

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2002](#): ensure access to legal aid for people with disabilities, lodged by Grant White

Brief overview of issues raised by the petition

The petitioner is in dispute with the Department of Work and Pensions. He has been advised that he could challenge the decision via a court process called judicial review. He has been unable to access a solicitor offering legal aid to do this.

The petitioner has a disability which makes written communication very difficult. He believes that only a small number of solicitors carry out legal aid work and most are unable to take on new work. He argues that there is a particular impact on disabled people in relation to access to justice because they may be less likely to be able to pursue legal action without additional support.

Access to solicitors offering legal aid

- The Scottish Legal Aid Board (SLAB) is the body responsible for administering legal aid.
- SLAB has a statutory duty to monitor the availability and accessibility of legal services (although note that this is not limited to legal aid services). The [most recent monitoring report is from 2017](#). This concluded that there were no systemic issues with access to legal services in any of the areas looked at.
- SLAB has changed its approach to monitoring from 2017. It now looks at specific topics. Reports on [Access to legal aid during the pandemic](#) (2022) and [Rural access to civil legal aid services](#) (2020) did not note any significant issue.
- Some other legal aid stakeholders have raised concerns about access to legal aid. Citizens Advice Scotland highlighted issues with access to legal aid – in particular in rural areas or for specialist subjects – [in a response \(2021\) to the Scottish Parliament’s Criminal Justice Committee](#). In a later publication¹, it indicated that, for the year 2021:

¹ Citizens Advice Scotland. (2022) CAS response to the SLAB consultation on civil legal aid financial eligibility assessment.

“The number of pieces of advice given in relation to solicitors and advocates increased by 26% to almost 6,000 pieces of advice. Of those advice queries, over 60% were in relation to accessing/ finding a practitioner.”

- The Law Society of Scotland is [actively campaigning on #AccessToLegalAid](#). It recently undertook [research which highlighted that there was a lack of solicitors offering civil legal aid based in deprived communities](#).

Eligibility criteria for Civil Legal Aid

- The SPICe briefing [Legal aid – how it works](#) (2022) looks in detail at the way the legal aid system in Scotland operates.
- Civil Legal Aid is the type of legal aid which would be relevant to a judicial review action. People with an annual income of up to £26,239 can qualify for Civil Legal Aid. Where income is above £3,521, an applicant would have to pay a financial contribution. This increases as income increases.
- There are other eligibility tests for Civil Legal Aid. The key requirements are:
 - that there is a plausible legal basis for the case – this means weak cases won’t get funding
 - that it is “reasonable in the particular circumstances of the case” to grant legal aid – this test considers things like whether it would be proportionate (for example, considering the cost of the action versus what is at stake) to grant legal aid.

Judicial review

- Judicial review is the form of court action used to challenge decisions by public bodies. It looks at whether the process used to reach a decision was lawful rather than at the strengths and weakness of particular outcomes. The SPICe briefing [Judicial Review](#) (2022) explains this in more detail.
- Actions for judicial review are expensive. This is because they must be raised in the Court of Session (Scotland’s senior court). This means that the person bringing the action must pay for an advocate to present the case as well as a solicitor.
- There is a three month time limit in which to raise an action for judicial review. The courts have discretion to hear a case outside this timeframe where it would be “equitable” (ie. fair, considering the interests of both sides) to do so.

https://www.cas.org.uk/system/files/publications/citizens_advice_scotland_response_to_the_consultation_on_civil_legal_aid_financial_eligibility_assessment.pdf [Accessed 6 February 2023]

Abigail Bremner
Senior Researcher
6 February 2023

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP