



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Equalities, Human Rights and Civil Justice Committee

**Tuesday 14 March 2023**

**Session 6**



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Pàrlamaid na h-Alba

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**Tuesday 14 March 2023**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>ACCESS TO JUSTICE .....</b>	<b>2</b>

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**EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE**  
**7<sup>th</sup> Meeting 2023, Session 6**

**CONVENER**

\*Joe FitzPatrick (Dundee City West) (SNP)

**DEPUTY CONVENER**

\*Maggie Chapman (North East Scotland) (Green)

**COMMITTEE MEMBERS**

\*Karen Adam (Banffshire and Buchan Coast) (SNP)

\*Pam Duncan-Glancy (Glasgow) (Lab)

\*Pam Gosal (West Scotland) (Con)

\*Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Jen Ang (JustRight Scotland)

Gillian Fyfe (Citizens Advice Scotland)

Colin Lancaster (Scottish Legal Aid Board)

Fiona McPhail (Shelter Scotland)

Rachel Moon (Govanhill Law Centre)

Jim Stephenson (Law Society of Scotland)

**LOCATION**

The James Clerk Maxwell Room (CR4)



## Scottish Parliament

### Equalities, Human Rights and Civil Justice Committee

*Tuesday 14 March 2023*

*[The Convener opened the meeting at 10:00]*

### Decision on Taking Business in Private

**The Convener (Joe FitzPatrick):** Welcome to the seventh meeting in 2023, in session 6, of the Equalities, Human Rights and Civil Justice Committee. We have received no apologies.

Agenda item 1 is on whether to agree to take in private item 3, which is consideration of today's evidence. Are we agreed?

**Members indicated agreement.**

## Access to Justice

10:00

**The Convener:** Item 2 is to hear from stakeholders on access to justice in Scotland: Jim Stephenson, convener, access to justice committee, Law Society of Scotland; Jen Ang, director, JustRight Scotland; Fiona McPhail, principal solicitor, Shelter Scotland; Rachel Moon, senior solicitor and legal services manager, Govanhill Law Centre; Colin Lancaster, chief executive, Scottish Legal Aid Board; and Gillian Fyfe, strategic lead for strong communities, Citizens Advice Scotland, who joins us remotely. You are all very welcome.

We have chosen a round-table format in order to encourage a little more of an informal discussion on the issues, so please feel free to indicate and come in on any of the issues that are of interest to you.

The committee is keen to hear about how you currently support people who seek advice, the challenges that your services face and access to funding. The committee is also interested in hearing your views on legal aid reform.

First, I ask each of you to introduce yourselves and say a little bit about the work that your organisation does and maybe a little about whether there has been a change to that work as a result of the pandemic and the cost of living crisis. I will go clockwise, starting with Jim Stephenson.

**Jim Stephenson (Law Society of Scotland):** Good morning, convener and committee. Thank you for allowing the Law Society to participate.

The major issue that faces civil legal aid practitioners is that they support the most vulnerable people in society, including people who suffer from mental illness and victims of domestic abuse. Increasingly, fewer lawyers are offering to do legal aid work. Those who continue are swamped and thus it is common for them to stop taking on new cases, because of the heavy workload. Women's aid organisations have told me that they are unable to find civil legal aid lawyers and have sought funding from charitable organisations to pay for lawyers outside the legal aid system.

Additionally, the number of legal aid lawyers in the Highlands and the Borders who are willing to take part in the children's hearings duty plan is extremely low. For example, in Inverness and Elgin, 15 firms are listed on the duty plan, but only one of those is local. There is also a problem with cases that involve adults with incapacity. There is

rising demand, yet legal aid lawyers are not available to meet that need.

Last year, the Scottish Government scheme to part fund 40 trainees in the legal aid sector was welcomed by the Law Society and the profession. However, newly qualified solicitors are being offered one third more than legal aid firms can offer by people in private practice or other areas. Without urgent action, there will be a further decline. The question is, how do we retain lawyers in this sector? The setting up of an annual review of fees is essential for legal aid firms to be able to demonstrate to graduates that this area of law has a future.

**Jen Ang (JustRight Scotland):** Thank you for the opportunity to give evidence on access to justice and, specifically, on how the current political, economic and regulatory environment has impacted access to services and service delivery by third sector organisations and legal charities such as ours.

JustRight Scotland is a charity that was founded by human rights lawyers to defend and extend people's rights in Scotland. We do that by providing free, confidential legal advice to people across Scotland in areas in which there are gaps in access to specialist advice. Those include the rights of women and of the survivors of gender-based violence, through the Scottish Women's Rights Centre—I will echo some of what Jim Stephenson has just said; of the survivors of trafficking and labour exploitation, through our anti-trafficking and exploitation centre; of unaccompanied asylum-seeking children and migrant women who are fleeing violence, through our refugee and migrant centre; and of people who face disability discrimination, race discrimination or discrimination on account of their sex or LGBT+ identity, through the Scottish just law centre. We also run the Ukraine advice Scotland project, which provides free advice to Ukrainians and their families on seeking safe routes to Scotland.

I emphasise that we run those services on a combination of private charitable trust funding, some core Scottish Government funding and a tiny bit of legal aid funding. I point out that there is a range of solutions that feed into filling the access to justice gap. We need to have a full and frank conversation about what we and other organisations need in order to continue to do that work.

In brief, as you would expect, demand for our services continues to outstrip our capacity to meet that demand. That is why we work in partnership with other lawyers and advice organisations, including Citizens Advice Scotland, Shelter Scotland and Govan Law Centre. We all understand that the most efficient means of addressing the gap is to work together when there

is such scarcity of resource. We are also here to highlight the point that the burden of continuing to address the gap must not fall only on the third sector, private charitable funding and our colleagues to work harder, smarter and faster but mostly harder.

As you will be aware, we think that that has, in part, to do with the slow disintegration of the civil legal advice sector in areas of social justice law in particular. Those are areas such as public law, housing, welfare and community care, and immigration and asylum. They are all areas in which the market does not provide sufficient incentive for people who are already in practice to step in.

We also highlight the point that, in specialist legal areas such as domestic violence, sexual harassment trafficking and labour exploitation, more needs to be done in Scotland. That is to say that there might be lawyers who are willing to take up that work, but the infrastructure, support and funding to do that need to be thought through.

I am aware that this is a wee bit long, so I will scooch forward.

We would really like to discuss today how we can work together and how the Scottish Government can work on a more unified footing to consider its obligations under international law to provide for access to justice across the law and, specifically, to look at its vision for justice strategy and meet those ambitions. We need a clear understanding of all the areas where a duty arises on the Scottish Government to ensure access for justice in the civil and criminal legal systems, as well as an understanding of where there are gaps and barriers in access to advice and what is causing them, because there are short and long-term solutions.

We also need an understanding of the longer-term opportunities, such as the proposed human rights bill, and the threats—such as the continuing erosion in the number of lawyers and advisers who are being recruited, trained and progressed in those roles—and a focused and comprehensive strategy with resource over more than five years to reverse those trends.

We would like to answer your question about widening gaps. We think that the situation is increasingly urgent in light of our experience and what I am sure that my colleagues will share on the impact of the pandemic and our response to it, as well as the cost of living crisis. I will not rehearse the evidence but I think that we all accept that those have increased inequality in Scotland.

We submit that a country such as Scotland, which has the resource and ambition to be a world leader, can do better. We welcome the opportunity

to start a conversation about the levers or mechanisms that we could employ to take that longer-term approach to addressing the problem.

**Fiona McPhail (Shelter Scotland):** Good morning, convener and committee. Thank you for the opportunity to be here.

I echo what Jim Stevenson and Jen Ang said. I also refer to the written evidence that Shelter Scotland has submitted to the committee. The starting point is that, as has already been said, the situation is an exacerbation of a pre-existing structural inequality.

Our domestic human rights law has long recognised that eviction is the most severe form of interference with the right to respect for the home that is enshrined in article 8 of the European convention on human rights. Scotland can proudly boast some of the strongest legal protections across the public and private sectors as well as for homeless people, but the scandalous truth is that, for many years, many tenants and homeless people have been denied access to justice.

We can consider the fundamental reasons for that: the structural inequalities, the lack of social housing and the inadequately funded statutory services. However, in the context of the delivery of our services, I believe that the barriers to access to justice fall under three broad themes.

The first is a lack of awareness of rights, which we commonly see in the field of homelessness. Clients present as homeless to a local authority and take what they have been told at face value, which is, "Sorry, we have no accommodation available today—come back tomorrow," or, "You do not have a local connection—go back to X." People will spend weeks in that situation before they become so desperate that they have no option but to get advice.

The second barrier relates to the complexity of needs and the vulnerability of clients. Not only might they face eviction or already be homeless, many of our clients present highly distressed or mentally and physically disabled; we have noticed an increase in the number of disabled clients approaching us for our services. Many clients will be fleeing domestic violence and many, if not all, will be in financial insecurity. Any one of those factors presents a challenge, but navigating or dealing with all of them seems unfathomable.

The third, and main, barrier—and the one that I would be grateful to discuss further today—concerns the lack of specialist advice services. As colleagues have said, we can have the strongest legal rights in place and people can know about them, but if they cannot get through the door and access a specialist adviser or a lawyer, the meaningfulness of those rights is questionable.

As has been said, when it comes to the delivery of services, people in housing crisis are almost entirely reliant on the third sector. The third sector is dealing with increasing demand, has an increasingly competitive funding pool and struggles to recruit, train and retain staff.

We are in a housing emergency, and Shelter Scotland's call is for an emergency response. Aside from building more social housing and adequately funding our services, let us look at the issue of access to justice. We have tinkered around the edges of that, and we need to continue to do that, but we are now at the stage where we need radical root-and-branch reform. The pandemic has taught us many important lessons and, although the legal profession has reacted well—we are now delivering a combination of remote and in-person services and many of us will offer digital advice—we have more fundamental issues when queues are growing and we are not able to offer access to justice, which is a fundamental right.

**Gillian Fyfe (Citizens Advice Scotland):** Thank you for the opportunity to provide evidence this morning. The citizens advice network, which is comprised of Citizens Advice Scotland, the Extra Help Unit and our 59 member bureaux, forms Scotland's largest independent advice network. The advice that is provided by our service is free, independent, confidential, impartial and available to everyone. We look at the problems that people bring to our advice services and campaign and advocate for change where it is needed most. We work for a fairer Scotland where people are empowered and their rights are respected.

During January 2023, Scottish citizens advice bureaux helped more than 22,000 people by providing more than 93,000 pieces of advice, which represents a 10 per cent increase in client numbers compared to January 2022. In addition, the CAS online advice pages saw the highest number of page views outside of the pandemic and the third-highest number of page views ever. Those figures demonstrate that the cost of living crisis is driving an increased demand for advice across the citizens advice network.

Advice relating to access to justice forms an important part of the work of the citizens advice network, with more than 3,000 pieces of advice on legal proceedings being provided in an average month. During 2022, the most common access to justice issues on which advice was provided were simple procedure, benefits tribunals, incapacity, legal aid, and solicitors and advocates. Although advice provided on legal proceedings by CAS can be wide ranging, we are aware of some common issues that are faced by clients, such as issues with accessing a practitioner who will take on a case that is funded by legal aid, issues with supply

of legal practitioners in certain parts of the country and in relation to particular specialisms of law, and issues with the accessibility of virtual or remote proceedings. I hope to expand on some of those points during this meeting.

The economic value of advice provided by citizens advice bureaux on legal proceedings is an estimated £11.58 million. That clearly demonstrates the effective early intervention and prevention role that the citizens advice network plays in Scotland. Therefore, it is crucial that citizens advice bureaux, and any specialist access to justice projects that they run—such as in-court advice projects—are funded on a consistent and long-term basis in order to help improve outcomes for people.

10:15

**Rachel Moon (Govanhill Law Centre):** Good morning. Thank you for inviting Govan Law Centre. We are grateful to be here. Govan Law Centre is a multidisciplinary service, in that we provide housing, debt, welfare rights and legal advice, from adviser level to solicitor advocacy level. Everything is in-house, which means that we can work fast and efficiently and can identify strategic challenges and act on them quickly. However, after losing out in funding rounds, we have lost staff and are just too lean to undertake, every day or every week, the strategic litigation that we would wish. As a result of the impact of Covid-19, the cost of living crisis, Brexit and inflation at 10 per cent, our cases are more complex and more time consuming, and being underresourced means that we cannot act as we want.

We call for better funding and investment in the specialist advice network and strategic work, to allow us to progress and move the boundaries of equalities law.

**Colin Lancaster (Scottish Legal Aid Board):** Good morning to the committee. Thank you for the opportunity to be part of this morning's round table. As you have heard, the panel encompasses the public, private and third sectors; specialists and generalists; national and local; and legal and other advisers. That is a good demonstration of the range of services that operate in this sphere and the ways of organising them. The knowledge, skills and commitment of what is a wide range of providers is a huge strength from which people who are in need of advice and representation benefit enormously.

However, that multifaceted approach also poses a challenge. For those who seek help, it can be complex to navigate, and the lack of strategic planning and co-ordination can result in an

inconsistency of access between geographic areas, between areas of law and over time.

Legal aid is just one part of that rich but complex and at times inconsistent pattern of provision. The system is demand led, which can make it responsive to changes in need, but there is no mechanism for connecting need, demand and supply, of targeting resources at priority issues, or of securing a consistent level of service in any given place or for a particular type of problem.

The legal aid schemes are complex and can be confusing for the public and for providers—and, indeed, for SLAB, at times. Legal aid should be a means of resolving problems, not a specialist subject in itself. The legislation is approaching 40 years of age—and it was based largely on schemes from the 1950s, 1960s and 1970s.

The system continues to support many who might otherwise not be able to access the services that they need to help them to exercise their rights, defend themselves against criminal charges, challenge those who abuse power, or use the law to secure a better future for themselves and their families. However, it would be truly remarkable if a system that was designed more than 70 years ago was able to respond effectively to today's range of problems or encompass what we have learned about patterns of need, user focus and trauma-informed joined-up models of service delivery. To do that, the system needs redesigning, with current and future needs in mind, to provide clear access to advice for the public, a reduced administrative burden for providers, and, by incorporating a range of funding and delivery models, the possibility of a structure that can retain talented and committed lawyers and advisers.

Such a change needs new primary legislation, and we are hopeful that that will be forthcoming soon. We look forward to working with partners, such as those that are here today, and the committee, to shape a responsive, comprehensive and accessible legal aid system for the future.

**The Convener:** I thank everyone for those introductory remarks. We now move to questions. I ask Pam Duncan-Glancy to kick off the discussion.

**Pam Duncan-Glancy (Glasgow) (Lab):** Good morning. I thank everyone who has joined us for the information that they provided in advance, which has been really helpful, and for the supplementary information that they have given in their opening remarks. I had prepared some questions in advance, but a few more have arisen out of some of the comments—I guess that that is the nature of the discussion.

The first issue that I want to focus on is that of the areas in which people are seeking information.



Fiona McPhail, I come to you first on housing, after which I will move on to debt. In your submission, you noted that women who experience domestic violence have specific issues; Jim Stephenson also mentioned that. What specific issues were you referring to in relation to access to justice? What can be done?

**Fiona McPhail:** In the context of housing and, predominantly, homelessness, it is women fleeing domestic violence, in which we saw an increase during the pandemic. What we see at Shelter Scotland and, regrettably, what we deal with in the context of homelessness is breach of statutory duty, where a local authority is not providing temporary accommodation where they otherwise have a statutory obligation to.

**Pam Duncan-Glancy:** Does that apply specifically to women fleeing domestic violence?

**Fiona McPhail:** That applies not just to women. It is a general problem. There are three main categories of homelessness cases that we deal with. The first involves local authorities that have failed to take an application. The second involves local authorities that have taken an application but failed to secure accommodation, normally because they do not have accommodation available. The final category involves people who have been offered temporary accommodation but are challenging the suitability of that accommodation.

**Pam Duncan-Glancy:** What options are open to people when they try to challenge that?

**Fiona McPhail:** The legal remedy there is judicial review, which has kept us very busy recently. There are circumstances in which we cannot take those cases on because we do not have the capacity. A prime example of that is when somebody contacts Shelter and is given specialist advice by one of our advisers, who will contact the local authority. Advocacy will be undertaken by Shelter, but unless a lawyer is able to take a case or threaten judicial review, those cases tend to get stuck, or can get stuck. Our advisers have a high success rate in challenging local authorities, but that example demonstrates that more than just knowledge of rights is needed.

**Pam Duncan-Glancy:** You also talk in your submission about the need for strategic litigation, so that organisations could have standing in cases in the future. Will you tell us a bit more about that, particularly in relation to the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill?

**Fiona McPhail:** In the context of homelessness, by the time those cases come to us in the law service, we will be threatening judicial review. Most of those cases will resolve at the point of a threat and will therefore not go to a substantive

hearing. Although that is extremely beneficial for the individual concerned because they get the outcome that they need, underlying issues, whether local authorities' practice or a failure to consider the systems issues, are not being addressed.

We hope that, through the human rights bill, the test for standing is expanded, so that, for example, Shelter or groups of people are able to take action to challenge those issues. Does that make sense?

**Pam Duncan-Glancy:** It does. Thank you—I appreciate that.

You also made a point in your submission about unsuitable temporary homelessness accommodation and the recent inner house of the Court of Session judgment. Can you tell us about what that means for the people you work with and what we need to do to remedy that?

**Fiona McPhail:** That case was taken by Govan Law Centre, and Shelter Scotland intervened in the matter. The case concerned the statutory interpretation of an amendment that was made in 2021 to the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (No 2) Order 2020 that requires local authorities to take into account the needs of a homeless household. In considering that, the Court of Session held that “taking into account” the needs is not the same as meeting the needs.

At first instance, the lord ordinary held that “taking into account” the needs in effect meant meeting the needs. That was significant, because the case of Glasgow City Council v X concerned a child with autism, and it was decided that that child needed their own room. That could apply, for example, to women fleeing domestic violence, who should not be placed in a hostel with men, or people who are recovering from addiction, who say that they do not want to go into hostel-type accommodation. Those needs are not otherwise protected or covered by the remainder of the unsuitable accommodation order. Shelter Scotland's remedy to the decision in Glasgow City Council v X of the outer house would be to amend the legislation and substitute “taking into account the needs” with “meet the special needs”.

**Pam Duncan-Glancy:** I will pick up some of the strategic litigation as I move on to my next line of questions on debt. I will bring Gillian Fyfe in on that topic.

Debt appears to be one of the main reasons why people seek advice and the main reason why people use civil remedy. What kind of support do people need just now? Where are the gaps? It would appear that we need both the model that you describe through Citizens Advice Scotland, and the model that Rachel Moon describes through Govan Law Centre, to be available across

the piece so that people can access advice and legal advice. That could begin to address some of the strategic litigation issues.

That is a slightly broader question, but the issue of strategic litigation came up in response to the general question, so I thought that I would mention it when I asked you about debt.

**Gillian Fyfe:** Historically, debt has been one of our biggest advice areas. With regard to the advice that people seek from the citizens advice network, benefits is the biggest area, followed by debt. In December, our data showed that energy advice overtook advice on universal credit, which gives an indication of the situation that we are seeing with debt in relation to utilities. We are also seeing an increase in advice on food banks, facing eviction and home repossession. Therefore, people come to the network for advice in relation to debt across a number of areas.

With regard to the service delivery model, I agree with Pam Duncan-Glancy that there is a need for holistic advice to individuals and increased provision of legal advice through increased supply and access to practitioners—both are needed. The advice sector is a very good method of early intervention and prevention and triaging to understand whether an individual needs to seek legal advice or whether they can solve their issue without the advice of a legal practitioner.

**The Convener:** Pam, do you want Rachel Moon to say a few words on that as well?

**Pam Duncan-Glancy:** Yes—in connection with the point that Gillian mentioned.

**Rachel Moon:** The law centre model goes from advice to advocacy. When I talk about strategic litigation, that is what I mean, starting from an adviser who speaks to 10 clients a day. Across an organisation, those cases can be filtered through quite quickly. With regard to suitability of accommodation, we can start to judicially review them really quickly, rather than looking for outside legal advice and applying for legal aid. Quite often, you will already have legal aid from your adviser level, you will have all the details and you will have spoken to the client, so you are looking to move it and progress it quickly.

If there are reports that say that accommodation is unsuitable, we should be moving fast. It should not be accepted that there are kids living in unsuitable accommodation. To provide a bit of colour or context to that, the cases that we are seeing reflect what Fiona McPhail said about children with autism. For example, the family that I am dealing with right now is in a high-rise flat with a window that is a bit like a balcony. There are countless reports from medical professionals that say that the child has tried to jump out of the

window, and there is a huge risk and concern there. That case should be moved on really fast. If the resource is not there, you cannot take that to a judicial review very quickly.

There are all these waiting lists in relation to unsuitable accommodation, which is part of the housing crisis. If you have more investment in that strategic work and if there is a funnel for all those cases to go through, it can only help to show that more investment is needed in the housing sector.

**Pam Duncan-Glancy:** When you say “resource”, do you mean legal aid or the availability of lawyers and solicitors, or both?

**Rachel Moon:** It is maybe a bit of both, but we have found that legal aid is usually granted for those cases, so it is just a case of filtering the cases through to the relevant legal professional. However, to do a judicial review, you need someone with rights of audience, so you need an advocate to draft that application to get it into the Court of Session. In our organisation, we feel very powerful in having that, but most do not have that. Where there is no referral route to get that advice and advocacy in place, these cases are not getting taken.

We have some success with the threat of judicial review, but I have found that you need to be able to act on it, because you are speaking to the same lawyers in the legal team. We have to follow through on that by acting fairly quickly to show that we have special urgency legal aid in place to take it forward. When that happens, that is when clients are provided with relevant accommodation.

10:30

**Pam Duncan-Glancy:** You said that you feel quite lucky because you have access to that provision. How did you get that?

**Rachel Moon:** Mike Dailly is the principal solicitor at Govan Law Centre, and he is a solicitor advocate. That means that he has the rights of audience that are necessary to draft the paperwork and appear in the Court of Session. Because of that, we can move on from an adviser-led role, which is someone speaking on the phone, sifting through cases. I sit across from the person who does that, so I will speak to her about how unsuitable accommodation is. The case will come to me fairly fast, and then it can go to Mike Dailly fairly fast to get it to court. That is how we get through those cases and get people into suitable accommodation.

The case that you and Fiona McPhail were talking about was such a boon for housing lawyers. We had been arguing for so long that there is an absolute duty to house someone in

suitable accommodation. That has given us all the power to keep taking such cases. It is not about resources; it is about providing a house that is suitable for a family or an applicant's needs.

**Pam Duncan-Glancy:** Thank you. Convener, should I move on to the next area of questioning or will you go to someone else?

**The Convener:** I will let somebody else come in, and you can come back in later. Fulton MacGregor is next.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Do you want to let Karen Adam in now? I do not want to step on any toes.

**The Convener:** We are moving on to questions about access to services.

**Fulton MacGregor:** Okay—I was going to come in on the domestic abuse angle. I apologise for the misunderstanding. That is one of the risks with an informal round-table session. I totally messed up there.

Good morning, everybody. I have a question about services, which is probably for Rachel Moon initially and then maybe Jim Stephenson; Pam Duncan-Glancy might have touched on this. I am a Lanarkshire MSP, and I know that there are differences in services across the country. Rachel, is it correct that Govan Law Centre deals only with people with a Glasgow postcode? People who are in Lanarkshire, which is close to Glasgow, do not have a similar service. Your service is very well known and well thought of. What do you think about the provision of services across the country? What more can the committee do, in conjunction with the Scottish Government or other partners, to ensure that there is a consistency of service across the whole country?

**Rachel Moon:** You are right—we work in Glasgow, and mainly in the north-east and the south of Glasgow. We get contacted, as I am sure other organisations do, almost on a daily basis by people from other areas who are looking for advice. People get in touch with us online in particular—through Twitter, for example—asking whether we can take on a client. We do not take on those cases routinely, but we do act on a pro bono basis if we think that there is a strategic element to a case that could have a wider benefit.

In other situations, we refer people on. That could be to the Law Society of Scotland, to see whether a local lawyer will take on their case, or to citizens advice bureaux. There is not much else available, because the law centres are predominantly in Glasgow. We are underresourced and feel that we cannot necessarily take on the cases that we want to in our area, never mind ones that come from elsewhere.

On your question about what can be done about the situation, I do not mean to keep banging on about this, but I would say that more investment is needed. The law centres in Glasgow are full to capacity with casework. It is not really good enough to rely on us taking on strategic cases from outside the Glasgow area on a pro bono basis. That is not sustainable. Significant investment would be needed to widen the service provision outside Glasgow.

**Fulton MacGregor:** Jim, I ask you a similar question. In your view, are there particular challenges for people in exercising their human rights in combating discrimination?

**Jim Stephenson:** As I mentioned earlier, I think that the problem arises because newly qualified solicitors are leaving this area of law.

Plenty of people leave university and want to go into legal aid traineeships, but they look for a better work-life balance when they qualify. The workload faced by legal aid lawyers, and certainly by second-year trainees, is too heavy for them to sustain. Firms have to turn business away because they cannot deal with it, even though it might come from somewhere like Scottish Women's Aid. We feel very hard pushed. We must address that problem, but I do not know how we can do so.

It is also a gender-based issue: a lot of women leave the profession in the early years. We must address that problem across the board. I know that Colin Lancaster has views on that. The whole justice system must look at how we can retain those people, who will be available to give advice if we can retain them. Those are also the people who will end up being sheriffs and judges and administering the law, so it is important that we discuss this not only on a money basis, but on a work-life balance basis. A civil legal aid lawyer's business card will have their mobile phone number on it. They are available almost 24/7, but they alone cannot deal with what is coming through the door. That is the problem.

Virtual courts were used during the pandemic, which certainly helped by giving people in rural areas access to the legal profession. There are problems with the virtual courts, the main one of which is that there must be effective participation by the parties involved in the action. The solicitor and the client might have to be in the same room so that the solicitor can encourage the client to speak up and state their views. There is no point in having an online or virtual court if people are not participating effectively.

We could make progress in those areas, which would greatly help the situation. That work could be built into a further review by the fee review body. That is why the Law Society is very keen to

have an independent body to look at those things and to ensure that we have enough solicitors to meet the current overwhelming need.

**The Convener:** Jen Ang is keen to come in, and Karen Adam has a supplementary question on this area.

**Jen Ang:** I will quickly take the opportunity to answer Pam Duncan-Glancy's and Fulton MacGregor's questions about how to ensure consistent, high-quality provision in a specialist area across Scotland.

The Scottish Women's Rights Centre is funded to provide advocacy, legal information, advice and representation across Scotland for women fleeing gender-based violence. The centre is a collaboration between JustRight Scotland, Rape Crisis Scotland and the University of Strathclyde Law Clinic. It has been running for a number of years and is grant funded, which is an unusual response that makes it a good model to examine.

We have advocacy workers who work alongside our solicitors and legal caseworkers. We use that advocacy base to provide more information about legal rights and to give people what we call early intervention legal advice. We have a Scotland-wide remit, which has been really challenging. That was one of the reasons why the project was seen as promising and worthy of funding, but it also puts us in a good position to be able to tell you about some of the gaps and about some of the challenges that arise here, which will arise in other specialist areas of law.

By working through Rape Crisis and Women's Aid networks, we provide as much great, front-line information about people's rights as possible, but there are restrictions. Even for us, there is a bottleneck when it comes to referrals for individual legal advice and representation. We bear some responsibility when we advise people who are seeking to escape abusive and exploitative situations. We advise them that they have rights and that the statutory authorities will conduct themselves in a certain way. If we do not provide them with the legal advice and representation that they need to engage with those systems, we are letting them down.

For example, a woman who is fleeing domestic violence in the central belt, as compared with someone who is fleeing the same circumstances in a more remote area, might be able to access in-person advocacy support locally, or they might be able to access our services remotely, which has become a more frequent and accepted approach. However, there will come a point at which it is not possible to deliver a person-centred, trauma-informed model and to meet that person again and again, perhaps even in the steps preceding her decision to exercise her legal rights. It might not—

it probably will not—be possible to find a lawyer to see her who is at a safe distance and is not linked in to her communities. That is simple inequality. That difference will have real impacts on the lives of women across Scotland.

Some of the things that the centre has looked at and is doing to address the problem illustrate our strategy and approach. As I said, there are lawyers across Scotland who would like to take a more trauma-informed approach and to be able to take some of those cases, and they have the skills to do that. The Scottish Women's Rights Centre now runs a training and accreditation programme that is relatively light-touch, but which aims to create a network of lawyers or to upskill lawyers across geographies so that they feel confident enough to do the work. However, that is only a partial answer.

The second, longer-term issue is something that we cannot address alone, and Jim, Rachel and Fiona have spoken about it. Unless you fund specific people to do the work, we cannot magic up the capacity in firms that are already stretched. As much as people are willing, they are right and they are acting within their ethical obligations to not take on more casework than they can handle, particularly when the cases are complex and need a high level of contact hours, which they should have, because people who are in such situations deserve that intensity of advice.

I know that that was a bit of a meander, but I hope that it started to explore some of the impacts of those questions. If we were to measure our success, that would involve running a Scotland-wide survey to engage with people who have had particular legal issues, and asking them about the quality and speed of the response that they were able to obtain, and whether it affirmed their rights, no matter where they lived.

**Karen Adam (Banffshire and Buchan Coast) (SNP):** Jim Stephenson talked about women's participation in legal services and them dropping out. We recently had a gender-sensitive audit of the Parliament. Maggie Chapman and I were members of the board for that, and we looked into the barriers to women's participation in politics as a whole. We know that the better the representation of women in Parliament, the better women are served across Scotland. Would a gender-sensitive audit of legal services be considered? A lot of the issues that we are hearing about this morning affect women disproportionately.

**Jim Stephenson:** The last survey of its members that the Law Society carried out was in 2018, and it is currently preparing for a further survey. I will feed back into that survey the issues that we have discussed, but it is quite broad.

The difficulty seems to be with the structure of the court system, which is seen as a barrier. We are talking about civil justice, and civil proofs might run for a period of time, which does not help with hybrid working if someone wants to work only certain days of the week. That is difficult if a six-day proof is set down before a court. It is therefore not just the law firm but the court system itself that faces problems. Sometimes, lawyers have to do those proofs and suchlike to progress through a firm. I do not particularly subscribe to that view; people should progress according to their ability and there should not be any barriers to their progress.

The Law Society certainly looks at barriers and tries to address them, and its latest survey will do that.

10:45

**Colin Lancaster:** Jim Stephenson's points are well made. We have been aware of the issue for some time through discussions with the Law Society, the Government and the Faculty of Advocates, and the group is currently considering some work on the future of the profession and trying to identify any barriers and challenges that there might be and how they might be overcome. Those barriers could be the structural ones that Jim Stephenson mentioned in relation to the wider operation of the criminal justice system, and it might well be that looking at the way in which services are structured, delivered and funded could help to address some of the issues.

Our legal aid sector is predominantly made up of very small firms. In fact, many—more than half, I think—are one or two-person firms, and there are challenges in that respect with managing workloads in the face of unpredictability, particularly in relation to crime, which might require police station work and out-of-hours call-outs. As Jim Stephenson said, there is also an issue with longer-running criminal trials or proofs in civil cases. There might be a challenge with regard to flexibility in some of the delivery models, and ways of supporting the profession in general might be needed to address those barriers and create opportunities.

At the moment, two thirds or so of entrants into the profession are women—indeed, more than 50 per cent of the profession has been women for a decade or so—but what we have seen with criminal practice, in particular, is women coming into that area of work and then moving on or moving into publicly employed positions. For example, they might move in-house to the Crown Office or to wherever they find flexible working arrangements to be more readily available. That can be a challenge with some of the smaller

business units in which they have traditionally been based.

**Fiona McPhail:** I want to come back on Fulton MacGregor's question to Rachel Moon about Lanarkshire. Shelter's housing law service is a national one, so we will take cases throughout Scotland when we have the capacity to do so.

As for the question about what can be done, there is the difficult underlying issue of resources. I know that we are all asking for more funding and more sustainable funding avenues, but this is also a question of principle. We need to put access to justice on a par with access to healthcare. In the context of criminal justice, where we have duty schemes, some of us in the law centre movement offer in-court evidence to those at risk of eviction, but there is no consistency in that respect. Not every housing court has access to that sort of thing, and not every tenant will have automatic access to a housing lawyer. What is saddening about that is that, as we know from the cases that we take, the vast majority will have a legal defence, and the vast majority of the people whose cases we take on will successfully keep their home as a result of that advice. It makes a difference.

We know about the social and economic cost of going through with an eviction, and I think that, if we are looking at a redesign of the legal aid system and at access to justice, we have to identify areas where we need to think differently. Why, for the sake of argument, do people at risk of eviction not have the same automatic access to legal advice as those at risk of losing their liberty? That is just a proposal to think about.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** On the theme of access, we know that 100 lawyers and 40 legal aid firms have quit the legal aid system, and we know that, since 2007, the Scottish Government has reduced the budget by £65 million. We have talked about resources and the recruitment and retention of staff, and there are lots of solutions to such issues, but can the Scottish Government do more within its legislative competence or regulatory powers to address those issues?

I will perhaps go to Jim Stephenson first, because I know that the Scottish Solicitors Bar Association has been very critical of the latest legal aid settlement, which it has said does not go far enough in addressing recruitment and retention issues.

**Jim Stephenson:** I have already talked about the trainees scheme, which was very welcome, with about £1 million of funding being made available for 40 trainees in the legal aid sector. Some of those trainees have gone into criminal work, while a few have gone into civil law. The

Scottish Government has also announced an £11 million package, and I understand that regulations in that respect have been laid before Parliament and will, I think—Colin Lancaster can support me on this—come into effect at the end of April.

There have been on-going negotiations with the Scottish Legal Aid Board about the provision of legal aid. I sat on the board a long time ago, and the underfunding of legal aid has been a constant theme and one of the major problems with it. When the £11 million package was announced, that was not welcomed by the Law Society as a solution; it was only a step in the right direction.

What is really needed—I hark back to my opening comments—is an independent review, so that, like teachers and other professionals, people who come into the profession can see that there will be some sort of increase each year and that problems with barriers and achieving a work-life balance will be addressed. That is how we could move forward. The Law Society and the Scottish Solicitors Bar Association are keen on the introduction of a body that addresses not just fees but other issues.

We had a legal aid review about five years ago, but nothing has moved forward. I fully understand that there has been a pandemic, but we have reached this crisis because, as I said, nothing has moved forward. We need a review and an independent body to look at those things and to address funding issues right across the board—not just legal aid but other funding. I know that the third sector, which lawyers rely on heavily, gets funding for short periods of time that are not long enough to fund a whole project, and women's aid groups always have difficulty finding funding to get access to legal provision. We could look at the bigger picture, and the Scottish Government could set up some sort of independent body to do that.

**Gillian Fyfe:** On addressing access issues, the way in which the legal aid budget is set up might need to be looked at. There could be a shift in focus to more grant funding and contracting to deal with areas in which there are supply issues. If the focus shifted to more grant funding, there could be a greater focus on early intervention and prevention. Some of the projects that are currently funded and run in citizens advice bureaux, particularly those that provide court advice, need to be funded nationally, because, as other witnesses have said, not everyone in every part of the country can get access to the same service. Funding needs to be made more consistent, because the current approach of year-on-year funding is an issue for supporting clients and ensuring good outcomes, as well as for job security for the staff who are involved. The funding issue is a barrier to access. Perhaps using the overall budget in a different way to fill gaps and

address access problems might be a good way to look at it.

**Colin Lancaster:** I have two or three things to say in response to Rachael Hamilton's question. The budget for legal aid is demand led and, therefore, it fluctuates depending on the number of cases that come through the system. The budget will rise if the number of cases coming through the system rises, and the number is rising at the moment. Some of that is a result of a bounce back from dips during the pandemic, but, by the end of this financial year, we will be spending more than we were spending before the pandemic. Up until the pandemic, the long-term reduction in legal aid expenditure was largely driven by reductions in the number of criminal cases that were going through the courts. Therefore, the demand for legal advice was lower and spend was lower.

Over the past two or three years, even with a slight dip during the pandemic, the numbers of grants of civil legal aid have been pretty similar to the numbers that we saw five or 10 years ago. There has not been a huge reduction in the number of grants, but there are fewer people acting in those cases.

As I mentioned earlier, a large number of the firms that do legal aid work are very small, and many of those that have been active—we define "active" as submitting one or more applications in a year—have been at the one or two applications a year end of the spectrum. There has always been a disproportionate concentration of the work in a small number of firms that tend to specialise, with law centres that concentrate on social welfare law dominating the provision.

Generally speaking—historically, by which I mean over a period of 30 or 40 years—mainstream private sector, private practice legal aid providers have not tended to do an awful lot of social welfare law work. In housing, for example, it has very much been the third sector that has picked that up. That is why law centres emerged in the first place. Mainstream legal aid services were not addressing those needs, so a different model was identified to do that, which is the model that Rachel Moon described earlier.

As regards what might be done to address any gaps that emerge, there has, over the past 10 to 15 years, been a change in the type of work that is done under legal aid. Fifteen to 20 years ago, that work was mainly in the areas of family law and damages actions. Damages actions barely feature now, because the no-win, no-fee model has entirely taken care of that. As well as family law, legal aid work now includes adults with incapacity—as Jim Stephenson mentioned, that is the biggest single area of work. There have been more grants for that this year than ever; the level goes up every year. That is widespread across the

country. A lot of mental health work is done under assistance by way of representation—ABWOR—for the Mental Health Tribunal for Scotland. There is also immigration and asylum work. Historically, those were not major features of the legal aid system, but they have grown over time.

There might still be some gaps in the system in some areas of the country—not necessarily in rural areas—where it is harder to get help than it is in others. As I mentioned in my introductory remarks, the system is reactive and demand led. There are very few tools for us, the Government or any other body to intervene directly to identify needs, to look at the patterns of supply and to make changes when those things do not match up.

We have fairly limited grant-funding powers, but the powers that we have help. I imagine that a number of the bodies that are represented here will have received grants from us over the years, or still do. However, as far as the balance is concerned, if what Parliament or the public need is a more interventionist system, a different set of tools is needed. I think that that is what Jen Ang was saying earlier. We need to think about what system we want to have in the future that will provide assurance that there will be consistency of service delivery, instead of just paying for the work that gets done, if it gets done. I am talking about the idea of being proactive and making it our business to understand the patterns of need and then design services to meet those needs. The current legal aid system is not really designed to do that, and it cannot be made to do it, because the tools are just not there.

I agree with what others have said. We need a more diverse range of funding and delivery models to meet the diverse range of needs that we observe.

**Rachael Hamilton:** Jen Ang, when you talked about levers and mechanisms, were you talking specifically about funding models and early intervention?

**Jen Ang:** I suggested that, if the committee has the powers to do so, it might be interesting to take a wider look at, or to press the Scottish Government to say more about, how it seeks to meet its access to justice obligations across directorates and areas of responsibility in a unified way. As organisations that receive funding through that route or that work across those areas, the national law centres and organisations such as Citizens Advice Scotland are in a really good position to feed back.

However, I think that, across directorates or areas of responsibility—whether we are talking about children’s rights, women’s rights or local government and communities—although people

recognise access to justice as a component of their responsibility, there is no wider conversation about how we could tie those things together and tackle the issue better.

On your question about what other levers or mechanisms we need, or what the Scottish Government could do within its powers, I point out that the Scottish Government and the United Kingdom Government play an active role in demand for legal services in how they legislate. We have gaps because demand exceeds supply. Lawyers will tell you, when they see something coming down the pipeline in their specialist areas, that that will massively increase demand for legal services. For example, the Illegal Migration Bill will massively increase demand for immigration advice services—everyone knows that—and we will not be able to meet that demand.

Similarly, repeated poor decision making by the Department for Work and Pensions massively increases demand for the work that Citizens Advice Scotland does, along with the Child Poverty Action Group. A lot of that work is done at adviser level because there are not enough lawyers to take the higher-level appeals, but it is Government legislation or bureaucratic decision making that creates that demand.

11:00

What is within the powers of the Scottish Government includes our judicial processes. In Scotland, in some cases, we might not move so swiftly to a court of tribunal adjudication, or processes could just be made quicker, easier and better for people. That would lighten the capacity burden on lawyers.

In some cases, legislative change has a direct impact—it increases or decreases demand for our services. On this issue, I defer to Fiona McPhail, but how housing solicitors worked through the Covid-19 pandemic, and how they work now that we have returned to a higher level of actions, is a really good example of the influence that the Government wields, whether or not the analysis of the impact on legal services happens at the time.

**Rachael Hamilton:** Do you want me to ask my other question very briefly, convener? It is just to Fiona McPhail.

**The Convener:** Okay.

**Rachael Hamilton:** The Shelter briefing talks about digital exclusion. I represent a rural area and obviously, in rural areas, broadband can be unreliable. What is the impact of facing digital exclusion on individuals, in relation to access to legal aid?

**The Convener:** You are moving on to the next area—I should not have said yes to you, so it is my fault.

**Rachael Hamilton:** Do you want Pam Duncan-Glancy to come in?

**Pam Duncan-Glancy:** No, I am fine. I can come in right after you.

**The Convener:** My challenge is that Pam has a question that is still on access to services. If it is okay, we will hold your question, Rachael. I am concerned that we are jumping ahead, so we will go to Pam first. That was my fault—sorry.

**Pam Duncan-Glancy:** Thanks, convener.

I am keen to explore—particularly with Jen Ang, given the focus of her work with Inclusion Scotland around disabled people—the area of access to legal services. In a 2021 survey on the United Nations Convention on the Rights of Persons with Disabilities, 73 per cent of respondents said that deaf and disabled people find it

“hard to get support if they have a legal problem”,

and a quarter were not sure. Deaf and disabled people are more likely to say that they have experienced a civil law problem but there are still barriers to getting advice. Examples that were cited included

“Costs associated with reasonable adjustments ... not met by legal aid”—

I will come to Colin Lancaster on that point in a minute—as well as a

“lack of ... high quality BSL/English interpreters in courts and police stations”.

Another response highlighted that, often,

“we are exhausted daily so dealing with legal matters is mentally and physically impossible for many of us”.

How can we address some of that? Those are the same issues that I remember writing a report about when I worked on the independent living in Scotland project in 2015, so it feels as though we have not made much progress. I am excited to see the work that you guys are doing, but how do we tell more people about it, scale it up and resolve some of the issues for disabled people that I have just highlighted?

**Jen Ang:** Thank you for raising that. I can only echo what you have said—basically, this is an area where we are far behind. We all aim to work intersectionally, but this is an area where the disproportionate inequality and the additional barriers have not been tackled quickly, in relation to ensuring that disabled people access legal advice and representation on an equal footing.

Several years ago, because the Scottish Government equality strategy had identified a gap

in access to legal advice, the Scottish Just Law Centre partnered with Inclusion Scotland. Heather Fiskin and I, as the leads on that project, remain frustrated with what we can do on a limited basis to address that gap. The project is funded by the Scottish Government’s equality and human rights fund. However, fundamentally, we have just 1.5 solicitors. What we can do with that limited resource is focus on the strategic cases, as has been mentioned. It is about looking for cases from our partners that raise wider issues. For example, the way in which local authorities exercise their discretion in reviewing the personal independence payment has a widespread impact on people, so we find the right case, we take the challenge and we try to publicise the result.

However, in disability justice in particular, the referrals far outweigh our capacity to respond—we cannot take them all. I agree that some of the responses are already known in the very good research work that has been done. That includes work on access to interpreters and, on a wider basis, the legal sector’s understanding of what good practice in working with disabled people looks like—Inclusion Scotland has started that piece of work but, again, we have not had sufficient capacity to roll it out—and, alongside that, the legal sector’s prioritisation of disabled people as service users to whom they have obligations.

The question asked what more we can do, and just as with the Scottish Women’s Rights Centre, the answer is that there cannot be just one or two specialist projects across Scotland that do this work. There needs to be a wider push across the legal sector for all law firms to work better, but there are probably some specific asks that should be pushed forward, which could make a real difference in the short term.

**Pam Duncan-Glancy:** Thank you, Jen—I appreciate that. I could go on, but I will not take up too much more time, because other members have questions.

Colin, can I ask you about the issue of legal aid funding the reasonable adjustments that people might need?

**Colin Lancaster:** We have discussed that issue before and we have looked at it over a period of time. There are perhaps two categories of reasonable adjustments that might be made in the delivery of the service to a particular client. First, if service delivery results in additional costs being incurred by a solicitor, whether that is costs that they incur—outlays—or more time having to be spent on certain activities, those can be accommodated in the legal aid system. Those would be considered as part of the solicitor’s general accounting in relation to the case. There might be a lack of clarity about that.



We are involved in a major project to clarify our policies and practices in relation to all our decision-making functions, which includes account assessment or approvals for additional costs being incurred. As part of that process, we are already publishing those policies, and we will work through everything to publish statements of our policy and clear guidance to the profession as well as the guidance that we provide for our decision-making staff. That should clarify any areas of doubt that solicitors have about what they can and cannot be paid for. If they are in doubt, they should contact us and we can advise them as they are dealing with the case.

The other type of adjustment might be to the solicitor's premises. Because of the funding model—we fund case by case—we cannot make any payments in relation to infrastructure adjustments that might make premises more accessible. That responsibility lies with the service provider as a business rather than us as a funder of the particular cases that they deal with.

I am not sure which of those two types of adjustments were felt to be the bigger barrier, but there is one that we can do something about directly and one where that is less the case.

**Pam Duncan-Glancy:** I suspect that it was both, if I am honest, given the lack of understanding on the part of the profession about what additional costs might be and what they can apply for. There is probably also an issue with regard to access to the services more generally. Perhaps Jim Stephenson from the Law Society might be able to comment on that.

**The Convener:** Rachel Moon has been trying to come in for a bit, so I will bring her in first.

**Pam Duncan-Glancy:** I am sorry.

**Rachel Moon:** I am really glad that you brought up how exhausting it can be for people to try to find a lawyer to enforce their rights or deal with councils, budget cuts or care package cuts. The way that we deal with that is through a carers project that is set up with two carers centres. That model has been effective and good at maintaining trust and respect. I hear what Colin Lancaster says about being reactive and the adults with incapacity work being greatly increased within legal aid. However, it could work really well for carers and disabled people to have projects that can deal with this holistically.

Our carers project works with a lot of adults with incapacity, and it also does a lot of work on challenging care packages. The nature of the way that we work at the law centre means that we have found that people are often dealing with housing issues, adaptations to their homes and welfare rights appeals or cuts to their care packages. People's situations can be quite holistic, and, if

you are looking at, for example, a guardianship application, you might be missing the rest of what is affecting that family.

**Pam Duncan-Glancy:** I appreciate that—thank you; that is helpful.

**Jim Stephenson:** I agree with Rachel Moon: a holistic approach is probably the best way forward. When a client with various difficulties—mental health difficulties and other difficulties—presents at a law firm, the solicitor tries to deal with that. Because civil legal aid is extremely specialised now, there is generally a bit of signposting within firms. That might be causing some problems—that is something that we will have to look at.

The Law Society works with organisations to try to improve access to justice. We are running a project with Supporting Offenders with Learning Difficulties—SOLD—on the issue of non-verbal communication, which involves using cards to communicate with clients. That work is continuing, but it would be useful for the Law Society to continue the conversation with Rachel Moon to work out how we could take a more holistic approach.

Of course, we come back to the issue of the shortage of solicitors in this field. We have various access-to-justice rights but, even if people were aware of those rights, how are they going to access them if they do not have a voice in the court system, the criminal justice system or the civil justice system?

**The Convener:** We will now go back to the area that Rachael Hamilton raised. Pam Gosal will reintroduce that subject.

**Pam Gosal (West Scotland) (Con):** Good morning, and thank you for your opening statements.

Rachael Hamilton can still ask the broad question, because my question does not cover the issue that she was asking about.

As you know, not everyone has access to digital devices, especially in some of the poorest and most deprived areas in Scotland. Given the shift during the pandemic and afterwards to digital technology and services, what is being done to ensure that face-to-face services exist for those who need them? Are people aware of them? Is it easy to access those services?

**Gillian Fyfe:** The Citizens Advice network is multichannel, and we think that it is important that clients engage with our services and advice provision in a way that suits their needs. We have our public advice site, which people can engage with if they want to self-serve digitally and are able to do so—that is a good source of advice for people in that position or those who simply want to understand an issue a bit better. However, a face-

to-face advice service is provided in the 59 citizens advice bureaux across the country.

Obviously, we faced challenges in that regard during that pandemic, when that service was not able to operate, and we quickly pivoted to offering a helpline service with a central number that people could phone. Now, people are routed from that central number to their local bureau, which means that, even if their first interaction is done via the telephone, they can still get a face-to-face service locally, which is the basis of the network's advice provision in terms of that essential local community service.

Rather than direct people to a digital channel as a first choice, we use digital to augment our advice provision. We believe in channel choice, not channel shifts. It should be up to the individual to decide how they want to engage.

I will touch briefly on the virtual and remote hearings that were used during the pandemic. We hear concerns from advisers across the network that the use of virtual hearings can disproportionately disadvantage party litigants, particularly those who are unrepresented and those with additional support needs. We feel that the issue is one of choice and that the person who is engaging in legal proceedings should be able to decide how to do that in a way that best suits their needs rather than that decision being made on the basis of the type of proceeding. We think that it is unrealistic to expect vulnerable groups to engage with virtual services without the provision of additional one-to-one support.

We have heard about instances from across the network. For example, during the pandemic, where a client attended a virtual procedural hearing, the sheriff determined that there was no jurisdiction and the case was dismissed. The client was unrepresented and did not understand what was going on in those circumstances, and no paperwork was issued after the decision. The virtual nature of those proceedings at that time compounded the uncertainty and lack of understanding for the client.

11:15

As I said at the start of the session, we certainly believe in channel choice; it is for the individual to decide how best to participate and engage with our advice services and with legal proceedings.

**Fiona McPhail:** Shelter Scotland also offers a multichannel approach to the delivery of its advice, and we have expanded and developed the offer of digital advice. For many people, one-off provision of advice through our website will help them and provide the answers that they need. However, in the context of the delivery of legal services in particular—to go back to Rachael Hamilton's

question—we find that either in-person or telephone-based advice is needed.

Throughout the pandemic, we were able to continue to deliver our services and, although we may not always be able to offer services face to face, our clients, given their vulnerabilities, prefer a telephone-based appointment to no appointment at all. Nevertheless, there is work to be done in the area, and we have to recognise digital exclusion. Shelter Scotland's data shows that most people who access our website do so through a mobile phone rather than a laptop. There are all sorts of issues that we need to continue to look at, and we need to ensure that we offer face-to-face and telephone-based services.

**Pam Gosal:** Convener, can I come back on that after the question on broadband?

**The Convener:** Colin Lancaster may be keen to answer before you probe that area.

**Pam Gosal:** I have another question for Colin as well.

**The Convener:** Okay—I will bring Colin in first.

**Colin Lancaster:** Thank you, convener.

In the past six to nine months, SLAB has done some survey work on clients who received assistance during the pandemic, either from private practice firms or from our own Civil Legal Assistance Office, which operates in Edinburgh, Aberdeen and Inverness. We wanted to explore the accessibility of services and the experience of remote delivery. We found that, in general, there was a lot of satisfaction with remote models of delivery.

We still offer face-to-face services, as I think most services would, but we have seen that people now choose to speak to us on the phone rather than coming in. We still make appointments, but we now get fewer no-shows. Previously, we had quite a lot of no-shows for face-to-face appointments; we are now making better contact with people more regularly as a result of doing more things by phone. Remote delivery can also be more convenient in covering a wide geographical area, either for the solicitor, as it adds to their capacity, or for the client.

There is definitely huge potential in remote delivery, but it cannot be all or nothing, because there will be some people, or some cases or issues, for which it is not suitable. In certain areas—Jen Ang mentioned trauma-informed practice, for example—people would absolutely want to see someone face to face. However, we are seeing people exercising that choice where it is offered, and they quite often choose to communicate by phone, email or text message, in a way and at a time that suits them. That approach builds in flexibility, which is a real positive. Having

said that, there is nothing particularly modern about the telephone—it is a 20th century, rather than a 21st century, solution. Nevertheless, it seems to be quite effective.

**Pam Gosal:** I will go back to Colin. Earlier, you spoke about the legal aid model being 70 years old and not fit for purpose today. We have so much diversity in Scotland now, and I certainly think—and I hear from people who use it—that the model is not fit for purpose.

I have a question on language barriers. It would be good to hear from Colin Lancaster, Fiona McPhail and Gillian Fyfe on those. Do you face or see any language barriers to accessing advice or even to accessing the legal aid system today? Obviously, a 70-year-old system is not fit for purpose, given the changes in Scotland.

To go back to Gillian Fyfe, Citizens Advice Scotland is among the largest advice services in Scotland. Do you see any language barriers, Gillian? If not, what is it that you provide that helps people who cannot speak English? I also put that question to Fiona, but Colin can start.

**Colin Lancaster:** There is a range of different things to consider. Those who are more involved in direct provision to clients might be better able to discuss what they experience on a day-to-day basis and what they are able to provide.

The question is similar to Pam Duncan-Glancy's question. There is an issue around what funding is available. We fund interpreting and translation services for casework undertaken by solicitors. As part of our services, we will offer to translate materials if that is necessary. We have some standard materials in different languages, and we recently launched a customer communication support needs project, in which we will ask those who contact us questions.

Most of the contact is through solicitors rather than directly with us by applicants. Where applicants do contact us, we check whether they have any particular communication needs and whether that involves language or otherwise. We can then make adjustments to ensure that applicants are able to get what they need from us. However, the people who work in front-line services and deal with people on a face-to-face or over-the-phone basis would be able to answer that question more clearly.

**Gillian Fyfe:** When people seek face-to-face advice at our bureaux and there is a need for interpreting services or information in another language or format, those services or that information can be made available, so such interactions can happen as and when.

On language, for some of the national projects that we run, which are funded differently in order

to do certain things and to serve certain client groups, funding has been available to create some of the documents in additional languages. However, I cannot comment further today on the details of that.

**Pam Gosal:** Do you do any outreach work? Obviously, it is good to have things, including the literature that goes out, in different languages, but do you go into communities to say that you have a service that is available and make people aware of it?

**Gillian Fyfe:** Individual citizens advice bureaux in different bits of the country will run outreach services in different areas. The majority of them will have a physical office location in one area or more than one area, and they may do outreach work in different parts of the country, too.

I would be happy to come back to the committee with a bit more information on that in written evidence after the meeting, if that would be useful.

**Rachel Moon:** I work in Govanhill, which is one of the most diverse areas in Glasgow. A lot of our clients do not speak English as a first language, and we use interpreters all the time. They might have someone in their family who speaks English as a first or second language, and they might speak it well, but the ability to speak to that person with an interpreter and to provide that dignity and respect is really important.

I want to say two things in particular about that. First, in the community law centre model, we found that having a physical space in the community for someone to come into was very important during Covid. A lot of the housing associations around us were shut—the doors were closed. People had nowhere else to go, and they would come in with letters to us, so we picked up quite a lot of cases that we might not have seen before because other services were closed. For someone who does not speak English, uploading a number of documents to email to us to look at is not going to work, frankly, so having a physical space to come into is really important.

My second point is about a pattern that we have seen over the past six months concerning the initial advice stage before a case comes to us, which we are looking to challenge. Whether the case involves a housing association, the homeless casework team or the DWP, interpreters are not being provided. We are finding that people are being referred to us to get an interpreter. That can be for something simple that should have been dealt with at the initial stage. Instead of people getting an interpreter and dealing with the matter at that stage, they are referring it out. It seems to us that that is simply because they do not want to get an interpreter, and we have the ability and experience to get interpreters in place.

**The Convener:** Jen, you are nodding a lot. Do you want to add something?

**Jen Ang:** I might as well add something to what Rachel Moon has said.

Like Rachel, I have worked for most of my career in immigration and asylum. All our work on legal aid has required the use of interpreters. To follow on from Pam Gosal's question, as you will be aware, the quality of interpretation is, basically, not regulated in Scotland. For some languages, it is easy to find an interpreter, but we need interpreters who are competent at legal work, court work and so on.

For some communities, it is very difficult to find a suitable interpreter. For example, a client might have a reasonable request that an interpreter for an engagement be female, and it might be difficult to find a person for that who will work on legal aid rates for interpretation, because those are slightly lower than market standard rates.

Those points can be barriers to providing legal advice. We will have missed or cancelled appointments or have been unable to support someone in the way that they wanted to be supported because of those extra challenges.

We are not here to talk about how to reform interpreting services in Scotland, but I suggest that other models are available. Even on a city-wide basis, large organisations will commission block contracts to ensure equality of access to high-quality interpretation. That approach might ease the burden on small and medium-sized legal aid firms and other organisations that need that support.

**Pam Gosal:** I have to agree with you on that, Jen. A couple of weeks ago, my mother went to hospital and my sister was there. My mother can't fully understand English, and she has some broken English but, when it came to medication, my sister had to step in. She was asked not to speak and an interpreter was brought in. My mum was going for a CT scan and some other scans. It was quite a serious matter that she could not move when she was under that equipment. The interpreter did not pass that key information to my mum, but my sister heard it and had to intervene. My mother-in-law was in the same hospital that day and had the same problem.

I know that this issue is not for this committee, but regulation on interpreters is important. That was key information. The interpreter turned round and said to my sister that they did not think that that was really important. However, they were not there to say what was important; they were there to interpret.

I know that that is not up to the committee, but I agree with what has been said.

**The Convener:** That is a strong point, though, Pam.

We will move on to questions about areas for legal aid reform.

**Maggie Chapman (North East Scotland) (Green):** Good morning, everyone. Thank you for joining us and for what you have said.

We have already touched on some of the legal aid reforms that you consider to be required, but I want to explore some of them in a bit more detail.

We have talked about the need for different funding and delivery models. Jim Stephenson mentioned the need for an independent body to oversee some of that. I am also struck by the fact that the Evans review of 2018 is five years old now, and Jim Stephenson said that there had been very little movement since then. The review was not persuaded of a general need to increase legal aid fees. Is that because there is a distinction between civil cases and criminal cases? Does the civil stuff get left out a little bit in a way that the criminal stuff does not? What is your assessment of where the review's position on that came from?

**Jim Stephenson:** I think that the criminal practitioners are far more vocal than the civil practitioners—I am sure that Colin Lancaster will back me up on that. That might be why that has happened.

The review of five years ago went nowhere because the difficulty was in understanding the model. The review suggested dissecting law firms to find out how they finance themselves.

The difficulty that the Law Society of Scotland has had with the review and the lack of movement is that the Scottish Legal Aid Board has a lot of information about each firm. You have heard Colin Lancaster speak about the small firms, but there are, obviously, larger ones. The board knows how many grants of legal aid firms have had in different sectors and what income they have, and it probably knows how many solicitors are there. However, it probably does not know what the rental of a firm's property is or what its back-up staff are. I fully understand that, but money is not really the answer to a lot of the issues.

We are looking at how we retain solicitors. The Law Society of Scotland has a difficulty in understanding how we do that. Currently, we have training contracts at the highest levels. We have trainees coming into the profession at some of the highest levels that we have seen for a number of years, but we are not retaining legal staff in civil legal aid to become experts in that field and provide the access to justice that Scotland deserves. That is the difficulty. It is a broader problem than just money.

The Law Society of Scotland has spent a lot of time and energy on legal aid over the past 10 years, and it has been very difficult to progress the matter. I do not know what needs to be done now. I do not think that we need another review, because reviews have taken us nowhere.

11:30

Colin Lancaster has explained that the legislation is way out of date. Attempts have been made with the Scottish Legal Aid Board and the Law Society of Scotland to move that on and maybe move to a different system, but they have not worked.

My major concern is that, although there is an opportunity to make more funding available—that is fair enough—we have to look at the bigger problem of how we retain staff. I work in a large firm in Edinburgh that has 11 lawyers—admittedly, some of them are trainees. We have seen 20 trainees go through our system in the past 15 years, and fewer than 10 per cent of them have stayed in legal aid. They have gone to work in public inquiries, the Scottish Government, private firms or the prosecution service. How do we address that problem?

Our firm tries to provide the best working environment. We close down diaries to make sure that our staff are not overworked. The problem is that there is a lifestyle issue. There is a major difficulty there, and I do not know how we can address it, unless we get all the parties, including the Scottish Courts and Tribunals Service, the Scottish Legal Aid Board and other users, around the table to work out how we can do that. Maybe we could even ask the Scottish Young Lawyers Association to help us. We engage with all those organisations, but we seem to always hit a barrier. One or two years after a lawyer is qualified, they want to move on to something else.

**Maggie Chapman:** Should we consider legal aid to be a public service? Do you think that it would help if we had that as the framework within which we worked? That would bring together all the different elements that you have just mentioned in a more coherent way. Would that help?

**Jim Stephenson:** I think that it would help. I think that legal aid lawyers look upon themselves as providing a public service. During the pandemic, they went into courtrooms and put themselves in difficult positions. They have helped with the backlog in the court service, and they took useful steps at every stage of the pandemic, including by engaging in discussions on whether jury trials should continue, and with virtual courts. They provide a public service, and I think that that is a fair recognition.

**Maggie Chapman:** I have a question for Colin Lancaster on the connection between the delivery models and funding. Where do you see us needing to go with that? In your opening remarks, you mentioned the need for primary legislation. Will you unpick that a little bit more?

**Colin Lancaster:** There are probably two or three different issues there.

I thank Jim Stephenson for not taking us down the fees rabbit hole, because that could dominate the conversation.

On the back of the Evans review, the Government established an expert panel on payment. Gillian Fyfe, the Law Society of Scotland, the Faculty of Advocates and I were involved in that work. On the back of that report, the Government is looking to commission work to gather evidence on the financial position of the sector and to provide a robust baseline for fees. That is because the issue that we have encountered in our discussions over many years is that the rationale for any given level of fees has been lost in the mists of time. Therefore, we need to take a step back and set a base for where we are now and moving forward.

I absolutely agree with Jim Stephenson on the need for regular reviews. It is not good for the legitimacy of the system to not have reviews. The approach needs to be evidence based to start with. We can then build from there.

More broadly, there is the fees question, which relates to how individual pieces of work or individual cases are paid for. There is also the funding question, which is about how the service in general is supported. There are lots of different models for that, which others have mentioned, and ways in which that funding could be delivered. That could be through paying case by case, paying for individual posts, or paying for a service through a grant, a commission or a contract. All those models would change the basis on which funding is provided and enable the funding to be directed at particular needs or particular services in particular places.

**Maggie Chapman:** Another striking idea to come from the Evans review was the need to shift to a more citizen-centred system. What would we need to do with our funding models and the funding landscape to achieve that approach?

**Colin Lancaster:** We absolutely agree with what Martyn Evans has identified, which is that, at the moment, the pattern of funding is not based on any assessment of need, priorities, or outcomes that we are trying to achieve; instead, it is just a response. The money that we spend on services—this year, it will be £130-odd million—is determined by individual acts of assistance that individual solicitors in firms up and down the

country provide, by the decisions that they make about which cases they can or cannot take on and, of course, by individuals' decisions to seek advice. That is a complex process, and we lack that clear understanding of the overall level of need, of the outcomes that people are seeking, and of where a gap exists between need, demand, and supply.

Therefore, we need to model more interventions to respond to that process—first to understand it, then to align funding with stated priorities and outcomes in mind instead of those outcomes arising by chance.

**Maggie Chapman:** That goes back to Fiona McPhail's question—what if you had the right to legal representation if you were about to lose your house? Is that the kind of thing that we could draw into that model of understanding?

**Colin Lancaster:** That is exactly the sort of thing that the current system cannot provide; it does not provide entitlements. Schemes and eligibility tests exist, but one does not have an entitlement to any particular service. Decisions would have to be taken somewhere about what the priorities are because, as we have heard, there are many competing demands. Ultimately, resources are finite and choices will have to be made somewhere along the line. If a decision is taken that housing advice for those people who are at risk of eviction is an essential and must be provided, then we need to have mechanisms to make that happen instead of hoping that it does.

**Maggie Chapman:** Okay, thank you; that is helpful. Jen Ang, you commented on the kind of standardisation that would be needed and the inclusion of a right to legal representation, along the lines that Colin Lancaster has described. What would that process require, and what would need to change around our current thinking about legal aid?

**Jen Ang:** Thank you for that question. I agree with the last part of Colin's description of the change that needs to happen. That needs to be a wider discussion beyond how the Scottish Legal Aid Board works or what its budget looks like. As a nod to Fiona McPhail—I invite her to come in after me if she wishes—one approach could be, as you have pointed out, treating legal aid as a public service and considering the right to a certain level of advocacy, legal advice or representation in relation to certain decisions or life situations. You can assume that, in many of the cases in which Shelter acts, people are facing an issue that we would want to prioritise, but it is not meaningful to have a right to respond or to request a review of a Government decision without the support and legal advice that one needs.

Other areas that we could look at arise from UK Government and not Scottish Government processes. The work around benefits as well as some of the work that debt advisers do starts to exceed their levels of competence, and there is a need for legal advice and representation that is then not available. We could examine how that service is currently provided in those social justice areas and whether we could provide a guarantee across Scotland of an equal level of service—it would be like a health service response to particular issues.

**Maggie Chapman:** Thank you, Jen; that is helpful. Fiona, I have referenced you a few times. Do you want to come in? I will then have one final question.

**Fiona McPhail:** I will keep this brief in the interest of time. Indeed, legal aid as a public service is absolutely the way in which we want to start thinking about access to justice as a fundamental right.

I will offer to come back to the committee on this, but I know that research was conducted a number of years ago—I am trying to remember when—that found that, for every pound spent on legal aid, £10 was saved. With regard to housing, Shelter recently published evidence on the cost of eviction, which is around £15,000, if not more, and which is normally worth less with regard to the debt involved.

We need to take a step back from the issue and analyse it differently. Obviously my focus is on housing, but many aspects need to be revisited. For example, why is access to justice not as important as access to healthcare? Why are we not recognising the importance of intervening at that early stage? We do so in the context of criminal cases, with good reason, but with the human rights bill coming along, we might have an opportunity to look at wider socioeconomic rights.

I will leave it there, but as I have said, I will come back with the further evidence that I mentioned.

**Maggie Chapman:** Thank you—that was really helpful. It is a big question for us to consider, but it is really important.

Finally, I was struck by Rachel Moon's comment in her opening remarks that, in relation to the strategic work that needs to be done on legal aid, we needed to

“move the boundaries of equalities law.”

I am curious to hear a little bit more about what you mean by that.

**Rachel Moon:** I talked earlier about working for the carers project. We do a lot of work with the carers centre, and because of the level of trust

that we have built up, we not only get a lot of guardianship cases or normal adults with incapacity work but can also speak to clients about other issues that they might be facing. As a result, we speak to a wide cache of clients, and we get from them a sense of patterns of injustice or discrimination. We have been able to look at, for example, cuts to or deductions from care packages, and we can use equalities law to address them. There are not many cases under the Equality Act 2010 in the courts, so if we can use strategic litigation to move the boundaries on something, it will, I hope, allow us to make progress with equalities law more generally.

**Maggie Chapman:** That was interesting, and in some ways, it ties in with Fiona McPhail's previous point about looking at rights in the round and ensuring that we are linking into the issue of what all citizens should be able to expect of services, whether they be legal or other public services.

I could go on, but I probably should not. Thank you, convener.

**The Convener:** I am keen to go to Karen Adam, who will cover the topic that Fulton MacGregor introduced almost at the start of the meeting.

**Karen Adam:** Thank you. I am sure that Fulton MacGregor will be able to come in with his other hat on as member of the Criminal Justice Committee.

Since I became an MSP, a few constituents have approached me with concerns that the court system was being used to abuse them further with regard to abusive relationships, whether that abuse be physical domestic violence or coercive and controlling behaviour. The issues range from one partner receiving legal aid and then financially draining the other to—and I have looked into and read a bit more about this—ex-partners being able to cross-examine partners whom they have abused and who might even have taken out a restraining order against them. These things have been allowed to happen in the court system, and it seems that women have been disproportionately affected. Are you aware of and attuned to such matters, and what can be done about them?

I see Jen Ang nodding, so I will pick on her first.

**Jen Ang:** That will teach me to nod. *[Laughter.]*

The Scottish Women's Rights Centre works only on civil cases and in the area of civil justice, but one of the issues that it has been looking at and occasionally making comment on for a long time now is the poor co-ordination between the civil and criminal justice systems for women fleeing gender-based violence. It has also been trying to identify areas in our justice system or our laws that lead to the sorts of situations that you have referred to. I am thinking, for example, of processes that are

open to anyone to use but can be used in a way that appears to be abusive and, indeed, in a way that courts are unable to address.

I am also on the women's justice leadership panel, which is about to conclude a year-long survey of certain key issues with regard to the experience of women across the justice system.

I think that what is needed is an individual, issue-by-issue analysis of pragmatic changes that we can make. Our observation across the piece is that what you have said is right—we see that in our practice. However, we need to do a careful balancing act to ensure that while the process does not change simply because someone has used it abusively, it changes so that our systems of justice cannot be used as a mechanism in that way.

11:45

I will add, because we are here, that there are barriers to accessing legal advice through the legal aid system for women surviving violence. We have raised that issue, and could raise it again, but for now I will highlight some areas in which specific action could be taken and where the rules should be changed slightly.

Fundamentally, you are asking a woman to bring a defence, with her own or her family's money, on a matter that is in the public interest, even though it falls on the civil side and impacts on her and her family. That could be an area where a systemic change could be made. Again, it highlights the need for a broader focus on access to justice, and whether our aspirations as a community should be more of a key element in how we evaluate the availability of legal aid for people.

**The Convener:** Does anyone else want to come in on that area? If not, I will bring in Pam Gosal.

**Pam Gosal:** I will stay on the subject of domestic abuse. Often, women who are fleeing domestic abuse are temporarily homeless, as has been mentioned today, and are without access to finances. It is sometimes the case that their abusive partner controls the finances.

The third sector is really good at providing a support mechanism for those women, but at times they may be trying to access advice and services in private without their partner knowing. What barriers currently exist in that regard, and how can we remove them to enable the advice system and the courts to help those women more? I am open to any of the witnesses answering that one.

**Rachel Moon:** I am happy to come in on that. We have a women's project that goes into the Simon Community Scotland in Glasgow. It has

been really successful—it is run by two female solicitors, but we also have a lived experience caseworker who was brought in under a project to offer soft advice with regard to speaking to a lawyer and applying for legal aid; asking a lot of questions and trying to get the details; and challenging whatever housing decision needs challenged.

The lived-experience woman can provide a different level of advice and assistance in comparison with what a traditional legal relationship can offer. Govan Law Centre is looking at pursuing that approach through different funding applications, because it builds a bridge between the solicitor and the client, and between the technical questions that we have to ask and other questions that the client may feel more comfortable putting to someone who is coming in with a different perspective.

**Fiona McPhail:** We have, regrettably, had cases in which, in the context of homelessness, the woman is not able to get out or access those services. Our primary concern is ensuring that she has a safe space and somewhere private and confidential in which to get legal advice.

That goes back to the fundamental point that Shelter Scotland is highlighting: we need to ensure that our homeless services are adequately resourced. No woman who is fleeing domestic violence should have to go back to her abuser, let alone sleep in her car, in order to access the legal advice that she needs to get before accessing that statutory service.

We have come up against that situation in which women are not able to get out and access services. We have real concerns about ensuring that they have the space not only to get advice as a one-off but to engage with us, and ensuring that they are not in an abusive environment.

**Pam Gosal:** I have one more question, which is quite open.

**The Convener:** Is it on the same issue?

**Pam Gosal:** Yes. With regard to the financial side, I have had cases in which it is more often the woman who does not have a financial cushion and is out of her home, and there is also a criminal domestic abuse case going on.

We are finding that there is a broken bridge between a civil case and a criminal case, in that one does not talk to the other, so both cases are taken separately. Is that something that witnesses have dealt with? I am currently dealing with a case involving a woman who has come forward as a result of domestic abuse. Access to her finances has stopped, so that is the subject of a civil case, but there is also a criminal case, as she has been hurt through domestic abuse. However, those two processes are not joined up. Quite a few people have spoken to me about that concern.

**The Convener:** We will go to Fulton MacGregor first, as he was going to ask about that issue.

**Pam Gosal:** Sorry, Fulton.

**The Convener:** It is fine, as it all feeds in. We will go to Fulton MacGregor first and then let witnesses come in.

**Fulton MacGregor:** I was trying to catch the convener's eye, as my question might supplement Pam Gosal's, and they could be answered together.

I also sit on the Criminal Justice Committee. Last week, we did some post-legislative scrutiny work on the Domestic Abuse (Scotland) Act 2018, which criminalised coercive control. How is that overlapping with some of the work that you are doing on domestic abuse? To follow questions from Karen Adam and Pam Gosal, are you seeing any overlap between coercive control being recognised as a form of abuse and cases that involve that offence going to the civil courts? Have you picked up on that in your work? I hope that that will supplement Pam Gosal's question, in which she referred to a specific case.

**The Convener:** We are wrapping up a lot of topics in those questions, which is good. There is a lot there. Gillian Fyfe, I invite you to answer any aspects that you would like to answer on, and I will see who else wants to respond after that.

**Gillian Fyfe:** Queries come to us that relate to advice on domestic abuse. Our public advice website has a quick-close function on web pages with that information, so that anyone who accesses that advice digitally can quickly close those pages if someone else is in the vicinity and can see that information on the screen.

On the question about the justice system and the courts, I will talk about legal aid and having access to practitioners. We dealt with a case in which a client's ex-partner pled guilty to a charge of domestic abuse. She then tried to evict the individual and their children from the home, but was unable to find a legal aid practitioner who would take on the case. That comes back to the point about whether there should be other considerations when someone in that situation is trying to find a practitioner who will represent them.

**Jim Stephenson:** Clearly, there is an overlap in a lot of cases, Pam. I am a criminal practitioner and there is generally an overlap with civil cases, which can be quite interesting.

The criminal law has changed so that, when a party wants to recover a complainer's medical records, she has a right to be heard in the criminal courts. That is a big area of overlap and that power is being used. As legislation around domestic abuse develops, there will be more powers. I do not know whether those powers are all reflected in the civil courts, but that is being



looked at. For example, the Lady Dorrian review looked at the methods of giving evidence, whether that is from behind a screen or providing pre-recorded evidence. Work is being done in the civil field to implement those changes, which will give further protection to victims.

**Jen Ang:** Pam Gosal's point about the disconnect between civil and criminal justice systems is a live issue in most of the legal case work that we run through the Scottish Women's Rights Centre. I am sure that the women's justice leadership panel is due to report at the end of March and there will most likely be a chapter on the evidence that was taken and some of the recommendations that were made. For those of you who are interested in that issue, that report could be something to look at.

The reforms on coercive control were supported by the Scottish Women's Rights Centre, and we continue to see that issue. I am relatively sure that in our evidence, we said that recognising coercive control was a start, but that a good deal of work still needed to be done on understanding it as a crime, as well as the kind of evidence that people need to have in order to effectively prosecute it as a crime. Our position was that those reforms were a step forward, but those measures alone would never be the solution. There is a need for wider initiatives such as raising awareness of economic abuse with banks, for example, and there are other areas where we can work effectively to spread the net, rather than just creating a better remedy for people, if that makes sense.

As for what else we can do, and as regards what other barriers there are, I remind the committee that we need to work intersectionally. You raised a point earlier about barriers to people for whom English is not their first language and barriers to disabled women accessing services and legal advice. Inclusion Scotland did a really good piece of work around the double barriers for disabled women surviving gender-based violence.

We should also remember that people face barriers because of their immigration status. We had evidence throughout Covid-19 and the cost of living crisis that being NRPF—having no recourse to public funds—is itself an additional factor that would make people more vulnerable to exploitation and abuse and less able to access legal advice.

**The Convener:** Can I check, Rachael: did you get the answer that you needed on broadband?

**Rachael Hamilton:** I did in a broad sense—a broadband sense, perhaps. It is fine—I can leave it. I think I have made my point, and I can follow the matter up if I need to.

**The Convener:** Maggie wishes to ask a question.

**Maggie Chapman:** Thanks for indulging me, Joe.

Colin Lancaster, I remember you saying in your opening remarks that legal aid should be there to solve problems and to support people to solve problems, rather than becoming a specialist area in itself. Can you elaborate on that? It is quite an interesting point, given the conversation that we have just had around the specialisms that are required for dealing with certain legal aid cases. I am curious to hear your views.

**Colin Lancaster:** It is a complex system. The legislation is complex, the regulations run to hundreds of pages and the associated guidance is fairly intensive, too.

I mentioned the project where we are trying to clarify all our guidance, but what we are trying to clarify is an overly complex system, so it would be preferable if the system itself were simpler. There are lots of nooks and crannies in the system that practitioners and their clients need to be aware of, such as in financial assessment, the permissions that are required to take certain steps or the billing for work. People who are not fully aware of those things can fall over trip-wires, which can make it take longer to get legal aid or which can result in work not being done or being done but not paid for because the proper processes have not been followed.

That is what I am getting at: if we can streamline and simplify the process, it makes it more understandable to people. They could then perhaps get a clearer idea of whether they are likely to qualify—which is complex in itself—and, if so, of what the process is and what information is needed. That can be dealt with first time, rather than after multiple interactions. Some people drop out of the system while we are in the process of making a decision, just because we have to go back and forward so often. A simpler, more streamlined system should be more accessible, and more people should know that they can access it.

**Maggie Chapman:** That would be better for everybody.

**Colin Lancaster:** Absolutely.

**The Convener:** Thanks very much, everyone. That has been a really interesting evidence session. I think we have covered all the areas that we were hoping to touch on. There is a lot for us to consider as we proceed with our work in this area.

We will now move into private session to consider the evidence that we have heard.

11:58

*Meeting continued in private until 12:40.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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