

# Consultation Response

Scottish Policy Forum  
Consultation

Focus on the Future

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## Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and respond to the Scottish Labour Scottish Policy Forum consultation: *Focus on the Future*.<sup>1</sup> We have the following comments to put forward for consideration.

## General Comments

The 2026 Scottish Parliament elections will provide an important opportunity for policy priorities to be shared, argued and challenged across the full range of devolved policy matters. As the professional body for over 13,000 Scottish solicitors and a proudly non-partisan organisation, the Law Society of Scotland will play a key role in helping to encourage and facilitate informed public policy debate.

At this stage, and like many other organisations, our thinking on our key asks for the next Scottish Government is still developing. We look forward to continuing to engage with Scottish Labour, and with Scotland's other political parties, over the coming months as we develop and share our policy priorities.

At this stage, and for the purposes of this response, we have focused our comments on *Commission 4: More equal and safer communities so we can all thrive*, and specifically those aspects of the consultation relating to justice.

At the heart of any fair and just society lies the fundamental principle of respect for the rule of law and human rights. We believe the next Scottish Government, and all those in positions of power, must do all they can to respect the rule of law, protect human rights, and preserve an independent legal sector. All are fundamental to a fair and democratic society, and should inform policy development.

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<sup>1</sup> [Scottish Policy Forum - Scottish Labour](#)



# Consultation Questions

## Justice

### Community Policing

We have no specific comments at this stage.

### Sentencing & Reducing Re-offending

We have previously highlighted the need for prisoners to have access to meaningful rehabilitative or reintegrative services, including training and educational opportunities while in custody. At present, we are concerned that convicted prisoners are not always able to access these services, which are a necessary precursor to them advancing through the system. Part of the sentencing process is about rehabilitation, and a lack of investment or disconnected lines of responsibility should not prevent prisoners from achieving this.

We are aware of test projects in relation to the use of restorative justice in Scotland (for example, the service operating in Edinburgh and the work of Community Justice Scotland). Whilst initial findings in relation to the impact of restorative justice on reoffending are positive (see the studies referred to in [Restorative justice: action plan - gov.scot](#)), such projects do require sufficient funding to achieve successful outcomes.

### Court Backlogs

#### 1. Is there anything else that the courts can do to reduce the backlog of cases?

We have long called for increased funding across the justice system to address court backlogs and ensure proper access to justice. Investment is urgently needed in a number of areas, including legal aid. In the criminal justice system, in particular, a distorted and short-sighted approach has seen funding to the prosecution increased without investment in criminal legal aid defence. This imbalance creates unsustainable pressure within our criminal justice system which is likely to undermine the effectiveness of other initiatives to tackle court backlogs.

#### 2. How can victims be best supported whilst they wait for their cases to be heard? Particularly victims of violent or sexual abuse?

We have supported recent initiatives to improve the experience of victims and complainers in the criminal justice system, including the proposals within the Victims, Witnesses and Justice Reform (Scotland) Bill for a Victims and Witnesses Commissioner for Scotland and for introducing the principle of trauma-informed practice in criminal and civil proceedings. We have also highlighted that improved communication between complainers and criminal justice agencies and reducing delays could significantly reduce the trauma that complainers may experience.

However, these and other initiatives will only be effective where they are supported by suitable funding and resources to deliver meaningful improvements for victims and complainers.

### 3. Should victims of serious sexual crimes have legal representation pre-trial to improve the experience of victims in the process?

In principle, we are supportive of complainers having access to appropriate legal advice and representation where this may improve their experience of the criminal justice process and does not undermine the accused's right to a fair trial. For example, we support proposals within the Victims, Witnesses and Justice Reform (Scotland) Bill for independent legal representation for complainers where applications are made to disclose sexual history and character evidence under section 275 of the Criminal Procedure (Scotland) Act 1995.

However, careful consideration must be given to how such legal representation can be funded and resourced given the current underfunding of the criminal legal aid system. It is also important that any extension of the right to legal representation does not contribute to court delays.

We also consider that improved communication between complainers and criminal justice agencies can have a positive impact on the complainers' experience of the criminal justice system. Initiatives to improve communication could be developed quickly using available technology and may provide a cost-efficient way to improve complainers' experiences of the process.

### 4. Are there any alternatives to custody that should be considered for prisoners on remand, to ease pressures on prisons and courts?

We have previously highlighted our concerns regarding the high number of accused persons being held on remand in the context of a prison population crisis, and the lack of measures to address the impact of the crisis on the remand population. It is important to note that those held on remand have not been convicted of a crime, and many will not ultimately be found guilty of any offence. Bail and custody arrangements must balance the accused's right to liberty with the need to protect complainers and the general public. The large remand population also causes operational difficulties for prison authorities and significant costs to the taxpayer.

The criminal justice system must be appropriately resourced so that court backlogs can be addressed, and proper investment can be made across the system.

### 5. What plans should Scottish Labour have to make sure legal aid is fit for purpose?

Legal aid is central to access to justice in Scotland, helping people in 134,900 cases in 2023-24 in difficult, life-changing situations (figures relate to the number of cases paid). Whether facing criminal prosecution, family separation,



discrimination, housing problems, debt or other issues, legal aid is available through a network of nearly 600 firms in towns and cities across Scotland.

The legal aid system, however, is badly in need of overhaul. It has become overly bureaucratic and complex to navigate - both for individuals seeking support and for the solicitors who provide this essential service. The governing legislation introduced back in 1986 therefore pre-dates both the Scottish Parliament and the introduction of human rights legislation now central to many of these cases.

There is an urgent need to review payment for this work if solicitors are to be able to build business model around continuing provision of legal aid work. An additional £11 million for a 10% increase in fees came into effect in April 2023, but high levels of inflation have reduced any positive impact from this. In April 2024, we and other stakeholders withdrew from the Scottish Government's Legal Aid Remuneration Project and Research Analysis Group, having lost confidence both in the delayed process of creating a mechanism and in there being any meaningful outcome if and when a mechanism is agreed. A process for periodic review, taking inflation into account, is sorely needed. We believe the Scottish Government must act in delivering an across the board increase in fees, with an assurance that recommendations from any agreed fee review mechanism will be acted upon.

Because of the complexity of the system and the challenges around funding, there has been a substantial reduction in the number of firms available to offer legal aid work. The Scottish Legal Aid Board (SLAB) 2023-24 [annual report was released](#) on 6 November. It showed the number of cases paid for by SLAB fell to 134,900 in the year, a 1% decrease on the previous year. The number has fallen 29% from the 191,256 cases paid in 2016-17. The total cost of legal assistance increased by 12% from last year to £151.2 million. However, that is an increase of just 11% on the £135.7 million paid in 2016-17. In real terms, £25 million less is being spent now than in 2016-17. 596 solicitor firms submitted at least one legal aid application in 2023-24, down from 621 firms the previous year.

Whilst statistics for the number of cases prosecuted in 2023-24 are not yet publicly available, anecdotally our members report a trend towards more complex cases- including more cases tried in the High Court and an increasing number of cases (particularly sexual crimes) which tend not to resolve by way of guilty pleas. More complex cases are more expensive, and also place increasing pressure on court resources.

Urgent action is needed to simplify the legal aid system and to place its funding on a sustainable footing, taking inflation into account in the setting of realistic fee levels in future.

An independent review of legal aid reported in 2018, although the majority of its recommendations remain to be implemented and would require legislation to do so.



## Violence Against Women & Girls

We recognise that violence against women and girls is a particular area of concern, and we welcome initiatives to support detection and prosecution.

See our comments above regarding the need for appropriate legal advice, representation and communication for complainers within the criminal justice system- we consider that such initiatives are essential to ensure that women and girls who experience abuse and violence are able to access their rights and navigate the justice system.

We note the work of Community Justice Scotland in implementing the Caledonian System to address men's use of abusive behaviour towards female partners, and progressing the roll out of the system across Scotland.

## Legal Aid

### 1. How can 'advice deserts', in which people in Scotland are unable to access legal advice due to where they live, be avoided to ensure access to justice stretches across all areas of Scotland?

As above, significant investment in legal aid is urgently required to ensure access to justice for people in all areas of Scotland. More needs to be done to ensure that legal aid is a viable long-term career for solicitors serving communities across the country.

### 2. Is the current criteria for those able to access legal aid suitable and fair?

We believe that lack of means should not prevent a person from enforcing their rights or determining their responsibilities.

We would support developing simpler systems for means and merits test, with improved decision-making to ensure that the application of these tests is consistent, predictable, and can be understood by solicitors, clients, and the public. The criteria must take into account the importance of access to justice irrespective of financial means and must preserve the potential to make an application on the basis of exceptional circumstances to ensure that access to legal aid is preserved in cases that would otherwise be denied if this would lead to a breach of human rights.

Financial thresholds for legal aid should be reviewed regularly. Similar to the approach to legal aid fees, we believe that there should be adjustment to take inflation into account. Failing to do so would result in fewer people being able to receive legal aid.

### 3. Should the Scottish Government do more to help families who have lost a loved one abroad in tragic circumstances in the absence of legal aid?

We have the upmost sympathy for anyone who has lost a loved one abroad in tragic circumstances and consider that such families should be able to access appropriate care and support.



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