



Legal Aid Reform in Scotland: Consultation

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- Individual
 Organisation

Full name or organisation's name

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Yes

No

Questionnaire

Part 1 – Foundations for Change

i) legal aid has the user voice at its centre

- The Review recommends the voice and interest of the user be at the centre of the legal aid system. Do you agree?

Yes

No

Unsure

Please give reasons for your answer.

JustRight Scotland is Scotland's legal centre for justice and human rights, where we use the law to defend and extend people's rights.

We work in the areas of migrant and refugee rights, women's rights, children's rights and anti-trafficking and exploitation. All of our legal centres pursue collaborative social justice, meaning we use our legal expertise to work with non-lawyers, pooling resources and skills in order to work towards common goals of reducing inequality and discrimination.

We believe in creating new models for helping individuals and civil society use the law more effectively, and we believe in sharing what we learn along the way.

We agree that the current system of legal aid – based on a market-led approach to meeting user needs, primarily through the judicare system – has failed to provide equal access to justice for service users (and potential service users) who face specific barriers in access, for those requiring legal assistance in specialist areas of law, and across key geographies.

This gap has disproportionately restricted access to legal advice for marginalised and vulnerable groups including:

survivors of gender-based violence, migrants, individuals with disabilities, children and the elderly. The current system arguably perpetuates, and amplifies, the current inequality in access to justice for some of these groups.

We therefore welcome the government’s commitment to more closely align the design of the legal aid system with the needs of service users (and potential service users) by ensuring the user voice lies at the centre of design, delivery and evaluation of legal aid provision.

However, we consider the proposals set out for embedding user voice stop short of the vision set out in the Martyn Evans report, which proposes that “publicly funded legal assistance” be recast as a public service for all.

We would go further and recommend a solution which empowers users not only to voice opinions, but also to contribute to setting strategy, evaluating outcomes and holding the organisations to account. We also think there is an important role to play for solicitors and their indirect representatives – frontline professionals across public, private and third sector organisations.

We submit that without mechanisms of accountability, the new system will not be effective or flexible enough to identify and meet the future needs of future users, or to adapt its approach over the coming decades, as we experience changes in the political and legal environment, social values, and the types of legal challenges faced by individuals.

- How desirable are each of the following ways of embedding the user voice and experience into the design and delivery of a legal aid service, on a scale of 1 – 5 (1 being very undesirable and 5 being very desirable).

1. Direct engagement through enhanced approaches to quality assurance

2. Indirect engagement through consumer panels

3. Collaborative engagement by connectivity across the publicly funded legal assistance landscape.



Please give reasons for your answer.

We believe that all of the methods set out above will potentially increase the power of the user voice, and are therefore desirable.

However, at this prospective stage, it is difficult to evaluate the merits and drawbacks of each approach in the detail required.

In evaluating solutions for increasing user voice in this context, we would recommend the following principles apply:

- 1. Solutions should genuinely empower individuals from a diverse range of user groups to contribute meaningfully to setting strategy, evaluating outcomes and holding organisations to account.**
- 2. Solutions also require to take account of the barriers for some user groups in participating in the types of structures proposed, and in response, build mechanisms for indirect representatives – frontline professionals from the public, private and third sectors with a mandate to amplify the user voice – to meaningfully contribute.**
- 3. Solutions which require input from users and frontline professionals, or which impose additional regulatory requirements on legal professionals, will create real financial costs – in terms of time and resources – for these groups.**

We believe these costs should be estimated in a transparent manner, and question of who should bear the burden of those costs should be a central part of the evaluation of alternative solutions.

- Partnership working and Community Planning Partnerships (CPPs) help provide local context to user needs. Would you support placing duties on a prescribed list of public sector organisations, to work together in order to help CPPs achieve their goals?

Yes

No

Unsure

Please give reasons for your answer

As set out above, we believe in the power of collaborative social justice, and in the value of pooling resources, skills and expertise in order to achieve common goals.

Many of our projects, including in the areas of anti-trafficking and exploitation, and migrant destitution, foster collaboration between public, private and third sector organisations, and the legal sector.

For this reason, we support solutions that build better connectivity between private providers, employed solicitors, public and third sector organisations and central and local government. We also see the value in encouraging local networks to build strategies that are effective at a local level.

However, through our work we have identified significant legal advice deserts in certain specialist areas of law, particularly outside the Central Belt. We are concerned that any future approach to funding public legal services should tackle the reduction of advice deserts as a priority, and proposals should be evaluated in light of the potential impact for decreasing, or increasing, advice deserts in certain areas.

For this reason, we would caution that an approach to increasing local participation in setting priorities be balanced with a commitment to the idea that “publicly funded legal assistance” is a national service that also requires the resources and flexibility to provide equal access across geographies, and sectors of law.

At this prospective stage, we would require more information about the specific proposals under consideration, in order to comment further, and refer to the principles set out in our response above.

(ii) legal aid has flexibility to address and adapt to user need

- The Scottish Government supports the recommendation in the Review that provision by publicly-funded private solicitors should continue. Do you consider that there are ways in which the mixed model can be strengthened?

- Yes
 No
 Unsure

Please give reasons for your answer

We support the proposal to maintain provision by publicly-funded private solicitors but to create new, flexible powers to direct and target legal aid at services at specific legal and geographic areas of need.

We understand the mixed model of funding under consideration includes:

- **A mix of demand led and targeting funding by way of judicare, public direct employment and grant aided;**
- **A mix of solicitor and lay assistance including options for solicitors being embedded within lay advice providers;**
- **A mix of method of delivery to include online and telephone as well as direct advice delivery**

We believe a flexible approach will allow more people to access advice and information in a timely and more accessible manner. We also believe that this approach can dismantle key barriers arising in particular sectors and geographies, as well as encourage creative and thoughtful solutions to emerging challenges.

To that extent, we would support the development of the “mixed model” not be limited to particular approaches, but rather to consist of a set of principles that could be employed to evaluate the effectiveness, suitability and value of new proposals.

- Are there specific areas of law, eg domestic violence or disability issues, that the current judicare funding arrangements are serving less well?

- Yes
 No
 Unsure

Please specify which areas and give reasons for your answer

As set out above, JustRight Scotland was founded as a legal centre for justice and human rights, with the goal of addressing gaps in access to justice for people in Scotland who experience discrimination and disadvantage.

To that extent, the work of our three legal centres – in migrant rights and children’s, women’s rights and gender-based violence, and in anti-trafficking and exploitation – explicitly seeks to fill gaps in access to legal advice and representation which were created, at least in part, by shortcomings in the current system of judicare funding.

We note that gaps in access to justice are not only, however, the consequence of funding shortfalls. There are individual, environmental, institutional, and other barriers that also contribute to unequal access. We are mindful that legal aid funding arrangements are only one part of a wider set of changes required in order to meet these gaps.

For example, a non-native English speaking, migrant young person with poor mental and physical health, who is destitute and excluded from public services, and living outside of the Central Belt (where immigration practitioners predominately practice) will struggle to access legal advice and representation with respect to an immigration issue, on the same terms and with the same efficacy as a native English speaking young Scottish person, who is safely accommodated and financially supported.

Legal aid funding arrangements may have a role to play in redressing the advice gap in immigration law outside of the Central Belt. It may be the case, for example, that fee arrangements that take account of common barriers (such as the need for interpretation services), or offer a premium for undertaking work in certain geographies, will increase the supply of private solicitors who are willing to undertake this type of work.

However, any future system also requires to retain the flexibility to respond effectively to specific vulnerabilities of

individual clients – for example, the need for more time delivering face-to-face legal advice, and the need to account for the additional challenges faced in delivering advice to individuals who are destitute and excluded from other public services.

We also recognise, as set out above, that reform of the current system requires solutions that are flexible to meet the future needs of future users, and that can be adapted over the coming decades, as we experience changes in the political and legal environment, social values, and the types of legal challenges faced by individuals.

For this reason, we would decline to comment on specific areas of law in which specific methods should apply. We would advocate instead for an accessible and inclusive governance system based on user and participant voice, with responsibility and accountability for the periodic assessment of gaps in access to justice, and the powers to take a broad and flexible approach to redressing those gaps.

- Are there specific areas of law that might benefit from a more targeted approach to funding solicitor services?

- Yes
 No
 Unsure

Please specify which areas and give reasons for your answer

Please refer to our answer above. In some areas, where adjustments to funding are not sufficient to redress legal advice deserts, a targeted approach may be appropriate, but we would also support the retention of flexibility to meet the specific needs of vulnerable service users.

We also note that any targeted approach to funding should take into account the need to preserve the independence of the legal profession and access to a solicitor of choice.

- Are there certain groups that when accessing legal aid might benefit from a more targeted approach to funding solicitor services?

Yes

No

Unsure

Please specify which groups and give reasons for your answer

Please refer to our answers above.

- Do you support building additional flexibility into the delivery of legal aid?

Yes

No

Unsure

Please give reasons for your answer

Please refer to our answers above.

iii) Legal aid as a public service

- As currently structured and delivered, do you consider legal aid a public service?

- Yes
 No
 Unsure

Legal aid is available to all people in Scotland who meet the threshold criteria – to that extent it is a public service in the broad sense of that term.

However, the Martyn Evans Report raises the valid point that legal aid in Scotland has been viewed more narrowly as mainly concerning SLAB administered funds granted to solicitors in the judicare system. Further reference to this point is raised in the Scottish Government response, which points out that only 2% of individuals in Scotland receive legal aid.

With that in mind, the Martyn Evans Report, proposes a widening the definition of legal aid as “publicly funded legal assistance.” This term expresses a broadening of the goal of legal aid to also provide flexible funding including for advice services and public legal education, and taking a preventative and proactive, rather than reactive, approach to funding strategy.

Our approach to collaborative social justice is based, at its core, around the belief that working together with non-lawyers – across the public, private and third sectors – to empower individuals and organisations. We believe professional training and public legal education is an effective and proactive approach to increasing access to justice and helping people achieve their rights.

Many of our projects – including in the sectors of gender-based violence and migrant and children’s rights – also involve advice workers providing advice and information, in a

complementary service, with the support or under the supervision of, our expert lawyers.

We continue to explore – with our collaborative partners - innovative solutions to provide early advice and information about legal rights, at the right time, and through the most effective channels, to individuals in the areas in which we work.

For the above reasons, we support the wider definition of “publicly funded legal assistance” – and the broader aspirations contained in that phrase – as set out in the Martyn Evans Report.

Please give reasons for your choice

- Are there changes that you consider would make legal aid function more as a public service?

Yes

No

Unsure

Please give reasons for your answer

For the reasons set out above, we support the proposals outlined in the Consultation Document, including:

- **A clear focus on the needs of all user groups and the design and delivery of services, including transparency of availability and eligibility**
- **Consistency of service across geographies and in terms of quality that does not vary over time**
- **Governance structures that are accountable and transparent**
- **Accessible digital services**

We also believe that the proposals can go further, as set out above:

- **Strengthening the powers of users and participants to set strategy, and ensure monitoring and accountability**

- **Setting out key principles, including that of responsibility and accountability for identifying and redressing gaps in access to justice**
- **Explicitly recognising the broader definition of “publicly funded legal assistance” – including the obligation to work with lawyers, and public, private and third sector professionals and to support public legal education – as core to a coordinated approach to funding**

- Are there potential risks to looking at the delivery of legal aid as a public service?

- Yes
- No
- Unsure

Please give reasons for your answer

At this prospective stage, it is difficult to evaluate the merits and drawbacks of this approach in the detail required.

We refer to our response above, and reiterate that we believe in a broad and flexible approach to “publicly funded legal services.”

We also believe that any solution must ensure the independence of the decisionmaking authority in individual cases, and preserve the independence of the legal profession and the right to access of a solicitor of choice. We believe an important element in preserving independence and choice would be met by supporting a mixed model approach to funding.

Part 2 – The Change Agenda

i) Scope and oversight

- Are there actions that could be taken by the Scottish Government to help maintain or strengthen the current scope of legal aid?

- Yes
 No
 Unsure

Please give reasons for your choice

The scope of legal aid in Scotland is broad, and we welcome and agree with the Scottish Government’s plans not to reduce to scope.

We believe the current flexibility is an important factor both in ensuring the fairness and resilience of the system, and in safeguarding its ability to meet new legal challenges as social, political and legal structures change over time.

However, we also believe that there is an opportunity to strengthen the current scope by supporting a broad and flexible approach to funding legal services through a mixed model of service provision, as set out in our response above.

- Are there any other aspects of the current scope of legal aid that you think should be reformed?

- Yes
 No
 Unsure

We believe that the approach to delivering “publicly funded legal services” can be improved in line with the principles we have set out above.

These include ensuring a role for service users and frontline professionals to have a meaningful role in setting strategy

and ensuring accountability, allowing for a mixed model of funding, and also taking a proactive and early intervention approach to ensuring access to legal advice and information.

Please give reasons for your choice

- Are there actions that should be taken by the Scottish Government to help support and strengthen the work of SLAB?

Yes

No

Unsure

Please give reasons for your choice

We refer again to the principles set out above, and our views that the organisation responsible for delivering “publicly funded legal assistance” should have a wide remit for funding a mixed model of legal advice, representation and education, with the goal of ensuring equal access to justice for all people in Scotland, and broad and flexible powers to do so.

ii) Improving access and targeted interventions

- A more structured relationship between SLAB and legal aid providers could be facilitated by way of a formalised agreement. Do you support a Memorandum of Understanding between solicitor firms and the Scottish Legal Aid Board being a prerequisite for doing legal aided work?

- Yes
 No
 Unsure

Please give reasons for your choice

Whilst we support setting minimum standards and ensuring consistency of practice across the range of legal practices that provide legal aid funded work, we believe it is important to ask what would be achieved by this contractual requirement, over and above the minimum standards which are already in place by virtue of Law Society of Scotland and current SLAB regulatory requirements.

We further observe that a MOU that places any type of restriction on a firm to take certain types of cases, or one that creates exclusive funding arrangements, would appear to work contrary to the stated intention to meet unmet need by creating *greater* flexibility.

We tend to favour incentive based systems – for example, additional payment for working in hard-to-reach geographies, or additional grant based funding for specialist areas of law, and alternative delivery methods, such as public legal education – rather than restrictive approaches that disqualify or exclude solicitors from offering legal aid practices in specific geographies or areas of law.

We also think it is important to consider the long-term impact of restrictive legal aid funding mechanisms, positive and negative, on the training of future generations of lawyers and the future supply of legal advice in these areas of law.

- What should be contained in a Memorandum of Understanding to strengthen consistency of service and user centred design?

We refer to our response to the previous question, and the principles we have articulated above.

- What risks might a Memorandum of Understanding system have in relation to the legal sector's ability to respond to emerging legal need, if any?

Please see our response above, with reference to our concerns about the impact of exclusive or restrictive funding arrangements.

- In principle, do you support a change whereby SLAB would have a standardised range of intervention powers, in statute, across all legal aid types?

- Yes
 No
 Unsure

Please give reasons for your answer

Please see our response above. We would require a more detailed proposal to comment fully, but reiterate our support for a future system for delivering “publicly funded legal assistance” with broad and flexible powers to meet gaps in access to justice.

- Should lay advisers be able to access funding through legal aid to provide advice?

- Yes
 No
 Unsure

Yes. For the reasons outlined above, we believe the market led judicare system has led to serious gaps in access to legal

advice required by individuals in certain areas of law, and geographies, and that it will take time, and creative approaches to funding in order to redress these imbalances.

We believe that third sector advice organisations and lay advice workers play an important role in filling this gap, and our collaborative social justice projects demonstrate the value of this approach.

We therefore believe it makes sense to leverage this resource, by opening funding opportunities for third sector organisations to employ lay advisors, adopting a tailored approach to providing just-in-time advice to individuals.

We also recognise that a future legal aid system requires to ensure public confidence in the quality and consistency of advice, whether provided by lawyers or lay advisors, and advocate for a transparent and effective system of regulation, for all types of advisors.

We also support the wider strategy to build greater coordination and cooperation between advice providers (lawyers and non lawyers) within sectors. We believe these networks should operate to ensure that individual enquiries are triaged appropriately, and dealt with by those organisations able to offer a suitable level of support, with effective signposting and referrals between organisations undertaking similar work in the same sector.

Please give reasons for your answer

- What are your views on solicitors providing publicly funded legal assistance being located within third sector organisations that have service users with civil legal issues e.g domestic violence, minority groups or disabled groups?

For the reasons outlined above, we support this flexibility, within a wider mixed model of service provision with reference to the effectiveness of lawyers working alongside

lay advisors in specialist third sector organisations like Shelter Scotland and the Child Poverty Action Group.

We also reflect on the benefits that we have seen in some of our collaborative social justice projects working in gender-based violence, refugee family reunion, migrant destitution, and anti-trafficking and exploitation.

Specifically, we believe there are significant benefits when vulnerable or at-risk service users are able to access legal advice in a user-centred environment, tailored to reduce specific barriers to access. We also believe there are also economic efficiencies in terms of allowing solicitors in specialist areas of law to deliver a targeted service, leveraging the infrastructure of the wider organisations in which they sit.

We also reflect there are additional benefits to this type of collaboration, including the potential for lawyers to increase the capacity of lay advisors to use the law more effectively, becoming more expert in identifying legal issues and engaging in public legal education.

We believe this flexible approach to funding legal services would also contribute to wider positive perceptions that publicly funded legal assistance is a public service.

We concur with the Law Society's consultation response, which points out that any future proposals will need to consider the sustainability of funding models for the advice sector, as well as issues of independence, conflict of interest, and equal access across diverse geographies.

- SLAB could directly employ lay advisors for tasks such as assisting with information and advice provision to aid early resolution, signposting people to information or services, or referring them to services that will meet their needs. Would you support SLAB being allowed to directly employ lay advisors for such purposes

- Yes
- No
- Unsure

Please give reasons for your answer

As above, we believe that there are a range of solutions that could work together to effectively meet the current gaps in access to legal advice.

We believe this proposal could be part of a wider solution, but that its value should be considered alongside other proposals, and in light of the principles set out above.

- Do you think there would be benefits to having a telephone triage service that provided basic advice and referral assistance?
 - Yes
 - No
 - Unsure

Please give reasons for your answer

As above, we believe that there are a range of solutions that could work together to effectively meet the current gaps in access to legal advice.

We believe this proposal could be part of a wider solution, but that its value should be considered alongside other proposals, and in light of the principles set out above.

- If such a telephone triage service were implemented, what criteria should be used to identify the most appropriate organisation to deliver this service?

Please see our response above.

- The Review supported a “channel-shift” in signposting, referrals, advice and information from face-to face and telephone to on-line, while ensuring that face-to-face remains for vulnerable groups or those who struggle to access digital technology. Do you agree that such a channel shift should be promoted?
 - Yes

- No
 Unsure

Please give reasons for your answer

We recognise that telephone and on-line provision of signposting, referrals, advice and information is a practical and pragmatic response to limited resources.

We also recognise the particular value of using technology respond flexibly to gaps in access, including in remote geographies, and also to a shift in how individuals access information in general.

However, we believe that the use of alternative channels of communication should enhance and strengthen, rather than replace or limit existing access to face-to-face advice and information.

We wish to emphasise the overriding importance of face-to-face interaction in ensuring the accuracy and quality of legal advice and information provision, and the value of face-to-face in reducing barriers in access to justice for certain vulnerable and at-risk groups.

We would also recommend that any newly established telephone and on-line channels of communication be rigorously assessed for accessibility and inclusivity, in line with the principles outlined above, in order to ensure that they are gateways to a genuinely public service, and are not creating new barriers in access for some service users.

- Planned intervention could mean exclusive funding using grants for specific advice or geographical areas. Should grants and/or contracts facilitate exclusive funding arrangements to target a specific identified need?

- Yes
 No
 Unsure

Please give reasons for your answer

We refer to our comments above, and in particular our support for a mixed model of service provision. We also refer to our concerns about the sustainability of this form of funding, and the potential adverse impact of exclusive or restrictive funding arrangements.

- Should grants and/or contracts be able to cover all aid types?

- Yes
 No
 Unsure

Please give reasons for your answer

We refer to our comments above, and our support for a mixed model of service provision. We also note that different approaches may be suitable for different areas of law, but whether a grant or contract funded approach is appropriate must be determined transparently, in light of evidence of current resource, alternative proposals made, and the principles set out above.

iii) Simplicity and Fairness

- Do you agree that the judicare system should be simplified?

- Yes
 No
 Unsure

We agree that the current legal aid system is complex, and there would be significant benefit – for solicitors and service users – in simplification of the process.

We would require specific proposals to comment further, but would recommend that reform to simplify the system be

pursued with transparency, and in line with the principles we have outlined above.

Please give reasons for your answer

- Should SLAB have more flexibility in operating the system?
 Yes
 No
 Unsure

Please give reasons for your answer

As above, we would require more specific proposals in order to comment further.

- Flexibility and fairness can trade off against one another. With this in mind:

In which areas do you think it is most important to maintain consistency?

As above, we would require more specific proposals in order to comment further.

Consistency is important to ensuring efficiency and fairness in a decisionmaking authority with a remit to deliver a “publicly funded legal service.” Having said that, we also see the scope for greater flexibility to enhance existing service provision. We believe an appropriate balance can be struck, in line with the principles articulated above.

In which areas do you think it is most important to allow more flexibility?

Please see our comments above.

- Do you support a single eligibility assessment at the earliest point in the application process?
 Yes

- No
- Unsure

Please give reasons for your answer

As above, we would require more specific proposals in order to comment further.

- Are there situations when the continuation of more complex financial calculations would be required?

- Yes
- No
- Unsure

Please give reasons for your answer and identify the situations in which you think this would be necessary (if any).

As above, in a system that retains flexibility, there will be circumstances in which more complex financial calculations may be necessary. However, we would support simplification, in line with the principles of transparency, consistency and fairness set out above.

- Should there be more strictly defined financial thresholds for eligibility?

- Yes
- No
- Unsure

As set out above, we support simplification, where possible, in line with the principles of transparency, consistency and fairness set out above.

We also reiterate that it is important that this simplification does not come at the cost of unduly restricting the flexibility required to meet the aims of providing wide public access to “publicly funded legal assistance.”

Please give reasons for your answer

- Would you support the availability of funding to those with a common interest in legal proceedings, such as Fatal Accident Inquiries?

- Yes
 No
 Unsure

Please give reasons for your answer, and if you answered 'Yes' provide any views on how this could be managed?

We do not wish to comment specifically with respect to Fatal Accident Inquiries, but we do support the Martyn Evans Report in thinking more broadly about a “publicly funded legal assistance” approach to funding, and not this could specifically expand more flexible funding alternatives for groups with a common interest in legal proceedings.

We also refer to a 2018 report by the Human Rights Consortium Scotland and Clan Childlaw, “Discussion Paper: Overcoming Barriers to Public Interest Litigation in Scotland in Scotland”

<https://hrcscotland.files.wordpress.com/2018/11/final-overcoming-barriers-to-pil-in-scotland-web-version.pdf>, which highlights a gap in public interest litigation in certain sectors and on behalf of certain service users, particularly in a context in which individuals (whether because of disadvantage, precarity, or other circumstances) are not best placed to bring legal challenges in the public interest.

Whilst these gaps are not exclusively created by legal aid funding structures, they could be redressed by making available more flexible forms of funding for groups of individuals, or for civil society organisations acting on behalf of groups of individuals.

- Do you agree that those who can afford to do so should pay a contribution?

- Yes
 No
 Unsure

Please give reasons for your answer

We support the general principle that those who can afford to make contributions, should pay a contribution in civil legal aid. We would reiterate that we believe contributions should be set with respect to the principles we have outlined above, including consistency, transparency and fairness.

- Would you support the implementation of contributions in criminal legal assistance for those who can afford to pay?
 Yes
 No
 Unsure

Please give reasons for your answer

We do not practice in the area of criminal law, and therefore decline to comment on this point.

- The existing contributions regime is complex but highly personalised. Would you support a simplified, more transparent and more accessible contributions system, even if this might risk some of benefits of this personalisation?

- Yes
 No
 Unsure

Please give reasons for your answer

As set out above, we support simplification, where possible, in line with the principles of transparency, consistency and fairness set out above.

- There are inconsistencies in the operation of clawback. Would you support addressing this by removing discretion to create a more transparent system, even if this might risk some benefits of the flexibility this discretion allows?

- Yes
 No
 Unsure

Please give reasons for your answer

As set out above, we would require to see more specific proposals before we can comment fully.

However, we support simplification, where possible, in line with the principles of transparency, consistency and fairness set out above.

- Would you support that there be a test on whether clawback should apply?

- Yes
 No
 Unsure

Please give reasons for your answer

Please refer to our answer above.

Do you hold any other views on how the current system of contributions and clawback could be improved?

Please refer to our answer above.

- Do you consider the merits tests appropriate and transparent?

- Yes
 No
 Unsure

Please give reasons for your answer

We believe there is scope for improving the transparency and consistency in how the merits test is defined and applied, and would support reform in line with the principles outlined above.

- Merits tests could be applied at defined stages during the lifetime of a grant of legal aid. For example before an appearance is made in civil court proceedings, or on receipt of summary complaint and any following appeal. In principle, do you support the application of a merits test at defined stages during the lifetime of a grant of legal aid?

- Yes
 No
 Unsure

Please give reasons for your answer

We would require to see additional detail, before commenting fully. However, as noted above, we support the simplification of the legal aid system, in line with the principles outlined above.

- We are aware that in other jurisdictions, such as the Netherlands, applications are submitted under a high trust model and automatically granted, subject only to financial eligibility checks. What are your views on the current balance between a solicitor's ability to grant advice and assistance and the need to seek prior approval from SLAB for funding in other aid types?

Do you think this balance should be shifted, and if so in what direction?

Again, we support the simplification of the legal aid system, in line with the principles outlined above. This may include reform aimed at reducing the number of legal accounts decisions required to be made by SLAB every year and simplifying the administrative mechanisms by which lawyers are granted certain types of legal aid.

- In general, what controls do you think should be put in place to protect the Legal Aid Fund from inappropriate use?

N/A

- Would you support the introduction of any merits test on what is currently the advice and assistance scheme?

No. We support maintaining the current flexibility within the advice and assistance scheme, to ensure that the public continues to benefit from the wide scope of assistance available through that scheme.

iv) Enhanced Statutory Powers and Best Value

- SLAB could have statutory powers to operate more strategically. Do you support there being statutory processes that allow SLAB to facilitate legal aid delivery in a more flexible and permissive way?

- Yes
 No
 Unsure

Please give reasons for your answer

We refer to our response above, and support the idea put forward in the Martyn Evans Report for reform to support a broad, flexible system for “publicly funded legal assistance.”

We note that SLAB holds a range of statutory powers which would permit it to implement many of the reforms put forward for consultation, and would require to see more detailed proposals before comment further on the necessity for additional powers.

- What checks or controls would you consider necessary if SLAB had statutory powers to operate more strategically?

We refer to our response above.

- Do you consider changes to the composition and structure of SLAB’s Board necessary to help support a more strategic role?

- Yes
- No
- Unsure

Please give reasons for your answer

As set out above, we think there is a role for more meaningful powers by users and frontline professionals to set strategy and ensure accountability of a system for delivering “publicly funded legal assistance.” Whether a change to the composition and structure of the SLAB Board is necessary, is a question that should be examined in light of other, complementary or alternative proposals.

- Do you support that SLAB should register and quality assure all those providing services paid by the Legal Aid Fund?

- Yes
- No
- Unsure

Please give reasons for your answer

We refer to our response above. We note that legal representatives are already subject to minimum standards set by the Law Society and SLAB regulatory processes, and recommend that the necessity for any additional regulation be evaluated in light of existing requirements.

As noted above, we also support a system for ensuring quality and consistency of advice provided by all legal advisors delivering publicly funded legal services – including lay advisors – in order to ensure public confidence in the legal aid system.

- Do you agree with the Review recommendation that all quality assurance reviews and reports on both lawyers and third sector advice services be published?

Yes

No

Unsure

Please give reasons for your answer

We refer to our response above and think this requires to be considered, against a more detailed future proposal, in light of our comments about consistency, transparency, and fairness, and the requirement to ensure consistent standards across lawyers and lay representatives.

- There are a number of approaches that could achieve greater surety and control over outlays. How desirable on a scale of 1 – 5 (1 being very undesirable and 5 being very desirable) do you find the idea of the statutory framework to give SLAB powers to:
 - 1. fix a preferred supplier list and to set rates for commonly used experts;

We believe that more detailed proposals are required, before we can fully comment. Whilst we support simplification of the

current system, we also believe it is important to retain the current flexibility which allows an individualised and tailored approach to instructing the evidence necessary to put forward cases most effectively.

2. deal directly with the experts to arrange payment;

Please see our response above.

3. make payment on the basis of a fixed tables of fees for experts, which must be agreed to when accepting instructions relating to a legal aid client

Please see our response above.

- Are there types of expert reports and other reports which could be subject to more control than others?

- Yes
 No
 Unsure

Please give reasons for your answer. If yes, what controls should be put in place?

Please see our response above.