

The Lord President welcomes the opportunity to respond to the Independent Strategic Review of Legal Aid on behalf of the senior judiciary, with whom he has consulted.

The principal interest of the senior judiciary is the role which legal aid plays in facilitating access to justice. In the civil field, this is achieved by ensuring that the cost of legal advice and the expense of litigation do not exclude those who cannot afford to pay. If a litigant has insufficient resources to proceed privately and decides to pursue or defend a case as a party litigant, there can be a negative impact on the efficient running of the case. In the criminal field, it is achieved by ensuring that those charged with serious crimes, notably with offences attracting custodial sentences, are provided with legal assistance from the point of arrest through to verdict and on appeal. Access to justice, as a principle, depends upon the remuneration for legal aid services being regarded as commercially attractive to the legal profession. A legal aid system can operate successfully only if a significant proportion of the profession are content to conduct legal aid work, notwithstanding the substantially reduced levels of remuneration which it provides when compared to private client or commercial business.

It is a particular concern that, in some parts of the country, there appears to be a drop in the number of those younger members of the legal profession who are engaging in criminal work.

The initiatives being pursued by the Scottish Courts and Tribunal Service have, as a goal, the improvement and modernisation of the justice system in general. Their effect will be maximised if legal aid provision is aligned to them. The Review of Legal Aid should therefore take account of matters such as the SCTS's Evidence and Procedure Review. The success of the initiatives will depend upon there being sufficient legal aid provision to carry forward the summary justice and vulnerable witness initiatives.