

Briefing for the Citizen Participation and Public Petitions Committee on [petition PE2168](#): Guarantee legal aid for “death or serious injury” victims in legal action against Police Scotland, lodged by Steven McNally

Brief overview of issues raised by the petition

The petitioner is calling for legal aid to be made available without any financial eligibility criteria for victims and their families where there is medical evidence confirming death or serious injury which occurred during an interaction with police.

- Legal aid provides financial assistance to enable people on low and moderate incomes to access legal services. The SPICe briefing [Legal Aid – How it Works](#) (2021) explains how the legal aid system in Scotland operates.
- Civil Legal Aid may be available to people who wish to pursue personal injury claims (including claims relating to a death). There are financial and other eligibility tests (often referred to as “means” and “merits” tests).
- To qualify for Civil Legal Aid, someone must have a disposable annual income (income after necessary expenditure, such as housing costs, loans and child care, is deducted) of not more than **£26,239**. They are usually required to have access to disposable capital assets of not more than **£13,017**. Anyone with a disposable income of more than £3,521, or access to disposable capital assets of more than £7,853, will have to make a contribution to their legal costs from their own income.
- There are also requirements (“merits” tests) relating to the nature of the case. For Civil Legal Aid, there must be a plausible legal basis for the case. It must also be reasonable in the particular circumstances of the case to grant Civil Legal Aid.
- Sometimes people access a type of legal aid called Advice and Assistance for initial advice on their situation, before moving on to Civil Legal Aid. The financial eligibility criteria for Advice and Assistance are much stricter (disposable income of not more than £245 per week and disposable capital assets of not more than £1,716).
- There are other ways to fund a personal injury case. For example, solicitors specialising in this area of law often offer “no win, no fee” arrangements. However, solicitors are likely to be unwilling to take on cases which don’t have a high chance of success under these funding arrangements.

- The Equalities, Human Rights and Civil Justice Committee recently finished an [inquiry into civil legal assistance](#), including Civil Legal Aid. The report is not due to be published until after summer recess.
- The [Justice Secretary made a statement to the Scottish Parliament on 27 March 2025 outlining that legal aid without any financial eligibility criteria would be available](#) for families in relation to Fatal Accident Inquiries (FAIs) looking at deaths in legal custody (or detention in secure accommodation for children). Civil Legal Aid is currently available for representation at any FAI, where the eligibility requirements are met.
- The purpose of an FAI is to establish the circumstances of a death and, where appropriate, make recommendations to prevent future deaths of a similar nature. It is not to establish criminal or civil liability for anything which has happened.
- Mandatory FAIs are held into all deaths which occur in “legal custody” or as a result of accidents in the course of someone’s work. Legal custody includes police and prison custody. FAIs can be held in other circumstances, at the discretion of the Lord Advocate (Scotland’s senior law officer).

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 25 June 2025

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

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