

Advice For All: Publicly funded legal assistance in Scotland - The Way Forward

Making your response

We ask you to consider and comment on the proposals set out in the consultation paper. In setting out your comments, you should respond to the specific questions set out under 'Your Views' throughout the paper. We are seeking comments to our proposals by **Friday 9 September 2005**.

You should complete Part A of this response form, to give information and to advise if your response is confidential. This will help ensure we handle responses appropriately. Part B of this form can be used to make your response.

Written comments should be submitted to:

PFLA Consultation
Access to Justice Division
Scottish Executive
2nd Floor West
St Andrew's House
Regent Road
EDINBURGH EH1 3DG

You can also fax your response to 0131 244 8325, clearly marking it 'PFLA Consultation'.

Or you can email your response to: pfla@scotland.gsi.gov.uk

The Scottish Executive Consultation Process

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general, Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Executive encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses¹. Consultation exercises may also involve

¹ <http://www.scotland.gov.uk/consultations>

seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Executive consultation papers and related publications (eg, analysis of response reports) can be accessed at: [Scottish Executive consultations](http://www.scotland.gov.uk/consultations) (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Part A – Respondent Information Form

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)
- (a) as an individual go to Q2a/b and then Q4
- (b) **on behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

2. (a) Do you agree to your response being made available to the public (in Scottish Executive library and/or on the Scottish Executive website)?

Yes (go to 2b below)

No, not at all We will treat your response as confidential

(b) Where confidentiality is not requested, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

3. The name and address of your organisation **will be** made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your **response** to be made available?

Yes

No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes

No

Part B - Your comments – Advice for All: Publicly Funded Legal Assistance in Scotland -The Way Forward

Use of this part of the form is optional - further or more detailed responses can be submitted to us in the manner you find most convenient.

If you do not use this part of the form, please refer to specific questions from the consultation and give the number of the question you respond to, to help us analyse your response.

The form is split into two separate sections: the first asking for your views on the proposals for civil publicly funded legal assistance, the second section for your views on criminal PFLA. Should your interest be restricted to either civil or criminal PFLA only, you can return the relevant section of the form only.

Your views on proposals for CIVIL publicly funded legal assistance

Q1. Do you agree with the proposed consensual approach to developing better planning and coordination of advice services by local authorities, without any formal duty on local authorities in respect of the provision of PFLA services in their area?

Yes

No

Don't know

Comments :

Q2. What support activity do you believe would need to be provided to assist local authorities in developing their planning and coordination of PFLA at a local level? Who should provide this?

Comments:

Q3. Should a national body with a planning and coordination responsibility for the delivery of civil PFLA be established in Scotland?

Yes

No

Don't know

Comments:

Q4. What are your views on the suggested functions for a national coordinating body for civil PFLA (national planning and coordination; national development and research; responsibility to ensure provision of services where necessary, including second tier services such as training and information)?

Comments:

Q5. Should a national coordinating body be able to fund provision by non-legally qualified providers as well as solicitors and advocates?

Yes

No

Don't know

Comments:

Q6. Should a national coordinating body have the ability to enter into matchfunding arrangements with other funders of PFLA?

Yes

No

Don't know

Comments:

Q7. (a) What are your views on the proposed outline planning framework for civil PFLA?

Comments:

(b) How do you envisage the various elements of such a planning framework might work together to ensure better planning and coordination?

Comments:

Q8. In relation to the suggested non-remuneration based methods:

(a) Do you believe that the suggested non-remuneration based methods to encourage and maintain civil legal aid provision should be pursued?

Yes

No

Don't know

Comments:

(b) How effective do you think that such methods would be?

Very effective

Effective

Not effective

Don't know

Comments:

(c) Do you have any alternative suggestions?

Comments:

Q9. In relation to securing the provision of civil PFLA services, do you believe that there should be:

(a) greater use of salaried or employed solicitors for civil PFLA?

Yes

No

Don't know

Comments:

(b) contracting with private practitioners to provide legal aid services?

Yes

No

Don't know

Comments:

Q10. Should legally assisted parties who at the end of their case are able to meet the full cost, be asked to pay enhanced rates for civil legal assistance?

Yes

No

Don't know

Comments:

Q11. Should the Scottish Legal Aid Board be able to fund provision by non-legally qualified advisers as well as solicitors and advocates?

Yes

No

Don't know

Comments:

Q12. Should SLAB be able to administer an outlays fund that could be accessed by non-legally qualified providers?

Yes

No

Don't know

Comments:

Q13. Do you agree that an enhanced rate for solicitors undertaking civil A&A work which requires specialist skills, knowledge and experience should be introduced?

Yes

No

Don't know

Comments:

Q14. Should a system of extended and tapered financial eligibility be introduced for civil legal assistance?

Yes

No

Don't know

Comments:

Q15. Assuming that an extended and tapered scheme was affordable, what should be its main features?

Comments:

Q16. What detailed changes to the clawback arrangements might desirably be made?

Comments:

Q17. Do you agree that state benefits should be disregarded in the financial assessment for civil legal aid, as they are for Advice and Assistance?

Yes

No

Don't know

Comments:

Q18. Do you agree that the Scottish Legal Aid Board should be able to:

(a) collect contributions over a longer period of time?

Yes

No

Don't know

Comments:

(b) make flexible arrangements for the repayment of contributions, including the use of instalments for contributions from capital?

Yes

No

Don't know

Comments:

Q19. Do you agree that the legally assisted person should be required to inform the Board of changes in their financial circumstances over the lifetime of their civil case?

Yes

No

Don't know

Comments:

Q20. Do you agree that the test of 'severe financial hardship' in section 19 of the Legal Aid (Scotland) Act 1986 should be changed to one of 'financial hardship'?

Yes

No

Don't know

Comments:

Q21. Would any further relaxation of the terms of section 19 of the Legal Aid (Scotland) Act 1986 be justified?

Yes

No

Don't know

Comments:

Q22. Should regulations be introduced to specify how the courts should determine the liability of the unsuccessful legally aided party (Section 18 of the Legal Aid (Scotland) Act, 1986)?

Yes

No

Don't know

Comments:

Q23. In relation to a review of the number and types of proceedings or categories of cases under which ABWOR and civil legal aid are available:

(a) Should the number and types of proceedings or categories of cases under which ABWOR and civil legal aid are available, be reviewed?

Yes

No

Don't know

Comments:

(b) If so, what general criteria or principles should be applied to determine what proceedings or categories of case might be included?

Comments:

Q24. Would a provision allowing SLAB to fund individual cases which fell outside scope, where there were exceptional circumstances relating to the general importance of the case for public policy, be helpful?

Yes

No

Don't know

Comments:

Q25. How may publicly funded representation by non-lawyers best be taken account of when reconsidering the scope of ABWOR?

Comments:

Your views on proposals for CRIMINAL publicly funded legal assistance

Q26. Should a national coordinating body *also* take on responsibility for the planning and coordination of the delivery of criminal PFLA?

Yes

No

Don't know

Comments:

Q27. Should there be a more general use of salaried solicitors through the PDSO for the provision of criminal PFLA, alongside private practice provision?

Yes

No

Don't know

Comments:

Q28. In relation to the suggested non-remuneration based methods:

(a) Do you believe that the suggested non-remuneration based methods to encourage and maintain provision of criminal PFLA should be pursued?

Yes

No

Don't know

Comments:

(b) Do you have any alternative suggestions?

Comments:

Q29. Do you believe that the Scottish Legal Aid Board should be given the flexibility of operation to allow it to pursue these methods?

Yes

No

Don't know

Comments:

Q30. Do you agree that the Scottish Legal Aid Board should be allowed to employ flexible methods (within the context of its current role and functions) in relation to secure the provision of solicitors' services for criminal legal assistance?

Yes

No

Don't know

Comments:

Q31. More specifically, do you agree that SLAB, should be able to:

(a) Make greater use of salaried or employed solicitors through the PDSO?

Yes

No

Don't know

Comments:

(b) Use contracting with private practitioners to provide legal aid services?

Yes

No

Don't know

Comments:

Q32. In relation to a contributions system for the full range of PFLA:

(a) Do you agree, in principle, that a contributory system should be developed for the full range of publicly funded criminal legal assistance?

Yes

No

Don't know

Comments:

(b) What would you anticipate the main practical difficulties in establishing and operating a contributory system might be?

Comments:

Q33. Should any arrangements be put in place in respect of contributions paid by people later acquitted to be refunded to them?

Yes

No

Don't know

Comments:

Q34. In relation to the transfer of responsibility for granting criminal legal aid:

(a) Do you agree that the responsibility for granting criminal legal aid in solemn cases should transfer from the courts to SLAB?

Yes

No

Don't know

Comments:

(b) If not, would there be another way of improving the transparency, consistency and cost control of the solemn criminal legal aid system?

Comments:

Q35. Do you agree that the Scottish legal Aid Board should be given powers in solemn cases:

(a) to recover costs from applicants who have made false disclosure of their means, and

Yes

No

Don't know

Comments:

(b) to terminate publicly funded legal assistance where this is appropriate, as it currently can in summary cases?

Yes

No

Don't know

Comments:

Q36. In relation to specific financial eligibility criteria:

(a) Do you agree that specific financial eligibility criteria should be introduced for all criminal legal aid?

Yes

No

Don't know

Comments:

(b) What should such criteria be based on?

Comments:

Q37. Do you agree that a requirement to report material changes in financial circumstances during the lifetime of a case, to allow a reassessment of eligibility, should be introduced for criminal legal aid?

Yes

No

Don't know

Comments:

Q38. Do you agree that publicly funded criminal legal assistance should be terminated if, upon reassessment of financial eligibility, the applicant is no longer eligible?

Yes

No

Don't know

Comments:

Q39. Should a single integrated system be developed for publicly funded legal assistance in summary criminal cases?

Yes

No

Don't know

Comments:

Q40. How should such a system take account of the proposals for summary criminal reform set out in the White Paper "Smarter Justice, Safer Communities"?

Comments:

Thank you for completing this form.