

Citizens Advice Scotland response to the consultation on civil legal aid financial eligibility assessment

Introduction

Scotland's Citizens Advice Network is an essential community service that empowers people through our local bureaux and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

During the year 2021, Citizens Advice Bureaux (CAB) have collectively provided over 38,500 pieces of advice on legal proceedings. Legal aid is one of the most sought-after topics of advice on legal proceedings, with over 2,500 pieces of advice provided during that same period, up 16% from 2020. The number of pieces of advice given in relation to solicitors and advocates increased by 26% to almost 6,000 pieces of advice. Of those advice queries, over 60% were in relation to accessing/ finding a practitioner.

Page views for our Law and Courts pages on our public advice site are ever increasing with 883,256 unique views during 2021. Our taking legal action page had 169,696 unique page views, our Using a Solicitor page had 7,533 views and our Helping with legal costs page had 16,745 page views. All pages are on course to exceed their page views from the previous two years.

Legal issues can have serious consequences for clients, and it is important that they can access advice to support them in handling legal disputes. A recent report on the economic value of advice provided by the Citizens Advice Network in Scotland showed that the value of the advice provided by CAB on legal proceedings (including areas such as benefits, employment, housing, and debt) was estimated to be £11.58m¹.

General comments on the consultation

Citizens Advice Scotland (CAS) is strongly in favour of simplifying the process by which consumers apply for legal aid, while maintaining its broad scope. We believe that the legal aid system in Scotland should be built on the principles of fairness, transparency, and timeliness. We note that reforms of this nature were strongly supported in the [consultation on reforming legal aid](#).

CAS believes that the current fifty-day turnaround for applying for legal aid is too long and every effort should be made to reduce this time period. The application process can be extremely demanding on applicants, who are likely to already be under stress due to the underlying legal dispute they are engaged in. It is important to remember that consumers tend to use legal services infrequently, and when they do so they are often in a vulnerable position². This needs to be taken into account when determining the correct assessment

¹ https://www.cas.org.uk/system/files/publications/economic_value_of_advice_report.pdf

² https://assets.publishing.service.gov.uk/media/5e78cc9b86650c296f6eda63/Research_report_-_Legal_services_in_Scotland_publication.pdf

model for legal aid. The current length of time for turnaround can impact negatively on applicants who are vulnerable.

CAS recognises that part of the reason for the length of the process is due to the Scottish Legal Aid Board (SLAB) considering a range of different circumstances and making allowances for these. However, CAS would welcome any steps that can be taken to reduce the time taken between applying for legal aid and having the final decision communicated.

While these proposed measures are a step in the right direction, CAS also continues to believe that there is an urgent need for significant wider reforms to the Legal Aid regime. CAS urges the Scottish Legal Aid Board and the Scottish Government to develop and introduce legislation to take these reforms forward. CAS believes that users must be placed at the heart of the legal aid system, and this should be key to any reforms made. Early intervention and prevention are key, and we believe there should be a significant shift in resources towards this and towards the use of Alternative Dispute Resolution (ADR) in civil areas.

CAS does not have views on every question. Where we do have comments on the specific proposals, they are set out below.

Accounting for the Costs of Living: Proposed introduction of Cost of Living allowances

Questions 9-15

CAS would support the introduction of standard allowances as part of the application process. The introduction of these allowances would allow day to day costs of living for an applicant and their household to be considered within the eligibility assessment. This would be achieved by introducing a range of standard allowances and a personal allowance for the applicant, which together reflect the average costs of living for households of various sizes in the United Kingdom, using tools which are evidenced and managed externally. We would note that there may be points in time that the cost of living could be disproportionately higher in Scotland than the rest of the United Kingdom. We believe that this should be factored in when the eligibility assessment is regularly reviewed to ensure applicants are not disproportionately affected.

CAS believes the introduction of standard allowances will benefit the applicant and the assessor. For the applicant, particularly those who are vulnerable or have low incomes, the introduction of these allowances reduces the chances that they are unfairly penalised for paying for basic needs such as food and heating. For assessors, a standard allowance will simplify the application process which will reduce the amount of time per application and free up resources.

The current policy to not make any discretionary allowance for the applicant's own basic living expenses is out-dated and does not take into account the limited finances of many applicants. With the rising cost of living and pressure on household incomes, making discretionary allowances is more vital than ever.

Basing the allowance on the average costs of living for households of various sizes in the United Kingdom seems appropriate and an evidence-led costing is welcome. CAS would suggest that these costings are regularly checked to ensure that the allowances are proportionate with the cost of living and inflation. This should include the cost of food, electricity and heating as well as recognising rent/mortgage payments. As noted above we would again highlight that at points in time the cost of living may differ or be higher in Scotland, which is why we would suggest that costings are regularly checked.

Overall, we support the move towards applicants not having to prove their expenditure for general costs, reducing the administrative burden on applicants, solicitors, supporting staff, and SLAB.

Common Financial Tool and Statement

CAS would recommend that when SLAB assess financial eligibility for Legal Aid, they use the prescribed Common Financial Tool as detailed under the Bankruptcy and Debt Advice (Scotland) Act 2014. This is currently the Common Financial Statement, and it is used to assess a debtor's contribution under sequestration. Existing regulations prescribe how a person's financial circumstances should be assessed and determine if a proportion of the person's income can constitute a contribution.

By using the Common Financial Statement, this would bring greater consistency across the Scottish Public Sector, as Social Security Scotland have also recently adopted the use of the Common Financial Statement when assessing contributions.

At present, the current system is based on thresholds and income exceptions. Using the Common Financial Statement will allow those seeking legal aid to budget payments for arrears such as rent or mortgages. In the current climate, many people have struggled financially during COVID, causing significant housing arrears to build up. Any proposed system used for Legal Aid Financial Eligibility needs to consider a claimant's potential debt situation, not merely their income and expenditure.

Additionally, the use of the Common Financial Tool, and its guidance developed by the Accountant in Bankruptcy, could assist when assessing a claimant's partner and their income. Under the Common Financial Tool Guidance, whilst the gold standard is to assess the household income as a whole, partners of debtors are under no legal obligation to provide any evidence nor any contribution to the debtor's sequestration. Therefore, in cases where the debtor's partner refuses to provide their income and expenditure details, the guidance provides a prescribed method to assess the debtor's contribution to the household bills and their bankruptcy. In short, this effectively works out at 50% contribution to the household bills and the remainder after expenditure is then assessed as the debtor's contribution. This same method applied to Legal Aid financial eligibility could help in situations where the partner of the claimant is not able or willing to provide their financial details.

On this note, it should be highlighted that there is currently a review being undertaken by the Accountant in Bankruptcy who oversee the Common Financial Tool and Statutory Debt

Solutions. This may lead to a change in the common financial tool, to other potential models including the Standard Financial Statement or an Income only Based model. This review is currently underway, and no formal decisions have been made. However, if SLAB is considering using the Common Financial Tool as its basis of assessment of financial eligibility for Legal Aid, there will be a need to monitor any changes that may result from the Accountant in Bankruptcy's review.

Change to housing costs policy

Question 16 - What are your views on the proposed change to allow housing costs an applicant is liable for but not paying to be deducted disposable income total?

SLAB's current policy is to deduct the actual amount being paid for housing expenses for householders, including any costs paid during the computation period by the householder for repairs or maintenance. This proposal would amend the policy so that housing costs an applicant is liable for but not paying, and therefore is incurring a priority debt for, shall be deducted from disposable income total.

CAS agrees with the proposed change. Housing costs are more often than not the biggest monthly outgoing for households and there may be a myriad of reasons why a person is liable for but not currently paying housing costs, including loss of work or an error or delay in a benefit claim. With policy changes such as the benefit cap, many households are losing help with housing costs, and are sometimes unaware of this until arrears have accrued and need to be repaid. Similarly, households in the private rented sector who receive Local Housing Allowance (LHA) often have a gap between what LHA provides and actual rent levels. Incorporating liable housing costs in this way is a sensible way of better understanding a household's circumstances and being cognisant of housing costs that may later need to be repaid by the household.

Question 17 - Do you have evidence to indicate this change to our housing policy may be unnecessary or result in any unintended adverse consequences?

Some confusion may arise in circumstances where a household's housing costs are being paid fully or partially by housing benefit or the housing element of Universal Credit, and some households may not be immediately aware of what their current full rent liability is.

Question 18 - Do you have any experience or evidence to indicate there are equalities considerations we should take into account in relation to this change to our housing policy?

While there is no specific data for Scotland, according to [2019 report](#) by the Women's Budget Group, women make up 60% of all housing benefit claimants. There is little evidence to suggest that these women are more likely to be in arrears or not paying rent, however it may be concluded that women may be more likely to be affected by policy changes such as the benefit cap (especially women with children) or are at an increased risk of experiencing issues with their benefit claim, all of which may lead to rent being unpaid for a period of time.



Consultation questionnaire

Respondent information

Name: Andrew Fraser

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Are you responding as an individual or an organisation? Organisation

If an organisation, please enter your organisation's name: Citizens Advice Scotland

SLAB would like your permission to publish your consultation response. Please indicate your publishing preference below:

Publish anonymous response	X
Publish response with name	
Do not publish my response	

NOTE: If you are responding on behalf of an organisation, anonymous publishing refers only to your name, not your organisation's name. If this option is selected, organisation name will still be published.

We may wish to contact you again in the future, but we require your permission to do so. Are you content for SLAB to contact you again in relation to this consultation exercise?

Yes	X
No	

By submitting a response you give us permission to analyse and include your response in our results.