

11 April 2025  
Submitted via Citizen Space

# Equalities, Human Rights and Civil Justice Committee: Legal Aid Inquiry

## Our response

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?

Legal aid in Scotland is often thought of as representation delivered by private-sector solicitors and advocates in relation to court action or another form of legal procedure, such as tribunals. This is generally referred to as ‘judicare’. However, it is not the only form of publicly funded legal assistance. Public monies are also spent providing information and advice about the law, how to resolve legal problems and enforce decisions. Grant funding also allows for the delivery of advice in relation to welfare rights, housing advice, money and debt advice and consumer issues. Publicly funded solicitors may be embedded into organisations to provide advice on legal issues, while other organisations such as the Civil Legal Assistance Office are directly funded to deliver these services.<sup>1</sup> This system of public legal assistance provides an important route for allowing consumers to resolve issues and disputes when things go wrong.

### Accessibility of the legal system

However, for legal aid to serve its purpose of increasing access to justice for all, consumers must feel able to engage with the legal system as whole. Our evidence suggests this is not currently the case. Consumer Scotland-commissioned research found that over a third (37%) of adults in Scotland have low levels of legal confidence, meaning they are not confident they can achieve good outcomes across a range of common legal scenarios.<sup>2</sup> In addition, 24% of adults perceive the justice system in Scotland as being not very accessible.

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1. Rethinking+Legal+Aid+-+an+independent+strategic+review.pdf<sup>1</sup>

<sup>2</sup> <https://consumer.scot/publications/using-legal-services-in-scotland/>

Research for the Legal Services Board in England and Wales has also highlighted how anyone can be “inherently vulnerable” when engaging with legal services and systems.<sup>3</sup> Consumers who use legal services are often dealing with difficult or stressful circumstances. They can experience “situational vulnerability”<sup>4</sup>, i.e. being served with an eviction notice or experiencing a bereavement, or there may be issues with their capacity to engage with systems due to illness or disability. Consumers also experience vulnerability in how they interact with legal services, due to the technical nature of legal information and the language and structures of the legal system. Vulnerabilities can also intersect and be compounded, i.e. when a person who has lost their employment is in poor health due to stress.

These findings provide important background context in considering how to reform the system of legal aid, reduce barriers to take-up and improve access to justice.

### **Understanding and perception of legal aid**

Previous reviews and reports from the Scottish Human Rights Commission<sup>5</sup> (and the Independent Review of Legal Aid in Scotland)<sup>6</sup> have highlighted a number of barriers that may stop eligible consumers from receiving legal aid. The legal aid system in Scotland is unusual in being demand-led, and some 70-75% of adults in Scotland meet the criteria to receive some legal aid.<sup>7</sup>

However, focus groups convened as part of the Independent Review showed that consumers did not know the criteria for qualifying for legal aid, what it could be used for or which lawyers provided it. Many people had the perception that legal aid was not for them. The Review also found that people tend to shy away from using lawyers and going to court to resolve a dispute, largely because of the uncertainty about what it would cost and the belief that it would be very expensive.

The Scottish Human Rights Commission highlights that consumers need to know about their rights, and the processes available to claim those rights, before being able to seek access to justice. They note that a key opportunity for enhancing access to justice is through raising awareness, education, and capacity building to empower consumers. In a similar vein, the Independent Review recommended that there be a targeted public legal education and information campaign. As part of its deliberations, we recommend that the Committee explores with the Scottish Government how it will increase awareness and dispel misconceptions amongst potential legal aid users, in order to encourage uptake amongst those who are eligible.

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<sup>3</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/10/Vulnerability-in-legal-services-research-FINAL-REPORT-v2-1.pdf> p. 3.

<sup>4</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/10/Vulnerability-in-legal-services-research-FINAL-REPORT-v2-1.pdf>

<sup>5</sup> <https://www.scottishhumanrights.com/media/2496/access-to-justice-for-everyone-a-discussion-paper.pdf>

<sup>6</sup> [Rethinking+Legal+Aid+-+an+independent+strategic+review.pdf](https://www.scottishhumanrights.com/media/2496/access-to-justice-for-everyone-a-discussion-paper.pdf)

<sup>7</sup> <https://www.scottishhumanrights.com/media/2496/access-to-justice-for-everyone-a-discussion-paper.pdf>

## Specific barriers for different groups of consumers

In addition to the general barriers identified above, we highlight several groups of potential legal aid users who may experience an increased risk of facing barriers when seeking civil legal assistance:

**Consumers with disabilities.** The Scottish Government notes that adults with incapacity cases are the biggest single case type by volume for civil legal aid.<sup>8</sup> Amongst those who had engaged with the legal aid system, disabled users in particular have indicated experiencing its lack of flexibility as a barrier. Respondents to the Independent Review expressed the view that the current service was not well structured to meet the needs of those with disabilities, as solicitors often needed more time to diagnose the issues presented to them, more time to find potential solutions adapted to the needs of clients with a disability, and more time to explain these solutions.<sup>9</sup>

Research by the Legal Services Board and the Law Society for England and Wales found that people whose day to day activities are limited due to a disability or a health condition (60%) are more likely to need to access legal services than those who do not (48%).<sup>10</sup> They are also more likely to have these needs left unmet (38% vs 30%). This was mostly because they did not get professional help or found their issue took too long to resolve. Those whose activities are severely limited are even more likely to have these needs unmet (42%).

**Consumers on low incomes and / or consumers who live in geographical areas with little or no access to legal assistance.** The Legal Services Board research quoted above found that people in England and Wales with household incomes of less than £32,000 a year and those living in areas of highest deprivation have higher levels of unmet legal need. It is likely that this pattern is similar in Scotland.

The Law Society of Scotland has reported that many of the most deprived communities do not have civil legal aid firms based in them and that this may result in a lack of access to legal service.<sup>11</sup>

The Scottish Human Rights Commission note that even though the legal aid system in Scotland works on an inclusive basis that is demand led, there has still been a decrease in overall legal aid funding in Scotland. This has inadvertently increased the likelihood of advice deserts, both geographically and in the sufficiency of the numbers of solicitors providing a particular service within a specialist field of law.<sup>12</sup> The number of civil legal aid firms and solicitors taking on legal aid cases has declined from 556 in 2020 to 531 in 2024.<sup>13</sup> This decline may be exacerbated by the wider reported trend that many current solicitors who provide legal aid services are due to retire over the next decade. The market for civil legal aid is also relatively concentrated, with 20% of the firms delivering civil legal aid dealing with

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<sup>8</sup> <https://www.gov.scot/publications/legal-aid-reform-discussion-paper/>

<sup>9</sup> [Rethinking+Legal+Aid+-+an+independent+strategic+review.pdf](https://www.gov.scot/publications/legal-aid-reform-discussion-paper/attachments/2024-01-23-rethinking-legal-aid-an-independent-strategic-review.pdf)

<sup>10</sup> [Online survey of individuals' handling of legal issues in England and Wales 2023 - The Legal Services Board](https://www.lawsocot.org.uk/news-and-events/law-society-news/legal-aid-crisis-hitting-scotlands-most-deprived-families/)

<sup>11</sup> <https://www.lawsocot.org.uk/news-and-events/law-society-news/legal-aid-crisis-hitting-scotlands-most-deprived-families/>

<sup>12</sup> <https://www.scottishhumanrights.com/media/2496/access-to-justice-for-everyone-a-discussion-paper.pdf>

<sup>13</sup> <https://www.heraldsotland.com/news/24728535.data-behind-legal-aid-like-area/>

57% of all civil legal aid grants. This 20% of firms dealt with an average of 93 grants of civil legal aid; 22% of the remaining firms dealt with an average of two cases.<sup>14</sup>

**Consumers affected by gender-based violence.** The Scottish Women’s Rights Centre note that a high number of legal aid cases relate to issues that disproportionately impact women, including child contact, divorce and protective orders. For women with experience of violence or abuse, civil legal assistance can be a lifeline enabling them to access justice.<sup>15</sup> They report evidence from advisors that many survivors have to contact multiple firms to find representation and may resort to representing themselves if they cannot obtain professional assistance.<sup>16</sup> As a result they have called for a simpler, fairer process to qualify for legal aid, ensuring that those who need protection can access essential support, without facing prohibitive costs.

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?

Consumer Scotland works across a number of markets, and consistently finds a lack of awareness and confidence amongst consumers around their rights, and how to obtain redress. This Legal Services Board study in England and Wales found that not knowing where to get good information or advice and not understanding rights and responsibilities when first facing a legal issue are linked with having an unmet legal need.<sup>17</sup> In order to support consumers to address legal issues effectively, we support the recommendation of the Independent Review that the Scottish Government explores providing a programme of public legal education aimed at improving consumer’s ability to resolve justiciable problems.<sup>18</sup>

We also recommend that mitigations be identified to respond to the additional challenges that consumers in vulnerable circumstances might face when interacting with an already complex system. We welcome the Scottish Government’s intention to engage with service users to develop, trial, and test longer-term proposals for user representation.<sup>19</sup> However, we consider that embedding the user voice should be an immediate priority, to help inform service design. We would welcome more detail on when and how the Scottish Government intends to engage with consumers, and whether such engagement will include an additional focus on consumers in vulnerable circumstances, such as disabled or low-income consumers or those in legal aid “not spots”. Such engagement would allow the new system to be designed in a way that is more universally accessible to all consumers, rather than having specific mitigations being added as “work arounds” at a later point, risking the addition of

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<sup>14</sup> [SLAB-2022-23-Annual-Report-and-Accounts.pdf](#)

<sup>15</sup> <https://www.scottishwomensrightscentre.org.uk/news/news/on-legal-aid-and-justice/>

<sup>16</sup> [Why we need a legal aid reform. Victims/survivors of abuse should not have to pay for their own protection | News/Blog | Scottish Women’s Rights Centre](#)

<sup>17</sup> [Online survey of individuals’ handling of legal issues in England and Wales 2023 - The Legal Services Board](#)

<sup>18</sup> <https://www.gov.scot/publications/rethinking-legal-aid-an-independent-strategic-review/>

<sup>19</sup> <https://www.gov.scot/publications/legal-aid-reform-discussion-paper/>

further complexity to the system. We support the recommendation of the Independent Review that a Consumer Panel should be established to represent the interests of current, future and potential consumers of publicly funded legal assistance.<sup>20</sup> We would be happy to engage with the Scottish Government and the Scottish Legal Aid Board around how best to create a more user-centred system.

Question 3. 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?

In 2023/2024 SLAB provided £52m in overall spending on civil legal aid. However, only £2.3m was provided in grant funding to deliver targeted legal and advice services.<sup>21</sup> This grant funding supports one nationwide and 16 regional grant funded projects, to provide advice and support, generally on housing, debt and gender-based violence issues.

Ongoing Consumer Scotland research on the experiences of private rented sector tenants (due to report later in 2025) highlights the difficulties tenants can face in accessing advice and redress in order to resolve tenancy issues. Advice agencies and law centres play an important role in supporting tenants to resolve disputes. Tenants living in the private rented sector have low awareness of their rights and low expectations around what these rights are. Where the dispute may involve formal legal proceedings (in this case a Tribunal) tenants assume that the process will be complicated, burdensome and potentially costly in terms of accessing legal support.

The grant funding programme set out above does not provide consistent nationwide coverage on these issues, as these types of projects are often funded by geographic areas, leading to disparities in consumer access to advice and support. This has led to concerns from advice providers, with Citizens Advice Scotland (CAS) noting that, in relation to the current Regulation of Legal Services Bill, there are no clear measures to incentivise specific kinds of provision that could help plug gaps in unmet advice need in relation to legal issues.<sup>22</sup> CAS further notes that the difficulties for third sector bodies who experience uncertainty around funding on an ongoing basis, which is ultimately detrimental for the people that these organisations are supporting.

We note that the policy intention of the current Regulation of Legal Services (Scotland) Bill is to allow third sector organisations to be able to directly employ legal professionals to undertake reserved legal services such as court proceedings, in addition to allowing non-profit organisations to apply to become licensed legal services providers. We support this change, which will potentially allow consumers to access advice and support in a wider variety of ways, from trusted sources, and using channels which work for them. However, the changes to the legal framework will not alone provide these benefits. For this objective to be realised, funding must be rebalanced to support a wider range of models in locations across the country.

We support the Scottish Government's aim, set out in the recent discussion paper for funding to support a diverse and sustainable mix of private, public and third sector delivery,

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<sup>20</sup> <https://www.gov.scot/publications/rethinking-legal-aid-an-independent-strategic-review/>

<sup>21</sup> <https://www.slab.org.uk/corporate-information/publications/corporate-information/annual-reports/>

<sup>22</sup> [Microsoft Word - Reg Reform - CAS evidence to EHRCJ committee](#)

which can respond to legal aid users' needs.<sup>23</sup> The Scottish Government should not only seek to ensure the continued provision of "judicare"; it should also invest in civil legal assistance provided by not-for-profit services, such as law centres and Citizens Advice Bureaux. Longer-term funding may lead to more stability, increased geographical coverage, and better levels of awareness and uptake of advice by service users, allowing for earlier resolution of disputes. We note that the Legal Aid Payment Review panel supported a mixed model of funding for legal assistance work, including grant funding and contracts<sup>24</sup>, and recommended further consideration of how these could better be utilised. We would welcome this exploratory work being taken forward.

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

We share the Scottish Government's view that being demand led is a considerable strength of the current system, and we welcome its commitment to continuing this.

For consumers who seek to access legal aid, we consider that barriers to access are the biggest weakness of the current system. We addressed this in answer to Question 1. As noted in our responses to Question 2 and 5, we consider that the lack of user involvement in system design is another weakness in provision.

We consider that those who navigate the system, such as solicitors, and advice agencies, are well placed to comment on the factors affecting their ability to advise potential consumers.

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)?

As a consumer body, we consider the user-centred approach to reforming and shaping the legal aid system as a key strength of the recommendations made in the Independent Review. We also consider that the diversity of its suggested provision, with a number of different models suggested, is more likely to meet the needs of consumers who may choose to access the system in a variety of ways. As explained elsewhere, we support the proposal for a wider programme of public legal education to assist consumers in understanding and exercising their rights.

Question 6. What are your priorities for longer-term reform?

In general, we support the intention that, in the longer term, the legal aid system is informed by equality and human rights principles, is evidence-based, and embeds person-centred and trauma informed practices, through collaboration and partnership. The Independent Review of the legal services market in Scotland led by Esther Robertson (2018) identified a lack of available research regarding the Scottish legal services market and in particular, a lack of research focusing on the consumer experience.<sup>25</sup> We consider that system design should be

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<sup>23</sup> [Legal aid reform: discussion paper - gov.scot](https://www.gov.scot/publications/legal-aid-reform-discussion-paper-2018-01/pages/1-10.aspx)

<sup>24</sup> [https://www.gov.scot/publications/legal-aid-payment-review-panel-report-minister-community-safety/](https://www.gov.scot/publications/legal-aid-payment-review-panel-report-minister-community-safety/pages/1-10.aspx)

<sup>25</sup> [https://www.gov.scot/publications/review-of-legal-services-independent-report/](https://www.gov.scot/publications/review-of-legal-services-independent-report/pages/1-10.aspx)

informed by the experiences of those who deliver it (incorporating advice services, directly funded and grant funded bodies as well as solicitors). As noted above there is also a critical need for the consumer voice to be embedded. Consultation should include potential, current and previous service users, as well as legal assistance providers. Consideration should also be given to ensuring a wide range of providers, and consumer voices, are represented in governance arrangements for legal aid.

The Independent Review highlights that consumers who may seek legal aid require stability, accessibility, and flexibility to suit their specific needs. We highlight below three key issues that we consider the Scottish Government should consider in reforming the legal aid system to meet these needs:

1. **Improve access to civil legal assistance provided both by civil legal aid firms and not-for-profit providers.** We have addressed this in our answer to Question 1 and 3.
2. **Facilitating a coordinated approach between advice services and solicitors.** The Scottish Human Rights Commission has noted that for most people, the complexities of legal avenues are “*impossible*” to navigate without advice.<sup>26</sup> However, legal aid does not tend to be available unless one enters the judicial system. CAS has previously highlighted that, while advice agencies can signpost or refer to civil legal aid firms, these may not be able to take up cases.<sup>27</sup> Given relatively poor levels of awareness of rights and a lack of knowledge about where to go for help, this can result in consumers feeling unable to resolve legal issues.
3. **Ensuring the system is responsive to the needs of users.** This includes consideration around the use of digital services. One of the three objectives in Scotland’s Digital Strategy (2021) is that digital public services must be “*resilient, accessible, and easy to use*.”<sup>28</sup> We note that this strategy is currently being refreshed and it is important that any revised strategy delivers a solid foundation for people to engage in digital services, including on legal matters. The Scottish Government already has a Legal Aid Portal on mygov.scot<sup>29</sup>; however, this relies on consumers having awareness that legal aid may be appropriate in their own circumstances and knowing where to find this information. In the Vision for Justice in Scotland the Scottish Government has recognised that, while greater use of technology and digital practices can lower barriers to accessing justice, this requires individuals to have digital connectivity and skills.<sup>30</sup> Moving services to digital platforms can enhance services, but unless handled carefully it may risk compounding disadvantages for consumers living in vulnerable circumstances and/or in geographical areas of poor digital connectivity.

#### Question 7. Do you have any other comments?

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<sup>26</sup> <https://www.scottishhumanrights.com/media/2496/access-to-justice-for-everyone-a-discussion-paper.pdf> p. 22

<sup>27</sup> <https://www.cas.org.uk/what-we-do/our-areas-work/access-justice>

<sup>28</sup> <https://www.gov.scot/publications/a-changing-nation-how-scotland-will-thrive-in-a-digital-world/>

<sup>29</sup> <https://www.mygov.scot/legal-aid>

<sup>30</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2022/02/vision-justice-scotland/documents/vision-justice-scotland-2022/vision-justice-scotland-2022/govscot%3Adocument/vision-justice-scotland-2022.pdf>

## About us

Consumer Scotland is the statutory body for consumers in Scotland, established by the Consumer Scotland Act 2020. We use data, research and analysis to inform our work on the key issues facing consumers in Scotland. In conjunction with that evidence base we seek a consumer perspective through the application of the consumer principles of access, choice, safety, information, fairness, representation, and redress. This consultation is particularly relevant to the principles of access, representation and redress.

Our purpose is to improve outcomes for current and future consumers, with a particular focus on affordability, consumers in vulnerable circumstances, and climate change mitigation. As a consumer advocacy body, we have responded to the consultation questions that are relevant to accessing and using the legal system in general, with a focus on the provision of civil legal assistance in particular.

The need to reform the legal aid system has been recognised for a long time. Seven years ago, the Independent Strategic Review chaired by Martyn Evans published a 10-year strategic mission geared towards six strategic aims, underpinned by 67 recommendations. One of its aims was to help the legal aid system in Scotland respond to changes in 2018 – 2028. Developments have been ongoing, and the legal aid system must now catch up.

While a wider consultation on legal aid reform was held in 2019, we note that the current consultation seeks to inform three pieces of work:

- Simplification of service delivery through primary legislation
- Reform of legal aid fees
- Development of a future legal assistance system

Consultation and policy development in this area has been ongoing for a number of years now with a view to improving outcomes for consumers, including future consumers who could be using legal aid. We consider that there is now a need to make meaningful progress towards reform within the last year of this Parliament and we welcome the Committee's interest in this topic.