Submission from Shelter for the Legal Profession and Legal Aid (Scotland) Bill

Written evidence at Stage One of the Legal Profession and Legal Aid (Scotland) Bill, section 45 provisions

Summary

Shelter supports the overall aim of ensuring greater access to quality advice, provided by the most appropriate adviser.

Shelter supports the proposal to allow the Scottish Legal Aid Board (SLAB) to fund non-lawyers to provide advice and assistance.

Shelter does not agree that this should be done on a case-by-case basis. Shelter believes such a funding mechanism will not be effective in securing the aim of increasing access to advice from the most appropriate adviser, and may ultimately result in a reduction in both the availability and quality of advice.

Shelter asks the Committee to recommend that the Bill be amended to allow SLAB to contract or grant fund the provision of advice by lawyers and non-lawyers. This would ensure funds could be targeted on areas of unmet need, and would ensure more effective delivery of services.

Shelter is concerned that there is no information on the other proposals for reform outlined in the consultation paper Advice For All, and asks the Committee to request a detailed report on progress against the proposals and a timetable for implementation.

Shelter’s experience

Shelter Scotland has Housing Aid Centres (SHACs) in Glasgow, Edinburgh and Dundee. The SHACs provide information and advice on housing and homelessness issues. The same services are provided in East Lothian by Shelter’s East Lothian Project. The Prisoners’ Project in Aberdeen runs surgeries in prisons in the north east and provides a consultancy, referral and training service to prison staff. Shelter currently runs the Scottish Homelessness Advisory Service (SHAS) in partnership with Citizens Advice Scotland (CAS) and local Citizens Advice Bureaux (CABx), providing advice, a referral service and training on housing issues. Shelter’s Housing Law Service provides legal advice and representation to clients referred from the SHACs and other projects.

Shelter has been actively involved in the access to justice agenda for a number of years. Shelter was part of the umbrella group Association of Scottish Legal Advice Networks (ASLAN) who wrote “The Case for Change – A Manifesto for a Community Legal Service” in 2000. Shelter was represented on the working group and the sub groups of the Review of Legal Information and Advice Provision in Scotland, which reported in 2001. Shelter also took
part in various discussions and consultations during the Scottish Executive and Scottish Legal Aid Board’s Strategic Review on the Delivery of Legal Aid, Advice and Information, and responded to the consultation paper, Advice For All. Shelter’s Edinburgh Housing Aid Centre was a member of the Legal Advice and Information Edinburgh Pilot Partnership, which ran from June 2003 to March 2004.

Shelter is therefore well qualified to comment on the Bill’s provisions. Shelter’s concerns about the Bill’s provisions, and suggested alternatives, are outlined below. It should be noted that there is a lack of detail as to how case-by-case funding will fit in with other proposals in Advice for All, and this should be borne in mind when considering the following comments.

**Comments on the Bill’s proposals**

1. The Bill Policy Memorandum (para 61) indicates that the intention of the Bill is for case-by-case funding to cover “restricted areas of provision”, where there is limited demand for services. Shelter believes this approach is the wrong way round, and that the Bill should be focussed on areas where the need for advice is greatest. As the restricted areas have still to be specified, it is difficult to anticipate where case-by-case funding is expected to have an effect.

2. The Memorandum (para 61) states that case-by-case funding “should ensure this provision is directed to areas of clear need”. It is difficult to see the justification for this statement. “Clear need” implies no existing provision or inadequate provision, and in these circumstances case-by-case funding will have no effect, as it relies on some advice provision already being in place and advisers being willing to offer the service. This mechanism is essentially reactive and is an ineffective tool if the aim is to stimulate particular types of advice provision. Case-by-case funding does not allow SLAB to target areas of greatest need, and SLAB will have no way of knowing whether this funding provision is doing anything to address unmet need.

3. Case-by-case funding by its nature will involve the means testing of clients. This is something non-lawyers do not currently do. SHAC provide free advice to clients regardless of their income. If advisers had to begin means testing to determine whether clients qualified for advice and assistance, this could put potential clients off seeking advice. Even though advice would be provided regardless of clients’ financial circumstances, there may well be a perception that this was not the case, so means testing would in fact be a barrier to accessing justice.

4. SHACs will provide free advice to anyone who needs it while Shelter’s voluntary income can sustain this. There is a real concern however that agencies may begin to select on the basis of eligibility for advice and assistance, due to financial pressures. This could result in clients who do not qualify being refused help, or agencies withdrawing from advice provision in those subject areas which do not attract advice and assistance funds, arguably contributing to unmet need.

5. The time involved in carrying out means tests and claiming advice and assistance on a case-by-case basis is time taken away from providing advice. Shelter advisers work to the National Standards for Housing Information and Advice, and as such operate detailed case
recording procedures. There is a time implication in this, but it is accepted as a necessary part of the provision of a quality advice service. The additional time involved in preparing and submitting advice and assistance claims will not enhance the quality of advice and may in fact adversely affect it, if advisers are under pressure to maintain the number of cases they deal with while having the additional work of submitting claims.

6. The intention of the proposals is to encourage non-lawyers to retain cases for as long as possible and only to refer them on when necessary. Under Shelter’s referral arrangements this is what happens. SHAC advisers will take cases as far as they can and will only refer on when legal representation or other specialist assistance is required. Shelter has a concern that under the proposed new arrangements, if SHAC staff become registered advisers, the Law Service may have its claims for advice and assistance rejected on the basis that it has carried out work that could have been done by the SHAC. This could potentially happen even though, as described above, the Law Service only takes on cases when in the solicitors’ judgement it is appropriate for them to become involved. The concern goes beyond Shelter’s own situation however; Shelter has a general concern that allowing non-lawyers to access advice and assistance payments may result over time in a restriction of solicitors’ ability to take on cases, which would deny clients choice and also potentially deny them access to the appropriate adviser, one of the principles the proposals is supposed to promote.

7. Shelter is concerned that other funders may reduce or withdraw funding of advice services when case-by-case funding becomes available, due to perceived “double funding”. This would be very damaging to advice providers, given the low levels of remuneration and the unpredictability of income from case by case arrangements, compared to the relative stability of many current funding agreements. It would also mean a further move away from the planned mixed model of delivery envisaged by the Strategic Review.

8. Shelter does not agree with the view set out in the Policy Memorandum (para 61) that case-by-case funding arrangements will contribute to the development of quality assurance systems. Case-by-case funding is unlikely by itself to be sufficient incentive for those agencies who have not already done so to implement quality systems and sign up to the proposed code of practice. There is also a lack of clarity about how the code of practice for registered providers fits with the work SLAB and others are taking forward on developing quality systems. Both the Strategic Review and Advice for All stated that the development of an overarching quality framework for publicly funded legal assistance (PFLA) was a matter of urgency. The emerging results from this work should form the basis of the code of practice, rather than the code representing an additional set of requirements for agencies to implement. This should also ensure that providers who have been accredited under an existing system such as the National Standards will be well-placed to meet the requirements of the code.

9. If case-by-case funding is to be introduced, Shelter is strongly of the view that it should be on a pilot basis. This should include an external review measuring the impact of the funding model. There is a real risk that agencies may otherwise have to set up costly and time-consuming systems which offer no benefit in terms of widening the provision of advice. A pilot
would also ensure that case-by-case funding is not seen as a replacement for existing funding, or an alternative to structured, longer term funding.

10. Shelter supports the proposal to allow non-lawyers to access the outlays fund. It agrees that this should ensure that inappropriate cases are not referred to solicitors simply to ensure the costs of necessary expenses such as medical reports are covered, an issue highlighted in the Strategic Review.

**Conclusion**

Shelter supports the overall aim of ensuring greater access to quality advice, provided by the most appropriate adviser. For the reasons outlined it is opposed to the proposal of funding this access through advice and assistance on a case by case basis. Any introduction of case-by-case funding should be on a pilot basis, which would be closely monitored and externally reviewed. Shelter believes that the best way to increase the supply of advice provision through non-lawyers is by either grant or contract funding. In the longer term, as the Strategic Review and Advice for All recognise, this has to be done through a planned model of advice provision, with national and local funders and providers working strategically to establish need for services and agree the best way to provide these. In the short term however this can be done by giving SLAB the power to contract or grant fund solicitors and non-solicitors. The Executive considered grant funding as an alternative to case-by-case provision before deciding on the latter. Shelter believes however that providing grant funding at this stage would allow SLAB to target funds appropriately based on what is already known about gaps in provision, while at the same time enabling it to gather further information about need for advice.

Beyond the matters raised within the Bill, there are questions about how the remaining proposals for reform will be taken forward. The Advice For All consultation highlighted grant funding of non-solicitors by SLAB, and a greater role for SLAB in assisting local authorities in planning and coordinating PFLA, as medium term objectives. In the longer term it was proposed that a new national body would be established, taking over from SLAB and with greater powers, with responsibility for national planning, coordination, and development of PFLA. The new body would also have the power to fund provision of solicitors and non-solicitors where gaps in provision had been identified. Another longer-term proposal was that a new system of financial eligibility for legal aid would be created. Primary legislation is probably not necessary to take most of these proposals forward, however there needs to be a clear indication of when and how this work will be developed.