

# Research Briefing

April 2022



## Survey of private practice criminal legal aid clients 2021

### Background

Legal aid allows people who would not otherwise be able to afford it to get help for their legal problems. The Scottish Legal Aid Board (SLAB) is responsible for managing legal aid in Scotland. We manage the day to day running of legal aid through our assessment of large volumes of legal aid applications and assessing and paying accounts submitted by solicitors and advocates.

The majority of legal aid solicitors in Scotland are in private practice; however SLAB also provides a direct advice and representation service through a small network of publicly funded criminal defence solicitors, the Public Defence Solicitors' Office (PDSO), Civil Legal Assistance Offices (CLAO) and a 24 hour Solicitor Contact Line which facilitates and delivers advice for suspects in police custody across Scotland.

### Aims

The overarching aim of this research was to explore criminal legal aid recipients' experiences of selecting and using their private practice solicitor, and their satisfaction with elements of the service.

### Methodology and sample

This work consisted of a postal survey of people who had used a private practice criminal solicitor paid for by legal aid. The sample was selected randomly from recently closed cases. It included those who had different types of legal aid support (legal assistance through either: advice and assistance (A&A) or assistance by way or representation (ABWOR), as well as legal aid for summary or solemn procedures). This survey was carried out at the same time as the survey of PDSO clients.

We used many of the same questions that we asked in the previous criminal legal aid client survey (2018). We also introduced new questions, to help explore changes since the start of the pandemic. We took advice from representatives of the Law Society of Scotland and the Scottish Solicitors Bar Association on appropriate wording of the questions.

SLAB contracted IBP Strategy & Research to undertake the postal survey for us. The survey questions were translated from English into six languages used by those in the sample. These were: Arabic, Lithuanian, Polish, Romanian, Russian and Simplified Chinese. Six people overall used the translations, to respond to either the private practice client survey or the PDSO client survey. Although most people completed the survey by post there was also an option to complete it online (in English and all the above languages). Eleven people overall took part online.

The survey fieldwork took place in October and November 2021. IBP contacted 5,740 people for the private practice survey, and had a total of 242 responses. One hundred and four surveys were undeliverable, giving a response rate from the delivered sample of 4.3%. Response rates for the three sub samples<sup>1</sup> (the types of criminal legal aid identified earlier) were reasonably similar to the overall response rate. They ranged from 3.5% for those who had had solemn legal aid, to 4.4% of those who had summary criminal legal aid.

## Profile of respondents

The characteristics of respondents to this survey are mostly in line with expectations of criminal accused. For example, they contain a higher proportion of males (80% of those who gave a valid response), and are more likely to have a health condition or disability (70% mentioned at least one) than the general population.

However, the sample of respondents to the survey is generally older than we might expect for this population generally. They are also typically older compared to the original sample of criminal legal clients used for this research; 52% of the original sample were aged between 18 to 34, compared with just 23% of those who gave a valid response to this question. This difference may be partly due to older clients being more likely to have a fixed place of residence, or being more likely to complete paper surveys, or surveys in general. We do not have any evidence on whether the experience of criminal legal aid is substantially different for different age groups.

## Summary of key findings

Responses were mainly positive, with findings similar to those in 2018. Tables showing the responses to all the questions are provided in Appendix 1: Response Tables.

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<sup>1</sup> A&A or ABWOR, solemn and summary.

## Accessing a solicitor

Ten people (5% of those who gave an opinion<sup>2</sup>) experienced difficulty finding a solicitor to help them. This is identical to the 2018 private practice criminal client survey. The most common difficulty was not having many solicitors in their local area (five people).

When choosing a solicitor previous use (43%) and personal recommendation (22%) were the most important factors. No-one used social media to help choose a solicitor. Ten people (4%) felt that their personal characteristics made it more difficult for them to access a solicitor. Nine of these gave further information on what made it difficult. Six related their difficulties to health (mental or physical) or disability (e.g. “because of my heart condition it was impossible to get a face to face ... contact overall was poor even by telephone”). Two people had difficulties due to being homeless at the time, and one due to being unfamiliar with the criminal justice system.

## Experience of using a criminal legal aid solicitor

Most respondents thought the overall service from their solicitor was good (84% of those that gave an opinion, compared with 86% in 2018) and that they would use them again if charged with an offence (92% of those that gave an opinion, 85% in 2018). However a small proportion (6% and 8% respectively) disagreed on these aspects.

In terms of the activities undertaken by their solicitor, people were most satisfied with how their solicitor explained things. Of those who gave a view, 89% felt their solicitor was good or very good at explaining things clearly in a way they could understand, whilst 86% felt their solicitor was good or very good at explaining the evidence against them, and options for what to do next.

Respondents rated their satisfaction with the method(s) they used to communicate with their solicitor. Phone calls, face to face and letters / postal were the most commonly used methods (each used by 79% of respondents). Letters / postal were the most highly rated (87% ‘good’ or ‘very good’), although face to face and phone were close. The rating of letters / postal may reflect the use of a postal survey. A minority of respondents rated each method ‘poor’ or ‘very poor’. Video calls were the least commonly used method, only 18% had used them at any point to communicate with their solicitor. They were also the lowest rated (‘very good’ or ‘good’: 66% / ‘poor’ or ‘very poor’:11%).

Most respondents (88%) gave their solicitor proof of income or savings. Of these, twelve people (6%) said that they had problems getting the documents, and seven of

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<sup>2</sup> Did not answer ‘don’t know’ or skip the question.

these people gave more information on this. The majority of problems related to 'time taken', although there were a variety of different reasons for this: "as I am supported by my partner all evidence had to come from ... her bank, employer etc", "self employed and had to go to accountant", "phoned bank for statement but didn't receive one so went into bank". One person referenced online methods (suggesting these were problematic for them personally): "more things are online, but was successful taking screenshots and sent via email". For one person's ill health appears to have been an issue: "I was detained in hospital for a period of time, I lost and forgot many documents".

Thirty five percent of those who gave a figure said that they had only been prosecuted for one offence (the offence they answered the survey about). A little under one third (29%) had been prosecuted for 6 or more offences.

## Experience of contacting SLAB

Just seven people (3%) said they had contact with SLAB about their criminal case. Only six of these expressed an opinion; all of them rated the service they had from SLAB as 'good' or 'very good'.

## Going to court

Most respondents (89%) said that their case went to court, with most of these (85%) appearing 'at a court building only'. Only 12 people experienced 'virtual court only', all but one of these came from the summary legal aid sample (the other was from the A&A/ABWOR sample).

The majority of those whose case went to court had positive opinions about the experience. Overall, only 6% of those who gave an opinion (12 people) thought their solicitor was poor or very poor at representing them at court (all of these attended at a court building only). When split by aid type (A&A/ABWOR, solemn or summary) the proportion of those having solemn legal aid who said their solicitor was poor or very poor at representing them was significantly greater than might be expected by chance. However the number of respondents is very small, so we cannot be sure how representative this is.

In terms of their functional experience of court the majority were satisfied, although a sizeable minority of those who gave an opinion said that they were 'never' or 'hardly ever' able to speak to their solicitor privately (13%), and that their court case 'never' or 'hardly ever' began when they expected (11%) or took the length of time they expected (9%).

## Reflections on the experience of using their solicitor

The survey asked respondents for comments on their solicitor, the Scottish Legal Aid Board or their experience overall. There were 92 responses to this question. These were mainly positive (63) with 19 negative, six mixed and four miscellaneous. Unsurprisingly, the majority of the comments were about their solicitor, although some also referred to other parts of the criminal justice system.

Most of the positive comments show appreciation without giving further detail: “I have the best lawyer in the whole of Scotland”, “he’s the man”, “I am glad of legal aid because I could not pay that man as much as he deserves”. Some describe a longstanding relationship with their lawyer: “I wouldn’t change him for anyone else. Have had him since the early 90s”.

Some of the comments demonstrate the importance of understanding the proceedings, and how this helps clients to feel reassured in the situation: “my lawyer was very helpful when explaining everything to me, and made me less anxious when attending court”, “The duty lawyer who was appointed to me was very helpful and explained all the procedures and the likely outcome”, “my lawyer helped put me at ease and explained things in an easy to understand manner”.

Many of the negative comments give case details and ways in which the respondent felt things were not done properly, or were unfair. Some are more general and refer to perceived negative treatment. For example, by their lawyer: “It was my first experience with court and I was very nervous. Don’t think the lawyer was sympathetic, told me to shut up”, or by other parties: “very pleased with my lawyer but disgusted by the procurator fiscal department and their treatment of me as an individual”.

Inadequate explanation, either to or about them, is mentioned by some respondents as a reason for dissatisfaction: “lawyer did not communicate any reasoning as to how overall outcome transpired”, “it was only when I was at court I was told about witness statements and what sentence I was likely to get. I should have been told that a lot sooner”, “There were loads of weird mistakes involving the police and prosecution that I do not understand”.

## Conclusions and next steps

The results are extremely positive, and are also very similar to those from 2018. This suggests that the pandemic has not have a negative impact on experiences of finding or using a criminal legal aid solicitor overall. Very few of the comments received made any clear reference to pandemic restrictions causing problems. This may be due to successful workarounds introduced by firms or other criminal justice organisations.

We will continue to seek views of stakeholders within the criminal justice system. We will do this through research, as well as other methods, such as consultations.

## Further information

If you would like further information about this research please contact SLAB's Research Team at [research@slab.org.uk](mailto:research@slab.org.uk)

SLAB's research publications are available on our website at:

<https://www.slab.org.uk/corporate-information/publications/research-publications/>



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## Appendix 1: Response Tables

### Core survey questions

Q1 Do you have any criminal cases currently ongoing? Please tick one box only

	Number	Percent	Percent giving opinion
Yes	93	38%	39%
No	145	60%	61%
Don't know	3	1%	
No answer	1	0%	

Q2 Thinking about your most recent closed case, was it difficult to find a lawyer to help you?

	Number	Percent	Percent giving opinion
Yes, it was difficult	10	4%	5%
No, it was not difficult	208	86%	95%
Don't know	10	4%	
No answer	14	6%	

Q2a Why was it difficult to find a lawyer to help you? Please tick all that apply

	Number	Percent
Not many lawyers in my local area	5	50%
Hard to find a lawyer who was willing to take my case on	2	20%
I did not know how to find a lawyer	1	10%
Other reason	4	40%
Not answered	-	

Q3 How did you choose your lawyer? Please tick all that apply

	Number	Percent	Percent giving opinion
I had used them in the past	104	43%	42%
They were recommended to me	54	22%	22%
They were the Duty Solicitor	32	13%	13%
They were near where I lived / worked	29	12%	12%
I was referred to them by another agency / adviser	10	4%	4%
I saw their website	5	2%	2%
I saw an advert for them	3	1%	1%

I saw their social media (e.g. Twitter, Facebook)	-	0%	0%
I heard about them on social media	-	0%	0%
No particular reason	10	4%	4%
Other	12	5%	
Not answered	14	6%	

Q4 How good or poor was the overall service you received from your lawyer?

	Number	Percent	Percent giving opinion
Very Good	154	64%	67%
Good	39	16%	17%
Neither Good nor Poor	22	9%	10%
Poor	5	2%	2%
Very Poor	9	4%	4%
Don't Know	2	1%	
No answer	11	5%	

Q5 (a - g) How good or poor was your lawyer at the following...

		Very Good	Good	Neither	Poor	Very poor	Don't know	No answer
Listening to you	Nos	146	53	20	5	3	2	13
	%	60%	22%	8%	2%	1%	1%	5%
Explaining things clearly in a way you could understand	Nos	136	53	14	5	4	2	28
	%	56%	22%	6%	2%	2%	1%	12%
Explaining at the start of your case the evidence against you and your options for what to do next	Nos	145	51	16	8	7	1	14
	%	60%	21%	7%	3%	3%	0%	6%
Keeping you up to date on the progress of your case	Nos	134	53	16	15	9	1	14
	%	55%	22%	7%	6%	4%	0%	6%
	Nos	138	47	19	9	11	3	15



Preparing you for what would happen in court	%								
		57%	19%	8%	4%	5%	1%	6%	
Advising you about the likely outcome of your case	Nos	137	45	22	7	10	4	17	
	%								
		57%	19%	9%	3%	4%	2%	7%	
Explaining the outcome of your case to you and what would happen next	Nos	143	41	20	7	9	6	16	
	%								
		59%	17%	8%	3%	4%	2%	7%	

Q6 (a - g) How good or poor were the following for keeping in touch with your solicitor...

		Very Good	Good	Neither	Poor	Very poor	Don't know	Not used	No answer
Face-to-face meetings	Nos	114	44	19	8	7	1	25	24
	%	47%	18%	8%	3%	3%	0%	10%	10%
Email	Nos	56	26	13	4	3	1	69	70
	%	23%	11%	5%	2%	1%	0%	29%	29%
Phone calls	Nos	114	50	17	6	6	2	18	29
	%	47%	21%	7%	2%	2%	1%	7%	12%
Video calls	Nos	22	7	10	2	3	1	113	84
	%	9%	3%	4%	1%	1%	0%	47%	35%
Texting	Nos	53	14	14	5	3	2	85	66
	%	22%	6%	6%	2%	1%	1%	35%	27%
Messaging	Nos	35	10	9	4	3	1	105	75
	%	14%	4%	4%	2%	1%	0%	43%	31%
Letters / postal	Nos	113	54	14	7	3	1	15	35
	%	47%	22%	6%	3%	1%	0%	6%	14%

Q7 Would you use your lawyer again if you were charged with an offence?

	Number	Percent	Percent giving opinion
Yes	198	82%	92%
No	17	7%	8%
Don't know	17	7%	/
No answer	10	4%	/

Q8 Was the outcome of your case better, worse or about the same as you expected?

	Number	Percent	Percent giving opinion
Better	105	43%	53%
Worse	28	12%	14%
About the Same	67	28%	34%
Don't Know	32	13%	/
Not answered	10	4%	/

Q9 Did you give your lawyer proof of income or savings?

	Number	Percent	Percent giving opinion
Yes	214	88%	93%
No	16	7%	7%
Don't know	8	3%	
No answer	4	2%	

Q9a Which of the following did you give your lawyer as proof of income or savings?

Please tick all that apply

	Number	Percent
Proof of benefits (e.g. benefits award letter)	143	67%
Proof of income (e.g. wage slip / bank statement)	91	43%
Proof of savings (e.g. bank statement / post office statement)	48	22%
Proof of outgoings (e.g. bills / rent payments)	46	21%
National Insurance number	84	39%
Other (please write in below)	3	1%
Not answered	2	1%

Q9b Did you have any problems getting hold of the documents, such as a payslip or a bank statement, to give to your lawyer?

	Number	Percent	Percent giving opinion
Yes, I had problems getting the documents	12	6%	6%
No, I did not have any problems	187	87%	94%
Don't know / can't remember	10	5%	
Not answered	5	2%	

Q10 Did you have any direct contact with the Scottish Legal Aid Board (SLAB) about your criminal case?

	Number	Percent	Percent giving opinion
Yes	7	3%	3%
No	206	85%	97%
Don't know	24	10%	
No answer	5	2%	

Q10a How good or poor was the service you received from SLAB? Please tick one box only

	Number	Percent	Percent giving opinion
Very Good	4	57%	67%
Good	2	29%	33%
Neither Good nor Poor	0	0%	
Poor	0	0%	
Very Poor	0	0%	
Don't Know	0	0%	
No answer	1	14%	

Q11 Did your case go to court?

	Number	Percent	Percent by court type
Yes - virtual court or online hearing only	12	5%	6%
Yes - at court building only	184	76%	85%
Yes - at court and virtual court	20	8%	9%
No	9	4%	
Don't Know	12	5%	
Not answered	5	2%	

Q12 How good or poor was your lawyer at representing you at court?

	Number	Percent	Percent giving opinion
Very Good	145	67%	68%
Good	40	19%	19%
Neither Good nor Poor	16	7%	8%
Poor	4	2%	2%
Very Poor	8	4%	4%
Don't Know	1	0%	
Not answered	2	1%	

Q13 (a - c) when your case was being heard at court how often did the following happen.....

		Always	Most of the time	Some of the time	Hardly ever	Never	Don't know	No answer
I was able to speak to my lawyer privately if I needed to	No	132	32	14	16	10	6	6
	%	61%	15%	6%	7%	5%	3%	3%
My court case started when I was told it would	No	102	49	19	8	12	5	21
	%	47%	23%	9%	4%	6%	2%	10%
My case lasted for around the time I was told it would	No	95	46	15	4	11	26	19
	%	44%	21%	7%	2%	5%	12%	9%

Q14 How many times have you been prosecuted for a criminal offence (including the one you told us about in this survey)?

	2	Percent	Percent giving a figure
1	68	28%	35%
2 to 5	69	29%	36%
6 to 10	21	9%	11%
More than 10	35	14%	18%
Don't know	35	14%	/
Not answered	14	6%	/

### Demographics section questions

D1 What is your sex?

	Number	Percent	Valid percent
Female	46	19%	20%
Male	185	76%	80%
Prefer not to say	1	0%	
Not answered	10	4%	

D2 What age range are you in?

	Number	Percent	Valid percent
18 to 24	13	5%	6%
25 to 34	40	17%	17%
35 to 44	57	24%	25%
45 to 54	67	28%	29%

55 to 64	33	14%	14%
65+	21	9%	9%
Prefer not to say	2	1%	
Not answered	9	4%	

D3 Do you have any of the following, which have lasted, or are expected to last, at least 12 months? Tick all that apply

	Number	Percent of responses	Percent of valid responses
Mental health condition	121	50%	56%
Long term illness, disease or condition	66	27%	30%
Physical disability	61	25%	28%
Learning disability	36	15%	17%
Learning difficulty	27	11%	12%
Developmental disorder	19	8%	9%
Deafness or partial hearing loss	17	7%	8%
Blindness or partial sight loss	9	4%	4%
Full or partial loss of voice or difficulty speaking	2	1%	1%
Other condition	20	8%	9%
No condition	48	20%	22%
Prefer not to say	10	4%	
Not answered	15	6%	

#### *Other conditions*

Eight respondents mentioned physical conditions or disabilities only, six mentioned mental health issues only and five described having both physical and mental health issues. Six of those describing other conditions had chronic obstructive pulmonary disease or other severe lung problems.

D4 Are your day-to-day activities limited because of a health problem or disability which has lasted, or is expected to last, at least 12 months? Please include problems related to old age.

	Number	Percent	Valid percent
Yes, limited a lot	93	38%	43%
Yes, limited a little	50	21%	23%
No	72	30%	33%
Prefer not to say	18	7%	
Not answered	9	4%	

D5 What is your ethnic group?<sup>3</sup>

	Number	Percent
White - Scottish	209	86%
White - Other British	18	7%
White - Any Other White Ethnic Group (please write in below)	2	1%
Asian, Scottish Asian or British Asian - Chinese, Scottish Chinese or British Chinese	2	1%
White - Polish	1	0.5%
Asian, Scottish Asian or British Asian - Pakistani, Scottish Pakistani or British Pakistani	1	0.5%
Asian, Scottish Asian or British Asian - Indian, Scottish Indian or British Indian	1	0.5%
Asian, Scottish Asian or British Asian - Other (please write in below)	1	0.5%
African, Scottish African or British African - (please write in below, e.g. Nigerian, Somali)	1	0.5%
Prefer not to say	3	1%
Not answered	3	1%

D6 We would like to know whether you are currently, or ever have been, ‘looked after’ by a Local Authority, including continuing care to age 21. By ‘looked after’ we mean: subject to a supervision order with no condition of residence; with foster carers, in a residential care home, in a residential school or a secure unit. Which of the following applies to you?

	Number	Percent	Percent
Currently ‘looked after’ by a Local Authority	16	7%	7%
Have previously been ‘looked after’ by a Local Authority	22	9%	9%
Never been ‘looked after’ by a Local Authority	170	70%	70%
Prefer not to say	18	7%	7%
Not answered	16	7%	7%

<sup>3</sup> Answer options not selected by any respondents are not included in the table. This question, and the answer options, used the wording from the ethnicity question in Scotland’s Census 2022.

D7 Do you think anything about your situation or personal characteristics made it more difficult for you to access a suitable criminal legal aid lawyer? These things might include: age, disability, gender reassignment, marriage & civil partnership, pregnancy & maternity, race, religion or belief, sex, sexual orientation, or care status.

	Number	Percent	Valid percent
Yes	10	4%	5%
No	199	82%	95%
Don't know	23	10%	
No answer	10	4%	

D8 Which area of Scotland do you live in?

	Number	Percent
Central, Tayside & Fife	50	21%
Dumfries & Galloway	11	5%
Edinburgh, Lothian & Borders	33	14%
Glasgow & Strathclyde	103	43%
Grampian, Highland & Islands	40	17%
Do not live in Scotland	4	2%
Not answered	1	0%

2 Fold Urban / Rural Classification<sup>4</sup>

	Number	Percent
Rural	25	10%
Urban	197	81%
No data	20	8%

Original sample source

	Respondents		Original samples	
	Number	Percent	Number	Percent
Advice & assistance / assistance by way of representation	36	19%	1148	20%
Solemn criminal legal aid	29	12%	827	14%
Summary criminal legal aid	165	68%	3765	66%
Missing	2	1%	/	/

<sup>4</sup> Derived from postcode data in the sample database and used alongside response data via a unique code for each survey recipient. No personal data under GDPR (including name, address or postcode) was included in the response dataset at any point.