

# Scottish Government Response to the Independent Review of Legal Aid in Scotland

November 2018

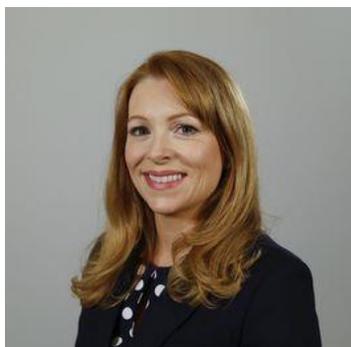


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## Ministerial Foreword



In February 2017 the former Minister for Community Safety and Legal Affairs, Annabelle Ewing, invited Martyn Evans, CEO of the Carnegie Trust, to chair an Independent Strategic Review of Legal Aid in Scotland. Over the following year Martyn Evans, supported by a review group made up of legal and consumer professionals and academics, engaged with a wide-range of stakeholders, including members of the legal profession, representative bodies, the third sector and the public before producing his report and recommendations to Scottish Ministers. The Chair's report, "[Rethinking Legal Aid](#)", sets out a long term vision of a citizen-focused legal aid and advice service in Scotland for all forms of publicly funded legal assistance. That vision is underpinned by a mission to create and sustain public trust and provider confidence in the legal aid system. The report identifies six strategic aims, and consequently 67 recommendations on how that vision could be achieved and how shorter term improvements might be made.

In making these recommendations, the report was clear that the Scottish legal aid system compares very well internationally, and that these recommendations could move it towards being one of the best in the world.

This report was one of the first things I considered when I took up post as Minister for Community Safety, and I found it a very positive report; its vision and support for the legal aid system in Scotland is clear, as is the frustration at the lack of public awareness and appreciation of the current system. I have since met with a number of stakeholders with a keen interest in the report and recommendations, some with firm views about what should, and should not, be taken forward.

The vision sets out a 10-year reform strategy, but it will not take 10 years for change to happen. Some of the recommendations can be taken forward in the shorter term, and that is already happening. Some require a new statutory framework to replace the existing outdated Legal Aid (Scotland) Act 1986.

Legal aid is often a contentious issue, with wide range of interests and perceptions on how it should operate, and for whom. That is evident in the report and from the many views that have been expressed since publication.

I am clear that the wide scope of actions for which legal aid is available should continue. I support the development of a new legal aid system in Scotland that is user-focused and has the flexibility to adapt according to emerging situations and developments.

While I recognise the intention, I am not persuaded that we need a new public body to replace the Scottish Legal Aid Board to deliver reforms to the legal aid system in Scotland. Effort and resource will be directed towards the design and delivery of a new system of legal aid, rather than a new public body.

I know that many in the legal profession were disappointed in the report's view that there was no clear evidence to support an immediate general increase in fees for legal aid work. It will be vital for key stakeholders to work together to agree an evidence based process for setting fees for legal aid and what kinds of evidence that could be used. I consider that this is likely to be a longer term project and one which will run in parallel to the package of future reforms of the legal aid system. This Government values the professionals who undertake legal aid work, often for the most vulnerable in our society, and with this in mind I will implement a 3% increase in all legal aid fees with effect from April 2019. This responds to the challenges that have been described to me by the legal profession and their representatives.

Additional short term improvements to the fee payment system including simplification and further block fees will be consulted on in the new year.

Further shorter term improvements that will simplify the legal aid system, and can be implemented without a need for primary legislation, will be proposed. We will work closely with the legal profession in delivering these further improvements and hope that constructive joint working can lead to a better system for all involved.

In the longer term, the report provides us with an opportunity to develop a new statutory framework for a modern, forward-looking and person-centred legal aid service for Scotland. I will issue a public consultation next year that will inform the design of that new system with a view, subject to the responses, to introducing a legal aid bill to Parliament to make necessary changes to primary legislation.

I would like to record my thanks to Martyn Evans for his report. His achievement was aided by a strong review group which both informed and challenged him, the many stakeholders who met with and wrote to the review, and by Professor Alan Paterson OBE who provided advice on the international legal aid landscape.

This report provides the Scottish Government's response to the recommendations made in *Rethinking Legal Aid* and confirms our commitment to a modern and effective system of publicly funded legal assistance.

A handwritten signature in black ink, appearing to read 'Ash Denham', written in a cursive style.

**Ash Denham**  
**Minister for Community Safety**

## Introduction

Since the publication of : *Rethinking Legal Aid: An Independent Strategic Review* in February this year, the Scottish Government has given careful consideration to the contents of the report. It was vital to have a sense of the wider reaction to the report and conduct informal engagement with key stakeholders to discuss its findings and recommendations. This initial engagement helped to identify not only those aspects of the report stakeholders were most interested in, but also determine what changes could be implemented to help improve the existing system, in the short term, without the need for legislation. That time with stakeholders has been very helpful.

In this response, we will provide some preliminary analysis on what has been recommended with reference to each of the six strategic aims outlined in the report:

- 1 Place the user voice and interest at the centre;
- 2 Maintain the scope but simplify;
- 3 Support and develop an effective delivery model;
- 4 Create fair and sustainable payments and fees;
- 5 Invest in service improvement and technological innovation; and
- 6 Establishing effective oversight.

We will also set out the work either already underway or planned which will provide early improvements to the legal aid system in Scotland.

The Scottish Government has no concluded view on how best to deliver the longer term aims and will issue a public consultation that will inform future reforms. However this response signals the Scottish Government's willingness to take forward supported recommendations that will deliver an enhanced system of legal aid across Scotland and the ambition that publicly funded legal assistance continues to be recognised as an invaluable public service. The role that local authorities and others have in the funding and delivery of advice services is recognised, and while a fully integrated design of advice and legal services could deliver benefits, further aspirations for better integration of advice services will take longer to develop and deliver. In the meantime we are taking steps to introduce changes that will improve the current legal aid system, such as the establishment of a payment review panel, and the simplification of administrative processes.

## Context for Change

Around 2% of the population of Scotland makes use of legal aid provision annually. This leads to a perception that it is not truly a public service, like health care or education for instance. The majority of us will not have occasion to access the legal aid fund but there will be some who will find themselves in need of advice whether civil or criminal and it is vital that our citizens are aware of their rights to advice and representation and obtain support appropriate to the method of dispute resolution that best addresses their needs. Legal aid, as a public service, should ensure that those who find themselves with justiciable problems can access appropriate advice services and representation if and when required. The availability of publicly funded assistance to uphold the Rule of Law and individual rights benefits all of society, not just those who directly access that assistance.

The current legal aid system is not always held in high esteem. It is often not widely appreciated that legal aid supports crucial services delivered by private solicitors, law centres, public sector lawyers, local authorities and third sector advice services, who carry out work with a high but largely unseen social value; work that keeps people in their homes, in contact with their families and protects rights in the criminal justice system and employee rights, to name but a few. In doing so, legal aid supports an individual's wellbeing, promotes their continued contribution to society, and helps to prevent an escalation of problems and potential entry into other parts of the justice system. Those who provide legal assistance are carrying out important work, often supporting the most vulnerable members of society, and this should be recognised in the way we design and deliver services.

Some may query why radical change is required when the report held the current system in such high regard. Put simply, much about the current system is good, but we can make it better. The current statutory framework supporting the provision of legal assistance is found in the Legal Aid (Scotland) Act 1986, which established the Scottish Legal Aid Fund and the Scottish Legal Aid Board, and the many regulations made under this Act. This framework has undergone myriad amendments and additions to reflect changes in domestic and ECHR law and court practice. Consequently, substantial subordinate legislation exists, which frequently requires to be updated or amended, often by the affirmative parliamentary procedure; the discretionary Ministerial determination power may be used to direct that other payments be met from the Fund. This can cause delays for those needing help from a system that can appear overly complex and difficult to navigate. It is not always an effective use of the resources of the Scottish Government, Parliament and the Scottish Legal Aid

Board. Furthermore, it is often not an effective use of the resources of those providing legal assistance, as it can be difficult to keep abreast of changes to the rules and regulations has led to account abatements and disputes over interpretation.

Instead of continually adjusting what is currently in place we have an opportunity to look at what we want to achieve and the legislation and structures needed to be in place to get there. Making no change may retain a good system by international standards, however it is still vulnerable to the impact of societal changes or court rulings and unable to quickly respond to emerging needs of individuals. To ensure legal aid is a valued public service, more user-centred legislation which is flexible and better able to react to changes in the justice system should be put in place.

The ultimate outcome is for a service that provides assistance to the people of Scotland to resolve their justiciable problems. This requires improved powers to design the providers framework and support providers. It will increase the general public's knowledge of their rights and responsibilities and that will empower them to resolve issues through the most appropriate route. A service provided by better integrated delivery of publicly funded legal assistance services should mean that areas of difficulty in accessing advice can be more readily identified and targeted. Being able to identify and triage in this way, with more flexible legislation, will allow the Scottish Legal Aid Board to take more proactive steps to address advice needs. This will lessen the burden currently felt by legal service providers and the courts. It will also have benefits in other social policy areas such as health, housing, and criminal justice.

Importantly, this aspiration aligns with the Scottish Government National Performance Framework outcomes:

- *We live in communities that are inclusive, empowered, resilient and safe*
- *We respect, protect and fulfil human rights and live free from discrimination*
- *We are a society which treats all our people with kindness, dignity and compassion, respects the rule of law, and acts in an open and transparent way*
- *We tackle poverty by sharing opportunities, wealth and power more equally*
- *We have thriving and innovative businesses, with quality jobs and fair work for everyone*

They also align with the outcomes set out in the [Justice for Scotland: Vision and Priorities](#) document (2017):

- *We live in safe, cohesive and resilient communities*
- *Prevention and early intervention improve wellbeing and life chances*
- *Our system and interventions are proportionate, fair and effective*
- *We deliver person-centred, modern and affordable public services*

## **Strategic Aim 1: Place the voice and interest of the user at the centre**

Recommendations in this category focus on placing the user at the centre of the legal aid service and building around those needs and upon the vision narrated in the report of a public service delivery model, with government, public and private sector and voluntary services collaborating in the interests of the individual and wider communities. This sits alongside the position in the report that legal aid should be reframed as a public service. The reform of Scotland's public services places the user at the very centre of service design and delivery, and evaluating success regards the views of the user as an essential indicator, either that the system is working well or that some design or delivery systems require adjustment.

People seeking assistance come from a variety of backgrounds and require help with a wide range of justiciable problems. We must recognise there will not just be a single voice to be captured and that there may be difficulty in engagement with some users of publicly funded legal assistance. The report rightly stated that putting the user at the heart of any system cannot be a one-off intervention, therefore a multifaceted and continuous approach will be needed.

The report considers that solicitors delivering legal advice and assistance are also users of the system, and recommended the establishment of a solicitor reference group and its involvement in court business planning, as well as representation of legal aid practitioners at local Criminal Justice Board level. This would help ensure that, as key stakeholders in the court system, these voices are heard and respected within that system. This is a matter for the Scottish Courts and Tribunal Service to consider and we will work with them on how to address this recommendation.

Using the existing quality assurance schemes for solicitors providing legally aided services, could help to embed consumer considerations. The Scottish Legal Aid Board is exploring the function of the existing quality assurance schemes for solicitors, how these work now and how improvements can be made, and it is intended that this work be taken forward with the involvement of the Law Society of Scotland. This work will provide a better understanding of how to capture consumer considerations in both the existing and any reformed schemes.

The report also recognises the important place of local authorities and third sector organisations which provide advice and support to individuals and represent their interests. The report recommends that the role of other funders be fully articulated in any new model of legal aid, and that the connection between third sector providers, local authorities, solicitors and alternative dispute resolution be strengthened, where appropriate. The report recommends that the membership of the Justice Board should be adjusted to accommodate third sector and local authorities. This is a matter for partners on the Justice Board and their views on this recommendation will be sought.

The full achievement of this aim is not possible without primary legislation, and the recommendations underpinning the aim recognise that. However, there may be elements of improvement that can be made within the current statutory and operational framework and this is currently being explored by Scottish Government and the Scottish Legal Aid Board.

This is an issue on which we will seek views by way of a public consultation. We will seek views on the most effective way to secure that the voice and experience of the user is captured in design and delivery of publicly funded legal assistance. In the meantime, we will work with the Scottish Courts and Tribunals Service and Scottish Legal Aid Board on early improvement that can be made to better involve users of the legal aid and justice systems; we will liaise with the Justice Board on their engagement with third sector and local authority providers.

## **Strategic Aim 2: Maintain scope but simplify**

The report considered the wide range of justiciable problems which fall within the scope of legal aid in Scotland. Against that context it also discussed the financial implications, particularly when high cost cases were supported. It noted that improved case management might lead to faster conclusion of long-running cases, and suggested that better use of other forms of resolution could be engaged, where appropriate. However, it was the complexity of the case-by-case funding of the system that was most striking to the Chair, and he considered this to be the most pressing aspect requiring change. Simplification of that system, in terms of eligibility criteria, contributions, clawback and the rules and regulations surrounding it, was vital.

The Scottish Government welcomes the recommendation that the current scope of legal aid be maintained. In taking forward reforms to the legal aid system we will seek to both maintain the current scope and improve access to legal services that it supports.

Simplicity is the central feature of this aim, and one which will be central to the design of a new legal aid service in future. However, there is scope for improvement within the current system. Since the publication of the review, the Scottish Legal Aid Board has been undertaking significant work to help bring about improvements within the current system. There is a major and ongoing project to make its online handbooks and associated guidance more user friendly, including a pilot of an approach to clarify the Scottish Legal Aid Board's decision-making processes to aid the submission of relevant information by solicitors and applicants. A research project into civil contributions is also underway and the findings should be available at the end of the year. These work streams will help to address some of the issues raised in the report under this strategic aim, without legislative change.

In moving forward, there is a careful balance to be struck between simplicity, flexibility and fairness. While the tests around eligibility and the system of contributions may be considered burdensome, it must be kept in mind that the current system is underpinned by a desire to enable legal aid funding to be secured by those who would be unable to access legal services on a private fee paying basis. Complexity has been driven by fairness. Any adjustment to the current regimes of financial eligibility needs to be explored with this in mind. We do recognise that the administrative burden on both the profession and the Scottish Legal Aid Board is an area where more immediate improvements can be made. Prior to the summer recess, the Scottish Legal Aid Board and the Law Society of Scotland

began working jointly to identify how best to tackle inconsistencies within the legal aid types, to streamline the application process to reduce the administrative burden and to consider the viability of a single legal aid type. This work with the Law Society of Scotland will form the basis of future advice from the Scottish Legal Aid Board to the Scottish Government on how a legal aid structure that balances simplicity, fairness and flexibility might be taken forward.

We have also identified options with regards to case related outlays, given recommendation 19 suggested that a preferred national and/or local supplier list be developed. There are a number of ways to help achieve greater surety and control over outlays; empowering the Scottish Legal Aid Board to fix a preferred supplier list and to set rates for commonly used experts is just one way to achieve more control. Notwithstanding, issues around cashflow associated with these costs are appreciated. In the interim, current judicare arrangements could be altered either to allow for direct payment of outlays by the Scottish Legal Aid Board, or to enable quicker reimbursement, although risks around clawback (for example) would need to be controlled in each scenario. The Scottish Legal Aid Board will explore this further with the legal profession and provide advice to Scottish Government on options for progress.

Work has begun on achieving progress on many of these recommendations within the current statutory framework; case management, other forms of resolution and funding, simplification. The public consultation will also inform how the recommendations might be delivered within a future reformed legal aid service.

We are mindful that some of proposals regarding case management under this aim are already under consideration as part of other initiatives. The recent Scottish Government review of Part 1 of the Children (Scotland) Act 1995 and the Scottish Civil Justice Council's consultation on the Case Management of Family and Civil Partnership Actions in the Sheriff Court may also help inform how contact cases could be better dealt with. The availability of legal aid in group or multi-party actions was explored during the passage of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 and this will be developed further as work on court rules develop.

### **Strategic Aim 3: Support and develop an effective delivery model**

The report reflected on the landscape for publicly-funded legal assistance and found it both complex and diverse. The result was a system in which various providers did not always consider themselves to be part of a whole system. The funding arrangements are varied; with a combination of private providers, employed solicitors, public and third sector organisations receiving public funds from the legal aid fund, central government and local government. This mixed model of provision has developed organically and now is the time to consider what further benefits could be achieved by planning delivery of services and greater cooperation between services.

The report recommended greater alignment of the providers, both from the perspective of the user and that of the provider. This greater alignment sat alongside simplicity and would enable the user and the provider to be clear about what services were available within a legal aid service, where these could be accessed and who would deliver these services, including agreed signposting and referral routes between services. Overall, the current system lacks any process for designing supply around demand. Delivery is organic and dependent on those willing to deliver services, or grant funding being available to support providers. There is little or no capacity to design around community need and user demand and this strategic aim looks to address that deficiency.

This aim builds on placing users of publicly funded legal assistance at the centre of the service, with a delivery model provided by a diverse range of private, public and third sector organisations, that work more closely together and will be supported by effective strategic planning. There is real value for both users and providers in achieving this aim; users can access appropriate interventions at the right time, and providers can better target their expertise to those who require it.

We recognise that currently there is a heavy reliance on private solicitors to provide legal advice within the judicare system. The ability to access this advice is therefore predicated on the willingness and ability of those private providers to offer such legal assistance. In areas such as housing there are few firms, outside of law centres, undertaking this work. During the review, and since, charities such as Shelter, with solicitors embedded in their hubs, have reported they also support these issues. They also support the continuation of a mixed funding model, as recommended by the report. We value the ongoing provision of advice and representation services by publicly funded private solicitors, and this will continue to be

important in an improved service. However, the public should be able to access appropriate advice, at the right time, and the report reflects that a more strategic and integrated delivery model is required to improve access to appropriate legal services.

The report recognises the support provided, with funding from the legal aid fund, by the Early Resolution and Advice Programme, which provides direct assistance and representation for people facing a civil court action and information, advice and sign-posting for people with small claims and other civil court matters. This work often leads to alternative methods of resolution and earlier resolution, reducing anxiety in clients and reducing the burden on courts. It is a programme that the Scottish Government has funded for 6 years and we will be interested in taking views on its future role within a reformed legal aid service.

Related to this recommendation was a concern regarding the lack of advice and legal services in rural communities and how those could be improved. The report made recommendations regarding a new payment model which takes into account geographical difficulties and ensuring access to services akin to those covered in the recent GP contracts. There is an absence of powers within the current statutory framework to:

- direct and target legal services at legal and geographical areas of need, taking into account local provision
- actively design a legal aid service which meets the needs of communities and individuals, that would allow for the construction of the right mixed model of delivery agents, and
- facilitate a more flexible payment regime

The current legislation helps to underpin the fragmentation outlined in the report.

The report reflected on the benefits to the users and to the public of a more holistic service, and noted the work of local defence solicitors whom the Chair met during his commissioning of evidence. For example, he admired their dedication to their clients and desire to help them at their lowest. The Law Society of Scotland also spoke of the unsung pastoral work carried out by its members for their clients. There is much to commend to this vision, and indeed many solicitors in the third sector and the private sector will already operate informal referral and working relationships. We also recognise the role that local authorities and others have in the design and funding of local advice and other support services, and that local authorities have experience of funding services to operate in referral partnerships. It is not

intended to impinge on the work done by other funders, but to develop a way which encourages working between services to obtain the best outcome for people.

Outside the criminal justice system there are many areas where people find themselves involved in the court process unnecessarily. Divorce proceedings, contact, and other family issues for example could be resolved through mediation, arbitration or even a very simple form filling exercise. Not all legal issues require legal representation and often involvement of the courts prolongs the process and creates animosity where little previously existed. The report suggests that a mixed model that supports and funds partnerships across the advice and public service landscape could have a significant impact on lives. Again, this is an issue that could feature in a reformed legal aid service and will be subject to public consultation. Meantime, Scottish Government will explore the potential for shorter term improvements.

Taking all of these points together, the report recommends that a future legal aid service should be reactive as well as proactive in delivering publicly funded legal assistance. The service will serve the needs of many; individuals seeking rights recourse, victims, accused, children and communities. The provider landscape is just as diverse, both at a local and national level. The recommendations are framed to propose that all of those with an interest in the service, directly and indirectly, should have the opportunity to design the service and comment on its performance.

While early work has been undertaken to analyse the potential scale of these recommendations, it is not possible to progress the ambition within the current statutory framework, therefore it will be consulted on to inform the development of a new legal aid service.

## **Strategic Aim 4: Create fair and sustainable payments and fees**

The report recognised that fees for solicitors providing legal aid was a contentious issue and that the tension created by debate on the level of fees contributed to some of the negative reporting on legal aid which in turn impacted on public support. There was an impact on levels of morale within the solicitor profession who undertake legally aided work and the report makes recommendations on addressing these morale issues. The report concluded that there was insufficient evidence to support a recommendation for an overall uplift in fees, but that an independent, evidence-based process should be established with the aim of creating fair and sustainable fees. There were also recommendations on the payment framework in the form of memorandums of agreement to cover levels of service and engagement in wider planning and for variable fee models to improve access to legal services in some areas of law and geographic areas.

The Scottish Government is determined that future payment frameworks must be fair to both the taxpayer and the provider; and that they are transparent, flexible, supportive of innovation and increased efficiencies, and include some accountability for service delivery. Payment frameworks should ensure that a valued public service be delivered sustainably. Equally we acknowledge the financial challenges being faced by the legal profession in face of falling volumes of business, changes in court processes and levels of fees.

We agree that an evidence based model for agreeing levels of fees should be developed, and are committed to working with the profession to achieve that aim. We also agree that the broader framework within which fees sit should be reviewed, and that this should be done with the legal profession. However, we also recognise that this will be a challenging and potentially time consuming recommendation to deliver in an impactful way; while the report makes suggestions on how this might be achieved, we consider it would be more beneficial to agree the methodology for such a model in dialogue with the legal profession. This will take some time and we intend to establish a working group to agree that model. The group will consider options for data and evidence collection and how these will be used. That work will inform the gathering of the agreed data and evidence to determine a fair and sustainable fee regime, which again will be subject to agreement by the legal profession. We will work with the profession to agree the membership and remit of a group early in 2019 and ensure the progress is being communicated to those with an interest.

Given that an evidence based approach is unlikely to lead to a short term solution on fees and in recognition of our commitment to ensuring access to justice, the Scottish Government intends to implement a 3% uplift to all legal aid fees with effect from April 2019. We value the professionals who deliver legal aid and trust this increase will encourage collaborative and constructive partnership working on a long term proposal around fee reform and shorter term improvements to the fee structure.

In the new year we will be taking forward consultation around fee reform with both the Faculty of Advocates and the negotiating team from the Law Society of Scotland. We have identified areas where simplification of fees can be undertaken in the short term which could deliver the following benefits:

- Facilitating the early resolution of cases
- Reducing the need for costly preparation of accounts and the need to review and re-negotiate solicitor accounts
- Providing faster and more certain payment to solicitors
- Reducing administrative costs to the profession
- Minimising the risk of payment for unnecessary or excessive items of work

In addition to consulting on simplification to the criminal fee system we will work with civil practitioners to identify areas for improvement.

The report considered payment for services outwith the case-by-case solicitor fee arrangements, by way of grant funding, and made a recommendation that the existing funding cycle be moved from a single year budget to a three yearly cycle. The rationale for so doing was echoed recently by Community Justice Scotland's pre-budget evidence to the Justice Committee; the Scottish Government hopes that the next UK Spending Review in 2019 will offer sufficient multi-year budget information to provide the Scottish Government with the opportunity to develop a multi-year approach to the development of its budgets.

## **Strategic Aim 5: Invest in service improvement, innovation and technology**

The report found that significant change management support would be required to deliver innovative service improvement using technology. It suggested that savings in legal aid expenditure should be invested in technology that would benefit service delivery and client access.

As justice system reforms progress, technology is likely to be a central element, and court business will rely on it in the future. Clients are more likely to use technology for transactional purposes and, of course, it presents opportunities to improve access to legal services. Providers will have to adapt to meet the changing needs of their clients. We want businesses to survive and thrive, but there is a responsibility on the providers to ensure this happens too.

The Scottish Government considers that investment in online services is important in supporting access to justice. As we approach the third decade of the 21<sup>st</sup> Century online services and information are, for many, the first step in obtaining assistance. It is clear from the Review that, for civil justiciable problems, on-line information may be lacking or difficult to find. We have begun the process to significantly develop Scottish Government online advice services such as mygov.scot to provide citizens with a one-stop shop for advice and information and signpost them to direct assistance if required. This will include pro formas which will empower members of the public to resolve issues on their own and links to third sector advice services and law centres. Our strategic vision includes that we have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others. We will continue to work with third sector partners and support them to improve their online presence and capabilities. Views will be sought on how we achieve this. In particular we will discuss with Citizens Advice Scotland its views on the recommendation which directly impact on it.

The Scottish Government is responding to an increasing shift in Scottish society towards reliance on online information and self-help in every day transactions by developing and growing the mygov.scot website. With its growth comes the challenge of getting people to the right information and helping them to access the most appropriate services to meet their needs.

To assist with this the content team for mygov.scot are currently working with CivTech to develop a digital conversational search tool on relationship breakdown. Initial research involved user experience mapping with participants who had been through the experience of separating from a partner in different circumstances. It revealed a number of user research insights around the user experience.

To support the development of the technology, the Scottish Government recognises that user experience is a key criteria. CivTech have recently undertaken further user research interviews to see if a tool would potentially create a better user experience for users at crisis point or dealing with complex situations and will consider the outcome of the user research report before considering next steps.

We would want a new legal aid service to invest in, promote and reward innovation and efficiency. Funding is a challenge and diverting funds away from front line delivery is not always an easy, or popular, decision particularly when results are not always immediately felt.

However, technology can be used to improve efficiency and quality. As justice system reforms progress, technology is likely to be a central element, and court business will rely on it in future. Clients are more likely to use technology for transactional purposes and of course it presents opportunities to improve access to legal services.

The report suggests that innovation within publicly funded legal assistance should be supported financially and rewarded, and that projected reductions in the demand-led legal aid budget over the next decade should be reinvested in online systems and other innovative technology. The Scottish Government supports the aim to invest in innovation, although reductions in demand-led budgets cannot be guaranteed. We will continue to work with justice agencies and legal professionals to identify credible opportunities to invest in technology.

We envisage a new legal aid service being equipped to harness new technology and develop new approaches for the benefit of all who are involved. That would best be delivered by a legal framework that can adapt to technological advances, and is funded to enable that to happen. The independent review of the regulation of legal services report, *Fit for the Future* addresses some of the challenges in using technology within the legal sector and makes some interesting recommendations. Progress in delivering those recommendations, which will also be subject to public consultation, may help to inform development of a structure that could be adopted for the reformed legal aid service.

## **Strategic Aim 6: Establishing effective oversight**

The report reflects on the lack of flexibility within the current legislative structure, and how this inflexibility is hampering the performance of the system and those who support its delivery. This strategic aim recommends a new statutory framework for a new, reformed, legal aid service. It seeks a framework that allows for flexibility to adapt, and to refocus on the citizens rather than the providers of services.

The report also recommends the establishment of a new public delivery body which would be granted new powers under the new statutory framework and be tasked with greater responsibility to deliver a service that was more able to adapt to emerging needs of citizens and changes in the civic, legal and justice landscapes. It sets out a number of recommendations on how this new body – an “independent public interest body” would be responsible for the delivery of publicly funded legal assistance in a strategic and effective way and would facilitate greater flexibility for the delivery of publicly funded legal assistance policy.

The Scottish Government appreciates the thinking behind this recommendation but is not minded to abolish one public body and set up another. This would draw on resources and funding that would be best directed towards reforming the legal aid system into an integrated public service. The same end could be achieved by restructuring the legislative framework within which the Scottish Legal Aid Board currently operates, providing it with the flexibility, powers and responsibilities that will enable it to deliver a reformed legal aid service.

Any changes to these powers will depend on the eventual design of the new legal aid service, and again this will be subject to public consultation.

## **Next Steps**

As set out in this response, there are various actions which address some recommendations already underway. These will be progressed over the course of 2019 to achieve some of the recommendations that have been made. This will be taken forward in liaison with those who have an interest, and some of that work has already begun, such as the working group on single legal aid types.

Immediate priorities include the implementation of a 3% increase across all legal aid fees with effect from April 2019. We will consult the legal profession on early simplifications to criminal fees early in 2019 and continue to work with the Faculty of Advocates and Society of Solicitor Advocates on improvements to the structure of fees for counsel.

We will also publish the outcome of the consultation on Family Law for a Family Law Bill to be introduced during this parliamentary session.

During the course of 2019 we will publish a public consultation on future reforms that will deliver an improved, user-focused legal aid service for Scotland That will be used to develop primary legislation for introduction to the Scottish Parliament in this session.

In moving this work forward it will critical to have the constructive engagement of stakeholders and partners and Scottish Government is committed to working in partnership to deliver proposals for a reformed legal aid service in Scotland. The time given by stakeholders is very valuable and greatly appreciated and we look forward to continuing work over the coming year and beyond.



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