

## **INDEPENDENT STRATEGIC REVIEW OF LEGAL AID**

### **CALL FOR EVIDENCE**

Relationships Scotland welcomes this opportunity to respond to the invitation to submit evidence to the independent strategic review of legal aid. Relationships Scotland is a network of 22 Member Services providing a range of support to families with relationship issues, such as family mediation, child contact centres and relationship counselling. Relationships Scotland services are child focussed and encourage children's views to be listened to and taken in to account. Our Member Services support families through the process of separation and divorce and family re-structuring and it is predominantly in this context that our Services have experience of legal aid.

This response has been prepared with input from our Member Services, summarised by the National Office to provide a collated perspective. Our response focuses on the questions posed for respondents in Section 6 and on the indicative list of issues identified in ANNEX B of the call for evidence paper.

#### **Section 6**

- **Experiences of the operation of legal aid services**

For the vast majority of Relationships Scotland Member Services our experience of Legal Aid is primarily through either the provision of Child Contact Centres (both supported and more likely, supervised contact) and child focused family mediation. Up until recently, Child Contact Centre work was only covered by a grant of Civil Legal Aid (CLA) but now it can also be covered by an appropriate increase in Advice and Assistance (A&A). In terms of child focused mediation it is covered by template increases under A&A and also through sanction under a grant of Civil Legal Aid.

**For the provision of family mediation** on child/parenting issues one Member Service commented that in the first couple of years their experience of SLAB was very frustrating. Where a client receives A&A then even if an account is for more than £150 then the solicitor cannot seek a reimbursement for that outlay unless they are also in receipt of a grant of Civil Legal Aid and have an outlay there which can then be submitted along with the outlay due under A&A. In those circumstances the solicitor will simply not settle the outlay and will state to the Service that that is their position in advance. The Service then knows that payment could potentially not be received for a period up to several years. Further, as this particular Service initially adopted a "block fee" option of a fixed figure for 7 sessions, this did not fit with SLAB's "hourly rate" principle and it was only after a period of issues and delays with payment by SLAB to agents that they managed to find a formula that worked.

In terms of Civil Legal Aid, things are more straightforward. Sanction is sought for a specific sum and agents are able to recover an outlay from SLAB immediately where sanction is in place and the outlay is £150 or more. The experience with this has been mixed with agents. Some will pay the outlay immediately upon receipt of the invoice from the Service which is as it should be. Others will withhold payment until the outlay reimbursement has been submitted and paid by SLAB so they are not out of pocket at any point. That is fine where those outlay reimbursement forms are being sent by agents at the point the invoice is received. It appears that some agents are not submitting these timeously and so the Service has to wait an unreasonable length of time for payment.

**For the provision of Child Contact Centre, supported contact**, one Member Service commented that where there is only a charge for setting up the contact of £150 and the

sheriff orders that the costs are split between the parties, it is not possible to claim this fee through Legal Aid because of the £150 threshold, leaving the agent or Service out of pocket.

When supported contact begins it is often impossible to know how long it will be needed for – a number of weeks, months or years. One option to help families to move on to handover contact or contact outwith the Centre would be to carry out a Contact Review Meeting, perhaps after 12 weeks. Our experience is that it is unclear whether SLAB would be prepared to pay for these review meetings.

**For the provision of Child Contact Centre, supervised contact**, one Member Service commented that they have had difficulty with agents paying for contact sessions that have already been delivered and the timeframe for payments is often too long and too much time is spent chasing payment. In order to mitigate the risk of non-payment this Service has asked agents to sign a Terms of Business Agreement which clarifies that the responsibility for payment is the agent's and this helps ensure they are paid. The timeframe for referral from the court and continuation dates for Supervised contact and court reports often doesn't allow the Service to clarify that payment is in place.

- **Examples of projects, services, innovations or improvement work**

**Parenting Apart** – information sessions for parents to find out about the process of separation and divorce, what their children need from them when they are living apart and how to work together and put their children's needs first. These parent education group or one to one sessions have been available across Scotland, through Relationships Scotland, since 2015. They are currently free due to funding from the Scottish Government. Evidence from an independent review of Parenting Apart, conducted by SMCI Associates, shows that parents mediate and negotiate more effectively after participating in Parenting Apart and are less likely to rely on statutory services. An analysis of outcomes over two years of the delivery of Parenting Apart indicates that of those parents who were seeking a court order before the session, 54% were no longer seeking a court order 3 months later. SLAB contacts are supportive of this service and we hope this will continue with greater awareness raising to encourage earlier and more widespread referral from agents.

**Family Dispute Resolution Pilot** – a joint proposal between Relationships Scotland and CALM Scotland was presented to SLAB and the Scottish Government in late 2016. The aim of the project is to ensure that parents/carers, who are in dispute over contact arrangements for their child/children, fully explore the different options available to them for resolving their differences prior to going to court. This would be done by way of a Family Dispute Resolution Information Meeting. The proposal for the pilot was to focus on contact actions in 4 court areas and evaluate the impact. The project requires some funding from SLAB and the Scottish Government and is currently with the SLAB Policy committee for further consideration.

Both of these interventions fit in well in terms of areas designed to assist people directly at an early stage in their involvement with both their agents and SLAB and as measures to expand access to alternative methods of resolving disputes.

**Hearing Children's Views** – The Children (Scotland) Act 1995 establishes that children should be given the opportunity to express their views on any decisions that affect them, including those taken within the court process. The ways in which views can be heard effectively by the judiciary are currently under review. Relationships Scotland's Family Mediation Services have an established process for listening to children's views within the mediation process. This is referred to as Direct Consultation with Children (or Child Inclusive Mediation). The Form F9 can be used during family law proceedings to give children the opportunity to express their views to the Sheriff. Some of our Member Services

provide support to help children consider their views about decisions that are being taken about their family arrangements and help them to complete the F9 form to communicate with the court independently of family or friends. More recently, one Member Service has been asked by the court to provide a report on the views of the child and this has become part of the service offered to the court. Relationships Scotland are keen to clarify whether the Consulting Children services as part of the legal framework would be covered by SLAB funding.

**Family Therapy / Family Counselling** – SLAB funding for family therapy was introduced in June 2016. This is a positive innovation to support families to work through family relationship issues with a view to fulfilling the needs of the child. The number of family therapists across Scotland is small, although there are a number of counsellors who are able to work with families as counsellors rather than therapists. Relationships Scotland are keen to clarify whether the support that our Services can provide, as family counselling, would be covered by this funding.

- **Views on the obstacles to and opportunities for Improvement**

The main obstacles are the fact that no recovery can be made under A&A (except in the scenario described earlier) and the fact that no recovery can be made for a figure under £150. Both of these can cause unreasonable delays in monies being received by Member Services. As an example, one Member Service charges £60 for a Child Contact Centre Attendance Report and it can be up to 2 years from date of submission to the agent until they receive payment.

In terms of an opportunity for improvement, the removal of both of the above regulations would be an excellent start. Furthermore, it may well be that allowing SLAB to liaise directly with the mediation/Child Contact Centre provider would speed things up. The agent would obtain a template increase/sanction as per the current situation but would then automatically provide the service with the A&A/CLA Reference Number and invoices etc could be submitted direct to SLAB and could then be deducted at source by them from the client's sanctioned amount available.

The complexity of the cases that Relationships Scotland are now dealing with is not well supported by or understood by the courts, SLAB or the Scottish Government. We would welcome greater communication with all parties, including SLAB, and clearer definition of the relationship between the courts, solicitors, SLAB and the client. This would help us to support clients and may assist in freeing Services from client complaint.

- **Views on the options for the future**

Options for the future have been articulated earlier in terms of regulations around payments.

It should be noted that Child Contact Centres are heavily reliant upon charitable trust funding and a more robust structure of funding is needed to ensure these Centres can continue to support children, families and the courts in the future.

It would be helpful to know if SLAB would pay for Supported Contact Review meetings as a mechanism for helping families to move on to contact arrangements outwith the Centres.

To expand access to alternative methods of resolving disputes SLAB could promote the Family Dispute Resolution Pilot by finding a route to support the project financially and in kind, through statistical analysis and evaluation. This request is currently sitting with the Policy Committee via Catriona Whyte.

There may be a need to implement a charge for Parenting Apart sessions in the future if funding from the Scottish Government is not forthcoming beyond end March 2018. We believe that funding early intervention, supportive activity delivers cost savings in the SLAB budget.

It would be helpful if SLAB could clarify whether they would cover the costs for Relationships Scotland's Hearing Children's Views services, consulting with children directly to support them to complete the F9 form or equivalent and/or reporting to the courts.

It would be helpful if SLAB guidance on funding for family therapy could be clarified in relation to family counselling provision.

## **ANNEX B**

### **Achieving positive outcomes**

- In terms of family cases legal aid is fairly successful in achieving an outcome of sorts for individuals and the community. If both parties in a case are in receipt of A&A/CLA then there is parity and both can be helped by their agents and the court towards an outcome for both. Unfortunately, often the outcome reached is a fudge between what either parent is looking for and often both are left unhappy. Where one party is legally aided and the other is not then financially the one not legally aided may be forced to accept an outcome which is not best for them or ultimately for their children simply because they are unable to afford to continue with their case.
- The system as a whole, particularly in CLA where fixed fees are in place is more efficient than it was in the old "time and line" days. With the massive costs per annum for example for Child Welfare Reports, Child Psychologists Reports, etc, the question of sustainability is still an issue in the family sphere as more and more complex cases are now coming through the courts on a regular basis.
- Legal aid services can, in some cases, help prevent future problems in family cases where a satisfactory outcome can be achieved for the "family". Unfortunately, in many cases, as stated above, the outcome is unsatisfactory and does not allow either parent to feel that they have a "good" outcome or indeed that they have moved on from where they were at the beginning of the process.
- Innovations like the change in regulation to allow Child Contact Centre cases to be covered under A&A are helpful and will prove successful in time we hope.
- In respect of family cases we have no comment on the effectiveness of varying models for the delivery of legal aid.

### **Supporting delivery**

- Until recently SLAB's management seemed very insular and not open to new ideas from other areas but as Relationships Scotland has been engaged in discussion in recent times and been invited to several events it appears that there is scope for matters to progress and for there to be "partnership" working. This is important with an organisation like Relationships Scotland as it is the national body of the main provider of Child Contact Centres, child focussed family mediation and other related services most applicable to legal aid in family cases.
- We are seeing the beginnings of innovative approaches with the current dialogue but more could be done to strengthen that partnership approach; consultation with Relationships Scotland on proposed child and family related changes etc as an example.

- If by “financial arrangements” the bullet point is alluding to the scenario where one party is covered by legal aid and one isn’t then, as described earlier, this can hinder outcomes.
- Full disclosure of all of this information would help determine if there are areas of concern both internally and externally in terms of how things could be improved.
- The relationship between public, third sector and private sector delivery is important. As a result of the recent review of the Civil Court process there was a clear recognition of the importance of forms of ADR in many areas of the law and in family cases the emphasis on mediation and early intervention should be paramount from the first grant of A&A, so in terms of the “range” of services in family cases these areas should be at the top of the list. Here is the perfect place for Parenting Apart and Family Dispute Resolution (FDR) Information Sessions to be high on the agents lists in terms of the tools available in a family case. There should be recognition that A&A/CLA spending may have to diversify slightly from things which are directly seen as giving advice on Scots Law to covering things related to the provision of advice about Scots Law.
- We have no comment on the range of delivery vehicles used.
- We have no comment on the role of complaints inspection and scrutiny.
- In terms of the capacity of the system to innovate and the extent to which improvements have been successful, our perspective is that to date, improvements in family cases have, at first glance, been more about saving money than actually making the delivery of LA services better and more open.

### **Value & ethos**

- Where both parties are in receipt of A&A/CLA then it does promote a sense of equality and fairness. As indicated earlier where one party is covered by legal aid and one isn’t then this is not so much the case.
- In general, in family cases, the most vulnerable financially are certainly supported to be able to take action and deal with the issues between parties. Emotionally however, having a large contribution or just failing the qualification test can put a huge burden on some people making them ultimately more vulnerable than they might otherwise have been without the added financial stress.
- The points made in the last two statements indicate the extent to which legal aid services support and empower individuals.

The fact that legal aid is available for families in Scotland to support them to resolve disputes arising from separation, divorce, living apart and family re-structuring is appreciated. We would welcome the opportunity to discuss our submission on how the legal aid provision could be made more effective and efficient from our perspective.

Rosanne Cubitt  
 Head of Professional Practice  
 Relationships Scotland