

Response from Legal Services Agency to the Equalities, Human Rights and Civil Justice Committee: Call for Views for the Inquiry into Civil Legal Aid in Scotland

Legal Services Agency is a Scottish Law Centre and Charity, dedicated to defending legal rights and driving social change through the law. We provide legal advice, assistance, and representation to those most in need.

Established in 1989, we operate nationally, offering legal aid to those who may struggle to access it otherwise. With significant experience in social welfare law, we develop novel remedies and tackle systemic failures to achieve sustainable changes for our clients and society. We believe in a fair society where social justice is available to those who might otherwise find it difficult to access legal assistance. We advocate for Human Rights and empowerment through sharing knowledge and promoting awareness of legal remedies in all communities.

Our practice areas include Mental Health and Incapacity, Housing, Criminal Injuries, Employment, Benefits, Disability Discrimination, and legal education.

We believe in everyone's right to specialist legal advice and having the right expert when things go wrong. We offer civil legal aid in all areas of our work. Over a number of years, we have been in receipt directly, or in conjunction with partners, grant funding through the Scottish Legal Aid Board in the areas of housing and homelessness.

QUESTION 1 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?

Shortage of Legal Aid Practitioners

There are a notable and growing shortage of legal aid practitioners across Scotland. This shortage is highlighted further by significant geographical disparities, with many areas lacking solicitors who are both qualified and willing to take on legal aid cases in specific areas of law. At the Legal Services Agency (LSA), particularly within our Housing Department and Disability and Social Justice Project, we frequently receive enquiries from individuals outside our designated project areas. Often, we are unable to assist due to jurisdictional limitations or a lack of practitioners handling these areas in the enquirer's locality.

Tackling the unmet legal needs of those in disadvantage.

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Clients commonly report difficulty sourcing solicitors for areas such as housing, family law, employment law. Even where specialist practitioners exist, they are often overwhelmed with demand. Many of our clients tell us that when they contact these solicitors, they are informed that the solicitor is at full capacity and unable to take on new cases. This often results in having to signpost enquirers to contact their local Citizens Advice Bureau.

The reduction in the number of solicitors offering legal aid services has reached critical levels. This is especially stark in certain rural and island communities. For instance, the Law Society of Scotland recently highlighted Orkney as a particularly severe case, where the number of civil legal aid solicitors dropped from nine in 2000 to just one by 2025. Nationally, from 2021 to 2023 alone, a staggering 439 solicitors deregistered from the legal aid roster.

This decline has forced many individuals to consider representing themselves in legal proceedings—an option that is often unfeasible due to the complexity of court processes and the average person's lack of legal knowledge. As a result, access to justice is severely undermined, particularly for those already facing socioeconomic disadvantage.

The primary reasons practitioners are abandoning legal aid work include unsustainable fee structures and administrative burdens. Many report that they are not reasonably remunerated for the volume or complexity of the work required. The financial strain of maintaining a legal practice under the current legal aid payment scheme leaves solicitors with little choice but to withdraw, thereby leaving vulnerable clients without representation.

Outdated Eligibility Criteria

The current application system for legal aid presents multiple barriers to access. A key issue is that the financial eligibility thresholds for Advice and Assistance have not been updated since 2011. As a result, individuals who are employed full-time, often in low-wage or minimum wage roles, are deemed ineligible despite experiencing genuine financial hardship. This outdated criterion fails to reflect the significant increases in the cost of living and the national minimum wage over the past decade.

Revising and increasing these thresholds is crucial to ensuring the system supports those who need it most. This should be revised on a yearly basis to keep up the changing cost of living costs, rather than when every Legal Aid review is.

There is precedent for adapting financial eligibility criteria in specific areas (e.g. Fatal Accident Inquiries, Mental Health Tribunals). Similar flexibility should be considered for homelessness-related, disability and equalities cases, where the stakes are high and individuals often lack the means or capacity to represent themselves.

Complexity of the Application Process

Another persistent problem lies in the complexity of the application process, particularly the Financial Form 2. Clients frequently report that the form is overwhelming, which leads many to disengage from the process altogether. Our team often has to arrange one-to-one support sessions

to help applicants complete the form—time that is not reimbursed if the client is ultimately found ineligible. Tight time scales, poor financial and digital literacy, and competing priorities often mean there is not the resource to support the one-to-one support needed to assist clients to access their bank statements and/or online portals/printers/passwords etc. to be able to provide all of the relevant information necessary for their application to be considered.

There is a clear need for simplification. For example, splitting Financial Form 2 into separate versions for married and unmarried applicants could reduce confusion. Additionally, simplifying the language and structure would greatly improve accessibility. Having the form available for individuals, where appropriate, to complete and submit online directly to SLAB would also reduce the heavy administrative burden placed on solicitors.

Once applications are submitted, solicitors are often required to spend excessive time justifying their work. Repeated requests for documentation that has already been provided, as well as ongoing queries about case actions, further increase the administrative burden. Introducing standardized subheadings or prompts within sections such as the statutory statement could streamline this process, making it easier for both applicants and legal professionals to navigate.

QUESTION 2 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?

Strict Timescale of Account Submissions

Currently, the timescales for submitting civil legal aid accounts are strict and inflexible. The Scottish Legal Aid Board allows submission of Civil Legal Aid accounts within four months of the conclusion of proceedings, and Advice and Assistance (A&A) accounts within one year of the completion of advice. However, these deadlines often prove unrealistic for busy practices, particularly law centres handling high volumes of urgent and complex work.

From experience, the preparation and submission of accounts cannot always be prioritised amid ongoing casework. This results in time-barring of accounts where substantial legal work has been carried out, leaving solicitors uncompensated. Introducing more discretion around these deadlines, especially in cases where valid reasons for delay can be demonstrated, would ensure fairer outcomes for practitioners.

Additionally, it would be beneficial for SLAB to permit submission of the A&A account while work under a Civil Legal Aid certificate is still ongoing. This change would allow for more flexible billing practices and prevent unnecessary delays in recovering fees for completed parts of the work.

Notifications

The current notification process lacks consistency and can result in missed or delayed responses from practitioners. Important notifications—particularly those relating to potential refusals, requests for additional information, or changes in status—should be sent via email to both the

individual who submitted the application and the named solicitor on the case. This dual notification system would help ensure that nothing is overlooked due to miscommunication or absence.

Practitioners should also be granted access to previously uploaded documents. This would prevent duplication and allow solicitors to easily reference existing documentation in response to further information requests. Having to re-upload the same documents is inefficient and increases the risk of administrative errors.

In the Housing Department at LSA, we frequently encounter challenges assisting clients with mortgage arrears through Legal Aid. A recurring issue is the non-payment of accounts in cases where we succeed in preventing the client's home from being repossessed. Ironically, this is the very outcome Legal Aid is intended to support. These cases often involve complex negotiations, such as mortgage-to-rent applications, requiring considerable time and effort. Despite this, current SLAB rules mean that if the client retains their home, the legal work is not remunerated.

This approach is inherently unfair—not only to practitioners who dedicate significant resources to these matters, but also to clients, who often face clawback despite already facing financial hardship. The fact that equity in a home is not exempt from clawback in repossession defence cases—regardless of whether the property is sold by the client, repossessed, or retained after a negotiated agreement—places an undue burden on vulnerable clients.

More comprehensive information should be collected at the application stage to allow for proper assessment of equity and better anticipate clawback issues, ensuring that Legal Aid fulfils its role in protecting access to justice for those in financial difficulty.

Solicitors leaving the firm

Difficulties often arise when a nominated solicitor leaves a firm, where active Legal Aid files are involved. To prevent delays and administrative issues, it would be helpful for SLAB to introduce a process whereby solicitors sign a mandate prior to leaving the firm. This mandate would authorise the transfer of all active files in their name to the firm or to another nominated solicitor. This would reduce the requirement to submit additional Applications for funding due to a solicitor moving from a firm and not taking casework with them.

This measure would ensure continuity for the client, simplify file management for the firm, and reduce the administrative burden on SLAB staff processing solicitor changes.

QUESTION 3: What are your views on the use of grant funding to address specific areas of need in legal services?

Grant funding plays a crucial and positive role in supporting access to justice, particularly in areas where legal aid provision is limited or absent—so-called “legal aid deserts.” It not only enables essential service delivery but creates opportunities for collaboration and innovation, aligning with the Scottish Government’s Justice Directorate ambitions for a more person-centred and sustainable justice system.

Grant funding models provide a unique platform for multi-disciplinary approaches that integrate legal advice with welfare benefits, money and debt advice. This joined-up model, often delivered in partnership with voluntary sector organisations deeply rooted in their communities, allows for earlier and more holistic intervention. These organisations can also direct clients to additional support services, reinforcing a wraparound, person-centred response that delivers more sustainable and effective outcomes.

LSA has successfully delivered a number of grant-funded projects in collaboration with other partners. These projects have proven to be highly effective in providing access to justice and person-centred services. By working with other community-based organisations, we have been able to reach individuals who may otherwise be excluded from traditional legal services. These collaborative efforts have allowed us to offer integrated support, tackling not only legal issues but also the wider social challenges that many of our clients face. This approach has been essential in delivering holistic solutions that address the broader needs of vulnerable individuals.

However, the current grant funding system is in need of urgent review and reform to ensure it remains fit for purpose. It must better respond to growing and evolving demand in key areas of law such as housing, homelessness, anti-social behaviour evictions, issues arising in the private rented sector, disability and employment rights. At present, the subject matter of grants has not been meaningfully reviewed in several years, leaving the funding landscape static and at risk of missing emerging or increasingly urgent legal needs.

The **timing and administration of grant awards** is another critical issue. In recent years, funding confirmations have routinely arrived late in the financial year or have been issued as short-term extensions (e.g. three to six months). While this causes major difficulties for organisational planning and workforce management, the wider impact on client casework is often overlooked. Solicitors have a professional obligation to continue representation once instructions are accepted. In the final quarter of the grant cycle, delivery partners must often weigh up whether they can responsibly take on new cases—with few or no alternative referral pathways available. This uncertainty undermines both continuity and quality of service, particularly in complex or sensitive cases where legal support is vital.

Furthermore, what may have started as full cost recovery under earlier grant awards is no longer sustainable. **The absence of inflationary increases over many years means that services are increasingly operating at a loss**, absorbing significant volumes of unpaid work. Despite being required to deliver trauma-informed, rights-based support—particularly in areas like housing, homelessness, anti-social behaviour evictions, and disability rights—much of the work is not adequately funded. This widening gap between professional obligations and available funding is contributing to a shrinking pool of solicitors able or willing to undertake this critical work, especially in defender roles across summary and ordinary cause proceedings.

If structured and allocated strategically, grant funding could play a pivotal role in delivering targeted support where it is most needed. We echo the findings of the Evans review, which emphasise

innovation, sustainability, and a person-centred approach. A reformed grant funding model should support:

- **Longer-term funding commitments** (e.g. 3–5 years), enabling delivery partners to sustainably manage staff, build capacity, and plan for innovation.
- **Clear mechanisms to identify priority areas** of need, developed in consultation with frontline providers who are best placed to understand the challenges on the ground.
- **Inflationary uplifts**, as many organisations have been operating with static grant levels for over a decade, significantly eroding the real value of funding.
- **Flexibility to support collaborative, multi-disciplinary models**, particularly where legal advice intersects with health, housing, social care, or disability support.

A reimagined, responsive grant funding model —must be strategic, sustainable, and capable of addressing Scotland’s most urgent access to justice challenges, while supporting the collaborative, community-based and person-centred approaches that deliver real outcomes for individuals.

QUESTION 4: What do you think are the strengths and weaknesses of the current system for providing civil legal assistance?

Wide range of civil cases

Legal Aid in Scotland is accessible for a broad spectrum of civil cases. A notable advantage is that it encompasses a wider range of civil matters compared to its equivalent in England. However, it is restricted to individuals, meaning that in group actions, every member of the group must qualify for legal aid based on their individual circumstances.

Online Accessibility and Navigation Issues

The Scottish Legal Aid Board has made various resources available online, including a range of supporting booklets and guidance. While the SLAB team is readily available to assist solicitors seeking further information, the website's layout can be quite confusing. Multiple guidance documents are available that focus on specific aspects of legal aid, which can lead to misunderstandings and difficulties in locating the correct information swiftly.

E-learning and Training Opportunities

Current learning sessions are only available when requested. Having access to recorded sessions would allow solicitors to revisit topics whenever necessary, thereby refreshing their knowledge on specific aspects of the process.

Complexities of Legal Aid Understanding

A comprehensive understanding of the various aspects of legal aid remains limited. The expertise required to navigate the complexities of guidance, policies, and practices is often acquired through experience rather than formal training. Currently, relevant online guidance is scattered across over

540 hyperlinked pages, and while downloadable resources are available, they are mainly restricted to annual key cards. Critical resources, such as Decision Makers Guidance and Policy Statements, prove challenging to access and navigate, hindering effective application progression.

Account Management and Notification Issues

The online accounts system is generally user-friendly, with a notifications tab for easy access. However, the limitation of notifications being sent only to the solicitor named on the application can pose difficulties when another solicitor handles the case. Additionally, when a solicitor departs from a firm, the increased workload for the remaining team can be burdensome, especially as mandates may need to be provided separately for each client and fresh applications for legal aid to be completed.

Fee Structures and Funding Delays

Unpaid work: Legal aid solicitors are increasingly required to take a trauma-informed approach and carry out essential work to support individuals in asserting their legal rights—steps that are often expected by the Law Society but are not covered by legal aid fees, resulting in a significant volume of non-chargeable unpaid work. Additionally, the inappropriate block fee structure means that solicitors are earning less than minimum wage on tasks which may take them several hours. For example, solicitors at LSA have highlighted the fee for pursuing an Inventory of Productions at £18.08, irrespective of whether that inventory is 2 pages or 200 pages. One of our solicitors recently spend 2.5 hours perusing a lengthy Inventory of Productions in respect of an Anti-social behaviour proof which would equate to an hourly wage of £7.20.

While fees for a range of cases are set, they often do not adequately compensate solicitors for their work. The discrepancy between fees for research, preparation, or negotiation compared to court work exacerbates the issue. In general, research is unpaid. It is an unrealistic position to take that a solicitor should never require to undertake research for a case. The absence of interim payments and delays in securing funding can create significant cash flow problems. This concern becomes more pronounced when a firm undergoes changes and accounts must be handled by a new solicitor.

We echo the comments made within the response from the Scottish Association of Law Centres in relation to the current financial eligibility rules. LSA are often approached to assist where an individual does not qualify for Advice & Assistance funding due to their financial situation however, they are not in a position to be able to afford legal representation. Recent examples of this include an individual having savings in excess of the allowable limit however these saving had been built in order to afford their winter heating bill due to the increased costs of living. Additionally, a family seeking Guardianship for their teenage son did not qualify due to income from one member's employment however they did not have capital funds available to afford an initial private fee.

Challenges with the Financial Assessment Process

The financial form 2 required for applications is often lengthy and overwhelming for clients to complete independently. Tight deadlines, along with varying levels of financial and digital literacy, hinder clients' ability to provide the necessary information, such as bank statements or access to online portals. Additionally, the nature of the helpline provided for assistance is unclear, leading to uncertainty about when clients should be encouraged to make use of these services. There is a noticeable lack of dedicated resources for advisors to provide tailored support. Addressing these subjective needs is crucial for clients to successfully acquire the necessary financial documentation for their applications.

QUESTION 5 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)?

One of the central recommendations of the Evans Review is to place the voice and needs of the user at the centre of the legal aid system. This could be an important potential reform as it could be argued that the current legal aid system is designed around the needs of administrators and the providers of legal aid services. One way the Review proposes to achieve this is through the establishment of a 'consumer panel' which would represent the interests of current and future users of the legal aid systems. The establishment of such a panel could function as a source of legal education to help to address knowledge gaps amongst members of the public concerning legal aid which the Review identifies.

In addition, the involvement of members of the public through a forum such as a 'consumer panel' could be important for maintaining long-term public support for the legal aid system. If the public is involved with the legal aid system, this may promote not only greater understanding but also encourage the public to value and feel that they have a stake in a system of publicly funded legal assistance. This is especially important when the legal aid system is wholly funded by public money.

It is also encouraging that the Review discusses the importance of technological innovation as part of its recommendations. Funding for user, administrator and provider led development projects would be welcomed to promote innovation and collaboration within the legal sector. This could create a more efficient system which is responsive to the needs of users and providers of legal aid services, and which keeps pace with societal wide innovation.

The Review's recommendation for a single type of legal aid as opposed to maintaining the current four different types is also welcomed. This would contribute to simplifying the system for users, practitioners and administrators. For example, having a single grant of legal aid for one person with multiple legal issues would streamline the application process and would avoid the duplication of work. This proposal is something which should be given serious consideration to in future reform discussions.

The recommendation to make the rules concerning clawback and client contributions fairer would also be something which would be welcomed as part of any reforms to the legal aid system. From our own experience working with housing clients, we have identified potential unfairness in the way

the clawback rules operate when repossession proceedings are defended. For example, any equity which homeowners have in their property is not exempt from clawback. This is the case regardless of whether the property is sold by the client, is repossessed and sold by the lender or kept following a negotiated settlement. This means that clients already struggling with debt have to pay fees.

We do not agree with the Review's recommendation that there should not be a general increase in legal aid fees. In our view, this is something which is needed and which the Scottish Government should give serious consideration to. We would support a general increase in fees for two reasons. Firstly, an increase in fees may incentivise solicitors to offer legal aid services when previously they consider it uneconomic to do so. It may also act as an incentive for trainees or solicitors in the early stages of their careers to enter sectors which are primarily funded by legal aid. This could help to address the supply issues in certain sectors and geographical areas which are identified in the Review.

Secondly, a well-funded public legal aid system is important for improving access to justice. Being able to access a court to protect and enforce rights is a fundamental aspect of democracy. This accountability function cannot operate as it should if solicitors are unwilling to offer legal aid services if they consider that the level of fees are not sufficient to compensate them their work.

It is also unclear if the establishment of an independent fee body to agree and review legal aid fees would work in practice if Scottish Ministers are not obliged to follow any recommendations. For an independent fee body to work, it would require accurate data collection on the earnings of legal aid practitioners and a commitment that any recommendations made by the body would be binding.

In relation to potential reform of the legal aid system, the Review notes that the requirement for many changes to be approved by the Scottish Parliament means that reform can be a time-consuming process which impedes the ability of the system to adapt quickly. It can therefore be said that this makes the current system unsuitable for the rapid technological changes which are expected in the sector. Whilst oversight of the Scottish Parliament is necessary give that the legal aid system is publicly funded, issues of responsiveness could possibly be addressed by the creation of a specialist parliamentary committee. This committee could monitor the performance of the legal aid system and report on the system's anticipated future needs. It is hoped that the committee's reports could be used to inform MSPs about the system's needs and to ultimately make the parliamentary process more efficient.

QUESTION 6: What are your priorities for longer-term reform?

One priority for longer-term reform would be for the establishment of an independent review of the 1986 Act to be carried out. It is hoped that an independent review would identify what works, what does not work, and what needs to be reformed in the legal aid system so that it is equipped to meet the needs of users, providers, and so that it reflects technological change and recent developments which have occurred in litigation and practice. For example, one of the points raised in the Evans Review is that legal aid remuneration is centred upon court appearances rather than

the towards advance preparation and settlement which are now common features of modern litigation.

Another priority for longer-term reform concerns the recommendation raised in the Review to have a single grant of legal aid to replace the four existing categories. As discussed above, it is hoped that a single grant would simplify the legal aid system for users, service providers, and system administrators. In doing so, it would make using the system more time and resource efficient. Any work on long-term reform should therefore explore the how a single grant could be implemented into the legal aid system.

An additional priority could be to greater publicise and continue to develop the SLAB e-learning resources for those who provide legal aid services. This would improve understanding of how to navigate the legal aid system and act as an effective training tool. Effective e-learning amongst other innovations should be considered as part of wider consideration of longer-term technological reform of the legal aid system.

QUESTION 7: Do you have any other comments?

Overall, the legal aid process in Scotland presents both opportunities and challenges. While the system is designed to support individuals in accessing justice, practical issues—such as navigating complex guidance, securing adequate practitioner support, and managing financial assessments—must be addressed to enhance the effectiveness and accessibility of legal aid.

Submitted by Legal Services Agency