

Citizens Advice Scotland – April 2025

Submission to the Equalities, Human Rights and Civil Justice Committee’s Inquiry on Civil Legal Assistance and grant funding

Citizens Advice Scotland (CAS), our 59 member Citizen Advice Bureaux (CAB) and the Extra Help Unit (EHU) form Scotland’s largest independent advice network. The Citizens Advice network in Scotland is an essential community service that empowers people in every corner of Scotland through our local citizens advice bureaux and national services by providing free, confidential, and independent advice. We use people’s real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

Access to justice – the role of the Citizens Advice network in Scotland

The Citizens Advice network in Scotland plays a crucial role in supporting people across the country to secure access to justice across a wide range of civil, administrative, and criminal justice issues. We inform people of their rights and responsibilities and provide person-centred advice, regularly on more than one issue and often relating to human rights – this includes advice on social security, debt, energy, housing, employment, family and relationships, consumer issues, and legal proceedings. We empower people to navigate systems and procedures to resolve their issues, prevent detriment, and pursue recourse when things go wrong.

The network provides advice via multiple channels: in person at almost 300 locations across the country, as well as by phone, email and other channels, and via our freely accessible online advice pages.

Our holistic advice and support changes lives. In **2023/24**,

- ▶ our public-facing online advice site registered more than 4.2m views across all advice areas;
- ▶ the Citizens Advice network in Scotland supported nearly 192,000 people and dealt with over 680,000 advice issues;
- ▶ our support put over £158 million in financial terms alone back into people’s pockets and local communities;
- ▶ we supported some of the most marginalised and (intersectionally) disadvantaged communities and individuals - 64% of people we supported reported having a disability

or long-term health condition, 56% were women; and 31% resided in the most deprived areas in Scotland.¹

The Citizens Advice network holds the largest dataset outside the public sector in Scotland on people's experiences on the ground and has unparalleled insight into the issues affecting them. This submission is based on our quantitative and qualitative data, including lived and learned experience from across CAS and the network.

In 2023/24, CAB collectively provided more than 39,000 pieces of tailored **advice on legal proceedings** to more than 15,000 individuals, that is close to 3,300 pieces of advice in an average month.

- Legal proceedings advice was most frequently sought in relation to benefits tribunals, simple procedure, solicitors/advocates, summary cause proceedings at Sheriff court, incapacity, and legal aid.
- Nearly 2,700 pieces of advice on **legal aid** were provided in 2023/24, up 17% from the previous year. Half (51%) of these legal aid queries dealt with questions around **accessing/finding a practitioner**, while a third (32%) related to qualifying (merits and means tests). Our latest figures for February 2025 show a 21% increase in legal aid advice compared to February 2024, with advice need relating to access/finding a practitioner amounting to 65% of all legal aid advice.
- Advice on **solicitors and advocates** is an interrelated but separate area of legal proceedings advice, with more than 6,000 pieces of advice provided in 2023/24. Two thirds of these queries related to **accessing/finding a practitioner**, amounting to almost 4,000 pieces of advice, a 25% increase from the previous year. In February 2025, this type of advice amounted to 74% of all advice on solicitors and advocates.
- The network also **supported 1,427 clients at courts and tribunals** in 2023/24. This includes CAB advisers acting as authorised lay representatives, notably in debt and housing cases, and as tribunal representatives, such as in social security and employment cases. Such functions developed largely in response to unmet legal advice need, utilising and developing the skills of CAB volunteers, including retired and non-practising legal professionals.
- The economic value of advice provided by CAB on legal proceedings is an estimated £11.58m.

The **Law and Courts pages** on our public advice site were viewed 930,000 times in 2023/24 and remain the most viewed among all our advice pages. Within this advice category, our 'Help with legal costs' page had nearly 17,000 views, 'What happens if you're taken to court for money you owe' had more than 15,000 views, 'Do you need help with a legal case' had almost 7,000 views and the 'Using a Solicitor' page more than 6,500 views.

¹ At 2%, people from minority ethnic backgrounds are very likely underreported in our client demographic, as 52% of people we support choose not to answer questions regarding ethnicity.

CAS's policy work on Access to Justice aims to ensure that people's rights are protected and realised, that people in Scotland have equal access to the justice system and legal services regardless of who they are, where they live, their digital skill level, and the speciality of their legal issue; can navigate and engage appropriately in legal proceedings; and that processes are transparent and fair.

We therefore welcome the opportunity to contribute to this inquiry. We will focus our submission on those questions where we can contribute an informed response.

Key Points

- **CAS believes that no-one should be excluded from accessing justice on the grounds of who they are, cost, geography, or legal specialism.**
- **The legal aid system should help ensure that everyone who has a legal issue is able to access help to resolve it and realise their rights.**
- **We believe that the Legal Aid system in Scotland should enhance fairness, transparency, and improve timeliness.**
- **CAS supports the broad scope and uncapped and demand-led model that underlies the current system for providing civil legal assistance in Scotland.**

However, a number of issues remain with the current system:

- **The Legal Aid system should place rights-holders who need access to legal advice and representation at its heart.**
- **There should be a significant shift in resources towards early intervention and prevention.**
- **The process by which rights-holders apply for legal aid should be simplified while maintaining/extending its broad scope.**
- **Current barriers to accessing civil legal assistance including: a lack of knowledge and information; a lack of legal aid solicitors; administrative hurdles and barriers; and restrictions on the scope of legal aid need to be addressed.**

Our Response

1. What are the current barriers to accessing civil legal assistance? Can you give examples from your own experience, or refer to any research in this area?

CAS believes legal aid, including civil legal assistance, is fundamental to ensure equal access to justice for all, which is crucial to uphold the rule of law in Scotland and for our rights to be realised.

In line with international human rights standards on access to justice, all rights-holders should have non-judicial and judicial routes to "accessible, affordable, timely and effective remedies".² The

² See Art 8 UNDHR, CESCR General Comment 9, para. 9, Similarly, Art 9(4) of the Aarhus Convention requires remedies to be "appropriate, fair, equitable, timely and not prohibitively expensive". See [CAS Response to Scottish Human Rights Bill Consultation \(Oct 2023\)](#) for more detail on "accessible, affordable, timely, and effective remedies".

European Convention on Human Rights (ECHR), which is incorporated into domestic law through the Human Rights Act 1998, enshrines central aspects of the right to access to justice. In particular, Art. 13 of the ECHR guarantees everyone access to an effective remedy, which must be available not just in theory but also in practice. Art. 6 of the ECHR guarantees everyone the right to a fair hearing in the determination of civil rights and obligations, which includes the provision of legal assistance for those who could otherwise not afford it, to protect the principle of equality of arms and prevent one party from being disadvantaged from the outset.

This means the legal aid system should enable people's equal access to legal advice when they need it, to a fair hearing before independent courts and tribunals, and to an effective remedy when things go wrong. The ability to pay should not determine whether someone can or cannot realise their rights.

CAS commends and supports the uncapped and demand-led nature of the Scottish legal aid system which enables a more generous provision of legal assistance than, for example, in England and Wales. However, the **Citizens Advice network in Scotland continues to see too many people for whom the current system is not working.** This means, people unable to get the legal advice they need to enforce or protect their rights and people forced to represent themselves in court or at tribunal, often leaving them unable to seek and achieve justice and forced to suffer rights breaches and detriment.

Focusing on civil legal assistance in this inquiry, access to justice barriers we see can be summarised as relating to:

- > a lack of knowledge and information
- > a lack of legal aid solicitors
- > administrative hurdles and barriers
- > restrictions on the scope of legal aid

1. 1- Lack of knowledge and information

For most people, pursuing or being faced with a legal issue and/or legal proceedings are not a common experience and can cause or come at a time of enormous stress and compound existing vulnerabilities.³ The Citizens Advice network in Scotland plays a crucial role in supporting people's access to justice through our person-centred and holistic advice in communities across the country.

It is important to note that CAB provide advice on legal issues as opposed to legal advice. If legal advice or representation is required, clients are advised of this and made aware of providers of legal services, but it remains the client's choice to pursue this and seek a legal practitioner. As the network provides free, impartial, and confidential advice, action is only taken on behalf of clients with their express and informed consent, and therefore clients' choice and empowerment are at the heart of the service.

³ https://assets.publishing.service.gov.uk/media/5e78cc9b86650c296f6eda63/Research_report_-_Legal_services_in_Scotland_publication.pdf.

As our advice code figures above indicate, CAB across our network regularly provide support to people who lack knowledge of or encounter problems with how the legal aid system works and how to access legal aid, with sustained advice need especially on accessing/finding a legal aid solicitor and on the means and merits test to qualify for legal assistance. Our advice code data regarding solicitors and advocates, more generally, also shows increasing demand for advice on accessing/finding these practitioners since 2020/21.

A more detailed analysis of our advice provision on legal aid and solicitors/advocates for the 2024 calendar year found:

- CAB advisers fielded queries on legal aid from 2,000 individuals and supported an additional 4,600 persons with advice on solicitors/advocates.
- People receiving advice on legal aid from our network were more likely than our average client to be female, younger (aged 25-44), in part-time employment or unable to work due to ill-health/disability, a single parent, separated from a legal partnership or divorced, and to live in remote areas. Legal aid reforms could likely affect individuals with similar characteristics if not carefully considered and appropriate Equality impact and Fairer Scotland duty impact assessments undertaken.
- In contrast, those advised on solicitors/advocates were more likely than our average client to be in full-time employment, have no long-term health condition/disability, be an owner-occupier and be separated from a legal partnership.
- Reflecting the holistic nature of advice provision across the network, people who received advice on legal aid were highly likely to simultaneously receive advice on other issues than not (79%). 42% of those advised on legal aid were also advised on solicitors/advocates; 12% on 'relationship: divorce, separation, dissolution', 9% on 'relationship: children', 8% on Universal Credit or a benefits check respectively, and 6% on incapacity.
- This compares with 75% of those advised on solicitors/advocates receiving advice on other issues simultaneously. Of these, 17% were advised on Legal aid, 7% on a benefits check or on 'relationship: divorce, separation, dissolution' respectively. 5% each were also given advice on relationships, either regarding death and bereavement, or children, on other legal proceedings or on an owner-occupier property.
- An analysis of advice provided by CAB shows the following Top 10 bureaux with the highest proportion of all clients nationally who received advice on Legal aid or solicitors/ advocates. For example, Aberdeen CAB advised the highest proportion of clients on Legal Aid (10%), while Perth CAB advised the highest proportion of clients in relation to solicitors/advocates (7%).

Top 10 CAB advising on Legal Aid (from highest to lowest)		Top 10 CAB advising on solicitors / advocates (from highest to lowest)	
Aberdeen	10%	Perth	7%
Perth	8%	Aberdeen	6%
Edinburgh	6%	West Dunbartonshire	6%
Fife	6%	West Lothian	6%
Glasgow - Central	5%	Fife	5%

Clackmannanshire	5%	Rutherglen and Cambuslang	5%
Shetland Islands	4%	Motherwell and Wishaw	5%
West Lothian	4%	Edinburgh	4%
Renfrewshire	4%	Clackmannanshire	3%
Inverness, Badenoch and Strathspey	3%	Stirling	3%

The above analysis indicates certain areas served by CAB where demand for these advice types is particularly strong. It is worth noting that this advice need emerges across certain urban and rural/remote areas, both inside and outside of the Central Belt. The above figures can include instances where people required information about the legal aid system, criteria, and how to find a legal practitioner but will also include situations where people experience problems with finding a solicitor/advocate willing and/or able to take on a legal aid case and approach their CAB for further advice, as will be discussed in the next section.

1. 2- Lack of legal aid solicitors

The Citizens Advice network sees widespread issues with accessing practitioners willing and/or able to take on a case funded by legal aid, alongside issues with a lack of legal practitioners working in certain geographical areas and legal specialisms. Qualitative feedback from CAB indicates that access to legal practitioners can be especially problematic for those in remote and rural areas and/or those looking for support in more specialist areas of law like immigration and asylum, family law, domestic abuse, employment, social security, housing, and human rights law. A lack of legal specialists in certain parts of the country impedes people’s access to justice. CAB advisers also highlight concerns about a lack of practitioners with expertise in specific proceedings, such as for representation in First Tier Tribunals (Housing and Property Chamber) and Judicial Review. This can lead to a significant disadvantage for one party if the other party has secured the support of the only solicitor experienced in a particular specialism in the geographic area, leave people in limbo, or forcing them to give up on their rights.

The following Citizens Alerts⁴ illustrate some of the difficulties people experience in accessing civil legal assistance:

Tina sought advice from a Central Scotland CAB after her ex-husband, who had been charged with domestic abuse, attempted to force the sale of their jointly owned home. Tina and her two children are all registered as disabled, and their home had been adapted to

⁴ **Citizens Alerts** are based on a real-time case reporting system operated by the Citizens Advice network in Scotland. These qualitative cases are shared with us from individual CAB, which provide CAS with unique and unparalleled insight into the lived experiences, situations and detriment which individuals seeking our support are facing. While Citizens Alerts represent individual client experience, they can also highlight patterns and structural issues which need to be addressed. We anonymise this data and compile and analyse it to effect change in policy, law and practice.

meet the family's specific needs. The thought of losing it caused immense stress. The first solicitor she instructed changed careers, and when the second solicitor retired, the firm dropped her case and closed her legal aid claim. Despite multiple attempts, Tina has been unable to secure another solicitor to take on her case as none seems to be accepting legal aid clients, and she is very anxious about having to face proceedings by herself.

Mhairi came to her North of Scotland CAB for advice. She has left her abusive partner and wishes to end the marriage but cannot find a legal aid solicitor. She requires legal assistance as she is a full-time carer to her son and is on a benefits income. This leads to her continuing to feel trapped and unable to move on with her life.

John, a young university student who is Black visited his local CAB for support. He experienced racist treatment by the police while travelling on a coach in Scotland, but despite attempts to get legal support, no legal aid practitioner was willing to take on his case to pursue a discrimination complaint against the police.

More generally, complexity of a case or a more complicated case history appear to make it harder to secure legal assistance-funded legal advice and representation as demonstrated by Christine and Susan's experiences below:

An East of Scotland CAB is supporting Christine who needs to provide evidence of why she is restricting her ex-partner's access to their son on health reasons for an upcoming pre-proof hearing. She has called all solicitors on a list provided by the bureau and all solicitors on the Law Society of Scotland website, but no one wants to take her case. She has been told over and over again that they are too busy, or the case is too far gone for them to get involved. She has also called a law centre providing legal advice on children's rights, but they couldn't help either. Her case is too complex for her to represent herself properly, and we're concerned there may be a breach of her right to a fair hearing, Art. 6 of the HRA 1998, if she doesn't get access to legal representation.

Susan has come to her East of Scotland CAB for advice. Susan was subjected to domestic, sexual and financial abuse by her ex-partner. Due to this she has low moods/ suicidal thoughts and tried to take her life last year. She has no contact with her ex-partner anymore, but her address has been given to him by her two children who live with her. Susan has tried to take legal action and searched for a solicitor via the Law Society of Scotland website but has been turned down by 15 solicitors, being told her case is too complex. She feels let down by the system.

CAS is also concerned about multiple, often intersecting barriers faced by specific groups such as those with experience of domestic abuse outlined above and those with English as an additional language, immigration status, and/or additional support needs. These issues are highlighted in the cases of Aashi, Matt, and Faheem below:

A North of Scotland CAB supported Aashi, a citizen of a South Asian country aged between 18-24, for whom English is an additional language. She got married in her country of birth one year before joining her husband in the UK on a spouse visa. She left her husband after a period of time in which he abused her. Aashi is in temporary accommodation. She no longer has contact with her husband, a restraining order seems to be in place. She has contacted several local solicitors to find out about options and proceed with her divorce action, but none were willing to take on her legal aid case.

Matt visited his local CAB for advice. Matt has additional support needs and receives benefits. He faced a decree last year, which claimed that he owed the estate of his late mother more than £150,000 plus interest and expenses. The claim related to allegations made by his siblings that he abused access to his mother's finances. Matt disputes the allegations strongly, but did not defend the action, and so a decree against him for the sum was issued. Matt could not understand the language used in court documents and by the solicitor relating to the summons. Navigation of legal proceedings at the Court of Session was impossible for Matt without qualified legal representation which he had been unable to get, as no law firms were willing to accept his legal aid case.

Faheem, a British citizen born in a Northeast African country, came to his West of Scotland CAB for support. He and his wife have separated, both sharing the care of their young children. Faheem is very concerned for the children's welfare when they are under his ex-wife's care, fearing that she might take them to their mutual country of origin without his permission. He has raised child protection concerns particularly for his daughter who could be at risk of female genital mutilation practices there. Faheem requires an Arabic interpreter to enable him to access and receive legal help with achieving the separation and care of the children. Supported by the CAB, it took Faheem five phone calls to different law firms on the Law Society of Scotland and Scottish Legal Aid Board websites before they were successful in speaking to someone prepared to take on his case. All other firms that were contacted declined availability based on the client's requirement for an Arabic interpreter and the fact that he was requiring Legal Aid while the case seemed quite complex. The firm prepared to take on the Faheem's case is in a different part of the city involving significant travel for him to attend appointments.

In some circumstances, individuals see no option but to pay legal costs out of their own pocket despite being eligible for legal aid as in Rob's case below:

A North of Scotland CAB assisted Rob, who is aged 65 – 79, as he has been served with legal action from a firm he has a dispute with. Rob used the SLAB website to try to access a legal aid solicitor but was unable to get anyone to agree to represent him. Eventually, he felt compelled to get legal representation without legal aid while on qualifying benefits, causing him unnecessary financial hardship.

On the local level, many CAB clients experience 'legal aid deserts'.⁵ A recent research report by Stirling District CAB highlights what amounts to a legal aid and pro bono advice desert for people in Stirling and the Forth Valley. Based on desk-based research conducted in June – August 2024, the report explores the local legal advice landscape in Stirling (and the surrounding Forth Valley) in terms of current access to justice for civil matters, specifically regarding the availability of legal aid provision, pro-bono advice and representation at court. The findings show that at the time of writing:

- There is no Civil Legal Aid Office (CLAO) covering Stirling or anywhere else within the Forth Valley Region.
- There are only 17 Law Society of Scotland registered solicitors in Stirlingshire, of which only 8 are also registered with the Scottish Legal Aid Board (SLAB) to provide legal aid work for civil cases.
- Local legal aid provision in some areas of law – for example, benefits, discrimination and human rights, housing and homelessness, mental health and education, is highly insufficient.
- In areas such as mental health-related cases or medical negligence claims, people have to travel more than 30 miles to access a suitable practitioner.
- A lack of transparency among local firms offering legal aid work made it difficult to establish whether they were charging fees for legal aid applications, which could constitute an additional access to justice barrier.
- No local legal firm seemed to offer pro bono support in Stirling.
- Stirling University has a small law school which is part of the Faculty of Arts and Humanities but do not operate a law clinic.
- Law clinics connected to Aberdeen and Edinburgh Napier universities stated that they would consider providing free legal advice to clients across Scotland, but they said that where face to face assistance is required that the client would be advised to attend a local Law clinic. This places people living in Stirling and the surrounding area at a great disadvantage.
- No law centres are operating in Stirling or the entire Forth Valley region.
- Legal advice for particular groups or in a specific area of law can be sought from specialist national legal advice charities. However, demand often outstrips what these specialist advice programmes are funded to deliver.
- There is no In-Court Advice service at Stirling Sheriff Court, which can guide people through the court process and occasionally offer lay representation.
- Moreover, a comparison with Aberdeen and Dundee show that Aberdeen has a population of approximately 224,000 citizens and Aberdeenshire a population of approximately 262,000

⁵ In 2022, the Law Society of Scotland reported grave concerns over the state of the legal aid system in Scotland. Their report found: Out of the 139 most deprived communities in Scotland, 122 have no civil legal aid firms. These communities share only 29 civil legal aid firms among them. Nearly 90,000 people across these communities are left without local access to civil legal aid. The number of lawyers willing to take legal aid cases has significantly reduced, and there are shortages in specialized areas such as immigration, environmental and human rights law.

citizens and benefits from two separate university-affiliated law clinics and a Civil Legal Aid Office. Dundee has a population of just over 148,000 residents – and benefits from a University Law Clinic and a solicitor led Law Centre.

- In stark contrast, Stirling and the Forth Valley, sitting within the busy Central Belt and with a population of almost 305,000 residents, has nothing similar for people to access. The report provides evidence of one local area – we believe among many – where the current legal aid system is leaving huge gaps which must be urgently addressed.

In summary, CAS advisers across the network raise significant concerns about the current system which in the main relies on legal aid being made available on a case-by-case basis via legal practitioners, when we simply don't have sufficient numbers of legal aid solicitors and coverage to sustain the system. In the words of one adviser from an East of Scotland CAB,

this leaves too many people “to deal with difficult legal issues by themselves and unable to get representation. In most cases, this causes further stress and anxiety, seriously affecting the clients’ mental health. It also leads to missing deadlines or escalating issues which could have been resolved earlier, whilst people struggle to find a solicitor. Even when they do, they have to travel miles to see them.”⁶

We regularly see cases where people have to undertake 90 - 150mile (180 – 300miles return) journeys to access a legal aid solicitor. Travel costs and health conditions or disabilities can render these options impossible for some.

CAS is also concerned that an important mechanism that provides exemption from court fees to those in receipt of civil legal aid does not kick in when people cannot secure a legal aid solicitor, compounding this access to justice barrier. We also find that it can be more difficult for someone who is unrepresented to ask the court to waive the other party's expenses if they lost their case, potentially increasing the financial risk of a court case for people who don't have sufficient financial means in the first place.

For those unable to secure the legal advice and representation they need to enforce or protect their rights, this often means having to bear rights breaches and detriment, without the hope of a remedy.

1. 3- Administrative hurdles and barriers

CAS is supportive of changes which simplify the application process for legal aid while maintaining its broad scope. CAS believes that the turnaround for legal aid applications can be too long, and every effort should be made to reduce this. The application process can be highly demanding on applicants, who are likely to already be under stress due to the underlying legal dispute they are engaged in. It is important to remember that most people will use legal services infrequently, and

⁶ This is taken from a Citizens Alert, where the client contacted solicitors from as far afield as 90miles (180-mile return journey) but could not secure legal representation.

when they do, they are often in a vulnerable position.⁷ This should be considered when determining an appropriate and trauma-informed assessment model for legal aid.

CAS recognises that part of the reason for the lengthy process is due to SLAB considering a range of different circumstances and making allowances for these. CAS is aware of current Scottish Government proposals to introduce personal allowances to the civil legal aid financial eligibility test, as well as block fees for adults with incapacity cases.⁸ CAS would welcome any further steps that can be taken to reduce the time taken between applying for legal aid and having the final decision communicated. CAS is supportive of using standard allowances where appropriate which take the real cost of living into account as well as debt/moneys owed to third parties in addition to amounts paid, to provide a realistic assessments of people’s financial situation and their ability to access justice without civil legal assistance.

This should likewise apply when determining the amount people are sometimes required to contribute from their own income towards the costs of legal services. We are aware of cases where people who, on the face of it, qualify for legal aid, can be put off from applying for legal aid or pursuing their case altogether due to considering their likely contribution as unaffordable.

Advisers across our network also highlight a growing justice gap where people or households are unable to afford legal costs, including solicitor fees, but don’t qualify for legal aid and court fee exemptions. The detriment experienced by clients is often particularly grave where they find themselves in a situation where they need to defend themselves against a claim, as illustrated by Julie’s situation below:

An East of Scotland CAB supports Julie who has received an Ordinary Cause initial writ seeking to recover a significant loan guaranteed by her. Julie had acted as guarantor for a friend and her husband, but the couple have since separated and stopped paying the loan. Julie has been unable to respond to the action having been unable to afford and obtain legal advice. She lives with her estranged partner and their three children in a mortgaged property. Julie works full-time for a low wage while managing mental ill health. Although her home is at risk due to the action, the client does not qualify for legal aid nor a court fee exemption, and she is unable to afford the £137 to lodge a Notice of Intention to Defend.

The financial burden of legal action for those who don’t qualify for legal aid can often be substantial and lead to longer-term financial hardship as shown by Paula’s situation.

Paula, a single parent came to her West of Scotland CAB for advice as she is struggling with legal costs. Because she works full-time, she is unable to obtain any legal aid or help with her legal bills. After separating from her husband, Paula had to set up a new home for herself and two children - her husband assaulted one of her children twice and she is pursuing action to prevent her husband from having access to the child. Her legal bill exceeded £7,000, of which she still has to pay around £3,000. She is paying the solicitor fees in instalments but is finding it increasingly difficult.

⁷ https://assets.publishing.service.gov.uk/media/5e78cc9b86650c296f6eda63/Research_report_-_Legal_services_in_Scotland_publication.pdf

⁸ [Legal aid reform: discussion paper - gov.scot](#).

CAS acknowledge the recent work from SLAB around the process for applicants who have had to flee an abusive or controlling relationship to be able to provide the relevant financial verification to support their civil legal aid applications and updating of guidance around this and the merits test. However, CAB advisers have raised concerns about these issues previously, as Sara’s situation demonstrates:

Sara is a survivor of domestic abuse and has had to flee for her own safety and that of her 12-year-old son. She is legally married. Her husband has the financial means and resources to employ solicitors who have been advising him. Sara left with nothing and does not. All the marital property was left behind. There are two properties from the marriage with an estimated value of £260,000. However, Sara has no access to these without legal assistance. No solicitor will take her on without payment. Because of the assets she cannot apply for benefits which would entitle her to apply for legal aid. Even though the assets are attributed to her, there is no way she can access them without the assistance of a solicitor to do so. As it stands, the client is in the dilemma of having assets which are regarded as capital which bars her from legal assistance, but which she cannot access without legal assistance. This means, the abuser has recourse to use the law which has enabled him to retain all the assets from the marriage, while Sara is left with no assistance whatsoever to help in her situation, thereby enabling a degree of coercive control to continue.

CAB advisers also report concerns about a lack of transparency among legal firms registered to carry out legal aid work, as some seem to be charging fees for legal aid applications, which can present an access to justice barrier. Such practices should be reviewed to ensure the legal aid application in itself is freely accessible at the point of application.

1. 4- Restrictions on the scope of civil legal aid

Some of the areas which are out of scope for civil legal aid can be difficult for people to navigate on their own. For example, legal aid is specifically excluded for representation in some tribunals (before appeal to the Upper Tribunal), although it is likely that litigants will already be managing very complex circumstances.

Social security tribunal data covering reserved social security (including Personal Independent Payment (PIP)), show that in 2020/21, out of 91,809 appeal decisions made at First Tier Social Security Tribunals, 64,077 decisions, that is 70% of government decisions, were overturned.⁹ Around 4 in 10 claimants who are refused awards following assessments and who ask for mandatory reconsideration do not appeal, often citing distress related to the process or the expectation that the decision would not be changed.¹⁰ The sheer scale of error in administrative decisions and poor decision-making shows that being able to challenge these at Tribunal is of crucial

⁹ Boyle, K. et al. (2022) The Practitioner Perspective on Access to Justice for Social Rights: Addressing the Accountability Gap, p. 117.

¹⁰ <https://www.disabilityrightsuk.org/news/2018/september/4-out-10-pip-claimants-do-not-appeal-it-would-be-too-stressful>.

importance. Access to both legal advice and representation via legal aid could have a significant impact on people's ability to realise their rights to social security and an adequate standard of living.

Scotland now has its own Social Security First Tier Tribunal Chamber. The majority of appeals heard by it concern Adult Disability Payment (ADP), which has now replaced PIP in Scotland. During financial year 2024-2025, 50% of appeals concerning ADP were upheld. Redeterminations and appeals together represented 20% of ADP advice provided by our network during Quarter 3 of 2024-2025 and remain the fastest growing areas of ADP advice.

The appeals process remains daunting and protracted for many. While amendments to the Social Security Act 2018 (Social Security (Amendment) (Scotland) Act 2025) have introduced "appeal lapsing", which should reduce the number of appeals proceeding unnecessarily, the legislation is not yet in force. Appeals involve potentially traumatic multiple "re-telling" in a situation involving a high financial stake. Appellants must speak to their circumstances at the time that they applied for a social security payment, frequently many months prior to the appeal hearing as experienced by James and his situation outlined below:

James approached his local CAB for support as he had applied for Adult Disability Payment. After a four month wait, he was awarded the Enhanced Component of Daily Living but no Mobility Component. He requested a re-determination. The re-determination notice, received three months later, refused him an award altogether. James submitted an appeal. The hearing was adjourned to provide James with an opportunity to participate in a video hearing, seek representation and submit supplementary medical records. Social Security Scotland (SSS) in their initial submission to the Tribunal supported a return to the original award, yet on the day of the hearing the SSS representative supported an award of the Enhanced Rate of both Components. The Tribunal awarded the Standard Rate of Daily Living and no Mobility, leaving James worse off than had he not submitted a re-determination. James is deaf in his right ear and has only 50% hearing in his left ear. He also suffers from anxiety disorder. He found the process confusing and overwhelming.

Similarly, legal aid is not available for Simple Procedure for claims below £3,000. These cases are often actions to process debts, increasingly brought by commercial debt buyers. These types of cases involve an inequality of arms if defenders cannot obtain advice and representation from advisers, which is not always available. Bureaux have also reported that many of these cases involve historic prescribed debts which should be unenforceable, yet, in the absence of defence arguments, are formalised by court decree and enable diligence to follow. Enforcement of debts, even of supposedly small value could nonetheless tip people into significant hardship and perpetuate and exacerbate other financial difficulties¹¹. The increasing digitisation of the justice system, with Simple Procedure now entirely managed online, also poses significant challenges for people who are digitally excluded (see Questions 3 for more detail), disproportionately affecting people on low incomes and those experiencing poverty. The provision of civil legal assistance could make a significant difference here too.

¹¹ Recent figures for the Scottish CAB Service show that 1 in 2 of our complex debt clients are living with a deficit/negative budget.

We welcome and are supportive of the extension of legal aid for mediation costs, notably in the Mediation Service run by Citizens Advice Edinburgh which can lead to earlier, less costly and less stressful resolution of disputes. We continue to advocate for a national provision of mediation across Scotland and funding to enable this.

2. Do you have any suggestions for shorter-term improvements (not involving changes to the Legal Aid (Scotland) Act 1986) which could be made to the current system for civil legal assistance?

As set out above CAS is supportive of changes which simplify the application process for legal aid while maintaining/extending its broad scope. We would welcome the introduction of standard allowances as part of the application process more widely to allow day-to-day costs of living for an applicant and their household to be considered within the eligibility assessment. This could be achieved by using a range of standard allowances and a personal allowance for the applicant, which together reflect the average costs of living for households of various sizes in the UK. Eligibility assessments should be regularly reviewed to ensure (particular groups of) applicants are not unfairly excluded from civil legal assistance and/or experience disproportionate hardship due to their non-eligibility. Costings should be monitored and regularly checked to ensure allowances are indexed to the cost of living and inflation, and should, as a minimum, include the cost of food, energy, and housing costs.

Overall, we support moves towards applicants not having to prove their expenditure for general costs, reducing the administrative burden on applicants, solicitors, support staff and SLAB. While such shorter-term changes would be a step in the right direction, CAS believes there is an urgent need for significant wider Access to Justice reforms.

3. Is grant funding from the Scottish Legal Aid Board helping to support access to justice? Can you provide examples of any successes or problems with this funding stream?

The Citizens Advice network in Scotland pioneered In-Court Advice projects at Sheriff Courts around Scotland to support unrepresented parties and empower them to realise their rights. At present, several CAB receive grant funding from SLAB to operate these projects. In-Court Advice services offered by bureaux are often physically located within the court building, allowing people to drop in on the morning of their hearing. Services vary from one location to another but typically involve casework assistance, advice about the processes courts follow and relevant evidence they may consider, assistance with completing and lodging forms, representation at preliminary hearings, negotiation with opposing parties towards a possible settlement, or support in housing cases involving possible eviction or recovery of possession. These are essential services that are often vital to prevent someone from losing their home or losing out on money they are owed and enable people to navigate and participate in legal proceedings.

A number of grant-funded projects which used to provide support with Simple Procedure cases, an area that is outside the scope of civil legal aid for claims below £3,000, had their funding removed while others had to shift staff resources due to the termination of Stream 2 funding in October

2024. While CAS understands funding pressures on Scottish Government, CAS and the CAB affected remain disappointed at this decision, particularly given there remains an ongoing advice need in relation to Simple Procedure across the network. With the closure of specialist projects this puts the pressure and demand back on the general CAB service, alongside the rest of our holistic advice provision.

Our network has seen sustained demand for advice on Simple Procedure, particularly in relation to court documents and procedures, following the introduction of Civil Online. Our advice code data shows that between 2019/20 and 23/24, advice related to Simple Procedure has consistently been at around 17% of all Legal Proceedings advice provided across the Scottish CAB Service, remaining an area where clients need significant support.

Advisers in our network regularly report concerns that unrepresented claimants, often vulnerable and/or with a protected characteristic, require support to access or use Civil Online. Much time is spent supporting clients with digital access and technology. Without channel choice and support directly available from or at Sheriff Courts, many people may struggle to manage and navigate Simple Procedure online on their own and to access the help and assistance they need to bring or respond to Simple Procedure claims – which may significantly disadvantage them, potentially undermining the principle of equality before the law. We do not see this need going away and are highly concerned about the access to justice impacts on those with protected characteristics and from lower socio-economic groups.

Information from individual In-Court Advice projects also demonstrate the importance of such projects to respond to otherwise unmet need. For example, in 2023/2024, the West Lothian In-Court Advice Project managed 242 client contacts in respect of 77 clients, providing extensive support to clients struggling to access Simple Procedure and often being the only legal service available in the local community. Western Isles CAB via their project previously supported 95 clients during 2023/24 and had 244 contacts with clients. Similarly to West Lothian CAB, this service was the only one available to people struggling with Simple Procedure throughout the Western Isles. Likewise, the Dumfries and Galloway In-Court Advice project assisted 510 clients of which 237 were new clients in 2023/24. 49 clients of this service remained in their homes as a result of the assistance provided by the project. This represents just a snapshot of the invaluable work carried out by these projects across the country.

The decision to close Stream 2 funding leaves wide gaps in the access to justice landscape for clients who relied on these services for essential advice and support – it remains unclear how this gap is now being filled to ensure everyone can access justice- as this advice need will just now form part of general CAB case load- again leaving stretched third sector organisations trying to do more with less. Closure of these projects does not reduce ever-increasing demand on the CAB service for advice on this issue but merely reduces the resources available to respond and advise clients in vulnerable circumstances. The early intervention and prevention work undertaken by such projects is vital and saves valuable time and money for public bodies and other organisations. We believe the client financial gains which were achieved through these projects greatly outweigh their costs in the form of grant funding.

The remaining In-Court Advice projects (and any similar access to justice projects) require to be consistently funded on a longer-term basis, as annual funding cycles adversely affect project's ability

to support clients and retain staff. In recent years, decisions to fund (or no longer fund) In-Court Advice projects at CAB have been confirmed very close to the end of the financial year, putting their vital work and clients at risk for several months in which a funding decision was pending. This also causes staff members enormous stress and negatively impacts on retention.

While funding for 2025/26 for the remaining projects has recently been confirmed, it has not been indexed to inflation, representing a real terms cut in funding for these crucial projects.

CAS therefore continues to call for dedicated work and reforms which will:

- ensure wider access for rights-holders to such projects on a national basis
- ensure longer-term funding to develop a sustainable institutional landscape of access to justice support; and
- ensure creation and utilization of funding models which promote an early intervention approach through greater emphasis on grant-funded services (such as In-Court Advice) in order to address access to justice gaps and deliver positive outcomes for people across Scotland.

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

CAS would like to reiterate our support for the broad scope and uncapped and demand-led model that underlies the current system for providing civil legal assistance in Scotland. However, we are aware that current rates of legal aid fees and limits on what type of work is chargeable continue to be a major concern of solicitors which they say disincentivises registering for legal aid as well as taking on legal aid cases, especially if they require more complex work.

Amid the dearth of legal aid solicitors, and as illustrated in our responses to previous questions, the judicare element of civil legal assistance is unable to sufficiently meet existing needs for legal advice and representation which is leading to denials of the right to access justice. While the mixed model, especially legal assistance provided through the Civil Legal Assistance Office (CLAO), is meant to offer individuals greater choice and exist alongside private firms of legal aid practitioners, it is often the only option for people unable to secure the services of a legal aid solicitor. However, some CAB report being unable to access support from the CLAO at all at certain points in time, either because of geographic restrictions (see e.g. the Stirling District CAB Research in 1.2) or limited capacity. Enhancing CLAO and expanding salaried law centres that do not rely on case-by-case applications for funding could strengthen the mixed model and address issues of geographical coverage and capacity to enable people's access to effective remedies. At the same time, early intervention and prevention are key, focussing on less stressful, less costly and earlier resolution of legal issues where possible. We believe there should be a significant shift in resources to reflect the vital importance of accessing information and advice, to enable better triaging, as well as enhanced resourcing and promotion of Alternative Dispute Resolution in civil areas where appropriate.

CAS would also suggest a weakness in the current system is its inability to effectively support those who are seeking legal support in a public interest case which has impacts for several affected individuals, but who do not meet financial eligibility criteria for legal aid. This leaves individuals struggling through a process when the other party has representation, and either trying to seek pro

bono support, potentially incurring huge costs in obtaining representation, or remaining unrepresented. CAS are aware of recent instances of this relating to cases around home improvements /energy efficiency measures. Many people are potentially affected, yet individuals' circumstances may mean they are ineligible for legal aid. This is despite the public interest angle to such cases and the level of harm being caused. Therefore, it may be appropriate to consider some further circumstances where legal aid support can be granted even if individuals do not meet financial eligibility criteria, but there is a wider public interest argument that they be supported.

5. & 6. What do you think would be the strengths and weaknesses of reforming civil legal assistance along the lines recommended in [the Evans Review \("Rethinking Legal Aid", 2018\)](#)? And what are your priorities for longer-term reform?

CAS believes that the issues outlined above in terms of access to support and advice on legal matters, access to legal practitioners and increases in advice being sought on Legal Aid demonstrate the need for urgent and cohesive Access to Justice reforms to ensure that the right to equality before the law, to a fair hearing, and to an accessible, affordable, timely and effective remedy are a reality for everyone in Scotland. As more of our international human rights are incorporated into Scots law, and as Scottish Government is progressing mainstreaming equality and human rights across the public sector, civil legal aid provision becomes even more vital to challenge and secure accountability for human rights breaches.¹²

Access to Justice reforms require work that includes but goes beyond reforming civil legal assistance and the legal aid system. Such as:

- enhancing the potential of non-judicial routes to justice, including complaints mechanisms, ombudspersons, regulators and tribunals
- strengthening collaboration between different levels/sectors/stages of advice to support rights-holders on their justice journeys
- reviews of current levels and exemptions from court fees
- reforms of the criteria for standing in Judicial review proceedings to allow organisations to take on strategic litigation in the public interest
- greater emphasis on and provision of Alternative Dispute Resolution such as mediation in civil cases; proactive steps towards accessibility and digital inclusion in the justice system¹³

In terms of reform of the civil legal aid system CAS would welcome a human-rights based approach based on the following key points:

¹² The UNCRC (Incorporation) (Scotland) Act 2023 enables children and young people to access remedies through the courts when their rights are violated. The much-awaited Scottish Human Rights Bill would secure accountability and justiciability for our economic, social and cultural rights as well.

¹³ [CAS evidence on Access to Justice Issues to Equality, Human Rights and Civil Justice Committee \(March 2023\)](#); [CAS Response to Scottish Human Rights Bill Consultation \(Oct 2023\)](#); [CAS Response to the Scottish Court Fees 2024-25 Consultation \(June 2024\)](#).

- CAS believes that no-one should be excluded from accessing justice on the grounds of who they are, cost, geography, or legal specialism. The legal aid system should help ensure that everyone who has a legal issue is able to access help to resolve it and realise their rights.
- We believe that significant reform of the Legal Aid system is required to place rights-holders who need access to legal advice and representation at its heart. This was a central plank of the Evans Review.
- We would welcome the extension of the system to:
 - ensure access to information, advice, and support so people are equally able to navigate and meaningfully participate in their legal case.
 - provide better triage before referral to solicitors
 - provide coverage for areas not currently covered such as in some tribunals and simple procedure work (pre appeal)
- There should be a significant shift in resources towards early intervention and prevention through expanding the grant-funded part of legal aid spend and towards the use of Alternative Dispute Resolution (ADR) in civil areas. An innovative, mixed funding model could aid earlier intervention and lead to less stressful and costly resolution of legal problems and disputes. We believe people should be able to access advice and support to resolve disputes at the earliest stage, as this can help to reduce the impact, cost, and distress caused by legal disputes. However, we recognise that some will choose to pursue court action, and all should be adequately supported to access an effective remedy.
- CAS is strongly in favour of simplifying the process by which rights-holders apply for legal aid while maintaining/extending its broad scope. We believe that the Legal Aid system in Scotland should enhance fairness, transparency, and improve timeliness. Reforms of this nature were strongly supported in the Scottish Government consultation on reforming legal aid.