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**Human Rights Consortium Scotland**

Submission to Scottish Parliament Equalities, Human Rights and Civil Justice Committee regarding its inquiry into Civil Legal Aid

April 2025

**Introduction**

HRCS is committed to the progressive realisation and mainstreaming of human rights across all policy and legislative areas in Scotland. We believe the existing international and domestic human rights framework has a significant contribution to make to ensure the development of fair and equitable policies and legislation.

HRCS is a civil society network (230 Civil Society/NGO members and 190 individual members). HRCS is dedicated to promoting and protecting human rights and our mission is to bring together organisations and campaigners to influence law and policy, develop accessible and informative resources, ensure accountability, and push for the incorporation of international human rights standards into Scottish law and policy.

HRCS plays a vital role in amplifying marginalised voices and ensuring human rights are at the core of decision-making. Regression and erosion of human rights is a very real concern for many of our members and the many people who continue to be marginalised and excluded in Scotland.

The Human Rights Consortium Scotland ([www.hrcs.org.uk](http://www.hrcs.org.uk)) has prepared this document in response to the call for evidence by the Scottish Parliament Equalities, Human Rights and Civil Justice Committee for its inquiry into Civil Legal Aid.

The information in this document is based on ongoing discussions with a number of our members and other stakeholder organisations[[1]](#footnote-1), our previously published partnership briefing document[[2]](#footnote-2) and the numerous individual requests for help and assistance we receive from people across Scotland on a weekly basis who are unable to access justice due to the lack of availability of civil legal aid.

Civil Legal Aid reform sits at the heart of HRCS’s Access to Justice programme of work as it is one of the key criteria required to make sure that everyone, regardless of their financial situation, can secure legal help when faced with injustice. Whether it is a survivor of domestic abuse needing protection, a tenant at risk of eviction, or a worker challenging discrimination, civil legal aid is often the only route to holding wrongs to account and ensuring human rights are upheld.

Furthermore, numerous Human Rights as detailed in the European Convention on Human Rights[[3]](#footnote-3) (ECHR) are impacted on by the lack of access to civil legal. These include the Right to a Fair Trail (Article 6), Right to Effective Remedy (Article 13) and the Prohibition of Discrimination (Article 14). These rights are incorporated into UK law through the Human Rights Act 1998.

In 2022, the Scottish Human Rights Commission (SHRC) underlined the importance of legal aid from a human rights perspective whilst giving evidence to the UK Parliament’s Joint Committee on human rights. The SHRC stated:

“Under international human rights law, States must ensure the existence of remedies that are *accessible, affordable, timely*, and *effective*. This is known as the AATE framework. The AATE framework requires remedies that are:

a) accessible: they must be transparent,  simple,  ensure legal advice,  and ensure the possibility of public interest litigation.

b) affordable: they must not be costly (ideally, they should be free), and sufficient legal aid must be ensured.

c) prompt: there must be no unwarranted delays and must include mechanisms that can urgently prevent the materialisation of an irreparable harm.

d) effective: they must, among other things, guarantee the existence of both administrative and judicial procedures,  which can be challenged if necessary. They must also provide the possibility of collective litigation, where the findings and benefits are generalised beyond the actual litigants. Remedies cannot be illusionary, and therefore, consequences for non-enforcement must exist. The effectiveness of remedies is also measured by the appropriateness of the reparations ordered, and therefore, orders of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, need to be ensured.”[[4]](#footnote-4)

As recently as February 2025, the UN Committee on Economic, Social and Cultural Rights also included recommendations in its Concluding Observations to the UK’s 7th review of compliance with the International Convention on Economic, Social and Cultural Rights in relation to the reform of legal aid, specifically in relation to Non-discrimination (Article 2.1) and the Right to Just and Favourable Conditions of Work (Article 9)[[5]](#footnote-5).

Given our ongoing work on this issue, the clarity of the UK legislative framework on the importance of these rights and, the level of international scrutiny paid to access to legal aid, HRCS welcomes the Committee’s inquiry and is grateful for the opportunity to provide the following evidence.

**What are the current barriers to accessing civil legal assistance? Can you give examples from your own experience, or refer to any research in this area?**

HRCS believes that Scotland’s legal aid system is in crisis, and the situation is worsening. Data detailed in an article by The Herald newspaper[[6]](#footnote-6) in November 2024 highlights just how profound these issues are. Across the country, the number of solicitors taking on legal aid work is falling sharply, creating “legal aid deserts” in places like Orkney and North Uist, where no solicitors are available at all. Cases are taking longer to resolve, the workforce is aging, and professionals are increasingly walking away from a system they say is no longer viable. This is a direct threat to the fairness and equality of Scotland’s justice system. As a result, many people are unable to find solicitors offering legal aid and are thus forced to represent themselves in court and may chose not to undertake this gruelling experience and forego their right to an effective remedy.

Finding legal aid solicitors in specialised areas of law is especially challenging, with even greater challenges for those living in remote and rural areas. There are significant shortages of legal aid solicitors specialising in gender-based violence, mental health, human rights and discrimination and children’s rights.

Solicitors do not believe that the legal aid system remunerates them sufficiently, further reducing availability. Individuals who do not qualify for legal aid often cannot afford private solicitors. Legal aid is means-tested, and an individual can only apply for legal aid through a solicitor.

Applications are currently restricted to individuals, and exclude groups, NGOs, and charities seeking to pursue cases. This places the onus on individuals to address systemic issues affecting them instead of NGOs being able to use the law to address broader issues and relieve individuals of this burden. Reform of Section 15 of the Civil Legal Aid (Scotland) Regulations 2002 to enable NGOs to access legal aid is a priority for HRCS and our partners.

The current criteria for accessing civil legal aid in Scotland raise significant concerns about fairness and appropriateness, particularly in how they impact vulnerable individuals seeking justice in non-criminal matters.[[7]](#footnote-7)

Civil legal aid is intended to provide access to justice for those who cannot afford legal representation; however, restrictive eligibility criteria and other systemic barriers mean that many are unable to secure legal representation through legal aid.

A key issue lies in the financial eligibility thresholds for civil legal aid. The income limits are set at such a low level that many individuals on modest incomes are excluded, even though they cannot realistically afford the costs of legal representation. Those who do qualify are often required to pay unaffordable contributions, creating a further obstacle to accessing justice. This is particularly problematic in areas like family law, housing disputes, and social welfare cases, which disproportionately affect people already facing financial hardship.

The assessment of financial eligibility also fails to take full account of the economic pressures many people face.[[8]](#footnote-8) Housing costs, childcare expenses, and debt burdens are insufficiently considered, meaning individuals in precarious financial situations may be excluded. This is likely to have worsened given the ongoing cost of living crisis. This rigid approach undermines the principle of fairness and excludes many who desperately need legal assistance.

Certain groups face additional barriers. Survivors of domestic abuse, for example, may be discouraged from seeking legal aid due to the intrusive and often intimidating application process, which requires disclosure of detailed financial information.[[9]](#footnote-9)

Similarly, individuals experiencing housing insecurity or facing eviction may not be able to navigate the complex system in time to secure legal representation, leaving them at a distinct disadvantage.

Another major issue is the limited scope of civil legal aid. Many areas of law critical to upholding people’s rights, such as housing, debt recovery, and employment disputes, are underfunded or not fully covered.[[10]](#footnote-10) This limits the ability of people to challenge injustices or access remedies in cases that significantly impact their lives.

Other limitations to legal aid are significant; currently legal aid is not available to assist with:

* Small damages claims
* Negotiating settlements for claims in some proceedings
* General advice on legal problems
* Writing letters
* Getting and advocate’s opinion
* Getting a medial report for an accident claim or a benefit appeal.

None of the above are new issues. In fact, the legal profession, civil society organisations, and Government have been in dialogue about reform of Civil Legal Aid for several years.

**Do you have any suggestions for shorter-term improvements (not involving changes to the Legal Aid (Scotland) Act 1986) which could be made to the current system for civil legal assistance?**

In 2018, the Independent Strategic Review of Legal Aid[[11]](#footnote-11) outlined sixty-seven recommendations for change. Despite this, only piecemeal actions have followed, such as one-off funding boosts that do not tackle the underlying structural issues.

HRCS believes that to make meaningful progress, we need more than stop-gap measures or further rounds of consultation.

A long-term, costed plan for reform is essential[[12]](#footnote-12) - one that addresses the chronic underfunding of the system, ensures fair remuneration for solicitors, and expands eligibility so more people can access legal aid when they need it.

It is vital to frame legal aid reform as a human rights issue, a public service issue and a legal issue. In 2023, Audit Scotland pointed out that that without a clear, sustainable vision for reform, all public services in Scotland will struggle to meet growing demand.[[13]](#footnote-13) Legal aid is no exception. Short-term fixes are unlikely to provide sustainable change when the entire system has been shown to have experienced decades of underinvestment.

Furthermore, HRCS believes that this is a critical moment for civil legal aid. If we are serious about human rights and access to justice for everyone, we need bold, systemic reform which addresses the root causes of this crisis and ensures everyone in Scotland can access legal representation to uphold their rights.

**Is grant funding from the Scottish Legal Aid Board helping to support access to justice? Can you provide examples of any successes or problems with this funding stream?**

HRCS is unable to comment in detail regarding the effectiveness or otherwise of Scottish Legal Aid Board grant funding to help support access to justice but notes the following statement made by the Co-convener of the Law Society’s Legal Aid Committee, Pat Thom in March 2025:

“This Holyrood inquiry is a welcome chance to highlight the problems with civil legal aid, the unacceptable impact that is having on access to justice in Scotland, and what the potential solutions are to restore the system.

“Solicitors have been warning for years that Scotland’s legal aid system is under enormous pressure. In this civil context, vulnerable people are being forced to deal with traumatic legal situations across critical parts of their lives including their housing, relationships and work.

“We hope that people and organisations with first-hand knowledge of the civil legal aid system will contribute to this inquiry, including solicitors, law centres and the growing number of people facing legal challenges without the expert advice they need.

“Political attention from first the Scottish Government and now a Holyrood committee is a positive development. We need to quickly move beyond examining the problem to identifying and implementing solutions.

“Without action, solicitors will continue to turn away from civil legal aid work. Around a third of Scotland’s legal aid solicitors are approaching retirement age, and many younger solicitors cannot see legal aid work being part of their working lives.”[[14]](#footnote-14)

This follows comments were also made by Ian Moir, co-convenor of the Law Society’s Legal Aid Committee, on the publication of the Scottish Legal Aid Board’s annual report for 2023/24:

 “The figures in this annual report show the long-term deterioration in Scotland’s legal aid system is continuing. Read in context, the only conclusion that can be drawn is that this crisis is getting worse, not better.

“Scotland’s courts are busier than they have ever been. On that basis, the long-term fall in the number of cases being funded through legal aid points to a shortage of solicitors to do this work, not a fall in the number of people who need help.

“Significant investment is urgently required, and every day of delay makes it harder to reverse this decline. The Law Society of Scotland remains ready to work with the Scottish government to identify and make the changes required.

“We need short-term and long-term action, to meet demand now and in the future. More needs to be done to attract young solicitors to work in this vital sector, and far more needs to be done to ensure that legal aid is a viable long-term career.”[[15]](#footnote-15)

At the same time, Colin Lancaster, Chief Executive of the Scottish legal Aid Board stated:

“We are reporting total expenditure of £151 million for 2023-24. As we move into 2024-25, based on current and anticipated volumes and case costs, we are estimating that expenditure for 2024-25 could be around £171 million which would be the highest ever recorded.

 “This represents a significant investment in legal aid and a substantial financial boost for the committed firms up and down the country who deliver this vital service.”

Mr Lancaster commented further that while ‘the increased funding was to be welcomed it did not address the challenges for the existing legal aid system in adapting to a world not envisioned when it was created 40 years ago’.

And concluded:

“New legislation is needed for significant structural change, and the Scottish Government has confirmed this will not now be until at least 2026. This means there would be no immediate transformation in the system’s ability to harness new ways of designing, securing and delivering services to respond to evolving demands and user needs.”[[16]](#footnote-16)

**What do you think are the strengths and weaknesses of the current system for providing civil legal assistance?**

Please see section dealing with current barriers.

**What do you think would be the strengths and weaknesses of reforming civil legal assistance along the lines recommended in the Evans Review (“Rethinking Legal Aid,” 2018)?**

As noted earlier, the Evans Review[[17]](#footnote-17) provides no less than sixty-seven recommendations for improvement and reform of the Scottish Legal Aid System. The format of the review, focussing on six strategic aims seems relevant and robust, however it must be acknowledged that the Review is already 8 years old. Its recommendations need be considered in this context and some information may need to be updated, especially given the ongoing cost of living crisis, our learning from the COVID 19 pandemic and the ever-changing political context in Scotland.

**What are your priorities for longer-term reform?**

HRCS believes that reforming civil legal aid is part of a much bigger picture, and we have campaigned for a system based on UK and international human rights standards that supports individuals to access justice, not just in theory but in practice.

In July 2024, we published our briefing paper in partnership with JustRight Scotland and ERCS, highlighting the lived experiences of those who have struggled to find legal representation and offering concrete proposals for change.

HRCS believes the Scottish Government and Parliament must prioritise comprehensive reform of civil legal aid to ensure it is fit for purpose and upholds the principle of access to justice for all. The current system faces significant challenges, including restrictive eligibility criteria, financial barriers, and limited scope, which disproportionately disadvantage vulnerable individuals and communities.

Embedding civil legal aid reforms within a human rights-based framework, aligned with Scotland’s human rights commitments such as the incorporation of ICESCR and work to address the recent Concluding Observations, and compliance with the Human Rights Act 1998, would reinforce the principle that access to justice is a fundamental human right, and not a privilege as it is fast becoming in Scotland.

There must be a focus on expanding financial eligibility by raising income thresholds to reflect the full cost of living, ensuring that people on modest incomes are not excluded. The current thresholds are outdated and exclude many who cannot realistically afford legal representation.[[18]](#footnote-18) Additionally, contributions for those eligible should be reviewed and reduced, with exemptions for individuals facing severe financial hardship.[[19]](#footnote-19)

In line with existing human rights standards, reforms should also broaden the scope of civil legal aid to cover a wider range of legal issues that impact everyday lives, particularly for marginalised groups. [Areas such as](https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2018/02/rethinking-legal-aid-an-independent-strategic-review/documents/rethinking-legal-aid-independent-strategic-review-pdf/rethinking-legal-aid-independent-strategic-review-pdf/govscot%3Adocument/Rethinking%2BLegal%2BAid%2B-%2Ban%2Bindependent%2Bstrategic%2Breview.pdf) housing, employment disputes, public debt recovery, welfare rights, and family law should be prioritised. This would enable individuals facing eviction, discrimination, or financial instability to access the legal representation they need.

Furthermore, the system must address the specific needs of vulnerable groups, such as survivors of domestic abuse, disabled people, asylum seekers, and those facing homelessness. Introducing a trauma-informed approach to the application process, reducing administrative burdens, and ensuring that legal aid services are accessible in rural and remote areas would help achieve this.

The Scottish Government must also invest in legal aid providers to address the growing crisis in the workforce, where low fees and insufficient funding have led to shortages of legal aid lawyers. Increased funding would attract and retain skilled practitioners, ensuring high-quality legal advice and representation for those who rely on civil legal aid[[20]](#footnote-20).

Simplifying the application process for legal aid is also crucial. Measures such as digital solutions, accessible guidance, and support for those struggling with forms or documentation would make the system less intimidating and easier to navigate. Local legal aid hubs or outreach services could further enhance access.

Preventative legal services should form part of this reform to reduce the demand for crisis-driven legal aid. Providing timely conflict resolution and mediation advice and support could enable individuals to resolve issues before they escalate into costly legal disputes, easing pressure on the courts and improving outcomes for individuals.

Collaboration with key stakeholders, including legal aid providers, the Law Society of Scotland, and civil society organisations, will be essential to co-develop a civil legal aid system that meets diverse needs[[21]](#footnote-21). Ongoing engagement and consultation would ensure that reforms are practical, effective, and responsive to emerging challenges.

A public awareness campaign to ensure people understand their rights and how to access legal aid services would also be extremely helpful and help overcome barriers of stigma, misinformation, and lack of knowledge.

HRCS believes these reforms would deliver a fairer, more equitable, and more effective civil legal aid system, ensuring access to justice for those in need while strengthening public confidence in Scotland’s legal framework.

**Any other comments?**

Addressing "advice deserts" in Scotland requires a multifaceted approach to ensure that access to justice is available to people regardless of where they live.[[22]](#footnote-22) Geographic inequalities in legal advice provision, particularly in rural and remote areas, leave many unable to secure timely and affordable legal support. A comprehensive strategy is essential to tackle these disparities and uphold the principle of equal access to justice.[[23]](#footnote-23)

A key priority should be increasing funding for legal aid services, with targeted investment in areas where there is a lack of provision.[[24]](#footnote-24) Low fees and limited funding have contributed to a shortage of legal aid practitioners in less densely populated areas. Introducing financial incentives, such as higher legal aid fees or grants, could attract and retain lawyers willing to work in these areas. Supporting legal traineeships and apprenticeships in rural and underserved areas would also help to build a sustainable pipeline of future practitioners.[[25]](#footnote-25)

Expanding access to digital legal services and embracing technology could be transformative in addressing advice deserts. Investing in high-speed broadband and digital infrastructure would allow people in remote locations to access legal advice through video consultations and online platforms. However, this approach must also ensure that those facing digital exclusion, such as individuals without reliable internet access, disabled people and older people, are supported with alternative methods, such as in-person advice sessions or outreach services.[[26]](#footnote-26)

Developing local legal advice hubs or partnerships with community organisations could provide accessible entry points for those in need of legal help. These hubs could offer free or low-cost advice on common legal issues such as housing, debt, and family law while signposting clients to specialist support where needed. Mobile legal clinics could also serve remote areas, providing scheduled visits from legal professionals to deliver advice and representation.

Collaboration between the Scottish Government, local authorities, and civil society organisations will be crucial in mapping areas of unmet need and designing targeted interventions. Regular monitoring of geographic access to legal services would ensure that resources are allocated effectively and gaps in provision are promptly addressed. Encouraging pro bono work by solicitors and partnerships between urban and rural legal practices could also play a role in ensuring widespread coverage.

In conclusion, HRCS, our partners and stakeholders believe that to sustain long-term change, structural reforms to the legal aid system in Scotland are essential and this will require new legislation. Broadening the scope of civil legal aid to include preventive legal advice and increasing the financial eligibility thresholds would reduce the overall demand for crisis-driven legal interventions. This would ease pressure on services and create greater capacity for those in remote areas. Additionally, incorporating access to justice as a statutory requirement for public bodies would ensure that tackling advice deserts remains a priority in policymaking.

**Charlie McMillan**

**HRCS**

**April 2025**

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