**Scottish Parliament**
**Equalities, Human Rights and Civil Justice Committee**
**Legal Aid Inquiry**

**1 May 2025**

## Contents

## Introduction

JustRight Scotland is a legal charity set up in 2017. We use the law to defend and extend people's rights in Scotland. We work with people and communities to change broken systems as well as individuals' lives. We run four specialist centres of legal practice which provide free advice, representation and support to hundreds of people every year.

We are responding to this call for evidence because we use the civil legal aid system across our work every day:

- Our **Scottish Refugee & Migrant Centre** and our **Anti-Trafficking & Exploitation Centre** use advice & assistance ("A&A"), ABWOR, and full civil legal aid ("CLA"). This is relevant because immigration and asylum work, in particular, accounts for almost 25% of the civil legal aid expenditure.[1]
- Our **Scottish Just Law Centre** supports individuals and communities to secure fulfilment of their human rights, with a particular focus on using human rights and anti-discrimination law to challenge structural and widespread rights breaches in the public interest, using A&A and CLA.
- Finally, our **Scottish Women's Rights Centre** is a SLAB administered grant funded project supporting survivors of gender-based violence.

We therefore cover a spectrum of the work in the scope of legal aid system, with the exception of criminal work.

Our response is underpinned by our day-to-day experience, and those of our clients, in using the legal aid system in Scotland. We are proud to work as legal aid lawyers, and we see the power and justice that can be achieved using the system for those who need it most. Scotland's legal aid system must be robustly protected and built upon to achieve its full potential. This is not only a moral obligation but a human rights obligation. We are heartened to see the Scottish Government identifying human rights as a guiding principle for its response to this inquiry.[2] We encourage the Committee to press the Scottish Government to ensure

[1] https://www.slab.org.uk/corporate-information/publications/corporate-information/annual-reports/, last accessed 21 April 2025.
[2] https://justice.org.uk/legal-aid-human-rights/, last accessed 21 April 2025.

that access to justice, and the human right to an Accessible, Affordable, Timely and Effective remedy for human rights breaches,[3] are guiding principles of Scotland's civil legal aid system, with the Scottish Legal Aid Board (SLAB) required to be guided by those principles in administering the system and exercising its broad discretion under that system.

Lastly, our response is premised on the fact that any effective legal aid system requires trust in the solicitor profession. Scotland's legal profession is one of the oldest and most respected in the world. We are robustly regulated and adhere to strict ethical standards; we are officers of the court. This must be recognised and respected when considering proposed reforms.

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?**

There are broadly speaking two main barriers for people to access legal aid: lack of provision and eligibility limits.

*Lack of Provision*

The first barrier is well documented. Solicitors registered to practice civil legal aid are the gatekeepers to accessing legal aid support. If people cannot find a legal aid solicitor to advise and represent them, they are locked out of this essential public funding. Much of Scotland constitutes a 'legal aid desert' where there is little or no legal aid provision in key areas of law. Research by the Law Society of Scotland ("LSS") in 2022 found that in the 139 most deprived communities in Scotland (approximately 10,000 people), there were just 29 legal aid firms.[4] In 122 of the 139 communities, there were no firms at all.

Our Scottish Just Law Centre (SJLC) is one of the only legal practices in Scotland specialising in human rights and non-discrimination law, using

[3] https://www.scottishhumanrights.com/media/2163/remedies-for-economic-social-and-cultural-rights.pdf, last accessed 28 April 2025.
[4] https://www.lawscot.org.uk/news-and-events/law-society-news/legal-aid-crisis-hitting-scotlands-most-deprived-families/, last accessed 18 April 2025.

legal aid. To our knowledge, there are only a handful of solicitors doing this work in the entire country. The level of need for advice and representation in this area is very high and is increasing as public funding cuts further undermine rights fulfilment. We believe the majority of this need is unmet. SJLC continually receives requests for advice and representation from people experiencing breaches of their fundamental human rights, even though we are currently closed to referrals due to being at capacity, because people are desperately contacting everyone who works in this area. They have often already contacted every legal aid registered solicitor practicing in this area but have been unable to obtain advice or representation. We are often only too aware when we advise them that unfortunately we are not able to assist, that we are their last option. It is unsurprising that Scotland's courts have considered a troublingly low number of substantive claims under the Human Rights Act or the Equality Act, given those with the most need of protection have no route to accessing publicly funded legal advice and representation.

The Scottish Women's Rights Centre ("SWRC"), a SLAB grant-funded project of which we are the legal partner, estimates that survivors of gender-based violence typically contact between 30 to 50 solicitors before they secure representation. Recent media attention focused on a woman from the Highlands who, after being assaulted by her husband, was unable to find a legal aid solicitor to handle her divorce after asking 116 law firms.[5]

In terms of immigration and asylum legal aid practitioners, the concentration is in Glasgow. To our current understanding, there are only two practicing legal aid immigration and asylum providers in Edinburgh. There are less than a handful across the rest of Scotland. In Aberdeen, where the Home Office are currently housing over 700 asylum seekers, there are no legal aid providers at all. In January 2025, we delivered an information session to over 35 asylum seekers in hotels in Aberdeen; all of their solicitors were based in Glasgow. These deserts exist at the exact moment that dispersal of asylum seekers is taking place all across Scotland, with hundreds of people in need of advice in,

[5] https://www.bbc.co.uk/news/articles/cpdx5qjyw25o, last accessed 18 April 2025.

amongst other areas, Dumfries, Falkirk, Bathgate, Greenock and Aberdeenshire.

It is important to dwell for a moment on the practical impact of this for people requiring legal advice. There are three options for them.

1. Pay for **private legal advice**. This is only an option for a small minority, given the low financial eligibility thresholds. We recently encountered a young man with Refugee Status who, when unable to source an immigration solicitor to assist with reuniting with his family separated by war, borrowed money to pay a private fee of approximately £5,000. We know that many firms that charge privately are registered for legal aid, but low fee rates mean that certain types of work can often be loss-making.

2. **Remote/long-distance** legal advice. The asylum seekers we met in Aberdeen were represented, however, none of them had met their solicitor face to face. Their engagement was typically by Whatsapp video call or voice message. Practical barriers include them not speaking or reading English, their limited access to digital tools, and no access to confidential spaces to receive legal advice or disclose their experiences. We experience similar issues when representing people in Gypsy Travellers and Travellers communities, as well as disabled individuals. Meeting in person is often essential for effective communication but made impossible due to lack of proximity. Efforts made by solicitors in this situation to make their service more accessible are time consuming and unpaid, placing significant strain on their business model.

3. **Self-represent**. The unavailability of legal aid providers has led to an increase in self-representation in the Scottish courts and tribunals. For example, the 2024 Shared Parenting Scotland annual survey found that 20% of respondents who were eligible for legal aid had to self-represent in family law matters, up from just 2% in 2022. Another 22% of respondents eligible for legal aid had to pay privately.[6] In the immigration sphere, we recently took on a

[6] https://www.sharedparenting.scot/extraordinary-increase-in-fathers-and-mothers-representing-themselves-in-scottish-family-courts/, last accessed 18 April 2025.

> British citizen client who revealed that he had contacted over 11 solicitors to act for his mother, who was stranded in Saudi Arabia having fled the war in Sudan. He was unable to source a legal aid solicitor and so the family were self-representing in the First Tier Tribunal on a case that required complex human rights arguments. Self-representation, especially in human rights and discrimination cases, does not afford people access to justice. They are at a severe disadvantage, attempting to navigate a complex and unfamiliar system, as well as attempting to present a legal case without any expertise in the law, while their opponent instructs solicitors and advocates who are experts in the field. In human rights and discrimination cases the opponent is most likely the State, with unlimited resources.

The pressures caused by the lack of provision have their impact also on solicitors themselves, thus perpetuating the cycle. Higher demand, rising costs and poor remuneration all leads to high and unsustainable workloads. The pressures cause very high levels of stress, particularly for those responsible for the financial sustainability of the practice, but also for all who practice civil legal aid. The direction of travel is for younger solicitors to exit legal aid practice, and ever fewer numbers are joining at all. According to the Law Society of Scotland, around 1 in 3 legal aid practitioners are retiring in the next decade and are not being replaced. Solicitors interested in working in public law can access significantly higher salaries and better working conditions in public bodies like the Scottish Government, Crown Office and Procurator Fiscal Service, Civil Legal Aid Office, Public Defence Solicitors' Office, and local authorities. The irony, of course, being that they are doing similar work (often the same work on different sides) and paid out of the same public purse.

We are keen to emphasise that it is not sufficient for this review of legal aid to simply 'stem the bleeding' of the practice area's diminishment. We must take radical steps to create a legal aid sphere that solicitors want to join and can sustainably remain and thrive.

*Financial Eligibility Limits*

As noted above, civil legal aid can be differentiated into advice and assistance ("A&A") and full civil legal aid ("CLA"). A&A relates to the everyday provision of legal advice outside of civil court litigation. It is the gateway to CLA, which relates to the conduct of civil court litigation.

We note that the Law Society of Scotland has encouraged a review and increase of the eligibility limits for both A&A and CLA.[7] We strongly endorse this.

Access to A&A and CLA is dependent upon evidencing that the individual falls under financial thresholds for both income and capital. The rationale for these thresholds is that those who earn more and/or hold capital above the threshold should be able to pay for legal advice and representation themselves. However, we frequently meet potential clients who could not possibly pay for legal advice or representation, but who fall just above the threshold for income or capital. This makes it impossible for them to obtain legal advice or representation because they cannot afford to pay private rates for legal advice. We have had to decline to act for clients with important and strong human rights and equality related claims, because they were financially ineligible although they very clearly required financial support. We believe this is happening frequently across Scotland and is a further reason why longstanding human rights breaches have not been legally challenged.

It is important to note that substantive Human Rights Act 1998 and Equality Act 2010 claims (as opposed to Judicial Reviews) cannot be raised by organisations, only by individual victims. If individuals experiencing these rights breaches who are prepared to pursue a claim, with all of the time and emotional commitment that entails, are prevented from doing so because they are just over the very low financial thresholds, the claims cannot be pursued, and the breach continues.

The financial eligibility thresholds for A&A and CLA do not appear to have been updated since 2011, some 14 years ago. The 2011 increases were themselves minimal. Since 2011 the economy has changed drastically, including the cost of living. The Bank of England inflation

[7] https://www.lawscot.org.uk/media/squlnqkk/25-04-17-civlac-legal-aid-inquiry-final.pdf, last accessed 18 April 2025.

calculator confirms that what cost £1 in March 2011 costs £1.46 in March 2025, almost a 50% increase.[8] During the past 14 years fewer and fewer people would have been financially eligible due to the thresholds not being changed in line with inflation. The financial eligibility thresholds must at least be increased to account for this significant change. **Financial eligibility thresholds can be changed through secondary legislation**, and we urge the Committee to press the Scottish Government to include this in the secondary legislation they intend to bring forward this year.

A&A

To be financially eligible for A&A you must meet both an income and a capital test.

*Income*

Someone who receives one or more of the following benefits will automatically qualify in terms of income: Income Support; Income related Employment and Support Allowance; Income related Jobseekers Allowance; and Universal Credit. It is positive that SLAB operate this "passport benefits policy", which eases the burden in terms of providing SLAB with extensive financial documentation for those who receive it.

However, in our experience clients often don't know if the benefits they receive are income-based until SLAB contacts the DWP to confirm. We have clients who have discovered they have been put on the wrong type of ESA, which we understand to be relatively common, meaning although they received ESA and should have been on income related ESA, they did not qualify through the passport policy. It also strikes us that there may be additional benefits that ought to be on the list of qualifying benefits for passporting, possibly including those administered by Social Security Scotland. **The power to change this appears to lie with SLAB.**

Anyone who does not receive a passport benefit must have a disposable income of less than £245 per week to qualify on income. Disposable income is full income under deduction of rent, mortgage, council tax, regular loan re-payments, minimum monthly credit card/store card

[8] https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator, last accessed 29 April 2025

payments, maintenance payments, car tax payments and other reasonable outgoings.

In our view the inclusion in “income” of bursaries, grants, some non-passport benefits is inappropriate.

Satisfying the disposable income test often involves a very intrusive process for the client, of exhibiting detailed financial information to SLAB, and a burdensome process for the client and often the solicitor, of a back and forth with SLAB on the precise details. The overall administrative burden is excessive and we therefore welcome that the Scottish Government’s Discussion Paper proposes introduction of personal allowances, avoiding people having to go through the current process.[9] It will be essential that those personal allowances are high enough to cover all regular payments, including for disabled people, who have higher living costs.[10]

Where someone is assessed as having less than £245 a week in disposable income but more than £105 a week, they will have to pay a contribution of up to £135. However, it is left to the solicitor to decide whether or not to seek payment of this sum from the client. Whether or not they do so, SLAB will deduct the sum from the amount paid to the solicitor when they submit their account. In practice, solicitors often write off the contribution, given the administrative burden of securing payment from a client who is not otherwise making any payments to the solicitors, and given the financial circumstances of these clients. In our view the A&A contribution should be disapplied. **We believe this could be done through secondary legislation.**

*Capital*

Even if an individual receives a passport benefit or is assessed as having less than £245 a week in disposable income, they will still not be eligible for A&A if they have more than £1,716 in capital, including savings.[11] This is an extremely low amount on the basis of which to rule out access to public funds for people on very low incomes.

[9] https://www.gov.scot/publications/legal-aid-reform-discussion-paper/pages/4/, last accessed 18 April 2025.
[10] https://www.scope.org.uk/campaigns/research-policy/cost-of-living-report, last accessed 29 April 2025
[11] https://www.slab.org.uk/guidance/advice-and-assistance-and-financial-eligibility-assessment-of-capital/, last accessed 1 May 2025

In our view the capital threshold should be significantly increased for A&A. We note the significant disparity between the income and capital thresholds for A&A compared to CLA, as discussed below. The disparity may be based on an assumption that the costs involved in obtaining advice are much lower than when raising a court action, which is what CLA covers. However, the costs involved in obtaining legal advice can be very significant, especially for anything unusual and/or complex. A private solicitor's rates are much higher than the rates SLAB pays legal aid solicitors for qualifying work, and more of the necessary work will be chargeable than SLAB will pay for. Private rates tend to range from £180 to £500 an hour plus VAT depending on the firm, the area of work and the seniority of the solicitor. A number of hours may be required to obtain factual information from the client, review the relevant law and apply it to those facts, assess the options open to the client and advise them on those option. It is also often necessary to obtain an opinion from an advocate, which may cost £750 - £1,500 plus VAT, or more depending on the complexity. It may also be necessary to obtain an expert report, which could cost £2,500 - £6,000 or more plus VAT. The solicitor may also engage in correspondence with a view to resolving the matter without court action, which can often involve detailed and time-consuming drafting. Overall costs can easily reach many thousands of pounds before a court action is raised. For people without extensive resources, embarking on a process of obtaining private legal advice, not knowing in advance how much that may end up costing, is unthinkable.

In our view there should be one financial eligibility test for all civil legal aid, A&A and full civil. Rather than make each individual go through an intrusive and burdensome process of displaying their detailed finances to SLAB and having to justify particular expenses, a reasonable amount of savings should be disregarded to allow people to retain an amount as protection from destitution, to meet unexpected or indeed expected large essential costs, and for the higher living costs disabled people face. Having disregarded that sum, a threshold for capital should be set that is high enough to be appropriate for initial advice through to full representation in a court action. Appropriate research to assess what these amounts ought to be, taking a human rights based approach, would be welcomed.

**We believe the above changes could be effected through secondary legislation**.

Full civil legal aid

To be financially eligible for CLA an individual must satisfy separate income and capital tests to those applied for A&A. It should be noted that where urgent representation is required, as is often the case due to our very strict time limits for raising and defending court actions, clients have to complete both the A&A and the full CLA applications and satisfy the separate financial tests, at the same time or in quick succession.

*Income*

It is difficult to identify and interpret the regulations and guidance, but it appears to us that a different set of benefits are treated as passport benefits for CLA as compared to A&A.

For those who do not receive passport benefits, the following applies:

- anyone assessed as having more than £26,239 in disposable income per annum (pa) is ineligible for CLA.
- anyone assessed as having less than £3,521 in disposable income pa will be financially eligible for CLA and will not have to pay a contribution.
- anyone assessed as having between £3,522 and £26,239 in disposable income pa will be financially eligible for CLA but will have to pay a contribution, on a sliding scale from 33% to 100%.

In our view, these thresholds are too low. A person assessed as having £26,239 in disposable income a year should not be viewed as in a position to afford to raise a court action using their own funds. Depending on the court action, it could cost anything from £50,000 to £500,000, or indeed more, if the party defending does not concede. In many cases, particularly complex and/or novel cases, it is impossible to predict the costs involved, as so much depends on how the case evolves, how the defender approaches the case, and the court's case management.

In addition, and very significantly, the person raising a court action does not only have their own costs to consider and account for. In Scotland the default in all civil court cases is that the loser pays. If someone is not successful in their case, they will very likely be ordered to pay the other side's legal costs. That is so even if they act entirely reasonably throughout, and it is the case even where the defender is the State, whether the UK Government or governmental body, the Scottish Government, local authorities or any public authority, and the claimant is simply seeking to have their rights upheld.

Pro bono (free) legal services are extremely limited in Scotland compared to other jurisdictions. Even in those very rare cases where it may be possible to instruct solicitors and advocates on a pro bono basis, exposure to the risk of having to pay the other side's legal expenses means it is impossible for people to go ahead with important human rights claims, which have good prospects. We have seen this first hand.

The Scottish courts have the power to make Protective Expenses Orders, limiting a claimant's exposure to the risk of having to pay the other side's legal costs, but they grant these rarely. The result is that, for most people, raising a court action is not a possibility unless they are legally aided. Having CLA provides a high degree of protection against having to pay the other side's legal costs in the event of not being successful. It is not a complete guarantee, but it is very likely the court will reduce any order to nil. Eligibility for CLA is therefore critically important, not only to meet the costs of legal representation and associated fees, but also to protect against what could be an extremely high liability. That should be taken into account in setting the financial eligibility thresholds.

In our view the financial thresholds should be set considerably higher for claims that concern people's human rights and where the defender is a State entity. This is essential if we are to secure a rights respecting society. Exclusion from public funding and protection against orders to pay the other side's expenses, ultimately shields the State from essential legal action to hold it to account for breach of rights. If we do not support people to bring these claims, we prevent them from holding authorities to account, which in effect grants immunity to State entities to breach people's rights.

*Capital*

Even if the person is assessed as having less than £3,521 in disposable income pa, they will still not qualify for CLA if they have capital of over £13,017, including savings. This amount, as with all the other financial thresholds, has not changed since 2011. For the reasons mentioned above, the fact that someone has that sum in savings at that particular point in time, cannot reasonably be taken as meaning they can afford to pursue a court action without any public assistance.

Section 15 of the Legal Aid (Scotland) Act 1986 provides that a person *may* be refused CLA if (1) their disposable capital exceeds £13,017; **and** (2) "*it appears to SLAB that they can afford to proceed without legal aid."* However, in our experience SLAB does not carry out the second part of that assessment as a matter of course, and the information is not requested in the CLA application form.

**Case Study:** We have a client who is blind and has two other disabilities. They are entirely dependent on benefits and are very unlikely to ever be able to work. They passed the income test for both A&A and CLA, however as they have more than £1,716 in savings, they were deemed ineligible for A&A. As noted above, in our view that was not reasonable. We were able to provide pro bono legal advice, which is rare, and were ultimately able to secure a supportive opinion (meaning the claim was assessed as having good prospects of success) from an advocate using third party funding, which is extremely rare and took a lot of unpaid work to secure. With the benefit of that supportive opinion, we applied for CLA to bring the relevant court action. However, because our client has just over the £13,017 threshold in the bank, SLAB advised they would not be financially eligible.

It was only when we challenged this, pointing out our client's precarious financial position, which is unlikely ever to change given their disabilities, that SLAB acknowledged it has discretion to treat someone as financially eligible even if they have more than £13,017 if they consider that they would not be able to proceed without legal aid. In our view, in taking this approach SLAB has reversed the test in the 1986 Act, which clearly requires SLAB to consider whether or not an applicant could afford to proceed without legal aid, whenever an applicant is assessed as being

over the upper capital threshold. In this circumstances, SLAB did not appear to be complying with that requirement. We encourage the Committee to press SLAB to confirm that it will do so going forward, and that it will urgently introduce clear guidance setting out how they will approach this. In our view, in applying this test SLAB must take into account the likely cost of the case if it proceeds all the way through, and the exposure to the risk of adverse expenses as well as the person's own legal expenses.

We were ultimately able to persuade SLAB that they should treat our client as financially eligible, however, SLAB decided they would have to make a contribution of £6,500 in order to obtain legal aid. This was not something our client could contemplate doing, given they need to spend a significant proportion on dental treatment and they are unlikely to be able to replenish their very limited life savings, which they view as essential protection against the vagaries of life, particularly given recent UK government benefit cut announcements and the social care crisis. To require someone in that position to pay the only savings they have in order to obtain public funding to pursue a human rights claim against the State for breaching their rights, is unreasonable.

SLAB has the discretion not to require a contribution in this case, but declined to exercise that discretion. We specifically asked SLAB to disregard the proportion of their savings required for dental treatment. SLAB refused. SLAB advised that they only make deductions for "*equipment or adjustments wholly necessary to a person's home directly related to a disability*" and only if "*such costs can be verified and shown to be required at this particular time*." They further noted: "*this discretion does not relate to potential future disability related costs or medical/health related costs such as private dental treatment*," and "*when assessing a person's liability towards the cost of their public funding, we do not make allowances from capital for future unforeseen costs and there is no statutory requirement in the regulations to make such allowances in the assessment of a person's disposable capital*." As we had made the point that had our client already received and paid for the dental treatment they would have been financially eligible, SLAB took the opportunity to point out that "*Regulation 12 gives us the right to include money/capital no longer held/already spent, in the assessment*

*of eligibility and any liability if we are satisfied that the disposal was not wholly necessary if at the time the person was involved in litigation or aware of their potential need to apply for public funding*."

The fact that SLAB referred to their power to include in the capital total money already spent, which is clearly intended to be limited to where an individual has deliberately sought to appear to have less capital than they actually have in order to qualify, in response to reference to paying for dental treatment, is a good indicator of SLAB's approach to use of its discretionary powers, afforded to it by the Scottish Government.

We also pointed out that SLAB has very wide discretion in determining if any contribution should be paid. Section 17 of Schedule 3 of the Civil Legal Aid (Scotland) Regulations 2022 states: *"In computing the amount of capital there shall be disregarded such an amount of capital, if any, as the Board in the circumstances of the case may in its discretion decide*."[12] We noted that this gave SLAB very broad discretion to disregard any or all of the life savings of our client. Neither the 1986 Act nor the 2002 Regulations require SLAB to take the approach it does. However, SLAB did not recognise itself as having this discretion in our discussions. It is difficult to argue with the fact that SLAB has erected additional barriers to accessing civil legal aid than are set out in the 1986 Act and 2002 Regulations. The direct result of this is to exclude people, such as our client, from accessing public funds to pursue a very important legal challenge that concerns a structural issue across the country, causing severe detriment to disabled people and others.

We urge the Committee to impress upon the Scottish Government the urgent need to require SLAB to grant civil legal aid in situations like this. **That may be addressed in the secondary legislation** the Scottish Government has committed to bringing forward and pass before the election, but it can also be done more urgently than that by the **Scottish Government requiring SLAB** to acknowledge and exercise the discretion it already has.

[12] https://www.legislation.gov.uk/ssi/2002/494/schedule/3, last accessed 1 May 2025.

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?**

*A&A*

It is critical that short-term improvements are made to A&A. SLAB statistics tell us that there were 46,200 grants of civil A&A in 2024, with immigration and asylum being the fastest growing component of this (up 29%).[13] A&A is central to individuals in Scotland receiving either initial or detailed, ongoing advice relating to a whole range of issues.

The areas ripe for improvement are threefold: fee rates; complexity and bureaucracy; and accounts/abatements.

Fee Rates

We note that the Evans Review recommended research into appropriate remuneration for legal aid solicitors. To our understanding, this research has not been conducted. The case for an increase in fee rates has been made comprehensively and repeatedly over the course of the last number of years. Despite recent very modest rises, the fact remains that rates are far too low and there has been no discernible improvement in the fact of the legal aid crisis.

Given the case for an increase has been made at length, we wish only to provide some brief, practical examples to demonstrate the issue and the need for improvements:

- The **initial limit**[14] for authorised expenditure when an A&A file is opened is £135. If it is a 'diagnostic' grant of A&A, it is only £50. The diagnostic category was intended to be for "*the most basic level of advice and assistance*"[15] with the solicitor moving to a standard A&A category after the initial meeting. However, in practice, SLAB has not updated its systems to provide category

[13] https://www.slab.org.uk/app/uploads/2024/10/Annual-Report-and-Accounts-2023-24.pdf, last accessed 18 April 2025.
[14] Amendment required to The Advice and Assistance (Financial Limit) (Scotland) Regulations 1993, Regs 3 and 4, https://www.legislation.gov.uk/uksi/1993/3187/contents/made , last accessed 28 April 2025.
[15] https://www.slab.org.uk/guidance/advice-and-assistance-matters-covered-by-a-diagnostic-interview/ last assessed 30 April 2025

codes for important areas of work including human rights claims. The Human Rights Act 1998 is listed as a category code, but as diagnostic, meaning the initial limit for human rights matters is only £50.[16] This has been the case for a number of matters being worked on by our solicitors. This is far too low. For context, if we are to have an initial meeting with a client about an immigration matter, we will typically hold a two-hour meeting with an interpreter. This costs £207.92. An increase in expenditure is therefore required to be made and approved on the day of the meeting, because increases are not applied retrospectively. This blanket rule against retrospective increases makes the work much more stressful as a practitioner. If an increase is not obtained in advance, the solicitor will not be paid and they will have to pay any related outlays themselves. The initial limit requires to be dramatically raised, or a basic A&A template with a much higher expenditure limit should be implemented at the outset.

- The **fee rates** are too low.[17] To give an example, in A&A for civil matters (like immigration and asylum or housing), the hourly rate for time recording is £63.88. Short letters or calls are charged at £3.64 flat rate, and letters are charged at £9.10 per 250 words. By comparison, law firms on the 'other side' of disputes charge between £180-£500 per hour, exclusive of VAT.[18] In the non-legal aid sector, or indeed any other profession that provides a service, it is the norm for more experienced solicitors to charge more than junior solicitors, reflecting their greater expertise e.g. partners in law firms are at the top of the hourly rate scale, trainee solicitors are at the bottom. However, legal aid in Scotland offers no such distinction, applying a very low, flat rate across the board for all qualified solicitors, and a 50% reduction for trainee solicitors (meaning their A&A rate is just £31.94 per hour). At JustRight Scotland, work conducted by a partner with over 20 years'

[16] https://www.slab.org.uk/solicitors/other-resources/category-code-cards/, last accessed 30 April 2025
[17] Amendment required to Schedule 3, Part 11 of The Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996, last accessed 28 April 2025.
[18] E.g. Harper Macleod - https://www.harpermacleod.co.uk/price-transparency/#:~:text=.co.uk.-,Costs%20%E2%80%93%20hourly%20rates,rates%20are%20exclusive%20of%20VAT; Drummond Miller - https://www.drummondmiller.co.uk/indicative-costs/litigation-fees/.

experience receives the same rate as a newly qualified solicitor. This exemplifies the systemic undervaluing of legal aid solicitors in Scotland. It also places legal aid practices in an obvious financial predicament: they require to pay more money to reward progression, retain staff and attract senior solicitors, but they cannot generate the income to do so. **This can be remedied without the need for primary legislation**, as Section 33(3)(d) of the Legal Aid (Scotland) Act 1986 delegates authority to the Scottish Ministers to make any provision they consider appropriate in respect of the fees and outlays of solicitors and advocates.[19] We urge the Committee to call on the Scottish Government to increase the rates in the secondary legislation they have committed to bringing forward.

- The rates of **interpreting**, at £36 per hour, have not changed in more than 11 years.[20] At JustRight Scotland, we use interpreters every day to engage with our clients. This is typically foreign language interpreting but also British Sign Language from time to time. For reasons of ethics, quality assurance, and administration, we use professional interpreting agencies like Global Language Services and Voiceover Interpreting. These agencies have raised their prices in recent years to combat the cost of living for their workers. As a result of this, our service is unable to now use face-to-face interpreting because our practice would have the bear a cost of £5 per hour of interpreting. This amounts to £100-£300 per week. We therefore now use remote-only interpreting, which is a poorer experience for our clients. We have approached SLAB to make the case for an increase in rates but were refused. We see this as an equality matter, placing clients with language needs or disabilities at a disadvantage.

- SLAB takes a very restrictive approach to the **type of work** that is chargeable under A&A, which means that a lot of essential work to provide a good service to clients is unpaid. The low rates paid for

[19] www.legislation.gov.uk/ukpga/1986/47/section/33, last accessed 28 April 2025.
[20] SLAB have discretion over outlay rates, https://policydmg.slab.org.uk/decision/outlays/#ps_tab , last accessed 28 April 2025.

chargeable work must be viewed in combination with this restrictive approach, given the overall impact on financial return. For example, SLAB has a policy that it will not pay for legal research.[21] It states that this is on the basis that solicitors are assumed to have sufficient expertise in the areas of law in which they practice. They go further and say research is not specific to one case, but should be considered part of the overheads of a legal practice in developing a solicitor's knowledge of that area. This vastly underestimates the complexity of the law, and the need for solicitors handling complex or less usual matters to review the law, including checking for the latest court decisions, and to apply that law to the facts of the matter before them. That takes time and that time ought to be paid for. SLAB say they will consider special cases but "*the test to be met is a high one*". This means solicitors having to spend more unpaid time attempting to persuade SLAB to exercise its discretion, and we have noted our lack of success in doing so in other areas. There may be areas of practice where the cases generally fall under the same legal framework, with which the solicitor can be reasonably expected to be familiar. However, there are other areas, like immigration and asylum where the law changes substantially on a monthly basis, that requires research. Or other areas such as novel human rights and equality law cases, where each case will raise very different issues and require close analysis of particular aspects of the law and lines of caselaw authority. It also often involves upskilling in areas of law that are unfamiliar, as the human rights issue relates to, for example, planning. There is also often a lot of information that has to be reviewed and assessed at an early stage. SLAB's system is not designed for these sorts of cases and has not been updated to take them into account. **This can be remedied without the need for primary legislation**, as Section 33(3)(d) of the Legal Aid (Scotland) Act 1986 delegates authority to the Scottish Ministers to make any provision they consider appropriate in respect of the fees and outlays of solicitors and advocates.[22]

[21] https://www.slab.org.uk/guidance/research-3/, last accessed 30 April 2015
[22] www.legislation.gov.uk/ukpga/1986/47/section/33, last accessed 28 April 2025.

Complexity and Bureaucracy

In line with other evidence provided to the Committee, we share the view that the administration of legal aid is overly complex. We would suggest the following improvements to A&A:

- More use of **templates**.[23] We would suggest radically expanding the use of templates, potentially straight from the initial limit stage of a matter. The templates used commonly in our practice for naturalisation (£220), asylum (£950), asylum appeals (£1800), and to apply for full civil legal aid (£500) all work well (albeit the limits require to be increased). Template increases provide solicitors with freedom to focus on their clients, rather than frequently engaging with SLAB for incremental increases. Having to constantly plan ahead to make increase requests significantly detracts from the solicitor's ability to focus on the matter, the substance, the strategy and the needs of the client. This additional burden and related stress makes working in legal aid much less attractive.

- Roll back the use of the **increase** system, in favour of larger templates. The use of increases in the current fashion is a significant part of a legal aid solicitor's time. They are a means by which every item of our work – correspondence, telephone calls, meetings, interpreters, perusing documents etc. – requires to be requested and justified by solicitors, and approved by SLAB in advance. Unless the increase is marked urgent, it takes 3-4 days to be approved. We would reiterate that an underlying principle requires to be **trust** in solicitors as regulated officers of the court. Increases are time consuming, paternalistic, prejudicial to the conduct of legal work, and add significant bureaucracy and cost to legal practices as well as SLAB itself. We understand the need for SLAB to safeguard the public purse and spend legal aid funds responsibly, however, this duty is more than discharged by the **accounts/abatements** function (more below). Implementing the

[23] Possible under section 33(3)(f) of Legal Aid (Scotland) Act 1968, and/or amends to Schedule 3 of the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996.

increase system and the accounts/abatements function is, in effect, a double audit. SLAB is approving our work in advance and then reviewing it afterwards, for every single activity of every single matter. This, in our view, is a core inefficiency in the system. As noted above, SLAB have the power to expand the use of templates and roll back its use of the increase system to cases that go beyond a more appropriate template. If this is not to happen, then the current accounts/abatement procedure ought to be scrapped (more below).

- Improve **SLAB's website and portal.** SLAB's website is difficult to navigate and very confusing. Key information about civil legal aid is often located within a lot of other information which has to be scrolled through to find it. For example, if you select "*view all guidance for all types of legal assistance on one page*"[24] it does not take you to all the guidance for that area of work, instead it provides a list of links that segment the information into smaller chunks, making it hard to sift through and difficult to find SLAB's full guidance on a particular topic where there is no dedicated link or section. We believe the format is very out of date and is a real hindrance to solicitors and other staff, particularly to those newer to legal aid practice. We believe this is also due to the piecemeal way in which SLAB has made updates. We recommend that the Committee press SLAB to invest in improving it considerably. Likewise, the SLAB online portal, requires a redesign from the user's perspective, to make it as intuitive and straightforward as possible, and to ensure that solicitors are not being asked to repeatedly input the same information, when that information is already on the file they are submitting to. **This could be done by SLAB without waiting for any legislative reform.**

- SLAB should offer more detailed and thorough **training** to all legal aid solicitors and any staff who support that work. In our experience, training offered by SLAB is not sufficiently detailed to

[24] https://www.slab.org.uk/solicitors/legal-aid-guidance/all-guidance/, last accessed 30 April 2025.

train staff new to civil legal aid. **This could be done by SLAB without waiting for any legislative reform.**

- Ensure **regulations kept up to date**. In order to be able to respond to this consultation effectively, we required to review the primary and secondary legislation ourselves, in part because SLAB's website is difficult to navigate, but also because it only provides SLAB's summary of its interpretation of the legislation. However, when looking at the regulations we noted that they do not appear to be updated when amended. For example, the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2024 amended the 1996 Regulations, so that a "*human trafficking or exploitation victim payment*" shall be left out of calculation in the assessment of disposable capital and income, but the Regulations have not been updated to reflect that. This makes it very difficult to review the legislation. **The regulations should be kept up to date by the Scottish Government.**

*Full civil legal aid*

When reflecting on the processes within the administration of **full civil legal aid**, we would strongly recommend simplification, clearer resources to help users navigate the process and, importantly, a more reasonable approach to retrospective sanction.

Specifically, we would suggest:

- The CLA system has an extremely rigid requirement for **prior sanction for outlays**. If an outlay is not sanctioned in advance it will not be covered by legal aid, even if SLAB recognises that it was justified and there is a very reasonable explanation for the failure to secure sanction in advance. SLAB will only cover such outlays if there is special justification, which cannot be administrative error. That is extremely harsh. In most systems we allow for human error to some extent. In this system you either get it right all the time, regardless of the pressures you're under, or you/your firm or law centre will personally have to pay for the

outlay. Again, that is even if it is clear the expense was required in order to represent the client effectively. This is exacerbated where the case is initially raised under Special Urgency (SU), meaning work is undertaken before a legal aid certificate is put in place. When the case is in the Court of Session, the default cover allows for instruction of one advocate. In complex and novel cases it is very common, if not the norm, for both junior and senior advocates to be instructed. Under SU an application has to be made for sanction for the second advocate. In a very complex and novel case we had done so, obtained restricted sanction, given the stage of the case, raised the action and immediately had it paused until full civil legal aid was granted and the legal aid certificate came through. All those involved being new to the complex and unintuitive system of civil legal aid, when the certificate came through, allowing us to turn our attention to the important work of advising the client, reviewing defences, instructing Edinburgh agents and preparing for and strategizing for the court action, we overlooked the need to revisit the request for sanction for counsel, possibly because of the back and forth about sanction under SU previously. This was human error, under pressure of work, at least in part caused by the undue complexity of the civil legal aid system and the lack of clarity in the guidance and training. There is no question that all work done by both advocates has been necessary and reasonable and SLAB has not taken issue with that. In any event, all their fees will be assessed under the accounts and abatements process described below, yet SLAB has refused to agree to retrospective sanction. This could leave our charity having to pay these outlays from our own very limited reserves. In our view this is unreasonable and illustrates the unforgiving nature of the civil legal aid system, and the strain this puts on all who practice in it.

- Simplified **application** process. At present, every application for full civil legal aid requires two signed legal aid forms (signed by solicitor and applicant), a precognition taken from the applicant, two statutory memorandums which set out the legal issues, a third-party statement (if relevant), and a host of financial information

documenting capital, income, assets and other documents. We would suggest streamlining this, for instance, removing the need for an applicant's precognition. It is burdensome to have to prepare so much documentation, particularly when a court action required to be raised urgently. Given the duties on solicitors, and their regulation by the Law Society of Scotland, it ought to be sufficient for the solicitor to complete one form advising SLAB of the nature of the matter, as set out to them by the client, and the legal basis for the court action. It can also be very challenging to produce the required financial information, particularly for some disabled clients and for clients who do not have good access to the internet, or who do not use smart phones, email or online banking etc. This is all the more challenging when acting for clients who are not in close proximity to the solicitor, as referred to above, as it is not possible to give them practical assistance in person. For example, when providing legal advice to members of Gypsy Traveller communities we have faced significant challenges with communication in general, completing SLAB's application process in that context was very difficult, and members of those communities had challenges in procuring bank statements or evidence of income. **We believe this could be changed by SLAB.**

- Simplifying the use of **special urgency**. At present, there are two types of special urgency, called SU2 and SU4. One relates to scenarios where prior approval is not needed, and the other relates to where prior approval is needed. It can be difficult for solicitors to determine which applies in specific circumstances, and there seems to be inconsistency in SLAB's practices. This is an example of where simplifying the system and providing more straightforward guidance would benefit practitioners. **We believe this could be changed by SLAB.**

- Reducing **administrative steps** in reporting to SLAB. During the life of a civil legal aid file, there are often points where we require to contact SLAB to make requests for changes to the case. There are three application forms typically used: 'Amend', 'Stage Report'

and ‘Sanction’. Solicitors new to civil legal aid can find it challenging to understand which applications need to be made for which issue, and the language is not accessible. It also creates a lot of duplication of effort as the same information has to be provided to support each application. For instance, requests for expert reports or instructing counsel require ‘Sanction’. Raising the case cost limit or adding an interested party, requires an ‘Amend’. If a new fact becomes clear which changes prospects of success, this requires a ‘Stage Report’. It would be simpler if there were a single application where all material issues can be conveyed to SLAB. **We believe this could be changed by SLAB.**

- Reduce the work involved related to **amendments** to legal aid certificates, for example where another party joins the action, and the time taken before confirming the updated certificate, as during this time legal aid cover is not in place as we understand it. **We believe this could be changed by SLAB.**

- Reduce the amount of detail and justification solicitors have to provide for case cost **uplifts**. **We believe this could be changed by SLAB.**

*Accounts and Abatements*

As noted above, our view is that SLAB operate a ‘double audit’ of solicitor work in A&A. They require **increase requests** for approval in advance of the work being done, which specify what activities need done and at what cost. Once approved, they determine your **‘authorised expenditure limit’**. At the end of a case, they then require an **account** to be submitted on their Legal Aid Online (“LAOL”) platform which sets out every piece of work done and its cost, for approval. We cannot see the primary legislation underpinning for this; it appears to be set out in secondary legislation at Regulation 18 of The Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996.[25] It

[25] https://www.legislation.gov.uk/uksi/1996/2447/regulation/18, last accessed 28 April 2025.

appears that SLAB has total discretion as to the manner of form of how accounts are submitted, assessed and taxed.

There is a myriad of issues with the approach SLAB has decided, in its discretion, to adopt:

- **Administrative** burden. The LAOL account system requires line by line entry of every meeting, phone call, perusal, court appearance, piece of court preparation, travel time etc. This is hugely time consuming and can be hundreds of entries, each with a narrative justifying the expense and attaching vouching or documentation. Many legal aid practices require to employ a staff member solely to prepare legal aid accounts. In real terms, that is an expense to the practice of approximately £40-50,000 per year. If the practice does not have administrative support, then the solicitors need to do it themselves, and this is unpaid work. Law Accountants in Scotland, to our understanding, do not prepare A&A accounts anymore.

- The system is increasing in **complexity**. Traditionally, SLAB required solicitors to record the date and length of time of a time-recorded work item, for example, a telephone call or meeting. This is reasonable and part of everyday legal practice. Since 17 December 2024, SLAB now require solicitors to note the exact start and stop time of every time recorded entry, e.g. 15:13-15:19. This includes telephone calls, which are numerous and often unscheduled. If you are time recording for one piece of work, e.g. perusing a document, and you receive a call from a client, you need to note the stop time of your perusal, record the start and stop for the call, and then mark the start time when you resume your perusal. Each is a different activity entry in a legal aid account, against which SLAB advise they will scrutinise for ‘double charging’. These are unreasonable demands on solicitors’ time, particularly in the dire financial context, and serve only to make the system more unusable. They also go against the principle of trust placed in solicitors to do their jobs ethically.

- SLAB routinely **abate fees** which they believe to be incorrect or unreasonable. This can happen if a line-item activity is not entered correctly, e.g. a specific type of letter. However, it also routinely occurs when a SLAB representative decides that a work item was unnecessary or unreasonable, e.g. a meeting taking more than 1 hour when in their view it could have taken 30 minutes. This leads to 'negotiations' with SLAB where solicitors are forced to argue to receive money they have already earned, often spending more than the disputed value in the process of doing so. It is critical to note that, when it comes to abatements, these are generally work items that SLAB have already approved via the increase request. To our knowledge there is no research on what percentage of legal aid funds are abated by SLAB. However, at JustRight Scotland we estimate that after the authorised expenditure limits and the abatements are taken into account, we receive approximately 60% of the work we actually carry out in immigration and asylum matters, and less than 50% for our other civil litigation.

- As noted earlier, any work items are deemed **non-chargeable** by SLAB. This includes completing the eligibility application process for A&A legal aid, updating clients on work done, legal research to study or ascertain a legal issue, and other objective evidence research. These are central functions of a jobbing solicitor which go unpaid when working under legal aid. This is a significant issue in terms of ensuring our legal aid system adequately compensates our legal aid solicitors, but it also raises real concerns that the system may be prevent solicitors from spending time reviewing the law, checking for up to date caselaw, carrying out careful and thorough legal analysis, to the detriment of legal aid clients. This is a further access to justice issue, generally and in terms of inequality of resources between the legally aided client and the State entity, or other opponent.

Our position is that operating the prior approval increase system and the accounts and abatement system is a key area of wasteful administration, and fundamentally undermines a solicitor's ability to function using legal aid. We would suggest that either (a) the increase system is substantially rolled back in favour of templates; or (b) the account

system is simplified where the line-by-line entry is abolished and the account is paid at the SLAB pre-approved authorised expenditure limit. This would remove the double audit feature of the system and would save time and administration for firms and SLAB alike. **We believe this could be changed by SLAB without the need for any legislative reform.**

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, grant funding from the Scottish Legal Aid Board (SLAB) plays a key role in supporting access to justice in Scotland, particularly for individuals and communities who face systemic barriers to legal support.

*Our experience of grant funding from SLAB*

JustRight Scotland is the legal partner of the **Scottish Women's Rights Centre (SWRC)**, where we receive grant funding through the Scottish Government, administered by the Scottish Legal Aid Board. Rape Crisis Scotland are the lead partner, with University of Strathclyde also forming part of the collaboration. We deliver legal advice and representation to women survivors of gender-based violence, and would not be able to do so without the grant funding. Our project also receives Violence against Women and Girls (VAWG) funding from the Scottish Government, 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. The SWRC recently celebrated its 10th anniversary, and JustRight Scotland has been a partner since 2017.

This funding has enabled us to provide trauma-informed legal services to women affected by gender-based violence, an area where access to justice is severely lacking. We note that the SWRC has provided its own response to this call for evidence.

From the perspective of JustRight Scotland, there are benefits but also challenges to the current grant funding model. It should therefore be used in conjunction with a reformed judicare legal aid system.

The benefits of this grant funding model include:

- The model **avoids the need for individual legal aid applications** for each client for A&A, though applications are still required for CLA, as that is the only way to obtain a legal aid certificate, without which the client is exposed to the significant risk of adverse expenses if they are not successful. For A&A it is a streamlined process, which is very welcome and should be replicated in other areas.
- 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 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.
- 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.
- **Somewhat predictable and relatively stable income** over multiple years has enabled the development of long-term services and staff retention. However, in common with Scottish Government grant funding generally (which, as above, is itself integral to supporting the holistic model delivered by the SWRC), this is compromised by a lack of multi-year grant agreements, delays in confirming grant renewals until the financial year is underway, and static funding levels despite high inflation. The financial risks associated with this are placed on us as small third sector

provider, which is unreasonable and compromises our ability to safely and confidently plan ahead to meet the needs of clients.

- It supports a **partnership-based, innovative approach** involving SLAB, the Scottish Government, and third sector specialist organisations – promoting joined-up thinking across policy and practice in an area of key need.
- It can provide a **more stable alternative to the volatility of independent or private grant funding** for third sector organisations delivering legal advice services, which often have to be combined with individual legal aid applications to ensure coverage of case outlays. However, it should be noted that SLAB grant funding is highly restricted to covering legal staff and related costs and is not in itself sufficient to deliver the holistic, trauma-informed, specialist services provided by the SWRC, nor the system-changing strategic policy and campaigning work that follows from our legal casework. The only reason we are able to deliver these wider outcomes and strategic impact is because of additional grant funding from the Scottish Government Violence against Women and Girls (VAWG) fund, and other independent charitable funding sources.

Challenges include**:**

- **Full delivery costs are not typically covered**, meaning JustRight Scotland and others often have to subsidise public services with charitable donations or other grants, effectively topping up state funding from other sources. For example, the grant we receive from SLAB covers the salary, NI and pension costs of our two SWRC Solicitors as well as the costs of their professional indemnity insurance, legal practice certificates and travel costs. It does not include any contribution towards the costs of providing them with office premises, laptops, phones, non-case management software, payroll services, HR support, wellbeing and training support or other overheads costs. These costs are covered by the companion grant for the SWRC received from the Scottish Government but we understand that not all SLAB grant-funded organisations are in this position. In addition, in 2024-25,

the SLAB grant to the SWRC included a management charge representing only a small fraction (less than 15%) of the actual full administrative and management staffing costs required by JRS to employ and adequately support the SWRC staff team.

- There are often **significant delays in securing annual grant approvals**, with funding letters arriving after the financial year begins – making it difficult to plan and forcing organisations like JustRight Scotland to carry the financial risk in the interim.
- The grant agreements can be **highly restrictive** as compared to other public grants or private trust grants, with micro-level scrutiny focused more on inputs and process than on meaningful outcomes or impact. For example, we are required to report on individual sickness absence rates for staff employed with the SLAB funding. This is unheard of in other funding agreements.
- There remains a **power imbalance** between SLAB and funded organisations, challenging the idea of a true, equal partnership.
- The funding is **subject to Ministerial direction,** which introduces uncertainty.

SLAB grant funding has undoubtedly enhanced access to justice, particularly for marginalised communities and individuals with complex legal needs. Projects like the SWRC show how this funding can support innovative, rights-based legal services in ways that traditional legal aid may not allow. However, for this model to be truly sustainable and equitable, the funding structure needs to evolve – offering greater flexibility, transparency, and security to frontline organisations delivering these critical services.

*How grant funding could be used to more effectively support access to justice*

We believe effective use of grant funding could address many of the issues highlighted in this submission, for particular areas of work. Through collaborative work, the Scottish Government and SLAB could create grants that support particular areas of work areas. For example, picking up some of the points made above, there could be specific

grants for working with disabled people, with Gypsy Travellers, and for human rights cases and Equality Act cases generally. By designating points of contact and grant managers, who learn the details of the work, its particular challenges and complexities, and running the grant in line with the overarching principle of supporting access to justice and accessible, affordable, timely and effective remedies, a more appropriate level of paperwork and communication could be put in place given the working relationship. We believe more can be done to address the undue burden of the existing system through grants than has been so far achieved through the SWRC grant model. **We encourage the Scottish Government and SLAB to reach out to us to discuss the possibilities in more detail.**

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

We have documented the weaknesses in the current system above.

In terms of the strengths, we believe that the scope of legal aid is a significant strength that sets Scotland apart from our counterparts in England. The cuts and reduction of scope introduced by Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO") have wrought devastation to the advice sector in England, particularly in areas like immigration and family law. The Law Society of England and Wales estimate that 63% of the population in England have no immigration legal aid provider.[26]

The Judicare model remains appropriate to ensure that there is flexibility and choice as to the type and range of work legal aid providers can do. If reformed with key weaknesses being addressed, it can be an example of best practice when it comes to ensuring access to justice.

[26] https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/immigration-and-asylum, last accessed 21 April 2025.

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)?**

The Evans Review contained many recommendations which we welcomed. At Strategic Aim 2, the review recommended simplifying the complexity of the system, including the four main types of legal aid as well as the areas of eligibility, contributions and clawbacks. It recommended that scope should be maintained. These would be positive steps as we have elaborated on above.

We agree with the recommendations in Strategic Aim 3 which cover the continuation of publicly-funded legal assistance, along with grant aided and other third sector providers. Diversity in legal aid provision is a strength. We have positive experiences of working with various strategic litigation groups comprised of private and third sector legal aid providers. However, seven years on from the Evans Review, this work continues in spite of the legal aid system rather than because of it. We believe that private legal aid providers struggle to set aside time to attend these forums as they contend with huge workloads, and much of what is discussed is attempting to mitigate the negative impacts of the diminishing legal aid provision.

There are other recommendations put forward in the Review which ring true today, including reinvesting efficiency savings into innovation, and creating an effective oversight body. The fact that there is no effective oversight of SLAB is likely to be a key reason for the lack of progress in addressing the issues matters set out above.

That said, there is one element which – seven years on – catches the eye in a negative sense: the ambiguity in the Review around fee levels. The Review stated that it could not find an evidence base for fee increases and instead recommended further research. However, it is our understanding that no such research was done. We would suggest that the relevant information is readily available. We have a number of non-profit law centres in Scotland, working in the public interest, using legal aid. Engagement with those law centres would provide much of the information needed. Often, if not always, these law centres have to secure significant third-party grant and trust funding to supplement their

legal aid income, without which they simply could not survive. The fact that working on legal aid rates alone is unsustainable, is effectively illustrated by the need for these law centres to devote precious time and resources to fund raising. In our own case, JustRight Scotland simply could not exist without substantial grant and trust funding from outwith the legal aid system. In 2025-26, it will cost around £1.7 million to operate JustRight Scotland as a legal centre for human rights and social justice, employing 23 staff, directly benefiting over 500 people each year, and delivering the wide-ranging public interest work we have described in this evidence. We expect less than 18% of our income to come from legal aid, whether grants or fees.

There is no doubt that simply raising fees without any other reform will not solve the problem; it is not solely about fees. However, in the intervening seven years, precious little reform has taken place (indeed, it is arguable that complexity has been added).

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

The issue of legal aid reform in Scotland is urgent. The issues identified in this evidence and the proposed solutions are, in our view, within the purview of secondary legislation and the discretion of SLAB. Until the changes above are actioned, it is challenging to define exactly what longer-term reform looks like.

It must be a priority that short, medium and long-term reform is premised on a human rights-based approach, and one that places trust in the profession and our independent regulators. It is positive to see the Scottish Government identifying human rights as a guiding principle for its response to this inquiry.[27] We urge the Scottish Government and SLAB to collaborate with legal aid solicitors who are the users of the current system, on behalf of their clients, and who witness the severe detriment to their clients of the inadequacies of the current system.

We encourage the Committee to press the Scottish Government to ensure that access to justice, and the human right to an Accessible,

[27] https://justice.org.uk/legal-aid-human-rights/, last accessed 21 April 2025.

Affordable, Timely and Effective remedy for human rights breaches,[28] are guiding principles of Scotland's civil legal aid system, and for SLAB to be guided by those principles in administering the system and exercising its broad discretion under that system.

7. **Do you have any other comments?**

No.

**END**

Contact: Andy Sirel, Partner & Legal Director, JustRight Scotland

1 May 2025

[28] https://www.scottishhumanrights.com/media/2163/remedies-for-economic-social-and-cultural-rights.pdf, last accessed 28 April 2025.