



International Legal
Aid Conference
The Hague 2013

National Report from Scotland

The Scottish Legal Aid Board

www.slab.org.uk

For more information on the issues included in this report, please contact the office of the Chief Executive on +44 (0)131 240 2191

A glossary of terms can be found at Appendix 2

Since the last ILAG in 2011 there have been a number of developments to note:

SLAB's Responsibilities

1. SLAB's responsibilities have increased again.
2. Police Station Duty Scheme - Following a decision from the UK Supreme Court, emergency legislation was passed in October 2010 by the Scottish Parliament giving SLAB a duty to make solicitors available to provide advice to suspects in police detention from July 2011. A Police Station Duty Scheme and 24 hours a day, 7 days a week Solicitor Contact Line was implemented on 4 July 2011. Since the start of the Solicitor Contact Line, the justice system has seen the overall time that a suspect requiring legal advice remains in custody reduce.
3. Children's Hearings - The Children's Hearings (Scotland) Act was passed by the Scottish Parliament in January 2011. This introduced major changes to Scotland's children's hearings system. The Act provides for children's legal aid and ABWOR to be made available in connection with children's hearings in prescribed circumstances and in respect of court proceedings in connection with children's hearings. It also provides for the registration and quality assurance of solicitors providing children's legal assistance.

The Act also transfers the responsibility for assessing entitlement to children's legal aid in the sheriff court from the court to SLAB. The Act will be commenced on 24 June 2013.

This is a major change in responsibilities for SLAB and has involved months of preparatory work in developing, amongst other things; a Code of Practice for legal aid work; a registration scheme for solicitors; a quality assurance scheme; guidance for the legal profession and development of SLAB's internal processes and procedures. It is estimated to result in additional expenditure of around £3m per year from 2014-15.

4. Grant Funding - Since 2009 SLAB has provided grant funding to a range of organisations to support legal advice and representation services. We have been asked by the Scottish Government and the Money Advice Service to run a new grant funding programme. There is an approved limit of expenditure of £7.45m by way of grants in the period to the end of March 2015 for this new programme.

Around £4m will be allocated to projects that provide advice and representation to help people facing financial difficulties, and a range of other problems arising from social welfare reforms.

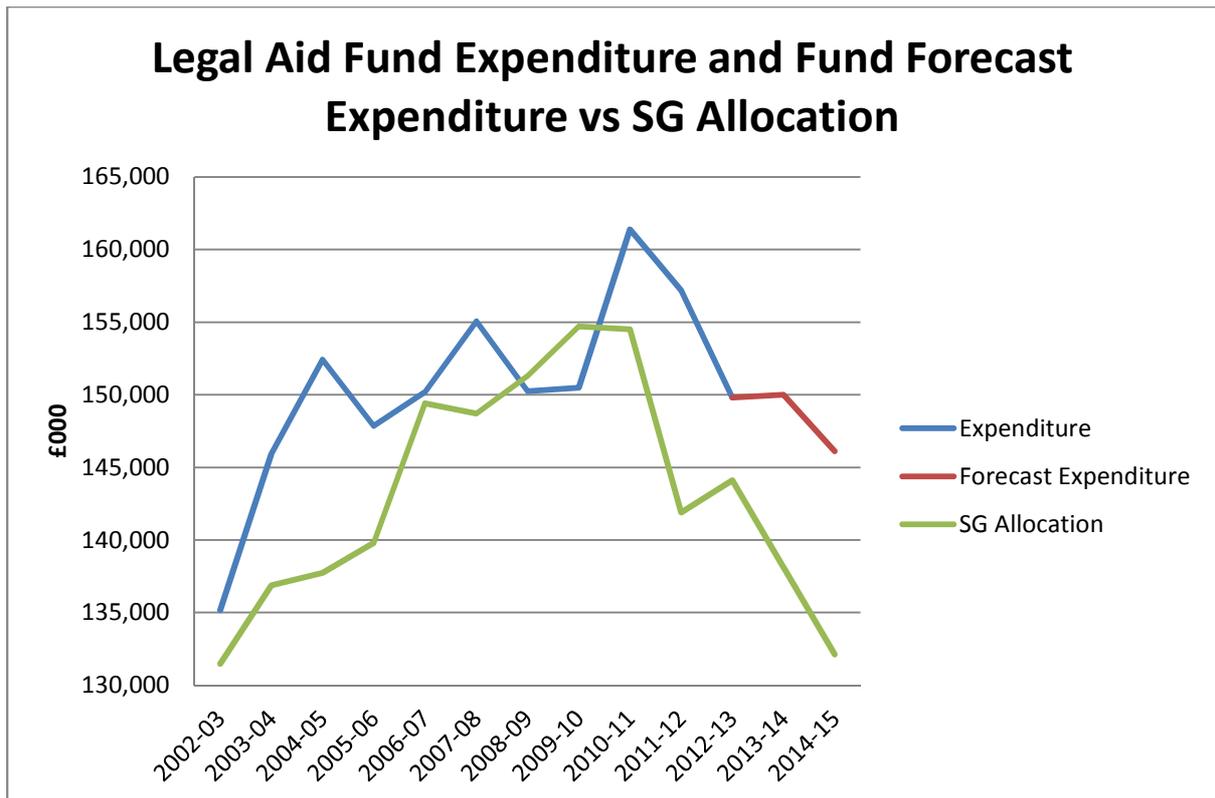
Around £2.5m will be allocated to projects led by social landlords that provide advice, information and representation to tenants dealing with the impact of social welfare reform.

Around £1m will be allocated to projects designed to find new ways of helping groups of over-indebted people who face particular barriers in accessing appropriate help to deal with their debts.

Expenditure

General

5. Funding for legal aid remains non-cash limited meaning the Scottish Government provides the funds for the cases that meet the statutory tests.
6. Expenditure on legal aid remains under severe pressure. Although expenditure on legal aid cases remains demand led, the Scottish Government's provision for legal aid cases between 2012-13 and 2014-15 will reduce by 7.1%.
7. There is a significant funding gap between Scottish Government provision for legal aid cases and SLAB estimated expenditure. Even after the effect of savings measures planned and implemented, this is around £11m in 2013-14 and £13m in 2014-15. This can be seen in the following chart.



8. There are significant other pressures which may lead to increased legal aid expenditure including:

- Major changes to the UK social welfare system which will mean that SLAB has to change the way it assesses applications and could lead to increases in people seeking assistance in this area;
- The Children’s Hearings (Scotland) Act (see paragraph 3)
- Expenditure on criminal legal assistance may increase as a result of Lord Carloway’s Review of Criminal Practice and Procedure in Scotland which looked at a number of issues including arrest, detention and questioning of suspects.

Civil legal assistance

9. Expenditure on civil legal assistance has risen 23% between 2007-08 and 2012-13 and was around £49m in 2012-13.

Criminal legal assistance

10. There is reducing expenditure on criminal legal assistance. It has reduced around 14% between 2007-08 and 2012-13. Civil legal assistance now forms a substantially larger proportion of our expenditure. In 2007-08 the share was 25%, in 2012-13 it was 31%.

SLAB administration

11. In spite of the substantial increase in our responsibilities, the Scottish Government provision for our administrative budget was frozen over the period 2007-08 to 2010-11. It was then reduced by £1.1m in 2011-12, £0.4m in 2012-13 and will reduce by a further £0.5m in 2013-14 and 2014-15. Our administrative budget will be £10.7m in 2014-15 which is around 30% less in real terms than it was in 2007-08. This is very challenging.

Business Volumes

Civil legal aid

12. In 2011-12, we saw some levelling off of the recent very high numbers of civil legal aid applications in 2009-10 and 2010-11. However, in 2012-13 this trend reversed again. Applications are now around 30% higher than 2007-08.
13. The main areas of growth in civil legal aid applications are for cases involving contact with children and for adults with incapacity which now amount to around 20% of all civil legal aid grants.

Criminal legal aid

14. Applications for criminal legal assistance continue to fall due to the reduction in criminal cases going through the courts. Applications for both summary and solemn legal aid were down around 9% in 2012-13.

All legal aid applications

15. There have been substantial increases in SLAB's workload. A lot of the applications that SLAB considers are for post grant work. All types of legal aid application, including such things as a request to use an advocate, were up 12% in 2012-13.

Supply of Legal Aid

16. There are around 670 firms registered to carry out civil legal assistance. This is the highest number since 2007.
17. There are high numbers of solicitors and firms registered to supply criminal legal assistance. There are around 585 firms and 1420 solicitors - this is around 60 more solicitors than 3 years ago and at a time of reducing business through the criminal courts.

An Holistic Approach to Reforming and Managing the Justice System

18. The Scottish Government published a *Justice Strategy for Scotland* in September 2012 which sets out key aims for the justice system to contribute to a safer and fairer society. Legal aid plays an important role in the justice system.
19. There are large, well developed, change management programmes for justice - Themes are *Reducing Reoffending, Reassuring the Public, Building Safer Communities and Making Justice Work*. These involve all the main justice agencies and the Scottish Government.
20. The *Making Justice Work Programme* continues to develop - a range of projects aimed at improving the efficiency of the justice system. SLAB is involved in all projects and lead on some. They include:
 - **Access to Justice:** Trying to resolve problems earlier and outside court; better legal education and information; enabling self help for those who are able to e.g. mediation. A major Sheriff Principal led review of litigation costs;
 - **Court Structures:** Greatly improving the efficiency and effectiveness of civil court processes and procedures. Closing a number of under utilised courts.
 - **Improving case management and procedures:** Ensuring that witnesses attend court. Increased use of video technology in courts, prisons, police stations and tribunals;
 - **Better co-ordination of IT systems and management information.**
21. The *Justice Board* is a cross justice organisation board that consists of senior members of Scottish Government, SLAB, The Crown Office (prosecution), Prison Service, Court Service, Police Scotland, Fire Scotland and the Tribunal Service. As well as overseeing progress on the *Making Justice Work* programme, the Justice Board:
 - Identifies the key priorities up to 2016 for delivering the outcomes required of the justice system;
 - Assesses and manages risks across the justice system;
 - Proactively supports communication and improves partnership working at all levels across justice organisations.
22. The Scottish Government published a strategy for legal aid in Scotland. A *Sustainable Future for Legal Aid* was published in October 2011 and sets out how to meet the key challenge of making expenditure on legal aid sustainable while maintaining access to justice for those that need it. The paper was developed jointly with SLAB. It has four themes:

- Focusing legal aid on those that need it most
- Ensuring wider access to justice - the right help at the right time
- Maximising the value of legal aid expenditure
- Making the justice system more efficient

23. SLAB shares information and systems with other justice agencies. For example:

- Court staff can contact SLAB personnel to find out immediately the status of legal aid applications;
- SLAB has developed an electronic link with the Crown Office so that copy complaints and petitions can be automatically downloaded by SLAB on receipt of the legal aid application;

Savings and Efficiencies in Legal Aid

Savings already implemented

24. In 2011 the Scottish Government and SLAB worked together to develop a series of legal aid savings measures designed to reduce legal aid expenditure whilst maintaining access to justice. This was a response to the substantial reductions in public expenditure following the 2010 Scottish Budget.

25. Following constructive engagement with the Law Society of Scotland, a range of regulations and other changes were introduced during 2011. The first package of savings is estimated to have saved around £12m during 2011-12 and £18m in 2012-13.

Savings currently being developed

26. A second savings package is being implemented in line with the proposals in the Scottish Government's '*Sustainable Future for Legal Aid*'. This is expected to save around £2m in 2013-14 and £9m in 2014-15. Further savings in legal aid expenditure will be required in future years to bridge the current gap between SLAB's forecasted expenditure and the Scottish Government's provision for legal aid.

27. Savings measures include:

- Contributions in criminal legal aid;
- Contracting for criminal legal aid;
- Reforms to legal aid fees - solicitors, counsel, experts and reporters & curators. Includes solicitors sitting behind counsel;
- Tightening guidelines for the use of counsel.

28. The Scottish Civil Justice Council and Criminal Legal Assistance (Scotland) Act was passed by the Scottish Parliament at the end of January 2013. The Act, which is to be commenced in November 2013, will introduce contributions in criminal legal aid. SLAB will be responsible for collecting contributions for the more serious criminal cases (solemn) and solicitors for collecting contributions in the less serious criminal cases (summary). This is estimated to result in around £3m of savings per year.

29. We are working with the Scottish Government to develop proposals to introduce a contractual relationship between SLAB and solicitors who provide criminal legal assistance. This could deliver savings in criminal legal assistance of around £3m per year. It will also encourage more effective business planning, more efficient service delivery and enable better alignment of high quality supply to need.

30. Additional work being led on by other justice agencies are:

- A Judge led review of family proceedings - many family cases drag on and at a huge cost, especially if legally aided;
- A Scottish Government led initiative looking at reducing the cost of court reports.

Legal Aid Online

31. SLAB's Legal Aid Online system has simplified and made more efficient the application process by moving away from paper processes. From April 2011 solicitors can no longer submit legal aid applications on paper. We aim to extend this to all accounts by the end of 2013-14. Around 85% of all firms are now submitting some level of online accounts.

About the Scottish Legal Aid Board

The Scottish Legal Aid Board exists to administer 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. **Tackle 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.

The vast majority of legal aid in Scotland is delivered through solicitors in private practice on a case by case, on demand basis, known as 'judicare'. SLAB also registers solicitors and firms to carry out legal assistance.

There is also a network of publicly funded criminal defence solicitors across which started as a pilot in 2001 but is now operational across Scotland. The network has seven 'Public Defence Solicitors Offices' with 23 solicitors. The solicitors are SLAB's employees and are paid a salary, not on a case by case basis. The network provides opportunities to compare against private practice and provides invaluable feedback on legal aid and the criminal justice system. The Scottish Government recently decided to increase the number of solicitors in the PDSO from in order to deliver legal aid savings under the court duty solicitor arrangements (see glossary).

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 solicitors contact 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.

We are responsible for enabling and improving access to justice. One way we do this is through funding of targeted advice services. We have a network of four Civil Legal Assistance Offices across Scotland where a team of 14 Board employed solicitors provide a civil legal advice and representation services for clients who are eligible for legal aid in areas where there are gaps in supply due to geographical location, such as remote areas in the Scottish Highlands, or area of law such as social welfare.

SLAB also funds services by way of grants. This allows us to provide block payments for services provided by solicitors, but also to fund delivery of other kinds of services.

GLOSSARY

Legal assistance' - Legal Assistance covers 'advice and assistance' and full 'legal aid'.

Advice and assistance' - Advice and assistance covers advice on any matter of Scottish law from a solicitor, but (apart from ABWOR) will not cover representation (putting the case in court or in front of a tribunal).

Advice by way of representation - 'ABWOR' - ABWOR is a form of advice and assistance and is advice and assistance given to someone by taking on their behalf any step in instituting, conducting or defending certain proceedings (notably tribunals).

Legal aid - Legal aid provides funding for a solicitor to put a case in court and some tribunals. It covers the preparation work, as well as the hearing itself, and can provide funding for advocates, experts and other costs. (Cases often begin with advice and assistance, and legal aid may be the next step if necessary).

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.

Court duty solicitor - This 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.