

Response to Equalities, Human Rights and Civil Justice Committee Call for Views on Civil Legal Advice and Assistance

The Scottish Human Rights Commission (SHRC) is a public body created by the Scottish Commission for Human Rights Act 2006.

We are an independent, expert body that works with and for the people of Scotland; we monitor, listen, speak up for all of our rights and respond when things go wrong.

The SHRC is also part of the international human rights system. It is accredited as the United Nations trusted organisation to provide impartial evidence on the enjoyment of human rights in Scotland.

The SHRC is independent of Government. We are accountable to the people of Scotland via the Scottish Parliament.

Introduction

The SHRC welcomes the opportunity to respond to this call for evidence on civil legal aid in our capacity as Scotland's National Human Rights Institution (NHRI) and in fulfilment of our mandate to provide advice and guidance on human rights under Section 3 of the Scottish Commission for Human Rights Act 2006. Civil legal aid is a vital component of access to justice, which forms one of the SHRC's strategic priorities under our current Strategic Plan.¹

The SHRC has not responded directly to the questions posed by the Committee as we are not engaged in the operational detail of the civil legal aid system, but we offer the following observations on the key human rights considerations the Committee may wish to consider.

Civil legal aid should be accessible, affordable and timely in order that it can form a core part of Scotland's access to justice framework. It is clear that the issues which the Committee is considering present a clear barrier in the realisation of access to justice for all in Scotland, which the SHRC considers to be unacceptable. Urgent action from the State to remedy this is required.

Human Rights Framework

Article 6 §1 ECHR protects the right to a fair trial in civil matters, with a key aspect of this being the right of access to a court in civil disputes. In order for this right to be practical and effective - for everyone to be able to enjoy this right - civil legal aid will be required in certain cases.² However, this does not mean that there is a general entitlement to legal aid in civil cases under the ECHR, as distinct from criminal cases.³

The right to legal aid in civil cases under the ECHR is dependent on a variety of factors such as the importance of what is at stake for the applicant,⁴ the complexity of the relevant legal procedure,⁵ the ability of the applicant to advocate for themselves,⁶ and whether there is a statutory requirement of representation.⁷ The State may also limit access to legal aid based on the income of the applicant, or the prospect of the case's success.⁸ It is at the discretion of the State to develop its own system for the grant and distribution of legal aid.

The International Covenant on Civil and Political Rights (ICCPR) guarantees a right to criminal legal aid under Article 14(3) and acknowledges that legal aid is an important factor in equality before the law. While Article 14(3) ICCPR does not explicitly provide for civil legal aid, the responsible treaty body, the UN Human Rights Committee (CCPR), has interpreted the ICCPR as encouraging the provision of civil legal aid, and views it as an important tool in ensuring that individuals have access to sufficient remedies to protect their human rights.⁹

More broadly speaking, it is recognised by the United Nations that civil legal aid underpins access to justice and builds trust in the State and the legal system, especially for the most vulnerable members of society.¹⁰

Overall, it is clear that the international human rights framework encourages the provision of civil legal aid, and may mandate it in highly significant cases, such as where an individual's human rights are at stake. However, the form of assistance, and the criteria for granting it are not prescribed by the international human rights framework.

The Importance of Civil Legal Aid in Accessing Justice for Human Rights Issues

Civil legal aid covers legal aid in all cases other than criminal proceedings. This means that the availability of civil legal aid has a direct bearing on people's ability to challenge decisions relating to key human rights issues; including housing, social security, social care, as well as most judicial reviews, a frequent route to remedy for cases brought under the Human Rights Act.

We have highlighted that many human rights issues fall within practice areas which are currently underserved by private providers willing to work on a legally aided basis. These areas include housing, debt, domestic abuse and immigration and asylum.¹¹ The lack of incorporation of all international human rights treaties further exacerbates access to justice barriers, as individuals in Scotland must rely on sectoral rights protections which require specialist advice.

That said, if the Scottish Government remains committed to progressing a Human Rights Bill in the next session of the Scottish Parliament, this would introduce new avenues of legal accountability for rights-holders in Scotland. To deliver fully on these commitments and ensure real accountability, legal advice and assistance must be readily available and accessible to rights holders.

Current Strengths and Challenges Facing Civil Legal Aid

It is important to acknowledge that Scotland has a demand led legal aid system with no fixed cap. A demand led approach is in line with human rights best practice for legal aid, as fixed budget targets, or limits for individuals could impede access to justice.

However, there are a number of challenges facing civil legal aid which do undermine access to justice, and the meeting of human rights obligations. The Committee will be aware, as is the SHRC, that evidence from multiple sources, such as the joint report led by the Scottish Human Rights Consortium,¹² that there are diminishing numbers of solicitors willing to take on civil legal aid work, and that there are especially few in rural areas or out with the central belt.¹³ Through our international monitoring work, (where we undertake and collate research as to the realisation of human rights for people in Scotland, and present our findings to UN Treaty Bodies) we have highlighted the difficulties faced by the most deprived communities, where 100,000 people share just 29 civil legal aid firms between them, and 122 of the 139 most deprived communities do not have any firms which take civil legal aid cases.¹⁴

This significant gap is also demonstrated by the SHRC's 2024 map of human rights advocacy and advice services in Scotland, which includes solicitors offering legal aid, and was developed in partnership with the office of the Children and Young People's Commissioner Scotland (CYCPS). The map demonstrates large geographic gaps in coverage, with the vast majority of services clustered in the central belt.¹⁵

In the SHRC's 2024 Discussion Paper, 'Access to Justice for Everyone?', we noted that advice deserts, both geographically and in different fields of legal practice, prevent individuals from accessing legally aided advice and assistance.¹⁶ This situation undermines the ability of the most vulnerable in society to access justice, and in turn realise their human rights. The issue of a lack of legal aid inhibiting access to justice was recognised in the UN Human Rights Committee Concluding Observations on the United Kingdom in 2024, though this observation was not specific to Scotland.¹⁷

Limited access and availability to legal aid solicitors in rural areas, the diminishing number of solicitors offering legal aid work, and the consequent lack of capacity and long waiting lists all represent major challenges to access to justice, which undermine the ability of people in Scotland to access courts. These issues risk interfering with human rights entitlements.

As Scotland's NHRI, it is not for the SHRC to comment on specific means of funding or delivery of civil legal aid from the perspective of operational effectiveness. The SHRC does not conduct legal aid work and has not undertaken further research into the successes or challenges of specific funding models. However, it is vital that any specific means of delivery is in line with the international human rights standards outlined above.

The SHRC's main priorities for long-term reform of legal aid are ensuring that access to justice is realised. Access to justice should be straightforward – for everyone. When an individual experiences a human rights violation, they should have access to simple, affordable, quick and effective processes which will address their situation and ensure that lessons are learned to protect the rights of everyone. Because accessing a solicitor through legal aid is often complex and difficult, access to justice is simply out of reach for too many people. By addressing the challenges facing civil legal aid with a human rights compliant system, Scotland can go a long way to ensuring access to justice for everyone.

The SHRC therefore welcomes the Equalities, Human Rights and Civil Justice Committee priority focus on this issue and remains pleased to provide any further insight to the Committee as useful.

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- ¹ SHRC Strategic Plan 2024-28 p18.
- ² Airey v Ireland (ECHR) 1979.
- ³ Essaadi v France (ECHR) 2002.
- ⁴ Steel and Morris v United Kingdom (ECHR) 2005.
- ⁵ Airey v Ireland (ECHR) 1979.
- ⁶ Steel and Morris v United Kingdom (ECHR) 2005.
- ⁷ Airey v Ireland (ECHR) 1979.
- ⁸ Steel and Morris v United Kingdom (ECHR) 2005.
- ⁹ Human Rights Committee, General Comment 32: Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007 (CCPR/C/GC/32)
- ¹⁰ Global Study on Legal Aid | United Nations Development Programme p7.
- ¹¹ SHRC, [Access to Justice for Everyone: A Discussion Paper](#), p15.
- ¹² Scottish Human Rights Consortium et.al., [Make Human Rights Justice a Reality](#).
- ¹³ Scottish Human Rights Consortium et.al., [Make Human Rights Justice a Reality](#), p28.
- ¹⁴ SHRC, Parallel Report to the United Nations Human Rights Committee on the 8th examination of the United Kingdom of Great Britain and Northern Ireland under the International Covenant on Civil and Political Rights (ICCPR), 2024, p50.
- ¹⁵ [Access to justice for potential human rights breaches | SHRC Spotlight Projects](#)
- ¹⁶ SHRC, [Access to Justice for Everyone: A Discussion Paper](#), p15.
- ¹⁷ CCPR, Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland (2024), p12.