

# Scottish Legal Aid Board

## Annual Audit Report 2012-13

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July 2013

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# 1. Executive Summary

## Introduction

The Auditor General for Scotland appointed Grant Thornton LLP as auditors to the Scottish Legal Aid Board ("SLAB") under the Public Finance and Accountability (Scotland) Act 2000 for a five year period from 2012. This is therefore the second year of our appointment. This report summarises the findings from our audit work for the year ended 31 March 2013.

## Our responsibilities

It is a condition of our appointment that we meet the requirements of the Code of Audit Practice, which is approved by Audit Scotland and the Auditor General for Scotland. The most recent Code was published in May 2011 and applies to audits for financial years starting on or after 1 April 2011.

The Code of Audit Practice highlights the special accountabilities that are attached to the conduct of public business and the use of public money. This means that audit in the public sector must be planned and undertaken from a wider perspective than in the private sector. We are therefore required to provide assurance, not only on the financial statements and annual governance statement, but also on how well SLAB is performing and whether it has achieved Best Value in its use of resources and performance.

## Our Annual Report

This report summarises the findings from our 2012-13 audit of SLAB. The scope of our work was set out in our Audit Approach Memorandum, which was presented to the Audit Committee on 11<sup>th</sup> February 2013.

The main elements of our audit work in 2012-13 have been:

- the audit of the financial statements, including a review of the annual governance statement
- consideration of corporate governance arrangements, internal financial controls and financial systems
- a review of SLAB's response to Audit Scotland's national study reports, including a targeted follow up to the Scotland's Public Finances report.

The key issues arising from these outputs are summarised in this annual report.

## Overall Conclusions

The table below highlights the key findings emerging from each aspect of our work during 2012-13. SLAB continues to perform strongly, both in headline indicators, and in delivering the savings proposals within *A Sustainable Future for Legal Aid*.

Our review of the organisation's financial plans has highlighted some concerns about the sustainability of current savings targets in light of the administrative burden of new legislation and additional reductions to SLAB's administrative budget. As Legal Aid spend is not cash limited this may have implications for Scottish Government spending. We will continue to monitor performance both against the budget, and in delivering further planned savings to the Legal Aid Fund.

## Acknowledgements

We would like to take this opportunity to record our appreciation for the kind assistance provided by SLAB's Finance Team during our audit.

## Key Findings

Reporting Area	Our Summary
Financial Statements	<ul style="list-style-type: none"> <li>We intend to give an unqualified opinion on both the financial statements of both the Scottish Legal Aid Board and Scottish Legal Aid Fund, and on the regularity of transactions undertaken for the 2012-13 financial year.</li> <li>The draft financial statements and supporting working papers were of a very high standard, and as a result only minor audit adjustments have been required following our audit.</li> </ul>
Financial Position	<ul style="list-style-type: none"> <li>The Legal Aid Fund reports a significant net liability position of £65.4 million (2012: £68.3 million) as a result of substantial provisions for legal aid work that has been undertaken but not yet billed, and the impact of pension liabilities.</li> <li>SLAB continues to make efficiencies in its operations, and a further £0.3 million was reduced from the administrative budget during 2012-13.</li> </ul>
Governance	<ul style="list-style-type: none"> <li>Our audit confirms that the organisation has effective governance and risk management arrangements in place. SLAB has developed plans to further enhance governance arrangements by reporting on the effectiveness of each committee in Autumn 2013.</li> <li>We are satisfied with SLAB's arrangements for the mitigation and detection of fraud across the organisation. SLAB has also participated in the National Fraud Initiative data matching exercise during the year.</li> </ul>
Performance	<ul style="list-style-type: none"> <li>We have expressed concern about the sustainability of plans to continue to reduce SLAB's administrative budget in light of the additional administrative burden associated with recent changes in legislation, and the impact of any further cuts on the savings within the Legal Aid Fund.</li> <li>SLAB has continued its programme of reviews to ensure that the organisation is discharging its duty to achieve Best Value in its use of public funds.</li> <li>SLAB achieved each of the targets within its performance management framework in 2012-13.</li> </ul>

## 2. Financial Statements

We intend to give an unqualified opinion on both the financial statements of the Fund and SLAB, and on the regularity of transactions undertaken for the financial year 2012-13.

### Financial Statements Audit

The draft financial statements were of a good quality and we identified no significant errors or misstatements. The supporting working papers reflect the standard of the accounts. Our Audit Findings report which we will present to the Audit Committee on 29 July 2013 provides our detailed findings.

### Audit Adjustments

Our audit identified one minor amendment, relating to the disclosure of a payment made to the Faculty of Advocates to settle claims for interest costs. The draft Statement of Accounts was updated in agreement with the Director of Corporate Services and Accounts.

In addition to the financial statement adjustments, our audit also identified a small number of presentational and disclosure issues impacting the financial statements. The most significant of these related to an adjustment to pensions disclosures to update the liability to reflect two leavers from the organisation.

### Internal Controls

We use an interim visit to update our understanding and test controls across a number of SLAB's key financial systems.

During our interim audit, we conducted testing on the following areas:

- review of internal audit
- payroll
- journals
- legal aid payments.

Overall, the results of our testing confirmed that there is a sound system of internal control covering the key financial systems operated by SLAB.

### Regularity

Our audit did not identify any instances of irregular expenditure or non-compliance with laws and regulations.

### Whole of Government Accounts

The current deadline for completion of the Whole of Government Accounts (WGA) is 12 August 2013. While there have been a number of delays in HM Treasury rolling out the new data capture tool and providing guidance on the WGA process for 2012-13, we expect that we will be able to provide our certificate of assurance by the 4 October 2013 audit deadline.

### 3. Financial Position

SLAB continues to reduce both Legal Aid expenditure costs, and the costs of administering the Fund. As in previous years, the accounts record a significant net deficit position as a result of the provision for ongoing legal aid cases and the pension liability. However, we continue to be satisfied in respect of going concern.

#### Legal Aid Fund expenditure

The Fund's Legal Aid expenditure is demand led and subject to fluctuations. As Table 1 below highlights, the Fund's net operating costs continued to fall in 2012-13, by a further 6.6% to £146.96 million.

**Table 1: Legal Aid Fund – Summary statement of comprehensive net expenditure**

	2013 £'000	2012 £'000
Civil Legal Assistance	44,572	53,862
Criminal Legal Assistance	93,354	97,197
Children's Legal Assistance	5,471	5,272
Other expenditure	2,838	776
Interest paid to advocates	536	-
Pension scheme finance costs	185	177
<b>Net operating costs</b>	<b>146,956</b>	<b>157,284</b>

Source: Statement of Accounts 2012-13

As in recent years, the levels of applications for civil legal aid remained high in 2012-13 as a result of the impact of the recession, and have increased by 3% during the year. The spend on civil legal aid costs fell, however, from £49.5 million to £36.1 million, partly as a result of SLAB's delivery of savings, which have reduced expenditure through a combination of a reduction in volumes, fees and associated travel costs. There has also been a fall in the level of payments to Counsel as changes to regulations increased payments in 2011-12. We consider SLAB's approach to savings further in **Section 5 – Performance**.

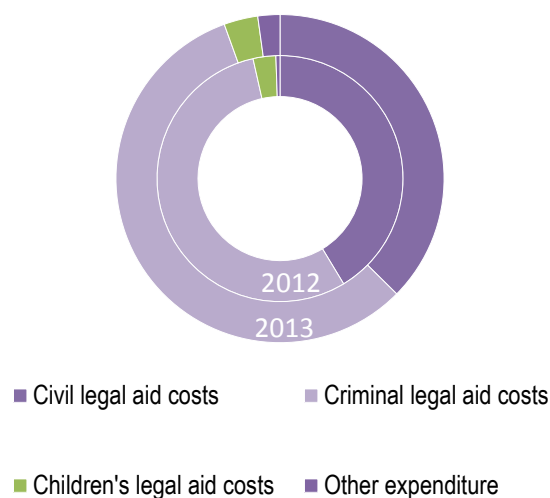
SLAB has reported a reduction in costs relating to summary criminal legal aid, which reflects a fall in the number of applications, and the impact of financial verification checks. The fees paid in relation to summary cases fell by an average of 4% as a result of the savings

packages agreed with the Scottish Government and Law Society of Scotland.

This reduction in expenditure has been balanced by an increase in costs associated with more serious cases. The granting of solemn criminal legal aid has fallen by 9% during the year, but a range of large and very expensive individual cases has meant that Fund expenditure on solemn cases has increased during the year by £2.4 million. Around £1.1 million of this increase related to counsel fees.

Figure 1 highlights that children's legal aid expenditure has a small increase in 2012-13. Costs in future years are expected to increase substantially following the implementation in June 2013 of the Children's Hearings (Scotland) Act 2011, which allows legal aid to be paid for representation at Children's Hearings.

**Figure 1: The majority of Legal Aid Fund expenditure related to civil and criminal cases, although Children's legal aid costs and other expenditure rose in the year**



Source: Statement of Accounts 2012-13

Other expenditure has also increased significantly. This rise predominantly relates to an increase in the bad debt provision, and a one-off payment made to the Faculty of Advocates.

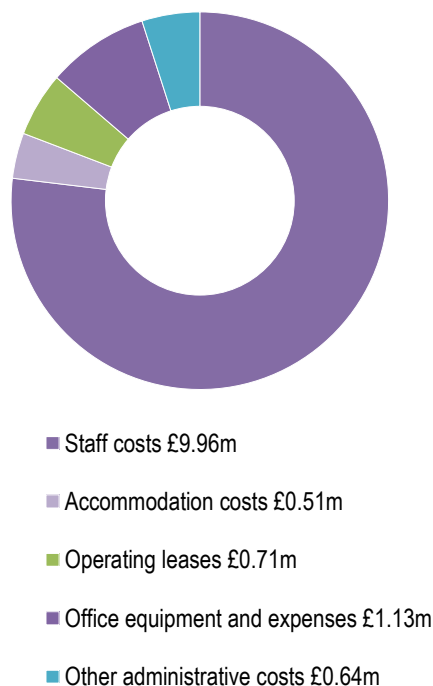
SLAB's bad debt provision has risen from £3.2 million in 2011-12 to £5.4 million in 2012-13. We expect that the provision will increase each year as outstanding debts become less likely to be recoverable, and additional debts are added. The increase this year was higher than anticipated and we therefore reviewed the basis of calculation, and compared it to our projections of debt recoverability. We found that the write off policy has been reviewed and amended during 2012-13 to reflect actual funds recovered. The revised calculation is in line with our projections.

SLAB has also made a one-off, global payment of £500k to the Faculty of Advocates to settle claims for interest due on counsel fees under the Late Payment of Commercial Debt (Scotland) Regulations 2002. The global settlement has been accepted in principle by the vast majority of the faculty, but a small number of advocates have opted out of this settlement to pursue individual claims for interest. No claims have been received to date and potential costs of claims cannot, therefore, be quantified at this time although it is not envisaged that amounts will be material.

### Administrative expenditure

The Scottish Legal Aid Fund is administered by SLAB. Figure 2 highlights that the vast majority of administrative expenditure relates to staff costs. Other key costs are accommodation and office running costs.

**Figure 2: The majority of administrative expenditure relates to staff costs**



Source: Statement of Accounts 2012-13

Table 2 below shows that SLAB's administrative expenditure has fallen by £400k during the year to £15.2million (£12.9m excluding Pension Scheme finance costs). SLAB continued to reduce staff costs, down by £129k during 2012-13. The whole time equivalent staff numbers have continued to fall as a result of efficiencies and digitisation. Staff numbers have fallen from 286 to 278, principally within temporary and agency staff numbers.

**Table 2: Scottish Legal Aid Board– Summary Statement of Comprehensive Net Expenditure**

	2013 £'000	2012 £'000
Staff costs	9,848	9,977
Depreciation and amortisation	214	190
Loss on disposal of property, plant and equipment	7	10
Impairment of property, plant and equipment	(9)	11
Other administrative expenses	3,096	3,286
Income from shared services	(275)	(281)
Pension Scheme finance costs	2,345	2,433
<b>Net operating costs</b>	<b>15,226</b>	<b>15,626</b>

Source: Statement of Accounts 2012-13

## Financial Position

As in previous years the Legal Aid Fund has a negative financial position as a result of significant provisions for the value of unbilled live cases at the year end, and pension liabilities. The provision as at 31 March 2013 has reduced slightly and now totals £75.6 million (2012: £77.8 million).

**Table 3: Scottish Legal Aid Fund – Summary Statement of Financial Position**

	2013 £'000	2012 £'000
Non-current assets	11,203	10,361
Current assets	8,826	10,865
Current liabilities	(57,111)	(60,825)
Non current liabilities	(28,337)	(28,719)
<b>Total net liabilities</b>	<b>(65,419)</b>	<b>(68,288)</b>

Source: Statement of Accounts 2012-13

Although these provisions create a significant liability at the year end, legal aid expenditure is not cash limited and the Legal Aid (Scotland) Act 1986 creates a statutory obligation on the government for payment of sums due from the Legal Aid Fund. We are therefore satisfied that SLAB remains a going concern.

## Looking forward

We refer in Section 5 to the potential impact of further reductions in the organisation's administrative budget on the savings plans to close the gaps in funding between the forecast legal aid requirements and Scottish Government budgets for both 2013-14 and 2014- 15.

One potential area of saving is in accommodation costs, and SLAB has plans to move to an alternative property when the leases on Drumsheugh Gardens expire or earlier if negotiated. The potential lease dilapidations remain an area of risk for expenditure in 2014-15 and the following year, although the Scottish Government are fully aware of the situation. We will continue to monitor the outcomes of lease negotiations.



## 4. Governance

SLAB's governance and risk management arrangements continue to operate effectively. The development of savings packages have increased the level of proactive fraud investigations and financial verifications, and have resulted in efficiencies, but also assurance about the underlying level of accuracy in legal aid claims.

### Annual Governance Statement

The Annual Governance Statement (AGS) is the key document that records the governance ethos of the organisation, and assurances around the achievement of the strategic objectives of the organisation. The AGS summarises the governance structures in place, including the internal control framework, arrangements for risk management, financial governance and accountability.

SLAB conducts a review of its corporate governance arrangements every three years. The Board has agreed to extend the process of annual formal review of Board and committee effectiveness from the Audit Committee to include the Board, the Legal Services Cases Committee and the Legal Services Policy Committee in response to a recommendation from the most recent review. The Board, Policy Committee and Cases Committee will all review their performance for 2012-13 by the Autumn of 2013. We will, therefore, update our understanding of SLAB's governance effectiveness as part of our 2013-14 audit.

### Risk Management

The organisation has risk management arrangements in place at corporate, directorate and service level. Risks are reviewed by the Executive Team on a monthly basis and by the Audit Committee on a quarterly basis, but ownership of each identified strategic risk remains with a named member of the Executive Team.

SLAB's risk management strategy includes training for all staff on SLAB's definition of risk, its objectives in having a risk framework and staff roles and responsibilities. SLAB's internal auditors review the risk management arrangements in place and provide assurance to the Accountable Officer and the Audit Committee that processes are in line with good practice.

The *Risk Policy and Risk Framework* is also reviewed by the Executive Team and the Audit Committee every three years.

### Prevention and Detection of Fraud and Irregularity

The integrity of public funds is a key concern for the organisation and for auditors. As external auditors, we are required to consider the arrangements made by management for the prevention and detection of fraud and irregularities. Our enquiries of management and SLAB's internal auditors found that there had been no internal frauds during 2012-13. We conducted testing on journal entries and related party transactions to highlight any unusual transactions. There were no issues arising from this testing.

SLAB has established arrangements to proactively identify and respond to fraud in the Legal Aid Fund. The Compliance and Solicitors Investigations Team respond to allegations, and conduct a risk based audit of solicitors who are registered to provide legal aid. During 2012-13, the team investigated 62 referrals relating to solicitors and undertook 165 compliance audits. Five cases of solicitor investigations have been referred to the Crown office. The Team estimate that this work results in savings to the Fund of £1.1million.

The AP Investigations Team conduct financial verification checks on legal aid claimants, and investigate any financial representations relating to:

- undisclosed income
- undisclosed capital; or
- an undisclosed partner.

During 2012-13, SLAB reported five cases to the Crown Office & Procurator Fiscal Service for deliberate or persistent act of non-disclosure or false declaration of an applicant's financial circumstances.

The Accountable Officer asks the organisation's Internal Auditors to conduct an annual review of the processes and programmes designed to mitigate and minimise fraud risk as part of the annual internal audit activity plan. We are therefore satisfied that SLAB has satisfactory arrangements in place to mitigate and detect fraud.

### National Fraud Initiative

SLAB has participated in the National Fraud Initiative data matching exercise 2012-13. The internal audit team are responsible for reviewing and investigating matches

identified. We have reviewed the work performed to date and have concluded that SLAB had appropriate resources in place and there were no matches that were not satisfactorily resolved.

### Looking forward

We note that appointments for six of the twelve Board members will come to an end on 31 March 2014. Where any Board member intends to step down, succession planning will be required to ensure that the organisation continues to benefit from the knowledge and experience, particularly of long-serving members. The organisation is alert to this issue and is in discussion with the Justice Department at the Scottish Government to take forward succession plans.

## 5. Performance

SLAB has demonstrated a commitment to achieving Best Value and continues to deliver significant savings while increasing responsibilities. SLAB achieved all eight targets within its performance management framework during the year. We are, however, concerned about the sustainability of maintaining service levels with further reductions in resources.

### Strategic Planning

The organisation has a Corporate Plan 2013-15 in place, which is directly linked to the National Performance Framework. The Plan is reviewed and approved annually, and performance against the plan is monitored by the Executive Team and the Board throughout the year. The Corporate Plan outlines five national outcomes, and the high-level actions that the Board will undertake to support the attainment of these outcomes, and three Justice Strategy for Scotland priorities:

- Widening access to justice and law reform
- Transforming civil and administrative justice
- Enhancing efficiency.

### Best Value

Accountable Officers have a specific responsibility to ensure that arrangements have been made to secure Best Value. In addition, the Boards of relevant public service organisations have corporate responsibility for promoting the efficient and effective use of staff and other resources by the organisations in accordance with the principles of Best Value.

The organisation continued to use a programme of Best Value reviews to make recommendations for improved efficiency and performance.

During 2012-13, the internal audit team carried out an assessment of the SLAB’s corporate arrangements for Best Value, using guidance produced by the Scottish Government.

As Table 5, below, demonstrates, internal audit found that the SLAB’s Best Value control environment provides reasonable assurance regarding the effective and efficient achievement of the organisation’s objectives.

**Table 5: Outcomes of internal audit review of Best Value arrangements**

Best Value Theme	Assessment
Vision and Leadership	Good
Effective Partnerships	Good
Governance and Accountability	Good
Use of Resources	Good
Performance Management	Good
Equality	Good
Sustainability	Good

Source: Internal audit report 09/12

### Performance reporting

SLAB has developed eight key performance indicators across each key area of their work (Table 6).

These headline indicators combine underlying targets on accuracy and the speed of applications for each type of legal aid claim.

The indicators highlight that performance continues to improve, despite the significant level of efficiencies and savings that have been made within the administrative budget.

**Table 6: Performance against Headline Indicators**

Indicator	Target	Achieved	Trend
Criminal legal aid applications	99%	✓	↑
Civil legal aid applications	97%	✓	↑
Children's legal aid applications	97%	✓	↓
Advice and assistance applications	97%	✓	↑
Criminal accounts	97%	✓	↑
Civil accounts	97%	✓	↑
Children's accounts	97%	✓	↑
A & A accounts	97%	✓	↑

### Scotland's public finances: Addressing the challenges

As part of our audit work in 2012-13, we considered how the organisation is affected by Audit Scotland's findings in *Scotland's public finances: Addressing the challenges*, which was published by the Auditor General and the Accounts Commission in August 2011. The report provided an overview of the scale of budget cuts expected to be faced by the Scottish public sector in the period 2010-11 to 2014-15, and how public bodies were beginning to respond to the challenges of reducing expenditure.

We noted in 2011-12 that the SLAB's administration budget has significantly reduced over recent years, representing a real terms reduction in resources of over 16%. During 2012-13, the administrative budget was effectively reduced by a further £0.3 million, with further £0.5 million reductions planned in 2013-14 and 2014-15.

SLAB has continued to work with the Scottish Government and Law Society of Scotland to agree a package of savings measures. *A Sustainable Future for Legal Aid* was published in October 2011 and sets out the proposals for maintaining a fair, high quality and equitable legal system within current cost restraints; and identifies a range of measures to form savings packages.

These measures have provided savings to date which are estimated at £18 million. However, many of these measures have resulted in additional responsibilities, such as increased financial verification checks on applicants, granting solemn legal aid and grant funding, at a time when the administrative budget has been falling.

SLAB has recently prepared a paper to highlight to the Scottish Government the difficulties of a further reduction of £0.5 million in the administration grant for 2014-15. This further reduction will jeopardise SLAB's ability to sustain further legal aid savings and carry out the additional responsibilities. SLAB currently estimate that the gap between projected legal aid expenditure and Scottish Government funding is £11.9 million and £14.0 million in 2013-14 and 2014-15 respectively. The work on savings packages is therefore a priority for the organisation's staff, however, as aforementioned, further budget reductions may present a risk to delivery. We will therefore continue to monitor the organisation's financial plans to ensure that they remain sustainable.

**Refer to Audit Action Plan 1**

### Looking forward

During 2011-12, a new requirement was introduced within the FReM to publish a Sustainability Report which outlines the economic, social and environmental factors impacting the organisation.

The Scottish Government prepared guidance on this *Public Sector Sustainability Reporting - Guidance on the Preparation of Annual Sustainability Reports* which outlines the minimum reporting requirements covering areas such as:

- Greenhouse gas emissions
- Waste minimisation and management
- Finite resources
- Action on Biodiversity

■ Sustainable procurement.

SLAB has not yet produced the Sustainability Report for 2012-13, and we will therefore review arrangements for publicising the report, and the organisation's environmental targets, once it becomes available. .

# Appendix A: Action Plan

	Issue	Recommendation	Management Response
1	The Board has made significant operational changes to reflect the cost pressures currently facing the public sector. We have noted concerns that the plans for future savings in the Legal Aid Fund may be jeopardised by additional reductions to the Board's administrative budget.	We recommend that the Board consult with the Scottish Government about future savings packages, and plans for deliver.	We are in regular contact with the Scottish Government, including monthly forecast and savings monitoring meetings and they are fully aware of our expenditure and savings forecasts and the possible impact of further reductions in our administrative budget.



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