

Law Society of Scotland submission of 14 August 2023

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

Thank you for your letter requesting views on the above petition. We are sorry to hear about the difficulties that the petitioner has faced in securing help through the legal aid system. We are not able to direct a firm to undertake any individual case, and we note that the petitioner has also sought help from the Scottish Legal Aid Board's Civil Legal Assistance Office, who were also unable to assist.

Unfortunately, the number of firms providing civil legal aid has significantly declined over the last decade, by around 20% (while the number of firms registered for criminal legal aid has declined by over 30%). There are many factors contributing to this decline, though the lack of a sustainable funding mechanism for legal aid a very significant element. Over the course of a generation, legal aid fees have largely not kept pace with inflation, resulting in a significant decline in real-terms, particularly during this current period of high inflation. A mechanism for periodic review, taking inflation into account, is required to address the impact of inflation on the legal aid system, a reform that we have called for consistently over the last decade. Currently, Scottish Government does not believe that it has sufficient data to understand the impact of inflation on the sector, and will shortly be commissioning research to assess this more fully. We are concerned that in the current cost of living crisis, legal aid fees will further reduce in real-terms in the time that it takes for this research to be completed, further exacerbating the current problem.

Scottish Government has looked to address the diminishing legal aid sector in other ways, for instance, through the implementation of a trainee fund. This has allowed 40 part-funded traineeships into the legal aid sector, to address supply concerns and also the lack of younger solicitors in the sector. We would be keen to see initiatives like this continue.

In a case of this type, seeking judicial review of the Department of Work and Pensions at the Court of Session, a solicitor advocate or advocate would be required to appear, again reducing the number of people capable of providing representation in the case. Judicial review is often

complex and we note proposals in the current Scottish Government consultation on human rights around additional approaches to improve access to justice, both in terms of the current framework for human rights in Scotland and also the rights proposed for incorporation, including the right to social security as a human right. Sustainable funding for advocacy services, wider accountability of public bodies and enhanced roles for scrutiny bodies may offer some help in improving access to justice and preventing human rights breaches.

Other reforms could be considered, for instance, the time limits within which to bring actions to challenge decisions. Decisions of the Department of Work and Pensions need to be appealed within a month (though the tribunal will consider applications up to a year following) and judicial review applications must be brought within three months (though this can be extended where it is equitable to do so). Whether these remain realistic timescales for people with disabilities, bearing in mind the diminishing size of the legal aid sector in Scotland, may be worth consideration.

There may also be opportunities in forthcoming legal aid legislation to consider ways to reform the legal aid system to ensure that people across Scotland with disabilities have more effective access to justice.