



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 13 May 2025

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
12th Meeting 2025, Session 6

CONVENER

*Karen Adam (Banffshire and Buchan Coast) (SNP)

DEPUTY CONVENER

Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Pam Gosal (West Scotland) (Con)

*Marie McNair (Clydebank and Milngavie) (SNP)

*Paul O'Kane (West Scotland) (Lab)

Evelyn Tweed (Stirling) (SNP)

*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Clare Adamson (Motherwell and Wishaw) (SNP) (Committee Substitute)

Sally Mair (Shelter Scotland)

Aaliya Seyal (Scottish Association of Law Centres)

Hyo Eun Shin (Citizens Advice Scotland)

Andy Sirel (JustRight Scotland)

Pat Thom (Law Society of Scotland)

CLERK TO THE COMMITTEE

Euan Donald (Scottish Parliament)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 13 May 2025

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Karen Adam): Good morning, and welcome to the 12th meeting in 2025, in session 6, of the Equalities, Human Rights and Civil Justice Committee. We have received apologies from Maggie Chapman and Evelyn Tweed. Clare Adamson is joining us in place of Evelyn Tweed.

Our first agenda item is a decision on whether to take in private agenda item 4, which provides an opportunity for the committee to consider its work programme. Do we agree to take that item in private?

Members *indicated agreement.*

Civil Legal Aid Inquiry

09:30

The Convener: Under our next agenda item, we will begin taking evidence as part of our civil legal aid inquiry, in which the committee will explore what is and is not working in the current legal aid system and what changes could be made in the shorter and longer terms to address issues relating to access to civil legal aid. I refer members to papers 1 and 2.

I welcome our first witnesses: Pat Thom, the convener of the Law Society of Scotland's civil legal aid committee, and Aaliya Seyal, the chief executive of the Legal Services Agency Ltd. You are both very welcome.

We will move to questions. What do you see as the biggest barriers to people accessing civil legal aid assistance?

Pat Thom (Law Society of Scotland): Thank you, convener. In our response to the consultation, the Law Society indicated that the biggest barrier to accessing legal aid is the low availability and increasing shortage of legal aid practitioners. That is down to three things. First, the low fees that are paid for legal aid work result in those who have been practising in that area refusing to keep doing so, because it is just not sustainable.

Secondly, the low fees do not appeal to younger solicitors and, as a consequence, we face a retirement cliff edge. By way of background, I note that baby boomers—I call myself one—were prepared to work six days a week, which perhaps camouflaged the poor financial return, but those who are younger than us are far more pragmatic and have a healthier appreciation of a work-life balance. That is having the effect of younger solicitors not being attracted into the legal aid sector.

Thirdly, the civil legal aid system is increasingly complex and bureaucratic. I am glad that the paper that was provided to the committee contained a section on technical terms, because that gives you a flavour of the complexity of the system. Understanding the difference between advice and assistance and civil legal aid is a basic step, but it is almost incomprehensible to any newcomer to legal aid. That illustrates how complex and bureaucratic the system is.

We refer to “legal aid deserts”, which cover geographical areas and particular areas of law, including those relating to asylum seekers, immigration and employment. Both are a consequence of the factors that I have mentioned, but the situation is exacerbated by lack of quantity. If someone in an urban area is going to court for a

legal aid case involving children, they probably have 10 cases in court that day, whereas someone up in Orkney might have one such case a week, so it is not financially viable to work in that way. The same is true for immigration cases—there are a lot more in urban areas than there are in outlying geographical areas.

In summary, in our view, the biggest barrier is the low availability and increasing shortage of legal aid practitioners.

The Convener: I will bring in Aaliya Seyal, who, I should say, is representing the Scottish Association of Law Centres.

Aaliya Seyal (Scottish Association of Law Centres): I agree with a lot of Pat Thom's comments about legal aid practitioners and the areas of law in which they practise. From a law centre perspective, there is certainly a shortage of practitioners who undertake cases involving housing, immigration, welfare or employment law. The main reasons for that are the administrative burden—the work that solicitors are obliged to undertake—and the amount of remuneration that they receive for the work. We can give many examples of that being disproportionate in relation to advice and assistance as well as to civil legal aid.

For advice and assistance, you start with a very small fee rate, and increases need to be applied—they are not retrospective. There are many examples of that in the committee's papers, and my colleagues will provide further evidence later today, particularly in relation to immigration law.

With civil legal aid, particularly in relation to housing, block fees do not pay for the work that is involved in certain types of cases. For example, block fees for antisocial behaviour cases are the same as those for rent arrears cases, but the amount of work that is involved is significantly different. A case can involve a statement of claim with more than 100 paragraphs, and you have to respond to questions and meet the client—work that will take a significant number of hours—but your fee for that is just over £100. Similarly, when you are reviewing the production of documents, there can be more than 100 pages, but you get a small fee of £18. You can see why there is a challenge in practitioners not delivering that work, given that the pay is not enough for what solicitors are obliged to do.

In relation to the clients we see in law centres, you might have come across the term “clustered injustice”, which means that people come to us not with a single issue but with simultaneous challenges—sometimes, when one issue is solved, there is another one to consider. A trauma-informed and person-centred approach is absolutely necessary to support such clients, build

trust, assist them in understanding their legal rights and help them to navigate the various legal processes that are involved. None of that is properly paid for. Therefore, you can see why there has been a reduction in the number of legal aid practitioners.

If people choose to move on to a different area in their career, having used practising in a law centre or a legal aid firm as a stepping stone, that is to be celebrated. However, if people are leaving because they feel that they can no longer cope with the amount of work that is required, given what they are paid, it is incumbent on us to review why that might be the case. That is one barrier.

Another barrier relates to eligibility criteria. The eligibility criteria for advice and assistance are different from that for civil legal aid, but the two cannot be considered in isolation. Somebody on the living wage with no dependants would not be entitled to advice and assistance, but they would not be able to afford to pay for legal advice.

For civil legal aid, the forms that require to be completed in order to assess means are fairly complex. Although there is provision for passported benefits, that does not take into consideration the capital limit, which is currently £1,716. That is a small amount of money, which people often use as a safety net. We consider that it is not fair to expect people to use their safety net to pay for legal advice. We highlight examples of people, particularly disabled people, having set aside funds for a particular purpose. For example, a client had set aside funds to pay for energy bills in the winter, but that put him above the capital limit and, accordingly, he was not entitled to advice and assistance. That sets people back from being able to get legal advice and assert their rights.

Those are the collective barriers that we need to consider.

Paul O'Kane (West Scotland) (Lab): Good morning. I am particularly interested in the proposals that the Government had to reform legal aid. The intention was to bring forward proposals in this parliamentary session, but that has not happened and now will not happen. Building on the Evans review, the Government set up a number of working groups; my understanding is that the Law Society withdrew from those groups, and I am keen to understand the Law Society's motivation and view in doing that.

Pat Thom: Given that I was involved in all of that, I can give you a good explanation.

Initially, I became convener of the legal aid committee just before Covid, and I have to say that the Government, the Law Society and the Scottish Legal Aid Board worked extremely well together over the Covid period. The outcome of

that was an increase in fees along with a resilience fund. Things were working well.

We received another increase in fees in July 2022, but on the condition that we worked with the Scottish Government on the research project that was the outcome of—or at least a suggestion from—the Evans review. Therefore, for almost two years, the Law Society, the Scottish Solicitors Bar Association and the Scottish Legal Aid Board met, first, to devise the tendering protocol for getting the research done and then to put it out to tender. The problem, though, was that there were no tenders; nobody was interested in doing this research for us.

Things culminated in April 2024, with a suggestion by the Scottish Government—and I am not sure whether it meant to suggest this—that, even if the research project indicated that there should be an on-going mechanism for increasing fees, there would be no money for that, so there was no point to it. That caused us to pull back.

The word was that we had pulled back from negotiating with the Scottish Government. However, we did not do that—we just withdrew from the research project. The difficulty was that, for some reason, the Scottish Government then stopped talking to us about legal aid. We were hoping for at least some movement with the reform—that is, the increase in fees—and for legal aid to continue to be looked at, but, unfortunately, we were struggling to get the Scottish Government to engage with us. It put out the word that we had stopped engaging with it, which I think was unfortunate.

In the past six, seven or eight months, though, we have been doing a public relations campaign to illustrate what we are talking about and that our biggest beef is not necessarily about trying to get more money for lawyers, but about the fact that the fees are so low that lawyers are stopping doing this work. As a result, people are not able to access justice, because they cannot get access to a lawyer to help them. The effect of the Scottish Government ignoring the issue has been that people have begun to realise that.

Fortunately, the Scottish Government is now engaging with us, and we now have, as at the end of February, a number of proposals. Most are linked to criminal legal aid, but there are about three civil legal aid proposals, too, which we welcome. They are merely little tweaks to the system, but we cannot look a gift horse in the mouth, and we are certainly happy to go along with what has been proposed. There has been some suggestion that the proposals might be implemented in the summer before the close of the parliamentary session, and that is what we are hoping for.

I hope that that explains our position.

Paul O’Kane: That was helpful. So, the piece of research is not going to happen.

Pat Thom: I think that the Scottish Government is now saying that it will look at the research that England and Wales have done and see how they manage. The problem with the research is that it needs the Law Society to engage with it, because once somebody is found to do it, we have to persuade our members to co-operate, open up their books and allow the researcher to see how their firms are financed.

Paul O’Kane: Is it your sense that the Government has moved from its initial position of prejudging the outcome of the research? Is the money back in the conversation again?

Pat Thom: Yes, I think that it is now suggesting that that what was said should not have been said.

09:45

Paul O’Kane: That was helpful.

I have one more question. With regard to reform and improvement more widely, how much of that do you feel needs to be in primary legislation? Obviously, we have been talking a lot about tweaking the system and finding other ways of doing things, but do you think that this requires a fundamental piece of legislation?

Pat Thom: In the long run, yes. The submission that you have been provided with lists several very productive and sensible things. As my friend has mentioned, the eligibility criteria need to be sorted out, and there is also the link between advice and assistance and civil legal aid. All of those things could probably—hopefully—be done without primary legislation, but we do need a big overhaul of the whole thing.

Paul O’Kane: Aaliya, do you have anything to add on the need for primary legislation?

Aaliya Seyal: I think that an overhaul review is definitely necessary and long overdue. However, there are things that can happen immediately, and that really needs to be looked at, too.

Paul O’Kane: Thank you. That was very helpful.

The Convener: We now move to questions from Pam Gosal.

Pam Gosal (West Scotland) (Con): Good morning. Respondents to the committee’s call for views highlighted many issues with administering legal aid. Do you have any proposals that could help tackle such issues in the short term? Pat, do you want to go first?

Pat Thom: As Aaliya Seyal has said, simplifying the eligibility criteria for certain kinds of cases

would help a lot. There is another thing arising from a recommendation in the Evans review. If lawyers, say, want an expert witness or order a child welfare or psychologist's report, and the expenses are approved by the Scottish Legal Aid Board, the person carrying out the work fees the solicitor, and then the solicitor then has to fee the Legal Aid Board. As you can imagine, it is a huge issue, and Martyn Evans recommended that, if the Legal Aid Board dealt with the expert witnesses and the child welfare reporters directly, we would take out the solicitor as the middleman having to bear the brunt of all the administration, and perhaps having to be concerned about the financial outlay, too. If the request has already been approved by the Legal Aid Board, changing the system in that way will not make that big a difference.

Pam Gosal: Thank you. Aaliya, do you want to add anything?

Aaliya Seyal: Significant improvements can be made to the administrative process. When you apply for advice and assistance or civil legal aid, the forms that you need to fill out and the evidence that you need to provide, particularly for civil legal aid, make the process fairly onerous. There is the information that you need from clients, which will vary depending on the case that you are undertaking; there are statements that you need to take from clients, and there are statements that you need to provide yourself. I think that that could all be streamlined and simplified into a single process in which the solicitor would simply state what the claim was and the legal remedy that was being argued.

At the moment, people are not able to navigate form 2, which is on financial eligibility. Certainly our solicitors have to spend time going over that with the client; quite often, the person just abandons the process, which has a negative consequence not only for that particular individual but, in the context of poor practices, for the next person, too.

Once you are on the other side and have managed to get advice and assistance and/or civil legal aid in place, there are various processes that need to happen in applying for either increases or sanctions and so on. Again, that process can be streamlined to make it a lot simpler.

When you get to the stage of submitting your account for payment, you face a lot of abatements. However, the abatements have already been authorised, which means that you are once again having to justify the work that you have undertaken, and it is sometimes the case that the work is considered unnecessary. An outlay might have increased, and the increase might be challenged and you might end up having to pay for it yourself.

You can see how all of that links back to people deciding that legal aid work costs more than it pays, but those are some of the things that we feel can be simplified.

Pam Gosal: Thank you for that. I have a couple of supplementary questions. The Scottish Women's Rights Centre has highlighted the issue of access to civil protection orders for survivors of domestic abuse. It says that, often, the burden of accessing legal protection falls on survivors, who must access civil legal assistance or pay privately to do so. What is being done to ensure that those women, many of whom are extremely vulnerable, receive the support that they deserve?

Pat Thom: That goes back to the first barrier to civil legal aid, because the first thing that that person will need to do is find a civil legal aid solicitor who is willing to take on the work. However, quite often—this goes back to the eligibility requirements—a woman in that situation will not have access to her finances or be in control of her financial situation, because of the effect of coercive behaviour or whatever.

I think that—as the Scottish Association of Law Centres called for yesterday—we should remove the requirement for domestic abuse survivors to meet that financial eligibility requirement. The adults with incapacity regulations allow for that in lots of cases, and I do not think that it would be too difficult to move that approach over to domestic abuse survivors.

Pam Gosal: Aaliya Seyal, do you want to add anything to that?

Aaliya Seyal: There is a real need to consider automatic grants in those circumstances. Pat Thom has rightly pointed to the situation with regard to the adults with incapacity regulations and, although I appreciate that there are slightly different circumstances at play, there are equivalents in criminal legal aid. Where we are talking about protection for an individual, the fact that they cannot afford legal advice means that they remain vulnerable, and that needs to be considered. It should not be that difficult to broaden the areas where automatic grant of civil legal aid, irrespective of means, is considered.

Pam Gosal: Another issue is that black, Asian and minority ethnic women face additional barriers, as sometimes the relevant authorities find it difficult to understand the cultural context of their cases. What is being done to ensure that those women, many of whom are extremely vulnerable, are looked after and receive the support that they deserve?

You mentioned the requirement for financial information, which could be a big issue. In many BAME communities, it is often the male—the husband—not the female who holds all the

financial information. That affects the issue of the eligibility requirements, too. Also, when somebody from a BAME background goes through this process, the setting is different. You have to consider the cultural aspect and also the person's community—you are dealing not just with the person's partner or family but with their wider community. Can you shed some light on what could be done there?

Pat Thom: Having an automatic grant would go a long way towards helping in that situation. That would be the view of the Law Society, so I will let Aaliya Seyal come in at this point.

Aaliya Seyal: I absolutely agree with the points that have been made about understanding the additional barriers that women from black and minority ethnic communities face. It is crucial that we understand that there are cultural customs that need to be taken into account, and that, often, those women are not aware of the financial circumstances of the family and would certainly not be in a position to be able to provide evidence of those circumstances. That being a barrier to somebody being able to get legal advice needs to be reviewed.

Going back to the eligibility criteria, when you are considering capital and savings, you are also taking into consideration jewellery. In minority ethnic communities, women's jewellery is often passed down from generation to generation. The position of someone having to think, "I cannot get legal advice to protect myself and/or my children because I have declared that I have jewellery that is of a certain value" and having to consider selling it in order to get that legal advice needs to be understood.

Pam Gosal: It is good that you have mentioned that, because I know that, in BAME backgrounds, jewellery and some other property would not be thought of in that context. Have you had many cases in which that situation has arisen? I have spoken to people in a lot of those communities in connection with a bill that I am working on, and they tell me that they face barriers in relation to not only financial areas but other areas, too. One size does not fit all with regard to access to services.

Aaliya Seyal: Absolutely. Reflecting back on my long-term career history, I can give you many examples of people who were not aware of what the household income was, even leaving aside the issue of jewellery and other property, and who would have created a domestic issue if they had even asked a question about it. It needs to be understood that, often, when someone says, "I do not know this information", they are not being vague; they simply do not know that information and, if they attempted to find it out, they could be putting themselves at risk.

Pam Gosal: Thank you.

The Convener: Tess White has indicated that she would like to ask a supplementary question.

Tess White (North East Scotland) (Con): I have one follow-up question, about domestic abuse. More than 80 per cent of those who experience domestic abuse are women. Scottish Women's Aid said in its submission:

"Legal services should be provided free for all women, children and young people experiencing domestic abuse, with no means test and no qualification on accessing this for women."

On the point about economic abuse, women who are on low incomes are often told by certain parties that they would be better off not working, because then they could access legal aid. However, if they have to stop working to access legal aid, they end up in a cycle in which they are never able to get out of poverty. Many women who experience domestic abuse find themselves leaving the family home and then having their partners come after them for maintenance—that is a huge situation. I have heard of absurd situations where women on low incomes have had to leave their family home, leaving their children behind, and cannot get legal advice but are being asked to pay significant sums in maintenance. Do you know of such cases? Would you also support Scottish Women's Aid in its call for there to be no means testing at all?

Aaliya Seyal: Yes, to all that you have highlighted. The issue goes back to the need to review the eligibility criteria with regard to the circumstances in which there needs to be an automatic grant, whether that involves people on low incomes, people who have to consider stopping work or whatever. We need to review all of it collectively.

Evidence that was taken by the Social Security and Social Justice Committee in recent weeks highlighted the significant cost of having to leave an abusive relationship. It was also highlighted that you can find yourself in circumstances where you are meeting not only the costs of your principal home but the costs that are associated with wherever you have had to move to. The costs on the whole are significant. It is not appropriate to have the current capital limits and to expect people to pay for legal advice in relation to something that is set as an emergency safety net. That needs to be reviewed, and there should be an automatic grant in certain cases.

10:00

Tess White: Pat Thom, I know that you have also said that the eligibility criteria should be reviewed. I am feeling a sense of desperation among many women who have experienced

domestic abuse and economic abuse. Would you like to speak to that?

Pat Thom: Yes. There is another twist in the tail, which I think has been addressed in the committee's papers but we have not mentioned today. If the person qualifies for and gets legal aid and that assists the victim of the abuse to retain the house, there is this thing called "clawback", which involves the Scottish Legal Aid Board deciding that, because the person has been successful in their action and has retained property as a consequence, they will have to use that property to pay back the legal aid fees that the solicitor has been paid. There is provision for getting exceptions to that, based on hardship, but it is a complicated process and would scare people and put them off.

The Convener: Thank you. We will now move on to questions from Marie McNair.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning. Aaliya Seyal, it is good to see you again, in a different committee.

The Scottish Government has proposed introducing block fees for legal work involving adults with incapacity. I am keen to hear your views on that. Earlier, you touched on your concerns about block fees, so could speak about that issue and expand on other aspects of block fees?

Aaliya Seyal: Any process that is intended to simplify matters has to be welcome, whether it involves block fees or templates for increases. What is significant and needs to be taken into consideration is what is involved in the work that is entailed and whether the block fees will cover that. Earlier, I highlighted examples of block fees that are paid in the context of housing, with regard to cases involving rent arrears or antisocial behaviour. The block fees do not cover the amount of work that is involved in that, and that needs to be reviewed.

With regard to adults with incapacity, a different amount of work needs to be done if you are representing the adult, and I would be concerned if block fees were introduced without taking that into consideration.

The overall principle that I am outlining is that, where block fees are meant to simplify things but do not necessarily take into consideration the level of work that is involved at each stage of the process, whether that is the court process or the process around engaging with a client, that could have an unintended consequence of deterring people from doing that work, if those issues are not appropriately considered.

Marie McNair: Thank you. That was helpful. Pat Thom, do you have any similar concerns?

Pat Thom: I agree 100 per cent with Aaliya Seyal. Having block fees for applicants in relation to adults with incapacity probably makes a lot of sense. Having practised in that area of law myself, I know that the process is fairly straightforward, and having a block fee simplifies things and makes life easier. However, by the same token, as Aaliya Seyal is suggesting, one size does not necessarily fit all. There needs to be consideration of how the proposal would be implemented, and there might need to be a safety valve whereby it could be suggested that a certain case does not suit a block fee, and there would be an ability to apply for a different mechanism for a fee in that case.

Marie McNair: Thank you. The Scottish Government has also proposed introducing standardised personal allowances for civil legal aid. I am keen to hear your views on any advantages or disadvantages to that approach.

Pat Thom: That is probably quite useful. The only difficulty is the difference between advice and assistance and civil legal aid. The issue gets really complicated, because the eligibility criteria and the threshold for qualifying are different for each. It is not a simple situation, and we need to recognise that.

Marie McNair: Everything seems to come back to the eligibility criteria. Aaliya Seyal, do you have anything to add?

Aaliya Seyal: I would welcome further information about what that would entail, recognising the point that Pat Thom has made about one size not fitting all. Anything that simplifies the processes is very welcome, but there needs to be engagement in advance on what that would mean in different scenarios.

Marie McNair: Thank you. That is helpful.

The Convener: We will now move to questions from Clare Adamson.

Clare Adamson (Motherwell and Wishaw) (SNP): My apologies for being late this morning. On the longer-term reforms, the Scottish Government has proposed testing different models of delivery. Do you have any views on models such as grant funding, solicitors being directly employed by the Scottish Legal Aid Board or contracting?

Pat Thom: I am personally not a fan of grant funding. The difficulty with grant funding is that it is a fixed amount, which appeals to the accountants of both the Scottish Government and the Scottish Legal Aid Board. The judicare system that we now have is demand led. As long as the demand is there, the money has to be paid. My concerns with grant funding, quite apart from some other issues, is that it seems to be awarded each year, so those

who get the grants have concerns about whether they will get the money.

My real concern is that it is a fixed amount and that it is not sufficient to cover the need. It is ring fenced, and once the money is spent, there is no mechanism to get any more money. I personally prefer the current judicare system.

Clare Adamson: Do you have a view on whether there is an appropriate mix of judicare provision and other types of funding?

Pat Thom: Having been a private practitioner, I have always been involved in the judicare system, but Aaliya will have a good understanding of the grant funding system, so I will pass to her in a second. Grant funding is probably a good stopgap measure, but it certainly cannot replace the judicare system.

Aaliya Seyal: I agree with Pat Thom. I do not think that one can replace the other. You outlined three different models, and all three are necessary. They have their own purposes and advantages. Law centres have significant experience of delivering grant funding. We consider that it gives the ability to provide holistic services and to collaborate with other partners so that you are focusing not only on the legal issue but on other support issues that the individual might have, to maximise the chance of minimising recurring instances of disadvantage.

From that experience of delivering grant funding, I would say that there are opportunities; however, there are also challenges. The subject of grant funding has not been reviewed for well over 10 years, if not longer. The starting amount for cost recovery has not been reviewed for probably that same length of time, if not longer, so what might have been cost recovery then is no longer cost recovery.

There is also the issue of the delay in receiving decisions. Quite often, you receive decisions in the last quarter of the financial year or after the financial year has started. Sometimes you have a year's funding, but sometimes you have either three months or six months, even while long-term decisions are being undertaken. You also have instances in which, although the grants have been renewed year on year, you are advised that this is the final year, and in the last quarter, you find out that it is indeed the final year.

There are two aspects to the difficulties. It is not just about organisations planning their finances, workloads and staff, including undergoing processes of issuing redundancy notices and so on. That is not the only issue, but sometimes it feels like that is the priority and that you should have planned for it. What gets forgotten in that mix is that you have commitments to clients. Their case might not necessarily end in the next three

months, so it makes you feel nervous about taking on new cases. There is not anywhere else to send those cases. You find yourself in very difficult circumstances when it comes to making sure that you are looking at what needs to be done practically, from an operational point of view, in relation to the obligation that you have to your staff, and in relation to the commitments to people who are already your clients. There can also be challenging circumstances in relation to those whom you have to be careful about not taking on.

Clare Adamson: Thank you. I have a final question, which is on the Scottish Government's intention to embed user voice in the planning process for legal aid delivery. Do you have any views on how that might be achieved and what the impact might be? I refer to my colleague Marie McNair's questions—I have a particular concern about how adults with incapacity could be embedded in that process.

Pat Thom: I think that that is an excellent idea—users probably should be embedded in the process. With regard to adults with incapacity, where do you see the issue there?

Clare Adamson: With regard to being able to advocate for themselves in a review process and to take part in that process.

Pat Thom: In that situation, it would be the applicants who are applying for, say, guardianship. They would be the user for the purposes of legal aid. They are looking out for and representing a very vulnerable group, but they would be well able to participate in a consultation.

Clare Adamson: Do you have anything to add, Aaliya Seyal?

Aaliya Seyal: I agree with what Pat Thom said. It is crucial to take the experience of not only the providers of legal aid but those who receive legal aid. It is crucial to take account of the combination of lived, learned experience. It is very important also to see how that information on lived experience is captured, so that we are sensitive and enable as many people as possible to participate. It needs to be meaningful.

The Convener: Would any other members like to come in?

Tess White: In wrapping up, I have the last few questions for you. I will go to Pat Thom first. If you had to look at a future vision for legal aid, what action would you say needs to be taken?

Pat Thom: There are two things. There needs to be a huge financial investment in legal aid. I fully appreciate that an increase in fees would not be sufficient to solve the problem, but it would go a long way. Legal aid solicitors are currently feeling extremely undervalued, and a lot of that comes from the process itself.

Aaliya Seyal mentioned the abatement process. It is frustrating for a solicitor to have approval for a case and the amount to spend, but when they put their bill in, it is bounced back. Invariably, you go back and forward and spend a lot of time that you are not paid for and, eventually, the Scottish Legal Aid Board decides, "Yes, you deserve that money". The respect and trust between the Scottish Legal Aid Board and solicitors need to improve.

I think that an increase in fees would make legal aid solicitors feel much more valued. I am not sure that it would attract more solicitors into the role, but at least it would go a long way to retain those who are doing it now. By the same token, the system is far too complicated and complex. The information that you have already been provided with in the paperwork shows how complicated and bureaucratic it is. It needs an overhaul.

10:15

Tess White: So we need more funds and to simplify the system. Aaliya Seyal, what is your view?

Aaliya Seyal: I agree with Pat Thom's comments, and I will add a couple of points.

We are talking about the number of legal aid practitioners reducing, so what might we be able to do to increase legal aid practice? Pat Thom has rightly mentioned ensuring that people are paid for the work that they need to undertake. We have also talked about simplifying the process.

I will touch on what has happened previously, but it is not clear what the next steps are. For example, during the pandemic, the Scottish Government had a legal aid traineeship scheme. It involved a small number of trainee positions and, from my understanding, they were taken on within 24 hours of the scheme opening. There has been no evaluation of how well that worked from the firms that provided those traineeships or from the trainees who undertook it, and no information about how many of them remained.

As a firm that was involved in that process, we would welcome the opportunity to be able to share what we consider feedback. I also welcome future such opportunities, but they must properly cover the full cost of the trainees' salaries and they must take into account the supervision that needs to be in place. In our submissions to the call for views, we have highlighted the disparity between what you are paid for legal aid work and what you get paid, for example, in private practice. With legal aid, you are not paid for supervising a trainee, whereas in private practice, there would be a charge if the solicitor was supervising. We would welcome feedback on how well that scheme

worked, what we learned from it and what we want to do next.

With legal aid rates, there is no distinction between newly qualified solicitors and accredited practitioners, or in relation to the number of years of experience, which also shows a disparity compared with the situation in private practice. I would welcome that being looked at again.

Throughout the course of the session today, we have talked about the Evans review, the legal aid payment advisory panel and what further research and evidence might be necessary. The Evans review took place in 2017 and the payment panel came a couple of years after that. We are now in 2025. Any further research that we undertake will not show us a better picture. Although I am, sadly, very fond of data and of making sure that we make evidence-based decisions, we have come to a point where any new evidence will not tell us a different story. We need to consider what actions can be taken in the immediate term and what actions are mid to long term.

Finally, we have talked today about circumstances in which an automatic grant would be necessary, and we have talked about domestic abuse, but I want to highlight two other cases. The first is street homelessness, which warrants consideration of whether an automatic grant would prevent that person from enduring further hardship and would prevent further cost to the public purse in different sectors.

The other issue that needs to be looked at is around inequalities and disability. Earlier, I gave the example of where somebody might not be entitled because of savings that they have put aside for a particular purpose, which precludes them from exercising their rights. That means that we cannot make progress on inequalities and disabilities, because there is not that case law. If there is no challenge, poor practices will continue.

I said that that was my final point, but I will also mention clawback. We have talked about clawback in relation to property, but clawback also applies in employment cases. There are very few practitioners who represent the employee. For any settlement that the individual receives, whether that is outstanding wages and/or any compensation payment, clawback can deter people from getting legal advice, which goes back to what I highlighted earlier. It does not just mean poor employment practices for that individual but poor employment practices for the next employee and the next.

Tess White: Thank you. Pat Thom, would you like to make any final points or raise any issues?

Pat Thom: I agree 100 per cent—Aaliya Seyal is absolutely right. The issue of clawback in employment law is crucial. If the award is £2,000

and it has cost £3,000 in legal fees, that person is not getting anything, because the Scottish Legal Aid Board will claw back the £2,000 in compensation. Therefore, what is the point of even doing it? It is an important point. I am happy that I have said my bit.

Tess White: To go back to the issue of employment, is there no role for the Advisory, Conciliation and Arbitration Service Scotland?

Pat Thom: There certainly is, but when ACAS Scotland cannot resolve the issue and it goes to a tribunal, that is when the clawback will be an issue.

Tess White: Thank you.

The Convener: If members are content that they have asked all their questions, I thank the witnesses once again for their participation this morning. We will now suspend briefly for a changeover of witnesses.

10:21

Meeting suspended.

10:27

On resuming—

The Convener: I welcome our second panel this morning. We have Sally Mair, principal solicitor, Shelter Scotland; Hyo Eun Shin, senior policy officer, Citizens Advice Scotland; and Andy Sirel, partner and legal director, JustRight Scotland. You are all very welcome. We will move straight to questions and I will kick off. What are the biggest barriers to people accessing civil legal assistance?

Andy Sirel (JustRight Scotland): Thank you for the question. The main barriers, as we set out in our submission, are most definitely lack of provision and financial eligibility. It is important to recognise, however, that when we are talking about barriers to accessing legal aid, we are talking about people in your constituencies, your districts and your areas who have issues, who are quite often very vulnerable and are unable to access a solicitor to use any remedy that might be open to them. There might very well be remedies open to them in the law—on the statute books—but if they cannot access a solicitor, quite often those remedies are meaningless.

It can be easy for us to get embroiled in the technicalities around legal aid, but I will start by recognising that we are talking about people, quite often those on low incomes and those who are vulnerable. The question why there is a lack of provision was documented quite well by the witnesses in the first session. Legal aid fee rates are very low compared to most other sectors,

including the private legal sector. Levels of experience are not differentiated either, which was touched on by the first panel, and that is one of the big issues. In no other industry do you have a person with one week's experience accruing the same fee rate as a person with 25 years of experience. That simply does not happen.

Legal aid businesses are therefore placed in a position where they need to try to attract senior people and I assume, therefore, pay them a senior wage, but they have no means whatsoever of accruing the revenue to pay them. That is why private legal aid firms struggle so much. In order to raise the funds to retain senior people, they have to do private work and that means that they are not doing legal aid work. Those are the basic economics of the situation. The salaries are uncompetitive with other public services, including those operated by the state, which is a key area where legal aid practitioners in effect move to the other side.

10:30

They go to work for local authorities, the Scottish Legal Aid Board or the Public Defence Solicitors' Office, where they are paid significantly more—ironically, from the same paymaster. That is inequality of arms at its heart and we can give you some examples of that. There is also the complexity of the system, which I am sure that we will talk about in the rest of the session. All of that means that there is an insufficient number of legal aid practitioners left. The Scottish Legal Aid Board itself has acknowledged that the pool of practitioners is shrinking. The expertise and the specialism of those left is increasing, because we do not get paid for basic things like legal research and so on. The shrinking pool of solicitors is a key barrier for your constituents in all parts of Scotland.

The financial eligibility criteria are the second big barrier. The threshold is extremely low. If you think for a moment about the cost of a legal case—I hope that none of you have had to go through one—you are looking at anything between £25,000 and £500,000. Yet, if you have £1,718 in your bank account, you are not getting legal aid. That makes no sense. The economics of it are worlds and worlds apart. That blocks out a huge number of people from accessing legal aid. It is essential to reform the eligibility criteria. I will stop there.

Hyo Eun Shin (Citizens Advice Scotland): Thank you for the question. The legal aid system, from our point of view at the citizens advice network, should really enable people's equal access to legal advice and representation when they need it, to a fair hearing before an independent court and tribunal and to an effective

remedy when things go wrong. I want to highlight the point about a remedy: we often talk about accessing justice, but it is also about how we right wrongs and what we do when something has gone wrong.

We know that the Scottish legal aid system enables a more generous provision of legal assistance than, for example, in England and Wales, and we commend and welcome that. At the same time, we see time and again that there are too many people for whom the current system is just not working. That means people who need to enforce or protect their rights are unable to get legal advice. They are forced to represent themselves in court or at a tribunal, and often they are unable to seek or achieve justice and are forced to suffer rights breaches and detriment.

Citizens Advice does not provide legal advice; we provide advice on legal issues. We play a crucial part in the landscape of advice giving in Scotland and the local bureaux work very closely together with other third sector organisations, law centres and so on, to make sure that people have access to justice. The barriers are immense, however, as you can see if you look at people's justice journeys and where they go from experiencing a huge problem—Aaliya Seyal mentioned in the first session how clustered injustice happens. As a network, the bureaux are good at providing person-centred holistic advice and always advise on a whole range of issues simultaneously, to ensure that the person can move forward and find solutions. In the general population, however, we see a lack of knowledge and information more generally about rights and about mechanisms to achieve or seek remedies.

We have heard the many reasons why there is a lack of legal aid solicitors in Scotland. The administrative hurdles and barriers, especially the financial eligibility criteria and the restrictions on the scope of legal aid, are all leading to huge legal aid deserts for people, who are being left to their own devices, which often means that they cannot go anywhere with their issue. I think that we will go into a lot more detail throughout the session.

Sally Mair (Shelter Scotland): Thank you for the question. The primary barriers to the provision of civil legal aid are the delay in taking steps to look at the fee structures that render much legal aid work unsustainable and also the administrative burdens in the provision of legal aid. What that amounts to is that we have a lack of legal aid lawyers. I will give a real world example of what that means. We have rising numbers of cases of street homelessness, particularly in Scotland's largest cities. There is an effective remedy to that situation if you can access a lawyer, but I know, particularly in places like Glasgow, that there simply are not enough lawyers to allow people to

access that remedy. Underlying that is that the fees often mean that you are either operating at a loss or not able to recruit the number of solicitors that you need because judicare funding, for example, may not cover the costs of doing so.

Over and above that, there are the financial eligibility thresholds, particularly for advice and assistance. Again, I will give a real world example, based on my experience of providing advice. It is an incredibly difficult situation when you have to say to someone, who perhaps could be working in an area such as social care, that their income, although moderate, takes them just over the threshold and you are unable to assist. Certainly, the financial eligibility thresholds need to be looked at.

The Convener: Thank you. We will move on to questions from Paul O'Kane, please.

Paul O'Kane: Good morning. I am particularly interested in developing the theme of unmet need and trying to better understand an unmet need for legal aid. Is it possible to start there and get a bit more depth on where you think that there are unmet needs within your specialist interest? I will ask Andy Sirel to start.

Andy Sirel: We talk about research on legal aid and unmet need and so on, but it can be difficult to get rich data because the reality of a legal aid practice or a practice that is reliant on legal aid is that they are time poor. They need to be in front of a client almost at all times to even exist, so it is difficult to carve out the time and space for research. However, in our practice, there are clear areas of unmet need.

Immigration and asylum is a significant area. There is a core of specialist lawyers who are largely based in Glasgow. In Edinburgh, it is my understanding that there are two immigration and asylum legal aid lawyers. I believe that there is one in Dundee. In Aberdeen, where the Home Office is housing over 700 asylum seekers in hotels, there are zero immigration and asylum lawyers. Asylum seekers are vulnerable people who, more often than not, do not speak English and may have mental health difficulties. They are sharing rooms, so there is no confidential space for a lawyer. Almost none of them has even met their lawyer and they are trapped in a process in which they need a lawyer. That is a clear area of unmet need.

Domestic abuse is also a significant area. We are the legal partner for the Scottish Women's Rights Centre. Our solicitors field helpline calls, run legal surgeries and represent women. We estimate, through our helpline, that women have contacted between 30 and 50 solicitors before they can access advice. There are extremely challenging areas there and we may well speak a

little bit later about the protective orders issue as well.

Finally, there is precious little advice out there in equalities and human rights work. We receive dozens of referrals every week and turn away well over 90 per cent of the people who come to us purely because we cannot see everybody. Particularly with issues such as disability discrimination, there is precious little service out there that provides a free legal service, so people are forced into one of the three options. First, they could pay for the service themselves, borrowing money and going into debt. Secondly, they could represent themselves, which happens very often, to the detriment of the justice system. Finally, which is probably the most common option, they could do nothing and succumb to their legal fate, which means that the statutory human rights breach continues. In our practice, those are the three main areas where there is dire need.

Paul O’Kane: Thank you for that. The Social Justice and Social Security Committee, on which Marie McNair and I sit, is doing work around financial abuse in domestic abuse. We have heard some evidence already about the challenge of trying to find a solicitor in what is often a very difficult set of circumstances, and having to go round lots of different solicitors to try to find someone who might take on a legal aid case. Citizens Advice Scotland acts as a front door to some of this. Do you have any reflections on that wider piece?

Hyo Eun Shin: It is always difficult to quantify unmet need. That is a really difficult question, is it not? What we have seen is that, in 2023-24, the bureaux in our network gave out about 2,700 pieces of advice on legal aid. That was up 17 per cent from the previous year. Half of the legal aid queries dealt with questions about accessing or finding a practitioner. We can also see, in the qualitative data that comes to Citizens Advice Scotland from our local bureaux, that they highlight widespread issues with accessing practitioners willing and able to take on a case funded by legal aid. That can be alongside issues of a lack of practitioners working in certain geographical areas, as we have heard, or in specific legal fields. That can be especially problematic in remote and rural areas but it is not confined to those areas. We have also seen a lot of problems with particular specialisms in the central belt. We see a dearth of practitioners in more specialist areas such as immigration, asylum, family law, cases involving domestic abuse, employment, social security, housing and human rights law. There are also concerns about a lack of practitioners with expertise in specific proceedings, such as judicial review. All that can lead to really significant disadvantage for the parties involved.

There is a lot of evidence of people struggling to find solicitors, especially if their cases are judged to be more complex or they have a more complex case history. We heard in the first evidence session why that might be the case. We also see that there are often intersecting barriers for specific groups, such as those with English as an additional language, an immigration status and/or additional support needs.

In our network, we have several bureaux that run grant-funded projects. In-court advice services were pioneered by the network and developed to meet an otherwise unmet need, often by volunteers who were retired practitioners and could offer that specific expertise to help clients. I think that we will come to the grant-funded projects later. Those are the significant gaps and barriers that need to be quite urgently addressed.

Paul O’Kane: Thanks. We have spoken about advice deserts, both in geographical terms—we have heard about the situation in rural areas—and in relation to specific subjects, such as housing. The Government has declared a housing emergency. It would be useful for the committee to understand what impact a lack of advice or legal recourse is having on the wider picture.

10:45

Sally Mair: One of the starkest examples in housing law is the increase in the number of people having to represent themselves in court due to their being unable to access a solicitor. That is particularly the case in rural locations. We will, no doubt, come on to grant funding; we operate a grant-funded project, which can address that issue to a certain extent.

There is a perception that in housing cases people can represent themselves or they can rely heavily on lay representation, but these cases can be quite complex. The difference between having a solicitor and not is that solicitors might look at a case in the round and perhaps pick up arguments around discrimination, for example. One of the most pressing unmet needs in housing law is access to a solicitor and therefore proper representation in court.

On the housing emergency, I have already described the situation in Scotland’s biggest cities with unmet need around access to a solicitor who can help people to seek an effective remedy. The law that is used is particularly complex. We are talking about taking judicial review proceedings at the Court of Session. To suggest that that could be done by any other means than having access to a solicitor is to misunderstand the laws that are there to be relied on.

The most pressing situation for us in the housing emergency is the increase in street

homelessness because of that lack of access. It is often said that Scotland has the most progressive homeless legislation, and it does, but at what point are you not able to enforce that legislation not just because of supply issues and a lack of social homes but because of a lack of solicitors to help people enforce their rights?

Paul O’Kane: Finally, I am interested in the real challenges around public debt and the legal options that are open to people to try to get themselves into a better position with the debt that they owe to public agencies. Very often, that will involve a degree of legal advice. I have spoken to firms in my region that do a lot of such work pro bono in order to try to support people, even if that just involves having an initial discussion with a counsellor or whoever about getting into a payment plan. Is that something that you have seen through your work?

Sally Mair: Certainly in eviction cases, in the social sector in particular, we work closely with money advice organisations such as citizens advice bureaux; that is an absolutely key part of a defence. That advice should be offered by social landlords; there are pre-action requirements in advance of raising eviction proceedings and, very regularly, we are able to challenge eviction proceedings because those steps have not been followed. Largely, those steps are geared at finding the advice that is needed, whether that is money advice, debt advice or welfare rights advice.

Access to money advice is a huge and pressing issue in relation to the increasing rates of eviction, but you also have to consider the cost of living: people are in incredibly difficult situations that, even with advice, it is quite difficult to get out of.

Paul O’Kane: Do you want to add anything, Hyo Eun Shin?

Hyo Eun Shin: I echo what Sally Mair just said. On public debt, council tax debt is the biggest debt advice area in the network. There are huge numbers of people who cannot afford to pay it and who are subjected to very heavy-going debt collection practices, and often there is no real way for them to get out of that cycle. The financial health team in CAS does a lot of work with local councils to influence and improve how these debt collection practices work and to ensure that people have more support and that councils are aware of these situations and can find ways of negotiating payment plans and so on very early on. Generally, that early intervention and prevention aspect is really important, and that is true for other areas as well, not just for public debt.

Paul O’Kane: Thank you. I am grateful.

The Convener: Thank you. We now move to questions from Marie McNair.

Marie McNair: Good morning, panel, and thanks for your time. I will stay on the same line of questioning that I had for the first panel. The Scottish Government is proposing to introduce block fees for work involving adults with incapacity and I am keen to hear your views on any advantages or disadvantages to that approach. I will start with Andy Sirel.

Andy Sirel: I defer to the evidence given by Aaliya Seyal in the earlier panel this morning on adults with incapacity on the basis that my organisation does not work for them.

I agree that block fees are a positive measure, assuming that they cover all the work that needs to be done. More generally, increasing the use of block fees, or what we call templates, whereby you open up a file for a person and you get an authorised expenditure limit of, say, £1,000 to do a piece of work for them, is a vital reform. The use of those needs to be increased without any question at all, because they provide us with the flexibility to do the work that is required.

At the moment, to be honest, block fees are pretty rare; instead, we operate under what is called the increase system. In my 12 years of experience as a legal aid practitioner, that has become somewhat normalised but it really should not have. The increase system requires you, when you get to your desk in the morning, to make a request on the legal aid online portal for every single piece of work that you want to do for a particular client in the coming days. You need to mark it “urgent” because if you do not, it will not be looked at that day at all—it will take three or four days. I am talking about every phone call, piece of written correspondence, meeting and outlay. Think about your case workers having to spend their time doing that. It is a complete waste of time and is completely inefficient.

If we were able to get a template, or a block fee, that would free us up to spend a lot more time on the client, as opposed to spending time with the Scottish Legal Aid Board. It absolutely has to be the case that we move in that direction.

The alternative is that we change radically how the Scottish Legal Aid Board looks at our accounts, because what we have right now is a double audit. We ask for permission for every single meeting and call and then we do the work up to the limit that the Scottish Legal Aid Board allows us. At the end of the file, we have to submit into the legal aid system every single telephone call and the time that it started—“It started at 3.15 and lasted four minutes”. We have to put that information in for every single outlay and every single meeting. We are being audited at both ends, even though the work has already been approved.

Legal aid practices need to employ people simply to do that back end of the process with the Scottish Legal Aid Board. You have to spend £50,000, £60,000 or £70,000 a year just to get some money out of the Scottish Legal Aid Board because of the way the system works. All of that is a complete waste of time because what we want to be doing is working for the individuals who are accessing our services.

Pam Gosal asked earlier about trauma-informed practice, gender-informed practice and working with folks with different cultures and backgrounds. Practitioners will struggle to do that work because it is not paid and because they are spending so much time dealing with the Scottish Legal Aid Board.

Block fees can seem like a technical thing, but, to break that down into how they apply to our day-to-day lives, practitioners in any other industry are not doing what I have described; it is only us, and it is taking us away from dealing with the issues that we are supposed to be dealing with.

Marie McNair: That would definitely simplify the process there. Hyo Eun Shin, do you have anything to add?

Hyo Eun Shin: Given that we are not legal practitioners—

Marie McNair: It is okay if you do not. I will pass over to Sally Mair. Do you have anything to add?

Sally Mair: I say the same as Andy Sirel. We do not provide advice on adults with incapacity. However, we regularly work with template increases and block fees so I can perhaps come in on some of our experience there. I echo that, largely, that proposal is welcomed. Templates, for example, allow us to get on with the work that we want to do, rather than constantly seeking prior approval from the board. We work with block fees where we are defending eviction proceedings in the sheriff court, for social landlord evictions.

We grant advice and assistance and we also apply for civil legal aid. Civil legal aid can take around six to eight weeks to be granted. It can be longer if you are gathering the significant amounts of evidence that need to be submitted for that application. You have advice and assistance, which largely allows you to negotiate; it covers you for that side of things in negotiating settlement. It is not always possible to conclude that by the time civil legal aid is granted. Once civil legal aid is granted in that circumstance, you move on to block fees, which do not allow room for payment for negotiation. They are very much focused on the appearance at court.

In reality, you might still be seeking to negotiate, for example if you are still awaiting information. You might have to seek someone's housing file by

way of a subject access request because it is not forthcoming from the pursuers—the social landlord—and that can take time.

So, although block fees are definitely welcomed, there is an argument that some of the work that we would like to continue to do becomes not paid for once block fees are in place.

In their written submissions, the Law Society of Scotland and the Faculty of Advocates recognise that at a more general level. The Law Society has recommended that you could look at allowing advice and assistance to continue in conjunction with the block fees and civil legal aid. The faculty has noted that, generally, civil legal aid is not reflective of current practice, which is for preparedness and settlement. Certainly in our work, we never want to put our clients through a full evidential hearing when they have to go to court and give witness evidence, given that sometimes they experience particular vulnerabilities; it is a case of saying, "If that process is not necessary, let us settle this and get a good resolution".

The block fees are certainly welcome—the template increase is welcome—but we have come across some issues around there being some level of essentially unpaid work under block fees.

Marie McNair: Thanks for that. The Scottish Government is also proposing to introduce standard personal allowances for civil legal aid. Do you support that approach?

Sally Mair: Yes. In principle, we support any approach that will relieve the administrative burden and make civil legal aid more accessible but, as with my colleagues earlier, we probably want to have more of a robust understanding of how that would work in practice.

The Convener: We move on to questions from Pam Gosal.

Pam Gosal: Good morning. My question is one that I also put to the previous panel. The vast majority of domestic abuse survivors are women and, as the Scottish Women's Rights Centre has said, survivors of domestic abuse often struggle to access civil legal aid and many of them need to pay privately. A witness on the previous panel told us that the fact that women cannot access civil legal aid makes them even more vulnerable.

As part of my work on my Domestic Abuse (Prevention) (Scotland) Bill, I have spoken to many survivors of domestic abuse, whose abusive partners often control the household finances. They might not be eligible for legal aid anyway as their household income may be too high, and sometimes they do not even have the information to hand. What is being done to prevent those women from becoming even more vulnerable?

Andy Sirel, you mentioned information from your helpline and said that some women have to go through 30 to 50 solicitors by the time that they get advice.

11:00

Andy Sirel: That is right. It is a really difficult area to be working in. The Scottish Women's Rights Centre's submission to the inquiry focused on protective orders and gave some suggestions around the automatic granting of legal aid for those orders. We have also heard about the position put forward by Scottish Women's Aid on automatic waiving of means testing, which we support.

We encounter women who have experienced, or are still experiencing, financial abuse. Post-separation abuse is particularly prevalent. That abuse can bump up against SLAB's structures and administration. There may be assets that the woman cannot access, or there may be money, but it is not possible to access it.

Another on-going issue is that even if legal aid is granted, that is routinely challenged by the abuser. Even when the grant of legal aid is not challenged, or when the challenge is overcome, the court system itself can end up being used by the abuser to continue the abuse by prolonging the case, looking for adjournments or moving the case from the sheriff court to the Court of Session where the expenses are significantly higher. That really plays in to jeopardy for women, particularly those who have experienced abuse because of clawback, which Pat Thom and Aaliya Seyal spoke about at length earlier.

The Scottish Women's Rights Centre was set up as a grant-funded project. The original idea behind it was to try to capture the women who just miss out on legal aid eligibility but who cannot afford their own lawyer. However, it is a relatively small centre, with only two solicitors, so demand far outstrips any supply that is possible.

Let us zoom out and look at the logic of having a grant-funded project, instead of expanding the eligibility criteria, as a solution to the issues with the eligibility criteria for women who experience domestic abuse. It does not make huge amount of sense. That grant funding is essential to the Scottish Women's Rights Centre, and it is essential that the centre exists because it goes beyond giving legal representation and one-off legal advice. Nonetheless, broader reforms need to be put in place to make sure that women who need protection are able to access it.

Pam Gosal: Thank you. In response to an earlier question, you spoke about not having the time to look at cultural or community differences

and how to adapt to them. Could you expand a bit more on that?

Andy Sirel: Yes. It goes without saying that our practice does look at those differences. JustRight Scotland is a law centre, so we use the legal aid system every day. Legal aid income and grants make up 18 per cent of our revenue. That is topped up by charitable funding. By using that funding, we are able to provide an enhanced legal service. We work specifically with migrant women affected by domestic abuse. Even outside the Scottish Women's Rights Centre project, we run legal surgeries and so on.

We have the flex to put in a lot of extra hours and extra work to make sure that women feel that our service is accessible. The challenge for those who operate just by using legal aid—this is the same for work with children, for example—is that so much of that work is not paid. It is not clear to me how a private legal aid business will make that work.

Scottish Women's Aid and other domestic abuse services will tell you that women have challenges both in accessing appropriate services and with the advice that they receive, unfortunately. That is not because solicitors do not want to or cannot do that work. I think that a great number of them can and do, but they are doing it on their own dime, so to speak. The system is not designed to help them in that manner, and that is challenging.

Hyo Eun Shin: To illustrate the problem that Pam Gosal is getting at, our submission included the following case study:

"Sara is a survivor of domestic abuse and has had to flee for her own safety and that of her 12-year-old son. She is legally married. Her husband has the financial means and resources to employ solicitors who have been advising him. Sara left with nothing ... All the marital property was left behind. There are two properties from the marriage with an estimated value of £260,000. However, Sara has no access to these without legal assistance. No solicitor will take her on without payment. Because of the assets she cannot apply for benefits which would entitle her to apply for legal aid. Even though the assets are attributed to her, there is no way she can access them without the assistance of a solicitor to do so. As it stands, the client is in the dilemma of having assets which are regarded as capital which bars her from legal assistance, but which she cannot access without legal assistance. This means, the abuser has recourse to use the law which has enabled him to retain all the assets from the marriage, while Sara is left with no assistance whatsoever to help in her situation, thereby enabling a degree of coercive control to continue."

We see many such cases.

I acknowledge the recent work by SLAB on the process for applicants who have had to flee abusive or controlling relationships. It has put out some new guidelines, which say that there is more discretion to waive the need for applicants to provide certain evidence as long as they can set

out the reasons why providing it is impossible in the current situation.

That is a step in the right direction, but there needs to be a lot more monitoring of whether it is helping people, and such provisions should be reviewed to see whether they can be applied across the board to situations where people are struggling with the application process.

Sally Mair: We are not directly engaged in advising about the types of orders that are being described, but we strongly support the calls made by our colleagues at the Scottish Women's Rights Centre.

I highlight that fleeing domestic abuse or coercive control often results in homelessness. Calls are being made for an automatic grant of legal aid for protection orders, and we would like to repeat those calls for homelessness generally. It is very difficult for those who are experiencing homelessness to pull together financial information, just as it is for those who are experiencing domestic violence or abuse.

I am happy to follow up on proposals for that—perhaps there will be an opportunity to discuss it in more depth. There is an opportunity to simplify the system of granting legal aid with automatic eligibility. That would mean that when we are advising people who are experiencing street homelessness, we do not have to go through the significant burden—both on us as solicitors and on the user—of pulling together bank statements or things that just might not be available and completing multiple forms.

In a street homelessness case, we are talking about acting in 24 to 48 hours, by which time some of our advice will have concluded. If a full-scale grant of legal aid is not automatic, there are other, lesser steps that could be taken, including looking at how special urgency is granted. Special urgency allows us, while we are awaiting the grant of civil legal aid, to urgently raise a petition for judicial review at court to address the situation of someone who is sleeping on the streets, for example, or in very difficult or unsafe conditions. At the moment, we have to routinely justify why we are doing that. There are different types of special urgency and we could look at some reforms to make that system a bit easier.

The Convener: We move on to questions from Clare Adamson.

Clare Adamson: The Scottish Government has indicated that it supports a mixed model of legal aid provision. What are your views on the strengths and weaknesses of such an approach? Perhaps I can go to Sally Mair first.

Sally Mair: I welcome the commitment to a mixed model, as it is something that we operate at

Shelter Scotland: we are recipients of grant funding, but we also provide legal advice and representation through judicare.

Having worked with the various models, not just at the civil legal assistance offices but, more recently, in the position that I have moved into at Shelter as principal solicitor taking over management of grant funding, I know acutely that each of the systems has differences, so having a balance between them is welcome. I do not think that there should be a particular preference for one. I would say, though, that grant funding is welcome but not to the extent that we lessen the provision of judicare, which is demand led and probably has greater flexibility.

At Shelter Scotland, we look to test the law. We have a strategic outlook, and judicare is often where we have the ability to assist people in that respect.

Hyo Eun Shin: Given the current lack of legal aid solicitors, which we have discussed already in previous questions, the judicare element is really important. However, it is unable to sufficiently meet the existing need for legal advice and representation, and that is leading to denials of the right to access justice. I think, therefore, that the mixed model has a really big role to play. Looking at the figures, we see that about £2.3 million gets allocated to grant funding out of a total budget of £53 million or so. It is a very small amount.

Grant-funded projects can plug some of the immediate gaps. They will never be the answer, but where there are gaps and there is a lack of a mechanism that will allow the current system to adapt quickly to newly emerging or unmet need, grant funding plays an important role in plugging those gaps and directing funds to work with people who otherwise would not have the ability to seek justice.

Legal assistance is also provided through the civil legal assistance offices, and a lot of the bureaux are signposting people to them. However, more and more bureaux are reporting that they are unable to access support from the CLAOs at all at certain times, either because of geographic restrictions or because they themselves have limited capacity. It is the same with signposting to other third sector organisations. I am not sure whether I am speaking beyond my capacity here, but a lot of us are really stretched and we are having to do more with less funding, and strengthening the mixed model could be a real way forward in channelling money to where it is urgently needed and in giving more longer-term reforms time to settle in.

As I have said, early intervention and prevention are key, with a focus on less stressful, less costly and earlier resolution of legal issues where

possible. Effort could also be made to improve the ways in which the whole advice sector works together, with better triaging, enhanced resourcing and the promotion of alternative dispute resolution where it is suitable and appropriate. We would certainly like to have more discussion about what a mixed model could look like.

11:15

Andy Sirel: The overwhelming priority needs to be the urgent reform of judicare, because that is where all the action is just now. That said, the mixed model proposal is a positive one. We are a recipient of grant funding via Rape Crisis Scotland for the Scottish Women's Rights Centre alongside the University of Strathclyde Law Clinic. I do not know whether I would say that it plugs the gaps, but it allows us to collaborate with different organisations. You are pooling your resources to a certain extent. Rape Crisis, for example, is getting a lot of information from our legal service; we are getting some great information from its survivor groups or from training that we collectively provide; and the advocacy service there is able to work hand in glove with the legal service. That is critical for women who are fleeing domestic abuse, and grant funding allows some of that to happen, which is really important.

I would look at this more from the point of view of asking, "Which are the real groups and where are the areas where such an approach will add a lot of benefit over and above what judicare provides?" Obviously, it has its problems. We are talking about a tiny amount of money, as Hyo Eun Shin has said, and, to be candid, I would have to say that, these days, it does not cover the costs, so charities such as ours are subsidising things. Sometimes, you do not know whether it will be funded until days before the funding runs out, which is not a good place for a charity providing a state-funded service to be in.

Clare Adamson: Thank you.

How practical is the Government's intention to embed the user voice in the planning process for legal aid delivery? After all, we have heard different examples of vulnerable people—an adult with incapacity, a homeless person, or someone under coercive, abusive or financial control. How practical is that ambition, and how do you see it working?

Andy Sirel: It is a good question, and I do not know the answer to it, to be honest with you. It would be very important, because—and I think that everybody, including the Legal Aid Board, is in agreement on this—it is clear that the system is not user friendly. The voices of the folks that we are talking about on this panel—those who are

trying to access our services—are not reflected in the structure of the system at all.

How we do that, though, is probably beyond my level of expertise. It requires a human rights-based and participation approach; there are organisations on this panel who I think have that expertise, although it might well be a case of looking to their grant-funded partners to provide it.

In any case, it needs to go a little bit broader than that, doesn't it? I suppose that the theme of this morning's session is that a lot of people out there never see these things, and the question is: how do we bring the system to them? As I have said, I do not know the answer to that question, but I know that there are people who do.

Clare Adamson: Would you like to add anything, Hyo?

Hyo Eun Shin: It is important to acknowledge that, as I said earlier, there is currently no real mechanism that allows for the views of rights holders to inform how legal aid is being administered, how it is being managed and whom it is funding. There is too little of that, and too little engagement.

Generally one has to be careful, because not all participation is meaningful. Often, though, it is much more difficult for those who are most vulnerable and marginalised to be part of these processes, and there must be a real effort to include them.

It is also important to have more regular feedback mechanisms. We have heard from grant-funded projects in our network that there is not enough direct conversation with SLAB about how these projects are making a difference to the people who come for advice, and about what they would like to see and what they need to happen to seek recourse. Those kinds of built-in mechanisms are more important than having, say, an advisory panel or something that happens only once.

Clare Adamson: That was helpful. Do you want to add anything, Sally?

Sally Mair: On the point about grant funding, there is scope within the reporting to take more of a look at that aspect. One of the submissions describes the reporting as having a bit of a micro-management focus, and we wish that it had more of a focus on outcomes and perhaps impact.

I agree that there is scope for grant-funded projects to feed into that sort of thing. Certainly we at Shelter Scotland embed lived experience in all of our work, and we have mechanisms in that respect that are already established and which we could certainly roll out in our grant-funded projects.

Clare Adamson: That was helpful, too.

I have one final question. Given what you have just said, Sally, should longer-term reforms focus on intervention and prevention at an earlier stage?

Sally Mair: Of course, anything that focuses on intervention and prevention is to be welcomed. However, I know that an older Scottish Legal Aid Board report referred to research showing that, unfortunately, people are still going to end up in difficult situations, no matter how much you have that kind of focus. Yes, there should be a focus on that, but it should not detract from what is needed from the short to medium-term reforms of the current legal aid system.

Andy Sirel: I agree with Sally Mair that intervention and prevention are great, but as it stands, the system is not particularly geared towards them. There are very low eligibility rates for advice and assistance, which is the primary means of intervening on and resolving issues before they go anywhere near a court. The rates are massively exclusionary.

To an extent, then, the system is a little bit on its head, unless you are able to squeeze through, and I think that it is important to focus on that. However, as Sally Mair has said, these issues very often end up in court anyway, despite our best efforts.

Hyo Eun Shin: First of all, on the issue of funding, we have always advocated for rights holders to have wider access to grant-funded projects nationally. Right now, it is still a bit of a lottery; the legal aid deserts do not necessarily match up with the places where those projects are available, and we really need longer-term funding so that we can develop a more sustainable institutional landscape of access to justice support more broadly.

With regard to early intervention and prevention, we do acknowledge that people will need to go to court, and they should have all the necessary support to do so. However, we also need to address a lot of the wider problems and issues that people are facing. The whole legal aid system needs a huge overhaul, but there are also issues with court fees and the digitisation of the justice system, which is excluding more and more people. We in Scotland have been promised that more of our human rights will be incorporated, and legal aid will play a crucial role in allowing and enabling people to seek remedies for rights breaches.

It is the same with the progress being made on mainstreaming equality and human rights across the public sector in Scotland. There is a real need to look at this issue urgently, to bring in these reforms now, not later and later, and to start work on them.

The Convener: We move to questions from Tess White.

Tess White: I will start with Andy Sirel. You talked about the need for urgent reform of judicare, and you said that the whole system needs looking at. We are talking about a landscape in which the number of pieces of advice that Citizens Advice Scotland provides has—according to its submission—increased by 25 per cent. The system is broken. Bearing in mind the tight funding situation that we are in and the fact that everyone wants more funding, what key actions need to be taken to improve that broken system in order to deliver the human rights that we are talking about?

Andy Sirel: I am glad that you asked that question. There is a lot that needs to be done. I genuinely believe that if we create the efficiencies that are set out in our written evidence, we will save money on the SLAB side of things. I mentioned earlier the double auditing process, whereby SLAB approves every little piece of work that gets done in advance and then audits everything at the back end a second time round. I do not have the figure to hand, but SLAB's annual report contains a pie chart that shows how much money it spends on the administration of such things. If we could reduce the amount of administration and the amount of time that we spend engaging with SLAB and that SLAB spends engaging with us, we would be able to make savings.

We have spoken about the fee rates and the very low initial limits. When I open up a file, the figure is £135. I spend that during my meeting with the client. There is more administration there.

We have spoken about the need for templates and the need to introduce the increase system. We have also spoken about the need for reform of the civil legal aid system. A huge number of documents need to be provided to SLAB even to open up a file, including two statutory memorandums—the terminology is not particularly accessible—client precognitions, third-party statements and months of bank statements. That is simply to get off the ground. It is an extremely onerous process.

We have spoken about some of the difficulties that exist. There is a lot of confusion about “special urgency”, which Sally Mair mentioned. Given the way in which the justice system is structured, my colleagues and I use special urgency almost all the time, because you have only three months to raise a judicial review. Judicial review is the primary means by which human rights breaches are challenged. If you take account of the prevention time—the time that is spent negotiating to avoid having to go to judicial review—you end up having a very short time to gather all the information and get the action off the ground. “Special urgency” is a very confusing area

with the Legal Aid Board. Every time I think that I have got it, I realise that I have not.

11:30

There are significant areas where we can make savings. Earlier on, Aaliya Seyal spoke about abatements. I can give the committee some granular detail. This afternoon, I will probably go back to my office to negotiate with SLAB over sums of money as small as £7.50 or £15.25. It will say things such as, “You had a meeting that lasted one hour. We think it should only have lasted 45 minutes.” That is the level of granular detail that we are talking about. That is an unwise use not only of my time, but of SLAB’s time. We have got to a point at which people like us are spending more than the value of the amount in question arguing about that sum of money.

That level of complexity of administration permeates throughout the system. If we can somehow work together and pull some of that out, we will be able to produce something that works a lot better for the people whom we are trying to help.

To zoom out for a moment, the reason that that is so important is that the provision of access to justice and to a functioning, efficient legal aid system is a human right in and of itself. In addition, the Parliament has been passing legislation to advance human rights and is trying to pass legislation to improve protections for domestic abuse survivors and so on. It passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. The mechanisms in those pieces of legislation can be used only if the legal aid system works properly.

Tess White: Okay; so you are saying that there needs to be an holistic, root-and-branch review that looks at all the different parts of the system and how they interact.

Andy Sirel: Yes—the whole shooting match.

Tess White: We need to go back to the drawing board.

Andy Sirel: There are detailed solutions in the written evidence.

Tess White: That was really helpful.

I mentioned the 25 per cent increase in the number of pieces of advice that CAS provides. Am I right in saying that we are talking about 4,000 cases a month?

Hyo Eun Shin: No. We provide around 3,300 pieces of advice a month on legal proceedings generally, and around 2,700 a year on legal aid in particular.

Tess White: Wow.

Hyo Eun Shin: I think that about 4,000 pieces of advice are provided on solicitors and advocates, too. There is a huge demand for advice on how to find a solicitor, how to engage in the legal aid process and what the criteria are. People come to us with problems that they have experienced with the application process or with finding someone who will take on their case.

Tess White: If you could wave a magic wand, what actions do you think should be taken?

Hyo Eun Shin: That is always a difficult question to answer. In the immediate term, as has been discussed in quite a lot of detail this morning, all the administrative processes need to be simplified. We are not legal practitioners, but we see the point of view of rights holders who need to get through those stages in order to obtain remedies. The process is so complex and difficult for people to understand. Evidence has to be submitted on forms and so on, and that can be really tough. In addition, as Sally Mair said, it can take quite a long time for a final decision to be communicated to clients.

Therefore, anything that can help to make that process easier—

Tess White: To simplify it.

Hyo Eun Shin: Simplifying it would be a good step in the right direction.

However, there are much broader problems with judicare. We need to make sure that there are enough legal practitioners on the ground so that access to justice is available in practice and is not just a goal on paper that cannot be realised for everybody.

Tess White: That is helpful. Sally, from Shelter’s point of view, given the massive crisis with homelessness, what actions do you think should be taken to make sure that a human rights approach to justice is taken?

Sally Mair: As I have said before, we are now at the stage at which we must recognise that there is a crisis in access to justice, particularly when it comes to people who are experiencing homelessness being able to access solicitors. Many proposals that have been made in the course of the committee’s inquiry can be taken in the short to medium term. My colleague Andy Sirel has highlighted many that can be taken purely by amendment to regulation rather than by introducing primary legislation. The focus needs to be on the underlying reasons for there not being enough solicitors to allow people to access and enforce their rights.

The legal aid process needs to be simplified and there needs to be a review of the fees. Part of the reason for the lack of solicitors is the requirement to do a significant amount of unpaid work. All

those things underlie the reasons for the crisis in access to justice, particularly in relation to homelessness advice.

Tess White: Finally, are there any other issues that the witnesses would like to raise with the committee? I will start with Sally.

Sally Mair: Yes. A particular concern—in fact, one of our overriding concerns—revolves around grant funding. We very much welcome being the recipients of grant funding, as it allows us to provide, for example, representation in court for people who are at risk of losing their home through either eviction or mortgage repossession. The Borders—Tayside, too, but the Borders in particular—is known as a legal aid advice desert, and without grant funding, we would not be able to cover that area to the extent that we do.

However, although such funding is particularly welcome, that is not to say that there are no issues with it. A particular issue for us is its year-on-year nature, and I cannot stress enough how difficult that is for us as an organisation to deal with and the real-life impact that it has. Given that the responsibility in that respect sits with the Scottish Government and the decisions that it makes on grant funding, we urge the committee to call upon the Scottish Government to extend the period of grant funding to three to five years and to try to avoid the delays in decision making that we have seen.

Perhaps I can give you an example of how it impacts on our work. Towards the end of last year, we were in the position of having to recruit solicitors, but we were unable to do so, because we were awaiting a decision on grant funding and its potential impact on us. What that meant in real terms for us as an organisation and the law service was that we were not able to provide the level of emergency service that we provide for street homelessness in Scotland's largest cities, particularly Glasgow. Delays in grant funding, and the instability caused by short year-on-year funding, have a very real impact on the users of legal aid and some of the most vulnerable in our communities.

Hyo Eun Shin: I would completely echo that, because it is also the experience that we in the network have with grant funding. It is difficult even to maintain a level of service, and the money could be much better spent or could go much further if it were not for the annual funding cycle that makes everything so precarious for the staff, for the projects and, of course, for the rights holders who come to us for support.

I could say a lot about what the legal aid system could look like and what we would like to happen. For example, last October, some funding was pulled from some of our grant-funded projects; it

was stream 2 funding, which provides support to people making a simple procedure claim. It is an area that is generally not covered by legal assistance funding, but it is where we have seen a sustained need for advice. However, it was decided that that funding would no longer be provided. Again, the question is: where is that support going to come from? How will people go through these proceedings without any help? Basically, the help has to be provided by bureaux through the general advice provision, which again puts pressure on already stretched services.

In general, we need to look at this from an access to justice and human rights-based point of view. Access to justice reforms will include, but go beyond, the reform of civil legal assistance and the legal aid system, although it is probably not a good idea to open up that box when we already have something so big to reform. However, I think that, for people coming to the network, it will be important to enhance the potential of non-judicial routes to justice, including the use of complaints mechanisms and ombudspersons, and advice on how tribunals work and what support people can get for those steps. We need to look at the broader access to justice landscape.

We need to strengthen the collaboration between different sectors and the different stages of advice in order to support rights holders on their justice journeys. We should also review current levels of and exemptions from court fees. We have heard both this morning, and previously, that eligibility thresholds are too low, and we are seeing a justice gap growing in respect of people not qualifying for legal aid and not having the money to pay privately. A broader section of society is being excluded from seeking justice.

An important point that we have not mentioned today is the need for reforms of the criteria for standing in proceedings to allow organisations to take on strategic litigation in the public interest. We are not lawyers, but we are still coming across cases in which there is a broader public interest, but for the individual, who might not qualify for legal aid, the burden and the risk are just too big to take on.

Tess White: That is fine. There is a bit of time pressure, so would you say, in a nutshell, that those are the key points? I note that you have a very extensive submission, which we have read.

Hyo Eun Shin: Yes.

Tess White: If you think of anything else, please write to us in addition to your submission.

Andy, would you mind closing the session by telling us whether there is anything else that you would like to flag up?

Andy Sirel: Do not worry—I can be brief.

Legal aid probably does not come up on your doorsteps when you are out canvassing, but I would reiterate that it is a core element of a democratic society and central to the operation of the rule of law. I think that everybody agrees that reforms need to be made; there is some disagreement over what exactly those reforms are, but I think that we can find a way through that, and the committee's inquiry will help us in that respect.

In the submissions, we have set out what can be done in secondary legislation and what can be done purely through the discretion of the Legal Aid Board. We should be crystal clear about what can be done now, because whatever can be done now needs to be done now.

I note that, on the advice deserts point, SLAB is pushing back and providing some statistics on that, but I would draw your attention to the fact that it does not have statistics for the people who approach services and are turned away. It has only half the story, because its data comes only from people who have made legal aid applications and who, by definition, have a lawyer.

I endorse my colleagues' comments on grant funding, particularly the funding cycle, but I will just finish by saying that reform needs to be based on trust between all the parties. We are a very highly regulated profession—indeed, we are officers of the court—but the system will function only if we trust each other, and that needs to be at the centre of what we are doing here.

It would be so nice to come along here in a few years' time and have a legal aid system that not only has stemmed the bleeding but is growing, with people wanting to open up a practice in, say, Harris to support folks who need help out there. That is really what we want to be doing, and I think that it is achievable, but we need to trust each other as we move forward.

Tess White: Thank you.

The Convener: If members are content that they have asked everything that they wish to ask, I will thank the witnesses once again for their participation this morning. It is essential to our work on this committee.

I close the public part of the meeting, and we will move into private to consider the remaining items on our agenda.

11:46

Meeting continued in private until 12:29.

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