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Equalities, Human Rights and Civil Justice Committee

Tuesday 27 May 2025

Session 6

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Pàrlamaid na h-Alba

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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
14th 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:

Martin Brown (Scottish Government)
Siobhian Brown (Minister for Victims and Community Safety)
Marie-Louise Fox (Scottish Legal Aid Board)
Colin Lancaster (Scottish Legal Aid Board)
Susan Young (Scottish Government)

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 27 May 2025

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Karen Adam): Good morning, and welcome to the 14th meeting in 2025, in session 6, of the Equalities, Human Rights and Civil Justice Committee. We have received apologies from Maggie Chapman, and Paul O'Kane and Tess White join us remotely.

Our first agenda item is a decision on whether to take in private agenda item 3, which is an opportunity for the committee to consider its annual report. Do we agree to take that item in private?

Members *indicated agreement.*

Civil Legal Aid Inquiry

10:00

The Convener: Our second agenda item is an evidence session on our civil legal aid inquiry. In the inquiry, the committee is exploring 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 around access to civil legal aid. I refer members to papers 1 and 2.

I welcome the first of two panels of witnesses. From the Scottish Legal Aid Board, we will hear from Colin Lancaster, who is the chief executive, and Marie-Louise Fox, who is the director of strategic development. You are both very welcome. I invite Colin to give us an opening statement.

Colin Lancaster (Scottish Legal Aid Board): Good morning. Thank you, convener, for welcoming us and asking us along to give evidence. This is an important and timely inquiry. The committee has already heard from several witnesses and received many submissions highlighting a number of challenges in the current legal aid system but also pointing towards opportunities for positive development.

From the Scottish Legal Aid Board's point of view, the legal aid system has several significant strengths, as well as a number of challenges. Some of those challenges are inherent in the structure of what we call a judicare system, whereby individual payments are made in relation to specific cases. As such, the system is reactive and not planned. There are very few mechanisms in the system to direct resources towards particular areas of need, whether those are parts of the country, particular communities or client groups, or types of cases.

The pattern that we see is that expenditure and the delivery of services are largely demand led and determined, to a large extent, by the decisions of individual practitioners and firms up and down the country as to which cases they will take on, what subjects they will cover and what volume of business they will undertake. As a result, it can be hard to predict what services will be available in any given place or time or to know that supply will be available on the ground if different needs emerge.

Opportunities definitely exist to address some of the challenges in the operation of the judicare system. The committee has heard a lot about many of those issues. There is scope for change on SLAB's part in that we can look at the areas of the system where the legislation gives us discretion. However, large parts of the system are tightly defined by regulations and primary

legislation. Our strong view is that we need a new statutory structure for the legal aid system, both to enable the judicare system to work more effectively and to shift the emphasis towards a more strategic, proactive, needs-focused approach, which would enable the system to be re-orientated and allow services to be designed and delivered with user needs in mind, and in anticipation of user needs in relation to different types of cases and parts of the country.

The Convener: Thank you. We move to questions, and I will kick us off. Our inquiry witnesses so far have all indicated that they would like to see a significant increase in investment in legal aid. Why does the Scottish Legal Aid Board not think that fee increases are enough to deal with the issues that we currently face in the civil legal aid system?

Colin Lancaster: There are a number of ways in which one can invest in the system. Our comments on this in our written submission were about whether fee increases alone could address all the challenges that are set out elsewhere in our submission and that the committee has heard about in other submissions and evidence.

Resources present a constant challenge in any public service environment, and it seems obvious to say that additional resources could lead to improvements in service delivery or availability, but the particular mechanism of increasing fee rates does not in itself guarantee or secure any additional service delivery. There is a risk that we would simply pay more for what we are already getting and that we would not get any increase in supply, accessibility or service delivery, which is because of the reactive nature of the system, as I have just described it.

If fees were increased substantially and the work became more financially attractive for solicitors, more solicitors might choose to enter the legal aid system, and they might choose to do more work under legal aid as opposed to privately funded work, but there is no guarantee of that. They might not. The increased investment might not secure any additional services.

Other mechanisms for investing in solicitor services could include the provision of grants or entering into contracts to provide specific services in specific places. It seems to us that that mechanism would better align with any particular goals that we, the Government or the Parliament might have in relation to increasing the accessibility and availability of services.

The Convener: Do you think that fee increases should not happen, or do you think that they should happen, along with other changes of structure?

Colin Lancaster: It is not for us to say whether they should or should not happen; those are decisions for Government. The fees that we pay are set out in fees tables, and those fees tables are incorporated into the regulations that ministers introduce and that the Parliament considers and agrees to—so, those are decisions for Government. If the aim of increasing fees is to address identified issues, that might suggest a targeted increase, with specific types of activity being paid at higher or different rates.

Looking at the data on activity, our sense is that the profession views certain areas of work as more profitable than other areas of work, and that might suggest considering the less profitable areas and targeting fee increases on those areas of work instead of having across-the-board percentage increases, for which the impact might well be very diffuse.

The Convener: Thank you—it is helpful to know your opinion on that.

Evelyn Tweed (Stirling) (SNP): Good morning. I thank the witnesses for their answers so far and for their opening statement.

Witnesses have highlighted recruitment and retention issues for solicitors working in civil legal assistance. What is the Scottish Legal Aid Board doing to address that issue?

Colin Lancaster: That is an interesting question. We are, indeed, aware of the various comments that the profession have made for many years in relation to the number of solicitors in the sector and the number of solicitors coming into the sector. We have recently published information about activity levels in civil legal assistance, which shows that a lot of different things are happening in the sector. We do not have overarching data about the number of solicitors or the extent to which they are involved in legal aid work. We do not hold data about the demographics of the solicitor profession as a whole or those who are providing legal aid services within it, so it is difficult for us to make any broad statements about what is happening within the sector.

The point about what we are doing about recruitment and retention is particularly interesting, because the nature of the system means that we have very few levers, if any, to influence either current or future levels of supply. The system is not one in which anybody can engage in workforce planning. The legal aid workforce are individual solicitors in predominantly private businesses who make day-to-day or year-to-year choices on their level of involvement in the legal aid system. There are few opportunities to look at the profession as a whole and influence the number of solicitors who are undertaking legal aid work.

Where we do have a role is in relation to our own employed solicitors. Over recent years, by looking at our own structure, we have been working to encourage more people into, predominantly, social welfare and criminal law. We employ a number of solicitors in the public defence solicitor's office, which is on the criminal side, and, on the civil side, in the civil legal assistance office. The numbers are small relative to the size of the profession and legal aid sector as a whole, but we are working with schools and universities by offering paid internships, shadowing opportunities and, most recently, combined traineeships. This year, we have taken on three trainees to work across our civil legal assistance office and the PDSO, so that they get a range of exposure to different types of legal aid work.

In general, our aim from all that work is to encourage people to see legal aid as an attractive area of work, to open up career options in our service and to equip people to go on to work in private practice or third sector organisations. As I said, those numbers are very much at the margins, because the total number of solicitors that we employ is a fraction of the total number of solicitors who provide legal aid, and we do not have levers when it comes to the wider pool.

Evelyn Tweed: You say that there are issues with the data and levers, and you are talking about small numbers for the things that you are doing. Given that a lot more legal aid support is needed, do you have any thoughts on how that can be provided, if you cannot do it?

Colin Lancaster: We have had discussions with the legal profession through the future of the legal profession working group, which was jointly convened by the minister, Faculty of Advocates and Law Society of Scotland. It explored a range of issues: recruitment, retention and, more widely, diversity in the legal sector. Although some of the discussions focused on legal aid, it was a wider working group.

It was striking that a number of issues that were identified were generally common across the legal profession and go far beyond the legal aid sector. That might mean that small firms face particular challenges, and the Law Society is currently undertaking research with small firms to explore some of those challenges. There might be issues outside the central belt, particularly in rural areas, of attracting newly qualified solicitors to move into those parts of the country.

The evidence that was brought to the working group from across the profession suggests that there are work-life balance issues and that career expectations and aspirations have shifted. The models of employment and working—the sense of going into a firm, remaining there until you become a partner and staying for your entire career—seem to be shifting. The impacts that are felt across the legal profession impact on legal aid, too, because the vast majority of legal aid firms are small; many of them have only two or three solicitors. More widely, the challenges that they face will be similar to the challenges that are faced by other small firms.

It suggests that a range of profession-wide responses are needed. We might have to look at some of the education pathways and what can be done in universities to encourage different types of work. I am fascinated to see what the Law Society gathers from small firms about their views on the challenges that they face and what suggested national and local interventions they make to address them.

Pam Gosal (West Scotland) (Con): Good morning. Thank you for the information that you have provided so far.

Over the past two weeks, witnesses have called for financial eligibility criteria to be expanded. Financial thresholds have not been updated in line with inflation since 2011, which was 14 years ago. Modelling from SLAB shows that eligibility for civil legal assistance has decreased and that that might be becoming a barrier in relation to advice and assistance. At the same time, people who are eligible for legal aid struggle to find solicitors who will take up their cases. Over the past two weeks, the committee has heard evidence that echoes that picture.

Although the Minister for Equalities told the Social Justice and Social Security Committee that legal aid needs to be reformed, nothing has happened. Is the Scottish Government failing the most vulnerable in our society? What more needs to be done?

10:15

Colin Lancaster: There was quite a lot in that question. The point about eligibility is important. In our evidence, we have highlighted the changes that have happened over time. You are absolutely right that the limits have not increased for some time; they were originally frozen as part of the response to the economic downturn, which, as you said, was 14 years ago. As a result, there has been a gradual drift out of eligibility for some people.

The key issue that has been flagged up is the low capital limit in relation to advice and assistance; that limit is significantly lower than the civil legal aid limit at around £1,700. Unlike civil legal aid, the limit for advice and assistance is fixed and the tests for advice and assistance are far more clear-cut and fixed in the Civil Legal Aid (Scotland) Regulations 2002, so there is little room for discretion.

Looking back over decades, we can see that the ways in which advice and assistance is used have changed. When it was introduced in the 1970s, it was intended to be a short, sharp piece of advice—initial advice from a solicitor—but, over the years, it has evolved into a precursor to litigation in some cases and an alternative to litigation in others. You can now find fairly extensive negotiations or pre-litigation procedures taking place that cost far more than the original short, sharp piece of advice, which was colloquially known as the "half-hour scheme".

The low capital limit might have been appropriate for that one-off piece of advice, but it is perhaps less appropriate for what is, in effect, full casework. Potentially, that poses a barrier, particularly for people who go through the process and then need to go on to litigation, because, in many ways, advice and assistance might be a gateway into further legal aid. Therefore, that is a potential challenge.

We have been doing quite a bit of work on eligibility more widely. As well as analysing the population that is eligible, we have been looking at the way that the different parts of the eligibility system operate. Marie-Louise Fox might want to say more about what we have been doing on that.

Marie-Louise Fox (Scottish Legal Aid Board): We have been looking at financial eligibility for quite a while. The proposal that we consulted on looked at financial eligibility for civil legal aid and at making the process simpler and more transparent to make it easier for people to understand what we take into consideration and the information that they need to provide to us. We looked at the standards that different parts of the public sector use and the factors that they take into account when carrying out any kind of means assessment.

As I am sure that we will touch on a few times today, the Legal Aid (Scotland) Act 1986 and the Civil Legal Aid (Scotland) Regulations 2002 really tie down the test that we have to apply. For civil legal aid, in particular, they set out how we need to assess financial eligibility. They also provide us with quite a bit of discretion, which is why we looked at this area: we could do things by looking at our policies and how we exercise the discretion that the legislation gives us.

A range of standardised allowances could help to make the system simpler. We have to try to calculate a person's disposable income: we need to look at their income and their levels of expenditure. That requires us to go into quite a lot of detail with that person and they need to provide us with quite a lot of verification; you have asked questions and heard evidence about that.

That system provides a bespoke and highly individualised assessment, so some people would say that it is actually quite fair. However, on the other side, given the points that have been made previously, some people would see it as an interrogation of their personal circumstances. Therefore, we considered other ways—instead of our having to ask somebody about all their expenditure—in which public bodies provide cost of living allowances. Do some public bodies allocate allowances that represent a fair cost of living to everybody? That is what we consulted on; we have been doing some very detailed work.

We are selecting a system that is used by different Government departments and local authorities when means testing is required to put in place standardised allowances not only for individuals, their partners and any dependent children but, importantly, in situations when there are other factors such as disability. We are coming to the end of that work and are now developing the policy. We will go out to public consultation again to say, "This is what we have ended up with after the initial consultation and what we think could make the system more transparent, simple and easier to understand for people".

Pam Gosal: Thank you, Marie-Louise, that is really helpful. My next question is on means testing. Witnesses who attended the committee over the past two weeks called for the removal of financial eligibility requirements for certain types of cases where domestic abuse is a factor. Survivors of domestic abuse, the majority of whom are women, are some of the most vulnerable members of our society. That is an area that I know extremely well, because I introduced the Prevention of Domestic Abuse (Scotland) Bill. Many of the survivors whom I have spoken to have told me how their abusers controlled their finances—many of those women do not even know what their household incomes are.

Last week, we heard that legal aid for housing cases in England is not means tested. Do you agree that we should take that as an example and apply it to legal aid for domestic abuse cases in Scotland? Marie-Louise, you mentioned carrying out a consultation on means testing. What work have you done in that area? When will the information from that consultation be available to you?

Marie-Louise Fox: We will consult on that this year, so fairly shortly.

Colin Lancaster: As Marie-Louise has said, that consultation and the further development work follow on from a consultation that we did a couple of years ago, to which Scottish Women's Aid responded and provided a lot of feedback on the dynamics of finances in abusive relationships, which you mentioned.

We have been quite struck by some of the evidence that has been provided. You mentioned the evidence that the Minister for Equalities gave to the Social Justice and Social Security Committee. A couple of weeks ago, a colleague and I gave evidence there in relation to its current work. Several issues have been flagged up, both to that committee and to this one, about how the means test is thought to operate for applicants who have been in abusive relationships.

One of our concerns is lack of awareness that, as it stands, the means test has more flexibility built into it than many organisations appear to appreciate. In the scenario that you have talked about, in which a woman seeking to leave an abusive relationship is either not aware of, or cannot access or obtain, evidence of the family finances, we can make allowances for all that. For example, if there is trapped capital, we can disregard it; if an abusive partner has run up debts without the survivor's knowledge, we can take that into account in any means assessment. We can proceed to grant without seeing the normal evidence if that evidence is, in effect, in the home and trying to retrieve it would put somebody at risk. There are far more flexibilities than is thought, and a variety of ways exists in which the system can and does accommodate the very issues that you have highlighted, when we are asked to do so.

The issue that we flagged up to the Social Justice and Social Security Committee was that we are often not made aware of those issues. A solicitor or a support organisation might advise a potential client that they will not be eligible, on the basis of their understanding of how the means test operates, or they will not tell us about specific aspects of the circumstances, so either we will not be asked to exercise that discretion or we will not know that it is an issue at all. As we told the Social Justice and Social Security Committee, we think that we should work with the Law Society of Scotland to improve awareness of how the system can operate in practice so that the complexity of the system, or the perception of it, does not act as a barrier when there are provisions to make it more accessible.

Pam Gosal: Thank you for that information. I have one final quick question. It is worrying that you say that, although this committee and the Social Justice and Social Security Committee have heard evidence on it in the past two weeks, not everybody knows that the means test has those levers to help vulnerable people, especially women. I am sure that men go through the process as well, but a lot of women are in that position and I am concentrating on the majority. We are many years on with this, but you say that we still need to raise awareness that means testing can help those women.

Organisations such as Scottish Women's Aid have also come in to tell us about this issue. I am surprised and very worried by evidence that although the system has been in place for many years, if anything it needs to be renewed, which is what we are discussing today. You have just said that many solicitors and organisations are not aware of the allowances that can be made. We should think about how many domestic abuse survivors, especially women, might have been let down by the system because there is an awareness and education issue and people do not have guidance on that aspect.

It is surprising to me that you have said something very different from what other witnesses have said. Why are we taking evidence on raising awareness when the issue should have been resolved earlier, which would have meant that those vulnerable women might not have gone through what they did?

Colin Lancaster: It is perhaps a symptom of a very complex system. As I said in my opening remarks, the legal aid system is complex, with a huge range of legislation, regulations and guidance that runs to hundreds of pages of information.

Many solicitors who do that work do not do it regularly. We have a widespread network of solicitors who undertake legal aid work. Some of them will be very experienced in areas of substantive law, such as family law, financial provision, protective orders, contact and so on, but they might have less experience with legal aid. That is one of the constant challenges in a complicated legal aid system that has a widely dispersed provider base, many of whom do small amounts of work under legal aid.

If the system could be simplified—the standard discretionary levels that Marie-Louise Fox outlined would be one way of doing that—there would be less room for misunderstanding, and less of a burden on practitioners to learn the legal aid system as well as practising substantive law. That might help to address some of the issues that we have just talked about.

I have just realised that I did not touch on your earlier point about the housing law position in England and Wales. I think that it was Shelter that, last week, highlighted that there is a specific service in England and Wales for people who are facing the loss of their homes through eviction or repossession, for example. It is that service that is not means tested. However, legal aid for housing law matters is still means tested in England and Wales, and the means-testing provisions there are far tighter than our provisions in Scotland. Nevertheless, that dedicated service has been put in place for that particular purpose.

From that example we should not necessarily say that we should import the non-means-tested aspect, but we should acknowledge that, in England and Wales, a particular problem has been identified that affects a particular group of people in particular circumstances, and a service has been designed to meet that need. That is where the judicare system struggles, because it does not have the mechanisms for designing services and putting them in place. Therefore, I think that there is a lesson to be learned from England and Wales about the targeting of particular services in particular circumstances.

Pam Gosal: Thank you for clarifying that.

10:30

The Convener: Over the past few weeks, witnesses have made a number of suggestions about lessening the administrative burden on solicitors. One was that the double audit should be removed, and another was that SLAB should deal directly with third parties on payment of outlays. What are your thoughts on those suggestions?

Colin Lancaster: They are many and varied, I would say. The system has many different parts. Most, if not all, of the points that have been raised derive from either the primary legislation or the regulation structure, which provide that particular steps have to be taken. The system requires there to be a limit on authorised expenditure under advice and assistance, and it requires solicitors to ask for an increase in authorised expenditure before doing any further work. The regulations determine which, if any, of such advance approvals can be made retrospective. Under advice and assistance, an approval cannot be made retrospective—I think that that was one of the points that witnesses made.

In many ways, those different measures are an inherent part of a judicare system. They are perhaps an uncomfortable but necessary part of a system that is demand led. The legal aid system is almost unique among all public services in not having a capped budget. Instead, it is based on tests, thresholds and controls. All the topics that have been raised in evidence have been examples of the different controls that are put in place to manage the risk that is built in, in a demand-led budget, of expenditure simply spiralling. Those controls are an inherent and necessary part of such a system, but that does not mean that they operate perfectly.

Where the scope exists for us to do so, we try to simplify the requirements. With regard to advice and assistance, one example is the template system for increases in authorised expenditure. Instead of saying, “I’ve exhausted my authorised expenditure. I want to have another few meetings with the client. Can I have an increase to cover that?”, we put in place a template that will cover a case type and all the work that is typically associated with it. Instead of having to seek an increase of another £100, that might mean having, from the outset of the case, authorised expenditure of £950 or £1,000 to cover the range of work that would typically be required.

We are extending those templates, such as that for prior approval for experts, so that we can reduce the administrative burden as far as that is consistent with the proper stewardship of public funds. That is part of our job in the system—the act and the regulations require us to do that. We want to do those things in a way that involves the minimum possible bureaucracy that is consistent with those responsibilities, but we cannot simply choose not to do them.

The point about outlays relates to a recommendation that Martyn Evans made in his review in 2018. There were two parts to that recommendation. One was that SLAB could use its purchasing power to construct lists of approved providers at agreed prices, and solicitors could simply draw down on those contracts on a day-to-day basis without having to seek their own experts or seek quotes for that work, because that would all have been resolved in advance. The primary legislation would need to be changed to enable us to do that.

The other issue that Martyn Evans picked up was that of solicitors having to wait until the end of a case to be paid the costs of those experts and other outlays, which placed a burden on them. He thought that if we paid those costs directly, it would remove that burden. Since then, fairly significant changes have been made to the arrangements for reimbursement as a case progresses. The big barrier was in relation to cases in which there might be a recovery—those in which money might be available at the end of the case. In the intervening years, regulations have changed those arrangements, which means that solicitors can now submit interim claims to cover such outlays, so they no longer have to carry those costs until the end of the case.

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

Marie McNair (Clydebank and Milngavie) (SNP): I take you back to the topic of SLAB using its discretion to take account of the economic impact of financial abuse. That aspect is not widely known about or used much. Is there any on-going work on that? I am referring here to violence against women partnerships and domestic abuse charities, for instance. That could make a difference quite quickly if there was more awareness of that aspect.

Marie-Louise Fox: We started a project a few years ago to review all of our policies, decision-making guidance and external guidance. Where we have wanted to change our policies, we have consulted on those changes. Part of the aim of the project is to make clear information available to people about what our policies are in the use of our discretion, how our decision makers make their decisions and what the guidance is for external purposes. Both for solicitors in the main and for others who are interested, what information would we need in order to exercise that discretion? That project is on-going. We make around 250 types of decision under the legislation across all the aid types. We are going through the process to make what we do as transparent as possible.

We have on-going interaction with solicitors groups in particular. Colin Lancaster mentioned the changes that we want to make to templates for immigration and asylum. We have a good working relationship with the Immigration Law Practitioners Association in Scotland, which the majority of providers are part of. We work very closely and consult with the association on what is working and what could be improved. We are also working with the Environmental Rights Centre for Scotland to consider matters in relation to environmental cases that were of interest at the committee last week, when Dr Christman was here.

We are looking to establish a way of working things out. Proposals are made, but what is the problem that people are identifying? Can we work with people to get down on paper and get agreement on the root problem that we are trying to solve? What are the options that we could embark on to solve that problem? Changes to regulations might be one option, and changes to our guidance and to how the services are delivered might be other options. We could work on advice and provide it to the Government, which would set out that judicare will not work in certain areas.

Those are a couple of examples of the work that we do with groups. We have on-going engagement with Scottish Women's Aid and organisations like that. Before the evidence sessions started for your inquiry, we sat down with one of the staff from Scottish Women's Aid and talked through our current approach to financial eligibility. That was a really useful restart of those conversations. It is then a matter of disseminating that to the different Scottish Women's Aid groups across the country. We need to work with those groups more in order to do that.

We have seen from the evidence that has been provided that there is more outreach that we can do. There is extensive guidance on our website, but there is more outreach that we could possibly do. We will have a look at that this year.

Marie McNair: It is a matter of simplifying the process where we can. It is really complex for anybody but, if we are dealing with violence against women, that concerns the most vulnerable. It is a matter of trying to get access to justice and making it as simple as possible.

I am on the Social Justice and Social Security Committee, too, so we are seeing both sides of the issue. In your response to the call for views, you indicated that you are doing a lot of work on the contribution levels for civil aid and on passporting for social security benefits. I know that you touched on that earlier, but could you explain that in a bit more detail? You can take your time with that one.

Marie-Louise Fox: Different arrangements are in place for advice, assistance and civil legal aid. Let us take passporting first. The roll-out of universal credit across the country means that it has become one of the passporting benefits. The more people who are on universal credit, the more people who are passported into eligibility, which is an important point to recognise if you are on a passporting benefit. A lot more people are on universal credit now than were on, for example, income support in the past. As has been pointed out, the thresholds and levels for eligibility have not changed for some years. I will not labour that point, but we have provided advice on that. Other aspects include the allowances and the policy work on how we use our discretion. Different elements of financial eligibility can be packaged separately.

Your last point was about contributions. Civil legal aid contributions is another area that has not changed much for quite a number of years. That is the work that we are doing now, and it is the other side of the work that we have been doing on financial eligibility. There is the financial eligibility side, and there is the affordability side, because you can be eligible for legal aid without a contribution or you can be eligible with a contribution. The vast majority of people are either passported straight through or eligible without a contribution. A smaller cohort of people are eligible for civil legal aid with a contribution, and we have discretion on that.

That is what we are exploring at the moment: we are considering what possible options we could look at in order to improve how the contribution system works in civil legal aid. I am happy to provide the committee with more information about that once we get a little further forward.

Marie McNair: Any further information that you can give to this committee, as well as to the Social

Justice and Social Security Committee, would really help.

Marie-Louise Fox: Absolutely. We are happy to provide more information and clarification in response to some of the thoughts about how the current system works that are perhaps misunderstandings, if that helps the committee.

Paul O'Kane (West Scotland) (Lab): Over a number of weeks, including in this morning's session, we have been discussing the mixed model of payment and delivery, which the Government's discussion paper calls for. The sense is that it could address some of the issues of identifying and meeting needs in the current system. However, to help to inform our work, it would be useful to get a sense on what panel members' feelings are about the advantages and disadvantages of that mixed model.

Colin Lancaster: You are right that the mixed model is part of the Government's discussion paper. We have been talking about that for a long time, in part because we have observed over an extended period that the judicare system has its strengths. Its ability to respond dynamically to situations on the ground is one strength, but it is very difficult to secure services, target services, address particular needs or, indeed, design those services.

We have heard a lot about trauma-informed service design, and it is very difficult to see how that approach could be incorporated into the judicare system. However, grant-funded, commissioned or contracted services could very much be designed in that way, as could the services that we deliver through the civil legal assistance office.

10:45

Some of the challenges and needs that have been described and expressed to the committee are examples of issues that were never contemplated when the judicare system was first developed in the 1950s. Although the legislation that established the Scottish Legal Aid Board dates back to 1986, in many ways it mirrors the legislation that went before it and the legislation that went before that, which was fundamentally about an individual solicitor-client relationship. The legal aid system was designed as a subsidy for what is otherwise essentially a private service.

What was put in place in the post-war years and what has remained in the 75 years since has never been designed as a public service. It has not been designed to be accessible, to be directed towards particular user needs or to be transparent, nor to have any guaranteed level of service or a single gateway. We said in our written evidence that there are few other public services, if any, in which the onus is on the recipient of the service to find somebody to provide it to them. However, that is an inherent feature of the judicare system, because that was what was in mind in 1950.

The mixed model would sit alongside and, to some extent, potentially replace aspects of the judicare model. In its place, there could be grants, contracts, commissioned services or directly employed solicitors that would operate under a different set of conditions. That would mean that the strategic decision to target resources on a particular type of problem, client group or geographic area would not need, to put it bluntly, further rationing mechanisms to separately be put in place. Those decisions would be made in allocating the funding, in specifying the service to be delivered and in the conditions of the grant.

We think that that might well be a model that is better suited to meet some of the needs that have emerged and to address our understanding of what good service delivery looks like in the 21st century, rather than what private client-solicitor relationships looked like in the post-war years. The trick would be to try to get the best balance between those two systems, so that resources could be targeted effectively and services could be secured where they might otherwise be wanting and designed to meet needs in a trauma-informed, accessible and user-focused way.

The judicare system could remain alongside that in areas of law where it seems to work well. Adults with incapacity is an example of that—in the past 20 years, there has been a massive growth in the take-up of legal aid for adults with incapacity. That seems to operate fairly well. However, that might not be the case in other areas, particularly some of the more specialist areas—where, to be fair, the volume of cases is always likely to be lower, and the critical mass that might be needed for an individual firm to invest in training and to target services just might not be there outside the biggest population centres. A more purposeful intervention might be more suited to those types of problems. As I say, all the different eligibility or financial controls that exist in the judicare system would not be needed.

Paul O'Kane: Clearly, what happens at the moment is that people often fall through the gaps. You are describing what is perhaps a more comprehensive approach to make sure that that does not happen. When considering any disadvantages of a mixed model, are there still risks of gaps in provision and the most vulnerable not being able to readily access a service?

Colin Lancaster: Whatever system you have, choices will have to be made. It goes back to the convener's question about investment. The Scottish Government has a finite budget. As I say, the legal aid system is unusual—there is not a

finite budget for that. However, if one were making deliberate decisions to target resources in particular places, each grant, for example, would have a set amount of funding that is associated with it. Ultimately, if you want to have the best of both worlds, that might be a more expensive world.

Almost undoubtedly, in any system, there will be compromises along the way, but, over the past two weeks, the committee has heard about the ways that those compromises are implemented on a case-by-case, piece of work-by-piece of work, client-by-client basis.

In many ways, making decisions about the scope of a grant funding programme, the overall scale of that programme and the priorities for it would be a more transparent way to make those choices. The accountability framework could be enhanced so that those decisions themselves could be subject to scrutiny, and that scrutiny would happen once at the beginning of the programme, not 15 times every day, when solicitors want to do individual pieces of work. I am not suggesting that it is a panacea or a magic bullet, or that it would magically mean that we would be able to meet all the needs that exist in the world, but it would certainly add a major tool to the toolkit.

Paul O'Kane: That was a very comprehensive and helpful answer.

The Convener: There have been calls to either scrap or reform regulation 15, which is seen as a barrier to collective action. What are your thoughts on that, and do you have views on reforming it?

Marie-Louise Fox: I am happy to take the question, and thanks for the opportunity to address this issue.

The starting point is that Legal Aid (Scotland) Act 1986 and Civil Legal Aid (Scotland) Regulations 2002 set out the controls, which are the other side—the balance—to the uncapped budget. The merits tests for civil legal aid are one of the controls to be applied; merits test 1 is for probable cause, which just means that you need to have a legal basis to your action. You can set that aside, as it is usually fairly easy to meet.

The second test is reasonableness, but there is no definition of "reasonableness" either in the act or in the regulations. Over the decades, SLAB has developed policy and guidance on how we apply the test and any discretion; wider public interest is one factor that we take into consideration, as I think that the committee heard from witnesses last week, and there is specific guidance in that respect. We take wider public interest into consideration, because we recognise that—to quote from the guidance—

"In some instances, individual cases can aid strategic development of the law for groups, including groups protected under law. It could also be demonstrated when the outcome of the case may have a direct tangible benefit to your client and to others."

When that benefit can be demonstrated, the reasonableness test is met.

When we consider wider public interest, we will gain information and knowledge from what the solicitor puts to us under that test, so we can then consider regulation 15. Regulation 15, which has existed since the 1950s, is one of the additional controls, and its aim is to control expenditure. In 2016, the Government carried out a consultation on how it related to environmental cases, looking at the risk of the gates opening and the risk, as a result, to the uncapped budget.

Regulation 15 has come into our decision making, but, on several occasions, we have granted legal aid. I can give the committee some examples from the past couple of years. We granted legal aid in relation to the action taken to challenge the decision to demolish the Wyndford Road flats in Glasgow; we granted legal aid in relation to the redevelopment by the local authority of a recreational park in Torry in Aberdeen as part of the sustainable energy strategy; in Moray, we granted legal aid to challenge a housing development decision in Slochy woods; we have granted legal aid in relation to the very high-profile case that challenged the winter fuel allowance decision by Scottish ministers; and we have also granted legal aid in relation to the closure of the public library in Balloch, the closure of Kirkton community centre and library and the closure of the swimming pool in Auchinleck.

Those are just some of the examples of our granting legal aid to individuals to challenge decisions that were made in their communities, and we considered regulation 15 in those cases. If the person can show that there will be serious prejudice to them, the first part of the test is met, and we can therefore be satisfied that the application should be granted. It is a very difficult regulation—there are no two ways about it. We do not think that it is simple for people to understand, and it is not simple for us to apply and explain.

As for the second part of the test, we can see from the information provided to us that, in a lot of cases, it never really applies; there is not some set identified and defined group of people to whom the test applies. In addition, it is very rare that those involved are people of abundant means. As a result, the second part of the test never really comes up, because we do not see a defined group of people who have abundant means. We therefore do not need to go into great detail about it with most solicitors; in fact, I can recall only one

case in the past 15 years in which there has been a very small group of such people.

Our position is not that the regulation does not need to be reformed—it could be improved. However, I assure the committee that we do apply the regulation and grant legal aid, when we can be satisfied with regard to the tests.

Our work with the Environmental Rights Centre for Scotland involves, first of all, looking at people's understanding of how high a bar they think that the test presents. In our view, it is not as high a bar as people have interpreted it as being, and we are currently working with the centre on looking at our guidance to try to help solicitors understand it. Secondly, we will review our policies and decision makers' guidance in that respect, which will take us a little bit longer.

The third element of our work with the centre, as I have mentioned, is to provide advice to the Government on the options for resolving the problem, which is actually about how people get access to representation to take their cases forward. People's aim is not to get legal aid, but to get their problems resolved in the justice system as it currently exists. We want to resolve the problems that we have. Witnesses in the committee's previous sessions have talked about making improvements to enable people to resolve their problems in different ways that are not about forcing them through the court system.

Colin Lancaster: This is another good example of something that challenges a model that is based on individual solicitors and clients. We have talked about strategic litigation, in which a wider group of people might benefit, and the committee has heard about legal aid for groups in group proceedings, where the group takes forward the action. There are court procedures for financial claims on that front, and for organisations to be able to take forward challenges.

However, none of those is something that the legal aid system was designed to address. It might be that, instead of seeing how we can bend the legal aid system to accommodate those different kinds of demands, we could think about other, different solutions to those problems. The legal aid and judicare system cannot be all things to all people, but that does not mean that publicly funded legal assistance cannot be available for those things. That brings me back to Mr O'Kane's question about the mixed model.

The Convener: Thank you. That was helpful.

We now have questions from Tess White.

Tess White (North East Scotland) (Con): I have two questions for Mr Lancaster. We have heard that finding a solicitor to help the most vulnerable people in domestic abuse cases, particularly where they are experiencing financial abuse, is almost like trying to find hens' teeth. Women, especially, have had to look at or approach around 100 solicitors to find help. Are you concerned about that?

Colin Lancaster: With regard to some of the situations that have been described to the committee, we have a great deal of sympathy with people in that position. Those people are facing other challenges in their lives and are seeking to protect either themselves or their children and to rebuild their life away from an abusive relationship, and getting legal aid or finding a solicitor should not be one of their problems.

11:00

As I said in response to some of the previous questions, however, the mechanism to secure that service does not really exist in the legal aid system. We have people who phone us looking for solicitors; we do not always know whether they are successful in getting one, because if they are, they will not come back and tell us—and rightly so, because they are getting on with building their relationship with the solicitor.

We have consistently, over a number of years, had discussions with Scottish Women's Aid about the issue, particularly in relation to domestic abuse, which is the subject of your question. As a result of those discussions, we agreed to put in place a system with our civil legal assistance office whereby we would ingather details from Women's Aid services about the problems that people were experiencing in trying to solve their legal problem, and seek to refer them to a solicitor. That has given us a better sense of the scale of the issue.

In the first year of that system's operation, we received around 200 referrals, and it has given us a better insight into the range of legal problems that people are facing in that sphere. Protective referrals made up quite a small minority of those 200 referrals; most of those cases related to general family matters such as divorce or separation, care of children and financial provision. In two thirds of those cases, we were able to refer the client successfully to a solicitor.

Clearly, that still leaves a gap, but we now have a better sense of where that gap is. It all helps build a picture of the type of intervention that might be needed. It suggests that we have a sense of the scale, nature and distribution of the problem, which can then help inform further decisions around the service that we provide.

We are currently considering extending that referral service to other areas of law, not exclusively in relation to domestic abuse, and working with partners other than Scottish Women's Aid. We are also considering what that

says about the service that we should be providing through the civil legal assistance office. We do not tend to do that type of work, and we are considering whether we should be doing it or whether there are parts of the country where a more proactive funding solution ought to be put in place.

Again, that is not at our hand—we cannot simply decide to allocate a grant. There is a whole process—again, built into legislation—around the approval and construction of grant programmes that we would have to go through. However, as I have said, we now have a better understanding of what the issue is.

Tess White: You did not really answer the question, which was this: are you, personally, concerned about the issue?

Colin Lancaster: To the extent that people are not able to access a service that they need, yes—it is of definite concern. However, there is a difference between my being personally concerned about it and my having the power to do anything about it. That is where the challenge comes in on many of these questions. We can observe and understand problems, but the system as it stands gives precious few opportunities to actually act on those concerns or respond to those challenges.

That is why we have consistently called for a mixed model—and we are pleased to see the idea reflected in the Government's paper—in which, instead of just studying problems, we are able to go out and try to solve them. The judicare system does not have the levers to enable those problems to be solved.

Tess White: My second question is about the pool of solicitors. There seems to be a systemic problem in that there are not enough solicitors to do the work. In the nine years that you have been chief executive of SLAB, have you sat down with the Law Society to discuss that systemic issue?

Colin Lancaster: Yes, we have discussed it regularly. Again, part of the challenge is understanding the nature and scale of the problem, and then working out what can be done about it.

As I said in response to Ms Tweed's question, there is no mechanism for planning a workforce in that area. It is not like other public services, such as dentistry, general practitioner services or midwifery, in which, if there is a shortage, we can put in place plans to train, recruit and retain a workforce. We do not have any control over those things—and in fact, we have precious little influence over them because, as I described at the outset, the shape, size and focus of the judicare legal aid system are determined by the day-to-day choices made by individual solicitors up and down the country.

Hundreds of those solicitors make the choice to provide legal aid services in thousands of cases each year, so there is a widespread network of solicitors who are doing that work. However, if people are having to phone 20 or 30 solicitors, we do not know whether that is because nobody has capacity and the person phones until they find somebody who does, or because they do not know who provides a relevant service. If someone is phoning criminal or commercial firms when they have a domestic abuse problem, they are not going to get access to the service. However, there is no identifiable clear gateway into the system, because it was not designed with the user in mind, in the way that other public services are.

Tess White: I suggest that you have more power and influence than you think. You can sit down with the Law Society and talk to it about the pool of solicitors, and influence the universities. A few weeks ago, we heard how, during the Covid pandemic, places were provided to trainee solicitors for early entry into the profession to undertake the type of work that we are discussing. However, that seems to have dried up. I almost feel that you have given up when you say, "It doesn't lie with me—I can't do anything about it." You actually can do something about it.

The system is broken and overly complex, and there are not enough solicitors. People are having to phone not just 30 solicitors, but more, and we are hearing about women who have experienced domestic abuse, who are homeless and have suffered financial abuse, and who have nowhere to go. If the situation is so bad—as it seems to be, because we are hearing evidence of that—what is stopping you sitting down with the Law Society and looking at the number of solicitors who are being trained? Does that number need to be increased? What areas of work are the solicitors going into? How many of them are doing legal aid? Should we provide certain funded positions, as was done during Covid? I put it back to you that to sit down with the Law Society, and work out some solutions and come up with some ideas, might be a way forward.

Colin Lancaster: As I said at the outset, we have regular discussions with the Law Society, and we have been having them for a number of years now. Again, as I explained in my response to Ms Tweed's question, many of the issues that have emerged from those discussions are not legal aid-specific problems, and therefore legal aid-specific solutions are unlikely to address some of those wider underlying issues with regard to the shape, size, structure and focus of the legal profession and the career aspirations and ambitions of young lawyers.

We go out to universities and do our internship work, as I mentioned earlier, and we are taking on trainees to bring people into this area of work. However, that really is about the limit of what we can do. The traineeship scheme to which you referred was not a SLAB scheme, but a Scottish Government-funded scheme run by the Law Society of Scotland. It is not in SLAB's gift to do that work, provide that funding or institute those types of schemes.

I am absolutely not giving up on this area; these issues have been around for a long time and we have consistently pursued reform to the system specifically to enable us to do more work in that field, and to be more strategic, proactive and focused in solving the kinds of problems that have been presented to the committee. That is not the system that we have, and those are not the powers or functions—or the resources—that SLAB has.

Tess White: Thank you. Back to you, convener.

The Convener: That brings to a close the evidence-taking session with our first panel of witnesses, but I just want to ensure that all members have been able to ask everything that they wish to ask.

I see that Marie McNair wants to come in.

Marie McNair: I have just one more question. What further changes could youse make without the need for regulation? Is there anything else that youse could do in the way of simple fixes, or have you addressed those already in your contributions?

Colin Lancaster: I think that we have talked about most of what we can do. The Government's paper sets out a number of changes to regulation, which could obviously be brought forward more quickly than changes in primary legislation. Marie-Louise Fox described the process of consulting on SLAB's policies and examining all the ways in which we apply our discretion. Each of the changes that we make might make the system a bit clearer and easier for providers and applicants to understand. That process might take some of the rough edges off, and it is absolutely worth putting time and effort into doing that, but it will not address the fundamental issue that we have been describing this morning.

The Convener: Thank you. That brings our first evidence session to a close, and I suspend the meeting briefly.

11:10

Meeting suspended.

11:16

On resuming—

The Convener: I welcome our second panel of witnesses. Siobhian Brown, the Minister for Victims and Community Safety, is joined by the following Scottish Government officials: Martin Brown, solicitor in the legal directorate; Simon Stockwell, family law unit head; and Susan Young, access to justice unit head. You are all very welcome.

I invite the minister to make an opening statement.

The Minister for Victims and Community Safety (Siobhian Brown): Good morning. I am grateful to the committee for inviting me to contribute to your considerations on civil legal aid.

I recently took the opportunity to meet staff from grant-funded projects, and I heard at first hand about their excellent work and the services that they deliver to people across Scotland. I note that many of the issues that have been raised with the committee are similar to the discussions that I have had about the need for change.

The Government recognises that reform of the current system is needed and that there are challenges in certain areas with certain types of legal aid work. The recently published discussion paper on legal aid reform sets out a programme of work for the rest of 2025-26. Our first priority is to engage with stakeholders on draft regulations and associated impact assessments. Those changes will make it easier both for solicitors to work with legal aid funding and for those who need legal assistance to access it.

We will re-initiate fee review planning and collaborate with stakeholders on the reform of legal fees in 2025. We will take the same collaborative approach to developing detailed proposals for future primary legislation, working with SLAB and with private sector and third sector stakeholders to explore areas of diversifying funding methods and embedding users' voices—something for which those who have responded to the committee's inquiry have called.

The report of the independent strategic review of legal aid that was carried out, which is entitled "Rethinking Legal Aid—An Independent Strategic Review", noted:

> "Scotland is one of the leading jurisdictions in Europe in the provision of legal aid judged by scope, eligibility and expenditure per capita."

It went on to say that "in almost all" solemn criminal cases

> "the accused will get legal aid",

and that in civil cases,

"the scope of legal aid in Scotland is broader than very many jurisdictions, with comparatively little excluded".

However, legal aid does not sit in isolation, and it is an essential component of access to justice. We recognise that legal aid plays a crucial role in upholding the principle of equality before the law by ensuring that those who cannot afford legal representation are not disadvantaged in the justice system. Legal aid funding allows solicitors to deliver their services to people remotely as well as in person, supporting many people with civil problems.

We have maintained the scope and resourcing of legal aid, and the demand-led budget means that all eligible costs are met. That means that legal aid expenditure is likely to reach £174 million in 2025-26, which is an increase of £5 million on last year's expenditure budget. That will be the highest-ever level, which highlights a trend of increasing levels of expenditure every year. We must ensure that delivering legal aid is fair to those who deliver the services, and it must also be effective and efficient and deliver value to the public purse. We have maintained funding for the Scottish Legal Aid Board's civil legal advice grant-funded projects, with up to £2.3 million this year.

I am aware of the significant input that the committee has received in aid of the inquiry. It is clear from all the submissions that have been received, and the evidence from the witness sessions, that there is a strong feeling that civil legal aid in Scotland needs reform, and I, and the Scottish Government, share that belief. I am happy to take any questions.

The Convener: Thank you, minister. We move to questions, and I will kick us off.

One of the key priority asks from our witnesses so far has been for a significant increase in funding. What resources are available to support the reform?

Siobhian Brown: We have to remember that the legal aid fund is demand led and is directly linked to application numbers, and that all eligible costs are met. As I said in my opening statement, in this year alone, £174 million will be provided.

In relation to the reform, we are currently drafting Scottish statutory instruments, putting them out to consultation and looking at the assessments of them. Last week, I met SLAB and discussed the fact that it could take between four and eight months for the SSIs to be implemented. By the time of implementation, therefore, there will be a budget available for that.

The Convener: That is great. The committee has heard repeatedly from witnesses that the current fee rates and rules prevent legal aid solicitors from being able to take the time to work with clients in a trauma-informed way. Will the Scottish Government work with SLAB to ensure that rules are changed to support trauma-informed working practices?

Siobhian Brown: Yes, absolutely. I think that we all recognise that reform is needed across the board to legal aid, both civil and criminal. The need for the approach to be more trauma informed is an important issue, and I am more than willing to work with SLAB and any third sector organisations to ensure that that happens in any legal aid reform as we move forward.

The Convener: We move to questions from Evelyn Tweed.

Evelyn Tweed: Good morning, minister. My question is on recruitment and retention. You will be aware that we have heard from witnesses that there are a lot of anxieties in that area. The Scottish Government funded legal aid traineeships in 2021. Has there been an evaluation of that scheme, and will it be continued in the future?

Siobhian Brown: The issue of recruitment and retention has been raised with me since I came into my role. I am sure that the committee will know about the future of the legal profession working group, which is looking at the short, medium and long term. The traineeship fund that was announced for 40 traineeships was welcomed by everybody. We are going through the evaluation of the scheme, which we received just recently from the Law Society of Scotland, and we will look at how it can be rolled out. I am keen to progress that.

Evelyn Tweed: Do you know when the evaluation will be completed?

Siobhian Brown: I do not know whether any of my officials have a timescale for that.

Susan Young (Scottish Government): It will hopefully be within the next couple of months or so—we will provide advice to the minister on that.

Evelyn Tweed: Okay—that is fine.

The Convener: We now have questions from Pam Gosal.

Pam Gosal: Good morning. My questions will be a bit long, because I have been pulling together some things that our witnesses have told us over the past two weeks, so please ask me to repeat anything after I have asked my question.

Witnesses have called for financial eligibility criteria to be expanded, as financial thresholds have not been uprated in line with inflation since 2011. That is 14 years ago—nearly a decade and a half. Some witnesses said that those outdated financial thresholds are not fit for purpose in this decade. Andy Sirel of JustRight Scotland said:

"if you have £1,718 in your bank account, you are not getting legal aid."—[*Official Report, Equalities, Human Rights and Civil Justice Committee,* 13 May 2025; c 18.]

In the previous session today, we heard concerns about that from Colin Lancaster of the Scottish Legal Aid Board. Last week, Dr Ben Christman of the Environmental Rights Centre for Scotland said that someone over the age of 21 who was working for the national minimum wage for more than 20 hours per week was not eligible for advice and assistance, as the current weekly disposable income threshold is £245 per week. He even referred—as Colin Lancaster did today—to a scenario in which people in receipt of universal credit were not eligible for advice and assistance. However, some legal cases can cost up to £500,000.

If someone on universal credit cannot get legal aid, who is legal aid for? If we cannot even help the people in our society who most need it, can you clarify whom we are actually helping, minister?

Siobhian Brown: On the point about financial eligibility thresholds for civil legal aid, I discussed that briefly with SLAB when I met it last week. SLAB has provided an analysis paper to the Scottish Government that provides advice on a range of possible changes to financial eligibility thresholds for civil legal aid and advice and assistance. The modelling includes the impact of the thresholds on eligibility levels and costs. However, any changes to policy will not be cost neutral, so we will, as a Government, have to consider that. We will carefully consider the SLAB paper in conjunction with the wider set of reforms that are set out in the Government's discussion paper.

I go back to your point about who is receiving legal aid. I have sat in committee over the past couple of years, and I have spoken to those in the legal profession and totally appreciate and understand the challenges that they face. As I said, we really need legal aid reform for the future.

As a Government, we have seen the legal aid budget go up every single year—two years ago, it was quoted as £141 million, and it went up to £151 million. Because legal aid funding is demand led, the Scottish Government will pay it. We are now up to £174 million. Every year, we are seeing an increase in legal aid, so it is not that people are not getting legal aid.

As has been highlighted to the committee, the picture is complex and hard to understand—we see it from the SLAB side, and I am seeing it from the Scottish Government side, with the budget increasing every year. We have to work together with the legal profession, with SLAB and with third sector stakeholders on how, moving forward, we can create a model that addresses all the challenges that everybody currently faces.

People are getting legal aid at the moment, as we can see from the budget. I do not know whether anyone else wants to comment on that.

Martin Brown (Scottish Government): I do not know the details of the example that Pam Gosal raised in relation to universal credit. All that I can say is that it is a passported benefit in terms of income, so I suppose that it is possible that if someone had capital that took them over the threshold, they would not be eligible for civil legal aid. However, under a standard set-up, we would expect a person on universal credit to get civil legal aid.

Pam Gosal: Thank you—I ask you to please look at that in your reform, because the issue has been brought up in evidence for the past two weeks. People have such a low amount of money, but they do not get advice and assistance. Please look at that, minister.

Over the past few weeks, the committee has taken evidence on how legal aid is administered for survivors of domestic abuse. Two weeks ago, Andy Sirel of JustRight Scotland highlighted that a survivor of domestic abuse can sometimes go to between 30 and 50 law firms before they can get a solicitor. As if those figures are not horrendous enough, we also heard about a woman in a divorce case who had been attacked by her husband and had to contact 116 firms.

Last week, Dr Marsha Scott of Scottish Women's Aid said:

"we are no closer to ... reform now than we were"

in 2017. She also said that the current model

"is not fit for purpose"

as

"It chops ... lives ... into little bits.—[*Official Report, Equalities, Human Rights and Civil Justice Committee,* 20 May 2025; c 5.]

The lives of those women, and in many cases of their children, are at stake. The situation is so bad that even the United Nations Human Rights Committee pointed out that it was

"concerned about the depletion of legal aid lawyers"

across the United Kingdom, but in particular in Scotland.

Minister, as you will probably be very much aware, it is a big first step for survivors even to contact a solicitor; we know that many survivors do not do that. We are talking about someone having to call 116 firms. I ask you to imagine a survivor picking up the phone and saying, "I need help," once, twice, three times, and then 116 times. That is not good enough. You, as the

Minister for Victims and Community Safety, and the Scottish Government cannot keep dragging your feet on this. It is so important that those women are treated with dignity and respect.

I really hope that the reform that you have mentioned takes all that into consideration, because it is happening on the ground. As you know, through my Prevention of Domestic Abuse (Scotland) Bill, I have had the opportunity to speak to many survivors, so I know that it is a big issue.

11:30

Siobhian Brown: I totally appreciate your comments, Ms Gosal. It is unacceptable. As we know, people who are fleeing domestic abuse can be some of the most vulnerable in our society. I am pleased, though, that the Regulation of Legal Services (Scotland) Bill was passed last week in Parliament, as that will remove restrictions preventing charities, law centres and citizens' advice bodies from directly employing solicitors to provide certain legal services to some of our most vulnerable, including those fleeing domestic abuse.

I watched Dr Marsha Scott's evidence, and she highlighted the issue that someone might take on a case for domestic abuse but then not take on the other issues that the person might need legal assistance with. That is where the bill that was passed last week will make things a lot easier for people who are fleeing domestic abuse.

I take your comments on board. No one disagrees that we need reform in legal aid, and all those issues will be embedded in the heart of how we move forward.

Pam Gosal: We heard from Colin Lancaster earlier that sometimes there are levers to help survivors. However, as we discussed, there is quite a worrying gap there, especially when it comes to eligibility. I said earlier—and another member touch on this, too—that solicitors and organisations are not fully aware of what legal aid has to offer.

We know that the law that is in place is very complex and could be simplified, but what work is being done to ensure that lawyers and organisations get information about that? We have come only this far in so many years; it is shocking that this big issue was not identified years ago and that we have let the situation go on when a lot of vulnerable victims could otherwise have had the help that they needed.

You heard Colin say that the system does not allow SLAB to action any of that work and that it needs more to be done; my colleague Tess White pointed out that it could do a lot more work with the Law Society. I am asking you not only about awareness but about why it took so long for the issue to be identified, and how we can move forward. I know that you are doing the reform, but it will take time. How can we move forward to help vulnerable victims now?

Siobhian Brown: The discussion paper that has just been published—we are working on the draft regulations at the moment—looks at short-term things. I know that we have eight or nine months before we go into purdah, so we are limited in what we can do, but the ball is rolling on certain things. The paper also looks at what we can do in the medium-to-long term.

I appreciate your comments that SLAB could make exceptions for some avenues for people who are fleeing domestic abuse. I listened to the previous evidence session and, as Colin Lancaster said, the law is very complex. Some lawyers might not be aware of the information, because it is not a field that they take a specific interest in—they might take up a case one day and not know about everything that is available.

This should perhaps be in place now, but as we do the legal aid reforms, which will specifically involve working with the Law Society and all the stakeholders, we must ensure that the legal profession and any solicitors who are dealing with a specific case—be it domestic abuse, a criminal case or whatever—are aware of the specific criteria according to which SLAB could make exceptions.

The Convener: There have been calls for regulation 15 of the Civil Legal Aid (Scotland) Regulations 2002 to be reformed, because, as witnesses have stated, there are instances in which it could cause a barrier to collective action. To help people to realise their rights under legislation that the Scottish Government has passed on environmental and human rights, does the Scottish Government have any plans to reform regulation 15?

Siobhian Brown: It is important to recognise that there are different standards for criminal and civil legal aid under the European convention on human rights. Article 6(3)(c) of the ECHR provides for the right to a fair trial, and where a person has insufficient means to pay for legal assistance in a criminal trial, it is to be given free of charge when justice requires it. There is no equivalent mechanism or right for civil legal aid.

The convener highlighted regulation 15. The SLAB has been engaging directly on that with the Environmental Rights Centre for Scotland since earlier this year and has provided an initial briefing on its approach. Its intention is to use engagement to establish evidence of the position from their respective perspectives in order to better understand the potential problem. That work is on-

going with the aim of delivering advice to the Scottish Government on recommended options. We will address that when we get the advice.

Paul O'Kane: Throughout our inquiry, we have been looking at the mixed model as proposed in the Government's discussion paper. We had a bit of a discussion with the previous panel on the finance and the money that is put into legal aid by the Government. Is it your view that a mixed model would save money?

Siobhian Brown: I do not think that the mixed model would be used to save money. In moving forward with the reform, there has to be flexibility and balance between both models. Obviously, we still need the judicare model, and we always will. However, if we can also move forward with grant funding—the Scottish Government's aim is to be able to give year-to-year funding—we can have that balance and flexibility. The mixed model is not to be used specifically to save money.

Paul O'Kane: Obviously, there are concerns about the amount of money in the system in general, and the risk with any model is that people fall through the cracks. Can you say something about what the Government is doing to ensure sufficiency of funding? I take the point about trying to move to a multiyear settlement, but what is the Government doing to ensure that people do not fall through the cracks in a mixed model?

Siobhian Brown: That is part of the recommendations that we will consider in the wider reform.

Susan Young: There are discussions going on at the minute at official level about people who, as you said, might fall through the cracks. We will look at that as we proceed with the reform, which gives us the opportunity to look at the unmet need, if you want to call it that.

Siobhian Brown: On the issue of funding, it is important to highlight that the legal profession feels that people are leaving the profession because of underinvestment, and although I recognise that historically there have not been regular uplifts for fees, from 2019 there has been a 25 per cent increase in funding from the Scottish Government, specifically as an uplift to the legal profession, to try to resolve some of the challenges that it has faced. That increase is above the inflationary rate.

Another reason why we need reform is that we have not seen a significant increase in solicitors. I think that £31 million has been put in since 2021, but that has not made much of a difference, so we need to look at all the different models to understand where the money is going and how we can ensure that it is delivering for vulnerable people and others who need it.

Paul O'Kane: Funding is one part of reform, but there are larger issues. There are short-term issues and issues that appear to be longer-term, which might require legislation. Do you understand the frustrations that people have with the time that this has taken and will take? I appreciate that we need to get things right, but throughout our evidence taking, the committee has heard a degree of frustration with the slow pace and with us not achieving as much as we hoped to during this session of Parliament.

Siobhian Brown: Yes, I absolutely appreciate the frustrations. I will provide bit of clarity on the background. My predecessor invited Martyn Evans to do an independent review. The Scottish Government published its response to that back in November 2018. We then went into the Covid era, so things were delayed. There has been substantial progress on things that were recommended in the Evans review, such as the legal aid remuneration project research analysis group, as part of which extensive work was carried out to agree the scope of potential research, and that work is on-going.

I saw Pat Thom from the Law Society of Scotland, who I know that Mr O'Kane has spoken to about the history of that. For example, £10 million was provided on the understanding that everyone would be on that board, and a lot of work was carried out on that remuneration project. Although we have not made progress on primary legislation, which we will do during the next parliamentary session, we need to get the funding model sorted. The board put the research project that was recommended by the Evans review out to tender twice, and unfortunately we were not able to get anybody to look into it.

Although we have uplifted funding by 25 per cent during the past five years, historically that was not done as much. In future, we need to have stability for the legal profession through an annual funding mechanism that can be reviewed. That is a core part of how we move forward with legal aid reform, because it is a bit disjointed. There are a lot of issues, and it is very complex. However, until we get that sorted, I do not see how we can progress, although I do want to move forward with the legal aid reform.

Paul O'Kane: The Law Society gave evidence on its frustrations, but it also spoke about the opportunity that it sees because of where we are now and because things are beginning to move. It was hopeful that certain proposals, which I think it described as tweaks to the system, might be implemented in the summer, before the end of the parliamentary session. Are you working towards that?

Siobhian Brown: Yes, we are. We are working on some draft SSIs. It will be after the summer, but

we are working at pace on the secondary legislation and doing what we can in the meantime, before we go into purdah next year.

Paul O'Kane: Okay. The committee will be keen to follow that up.

Marie McNair: I am going to repeat the message about multiyear funding. During the past few weeks, in connection with the funding streams, we have heard that grant funding is a huge and significant issue. There have been calls for multiyear funding, but there have also been calls for earlier funding announcements, so that recipients can plan ahead and strengthen their services. Therefore, I am happy to hear that you are looking at multiyear funding, but how else can we better address that issue?

Siobhian Brown: I absolutely understand the frustration. I appreciate it, and the issue of organisations moving away from a year-to-year funding model is brought up with me quite frequently. You will appreciate that the Scottish Government has the same issue; we do not know what we are going to get until the September or October before we have to finalise our budget. However, we recognise the financial uncertainty that that causes.

The Scottish Government is aiming to move away from short-term projects. As part of the 2025-26 programme for government, it has committed to delivering a fairer funding pilot. That will provide multiyear funding to third sector organisations that deliver front-line services and tackle child poverty. It is not for every organisation, and it is only a pilot. However, I am hopeful that if it is a success we can give other organisations multiyear funding.

Marie McNair: I welcome that commitment. We will keep putting pressure on you.

The Convener: That brings us to the end of our evidence session. Thank you so much for joining us this morning.

11:45

Meeting continued in private until 12:28.

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