



International Legal
Aid Conference
South Africa 2017

National Report from Scotland

The Scottish Legal Aid Board

www.slab.org.uk

1. The Current Landscape

1. The political landscape in Scotland has changed significantly since the last ILAG conference in 2015.
2. In May 2016, the Scottish Parliament elections saw the Scottish National Party (SNP) remain in power, with Nicola Sturgeon as First Minister. Annabelle Ewing was given the portfolio of Community Safety and Legal Affairs.
3. In June 2016, a nation-wide referendum was held on the UK's membership of the European Union (EU). The majority (52%) voted to withdraw membership. In Scotland, however, the majority (62%) voted to remain.
4. Following the result of the referendum, the UK Prime Minister Theresa May triggered Article 50 of the Treaty of Lisbon, beginning the formal process of leaving the EU ('Brexit'). In advance of the Brexit negotiations beginning proper, the Prime Minister has called a snap UK General Election which is scheduled for 8 June 2017. The Scottish Government is currently assessing the potential impact of Brexit on a range of policy areas, including justice.
5. The EU referendum result has also led to the First Minister to call for a second referendum to be held on Scottish independence as the result represents a "significant and material change" in the circumstances that prevailed in the referendum of 2014.
6. The budget agreed by the Scottish Parliament in February 2017 is a one year settlement and therefore future budget settlements are as yet unknown and may well have an impact on future year's priorities. Following a reduction in 2016-17, the allocation for the Legal Aid Fund for 2017-18 remains unchanged at £126.1 million. The funding for SLAB's administration costs for 2017-18 is £11.1 million. This also remains unchanged.
7. If the budget allocation for the Legal Aid Fund is reduced, this will no doubt increase the focus on SLAB to deliver advice to Ministers on potential reforms to deliver further efficiencies in the system. It is important to note however, that what a reduction in budget allocation does not do is directly impact on the ability of people to access legal aid services. The demand led nature of the funding prevents this.
8. There is agreement between the Scottish Government, SLAB and Law Society of Scotland that there are a number of weaknesses in the primary legislative framework for legal aid that is now around 30 years old. This was one of the reasons that in February 2017, Annabelle Ewing MSP announced an independent review of legal aid and the setting up of an expert advisory group, which includes Colin Lancaster, the Scottish Legal Aid Board's chief executive. It will be Chaired by Martyn Evans who is the Chief Executive of the Carnegie UK Trust and previously the Director of the Scottish Consumer Council (SCC) and Consumer Focus Scotland from 1998-2009, a consumer policy and research body. He was also CEO of Citizens Advice Scotland (1993-1998).
9. The review has the following high level remit:

"legal aid in the twenty-first century: how best to respond to the changing justice, social, economic, business and technological landscape".
10. The review is expected to take 12 months before reporting recommendations back to Ministers in February 2018.
11. Further information can be found at <http://www.gov.scot/About/Review/legal-aid-review>.

2. Demand and Expenditure in 2016-17 (all figures are provisional)

	Expenditure	Applications
Total Legal Assistance	c.£135.6 million, a fall of 1.5% (£2.2 million) on the previous year.	
Civil Legal Assistance	Net expenditure is expected to be c.£44.8 million, a fall of around 6% (3.1 million) on the previous year.	<p>The downward trend in demand for civil legal assistance has continued with applications for civil legal aid of 18,721, a fall of 1% on last year.</p> <p>Applications for guardianship and intervention in the case of adults with incapacity numbered 4,671, an increase of 10% on last year.</p> <p>Applications for advice and assistance were 61,058, a fall of 3% on last year.</p>
Criminal Legal Assistance	c.£85.3 million, an increase of less than 1% (£0.7 million) on the previous year.	<p>Applications for summary criminal legal aid were 52,708 for 2016/17, a fall of 8% on last year.</p> <p>Applications for criminal ABWOR were 28,663 for 2016/17, an increase of 2% on last year.</p> <p>Applications for criminal advice and assistance were 22,373, a fall of 9% on last year.</p> <p>Applications for solemn criminal legal aid were 11,134, a fall of 10% on last year.</p>
Children's Legal Assistance	c.£5.4 million, an increase of nearly 6% (0.3 million) from 2015/16.	<p>Applications for children's legal aid were around 3,207, a fall of around 16% on last year.</p> <p>Applications for children's advice & assistance and ABWOR were 8,996, a fall of 1% on last year.</p>

3. Supply of Legal Aid

12. Table 3.1 shows the change in the number of solicitors and firms registered to provide legal aid and assistance in 2016 and 2017:

Table 3.1 Legal Aid Register 2016 and 2017

	31 March 2017	31 March 2016
Criminal - firms	499	535
Criminal - solicitors	1210	1293
Civil - firms	581	616
Children's - firms	377	386
Children's - solicitors	908	901

13. There are a number of factors that can help to explain the decrease of those on the register. These include a number of firm mergers and some sole practitioners withdrawing from the market.

4. Recent Developments in Justice and Legal Aid

The Criminal Justice (Scotland) Act 2016

14. This Act was passed in 2016, and takes forward many of the recommendations made by the judge, Lord Carloway, in his 2011 review of practice and procedure in the Scottish criminal courts. A number of the Act's provisions will have a significant impact on the system of criminal legal assistance. In particular, publicly funded legal advice will now be available at the point of police custody, not just at a police interview. In addition, new court procedures will give the opportunity to challenge special bail conditions and the resumption of questioning at a later date. The new measures will result in significant changes to SLAB's Solicitor Contact Line service, the police station duty plans, and also bring the need for new legal aid arrangements for the new court proceedings.
15. Certain elements of the Act are being implemented in 2017, including some changes to the way that sheriff and jury cases under solemn procedure are handled. However, the main changes to police station procedures and rights are contained within part 1 of the Act, and this is not due to be implemented until late 2017/early 2018. Within part 1 of the Act, Section 32 confirms the right for a solicitor to be present at a police interview, very similar to the current right under section 15A of the Criminal Procedure (Scotland) Act 1995, as amended in 2010. However, Section 44 of the new Act gives the right to a consultation with a solicitor for anyone at a police station, and not only those being interviewed. SLAB are working on the introduction of new fees for solicitors undertaking police station work, along with changes to the duty solicitor arrangements and the operation of our Solicitor Contact Line, which will be needed to ensure the smooth introduction of the new measures.
16. Part 1 of the Act also has the new provisions for investigative liberation where a suspect can be released and then be required to return to the police station to complete the questioning at a later date. New bail conditions can also be attached where a suspect is released on an undertaking to appear at court at a later date, and, for the first time, it will also be possible to question suspects or accused persons after they have been charged. In each of these situations, bail conditions can be attached, and the client will have the opportunity to apply to the court to challenge these conditions. New forms of legal aid cover will also be implemented to cover these court challenges to bail conditions or post charge questioning which take place before any charges are served.

5. Recent Developments in Legal Aid Administration

17. It has been a period of change in the administration of legal aid. Lindsay Montgomery retired in August 2015 following 16 years as Chief Executive and was replaced by Colin Lancaster, previously SLAB's Director of Policy and Development. Then, in March 2016, Iain Robertson left SLAB after 10 years as Chair to be replaced by Ray Macfarlane, who had been a SLAB Board Member since 2010.
18. New leadership has bought with it the opportunity to take a fresh look at the direction of SLAB and to examine what the organisation does - to mark, consolidate and share what it does well but also reflect a renewed focus on improvement in a review of SLAB's purpose and strategic objectives.
19. SLAB's focus over the next three years will be continuous improvement as an organisation, further streamlining of the legal aid system and the formulation of a revised performance framework to reflect the priority to improve customer experience and interaction with the system and the organisation. The performance framework will cover the full spectrum of SLAB's responsibilities and allow the public, politicians and the suppliers and users of legal assistance to fully hold SLAB to account. This should drive a transformation of the administration of the legal aid system. By contrast the independent review of legal aid is focussed on the long term sustainability and design of the system.

20. As part of our effort to continually improve, we have refocused the work of our civil solicitors in the Civil Legal Assistance Office (CLAO) to a service delivery model. Their focus will now be on helping clients with case types identified as being a priority, and in which CLAO solicitors have developed expertise. This is a change from the current system of targeting resources on cases not catered for by other providers in the geographical areas where CLAO offices are.

6. About Legal Aid and Glossary

21. SLAB administers the legal aid system which enables people to gain access to justice and in a way which delivers value for money. Our main functions include:

- a. **Assessing applications** and deciding whether to grant legal aid or authorise expenditure. Including applications for advice and assistance, full legal aid, sanction requests and applications to review our decision to grant. We apply the statutory tests to each application for legal aid to ensure that legal aid is only granted in line with legal aid legislation.
- b. **Assessing and paying for the case work done by solicitors and advocates.** We assess a large volume of accounts and in doing so must be satisfied that the work has been invoiced in the correct way.
- c. **Tackling fraud and abuse** of legal aid by carrying out audits and investigations of legal aid providers and investigate the information provided by applicants for legal aid.
- d. **Advising Ministers** on the operation of legal aid in Scotland. We do this by observing the way that the justice system and legal aid operates and analysis of trends and supply patterns in legal aid.

22. Legal aid in Scotland funds a mixed model of help. The vast majority of legal aid is delivered through solicitors in the private sector on a case by case, on demand basis. SLAB also registers solicitors and firms to carry out legal assistance. It is primarily a system which focuses on enabling broad access to assistance from solicitors in private practice or law centres without there being a cost limit. This means that legislation requires the Scottish Government to provide the funding for all legal aid applications that meet the statutory tests. People seeking legal aid will not have their applications refused because funding is unavailable.

23. There is also a grant funding programme which funds direct delivery projects involving a range of different organisations working in partnership, that deliver targeted help to people on a range of Scottish Government priorities. For example one of our current funding streams complements the Scottish Government Child Poverty Strategy which focuses on early intervention/prevention, building on the assets of individuals and communities, and ensuring that children's and families' needs and abilities are at the centre of service design and delivery. In this programme we fund non-traditional routes to advice (such as mid-wives), to link families to money advice. Unlike legal aid expenditure, the grant funding programme has fixed expenditure limits.

24. Help is also provided through SLAB employed solicitors. We have a small network of four Civil Legal Assistance Offices that deliver targeted civil legal assistance in areas where there is unmet need. On criminal legal assistance the Public Defence Solicitor's Office operates a network of seven offices across Scotland where SLAB employed public defenders provide help with criminal matters.

25. A Solicitor Contact Line operated by SLAB employed solicitors was set up from July 2011 to provide 24/7 cover and is the initial contact point for the police after a suspect has indicated that he wishes legal advice. If the suspect has their own solicitor, the contact line solicitor contacts that named solicitor or firm so that they can provide telephone advice or, attend in person, where this is needed. Where there is no named solicitor or firm or the named solicitor is unable to provide advice, the contact line solicitors will provide telephone advice and, where a personal attendance is required, arrange for a local duty solicitor to attend with the suspect.

26. An explanation of some of the terms you may hear in relation to legal aid in Scotland:

Legal assistance: comprises all payments made from the Legal Aid Fund to provide assistance. It includes case by case payments to solicitors and advocates, expenditure associated with the operation of our direct services (PDSO, CLAO and SCL) and grant funding.

Legal aid: pays for solicitors and advocates to represent people in court. It is subject to means and merits testing.

Advice and assistance: is granted by a solicitor. Advice and assistance helps to pay for a solicitor to give advice on any matter of Scots law, but does not normally cover representation in court. There is no merits testing in the grant of A&A.

ABWOR: a form of advice and assistance under which in certain circumstances, normally in criminal cases, a solicitor can appear in court on behalf of his client: it is also used for representation at tribunals and children's hearings. Some ABWOR is merits tested.

Legal Aid Fund: All payments for legal assistance are made from the Fund. The administration of legal aid is not paid from the Fund.

Clawback: SLAB may claim back the cost of fees and outlays from an assisted person if they recover or preserve property as a result of their legal assistance.

Special Urgency: From time to time work has to be undertaken by a solicitor to protect their client's position before an application for civil legal aid can be finally determined. Specific legislation allows a solicitor to do certain work as a matter of special urgency and inform SLAB afterwards.

Advocate/Counsel: Lawyers who are members of the Faculty of Advocates and have rights of audience in the highest courts in Scotland.

Duty solicitor: The duty scheme is a roster of solicitors, administered by SLAB, that can be called upon to give advice to people in police stations or appearing in court from police custody who do not have a named solicitor.

Reasonable test in civil legal aid: SLAB's governing legislation requires us to be satisfied that it is reasonable in the particular circumstances of the case that civil legal aid is granted.