**From:** Ministers Office <noreplymo-justice@corr.cloud.gov.ie>
**Sent:** Monday, July 4, 2022 1:05 PM
**To:** Customer Services <customerservices@limerick.ie>
**Subject:** Ref: DJE-MO-05842-2022

Ms. Laura Flannery

customerservices@limerick.ie

Minister’s Reference: DJE-MO-05842-2022

Dear Ms. Flannery,

I am writing about your recent correspondence to the Minister for Justice. The Minister has asked me to reply on her behalf.

I refer to your letter of 13 June 2022 to the Department of Justice regarding the resolution of the Joint Policing Committee in respect of Criminal Legal Aid.
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The Criminal Legal Aid Scheme is a vital element of the criminal justice system. The Criminal Justice (Legal Aid) Act 1962 provides that free legal aid may be granted in certain circumstances for the defence of persons of insufficient means in criminal proceedings. Under the 1962 Act, the courts, through the judiciary, are responsible for the granting of legal aid.

An applicant for legal aid must establish to the satisfaction of the court that their means are insufficient to enable them to pay for legal aid themselves. The 1962 Act specifies that the court must also be satisfied that, by reason of the "gravity of the charge" or "exceptional circumstances", it is essential in the interests of justice that the applicant should have legal aid. Criminal prosecutions originate in the District Court and if so satisfied, the Judge will grant a criminal legal aid certificate.

The provision of an effective criminal legal aid service to persons facing serious charges which could result in the loss of their liberty is of fundamental importance. The Supreme Court ruling in the case of State (Healy) v Donoghue [1976] I.R. 325 effectively determined that the right to criminal legal aid is, in circumstances which are quite wide in practice, a constitutional right. An accused person who faces serious changes and who cannot afford to pay for legal representation has a constitutional right to legal aid.
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In addition, Article 6(3) ( c) of the European Convention on Human Rights provides that every person charged with a criminal offence is entitled to defend themselves in person or through legal assistance of their choosing or, if they have insufficient means to pay for legal assistance, to be given it free when the interest of justice so require.

The Criminal Legal aid Schemes are demand led and the fees and expenses due to the legal practitioners are paid in accordance with the terms and conditions of the schemes.The Department has no influence in the granting of Criminal Legal Aid or the assignment of solicitors as under the Criminal Justice (Legal Aid) Act 1962. The Judiciary are responsible for the granting of legal aid.  Legal services under the Criminal Legal Aid Scheme are provided by private solicitors and barristers who have notified their availability to undertake legal aid work. The Department is responsible for the payment of fees and expenses to the legal practitioners.

The potential outcome of a trial has no bearing on a persons constitutional right to be represented. As noted above criminal legal aid is granted if the Court is satisfied that the persons means are insufficient for them to pay for legal aid themselves, therefore in order to uphold this right the Department remunerates legal practitioners who undertake such work.

I trust that this clarifies matters,

Yours sincerely,

**Emma McHugh**

Private Secretary to the

Minister for Justice

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