An indictable case in the Dublin District, when the defendant is remanded in custody, typically involves remands on at least 10 occasions, as outlined in this Table:

Evidence of Arrest charge and caution	**1 remand**
If a person is remanded in custody, awaiting DPP directions they can only be remanded for 2 weeks or 4 weeks. If listed in Cloverhill, the DPP have 3 months to deliver DPP directions	**6 remands**
Trial on Indictment – DPP then has 6 weeks for book of evidence	**3 remands**
Total	**Minimum of 10 remands**

If ten appearances are required, the proposed €100 fee equates to a fee of €10 per appearance. This approach would mean, for example, that a solicitor would be paid less for representing someone accused of murder than when they assist someone charged with being intoxicated in a public place.

The proposal implies either that no work is carried out by solicitor in the District Court or that the work carried out in these cases is covered by the fees paid at the Circuit Court level – which is manifestly incorrect.

[29] "*Simplifying Criminal Legal Aid Payment in the District Courts",* p. 5.

It is important to emphasise that the fee payable for the Circuit Court is for the work done in the Circuit Court - this is separate and distinct from the amount of work that is done beforehand at the District Court. In addition, the brief fee payable for the Circuit Court is only payable on day one of the trial.

The District Court phase for indictable matters is rarely administrative. It frequently involves contested bail applications, repeated remands pending the preparation of complex Books of Evidence, proactive engagement in seeking primary disclosure, and sustained strategic advice while the prosecution case is being assembled. Multiple remands in these matters are often unavoidable, particularly where the Director of Public Prosecutions must compile substantial forensic, digital, financial or cross-border material.

During this period the solicitor's work involves ensuring that the defendant's fundamental rights are protected and vindicated. The solicitors advises on the liberty of the defendant and engages with the defendant to make decisions that will shape the trajectory of the trial.

The Department's paper frames the proposed reform in terms of efficiency and sustainability. In serious indictable matters, however, the proposed €100 fee risks discouraging early engagement, increasing remand periods, and transferring cost and pressure further down the system.

The proposed €100 fee for work done at District Court level in matters that are sent forward for trial in the Circuit Court is a proposal that is unfathomable and is devoid of any understanding whatsoever of the work done by practitioners in these types of cases. It is a proposal that is wholly untenable.

2.2 Other Prejudicial Consequences of the Proposal

We now address a number of significant issues that are linked to, or are impacted by, the proposal to adopt a flat fee approach. In our view, some of the potential impacts could undermine the Department's own objectives and policies. It appears that these matters have been disregarded or ignored by the Department in the development of the flat fee proposals.

Threat to the Juvenile Protocol and Signed Plea

A proposed flat fee of €100 for the entire District Court phase of serious indictable matters does not reflect the gravity or complexity of the work undertaken at that stage, and will in our view jeopardise the efforts that have been made in the recent years by the DPP and the Department to streamline juvenile cases and encourage an early guilty plea via signed plea.

There is a significant concern among prosecution solicitors that the flat fee proposal will actively undermine the use of signed pleas and the streamlining of juvenile cases.

Over recent years the DPP has encouraged the disposal of indictable cases by way of signed pleas. This mechanism involves extensive engagement by the solicitor for the defendant with the prosecution to receive full disclosure, review of Circuit Court level of disclosure (memos and tapes of interview, witness and complainant statements, warrants, forensic evidence etc), and conduct research and provide advice to their client.

If the defendant decides to plead guilty the District Court judge will acknowledge their guilty plea and send them forward to the Circuit Court for sentencing. This mechanism allows for a swift disposal of cases, helps avoid costs for the State and does not put complainants through the pains of a trial.

The proposed €100 fee for solicitors advising a defendant who decides to enter a signed plea will discourage solicitor from accepting such cases, and will make it difficult for a defendant to secure legal representation. A further effect of this proposal is that it ultimately risks increasing the workload of the Circuit Court.

Similarly, the recently introduced Juvenile Protocol for rape and murder cases involving children recognises the harm caused by delay, and requires that legal aid be assigned as soon as reasonably practicable to both solicitors and two counsel. This approach facilitates early consultation and advice. The policy rationale underpinning the Juvenile Protocol acknowledges the necessity of early specialist engagement in serious cases. The proposal for a €100 flat fee signals a clear intent to move in the opposite direction.

In serious indictable cases, particularly serious sexual offences, certificates for counsel should be issued immediately, together with a meaningful solicitor fee. Early structured engagement between solicitor and counsel supports efficient case management, narrows issues, and can materially influence whether matters resolve by way of signed plea where appropriate. Where cases resolve at an early stage, complainants are spared the ordeal of giving evidence, court trial time is reduced, and custodial pressure is alleviated.

Cases Heard on the Same Date

The flat fee proposal suggests that a single fee would be payable to a practitioner for providing advice and representation where multiple cases involving the same defendant are heard together, even if they arose from a separate incident.

Under any reform proposals, it is imperative that there be a clear recognition of the work done by a solicitor in respect of separate offences. Entirely separate offences should give rise to an entirely separate payment.

While prosecutions for separate incidents might be heard on the same day, they are fully distinguished from each other (eg. different offence, different time, different location, different parties). Each call for their own set of evidence, instructions and preparation and in many instances, they are likely to have taken place on different dates.

It is important to emphasise that just because a person is charged with multiple offences at the same time does not mean that they arise out of the same set of circumstances or same offence. One example of a situation where this can arise is if a defendant does not show up in court and a bench warrant is issued for their arrest. Then, once the various warrants are executed, there may be numerous separate and distinct prosecutions taking place at the same time for a series of unrelated past offences. This does not mean that they arise out of the same offence.

Currently, solicitors endeavour to streamline cases where possible. For example, a solicitor may represent a defendant who has entered a guilty plea to an offence and a probation report may become available for that defendant in another case. If the defendant picks up other charges in the interim, the solicitor will generally seek to adjourn the new matters for finalisation to the date on which the probation report is due. This approach enables all cases to be disposed of together. It is an approach that promotes efficiency as it consumes

far less court time. However, under the proposed flat fee approach, there is no incentive to work towards the most efficient approach. Therefore, one of the practical effects of the proposed flat fee approach will serve to discourage having all cases involving the same defendant being disposed of together on one day.

Any proposal that would result in a flat fee being paid for multiple cases heard together, even if they arose from a separate incident is unworkable.

Flat Fee to be Split with Counsel

The flat fee proposal includes provision for an enhanced flat fee of €600, when counsel is involved in the case, to be "split evenly between solicitor and counsel". In practice, this will result in a reduced fee for a solicitor of €300 (ie. less than the proposed flat fee of €455 where no counsel is involved).

It is not clear whether the proposal means that the enhanced flat fee will be applied when counsel will be certified by the judge or whether it will apply to every case where counsel is instructed by the solicitor independently of an order from the court.

Solicitors are increasingly required to attend multiple courts simultaneously. In circumstances where a solicitor cannot attend court themselves for a particular case, it is common practice for a solicitor to brief counsel to attend the District Court on their behalf. The reliance upon counsel, often very junior members of the Bar seeking experience, is a key to their practice and is a way of ensuring that a defendant will be legally represented. The proposed flat fee system will undoubtedly cause solicitors to reconsider their usual practice of instructing counsel as they will no longer be able to afford to do so. Therefore, this aspect of the Department's flat fee proposal will ultimately lead to reduced work for junior members of the Bar and will increase the level of difficulty that defendants will face in seeking to secure legal representation.

It is understood that the current certificate for counsel will be maintained which will mean that counsel instructed in a case and certified for that case would now receive €300 on top of the current €600[30] that is currently payable. This suggests that barrister would receive a total of €900 for handling a case, whereas the solicitor acting in the same case would only receive €300. This disparity is startling and is indicative of a profound misunderstanding and disregard of a solicitor's role and extent of involvement in cases before the District Court.

Bench Warrants

The proposed flat fee does not allow for issues that arise in the course of a case to be taken into consideration, such as the execution of a bench warrant.

If a bench warrant is issued in respect of a defendant, a question that arises is whether the solicitor will receive a payment for the work done up to that point (eg previous court appearances) even if the case is technically still ongoing. A bench warrant may take a long period of time, even years, to be executed.

A further aspect that requires consideration is, if a warrant is executed in another court or district but then remanded back to the original court that issued the warrant, which solicitor does the Department intend will get paid for the work done. As a matter of principle, and as

[30] Counsel certificate fee is €600 in the current system.

already reflected throughout this submission, it is the position of the Law Society that all of the work carried out by a solicitor under the Criminal Legal Aid Scheme must be recognised and be fairly remunerated.

If solicitors will not be remunerated for the work that they carry out for the execution of a bench warrant, how can they be expected to appear in court or to organise for the execution of the bench warrant. In this context, the effect of the proposal will lead to an increase in self-representation during execution of bench warrant and associated application for bail. This is likely to lead to the court lists being inundated and is likely to also lead to an increase in High Court bail applications, which will in turn increase costs for the State.

Change of solicitor

Similarly, the proposed flat fee structure does not account for cases whereby the defendant would change his/her solicitor during the course of the proceedings. This is an occurrence that is quite common. The Department's flat fee proposal does not provide clarity on the approach that will be adopted to recognising the work done by the first solicitor prior to the file being handed over to a newly appointed solicitor. If the implementation of the proposed flat fee precludes a defendant from appointing a new solicitor, that would constitute a breach of their constitutional right to legal representation of their choice.

Conclusions

The flat-fee proposal is simply unworkable: an inflexible system cannot reflect the unpredictable pace, variability, or demands of District Court criminal cases, making the model inherently incapable of supporting effective legal representation.

Experience in family law has shown the folly of a simplistic flat-fee system. The experience of the operation of the flat fee in family law under the Private Practitioner Scheme has driven practitioners out of this area of practice and has led to legal deserts - a prospect that will inevitably extend to criminal law if the proposed flat fee model is adopted.

The Department's proposal undervalues the real work required and risks undermining defendants' fair-trial rights by effectively capping the level of representation that a solicitor can provide.

The proposal contradicts the Government's commitment to fully restore FEMPI-era cuts and instead would operate as a cost-cutting measure that further reduces already outdated Criminal Legal Aid fee levels.

The likely failure of these proposals would serve no one's interests and certainly not the wider public, whose safety, and confidence in the criminal justice system, depend on its effective operation. If implemented these proposals will also, perhaps invertedly, limit the legal options available to those who qualify for free legal aid.

For these reasons the Law Society remains committed to developing a structure for Criminal Legal Aid that achieves genuine efficiencies, while guaranteeing fairness for all stakeholders in the justice system, as well as protecting the rights of those facing trial.

In order to achieve this, the Law Society is calling for an independent, effective, and time-bound mechanism to determine the appropriate Criminal Legal Aid structures.

Annex 1 – Context in which this Submission is Made

The Law Society has been engaging with the Department of Justice, Home Affairs and Migration over a period of almost two years to discuss and progress administrative reforms to the Criminal Legal Aid Scheme at District Court level.

The Law Society has made it clear that it is not supportive of many of the assumptions and assertions that were made in the Department's paper - entitled '*Review of Criminal Legal Aid in the District Court*' of November 2025.

By letter dated 23 January 2026, Minister O'Callaghan informed the Law Society that Criminal Legal Aid fee restoration would take place with effect from 1 July 2026 and stated that "the changes to the fee structure in the District Court will take a number of months to complete". The Law Society welcomed the proposal to restore Criminal Legal Aid fees.

On 24 February, the Law Society received, from the Department, an email attaching a document entitled *'Simplifying Criminal Legal Aid Payment in the District Courts'*. That document presented for the first time a proposal for the introduction of a flat fee approach to the payment of solicitors under the Criminal Legal Aid Scheme for District Court work and invited the Law Society to make a submission to the Department. The Law Society noted the Minister's press statement issued later that same day, announcing his decision to introduce a flat fee.

On 5 March the Law Society met with officials at the Department of Justice and presented a short position paper to the Department in advance of that meeting. That paper set out in clear and unequivocal terms the Law Society's opposition to the Department's flat fee proposal.

This present Submission sets out the Law Society's concerns in a more detailed way.

Annex 2 - About the Law Society

The Law Society of Ireland is the educational, representative and professional body of the solicitors' profession in Ireland.

The Law Society's main statutory functions in relation to the education, admission, enrolment, and discipline of the solicitors' profession are provided by the *Solicitors Acts 1954 to 2015*. These statutory functions are exercised by the Council of the Law Society or by the various committees, task forces and working groups to which the Council may delegate certain statutory functions. A separate organisation - the Legal Services Regulatory Authority - is responsible for regulating the provision of legal services by legal practitioners.

The Law Society delivers high-quality legal education and training and also places significant emphasis on civic engagement, supporting local community initiatives and driving diversity and inclusion. The Law Society is committed to participating in discussion and advocacy on the administration of justice and the effective implementation of public policy.

Blackhall Place, Dublin 7
t. 01 672 4800
e. policyteam@lawsociety.ie