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Scottish Women's Rights Centre Response to the Equalities, Human Rights and Civil Justice Committee Call for Views for the Inquiry into Civil Legal Aid in Scotland

About the Scottish Women's Rights Centre

The Scottish Women's Rights Centre ("SWRC") is a collaboration between Rape Crisis Scotland, JustRight Scotland and the University of Strathclyde Law Clinic. The SWRC works with women who have been affected by abuse and violence in Scotland with the aim of improving their access to justice and experience of the justice system.

The SWRC strives to fill the gaps that exist between women's experiences of gender-based violence and their ability to access justice by working with specialist solicitors and experienced advocacy workers.

Informed by our direct work with victims/survivors of violence and abuse, we seek to influence national policy, research, and training to improve processes and systems, and ultimately to improve justice outcomes for women who have experienced gender-based violence.

Our Response

Our response to the Equalities, Human Rights and Civil Justice Committee call for views for the inquiry into Civil Legal Aid in Scotland

Questions:

- 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?**

The Scottish Women's Rights Centre ('SWRC') has identified a number of barriers to accessing civil legal assistance through its work providing free legal information, advice and representation to women affected by violence and abuse.

Firstly, there has been a continued decline in resources for legal assistance which leave many victims/survivors of gender-based violence (GBV) unable to find solicitors



to take on their case under legal aid funding. As a consequence, they are forced to represent themselves or privately fund their legal representation causing them significant financial hardship. This financial hardship is often on top of any economic abuse they may have been experiencing and the significant financial burden of having to flee domestic abuse.

Second, the COVID-19 pandemic and the resulting cost-of-living crisis exacerbated issues related to the proper remuneration of legal aid work, the accessibility of legal representation and finding legal aid solicitors in specialised areas of law and outside the Central Belt.

Thirdly, ongoing financial and procedural barriers within the legal aid system – including the legal aid payment structure (e.g. 'block fee' system), the presence of means testing and the requirements to show the merits of the application - continue to impede access to protective orders for survivors of domestic abuse. Those who do not qualify for legal aid and often cannot afford private solicitors, or the additional cost and risk of taking a claim to court, are unable to raise a court action to seek protective orders. Leaving victims/survivors, and their children, at serious risk of harm from their perpetrator.

We have commented on the current legal aid crisis in Scotland in previous parliamentary responses¹. The Scottish Legal Aid Board's (SLAB) 2023-24 report² highlights significant declines in legal aid support. The total number of cases funded dropped to 134,900, a 1% decrease from the previous year and a sharp 29% decline from 191,256 cases in 2016-17.

Legal aid costs³ have risen 12% from the previous year, totalling £151.2 million, but this is only an 11% increase from 2016-17 levels, meaning that SLAB's budget is not keeping pace with inflation⁴. Additionally, the number of law firms applying for legal aid funding fell to 596, down from 621 the previous year, signalling a continued decline in resources for legal assistance. On top of this, we are aware from speaking directly with victims/survivors through our outreach, and with legal aid solicitors from our Signposting Network⁵, that some solicitors are less likely to take on complex cases involving domestic abuse and GBV under legal aid, due to the complexity of the cases and issues around adequate remuneration for the work involved. This further widens the gap in access to legal aid for victims/survivors.

¹ https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/correspondence/2023/pe2025/pe2025_e.pdf; https://www.justrightscotland.org.uk/wp-content/uploads/2024/12/24.12.03-SWRC-report_No-Costs-Barriers-Protective-Orders-in-the-legal-aid-system-FINAL.pdf

² <https://www.slaborg.uk/app/uploads/2024/11/SLAB-Annual-Report-2023-24-news-release.pdf>

³ <https://www.scottishlegal.com/articles/slab-report-confirms-that-legal-aid-remains-in-crisis>

⁴ <https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/consumerpriceinflation/october2024>

⁵ <https://www.scottishwomensrightscentre.org.uk/support-find-solicitor/>



We have seen a significant increase in enquiries to our services from victims/survivors of GBV who are unable to find solicitors to take on their case under legal aid funding. The demand for those looking for legal representation is overwhelming.

We have heard from our service users that they are having to contact on average anywhere between 30-50 solicitors to seek legal representation. We are also aware that some victims/survivors have tried to contact over 100 solicitors' firms and still have been unable to secure representation⁶. We have also seen a steady increase in the number of victims/survivors self-representing in civil cases due to the legal aid crisis and a decrease in solicitors willing to provide legal aid funded work, due to inadequate remuneration.

Where a victim/survivor is unable to secure a solicitor under legal aid they will either be required to consider privately funding their legal representation (often through borrowing money or taking loans which they cannot afford) or to self-represent.

Due to the complexity and length of certain cases, legal fees can be extremely high and can cause significant financial hardship for survivors. Survivors of domestic abuse often find themselves navigating multiple legal proceedings simultaneously - such as self-funding or self-representing in matters related to the dissolution of a relationship, child contact arrangements and financial disputes. This highlights the significant emotional and financial burdens they endure.

Private legal fees can be anywhere from £180-£500 per hour and with court actions lasting months survivors can be faced with bills mounting to £10,000+ within a matter of months.

We are aware that perpetrators use legal processes to continue to perpetrate economic abuse and coercive control following separation, particularly in child contact and divorce actions. Perpetrators will use the legal system to continue their abuse by delaying proceedings, refusing to share documents and, in some cases, sending threatening letters through their solicitors. Where a victim/survivor is privately funding their legal fees, this increases the costs and is often a tactic used by the perpetrator to force the victim/survivor into destitution or to accept an unfair settlement.

Where a victim/survivor is unable to afford privately funded litigation costs, they are faced with self-representing, which can lead to re-traumatisation of victims/survivors. A victim/survivor may simultaneously be dealing with being a witness in a criminal case against their perpetrator. Facing multiple legal proceedings alone can inflict further psychological harm and is often overwhelming or unmanageable for the victim or survivor. . Moreover, the court system can be seen as intimidating and almost impossible to navigate for someone without legal training, making self-representation

⁶ Please see <https://www.bbc.co.uk/news/articles/cpdx5qjyw25o>



a tough challenge. A victim/survivor will often still be dealing with ongoing abuse and harassment making self-representation an impossible challenge. Furthermore, it is unfair and unreasonable to expect a victim/survivor to self-represent. The systems failings are causing victims/survivors to have to self-represent, and regardless of how able and prepared they are, they are not likely to be legally trained nor have the experience of the legal system. Therefore, this becomes a massive disadvantage, and the outcome can have life changing consequences. We would submit that this falls very short of a trauma-informed justice system.

Furthermore, the victim/survivor will be faced with representing themselves in front of their abuser. This is re-traumatising for the victim/survivor and can cause continued and increased psychological harm.

Special measures can be requested in some cases although these are limited and are not always granted by the courts. Many victims/survivors are then being forced to enter into unfair settlement agreements which are not in the victims/survivors' or the child's best interests or dropping the case altogether. Many of our service users report feeling that they have not achieved a fair settlement and that their perpetrator has "won". This often continues the economic abuse if they have been placed into a difficult financial position following the settlement; leaving many victims/survivors and their children unsafe and facing destitution.

The Covid-19 Pandemic compounded with the cost-of-living crisis in the UK, has had a disproportionate impact on victims/survivors of GBV⁷. Women accessing SWRC services are reporting on a variety of issues that have been compounded by the cost-of-living crisis as well as direct impacts that it is having on them, including; access to affordable housing, accessing legal aid and financial insecurity impacting their ability to flee abuse. The cost-of-living crisis has therefore further reduced the ability of victims/survivors to pay for their own legal fees and increased the need for available representation under legal aid.

Prior to the pandemic, there had been an ongoing issue relating to the accessibility of legal representation for women who qualified for legal aid. Fewer solicitors were taking on cases on a legal aid basis due to issues within the legal aid payment structure, which meant that solicitors were not fully recompensed for their work. Many solicitors were unable or unwilling to take on family actions and protective order cases under legal aid due to the 'block fee' system. Nearly all cases of this type require a large volume of work to be undertaken at the start of the case, and specifically, for protective order cases, they do not normally require proceeding to a full evidential hearing. The block fee system does not recognise the front-loaded nature of this type of case and

⁷ <https://www.covid19inquiry.scot/sites/default/files/ev-documents/sci-wt0177-000001.pdf>



therefore does not adequately recompense the work required by solicitors in these cases.

Unsurprisingly, this issue has been exacerbated by the COVID-19 pandemic, and the resulting cost-of-living crisis, which has many solicitors and solicitors' firms facing ever increasing financial demands without adequate increase of fees under legal aid. The SWRC heard through its outreach (legal helplines and surgeries), and from other violence against women organisations, that sourcing legal representation on legal aid funding was incredibly difficult during 2020, and this was a particular issue for women living in the north of Scotland, in rural and island areas, where legal representation is generally limited. We are now seeing widespread problems in all areas including in the central belt.

As a result, the SWRC experienced an unprecedented increased demand for our legal surgeries and saw increasing numbers of women contacting us who were eligible for legal aid but could not find a solicitor to represent them.

During the pandemic, the SWRC prioritised representation in protective order cases as these were considered an area of strategic need for victims/survivors. However, the SWRC could not (and should not be expected to) represent every case meaning that women and children experiencing abuse were sometimes left without the necessary legal support. Since the pandemic, this issue has only compounded, with victims/survivors reporting being unable to source legal representation.

People at risk should not face barriers in accessing important protection. Yet the SWRC is aware from our experience of women contacting our outreach services, that many women in desperate need of a protective order have been unable to raise a court action if they do not qualify for legal aid and additionally may choose not to pursue such an action if they are required to pay a contribution.

It is our opinion that protective orders are being drastically underused, and the removal of legal aid barriers would substantially improve the justice outcomes for women.

We have highlighted in a recent report⁸ the barriers faced by victims/survivors when seeking protective orders to prevent further abuse by their abuser. There is not only a significant barrier to obtaining protective orders from the presence of means testing but also through the requirements to show the merits of the application and the effects of the legal aid crisis.

⁸ https://www.justrightscotland.org.uk/wp-content/uploads/2024/12/24.12.03-SWRC-report_No-Costs-Barriers--Protective-Orders-in-the-legal-aid-system-FINAL.pdf



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?

We support the principle that free legal representation for those who need it must be adequately funded to ensure access to justice.

We call on the Equalities, Human Rights & Civil Justice Committee to propose urgent and radical reform the legal aid system to ensure that this system is effective in practice. Improvements are needed as the ongoing legal aid crisis has been exacerbating existing inequalities, primarily by making people who were already excluded and marginalised - more vulnerable and isolated. That is the case for people seeking asylum, refugees and migrants, trafficked people, women who experience gender-based violence, disabled people and racialised communities. The civil legal assistance system needs to be reformed by applying an intersectional and gender-competent approach.

We propose that it is in the interests of justice to:

- Remove financial eligibility tests in protective order cases - failing which, increase legal aid eligibility limits at least in line with inflation and remove the requirement for contributions in protective order cases;
- Review the process for demonstrating the 'merits' of a legal aid application for a protective order to make this more accessible to those seeking protective orders;
- Simplify the process of obtaining legal aid by streamlining processes and reducing supporting documentation required;
- Introduce a block fee uplift in protective order cases, and in other cases involving domestic abuse and GBV, on application by solicitors;
- To increase legal aid eligibility limits at least in line with inflation;
- Seriously review the provision of legal aid services in this area; we are aware that the Civil Legal Assistance office in some areas take these types of cases, but more should be done to ensure there are sufficient numbers of solicitors providing this type of work in every area of Scotland, including rural and island areas;
- Ensure access to legal aid for divorce proceedings where domestic violence is a contributing factor⁹.

We ask for the Committee to review the legal aid fee structure of the Scottish Legal Aid Board, to increase funding for solicitors in these cases and ensure victims can access justice. We expand on these points below.

⁹ https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/correspondence/2023/pe2025/pe2025_e.pdf



During our latest consultation which took place in Autumn 2024, solicitors from our Signposting Network made recommendations for improvement to the legal aid system in protective order cases¹⁰. Specifically, calls were made for consideration to:

- Introduce a block fee in protective order cases which allows solicitors to apply to the Scottish Legal Aid Board (SLAB) for an uplift in fees to account for the additional and urgent work required in these cases. It is thought that such an uplift would incentivise solicitors to take on these cases under legal aid and would improve trauma-informed practice as solicitors are able to dedicate time to victims/survivors and their cases. We suggest that this could be applied in any case involving domestic abuse or GBV including divorce and child contact cases. This would increase the desirability of solicitors to take on these cases under legal aid and would allow solicitors to be adequately remunerated for the complex and additional work required in these cases;
- Simplify - should means testing remain, simplification of the means testing process would reduce both the time required by solicitors and the pressure on victims/survivors. Solicitors report that the completion of the Financial Eligibility Form 2 is burdensome and time intensive. Removing this process, or part of this process, would simplify and reduce costs involved. Furthermore, this would reduce the pressure placed on victims/survivors to provide extensive financial documentation. We would also propose that this simplification of the means testing process could be rolled out into all cases in which domestic abuse/GBV has been plead; reducing the burden and trauma on survivors (who are potentially experiencing economic abuse) and reducing the burden on solicitors' time;
- Request that the Scottish Legal Aid Board reviews eligibility limits in line with inflation. Solicitors also report that the eligibility limits in Advice and Assistance legal aid are restrictive and often victims/survivors are ineligible for this first stage of legal aid. Legal aid eligibility limits have not been increased for over 10 years and have not been increased in line with inflation. Following the cost-of-living crisis, this has left a significant disparity between the eligibility limits and salaries. Even where victims/survivors qualify for civil legal aid, they often do not qualify for Advice and Assistance legal aid. This means that victims/survivors are being faced with paying for the initial stages of the process (including initial advice and applying for legal aid) or legal aid firms are being faced with working pro bono or restricting fees in these instances. We have

¹⁰ https://www.justrightscotland.org.uk/wp-content/uploads/2024/12/24.12.03-SWRC-report_No-Costs-Barriers--Protective-Orders-in-the-legal-aid-system-FINAL.pdf

heard that victims/survivors are sometimes being faced with bills of around £1,500-£3,000 for the work before the court action even begins.

- Solicitors reported to us that the 'high' test involved in demonstrating the merits of the case for a protective order and other cases involving domestic abuse/GBV, combined with the need to provide supporting documentation was onerous and time consuming. Simplification of this process would prove to be more trauma-informed for victims/survivors and would also improve the process for solicitors making these applications on behalf of their clients.
- Furthermore, due to the extremely restrictive approach taken to legal aid accounts most of the work required in these complex cases goes unpaid. Solicitors report that they are unable to spend the necessary time with victims/survivors to ensure a trauma-informed practice due to their mounting caseloads and the restrictive nature of accounting. This impacts their ability to work in a trauma-informed way, impacting victims/survivors access to justice. Consideration should be given to the restrictive approach taken in legal aid accounts and particularly in complex cases involving domestic abuse and GBV.

No victim/survivor of GBV should have to pay for their own protection, or that of their children. The process for obtaining legal aid should be straightforward and there should be less of a burden on solicitors to prove the merits of the case. We are aware from our work with victims/survivors that the current position discourages those experiencing abuse from taking the necessary steps to protect themselves from harm.

Particularly in protective order cases, we consider that the legal aid position for protective order cases should mirror that of actions under the Mental Health (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000. Where applicants meet the merits test, there will be no means testing for those seeking orders for their own protection in these cases. The logic here is that there should not be financial barriers preventing any order from being granted which is necessary to safeguard a person's welfare. This rationale should likewise be applied to protective order cases for victims/survivors of GBV. We note that the Scottish Government has recently updated the procedure for applying for legal aid for Fatal Accident Inquiries for a death in custody cases¹¹. A temporary measure providing access to free representation for the families involved in deaths in custody in relation to any Fatal Accident Inquiry (FAI) has been put in place by Scottish Ministers with effect from 7 April 2025 by virtue of a determination under section 4(2)(c) of the Legal Aid (Scotland) Act 1986. The Scottish

¹¹ <https://www.slab.org.uk/news/procedure-for-applying-for-legal-aid-for-fatal-accident-inquiries-for-a-death-in-custody/>



Ministers have also undertaken to introduce permanent measures. We would propose that similar measures could be used in protective order cases. Section 4(2)(c) of the Legal Aid (Scotland) Act 1986 provides "such other payments as the Secretary of State may [*Scottish Ministers] determine" can be considered under the legal aid fund. We submit that this is a measure which could be put in place quickly and which would improve outcomes for victims/survivors.

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?

Yes, we strongly consider that grant funding from the Scottish Legal Aid Board is helping to support access to justice. Our own project benefits from grant funding through the Scottish Government and administered by the Scottish Legal Aid Board and would not be able to operate without this funding. Our project also receives Violence against Women and Girls Justice funding which enables the delivery of our holistic model (the collaboration between our solicitors and advocacy workers) and access to advocacy support for our trauma-informed services, among many other services. Our Project has recently celebrated its 10th anniversary and admiration of the project was shared on the day¹².

The Evans Review, "Rethinking Legal Aid – an Independent Strategic Review" in 2018 was the Scottish Governments independent review of legal aid. The review commented on the Scottish Women's Rights Centre project as follows¹³:

"An example of an innovative model providing advice, advocacy and legal aid services is the Scottish Women's Rights Centre. The project agreement between the project partners and the Scottish Legal Aid Board runs to end of March, 2019 and has a budget of up to £225,000 per annum. This model of providing both legal aid and legal advice was widely supported by those who engaged with my review..."

Through our grant funding our service is able to provide direct legal representation for victims/survivors. We provide our representation within strategic objectives to achieve wider outcomes for survivors. Due to the nature of our funding, our Centre is only able to take on a limited number of cases each year. We prioritise cases that will have a positive impact on access to justice for all women affected by gender-based violence. We also focus on cases where there are barriers within the system that prevent women from accessing justice. When taking on cases we consider whether a case will have a

¹² Please see our blog: [Celebrating a decade of the SWRC | News/Blog | Scottish Women's Rights Centre](#)

¹³ Please see <https://webarchive.nrscotland.gov.uk/3000/https://www.gov.scot/Resource/0053/00532544.pdf> at p58



wider impact on access to justice, and whether there are systemic barriers to accessing justice that we can address by working on the case.

Our Centre benefits from having a case costs budget which covers the case costs associated with legal representation. This allows us to represent victims/survivors without having to apply for advice and assistance legal aid and without cost to our clients. Given the currently restrictive advice and assistance means rates, this allows us to ensure that victims/survivors do not require to pay for our services. We do apply for civil legal aid certificates where possible to allow our clients to benefit from the protection of a legal aid certificate should expenses be an issue.

However, we have found that the case costs budget which we are afforded each year can be restrictive. We often have challenges with having to juggle anticipated costs of larger court actions, alongside actual spend. In practice this means that, on paper, we may not have enough case costs to take on further cases which restricts our capacity, although in actual case costs spend this is different. When taking on a new case, the SWRC forecasts the related case costs and is required to ring fence these costs within annual budgets. Commonly cases span more than one financial year, with longer and more complex strategic cases spanning multiple financial years. This was further impacted by delays in cases arising from Covid. There is no facility to carry forward underspend between financial years.

Our project not only offers legal representation for strategic casework but also provides outreach services. We provide helplines and legal surgeries in which victims/survivors can contact for support, signposting, information and legal advice. Our helplines and legal call backs are able to provide initial information and advice and through our legal surgeries our solicitors can provide more detailed advice regarding specific cases. Through our outreach we are able to speak to hundreds of women each year. We are often victims/survivors first point of contact with legal services. We are able to appropriately and sensitively signpost and guide victims/survivors during what is often an extremely challenging and traumatic time of their lives. This service is especially important in the current climate, as our service users are often reporting that they have been unable to secure legal representation through legal aid. We are able to help guide them through complex and challenging processes and to provide some initial support and signposting. The Evans Review commented on the importance of advice work in ensuring early intervention which often stops the need for court action¹⁴.

Between 1st April 2024 – 31st March 2025 the SWRC Advocacy Triage Helpline answered 401 calls and 222 online contacts from victims/survivors, responding to initial disclosures, signposting to services and streamlining legal advice call backs in accordance with detailed guidance from the legal team. The solicitors continue to provide legal advice on a call back basis. During this reporting period 123 legal advice

¹⁴ Please see <https://webarchive.nrscotland.gov.uk/3000/https://www.gov.scot/Resource/0053/00532544.pdf> at p58



call backs were provided by our solicitors and 87 calls completed by the pro bono solicitor helpline. The solicitors also provided 144 legal surgery appointments (through our general legal surgery, our in-person legal surgery and our immigration surgery) to victims/survivors during this period.

We remain very aware of the considerable unmet need on our helplines, with 6,135 calls either receiving the engaged message or having been made out-with our opening times between April 2024 – March 2025. This demonstrates the demand for our service and the need for initial legal advice and support for victims/survivors.

Our grant funding also goes beyond our legal representation and outreach services, as we are also able to focus on the areas of training¹⁵, policy¹⁶ and legal education materials¹⁷. All of which helps to improve the legal landscape and outcomes for victims/survivors and is informed by our direct work with victims/survivors.

We regularly engage with the Scottish Legal Aid Board on processes and would be happy to further engage with the Board in terms of the operation of grant funding and any suggestions that may arise from this inquiry. We have considered a few aspects of our grant funding which work well and aspects for which there are potential challenges. These are:

- Notional Accounts – As we are a grant funded project, we require to provide notional legal aid accounts to the Board following the completion of our civil legal aid cases. Notional accounts are complex to prepare in our cases and we have struggled to find law accountants to prepare them. The main difficulties which we have experienced are the size and complexity of the cases. Often running to 1,000+ entries. We are working with an extremely vulnerable client group who require a trauma-informed service. Furthermore, our case work is often novel and complex and requires extensive research, preparation and consideration. All of which does not lend itself to the current legal aid accounting provisions. We have been working closely with the Board to simplify this process, and the Board have been amenable to making changes and simplifying the process where possible. For example, we have ascertained that we do not require to provide notional accounts where there are no prospects of recovery of legal fees. This reduced both the burden and costs associated with seeking a legal aid account, and removes this additional step for victims/survivors.
- Sanction requests – In A&A cases the grant model also means solicitors can seek sanction for outlays directly from their designated contact at SLAB, rather than having to use the SLAB portal. This is a much more straightforward

¹⁵ Please see: [Training | Scottish Women's Rights Centre](#)

¹⁶ Please see: [Policy | Scottish Women's Rights Centre](#)

¹⁷ Please see: [Legal guides | Scottish Women's Rights Centre](#)



process than the usual online sanction application process. It also means specific SLAB staff build up knowledge and understanding of the area of work and its complexities, whereas the standard system involves each application being picked up by someone different each time, there is no continuity, and the solicitor has to repeat the same information frequently. Therefore, when we require to make applications through SLAB portal, for our civil legal aid cases, this can be a more complex process and often leads to additional steps and communication with SLAB.

- Communication - We consider that the above also applies when we require to speak to SLAB about our cases. In A&A cases, where our SWRC solicitors speak to their contacts at SLAB, who know their work, they find communication much easier and better than where they have to use the SLAB portal to make applications, submit updates etc.

We refer to our partner organisation, JustRight Scotland response to this inquiry and specifically to the explanation of the benefits and challenges of grant funding models (at JRS response answer to question 3), all of which we agree and adopt in our own response.

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

From the feedback received during the roundtable the SWRC hosted with other legal firms and solicitors from our Signposting Network in Autumn 2024, it was clear that there was a real sense that people care about their clients and support them as much as possible when providing civil legal assistance.

However, the current system for providing civil legal assistance presents many weaknesses which we have highlighted in our response to Question 1 and summarise below.

In general, the system is underfunded, meaning that much essential work on cases is not paid for, undervaluing the services provided by solicitors and the importance of this work for their clients.

There is a very limited number of legal aid practitioners, which is directly caused by:

- low rates of legal aid fees;
- restrictive rules and limited coverage;
- unnecessary bureaucratic steps;
- lack of work/ life balance; and
- retention and succession issues.



Legal aid payments are insufficient to cover the actual costs of legal work, making it financially unsustainable for solicitors. This discourages them from taking on legal aid cases, further reducing available support. Furthermore, the criteria for what qualifies as chargeable work under legal aid are very restrictive. Many essential tasks are not covered, leaving significant gaps in the support that legal aid can provide.

The combined issues of solicitor shortages and low fees limit access to legal advice and representation, particularly for those in poverty and rural areas, and those seeking legal representation in certain specialised areas of law (e.g. family actions and protective order cases for victims/ survivors of GBV).

There are a number of specialist law centres, such as JustRight Scotland, however, all of these are small and with very limited capacity due to inconsistent funding. All of them are registered for civil legal aid, but all of them are forced to rely on other sources of income to supplement legal aid in order to provide these specialised services. It would likely be impossible to run most of these services without non-legal aid funding, due to low legal aid rates and restrictive rules on what is chargeable work.

Finally, the shortage of civil legal aid solicitors is particularly an issue for women living in the north of Scotland, in rural and island areas, where legal representation is generally limited. We are now seeing widespread problems in all areas including within the Central Belt.

5. What do you think would be the strengths and weaknesses of reforming civil legal assistance along the lines recommended in [the Evans Review \("Rethinking Legal Aid", 2018\)](#)?

We wish to note that the Evans Review was conducted in 2018 and so its analysis could be outdated. As explained in our response to question 1., the Covid-19 pandemic compounded with the cost-of-living crisis in the UK, has had a disproportionate impact on victims/survivors of GBV, and deepened preexisting inequalities compounded by intersecting factors like age, gender, race, class, disability, and migration status¹⁸. Through experience of working on the front-line with victims/survivors of gender-based violence, the SWRC considers that at some levels of decision making during the COVID-19 pandemic, there was a failure to apply an intersectional, gender-competent approach to decisions being taken. Women accessing SWRC services are reporting on a variety of issues that have been compounded by the cost-of-living crisis as well as direct impacts that it is having on them, including; access to affordable housing, accessing legal aid and financial insecurity impacting their ability to flee abuse. The

¹⁸ <https://www.covid19inquiry.scot/sites/default/files/ev-documents/sci-wt0177-000001.pdf>



cost-of-living crisis has therefore further reduced the ability of victims/survivors to pay for their own legal fees and increased the need for available representation under legal aid¹⁹.

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

We wish to ensure the human rights of people we represent are respected, promoted, and upheld, as recognised and enshrined in national and international laws and treaties (e.g. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)). It is within the context of human rights' protection and violations that the SWRC's work is informed. The SWRC recognises the Scottish Government's binding obligations to uphold human rights (including the state's positive obligations to give effect to these rights) as set out in the European Convention on Human Rights, including the rights to life (Article 2), freedom from degrading treatment (Article 3), liberty and access to justice (Articles 5 and 6), and dignity and respect for private and family life (Article 8).

The SWRC's position is that this international and human rights legal framework must be taken into account in the Committee's approach to long-term legal aid reform.

We strongly believe that no victim/survivor of GBV should have to pay for their own protection, or that of their children²⁰. The process for obtaining legal aid should be straightforward and there should be less of a burden on solicitors to prove the merits of the case where involving domestic abuse/GBV. We are aware from our work with victims/survivors that the current position discourages those experiencing abuse from taking the necessary steps to protect themselves from harm.

We consider that the legal aid position for protective order cases should mirror that of actions under the Mental Health (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000, and now in relation to deaths in custody cases. Where applicants meet the merits test, there will be no means testing for those seeking orders for their own welfare in these cases. The logic here is that there should not be financial barriers preventing any order from being granted which is necessary to safeguard a person's welfare. This rationale should likewise be applied to protective order cases for victims/survivors of GBV.

Current civil legal aid provisions have made protective orders inaccessible for some victims/survivors of abuse, leading to an imbalance between the access to justice afforded to the perpetrator and that available to the victim. This is unacceptable in a

¹⁹ We refer to our JustRight Scotland 2019 consultation response: [Microsoft Word - Legal Aid Consultation JRS 23 Sept 2019.docx](#)

²⁰ Please see our report: <https://www.justrightscotland.org.uk/wp-content/uploads/2024/12/24.12.03-SWRC-report-No-Costs-Barriers--Protective-Orders-in-the-legal-aid-system-FINAL.pdf>



society which states that it will not tolerate GBV and has made significant commitments to eradicate all forms of violence against women and girls.

The delivery plan for Equally Safe, Scotland's strategy to eradicate violence against women and girls, recognises the concerns raised by stakeholders on the urgent need of legal aid reform, but includes no firm plans, simply stating that the Scottish Government "*will continue to engage with key stakeholders to inform and shape future legislative proposals in relation to the reform of legal aid.*" Nonetheless, despite multiple commitments, the Programme for Government 2024 makes no mention of the urgent need to reform civil legal aid.

In 2016, the Scottish Government pledged to establish a First Minister's National Advisory Council on Women and Girls (NACWG) to help drive forward action to tackle gender inequality. The NACWG published their first set of recommendations in their 2018 report²¹.

This included the recommendation to "*improve access to justice for women and girls experiencing men's violence and the culture of violence against women and girls embedded in the fabric of Scottish society by*" various means including "*creating a world-leading process for complainers of sexual violence*" and to "*create a consistent and inclusive model to ensure that women experiencing domestic abuse have sufficient access to expert legal advice and legal aid.*"²²

Furthermore, the UK ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1986, committing to "*eliminate discrimination against women in all aspects of life and to protect, promote and fulfil the human rights of women under all circumstances.*"²³ The CEDAW Committee recognised in General Recommendation No. 35, 2017, that "*the prohibition of gender-based violence against women has evolved into a principle of customary international law, binding all States.*"²⁴

In the concluding observations of latest review of the UK, the CEDAW Committee expressed concern that changes in the legal aid system in England and Wales unduly restrict women's access to legal aid²⁵.

The Committee urged the UK government to ensure "*effective access by women, in particular women victims of violence, to courts and tribunals,*" and "*to continuously assess the impact of the reforms of legal aid on the protection of women's rights.*"

²¹ 2018report.pdf (generationequal.scot)

²² 2018report.pdf (generationequal.scot)

²³ Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 | OHCHR

²⁴ General Recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992) | OHCHR

²⁵

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en



Although these comments related specifically to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the UK's ratification of the Convention applies equally to Scotland, and these recommendations must be taken into account in the Scottish context also. The Committee also urged the UK to increase its efforts to protect women against all forms of violence, including domestic violence.

We urge the Equalities, Human Rights & Civil Justice Committee to take into consideration the concerns expressed around the current legal aid system by the CEDAW Committee and implement all the recommendations submitted by that Committee, including what the government should do to ensure effective access to expert legal advice and legal aid – especially for women who have experienced GBV.

7. Do you have any other comments?

Despite numerous consultations and commitments, there has been no significant action toward the necessary reforms. Urgent action and substantial investment from the Scottish Government are required to create a legal aid system that truly provides access to justice. Low fee rates should be increased, and the legal aid system should be simplified to avoid unnecessary bureaucracy.

The Scottish Government needs to work in close collaboration with civil society organisations to deliver impactful reforms, and in this case legal aid reforms to improve access to justice for marginalised and under-represented communities across Scotland.

The SWRC is supportive of and wants to take part in this collaborative process. We want to share our expertise to inform a proper reform of the legal aid system.

We ask the Scottish Government to commit to a preparing a draft Legal Aid Reform Bill by 2026 as per the 2024-25 Programme for Government.

Too many people, particularly those living in poverty, in rural and island areas and experiencing serious violations of their human rights, can simply not access justice because it is unaffordable. Scotland has a system that is meant to address this - our legal aid system – but it is not working. There are simply not enough civil legal aid solicitors, and in the right places or with the right specialisms. Civil justice in Scotland is therefore unaffordable for many.

Despite Government promises of reform, our legal aid system is crumbling, leaving people in poverty without access to justice. We call on the Scottish Government to urgently reform the legal aid system. The current situation is a crisis that demands immediate attention and substantial investment to build a legal aid system that truly enables access to human rights justice for everyone.