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Dear Convener

**Further submissions to the Committee Inquiry into Civil Legal Aid**

I am grateful for the opportunity to have presented evidence to the Committee on 20<sup>th</sup> May 2025. This further submission seeks to (1) clarify a point I made about the availability of legal aid in housing matters in England & Wales during my oral evidence and (2) further draw out some of the available evidence on levels of unmet legal need in the area of housing and homelessness law.

**Point of clarification: Housing Loss Prevention & Advice Service (HLPAS)**

In my evidence I made reference to the above service which is funded through the Legal Aid Agency in England and Wales. The government website describes this service as offering:

- 'Early Legal Advice to anyone at risk of possession proceedings and loss of their home – advice can be provided in relation to Housing, Debt and Welfare Benefits issues
- In Court Duty on the day emergency advice and advocacy to anyone facing possession proceedings

The service enables anyone at risk of losing their home or facing possession proceedings to get free legal advice, and representation in court, regardless of their financial circumstances<sup>1</sup>.

I wish to clarify that housing related legal advice which does not fall within the scope of HLPAS will be means tested and this includes any further court work following the initial in court duty advice and representation provided.

I referred to this scheme however as it is an example of how legal aid can be used in a targeted manner to address an area of legal need which predominantly affects those who would not have the means to access private funded legal assistance. HLPAS is wider in scope than the Scottish Legal Aid Board's existing grant funding programme under the Early Resolution and Advice Programme (ERAP), which is limited to debt related housing loss and debt advice. It is further understood that ERAP predominantly funds lay representation and advice services

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<sup>1</sup> <https://www.gov.uk/government/publications/housing-loss-prevention-advice-service-hlpas>

as opposed to legal services and whilst valuable advice services must complement and not substitute the access to legal advice and representation. ERAP does not presently include social security cases or assist persons who may be at risk of losing their home for other reasons.

### **Data & evidence of unmet legal need**

Under section 3 Legal Aid (Scotland) Act the Scottish Legal Aid Board has a duty to provide information to the Ministers relating to the availability and accessibility of legal services in Scotland.

What follows is a brief analysis of data published by the Scottish Courts & Tribunal Services (SCTS); the First Tier Tribunal for Scotland (Housing and Property Chamber), the Scottish Government as well as data held by the Board obtained through a Freedom of Information Request received on 31<sup>st</sup> July 2025. This data shows that in the area of housing and homelessness law there is a high level of unmet legal need and furthermore, that the level of Board expenditure in this area of law is at the lower end of the spectrum.

A number of general points require to be made at the outset.

Firstly, a person in need of legal advice may not obtain this at the commencement of a court or tribunal case. Whilst there is some likelihood that most of the grants of Legal Advice & Assistance (A&A) and Civil Legal Aid relate to court or tribunal cases which were started in the same year this should not be automatically assumed. Some of the grants of legal aid may relate to court proceedings commenced in previous years.

Secondly, Advice & Assistance is the type of legal aid which will cover out of court work, such as initial advice, negotiations and general correspondence. The Committee has heard evidence as to the eligibility rates for Advice & Assistance and how these may be a barrier to accessing justice. Advice & Assistance would enable an individual to get legal advice on whether or not they have a defence to eviction proceedings; or whether or not they have any legal remedy in relation to their homeless situation.

Thirdly, where there is a live court or tribunal case for eviction that individual should be advised to apply for civil legal aid. It can take several weeks for an application for civil legal aid to be processed by an applicant and then determined by the Board. It is common in housing cases for applications for special urgency cover to be made to enable a solicitor to carry out court or tribunal work on an urgent basis before the application for Legal Aid has been fully determined. I have therefore included data on the number of Special Urgency applications made which may present a more accurate picture of number of individuals who have had the benefit of legally aided advice as not all applications for Civil Legal Aid will result in the grant of a Legal Aid Certificate.

Fourth, whilst the number of grants of Advice & Assistance and Civil Legal Aid can give us an indication of the number of individuals who have benefitted from legal aid, it is possible although rare, for an individual to make more than one application for Advice and Assistance or Civil Legal Aid in relation to the same set of proceedings.

**Social Landlord evictions** (Source: SCTS Courts and Tribunals Data: Civil, 24 April 2025<sup>2</sup>)

	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
<b>Court cases initiated by landlords</b>	10,440	539	1,599	3,862	4,179	4,227
<b>A&amp;A grants</b>	1,637	356	526	654	812	n/a
<b>Special Urgency applications</b>	1,063	150	276	426	480	n/a
<b>Civil Legal Aid Grants</b>	773	204	205	278	365	n/a

The significant drop in both court cases initiated and applications for legal aid which occurs in 2020-2021 is to be expected. This reflects the legislative measures taken during the coronavirus pandemic to minimise evictions.

The low number of cases where legal aid has been made available can be cross referenced with the SCTS data on 'percentage of defended actions with first defender represented by a solicitor'. For 2023-24 that figure is 9.6%. That statistic is taken from the status of the case at the stage of final disposal and therefore may not capture the true percentage of cases where a tenant may have benefitted from legal representation at an earlier stage in the process. SLAB's data indicates that around 12% of tenants had access to legal aid in 2023/24 if we assume that all special urgency applications were made in relation to eviction cases commenced in 2023/24, which as noted above should not be assumed. **Nevertheless whichever of the two data sets is used, the numbers indicate that far fewer than 50% of tenants at risk of eviction have access to legal advice and representation.**

The same court statistics provide that in **99.6%** of cases initiated the social landlord was represented by a solicitor, which raises concerning questions about equality of arms with respect to social landlord evictions in Scotland.

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<sup>2</sup> <https://www.scotcourts.gov.uk/publications/#/?page=2>

**Mortgage repossessions** (Source: SCTS Courts and Tribunals Data Scotland: Civil, 24 April 2025<sup>3</sup>)

	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
<b>Court cases initiated</b>	2,204	91	1,187	1,352	1,760	1,897
<b>Advice &amp; Assistance grants</b>	51	7	16	15	16	n/a
<b>Special Urgency applications</b>	83	5	19	37	20	n/a
<b>Civil Legal Aid Grants</b>	56	5	9	24	22	n/a

Again if we cross reference the above data with the data available from the SCTS on the percentage of defended actions with the first defender represented by solicitor the figure provided is **9.1%**. The same caveat as above applies and is further complicated by the fact that it is common to have more than one defender/ debtor in mortgage repossession cases. Where the second defender is legally represented this will not be captured in the 9.1%. The SCTS data provides that **99.9%** of lenders are represented by a solicitor.

The data suggests similar concerns with regards to the availability of legal services for home owners at risk of having their home repossessed.

**Private Landlord evictions** (source: Housing and Property Chamber Annual Reports<sup>4</sup>)

	2019-20	2020-21	2021-22	2022-23	2023-24
<b>Tribunal Applications</b>	1,742	767	1,251	2,252	n/a
<b>Applications for legal aid</b>	17	8	18	21	41

The data available on representation provided by the Housing & Property Chamber indicates that around 7% of tenants were represented in 2022-23. It is important to note that although legal aid is available, lay representation is more common in tribunal proceedings. **The**

<sup>3</sup> <https://www.scotcourts.gov.uk/publications/#/?page=2>

<sup>4</sup> <https://housingandpropertychamber.scot/who-we-are/annual-reports>

applications for legal aid represent less than 1% of applications for eviction in 2022-23 which indicates that the majority of the 7% of tenants represented were assisted by lay representatives. This can be compared with 63% of landlords who were represented.

**Statutory Homelessness** (Main Source: Homelessness in Scotland:2023-24, Scottish Government, published 24 September 2024<sup>5</sup>)

	2020	2021	2022	2023	2024
<b>Homeless Applications April-Sept</b>	17,169	17,447	19,438	20,528	20,823
<b>(a) Failure to provide temporary accommodation April- Sept</b>	n/a	n/a	345	2,000	7,545
<b>(b) Breach of Unsuitable Accommodation Order April-Sept</b>	n/a	n/a	2,280	3,665	4,085
<b>Total number of breaches of statutory duties in <u>6 month period</u></b>			<b>2,625</b>	<b>5,665</b>	<b>11,660</b>
	2019/20	2020/21	2021/22	2022/23	2023/24
<b>Advice &amp; Assistance Applications per year</b>	744	254	311	426	691
<b>Special Urgency per year</b>	74	14	25	66	71
<b>Civil Legal Aid Grants per year</b>	9	10	12	46	71

There are various stages in the homeless application process where an individual may need legal advice and assistance. For present purposes we are focusing on (a) those persons who need temporary homeless accommodation but have not been provided it by the local authority as required under Section 29 Housing (Scotland) Act 1987; and (b) those persons who are in temporary homeless accommodation which the local authority deems to be a breach of the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014. It can be assumed that the vast majority of those cases will relate to the provision of B&B accommodation beyond the 7 day statutory time limit.

Legal Aid plays a different role in homelessness cases as a homeless person is seeking advice on the remedy of judicial review where they may be initiating proceedings instead of defending

<sup>5</sup> <https://www.gov.scot/collections/homelessness-statistics/>

proceedings. **Advice & Assistance plays a crucial role in these cases as it will enable a solicitor to negotiate with the local authority and in most cases will lead to resolution of the matter through the local authority agreeing to provide (suitable) temporary accommodation.** Where that has not been possible Special Urgency will be applied for to take urgent steps to raise judicial review proceedings. The above data suggests that this only happened on 71 occasions throughout the period 2023-24. This indicates that the majority of urgent cases will have been resolved under Advice & Assistance.

It is important to note that the number of breaches recorded does not represent the number of homeless applicants denied assistance but rather the number of times a local authority has been required to secure accommodation and failed to do so. In other words a homeless person may seek accommodation every day for five days. If they are left without accommodation that should be reported as five breaches. On a similar note, these statistics will not tell us how many other people, beside the homeless applicant, may be affected. For example if a family of two adults and three children are left in a hotel room for several months, the statistics would capture this as one breach of statutory duty. **The total number of breaches throughout a six month period does however give us an indication of the overwhelming scale of legal need.** If there were greater availability and accessibility of legal services in this area, one could expect to see fewer people turned away from temporary homeless accommodation or stuck in unsuitable temporary homeless accommodation.

### **Preliminary conclusion**

As the above discussion demonstrates there is considerable unmet legal need in three areas of housing and homelessness law: evictions; mortgage repossessions and breach of homeless statutory duties.

Where SLAB concludes in its 2025 Geographical Trends analysis that ‘the supply of practitioners is decreasing across all sectors, and that it is decreasing the most in the sectors where the casework is decreasing the most<sup>6</sup>.’ we should interrogate this further as small casework numbers are not conclusive of the demand for a service. A number of factors may contribute to smaller casework numbers, such as the capacity within the sector to take on new cases particularly where there are recruitment and retention issues<sup>7</sup>; the economic sustainability of that particular area of legal aid work; whether or not people are aware of their rights in that area of law or aware of the availability of legal aid; whether or not solicitors feel suitably trained in that area of law.

### **The economic value of investing in legal aid**

In a 2024 research paper commissioned by the Access to Justice Foundation and The Bar Council Pragmatix Advisory<sup>8</sup> provide evidence as to the economic benefits of funding free legal advice to (a) the clients receiving advice and (b) national government and agencies, including health services and local authorities. Whilst this research focuses on England and Wales and includes sources of funding beyond legal aid the socio-economic context being

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<sup>6</sup> Civil Legal Aid: Geographic trends analysis, SLAB, May 2025, p45

<sup>7</sup> Stretched and Stressed out: the challenge of mid-career lawyer recruitment and retention in civil society organisations, J Kinghan, Taylor and Francis Online available [here](#).

<sup>8</sup> The Value of Justice for All, Pragmatix Advisory, August 2024, p8 available [here](#).

examined is similar: 'cost of living crisis, the aftermath of the pandemic and a lack of affordable housing'. The researchers conclude that 'In 2023, the provision of free specialist legal advice saved the Treasury approximately £9,100 per case. For the estimated ½ million people receiving free legal advice, this equates to a saving of around £4,5 billion in the first year.'

Most of the high volume and specialist legal advice provided in the areas examined above is delivered by the not-for-profit sector who rely on a mixed model of funding including judicare, grant funding and charitable funding. The table below shows the total level of legal aid expenditure through judicare for housing and homelessness related casework. These figures include the solicitor's fees; counsel's fees and all outlays such as the costs of interpreter invoices and medical reports. The number of grants of advice and assistance in relation to damages for disrepair in housing are so low that I have excluded these (2019- 5; 2020-14; 2021-14; 2022-6 and 2023-3).

#### **Total Legal Aid expenditure across housing & homelessness cases**

	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>A&amp;A</b>	517,526	282,443	290,404	298,695	278,484
<b>Civil Legal Aid</b>	277,935	160,788	177,440	172,056	256,908
<b>Total expenditure</b>	<b>795,461</b>	<b>443,231</b>	<b>467,844</b>	<b>470,751</b>	<b>535,392</b>

The data in relation to the total level of expenditure in eviction and homelessness cases can be broken down as follows:

	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>
<b>Eviction</b>	477,951	253,793	212,222	174,313	259,030
<b>Homelessness</b>	83,670	53,515	64,552	116,812	101,692

**On closer analysis the average cost of a homeless case under Advice and Assistance is approximately £100 per case. In relation to social rented sector evictions the cost of a case including both Advice and Assistance and Civil Legal Aid is approximately £800 per case.** £800 equates to approximately 12 hours of a solicitor's time billed at the advice and assistance hourly rate of £63.88.

Further research is urgently required to ascertain why housing related legal aid cases are so low value and what remedial steps could be taken to improve growth of legal aid services in the area of housing and homelessness, against the above noted backdrop of unmet legal need.

#### **Conclusion**

The number of legal aid solicitors in any practice area or the number of legal aid cases undertaken does not give us an indication of whether or not access to justice is being delivered. There is however scope through the analysis of publicly available data coupled with a review of the data held by advice providers, including Law Centres and the Civil Legal Aid Assistance Offices to identify areas of unmet legal need which may require targeted

intervention. Evidence suggests that investment in legal aid is not just beneficial to the individual rights holder but also for wider society.

### **Recommendations**

- (1) That the Minister pilots an expanded version of the Early Resolution and Advice Programme to provide non means tested early legal advice and in court duty advice and representation for any person at risk of losing their home, as an intervention in the context of the national housing emergency with grant funding made available for a minimum of a 3 year term;
- (2) That the Minister makes funding available for traineeships in areas where there is demonstratable unmet legal need, such as housing and homelessness, and that such funding covers the full costs of the traineeship;
- (3) That the Board undertake a periodic review of areas of unmet legal need, reviewing publicly available data together with data provided through their CLAOS, the grant funded programmes; the Scottish Association of Law Centres and the Law Society of Scotland;
- (4) That research on the economic value of legal aid, along the lines of The Value of Justice for All<sup>9</sup> report, be commissioned and periodically reviewed.

I am grateful to the Committee for considering this further evidence. Please do not hesitate to let me know if I can be of further assistance in relation to any of the above.

Yours sincerely,

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<sup>9</sup> <https://atjf.org.uk/wp-content/uploads/2024/08/The-value-of-justice-for-all-a-report-for-the-Access-to-Justice-Foundation-and-the-Bar-Council-from-Pragmatix-Advisory.pdf>