

Legal Aid Reform in Scotland: Consultation

Response also available online at: https://consult.gov.scot/justice/legal-aid-reform-in-scotland/consultation/view_respondent?uuld=862307137

Legal aid has the user voice at its centre

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

Please select one item

Ticked Yes

No

Unsure

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

1 2 3 4 5

1. Direct engagement through enhanced approaches to quality assurance

Please select one item

2. Indirect engagement through consumer panels

Please select one item

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

1

2

3

4

5

Please select one item

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

Please select one item

Yes

No

Ticked Unsure

Please give reasons for your answer.

It is unknown what support they would need, and what framework support is likely to be available.

Legal aid has flexibility to address and adapt to user need

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

Please select one item

Yes

No

Ticked Unsure

Please give reasons for your answer.

The Consumer Panel is of the view that this is more about the technical nature of how the system operates, and therefore not something that we feel best placed to comment on.

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

Please select one item

Ticked Yes

No

Unsure

Please specify which areas and give reasons for your answer.

We believe that domestic violence matters, immigration and disability issues are all areas where there is a limited choice of practitioners and thus where the need may not be served as well as it could.

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

Please select one item

Ticked Yes

No

Unsure

Please specify which areas and give reasons for your answer.

See above: in the areas of domestic violence, immigration, disability.

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

Please select one item

Ticked Yes

No

Unsure

Please specify which groups and give reasons for your answer.

Vulnerable groups - particularly those identified in the answer to questions about areas of law under-served by the judicare system at present.

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

Please select one item

Ticked Yes

No

Unsure

Legal aid as a public service

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

Please select one item

Ticked Yes

No

Unsure

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

Please select one item

Ticked Yes

No

Unsure

Please give reasons for your answer.

Legal aid being provided for strategic litigation could help to change the law and systems.
We acknowledge that this would have cost implications.

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

Please select one item

Yes

Ticked No

Unsure

The Change Agenda

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

Please select one item

Ticked Yes

No

Unsure

Please give reasons for your choice.

Providing more funding and extending to more areas of the law.

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

Please select one item

Ticked Yes

No

Unsure

Please give reasons for your choice.

As above, consideration to funding more areas of the law.

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

Please select one item

Yes

No

Ticked Unsure

Improving access and targeted interventions

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

Please give reasons for your answer.

The Consumer Panel is of the view that this is more about the technical nature of how the system operates, and therefore not something that we feel best placed to comment on.

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

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The Consumer Panel is of the view that this is more about the technical nature of how the system operates, and therefore not something that we feel best placed to comment on.

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

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The Consumer Panel is of the view that this is more about the technical nature of how the system operates, and therefore not something that we feel best placed to comment on.

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

Please give reasons for your answer.

The Consumer Panel is of the view that this is more about the technical nature of how the system operates, and therefore not something that we feel best placed to comment on.

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

Please select one item

Ticked Yes

No

Unsure

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

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We would support this.

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

Please select one item

Ticked Yes

No

Unsure

Do you think there would be benefits to having a telephone triage service that provided basic advice and referral assistance?

Please select one item

Ticked Yes

No

Unsure

Please give reasons for your answer.

The Consumer Panel is of the view that this is more about the technical nature of how the system operates, and whilst it agrees that this would be a good idea, it is for SLAB and government to decide on the most appropriate model.

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

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

Please select one item

Ticked Yes

No

Unsure

Please give reasons for your answer.

Provided that the channel shift still meets the needs of people who choose to use either option.

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

Please select one item

Ticked Yes

No

Unsure

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

Please select one item

Ticked Yes

No

Unsure

Simplicity and fairness

Do you agree that the judicare system should be simplified?

Please select one item

Ticked Yes

No

Unsure

Should SLAB have more flexibility in operating the system?

Please select one item

Ticked Yes

No

Unsure

Flexibility and fairness can trade off against one another. With this in mind:
In which areas do you think it is most important to maintain consistency?

More information required

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

Please select one item

Ticked Yes

No

Unsure

Please give reasons for your answer.

We believe this is important for consistency.

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

Please select one item

Ticked Yes

No

Unsure

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

For an ongoing matter or one of particular complexity.

Should there be more strictly defined financial thresholds for eligibility?

Please select one item

Yes

No

Ticked Unsure

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

Please select one item

Ticked Yes

No

Unsure

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

Please select one item

Yes

Ticked No

Unsure

Would you support the implementation of contributions in criminal legal assistance for those who can afford to pay?

Please select one item

Yes

Ticked No

Unsure

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

Please select one item

Ticked Yes

No

Unsure

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

Please select one item

Ticked Yes

No

Unsure

Please give reasons for your answer.

If clawback is to be retained, we would support a system that is principle-based and transparent, but which still allows for a combination of transparency and flexibility of result.

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

Please select one item

Ticked Yes

No

Unsure

Do you consider the merits tests appropriate and transparent?

Please select one item

Yes

Ticked No

Unsure

Please give reasons for your answer.

Whilst information can be accessed, it is not readily available or understandable, especially for vulnerable people.

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

Please select one item

Yes

No

Ticked Unsure

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

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

We would request that consideration be given to finding a balance between meeting urgent needs and ensuring proper checks and balances.

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

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

We consider that SLAB should be able to draw from their past experience and benchmarking to ensure that robust procedures are in place.

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

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

N/A

Enhanced Statutory Powers and Best Value

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

Please select one item

Ticked Yes

No

Unsure

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

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We do not have any particular suggestions on the methodology but would support the principle.

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

Please give reasons for your answer.

We would wish to see sufficient consumer representation on any Board, in particular representation for vulnerable consumers

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

Please select one item

Ticked Yes

No

Unsure

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

Please select one item

Ticked Yes

No

Unsure

There are a number of approaches that could achieve greater surety and control over outlays. How desirable on a scale of 1 – 5 (1 being very undesirable and 5 being very desirable) do you find the idea of the statutory framework to give SLAB powers to:
Please explain the reasons for your answer.

The Consumer Panel feels that these are operational matters and has no comments to make.

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

Please select one item

Yes

No

Ticked Unsure

About you

What is your name?

Name

Mark Paxton

Are you responding as an individual or an organisation?

Please select one item

(Required)

Individual

Ticked Organisation

What is your organisation?

Organisation

Consumer Panel of the Scottish Legal Complaints Commission