

Consultation Response

Scottish Labour Policy
Forum

Legal Aid

June 2025



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and respond to the Scottish Labour Policy Forum's stage 2 consultation paper on legal aid.¹ We have the following comments to put forward for consideration.

1. How often should legal aid fees be reviewed? What kind of fee payment mechanism would work, whilst still ensuring value for the taxpayer?

Over a number of years, the Law Society of Scotland has expressed deep concern at a growing crisis within Scotland's legal aid system, with the lack of periodic reviews being one of our many historic issues.

As evidenced in our recently published research², we know many solicitors are ceasing legal aid funded work because fee levels offered by the Scottish Government fail to provide the financial return necessary to sustain a legal aid business.

In addition to an urgent uplift in fees, ongoing periodic reviews are vital to ensure the sustainability of fees to maintain availability of legal advice for those who need it and encourage new entrants to the sector. There are models for periodic review across the justice system already, from judicial expenses to sheriff officers' fees, and there are examples of best practice in legal aid systems internationally that we can learn from. For example, Scottish Courts and Tribunals Service (SCTS) usually undertakes a review of the court fees in the majority of Scotland's courts every 3 years³.

We call for the next Scottish Government to introduce a proper legal aid fee review mechanism. Our hope is that, similar to parts of the public sector, a structured and

¹ https://scottishlabour.org.uk/wp-content/uploads/2025/05/4378_25-Legal-Aid-SPF-Stage-2.pdf

² <https://www.lawscot.org.uk/research-and-policy/research/#heading-811a52b6-1acf-4717-8f24-5618eb3ca69c>

³ [Section 1: Background and proposals - Scottish court fees 2024 to 2025: consultation - gov.scot](https://gov.scot/section-1-background-and-proposals-scottish-court-fees-2024-to-2025-consultation)

fair process would provide independent analysis and recommendations for regular uplifts in fees. We were not alone in arguing for this.

We believe that if there is a suitable fee review mechanism in place – which there is not at present – annual reviews could take place every year. This would allow greater flexibility of the fee structure; allow the system to absorb an unexpected delays to fees increases; and ensure fees keep pace with inflation.

Fee Review Research

In 2023/24, we participated in the Scottish Government's Legal Aid Remuneration Project. Whilst an invitation to prospective researchers to tender for the research work was issued, no company or organisation was appointed to undertake the research which the Scottish Government said was required. After we were informed that while the project was intended to identify a mechanism for review, there was no guarantee that actual reviews would result in fee increases, even if this was recommended, we left the group.

Despite this high level interest and focus, and numerous commitments and reports, no tangible progress has been made, and no fee review model has been developed or implemented. We are aware that similar research was successfully undertaken in England and Wales⁴.

If further research is a necessity to provide further evidence to introduce fee increases and a review mechanism, then every effort should be made to make sure this research is undertaken in the immediacy.

Previous and Future Fee Increases and Reviews

The most recent fee increase was in July 2022 when the Scottish Government recognised legal aid fees were too low and agreed a 10% across the board increase⁵. Two years of inflation completely negated that increase.

It is for this reason that we believe that any fee review must take into account inflation.

We also call for a commitment that the fee review mechanism will be in place by 2027 at the latest and that this will cover both criminal and civil fees.

Law Society of Scotland Legal Aid Research

We published research in 2017 highlighting the benefits of legal aid⁶. In addition to identifying the benefits for individuals who directly receive legal aid, which include positive family relationships, better job prospects and better mental health, the research considers the impact on tax-payers and wider society, and highlights a positive financial impact for the NHS, local authorities and prisons.

⁴ [Civil legal aid: a review of its sustainability and the challenges to its viability | The Law Society](#)

⁵ [Minister for Community Safety](#)

⁶ [Legal aid benefits Scotland's health, wealth and happiness | Law Society of Scotland](#)

The research found that for every £1 spent on legal aid in each of these areas, the overall benefit gained by the person receiving legal aid and wider society was valued in many cases, as substantially more than £1.

Key research findings include:

- In housing cases, such as evictions due to rent or mortgage arrears, spending £1 on legal aid can generate a beneficial return of approximately £11 for both recipient and wider society.
- For every £1 spent on legal aid in family cases, which include issues regarding finances, child contact or residence following divorce or separation, there is a beneficial return of approximately £5.
- For every £1 spent on legal aid in criminal law cases, there is a beneficial return of approximately £5.

2. How can the eligibility for legal aid be changed so that it still remains affordable to the tax-payer but ensures that those on the lowest incomes have access to justice?

Many people who cannot afford legal representation fall just outside the financial eligibility criteria for legal aid, leaving them without access to justice.

Reviewing and expanding the financial eligibility thresholds would ensure that those with low and middle incomes are able to qualify for legal aid where this is appropriate. This could involve adjusting income and asset limits to reflect the current cost of living.

Some specific examples from solicitors on our committees, and our members, include:

- i. a client who had contacted around 40 firms before securing services (we understand that this is far from unusual).
- ii. rural areas having very limited numbers of firms offering legal aid, which creates significant difficulties due to the pressure of work and the likelihood of conflicts of interest. It can take a long time to get an appointment with a solicitor, even if there is not a conflict. We understand the Borders, for example, now has only three firms (four solicitors) offering legal aid. This is also expanding out of rural areas and becoming a wider issue.
- iii. Issues around housing and homelessness. There is an increasing demand for legal advice in the homelessness sector as people are turned away from statutory services. This results in people not accessing services they are entitled to. Thought should be given to expanding eligibility relating to these cases, and applying flexibility where appropriate. Organisations which can offer help are heavily reliant on grant funding. Asylum and immigration and medical negligence cases also face similar issues, as do women, children and young people experiencing domestic abuse.

- iv. Local and face to face access to a solicitor is important across the board, but particularly in relation to complex cases. This becomes especially acute in relation to domestic abuse cases where competent legal-aid funded services are vital. Those in rural and island areas especially might face logistical difficulties in finding a solicitor and they will be a considerable distance away, even a ferry/plane journey, if travel from the islands to the mainland is required. A powerful example of these issues can be found in a recent media report detailing one woman's story⁷.
- v. It is clear from these examples that legal aid deserts, geographical areas where there is poor or no provision to access local advice and representation, do exist and, from the anecdotal evidence above, appear to be growing across the country, not just in rural areas, and that those solicitors who are still doing legal aid work are doing less in terms of specific cases and areas of practice.

3. What can be done to ensure that areas beyond the central belt have access to legal aid representation? What are the barriers – apart from fee levels - to solicitors in rural areas taking on legal aid cases?

It's important to note that legal aid deserts are not limited to rural areas, but are now evident in urban settings across Scotland too.

Our recent research found further evidence of a deepening crisis in access to justice, with 41% of respondents either planning to stop legal aid work within two years or unsure whether they will continue.

The analysis also confirmed the extent of legal aid deserts, with around 5% of legal aid payments made to rural firms, despite 29% of Scotland's population living in those areas.

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.

There is also a real need for SLAB to streamline the cumbersome system, through procedural changes and technology, which could make legal aid services more accessible, efficient and quality assured. SLAB could also make contact directly with clients in some circumstances, such as to request pay slips and other financial information, reducing administrative demands on solicitors. Pressures on solicitors in terms of this bureaucracy, as well as issues with eligibility, demand, and the cost of living crisis, compound the issues already faced in this sector.

⁷ [Woman's divorce case was turned down by 116 legal aid lawyers - BBC News](#)

There are also eligibility concerns raised in our response to question 2 (see points ii and iv).

Recruitment and Retention

The main barrier for accessing legal assistance is the extremely low availability and, as evidence in our research⁸, increasing shortage, of legal aid practitioners as this work becomes less commercially viable.

Young solicitors are not remaining in the sector, or moving to the Crown Office and Procurator Fiscal Service (COPFS), the Public Defence Solicitors' Office (PDSO) and in-house where they will find better remuneration, benefits and work life balance.

There are succession issues for existing firms, where partners retiring will be more likely to close businesses, or their firm stop doing this work, rather than having existing staff who want, or are able, to continue this work.

Traineeship Fund

In 2021, the Scottish Government's launched a £1m fund to support legal aid traineeships in Scotland.

The government fund provided support for up to 40 new legal aid trainees, paying for 50% of their salaries. In addition, trainees' regulatory costs, National Insurance, Practising Certificate costs and Trainee CPD were all half-funded by the grants, which covered costs for the full term of the traineeships.

The Law Society of Scotland managed the fund on behalf of the Scottish Government, having pushed for this investment in the legal aid sector. We welcomed the legal aid traineeship fund as it provided a much-needed boost for the hard-pressed, yet vital, part of the profession. We believe it was a step forward in addressing concerns over future sustainability.

We are disappointed that the Government has not yet agreed to reinstate this impactful fund. Restoring this is a necessity for the future sustainability of the sector fund, and would demonstrate the Scottish Government's intent to invest in access to justice.

⁸ [Legal aid crisis to deepen with 41% of solicitors considering exit | Law Society of Scotland](#)

4. Is supporting the development of Law Centres something to be encouraged in terms of improving access to justice?

Yes. Law Centres play an integral role in the civil legal aid system. By offering free advice and legal representation across areas like housing, employment, and benefits, they greatly assist in enhancing access to justice in Scotland as part of a mixed legal aid sector of not for profit and private firms.

In addition, they are also able to use the law strategically in partnership with other organisations via, for example, test cases and policy work. This is often achieved through a combination of legal aid funding and other sources of income which would not be open to private firms. This further illustrates their contribution in providing access to justice.

5. Should legal aid continue to be restricted to individuals, and not to groups, charities etc?

Collective legal action significantly enhances the ability of citizens to defend and enforce their legal rights which could not realistically be pursued by a single individual.

We therefore believe it would be sensible for the system that is designed to secure access to justice to have arrangements in place to better support group proceedings.

Group proceedings are now possible in Scottish courts in a way that was not previously the case. However, there is, anecdotally, a real struggle to find legal aid solicitors in Scotland who will accept instructions in such cases, for example in environmental (and related planning law) cases.

It is important to note that law centres have been calling for legal aid funding for this type of litigation for some time now.

We are aware that the Scottish Legal Aid Board (SLAB) do grant applications for individuals for cases involving wider public interest. However, that individual then has to take sole responsibility for the instruction of the case, pay any legal aid contribution involved, and accept the risk that expenses may be awarded against them if they are unsuccessful. This is quite onerous for the individual, so we understand that SLAB tends only to see applications from people who have a very clear individual interest in the outcome of a case.

A group representative could potentially apply for legal aid, but in doing so Regulations 14, 15 and 16 of the Civil Legal Aid (Scotland) Regulations 2002 would be engaged, which could present a number of challenges.

We are aware of calls to broaden the scope of legal aid to include Non-



Governmental Organisations (NGOs) and community groups by amending Regulation 15 of the Civil Legal Aid (Scotland) Regulations 2002. These are essentially group actions (charities, groups, communities) which are currently covered by legal aid.

This would be worth further exploration as a means to lift current restrictions.

From the children's sector perspective, the UNCRC (Incorporation) (Scotland) Act 2024 has removed the 'victim' test that is contained in the Human Rights Act; but without access to funding for public interest actions for those with sufficient interest to do so, the burden of holding public bodies accountable for rights breaches is still likely to fall to individual children. This is rarely in their best interests.

The UNCRC Act also provides the Scottish Human Rights Commission and the Children and Young People's Commissioner with powers that allow them intervene in civil proceedings to advance wider strategic issues under the 2024 Act. Extending the powers of Commissioners to bring and intervene in strategic cases may be another mechanism of ensuring rights are given effect. However, these Commissions have limited resources and would need to be properly funded to exercise any new powers.

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