OFFICIAL REPORT
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Social Justice and Social Security Committee

Thursday 8 May 2025

Session 6

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SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE
14th Meeting 2025, Session 6

CONVENER

*Collette Stevenson (East Kilbride) (SNP)

DEPUTY CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)
Mark Griffin (Central Scotland) (Lab)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Marie McNair (Clydebank and Milngavie) (SNP)
*Paul O'Kane (West Scotland) (Lab)
Liz Smith (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sophie Berry (Govan Law Centre)
Colin Lancaster (Scottish Legal Aid Board)
Roz McCall (Mid Scotland and Fife) (Con) (Committee Substitute)
Cindy Morrice (Scottish Legal Aid Board)
Aaliya Seyal (Law Society of Scotland)

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Justice and Social Security Committee

Thursday 8 May 2025

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Collette Stevenson): Good morning, and welcome to the 14th meeting in 2025 of the Social Justice and Social Security Committee. We have received apologies from Liz Smith and Mark Griffin. I welcome Roz McCall to the meeting.

Our first item of business is a decision on taking business in private. Does the committee agree to take agenda item 4 in private?

Members *indicated agreement.*

Financial Considerations When Leaving an Abusive Relationship

09:30

The Convener: Our main item of business is to continue taking oral evidence for the committee's inquiry into financial considerations when leaving an abusive relationship. I welcome our witnesses to the meeting. Joining us in the room are Aaliya Seyal, access to justice committee member, Law Society of Scotland; Colin Lancaster, chief executive of the Scottish Legal Aid Board; and Cindy Morrice, head of civil finance, Scottish Legal Aid Board. Online, we are joined by Sophie Berry, a solicitor from Govan Law Centre. Thank you all for being with us. I will start the questions.

Are there any changes to the current rules that could mitigate the barriers that victims/survivors of domestic abuse face in meeting the eligibility criteria for legal aid? I do not know whether Cindy or Colin wants to cover that.

Colin Lancaster (Scottish Legal Aid Board): Good morning. I can certainly start, but Cindy is our technical expert, so she can go into more detail than I can.

Our general point is that the financial eligibility rules can be quite complex. They vary: there are rules for full legal aid, which is for court proceedings, and there are rules for advice and assistance, which, as the name implies, is for advice and assistance, often in advance of an application for legal aid for court proceedings.

The rules for those two systems are different. The civil legal aid means test is the one that the committee is perhaps most interested in. In itself, it is quite complex. There are lots of regulations and guidance about the sources of income and capital that we have to take into account and the allowances that are available, as well as more general provisions on our discretion either to disregard certain forms of income or capital or to take outgoings into account.

That is a complex process, so we prepare guidance, which we issue to the profession. Over the past few years, we have been through a process of reviewing all our guidance, and the policies that are articulated through it, to try to ensure that they are clear and transparent, that we can be held to account and that those who are applying for legal aid know what they are looking at and what will be needed from them.

There are two things to say about that, one of which is that the eligibility thresholds in the core parts of the means test are contained in regulations that were introduced by the Government and considered by the Parliament.

The financial thresholds for legal aid have not increased for some years. As a result, there has been a process of drift in that more of the population has either drifted out of eligibility because of a general rise in incomes or drifted from free legal aid into contributory legal aid. Legal aid is not always free; over certain thresholds, people pay a contribution.

At the same time, the passporting arrangements under universal credit have had an increasing impact. More and more people who were previously on passporting benefits are now on universal credit, so they were passported. However, some people were on other legacy benefits that were not passported, and they have been passported by virtue of those benefits having been subsumed into universal credit. It is a moving picture. Some people have benefited and some people have drifted out of the system, so the whole system could do with a bit of a review of the options for operating those thresholds and how the different changes that have happened over the past 14 years have impacted on the eligible population.

Secondly, the way that we apply the means test leaves room for discretion, particularly in terms of disregards and taking outgoings into account. From the evidence that has been submitted to this committee and, more generally, from the commentary that we have seen over a number of years, we have observed that the way in which discretion is applied is not necessarily well understood.

Flexibilities can be applied in the system in exactly the circumstances that the committee is concerned about. However, quite often, we find that we are either not told about circumstances where we could apply our discretion or we are not asked to apply that discretion in individual cases. We are not sure whether that is because the system is too complex and opaque or because solicitors or others supporting those who experience domestic abuse do not fully understand the ins and outs of the system or the flexibilities that we can apply. They might be making assumptions about how the rules would apply and are therefore not availing themselves of the flexibilities that exist. The experience of Cindy Morrice's team is that we are often not asked about things such as trapped capital.

Cindy Morrice (Scottish Legal Aid Board): I reiterate what Colin Lancaster said. You would be lucky if there were half a dozen cases in the past 12 months in which we were approached and asked to consider circumstances such as those being considered in this inquiry.

Colin touched on the fact that we have lots of discretion in our regulations, but we need to know about those circumstances. We need communication in the first place that tells us about an applicant's circumstances. We know that it can be difficult for someone to share how they have got into a certain situation, but if they do not tell us, we do not know, so we want people to share that information with us.

We are not here to judge, but we will look at whether, within our rules and regulations, we can get people into legal aid. Ideally, that is what we are here to do. If someone is eligible, we want to use our rules to disregard trapped capital or to take into account coercive behaviour. We can consider all those kinds of things, but we need to know about them, and we are not seeing that information in the applications that are being submitted to us.

The Convener: You have almost answered my next question, but is there an option to change an application in order to expand on the circumstances in which someone is applying for legal aid, or does that come down to the solicitor?

Cindy Morrice: The form that an applicant fills in is pretty lengthy. We are reviewing it, and we have been trying to do it online to make it easier for the application to go through. When a solicitor submits the application to SLAB and sends the financial form, which is form 2, we try to engage directly with the applicant and to ask them about their financial circumstances. We try not to go through the solicitor but to have one-to-one contact with the applicant.

There is always room to review the process to see whether it can be made easier or more open and transparent. Colin touched on the fact that we are reviewing our guidance. We have recently updated our website in relation to such situations. We have made the key point about communication, saying, "Talk to us and tell us about it, and we will review your case on an individual basis to see what we can do."

Colin Lancaster: One of the things that Cindy Morrice's team has observed is that, once somebody is in the process and we have that dialogue, information can emerge that was not apparent from the application form. That can often happen fairly late in the process. Once we have done an assessment and communicated the outcome, particularly if our assessment is that there should be a contribution, the notification that a contribution is payable might prompt the applicant to say that they do not have access to those resources and cannot pay it. That will enable us to have further dialogue with them, uncover the circumstances and then take those into account and revisit the assessment. However, some people might not get that far in the process. If, at the outset, they think that the rules are going to work in a particular way, they might not even get to the point of making the application, because

they might assume that they will not get legal aid or that they will not get free legal aid, which might put them off.

As well as all the work that we can do as part of our process, training and raising awareness are elements to consider. In any event, we do those things. We regularly go out and work with firms of solicitors to explain how the legal aid system operates.

As Cindy Morrice said, we are reviewing the guidance, which we will publish and issue as an update to the profession. However, there might be scope to do a bit more awareness-raising work. As I said, the evidence suggests that issues might be more widespread than we anticipated, so we might need to redouble our efforts and work with the Law Society and other training providers to ensure that solicitors avail themselves of the training that we can provide.

The Convener: That is really helpful.

Marie McNair (Clydebank and Milngavie) (SNP): I have a supplementary question on that point. Is the legal aid system open to abuse, and how rigorous is the financial assessment? I have heard some horror stories about abusive partners hiding assets in order to qualify for legal aid. Have you encountered that?

Cindy Morrice: We carry out a very thorough financial assessment review. People have to provide us with verification of all their bank accounts and income. We carry out a full assessment on a case-by-case basis. When an opponent is involved in the case, we allow them to submit representations if they believe that there has been a failure to declare a full and true set of circumstances to us. At SLAB, we have a team whose primary job is to investigate anything that is put to us.

Marie McNair: Thank you for that.

Roz McCall (Mid Scotland and Fife) (Con): That is very interesting. We have heard evidence that a couple's assets must be aggregated when they are assessed for legal aid eligibility, and we have heard all about your process. How does that affect domestic abuse victims/survivors. From their perspective, is reform needed?

Cindy Morrice: It is not as clear cut as saying that we aggregate both parties' resources. If they are no longer in a relationship or living together, we do not aggregate the resources. If we find situations in which they might be living under the same roof, and the applicant tells us that they have no access to income or capital, we have the power to disregard the other party's resources.

We do not have to aggregate, and we assess on a case-by-case basis. If people tell us their circumstances and situation, we will look at that and consider whether it is appropriate to aggregate the resources.

Roz McCall: That is helpful. Thank you.

Colin Lancaster: To all the situations that Cindy Morrice has mentioned, I add the proviso that we do not aggregate the resources of the applicant and the opponent if there is a contrary interest between them, which is often the case in situations of the sort that the committee is considering.

Other case types, such as housing-related cases, in which it might be less clear that there is a contrary interest, are discussed in some of the evidence that the committee has received. In such situations, some of the flexibilities that Cindy Morrice mentioned might come in. If somebody is, for example, seeking a divorce or in a dispute around the care of children, the resources are not aggregated.

Roz McCall: In what ways might the proposal to introduce standardised personal allowances affect access to legal aid for those with no or limited access to their assets due to financial or economic abuse?

The question is for the SLAB witnesses, but if anybody else wants to answer from a different perspective, that would be great.

Colin Lancaster: We consulted on a range of potential changes to the way that we approach financial eligibility. The issue is how we use our discretion. Rather than making individualised allowances for specific outgoings, which would require us to see evidence of those outgoings, we instead developed a proposal to provide a standardised allowance that would carry premiums in relation to disability, the family structure and so on. There are also statutory allowances in relation to childcare costs, work-related costs and housing costs, and those would not be included in the standardised allowance.

We think that a standardised personal allowance would provide a far simpler process. It would be clear and transparent from the outset, improving the predictability of the system and making it easier for people to understand. They would know that the allowance would be applied to their case and that it would not depend on them finding evidence of particular outgoings or remembering to tell us about individual items.

09:45

Our modelling suggests that, for a great majority of applicants, a standardised personal allowance would be of benefit. More people would be able to confirm that they qualify without a contribution, and they would be able to do so more quickly. For some people who are currently assessed as

needing to make a contribution, we think that that would take greater account of their actual living costs and move some of them into non-contributory legal aid.

In any system, some people will not benefit when you seek to standardise something that is highly bespoke—that is where the complexity comes in. Our modelling suggests that such people are far more likely to be at the higher end of the income scale and would have higher gross incomes, but may have some higher outgoings. That would result in them having a reduced disposable income and in the standardised allowance being less likely to benefit them. However, the vast majority of people would benefit from standardisation.

One of the issues that we have identified and that has been raised with us is the way in which we treat debts. We are giving further consideration to how debts that are accrued in the course of a relationship might be taken into account over and above a standardised allowance. Our aim would be to remove the individualised assessment of debts, which is what we currently do. We recognise that, if debts have been run up in somebody else's name as part of an abusive or coercive relationship, we may need to find an exception to enable us to take those into account over and above the standardised allowance.

Roz McCall: That is very helpful—thank you very much. I am interested in your views on the UK Government's proposal to ignore disputed assets and assets that an applicant does not have access to in the means test for civil legal aid in England and Wales—that was not easy to say. Should such a proposal be introduced in Scotland?

Colin Lancaster: I will touch on the first bit of your question and then pass over to Cindy Morrice. The proposal in England and Wales is to remove the cap on the disregard for assets that are in dispute. We already disregard such assets in Scotland; that is called the subject matter of dispute. Assets that are the subject matter of the dispute are not taken into account as part of the financial assessment. There is no cap, so the full amount of those assets is disregarded.

If, as a result of the case, ownership of those assets changes hands, that triggers what are called the clawback provisions. That is called property recovered and preserved in Scotland and the statutory charge in England and Wales, which was also mentioned in the UK Government's consultation on the legal aid means test review.

Essentially, the UK Government is talking about moving to a position that mirrors our existing position in Scotland.

Cindy Morrice: As Colin Lancaster touched on, there is flexibility in how we would expect an applicant to repay any clawback to SLAB. We do not, for example, insist that the applicant sells their property if they have gained the title to the full matrimonial home. We would try to enter into a suitable repayment plan with them. No interest accrues on any liability, either.

Roz McCall: Thank you, that is very interesting.

The Convener: Do any other witnesses want to come in on what has been discussed so far? Sorry, I feel as though you have been ignored.

Aaliya Seyal (Law Society of Scotland): I have a few things to touch on regarding what Colin Lancaster highlighted. First and foremost, we are talking about means assessment, advice and assistance and civil legal aid. We cannot consider those things in isolation; they have to be conjoined. Although there are passported benefits that allow you to be automatically entitled to civil legal aid, capital limits are also taken into account. If you do not have any dependants, the capital limits are fairly low—just over £1,700.

The point that has been made about reviewing the assessment limits needs to be taken into consideration. You could be on the living wage without any dependants and not be entitled to advice and assistance. However, that does not mean that you can afford to pay for legal advice. Therefore, the means assessment element definitely needs to be reviewed in relation to advice and assistance and civil legal aid. Colin Lancaster outlined all of the complexities around that. Simplification definitely needs to be considered.

We have been asked whether having to make a contribution deters people from getting to the stage of applying for civil legal aid, and based on the information that we have, if someone knows that they have a contribution to pay but they do not have the means to pay it, we can understand why they might not decide to take any action.

We have also talked about awareness and clarification of what means are taken into consideration for both parties. If somebody is trying to get advice before they leave a relationship and they are unsure whether joint assets or income are going to be taken into consideration, and they have a lack of awareness about what can be disregarded and a lack of clarity about how discretion is applied, those factors could all deter them from getting early advice—let alone getting it when they are in a crisis.

The other thing to highlight is that, although there is discretion in the clawback provisions, the complexities and the circumstances in which that discretion is applied need to be reviewed. We

need to work with the Law Society of Scotland to raise awareness and understand examples of where clawback has been requested but has not worked. A solicitor might rightly be advising their client of the circumstances that are taken into consideration, but it might not even get to that stage, because people are discouraged from doing anything in the first place.

The Convener: Sophie Berry, do you want to come in?

Sophie Berry (Govan Law Centre): I will just reassert what has been said. In cases of domestic abuse, people often have income and assets that they do not have access to. I appreciate what the Scottish Legal Aid Board said about it having discretion not to take those things into account. However, the main issues are often that people think that they will not be entitled to legal aid or that they are being advised by their solicitor that they will either not be entitled to it or that they will be subject to making a contribution. We support clients with housing and homelessness issues, and often in those cases the income and assets will be aggregated with the partner's if they have not separated yet.

The clients who we see almost always need family law advice as well, which we do not provide. A lot of them come to us to say that they have been turned away by solicitors because they have been told that they might not be entitled to legal aid or they might need to make a significant contribution that they cannot afford to pay because they do not have access to the income or assets that they are purported to have.

Those are the main issues that we see. I appreciate that there is discretion, but—as has been said repeatedly—it is probably more an issue of awareness, not only among applicants but among the solicitors who are advising whether a client might be entitled to legal aid.

Colin Lancaster: I agree with Sophie and Aaliya about the up-front perception being quite a strong factor, but, on Aaliya's point about the difference between advice and assistance and civil legal aid, there is absolutely a difference in the means-testing arrangements. The limits on capital are low for receiving advice and assistance.

There is far more flexibility in respect of civil legal aid. The solicitor assesses for advice and assistance. It is a simple test. They are not able to apply discretion in the way that we can, and they are not able to take outgoings into account in the way that we can, just because the statutory structures are different.

Where somebody is seeking advice to consider their options, the eligibility for advice and assistance is seen as a barrier to accessing civil legal aid. The overall population eligibility for advice and assistance is much lower than it is for civil legal aid.

That is partly because we have that long structure that means that there is a high upper limit for civil legal aid that does not apply to advice and assistance. In some respects, the two eligibility regimes do not sit comfortably alongside each other and one might act as a barrier to the other.

The Convener: Thank you. I invite Jeremy Balfour to come in.

Jeremy Balfour (Lothian) (Con): The Law Society's submission suggests extending civil legal aid automatically to those with domestic abuse cases. I wonder whether I can explore that a wee bit. First, how would that work in practice? Who would make the decision about whether it was a domestic abuse case or some other case? Secondly—this is probably a more difficult question for Colin Lancaster—do you have any concept of how much that would cost the Scottish Legal Aid Board or the Scottish Government and, ultimately, the taxpayer?

Aaliya Seyal: There are already principles that exist, for example, in criminal legal aid—

Jeremy Balfour: Could you speak up slightly? I am having a slightly difficult time hearing you.

Aaliya Seyal: There are already examples of automatic assessment in criminal legal aid, so there are examples to learn from in applying the same test for civil legal aid in cases of domestic abuse. That is what we are asking to be considered.

Colin Lancaster: A number of issues need to be considered. Aaliya Seyal is absolutely right that there are some other examples of automatic access or no means tests. Those tend to apply in defined circumstances, for example in relation to police station advice or for those who are appearing in the criminal courts from police custody. The other example is mental health tribunal proceedings on compulsory treatment. Those tend to be situations in which the state is seeking to, to put it bluntly, interfere in the fundamental rights and freedoms of the individual. Those tend to be the situations in which automatic legal aid is provided.

The circumstances are different. Mr Balfour's question about how to determine which cases or which applicants would fall within the provisions hits the nail on the head. It is often a hotly contested part of an action and, at the point of application for legal aid, we are not really in a position to judge what is being said to us in an application.

As Cindy Morrice said, when we receive an application for legal aid, we notify the opponent

and they can make representations. We often see people disputing things that have been said or alleged, but that is for the court to determine. The court's determination of the facts and circumstances and the evidence that it will weigh is not available at the outset of the case, so you get a bit of a chicken-and-egg situation: you cannot get into court to establish the facts without the funding, but if determining the facts becomes a factor in whether the funding is available, we have a little bit of an insurmountable barrier. That is a practical issue.

Jeremy Balfour: I will come to the courts in a moment. In a previous century, when I was doing legal aid work, which was mostly civil, my understanding was that getting automatic legal aid was a fairly short procedure—it was a one-off for a year and it was for advice and assistance or whatever. Would the Law Society suggest that legal aid should be for the whole case, including if it went to an appeal, or are you suggesting that it should be for the initial meeting with the client and the initial paperwork? How long is the piece of string that you are suggesting with regard to domestic abuse cases?

Aaliya Seyal: I certainly think that it should not be a barrier at the onset. Colin Lancaster rightly makes a point about disputed facts, but at the onset it should not be a barrier. The Law Society can provide further information.

Jeremy Balfour: Okay, that would be helpful. I go back to my million-dollar question, but it might be slightly more than that. How much do you think that could cost?

10:00

Colin Lancaster: We have not assessed that and I would not want to give you a number, because it would so much depend on how it was framed. You asked how extensive the coverage would be.

I know that the issue has been considered on a number of previous occasions. The briefing from the Scottish Parliament information centre touches on the 2018 consultation and some members may also recall Rhoda Grant's bill in 2010-11, which became the Domestic Abuse (Scotland) Act 2011. When that bill was introduced, there was provision that would have made legal aid free in respect of protective orders and some of the same issues were highlighted then. For example, there were questions about how one would separate a protective order from a wider family action, whether one part of the action would be funded but not another and whether that might result in two separate cases going to court with two separate applications for legal aid. All those factors would determine the scope of the measure and therefore its cost. As things stand, we cannot really put a number on that.

The Government has highlighted the potential cost of having a demand-led system as being one of the barriers to taking such a measure forward, but I cannot put a number on that.

The Convener: Bob Doris has a brief question and then we will hear from Paul O' Kane.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): I will be very brief.

I am sorry if I have this wrong, but I think that Cindy Morrice suggested that discretion was applied for and granted on only five occasions in the past year. I am sorry if I have that number wrong—it would be helpful if she could restate the number.

What work has been done to estimate how many times discretion could have been applied for and might have been granted, when that has not happened? I know that there is no exact science to this, but I would like to hear an estimate or a ballpark figure or to get a feeling for how far there is a lack of applications, even though those could be successful. Is there any more data that you could put on the record so that we can see the extent of the challenge under the current criteria?

Cindy Morrice: In answer to your first point, we can count on one hand the number of cases where we have been asked to apply discretion in such circumstances.

I do not know where to begin with the second part of your question, so would have to do some analysis. Colin Lancaster may have a feeling about that.

Colin Lancaster: I do not, which I think is the challenge. We only see what we see. Was the question whether we have been asked to apply discretion but have declined to do so, or was it about us not being asked?

Bob Doris: I will clarify and you can supply more information in writing, because I have sprung this on you today. Everyone seems to agree that there is a reluctance to apply for discretion, which may be because of a lack of awareness or because of a lack of consciousness that it can be applied for, but do we know the extent of the problem? Have solicitors been surveyed? Does the Scottish Legal Aid Board have a feeling for how many times discretion should be being applied for? At the moment, no one is quantifying the extent of the problem. If you do not have that information today, please let the committee know, because that is important.

Colin Lancaster: The short answer is that we do not know.

The slightly longer answer is that that issue has been highlighted in evidence from other respondents. If you were to ask us how often that occurs, we would say not very often. Other respondents have suggested that the issue is widespread, but that is certainly not what we are seeing. I am in no way suggesting that that means that the issue does not exist, only that we are not seeing it. I am confident that, if we did see it, we would be able to apply discretion more regularly.

Paul O'Kane (West Scotland) (Lab): I will ask about some issues that we have started to touch on. The committee is interested in the availability of solicitors for this particular work and for legal aid work. It will be useful to get a sense of whether there is a lack of solicitors who are available to take on legal aid work in this area or whether there is a more general problem. The Equalities, Human Rights and Civil Justice Committee has heard about a general lack of legal aid solicitors. It would be useful to hear your comments on the subject.

Colin Lancaster: Your reference to the Equalities, Human Rights and Civil Justice Committee is pertinent. As you are aware, that committee is undertaking an inquiry into civil legal assistance. We are giving evidence to the inquiry in three weeks' time, and I think that the Law Society is giving evidence in a week or two. Supply is one of the issues that has come up in our evidence to that committee. We have talked about that, and we have provided a research briefing to the committee on our geographical analysis of supply.

Again, the short answer is that it is complicated. No overarching picture emerges from that analysis. The number of grants of civil legal aid is higher than it was 10 years ago, and there has been lots of change under the surface. We have seen a reduction in the number of grants in relation to family legal aid, but even within family legal aid we have seen an increase in grants relating to residence and a reduction in grants relating to contact. We are not sure why those differences exist.

On supply, we are, over time, seeing different things happening in different areas of law and in different parts of the country. There has been a general reduction in the number of solicitors who are providing a legal aid service, and what we are seeing is that those who are providing a legal aid service are doing so more often. The pattern is very much that there is a large number of solicitors who do legal aid infrequently and a small number of solicitors who do it regularly. The number of solicitors who do it regularly has not reduced in the same way as the number who do it occasionally, and those who do it regularly are doing it more regularly than they were previously. Again, the picture varies across the country and between areas of law. For example, there has been growth in the number of solicitors undertaking guardianship work, which is now the biggest part of the legal aid system. Twenty years ago, it did not exist, so there has been a significant shift.

Is there a general problem with the number of solicitors? The data does not suggest that. Are there likely to be more specific issues? Yes, and those may be in some parts of the country, not necessarily in rural areas. The assumption is that it is harder to find a solicitor who does legal aid in rural areas, but the biggest shifts have happened in Glasgow and Dundee. Some of the data is counterintuitive—it does not tally with people's perceptions—and it is important to bring that evidence to bear in the discussion.

On the general supply picture, what is also difficult is that past behaviour is not necessarily an indication of future behaviour. Those who have provided legal aid are under no obligation to continue doing so, either generally or in relation to particular types of case or for particular applicants. Cindy Morrice's team gets calls from people seeking solicitors. Sometimes, it is unclear whether the issue for solicitors is the specifics of the case; sometimes, it might be the specific applicant, perhaps because there is a conflict of interest or because the solicitors acted for a family member previously. It might be to do with a general unwillingness to do particular types of work or a general capacity issue. Lots of different things are happening. Our submission to the Equalities, Human Rights and Civil Justice Committee goes into that in more detail.

Paul O'Kane: I should probably have said at the outset that I am a member of the Equalities, Human Rights and Civil Justice Committee, as is Ms McNair, so you will have to put up with questions from us in the coming weeks. It is an important demonstration of the synergy between the two inquiries.

In looking at the Regulation of Legal Services (Scotland) Bill, the Equalities, Human Rights and Civil Justice Committee examined the definition of "solicitor" and how we can ensure that people get access to appropriate legal advice. Have you any sense of whether women who are leaving violent and abusive relationships are going to the right places to get support? We know about the work that is done with partners such as Scottish Women's Aid to direct people to the right places, but are there any examples of people having been given poor advice or having been unable to access a solicitor to get legal recourse?

Colin Lancaster: As we said in our submission, one of the challenges that is posed by the way in which the legal aid system is structured is that it does not look like a public service or what you would expect a public service to look like. The way

into it is opaque and confusing, and knowing whom to go to is one of the challenges. There are many solicitors out there, but not all of them do legal aid, and not all who do legal aid take particular case types. We hear about people having phoned 50 solicitors, and 40 of those might have been in absolutely the wrong ballpark, which is a challenge, because nobody is to know that.

You referred to our work with Scottish Women's Aid, which is done through the civil legal assistance office. We have better insight into who is doing what type of work, so we can target referrals more effectively, and we have had a two-thirds success rate in referring clients through that service. Our work with other support organisations can certainly help to at least get people to the right solicitors, although whether they take the case is still subject to a whole range of considerations in that particular moment.

Paul O'Kane: We have referred to the committee's work on reviewing the structure of legal aid. The Government has also committed to a review of the fees and a wider review of the legal aid system—we started to cover that in our conversation this morning.

I have two questions, the first of which is about the pace of change and the inquiries. Is all of that happening quickly enough? Secondly, what broad issues do you want to see captured in any system reform? I appreciate that it is big question, but it would be useful to get a sense of everyone's view on it.

Colin Lancaster: A lot could be done to simplify the system and make it clearer and easier for the public, solicitors and us to understand, because it is a complex system to administer.

Part of the thrust of our submission to the Equalities, Human Rights and Civil Justice Committee is that we can simplify the case-by-case legal aid system, but many of the challenges that have been highlighted in evidence to this committee and the Equalities, Human Rights and Civil Justice Committee—they have also been highlighted in recent press coverage—are to do with a system that was built on post-war models and that has not really evolved. When you talk about the pace of change, we might look at a 70-year or 75-year change process.

Our view is that the system should be more strategic. There should be more flexible tools so that the system is able to respond to shifts in demand and target resources at particular needs, communities, case types, groups or localities. In that respect, the tools that exist in the current system—in the demand-led part of the system—are pretty blunt. Today, we have talked about eligibility, and you mentioned fees, but those are fairly blunt tools when it comes to managing a demand-led service and prioritising resources. It is very difficult to direct resources towards particular areas of need. Changing eligibility opens the possibility that people might access a service, but it does not guarantee them a service.

Similarly, increasing fees might make legal aid generally more attractive to more solicitors, but that does not mean that you would be able to say, for example, "Yes, there's a solicitor who will undertake domestic abuse-related work in Perth." If your problem is in that place, the system should be able to say that we need to fund a solicitor in that area to work with Scottish Women's Aid or other support organisations to deliver that specific service in that specific place. At present, the legal aid system is not designed to do that, which is why it needs to be redesigned from the bottom up. That would require primary legislation, because the scope for doing that under current primary legislation is very limited.

Aaliya Seyal: Colin Lancaster highlighted the reduction in the number of practitioners, and the Law Society has made submissions about that. We observe that the overall number of solicitors who are undertaking legal aid work has not reduced but that the number who practise in family law has reduced, which we need to understand the reasons for.

10:15

The complexities, from our position, have already been talked about. There are administrative burdens, which means that solicitors are choosing not to undertake such work—that needs to be understood. We also talked earlier about where automatic grants might be pertinent, such as for protective orders. When wider reform is talked about, those things need to be taken into consideration. At our next committee meeting that looks at civil legal aid, we will consider some of the suggestions around wider reform. However, with regard to this committee's remit, those factors explain why there has been a decline in the number of solicitors who choose to practise family law.

Paul O'Kane: Does Sophie Berry have anything to add from the Govan Law Centre's point of view?

Sophie Berry: Yes, I do. The issue has been raised that there is a reduced number of solicitors available for family law cases, especially for domestic abuse cases. Whether or not there are fewer solicitors, it is pressing that there must be legal aid lawyers available for domestic abuse cases, for all the reasons that have been discussed.

The level of funding is obviously critical. The legal aid system does not allow for certain work that is necessary to provide a trauma-informed

service to victims of domestic abuse. There are also many additional costs, from the provision of more time—potentially in unsuccessful meetings with clients—to travel costs for vulnerable clients, which cannot be claimed back through the legal aid system. That is one of the issues that makes it so pressing that the funding issue be tackled for cases of domestic abuse.

As has been said, automatic funding for protective orders seems to be an obvious step in the right direction. Those cases can be separated clearly from other civil cases, because a civil protective order is not about a dispute between two parties; it is about an emergency situation, and it is never the fault of the person who is applying for the order. Such orders are distinct enough from other civil cases to justify their being automatically funded.

I am trying to remember whether there is anything else that I wanted to raise, but I think that that is all.

Paul O'Kane: Okay. That has been very useful.

The Convener: I invite Jeremy Balfour to come in.

Jeremy Balfour: Apologies, but I would like to seek clarification from Colin Lancaster. You said that there has been no reduction in the total number of solicitors doing legal aid, which would include criminal and civil law cases. Has the number of solicitors who are practising civil and, particularly, family law fallen?

Colin Lancaster: I am sorry if I was not clear. There has been no reduction in the number of grants of legal aid over a 10-year period, but there has been a reduction in the number of solicitors acting in those cases, and that reduction has occurred across civil, criminal and children's legal aid. Fewer solicitors are doing the work, and those who are doing it are doing more of it. I suppose that that is an arithmetical certainty—if there are the same number of cases but fewer people working on them, the average case load is increasing.

However, when we look at the distribution, we see that the biggest reduction has been in the number of solicitors who did small amounts of legal aid work. There has been more stability, or a smaller reduction, in the number of solicitors who have been doing large amounts of legal aid work.

Jeremy Balfour: Okay. Perhaps my colleagues are too nice to ask this question, but I will ask it of the Law Society: is that simply because legal aid work does not pay enough money? Are solicitors choosing not to do that work—particularly family and civil legal aid work—because they are not getting what they think is enough of a return from it?

Aaliya Seyal: Yes. Sophie Berry highlighted the amount of work that they need to do and the amount of work that they are paid to do, and there is a disparity between those amounts.

Jeremy Balfour: Have you looked at what type of firms are no longer doing a little bit of civil legal aid work? Is it sole practitioners or middle-sized firms, for example? Has the Law Society or the Scottish Legal Aid Board done any work on the types of firms that are doing civil legal aid work, compared to those who were doing it 20 or 30 years ago?

Aaliya Seyal: I am not personally aware of that information, but I can put the question to the Law Society.

Colin Lancaster: We have done some analysis, but we have limited access to information about firms beyond their legal aid activity, so we do not know what else they are doing. It is easier for us to analyse the supply of solicitors for criminal work, because the majority of firms are more likely to be specialists in criminal work. Legal aid work generally, and criminal work particularly, is usually done by small firms—there are very few large providers of legal aid services. The last time that we checked, the average number of active practitioners in firms that do legal aid criminal work was, I think, about two per firm, and that number has been pretty consistent over 10 to 15 years. It always was, and still is, the case that legal aid work is concentrated in small firms.

Jeremy Balfour: That is helpful. The Legal Aid Board funds the Edinburgh Women's Aid project, which provides quick access to specialist legal advice on family-related issues. Going forward, could that model be replicated in other parts of the country? Could it be scaled up to cover rural areas and places outwith Edinburgh?

Colin Lancaster: We run two projects, one in which we fund a solicitor in Edinburgh Women's Aid and another in which the Civil Legal Assistance Office provides a referral service.

Jeremy Balfour: It is the first of those that I am asking about.

Colin Lancaster: That is a relatively new service, which is funded until next March, and we will want to look more closely at it over the course of this year to see what impact it is having. It is a very focused project, so it is not undertaking general casework on behalf of the women who are accessing the service; it is very much about providing early advice and intervention. However, if the case requires on-going work, it is referred to solicitors in private practice. We need to assess what benefit that is providing, as it might be effective in addressing that front-end barrier.

If that is the key issue, one might want to replicate that model. However, if the issue remains a wider one of finding solicitors who are experienced, knowledgeable and willing to take on domestic abuse-related cases, that project will not be a solution to the problem. It is likely that there are lots of different issues that need to be addressed in a multifaceted way, so I would not say that it is a magic bullet, but it might have the potential to address one part of the problem.

Jeremy Balfour: That is really helpful. Remind me—did you say that it is a year-long project?

Colin Lancaster: It has one more year to run.

Jeremy Balfour: My final question to all of you is about the Scottish Government's promised reform of the legal aid system. Particularly with regard to domestic abuse cases, what changes would you like to see in any reform?

Sophie Berry: We would like to see the changes that have been mentioned so far. Our primary concern is automatic entitlement to legal aid in domestic abuse cases. We also need additional funding or uplifts for domestic abuse cases and cases where trauma-informed work is necessary. Obviously, as has been discussed, we need to simplify the means-testing process, especially in urgent cases. We perhaps also need to introduce block fees, a point that has been raised already, to simplify the process and to reduce the administrative burden on applicants in such situations. Those are the main things that need to be changed.

Aaliya Seyal: I agree with a number of the points that Sophie made in relation to means assessment, automatic entitlement, simplifying the procedures and ensuring the means to pay solicitors for the work that they are undertaking.

Colin Lancaster: I do not have a great deal to add. Simplification is generally needed, as well as maybe enhanced training and awareness. We also need to look at the eligibility thresholds, particularly in relation to advice and assistance. Sophie mentioned block fees. We included that specific proposal in our submission to the Equalities, Human Rights and Civil Justice Committee. We think that providing an extra block in relation to protective order work would be of assistance in recognising some of the work that Sophie has talked about as being needed in those cases. More generally, we need the system to be able to respond in a strategic and targeted way to particular needs in particular places, potentially by funding posts instead of funding cases or particular activity.

Bob Doris: My question is in two parts. The first part has probably just been answered by Colin Lancaster and Sophie Berry but I will check that. There seems to be consensus on the importance of civil protection orders, but there are issues with regard to the cost for victims and the limitations of the legal aid system to show flexibility in relation to that. Can I check that that is the general consensus among all the witnesses?

Colin Lancaster: I am sorry—in which particular respect do you mean?

Bob Doris: We have spoken about civil protection orders, but there are drawbacks to applying for those. There is potentially a cost to victims and the legal aid system is limited in its ability to alleviate those costs. I think that I heard you mention aspects of that, Colin, and Sophie certainly did. Is there consensus among the witnesses that that has to be looked at again? Rather than asking a specific question about what the issues are, I am checking whether we have established that that is a fact—that that is the view.

Colin Lancaster: What we said at the outset was that there are flexibilities in the system that are perhaps not being fully utilised and that, if they were fully utilised, that might address some of those issues. Whether that demonstrates that there is a need for change or for increased awareness and using the flexibility that the system offers—either way—

Bob Doris: Do those same flexibilities exist for civil protection orders?

Colin Lancaster: Yes, because an application for civil legal aid would be required in order for a case to be raised.

Bob Doris: That is helpful for my clarity. Sophie, what do you think that the issues are in relation to applying for legal aid for civil protection orders?

Sophie Berry: I am sorry, but I am a bit confused about the question.

Bob Doris: For clarity, I will go back to my verbatim notes. I was trying to set the context. My notes on what we have established from the committee's call for evidence say that, when a victim has to apply for a civil protection order, drawbacks include the potential cost to the victim of doing so and the limitations of the legal aid system in alleviating those costs. I want to ensure that all the witnesses agree with that as a matter of fact and to check whether you want to add to that before I move to my final question.

Sophie Berry: No, I do not think that I have anything to add. I think that that has been covered.

Bob Doris: Thank you. What I really want to ask about is also for you, Sophie, because I think that it was mentioned in the Govan Law Centre's written evidence. Does part 1 of the Domestic Abuse (Protection) (Scotland) Act 2021, with its

key role for the police in enforcement, represent a viable alternative to the old system of civil protection orders? Part 1 of that act has not yet been enacted. The Parliament's Equalities, Human Rights and Civil Justice Committee is looking at why that is the case, but my understanding is that the key aspect is that it is not the victim/survivor who would apply for such an order and that they would not bear the cost but that Police Scotland could take that forward. Could you say more about the importance of that and about the barriers to fully implementing part 1 of the 2021 act?

10:30

Sophie Berry: The importance of that provision is that, at the moment, getting a civil protection order is an extremely complicated process. That is because of both the financial barriers and the practicalities of finding a solicitor. That takes time. In addition, the onus is on the victim/survivor to make the application and instruct legal representatives. If, and, I hope, when emergency protection orders are brought in, the police will be able to step into those critical situations and get a domestic abuse protection notice in place and then a domestic abuse protection order. That will take from the victim/survivor all the onus of having to make the application themselves. In addition, it is immediate—it should be able to be put in place much more quickly. I appreciate that the police will need resources to do that, but it is essential for victim/survivors to have those protections in place as soon as possible. I am not sure what else there is to say about that.

Bob Doris: That is helpful; you have put on record that resource for the police is a key issue in the delivery of that provision and that that should be a priority. That is what we want to establish and put on record.

Do other witnesses have anything to add in relation to the importance of part 1 of the Domestic Abuse (Protection) (Scotland) Act 2021 being brought into force?

Colin Lancaster: I have no comment on the specifics of part 1, but the general principle that the onus to provide that protection should be shifted from the individual to the state has been extended over a number of years.

Based on an analysis that we previously undertook in discussions with Scottish Women's Aid and justice partners, part of the reason for the long-term reduction in the number of applications for legal aid for civil protection orders has been a more proactive approach on the criminal justice system's part. Whether that is as part of special conditions of bail providing the same sort of protection that a civil order might do, or as part of sentencing—through non-harassment orders, for example—the onus has been shifted. The requirement on the survivor to seek to protect themselves has shifted to the state. As I said, I do not have any particular comment on the substantive aspects of part 1, but my understanding is that part of the aim of that provision is to make it the state's responsibility to take such action, rather than leaving the survivor to do it themselves.

Bob Doris: The committee will, of course, reach out to the Government on when that part might eventually come into force. Does any witness have any insight into when implementation might happen? Since no one does, I will say thank you.

Marie McNair: Sophie, as you are aware, some abusive partners have been known to drag out legal cases just to maintain control over their ex-partners. What more needs to be done and what safeguards are needed to ensure that ex-partners do not use the legal system to perpetuate abuse?

Sophie Berry: Most of the things that we have already covered would help to reduce the incidence of that. The first is the availability of legal aid funding for victims of domestic abuse, so that dragging out a case cannot be used as a means to deplete their resources. Also required are more training and awareness in general for legal practitioners on domestic abuse and economic abuse, and how legal proceedings can be used to perpetuate on-going abuse during a relationship or after a relationship has ended. It is important not to try to force parties into mediation in those circumstances, because, again, that can be used as a means to continue the abusive behaviours of the perpetrator.

Marie McNair: Thank you, I really appreciate your comments. Since no one else wants to add anything, I will hand back to the convener.

The Convener: When it comes to safeguards—in particular, for SLAB—it was reported at the beginning of the week, I think, that there was a cyberattack on the UK's Legal Aid Agency. What actions are you taking to ensure that the data that you hold is safe, particularly when it comes to domestic abuse cases?

Colin Lancaster: We are very alert to the risks, and we devote significant time and resource to ensuring that we have robust protections. We undertake regular penetration testing, and we have recently—just this week—been awarded, for the fourth year running, cyber essentials plus, which is the general governmental standard for protection against cyberattack.

We have been in touch with our colleagues in the Legal Aid Agency, who are—understandably—otherwise engaged right now, but we will seek to work with them, the National Cyber Security

Centre and the Scottish Government to try to understand, to the extent that is possible, whether any particular vulnerabilities were exploited there and to ensure that our systems and protections are robust.

The Convener: That is reassuring and helpful. Thanks very much.

That concludes our questions. Since none of our witnesses has any further comment, I thank them all for joining us.

That also concludes our public business, and we move into private session to consider the remaining items on the agenda.

10:36

Meeting continued in private until 11:02.

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