

National Report Template ILAG Ottawa June 2019

1. Country details :

Table 1.1

Population	5.4 million
GDP	£32,800 (per person)
Population in poverty	18% (absolute poverty after housing costs)
Practising lawyers	11,000+

2. Legal Aid Organisation / Authority:

The Scottish Legal Aid Board (SLAB) is a Non Departmental Public Body (NDPB). This means it is funded by the Scottish Government and accountable to Ministers although operational matters are maintained at arm's length from the Government.

People in Scotland generally apply for publicly funded legal assistance through a private solicitor who, depending on the type of legal assistance granted, charge fees based on a number of different models:

- Block fees: an inclusive or block fee is a prescribed fee for all work done in connection with a defined stage of the proceedings, regardless of the amount of work undertaken in the particular case.
- Fixed payments: a fixed payment tends to be a fee per case and is closely associated, at least in the Scottish legal aid system, with the fee for the conduct of the of a summary criminal case, although there can be add-on payments for additional work in connection with a trial.
- 'Time and line' fees: a detailed, or time and line, fee is based on a detailed break-down of each item of work done in the proceedings, which may be time or task-based.

The vast majority of legal assistance is delivered by solicitors and advocates in the private sector on a case by case basis. There is no obligation on the profession to accept instructions from a client who seeks assistance.

A small amount of publicly funded assistance is delivered by SLAB employed solicitors in the form of publicly employed solicitors delivering criminal (Public Defence Solicitors' Office (PDSO)) and civil legal services (Civil Legal Assistance Office (CLAO)) across Scotland. SLAB's employed civil solicitors play a dual role in referring people to solicitors in the private sector and providing direct services if this is not possible.

SLAB employed solicitors also manage a 24 hour Solicitor Contact Line which provides advice and facilitates access to solicitors for people that require advice in police custody.

To put this into context there are around 1,100 solicitors in Scotland who are registered to carry out criminal legal aid compared to 25 publicly employed solicitors in the Public Defence Solicitors' Office.

SLAB also manages a range of projects delivering legal and other support across the country which are funded through government grants.

Table 1.2 Firms and solicitors registered for Legal Aid.

	31 MARCH 2019
Criminal - firms	458
Criminal - solicitors	1104
Civil - firms	561
Children's - firms	372
Children's - solicitors	874

3. Budget and Spend:

Although the Scottish Government allocates a budget for legal aid, expenditure is uncapped and demand led. An application for legal aid will never be refused on the basis that the allocated funding has been reached.

The legal aid budget is split into two categories. The Legal Aid Fund covers payments for legal assistance cases. The second is the administrative budget (Admin), this covers all the operational costs of SLAB. Table 1.3 shows the allocated budget for the last two years.

Table 1.3 Annual budget

	2016-17	2017-18
	£m	£m
Fund	126.1	126.1
Admin	11.8	11.3

4. Scope, Caseload and Eligibility:

The scope of civil legal aid in Scotland is wider than in many other jurisdictions. Only a very small number of civil proceedings, e.g. small claims, are not covered by legal aid. All types of criminal proceedings are covered by criminal legal assistance.

Table 1.4 Eligibility for legal assistance

Type of legal aid	Eligibility testing*		Contributions
	Merits test	Means test	Assisted person pays towards the costs of the case if disposable income or capital over a set threshold
Civil			
A&A	✗	✓	✓
ABWOR	Depends on case type	Depends on case type	Depends on case type
Civil Legal Aid	✓	✓	✓
Children's			
A&A	✗	✓	✓
ABWOR	✓	✓	
Children's Legal Aid	✓	✓	
Criminal			
Police Station Advice (A&A)	✗	✗	✗
A&A	✗	✓	✓
ABWOR	Depends on case type	Depends on case type	Depends on case type
Summary criminal legal aid	✓	✓	✗
Solemn criminal legal aid	✗	✓	✗

Financial eligibility is also generous. While there has been no recent analysis on the proportion of the population eligible for legal aid, those with disposable incomes of

- up to £26,239 can qualify for civil legal aid albeit with a contribution.
- up to £222 per week for criminal legal aid.

If unsuccessful in their action people in receipt of legal aid can be found liable for the other side's expenses. Where an order for expenses is made the assisted person can apply to the court to reduce the expenses to nil. This happens in the vast majority of cases.

Table 1.4 Applications and grants of legal assistance

	2016-17		2017-18	
	Applications	Grants	Applications	Grants
Total applications and grants	214,781	218,231	200,632	203,203
Civil (total)	86,956	81,504	81,196	76,740
Advice & assistance and ABWOR	68,079	68,079	63,647	63,647
Civil legal aid	18,877	13,425	17,549	13,093
Criminal (total)	115,674	124,814	107,968	115,193
Advice and assistance	22,590	22,590	18,682	18,682
CJA advice & assistance and ABWOR			2,315	2,315
ABWOR	28,713	28,713	26,660	26,660
Summary criminal legal aid (SLAB granted)	52,706	47,761	49,194	43,819
Summary criminal legal aid (Court granted)		18		9
Summary and ABWOR	81,419	76,492	75,854	70,488
Solemn criminal legal aid	11,133	10,059	10,616	9,772
Court granted		2,796		2,611
Appeals	532	489	501	480
Duty solicitor appearances (incl. PDSO)		12,388		10,845
Children's (total)	12,151	11,913	11,468	11,270
Advice and assistance	4,725	4,725	4,279	4,279
ABWOR	4,371	4,371	4,383	4,383
Legal aid (including appeals)	3,055	2,601	2,806	2,379
Automatic legal aid		216		229

5. Quality Assurance:

The table 1.5 sets out the key features of the criminal and civil quality assurance schemes in Scotland.

Table 1.5 Quality Assurance Schemes

	Criminal Legal Assistance	Civil Legal Assistance	Children's Legal Assistance
Commenced	The scheme was commenced in February 2012.	The scheme was commenced in 2003.	The Scheme was commenced in 2017
Administered by	Scottish Legal Aid Board (SLAB).	Law Society of Scotland.	Scottish Legal Aid Board (SLAB).
Funding	SLAB funds the QA	Funding ultimately	SLAB funds the QA

	scheme.	covered by SLAB. The Law Society initially pays for the costs of the scheme including Peer Reviewers and the scheme's administration costs. These costs are then reimbursed by SLAB.	scheme.
Committee	<p>QA is overseen by a Criminal Quality Assurance Committee (CQAC). This is a Committee of SLAB which comprises:</p> <ul style="list-style-type: none"> • 3 members appointed by SLAB; • 3 members appointed by the Law Society of Scotland; • 3 independent or lay members appointed in consultation with the Law Society of Scotland. <p>The main roles of the Committee are to consider the results of peer reviews and make recommendations for further action e.g. SLAB commencing de-registration proceedings.</p>	<p>QA is overseen by a Quality Assurance Committee. This is a Committee of the Society which comprises:</p> <ul style="list-style-type: none"> • 3 solicitors appointed by the President of the Law Society, including the Convener, who is a member of Council; • 3 lay members; • 3 employees of or members of SLAB, of whom at least two must be solicitors. <p>The main role of the Committee is to consider the results of peer reviews and to determine whether a firm should hold or continue to hold a Law Society Compliance Certificate.</p>	<p>QA is overseen by a Criminal Quality Assurance Committee (CQAC). This is a Committee of SLAB which comprises:</p> <ul style="list-style-type: none"> • 3 members appointed by SLAB; • 3 members appointed by the Law Society of Scotland; • 3 independent or lay members appointed in consultation with the Law Society of Scotland. <p>The main roles of the Committee are to consider the results of peer reviews and make recommendations for further action e.g. SLAB commencing de-registration proceedings.</p>
Peer review cycle	The reviews are carried out over a 6 year cycle.	The reviews are carried out over a 6 year cycle.	The reviews are carried out over a 6 year cycle
Peer review carried out by	Peer reviews are carried out by experienced and currently practising	Peer reviewers are carried out by solicitors who practice civil legal	Peer reviewers are carried out by solicitors who

	criminal solicitors.	assistance.	practice children's legal assistance.
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Complaints about solicitors are handled in the first instance by the Scottish Legal Complaints Commission (SLCC). SLCC are a single point of contact for all complaints against lawyers in Scotland (solicitors, advocates, commercial attorneys, licensed conveyancers). They investigate and resolve complaints about service and refer conduct complaints to the relevant professional body for investigation.

6. Public Legal Education:

The Scottish Government has introduced the mygov.scot website which works with over 150 organisations to deliver an online platform for people in Scotland to access public services that are easy to find and simple to use.

7. Alternative Sources of legal services:

Alternative advice is available through local authorities, national organisations such as Shelter and smaller charities. Advice on welfare benefits, housing, debt, consumer issues, employment and relationships can be sought from one of the 59 Citizens Advice Bureau spread across 300 locations. In 17-18 CAB assisted 262,000 clients with almost 766,000 issues.

8. Holistic legal services:

We are currently exploring options for a pilot project whereby our public defenders (and possibly private sector custody court duty solicitors) will work with a charity that connects vulnerable clients with mentors, who themselves have lived experience of offending. Such a project would seek to replicate similar approaches currently in place in hospital accident and emergency wards, establishing a relationship of trust between mentor and accused with a view to enabling accused to identify and address underlying issues, including by referral to other support agencies via their mentor. The idea for the pilot emerged from discussions between SLAB, police, community justice and a private defence solicitor focusing on the particular needs of those with a history of adverse childhood experiences.