

Independent Strategic Review of Legal Aid

I am very pleased to respond to the call for evidence from the Independent Strategic Review of Legal Aid.

This response is comparatively brief as the main way Law Centres have decided to respond to the Review is collectively. Angus McIntosh of Castlemilk Law Centre will, accordingly, be forwarding a more lengthy submission.

However, as Law Centres in general, and Legal Services Agency in particular, consider the Review to be of the greatest importance, I am responding to you to particularly reflect Legal Services Agency's experience and concerns.

About Legal Services Agency

It is probably worthwhile summarising what we do and how Legal Aid is important to us.

Legal Services Agency has offices in Greenock and Edinburgh, with our main office in Glasgow city centre: Fleming House, 134 Renfrew Street. We have been operating since 1989. We tackle the unmet legal needs of those in disadvantage. This is particularly as regards homelessness (including rough sleeping), defended eviction, trafficking and mental health issues (including dementia). We act for several thousand clients a year.

The philosophy behind the organisation has always been to have multiple sources of funding in general and not to be anything more than half dependent on grants. We are a community business and "trade".

This is in order to maintain our political independence as well as to be open to the needs of clients as they may immediately develop rather than the much slower way that the grant application, consideration and award process operates.

Of course, grants, particularly from Glasgow and Edinburgh City Councils and the Scottish Government, but also Midlothian Council and Inverclyde Council are **crucial** to us. We, however, believe that our ability to respond to the needs of clients has been immeasurably improved by our very heavy commitment to advising and representing clients through the Legal Aid system.

As a consequence, broadly speaking, we have never been subject to the main problems that afflict grant dependent organisations: for instance, the way that when a grant comes to an end or is reduced, a service disappears, along with the jobs providing it.

Legal Aid has been crucial to our vision. Whilst oftentimes providing a service based on Legal Aid has been very difficult, the net result has been more secure services and more secure employment.

We are proud that, in a number of key areas (particularly preventing homelessness and our services for people with mental health difficulties or dementia), we have kept on being a major supplier through thick and thin and that in an innovative way.

Indeed, our Legal Aid and related earnings are now more than our grant income.

This consistency of income has meant that we can claim to be amongst the most innovative organisations. We have maintained an ability not only to develop new legal remedies but also provide services in significant volume.

This fits in with our vision that nobody should be left out (please see the attached Vision Statement for further information).

We consider that our services should be scalable so that access to high quality and effective legal advice, assistance and representation should not depend on where a client happens to be in the queue for services.

Having this “trading” component has not been easy.

Nonetheless, both personally and on behalf of Legal Services Agency, I would like to make it clear that we recognise the great support that the Scottish Legal Aid Board and its staff have provided to us over many years and hope they will continue to do so in the future.

In short, our **mixed model** works but there certainly are issues which we would like addressed and, broadly speaking, the rest of this letter deals with those.

Financial Sustainability

As indicated above, for many years, Legal Services Agency has been half dependent on Legal Aid and Legal Aid related payments. It is fair to say that, in many respects, the process has become more difficult over the years.

In part this is because the increase of need has resulted in us having to specialise in the most acute areas of need, thus ceasing to undertake work in some areas which, in some respects surprisingly, are better paid.

Thus, as the need to defend evictions, deal with homelessness and rough sleeping, for instance, has increased (sharply), the Legal Aid payments for these areas has remained static. Our income has not increased, even though we are much busier. Our litigators do not have enough time to undertake, for instance, claims for compensation, which are generally much better paid.

This has gone along with court reform (reducing recoverable expenses on success), as well as our greater specialisation in areas of need. Overall, this has meant that we have had to run harder to stay still financially from a Legal Aid earnings point of view.

It is striking the extent to which the Legal Aid system has sometimes not responded to the changing demands and needs in Scottish society and tends to financially remunerate best the most traditional areas of work. I am not suggesting that traditional areas of work do not need advice, assistance and representation: they do. However, newer areas also need Legal Aid but the system does not reflect the importance of these areas.

Broadly speaking, the level of remuneration reflects the forum in which the dispute happens to be located rather than the importance, difficulty or level of legal complexity. Ordinary

actions for compensation are paid vastly better than, for instance, a tribunal dealing with a Criminal Injuries Compensation case involving very much larger amounts of money.

As you will know, Law Centres in general, and Legal Services Agency in particular, concentrate largely but not exclusively on disputes with various bits of the State/Government. Thus mental health law, homelessness, asylum and immigration are heavily dependent on the advice and assistance system rather than full Legal Aid. As a consequence, they are not so well paid.

In summary, unless the approach to advice and assistance is very much “pile them high and sell them cheap”, the rates of remuneration in terms of advice and assistance system are, broadly speaking, not viable. We could not operate without grants.

Our mixed model requires constant rebalancing.

There may be political objection to an across the board increase in advice and assistance rates of pay.

This can, of course, be disputed.

However, another approach might be to incentivise high grade areas of high priority work.

This could be done by introducing a system for increased hourly rates in certain situations (say, a client with high multiple needs and a complex case legally) or simply provide that certain areas of work have a higher rate of pay than others.

There are, of course, alternative and more complex options such as some form of contract or preferred supplier arrangement.

Whatever is done, there needs to be a change to the current position as, otherwise, not only will our financial model become more and more difficult but it will become more difficult to attract any lawyers at all to work in the system.

One thing that we would not support (at all), however, would be any form of competitive tendering.

Financial Verification

Not only has the relative rate of pay for advice and assistance declined over the years, so too has the burden on solicitors of financial and related verification increased.

Of course, there are reasons for this, many of them understandable.

Fraud by solicitors or clients has to be avoided and a punctilious approach to the expenditure of public money enhanced.

However, the consequence of the current arrangements has been to sharply increase bureaucratic impediments to access to Legal Aid at the same time as increasing the amount of time solicitors and admin staff have to take on administration as opposed to their actual legal work.

Thought needs to be given to some sort of passporting system.

In addition, in some fundamental areas of work, particularly where debt is concerned, thought should be given to entirely removing the requirement for a Legal Aid contribution (so removing the need for financial verification).

So, if somebody is being threatened with eviction for rent arrears or mortgage arrears, surely it fits in with public policy that they should be encouraged to obtain advice, assistance and representation by there being no financial contribution? This would encourage people to obtain help, as well as make the task of providing it so much easier.

Another related issue is clawback in mortgage arrears cases.

In these cases, not only is a hefty contribution towards Legal Aid required but also, on success, the approach taken is to see the house as an asset that has been preserved and, accordingly, the client is expected to pay the cost of Legal Aid, notwithstanding that the whole point of the exercise was to assist them with their financial difficulties in general.

The Capacity of the System to Innovate

It will be plain from the above comments that our experience is that the Civil Legal Aid system on its own does not provide the financial basis for running and maintaining a successful organisation, whether charitable or otherwise.

The rates of pay are too low and there are horrendous cashflow difficulties.

The amount of time spent on non-feeable work is high, whilst the pressures on staff who wish to provide high quality work, as well as be financially sustainable, is high.

Nonetheless, the system can and does provide for innovation, when combined with other sources of funding.

Unlike some grants, Legal Aid endures over many years: required where lengthy or complex litigation is required.

The system meets the cost of experts (a very important area for our practice) and for the employment of Counsel in complex cases.

The system for providing for Legal Aid for Judicial Review operates reasonably well and LSA is proud of the large numbers of cases that we have and continue to take through the higher courts.

Yet it has to be emphasised that, without grants and the cashflow provided by them, this could not possibly be achieved.

Not only that, but, of course, the Legal Aid system does not directly incentivise innovation. On the contrary, any legal or factual research has to be undertaken almost entirely as voluntary work: unless a grant is available for it.

In terms of delivery models, if an holistic Civil Legal Aid service is to be provided through a high quality and in an innovative fashion, there needs to be a mixed model of provision with core grants being given. Only in this way, unless there is a sharp increase in the rates of remuneration, can a practice, whether charitable or otherwise, operate consistently within the Legal Aid system without being drawn to better paid areas of work.

General Comments

The Legal Aid system sustains the legal profession.

Many of the values of Legal Services Agency are very similar to those traditions.

A client's best interests must be asserted irrespective of what policy makers or, indeed, the public think.

The most excluded need to have somebody to guide them through the system.

People for whom society turns a blind eye (particularly people with serious mental health problems or rough sleepers, for example) need access to tough, well resourced advisors capable of assertive representation on their side.

It should never be, and can never be, assumed that reasonable people will always agree and disputes through the courts about key matters need to be preserved.

A career in Civil Legal Aid in general and Law Centre work in particular must be possibilities.

We cannot afford to permit the current situation to continue in which Legal Aid work is sometimes seen as being a poor relation that will be pushed aside when the lawyer concerned gets experienced enough to undertake private work.

Legal Services Agency absolutely support the objective of the Review to maintain access to public funding for legal advice and representation.

Can we thank you for the opportunity to make these brief initial comments.