

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

14th Meeting, 2025 (Session 6), Thursday, 8 May

Inquiry into financial considerations when leaving an abusive relationship

Introduction

This is the third of four stakeholder evidence sessions in this inquiry. Today's focus is on legal aid.

The Committee will hear from:

- Colin Lancaster, Chief Executive; and Cindy Morrice, Head of Civil Finance, Scottish Legal Aid Board
- Aaliya Seyal, Member, Access to Justice Committee, Law Society of Scotland
- Sophie Berry, Solicitor, Govan Law Centre

The inquiry

The Committee is holding an [inquiry into financial considerations when leaving an abusive relationship](#). The Committee's 'call for views' ran from December 2024 to February 2025 and received 58 responses. The [responses are available on the inquiry webpage](#).

The call for views asked about the extent to which financial barriers are considered in government strategies, in the advice and information available around domestic abuse and in relation to rules and practices in managing debt, social security and legal aid.

Call for Views

Key themes from the Call for Views in relation to legal aid included:

- There needs to be **training/guidance** for public sector staff (including local authorities and police) on recognising and taking into account financial and economic abuse.
- Abusers can use social security, legal aid, child maintenance, debt etc as a way of continuing abuse for years after a relationship ends by **manipulating these systems**.
- **Legal aid** is problematic –because of the complexity of financial eligibility, because it doesn't take account of assets not being available to someone to use because of financial and economic abuse and also because it can be difficult to find solicitors to take on legal aid cases.

A more [detailed summary of the Call for Views is available on the inquiry webpage](#).

Suggestions for change included:

- Reform legal aid rules to take account of the impact of domestic abuse (Financially Included)
- Legal aid to be available without financial or other eligibility criteria for cases related to domestic abuse (Counselling Service Glasgow,)
- Reassess means-testing where someone cannot access their income, including the requirement to include joint income and “trapped capital” (assets of a marriage which are not accessible to victim/survivors) in the assessment (Counselling Service Glasgow, Scottish Women's Aid, Amina)
- Scale up the [Edinburgh Women's Aid Legal Services Project](#) across Scotland (Scottish Women's Aid) - this is a project funded by the Scottish Legal Aid Board which provides quick access to legal advice on a range of child and family law issues.

The Committee also heard views from Scottish Women's Aid 'Survivor Reference Group'. [A note of this meeting is available on the inquiry website](#). The group raised issues around:

- Inconsistent and inaccurate information on legal aid eligibility
- Lack of availability of solicitors for civil legal aid– especially in rural areas
- Abusers using the legal system to perpetuate financial abuse

Previous Committee Consideration

Last week, there was some discussion of legal aid which reflected the themes in written evidence with the key points being:

- Fewer solicitors taking on legal aid cases across Scotland
- Legal services should be free for those experiencing domestic abuse, and
- Abusers can engage in vexatious litigation, to continue their abuse, draining the victim/survivors finances and continuing abuse through lengthy legal proceedings after a relationship has ended.

Jenn Glinski (Scottish Women's Aid) referred to the recommendation in the [Evans Review of legal aid](#) (2018) that: "It should be an active public policy for publicly funded legal assistance funded solicitors to be embedded within third sector organisations who have a significant civil case workload" (recommendation 28). Dr Glinski stated that: "a very good example of best practice [...] is the Edinburgh Women's Aid legal service." (SJSS Committee, 1 May 2025, 10.04 am)

Equalities, Human Rights and Civil Justice Committee Inquiry

The Equalities, Human Rights and Civil Justice Committee is currently doing an [inquiry on legal aid](#). They are considering the Scottish Government's recent discussion paper on legal aid reform and considering

"what is working and not working within the current civil legal aid system and what changes could be made in the short and longer term to address access issues."

The inquiry starts taking evidence from stakeholders on 13 May and will run for three weeks. It expects to hear from Scottish Women's Aid (among others) on 20 May.

Scottish Government Policy: legal aid reform

One of the 'deliverables' in the [Equally Safe Delivery Plan](#) (August 2024) includes consideration of legal aid:

12.3 We will engage with key stakeholders to inform and shape future legislative proposals in relation to the reform of legal aid, including representatives of the legal profession, third sector, victim support organisations and the Scottish Legal Aid Board.

The Scottish Government published a [discussion paper on legal aid reform](#) in February 2025. It put forward a positive view of the current system stating that:

“In almost all solemn criminal cases, the accused will get legal aid, and in civil cases the scope of legal aid is broader in Scotland than in very many other jurisdictions, with comparatively little excluded.

[...]

“A demand led approach means that most people across Scotland will routinely be able to access financial help to defend their rights or to resolve disputes if they need it. We know, however, that there is scope for improvement and that funding for services does not in itself guarantee their provision.”

The discussion paper proposed a three-stage approach to reform:

- changes to regulations to simplify the current system, to be delivered in 2025 to 2026 - for civil legal assistance, proposals include assessing financial eligibility using standardised personal allowances
- research on and reform of legal aid fees, to be delivered in 2025
- longer-term reform, including testing different funding models and embedding user experience in decision-making, with a view to introducing new legislation in the future.

It does not mention domestic abuse, but reforms stemming from this work could be relevant to those seeking to access legal aid when leaving an abusive partner.

Of particular relevance is the proposal to introduce personal allowances to the civil legal aid scheme. This could deal with some of the administrative complexity of the means-test, but at the expense of taking individual circumstances into account. The discussion paper states:

“In order to reflect household circumstances better whilst reducing administrative burdens, SLAB will use its discretion to introduce standard personal allowances to the financial eligibility test. This will replace the detailed assessment of individuals’ particular expenses that adds time, difficulty and uncertainty to the financial assessment process for applicants and for SLAB”

Another frequently raised issue is the availability of solicitors to do legal aid work. The Legal Aid Payment Review panel reported in 2021. This process was intended to set up an independent fee review mechanism, so that fees could be updated regularly in a pre-agreed manner. However, key stakeholders have withdrawn from the process due to lack of progress.

The legal aid discussion paper stated that:

“We will progress with work to build the evidence base needed to review fees. This work will enable us to develop a regular review mechanism. The Minister for Victims and Community Safety wrote to the Law Society of

Scotland and the Scottish Solicitors Bar Association inviting them to work with the Scottish Government to progress this issue in 2025.”

Legal Aid – current provision

Legal aid policy is set by the Scottish Government while legal aid applications and payments are administered by the Scottish Legal Aid Board (SLAB). There are a number of different forms of legal aid in Scotland, dealing with criminal or civil legal issues, or children’s hearings. The system is described in detail in the SPICe briefing [Legal aid – how it works](#) (2021).

Victim/survivors will often need to apply for legal aid for civil justice matters, such as civil protection orders, divorce and child contact issues and immigration issues. There are three types of civil legal assistance:

- Advice and Assistance – covers advice (but not representation in court) from a solicitor on any matter of Scots law
- Advice by Way of Representation (ABWOR) – an extension of Advice and Assistance which allows representation in certain forums, including some tribunals
- Civil Legal Aid – covers representation (and related support) from a solicitor in most court processes.

Legal aid is subject to financial and other eligibility tests. These are commonly referred to as “means” (financial) and “merits” (relating to the strength of the case or the circumstances of the applicant) tests. Advice and Assistance and ABWOR have a strict means test. The means test for Civil Legal Aid is significantly more generous, but complex to administer.

Even where someone meets the eligibility criteria for legal aid, they may be required to pay a contribution towards the cost of legal services. This is calculated as a percentage of their disposable income. The higher the assessed level of disposable income, the higher the contribution. People receiving certain low income benefits, including Universal Credit, can be passported through the means tests for legal aid and may not have to pay a contribution.

Where someone gains or retains assets (such a house or a pension-sharing arrangement) as a result of legal proceedings funded by legal aid, SLAB can use the value of the asset to pay for the costs of the case. This is known as “clawback”.

You can only apply for legal aid through a solicitor.

[Section 15 Legal Aid \(Scotland\) Act 1986](#) provides that Civil Legal Aid is available to those with

- disposable income not exceeding £26,239
- disposable capital not exceeding £13,017

Disposable income and capital is determined by SLAB in accordance with the [Civil Legal Aid \(Scotland\) Regulations 2002](#).

Civil protection orders and domestic abuse

A [separate SPICe note is available on the civil protection orders relevant to domestic abuse](#). Civil protection orders aim to prevent harm and distress. They prohibit a person named in the order from doing certain things. Some important types of civil protection order, such as interdicts and exclusion orders, must be obtained through the civil courts by the person at risk. Drawbacks of this include the potential for significant legal costs (unless these are wholly met out of the legal aid budget) and stress for the person at risk.

The need for legal aid to be available automatically for applications for civil protection orders, rather than being available only if means and merits tests are satisfied, has been debated by stakeholders at various points over the years. For example, most recently, see [a report by prepared for the Scottish Women's Rights Centre](#) on issues with the legal aid system, published in December 2024 which describes a 'legal aid crisis in Scotland'. For a description of earlier debates on this topic, see [the SPICe Briefing on the Bill which became the 2021 Act](#) (at p 35).

On the other hand, arguments against legal aid being automatically available in domestic-abuse-related civil cases often include concern for the potential impact on the legal aid budget in terms of extra costs – see, for example, [a 2018 Scottish Government consultation paper](#) on this topic (at para 2.19 onwards).

Witness submissions:

The submission from SLAB describes how they take account of domestic abuse:

“It is our policy to take into account the difficult practical circumstances in which women who have experienced domestic abuse find themselves in. ‘[...] for example, if someone has had to flee the matrimonial home or has had a controlling partner and cannot access evidence such as bank statements or credit card statements to enable us to carry out our financial assessment, we can proceed without these and carry out a provisional assessment.”

“We have updated the guidance on our website to include some specific advice regarding applications involving domestic abuse.”

The submission sets out that SLAB considers all debts an applicant is paying, “and make an allowance for whatever the monthly payment is towards these debts”.

SLAB fund two relevant projects:

- Edinburgh Women's Aid Legal Services project provides early intervention service providing legal advice, intervention services to women and children impacted by domestic abuse
- Scottish Women's Rights Centre Legal Project provides free legal information, advice and representation to women affected by violence and abuse across Scotland.

The submission from the Law Society states that:

“the current threat to legal aid in Scotland puts our most vulnerable citizens at greater risk.”

They highlight:

- Lack of solicitors taking on legal aid work
- Barriers created due to difficulties gathering required evidence on finances and survivor/victims may appear to be in a stronger financial position than they are in reality.

They recommend: “extending automatic legal aid to civil cases relating to domestic abuse, as well as considering the process of means testing to account for those under financial control by their abuser.”

The submission from Govan Law Centre discussed a wide range of issues relevant to this inquiry. On legal aid they highlighted:

- Problems with the means test taking into account assets that the victim/survivor may not have access to
- The eligibility thresholds for legal aid should be reformed, to ensure civil protective orders are affordable and accessible.

Themes for discussion:

Theme 1: Eligibility for Civil Legal Aid

As mentioned above, when calculating eligibility for civil legal aid, disposable income and capital is determined by SLAB in accordance with the [Civil Legal Aid \(Scotland\) Regulations 2002](#).

These regulations provide discretion to disregard income or capital as is 'reasonable'. In practice, the disposable income calculation takes account of a range of necessary expenditure, including housing, childcare and travel costs.

In March 2025, SLAB updated their [guidance for solicitors dealing with clients in domestic abuse situations](#), stating that:

“we can use our discretion to either disregard income or capital where we consider it reasonable to do so in the circumstances or provisionally assess financial eligibility based on the information available.”

In the Call for Views both the Law Society and Counselling Services Glasgow recommended automatic legal aid for cases relating to domestic abuse.

Counselling Services Glasgow stated that means testing Legal Aid: “may not adequately consider the complex financial situations of women experiencing economic abuse, where they might appear to have access to assets or income but are actually financially controlled by their abusers.”

Similarly, Govan Law Centre say that victim/survivors of economic abuse do not have control of their assets/income.

Govan Law Centre referred to regulation 11 of the Civil Legal Aid (Scotland) Regulations which requires that when assessing the contribution that a person might be required to pay towards the cost of the case then the resources of the couple must be aggregated. SLAB notes that it is legally required to comply with these regulations. However, it is possible for the resources of a partner to be ignored where the relationship has ended and the couple are living separately.

Scottish Government Reform proposals

As mentioned above, the current discussion paper on legal aid proposes replacing the current scheme. This states that:

“SLAB will use its discretion to introduce standard personal allowances to the financial eligibility test.”

England and Wales The legal aid system in England and Wales is different – with different and sometimes significantly less generous thresholds for income and capital. The issues for which civil legal assistance is available are also significantly restricted in comparison to Scotland.

However, proposals for change to that system may be of interest in Scotland. The UK Government [consulted on changes to the Legal Aid means test in 2022](#). In its [response to the consultation](#) (2023), the then UK Government stated:

“Our changes will help ease the burden on domestic abuse victims, who often find legal proceedings both traumatic and costly. Victims will now benefit from a more generous means test when applying for a protective order or other

proceedings, and because domestic abuse often involves financial control, disputed assets, or assets in the control of an abusive partner will no longer be taken into account in the test.”

Members may wish to discuss:

- 1. What barriers do victims/survivors of domestic abuse face in meeting the eligibility criteria for legal aid? And are there any changes to the current rules which could help mitigate these?**
- 2. SLAB has discretion in terms of how it calculates disposable income and capital for Civil Legal Aid. To what extent is this applied in cases involving domestic and economic abuse?**
- 3. IF NOT COVERED ABOVE: A clear issue for respondents to the call for views was the requirement that the assets of a couple must be aggregated when assessing eligibility for legal aid. How does this affect victims/survivors of domestic abuse and is reform needed?**
- 4. In what ways might the proposal to introduce standardised personal allowances affect access to legal aid for those with no or limited access to their assets due to financial or economic abuse?**
- 5. What are witnesses views of the UK Government’s proposal to ignore disputed assets and assets an applicant doesn’t have access to in the means test for civil legal aid in England and Wales? Should this be introduced in Scotland?**
- 6. In their written submission the Law Society recommend “extending automatic legal aid to civil cases relating to domestic abuse.” What are the advantages and disadvantages of doing this – both for the victim/survivor and the cost of the legal aid system?**

Theme 2: Availability of solicitors

In the Call for Views, Edinburgh Women’s Aid said that:

“The most significant issue with domestic abuse survivors seeking access to legal aid is that there appear to be too few solicitors who provide legal services.”

They consider that:

“As we understand it, the reasons underlying why firms do not provide these services funded via legal aid relate to how much and whether firms are paid for the work they do. If left unresolved survivors of domestic abuse will remain disenfranchised particularly in terms of their legal right to property and financial claims at the end of relationships with abusers; exacerbating the economic inequality women already face in society.”

The submission from SLAB notes that:

“SLAB has no power to compel solicitors to take cases and it is for individual solicitors or firms to decide whether to take on a case. There can be several reasons for firms declining to take on legal aid cases, including a firm’s capacity to take on a case requiring urgent orders or protracted negotiations because of high levels of conflict, as well as firms making choices about whether to legal aid funded work at any given time or client. We are working with the Scottish Government on a reform programme for legal aid, which we hope will improve access to services funded through legal aid.”

The Scottish Government established a [Legal Aid Payment Review panel](#) which met for the first time in 2019 and reported in 2021. The Scottish Government’s recent discussion paper on legal aid stated that: “we will resume work to conduct research on, and implement reform of, legal aid fees.”

Members may wish to discuss:

- 7. Are there issues in the availability of solicitors that are particular to cases relating to domestic abuse or is this an example of a more general problem that applies to all those seeking legal aid?**
- 8. Are witnesses confident that Scottish Government policy on reforming legal aid fees is proceeding at the necessary pace and will result in improved availability of legal aid solicitors in cases of domestic abuse?**
- 9. Edinburgh Women’s Aid hosts a project funded by a SLAB grant which provides quick access to specialist legal advice on family-law related issues. Is this a model for dealing with gaps in legal aid provision and could it be scaled up to cover Scotland?**
- 10. The Scottish Government has made a commitment to longer-term reform of the legal aid system. What changes would witnesses like to see to address the access issues faced by victim/survivors of domestic abuse?**

Theme 3: Effectiveness of civil protection orders.

As noted above, there are various civil protection orders which can be applied for, and further orders are created (although not yet in force) in Part 1 of the Domestic Abuse (Protection) (Scotland) Act 2021.

The costs of applying through the courts for current civil protection orders often must be met by the victim/survivor, either via a Civil Legal Aid application or from their own income. The submission from Govan Law Centre states:

“Protective orders exist to safeguard victims of abuse. Reform in this area is required to ensure these protections are affordable and accessible.”

The Scottish Human Rights Commission prepared a report on the implementation of the Istanbul Convention stating that:

“many women in need of a protective order cannot raise a court action if they do not qualify for legal aid or are unable to pay contributions to costs.”

[...]

“The protection order landscape is complicated and expensive, and legal aid is not readily accessible. New purpose-built protection orders have not yet been implemented and Scottish Government has not provided a timescale.”

The Equalities and Human Rights Committee has been monitoring the implementation of the Domestic Abuse (Protection) (Scotland) Act [2021 taking evidence on 10 December 2024](#). Part 2, on housing and rent arrears is due to come into force in December 2025. Part 1, which includes new civil protection orders, does not yet have a timetable. Jamie Hepburn, Minister for Parliamentary Business told the Committee that:

“We continue to engage with justice partners and other stakeholders, including Scottish Women’s Aid, which officials met recently, to talk through the operational challenges that have emerged as a consequence of the legislation’s provisions for the protection orders scheme. Some of the challenges that have been identified include clarity on the estimated number of cases and, in turn, the costs of implementing the scheme and the short timescales required to process and implement a DAPN and a DAPO, which have been identified by justice partners as extremely challenging.” [Equalities, Human Right and Civil Justice Committee Official Report, 10 December 2024, col 2.](#)

A key policy innovation of Part 1 is that the police can impose a DAPN (Domestic Abuse Protection Notice) and initiate the court application for a DAPO (Domestic Abuse Protection Order), so the victim does not have to do it. However, [Police Scotland are arguing there are significant operational difficulties for them here. For example, in a letter to the Equalities Committee](#), dated 3 December 2024, Police Scotland commented:

“The aforementioned timescales and anticipated volume of cases will create significant pressures and resource demands for Police Scotland staff, officers and solicitors. Police Scotland’s current in-house legal resources would be unable to meet the estimated demand and would therefore necessitate the hiring of a number of additional solicitors and administrative staff to deal with a proportion of the DAPO applications in-house. The remainder of the applications would have to be outsourced to external solicitors, at cost [to Police Scotland].”

In a [letter to the Equalities and Human Rights Committee in March 2025](#), Angela Constance, Cabinet Secretary for Justice and Home Affairs said that a workshop planned for late March involving members of the Implementation Advisory Board which would provide advice on potential next steps.

Members may wish to discuss:

11. When a victim has to apply for a civil protection order, drawbacks include the potential costs for the victim of doing so and the limitations of the legal aid system in alleviating those costs. Does Part 1 of the Domestic Abuse (Protection) (Scotland) Act 2021, with its key role for the police in enforcement, represent a viable alternative approach (which could be developed further) or are there separate policy challenges associated with Part 1 that the Committee should consider?

Theme 4: Using the legal system to perpetuate abuse.

The UK organisation Surviving Economic Abuse summarise on their website how “the family court is an arena where economic abuse can be facilitated and perpetuated” through:

- **Lack of access to legal aid:** This can leave victim-survivors struggling to represent themselves during legal proceedings as litigants in person. Many others get into large amounts of debt to fund legal costs.
- **Drawn out legal proceedings:** Perpetrators often bring repeated and unnecessary applications as a means of exerting (further) control and depleting victim-survivors’ resources.
- **Unfair financial settlements:** Perpetrators often fail to disclose assets in proceedings so that victim-survivors are left with financial settlements that unfairly disadvantage them.

Although this is referring specifically to the English system of family courts, the comments from the survivor reference group suggest similar issues in Scotland. Members of Scottish Women’s Aid’s Survivor Reference Group told that Committee that perpetrators can start civil and legal proceedings as a form of financial abuse. One woman reported having malicious claims made against her in order to drain her finances. Because money was not an issue for the ex-partner, these claims were only financially damaging for the victim/survivor.

“If you’re the one with the money, you’re the one with the power”.

A [report for the Scottish Women’s Rights Centre \(2024\)](#) highlighted how the complexity and length of cases can enable further economic abuse:

“Where a victim/survivor is unable to secure a solicitor under legal aid they will either be required to consider privately funding their legal representation (often through borrowing money or taking loans which they cannot afford) or to self-represent.

Due to the complexity and length of these cases, legal fees are extremely high and can cause significant financial hardship for survivors. Private legal fees can be anywhere from £250-£350 per hour and with court actions lasting months survivors can be faced with bills mounting to £10,000+.

“Perpetrators often use this as a way of perpetrating continued economic abuse (for e.g. in child contact and divorce cases where the perpetrator drags out proceedings as a means of continued coercive control and economic abuse).”

Members may wish to discuss

- 12. What safeguards are needed to ensure that the legal system is not used by ex-partners to perpetuate abuse?**

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01 May 2025**