

Scotland National Report ILAG Harvard 2023

1. Country details : Scotland

Population	5.52 million
GDP	£168.7 bn (£33,708 GDP per person)
Population in poverty	<p>1 in 4 children in Scotland (24%) are living in poverty</p> <p>1 in 5 working age people (19%) in Scotland are living in poverty</p> <p>15% of pensioners in Scotland are living in poverty</p> <p>61% of working age adults in poverty and 68% of children in poverty live in a household where someone is in employment.</p>
Practising lawyers	<p>+ 12, 000 (Mix of legal aid & Commercial solicitors)</p> <p>In terms of legal aid providers in Scotland, the financial year April 2022 to March 2023:</p> <ul style="list-style-type: none"> • there were 620 solicitor firms active; • just over 70% did civil work, almost 60% did criminal work and a third did children's.

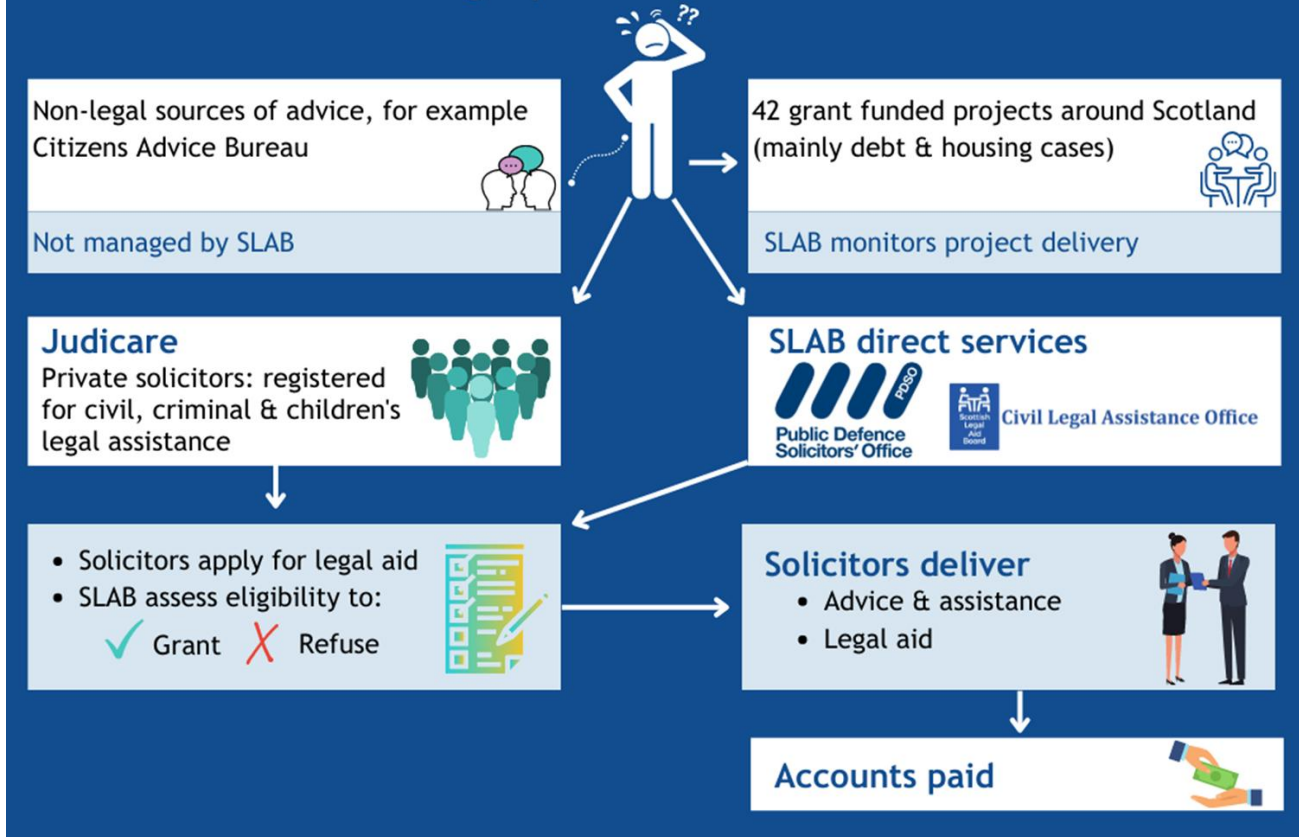
1. Legal Aid Organisation / Authority:

The Scottish Legal Aid Board (SLAB) is the national funding body for most solicitor and advocate delivered publicly funded legal services.

SLAB a Non-Departmental Public Body (NDPB) of the Scottish Government and was established in 1987. It is funded by the Scottish Government and accountable to Ministers although operational matters are maintained at arm's length from the Government.

SCOTLAND'S LEGAL AID MODEL

Legal problem identified



Legal aid in Scotland is primarily designed around case-by-case funding for services provided by solicitors and others instructed by them, such as advocates and experts. This is known as judicare. Funding for legal aid cases is demand led. This means that decisions on eligibility and payment are made irrespective of any budgetary provision and the Scottish Government must make funding available if required to pay for services covered by the legal aid schemes, even if this is higher than expected in some years. In other years, demand may be less than expected. These are not savings that SLAB makes or holds or can use in any other way.

The nature of judicare funding is that it is unplanned and non-targeted. In any one year we pay for services delivered in that year and over previous years. Most expenditure is for cases which concluded in the year payment is made. Some cases can start and conclude in the same year, whilst others will span one or more financial years.

Most services paid for through the Legal Aid Fund are delivered by judicare through the private sector. The third sector and our own in-house legal services also deliver case-by-case services but on a much smaller scale. Finally, a small amount of funding provides direct grants for projects to deliver targeted legal and advice services. The Legal Aid Fund also finances the quality assurance schemes we manage.

The Scottish Government is responsible for the overall direction of legal aid policy which finds expression in rules and regulations which form an extensive and complex body of legal aid legislation.

SLAB's primary functions are to assess eligibility for legal aid and check accounts submitted for payment by solicitors and advocates. The rules SLAB applies in doing so are set by the Scottish Parliament. SLAB employs around 350 staff with around 60% of our staff involved in the assessment of legal aid applications and payment of solicitor and advocate accounts.

A small amount of publicly funded assistance is delivered by SLAB employed solicitors in the form of publicly employed solicitors delivering criminal (Public Defence Solicitors' Office (PDSO)) and civil legal services (Civil Legal Assistance Office (CLAO)) across Scotland. SLAB's employed civil solicitors play a dual role in referring people to solicitors in the private sector and providing direct services if this is not possible.

SLAB employed solicitors also manage a 24 hour Solicitor Contact Line (SCL) which provides advice and facilitates access to solicitors for people that require advice in police custody.

SLAB also manages a range of projects delivering legal and other support across the country which are funded through government grants. In 2022-23 there were three nationwide and 42 regional grant funded projects.

The table below shows the number of firms and solicitors registered to provide different forms of legal assistance. Being registered means that they are eligible to do so, not necessarily that they actively do so. The number of active firms and solicitors is likely to be smaller. Many firms are registered to provide various combinations of civil, children's and criminal legal assistance, so the total number of firms is lower than the total of the three registers.

	To 31 March 2022
Criminal firms	429
Criminal solicitors	1138
Civil firms	489
Civil Practitioners	1138
Children's firms	240
Children's solicitors	419

2. Budget and Spend:

Funding for legal aid cases is demand led. This means that decisions on eligibility and payment are made irrespective of any budgetary provision and the Scottish Government must make funding available if required to pay for services covered by the legal aid schemes. An application for legal aid will never be refused on the basis that the allocated funding has been reached.

The legal aid budget is split into two categories. The Legal Aid Fund covers payments for legal assistance cases, including the costs of running SLAB’s directly employed client-facing services (PDSO, CLAO and SCL). The second is the administrative budget (Admin), this covers all the operational costs of SLAB. Table 1.3 below shows the initially allocated budget for the last two years, along with the actual expenditure on the Legal Aid Fund. Expenditure on the Fund has been affected by Covid-19 but provisional figures for 2022-23 indicate that it has now returned to above pre-covid levels.

A significant amount of administrative expenditure is directed at ensuring that all legal aid expenditure is in accordance with prevailing statutory provisions, regulations, fee tables and taxation standards. This is achieved through assessment of solicitors’ and advocates’ accounts and determination of applications, only granting those that meet the statutory tests.

Table 1.3

	2020-21	2021-22
	£m	£m
Fund (budget)	£125.8	£125.8
Fund (spend)	99.3	118.2
Admin	12.9	13.9

3. Scope, Caseload and Eligibility:

The scope of civil legal aid in Scotland is wider than in many other jurisdictions. Only a very small number of civil proceedings, e.g. small claims, are not covered by legal aid. All types of criminal proceedings are covered by criminal legal assistance. The table below sets out the eligibility tests.

4. Quality Assurance:

The table below sets out the key features of the criminal and civil quality assurance schemes in Scotland.

Type of legal aid	Eligibility testing*		Contributions
	Merits test	Means test	Assisted person pays towards the costs of the case if disposable income or capital over a set threshold
Civil			
A&A	✗	✓	✓
ABWOR	Depends on case type	Depends on case type	Depends on case type
Civil Legal Aid	✓	✓	✓
Children's			
A&A	✗	✓	✓
ABWOR	✓	✓	
Children's Legal Aid	✓	✓	
Criminal			
Police Station Advice (A&A)	✗	✗	✗
A&A	✗	✓	✓
ABWOR	Depends on case type	Depends on case type	Depends on case type
Summary criminal legal aid	✓	✓	✗
Solemn criminal legal aid	✗	✓	✗

	Criminal Legal Assistance	Civil Legal Assistance	Children's Legal Assistance
Commenced	The scheme was	The scheme was	The Scheme was

	commenced in February 2012.	commenced in 2003.	commenced in 2017
Administered by	Scottish Legal Aid Board (SLAB).	Law Society of Scotland.	Scottish Legal Aid Board (SLAB).
Funding	SLAB funds the QA scheme.	Funding ultimately covered by SLAB. The Law Society initially pays for the costs of the scheme including Peer Reviewers and the scheme's administration costs. These costs are then reimbursed by SLAB.	SLAB funds the QA scheme.
Committee	<p>QA is overseen by a Criminal Quality Assurance Committee (CQAC). This is a Committee of SLAB which comprises:</p> <p>3 members appointed by SLAB; 3 members appointed by the Law Society of Scotland; 3 independent or lay members appointed in consultation with the Law Society of Scotland.</p> <p>The main roles of the Committee are to consider the results of peer reviews and make recommendations for further action e.g. SLAB commencing de-registration proceedings.</p>	<p>QA is overseen by a Quality Assurance Committee. This is a Committee of the Society which comprises:</p> <p>3 solicitors appointed by the President of the Law Society, including the Convener, who is a member of Council; 3 lay members; 3 employees of or members of SLAB, of whom at least two must be solicitors.</p> <p>The main role of the Committee is to consider the results of peer reviews and to determine whether a firm should hold or continue to hold a Law Society Compliance Certificate.</p>	<p>QA is overseen by a Children's Quality Assurance Committee (CQAC). This is a Committee of SLAB which comprises:</p> <p>3 members appointed by SLAB; 3 members appointed by the Law Society of Scotland; 3 independent or lay members appointed in consultation with the Law Society of Scotland.</p> <p>The main roles of the Committee are to consider the results of peer reviews and make recommendations for further action e.g. SLAB commencing de-registration</p>

Complaints about solicitors are handled in				proceedings.
	Peer review cycle	The reviews are carried out over a 6 year cycle.	The reviews are carried out over a 6 year cycle.	The reviews are carried out over a 6 year cycle
	Peer review carried out by	Peer reviews are carried out by experienced and currently practising criminal solicitors.	Peer reviewers are carried out by solicitors who practice civil legal assistance.	Peer reviewers are carried out by solicitors who practice children's legal assistance.

the first instance by the Scottish Legal Complaints Commission (SLCC). SLCC are a single point of contact for all complaints against lawyers in Scotland (solicitors, advocates, commercial attorneys, licensed conveyancers). They investigate and resolve complaints about service and refer conduct complaints to the relevant professional body for investigation.

In April 2023, the Scottish Government published the Regulation of Legal Services (Scotland) Bill. It can be found [here](#). The Bill updates the regulation of legal services in Scotland and provides for a modernised regulatory framework. Of most note are provisions that:

- Introduce a requirement for category 1 regulators (at present just the Law Society of Scotland) to create and apply a set of rules for the regulation of legal services at a business level (for example, to require traditional firms of solicitors etc. to be regulated as firms as opposed to as a collection of solicitors).
- Reconstitute the Scottish Legal Complaints Commission as the Scottish Legal Services Commission, adjusting its powers and providing for an updated complaints regime

5 .Public Legal Education:

The Scottish Government launched the mygov.scot website in 2014 which works with over 150 organisations to deliver an online platform for people in Scotland to access public services that are easy to find and simple to use.

6. Alternative Sources of Legal Aid services:

Alternative advice is available through local authorities, national organisations such as Shelter and smaller charities. Advice on welfare benefits, housing, debt, consumer issues, employment and relationships can be sought from one of the 59 Citizens Advice Scotland bureaux. Citizens Advice Scotland, the Extra Help Unit and associated bureaux together form Scotland's largest independent advice network. In 2020-21 the Citizens Advice Service network helped over 171,000 clients in Scotland and dealt with over 647,000 advice issues within the UK.

SLAB are responsible for the administration of a [range of projects across Scotland](#) which have been established to help people with certain civil problems.

Law centres

Law centres also offer cheaper or free legal help to people who might find it difficult to get legal advice. Most Law Centres in Scotland obtain funding in the form of grants from local and central government and other sources, as well as employing solicitors who are registered to carry out legal aid work. There are a number of law centres across Scotland, including:

- [Castlemilk Law Centre](#)
- [Dundee Law Centre](#)
- [Ethnic Minorities Law Centre](#)
- [Fife Law Centre](#)
- [Govan Law Centre](#)
- [Legal Services Agency,](#)
- [Scottish Child Law Centre](#)

7. Holistic legal services:

The Scottish Legal Aid Board was heavily involved in sessions including justice leaders, stakeholders and Justice Committee members to participate in discussions around post pandemic recovery plans. The later sessions were more focused on future justice priorities, looking beyond the pandemic. There was a near consensus emerging around the need for a progressive approach to prevention, reducing re-offending and rehabilitation, alongside better treatment of victims and witnesses.

Potential means of supporting complainers in the criminal justice system via independent legal representation in sexual offences cases is now a feature of current pilot and legislative plans. The contribution of publicly employed solicitors will also be a key consideration.

We are working with partner agencies to share experience of ongoing changes caused by COVID and working together to deal with these. In Edinburgh we have regular meetings with homelessness services providers to discuss trends in homelessness, how the Civil Legal Assistance Office's (CLAO) involvement could assist and how agencies can work together to deal with the emerging issues as well as having regular meeting with City of Edinburgh Council to discuss eviction actions.

CLAO also successfully trialled a new approach of providing a direct advice line to service users at the Rapid Re-accommodation Welcome Centre (formerly homeless winter night shelter) in Edinburgh city centre during lockdown, finding it a better way to engage with homeless contacts and provide them with quicker, more effective legal assistance at a time of crisis. The shelter has now been operating again since October 2020 with an emphasis on supporting people to move on to suitable accommodation. CLAO are offering a weekly telephone surgery to homeless people staying at the Winter Welcome Centre and have successfully assisted people there in obtaining temporary accommodation.

In addition to the above CLAO are developing new referral pathways with agencies such as the Highland Custody Link Project who focus on young adults in custody to support early intervention in various aspects of a person life at a critical stage to reduce reoffending. Many of their clients require assistance with problems with housing and homelessness, mental health or child protection – areas of work which are core for the organisation. CLAO are able to offer assistance with identifying legal

issues and triaging for casework, referral or signposting. They may also be a link for us into support services for clients who fall within their remit.

8. Other

SLAB will continue in 2023 with our work to improve the legal aid schemes within the parameters of the current legal aid legislation and our current functions. Whilst there has been incremental change over the decades, our primary legislation itself dates from 1986: it is as old now as the 1950 scheme it replaced. The biggest innovation in 1986 was the establishment of SLAB to take the administration of the system into the public sector: the legal aid system itself and the delivery model it supports are fundamentally unchanged from those of the 1950s. The core shape of the legal aid system has not evolved to fully reflect many of the changes in the intervening decades, including: our understanding of client needs and the potential of joined up service delivery; demographic shifts within both society and the legal profession itself; changing expectations of work patterns and career development; the operation of the justice system; the long term reduction in crime and growth in alternatives to prosecution the rights of suspects and the need for 24/7 services; the possibilities offered by new technology.

The transformational potential of additional or alternative systems and the legislation required to deliver them need careful thought and will take time to deliver. The right solution – one that meets the needs of users and those who deliver the services they rely upon – must be informed by detailed analysis both of the problem and data that can illustrate it. But it also needs constructive dialogue in order to build a shared understanding of the issues and an informed approach to identifying what is likely to be a range of measures to address those issues.

Covid-19

At the outset of the pandemic, we developed and implemented a four point plan to assist the profession deliver advice remotely by phone or video call to clients, and to reduce some of the requirements on solicitors. This included:

- Revising our approach to the collection of debt, including a three-month payment break for those struggling to make payments
- Accepting applications without a client's signature, eased timescales for submission of applications and information requirements, and reduced the requirements of proof of clients' eligibility for A&A and ABWOR
- Suspending compliance audits and peer review quality assurance schemes for criminal and children's legal aid
- Allowing solicitors to obtain and submit financial verification in alternative ways

Working closely with colleagues in the Scottish Government policy changes were introduced to allow solicitors to release work-in-progress in new and existing cases to support their cash flow during the year by:

- introducing interim payments for summary criminal fixed payments (incl.ABWOR) and A&A/ABWOR;

- extending interim payment provisions for solicitors and counsel in civil, children's and solemn criminal proceedings. 63% of active civil firms and 47% of active criminal firms used these interim payment schemes;

Throughout 2020 and 2021 we worked to facilitate the move from office to home working, putting in place appropriate health and safety controls for those staff who needed to deliver services in courts and police stations.