

# Minister for Community Safety submission of 9 February 2023

## PE2002/B: Ensure access to legal aid for people with disabilities

*Calling on the Scottish Parliament to urge the Scottish Government to provide increased funding for legal aid in civil cases for people with disabilities.*

I write in response to the above petition lodged with your committee and the actions called for within.

The petition provides background that Mr White has encountered difficulties in engaging a legal aid solicitor to provide advice and representation. Mr White states that the number of solicitors carrying out legal aid is small and those approached are unable to take on new work. He cites discrimination due to his inability to engage a solicitor and a breach of his human rights.

The Legal Aid Fund is a demand led and open-ended. Scotland is considered to have one of the most generous legal aid systems in terms of eligibility and scope. The Scottish Legal Aid Board, as administrators of the Fund, apply means and merits tests to determine eligibility. These tests are essential levers in ensuring the sustainability of the Fund.

Therefore in some circumstances individuals may be asked to contribute towards the cost of their legally aided advice, or they may not be eligible for legal aid funding at all. It is unclear from Mr White's petition whether he has confirmed with SLAB his eligibility for civil legal aid however the main issue appears to be an inability to engage a solicitor. His eligibility or otherwise for legal aid funding is not, at least from the reasons he has given, at issue.

Neither Ministers nor the Scottish Legal Aid Board (SLAB) can compel solicitors to provide advice and representation. There can be many reasons why a solicitor declines to take on a case. The Legal Aid system is not designed to guarantee access to legal advice and representation. It is designed to assist those who are unable to afford a solicitor themselves.

Over the last three years the Scottish Government has engaged with representatives of the legal profession and the Scottish Legal Aid Board to develop reforms to improve the current system whilst also working towards the introduction of a legal aid reform bill. That engagement continues to identify further more immediate improvements that can be made to legal aid fees.

In the shorter term, Ministers will be laying regulations to provide an uplift to all legal aid fees, including civil, of over 10%. Once implemented this will bring the total amount of additional legal aid funding since April 2021 to £31m.

The Scottish Government has also recently announced a further £3m to strengthen access to justice for deprived communities and vulnerable groups. Work is underway on how best to target this funding. The £3m funding is in addition to the demand-led Legal Aid Fund and to specific grant funds paid through the Scottish Legal Aid Board.

In the longer term we are committed to moving forward with continued improvements where these can be made, to support the sustainability of the legal profession and maintain and improve access to justice for individuals and the wider efficiency and recovery of the justice system.

In summary, significant funding has been provided to the legal aid system over the last few years however Mr White is still encountering difficulties in engaging a solicitor. There is no evidence at this time that specific additional funding would resolve his particular difficulties and suggest that other factors may be at play. Ministers will however continue to consider how best to support people with vulnerabilities within the legal system and make improvements where we can.