

## **INDEPENDENT STRATEGIC REVIEW OF LEGAL AID**

### **CALL FOR EVIDENCE**

#### Introduction

1. This is an invitation to submit evidence to the independent strategic review of legal aid. The review has been established by the Scottish Government with the aim to fulfil the Programme for Government commitment to, *“engage with the legal profession and others to identify during this year specific measures to reform Scotland’s system of legal aid, maintaining access to public funding for legal advice and representation in both civil and criminal cases alongside measures to expand access to alternative methods of resolving disputes”*.

2. This paper sets out the main details of the Call for Evidence including relevant questions at paragraphs 5-6 below. Further information is provided in the annexes:

Annex A – Timescale, remit and membership for the review

Annex B – List of issues that the reviewers have identified as issues for investigation

Annex C – RESPONSE SHEET

Annex D – Further background on the review

3. The review is chaired by Martyn Evans and the remit and membership of the review group and a broad timescale for its work are attached at Annex A. The work of the review will be taken forward independently of Government. It has been asked to report by February 2018.

4. The review views its work as being to produce recommendations that will inform Scotland’s approach to legal aid over the coming 5 to 10 years. Our aim is to consider the legal aid system in 21<sup>st</sup> century Scotland and how best to respond to the changing justice, social, economic, business and technological landscape within which a modern and flexible legal aid system should operate. The review recognises the important role for legal aid to reduce inequalities, uphold social justice and improve lives to support this. The review wants to ensure that its recommendations are founded on evidence, and on the experiences and understanding of users and providers of legal aid in Scotland. Some further back ground can be found at Annex D.

#### Questions for the submission of evidence

5. In fulfilling its remit, the review wishes to address four broad questions:

- What shared values and ethos should underpin legal aid services, and how best can they be embedded in the delivery of legal services in the future?
- How best can wider organisational arrangements (including functions, structures and processes) support and enable the delivery of effective legal aid services?
- How best can legal aid services achieve positive outcomes for and with the people of Scotland?

- If you were designing a system of legal aid today what would you do differently from the current system to make it more effective and person-centred?
6. The review invites respondents to consider these questions, and to tell them about:
- Experiences of the operation of legal aid services;
  - Examples of projects, services, innovations or improvement work, including evaluations or assessments, which may be relevant to the work of the review;
  - Views on the obstacles to and opportunities for improvement;
  - Views on the options for the future.
7. To give an indication of the scope of its work, the review has identified an initial set of issues it considers likely to arise; and this is attached at Annex B. **Respondents may wish to consider this list of issues in preparing their response, but should not be constrained by it.**

#### Submitting evidence

8. To allow the review to explore the evidence submitted and focus its work on key themes, responses are invited by **28 May 2017**.
9. **Respondents are asked to complete the response sheet at Annex C and submit it alongside their response to this Call for Evidence as we need to know how to present the evidence you are providing.**
10. In addition to this general Call for Evidence, the review will be seeking evidence directly from a range of individuals and organisations it considers to have a specific contribution to make to the review's work, including those currently engaged in significant work around legal aid services.
11. As indicated in the timescale attached at Annex A, the review intends to hold a number of discussion events to enable a more in-depth investigation of the issues raised in the evidence submissions. Further information on these events will be provided in due course on a legal aid review website which is under development currently.
12. Thank you for your interest in the work of the review.

Martyn Evans  
Chair of the Independent Strategic Review of Legal Aid  
8 March 2017

**TIMESCALE AND REMIT OF THE REVIEW**

The **membership** of the review group is as follows:

- **Martyn Evans**, Chair
- **Prof Alan Paterson**, International and expert adviser
- **Colin Lancaster**, Chief Executive, Scottish Legal Aid Board
- **Brian McConnachie QC**, Black Chambers
- **Alison McInnes**, former MSP and Scottish Parliament Justice Committee member
- **Margaret Burns**, Aberdeen University
- **Jackie McRae**, McKinnon Forbes
- **Janys Scott QC**, Westwater Advocates
- **Susan McPhee**, Head of Policy and Public Affairs, Citizens Advice Scotland
- **DCC Iain Livingstone**, Scottish Sentencing Council
- **Fran Wasoff**, University of Edinburgh
- **Lindsey McPhie**, Gallen & Co

The broad **timescale** for the review's work is as follows:

Announcement of remit and membership	1 February 2017
First meeting	24 February 2017
Issue of Call for Evidence	8 March 2017
Second meeting	April 2017
Date by which responses are requested	28 May 2017
Discussion events	April to July 2017
Consideration of evidence and development of recommendations	September 2017 – February 2018
Publication of report	February 2018

The **remit** given to the review by the Scottish Government is as follows:

*“To consider the legal aid system in 21<sup>st</sup> century Scotland and how best to respond to the changing justice, social, economic, business and technological landscape within which a modern and flexible legal aid system should operate.”*

**INDICATIVE LIST OF ISSUES**

To give an indication of the scope of their work, the review has identified an initial list of issues it considers likely to arise – see below. Respondents may wish to consider this list of issues in preparing their response, but should not be constrained by it.

Achieving positive outcomes

- the extent to which legal aid is successful in achieving outcomes for and with individuals and communities;
- the extent to which legal aid is efficient and financially sustainable;
- the extent to which legal aid services help prevent future problems;
- the extent to which innovations in legal aid have proved successful, and the extent to which that success may be replicated;
- the effectiveness of varying models for the delivery of legal aid ;

Supporting delivery

- the effectiveness of processes by which legal aid services are designed, reviewed and managed, including the effectiveness of partnership processes and user involvement;
- the effectiveness of innovative approaches to partnership or other joint working in delivering legal aid services;
- the extent to which financial arrangements can help or hinder the achievement of outcomes;
- the availability of information about the performance of legal aid services;
- the relationship between public, third sector and private sector delivery;
- the appropriateness of the range of delivery vehicles used;
- the role of complaints inspection and scrutiny;
- the capacity of the system to innovate;
- the extent to which efforts to improve or reform legal aid have been successful;

Values and ethos

- the appropriate role of legal aid in promoting equality and fairness;
- the extent to which legal aid services are effective in supporting the most vulnerable;
- the extent to which services support and empower individuals;

**Legal Aid Review**

**RESPONSE SHEET**

Please use this response sheet when submitting evidence to the review. It will help us both to organise the many responses received, and to reflect your wishes for how the material is used. It can be completed and returned either electronically or posted back in hard copy.

Please send this coversheet and your submission to the following address:

[LegalAidReview@gov.scot](mailto:LegalAidReview@gov.scot)

**Or in hard copy to:**

**Hazel Dalgård  
Access to Justice Unit  
GW.15  
St Andrew's House  
Regent Rd  
Edinburgh  
EH1 3DG**

**Information required:**

Name of organisation or person responding:

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Contact name (if responding on behalf of an organisation):

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Address and telephone number. Email address:

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**Disclosure**

Have you submitted any confidential evidence? (Y/N) \_\_\_\_\_

If any of the evidence or views submitted are deemed confidential, please clearly mark these sections of the evidence.

(Continues on next page...)

Are you content for this submission to be published on our website? (Y/N) \_\_\_\_\_

Are you content for your name to be supplied with the response on our website or do you wish the response to be anonymous on the website? (Y/N) \_\_\_\_\_

Would you be content to be approached by the review for further discussion on your submission? (Y/N) \_\_\_\_\_

Are you or have you at any time in the past been a recipient of legal aid? (Y/N) \_\_\_\_\_

N.B. The Scottish Government is a data controller under the Data Protection Act 1998. Information collected by the Review will be subject to the Act which balances the legitimate needs of organisations to collect and use personal data against the right of individuals to respect for the privacy of their personal details.

Thank you for your submission.

**FURTHER BACKGROUND INFORMATION**

1. The Scottish Government announced an independent strategic review of the legal aid system in Scotland on 1 February 2017, with the aim to fulfil the Programme for Government commitment to, *“engage with the legal profession and others to identify during this year specific measures to reform Scotland’s system of legal aid, maintaining access to public funding for legal advice and representation in both civil and criminal cases alongside measures to expand access to alternative methods of resolving disputes”*.
2. Announcing the review, the Minister for Community Safety and Legal Affairs noted that the legislation in Scotland dates back nearly 30 years, and that the legal aid system needs to keep pace with other reforms in the justice sector which are driving a more modern, progressive and person-centred system. The Minister indicated her intention that the remit of the independent review group would be to consider the legal aid system in 21<sup>st</sup> century Scotland and how best to respond to the changing justice, social, economic, business and technological landscape within which a modern and flexible legal aid system should operate. She further noted the important role for legal aid to reduce inequalities, uphold social justice and improve lives. She emphasised that the Scottish Government intends to carry on with essential day to day updating of the present legal aid system, as well as considering any medium term reforms to the fee structure for legal practitioners.
3. In terms of legal aid policy, some significant developments in recent years which have impacted on recipients of legal aid have included the Legal Services (Scotland) Act 2010 which placed a duty on the Scottish Legal Aid Board to monitor the availability and accessibility of legal services. The Scottish Government has maintained a wide scope of civil legal aid and increased financial eligibility for civil legal aid, albeit these changes included a system of client contributions to some forms of legal aid for those who are able to contribute. New social developments also provide context to legal aid interventions, such as increasing cohabitants rights, or new rights under the Same Sex Marriage (Scotland) Act 2014. Specific funding to deliver legal services has been targeted in recent years at particular social priorities in partnership with the third sector, and the Scottish Government has introduced children’s legal assistance to support children’s hearings.
4. In terms of the wider civil justice policy environment, of interest to the review group are the Expenses and Funding of Litigation Bill which is intended to introduce new mechanisms aimed at improving the affordability of funding civil actions, and any action that the Scottish Government is likely to take to meet its commitment to review the regulation of the legal profession in Scotland.
5. Other important factors that provide context to the work of the review are recent developments in the legal profession including the trend for mergers and takeovers of solicitor firms, the increased volume and complexity of the law, and the opportunities that new technology and alternative business structures may provide to firms.

6. The work of the review panel will be of relevance to the following National Performance Framework indicators:

- “We have tackled the significant inequalities in Scottish society”
- “Our public services are high quality, continually improving, efficient and responsive to local people’s needs”.