

Reviews of Legal Aid and Legal Services

Policy Development

Reviews are currently ongoing into Legal Aid and the Regulation of Legal Services. In recent years, early advice and informal resolution has become a cornerstone of the civil justice system and it is highly likely that the outcome of these reviews will reinforce the value of early, preventative action through a focus on advice services.

Summary and Recommendations

Both the Strategic Review of Legal Aid and the Review of Legal Services could have an impact on advice services, of which local government are a core funder. It will be essential that the local government voice is heard in forward discussions to ensure local flexibility can be maintained in developing frameworks.

This paper invites Board Members to:

- i. Agree with any comments on the importance of COSLA engagement in the Strategic Review of Legal Aid; and
- ii. Agree that COSLA Officers adopt a watching brief on the Review of the Regulation of Legal Services Review.

References

Previous reports on Independent Review of Legal Aid:

- 17/03/17, Community Wellbeing Executive Group, *Independent Review of Legal Aid in Scotland*

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Legal Aid and Legal Services

Policy Development

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Current COSLA Position

2. COSLA has welcomed the Strategic Review of Legal Aid, agreeing with the premise of the Review that Scotland's legal aid system must be fit for purpose and provide access to justice for those who depend on it.
3. The response outlined that local government are absolutely committed to the principle of shared civic responsibility with a key aspect of empowering citizens is in ensuring access to justice when faced with a complex life problem. Services which support prevention and early intervention, and thereby avoid the need for costly and time-consuming legal proceedings in the first place, are vital. Firm boundaries cannot always be drawn between "legal" and other forms of advice.
4. The offer to remain engaged in the Review as it progressed was made, given the strategically important role of local government in the provision of advice and support services locally.
5. The Review of Legal Services has not previously been considered by the Board.

What is changing

6. Early discussion with civil servants and the Legal Aid Review have reinforced the expectation that the scope will not be limited to the point where a lawyer becomes involved in any proceedings but will instead take a prevention-based approach. This will have implications for all advice services. As a core funder of advice services locally, this will therefore have implications for local government.
7. Most issues brought to advice services have the potential to escalate to formal justice (courts or tribunals) if the matter is not resolved – housing, debt, welfare, family issues, employment issues. The longer affairs remain unresolved, the more likely it is that a cumulative impact or escalation will occur – for example unpaid or unlawfully low wages leading to an inability to pay rent, in turn leading to debt and then the threat of homelessness. There is a financial benefit to early resolution, for every:
 - £1 of expenditure on housing advice, the state potentially saves £2.34
 - £1 spent on debt advice, the state potentially saves £2.98.
 - £1 spent on benefits advice, the state potentially saves £8.80
 - £1 spent on employment advice, the state potentially saves £7.13¹

¹¹ Report on the Citizens Advice Service by Fraser of Allander Institute using 2013/2014 data <https://www.cas.org.uk/system/files/Fraser%20of%20Allander%20report%20to%20CAS%20The%20continuing%20financial%20benefits%20of%20advice%20provision%20to%20the%20common%20good%20November%202014%20PDF.pdf>

8. There is currently a disconnect in policy between advice and legal aid which is echoed in funding. An arbitrary line is drawn where advice stops and 'legal' services begin. The outcome of the Review is likely to recommend that this changes so services are thought of as part of a continuum. This is likely to have an impact on policy and funding strategies at a national level. COSLA engagement is necessary to ensure local flexibility is maintained within this.
9. The Legal Aid Review is scheduled to report in February 2018 and a separate but related Review of Legal Services is due to report in July 2018. It is likely that its recommendations will flow from the Legal Aid Review and could itself make recommendations about accessibility of legal services or lay representation – both of which would have an impact on local authority funded services.
10. There is the potential for both Reviews to result in primary legislation. Early influence could help to shape the resulting legal framework.

Proposed COSLA Position

11. Given the potential implications for advice services, it is proposed that COSLA engages with the Review at a strategic level – firstly to understand the developing scope of the review and then as a key partner in the strategic development of any policy which may have an impact on the design and delivery of advice services.

Next Steps

12. If Members are content with the proposed position, a high-level Officer meeting will be arranged with Martyn Evans, the Chair of the Strategic Review of Legal Aid, to gain an understanding of where the Review currently is with its considerations and what scope there is to influence. Developments would be brought back to the Board for consideration.

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