



Scottish Legal Aid Board

Scottish Government consultation on Legal Aid Reform

Introduction

This document sets out the Scottish Legal Aid Board's (SLAB's) response to the Scottish Government's consultation on legal aid reform.

This document sets out the questions as headings, with SLAB's responses in text below.

Vision for reform / Overview of process

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

- ☒ Strongly agree
- ☐ Agree
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly disagree
- ☐ Other (Please specify)

We strongly agree that the legal aid system should be reformed. We think transformational change is needed for the legal aid system to deliver what is expected by the public and Parliament.

Our organisation is ready to drive change in support of this approach. We look forward to working with all stakeholders to reshape the legal aid system as a public service.

Section 1: Purpose, Priorities and Objectives

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

- ☒ Yes – both purpose and objectives
- ☐ Yes – purpose only
- ☐ Yes – objectives only
- ☐ Neither purpose nor objectives
- ☐ Don't know

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

We think legal aid should have a clear purpose, supported by evidence-based priorities. This purpose and those priorities should form the basis of clearly set objectives to be delivered by the legal aid system, with both the objectives themselves and their delivery shaped by clear principles. This would make it easier to explain what legal aid is for, what the system is trying to achieve, and why and how decisions are made as to which services are available.

Two linked purposes

We suggest that legal aid should have two complementary purposes:

1. **A rule of law purpose.** Legal aid exists to help people defend their rights, resolve legal problems and settle disputes – this was supported by the Evans Review. This purpose is fundamental and so should be regarded as enduring, rather than varied according to the priorities of the government of the day. Fair access to justice is essential to the rule of law, which in turn requires SLAB's decision-making in individual cases to be independent of government.
2. **A strategic purpose.** Legal aid should also help deliver agreed public policy priorities. For example, it can support action to reduce poverty, advance equality and make sure people can access a minimum level of legal help on priority issues when they need it. These priorities are more likely to change over time, so the legislation should enable Ministers to specify them periodically, subject to parliamentary oversight.

How purpose, objectives and principles work together

We support the consultation paper's suggestion that the system should be built around a combination of purpose, objectives and principles. In simple terms:

- **Purpose** explains what legal aid is for and the strategic priorities it is designed to address.
- **Objectives** set out what the system should aim to do.
- **Principles** guide how the system should be designed and delivered.

These all focus on the legal aid system. They will shape outcomes: the difference the system should make. SLAB's role will be to develop and implement strategic plans for how the legal aid system will deliver the objectives set for it and achieve the intended outcomes. The organisation's purpose and objectives will be different and separate to those of the legal aid system.

Five principles for delivery

Principles are important because they shape how the purpose of legal aid is put into practice. We have identified five main principles, informed by approaches in other jurisdictions.

1. Protect the interests of justice

Legal aid should assist people to uphold their rights where they could not otherwise afford to do so, with cases funded independently of the government of the day.

2. Help people prevent and resolve problems

Legal aid should not only help people access formal ways to resolve disputes but should also, where appropriate, support prevention and early resolution before problems become more difficult or costly.

3. Be user-centred and evidence-based

The system should be planned and designed around the people who use it, based on evidence about their needs and experiences.

4. Use good service design

Legal aid services should be designed and delivered as accessible, high-quality public services. This principle should guide practical decisions about how services are specified, funded and delivered.

5. Take a whole-system view

Legal aid is part of a wider system of publicly funded legal assistance and public services. Legal aid should help the justice system work effectively. Decisions about legal aid should therefore take account of that wider landscape, including through consultation and engagement with others.

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

- ☒ Yes
- ☐ No
- ☐ Don't know

Section 2: Simplifying processes

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

- ☒ Easier access for users
- ☒ Reduced administrative burden for providers and the Scottish Legal Aid Board
- ☒ Faster decision-making
- ☒ Improved consistency
- ☒ Better use of public funds
- ☒ Ability to support a wider range of service delivery models
- ☒ Ability to support innovation and service improvement
- ☒ Ability to support providers in different ways e.g. technology or training
- ☐ None
- ☒ Other (please specify)-

Whilst we agree with the options provided, we think there are additional benefits.

Simplification of **the judiciary system** will help applicants and solicitors to understand the system, helping to make it easier to access for users. A simpler system will reduce administrative burden and make for faster, more consistent and more predictable decisions. This will make better use of the public funding which is needed to run the system.

Providers will have reduced operating costs per case and improved cashflow, as there should be fewer interactions with SLAB. This increase in efficiency and predictability could allow providers to invest in innovation and service improvement, potentially driving a wider range of service delivery models or approaches to casework. Simpler systems could mean that SLAB's investment in technology and training for providers is more effective.

A simpler system should have the following benefits for applicants and assisted persons:

- ease of understanding the legal aid system
- surety that they have legal aid in place
- reduced interaction with legal aid system, rather than multiple legal aid applications
- gaining faster access to legally aided services where eligible
- resolve cases earlier – including keeping them out of court where that was appropriate.

For solicitors, the range of potential benefits we have identified are:

- remove any payment gaps
- reduce legal aid administration-related operating costs per case
- remove inconsistencies in eligibility and fee structures
- reduce average number of interactions with SLAB per case
- be simple to explain to clients
- improved cash flow.

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

- ☐ Strongly agree
- ☒ Agree
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly disagree
- ☐ Other (Please specify)

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

- ☐ Strongly agree
- ☒ Agree
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly disagree
- ☐ Other (Please specify)

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

- ☐ Strongly agree
- ☒ Agree
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly disagree
- ☐ Other (Please specify)

Q9. What changes, if any, should be made to contributions and repayment arrangements? (Select all that apply)

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

Whilst we agree with the options provided, we think there are additional changes that should be made.

We agree that contributions and repayment could be simplified and made more consistent.

We keep all of our policies and guidance under review. As part of a wider programme, we are developing and consulting on new policies and guidance on financial eligibility and contributions in civil legal aid.

Financial eligibility assessment is core to contributions

Financial eligibility assessment does two important things. First, it helps decide whether someone qualifies for legal aid. Second, where contributions apply, it helps decide whether they should pay something towards the cost and how much that contribution should be.

This means the financial eligibility rules are central to any discussion about contributions. If the assessment does not accurately reflect what someone can afford, the contribution may not reflect their real ability to pay.

As they are so fundamental to access to legal aid, Parliament should decide on financial eligibility and contributions rules.

Clear and consistent rules could mean similar financial eligibility and contribution arrangements across all aid types

At present, the rules are not the same across all types of legal aid. A person may qualify for one form of funding but not another, or may be asked to pay a contribution in one part of the system but not in another.

Recent modelling illustrates this difference. Eligibility for civil legal aid has reduced from around 70% of the population in 2011 to around 56% now, while eligibility for advice and assistance is lower, at around 30%. Thresholds can be changed by the Scottish Parliament, but there has been no change since 2011.

As it is fundamental to access to legal aid, eligibility thresholds should be reviewed annually by Ministers and decided upon by Parliament.

Criminal legal aid currently has no contributions, while civil legal aid, children's legal aid and advice and assistance can involve contributions.

Different profiles of applicants can mean different cost and benefit outcomes

Even if the rules are made clearer and more consistent, the practical effect may differ across aid types because different groups of applicants have different financial circumstances.

In 2025-26, in civil legal aid, only 4% of applicants were assessed as having to pay a contribution and fewer than 1% were refused legal aid on financial eligibility grounds.

These figures may reflect three things. The first is that more people are now in receipt of Universal Credit, meaning they are automatically deemed eligible for legal aid and do not pay contributions. Secondly, almost half of all applications for civil legal aid now relate to guardianships for adults with incapacity: there is no means test for the vast majority of such cases, and no contributions. Finally, the percentages include only those who apply for legal aid. There are likely to be many people who do not believe they will qualify for legal aid and so do not apply and are instead helped by solicitors on a private fee basis.

In children's legal aid, even fewer applicants are assessed as needing to contribute, and the contributions due are often low. In those cases, the cost of collecting unpaid contributions may outweigh the money recovered.

Current financial eligibility assessment rules miss some day-to-day expenses

The assessment of financial eligibility is intended to identify someone's disposable income and disposable capital. This means working out what resources a person has available after taking account of the costs allowed by the rules.

The difficulty is that the current rules do not always reflect the day-to-day expenses people actually face. As a result, there can be a gap between assessed disposable income and real ability to pay a contribution.

For civil legal aid, we have scope now to introduce Standard Personal Allowances to replace detailed, individual assessment of expenses. Standard Personal Allowances could help address the gap between eligibility and ability to pay by recognising typical living costs in a simpler and more predictable way. This would reduce the need for detailed checks of individual expenses, making the process easier for applicants and for SLAB.

We are also considering whether Standard Personal Allowances should be introduced into the assessment of the criminal undue hardship test.

That option is not currently available in advice and assistance, where SLAB does not have the same discretion.

In a reformed system these allowances could be built directly into the statutory financial eligibility rules.

Because relatively few applicants have disposable incomes above the current thresholds, the main effect of these allowances would likely be on contributions rather than on eligibility. They may not bring many more people into scope for legal aid, but they are likely to reduce the number of applicants who have to contribute and how much those who do are asked to pay.

For fairness, contribution levels should be linked to what people can realistically afford. The rules used to assess ability to pay should therefore be clear, consistent and aligned with the rules used to decide eligibility.

Contribution arrangements can differ depending on the policy objective

There are different possible policy objectives a government may have for asking people to contribute towards legal aid costs. The way contributions are designed should depend on the policy objective being pursued. Suggestions for policy objectives may include:

- a. placing a small, token value on the service
- b. encouraging assisted people to consider the cost and conduct of litigation, in a way closer to privately funded cases
- c. reducing the overall cost of the service by recovering contributions where people can afford them
- d. extending eligibility to people on higher incomes, with contributions helping to meet some or all of the additional cost
- e. making the move from legal aid to private funding more gradual and affordable.

These objectives can overlap, but each points towards a different contribution model. Being clear about the objective would help explain why contributions are being asked for, who should pay them, and how contribution bands should be set.

Clawback: proposed approach to clearer rules

Clawback allows legal aid costs to be recovered from money or property a person keeps or gains as a result of their case. The current rules are not consistent across legal aid schemes. A clearer approach would support fairness, transparency and public confidence.

Our view is that there should be consistent definitions and availability of exceptions for clawback across A&A and civil legal aid.

- In A&A the scope of clawback is broader: it attaches to property rights and property. In some circumstances, SLAB can decide not to recover costs where this would cause grave hardship or distress.
- In civil legal aid clawback only attaches to property, not rights to property. We have no discretion about whether it applies, which can limit flexibility in exceptional cases.

Any new legislation should set clear principles for when clawback applies and when it may be reasonable not to apply it. These should cover both applying clawback and the principles of any test or discretion to disapply. Alternatively, these could be set out in statutory guidance from Ministers.

The system needs enough flexibility to deal with exceptional cases, but the rules must remain simple, predictable and fair. There should be clear and consistent rules for exceptionality to avoid the potential for the system to be more complicated.

Repayment in criminal legal aid

At present, criminal legal aid does not include provisions relating to property being kept or recovered. There may be a case for considering whether criminally acquired property should help pay a convicted person's legal aid costs, although appropriate consideration would need to be given to money laundering issues and the proper treatment of those assets. Currently, the Proceeds of Crime (Scotland) Act 2002 governs the proper handling of seized assets, including anti-money laundering legislation.

In addition, where frozen assets are subsequently released to the accused or convicted person, there may also be a case for introducing provisions to allow repayment of legal aid costs. This would be in the circumstances where, if the assets had been available at the outset, they would have made the individual ineligible for legal aid.

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

- ☐ Strongly agree
- ☐ Agree
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly disagree
- ☒ Other (Please specify)

We agree that there should be a duty to review and consider both the thresholds for financial eligibility and the arrangements for contributions.

Our view is that Parliament, Ministers and SLAB should all play a role. We suggest that SLAB should have a duty to provide advice to Ministers on eligibility and contributions, and that Ministers should have a duty to propose eligibility thresholds and contribution arrangements to Parliament annually.

As we note in response to question 9, decisions on financial eligibility and contributions rules should ultimately rest with Parliament as they are so fundamental to access to legal aid.

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

- ☒ Yes
- ☐ No
- ☐ Don't know (please specify)

The 'High Trust' model comes from the system of legal aid in the Netherlands. SLAB has previously suggested this model as one that could be adapted for use in Scotland.

However, the word 'trust' has very emotive connotations and, although it is taken as a translation from the Dutch system, it is perhaps unhelpful in describing an administrative process. It could imply that some solicitors are trusted, whilst others are not and that would not be the case, certainly in terms of SLAB's viewpoint. We recognise that the current rules and their operation do make some solicitors and advocates feel that they are not trusted at present. This has an adverse impact on SLAB's relationship with solicitors. We would not want the new system to include that problem as an integral part of the operating model. In future we wish to develop a collaborative relationship that places the interests of service users at its heart.

The model helps accredited legal aid providers in the Netherlands get certificates faster. Because these providers have a good compliance record, the Board in the Netherlands does fewer up-front checks: the Board has data sharing arrangements that enable it to quickly assess financial eligibility and accredited providers can approve the merits of applications themselves. This lets solicitors start work for clients sooner, with legal aid cover already in place.

Payment requests are also easier. Accredited providers who submit more than 50 legal aid applications a year can have payments approved automatically. Instead of checking every request, the Board in the Netherlands reviews a random sample. If problems are found, the Board can carry out more audits or move the provider back to individual payment checks.

Legal aid schemes need some administration to make sure public money is used properly. But the rules should be fair and not create unnecessary work. The current Scottish system uses 'entry' (eligibility) and 'exit' (scrutiny of payments claimed) controls to ensure public money is being used for appropriate cases. It also uses an approvals process to monitor and control certain types of expenditure during a case. These processes apply to all providers.

For some types of legal aid, notably advice and assistance, the initial entry controls are applied by solicitors already. For others, such as civil and criminal legal aid where the tests to be applied tend to be more complex, they are operated by SLAB to ensure their consistent application. This is particularly relevant where the rules provide discretion. This is managed by SLAB through the development of detailed policy statements, guidance and training for decision-making staff, backed by accuracy checks. These structures are designed and operated so as to minimise the risk of subjectivity, bias, error and inconsistency. Importantly, they also protect against risks arising from moral hazard and conflict of interest.

Consistent application of rules on eligibility, scope and cost are essential in a demand led system. But those rules need to be proportionate, and their application should enable rather than frustrate the purpose of the service they are designed to manage. If the rules can be simplified as proposed elsewhere in this response, their operation can also be simplified and the scope for rebalancing their operation between providers and SLAB is also significantly widened.

Adjusting controls would not mean lifting off all controls, but we would welcome the ability to adjust those controls so that they operate differently for providers accredited in line with their track record of operating successfully within the existing control framework. For example, those whose applications and accounts regularly meet current requirements in terms of information and verification, with high grant rates, low rejection or continuation rates, and payments with minimal adjustments.

In such a system, SLAB could be permitted to give more flexibility to firms that have a strong compliance record and provide good quality services. This could be delivered through a supplier relationship model, re-designing existing statutory arrangements for legal firms' registration, quality assurance and compliance to operate in this way. Changes could be made to the control framework at all points in the legal aid cycle: 'entry', 'exit' or approvals during the case.

Having a system based on compliance requirements, supplier relationship management and proportionate controls, would help focus checks on where they are most needed, whilst still protecting public funds.

Developing and adapting this model to the Scottish context will need careful consideration. For example, in the Netherlands, they have empowered solicitors to grant civil legal aid. In Scotland, opponents have a right to make representations about an application for civil legal aid. If that right is to continue, then safeguards or alternative processes would be needed so that this important protection is not eroded.

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

- ☒ Yes
- ☐ No
- ☐ Don't know (please specify)

Alongside passporting for financial eligibility, we see data sharing, within the relevant legal frameworks, as helping to combat fraud or otherwise understand whether legal aid funding is being used appropriately. The ability to more easily ingather or share data between justice partners and others would provide important efficiencies relating to evidence gathering for planning purposes.

Specifically, data sharing powers are needed to simplify the process and reduce the information burden on applicants and solicitors to allow checks with other bodies. Sharing of data for normal lawful purposes should cover bodies such as banks, HM Revenue and Customs, Scottish Courts and Tribunal Service, Social Security Scotland, Department for Work and Pensions, Law Society of Scotland and the Scottish Legal Complaints Commission.

Section 3: Diversifying Delivery

Q14. Which funding models do you think should be used more in future? (Select all that apply)

- ☐ Judicare (case-by-case funding)
- ☒ Commissioning (grant funding / contracting)
- ☒ Direct employment
- ☒ Other (please specify)

A framework for using commissioning and direct employment

Our vision is a model of delivery that is evidence-based, strategically planned and able to use the full range of funding tools. The aim is to choose the funding approach that best meets the needs of the people who require help.

In response to question 3 we proposed a dual purpose for legal aid. While the specific choice of funding model should not be wholly dependent on the purpose it is designed to meet, we think that judicare provides the core delivery model for supporting the rule of law.

Scottish Government policy is that judicare remains the primary delivery model. We agree. This is because it can respond to demand and enable access to clearly defined services for the people and problems parliament has specified in the legal aid legislation.

Where particular types of service may be better placed to deliver objectives established under the strategic purpose, or where the judicare system is not fully effective in meeting either core demand or strategic objectives, then commissioning and direct employment will be needed alongside judicare. We do not envisage a situation where firms can only work under a grant or commissioned model. They will have a choice as to whether to engage in that funding opportunity, or to continue to do work funded by judicare.

In future, a clear framework for decision-making should determine which funding models to use by reference to the strategic objectives set for the legal aid system, and the evidence available at the time in relation to need, supply and the effectiveness of different types of service in delivering specific outcomes. The ability to deliver services within this framework will depend on the extent of funding made available for investment.

A successful public service system needs planning, evidence gathering and analysis, strategic development and review. Without that framework, there is no clear route to assess and act on feedback from users and stakeholders. It also makes it harder for government or a funding body to understand the impact and outcomes of support for specific services.

A decision-making framework should include the following key elements:

- Governance arrangements and direction setting
- Strategic planning, including evidence gathering and consultation
- Delivery of programmes and services
- Monitoring and Evaluation

These elements should operate as a continuous cycle, supporting improvement and evidence-based decision making.

This kind of planning framework will be crucial in future because a reformed legal aid is likely to require more than one funding and delivery model in order to effectively deliver against its purpose and strategic objectives.

The role of judicare as part of a planned, diverse, mixed model of funding

Judicare has an important role. Because it is not planned or targeted in advance, it supports the rule of law by allowing funding of eligible cases as they arise.

However, the current judicare-led system has a number of weaknesses. These weaknesses can only be addressed through a transformed system that uses a wide range of funding tools in a planned and strategic way.

One weakness is that, without planning, there is limited assurance that a service will be available when people need it. Judicare produces a pattern of supply based on where, when and how people seek help and the decisions of individual firms and solicitors about which cases they take on, how many they taken on, and where they choose to provide services. Solicitors may decide not to offer legal aid services, or to restrict the areas of law or geographic areas in which they will act. This may happen case-by-case, or as part of a wider business decision. Solicitors do not need to inform SLAB about changes in the services they choose to offer.

For this reason, our judicare-led system does not operate in the way that might be expected of a modern public service. Individual firms, solicitors and advocates can rightly be proud of the high-quality advice and representation they provide. However, the system itself cannot give the public confidence that services will be available when and where they are needed. Nor can it ensure that services will be tailored to specific needs, or that people will be connected to other support services in a more joined-up way. Using a wider range of funding tools within a strategic planning framework would help meet this challenge. It would give greater security about future service availability and support the design of services around specific needs.

The current legal aid legislation does not require needs to be assessed, or for any known needs to be met. It allows work to be paid for, subject to the rules set out in the legislation, but does not actively require any particular work to be done or ensure that solicitors or advisers are available to do that work. Where gaps exist in priority areas and judicare is not meeting need, the ability to use different funding tools becomes important.

SLAB has some powers to provide more targeted legal assistance through grant funding, direct employment and contracting. Currently, these delivery tools operate in isolation and without strategic oversight. This means they can overlap with judicare provision while still leaving gaps. There is an opportunity to use these tools more effectively to design and test models of service that better support those most in need.

Benefits of a planned, diverse, mixed model of funding

Taken together, this points to the need for a more diverse set of funding models, within a modern planning framework. This approach – a diverse range of funding models alongside simplified judicare – would have the following benefits:

- Easier access for users
- Reduced administrative burden for providers and the Scottish Legal Aid Board
- Faster decision-making

- Improved consistency
- Better use of public funds
- Ability to support a wider range of service delivery models
- Ability to support innovation and service improvement
- Ability to support providers in different ways, such as through technology or training.

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

- ☒ Yes
- ☐ No
- ☐ Unsure (please specify)

We support services being commissioned or delivered directly where that is the best way to meet an identified need. This should be done as part of the clear planning framework described in response to question 14, alongside judicare, so that the legal aid system can utilise the most suitable funding and delivery model for each situation.

We anticipate that judicare would remain the main model for delivering legal aid casework services and supporting the rule of law as it allows eligible cases to be funded as they arise. However, judicare services cannot be planned in advance, targeted, designed or ensured. Commissioning and direct employment can help fill that gap where a more planned response is needed.

These tools could be used where there is a gap in provision, where a new service model needs to be tested, or where legal help needs to be linked with wider support. They could also help improve access, reduce unnecessary administration, support innovation and make better use of public funds.

SLAB should have consistent powers to use commissioning and direct employment for the full range of activities needed to support access to justice and any strategic objectives set by Ministers. This should include funding direct legal services, services outside the judicare structure, related support services, and practical infrastructure such as technology, case management systems and training.

The full range of activities to support access to justice could in future include AI supported or delivered legal services, developed either through commissioning or via SLAB's own development capability.

Judicare supported casework services are also by their nature reactive, responding as they do to a need for immediate help with a problem already affecting a potential client. While other forms of funding might enable different ways of delivering casework services to those same clients, they could also support more preventive approaches.

Other forms of service delivery (and funding) could focus on problem prevention or avoidance, or intervening at a point before the problem has turned into a crisis, working with client groups rather than just individual clients, or collaborating with other service providers, for example in the advice, health or social care sectors. Such approaches do not fit neatly into the individual casework structure of judicare but could sit alongside it, not as an alternative but as complementary approaches.

The extent to which the current legislation could support such approaches alongside judicare is inconsistent. For example, in children's legal assistance, grant funding can support IT systems, case

management and other tools, but contracting powers are limited to direct advice and representation and no such powers exist in relation to civil legal assistance. Reform should remove these inconsistencies, so that decisions are based on evidence, need and value for money rather than technical limits in the available funding powers.

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

- ☐ Legal aid should remain focused primarily on individuals
- ☐ Non-natural persons should be eligible for legal aid in some circumstances
- ☒ Other (Please comment)

There are various ways in which the legal aid system could provide support for groups or organisations, including but not limited to an adapted version of the current individual-based case by case framework for funding. Judicare is not the only (and may not be the best) option for funding public interest litigation, or other approaches to achieving strategic change in pursuit of a stated purpose and objectives.

Alternatives could include the kind of preventative work outlined in our answer to question 15, supporting groups or communities to address issues that might otherwise require judicare-based casework assistance for one or more eligible individuals. Grants could fund specialist organisations to identify, develop and support non-court based solutions. They could also support research and development to inform law reform, or the identification of individual test-cases that can in turn be supported through either judicare or other funding models.

Extending judicare itself beyond the focus on individuals may also mean consideration of how it might be adapted to support either cases raised by organisations (where the organisation itself is the pursuer), or group proceedings (single cases involving multiple pursuers with a common interest). The latter is under active consideration by the Scottish Government and the Scottish Civil Justice Council, and we look forward to working with them as thinking on this topic develops further.

Extending judicare provision to organisations or group proceedings would have to address challenges related to, for example, financial eligibility, contributions and repayment as the current arrangements are based on the circumstances of individuals.

Section 4: How the new system would work

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

- ☐ Strongly agree
- ☒ Agree
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly disagree

Q18. Which of the following planning and reporting requirements do you think should apply to the Scottish Legal Aid Board under any new scheme? (Select all that apply)

- ☒ Approval by Ministers of strategic service delivery plans
- ☒ Reporting regularly to the Scottish Government and Scottish Parliament on performance and outcomes of the legal aid system
- ☐ No significant change from current annual reporting to the Scottish Parliament
- ☒ Other (please specify)

As outlined in response to questions under Section 3, and expanded upon in Section 5, we believe that the reformed legal aid system should be driven by a stated purpose and objectives. These should be delivered by a planned diverse mixed model incorporating simplified judicare, high trust, commissioning and direct employment.

This model will require clear, evidence-based planning which should be subject to appropriate scrutiny and oversight and backed by strong accountability for delivery. The respective roles and responsibilities of parliament, Ministers and SLAB set out in the consultation provides that framework.

There are established arrangements for the scrutiny and holding to account of all non-departmental public bodies by Scottish Ministers and the Scottish Parliament. This includes a range of statutory and non-statutory requirements in relation to the preparation and approval of Corporate Plans setting out bodies' strategic objectives and performance measures, Annual Reports and Accounts and the operation of Framework Agreements between Ministers and bodies, including SLAB. Those will remain.

In addition to these general controls, and as proposed in this section, the new legal aid legislation should place specific duties on SLAB to develop strategic plans for approval by Ministers. SLAB should then be accountable for how it uses its powers to deploy the resources made available by Ministers in pursuit of its statutory functions and the strategic objectives set by Ministers for the legal aid system.

This should include periodic reports to Ministers and onward to parliament on progress against those plans, the outcomes they are delivering and any adjustments or supplementary plans that may be required (see response to question 20). The potential for adjustments to plans should be provided for by appropriate powers and duties.

While SLAB should continue to submit annual reports to parliament on the discharge of its functions, the scale and scope of the evidence needed to assess the effectiveness of the whole legal aid system against its statutory purpose and strategic objectives would suggest a different pattern of reporting. We would suggest that each strategic plan should cover a five year period to give sufficient time for appropriate arrangements to be made, services to be established and impacts to be seen. This would also enable providers to plan and invest in their services. We would suggest that each planning cycle should be subject to a comprehensive report, with one interim report mid-cycle. That would suggest some adjustment to the specific powers and duties set out in this section.

In line with our comments in section 2, we would also suggest some adjustment to the powers and duties relating to financial eligibility and contribution levels. Rather than SLAB reviewing contribution levels every two years, and given our comments about the inter-relationship between financial

eligibility levels and contributions, we think the new scheme should require Ministers to review eligibility levels every year, with parliamentary oversight. This is more appropriate than giving SLAB the lead role, because these decisions determine the fundamental issues of who legal aid is for and how much people may have to pay towards it. SLAB should also have a duty to advise Ministers on eligibility and contributions to help inform their own annual reviews.

We suggest the following changes to the proposed allocation of new roles:

Additional role for Ministers:

- Direct SLAB to prepare a supplementary strategic delivery plan where the approved plan is unlikely to achieve its intended outcomes
- Propose annual financial eligibility and contribution levels to Parliament.

Additional role for Parliament:

- Approve SLAB's proposed delivery plans as agreed by Scottish Ministers.
- Review progress reports submitted by Scottish Ministers.

Additional role for SLAB:

- Advise Ministers on financial eligibility and contributions levels
- Report to Ministers on the implementation and impact of approved delivery plans.
- SLAB should be able to propose amendments to strategic delivery plans, or the development of supplementary plans, where SLAB's monitoring suggests that the services being delivered under an approved plan will not achieve intended outcomes. This could be because of changes in need, supply or other relevant changes. This links to question 20, where we suggest that SLAB should be able to act within its functions when the legal aid system is not delivering its agreed objectives.

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

- ☒ Yes
- ☐ No
- ☐ Unsure (please specify)

Q20. Who should have powers to act if the objectives of the legal aid system are not being delivered? (Select all that apply)

- ☒ Scottish Ministers
- ☒ Scottish Parliament
- ☒ Both Scottish Ministers and the Scottish Parliament
- ☐ An independent body
- ☐ No formal powers
- ☒ Other (please specify)

We agree that both Scottish Ministers and the Scottish Parliament should have powers to act if the objectives of the legal aid system are not being delivered. This follows from our answer to question 18.

Ministers and Parliament should provide oversight, approve strategic delivery plans and resources, and have a clear route for action if an approved strategic delivery plan is not delivering the expected outcomes. This could be needed if circumstances change, for example if people's needs change, services become harder to access or available provision changes.

SLAB should also have the power to act within its own functions. For example, if judicare is not providing the level or type of support anticipated when a strategic delivery plan was approved, SLAB should be able to respond during the life of that plan. This could include using other funding tools or delivery models to address gaps, or submitting a supplementary plan to Ministers setting out what further action and/or funding is needed.

Q21. What types of powers should be available? (Select all that apply)

- ☒ Direct the Scottish Legal Aid Board to take action
- ☒ Set or change performance targets
- ☒ Commission independent reviews
- ☒ Change governance arrangements
- ☒ Other (please specify)

Most of the powers listed are already available outside the legal aid legislation. Ministers have already commissioned independent reviews; Parliament has carried out inquiries; and Ministers can set SLAB performance targets and organisational strategic objectives through their role in approving the corporate plan or adjusting the Framework Agreement.

Ministers can also direct SLAB to act in specific circumstances, albeit any direction must relate to matters that are within SLAB's legal powers. The current legislation safeguards SLAB's operational independence by prohibiting Ministerial direction in relation to individual applications for legal aid or advice and assistance, and this should remain.

We would support powers that allow Ministers or Parliament to respond to evidence of system-level problems (provided by SLAB or otherwise), for example by shortening the period covered by a strategic plan, or requiring SLAB to adjust a plan or prepare a new or supplementary plan. We would not support powers for Ministers that could be used to cut across SLAB's operational independence, for example by directing decision-making in individual cases or reducing the scope or scale of services being provided under an existing approved delivery plan without parliamentary approval.

As explained in our answer to question 20, parliament, Ministers or SLAB should be able to intervene during the life of a strategic delivery plan where delivery problems or gaps in provision emerge. For SLAB, this could include using other funding tools or delivery models to address those gaps, or submitting a supplementary plan to Ministers setting out how we propose to do so and whether additional funding is required.

Section 5: Overall Impact

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

- ☒ Likely to have a positive overall impact
- ☐ Likely to have a negative overall impact
- ☐ Likely to have mixed impacts
- ☐ Insufficient information to reach a conclusion

Please explain your answer, including any key benefits, risks, trade-offs or unintended consequences. Please also use this space to provide any additional comments on the proposals set out in this consultation.

Overall approach

We strongly agree with the vision, the approach to the Bill and the principles set out in the consultation.

These proposals are consistent with [our stated ambition for reform](#). They would help create the foundation for the transformational change needed to reshape the legal aid system as a public service. In particular, they would support a more strategic, proactive, needs-based, user- and outcomes-focused system.

To deliver that transformational change, a new Bill is needed. The Legal Aid (Scotland) Act 1986 (“the Act”) is focussed mainly on controlling access to funding. It does not provide a clear framework for deciding what the system should achieve, how services should be planned, or how outcomes should be measured.

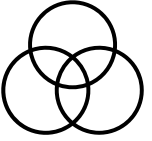
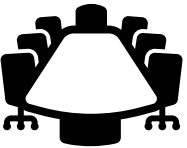
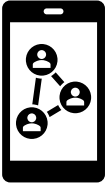
Our strong view is that the legal aid system needs a new statutory structure. That structure should help judicare work more effectively, whilst also allowing the wider system to become more strategic, proactive, needs-based and outcomes-focused approach.

This would allow services to be planned, resourced, designed and delivered in in line with clear outcomes and objectives. It would also make it easier to design services around user needs, including needs linked to particular types of case or parts of the country.

This new statutory structure would provide for:

1. Legal aid as a public service, with a clear statutory purpose
2. A planned, diverse mixed model of publicly funded legal assistance, using judicare alongside other funding tools where appropriate
3. Clear accountability and governance arrangement between Minister, Parliament and SLAB, while protecting SLAB’s operational independence

In our view, legal aid should have the following characteristics of a public service.

Principle	What does it look like?
 User needs	Evidence-based service design for people where and when they need it
 Whole system approach	Achieving wider national outcomes such as prevention and reducing inequalities through collaboration across policy and service boundaries
 Transparency	Eligibility for services is clear and consistent
 Consistency of service	Certainty about what services, if any, are available across the country
 Governance	Transparency and accountability for the system in setting direction and priorities and achievement of outcomes
 Accessible digital services	Services designed and funded to be delivered digitally to improve access

We believe there is a need for a stated **purpose for legal aid**, with **strategic objectives** identified based on evidence. We have proposed:

- **Rule of law purpose** – undirected by the government of the day
- **Strategic purpose** – to support achievement of specific priorities including through securing minimum offers of access to help

A stated purpose would support forward planning, accountability and prioritisation of action. Strategic objectives could be related to changes in SG justice policy, procedural change, or achievement of justice strategy priorities.

A planned, diverse mixed model for the future legal aid system should include:

- simplified judicare with proportionate controls
- a wider range of funding models, including: directly employed solicitors, commissioned services and judicare
- wider role for directly employed solicitors where that is the best way to meet identified need

- a planned, coordinated and evidenced-based approach to directing funding and services towards identified needs and delivery of stated outcomes

As set out in our answers to questions 17 – 21, this kind of system will need a different model of accountability and governance.

The governing legislation does not provide for these core aspects of a modern legal aid system.

We agree that the new statutory framework must allow the system to respond swiftly and effectively to changing needs, priorities and developments in the justice system. The Act is incompatible with a strategic, transparent, user-focused system. It also makes it harder for legal aid to support Ministers' priorities or respond effectively to change.

The reforms should also provide a clearer and more flexible approach to funding tools other than judicare. At present, Ministers ultimately control the detail of direct employment, grant funding and contracting. A better model would focus on agreed outcomes, with detailed funding decisions made through the strategic planning and delivery process, subject to proper approval, scrutiny and accountability.

A new Bill is an opportunity to create a system that is more flexible and capable, while also being more transparent and accountable. For example, the use of directly employed solicitors is currently governed by non-statutory controls. A more transparent approach would bring this within the strategic delivery planning and approval process, with parliamentary oversight.

Judicare: aid types, financial eligibility, contributions and repayment

On the specific topics covered in the consultation on judicare funding (questions 6, 7 and 8), we noted agreement with the propositions, but these come with some qualifications.

Question 6 covers the proposal to consolidate or streamline, where possible, the current range of separate aid types. We previously worked with the Law Society of Scotland to develop proposals for consolidation. We welcome further opportunities to discuss how aid types may be further consolidated or streamlined.

The proposals around contributions in question 7 are intimately linked with financial eligibility arrangements. The rationale and arrangements for repayment are less directly related to financial eligibility. Repayment should be seen alongside expenses as another form of payment which can be due to the legal aid fund at the end of the case.

On contributions, the consistency outlined at question 8 seems to imply similarity in financial eligibility assessments, including thresholds, across aid types. This would improve certainty and reducing complexity. However, this could also cost more than the Scottish Government may find affordable. For example, our modelling shows a 25 percentage point gap between population eligibility for advice and assistance as compared to civil legal aid.

Judicare: registration, quality assurance and compliance powers

The current quality assurance model should be made clearer and more consistent across legal aid. Arrangements that already exist for children's and criminal should be extended to civil legal assistance. This would mean the same broad approach applies across different types of work and different providers.

These arrangements should also be improved so they are more proportionate and effective. At present, the options available where there is non-compliance with quality standards are limited and do not always fit the circumstances. A wider range of responses would help protect both the public and public funds and support providers to comply. For example, action could be limited to a particular type of work, or a provider could be required to complete training or work under supervision. A more consistent approach should also look at how services are delivered in practice. This means setting clear quality standards not only for individual legal advice, but also for supervision, business systems and the support needed to serve clients well.

Overall, and particularly if combined with a high trust model, the system should move towards a stronger partnership between SLAB and providers, as well as the individual solicitor. This would allow quality assurance and compliance to focus more on firm-level controls, such as audits and steps to put things right, rather than relying mainly on checks at the level of individual cases. This would both underpin and be facilitated by simplification across the judicare system.

Implementing the new overall approach

We think transformational change is needed for the legal aid system to deliver what is expected by the public and Parliament.

Transformational change will not come overnight, and it will require investment.

There will be changes to judicare, to make it simpler and easier to access for users and service providers. Following the Bill, we envisage a new suite of secondary legislation will be needed to create this positive change. That will mean revising our digital systems, business processes, policies and guidance. There will be training for us and the profession. This investment and time will mean that judicare operates more efficiently, effectively and sustainably, building confidence in the system amongst providers, service users and taxpayers and upholding the rule of law.

At the same time, we will need to continue running the current system of judicare. Legal cases take some time to progress through the justice system, so this parallel running of systems will last for several years.

The new planning framework and use of different funding models will mean change too. In line with the principles, we will need to work with others to develop and then deliver strategic plans. Our people will need to enhance their current skills and learn new ones, create new governance arrangements and manage new relationships. These changes will mean resources can be invested strategically and effectively to meet public policy objectives, securing better value for money and better outcomes for the people the legal aid system will serve.

The need to run both old and new judicare systems and to create a new planning framework with different funding models will be complex and require both adequate time and investment. In order to implement reform as quickly, but safely as possible, we will need to plan with partners and secure investment as the Bill is progressing through Parliament.

At the end of this transition, both SLAB and the legal aid system will be significantly altered. We look forward to and welcome this challenge and opportunity.

Section 6: Responding to the consultation

Equality Impact Questions

23. In your view, are the proposals likely to have a positive impact on any of the following groups? (Select all that apply)

- ☒ Age
- ☒ Disability
- ☒ Sex
- ☒ Pregnancy and maternity
- ☒ Gender reassignment
- ☒ Sexual orientation
- ☒ Race
- ☒ Religion or belief
- ☐ None

24. In your view, could the proposals have a negative impact on any of these groups? (Select all that apply)

- ☒ Age
- ☒ Disability
- ☐ Sex
- ☐ Pregnancy and maternity
- ☐ Gender reassignment
- ☐ Sexual orientation
- ☒ Race
- ☐ Religion or belief
- ☐ None

25. Please provide details of any positive impacts identified:

In general, we know that disadvantaged groups are both most affected by legal problems and least able to navigate the justice system. A future ability to tailor responses to the needs of disadvantaged groups would provide a step-change in the ability of the legal aid system to reduce discrimination, promote equal opportunities and deliver positive outcomes.

Whilst our assessment of the impact on equality groups is high level - as we have not carried out a full equality impact assessment at this stage - the proposals in the consultation, as well as the pathways SLAB proposed in our responses above, should have positive impacts on all equality groups.

Simplification

Simplifying the system and processes should benefit all equality groups, as it would make the system easier to understand and navigate. The benefits we describe in question 5 would apply to all applicants, including those with protected characteristics. As we discuss in question 9, simplification of contributions and repayments would benefit applicants. The introduction of Standard Personal Allowances would make the process more straightforward, less intrusive and quicker for applicants, which benefits all equality groups.

The proposal to better understand users' needs and have an evidence-based approach should also be positive for all equality groups. This would help identify gaps in provision and assess whether some protected characteristics need additional support to access legally aided services.

As detailed in question 3, SLAB proposed five main principles to guide how decisions are made. These five principles should help develop the legal aid system in a way that provides positive outcomes for all equality groups.

Diversification of funding and improved planning

As outlined in question 14, the development of an evidence-based funding model would have a number of benefits for applicants and embed feedback from service users. This could mean a positive impact for all equality groups, as regular review of service access and needs could allow for the delivery of more targeted legal assistance.

26. Please provide details of any negative impacts identified:

While we have not carried out a full impact assessment that would allow us to identify detailed negative impacts of the proposals, digital accessibility might be an issue for some equality groups, especially older people, people with disabilities and people whose first language isn't English.

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

- ☒ Yes
- ☐ No
- ☐ Unsure

28. Please provide further detail

As mentioned above, the proposals could improve access to justice for all groups. An evidence-based approach would assess need and help with directing resources where they are the most needed.

29. Do you have any suggestions for mitigating negative impacts?

While we did not identify many negative impacts for equality groups, digital exclusion might be an issue if some services move online. Maintaining ways to contact people in person, via telephone or letter, could mitigate this.

Business and Regulatory Impact Assessment (BRIA)

30. What impact do you anticipate the proposals will have on legal aid providers?

- ☐ Significant positive impact
- ☒ Moderate positive impact
- ☐ No impact
- ☐ Moderate negative impact
- ☐ Significant positive impact

31. How do you expect the proposals will affect the sustainability of legal aid practice?

- ☒ Improve sustainability
- ☐ No change
- ☐ Reduce sustainability
- ☐ Unsure

32. What impact might the proposals have on small or rural firms?

- ☒ Positive impact
- ☐ No impact
- ☐ Negative impact
- ☐ Unsure

34. What administrative or compliance costs may arise for providers?

There may be additional up front administrative or compliance costs, depending on how implementation of a broader suite of registration, quality assurance and compliance powers integrates with any high trust accreditation scheme.

However, there should be a reduction in case-by-case administrative and compliance costs where the judicare schemes are simplified, or high trust introduced, or where services are commissioned from providers.

35. Do you anticipate any impacts on innovation or use of technology in legal aid delivery?

- ☒ Positive impact
- ☐ No impact
- ☐ Negative impact
- ☐ Unsure

36. Are there regulatory barriers that could affect implementation of the proposals?

At this stage there are no known regulatory barriers to the proposals, however a definitive assessment can only be made once the provisions of the Bill have been finalised.

37. What steps could be taken to minimise any negative impacts on providers or the wider legal services market?

Unclear what those negative impacts may be.

38. Do you foresee any impacts on access to legal services for businesses or organisations?

- ☒ Improved access
- ☐ No change
- ☐ Reduced access
- ☐ Unsure

39. Please provide any further comments on business and regulatory impacts:

At question 30 we assess that proposals would have a moderate positive impact on legal aid providers, as the ability to commission services from legal aid providers within a new strategic planning framework should offer potential new routes for investment for business and organisations, including piloting, growth and development opportunities.

For question 31, in our view the proposals should improve the sustainability of legal aid practice through the implementation of a new strategic planning framework, coupled with simplification of the judicare schemes, potential new routes for investment via commissioning, and an independent fee review mechanism in place.

To supplement our response to question 32, we note that a significant majority of legal aid providers are small firms, and that a new strategic planning framework could mean that resources are directed to rural areas, where many of the smallest firms are located.

For question 35, a positive impact should arise from an ability to fund training, technology and infrastructure through commissioning. This provides a route to support the use of technology in the sector. Innovation could similarly be supported through commissioning models.

The implementation of a new strategic planning framework may have impacts on competition within the legal services market. The precise nature of those impacts will depend on the objectives set by Scottish Ministers for the legal aid system to meet and the approach taken to meeting those.

We can foresee positive impacts on access to legal services for business or organisations if the Scottish Government pursue proposals to allow legal aid for non-natural persons, as noted at question 38.

Child Rights and Wellbeing Impact Assessment (CRWIA)

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

- ☒ Yes
- ☐ No
- ☐ Unsure

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

- ☒ Positive
- ☐ Negative
- ☐ Both positive and negative
- ☐ Unsure

42. Which aspects of children's rights could be affected? (Select all that apply)

- ☒ Access to justice
- ☒ Right to be heard
- ☐ Protection from harm
- ☐ Right to family life
- ☒ Equality and non-discrimination
- ☐ Other (please specify)

The proposals may positively affect children's access to justice and their ability to be heard in legal processes that affect them. Improvements to the accessibility and planning of legal aid services may also support equality and non-discrimination by helping children and young people access the legal support they need to make their rights effective.

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

- ☒ Yes
- ☐ No
- ☐ Unsure

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

Children and young people who require – but struggle to find or access – legal advice, assistance, or representation are likely to be most affected by the proposals. They are likely to be from disadvantaged groups. This may include care experienced children and young people involved in children's hearings and other legal proceedings where legal support is important.

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

The needs of children and young people should be considered when reforms are developed and implemented. Future planning and service design should take account of the experiences and needs of children and young people who use legal aid services.

46. What steps could be taken to mitigate any negative impacts?

Any reforms should be monitored to identify any unintended impacts on children and young people. Regular review will help ensure services continue to meet their needs. Care should be taken to make sure the needs and experiences of children and young people are considered in future service design and are not overlooked as part of wider changes to the legal aid system.

47. Please provide any further comments on impacts on children and young people:

The proposals provide an opportunity to transform the legal aid system into one that is more accessible, child-centred and strategically planned to address the needs of children and young people. Consideration of the needs and experiences of children and young people will be important in ensuring that future reforms support access to justice and effective legal assistance.

For question 40, the proposals could affect children and young people by changing how legal aid services are planned, delivered, and accessed. Any changes to the legal aid system may affect children and young people who need legal advice or representation.

At question 41, we note a positive impact, since the proposals aim to create a simpler, more accessible and better planned legal aid system. This has the potential to improve access to legal support for children and young people.

We answered yes in response to question 43, as the proposals may improve access to legal advice and representation by creating a simpler and more flexible legal aid system. Better planning of services may also help ensure support is available where it is needed.

About you

What is your name?

Scottish Legal Aid Board

Are you responding as an individual or an organisation?

- ☐ Individual
- ☒ Organisation

What is your organisation?

Scottish Legal Aid Board

Further information about your organisation's response

We have drawn upon our extensive operational experience, involvement in the Evans Review and ongoing advice on developing legal aid, as well as our organisational research in drawing up our response. Further information about our organisation can be found on our website:

<https://www.slab.org.uk/>

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- ☒ Publish response with name
- ☐ Publish response only (without name)
- ☐ Do not publish online

Do you consent to Scottish Government contacting you again in relation to this consultation exercise?

- ☒ Yes
- ☐ No

What is your email address?

ceo@slab.org.uk