

# Citizen Participation and Public Petitions Committee

6th Meeting, 2023 (Session 6), Wednesday  
19 April 2023

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

**Lodged on** 13 February 2023

**Petitioner** Grant White

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

**Webpage** <https://petitions.parliament.scot/petitions/PE2002>

### Introduction

1. This is a new petition that was lodged on 13 February 2023.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 22 signatures have been received.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.
6. A submission has been provided by the petitioner. This is included at **Annexe D**.

## Action

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

**Clerk to the Committee**

## Annexe A

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

#### Petitioner

Grant White

#### Date Lodged:

16/01/22

#### Petition summary

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

#### Previous action

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

#### Background information

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

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

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

## Annexe B

The logo for SPICe, featuring the letters 'SPICe' in a white, sans-serif font on a dark purple background.

The Information Centre  
An t-Ionad Fiosrachaidh

### Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2002](#): ensure access to legal aid for people with disabilities, lodged by Grant White

#### Brief overview of issues raised by the petition

The petitioner is in dispute with the Department of Work and Pensions. He has been advised that he could challenge the decision via a court process called judicial review. He has been unable to access a solicitor offering legal aid to do this.

The petitioner has a disability which makes written communication very difficult. He believes that only a small number of solicitors carry out legal aid work and most are unable to take on new work. He argues that there is a particular impact on disabled people in relation to access to justice because they may be less likely to be able to pursue legal action without additional support.

#### Access to solicitors offering legal aid

- The Scottish Legal Aid Board (SLAB) is the body responsible for administering legal aid.
- SLAB has a statutory duty to monitor the availability and accessibility of legal services (although note that this is not limited to legal aid services). The [most recent monitoring report is from 2017](#). This concluded that there were no systemic issues with access to legal services in any of the areas looked at.
- SLAB has changed its approach to monitoring from 2017. It now looks at specific topics. Reports on [Access to legal aid during the](#)

[pandemic](#) (2022) and [Rural access to civil legal aid services](#) (2020) did not note any significant issue.

- Some other legal aid stakeholders have raised concerns about access to legal aid. Citizens Advice Scotland highlighted issues with access to legal aid – in particular in rural areas or for specialist subjects – [in a response \(2021\) to the Scottish Parliament’s Criminal Justice Committee](#). In a later publication<sup>1</sup>, it indicated that, for the year 2021:

“The number of pieces of advice given in relation to solicitors and advocates increased by 26% to almost 6,000 pieces of advice. Of those advice queries, over 60% were in relation to accessing/ finding a practitioner.”

- The Law Society of Scotland is [actively campaigning on #AccessToLegalAid](#). It recently undertook [research which highlighted that there was a lack of solicitors offering civil legal aid based in deprived communities](#).

## Eligibility criteria for Civil Legal Aid

- The SPICe briefing [Legal aid – how it works](#) (2022) looks in detail at the way the legal aid system in Scotland operates.
- Civil Legal Aid is the type of legal aid which would be relevant to a judicial review action. People with an annual income of up to £26,239 can qualify for Civil Legal Aid. Where income is above £3,521, an applicant would have to pay a financial contribution. This increases as income increases.
- There are other eligibility tests for Civil Legal Aid. The key requirements are:
  - that there is a plausible legal basis for the case – this means weak cases won’t get funding
  - that it is “reasonable in the particular circumstances of the case” to grant legal aid – this test considers things like whether it would be proportionate (for example, considering the cost of the action versus what is at stake) to grant legal aid.

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<sup>1</sup> Citizens Advice Scotland. (2022) CAS response to the SLAB consultation on civil legal aid financial eligibility assessment. [https://www.cas.org.uk/system/files/publications/citizens\\_advice\\_scotland\\_response\\_to\\_the\\_consultation\\_on\\_civil\\_legal\\_aid\\_financial\\_eligibility\\_assessment.pdf](https://www.cas.org.uk/system/files/publications/citizens_advice_scotland_response_to_the_consultation_on_civil_legal_aid_financial_eligibility_assessment.pdf) [Accessed 6 February 2023]

## Judicial review

- Judicial review is the form of court action used to challenge decisions by public bodies. It looks at whether the process used to reach a decision was lawful rather than at the strengths and weakness of particular outcomes. The SPICe briefing [Judicial Review](#) (2022) explains this in more detail.
- Actions for judicial review are expensive. This is because they must be raised in the Court of Session (Scotland's senior court). This means that the person bringing the action must pay for an advocate to present the case as well as a solicitor.
- There is a three month time limit in which to raise an action for judicial review. The courts have discretion to hear a case outside this timeframe where it would be "equitable" (ie. fair, considering the interests of both sides) to do so.

**Abigail Bremner**  
**Senior Researcher**  
6 February 2023

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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## Annexe C

### Minister for Community Safety submission of 9 February 2023

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

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

I write in response to the above petition lodged with your committee and the actions called for within.

The petition provides background that Mr White has encountered difficulties in engaging a legal aid solicitor to provide advice and representation. Mr White states that the number of solicitors carrying out legal aid is small and those approached are unable to take on new work. He cites discrimination due to his inability to engage a solicitor and a breach of his human rights.

The Legal Aid Fund is a demand led and open-ended. Scotland is considered to have one of the most generous legal aid systems in terms of eligibility and scope. The Scottish Legal Aid Board, as administrators of the Fund, apply means and merits tests to determine eligibility. These tests are essential levers in ensuring the sustainability of the Fund.

Therefore in some circumstances individuals may be asked to contribute towards the cost of their legally aided advice, or they may not be eligible for legal aid funding at all. It is unclear from Mr White's petition whether he has confirmed with SLAB his eligibility for civil legal aid however the main issue appears to be an inability to engage a solicitor. His eligibility or otherwise for legal aid funding is not, at least from the reasons he has given, at issue.

Neither Ministers nor the Scottish Legal Aid Board (SLAB) can compel solicitors to provide advice and representation. There can be many reasons why a solicitor declines to take on a case. The Legal Aid system is not designed to guarantee access to legal advice and representation.



It is designed to assist those who are unable to afford a solicitor themselves.

Over the last three years the Scottish Government has engaged with representatives of the legal profession and the Scottish Legal Aid Board to develop reforms to improve the current system whilst also working towards the introduction of a legal aid reform bill. That engagement continues to identify further more immediate improvements that can be made to legal aid fees.

In the shorter term, Ministers will be laying regulations to provide an uplift to all legal aid fees, including civil, of over 10%. Once implemented this will bring the total amount of additional legal aid funding since April 2021 to £31m.

The Scottish Government has also recently announced a further £3m to strengthen access to justice for deprived communities and vulnerable groups. Work is underway on how best to target this funding. The £3m funding is in addition to the demand-led Legal Aid Fund and to specific grant funds paid through the Scottish Legal Aid Board.

In the longer term we are committed to moving forward with continued improvements where these can be made, to support the sustainability of the legal profession and maintain and improve access to justice for individuals and the wider efficiency and recovery of the justice system.

In summary, significant funding has been provided to the legal aid system over the last few years however Mr White is still encountering difficulties in engaging a solicitor. There is no evidence at this time that specific additional funding would resolve his particular difficulties and suggest that other factors may be at play. Ministers will however continue to consider how best to support people with vulnerabilities within the legal system and make improvements where we can.

## Annexe D

### Petitioner submission of 5 April 2023

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

I wanted to secure legal assistance to pursue a Petition for Judicial Review in respect of actions of the DWP in respect of claims for Disability Living Allowance and Personal Independence Payment. The inability to obtain a lawyer to represent me made it impossible for me to pursue this case.

I believe that I would qualify financially for legal aid due to the fact that I am entitled to income based Employment and Support Allowance. As I have been unable to secure the services of a solicitor I have never been able to make an actual application for legal aid.

I contacted the Law Society of Scotland who provided me with access to lists of solicitors. I contacted nearly 100 different firms but all stated they could not take on my case. The main reasons given were:

- 1) Unable to take on the case due to pressure of business
- 2) This is a 'historic case' which would be very expensive and the firm/centre did not consider that they would be able to carry out the amount of work which would be involved
- 3) Insufficient legal aid funding to be able to take on this case.
- 4) Do not carry out legal aid work.

I was given a list of law centres also but they too stated they could not take on the case.

I have twice approached the Civil Legal Assistance Office for help but they too have said they do not have capacity to take my case.

I was told of the existence of the Faculty of Advocates Free Legal Services Unit and I made contact with them. However I discovered that they need someone to organise the papers and give instructions to the advocate before they can take on a case. A solicitor could do this but as stated I have not been able to get a solicitor. A voluntary organisation could provide such a service. Citizens Advice explained that they are

unable to provide this service as they do not have the capacity or expertise.

I also wrote to Lord Carloway, Lord President of the Court of Session, on the advice of one of the MSPs for my area, to explain that I was unable to pursue my legal rights and requesting help. He replied stating that this was not something he could assist with.

Due to my disability I am not able to take my case forward myself. In particular I have difficulty with written communications (I have had assistance from Citizens Advice in writing this letter). Therefore if I cannot get a solicitor to take on my case I cannot exercise my legal rights.

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