

# Citizen Participation and Public Petitions Committee

3rd Meeting, 2024 (Session 6), Wednesday  
21 February 2024

## PE2002: Ensure access to legal aid for people with disabilities

<b>Petitioner</b>	Grant White
<b>Petition summary</b>	Calling on the Scottish Parliament to urge the Scottish Government to provide increased funding for legal aid in civil cases for people with disabilities.
<b>Webpage</b>	<a href="https://petitions.parliament.scot/petitions/PE2002">https://petitions.parliament.scot/petitions/PE2002</a>

### Introduction

1. The Committee last considered this petition at its meeting on [19 April 2023](#). At that meeting, the Committee agreed to write to the Law Society of Scotland and the Scottish Legal Aid Board.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from the Law Society of Scotland and the Scottish Legal Aid Board which are set out at **Annexe C** of this paper.
4. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
6. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 30 signatures have been received.

## Action

The Committee is invited to consider what action it wishes to take on this petition.

**Clerk to the Committee**

## Annexe A

### PE2002: Ensure access to legal aid for people with disabilities

#### Petitioner

Grant White

#### Date Lodged:

13 February 2023

#### Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to provide increased funding for legal aid in civil cases for people with disabilities.

#### Previous action

I have contacted the Law Society of Scotland, the Scottish Legal Aid Board, and the Lord President of the Court of Session. None have been able to assist. I wrote to all the MSPs for my area. Only one replied, Jeremy Balfour MSP. Initially he said he would help and later said he could no longer do this.

#### Background information

I have been attempting for some time to obtain legal assistance to challenge decisions of the Department of Work and Pensions which I believe were reached in breach of the rules applying to such decisions. I have been advised that I could petition the Court of Session for Judicial Review. I do not have the capacity to do this for myself as I find written communication very difficult.

Disabled people are doubly disadvantaged within the legal system because of their low income, and the difficulty they have in pursuing legal actions on their own without assistance. The number of solicitors who carry out legal aid work is small and those who do are unable to take on new work, even to provide initial advice and assistance preparatory to legal action being taken. I believe that many people will be in a similar position to myself, and therefore are being discriminated

against because they are unable to get justice. Our human rights are being breached.

## Annexe B

### Extract from Official Report of last consideration of PE2002 on 19 April 2023

**The Convener:** PE2002, which has been lodged by Grant White, urges the Scottish Government to provide increased funding for legal aid in civil cases to ensure access for people with disabilities. The Scottish Parliament information centre briefing highlights the Law Society of Scotland's campaign on access to legal aid and its research, which found that there was a lack of solicitors offering legal aid based in deprived communities.

The Scottish Government's response to the petition states: "The Scottish Legal Aid Board ... apply means and merits tests to determine eligibility" for the legal aid fund. It goes on to state: "Neither Ministers nor the Scottish Legal Aid Board ... can compel solicitors to provide advice and representation."

The response also outlines measures that are being introduced to improve access to legal aid.

The petitioner's written submission details his experience, which highlights the challenge in obtaining a solicitor. He states that he has contacted nearly 100 firms, all of which stated that they could not take on his case. He concludes by stating:

"my experience is that there are too few solicitors who carry out legal aid work and those who do legal aid cases do not have the capacity to take on any more because of the lack of funding."

Well, there we are. Do members have any comments or suggestions as to how we might proceed in relation to the petition?

**Fergus Ewing:** This is a problem of access to justice that seems to be growing. I am aware that the Scottish Government intends to introduce a legal aid reform bill and an uplift of 10 per cent to legal fees. That is welcome as far as it goes, but it is a serious matter for someone to be unable to access legal aid at all. No access is effectively justice denied.

I think that we should write to the Law Society of Scotland to seek its view on the action that the petition calls for, and for information about its campaign on access to legal aid, in particular as it relates to people with disabilities. We have a duty to explore that aspect.

We should also write to the Scottish Legal Aid Board to ask whether it intends to undertake a monitoring report on access to legal aid for people with disabilities and if not, why not. We have a duty to ensure that that particular category of vulnerable people has access to justice, and we need to find out what barriers there are. It could be useful to provide that information to the Scottish Government in order to inform its intended law reform and perhaps influence that process down the line.

**The Convener:** Are colleagues content?

**Members** *indicated agreement.*

**The Convener:** It does seem ridiculous that an individual in such circumstances should have contacted 100 people only to receive 100 rebuffs as he tried to access justice. It is an important petition, and we will take it forward.

## Annexe C

### Scottish Legal Aid Board submission of 31 May 2023

#### PE2002/C: Ensure access to legal aid for people with disabilities

Thank you for your letter of 4 May 2023 seeking information from the Scottish Legal Aid Board to assist the Committee in responding to the above petition. We are sorry to hear of the difficulties experienced by Mr White.

You indicate the Committee is keen to know whether the Scottish Legal Aid Board intends to undertake a monitoring report on access to legal aid for people with disabilities and if it does not intend to, what its rationale for this is.

SLAB has a range of arrangements in place to monitor legal services by:

- Analysing the organisation's data on trends in legal assistance and supply;
- Supplementing this with other sources of data about legal services including information that may be requested of the Law Society of Scotland, the Faculty of Advocates and the Scottish Courts and Tribunals Service and
- Seeking the views of stakeholders, including service providers and users.

SLAB has recently conducted research into the experience of users of Civil Legal Assistance which was [published](#) in July 2022. The results overall were positive, for both civil legal aid clients and individuals that have received civil advice and assistance, suggesting that the service is generally meeting people's requirements.

The survey asked about the ease or difficulty respondents experienced in finding a solicitor, including the number of solicitors who were contacted before finding the one who acted for them. The responses to these questions did not reveal any significant differences in experience as between the 182 respondents reporting a condition that limited their day-to-day activities and the 341 that did not, although eight people

reported feeling that their disability had made it more difficult for them to access a solicitor.

While we appreciate that these findings will be of little comfort to Mr White and do not in any way diminish the challenges he has faced, they do suggest that his experience is not typical or illustrative of a widespread or systemic problem.

More broadly in relation to the accessibility of the legal aid system for people with disabilities, our 2021-2023 Equality Outcomes plan included a focus on improving access to our services and funding of communication support, including delivery of a customer communication support needs service. We reviewed and impact assessed our key policies in relation to legal aid funding for communication support. As part of that plan, we redeveloped how we capture equality information from applicants, including people with disabilities, which will inform future development of our services and legal aid policy.

In our forthcoming equality outcomes plan 2023-2026, we are aiming to deliver improvements in accessibility of information about legal aid and our services, with a focus on people with disabilities amongst others.

To provide some context for our work in this area, the current legal aid system is demand led and funded on a case-by-case basis. As such nobody is precluded from accessing assistance due to budgetary pressures. However, the current legislative framework does not guarantee access to legal advice and representation: neither SLAB (nor the Scottish Government) can compel solicitors to take on legal aid work and it is a matter for them as to whether they undertake legal aid work at all or, if they do, whether to take on a particular client or case. It is difficult to know precisely why Mr. White has been unable to find a solicitor: there can be many reasons why a solicitor declines to take on a case.

There are a number of third sector advice agencies such as law centres that offer legal advice of the kind that might be of assistance to Mr. White. The Scottish Government's website has information [here](#) on accessing help with a legal problem and in particular, has a section in relation to discrimination which may be helpful.

I hope that this information is helpful and if I can be of any more assistance, please do not hesitate to get back in touch.



# Law Society of Scotland submission of 14 August 2023

## PE2002/D: Ensure access to legal aid for people with disabilities

Thank you for your letter requesting views on the above petition. We are sorry to hear about the difficulties that the petitioner has faced in securing help through the legal aid system. We are not able to direct a firm to undertake any individual case, and we note that the petitioner has also sought help from the Scottish Legal Aid Board's Civil Legal Assistance Office, who were also unable to assist.

Unfortunately, the number of firms providing civil legal aid has significantly declined over the last decade, by around 20% (while the number of firms registered for criminal legal aid has declined by over 30%). There are many factors contributing to this decline, though the lack of a sustainable funding mechanism for legal aid a very significant element. Over the course of a generation, legal aid fees have largely not kept pace with inflation, resulting in a significant decline in real-terms, particularly during this current period of high inflation. A mechanism for periodic review, taking inflation into account, is required to address the impact of inflation on the legal aid system, a reform that we have called for consistently over the last decade. Currently, Scottish Government does not believe that it has sufficient data to understand the impact of inflation on the sector, and will shortly be commissioning research to assess this more fully. We are concerned that in the current cost of living crisis, legal aid fees will further reduce in real-terms in the time that it takes for this research to be completed, further exacerbating the current problem.

Scottish Government has looked to address the diminishing legal aid sector in other ways, for instance, through the implementation of a trainee fund. This has allowed 40 part-funded traineeships into the legal aid sector, to address supply concerns and also the lack of younger solicitors in the sector. We would be keen to see initiatives like this continue.

In a case of this type, seeking judicial review of the Department of Work and Pensions at the Court of Session, a solicitor advocate or advocate would be required to appear, again reducing the number of people

capable of providing representation in the case. Judicial review is often complex and we note proposals in the current Scottish Government consultation on human rights around additional approaches to improve access to justice, both in terms of the current framework for human rights in Scotland and also the rights proposed for incorporation, including the right to social security as a human right. Sustainable funding for advocacy services, wider accountability of public bodies and enhanced roles for scrutiny bodies may offer some help in improving access to justice and preventing human rights breaches.

Other reforms could be considered, for instance, the time limits within which to bring actions to challenge decisions. Decisions of the Department of Work and Pensions need to be appealed within a month (though the tribunal will consider applications up to a year following) and judicial review applications must be brought within three months (though this can be extended where it is equitable to do so). Whether these remain realistic timescales for people with disabilities, bearing in mind the diminishing size of the legal aid sector in Scotland, may be worth consideration.

There may also be opportunities in forthcoming legal aid legislation to consider ways to reform the legal aid system to ensure that people across Scotland with disabilities have more effective access to justice.