

# **Social Justice and Social Security Committee**

## **Financial considerations when leaving an abusive relationship**

### **Scottish Legal Aid Board Response to the Equalities, Human Rights and Civil Justice Committee**

We welcome the Committee's Inquiry on civil legal assistance. It provides a valuable opportunity to explore the data and evidence, hear from those with experience of providing or using services supported by civil legal assistance and build consensus for change.

Whilst the high level and long term data may not itself immediately point to widespread problems with the system, we believe it requires significant structural change and new governing legislation.

Legal aid funded work on civil matters has changed over time and our data shows that while there are now fewer family cases and fewer solicitors doing this work, there is more work in relation to guardianships, mental health, immigration and asylum and a greater concentration of legal aid work amongst a core group of active solicitors.

These changes show that the legal aid system in Scotland has evolved to some extent in response to the changing demands placed upon it, but it is nevertheless limited in its ability to adapt to a world not envisioned when it was created in its current form almost 40 years ago. Despite the huge amount of help delivered, and above inflation increases in expenditure over recent years, concerns are being raised that the legal aid system is in crisis.

There is no doubt that some of those seeking and providing help face challenges, but many of these cannot be resolved solely, primarily or in any significant way by the legal aid system. Some of the issues we observe relate to the structures of the legal profession, changes in career expectations, and the support available to small businesses, for example to help them embrace technology, or adapt to changing patterns of need, client expectations and the modernisation of the justice system.

But other problems sit more squarely within the legal aid system.

The current system is complex and hard to navigate. It isn't person centred. There is no mechanism for connecting those in need with solicitors or advice agencies that can help them, and no guarantee that services with sufficient resources will be available to provide help.

Equally, the current system has limited scope for targeting resources at priority issues or securing services in any given place or for a particular type of problem.

Add these weaknesses to the challenge of ensuring that delivering legal aid funded services remains a sustainable economic prospect for providers, and change is undoubtedly needed.

The system delivers vital public funding for crucial services, helping tens of thousands of people each year. But it is fundamentally still the system designed in the post-war era and as such we don't believe that in its current form it can deliver what the public rightly expects of a modern, accessible public service. There may be different views on how best to address these challenges, but we all want a system that meets the needs of the people of Scotland in the 21st century.

## **About the Scottish Legal Aid Board (SLAB) and Legal Aid**

### **Summary:**

- **The Scottish Government is responsible for legal aid policy and SLAB administers the legal aid system.**
- **There are 3 main funding tools for delivering legal aid services: case by case on demand funding (known as judicare); commissioning through grant funding and contracting; direct employment of solicitors.**
- **Grants of civil legal assistance and expenditure and payments to firms have all increased in 2023-24. But there are trends which show changes in the cases being funded by civil legal aid – a reduction in family cases and an increase in Adults with Incapacity cases.**

### **Scottish Legal Aid Board**

Our primary purpose is to manage access to legal aid funding. We do that through assessing eligibility for legal aid and paying accounts submitted for payment by solicitors and advocates. We also directly deliver a range of legally aided services through our own network of employed criminal and civil solicitors and grant funded services.

The Scottish Government is responsible for legal aid policy. We also advise Ministers on the operation of legal aid and how it can be improved to help them make policy decisions.

### **How legal aid works**

Legal aid in Scotland is primarily delivered through case-by-case funding (“judicare”) for services provided by solicitors and others instructed by them, such as advocates and experts. Most services paid for through the Legal Aid Fund are delivered by judicare through the private sector. Our own employed solicitors also deliver legal representation services but on a much smaller scale.

A small amount of legal aid funding also provides grants for services through the third sector to deliver targeted legal and advice services.

In thinking about the future of legal aid, it is important to consider the funding tools available under the governing legislation – the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) and their characteristics.

The statutory framework for legal aid currently enables payment out of the Legal Aid Fund by way of three different funding mechanisms:

## **1. Case by case on demand funding (known as judicare)**

- Solicitor firms register to be able to access public funds for legal work. There is no requirement for a registered provider to commit to or carry out any specific scope or amount of publicly funded work for any particular area, topic or population group
- the scope of what can be paid for is wide and expenditure is uncapped
- There are eligibility tests, controls around approvals for range of work covered and payment controls applied for each individual case
- While eligibility and scope is wide, there is no ability for the funder to secure any particular range or type of delivery for any particular population, geography or type of work even for those who are in theory eligible.

## **2. Commissioning**

- Commissioning payment of legal aid by way of the grant funding enables payment for stated purposes including but not limited to the securing of delivery of services
- the cost limit is capped and set by Scottish Government
- Control is exercised by Ministers agreeing the priority need the funding is to deliver.
- There are also contracting powers, but the 1986 Act prescribes these for criminal and children's legal aid only.

## **3. Direct employment**

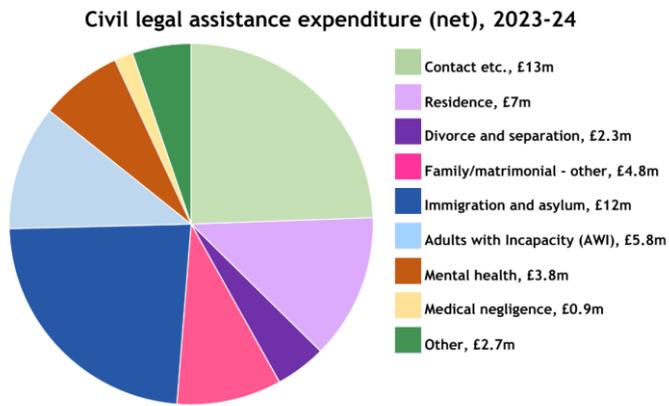
Solicitors can be employed by SLAB and paid for out of the Legal Aid Fund to provide delivery in certain areas and for types of work.

### **Legal aid statistics**

Our [Annual Report for 2023-24](#) was laid in Parliament and published on 6 November 2024.

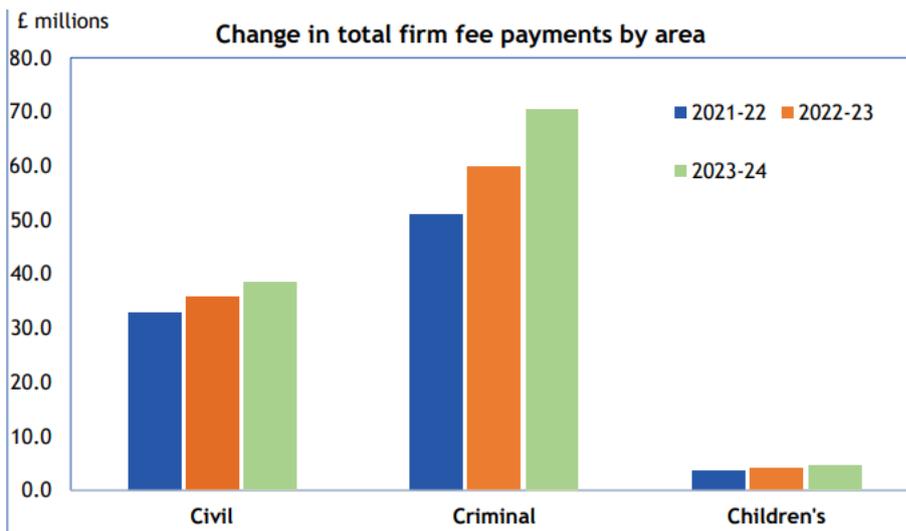
Grants of legal assistance increased: civil legal aid by 5% to 13,800 and A&A by 6% to 46,200. There was a reduction in family cases and an increase in non-family cases, mainly Adults with Incapacity cases. In A&A, the biggest increase was in immigration and asylum cases.

Total net expenditure increased by 9% to £52 million (excluding the costs of grant funding and SLAB employed solicitors). Civil legal assistance accounts for 39% of total legal aid gross judicare expenditure.



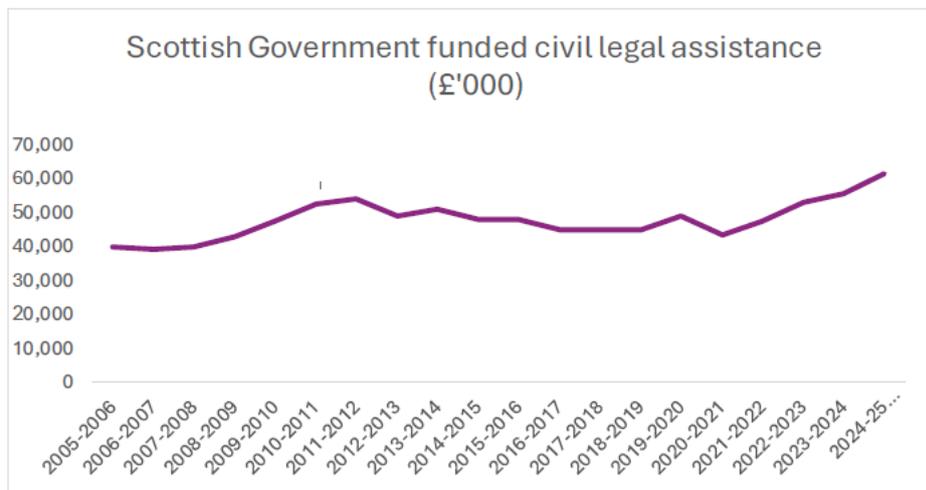
Payments to solicitors and advocates have also increased due, in part, to the Scottish Government's investment in increases in legal aid fees.

Total payments for all aid types to solicitors and solicitor advocates were £114 million in 2023-2024, a 14% increase on the previous year and a 16% increase on the pre-pandemic year of 2019-20. Fee payments to advocates were £15 million, a 10% increase on 2022-23.



These recent trends reflect to some extent a post-pandemic recovery in the progress and conclusion of cases, particularly in relation to criminal legal assistance. They are perhaps best viewed in the context of the longer term trends.

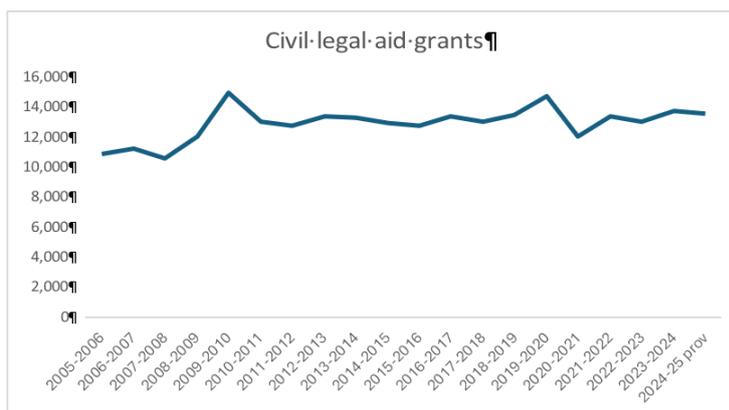
The chart below shows Scottish Government expenditure on civil legal assistance over the last 20 years (including the cost of SLAB employed solicitors in the Civil Legal Assistance Office since 2007-08 and grant funding since 2009-10).



Spending in the early to mid-2000s had been around £40m per year for several years. It then rose rapidly during the financial crisis of 2008-2012, peaking at £54m in 2011-12 - an increase of 35% in four years. It declined gradually over following years, settling at just under £45m before rising again in 2019-20. Figures for 2020-22 were heavily affected by the pandemic, but the upward trend has since become more firmly established: spending of £55.6m in 2023-24 representing the highest total to that point.

Provisional figures for 2024-25 suggest a further substantial increase to over £61m, higher in real terms than any year since 2015-16. Despite these recent real terms increases, spending remains around 4% lower in real terms than either 10 or 20 years ago, and 20% below the modern peak in 2011-12.

The largest component of civil legal assistance expenditure is civil legal aid, which pays for representation in court proceedings. The chart below shows the long term trend in grants of civil legal aid over the same 20 year period.



The single year spike at the height of the economic crisis is clear, as is the dip in the first year of the pandemic, but perhaps the most striking aspect of the chart is the overall stability in the number of grants over the last 15 years, and at a level consistently above that before the economic crisis.

Within this relatively stable picture however there have been considerable changes in the types of cases supported by civil legal aid. At the start of this period, family

cases accounted for 70% of the total, reparation for 15% and adults with incapacity (guardianship) for 2%. Twenty years later, we see only a handful of reparation cases each year as the vast majority of such cases now proceed on a no-win no-fee basis. Family now accounts for 46% of grants, and adults with incapacity for 47% - the latter growing from 233 grants in 2005-06 to 6439 in 2024-25.

Similar shifts have also occurred in other aspects of civil legal assistance. Over the last 20 years, immigration and asylum and mental health have come to dominate spending on advice and assistance. In 2005-06, these categories accounted for 25% of total civil advice and assistance expenditure, but now account for 73%. In overall civil legal assistance terms, their share of gross expenditure has risen from 13% to 28%.

These shifts are not only significant in themselves, but they are also important in understanding patterns of supply and perceptions of the health of the legal aid system within and beyond the legal profession.

Going back 20 or more years, participation in the legal aid system was more widespread amongst generalist legal practices, many of which might offer family law and reparation advice alongside a range of other private client services, including wills, executories and conveyancing. An element of this work might be legally aided, and this would sit alongside privately funded work in the same and other fields of law.

By contrast, immigration and asylum and mental health work tends to be highly concentrated amongst more specialist providers: a handful of firms, most located in the central belt, may account for 80-90% of all legally aided work in these fields, and legal aid will account for a high proportion of total firm income. The work itself is tribunal rather than court-based and so the extent of work in these fields is perhaps less visible to court practitioners around the country, who previously undertook – and so were aware of - the vast majority of legally aided work. Involvement in guardianship work is more widespread – involving almost half of active civil legal aid practitioners - but these cases are usually non-contentious and so require both less interaction between providers and less regular attendance at court than, say, defended family or personal injury actions.

In terms of the preponderance of legal aid work amongst court (as opposed to tribunal) practitioners and the actual and perceived level and spread of activity (and associated income) amongst the wider body of high street firms, the legal aid landscape will look and feel very different today than it did 20 years ago. The relative stability shown in the high level longer term trends described above may therefore run counter to the widespread perception that the legal aid system has been in steep decline for many years.

The last ten or twenty years might instead be described as a period over which the focus of the legal aid system has changed radically, rather than one over which it has significantly declined in terms of scope, funding or overall levels of activity. Much of this change has happened ‘under the surface’ in terms of the focus of, and level and distribution of professional participation in, the legal aid system.

It is important to stress that none of this is to suggest that there are no problems in the system or that concerns expressed by stakeholders are unfounded. As explored below, SLAB's view is that the system does not – and in its current form cannot – meet all needs, or do so in a way that is accessible, transparent, efficient, consistent or reliable.

**Q1 What are the current barriers to accessing civil legal assistance? Can you give examples from your own experience, or refer to any research in this area?**

**Summary:**

- **There are intentional barriers built into the governing legislation on scope and eligibility. Legal Aid was not designed as a universal service.**
- **The legislative framework for legal aid is outdated, cumbersome and complex. We have advocated for new primary legislation to govern legal aid to make it easier for people to understand and use.**
- **The legal aid system cannot secure the supply of services to those who need it. Our analysis shows a complex picture of change in where and what publicly funded legal services are being delivered. It also shows greater concentration of provision in a core group of solicitors.**

### **Intentional barriers**

Intentional barriers are those that Parliament has applied through the Legal Aid (Scotland) Act 1986. The Act sets out what legal aid can be granted for i.e. the scope of the system, and controls on who can access it i.e. assessment of the merits of funding, and an applicant's financial eligibility.

Parliament has deemed this necessary to deliver value for money by focusing public expenditure on particular problem types, personal circumstances and cases with prospects of delivering substantive benefits for applicants or the wider public. In a system with a demand led budget, like Scotland's, intentional barriers help place a limit on public expenditure and prevent it becoming unsustainable.

The financial eligibility rules also fit with the Scottish Government's overarching principle that legal aid is for people that would otherwise not be able to afford legal help i.e. those that can pay, should pay.

In our response to Question 2 on the improvements that could be made, we consider whether the

barriers inherent in the financial tests and eligibility levels have become more significant and outline our work to review and explore improvements to their operation.

## **Unintentional barriers**

### **System complexity**

A myriad of secondary legislation and resulting guidance built up since 1986 means that the current system is complex and hard to navigate for applicants and solicitors.

Systematic legal aid reform as described in our response to Question 6 would assist. However, we are continuously trying to simplify the current system for applicants and solicitors, with current proposals set out in our response to Question 2.

### **Securing the supply of services**

Applicants must apply for legal aid through a solicitor. Solicitors' firms register with SLAB to provide civil legal assistance. The Scottish Government has no specific levers to manage or secure legal aid supply by solicitor firms. There is no contract for the delivery of services. Firms decide whether to offer a legal aid service at all, for specific case types or in particular locations. Each solicitor decides whether to take instructions for an individual case from a particular client.

Individual solicitors and firms will take decisions about what work they want to do and those

decisions can be made for several reasons, some to an extent within the control of the legal aid system (e.g. legal aid fees) but others not (workload, business structures, alternative sources of work).

The legal aid approach to funding is not person-centred. There is no mechanism for connecting those in need with solicitors or advice agencies that can help them, and no guarantee that services with sufficient resources will be available to provide help.

Government also has very limited scope for targeting resources at priority issues or securing services in any given place or for a particular type of problem.

Systemic reform of legal aid is needed to improve this situation, as set out in the longer-term changes section to this response.

### **Geography**

It is a widely expressed view that rural and island communities are underserved by solicitors who are willing to act in legally aided civil cases. For example newspaper headlines have stated that these communities have become "civil legal aid deserts".

SLAB has been conducting a detailed analysis of the long-term trends in civil legal aid. A summary of this report is appended. This has involved analysis of our own administrative data using data on

subject matters and geographic variables including applicant location, solicitor location and court location. This has helped us identify shifts in patterns of supply and usage of civil legal aid for different case types nationally and locally.

There is no clear overarching picture emerging from the analysis.

The number of grants of civil legal aid is higher now than ten years ago. But the trends differ widely between areas of law (adults with incapacity rising and family law falling, as explored above) and also by geography.

For example, the total number of civil legal aid certificates granted to applicants living in the three island council areas<sup>1</sup> has increased by an average of 43% between 2014-15 and 2023-24.

Analysis also shows that there are fewer, but busier, solicitors who are delivering the service.

The data does not support the view that rural and island communities have become legal aid deserts, with the biggest falls in activity being seen in major urban areas like Glasgow and Dundee.

Scottish Borders, another area described as a legal aid desert, has seen a 28% increase between 14- 15 and 23-24.

Some areas of work are thriving (adults with incapacity) whereas other areas such as family and non- family law have declined. Some of the recent decline was pandemic related, for example in relation to housing, which is now increasing again. Given the number of civil court cases about family disputes, it appears that the majority are legally aided, which suggests that there may be a difference in the resolution of family disputes between those who pay privately and those who receive legal aid.

Even within the overall reductions in family law some case types have grown (residence, variation and contempt).

The complexity of this picture, and the mix of upward and downward trends, does not suggest an overall crisis, but nor does it suggest that there are no areas of concern.

SLAB has long been of the view that change is needed, not because we believe that the system is on the brink of collapse but because we see a need for better tools to target interventions to support access to justice in specific areas or for some types of case.

Within the constraints inherent in the system, SLAB has worked successfully with key stakeholders to target interventions in areas where it is perceived to be difficult to gain access to legally aided services. One of the primary means by which this has been done is through SLAB's grant funding programmes, which are described in our response to Question 3. Another key approach is through the work of our Civil Legal Assistance Office, described under Question 2 below.

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<sup>1</sup> Na h-Eileanan an Iar, Shetland Islands and Orkney Islands

**Q2 Do you have any suggestions for shorter-term improvements (not involving changes to the Legal Aid (Scotland) Act 1986) which could be made to the current system for civil legal assistance?**

**Summary:**

- **There are a range of short term proposals included in the Scottish Government's discussion paper. SLAB provided advice on these proposals, many of which emerged from discussions with stakeholders. We outlined these potential proposals in recent discussions with stakeholders to find out their views, which were supportive. We believe there are further options for regulation changes that could be made in the coming years, as part of a rolling programme of improvements.**
- **A review of the financial eligibility thresholds for all aid types is needed to ensure that those who should qualify, do so. A review of other aspects of financial eligibility tests would also ensure fairness, including passporting and contributions. SLAB is providing advice to the Scottish Government about these topics.**
- **Sharing of data and collaboration on remuneration and wider issues of recruitment and retention.**

We have taken this question to mean improvements delivered through means other than primary legislation.

### **Legal aid reform discussion paper**

#### *Simplifying judicare*

The Scottish Government's discussion paper on legal aid reform describes some short term improvements to be introduced by regulations. We advised the Scottish Government on the content of the paper and support the proposals. These proposals were based on our knowledge of how the current system could be improved and feedback given by applicants, solicitors and other stakeholders. The short term proposals are also based on what is feasible to achieve in the remainder of this Parliament.

For civil cases, the proposals are to introduce block fees for adults with incapacity cases and a new block fee in Protective Orders. The introduction of block fees for adults with incapacity cases will simplify the payment process for solicitors in a high volume area of work, and therefore reduce administration for them and SLAB, provide certainty of payment and minimise any scope for dispute about sums payable. The new block fee in Protective Order cases has been suggested by stakeholders as a way of making the payment more appropriate in these cases to reflect the urgent work that needs to be done at the beginning of the case to protect the client.

## **Financial eligibility**

### *Introduce standardised personal allowances*

Following a detailed review of financial eligibility and our policy approach to the application of the limited discretion we are given by the various statutory tests, we have identified scope for us to introduce Standard Personal Allowances to the financial eligibility test for civil legal aid. This will simplify the process for applicants. It will replace the detailed assessment of individuals' particular expenses that adds time, difficulty and uncertainty to the financial assessment process for applicants and for us.

### *Review eligibility limits*

The controls on financial eligibility are prescribed in regulations and therefore decided by the Scottish Parliament.

Our recent financial eligibility modelling suggests that eligibility for civil legal aid has diminished since 2011. Whilst more than half of the population retains some eligibility for civil legal aid, current levels have decreased from around 70% to 56%. Current population eligibility for A&A is considerably lower, at 30%.

However, despite this overall reduction, significant changes to passporting eligibility for legal aid have simplified and improved levels of eligibility for some groups. Passporting is where an applicant who receives government welfare benefits prescribed in the regulations will be eligible for legal aid or A&A without the need for the full assessment of their financial circumstances. Passported applicants now make up a quarter of the eligible population, compared to under a tenth in 2007. The increase in passporting (which has more than doubled, in absolute terms) is accounted for by the rollout of Universal Credit since 2013 and greater population eligibility for that benefit when compared to the other legacy passporting benefits.

Even taking this into account, we have observed that the financial eligibility levels at which people are admitted to the system, particularly for advice and assistance ("A&A"), are becoming a potential barrier to accessing legal assistance.

The disposable income and capital eligibility thresholds are significantly lower for A&A than for civil legal aid. These levels have not been increased since 2011 and so have not kept pace with earnings growth or inflation.

Increasing eligibility limits would come at a significant cost. For example, some stakeholders have suggested that the A&A eligibility levels should be made the same as civil legal aid. This would cost around £4m per year. Alternatively, to increase A&A eligibility by the rate of inflation since 2011 would cost around £1m per year. If a similar change were made to civil legal aid, the costs would clearly be higher. There are a range of other options, some cheaper and others more expensive on which stakeholders could be consulted.

### *Passporting and financial contributions in civil legal aid*

We are developing advice for the Scottish Government on passporting and its impact on financial eligibility. We are also reviewing our policy on the setting of financial

contributions in civil legal aid to assess whether improvements can be made. These are currently work in progress with no firm conclusions at this time.

### **Legal aid remuneration**

It has been widely reported by the legal profession that the level of legal aid fees is a disincentive for solicitors to undertake legal aid funded cases.

The Scottish Government has committed to collaborate with stakeholders and develop an agreed plan for a legal aid fee review by summer 2025. We fully support the need for progress with the research and for regular review of legal aid payment mechanisms and levels. The Scottish Government has asked us to assist them in developing options for taking this work forward.

But we are equally clear that increases in legal aid fees alone will do little to address the other deep- rooted and widespread issues around recruitment and retention, equality and diversity, and work-life balance raised by stakeholders. These are issues which are felt across the legal profession, not only the legal aid sector. We expand on this in our response to Question 7.

### **SLAB initiatives**

#### **Civil Legal Assistance Office (CLAO)**

CLAO is a network of three offices that helps people with civil legal problems, covering Highland and Islands, Argyll and Bute, Aberdeen and Aberdeenshire, and Edinburgh and the Lothians. Its purpose is to contribute to a fairer Scotland by providing and supporting services to resolve or pre-empt legal problems, in a manner which works towards tackling inequalities.

As a direct client legal service operated by SLAB, our employed solicitors can provide advice and representation to people with particular types of civil legal problems. All offices offer legal advice and assistance in relation to housing and homelessness, debt and money. Aberdeen and Aberdeenshire, Argyll and Bute and Highland and Islands offer assistance with public family law. Argyll and Bute and Highland and Islands offer assistance with mental health and incapacity.

Where CLAO is unable to take a case that would normally fall within its remit, for example, due to reasons related to capacity or a conflict of interest, it will attempt to connect individuals to a solicitor in private practice who is willing and able to take the case under legal aid. Where attempts to refer a case to a solicitor in private practice are unsuccessful or the case is not within the remit of CLAO (either because the individual is not eligible for legal aid, the type of case, or the individual is not based within the geographical areas CLAO operate within) CLAO will signpost to other sources of help and support.

#### *Scottish Women's Aid (SWA) National Referral Project*

In 2023-24, we started a scheme between Scottish Women's Aid (SWA) and CLAO to provide SWA with a service to match their clients with solicitors. This is a national project and takes referrals from SWA offices; helps them narrate information about the client's problem; and refers the case to 10 potential solicitors at a time, giving

them the option to take on the case. This has now operated for a year and will continue. We have been able to successfully refer to a solicitor in over two-thirds of cases and gained a valuable insight into the types of cases and locations in which referral has been more challenging. This has potential to be replicated in other areas of work.

We intend to provide advice to the Scottish Government on how the CLAO service can be further developed to achieve the Government's strategic priorities for legal aid. For example, this could include extending the SWA referral approach to other support organisations, case types and client groups, and to cover areas of the country not currently served by CLAO's casework services.

### **Policy & Guidance on the Administration of Legal Aid**

SLAB has recently concluded a substantial multi-year project to develop a clear framework for our decision-making on legal aid applications and accounts. The aim of the project was to articulate

transparent policies for each type of decision the statutory framework requires us to take, with those policies then reflected in effective internal guidance for our staff and clear and accessible external guidance for solicitors and applicants.

By clearly explaining the law, the discretion we have, how we apply it and the information we need to make decisions, our aim is to improve users' understanding of the system, make it easier to access and, by reducing the occasions on which additional information has to be sought, enabling more effective and timely decision-making.

The learning from this project has now been embedded in a business as usual process for the regular review of policies and supporting guidance, including in response to changes in the statutory framework or other external developments.

### **Solicitor Training & Support**

In 2025-26, we will begin a project to improve the consistency and quality of the training we deliver to legal aid providers. This will include reviewing methods of delivery, asking about solicitors' experiences of training, reviewing the materials that are used and the ways in which we assess the effectiveness of this work. As with our policy and guidance reviews, the aim is to equip solicitors to interact effectively with the legal aid system, reducing unnecessary interactions and promoting efficient administration both for SLAB and providers.

### **Opponents**

Being an opponent in a case where civil legal aid is applied for can be challenging, particularly if they do not have their own legal representation. In civil legal aid, opponents are entitled to send us their views about the legal aid application. We're going to review the information we make available to opponents to help them navigate the process and improve their experience and understanding of why legal aid may be granted, even if they do not agree. This can be the source of complaints and we are aware that some MSPs are contacted by constituents in this position.

**Q3 Is grant funding from the Scottish Legal Aid Board helping to support access to justice? Can you provide examples of any successes or problems with this funding stream?**

**Summary:**

- **Scottish Ministers decide on grant funding priorities, the period and the legal aid budget. SLAB has responsibility for the management of the grants.**
- **Grant funding is a useful funding tool to secure provision of services, however, short term grants, flat budgets and late funding decisions make these services difficult to operate.**
- **Increased use of grant funding could enable the system to respond more proactively to identified needs, but greater financial certainty is needed to allow organisations to plan for service delivery.**

### **Legal aid grant funding**

SLAB has powers under the 1986 Act to make grants of funding for civil and children's legal assistance only, not criminal. SLAB decides which individual projects to fund and is responsible for the day-to-day management of the grants, but decisions on the scope, priorities, funding level and duration of each grant funding programme are taken by Scottish Ministers.

Current grant funded projects are shown here - Grant funding programmes - Scottish Legal Aid Board. There are 17 services funded with a budget of £2.3m in 2025-26.

Key characteristics of legal aid grant funding:

- Grants can secure delivery of assistance for agreed priority needs
- Grant funding enables payment for particular purposes, including but not limited to securing delivery of support for specified subject matters, locations and types of service
- Scottish Ministers determine the scope and priorities for funding
- Ministers also set an upper limit and time period for expenditure, so the cost is capped and time-limited (unlike judicare).

### **Grant Funding Budget 2025-26**

The funding allocated in 2025-26 is in the region of £2.3million. This includes £1.95million for the Early Resolution and Advice Programme (ERAP). Grants are currently made on a one year basis. All grants have a current end date of 31 March 2026.

### **Current challenges**

Governance arrangements for grant funding under the current statutory framework mean that decision making largely sits with Scottish Government.

ERAP has had one year extensions for several years on flat budgets. We recognise the impacts that short-term budgets and very late decision making has had on grant funded services:

It limits organisations' ability to retain specialised grant funded staff and provide consistent commitment in service for project clients.

The uncertainty around continuity means that projects need to limit the services they provide to new clients from December each year.

While the provisions enabling use of grants are broad and permissive, the decision making on availability of funds, priority setting and use of evidence to inform ongoing planning are limited within current governance arrangements. There is no statutory requirement for any grants to be provided at all, or for any particular purpose. The ongoing availability of support is therefore entirely at the discretion of Ministers.

We have indicated our strong support for a review of these arrangements as part of the longer term work to reform legal aid and development of a new statutory framework. We refer to this in response to Question 7 and the need for a framework which include key elements:

- Governance arrangements and direction setting
- Strategic planning
- Delivery of programmes and services
- Monitoring and Evaluation

We have begun some engagement with stakeholders on this issue, and this will be shaped by Scottish Government priorities for taking forward broader reform work under the implementation plans for the recently published Discussion Paper.

Current grant funding programmes

### **Early Resolution and Advice Programme (ERAP)**

The programme has been operational since October 2012. The programme's policy priorities are to

- provide direct assistance and representation for people facing court action related to debt in respect of mortgage or tenancy repossession
- provide direct assistance to tackle the multiple and serious debt issues underlying these court actions.

Services are designed to complement and work with SLAB's Civil Legal Assistance Office (CLAO) network (SLAB's employed solicitors) if they are based in the same area. Services can refer clients to the CLAO who require higher levels of support and representation than can be provided by lay representatives.

All services are designed to help clients either at the formal court stage or before their housing debt problem reaches court.

Services work with local authorities and local housing associations who refer people needing help to services in advance of action being raised. This means they can help people before the formal notice of eviction is received, often resolving matters prior to them reaching court. This reduces the overall number of cases reaching court, avoiding the stress this brings to clients, many of whom already have mental health issues.

Services report demand for help as increasing beyond the capacity of the funded posts, the number of which has remained static in some projects or reduced in others due to staff being lost, in part in

response to the uncertainties surrounding ongoing funding.

The information below illustrates patterns across the last four full years and the current year to end February.

Stream 1	2020-21	2021-22	2022-23	2023-24	2024-25 (to end Feb)
New clients	1280	1366	1930	1948	1884
New client problems	1687	1722	2587	2578	2244

### **Violence Against Women services**

SLAB manages the funding for two services which help women who have experienced gender-based violence. Both services have funding agreements in place to March 2026. They are funded under

Directions from Scottish Government which require SLAB to fund a specific organisation or partnership for delivery of particular agreed priorities through legal aid by way of a grant. Ministers have directed that each of these will be multi-year funding agreements.

#### *Scottish Women’s Rights Centre Legal Project*

The service managed by Rape Crisis Scotland, in partnership with JustRight Scotland, provides help to women needing legal advice and representation for gender-based violence across Scotland. The project employs solicitor staff to provide advice, casework help and representation. The project budget covers the cost of solicitors and case related costs.

The Scottish Government provides a separate grant to Rape Crisis Scotland for lay advocacy workers and a project co-ordinator and funds the delivery of a national helpline. The advocacy workers act as an initial point of contact prior to women receiving help from a project solicitor.

In 2024-25 the project has taken on 60 new clients and helped with 247 new matters, including child contact, the dissolution of a relationship and advice on protective orders.

### *Edinburgh Women's Aid Legal Services Project*

The service is run by Scottish Women's Aid in partnership with Edinburgh Women's Aid and Baker Gostelow Family Law Ltd and it opened in September 2023. The service provides an early intervention service with the funded solicitors providing legal advice and intervention services to women and children living in Edinburgh impacted by domestic abuse. The focus is help at the early stage of contact rather than at the complex advice end. Activity that would otherwise fall within the scope of the case-by-case legal aid schemes is outwith scope of the funded grant.

Since September 2023 it has received 356 referrals which resulted in 263 new clients. The service provides signposting to other law firms for further casework help and representation as this is outside scope of the grant funding.

### **Q4 What do you think are the strengths and weaknesses of the current system for providing civil legal assistance?**

#### **Summary:**

- **Strengths: Legal aid in Scotland has an uncapped budget and is very wide in scope. Solicitor services are quality assured. Where there is capacity, solicitors can respond to increases in demand or where new needs emerge.**
- **Strengths: Other funding tools are used in a limited way to provide targeted services in areas of priority need.**
- **Weaknesses: There is no statutory stated purpose or objectives for this substantial public fund. There is no assessment of need and planning of services to respond to that assessment. The system cannot provide assurance about provision of services.**

We would categorise the strengths and weaknesses as follows:

#### **Strengths**

- Due to the demand led nature of judicare paid for through the Legal Aid Fund, the **budget from Scottish Government is not capped**. In other words, an application is never refused or account unpaid on the basis that the budget has been exhausted.
- **Wide scope** - The scope of legal aid in Scotland is wider than in many other jurisdictions. Only a very small number of civil proceedings, e.g. civil court simple procedure, are not covered by legal aid
- This results in **many thousands** of people around the country getting **high quality, professional**

help with a wide range of different civil issues

- SLAB funding allows solicitors to deliver their services to people all around the country. There is a **widespread network** of local legal aid providers, but services are also increasingly being delivered remotely, enabling wider access to specialist services. The Covid Pandemic changed how many solicitors deliver services, with fewer 'in person' court hearings or meetings at solicitors' offices. There are several ways in which access to solicitors can be facilitated remotely, and funding is also available to allow solicitors to travel to rural and remote parts of the country to carry out work, meaning that individuals do not have to rely on local provision alone when seeking publicly funded legal assistance.
- Where demand increases or new needs emerge, **solicitors are able to respond** immediately assuming sufficient capacity and that the matters concerned are already within the scope of the schemes. Other than the limits imposed by the existing means and merits tests, they do not need advance authority to take on different types of cases, more clients or extend their geographic reach.
- **Quality Assurance** - Solicitors registered to provide legal aid services are subject to a quality assurance scheme. This means that periodically their work is reviewed by a peer reviewer, who is another solicitor trained to undertake quality assurance reviews. The 1986 Act provisions mean that there are difference governance arrangements for the aid types. All are governed in partnership with the Law Society of Scotland and paid for through the Legal Aid Fund: Criminal & Children's quality assurance schemes are overseen and administered by SLAB. The Civil scheme is administered by the Law Society of Scotland.
- **SLAB employed solicitors** currently play a key role in ensuring delivery of essential services, complementing judicare and commissioned services and providing similar opportunities for testing methods of delivery and supporting wider legal aid workforce development through alternative training and career paths.

## **Weaknesses**

- The nature of judicare funding is that it is **unplanned and non-targeted**.
- The current legal aid legislation contains **no requirement for needs to be assessed, or for any known needs to be met**. It allows work to be paid for, subject to the rules set out in the legislation, but does not actively require any particular work to be done or ensure that solicitors are available to do that work. Without systematic assessment of need, the Scottish Government cannot identify what needs are experienced, how these needs are changing, the extent to which they are being met and whether there is a gap that should be met by publicly funded legal assistance.
- Most services paid for through the Legal Aid Fund are delivered by judicare through the private sector. The combined effect of **the choices made by individual firms and solicitors determines which and how many cases are taken on, and for whom**. Solicitors who have previously

delivered a legal aid service may decide not to continue to offer a legally aided service at all, or to restrict those areas of law or geography in which they will act. This can be on a case-by-case basis, or a more general business policy. Solicitors are under no obligation to inform SLAB of any changes in the range of services they choose to offer. Past activity is therefore the only indication SLAB, Scottish Government or the public have as to potential future service availability.

- SLAB has some powers to deliver more targeted legal assistance by way of grant funding, direct employment and contracting. Currently, these **tools for delivery operate in isolation and without strategic oversight**. They can both overlap with judicare provision and leave gaps. There is opportunity to use these tools more effectively to design and test models of service that better serve those most in need.
- There are **few levers within the system to design services to meet particular needs or deliver priority public policy outcomes**. The system does not operate like a modern public service might be expected to. Although individual firms, solicitors and advocates can rightly be proud of the high quality advice and representation they deliver, there is nothing in the system itself that can give the public confidence that those services will be accessible for them when and where they need them, will be tailored to their specific needs or will connect them to other services that can help them in a more holistic, whole system way.

**Inability to respond to changing demands in a planned, proactive way** - there is no mechanism within the current legal aid system to match the availability of supply to actual or predicted demand. The overall capacity of the system is determined by decisions taken by hundreds of predominantly small, often highly specialised firms, who face the challenge of fine tuning their capacity in response to or in anticipation of incremental changes in demand. The risk for providers, their potential clients and the system as a whole is either over or under supply. The former creates financial challenges while the latter may mean people struggling to find representation.

- **Supply of legal assistance** - We do receive feedback from applicants about difficulties in finding a solicitor. We know there is an increased concentration in the market, with solicitors specialising in particular subjects and a smaller cohort of solicitors doing a larger proportion of cases funded by legal aid. Representative groups tells us that it is harder to find a solicitor to do work in relation to some subject matters, for example divorce with financial provision.
- **No means of assessing or managing available system capacity** – Linked to the above, it can be difficult for prospective clients to tell not only which solicitors act in what kinds of case, but also whether they will have capacity to take on their case at this point in time. Where there is a lack of capacity at individual solicitor or firm level or more widely, there is no systematic means of capturing this information or mechanism by which it might form the basis of referral to a firm with current capacity, or where

there is no current capacity in the system, a prioritised waiting list. Instead, the person seeking help keeps searching until either they find a firm with capacity, or they give up. It is hard to imagine the onus being on the service user to find a provider with sufficient capacity in any other area of public service.

- **Lack of system wide data** - There is anecdotal evidence that there is unmet need in relation to civil justice issues however, there is no mechanism of recording data in this regard. For example, where there are party litigants in court the numbers and reasons behind this are not recorded, therefore there is no data available on the scale or nature of the issue, or where intervention may be best targeted for those unable to secure legal representation. A system wide approach to tackling such issues would have a beneficial effect for all parties involved in the cases, including the judiciary and court staff.
- **No fee review mechanism** – there is no statutory basis for the setting or uprating of legal aid fees. The Law Society of Scotland removed its ‘General Table of Fees’ many years ago and there has since been no benchmark for the creation of fees or agreement on fee levels. The Scottish Government has committed to taking forward work to create a fee review mechanism. It is vital that representative bodies and their members participate in this work. In England & Wales, the Bar Council, the Law Society, the Crown Prosecution Service, the Legal Aid Agency and the Ministry Of Justice entered into a data sharing project to obtain a complete picture of the legal services provider base for publicly funded criminal justice and identified the need for targeted fee increases to address evidenced problems. While the development of an evidence-based fee review mechanism is a high priority, it has to be recognised that across the board fee increases are not an effective lever for assuring security of access to publicly funded legal services, either in general or in particular places, or areas of law. See Question 7 for further commentary on fees.

**Q5 What do you think would be the strengths and weaknesses of reforming civil legal assistance along the lines recommended in [the Evans Review \(“Rethinking Legal Aid”, 2018\)](#)?**

Rethinking Legal Aid was a thorough and considered review of the strengths, weaknesses and opportunities for improvement of the legal aid system. Seven years have passed since the Review. The Scottish Government has since consulted on the recommendations and its plans for the future are now set out in its legal aid reform discussion paper.

Much of the legal aid reform discussion paper draws heavily on the recommendations in the Evans Review and it is informed by the principles Evans proposed. Rather than revisiting Evans itself, we suggest that the Committee’s inquiry might more fruitfully focus on the short term reforms set out in the Scottish Government’s discussion paper and the proposed development of subsequent primary legislation.

## **Q6. What are your priorities for longer-term reform?**

We continue to call for transformational reform of the current legal aid system which would ideally be delivered through primary legislative change. A more interventionist system is required that gives the Scottish Government a different set of tools to target resources.

[Our response](#) to the Scottish Government's consultation on the legal aid review set out a range of approaches that could, in time, better link supply and demand, provide greater assurance about the ongoing availability of the full range of services and enable targeted action to be taken at a local level should evidence emerge of supply problems.

For legal aid to move closer to a public service model it needs consistency of service across geography and in terms of quality that does not vary over time, except in line with an agreed and managed change process. This requires governance structures that are accountable, transparent, cost-effective, streamlined and efficient; and a whole system approach, involving cooperation and collaboration where possible across boundaries to achieve stated outcomes.

Seven years on from Evans report, stakeholders expect and want change – we are unable to achieve this without legislation.

Legal Aid expenditure is on track to be over £170 million this year – its highest ever level. There are difficult decisions being taken across the public sector in Scotland in relation to delivery of vital public services. As such there requires to be appropriate controls in place to ensure proper stewardship of public funds. In order to maintain a fair, high quality and equitable system, which maintains public confidence at an affordable and sustainable level of expenditure, legal aid requires to be focused on those who need it most. Cross sectoral efficiencies across the justice system are key to delivering real change and improve outcomes in relation to access to justice.

We want to explore ways of linking the way legal assistance is planned, delivered and funded with user needs and changes in the wider justice system. These kinds of change can't be delivered overnight, but collaboration is key to developing recommendations for the primary legislation needed to deliver a system redesigned to meet the needs of the people of Scotland in the 21st century.

### **A framework for decision making in the future**

A successful public service system relies on planning, evidence gathering and analysis, strategic development and review. Without a framework for this, feedback from users and others stakeholders has no strategic route to be assessed or acted upon. It also limits the capacity of a government or funding body to be able to properly assess the impact and outcomes of investment in that service.

There are key elements to a framework for decision making, including:

- Governance arrangements and direction setting
- Strategic planning
- Delivery of programmes and services
- Monitoring and Evaluation

These should be enacted cyclically so constant improvement and evidence-based decision making can be made.

### **Q7 Do you have any other comments? Legal Aid fees**

Remuneration for legal aid services tends to dominate the discussion around reform or improvements to the service.

Legal aid fees in Scotland are predominately set by legislation. It is Scottish Government policy that drives any change to legal aid fees. There is currently no provision for regular inflationary increases to legal aid fees: to the extent it ever existed, this practice ceased in the 1990s. Current fee rates can be viewed [here](#).

Historically, fees for legal aid work were based on a proportion of the market rate, based on Law Society of Scotland tables of fees which no longer exist, and reflected the reduced risk of non-payment in delivering publicly funded legal services.

Currently there are a number of fees in place that were agreed in response to new demands in the system, or as a trade-off for other benefits. Therefore, the current fee system is largely ad-hoc in its construction and, comprising as it does of a combination of block fees for elements of a case or types of activity, varying hourly rates for other activities and per-item payments for items such as letters or phone calls that are based on combinations of time spent and word/page counts, there is no clear relationship between overall remuneration for any given case type, the solicitor and support staff time spent and the cost of that time.

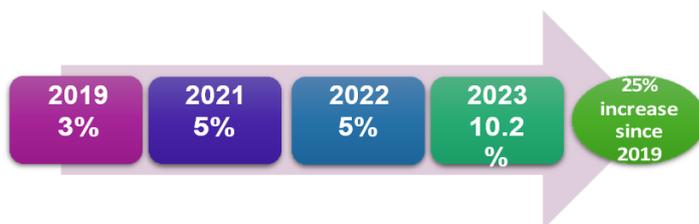
The true cost of delivery, overall remuneration or level of profit that can be derived for any given mix of cases has never been ascertained, and in any event this would vary from firm to firm depending on firm structure, case mix, business volumes, efficiency in delivery and operating costs. Establishing a process that more explicitly links fee structures and rates with changes in the provider cost base, individual remuneration expectations or overall market sustainability is inherently complex.

Tracking fee rates over time is not straightforward: uplifts have been sporadic, have come at different times for different aid types and fee types and have often been accompanied by structural changes to fees.

The Scottish Government's [response](#) to the Criminal Justice Committee in September 2022 details the inherent difficulties with using either historical

comparisons or inflation as a basis for assessing and up-rating legal aid fees.

It is often stated that there has been no investment in legal aid or increase in fee rates over a lengthy period, variously described as 30 years, since 1999, or for generations. However, the facts are that fees across different legal aid types were uprated or reformed on several occasions between 2003 and 2010 and all fees were uprated in 2019, 2021, 2022 and 2023.



Whilst increased funding is to be welcomed, it does not appear to have allayed the profession's concerns about the future of the system. This is perhaps unsurprising, as many of the challenges identified by the profession either extend well beyond the legal aid sector, or indeed the legal profession, or are at most only indirectly related to fees. In the context of increasingly difficult decisions being taken by the Scottish Government in relation to public spending, relying on increased fee levels to address wider and often indirectly-related challenges is unlikely to be cost-effective or sustainable long term.

### ***Civil legal aid fees***

Civil legal aid rates were uprated significantly between 2003 and 2009: the initial increase, which was accompanied by the development of the block fee system, was calculated by reference to inflation since the previous increase in 1995. A number of adjustments to the block fee structure were made over the next five years, adding significant further sums for specific types of case, and then both the unit rate and detailed fees were again uplifted by inflation in 2009 (backdated to 2008). All civil fees have been uprated four times since 2019.

### ***Impact on the taxpayer of fee increases***

Increases to fees across the whole legal aid system costs the taxpayer broadly £1.25m per one percent. The full impact unfolds over time due to the lag between a fee increase coming into effect and the submission of related solicitor and advocate accounts. The projected impact will also be influenced by intervening changes in demand, the profile of cases and the operation of the justice system. Broadly speaking however, the recurring impact of the civil legal assistance fee increases since 2019 is an estimated £8.5m per year.

### **Recruitment and retention in the legal aid sector**

It has been suggested that young legal aid solicitors are not joining, or are

leaving, the profession because of a crisis in legal aid.

Evidence considered by the Legal Aid Payment Review Panel on recruitment and retention in the legal profession showed that the issue was not unique to legal aid provision, or to legal services more generally. Studies show that new graduates appear less likely to join an organisation and remain there for their whole career but instead build a “portfolio career”. They also want to progress very quickly in terms of job role and salary.

The Scottish Young Lawyers Association also conducted a survey in 2018 on why young lawyers are considering leaving the profession and appears to support the premise that this is a legal sector issue as opposed to a legal aid issue. One of the predominant issues for new lawyers is work/life balance.

In 2023, the **Future of the Legal Profession Working Group** was established to consider the future of the of the legal profession in Scotland. It was convened and jointly chaired by the Minister for Victims and Community Safety, the Law Society of Scotland, and the Faculty of Advocates. The purpose of the group was to examine the evidence and propose improvements to address the challenges of recruitment and retention and promoting diversity within the legal profession. The challenges identified by the group were not unique to legal aid practice, but affected a wide range of firms - large, small, urban, rural - and also other businesses outside the legal sector. Outcomes from the group are being considered by the Government.

The verifiable long term decline in the number of active criminal legal aid practitioners aligns closely with trends in crime, prosecution and therefore available legal aid work. It is harder to gauge the relationship between the similar decline in civil practitioners and external demand-side factors as there is no equivalent single indicator of need or demand due to the variety of areas on which civil advice might be provided and the range of drivers of need in these different areas. The data suggests that the profession has responded to increasing demands in areas such as mental health, immigration and asylum and adults with incapacity, and even within family law some case types are increasing while others are reducing.

It is therefore unclear whether the decline in the number of active practitioners and overall activity levels in family law in particular are a result of supply or demand factors, or whether patterns of involvement in legal aid work reflect trends and issues elsewhere in the profession, such as challenges in attracting newly qualified solicitors to work in small firms, or outside the central belt.

There may also be more complex issues relating to the way in which family dispute resolution has evolved. Court statistics suggest that the majority of contact and residence disputes in court are funded by legal aid. This in turn suggests that non-court focused models of practice may have become the norm for solicitors acting for privately funded clients. While this may align with these clients’ preferences and expectations, it is an approach perhaps not so well supported by the structures of legal aid: diverging eligibility rates

and fee structures for A&A (used for negotiation and settlement) and civil legal aid (used for court proceedings) may increasingly sit at odds with the profession's preferred ways of working. This may itself be a disincentive for some firms to continue operating within the legal aid system, or for newly qualified solicitors to move into this area. Further analysis of data and consideration of trends in dispute resolution could be part of the work on system-wide data and needs assessment we have highlighted in the sections above.

We understand that the Law Society of Scotland is currently undertaking research with small firms that will explore the challenges they face, including with recruitment and retention. Previous discussions have suggested that many of the challenges described by legal aid providers are likely to be similar to those faced by small firms in general. This work will also capture demographic data, in relation to which there is a significant gap when it comes to the legal aid sector.

We are keen to explore collaborative research and data analysis, combining datasets where possible across justice organisations, as a way of exploring links between legal aid activity levels and wider trends in legal need and approaches to dispute resolution, and gaining greater insights into the profile of the profession and issues such as retention.

We would also be keen to participate in collaborative research more specifically focused on recruitment and retention, including potentially surveys of law students, trainees and solicitors of varying levels of experience working within and beyond the legal aid sector. Such research could help us better understand these groups' motivations and attitudes towards different types of work, employment arrangements, career aspirations, perceived and actual barriers to their chosen career path and factors that might influence their choices.

### ***Action we are taking to support recruitment and retention***

SLAB's Client Legal Services (CLS) directorate includes all our directly employed solicitor services: CLAO, Public Defence Solicitors' Office and the Solicitor Contact Line for police station advice.

Together, they are Scotland's largest legal aid practice with offices across Scotland providing legal advice, assistance and representation in both civil and criminal law.

Short- and medium-term strategies are being developed to promote recruitment, enhance retention rates, mitigate the impact of vacancies and build a talent pipeline. This work aims to benefit not only SLAB's services, but also to promote public, private and third sector legal aid delivery as an attractive career option for new lawyers.

For the medium term, we are trialling initiatives to raise the profile of CLS's work and the wider

benefits of working for us, but also more broadly to attract talented individuals to careers in legal aid, not necessarily on the basis that they will stay in employment with SLAB but perhaps going on to join or create their own firms. Participants are being asked to share feedback to inform our learning.

- **CLS Traineeship Programme:** This programme draws on our unique position as Scotland's largest legal aid firm by offering experience of civil and criminal law, and opportunities to learn about the wider legal aid system. This approach will support our aspirations for holistic service delivery. We welcomed three trainee solicitors in early 2025 to CLS as the first intake to benefit from this new approach, which recently featured in an article in the Journal of the Law Society of Scotland [here](#).
- **CLS Internship:** Our first paid intern took up post on in March 2024. Those who were unsuccessful at interview were offered a shadowing opportunity to maintain connections. Two candidates took up this offer. Following the success of the first internship, we are currently advertising for a second to take up post later this year. The role aims to provide invaluable insight into criminal defence casework and the wider justice system by shadowing experienced solicitors, supporting case preparation & developing a solid foundation in legal practice.
- **Engagement with Universities:** We have initiated discussions about presenting to law students to provide them with early insights into the range of work that we do and the personal/professional fulfilment that it can provide.
- **High School Liaison:** We have identified a host school for an initial pilot. We will provide information about becoming a lawyer and what the job of a legal aid solicitor involves, to support access to a career in law.
- **Work Based Learning:** Between January and March 2024, 3 Diploma students participated in work-based learning (WBL) across four PDSO offices. Feedback confirmed that this resulted in enhanced interest in a career in criminal legal aid work. This exercise meant we were able to respond positively to speculative requests for shadowing/WBL.