

# Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux  
www.cas.org.uk



## **Submission from Citizens Advice Scotland to the Justice Committee Scrutiny of the Scottish Government's Spending Review 2011 and Draft Budget 2012-13**

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- Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using service points throughout Scotland, from the islands to city centres.
- Citizens advice bureaux in Scotland helped clients with almost 550,000 new issues in 2009/10 – almost 1,500 new issues for every day of the year. Over 270,000 clients brought new issues to a bureau over the year.
- In 2009/10, Scottish bureaux achieved a financial gain of almost £116million for clients based on funding of £14.8million (including £6.8million in core funding). This means that CAB clients were better off by £17 for each £1 of core funding given to bureaux.

## Summary

- Citizens advice bureaux are a key part of the wider landscape of publicly funded legal advice, helping clients with thousands of legal issues each year and also resolving thousands of issues before they reach the legal stage. Bureaux operate nine in-court advice projects across the country and represent clients at thousands of tribunals and court cases each year.
- Early advice prevents problems becoming legal cases and saves public money. This is a good example of preventative spending: investing money in advice will increase the number of issues that are resolved without resorting to court action and will therefore decrease the number of people requiring legal aid and going to court. Investment in advice may therefore be a way of cutting the demand for legal aid and therefore expenditure.
- The Scottish legal aid budget will reduce by over £10 million by 2014/15. Given that legal aid expenditure is not in the direct control of the Scottish Legal Aid Board (SLAB) or the Scottish Government, substantial savings are only likely to be achieved through changes in legislation. The Scottish Government have proposed a number of reforms aimed at making these savings.
- The anticipated reform of legal aid will need to maintain access to justice at the same time as reducing expenditure. It is essential that access to civil legal aid is maintained for those who may otherwise struggle to access justice, while funding for SLAB should be maintained for its work in supporting the legal advice landscape. It is also imperative that grant funding for projects, particularly in-court advice projects, is maintained and extended.
- Low economic growth and welfare reform will increase the demand for legal advice. The effects of the UK welfare reform changes – estimated to take £2 billion out of the Scottish economy by 2014/15 – will increase benefit, debt, housing, and relationship problems across the population and drive demand for advice.
- The reduction in the legal aid budget is just one of the factors that will influence legal advice service provision. Cuts in local authority budgets, the core funders of advice in Scotland, will inevitably impact on funding of advice services. These spending cuts are likely to further drive demand for advice as supply decreases.

### **Citizens advice bureaux are a key part of the wider landscape of publicly funded legal advice**

1. Citizens advice bureaux are a key part of the wider landscape of publicly funded legal advice, helping clients with thousands of legal issues each year and resolving thousands of issues before they reach the legal stage. Bureaux

operate nine in-court advice projects across the country and represent clients at thousands of tribunals and court cases each year.

2. The Scottish Government's Paths to Justice survey showed the value of legal advice provided by bureaux, the types of clients that seek advice, and the problems that they experienced. The survey found that the most common first points of contact for legal information and advice are solicitors and citizens advice bureaux, with bureaux more likely to help women, those with an income of between £5,000 and £25,000 and those under the age of 55. Bureaux were the most likely source of legal advice and information on housing and benefit problems. The survey stated that *'one conclusive finding was that Citizens Advice Bureaux were consistently popular'*.<sup>1</sup>
3. The role of citizens advice bureaux in the legal landscape is much wider than the legal services and representation that they provide. Every day, bureaux help thousands of people to resolve issues that could have become expensive and stressful legal issues, such as bankruptcy, divorce, eviction, repossession, and employment disputes. In 2010/11, citizens advice bureaux helped clients to deal with nearly 560,600 new issues and bureaux saw more than a quarter of a million new clients.
4. In this way, bureaux play a key **preventative** role in the legal advice landscape. Good advice ultimately saves money and is significantly cheaper than legal proceedings and the social outcomes for clients are far better. Research by the New Economics Foundation shows that for every £1 gained through welfare rights advice, an additional £1.70 is gained for the local economy.<sup>2</sup>
5. Bureaux achieve positive outcomes for clients at the same time as saving public money. Investing in advice increases the number of issues that are resolved without resorting to court action and will therefore decrease the number of people requiring legal aid and going to court. **Investment in advice can therefore be a way of cutting the demand for legal aid and therefore expenditure.**
6. Citizens advice bureaux provide legal services in a number of different ways. Welfare advisers provide key support and representation in benefit tribunals, employment advisers support clients in employment tribunals, while debt and housing advisers represent clients in bankruptcy and eviction hearings. There are a number of schemes by which bureaux provide legal advice.

### ***In-court advice projects***

7. There are currently nine in-court advice projects funded by SLAB which are operated and managed by Scottish CAB: five based within court buildings (Airdrie, Hamilton, Dundee Aberdeen & Edinburgh), the other four being based within the local CAB offices with advisers spending a significant amount of their time within the local court (Haddington, Orkney, Lewis & Dumfries). The advisers working within these projects have proven, over a number of years, to have provided an invaluable service to users of the courts and the courts themselves.

8. Court users have received the benefit of impartial and informed advice and guidance on a variety of topics which has assisted them in obtaining a clearer view as to the court procedures and protocols affecting their particular case. In addition, court users have been able to access to informal mediation facilities and lay representation and support to assist unrepresented clients state the merits of their case appropriately. There is major value derived by clients in having access to such an in-court service, and the courts themselves have acknowledged the benefits and advantages to the smoother transaction of court business where in-court advisers are present. The Civil Justice Advisory Group recognised the value of in-court projects and in their final report<sup>3</sup> recommended the continuation and expansion of such facilities into a wider number of Sheriff Courts:

*'There is strong evidence that in-court advice services, where they exist, have been viewed as a great success by all involved, including clients, sheriffs, solicitors, advice agencies and court staff... We believe in-court advisers have an important role to play, not only in providing assistance to unrepresented litigants during the court process, but also in performing a triage function in directing litigants or potential litigants to other appropriate sources of advice or methods of dispute resolution.'*

9. The primary concern of the CAB service for the in-court programmes is that the funding for such facilities is based upon a one year reviewable contract from SLAB. In 2011/12 financial year funding to these projects was reduced by 8% which mirrored the overall reduction in the SLAB budget and future funding will be subject to future pressures on public expenditure. Despite funding cuts each of the CAB-based projects has managed to maintain an unaltered service provision by working to over capacity. **If further cuts in the legal aid budget are passed on to in-court advice services this will have an impact on the number of people that they are able to help.**

### ***Lay representation***

10. Citizens advice bureaux provide significant support and representation for clients with many legal issues, including benefit tribunals, employment tribunals, small claims cases, and repossession proceedings. The number of tribunals at which CAB provided representation increased to over 4,000 in 2010/11 – an increase of 87% since 2009/10. The number of court/tribunal documents prepared by CAB more than doubled to over 16,000 in 2010/11. Over the same time period, the number of cases involving bureau representation increased by 27% to over 30,000 cases.
11. This increase in representation was mainly driven by a 58% increase in the number of welfare tribunals at which an adviser provided representation. The client was successful in 63% of these tribunals. This volume of activity represents a huge draw upon the limited resources of the CAB service in terms of time and places a great strain on the service to assist every client requiring assistance. These figures give a strong indication that there is likely to be a continued increase in the number of cases requiring representation in benefits cases as the welfare system undergoes continued change.

12. The financial gain for clients as a result of bureau representation and assistance was £14,169,788 in 2010/11 – an average financial gain of £2,666 per client. It is likely that many of these clients would have struggled to access justice without the assistance of the bureau.
13. Recent legislative changes have increased the scope for advisers to provide representation in housing cases. The Home Owner and Debtor Protection (Scotland) Act 2010 introduced lay representation of home owners in-court proceedings for possession. Whilst many bureaux are providing lay representation in housing cases, the legislation has also placed a significant burden on bureaux. In these tight economic times, we believe that an amount of the cost savings generated by lay representatives should be passed as funding or grants to advice providers to assist with the provision of trained resources. Citizens advice bureaux are already faced with far more client demand than there is resource available, therefore increasing the ability for more lay representation will not by itself increase access to justice.

### ***Working with the legal profession***

14. A number of Scottish CAB have long established relationships with the local legal profession who have provided pro bono legal clinics, but to cater to demand, some bureaux have formed formal/ informal arrangements with solicitors to assist clients. Projects established by SLAB where individual solicitors were located in and worked in partnership with advice agencies, including citizens advice bureaux, demonstrated that by combining expertise and services, rather than working in isolation from each other, 'improved outcomes could be achieved for both clients and advice providers.'<sup>4</sup>
15. The Free Representation Unit and Free Legal Services Unit schemes have been in operation for a number of years and have provided access to Advocacy services to CAB clients throughout the country. The schemes are supported by the Faculty of Advocates who facilitate the availability of both qualified Advocates and devils (trainee Advocates) to provide their legal services free of charge to qualifying clients.
16. One of the major effects of the Legal Services (Scotland) Act 2010 on the CAB service is that CAB are now classified as an approved non-legal firm (similar to Law Centres) and therefore are legitimately able to directly employ solicitors in a professional capacity to offer advice, assistance and representation to clients. The Scottish CAB service is keen to implement this new ability and is actively investigating the practicalities of such an activity.

### ***Barriers to providing legal services***

17. The greatest difficulties facing the Scottish CAB service in assisting clients to attain access to justice are the huge constraints in terms of resources, both financial and appropriately skilled manpower. The CAB service has a number of legally based initiatives and projects that are being increasingly challenged to

meet existing client demand. Some bureaux are not able to take clients' cases through to their final conclusion due to the pressure of time constraints and/or a lack of resources, eg one city bureau cannot provide representation at employment tribunals due to the time the preparation of cases and the time in court takes.

18. In particular, the significant increase in demand for lay representation, particularly in benefit tribunals, is placing considerable pressure on bureau time and resources. Bureaux represented clients at 68% more tribunals in 2010/11 than they did in 2009/10. This increase in workload was not matched by a concurrent increase in funding. Increases in demand for bureau services with regard to legal issues is stretching bureau resources and means that they are struggling to meet the needs of all those seeking support.
19. **An increase in public funds made available for the development of legal based projects focusing on increasing access to justice would facilitate CAB assisting more clients with legal based issues.** We would also welcome the development of alternative business structures that would facilitate greater access to a qualified legal professional for bureau advisers and clients.

#### **The Scottish Government has proposed a number of reforms to legal aid to meet the reduction in budget**

20. The Scottish Government proposes to cut the overall budget for legal aid by 8.2% in the 2011/12 budget and by 1.4% in the 2012/13 budget. Gross expenditure on legal aid will decrease from £167.4 million in 2010/11 to £152 million in 2012/13, and the Spending Reviews shows plans to decrease this further to £132.1 million by 2014/15<sup>5</sup>. This reduction in spending affects both legal aid administration and the legal aid fund which the Spending Review shows will reduce from a high of £154.5 million in 2010/11 to £142.3 million in 2011/12 and to £132.1 million in 2014/15 - a 7% decrease<sup>6</sup>.
21. Unlike most Scottish Government budgets, the budget for legal aid expenditure is demand-led rather than cash limited<sup>7</sup>. Legal aid must be available to applicants where the legislative requirements are met. Therefore reducing legal aid expenditure is not in the direct control of SLAB or the Scottish Government. A Scottish Parliament Information Centre (SPICe) briefing in 2011 explained that significant reductions to legal aid expenditure are likely to require one (or more) of the following<sup>8</sup>:
  - A reduction in payments made to lawyers
  - Limiting the situations in which legal aid is available
  - Decreasing the number of people who qualify for legal aid payments.
22. The Scottish Government proposed a number of potential reforms in its paper, 'A Sustainable Future for Legal Aid'<sup>9</sup>, published in October following the Spending Review. The proposals focus on a preventative approach that avoids

problems escalating and on ensuring that legal aid is efficient and clearly focused whilst delivering efficiencies and savings. The Scottish Government groups these proposals under four themes.

***Theme 1: Focusing legal aid on those who need it most***

23. Whilst CAS supports the principle behind this theme, we have some concerns regarding the proposal to move closer to a system in which legal aid is seen as 'funder of last resort'. Under these proposals, applicants with alternative sources of funding to legal aid, including 'no win/no fee' arrangements, may have their applications refused. We are concerned that the alternative sources of funding may not be suitable for some applicants and it is essential that access to justice is not restricted through this proposal. Reductions in people receiving legal aid would be likely to pass on this demand to free advice services.
24. The paper states that SLAB's programme of grant funded services is under review, including the amount of funding available for targeted provision. These services, including in-court advice projects, provide much needed advice and representation across the country. Demand would not be met without such services.
25. **CAS believes that the grant funding should be at the very least maintained, and further believes there is a strong argument for increased grant funding for in-court advice projects due to the Civil Justice Advisory Group recommendation that such services be extended and developed to be more widely available<sup>10</sup>.**

***Theme 2: Ensuring wider access to justice – the right help at the right time***

26. CAS welcomes the proposed reforms to simplify the court process providing there is funding in place to make people aware of these changes and what they mean for them. There are proposals under this theme to make more information on justice available online to promote self-help. While this is to be welcomed, it should be recognised that this strategy runs the risk of isolating some of our most vulnerable clients. Face to face advice remains essential for many clients seeking legal advice.

***Theme 3: Maximising the value of legal aid expenditure***

27. The budget for administration of legal aid provided to SLAB is cash limited and has been reducing at a time when SLAB has been taking on additional responsibilities. The budget for administration will reduce from £11.8 million in 2011/12 to £10.7 million 2014/15, down from a high of £12.9 million in 2010/11<sup>11</sup>. SLAB has a number of key duties in ensuring that there are no geographical areas or groups of people that struggle to access justice, and to provide support and funding to the various specialist legal advice services. **Any cuts in the administration budget for legal aid must not hinder SLAB's ability to provide these functions.**

#### **Theme 4: Making the justice system more efficient**

28. CAS is encouraged by the emphasis on the 'principle of getting it right first time' in the case of government decisions. Citizens advice bureaux represent clients at significant numbers of tribunals, particularly welfare tribunals, that are caused by decisions that were found to be incorrect. For example, we estimate that bureaux in Scotland represented clients at over 1,500 Employment and Support Allowance (ESA) tribunals in 2010/11 – an increase of 82% on 2009/10. **69% of tribunals found in favour of the claimant.** This is just one example which illustrates that better public decisions would result in less stress and worry for claimants and less pressure on legal advice agencies. These tribunals took up an estimated 1,100 working days of adviser time but with no additional resources.
29. Changes to legal aid in Scotland in recent years have improved the scheme and widened access to those who previously would not have received support and may not have had access to justice as a result. It is important that reforms maintain the wider landscape of publicly funded legal advice and do not narrow access to justice for those in need of support.

#### **Cuts in public funding will impact on legal advice provided by citizens advice bureaux**

30. The reduction in local government budgets will have an impact on the third sector which derives a significant part of its income from local authority funding. The likely impact is that many third sector organisations will reduce their services, provide a service with cuts in resources, or cease providing services altogether. **We are concerned that local authorities will concentrate their reduced resources on statutory services at the expense of non-statutory services.** Many non-statutory services, including advice, are relied upon by service users.
31. We are particularly concerned about local authority funding to citizens advice bureaux as cuts in funding will inevitably lead to delays in advice or to people not receiving the advice that they desperately require. Citizens advice bureaux in England received average cuts in funding of 10% from local authorities, which has led to a drop of 7% in the number of people they have been able to advise this year<sup>12</sup>.
32. **CAS estimates that total funding – including core and project funding - for citizens advice bureaux in Scotland will reduce by 9% (or £1,436,761) in the financial year 2011/12,** which will affect the number of clients that bureaux are able to advise.
33. The Scottish Government should be stating how the increasing number of people living in Scotland facing economic and legal difficulties will access legal, benefit and debt advice services. However, this is not considered in the Scottish Draft Budget or Spending Review, as responsibility for funding advice is devolved to local authorities without ring fencing of funds. There is a very real

danger that funding for advice services will be cut as local authorities protect statutory services on reduced budgets.

34. The Scottish Parliament has brought in legislation to give homeowners and debtors a legal route to resolve their problems. However, writing in a personal capacity in the SCOLAG Legal Journal, Alan McIntosh, (Technical, Training & Money Advice Liaison Manager, Carrington Dean Group) stated that cuts in services, increased living costs, and benefit reform, would 'expose the futility of many of the recent legislative reforms that have been brought forward to increase protection for Scottish debtors and their homes, unless they are complimented with sufficient front line money, benefit and legal advice services that can help Scots access the protections and remedies the law provide them'<sup>13</sup>. Legal protections for Scots are insufficient unless there are frontline services available to help people to access them.

### **Economic uncertainty and welfare reform will increase the demand for legal advice**

35. Whilst the Scottish Government is cutting the budget for legal aid, the demand for advice and support on legal problems stands to increase. Continuing economic problems and cuts in welfare spending will increase debt, welfare, employment, housing and relationship problems, many of which will progress into legal and court issues. This will increase the demand for legal and general advice services at the very time when cuts in public spending threaten the supply of advice.
36. We are particularly concerned that the effects of UK welfare reform changes, including the Welfare Reform bill, on Scotland's services have not been considered in the Scottish Budget or Spending Review. The Fraser of Allander Institute has stated that that benefit cuts will result in £2 billion being taken out of the Scottish economy by 2014-15 and they expect this to "contribute to the weak growth of household spending" and that "our fear is that the greater welfare spending cuts may dampen growth in 2012"<sup>14</sup>.
37. CAS believes these welfare reform changes will have a major impact on the budgets of those services most needed; on the overall budgets of local authorities, and on the Scottish Government's budget. Local government and voluntary services may have to pick up the pieces for those affected by welfare reform – all on a shrinking budget.

### **Conclusion**

38. Citizens advice bureaux play a key role in the legal advice landscape in Scotland, representing and supporting thousands of people with tribunal and court issues, and helping thousands more to resolve their issues before they reach the court stage. In this role, bureaux help to achieve positive outcomes for clients and save the public purse substantial sums of money. Investment in advice is a positive way of reducing expenditure on more expensive outcomes in the legal process.

39. The reduction in the legal aid budget, alongside wider reductions in public expenditure and services and the effects of the welfare reform bill, stand to impact on both the supply of legal advice and the demand for it. It is clear that demand for advice will increase in the near future; however, funding for that advice is already decreasing. It is fundamentally important that advice services are properly resourced to help many people across Scotland to face the troubling times that are still to come.
40. In making decisions on legal aid and the legal advice landscape, we believe the Scottish Government needs to consider these important points:
- The value of the in-court advice projects is recognised across the legal landscape by clients, advisers, solicitors, sheriffs, and the Scottish Legal Aid Board. We strongly recommend that not only should current in-court advice services be maintained, but that funding should be found to increase the availability of such projects within all courts in Scotland.
  - Advice plays a key preventative role in resolving problems before they reach courts and tribunals. Investment in advice can therefore be a way of cutting the demand for legal aid and therefore expenditure.
  - Citizens advice bureaux are an essential part of the legal advice landscape, but funding for the service is decreasing at a time in which demand is increasing. The Scottish Government need to ensure that funding is provided to help those facing economic and legal difficulties to access quality advice. However, this is not considered in the Scottish Budget or Spending Review.
  - The reduction in the overall legal aid budget necessitates reform of the regime in the near future. The Scottish Government's proposed reforms are broadly positive, although we strongly argue that access to legal aid must be maintained for those who require it, that SLAB receive adequate funding to properly address its growing responsibilities, and that grant funding for advice services is extended.
  - The UK Welfare Reform Bill will have a significant impact on Scotland's people, services and economy. Reductions in benefit levels and eligibility will inevitably drive demand for legal advice services. However, this impact is not considered in the Scottish Budget or Spending Review. Any reforms must consider the pressure that the Bill will place on legal advice services across Scotland.

## References

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