



FACULTY OF ADVOCATES

Response to Scottish Government's Consultation on Legal Aid Reform

- [1] The Faculty of Advocates welcomes the Ministers' commitment to provision of legal aid which is uncapped and delivered, in the main, through private legal practitioners representing individual legal aid clients ("judicare"). The Faculty agrees that a legal aid system that has demand-led delivery and funding at its core does, in principle, enable a justice system to support the rule of law.
- [2] The Faculty is committed to supporting access to justice by providing advice and advocacy where this is required. The proposed reforms mainly affect the work of solicitors, rather than advocates. The Faculty's main concern relates to the, admittedly rare, but important cases where there is significant novelty or complexity. These are the cases where advocates can add value by providing early direction to inquiries and procedure. Assistance at the outset can save time and expense, by ensuring focus.
- [3] While block fees reduce administrative burdens it will be important to allow charges on a detailed fee basis, where there is novelty or complexity. For example, while most Adults with Incapacity cases are straightforward in some there can be significant difficulties. For example where:
- The proposed powers for the guardian have the effect that the adult may be deprived of liberty. This raises issues under article 5 of ECHR. The problem requires to be recognised, the power justified and any order to provide for regular review.
 - The adult objects to the order, the powers sought or to the person to be appointed as guardian.

- There is a material dispute about the exercise of powers, such as the nature of medical treatment to be authorised by the guardian.
- [4] In such cases it may be appropriate for a safeguarder to be appointed and a decision deferred pending receipt of the safeguarder's report. The matter may be remitted to proof. Expert evidence may be required. In our experience issues have been remitted to mediation to resolve disputed issues. Cases where such issues arise may continue for many months, or even years. They could not be fairly litigated on the basis of a block fee.
- [5] It is disappointing that no research has taken place on the way that current fee levels impact the delivery of services. A 12% drop over three years in the number of solicitors registered to carry out legal aid work was reported by Scottish Legal News on 23 June 2025. "Legal aid deserts" were discussed by the Scottish Parliament's Equalities, Human Rights and Civil Justice Committee on 17 September 2025. Data from research is urgently required, to inform the causes and potential remedies.
- [6] Forward-looking reform should anticipate that the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 is likely to result in increased demand for legal aid for children seeking representation in proceedings. Article 12 of UNCRC requires that children are given the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. Removal of eligibility tests for children will, in this context, be a welcome development.
- [7] The Faculty welcomes the commitment to embed users' voices in the legal aid system. This should assist in forestalling the current problem that changes in legal practice are not reflected in changes in legal aid, with the result that it can be difficult to access fair remuneration. The Faculty is willing to engage in ongoing dialogue with SLAB and the Scottish Government, both with a view to reform and in order to promote flexibility and so facilitate access to justice.