

RESPONSE BY THE FAMILY LAW ASSOCIATION OF SCOTLAND TO
INDEPENDENT STRATEGIC REVIEW OF LEGAL AID CALL FOR EVIDENCE .

The Family Law Association comprises of approximately 350 members . The majority of our membership are solicitors throughout Scotland who practice in Family Law and cover a wide spectrum of cases from private client to publicly funded clients . The Call for Evidence document was circulated to our membership for comments and this response incorporates the views of members who provided comments. This reply is focused on family cases dealt with within civil legal aid .

The Association is of the view that it is essential to maintain meaningful access to justice for members of the public who may not have the necessary financial resources to access justice in family cases by other means. It is of the view that a fair and robust system of publicly funded legal assistance is fundamental to ensure meaningful access to justice for such individuals. It is essential to ensure solicitors who deliver this service to said individuals are adequately remunerated in order to ensure that solicitors specialising in Family Law can continue to regard provision of this service as a viable sustainable career option whilst ensuring that members of the public most in need are able to access justice and satisfying the need to limit public expenditure to a level that is in the interests of society as a whole. Due to concerns about the current Legal Assistance regime ,many of our members are of the view that continuing to provide this service is no longer a viable option and many have been forced to decline to take instructions in specific categories of Family Cases if the client is reliant on public funds . This gives rise to the concern that members of the public have difficulty in securing the services of an experienced solicitor with relevant specialist experience in Family Law . This is of particular concern as the type of case affected in this way can involve the most vulnerable clients in need of urgent assistance.

Specific Examples.

A. Domestic Abuse .

Our members have expressed concern about the current regime in so far as it relates to special urgency and sanction for outlays. Solicitors have provided examples of cases in which they incur outlays and carry out urgent work to protect the interests of the client after obtaining appropriate sanction or special urgency cover only to have the fee for the work or outlay incurred abated from their account at a later stage . An example of a case in which urgent work must be carried out and outlays incurred before the legal aid application has been determined is in a case of domestic abuse. Sanction or special urgency cover must be relied on in order to raise proceedings urgently for protective orders and outlays will be incurred eg for medical reports and Sheriff Officer fees. Many solicitors no longer offer this service as a result. Such cases usually involve the most vulnerable members of society who require assistance urgently and do not have the ability or benefit of time to source a solicitor who still does this type of work on a legal aid basis.

B. High Net Value Division of Matrimonial Property.

We have had feed back over recent years from members who are no longer prepared to deal with financial provision cases if the client requires to apply for legal aid. Such cases can be complex and carry a high degree of responsibility . If the client has no funds and the spouse has high net value assets the value of the claim may be considerable. Outlays require to be incurred in valuing and recovering assets if the spouse seeks to conceal assets . Such outlays can amount to several thousand pounds . Current provisions prevent the solicitor seeking reimbursement of such outlays if there is a prospect of the client recovering funds which is likely to be the case in the majority of such cases. This requires the solicitor to have a large debit balance due to outlays for the duration of the case .Alternatively the outlay is not paid during the case which can result in the 3rd party seeking payment threatening action for recovery or refusing to assist in future cases . An obvious example is an outlay for a pension valuation . As a result such clients can experience difficulty instructing a suitably experienced solicitor in their local area.

Further , clients in these cases can make a substantial financial recovery but the fee paid to the solicitor is minimal compared to the agents acting for the opponent given the level of responsibility involved . Therefore the resources , in the form of staff etc , available to the publicly funded solicitor may be less than that available to the privately funded opponent . There is support for amending current provision to allow an uplift in the fee in certain cases to reflect the complex nature of the case and value of the assets in dispute .

Members also encounter clients who fall outwith the limits for eligibility for public funding in the form of Legal Assistance but who cannot afford to raise proceedings privately to protect their position or recover sums due to them. There is support for public funding of alternatives to legal assistance in such cases in the form of loans to individual who do not qualify for Legal Aid.

Further , in a general sense many members over the years have suggested that the current regulations are unduly complicated and constantly subject to change with the result that solicitors can unintentionally stray into carrying out work necessary to fulfil their duty to client without being paid or with substantial abatements at the conclusion. There is support, therefore , for simplifying rather than further complicating , the current regime.

It is accepted that a robust system of quality assurance is required to ensure that work carried out using public funds is to high professional standard and it is felt that the current regime in that respect is adequate.

Margaret Carlin

Chair

Family Law Association of Scotland .