

Independent Strategic Review of Legal Aid – Call for Evidence Response from the Scottish Arbitration Centre

In your invitation to submit evidence to the independent strategic review of legal aid, you note the review has been established with the aim to fulfil the Programme for Government commitment to “engage with the legal profession and others to identify... measures to reform Scotland’s system of legal aid, maintaining access to public funding or legal advice and representation... **alongside measures to expand access to alternative methods of resolving disputes**”. Therefore, it is disappointing that your questions for the submission of evidence and your indicative list of issues do not refer to measures to expand access to alternative methods of resolving disputes. Nevertheless, given that you have arbitrators and mediators as members of the review, we hope this part of the commitment will be developed in due course.

Alternatives to court, such as arbitration and mediation, might be more appropriate methods of dispute resolution than litigation in some cases. However, we are not aware of persons seeking to use such methods being eligible to apply for legal aid to cover related costs. There is certainly no information on the SLAB website regarding alternatives to court, aside from a page that refers to some research done on the matter.

We understand SLAB is involved in funding one or two in-court mediation schemes, so some legal aid funding is used to facilitate mediation. We also understand that the Scottish Government funds Relationships Scotland, which assist with family mediations. This is to be welcomed, but means resources are limited to family disputes or those sheriff courts with an in-court mediation coordinators, such as Edinburgh.

The Scottish Government’s Justice Digital Strategy committed the government to establishing an online dispute resolution platform for arbitration and mediation. We are unaware of any progress in developing this platform to date, but welcome the ambition.

We believe that alternatives to court often provide more effective means of resolving disputes. Arbitration and mediation might be quicker and more cost-effective than litigation and the potential appeals. Such options also reduce the burden on the courts and can be facilitated by telephone or online. Arbitrations can be done on papers, so without a hearing, if appropriate. All such approaches save money in terms of venues and transport costs. This is particularly beneficial to those living in rural areas, where the nearest court might be 100 miles away.

We would remind the review of the Civil Justice Advisory Group, chaired by the Rt Hon Lord Coulsfield. He looking beyond the courts and emphasising the need for greater use of alternative dispute resolution. He said:

“The civil justice system should be designed to permit a ‘triage’ approach to help inform and guide individuals in identifying the most appropriate route to dealing with civil justice problems at each stage of the ‘user’s journey’.”

We agree with his recommendation and would like you to focus on this when considering measures to expand access to alternative methods of resolving disputes. Arbitration, mediation and litigation, including the association fees and costs, should be known and understood by all potential users. This requires support from various bodies, ensuring that users can access information and advice services, so signposting from SLAB and SCTS to the relevant mygov.scot pages would be a start. Legal aid should cover arbitration and mediation, so legal aid is not seen as a matter for litigation alone. If the only choice for legal aid is litigation, users will go down that road, despite the fact that court action might be more expensive than arbitration or mediation, so opening legal aid up for alternatives to court might save the public purse. The Scottish Government’s Justice Digital Strategy is also worth considering, as it commits the government to establishing an online dispute resolution platform for arbitration and mediation.

Andrew Mackenzie
Chief Executive