

**Equalities, Human Rights and Civil Justice Committee**  
**Tuesday 13 May 2025**  
**12th Meeting, 2025 (Session 6)**

## **Civil Legal Aid Inquiry**

### **Overview**

1. Access to justice has been a key theme of the Committee's work during the course of this session. In particular, the Committee has taken an interest in the provision of legal aid and the increasing challenges faced by some in finding a lawyer to take on a case. The numbers of solicitors in Scotland offering to undertake legal aid work has fallen in recent months.
2. At its meeting on 4 February 2025 the Committee agreed to undertake an inquiry into legal aid reform.
3. Further to that, the [Minister for Victims and Community Safety wrote to the Committee on 27 February 2025](#) announcing the publication of a [Legal Aid Reform Discussion Paper](#).
4. At its meeting on 11 March the Committee agreed to focus its inquiry on:
  - what is working and not working within the current civil legal aid system; and
  - what changes could be made in the shorter and longer term to address issues about access to civil legal aid.
5. It launched a [call for views](#) which close on 17 April 2025. [The responses](#) have all been published. A summary of the responses can be found at the Annexe to this paper.
6. This is the first of three evidence sessions in the inquiry.
7. At today's meeting, the Committee will evidence from the following witnesses:

#### **Panel 1 – professional bodies**

- Pat Thom, Convener, Civil Legal Aid Committee, Law Society of Scotland
- Aaliya Seyal, Chief Executive, Legal Services Agency Ltd (representing the Scottish Association of Law Centres)

#### **Panel 2 – grant-funded bodies**

- Sally Mair, Principal Solicitor, Shelter Scotland;
  - Hyo Eun Shin, Senior Policy Officer, Citizens Advice Scotland;
  - Andy Sirel, Partner and Legal Director, JustRight Scotland.
8. The Committee will hear from witnesses who provide legal aid services or have a focus on human rights at its meeting the following week. It will hear from the

Scottish Legal Aid Board (SLAB) and the Scottish Government at the meeting after that.

## **Committee consideration**

9. The Committee is asked to note the information provided above.

**Clerks to the Committee**  
**May 2025**

## Annexe - Summary of Evidence

### Purpose

The purpose of this paper is to provide a summary of the views expressed in responses to the Committee's call for views on legal aid. [The call for views and individual responses are available on the Scottish Parliament's website.](#)

### Overview

The Committee received 39 responses to the call for views (with one additional response still being processed). These came primarily from third sector organisations dealing with people who may need to access advice on civil justice issues. Some respondents were solicitors providing services via third sector organisations. Professional bodies were also represented, as were individual legal professionals (although in small numbers).

Key issues for respondents to the call for views were:

- **the inter-related issue of low fees and “advice desserts”** (geographical or subject areas where it was very difficult to access legal aid-funded legal advice) – many considered that low fee rates for solicitors caused them to not offer legal aid, creating gaps in provision. However, SLAB did not think fee increases would address many of the structural issues with legal aid provision.
- **administrative burdens created by legal aid processes** – respondents were possibly more concerned with administrative burdens than fee rates. They described cumbersome processes to get expenditure agreed and to audit accounts – resulting in work which was necessary to support a client not being paid for. There were many suggestions to improve these processes.
- **restrictive eligibility criteria** – with calls for financial eligibility requirements to be removed for some types of work (such as civil protection orders) and financial thresholds to be increased.
- **calls to make legal aid available for public interest litigation** taken forward by campaign groups rather than individuals, and for group litigation.
- **support for grant funding to provide holistic services which can plug gaps in demand** – but not under the current arrangements for funding, which were seen as problematic.
- **support for reform** which simplified procedures, had a mixed model of delivery and embedded the experiences of clients in the planning process, in line with the recommendations of the Evans Review.

Wider priorities for reform included embedding human rights (including effective remedies) into the reform process, looking at dispute resolution more generally, looking at options for early intervention and prevention and providing more support to individuals to understand and navigate legal disputes.

## Technical terms

This briefing uses the following terminology:

- **Abatement** – when SLAB decides work was not reasonably required to progress a case and therefore does not pay for it.
- **Block fees** – standard fees for a specific stage of work (eg. until the end of the first court hearing). Block fees are easier to administer but may not take account of the work required in complex cases. The alternative to block fees is “time and line” fees – requiring a detailed account of all work undertaken for a client.
- **Civil Legal Assistance Offices** – services provided by solicitors employed by SLAB which target particular geographical areas and particular types of case.
- **Civil protection orders** – orders for the protection of victims of domestic abuse (such as preventing the abuser entering the family home) which must be sought through the civil courts.
- **Clawback** – the process by which SLAB can recover some of the costs of providing legal aid-funded legal advice from assets (such as a house or compensation) gained or retained as a result of legal action.
- **Evans Review** – an independent, strategic review of legal aid commissioned by the Scottish Government, which reported in 2018.
- **Judicare** – the term for case-by-case legal aid funding provided to solicitors in private practice.
- **Means tests** – tests looking at the financial position of a legal aid applicant.
- **Merits tests** – tests looking at the strength or circumstances of the case.
- **Outlays** – expenses paid by solicitors to third parties – such as fees to expert witnesses, advocates or child welfare reporters. Solicitors are responsible for paying these expenses but can claim the money back from the legal aid fund.
- **Pro bono** – work carried out by lawyers for free.
- **Publicly funded legal assistance** – the term used in the Evans Review to describe all publicly funded advice services, including services such as those provided by local authorities and CABx as well as solicitors.
- **Scope** – the term used to describe the issues covered by a legal aid scheme. Scotland’s legal aid scheme has a wide scope – covering most forms of court action.
- **Uplifts** – the process getting SLAB to sanction expenditure above set limits for different types of advice.

## Analysis

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

### Summary

The main barriers identified by respondents were the inter-related issues of **low fees for solicitors** (leading to them not undertaking legal aid work) and “**advice desserts**”, on the basis of geographical area or legal specialism, where it was very difficult to access solicitors offering legal aid.

A range of other barriers were identified, including:

- **lack of knowledge about the legal system** which made it difficult for individuals to identify how to solve legal issues they were dealing with, or to access legal advice if they needed to
- **eligibility tests, particularly financial eligibility tests**, that were difficult to meet
- **issues with workload or work-life balance** which made solicitors offering legal aid feel overwhelmed and made it less likely solicitors would enter or remain in the legal aid sector
- **issues with bureaucracy** within the civil legal assistance system which resulted in solicitors carrying high administrative costs for doing legal aid and not being paid for work they considered necessary to a case
- **issues with the scope of civil legal assistance** – for example that only individuals qualify for legal aid, so it is difficult to fund actions for collective rights breaches (eg. in relation to human rights or the environment) and that civil legal assistance is not available for monetary claims with a value of up to £3,000.

Some respondents highlighted issues for particular groups, including asylum seekers, women experiencing domestic abuse and women from black, minority ethnic backgrounds.

## Fee rates

In the view of the Law Society of Scotland:

“The main barrier for accessing civil legal assistance is the extremely low availability, and increasing shortage, of legal aid practitioners as this work becomes less commercially viable.”

A number of other respondents highlighted the view that providing civil legal assistance was no longer commercially viable for solicitors. There were various aspects to this, including that some work was not paid for at all, and that block fees may not be sufficient to cover the work required for a case, especially if it was complex.

Several respondents gave specific examples. An individual respondent (a retired solicitor) noted that their firm had stopped doing legal aid work in the 1990s. This was because an audit of legal aid versus private client cases had shown that, even back then, legal aid work paid only 28% of the income generated for the same work in private client cases.

Ms McPhail (an academic who has previously worked as a housing solicitor) gave this example:

“In my experience, where a solicitor has been instructed in an urgent homeless case where Judicial Review proceedings for breach of statutory homeless duties are anticipated, the average fee paid by the Scottish Legal Aid Board is in the region of £100 per file. On many occasions I have seen accounts paid at less than that. This is despite that solicitor taking a trauma informed approach and spending the time necessary to make the client feel as comfortable as possible, whilst often having to factor in safeguarding concerns. The time spent assessing their eligibility for Advice and Assistance

and thereafter processing the application online, and following up with financial verification checks if and when the client is able to provide proof of income and capital is non-chargeable. The time spent writing up the notes of attendance again are non-chargeable. Repeat calls or emails to obtain an update from the client are abated on the basis that the onus is on the client to engage. A terms of business letter in which our legal advice is confirmed is also abated on the basis that confirmatory correspondence is non-chargeable.”

Several other respondents also highlighted that the current fee structure hinders solicitors from taking a trauma-informed approach to their work with clients.

The Scottish Legal Aid Board (SLAB) emphasised in its response that there had been a number of increases to fees since the 2000s. These were complex and difficult to track but, since 2019, had amounted to a 25% uplift (not taking into account the impact of inflation).

SLAB also expressed its view that the complex issues with current legal aid delivery were unlikely to be addressed by fee increases alone. It stated:

“In the context of increasingly difficult decisions being taken by the Scottish Government in relation to public spending, relying on increased fee levels to address wider and often indirectly-related challenges is unlikely to be cost-effective or sustainable long term.”

## **Lack of provision in geographical and specialist areas of law**

This issue is often referred to as “advice deserts”, which can be geographical or related to advice on particular subjects. The Law Society of Scotland noted:

“We are contacted on a daily basis by members of the public who have exhausted lists of firms and have been unable to find a legal aid solicitor to represent them. Similarly, we hear from third sector advice organisations that have seen massive increases in people contacting them who have been unable to find a legal aid solicitor, as well as those who do not meet the legal aid financial threshold but are also unable to afford a solicitor.”

Citizens Advice Scotland noted it had provided nearly 2,700 pieces of advice on legal aid in 2023/24, and 51% of these related to accessing or finding a lawyer.

The Human Rights Consortium Scotland were among those highlighting advice deserts in rural and remote areas, such as Orkney, Aberdeen and Aberdeenshire and the Western Isles. They also flagged a lack of access in for subjects such as domestic abuse, discrimination and human rights. The Law Society additionally noted problems accessing advice on homelessness issues, immigration and asylum and medical negligence. Social security issues, employment rights and family law more generally were highlighted by other respondents.

Some respondents commented on the impact of struggling to access legal advice. Citizens Advice Scotland had seen examples of people travelling over 150 miles to access a solicitor. Shared Parenting Scotland noted that its 2024 survey question on legal aid highlighted that 20% of those eligible for legal aid had been forced to represent themselves as party litigants. In 2022, this was 2%.

In terms of parties having to represent themselves, the Scottish Association of Law Centres stated:

“This can result in poorer outcomes, increased pressure on the judicial system, and longer case resolution times.”

Ultimately, the impact of advice deserts is that people can't exercise their legal rights. Professor Wilding (who has carried out several pieces of research looking at access to legal aid-funded legal advice) notes reports from solicitors dealing with housing law that they regularly have to close to new referrals to manage demand. An individual respondent (who works as a medical negligence solicitor) noted that the initial investigations necessary to establish whether there is a basis for a medical negligence claim is likely to be prohibitively expensive for many without Advice and Assistance.

### **Lack of knowledge**

Citizens Advice Scotland highlighted that accessing legal advice is an unusual situation for most people. Having to do so can increase stress and increase the risk of a consumer being vulnerable.

Consumer Scotland noted research that found that 37% of adults in Scotland are not confident they can achieve good results in common legal situations. They also flagged that focus groups convened as part of the Evans Review showed that most people did not think they would qualify for legal aid (despite relatively generous eligibility criteria for Civil Legal Aid).

### **Eligibility tests**

There are several eligibility tests for civil legal assistance. These vary depending on the specific type of legal aid (and sometimes the forum in which the client will be represented). The financial eligibility test (“means test”) for Advice and Assistance is significantly more strict than the financial eligibility test for Civil Legal Aid.

A number of respondents commented that they regularly dealt with people who did not meet the financial eligibility test for Advice and Assistance but would be quite unable to pay privately for legal advice. The Scottish Association of Law Centres highlighted that someone working more than 21 hours at minimum wage would be entirely excluded from qualifying for Advice and Assistance.

The Children and Young Person's Commissioner was among those highlighting that children are assessed for financial eligibility on the basis of the income of anyone with a legal obligation to maintain them. This can preclude them from seeking advice for issues they don't want to discuss with their parents. It can involve assessment of income from a parent they have a hostile relationship with.

Citizens Advice Scotland highlighted that people can qualify financially for civil legal assistance but be required to make a contribution towards their legal costs from their own income. Grampian Regional Equality Council noted that this requirement can place additional strain on people who are in financially vulnerable situations, deterring them from exercising their rights.

In relation to the cost of legal advice on family law issues, Shared Parenting Scotland reported:

“Our recent ‘user survey’ revealed 13% of cases that had cost the client paying privately over £100,000 in lawyer’s fees, court costs and professional reports such as Child Welfare Reports or Child Psychology reports. A further 24% had spent more than £25,000. 54% had spent more than £10,000.”

The Legal Services Agency was among those respondents commenting on the administrative burden of dealing with financial eligibility, in particular, for Civil Legal Aid. It notes that many clients find the process overwhelming and may disengage entirely. It often arranges one to one support sessions to help people with the application.

Eligibility criteria can also include requirements relating to the strength of the case or the circumstances of the client (called “merits tests”). The Scottish Women’s Rights Centre noted that there are also barriers in relation to the application of merits tests for women seeking civil protection orders (such as orders banning an ex-partner from their home) due to domestic abuse.

## **Work-life balance issues**

Several respondents highlighted issues with recruitment and retention of solicitors as barriers to accessing civil legal assistance. Broadly, legal aid work was seen as requiring large caseloads to be profitable, impacting on work-life balance and the quality of advice and support provided.

This was seen as putting off young solicitors from following a career in civil legal assistance work. It was also seen as making it difficult to retain solicitors in jobs with significant civil legal assistance caseloads. Respondents highlighted that jobs with better pay and terms and conditions were available in the public sector side of legal aid, including in SLAB’s Civil Legal Advice Offices and Public Defence Solicitors’ Office (for criminal legal assistance).

These disincentives to working in legal aid were also seen as putting an unmanageable strain on the remaining services, increasing work-life balance issues. The Scottish Association of Law Centres stated:

“The pressure on the few solicitors who do offer civil legal assistance is intense. Rising caseloads, inadequate remuneration, and financial insecurity contribute to high levels of stress and burnout disproportionately affecting those working within legal aid practices.”

SLAB highlighted concerns around work-life balance in its response, but noted that these may be due to changes in the legal services market more broadly – or work practices generally (eg. moving between different employers during a career rather than staying with one). It highlighted a range of initiatives it was undertaking (as the biggest employer of legal aid solicitors in Scotland) to improve legal aid career options and build a “talent pipeline”.



## **Legal aid bureaucracy**

A number of respondents highlighted the high burden of administration that came with a legal aid caseload. This issue overlapped with concerns around low fee rates. The administration work required to detail time spent on cases and supply this information to SLAB is not directly covered by legal aid fee rates (although the cost of employing administrative support could be argued to be indirectly intended to be covered).

The key concerns were around the time it took to collect and supply information to SLAB's satisfaction, and the risk of work being abated by SLAB so that solicitors would not be paid for it. An individual respondent (who is a medical negligence solicitor) noted that firms often ended up carrying outlays (such as expert witness fees) until the end of the case; and that some expert witnesses won't do legal aid cases because of delays in settling fees.

These administrative issues, along with suggested solutions, are discussed in more detail at question 2.

## **Scope of legal aid**

The term scope is used to describe the issues for which it is possible to get civil legal assistance. The scope of the system in Scotland is widely acknowledged to be broad, meaning that legal aid is available for almost everything. However, there are some notable exclusions.

A number of respondents highlighted that civil legal assistance is only available to individuals (although that can include individuals acting in a representative capacity). This means that groups – including campaign groups or people involved in group litigation (where a number of people with similar legal problems work together on court action) – can't get legal aid as a body. It also prevents third sector organisations getting legal aid funding to raise public interest litigation (where one case is taken forward to challenge a particular problem).

It was noted that structural injustice (such as discrimination or human rights breaches) is often experienced by lots of people. Current rules prevented these types of breaches being taken forward via collective action. Professor Boyle described this as the "individualisation of collective injustice".

The key barrier was seen as Regulation 15 of the Civil Legal Aid (Scotland) Regulations 2000. This applies where several people have a "joint interest" in legal action. In these circumstances, SLAB cannot grant Civil Legal Aid where the applicant is not "seriously prejudiced" (ie. their rights are significantly impacted) by the situation or another person with the same interest could be expected to take the matter forward.

Clan Childlaw noted that individual legal action may not be in the best interests of a child. It may retraumatise them and impact on their other rights to education, home and leisure time. It has identified breaches of the UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 which it could challenge. However, in order to access legal aid funding, this would have to be done via litigation involving an individual child. It questioned whether this was a breach of the Convention.

The Environmental Law Centre Scotland noted that the application of this regulation was a serious barrier to environmental legal action. Those issues were often “diffuse” (so that many individuals are affected in a general way rather than experiencing significant breaches of their private rights) – but nevertheless vital to uphold environmental law requirements.

The Environmental Law Centre Scotland highlighted the requirement in the Aarhus Convention (covering public participation in environmental decision-making) that access to justice on environmental issues was not “prohibitively expensive”. In its view:

“Scotland has a poor Aarhus compliance record because environmental litigation in Scotland is prohibitively expensive.”

Other issues with the scope of civil legal assistance included that it was not available for claims up to the value of £3,000, as well as a number of tribunal forums.

## **Barriers to accessing civil legal assistance for particular groups**

Respondents working with particular groups of people highlighted specific barriers that they faced in accessing legal aid. These included:

### **Asylum seekers**

It was noted that asylum seekers were now dispersed by the Home Office across Scotland. However, almost all legal aid legal advice relating to immigration and asylum issues was provided by law firms in Glasgow. Asylum seekers may have language barriers, a very poor understanding of their rights in Scotland and no ability (due to Home Office restrictions and very limited income<sup>1</sup>) to travel to access advice.

In practice, asylum seekers outside the central belt had to access legal advice remotely. However, respondents noted that they lacked the equipment, connectivity and sometimes digital literacy to do this. Those based in hotel accommodation may also lack private spaces to discuss personal issues. Together, these factors may mean that asylum seekers were unable to access appropriate advice or were unable to build up trusting relationships with their solicitor to enable them to disclose traumatic events.

### **Victim-survivors of gender-based abuse**

Scottish Women’s Aid noted particular barriers for women accessing legal advice in rural and remote areas. It noted that local firms were often small and lacked capacity. Victim-survivors of abuse also faced the challenge of local solicitors representing the abuser, leaving them to find a solicitor in another part of the country. Other respondents noted that there could be a reluctance to take on urgent or complex cases due to low fee rates.

Scottish Women’s Aid also highlighted the risk of the legal system being used to perpetrate post-separation economic abuse. It said:

“Abusive (ex)partners will purposely delay legal proceedings, refuse to settle, and maliciously litigate against their ex-partner for the sole purpose of

exerting continued power and control over the victim-survivor and their children.”

Where victim-survivors could not find solicitors, or did not qualify for civil legal assistance, they could be required to pay privately or to represent themselves as a party litigant. The Scottish Women’s Rights Centre noted that this could be retraumatising, overwhelming and increase the economic hardship faced by victim-survivors. It could also result in poor legal outcomes in relation to really important issues.

The Scottish Women’s Rights Centre also highlighted the issue of access to civil protection orders. In most cases, the burden of accessing legal protection (eg. court orders preventing an abuser entering their home) falls on victim-survivors. They must access civil legal assistance or pay privately to do this. The Scottish Women’s Rights Centre stated:

“It is our opinion that protective orders are being drastically underused, and the removal of legal aid barriers would substantially improve the justice outcomes for women.”

### **Women from black, minority ethnic backgrounds**

Amina highlighted that women from black, minority ethnic (BME) backgrounds faced intersectional barriers. In particular, their immigration status (including “No Recourse to Public Funds”) could mean that their case is considered too complex to take on. There may also be a failure to understand the cultural context or offer competent translation services.

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

### **Summary**

There were a wide range of suggestions for short-term improvements to the current system. These were mainly focussed around increasing fees (including specific types of fee); addressing bureaucracy and increasing eligibility.

Suggestions included:

- **improving the process for requesting uplifts**, in particular reflecting realistic case expenditure
- **improving the abatement process** so that work required to progress a case in a professional and trauma-informed manner was not discounted by SLAB
- **removing the “double audit”** created by assessing the same expenditure via the uplift and abatement processes
- **simplifying the application process** to reduce time and cost for clients, solicitors and SLAB
- **removing financial eligibility criteria** for certain important areas of work, such as civil protection orders

- **increasing financial eligibility thresholds** for civil legal assistance (with a priority for the capital limit for Advice and Assistance)
- **removing or rewording Regulation 15** of the Civil Legal Aid (Scotland) Regulations 2000, which created a barrier for public interest or group litigation
- **using grant funding or SLAB-employed solicitors to plug existing advice gaps**, such as face to face advice for asylum seekers.

## Increase fee rates

There were a range of calls to increase legal aid fees. Many respondents saw this as key to increasing the number of solicitors prepared to offer legal aid-funded services and therefore improving access to legal advice.

There were specific proposals for particular types of fee:

- the Scottish Women's Rights Centre called for **block fee increases for work on civil protection orders and cases involving gender-based abuse**. This would incentivise solicitors to take these cases, which could be urgent and complex, as well enabling them to take a trauma-informed approach. The response from SLAB indicated that the Scottish Government would be taking the proposal to increase the block fee for civil protection orders forward.
- the Scottish Association of Law Centres called for **fee rates which allowed solicitors in private practice to have salaries and working conditions that were comparable to solicitors working for SLAB**. Professor Wilding referred to this fee level as creating a "retention salary" (one which was competitive with other job opportunities in the sector).
- JustRight Scotland flagged that **expenditure limits for different types of Advice and Assistance have not been reviewed**. There are set expenditure limits and agreement from SLAB must be sought before exceeding these. For immigration advice, it noted that an initial two hour meeting with the client including an interpreter costs more than the limit, so they have to apply for an uplift as soon as they take a client on.

The Faculty of Advocates commented generally on a mismatch between the civil legal assistance fee structure and modern legal practice:

"There is a disconnect between modern litigation, which is front-loaded to encourage advance preparation and settlement, and the unreformed civil legal aid remuneration structure that is geared towards appearance in court. A remuneration structure that placed greater weight on preparation and resolution would provide a much better fit for the modern dispute resolution environment. This would assist earlier resolution and provide better value for the public purse. It would reward efficiency and economy."

SLAB noted that work on an agreed mechanism to review fees (as noted in the Scottish Government's discussion paper) was a priority. It expected "an agreed plan for a legal aid fee review by summer 2025". However, its view was that this would not solve access problems. It said:

"...it has to be recognised that across the board fee increases are not an effective lever for assuring security of access to publicly funded legal services, either in general or in particular places, or areas of law."

It also noted that fee increases did not address other problems identified by legal stakeholders:

“But we are equally clear that increases in legal aid fees alone will do little to address the other deeprooted and widespread issues around recruitment and retention, equality and diversity, and work-life balance raised by stakeholders. These are issues which are felt across the legal profession, not only the legal aid sector.”

## **Addressing bureaucracy**

There were a wide range of suggestions for improvements to the processes used by SLAB to administer legal aid. Simplification was seen as benefiting solicitors, their clients and SLAB by reducing the time and costs relating to dealing with legal aid processes.

JustRight Scotland was among those respondents commenting on a lack of trust between SLAB and solicitors which undermined their overall relationship. It said:

“We would reiterate that an underlying principle requires to be **trust** in solicitors as regulated officers of the court. Increases are time consuming, paternalistic, prejudicial to the conduct of legal work, and add significant bureaucracy and cost to legal practices as well as SLAB itself.”

The Scottish Association of Law Centres highlighted that submitting accounts which meet SLAB’s requirements take hours of unpaid time from solicitors, or require employing administration staff. JustRight also commented on the heavy burden on solicitors to get it right:

“In most systems we allow for human error to some extent. In this system you either get it right all the time, regardless of the pressures you’re under, or you/your firm or law centre will personally have to pay for the outlay “

## **Paying on time**

There were concerns about the time it took SLAB to make payments to solicitors, and calls for legally enforceable deadlines. The need to carry expenditure until SLAB settled an account was highlighted putting off new entrants to legal aid.

There were particular concerns around the payment of outlays to third parties. The Law Society of Scotland called for SLAB to deal directly with third parties such as child welfare reporters to cut down on the verification work required by them from solicitors. This was recommended in the Evans Review.

## **Improving the uplift process**

Advice and Assistance is divided into various categories. There are set levels of expenditure for each category. Any expenditure above this limit requires advance approval from SLAB. Respondents called for the levels to be updated to realistically reflect basic expenditure on a case. They also called for the roll out of more online templates (with realistic expenditure covered) to simplify this process for solicitors.

The Scottish Women's Rights Centre noted that they could deal with a dedicated contact for uplifts in relation to their grant-funded work. This significantly improved the process.

### **Improving the abatement process**

When final accounts are submitted, SLAB audits them and disallows expenditure which it does not consider necessary to progress a case. Expenditure which is routinely disallowed includes:

- time for legal research
- letters to clients confirming the terms of engagement with the solicitor (which are a professional requirement set by the Law Society of Scotland)
- follow up meetings or phone calls to chase up information (because this does not progress the case).

In the view of the Scottish Association of Law Centres, "fee abatement practices . . . penalise diligence." The Law Society called for streamlining and consistency.

### **Removing the "double audit"**

The Scottish Association of Law Centres was among those highlighting that work could be agreed in advance by SLAB as part of the uplift process and was then scrutinised again when the final account was submitted. Payment could be refused even when previous authorisation for the work had been given. It argued that one rather than two detailed checks on expenditure would be appropriate.

### **Clarity on "special urgency"**

The special urgency process allows solicitors to deal with specific urgent work (such as meeting legal deadlines to raise court action) under Civil Legal Aid without an application having been processed by SLAB. However, several respondents suggested it was unclear which action had to be approved in advance by SLAB and which did not, putting solicitors off from doing this work.

### **Simplifying the application process**

The requirement for significant evidence to support expenditure was seen as creating a large administrative burden for clients, solicitors and SLAB. Citizens Advice Scotland called for a trauma-informed process.

The Scottish Government's discussion paper proposes standardised personal allowances. There was some support from respondents for this idea as a way of streamlining the process. However, it is unclear how it will work in practice.

### **Extending eligibility**

SLAB's response noted that financial eligibility for civil legal assistance – as a population share – had indeed decreased. The financial eligibility test for Civil Legal Aid is more generous than the test for Advice and Assistance. It stated:

"Our recent financial eligibility modelling suggests that eligibility for civil legal aid has diminished since 2011. Whilst more than half of the population retains

some eligibility for civil legal aid, current levels have decreased from around 70% to 56%. Current population eligibility for A&A is considerably lower, at 30%.”

Suggestions for improvements to the financial eligibility criteria included:

- **removing means testing for civil protection orders** (on the basis that the state should ensure victims of gender-based abuse should have an accessible route to protect their safety)
- **removing means tests for issues relating to gender-based abuse** more generally (on the basis that this was an unrealistic cost for women – who may be subject to economic abuse and may already be bearing the costs of leaving the relationship – to bear)
- **increasing the financial eligibility thresholds for Advice and Assistance to match those of Civil Legal Aid** (SLAB estimated the cost of this to be £4 million)
- **increasing all financial eligibility thresholds in line with inflation** since 2011, when they were last uprated (SLAB estimated that this would cost £1 million)
- **prioritising increasing the £1,716 capital limit for Advice and Assistance** (which excluded people with very modest and necessary savings and was out of line with some income-based social security benefits).

In its response, SLAB accepted that the financial thresholds for Advice and Assistance were “becoming a potential barrier to accessing legal assistance”. It also noted ongoing work in relation to Civil Legal Aid on improving the process for passporting from certain social security benefits and for reviewing the way contributions towards the cost of legal advice were calculated.

Some respondents called for **Regulation 15 of the Civil Legal Aid (Scotland) Regulations (discussed above) to be removed or reworded** to provide more scope for strategic and group litigation. The Environmental Rights Centre Scotland called for it to be amended to exclude certain environmental cases to ensure compliance with the Aarhus convention.

## Other suggestions

Other suggested short-term improvements included:

- **using grant funding or solicitors employed by SLAB to deal with immediate gaps in access to legal advice** – particular priority was called for in relation to access for asylum seekers to face to face advice
- **creating “community hubs”** where people could access legal aid-funded legal advice in familiar settings
- **improving public legal education** to increase awareness of legal rights and how to access legal advice – Friends of Scottish Settlers specifically suggested video guides in community languages about how to best access and use legal aid solicitors
- **using technology to create innovative services**, including online tools to deal with common legal disputes
- **improving legal training** – to address a lack of education in relevant areas (such as immigration and asylum law) at university, as well as the financial

barriers to doing the Diploma in Legal Practice for those who wanted to work in legal aid rather than large private client firms.

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

### **Summary**

Respondents were generally supportive of grant funding, seeing it as playing an important role in supporting access to justice. However, SLAB noted that it had limitations in comparison to the demand-led system of case-by-case funding, and the Law Society stated that it was not a substitute for that system.

Advantages included a lower administrative burden, meaning funding could go further. Clients were protected from some of the elements of case-by-case legal aid, including making contributions from income and clawback.

Grant funding was also seen as supporting holistic advice by allowing collaborations between solicitors and other advisers. It could also focus on early intervention.

However, there were some well documented disadvantages to the current funding stream, including:

- that funding had not increased in line with inflation, so that many projects were subsidising work from other income streams
- decisions about continued funding had been made at the last minute, leading to staff loss and reduced services for clients
- the lack of review of funding priorities, or a mechanism to monitor demand, raising concerns that there were important emerging advice issues which were not being dealt with.

### **The advantages of grant funding**

A number of respondents were of the view that grant funding was playing a key role in supporting access to justice. Projects included the Early Resolution and Advice Programme (various projects dealing with repossession cases featuring rent and mortgage arrears) and targeted advice for women facing gender-based abuse.

SLAB highlighted that grant funding could be used to respond to particular areas of need. However, both the available budget and timeframes for projects were limited. This was in contrast to case-by-case legal aid from solicitors, which was entirely demand-led.

The Law Society of Scotland noted the role grant funding could play, particularly in addressing issues earlier and so reducing demand and cost on the justice system overall. However, it stated:

“Any increased funding and pro bono initiatives in this area, however, must not and will never replace the need for a properly funded and efficient legal aid system and should only be used to complement legal aid services.”



Professor Wilding was among those respondents who noted that grant funding removed much of the administrative burden of applying for legal aid on a case-by-case basis. This enabled providers to help more people with less money.

The Scottish Women's Rights Centre noted that it removed the requirement for some clients to have to pay contributions towards the costs of their legal advice under legal aid. Professor Wilding highlighted that it also avoided clawback, which made some low value legal claims not worth pursuing meaning that unlawful behaviour was not deterred.

Respondents also noted that grant funding allowed projects to provide a more collaborative and holistic approach than case-by-case legal aid. For example, projects could involve work with specialist advisers and/or advocates as well as solicitors. Opportunities for early intervention (rather than waiting until a crisis point, such as when court action has been raised) were also flagged.

## **Issues with current grant funding arrangements**

Consumer Scotland noted that grant funding – at £2.3 million – currently formed a very small part of SLAB's overall civil legal assistance budget of £53 million. The Scottish Women's Rights Centre noted that its funding only allowed it to take on a limited number of cases, meaning that it has to prioritise those that would have a wider impact on women affected by gender-based abuse.

There had also been particular issues with current grant funding arrangements (which [Shelter wrote to the Committee about in May 2024](#)). These were:

- that funding was not increased in line with inflation over the multi-year course of projects, which means projects are absorbing costs from other income streams
- that funding was granted on a short-term basis (12 months or less) with decisions about whether it would continue notified at the last minute. This resulted in staff being lost and solicitors having to wind down the services they could provide so as not to be in breach of their obligations to the court if they could no longer represent a client
- several projects lost funding at the end of 2024/25, but there were no alternative sources of support available to clients.

In addition, the subject matters for which funding is available have not been reviewed. This has led to concerns that new areas of priority need have emerged which are not being addressed.

The Community Help and Advice Initiative (an Edinburgh-based advice project leading on the arrears project there) stated:

“After a decade of subsidising a government programme out of our charitable funds, it is highly doubtful that we can continue to provide the EHAP services unless the SLAB grant funding is reformed, or at least increased to reflect rising costs.”

Ms McPhail (an academic who previously managed grant funded housing projects as a solicitor) commented:

“Short term grant funding does not fully acknowledge the obligations solicitors have to their clients, court as well as to the wider profession. An inordinate amount of time and resource would be spent risk assessing operational plans in the event that grant funding would not be renewed, instead of focusing on the delivery of legal services.”

Citizens Advice Scotland, which supported CABx across a number of grant-funded projects, highlighted:

“Closure of these projects does not reduce ever-increasing demand on the CAB service for advice on this issue but merely reduces the resources available to respond and advise clients in vulnerable circumstances.”

The SLAB response acknowledged these weaknesses in grant-funding arrangements. However, it noted that current decision-making largely sits with the Scottish Government. SLAB also noted the need for better mechanisms to monitor demand for services over time so that grant-funding could be directed at those areas where it would be most effective.

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

### **Summary**

The work of those solicitors delivering legal aid and the wide scope of the civil legal assistance scheme were seen as key strengths. Other strengths included being able to change solicitors with relative ease, and SLAB's role in monitoring availability of legal advice. This meant there was more information about availability than in other parts of the UK.

However, despite dedicated solicitors and a wide scope, respondents noted that people still struggled to access legal aid-funded legal advice in practice. Low fees, creating a lack of availability, were seen as a major weakness.

Some respondents highlighted different delivery models – such as grant-funding and Civil Legal Assistance Offices – as strengths. But SLAB saw the lack of mechanisms to monitor need or match supply to demand as fundamental weaknesses.

Other weaknesses included: systems for clawing back the costs of legal action from assets a client may have gained or retained as a result of the process; and lack of clarity over when a legal aid applicant was protected from paying the winning side's legal expenses.

### **Solicitors delivering legal aid as a strength**

One of the key strengths identified by respondents were solicitors undertaking legal aid work. The Law Society of Scotland said:

“The main strength of the current legal aid system is the dedication and professionalism of the remaining legal aid practitioners”

However, respondents also highlighted the pressure legal aid solicitors may be working under and called for better support, in relation to professional development as well as fees. This could turn this strength into a weakness. In Professor Boyle's view:

"The greatest weakness of this system is that the delivery of justice relies on the good will and pro bono work of practitioners who are collapsing under the pressure of trying to help people access justice without the tools they need to do so sustainably."

## The scope of civil legal assistance as a strength

Another commonly cited strength was the scope of the current civil legal assistance scheme. It was available to cover advice on almost all issues as well as provide representation in a wide range of legal forums. This was sometimes contrasted to the scheme in England and Wales, where civil legal assistance is only available for certain types of advice.

Respondents also welcomed the "demand-led" nature of case-by-case legal aid (judicare). There are no financial limits on the budget available for legal aid – all qualifying expenditure (so within the requirements of the statutory framework) will be paid by the Scottish Government via SLAB.

However, respondents noted that, while civil legal assistance was notionally available for a wide range of issues, this was not necessarily the experience in practice. Issues with advice deserts and fees discussed above meant that people could still struggle to get legal support even if they qualified for it.

## Other strengths

Professor Wilding had carried out comparative research into legal aid in different parts of the UK. She commented on the following strengths of the Scottish system:

- **scope**– people's legal problems are often clustered so it adds additional complexity if they can access legal aid-funded legal advice for some but not others. This is a much smaller issue in the Scottish system than in England and Wales. However, she also noted that, despite the wide scope, there were significant access issues. These were due, in her view, to low funding.
- **easy entry** – solicitors can offer civil legal assistance by registering with SLAB. She noted that this was an additional step but demonstrated some degree of commitment from firms as well as clarity about where legal aid may be available. This contrasted to a complex contracting process in England and Wales.
- **being able to change solicitors** – this meant that solicitors were incentivised to maintain a good level of client care, even after signing them up. It appeared to contribute to quality as there were fewer complaints than in England and Wales, despite greater regulation there. In England and Wales, it wasn't possible to change solicitor – even where the relationship had broken down – unless a client had submitted a formal complaint which had been upheld.
- **availability of piece rate ("time and line") payment** – this provided greater flexibility for solicitors to take on unusual work or deal with changes to legal requirements than block fees. She gave an example of changes to

immigration law with an impact on the way solicitors worked. In England and Wales, there was a need for legislative change to payment rates, while in Scotland, the legal aid system had the flexibility to deal with it.

- **SLAB's remit to do research into the availability of legal services** – this wasn't within the responsibilities of the agencies managing legal aid in other parts of the UK. It meant there was more information about the nature and geography of provision in Scotland (although she stressed that there could be more).
- **Civil Legal Assistance Offences** – these provided flexibility to provide services where doing so as a private practice may not be viable.

### **Low level of fees leading to lack of access to legal advice as a weakness**

A number of respondents flagged the low level of fees as a weakness. As alluded to above, this was seen as a driver for the lack of availability of legal advice in some circumstances, despite the wide remit of civil legal assistance. The Scottish Women's Rights Centre commented:

"In general, the system is underfunded, meaning that much essential work on cases is not paid for, undervaluing the services provided by solicitors and the importance of this work for their clients."

A heavy administrative burden, as discussed above, was also highlighted.

Some respondents commented on the consequences of not being able to access legal services. Counselling Services Glasgow said:

"Vulnerable people in poverty or remote areas struggle to secure representation, perpetuating inequalities."

### **No mechanism to match supply with demand as a weakness**

Some respondents commented on options to deal with gaps in availability of legal aid-funded legal advice – such as grant funding or Civil Legal Assistance Offices – as strengths. Others highlighted the judicare model – with lots of individual legal practitioners able to respond to different requirements – as a strength.

However, SLAB highlighted the lack of a mechanism to match supply with demand as a fundamental weakness of the system. It noted that the current system has no stated purpose or objectives to guide it, despite amounting to significant expenditure of public funds.

There were also no requirement or established mechanisms to measure need. This limited the ability to be strategic about the use of resources. It noted:

"Without systematic assessment of need, the Scottish Government cannot identify what needs are experienced, how these needs are changing, the extent to which they are being met and whether there is a gap that should be met by publicly funded legal assistance."

Ultimately, SLAB's conclusion was:

"There are few levers within the system to design services to meet particular needs or deliver priority public policy outcomes. The system does not operate like a modern public service might be expected to."

## Poor quality as a weakness

Several respondents, who worked with people who needed to access immigration advice, raised concerns about poor quality services. This was generally put down to the huge pressure that legal aid immigration solicitors were thought to be under. It was also noted that this was a complex and ever-changing area of law, where solicitors may find themselves dealing with novel situations relatively frequently.

Issues highlighted include being abrupt or rude to clients; clients not receiving updates unless they proactively contacted their solicitor; and clients having to do significant administration themselves. Amina commented:

"While we understand that legal aid resources are stretched, it's unacceptable that vulnerable women are expected to essentially act as their own caseworkers. These are tasks the solicitor is being funded to do, yet in too many cases, women are left to manage the process alone, without the legal knowledge or emotional support they need."

Although it wasn't stated by respondents, these issues match problems with what solicitors can get paid for in relation to legal aid. As discussed under question 2 above, legal research and work to follow up with clients is likely to be abated by SLAB.

Grampian Regional Equality Council noted that, because of the difficulty in accessing an immigration solicitor in the first place, it was difficult to change where a client was unhappy with the service.

## Other weaknesses

The Law Society of Scotland highlighted the following weaknesses in the system:

- **differing requirements (including significantly different financial eligibility requirements) between Advice and Assistance and Civil Legal Aid** – however, a client may need to apply for both. The Law Society highlighted adults with incapacity work as an example of this – in particular, that a client may qualify for Civil Legal Aid but not for Advice and Assistance to get the initial advice to allow them to understand their options
- **clawback** – where a client may have to make a contribution to their legal aid-funded legal costs from assets gained or retained as a result of legal action. Clawback had implications for lower value compensation cases (such as employment rights cases) which may mean they were not worth pursuing. It was also applied to assets which may not be realised for some time (for example a family home or pension sharing agreement). Some other respondents alluded to the fact that solicitors – who are responsible for getting payment from clients themselves in Advice and Assistance cases – may chose to forgo payment in these circumstances.

- **lack of clarity around protection from expenses** – one of the advantages of an award of legal aid is that the applicant is not usually asked to pay the winner's legal expenses if they lose a case. This removes a significant financial and tactical risk. However, it is ultimately up to the court to make this decision, so it cannot be guaranteed.

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

### **Summary**

There was support for the Evans Review recommendations around embedding user voice in the planning and delivery of services and providing a more mixed model of delivery. These principles were seen as likely to create more sustainable services which were more tailored towards the needs of individuals.

Some respondents criticised the Review for failing to address fee levels. It was also thought that delivering the degree of change envisaged by the recommendations would be difficult.

### **Context**

The Scottish Government commissioned an independent, strategic review (called the "Evans Review") which reported in 2018. Key recommendations included:

- that legal aid should be focussed on the needs of the user/client
- it should encompass all advice services (including services like local authority money advice or Citizens Advice Bureaux)
- legal aid rules should be simplified
- the system should be more flexible in order to adapt to technological change and different user needs.

### **Focussing on the needs of users**

Respondents were supportive of recommendations around embedding the user voice in service planning and delivery (which the Scottish Government has put forward as a priority for reform). This was seen as helping to tailor services, address unmet need and improve services for vulnerable groups. Consumer Scotland saw this as an immediate priority rather than something that should wait for longer-term reform.

However, it was noted that capturing user experiences may be difficult to achieve. Professor Wilding said:

"I am in favour of embedding user voice but would add that it is very important to find ways of including the more marginalised user, via representative or intermediary groups, otherwise there is a real risk of embedding only the most capable users' voices, and so entrenching the disadvantage to people who are less confident, less able to self-help or more digitally excluded, who typically face the most complex and clustered legal problems."

Professor Wilding also commented that having a healthy legal and non-legal advice sector very much served the needs of users, even if this was not explicitly visible.

### **Flexible delivery**

Respondents also supported a mixed model of delivery to improve flexibility (again, in line with Scottish Government priorities for reform). This would utilise grant funding, solicitors directly employed by SLAB and, potentially, contracting to support a diverse range of legal aid-funded services.

Consumer Scotland thought that diversity in delivery would support sustainability as well as being more likely to meet the varied needs of consumer. Strathclyde Law Clinic was among those who saw more direct funding options as enabling third sector organisations to sustain legal services.

### **Wide view of publicly funded legal assistance**

The Evans Review envisaged publicly funded legal assistance as covering third sector advice services as well as solicitors. It called for better co-ordination and referrals between these services to deal with the interconnected issues that people experienced.

Some respondents welcomed this view. One individual respondent commented on the model which had previously been used in Glasgow to fund advice provision. This involved one council funding route and one regulatory system, with all providers expected to work together, cross refer and undertake awareness raising activities.

### **Failure to address solicitor fees**

The Evans Review did not recommend a general increase in fees for legal aid work. Instead, it recommended establishing an evidence-based process for standardising the fee-setting process. Some respondents criticised this aspect of the review as failing to address a core problem with the system.

### **Length of time since Review reported**

Some respondents noted that it had been eight years since the Evans Review reported. This may mean that recommendations needed to be reconsidered eg. in light of the cost-of-living crisis.

Other respondents commented on the slow progress to date and called for urgent action to address problems with the current system. Some thought that the recommendations were difficult to deliver in practice and would require significant legislative and administrative efforts. Counselling Services Glasgow commented:

“The Evans Review’s proposals offer a transformative vision for a more accessible and adaptive civil legal assistance system. However, their success would hinge on overcoming funding constraints, stakeholder resistance, and the practical challenges of integrating diverse service providers.”

## What are your priorities for longer-term reform?

### Summary

Wider priorities for legal aid reform included:

- **significant financial investment** – this was argued to enable more responsive service design, for example expansion of services to meet need, as well as more person-centred services to address barriers to access
- **community-based legal aid hubs** were suggested by several respondents. There were different ideas about how they could operate, but the broad idea would be to situate services in locations which were accessible to those who most struggled to access legal services
- **a more interventionalist approach** – including new governance arrangements and mechanisms for planning and monitoring was called for by SLAB
- **a human rights approach** – including delivery of remedies which were accessible, affordable, timely and effective and support from the legal aid fund for public interest litigation and group actions.
- **a shift to early intervention and preventative work** which could improve outcomes and reduce costs by reducing the pressure on the courts system
- **support for alternative dispute resolution** (such as mediation) as well as working with the wider dispute resolution landscape (such as ombudsmen and complaint handling). Note though that Scottish Women's Aid was clear that it did not consider mediation appropriate in situations involving gender-based violence
- **simplification of the types of civil legal assistance** to avoid complexity when delivering advice and to support a focus on negotiation and settlement (rather than court action) where appropriate
- **better use of technology**, for example to support remote advice in rural areas, But careful consideration had to be given to digital inclusion to ensure services were accessible
- **public legal education** to address lack of knowledge as a barrier to resolving legal disputes. Resources could cover information about rights and obligations as well as accessing legal advice, and there was the potential to utilise technology to do this innovatively

### Significant financial investment

A number of respondents saw significant financial investment as a key long-term priority. This was seen as enabling expansion of services to meet need as well as more responsive service design.

There were calls for various types of service to be supported, including:

- **the expansion of Civil Legal Assistance Offices** to cover the whole of Scotland
- **the expansion of the law centre model** (which is rooted in an approach which served the needs of the community) as there were many areas in Scotland without access to one



- **the expansion of legal clinics** where services are provided pro bono, such as those hosted by a number of universities
- **contracting with solicitor firms** as a way of providing a more stable funding stream for legal advice which was unlikely to be delivered profitably. Contracting could also achieve wider objectives – such as a requirement to refer to other providers, or have community involvement in governance arrangements.

## **Services tailored to meet the needs of vulnerable groups**

Related to the issue above, respondents also wanted reforms which delivered more responsive services. It was noted that people often experienced clusters of problems and would be better supported if they could deal with services that provided support to resolve all of them.

The Human Rights Consortium Scotland was among those calling for services which met the specific needs of vulnerable groups – such as victim-survivors of gender-based abuse, asylum seekers and homeless people.

The Human Rights Consortium Scotland was also among those who suggested **community-based legal aid hubs** as a way of delivering services. There were different ideas about how they could operate, but the broad idea would be to situate services in locations which were accessible to those who most struggled to access legal services.

## **A more interventionalist system**

As highlighted previously, the current legal aid system has no mechanisms for monitoring need or matching supply with demand. To address this, SLAB called for longer-term reform which delivered a more interventionalist system with reforms to governance arrangements and systems for planning and monitoring. It said:

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

Other respondents also noted a need for greater planning and co-ordination across all providers of publicly funded legal assistance.

## **A human rights approach**

A number of respondents called for a human rights approach to reform. Grampian Regional Equality Council noted:

“Access to justice is arguably the most important of all rights because the exercise of this principle underpins the enjoyment of all others. It is, therefore, a fundamental human right, without which there can be no genuine democracy or effective rule of law.”

A key part of this framework would be providing access to remedies for rights breaches in practice (rather than just in theory). The international human rights framework required that remedies were accessible, affordable, timely and effective (AATE).

Professor Boyle described this as a system which provides “effective solutions rather than simply access to legal routes to remedy”. This may require a shift from an approach that focusses on compensation after the fact to remedies which prevent the problem behaviour.

As noted in question 1 above, current legal aid rules do not support collective action for systemic justice issues. There were calls for reform to address this, including enabling public interest litigation brought by non-governmental organisations to be funded via legal aid.

Citizens Advice Scotland noted:

“As more of our international human rights are incorporated into Scots law, and as Scottish Government is progressing mainstreaming equality and human rights across the public sector, civil legal aid provision becomes even more vital to challenge and secure accountability for human rights breaches”

## **Early intervention, prevention and alternative dispute resolution**

Citizens Advice Scotland was among those who called for a shift to developing services which focussed on early intervention and prevention. This could support people to navigate the legal system as well as prevent problems needing intervention from a solicitor. This approach was less stressful for individuals as well as being less costly because it freed up resources in the court system.

This approach could also involve integration of wider options for dispute resolution, such as ombudsmen, complaint handlers and regulators.

There were also calls to support alternative dispute resolution, such as mediation and conflict resolution. The Human Rights Consortium Scotland noted that this could deliver better outcomes for clients.

Shared Parenting Scotland supported this approach and noted that the current adversarial system for resolving disputed between parents encourages them to see the worst in each other. It called for a more problem-solving approach and highlighted examples of international good practice.

Note though that Scottish Women’s Aid does not support mediation in situations involving domestic abuse as it can be used by the perpetrator to continue their abusive behaviour.

## **Simplification of the types of civil legal assistance**

The Law Society of Scotland noted significantly different eligibility criteria between Advice and Assistance and Civil Legal Aid and called for simplification as part of the reform process.

There were many situations where a client might need to apply for both Advice and Assistance and Civil Legal Aid. This led to complexity. It also resulted in situations where clients might qualify for representation in court via Civil Legal Aid but couldn't access the initial advice to work this out via Advice and Assistance.

The Law Society also noted that Advice and Assistance stops as soon as Civil Legal Aid is granted. This can create issues where the best solution is a negotiated settlement rather than court action. This reflects wider concerns that the current civil legal assistance rules focus on court-based solutions when modern legal practice focusses more on negotiation at the early stages of a dispute. It called for payment under Advice and Assistance to be extended to cover the additional work in these situations.

### **Better use of technology**

Respondents highlighted opportunities for using technology to deal with some of the challenges in accessing legal advice. This could include well-designed online resources to help people navigate legal disputes as well as remote services for people in rural areas.

However, respondents were also clear about the need to design these services carefully to avoid digital exclusion. There was also a need for more work to support digital inclusion – around access to devices, internet connections and the skills necessary to use them.

### **Public legal education**

Lack of knowledge in relation to legal services was identified as a major barrier in the current system. If people didn't know their rights or the remedies available, they'd be unable to get redress.

Respondents called for awareness raising around rights and obligations, access to legal services and legal aid entitlement in order to address this. As noted above, it was suggested that well-designed online information and digital tools had a role to play in this.

### **SPICe Research**

**Date: May 2025**

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