



JustRight Scotland

Legal Aid Reform Consultation Response

October 2026

JustRight Scotland Scotland

[JustRight Scotland](#) (JRS) is a registered charity established by an experienced group of human rights lawyers. We use the law to defend and extend people's rights, working towards a model of collaborative social justice. We work in partnership with non-lawyers and others towards the shared aims of increasing access to justice and reducing inequality in Scotland. We do this by providing direct legal advice and representation to individuals and organisations, running outreach legal surgeries and helplines, delivering rights information, training and legal education, contributing to research, policy and influencing work, and representing people in courts and tribunals. We work across a number of policy areas including migration, citizenship, trafficking and exploitation, women's legal justice and gender-based violence, and human rights and equality for groups including disabled people and Gypsy Travellers.

We have a broad exposure to the civil legal aid system in Scotland. We work across Advice and Assistance (A&A), Advice By Way of Representation (ABWOR), and full civil legal aid (CLA). We are also part of a grant funded project, the Scottish Women's Rights Centre (SWRC). This consultation response should be read in line with our [written evidence](#) to the 2025 Equalities, Human Rights and Civil Justice Committee Legal Aid Inquiry, and [the response](#) of the SWRC.

Introduction – Q.1

Q1: As set out above, to what extent do you agree with the Scottish Government's proposed approach?

Response: Agree

We broadly agree with the Scottish Government's proposed direction of travel for legal aid reform. This is an opportunity for legal aid reform to reimagine a system where it is viable for solicitors to work in legal aid, where the field of those delivering legal advice and representation to people on low income grows; reversing decades of decline and fundamentally improving access to justice in Scotland. We welcome the commitment to establish a legal aid system that is simpler, more flexible, more user-centred and better able to respond to changing patterns of legal need. We also support the proposal to treat

legal aid as a core public service and to move away from an overly prescriptive and process-driven framework towards one that is focused on outcomes, accessibility and sustainability.

Our previous evidence to the Scottish Parliament in 2025 highlighted two principal barriers to access to justice: the lack of availability of legal aid providers and restrictive financial eligibility criteria. We therefore particularly welcome proposals that seek to simplify administration, reduce unnecessary bureaucracy for solicitors, improve data-sharing and passporting arrangements, and support a more strategic approach to planning and delivering services. These are important and necessary reforms if the legal aid system is to meet the needs of people experiencing poverty, discrimination, gender-based violence, displacement, trafficking and other forms human rights breaches.

We encourage reforms around contributions and ‘clawback’ to be carried out with recognition that financial eligibility needs to be more easily understood and more accessible. In our experience, the current financial eligibility rules exclude many people who are unable to afford private legal representation but who fall marginally outside the existing thresholds. Eligibility levels – not increased since 2011 – have failed to keep pace with inflation and the rising cost of living. This reform must reflect contemporary economic realities and remove barriers to accessing justice.

We also welcome the recognition that legal aid provision should be informed by a clearer understanding of unmet legal need and that additional tools may be required to address gaps in provision. Across Scotland, particularly in specialist areas such as human rights law, equality law, family law and immigration and asylum law, there are severe shortages of legal aid providers. Any new framework should support sustainable provision in these areas and ensure that people can obtain timely legal advice and representation regardless of where they live.

As the reforms are developed, we encourage the Scottish Government to ensure that access to justice and human rights remain central principles of the new system. Simplification and flexibility should improve, rather than restrict, access to publicly funded legal assistance. Subject to that qualification, we consider that the proposals provide a foundation for a modern, sustainable and accessible legal aid system and we are supportive of the overall approach.

Section 1 – Purpose, Priorities and Objectives - Q.2-4

Q2. Do you think it would be beneficial for Scottish Ministers to continue to set a clear purpose for the legal aid system, supported by periodically updated objectives for the Scottish Legal Aid Board?

Response: Yes, both purpose and principles

We agree that clear principles, purposes and objectives could provide clarity and direction in terms of what the legal aid system is intended to deliver and how it should operate in practice. Clarity and transparency as to the overall purpose and aims of the system, and the principles that apply to decision-making, would promote a shared understanding as between administrators and users of the legal aid system, which could encourage more efficient decision-making, reduce burden and, ultimately, build trust.

The current legal aid system rests on a framework put in place in the 1980's. The forty plus years since the legislation was put in place have seen dramatic societal and legal developments, including the introduction of the Human Rights Act 1998 and the consolidation of equality law, in the Equality Act 2010. Expectations of and demands on the legal aid system developed accordingly, whereas it remained rooted in a framework established many decades prior, utterly inadequate to meet those developing needs. The reformed system must be designed to prevent a recurrence of the current situation, in which solicitors attempt to secure financial support for clients in need, referencing access to justice and accountability, while administrators of the system strictly adhere to outdated practices, generating tension, inefficiency and inaccessibility, undermining trust and confidence. We therefore support the proposal to keep the objectives updated and recommend that the reformed system builds in a requirement for wider periodic review and updating, to ensure the reformed system keeps pace with developments. That wider, periodic review and updating, ought to take full account of the experiences of users of the legal aid system. That means hearing from civil legal aid solicitors, who are the agents or representatives of those in need of financial assistance, through whom people attempt to access legal aid, as well as from beneficiaries of the legal aid system themselves.

Q3. What principles, if any, should inform the purpose and objectives?

In our view, there are a number of overlapping principles that should be included in the legislation to provide an overarching framework for decision-making:

Rule of law and accountability – the rule of law will only be upheld if there is an accessible and effective route to challenging unlawful actions and securing accountability when our laws are broken. The reformed legal aid system should explicitly recognise the critical role of civil legal aid in enabling people to challenge unlawful policies and practices, particularly by government, central and local, and public institutions.

Access to justice – legal protections are only meaningful if they can be enforced. The civil legal aid system plays a critical role in ensuring people can secure justice if the law is broken and this should be made explicit in the reformed system. Access to justice should be understood in a broad sense, not limited to securing a remedy from a court or tribunal.

Upholding human rights – the Scottish Government is responsible for ensuring that international human rights are respected, protected and fulfilled for people in Scotland. Human rights fulfilment requires more than putting in place a system that enables people to seek a remedy when their rights are breached. The reformed legal aid system should promote the fulfilment of human rights, supporting people to know and understand their

rights, and effectively rely upon them.

Right to an effective remedy - the right to an effective remedy is a fundamental right in international human rights law. When people's rights are breached they must have an accessible, affordable and effective route to securing a remedy, restoring them as far as possible to the position they would have been in had that breach not occurred, as well as ensuring against recurrence. Fulfilment of this right requires effective access to legal information, advice and representation. The reformed legal aid system should explicitly recognise the role of civil legal aid in supporting people to secure an effective remedy when their rights are breached. It is important that the breadth of the right to an effective remedy is adequately reflected, going beyond monetary compensation, encompassing apologies, declarations of rights breaches, and other forms of redress, as well as securing system change to prevent recurrence.

Equality before the law – equality of arms is a fundamental legal principle which should explicitly apply to the reformed civil legal aid system. A party who is legally aided should not be disadvantaged as a consequence of having to rely on state funding. They should be supported adequately, in such a way as to place them on an equal footing with other parties, including where they are pursuing a claim against the State, or against government or a government institution. Central and local government, and government institutions, have effectively unlimited resource to apply to defending legal claims, including permanent and expansive legal teams, priority access to the best advocates (lawyers who appear in Scotland's highest civil courts) and the ability to instruct third parties including expert witnesses, without concern about meeting their costs. The legally aided person, by way of contrast, is curtailed at every step by limits imposed by the legal aid system. The reformed legal aid system should be designed to ensure equal access to legal information, advice and representation, including in terms of quality and quantity of legal resource, and access to experts and other third parties. People should also not be disadvantaged as a result of their location. Access to legal information, advice and representation should be ensured across the country, including in specialist areas such as human rights and equality law. While we understand the reference to proportionality as a potential principle for inclusion in the framework, it is important that any reference to proportionality does not undermine equality before the law, or the right to an effective remedy.

User-centred – we agree with the suggestion that the principles should include the system being user-centred and note that this should acknowledge that the system should be designed and administered recognising that inflexible requirements will particularly disadvantage some people. For example: many of our clients do not have access to reliable internet, internet banking, or a local bank branch, making it challenging to provide three months bank statements in a timely way to support their legal aid application; additional time and cost may accrue on matters for disabled clients, related to communication needs, and for clients who do not reside near Glasgow or Edinburgh, where travel may be required in order to meet them where they are. The system must be designed to allow for client specific needs and circumstances to be taken into account in terms of how it is administered, without putting additional burden on solicitors, and thereby on their clients.

Role of regulated profession – the key role played by regulated solicitors in the delivery of legal advice and representation, funded by legal aid, should be recognised in the reformed civil legal aid system, acknowledging that solicitors in Scotland are regulated by the Law Society of Scotland, reviewed for compliance with civil legal aid quality assurance and practice standards, and subject to stringent professional practice rules. While the reformed civil legal aid system should provide for checks and balances to ensure against misuse of public funds, full account should be taken of the regulatory system in which solicitors operate, the very high compliance rate. Account should also be taken of the non-profit nature of law centres carrying out civil legal aid work.

Q4. Do you think these principles should be subject to Parliamentary scrutiny?

Response: Yes.

Parliamentary scrutiny would be in line with the Scottish Government and Scottish Parliament retaining oversight over the civil legal aid system, ensuring that responsibility remains with them, while administration of the system is undertaken by the Scottish Legal Aid Board.

Section 2 – Simplifying Processes - Q.5-13

Q5. Which of the following benefits, if any, do you think simplification would provide? (Select all that apply)

Response

- Easier access for users
- Reduced administrative burden for providers and the Scottish Legal Aid Board
- Faster decision-making
- Improved consistency
- Better use of public funds
- Ability to support a wider range of service delivery models
- Ability to support innovation and service improvement
- Ability to support providers in different ways, e.g. technology or training

Q6. To what extent do you agree with the proposal to consolidate or streamline, where possible, the current range of separate aid types?

Response: Strongly Agree

We strongly agree with the proposal to consolidate or streamline the current range of separate legal aid types. The current distinctions between Advice and Assistance (A&A), Advice by Way of Representation (ABWOR) and civil legal aid (CLA) are confusing, burdensome and not well understood by legal aid users. We would welcome the

consolidation of these processes. However, we would highlight that this must be done in a way which does not inadvertently make legal aid more complex and difficult to access for matters which can currently be conducted under A&A.

We would highlight that A&A involves significantly less burdensome administrative procedures than CLA, with financial eligibility assessed by solicitors, rather than SLAB, and no merits assessment. Therefore, it provides a relatively flexible way for solicitors to provide advice and assistance at the early stages of a legal matter and to conduct crucial pre-litigation work. ABWOR for immigration and asylum matters is similarly flexible. The picture is more complicated for ABWOR for some other matters, where SLAB will apply a merits test (either an 'effective participation' test or an 'interests of justice' test).¹ CLA is much more complicated than both A&A and ABWOR, with the CLA process characterised by long and time-consuming application forms and burdensome financial information requirements. Furthermore, grants of CLA are subject to detailed assessment by SLAB of both the means of the applicant and the merits of the case.

We would like to see a simplified and consolidated process which retains, and improves, the flexibility of current A&A application procedures. We would suggest that A&A and ABWOR could be consolidated into one case type. In our view, there is no need for a distinction between A&A and ABWOR. We would suggest that consideration is given to whether the merits tests currently applied by SLAB to some ABWOR matters could simply be removed. Alternatively, some merits assessments could be conducted by solicitors rather than SLAB.

For CLA, we appreciate that a merits assessment by SLAB is to be expected at the point of raising a court action, and at further stages in proceedings such as appeals, in order to ensure appropriate use of public funds. However, we note that there is a lack of clarity regarding the criteria used for merits assessments, and inconsistency in decision-making at present. The process for satisfying SLAB on merits is often time-consuming, unduly burdensome, and demoralising for civil legal aid solicitors. We would encourage simplification and clearer guidance regarding any applicable merits tests.

We refer to our evidence to the Scottish Parliament's Legal Aid Inquiry² in which we set out several ways in which the A&A and CLA processes could be simplified by SLAB.

Our suggestions for A&A included increased use of **templates**; rolling back the use of the **increase** system in favour of larger templates; improving SLAB's **website and portal**; and offering detailed **training** for legal aid solicitors and support staff. We also set out our concerns regarding SLAB procedures for **accounts and abatements** of solicitors' fees, which result in a complex 'double audit' of solicitor work in A&A.

Our suggestions for CLA included reforms to SLAB's extremely rigid requirement for prior **sanction for outlays**; a simplified **application process** with fewer forms and documentary requirements; simplification of the **special urgency** procedures; reducing administrative

¹ <https://www.slab.org.uk/guidance/proceedings-requiring-our-prior-approval-before-granting-abwor/>

² <https://www.justrightscotland.org.uk/wp-content/uploads/2025/05/FINAL-JRS-Legal-Aid-Inquiry-Response-1.5.25.pdf>

steps in **reporting to SLAB** during the life of a case; reducing the work involved to obtain **amendments** to legal aid certificates; and reducing the detail and justification solicitors have to provide for **case costs uplifts**.

For CLA, we would also like to see simplification of the process for moving between **legal aid certificates**; for example, in cases where a decision of the Outer House of the Court of Session is appealed to the Inner House and then remitted to the Outer House. In such cases, the circumstances in which work should be carried out under the original legal aid certificate for the court action, or another legal aid certificate for the appeal, can be very confusing for solicitors. This also results in confusion as to when accounts should be submitted for work carried out on the original legal aid certificate.

Another important way in which legal aid types could be streamlined is reforming the financial eligibility assessment process. We set out in our evidence to the Legal Aid Inquiry our view that there should be one financial eligibility test for all civil legal aid types. In this regard, we welcomed that the Scottish Government's Discussion Paper (27 February 2025) proposed that SLAB introduce personal allowances to replace a detailed assessment of individuals' expenses.

However, as we highlighted in our evidence, it is essential that personal allowances are high enough to cover regular payments, including higher living costs incurred by disabled people. A reasonable amount of savings should be disregarded to allow people to protect themselves from destitution, to meet unexpected and essential costs, and to cover disabled people's higher living costs. 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. We also set out our view that financial thresholds should be set considerably higher for claims that concern people's human rights and where the defender is a State entity.

These examples may appear technical, but we raise them because the lived reality of legal aid solicitors is that they consume hours of work, thousands of pounds of unpaid time, and detract on a daily basis from the ability to give legal advice to those who need it. They embody the labyrinthine nature of today's legal aid system in Scotland, arrived at through both tweaks and amendments but also inaction over forty years. Together with the well-documented problems around poor fee rates, they are the reason legal aid provision in Scotland has deteriorated. The legal aid reform requires to recognise this complexity and tackle it head on.

Q7. To what extent do you agree or disagree that contributions and repayment arrangements should be simplified?

Response: Strongly Agree

Our responses to questions 7, 8 and 9 are focused on the Government's proposals as they relate to contributions. We support the Government's suggestion of simplifying the current processes in place for assessing client contributions, with the caveats set out above. In our

view, this would benefit a significant number of applicants across ABWOR, A&A and CLA matters.

As the Government has noted, the current system is complex and varies between different types of legal aid, which can be confusing for clients to navigate. For example, the approaches used in calculating contributions for A&A and CLA differ. Under the standard A&A income scale, weekly disposable income of £112 produces a maximum total contribution of £7, while £224 produces a maximum of £119.³ These contribution amounts are small sums for SLAB, but to applicants with income and capital low enough to be eligible (which as SLAB's own assessment has noted represented only 30% of the population in 2025)⁴ are significant and potentially bar their ability to reasonably access justice without being placed in financial hardship.

This complexity can also inhibit applicants' ability to foresee whether they are likely to be required to pay a contribution and, if so, how much this contribution is likely to be.

While we are encouraged by the Government's aim to simplify this system, we would caution against any approach which introduces standardisation of approach without also allowing adequate consideration of the varied additional costs faced by applicants in connection with protected characteristics.

Q8. To what extent do you agree or disagree that contributions and repayment arrangements should be made more consistent across all types of legal aid?

Response: Agree

The Government is correct to identify the need to make contributions fair and proportionate.

An applicant progressing a claim through both A&A and CLA stages will be subject to a number of very different allowances to income and capital at each stage their action. For example, applicants for A&A will receive capital allowances for partners and dependants that aren't available under CLA, while state pension income is disregarded at A&A but not at CLA.

In developing a consistent approach to assessing contribution sums, we would encourage the Government to adopt an approach which allows for financial considerations available under certain legal aid types to be made available across all, to ensure that applicants receive consistent protections throughout the course of their legal matters.

Q9. What changes, if any, should be made to contributions and repayment arrangements?

Response

³ <https://www.slab.org.uk/solicitors/other-resources/key-cards/civil-keycard/>

⁴ <https://www.parliament.scot/-/media/files/committees/equalities-human-rights-and-civil-justice-committee/correspondence/2025/civil-legal-aid-inquiry-25-november-2025.pdf>, page 14

- Clear and consistent rules
- Simpler assessments
- Transparent calculations
- Published guidance
- Safeguards for low incomes
- Flexibility in exceptional cases
- Other

Clear and consistent rules and simpler assessments

As outlined above, we consider that a simplified and consistent framework for assessing contributions would benefit the majority of applicants. Assessment should protect reasonable living costs, essential care, and disability-related costs. Where standard calculations place applicants at disadvantage in connection with protected characteristics, we would encourage the Government to consider requiring SLAB's consideration of applicants' individual circumstances (for example, disability-related costs which are inherently non-standard from one disabled person to another) to reduce or waive contribution sums.

Transparent calculations

At present, separate breakdowns of contribution sums for income and capital are provided by SLAB following an application for legal aid being made. However, earlier confirmation of this sum and its payment timescale, accompanied by detailed and transparent reasoning behind the calculation would give applicants the necessary information to consider whether they could proceed in a timely way. The amount of contribution can prevent an applicant continuing an action which may have already been raised. Availability of discretionary consideration, allowances, and the circumstances in which the contribution assessment may change should be accessibly set out to applicants.

We note that SLAB's online eligibility estimators now provide indicative contribution figures, which is a useful service and we encourage its continued development to reflect the inputs, allowances and available discretion under any new contribution scheme.

Published guidance

For advice on contribution arrangements, applicants and advisers must navigate several keycards and webpages. Any replacing guidance on the new frameworks should be accessible and comprehensive. We would encourage the inclusion of worked examples, along with clear explanations of allowances and available discretion and how these can be accessed. Guidance should also set out suitable alternative evidence where possible, and criteria where discretionary consideration of circumstances is available and how this can be sought.

We would also encourage that any guidance for applicants be published in a variety of languages and accessible formats such as audio and easy-read versions, and would encourage the Government and SLAB to engage with relevant organisations and community groups in preparing this.

Safeguards for low incomes

We support introducing safeguards for low-income applicants. It is important to consider that, due to the stagnation of eligibility and contribution thresholds since 2011, contributions have been sought from applicants on progressively lower relative incomes.⁵ Protection must therefore address what applicants can reasonably afford after essential expenditure, rather than assume that a contribution is affordable because it falls within current thresholds.⁶ We encourage the Government's consideration of the Committee's recommendations regarding updates to these thresholds.⁷

Existing Civil Legal Aid rules already permit income allowances and capital disregards, and SLAB can consider requests to alter unaffordable instalments. Elsewhere, SLAB also has discretion to consider financial hardship to clients in certain clawback arrangements under A&A, though there is no similar consideration at present for whether contribution costs would cause similar hardship at either A&A or Civil stages. As stated, these sums are minimal for SLAB's purposes, yet comparably significant for the diminishing portion of the population covered by A&A. Alongside considering protective measures to prevent financial hardship when assessing contribution recovery across all legal aid types, we would therefore encourage the Government to disapply the requirement for a contribution for A&A matters generally.

Flexibility in exceptional cases

We appreciate the Government's intention of accommodating applicant's individual circumstances. However, that this should be available only in "exceptional cases" may place this necessary flexibility behind an unrealistically high threshold. As outlined further on in this response, this could be to the disadvantage of protected groups whose circumstances do not fit within standardised allowances. We would encourage the government to consider making this discretion more accessible to protected groups, without the requirement to pass this hurdle of exceptionality which, in our experience, has previously been strictly applied by SLAB. SLAB itself has recently outlined a broad definition of exceptionality, in the context of assessing disposable income, as resulting in a 'materially inequitable outcome or effect' which could be considered as a more accessible general criteria for flexibility, subject to its application.⁸

Other (please specify)

To challenge unfair assessment outcomes, applicants should have an express right to seek review of contribution amounts, refusal of an allowance or disregard, and payment timetables. Review processes should be accessible, timely and independent, and provide reasoned outcomes addressing evidence and any impending deadline. Reassessment should remain available where income falls or unavoidable expenditure increases while a contribution remains outstanding. Necessary urgent legal work towards time limits should be protected during reassessment.

⁵ SLAB has acknowledged the effect of this freeze: [SLAB, Civil Legal Aid Inquiry evidence](#), page 20.

⁶ [Equality and Human Rights Committee report](#), paragraphs 136 to 139.

⁷ Ibid, paragraph 90.

⁸ [SLAB, response on financial assessment and contributions \(March 2026\)](#), paragraph 25.

Q10. Do you agree that eligibility for legal aid should be clearly separated from the assessment of what a person is required to contribute?

Response: Yes

The Scottish Government is correct to recognise the need to make assessment of contributions more fair, proportionate and reflective of current economic conditions. Those who are eligible for legal aid are a decreasing portion of the population, and it is not realistic to assess their ability to pay a contribution based upon out-of-date eligibility thresholds. Many applicants who cannot fund proceedings privately will also be unable to pay the contribution attached to a grant. We agree that consideration of eligibility and affordability of contributions should be addressed separately, given the former does not reasonably confirm the latter.

The current capital rules illustrate this distinction between eligibility and affordability. Section 15(2) of the Legal Aid (Scotland) Act 1986 does not make capital above the prescribed upper level an absolute bar to eligibility, and refusal also depends on whether SLAB considers that the applicant can afford to proceed without legal aid. A favourable discretionary eligibility decision under section 15(2)(b) does not itself disregard the capital used in calculating contribution or remove the contribution, and may still result in an unaffordable contribution sum.

Under A&A, it is left to the solicitor to decide whether or not to seek payment of this sum from the client. At JustRight Scotland we do not. 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. As above, our view is that the A&A contribution should be disappplied.

A contribution which prevents an eligible person from proceeding defeats the purpose of the grant. The assessment must consider the practical effect of payment on reasonable living costs and essential needs, including the ability to replace savings required for future care. A person should not have to sacrifice ordinary, reasonable expenditure to obtain access to justice.⁹ To provide two examples from our work:

- A disabled client whose only income was his received benefits, who nonetheless faced a £6,500 capital contribution (almost half his savings) to challenge the discriminatory impact of a local authority's policy.¹⁰ Our client required these savings to cover future disability-related costs, and could not easily replenish them given his benefits income. This outcome illustrates why eligibility and contribution affordability require distinct consideration. To avoid situations such as this, we recommend an approach which gives attention to the purpose of retained savings in the context of protected characteristics. We challenge the implied assumption that an individual ought to be prepared to spend their small life savings on a court case which is required only because their local authority has breached its legal duties and the only means of holding them to account in our civil justice system requires an individual to take on the burden of challenging them in court.

⁹ Supported by analogy in the Supreme Court's approach concerning the reasonable affordability of tribunal fees in *R (UNISON) v Lord Chancellor* [2017] UKSC 51, paragraphs 66 to 69 and 93.

¹⁰ [JustRight Scotland, response to the Civil Legal Aid Inquiry, 1 May 2025](#), pages 12 to 14.

- In order to bring a claim against a public body in connection with the death of an applicant's relative in its care, a client required to pay a contribution to SLAB of almost £7,000, more than a quarter of his annual income. That the client had to pay any contribution at all, let alone such a significant sum, placed them in the position of in effect having to pay the state in order to access justice from it for its role in their relative's death.

To avoid situations such as this, we would encourage the Government to consider a framework of certain categories of case (including human rights and equalities actions and judicial reviews against public authorities) where a contribution would not be required at all. In considering this, we refer the Government to the Scottish Women's Rights Centre's report regarding the discouraging and disadvantaging impact to vulnerable women caused by the current requirement to pay contributions in order to access important protections such as protective orders.¹¹

SLAB already has broad statutory discretion to disregard sums of capital as it may decide appropriate, used in assessing eligibility and contribution sums.¹² However, in our experience SLAB has not readily acknowledged or applied this discretion. Given this we would also encourage stronger measures requiring SLAB's consideration of individual circumstances, particularly in relation to protected characteristics as below.

Q11. To what extent do you agree or disagree that the Scottish Legal Aid Board should have a bi-annual statutory duty to review and advise on contribution thresholds and arrangements?

Response: Strong Agree

We are strongly in favour of the Government's proposal to introduce a duty to regularly review the thresholds above which contributions are required. This would allow Scotland's legal aid system to be more responsive to and reflective of the financial realities of the people it assists.

As noted elsewhere in this response, contribution thresholds have not increased since 2011 which in effect has required applicants in worse relative financial conditions to pay contribution sums. As above, these sums are often minimal to SLAB but onerous upon the diminishing section of the population qualifying for legal aid, particularly A&A. Any duty to review must be connected to a mechanism for timely action by Ministers to prevent further erosion of access to justice.

In exercising this duty, we would encourage the Government to introduce a requirement upon SLAB and Ministers to include human rights, equality and access-to-justice evidence in the material considered, and to engage with bodies such as Disabled People's Organisations, representative charities and community organisations with relevant experience of the cost of living for disadvantaged groups. This will ensure that any updates to contribution thresholds are reflective of the financial pressures faced by those disproportionately impacted by the cost of living, and no applicants are left behind. For transparency, SLAB's advice and the evidence it considers, along with a reasoned

¹¹ <https://www.scottishwomensrightscentre.org.uk/resources/24.12.03-SWRC-report-No-Costs-Barriers---Protective-Orders-in-the-legal-aid-system-FINAL.pdf>

¹² Civil Legal Aid (Scotland) Regulations 2022, Schedule 3, Section 17.

ministerial response setting out actions and timescales, should be published.

In line with the Committee's recommendations to update eligibility thresholds, we would also strongly encourage the Government to consider similarly introducing a duty for scheduled review of financial eligibility thresholds, given that these have also not been updated since 2011 alongside contribution thresholds.¹³

Q12. Are you in favour of a higher trust model for accredited providers?

Response: Yes

We support the introduction of a higher trust model for accredited providers. We consider that such a model has the potential to reduce unnecessary bureaucracy and increase access to justice by allowing legal aid providers to spend more time supporting clients and less time navigating administrative processes.

We previously set out in our evidence to the Committee's Legal Aid Inquiry that, in our view, trust in the solicitor profession is an essential component of any effective legal aid system. Scotland's legal profession is already robustly regulated and solicitors are subject to strict ethical standards as officers of the court. Yet trust is not currently reflected in the operation of the Scottish legal aid system. In our evidence, we described the current approach adopted by SLAB — requiring prior approval for expenditure and then reassessing the same work again at the accounts and abatement stage — as, in effect, a double audit. We estimated that, once authorised expenditure limits and abatements are taken into account, we recover for only around 60% of the work we actually carry out in immigration and asylum matters, and less than 50% in our other civil litigation. That is before we account for the exceptionally low rates paid for work we do recover for. Preparing and defending accounts under this system is resource-intensive: legal aid practices are forced to dedicate significant staff time and resources to negotiating payment for work already sanctioned and carried out.

The Committee's own report reached a similar conclusion. It found that bureaucratic processes are a major barrier to offering and accessing civil legal assistance, and that onerous administration requirements have resulted in a breakdown in the relationship between legal aid lawyers and SLAB. The Committee heard evidence of solicitors spending disproportionate amounts of time disputing small sums with SLAB, and of the significant staff costs firms incur purely to manage this process. The Committee specifically recommended removing the "double audit" created by assessing the same expenditure via both the uplift and abatement processes. We welcome that recommendation and consider it directly relevant to the case for a higher trust model: removing duplicated scrutiny would free up capacity currently spent on administration, allowing that time and resources to be redirected towards serving clients and addressing unmet legal need.

We consider a higher trust model to be entirely compatible with accountability. Legal aid providers should be trusted to exercise their professional judgement, while remaining subject to appropriate and proportionate oversight and audit. The current system often duplicates scrutiny of work that has already been approved. A higher trust model should move away from this approach and instead rely on proportionate safeguards, recognising the existing regulatory framework within which solicitors already operate.

¹³ EHR Committee report, paragraph 90.

We also consider it important that lessons are learned from jurisdictions which have already implemented higher trust approaches, including the Netherlands. However, reforms should be adapted carefully to the Scottish context. One feature of the Dutch system that may merit further consideration is the integration of advice, referral and legal aid provision. Through its advice-counter model, individuals are encouraged to seek initial advice before being referred to legal aid providers where specialist representation is required. In addition to encouraging early resolution, this model provides the Government with a clearer understanding of demand for legal assistance and of the capacity of legal aid providers. Scotland currently lacks a comprehensive picture of legal need, unmet demand and of the capacity of legal aid providers. The Scottish Government may therefore wish to explore stronger integration between advice services and legal aid provision as part of wider reforms. However, this requires careful consideration, in particular due to Scotland's very tight time limits for raising court proceedings, including only three months to raise a judicial review. The reformed system must support people to secure timely legal advice, including regarding steps they require to take to protect any claims they may have.

We would caution against moving to a higher trust model without further, detailed consultation on how it is to be designed. Whilst we support the adoption of such a model in principle, we would highlight a few critical concerns:

1. **A single model will not suit all types of providers or work.** Block fees may be appropriate for high-volume and relatively predictable categories of work where the time and complexity involved are broadly consistent between cases. However, many areas of civil legal aid, including much of the work undertaken by JustRight Scotland, involve vulnerable clients, complex legal issues and novel points of law. In such cases, a fixed-fee model may fail to reflect the work reasonably required, particularly where practitioners take a trauma-informed approach or need to undertake extensive preparatory work. Any higher trust model should therefore retain flexibility and allow providers to recover payment for reasonable work actually undertaken in complex or sensitive cases. Practitioners should have discretion to determine, based on the complexity of a matter and the circumstances of a client, whether a case is more appropriately remunerated through a block-fee arrangement or through payment for work reasonably undertaken.
2. **Disputes over the reasonableness of work carried out should be resolved by an independent mechanism, not by SLAB itself.** Where disagreements arise over whether work was reasonably necessary, the current position places SLAB in the role of both payer and decision-maker. While it is theoretically possible to refer some disputes to the auditor of court, they do not have jurisdiction over all areas of dispute, SLAB is the ultimate decision-maker on many points. Where the auditor does have jurisdiction, the process is time-consuming and places undue burden on the practicing solicitor, such that it is rarely a process they have the capacity to consider instigating, meaning that in practice SLAB remains the ultimate decision-maker. This creates an inherent conflict and can undermine confidence in the fairness of the process. In a private court action, where judicial expenses are awarded in favour of a party, if that party takes the judicial account to taxation they are recompensed for the reasonable expenses related to undertaking the taxation process. A similar approach ought to apply to legal aid accounts, with solicitors receiving a reasonable sum for the time involved in the taxation process. This would make a fairer, more transparent route to resolving disagreements about accounts more accessible. The jurisdiction of

the auditor ought to be extended to cover all disputes with SLAB, including sanction and increase decisions. Similarly, where legal aid is refused there ought to be an independent review mechanism, rather than a committee within SLAB reviewing SLAB's own decision to refuse legal aid.

3. **Guidance, fee levels and processes should be transparent and subject to regular review.** We noted in our earlier evidence that SLAB's guidance is difficult to navigate and, in places, out of date. A higher trust model will only succeed if providers can rely on clear, current and easily accessible published guidance on what is expected of them, what rates apply, and how compliance and audit will operate — with a formal commitment to keep this under regular review as the model develops. This is particularly important in the context of fee levels. Should the option of block fees be considered as part of the high trust model, it is crucial that fee levels are agreed in consultation with practitioners and kept under regular review. In this context, we would draw attention to the experience of Scottish legal aid criminal solicitors who, in 2025, chose to boycott a pilot relating to summary cases due to the unsustainable level of fees applicable to these cases.

Overall, we consider the introduction of a higher trust model to be a welcome development. Handled well, and designed in genuine consultation with the profession, it has the potential to begin restoring trust between SLAB and legal aid providers over the longer term — trust which, as set out above, has been significantly eroded by the current administrative burdens. Ultimately, a properly designed higher trust model would allow providers to spend less time on duplicated administration and negotiation with SLAB, and more time on the work itself, enabling us to assist more clients.

Q13. Are you in favour of data sharing between organisations (such as the Scottish Legal Aid Board and Social Security Scotland) to ease the passporting of benefits?

Response: Yes

We strongly support the Scottish Government's suggestion to expand SLAB's data-sharing with a wider range of public bodies, including those administered by Social Security Scotland, where this reduces the evidence applicants must obtain and provide and the time required to determine applications.

SLAB's current approach allows it to communicate with the Department for Work and Pensions to confirm the four current 'passported' benefits. This is useful to our clients as it removes the requirement for them to provide certain information that SLAB can otherwise confirm itself. However, clients are still left to provide the remainder of the financial evidence required by SLAB in order to assess their financial eligibility generally, and to access allowances such as recently-introduced premiums for disabled applicants.

We consider that developing SLAB's capabilities to access financial evidence directly will be a constructive step in alleviating the evidential onus on clients. As outlined further in this response, many applicants are disproportionately burdened by the requirement to collect comprehensive, up-to-date financial evidence in connection with protected characteristics (including age, disability, and race).

We would also encourage the Government to expand SLAB's data-sharing capabilities beyond simply confirming receipt of passported benefits, to cover financial verification more

broadly and reduce the onus on clients as far as possible.

Generally, any expanded sharing should have a clear lawful basis, defined purposes and safeguards for accuracy, security and correction. Data sharing must also work safely for people experiencing economic abuse and those unable to obtain records from another household member.

Section 3 – Diversifying Delivery - Q.14-16

Q14. Which funding models do you think should be used more in future?

Response

Judicare
Commissioning

We support a mixed model of legal services funding but believe there should be an increased role for both commissioning (grant funding/contracting) and judicare (case-by-case legal aid funding). The appropriate model will depend on the nature of the work being delivered, the needs of the client group, and the availability of specialist providers.

The judicare system remains an essential component of Scotland's legal aid framework because it preserves client choice, professional independence, and flexibility. Individuals should continue to be able to choose a solicitor who is best placed to meet their needs, particularly in complex and sensitive areas such as human rights, discrimination, immigration, trafficking, and gender-based violence. However, our experience and published Inquiry evidence demonstrates that the effectiveness of the current judicare model is being undermined by insufficient remuneration, restrictive eligibility criteria, and a shortage of legal aid providers across large parts of Scotland. Reform and investment are therefore required if judicare is to remain viable.

At the same time, there is a case for expanding commissioning through grants and contracts in areas where specialist expertise is limited and demand is high. Our own experience demonstrates the value of specialist, grant-funded legal services that combine legal representation with outreach, community engagement, and strategic litigation. Vulnerable groups often require more intensive and trauma-informed support than can readily be provided through a purely case-based payment structure. Commissioned services can provide targeted supply, stability, facilitate long-term planning, and allow providers to develop expertise that would otherwise be difficult to sustain.

This is particularly relevant in the context of survivors of gender-based violence. The experience of the Scottish Women's Rights Centre shows that survivors often struggle to obtain solicitors willing or able to undertake legal aid work and may contact dozens of firms before finding representation. Fully-funded, grant-funded specialist services can help fill those gaps and ensure access to justice where the mainstream system has failed; but they cannot do so without broader reform outlined above. Commissioning grant funded services ought not to be seen as a silver bullet, but rather as another tool to address specific subject matter or geographical gaps.

The same can be said for direct employment. It ought not to be the principal delivery model.

While publicly employed lawyers may have a role in addressing geographical gaps in provision or delivering services in particular areas, there is a risk that an overreliance on direct employment could reduce diversity of provision and limit client choice. The three models should complement each other.

Q15. Are you in favour of services being commissioned directly in line with the approach set out, for example through grants/contracts or direct employment?

Response: Yes

We are in favour of the use of directly commissioned services, particularly through grants and contracts, provided this is designed to complement rather than replace the wider legal aid system. Commissioning has an important role to play in ensuring access to justice for groups whose legal needs are not adequately met through traditional legal aid provision.

Evidence we presented during the Legal Aid Inquiry highlighted persistent gaps in provision across Scotland. Entire areas of law, including human rights, equality, immigration and gender-based violence, are supported by only a small number of specialist organisations and practitioners. In many parts of Scotland, individuals struggle to find a solicitor willing and able to take on legally aided work. These shortages are particularly acute in rural and island communities and in specialist practice areas. Direct commissioning can help ensure that critical services remain available where market-based provision has become fragile or unsustainable.

Commissioning also allows legal services to be delivered in ways that are responsive to the needs of vulnerable groups. Many clients require more than traditional legal representation. They may need outreach support, accessible information, partnership working with advocacy organisations, trauma-informed engagement, and strategic litigation that addresses systemic rights violations. These activities are often difficult to sustain under fee-based legal aid arrangements but can be effectively supported through grants and contracts. The experience of specialist centres operated by JustRight Scotland demonstrates the benefits of stable funding that allows expertise and trust to be developed over time.

Our experience tells us that the case for commissioning is particularly compelling in relation to survivors of gender-based violence. The Scottish Women's Rights Centre has documented significant barriers faced by women seeking protective orders, including difficulties accessing legal aid solicitors and the discouraging impact of contribution requirements. Its specialist grant-funded model has enabled women to obtain protection who may otherwise have been unable to access justice. This illustrates how targeted commissioned services can address unmet legal need and protect fundamental rights.

However, commissioning should not be viewed as a complete solution. Any expansion should preserve client choice, maintain solicitor independence, and sit alongside a reformed legal aid system that remains accessible and properly funded. Direct commissioning should enhance capacity, fill gaps, and support specialist services rather than create a parallel system that substitutes for broader legal aid reform.

Q16. Do you consider that the scope of legal aid in Scotland should continue to be focused primarily on individuals, or are there circumstances in which non-natural persons should be eligible for support?

Response: Non-natural persons should be eligible for legal aid in some circumstances

We are encouraged by the Government's consideration of expanding the scope of legal aid beyond individuals to include non-natural persons. Under the current system, legal aid eligibility excludes organisations in most cases.¹⁴ As the Government notes, there are circumstances where charities and other third-sector organisations in particular could benefit from legal support in order to fulfil their functions, including the protection of rights. We also note the heavy burden placed on individuals under the current system, where organisations are unable to secure legal aid.

Organisations are typically excluded from raising civil proceedings for human rights and equalities matters due to issues of standing, where either procedure most often requires an individual rights-bearing 'victim' for a case to be brought. However, organisations can more readily have standing in judicial review procedure through the broader test requiring 'sufficient interest' in the decision being challenged.

While organisations can have standing to raise judicial review, we note that most are currently prevented from doing so due to significant financial barriers. Judicial review procedure, which must be raised in the Court of Session in Edinburgh, carries high court costs, and involves payment for both solicitors and advocates. Given this, the cost is usually in the tens of thousands and can be very high indeed. The precise cost can be difficult to predict as each case develops differently. Even if an organisation were able to meet its own legal costs, or secure free (pro bono) representation, which is very rare in Scotland, they are unlikely to be able to take on the risk of having to pay the opposing party's expenses if unsuccessful. In Scotland liability for the other side's expenses usually follows if a case is lost. Access to legal aid not only provides funding for the party's own legal costs, it also provides a high level of protection against having to pay the other side's legal expenses if unsuccessful. Someone with a legal aid certificate can ask the court to reduce their liability to nil, and this is generally granted. An effective funding route must therefore address both the costs of bringing proceedings and exposure to adverse expenses. Assisted status for organisations, similar to that granted to individual applicants, could significantly limit the risk regarding expenses.¹⁵

In the current funding landscape charities are under considerable pressure, with income stretched across dedicated purposes. This financial pressure further compounds the inability of charities and other third-sector organisations to cover the legal costs necessary to raise proceedings or bear adverse expenses awards, without impacting the services they provide to communities. While measures such as protective expenses orders are available, they are very rarely granted and require potentially unrecoverable expenditure in order to reach the procedural stage where they can be requested. The system should create sufficient foreseeability and certainty for charities such that they are able to contemplate raising strategic legal cases.

While organisations who represent groups affected by decisions of public bodies can refer individuals to legal representation themselves, in our experience there are numerous complicating factors in doing so. An individual may not recognise the legal issue or obtain

¹⁴ Legal Aid (Scotland) Act 1986, section 41.

¹⁵ Legal Aid (Scotland) Act 1986, section 18(2).

advice within the normal three-month time limit for judicial review. Arranging accessible advice and establishing financial eligibility may add delay, particularly where the individual faces communication or other access barriers. The individual must also be willing and able to take on proceedings and any associated risks. In our experience these difficulties can prevent a challenge from reaching court. Organisational eligibility should complement improvements in individual access and should not depend on an exhaustive search for someone who might theoretically bring the case instead.

Given these reasons, we would strongly support the Scottish Government's suggested expansion of legal aid eligibility to cover non-legal persons, which we consider could address the current financial barriers faced by organisations and encourage their engagement in upholding rights through judicial review. We consider that this will be to the ultimate benefit of the communities and protected groups represented by these organisations and could be a significant step towards strengthening accountability and the rule of law. In considering how merits and financial assessment should be approached, we would welcome opportunity for involvement in developing this framework alongside a broad variety of charities, organisations and those they represent.

Section 4 – How the new system would work - Q.17-21

Q17. To what extent do you agree with the split of duties between the Scottish Parliament, Scottish Ministers and the Scottish Legal Aid Board?

Response: Agree

We agree with the broad division of responsibilities proposed, whereby the Scottish Parliament establishes the legislative framework, Scottish Ministers set strategic priorities and funding parameters, and the Scottish Legal Aid Board (SLAB) is responsible for operational delivery. This structure reflects the distinction between democratic accountability and day-to-day administration. However, our agreement is qualified by the need for substantially stronger oversight and accountability mechanisms than currently exist.

Our evidence to the Legal Aid Inquiry set out our concerns around the administration of the legal aid system by SLAB. It reflected on the myriad responsibilities split across primary legislation, secondary regulations and policy guidance. Our reading of what powers derive from which source differs to that of SLAB. Our view is that there is little transparency on why certain actions could not and have not been taken to make improvements in recent years. These issues demonstrate that oversight and scrutiny are as important as operational independence for the administrator of the system.

The legal aid system should be understood as a key component of Scotland's justice infrastructure and as an important mechanism for securing effective remedies for rights violations. Put another way, it is providing a public service to the people of Scotland, especially those from marginalised communities. Where there is evidence that the system is failing to meet need, there must be clear routes for democratic oversight and intervention. The proposed allocation of functions can work effectively, provided that Parliament and Ministers have meaningful and regular opportunities to scrutinise performance, assess whether legal need is being met, and require corrective action where appropriate.

Accordingly, we support the proposed split of functions, but only if it is accompanied by

robust reporting, transparency and accountability arrangements that ensure SLAB remains focused on supporting access-to-justice outcomes rather than merely administering processes.

Q18. Which planning and reporting requirements should apply to SLAB?

Response

Approval by Ministers of strategic service delivery plans

Reporting regularly to the Scottish Government and the Scottish Parliament on performance and outcomes of the legal aid system

Other: publication of access-to-justice indicators and independent evaluation

The current reporting framework is insufficient to provide confidence that legal aid is meeting legal need across Scotland. Evidence from providers, users and parliamentary scrutiny has repeatedly highlighted difficulties accessing legal aid services, significant geographic inequalities, diminishing numbers of providers and growing numbers of people unable to secure representation despite apparent eligibility.

We support ministerial approval of strategic delivery plans to ensure that legal aid provision is aligned with national access-to-justice objectives and reflects identified areas of unmet need. However, those plans should also be published and subject to parliamentary scrutiny. SLAB should be required to report regularly, rather than solely through annual reports, on outcomes including provider availability, waiting times, legal aid uptake, unmet need, regional disparities, financial eligibility impacts, contribution requirements and the experience of protected groups. These indicators would provide a more meaningful assessment of whether individuals are actually able to access justice.

In addition, independent evaluation should be built into the framework. Stakeholders have frequently identified a disconnect between administrative performance measures and lived experience of accessing legal aid. External review would help ensure that reporting focuses not only on processing applications but on whether the system is achieving its fundamental purpose: enabling effective access to legal advice, representation and remedies.

Q19. Do you think there should be powers to act if SLAB is not able to deliver the objectives of the legal aid system?

Response: Yes

There should be formal powers to act where there is evidence that the objectives of the legal aid system are not being delivered. Legal aid is intended to safeguard access to justice and the effective enforcement of rights and uphold the rule of law. If the system is unable to perform that function, there must be mechanisms that permit corrective action.

A governance framework that relies solely on voluntary improvement risks allowing systemic problems to continue without effective remedy. Formal intervention powers create an

important safeguard and provide assurance that legal aid delivery remains focused on public need and legislative objectives. Such powers would not undermine operational independence provided they are exercised transparently, proportionately and only where there is clear evidence of failure.

Importantly, intervention should be linked to objective indicators and evidence of outcomes rather than political preference. The purpose of any intervention power should not be to influence individual case decisions but to address systemic failures in the delivery of legal aid services. That distinction is essential to preserving public confidence, protecting professional independence and ensuring that governance arrangements remain compatible with the rule of law and access to justice principles.

Q20. Who should have powers to act if the objectives of the legal aid system are not being delivered?

Response: Both Scottish Ministers and the Scottish Parliament

Legal aid is a publicly funded service that is central to the justice system and the protection of rights. Where system objectives are not being achieved, accountability should operate through both democratic institutions. We therefore support powers being held by both Scottish Ministers and the Scottish Parliament.

Ministers are responsible for policy, funding and strategic direction and are therefore best placed to respond swiftly to operational concerns and emerging gaps in provision. Parliament also has an essential role. The challenges currently facing legal aid have developed over many years and involve questions of public expenditure, access to justice and human rights fulfillment. For instance, the legislation arising from this reform must comply with the Human Rights Act 1998 and the UNCRC (Incorporation) (Scotland) Act 2024. Independent parliamentary scrutiny helps ensure transparency and prevents accountability resting solely within the executive branch.

We do not support accountability resting exclusively with an independent body. While independent review can play an important role, decisions regarding the performance of a national public service ultimately require democratic oversight.

Q21. What types of powers should be available?

Response

Direct the Scottish Legal Aid Board to take action

Set or change performance targets

Commission independent reviews

Change governance arrangements

A range of powers should be available to respond proportionately to different levels of

concern regarding legal aid delivery. No single mechanism is likely to be sufficient.

The power to direct SLAB to take action should be available where evidence identifies specific operational shortcomings. There should also be powers to set and revise performance targets. Current measures often focus on administrative activity rather than outcomes. Future targets should assess whether people are obtaining timely legal advice and representation, whether legal aid provision exists in areas of identified need, and whether vulnerable groups can access services in practice.

Independent reviews have a role. Concerns about legal aid availability and administration have been raised consistently by practitioners, users and now parliamentary committees. Independent examination can provide objective evidence and improve confidence in reform processes. We note, though, that much depends on whether those reviews are implemented. The Evans Review took place in 2018 and it has taken eight years to arrive at this point.

Section 5 – Overall Impact – Q.22

Q22. Overall, how would you characterise the likely impact of the proposed reforms?

Response

Insufficient information to reach a conclusion

We remain cautiously optimistic about the proposed reforms. However, more detail is required to understand the nature of the impact. We look forward to contributing to the next stage of the process.

Section 6 – Equality Impact Questions

Please provide details of any positive impacts identified:

Data-sharing and financial evidence

In our experience elderly clients, disabled clients, and clients from minority ethnic groups, migrants and Gypsy/Traveller communities experience particular difficulty in accessing and providing the significant financial information required to be assessed for legal aid. This can be in connection with health conditions, limited access to online and physical banking, and language and literacy barriers. Clients have expressed to us that they find this process onerous and invasive, and SLAB has itself recognised that evidential demands can limit access to allowances and prevent or discourage applicants from engaging with assessment processes.¹⁶

¹⁶ [SLAB, Standard disposable allowances and contributions: stakeholder briefing \(December 2025\)](#), paragraphs 12 to 15.

Increased data-sharing between SLAB and other public bodies would go some way to alleviating this disproportionate burden, in reducing the amount of evidence they have to provide themselves regarding their receipt of benefits. However, as outlined above applicants would still require to provide a significant amount of financial information regarding their income and capital. We encourage the Government to consider further steps to lift this evidential onus from clients as much as possible, and to provide accessible assistance where it remains necessary.

High-trust model

The introduction of a 'high-trust' system that reduces the need for repeat applications for the same matters would be of similar benefit to these groups in eliminating unnecessary repeat or duplicate provision of information and evidence. Information already established should be reused where it remains reliable, and any process for reporting updates in financial circumstances should be simple and reduce as much onus on the client as possible.

Please provide details of any negative impacts identified:

Accessible discretion

As noted above, any steps towards consistency and standardisation, while beneficial to the majority of applicants, must be accompanied by discretion to accommodate the additional circumstances of protected groups.

For example, many disabled people require their savings as a crucial safety net for potential future costs that may arise in connection with their conditions, such as due to a deterioration in health, or to cover treatment costs and necessary equipment. Recent income allowances for recurring expenditure don't necessarily protect capital held for these purposes. If the simplified measures for assessment of contribution sums were unduly restrictive in their ability to consider disability-related costs in assessing applicants' capital, this may leave many disabled people limited in their ability to access justice or, where a contribution is required, leave them in the difficult position of choosing between addressing a rights breach and retaining the resources needed to manage their conditions. Given the variability of disabled people's circumstances, including the interaction of disability with other protected characteristics and financial pressures, standard premiums alone cannot address every applicant's needs.

Fee levels and chargeable work

In our experience engaging with clients in all the matters above can involve substantial additional work to prepare an initial application for legal aid. This work is not recoverable under the current system, as obtaining financial information, assessing eligibility and writing for verification are not chargeable under A&A.¹⁷ In addition, current fees don't fully reflect additional work necessary during the course of a case to accommodate clients' needs. For example, in our experience the recoverability and level of costs for accessible communication required by disabled clients is at best unclear, such as for voice-messages where email is not possible.

¹⁷ <https://www.slab.org.uk/guidance/financial-verification-for-advice-and-assistance-general-principles/>

We recommend reform that introduces a funding route for necessary assistance in establishing eligibility and preparing an application for legal aid, alongside sufficient cover for additional work required following a grant, set out in clear guidance. Reform which does not address this may compound disadvantage in access to justice by discouraging providers from taking on clients requiring this additional support.

Exemptions from contributions

We refer the Government to the Scottish Women's Rights Centre's report 'No Cost Barriers' regarding the disproportionately disadvantaging impact to vulnerable women caused by the current requirement to pay contributions in order to access important protections such as protective orders.¹⁸ This places many women in the difficult position of choosing between their own safety and placing themselves in financial precarity. Reform of the current approach to assessing whether contributions are necessary that does not provide specific allowances for cases such as this is unlikely to fully address this disadvantage.

Are there any groups for whom the proposals could improve access to justice?

Legal aid reform which takes into account the positive and negative impacts as identified above has the potential to significantly improve access to justice for elderly and young applicants, disabled people, women experiencing abuse, and applicants facing language, literacy or banking barriers, while ignoring these concerns risks limiting their access to the full benefit of the proposed reforms.

Do you have any suggestions for mitigating negative impacts?

We recommend that reforms introduced minimise documentary requirements for applicants, fund necessary assistance, and ensure that standardisation is accompanied by accessible individual consideration of affordability and protected characteristics. Applicants should be asked early about communication, language and safe-contact needs, with those arrangements carried through the process.

Any discretion around implemented reforms must be easily accessible by applicants. Complex processes can scare applicants off.¹⁹ In our experience, SLAB has been reluctant to exercise broader discretion available to it where there has not been a clearly stated requirement for it to do so. We would invite the Government to consider implementing duties upon SLAB to consider protected characteristics when exercising any discretionary considerations. Broad powers offer limited protection if applicants aren't aware they exist, and we would encourage measures to promote awareness throughout application processes, such as through clear guidance and prompts in application forms.

To ensure equality duties are met throughout the application process, we would encourage clear assessment and review procedures to monitor implementation of reforms from the outset.²⁰ We would encourage consideration of and, where possible, engagement with applicants who were unable to complete applications or obtain advice to ensure their issues are not lost in this process. Findings noting evidence and data limitations alongside actions

¹⁸ https://www.scottishwomensrightscentre.org.uk/resources/1733226669_Final-EHRCJ-Committee-Response--Dec-24-PDF.pdf

¹⁹ EHR Committee report, paragraph 135.

²⁰ [Equality Act 2010, sections 20, 29 and 149.](#); [Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012, regulation 5 and Schedule.](#)

to address identified barriers should be published.²¹

Child Rights and Wellbeing Impact Assessment (CRWIA)

In your view, could the proposals impact children and young people?

Response: Yes

If yes, do you consider the impact is likely to be:

Response: Positive

Which aspects of children's rights could be affected?

Response:

- Access to Justice
- Right to be heard
- Protection from harm
- Right to family life
- Equality and non-discrimination

Could the proposals improve access to legal advice and representation for children and young people?

Response: Yes

Are there any groups of children or young people who may be particularly affected?

In our view, if the proposed reforms are implemented effectively, they have the potential to positively impact some of the most vulnerable children and young people we represent.

At JustRight Scotland, we routinely assist children and young people navigating the immigration and asylum system, age assessment processes and the National Referral Mechanism. These cases are often complex and lengthy, requiring substantial legal work as well as a trauma-informed approach that takes account of the significant vulnerabilities of many of our clients.

The current administrative burdens associated with legal aid, together with low fee levels and the regular abatement of work carried out, limits the number of children and young people we are able to represent. We are also aware from other stakeholders, as well as from the volume of referrals we receive but are unable to accept, that children and young people with complex and sensitive legal issues often face significant barriers to accessing good-quality legal representation.

²¹ [SLAB, Collecting equality data: guidance for solicitors delivering legal aid, disclosure gaps and separation from individual assessment \(undated; checked 18 September 2026\).](#)

If implemented effectively, the proposed reforms could have a positive impact on these groups. By reducing unnecessary administrative burdens and supporting providers to undertake complex cases, the reforms could increase the availability of good-quality, trauma-informed legal representation for vulnerable children and young people. This would improve their ability to access justice, participate effectively in decisions affecting them, and have their voices heard throughout these complex legal processes.

What steps could be taken to maximise positive impacts on children's rights and wellbeing?

Many of the children and young people we represent are navigating the immigration and asylum system, age assessment processes, and the National Referral Mechanism, often simultaneously. These cases often involve significant trauma, communication barriers, and complex factual and legal issues. Delivering a trauma-informed service in these circumstances requires solicitors to be able to spend the time necessary to build trust with clients, take detailed instructions, liaise with support services and adapt their practice to meet individual needs.

In this context, a higher trust model has the potential to make a significant positive contribution to children's rights and wellbeing. Legal aid providers should be able to exercise their professional judgement as to reasonable work required in a particular case without being concerned that necessary work may later be abated. Reducing duplicated scrutiny and adopting a more proportionate approach to audit and compliance would enable providers to focus their time and resources on meeting the needs of children and young people rather than on administrative processes. This, in turn, would support the delivery of more effective, trauma-informed and child-centred legal representation.

Consideration should also be given to the operation of financial eligibility rules in cases involving children and young people who are separated from their families but are not looked after by a local authority. In our experience, strict application of financial eligibility criteria or contribution requirements can create barriers to accessing legal assistance for particularly vulnerable young people. The reformed system should therefore retain sufficient discretion to take account of individual circumstances and ensure that children and young people are not excluded from accessing legal aid because of family circumstances, living arrangements, or financial resources over which they have little or no control.

Overall, reforms will be most effective in promoting children's rights and wellbeing if they increase access to high-quality, trauma-informed legal representation, reduce unnecessary barriers to obtaining legal assistance, and allow practitioners sufficient flexibility to respond to the particular needs and vulnerabilities of individual children and young people.

What steps could be taken to mitigate any negative impacts? Please provide any further comments on impacts on children and young people:

The primary risk for children and young people is that reforms designed to increase efficiency inadvertently reduce flexibility for providers working with vulnerable clients. To mitigate this risk, any higher trust model should recognise that cases involving children and young people often require additional time and resources to deliver a trauma-informed and child-centred service. Fee structures and audit arrangements should therefore allow sufficient flexibility to reflect the complexity of individual cases and should not discourage

providers from taking on particularly vulnerable clients. There is perhaps a role for commissioned services to allow for an enhanced service to be provided in these contexts.

More broadly, we encourage the Scottish Government to monitor the impact of any reforms on children's access to legal assistance and to engage directly with children, young people, and organisations supporting them as the new framework develops. This will help ensure that reforms continue to support, rather than inadvertently undermine, children's rights and wellbeing. After all, any new legislation on legal aid must comply with the UNCRC (Incorporation) (Scotland) Act 2024.

END

13 October 2026

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