

PE1695/A

Scottish Government submission of 29 June 2018

Thank you for your email and letter of 8 June 2016 in relation to the above referenced petition. In response to the same the Scottish Government wishes to make the following comments:

Eligibility

Legal aid allows people who would not otherwise be able to afford it to get help from a solicitor with their legal problems, on both civil and criminal matters. In cases where access to legal advice and support on human rights law is sought concerning civil matters the two types of legal assistance available are “advice and assistance” and “civil legal aid”.

Under the advice and assistance scheme a solicitor can undertake enquires, provide advice and seek to remedy matters which fall within the scope of Scots law, where this can be done without the client having going to court. A grant of civil legal aid enables a solicitor to raise and pursue legal proceedings, generally before a court, on behalf of a client.

An application for civil legal aid to progress a case where human rights issues are engaged is subject to the usual statutory tests prescribed by the Legal Aid (Scotland) Act 1986: that the applicant is financially eligible; there is a sound legal basis to raise or enter proceedings; and that it is reasonable to do so. The Act also identifies the Scottish courts in which an action eligible for legal civil aid can be raised. The Act identifies the Supreme Court and the domestic courts and tribunals in which an action eligible for legal civil aid can be raised.

The Scottish Legal Aid Board (SLAB) has published guidance on its website at <https://www.slab.org.uk/public/> detailing the information that is required to consider an application for civil legal aid.

Independent Review of Legal Aid in Scotland

The recently published '[Rethinking Legal Aid](#)' recognised the wide scope of legal issues covered by publicly funded legal assistance and the wide demographic of those eligible to access it. The review states that the *“use of a means test for legal aid complies with the European Convention on Human Rights, and the ‘undue hardship’ test ensures that there is also provision for taking account of the wide range of circumstances of the individual and the case. The current use of means and merits test ensures that legal assistance is directed at those who need it”*.

The review also recognises the over-supply of the types of legal services offered by solicitors in some parts of the country and the under-supply of solicitors with particular specialisms in other areas.

The Scottish Government’s response to the independent review will be published in due course.

Legal Aid Provision

We appreciate that some individuals may experience difficulties in accessing publicly funded legal assistance in some geographical or subject areas. The Scottish Government works closely with SLAB and the Law Society of Scotland to provide as wide a range of legal aid, appropriately remunerated, as possible.

Although firms may be registered to undertake legal aid work, it is a matter for each firm as to whether it can take on new clients at any given time, and whether the firm can assist someone in obtaining the legal remedy sought. A firm is not obligated to offer services to any person on a legal aid basis, notwithstanding being registered for legal aid work. The Scottish Government cannot recommend or compel a law firm to take on a particular case.

If an individual cannot find a suitable solicitor to represent them, the Law Society of Scotland and SLAB can signpost that person to solicitors in their area who may be able to assist.

Additionally the Faculty of Advocates has a Free Legal Services Unit which aims to help in cases where the applicant cannot afford to pay for the assistance or obtain public funding, has a meritorious case and needs the help that counsel can provide.

SLAB employ a number of solicitors at Civil Legal Assistance Offices (CLAO). The CLAO's service currently covers the Highlands and Islands and Moray, Aberdeen and Aberdeenshire, Argyll and Bute and Edinburgh and the Lothians. These solicitors can provide legal advice where the subject matter is within the remit of the office and they have the capacity to deal with the case or they can refer people to other sources of advice and support, including solicitors who offer services funded by legal aid. The CLAO take into account existing provision when developing core areas of expertise. For example, the Edinburgh office does not provide family law as there is adequate private practice provision of family law in the area.

Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

The Civil Litigation (Expenses and Group Proceedings) (Scotland) Act, which received Royal Assent on 5 June 2018 will create a more accessible and affordable civil justice system. The Act will extend the funding options for litigants by permitting damages based agreements to be enforceable by solicitors in Scotland. It will also make the cost of litigation more predictable by introducing sliding caps on the amount that can be taken from an award of damages as the solicitors success fee in speculative fee agreements and damages based agreements in personal injury and other civil actions.

The introduction of a qualified one-way costs shifting (QOCS) for personal injury cases and appeals, including clinical negligence, will mean that a legitimate pursuer is not liable for the other sides' expenses except in certain circumstances where there is fraudulent or unreasonable behaviour, or behaviour amounting to an abuse of process.

Finally the Act will lead to the introduction of group proceedings (ie multi-party action) procedure in Scotland for the first time.

I trust that the above information is of assistance - should you require anything further please do not hesitate to contact me.