

Scottish Government

Legal Aid Reform

A response by the Association of Personal Injury Lawyers (APIL)

September 2026



Introduction

Overall, APIL welcomes the proposals set out in the consultation and the changes proposed by the Legal Aid (Scotland) Bill.

We are pleased to see that the Bill does not propose to change the scope of legal aid provision. APIL's view is that legal aid must be retained for personal injury cases. While success fee agreements can be used to fund the majority of personal injury cases in place of full civil legal aid, there is still a need for some provision for legal aid in personal injury cases for those cases where speculative funding arrangements are unworkable, (for example claims against education authorities or claims which can involve novel legal issues) or in personal injury cases where other funding methods are unavailable.

In addition, full legal aid must continue to be maintained for clinical negligence cases, where because of the "risky" nature of such claims it is notoriously difficult to establish the strength or weakness of a case until expensive investigations have been undertaken, and so a speculative funding arrangement is frequently unworkable. Without the continuing availability of legal aid for such cases there would be a major problem with access to justice. The cost of providing such continuing access to justice is minimal as it is well recognised that civil legal aid for personal injury and clinical negligence work is more or less self-financing, with high recovery rates from successful cases where the defender pays the costs, and the providers of medical treatment can recoup their costs, too.

APIL acknowledges that SLAB has made great progress over the years to streamline a number of procedures, and the efforts to modernise the system have been successful, on the whole. Despite these improvements a continuing area of concern amongst members, particularly when instructing experts in clinical negligence cases, is that even where the solicitor has complied with the necessary requirements and the expert has been duly sanctioned in advance, there can be undue difficulties with efficient reimbursement of expert fees.

We have concerns regarding financial eligibility for brain damaged children, owing to the inclusion of the parent's resources when assessing the child's financial eligibility, and also the failure to apply meaningful discretion when deciding whether or not to disregard the parent's resources in assessing financial eligibility for such children. This means that some of the most vulnerable in society are being denied access to justice.

Contributions and repayment arrangements

We do not object to those who can afford to do so paying a contribution, however the contribution system should not be based on gross income. Gross income is not an accurate representation of a person's ability to pay, as contributions can reach several thousands of pounds in some cases. This would create unfairness and restrict access to justice.

We believe that the Bill should introduce flexibility to allow for consideration of exceptional circumstances. Contributions and repayments should be reduced or waived where the case is meritorious, but the contribution is disproportionate to the client's circumstances due to the likely costs of running that claim.

Streamlining decision-making (“high-trust” model)

APIL supports the introduction of a high-trust model based on solicitor's accreditation. As a general point, APIL believes that accreditation has a significant role in ensuring that people can choose a legal professional that they know has the necessary expertise and skills to handle their case properly. We believe this proposal can significantly streamline the process and reduce the administrative burden and delays for all parties involved. Regular reviews should be carried out to ensure that the accreditation conditions are being met and that the work carried out is of sufficient quality. We would also suggest that there could be a minimum requirement that in order to be able to provide services in a specialist area of personal injury or clinical negligence, the legal professional must undertake a minimum of one training course on that particular area per year to ensure that their knowledge and expertise remain current and reflect legal and practical developments.

Data sharing and passporting

We agree with the suggested changes to the processes including data sharing capabilities between the Scottish Legal Aid Board and other public bodies to help streamline the application process and passporting of benefits.

Broadening funding and delivery models

APIL recognises that the new Bill should aim to address gaps in provision and provide greater certainty of access. However, we caution against provisions that would restrict the availability of private solicitors and claimants' choice of their representative.

We have concerns with the suggestion regarding commissioning services. We believe that case-by-case funding is the fairest model as it links funding to individual clients and cases. Grants or commissioning services may create risks that funding is exhausted before the end of the year, leaving later meritorious cases without support. We suggest that if this approach is taken forward, the Legal Aid Board should carry out stringent checks to ensure that service standards remain high.

Broadening access to legal aid beyond individuals

We believe that legal aid funding should remain focused on individual applicants. Shared funding for those with a common interest may be problematic. Just because a group of people have a common interest, that does not mean that they will all be of the same view as to what action needs to be taken, and if there is a common funding arrangement, those representing the families would find it difficult to co-ordinate all of the different views.

For example, in the inquiry relating to the Glasgow bin lorry, as the inquiry progressed, families were moving in different directions. Some families wanted a private prosecution,

while others did not want to follow that approach. If there is one grant of legal aid for a composite group of families, those representing the families will be put in an untenable position, as each family wants to do different things. APIL agrees, however, that it would be beneficial for all family members in one family to have access to common funding.

If the provision of legal aid is extended to groups, charities, and other organisations, we believe care must be taken to ensure a demonstrated access-to-justice need and safeguards against diverting resources from individuals. Another key requirement would be to ensure that legal advice is provided by legal professionals experienced in the relevant areas of practice. Lay advisers should not be able to access funding through legal aid to provide advice. This would mean that resources that could be used to fund support by legally qualified individuals will instead be diverted to lay advisers.

Lay advisers are unlikely to be insured for the advice they give and may not have sufficient knowledge to ensure that the pursuer is fully compensated in their claim. There have been instances in the past where lay persons have failed to provide comprehensive advice and it resulted in a claim against the organisation.¹ The limited resources available should be directed to ensuring that those in need are able to access publicly funded legal advice from legal professionals.

We do support, however, the role of charities and lay advisers acting in a signposting role and would welcome further resources to ensure that more people are put in touch with a solicitor. We would welcome SLAB directly employing lay advisers for tasks such as assisting with information and advice provision to aid early resolution, signposting people to information and referring them to services to meet their needs.

A good example of this in practice is that the Citizens Advice Bureau / Patient Advice and Support Service play an important role in assisting patients through the NHS Internal Complaints procedure and with the Scottish Public Services Ombudsman. This works well as these Patient Advice Support workers tend to recognise the need for patients then to obtain specialist advice from specialist lawyers. The limited resources available should be directed to ensuring that those in need are able to access publicly funded legal advice from legal professionals.

Planning, Reporting and Accountability

We agree with the responsibilities proposed for Scottish Ministers, the Scottish Parliament, and the Scottish Legal Aid Board. There should be effective powers to act where the Board is unable to deliver the statutory objectives of the system, including the ability to require improvement, commission independent reviews and revise governance arrangements. These reviews would be important to improve learning, accountability and transparency.

Other comments

Financial eligibility in cases involving children

We believe that financial eligibility requirements should be reviewed in children's cases. Currently, the assets of the parents are taken into account to decide whether the child

¹ *1D v Victim Support Scotland* [2017] SC EDIN 85

should be granted legal aid.² We strongly recommend that only the child's resources should be considered in any decision as to whether grant legal aid. This was the position in Scotland before the Advice and Assistance (Amendment) Regulations 2010 were implemented. At the very least, only the child's resources should be taken into account in cases involving brain damaged children. These children invariably have special needs and any resources which the parents have are used to purchase the necessary expensive aids, equipment, and therapy that the state either does not or cannot provide for the child.

There is a provision within the regulations that disapplies the rule if its application in the particular circumstances would not be unjust or inequitable. However, members report that it is extremely difficult to prove that taking the parents' financial circumstances into account would be unjust and inequitable. Members report that where both parents are caring for a seriously disabled child but have the resources of just over the eligibility limit for legal advice and assistance or legal aid, the rule has not been disapplied despite having larger than usual expenditure due to the child's needs. Even in cases where there has been domestic violence, and the mother is now raising the child alone, the father's income has been considered and used to deny the child access to legal aid. The prospect of the father being contacted about legal action is likely to be extremely distressing and traumatic for the mother, but this has not previously been enough to disapply the provision. The situation is highly unfair, and the law must be amended so that only the child's resources are taken into account.

Any queries in relation to this response should be directed, in the first instance, to Ana Ramos at ana.ramos@apil.org.uk

² The Advice and Assistance (Amendment) Regulations 2010 provides that if the person concerned is a child, the resources of any person who owes an obligation of aliment to the child under section 1(1)(c) or (d) of the Family Law (Scotland) Act 1985(3) are to be treated as part of the child's own resources.