# Scottish Government consultation: Legal Aid Reform

# Response by Scottish Women's Aid

## Introduction

Scottish Women's Aid (SWA) is the lead organisation in Scotland working to end domestic abuse and plays a vital role in campaigning for effective responses to domestic abuse. SWA is the umbrella organisation for local Women's Aid organisations across Scotland, each providing practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach, follow-on support and temporary refuge accommodation.

We also run the Scotland's Domestic Abuse and Forced Marriage Helpline taking over 2000 calls, WhatsApp messages, and texts (24h/365) every month.

## Questionnaire

**Question 1**
**As set out above, to what extent do you agree with the Scottish Government's proposed approach?**
**☐ Strongly agree;☐ Agree;☐ Neutral;☐ Disagree ☐ Strongly disagree**
**Please give reasons for your answer.**

**Impact of the proposals on women, children and young people experiencing domestic abuse**

Domestic abuse offending has serious and long-lasting consequences for women and children's enjoyment of their human rights, including their right to health and access to justice. The extent to which women and children have access to justice, and legal support in particular, when experiencing domestic abuse is an indicator of society's commitment to women's and children's human rights.

Issues with civil cases involving contact, residence and/or Parental Responsibilities and Rights (PRRs) are frequent reasons a woman, a local Women's Aid specialist service or a partner agency to contacts/ SWA for information and/or support. Concerns about child residence/contact matters remain the biggest issue highlighted by callers contacting Scotland's Domestic Abuse and Forced Marriage Helpline.
Women's poverty has a considerable impact on their ability to pay for legal services. Women earn less than men, and women are more likely to be in lower paid, part-time or insecure employment. Women also perform most of the unpaid care work in Scotland and make up the vast majority of single-parent households. In addition, women disproportionately experience domestic abuse, including economic abuse, which restricts their access to household income, assets and financial independence. As a result, women access legal aid more than men, with women and children experiencing domestic abuse disproportionately affected. They will often need to access legal aid across a range of actions, including child contact and residence, divorce and protective orders.

- **Impact of means testing on women experiencing domestic abuse**

Retaining financial tests and requirements for contributions will continue to disadvantage women experiencing domestic abuse as it wholly fails to reflect the reality of economic abuse. Women experiencing domestic abuse rarely have access to family income and assets, often have huge and unpayable coerced debts, and need immediate, domestic-abuse-competent legal services.

One in 6 women in the UK experience a form of economic abuse.[1] Women subjected to economic abuse may appear to have sufficient funds or assets, such as the family home or savings, but the reality is that even if they are in her name she has no access to, or control over, these resources. These assets still count toward assessment of woman's legal aid eligibility meaning focusing solely on the woman's income and capital may misrepresent her actual financial situation and lead to wrongful denial of legal aid; this is also the case with what is referred to as "trapped capital."

Without greater awareness, economic abuse can be invisible in financial eligibility decisions, forcing survivors to self-represent or incur further debt to secure legal help.

- **Impact of initiatives to secure "*earlier resolution of problems*."**

Page 2 of the consultation states that eligibility will be improved by, amongst other measures, the Scottish Government supporting "…earlier resolution of problems." The latter raises concerns for us as domestic abuse is not a problem to be resolved early.

SLAB requires applicants to detail the steps they have made to resolve the "disputed" matter by negotiation.[2] This framing of contact in the context of domestic abuse as a "dispute" reveals a profound misunderstanding of the dynamics of domestic abuse and leads to significant system-generated risk. There is also an emphasis on the need to engage in mediation but with a caveat around using this in relation to domestic abuse. We can find little evidence that solicitors heed the caveat.

Mediation or dispute resolution is unsafe and inappropriate for any civil, or criminal case, involving domestic abuse. We oppose any move to increase use of this procedure, or to require that litigants first seek out-of-court mediation/ "early resolution" evidencing that this had been done before legal aid would be considered, where domestic abuse was an issue.

- **Impact of legal professions' lack of understanding of domestic abuse**

Training to ensure legal professionals are domestic-abuse competent, with an understanding of the dynamics, causes and effects of abuse, particularly in the context of civil issues such as child contact and residence and how domestic abuse impacts on children, is not mandatory. Our network frequently reports women getting poor legal advice that further inflicts trauma and cost e.g. being told that an ex-partner will automatically have contact rights, meaning that raising issues of safety will be interpreted as intractable opposition and/or that raising domestic abuse is inadvisable because it will be not be positively viewed by the court, despite domestic abuse being the core issue of the woman's case.

As a result of these barriers, women very often get little or no appropriate legal advice support when and where they need it, and children never get offered legal support when

[1] https://survivingeconomicabuse.org/
[2] https://www.slab.org.uk/guidance/timing-of-the-application-and-the-status-of-the-dispute/

they need it. This results in women and children experiencing service-generated harm through a legal system that often exacerbates, rather than meets, their needs. As a result, women and children currently become enmeshed in legal processes that could have been avoided if they had been advised and supported appropriately at first contact.

**Reform of legal aid and optimum objectives needed to support women, children and young people experiencing domestic abuse**

Women cannot routinely access appropriate legal advice and support, but they do routinely experience service-generated harm and re-victimisation from the legal system.

Seeking safety from an abusive partner often leaves women in poverty because financial dependence and abuse are critical tools for controlling women and constraining their routes to liberty and safety. Legal aid restrictions limit a woman's access to justice. Women find themselves with a set of unpalatable choices: seek protection through the courts and risk poverty; go into debt to pay for access to justice; or avoid civil protection as just one more financial burden that is impossible to meet.

We agree with the consultation statement *"... that the experiences and views of victim-survivors should, not only be heard and considered, but should be actively involved in the design and delivery of legal aid and future improvements to its provision."*

Women, children and young people experiencing domestic abuse should receive the dedicated, cost-free, specialist legal advice and support they need, at the time they need it. They should be confident of getting protection against their abuser from all actors in the justice system.

This system change will help Scotland to move towards adopting a model based on the principles of:

- Earlier intervention
- Reduced re-victimisation
- Opportunities for recovery
- Improved confidence in public justice
- Reduced cost.

For women, children, and young people experiencing domestic abuse seeking protection through the civil courts, a system facilitating and encouraging access to justice requires adequate local availability of solicitors practising family law who also provide advice and assistance and civil legal aid. This would be achieved by the provision of free legal services for all women, children and young people experiencing domestic abuse, with no means and merit test and no qualification on accessing this for women.

An example of best practice in providing free, trauma informed, domestic abuse competent legal support for victim-survivors is the Edinburgh Women's Aid (EWA) Legal Service partnership between EWA, Scottish Women's Aid and Baker Gostelow Family Law that provides accessible legal advice, assistance and out-of-court interventions to women and children affected by domestic abuse. The model has now been extended to Orkney and Shetland.

This model is supported by the Equalities, Human Rights and Civil Justice Committee's recommendations in their 2025 report published on their inquiry into Civil Legal Assistance in Scotland.[3]

This arrangement is also possible under section 89 of the Regulation of Legal Services (Scotland) Act 2025 which removes restrictions to solicitors being employed directly by, and otherwise acting for, third sector bodies. In a letter to the Equalities, Human Rights and Civil Justice Committee on the commencement of the Act, the then Minister for Victims and Community Safety, said on February 2026, "… *Commencement would be an immediate benefit, allowing third sector bodies and law centres to directly employ solicitors to support vulnerable clients*."[4]

**Question 2**
**Do you think it would be beneficial for Scottish Ministers to continue to set a clear purpose for the legal aid system, supported by periodically updated objectives for the Scottish Legal Aid Board?**
**☒ Yes – both purpose and objectives**
**☐ Yes – purpose only ☐ Yes – objectives only**
**☐ Neither purpose nor objectives**
**☐ Don't know**
**Please give reasons for your answer.**

**Question 3**
**What principles, if any, should inform the purpose and objectives?**
**Principles are the high-level considerations that guide how decisions are made (e.g. user-centred or evidence-based). "Purpose" describes the overarching aim of the system, and "objectives" set out the specific outcomes needed to deliver that aim.**
**Please give reasons for your answer.**

See our response above

**Question 4**
**Do you think these principles should be subject to Parliamentary scrutiny?**
**☒ Yes ☐ No ☐ Don't know**

**Question 5**
**Which of the following benefits, if any, do you think simplification would provide? (Select all that apply)**
**☒ Easier access for users**
**☒ Reduced administrative burden for providers and the Scottish Legal Aid Board**
**☒ Faster decision-making**
**☒ Improved consistency**
**☒ Better use of public funds**
**☒ Ability to support a wider range of service delivery models**
**☒ Ability to support innovation and service improvement**

[3] Equalities, Human Rights and Civil Justice Committee (2025) *Report on the Equalities, Human Rights and Civil Justice Committee inquiry into Civil Legal Assistance in Scotland*, paragraphs 101, 157 https://bprcdn.parliament.scot/published/EHRCJ/2025/9/17/b4eb8e78-2158-4978-bc77-ccc22aeeb906/EHRCJS062025R03.pdf
[4] https://www.parliament.scot/-/media/files/committees/equalities-human-rights-and-civil-justice-committee/correspondence/2026/regulation-of-legal-services-scotland-act-19-february-2026.pdf

☒ **Ability to support providers in different ways e.g. technology or training**
☐ **None**
☐ **Other (please specify)**

**Question 6**
**To what extent do you agree with the proposal to consolidate or streamline, where possible, the current range of separate aid types?**
☐ **Strongly agree** ☐ **Agree** ☒ **Neutral** ☐ **Disagree** ☐ **Strongly disagree**

**Question 7**
**To what extent do you agree or disagree that contributions and repayment arrangements should be simplified?**
☒ **Strongly agree** ☐ **Agree** ☐ **Neutral** ☐ **Disagree** ☐ **Strongly disagree**

**Question 8**
**To what extent do you agree or disagree that contributions and repayment arrangements should be made more consistent across all types of legal aid?**
☐ **Strongly agree** ☐ **Agree** ☐ **Neutral** ☐ **Disagree** ☐ **Strongly disagree**

**Question 9**
**What changes, if any, should be made to contributions and repayment arrangements? (Select all that apply)**
☐ **Clear and consistent rules**
☐ **Transparent calculations**
☐ **Simpler assessments**
☐ **Published guidance**
☐ **Safeguards for low incomes**
☐ **Flexibility in exceptional cases**
☒ **Other (please specify)**

See our answer to Question 1.

**Question 10**
**Do you agree that eligibility for legal aid should be clearly separated from the assessment of what a person is required to contribute?**
☒ **Yes** ☐ **No** ☐ **Unsure**

Contribution and repayment regimes disadvantage women experiencing domestic abuse and we would also refer to our preferred model for delivering publicly funded legal services. Further consultation and discussion are needed on the possible models for a revised framework.

**Question 11**
**To what extent do you agree or disagree that the Scottish Legal Aid Board should have a bi-annual statutory duty to review and advise on contribution thresholds and arrangements?**
☒ **Strongly agree** ☐ **Agree** ☐ **Neutral** ☐ **Disagree** ☐ **Strongly disagree**
**Please give reasons for your answer**.

**Question 12**
**Are you in favour of a higher trust model for accredited providers?**
**☐ Yes ☐ No ☒ Unsure ☐ Other (please specify)**

The proposal is that with simpler, more consistent tests, “accredited solicitors”, supported by SLAB guidance, would be given greater freedom to progress cases without repeated approvals at different stages. More detail on how this would work in practice is needed before we can comment further.

Care would have to be taken that this did not operate to the exclusion of smaller firms, and rural firms, who do not have the staff numbers capable of maintaining the paperwork and systems supporting such accreditation. Discrimination in favour of larger firms, with greater numbers of staff, especially those in urban areas, and the cost benefits this would bring them, would likely cause financial disadvantage and impact on ability to service clients. Also, this could mean that “accredited” firms were able to bring cases before courts more quickly or bring issues relating to their clients in a case more speedily before courts, which, where the other party’s representative was not “accredited” would disadvantage that person.

The system also runs the risk of disadvantaging clients where a firm that previously held “accreditation” lost that status, which meant that processes for clients would very quickly become lengthier, with delays that could impact on service delivery and their case.

**Question 13**
**Are you in favour of data sharing between organisations (such as the Scottish Legal Aid Board and Social Security Scotland) to ease the passporting of benefits?**
**☐ Yes ☐ No ☒ Unsure ☐ Other (please specify)**

Further information is needed on the practicalities of such data sharing, such as risks and benefits for applicants, whether opting out is possible, ensuring trust from applicants in the efficacy of the process and data protection issues.

**Question 14**
**Which funding models do you think should be used more in future? (Select all that apply)**
**☐ Judicare (case-by-case funding)**
**☐ Commissioning (grant funding / contracting)**
**☒ Direct employment**
**Please give reasons for your answer.**

See our response to Question 1 above.

**Question 15**
**Are you in favour of services being commissioned directly in line with the approach set out, for example through grants/contracts or direct employment?**
**☒ Yes ☐ No ☐ Unsure ☐ Other (please specify)**

**Question 16**
**Do you consider that the scope of legal aid in Scotland should continue to be focused primarily on individuals, or are there circumstances in which non-natural persons should be eligible for support?**

☐ **Legal aid should remain focused primarily on individuals**
☒ **Non-natural persons should be eligible for legal aid in some circumstances**
☐ **Other (please specify)**

We would support further discussion on this matter as we see merit in allowing third sector charitable support organisations, particularly our local specialist Women's Aid services, access to resources that would give capacity to challenge issues that breached women's, children's and young people's human rights.

**Question 17**
**To what extent do you agree with the split of duties between the Scottish Parliament, Scottish Ministers and the Scottish Legal Aid Board?**
☐ **Strongly agree** ☐ **Agree** ☐ **Neutral** ☒ **Disagree** ☐ **Strongly disagree**

To ensure that the operation of the reformed system is working to meet the needs of consumers, all involved should have scrutiny and public engagement/consultation duties imposed on them.

User views should be captured and reflected in the delivery of a legal aid service in a meaningful way.

Representatives from **"**third-sector advice services," such as Scottish Women's Aid, and local authorities should be formally involved in the strategic planning and delivery of justice outcomes through membership of the Justice Board.

**Question 18**
**Which of the following planning and reporting requirements do you think should apply to the Scottish Legal Aid Board under any new scheme? (Select all that apply)**
☐ **Approval by Ministers of strategic service delivery plans**
☒ **Reporting regularly to the Scottish Government and Scottish Parliament on performance and outcomes of the legal aid system**
☐ **No significant change from current annual reporting to Parliament**
☐ **Other (please specify)**

**Question 19**
**Do you think there should be powers to act if the Scottish Legal Aid Board is not able to deliver the objectives of the legal aid system?**
☒ **Yes** ☐ **No** ☐ **Unsure**

**Question 20**
**Who should have powers to act if the objectives of the legal aid system are not being delivered?**
☐ **Scottish Ministers**
☐ **Scottish Parliament**
☒ **Both Scottish Ministers and the Scottish Parliament**
☐ **An independent body**
☐ **No formal powers**

**Question 21**
**What types of powers should be available? (Select all that apply)**
☐ **Direct the Scottish Legal Aid Board to take action**
☒ **Set or change performance targets**
☒ **Commission independent reviews**
☒ **Change governance arrangements**
☐ **Other (please specify)**

**Question 22**
**Overall, how would you characterise the likely impact of the proposed reforms?**
☐ **Likely to have a positive overall impact**
☐ **Likely to have a negative overall impact**
☐ **Likely to have mixed impacts**
☒ **Insufficient information to reach a conclusion**
**Please explain your answer, including any key benefits, risks, trade-offs or unintended consequences.**
**Please also use this space to provide any additional comments on the proposals set out in this consultation.**

These reforms will only succeed if accompanied by other systemic change.

- For survivors of domestic abuse, the provision of advice is very much dependent upon the competency of those delivering this advice, meaning a legal profession that is consistently domestic abuse competent. This will require compulsory training and CPD on causes, dynamics and impact of domestic abuse on women, children and young people for all legal professionals, specifically those undertaking family law work and criminal defence practitioners.
- Training for the judiciary on domestic abuse in civil and family law cases, especially child contact.
- Further reform to the vulnerable witness process to ensure that any woman involved in a civil case where domestic abuse is raised as an issue, or identified by the court during proceedings, is automatically given vulnerable witness status and automatic access to standard special measures.
- Implementation of the training and governance regime for Child Welfare Reporters.
- Implementation of the advocacy provisions for children under the Children (Scotland) Act 2020.
- Courts' implementation of the trauma- based practice provisions in the Victims, Witnesses and Justice Reform (Scotland) Act 2025 to ensure protection of women, children and young people, both when in the court room itself and throughout the rest of the court building, during civil and criminal proceeding.
- Better communication and information exchange between the civil and criminal justice systems.

## Equality Impact Questions

**In your view, are the proposals likely to have a positive impact on any of the following groups? (Select all that apply)**
☐ **Age**

☐ **Disability**
☐ **Sex**
☐ **Pregnancy and maternity**
☐ **Gender reassignment**
☐ **Sexual orientation**
☐ **Race**
☐ **Religion or belief**
☐ **None**
**Please provide details of any positive impacts identified:**

As proposed, we cannot see likely positive impacts unless the model that we are recommending to deliver legal aid services to women, children and young people experiencing domestic abuse is adopted.

**In your view, could the proposals have a negative impact on any of these groups? (Select all that apply)**
☐ **Age**
☐x **Disability**
☐ **x Sex**
☐ **x Pregnancy and maternity**
☐ **Gender reassignment**
☐ **Sexual orientation**
☐ **x Race**
☐ **Religion or belief**
☐ **None**
**Please provide details of any negative impacts identified**

If our proposals are not facilitated by the Bill or actioned by the Scottish Government the discrimination against women experiencing domestic abuse will continue, in contravention of their human rights and the Scottish Government's domestic and international treaty obligations.

**Are there any groups for whom the proposals could improve access to justice?**
☐ **Yes**
☐ **No**
☐ **x Unsure**
**Please provide further detail:**

See our response to Question One – women experiencing gender-based violence, specifically domestic abuse.

**Do you have any suggestions for mitigating negative impacts?**
These could be mitigated by the Scottish Government and SLAB supporting the set up and delivery of embedded legal services as discussed above.

**Business and Regulatory Impact Assessment (BRIA)**

**This section seeks views on the potential business and regulatory impacts of the proposed Legal Aid (Scotland) Bill.**

**What impact do you anticipate the proposals will have on legal aid providers?**

☐ **Significant positive impact**
☐ **Moderate positive impact**
☐ **No impact**
☐ **Moderate negative impact**
☐ **Significant negative impact**

**How do you expect the proposals will affect the sustainability of legal aid practice?**
☐ **Improve sustainability** ☐ **No change** ☐ **Reduce sustainability** ☐ **Unsure**

**What impact might the proposals have on small or rural firms?**
☐ **Positive impact** ☐ **No impact** ☐ **Negative impact** ☐ **Unsure**

See our comments on "high trust" firms above.

**Do you consider the proposals will impact competition within the legal services market?**
☐ **Increase competition** ☐ **Reduce competition** ☐ **No impact** ☐ **Unsure**
**What administrative or compliance costs may arise for providers?**

**Do you anticipate any impacts on innovation or use of technology in legal aid delivery?**
☐ **Positive impact** ☐ **No impact** ☐ **Negative impact**☐ **Unsure**

**Are there regulatory barriers that could affect implementation of the proposals?**

**What steps could be taken to minimise any negative impacts on providers or the wider legal services market?**

**Do you foresee any impacts on access to legal services for businesses or organisations?**
☐ **Improved access** ☐ **No change** ☐ **Reduced access** ☐ **Unsure**

**Please provide any further comments on business and regulatory impacts:**

## Child Rights and Wellbeing Impact Assessment (CRWIA)

This section seeks views on the potential impact of the proposals on the rights and wellbeing of children and young people.

**In your view, could the proposals impact children and young people?**
☐ **Yes** ☐ **No** ☐ **Unsure**

**If yes, do you consider the impact is likely to be:**
☐ Positive ☐ Negative ☐ **Both positive and negative** ☐ Unsure

**Which aspects of children's rights could be affected? (Select all that apply)**

☐ **Access to justice**
☐ **Right to be heard**
☐ **Protection from harm**
☐ **Right to family life**
☐ **Equality and non-discrimination**
☐ Other (please specify)

**Could the proposals improve access to legal advice and representation for children and young people?**
☐ **Yes** ☐ No ☐ Unsure

**Are there any groups of children or young people who may be particularly affected?**

Children and young people experiencing domestic abuse.

**What steps could be taken to maximise positive impacts on children's rights and wellbeing?**
**What steps could be taken to mitigate any negative impacts?**

Implementation of the direct service delivery model we suggest.

**Please provide any further comments on impacts on children and young people**: