

70
Years
1949-2019



Law Society
of Scotland

Legal Aid Fees



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Legal Aid Expert Payment Advisory Panel

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Law Society
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Objectives

Representing
the profession

And the public
in relation to
the profession

Supporting the
rule of law

Supporting the
interests of
justice

Protecting the
interests of
consumers

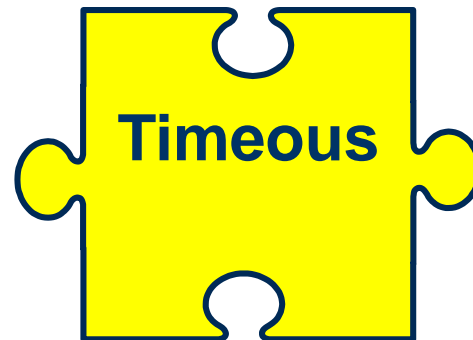
Protecting the
public interest

Promoting
access to
justice



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Fee frameworks



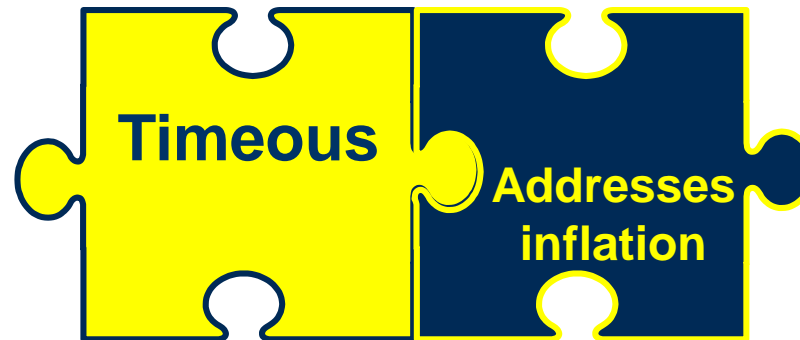
Timeous

- Legal aid fees without any formal, periodic review mechanism
- Creates uncertainty and risk for providers
- Deters investment and innovation
- Exposes fee structures to effects of inflation over time
- Needs to be prompt – criminal fee review yet to start in England and Wales, but due to complete by summer 2020

Sheriff Officer fees – service to each individual

	Column A	Column B
2018	£52.02	£81.16
2016	£50.70	£79.10
2013	£50.05	£78.10
2012	£49.00	£76.45
2011	£47.85	£74.60

- Five reviews in seven years, another requested and an 8.7% increase over the period

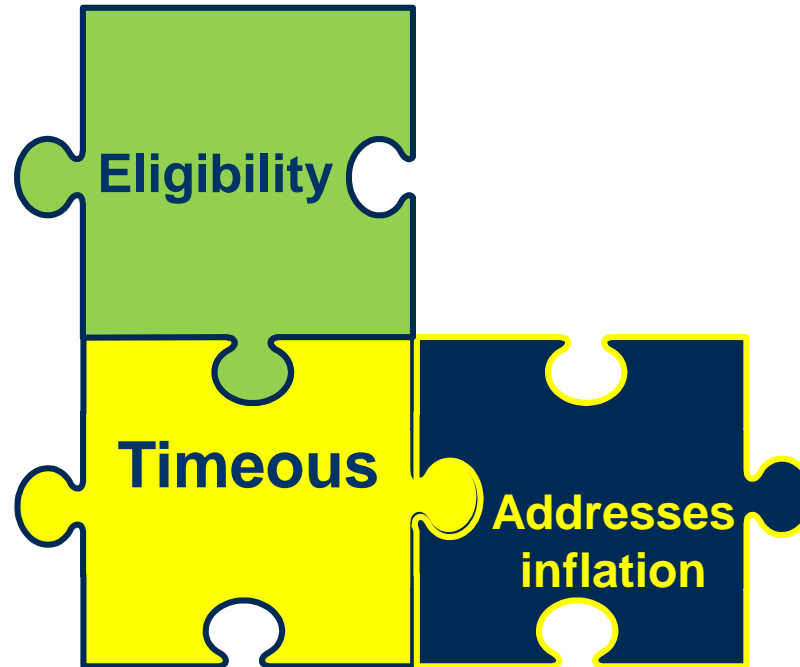


Addresses inflation

- Inflation reduces fee income in real terms
- Combined with lack of periodic review, significant reduction over time
- Using CPI-H as future indicator for inflation
- Other jurisdictions have inflation-proofed fee systems
- For instance, Legal Aid Queensland in Australia has been increasing legal aid fees in line with the Australian Bureau of Statistics CPI index

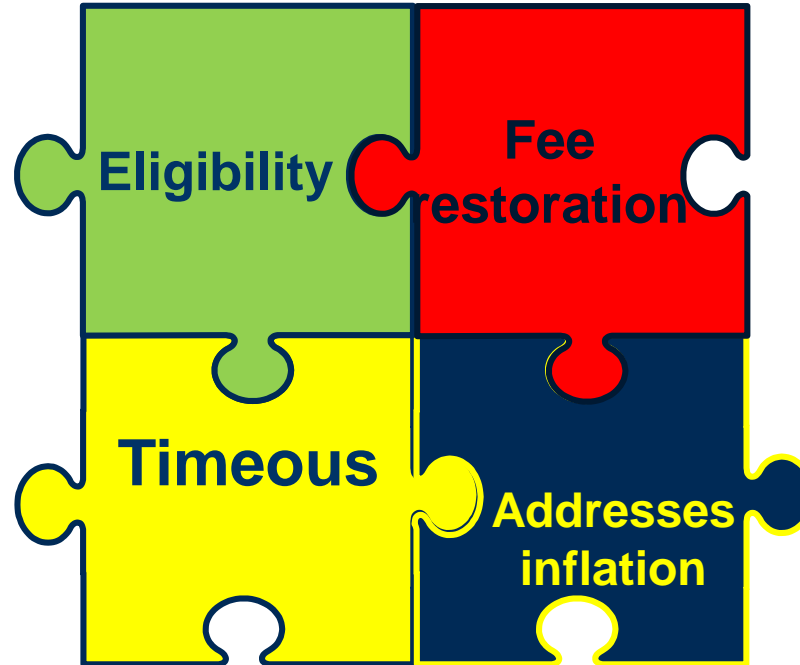
Impact of inflation on fees

Fee	Current fee	Last change	Date of last change	GDP deflated	Real terms decrease
Summary fixed fee – sheriff court	£485	Reduced from £515 to £485	2011	£536.58	9.61%
Summary fixed fee – JP court (not guilty)	£295	Reduced from £315 to £295	2011	£326.37	9.61%
Civil legal aid – block fees	£21	Increased from £19 to 21 per unit	2009	£23.98	12.42%
Summary fixed fee – JP court (guilty)	£150	Increased from £70 to £150	2008	£173.69	13.63%
Criminal advice and assistance	£42.40	N/A	1992	£70.33	39.71%



Eligibility

- Inflation also affects eligibility for legal aid
- Including eligibility in scope of framework would protect reach of system
- For instance, Commission des Services Juridiques has increased eligibility on the basis of increases to the minimum wage
- The result that eligibility in Quebec increasing by 6.67% in 2018 and 4.7% the previous year

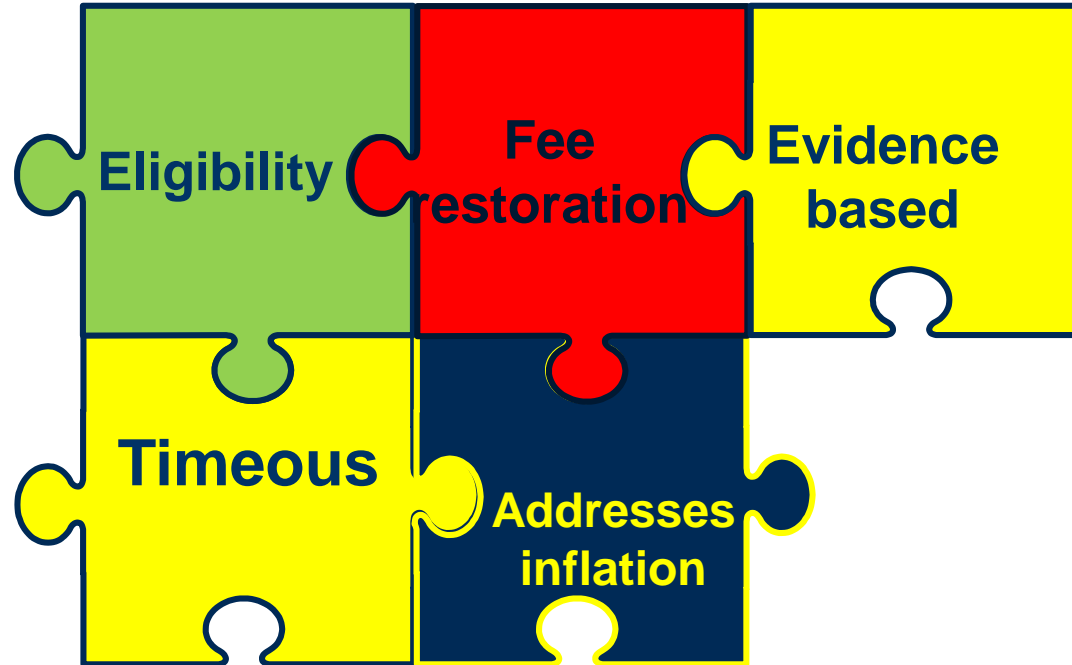


Fee restoration

- Inflation has effected real terms cuts to fees across the legal aid system
- The same, or more work, is being done for less remuneration
- Real terms cuts not unique to legal aid, as public sector pay settlement has seen over last decade
- Consistent with Scottish Government policy on public sector pay
- Cabinet Secretary for Finance in 2018: “while this is only a one year pay policy, it takes an important next step on the journey towards pay restoration”

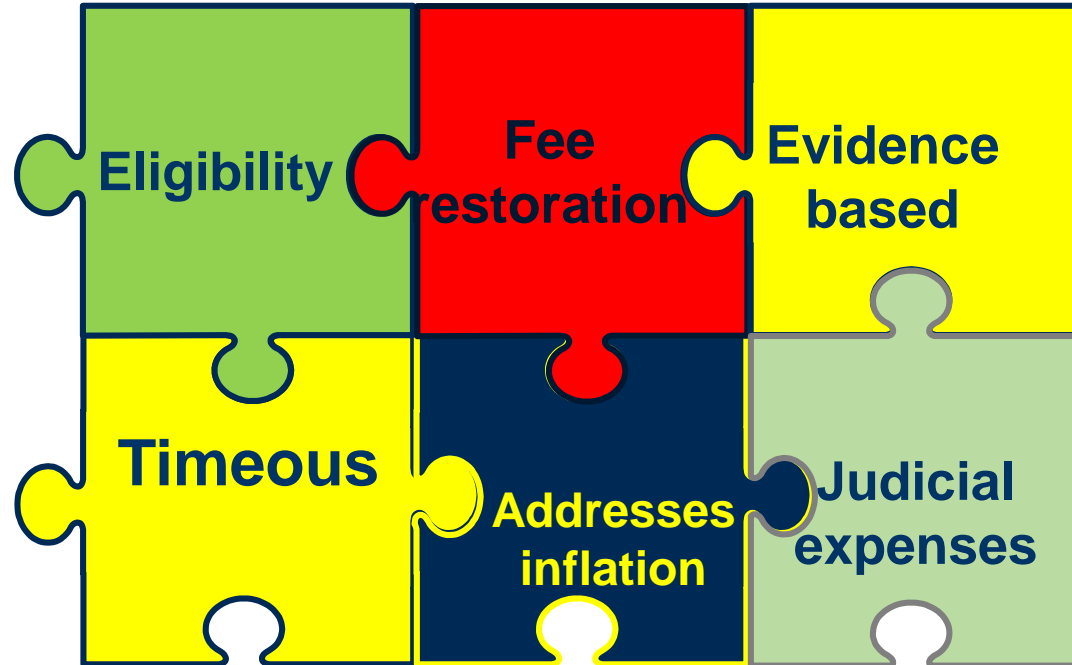
Pay review body salaries

	Average annual growth % (GDP deflated from 2015)		
	2005-2010	2010-2015	2005-2015
Doctors	-0.1	-4.4	-2.2
Police officers	0.4	-1.9	-0.8
Prison officers	-1.1	-0.7	-0.9
School teachers	-0.7	-1.3	-1.0



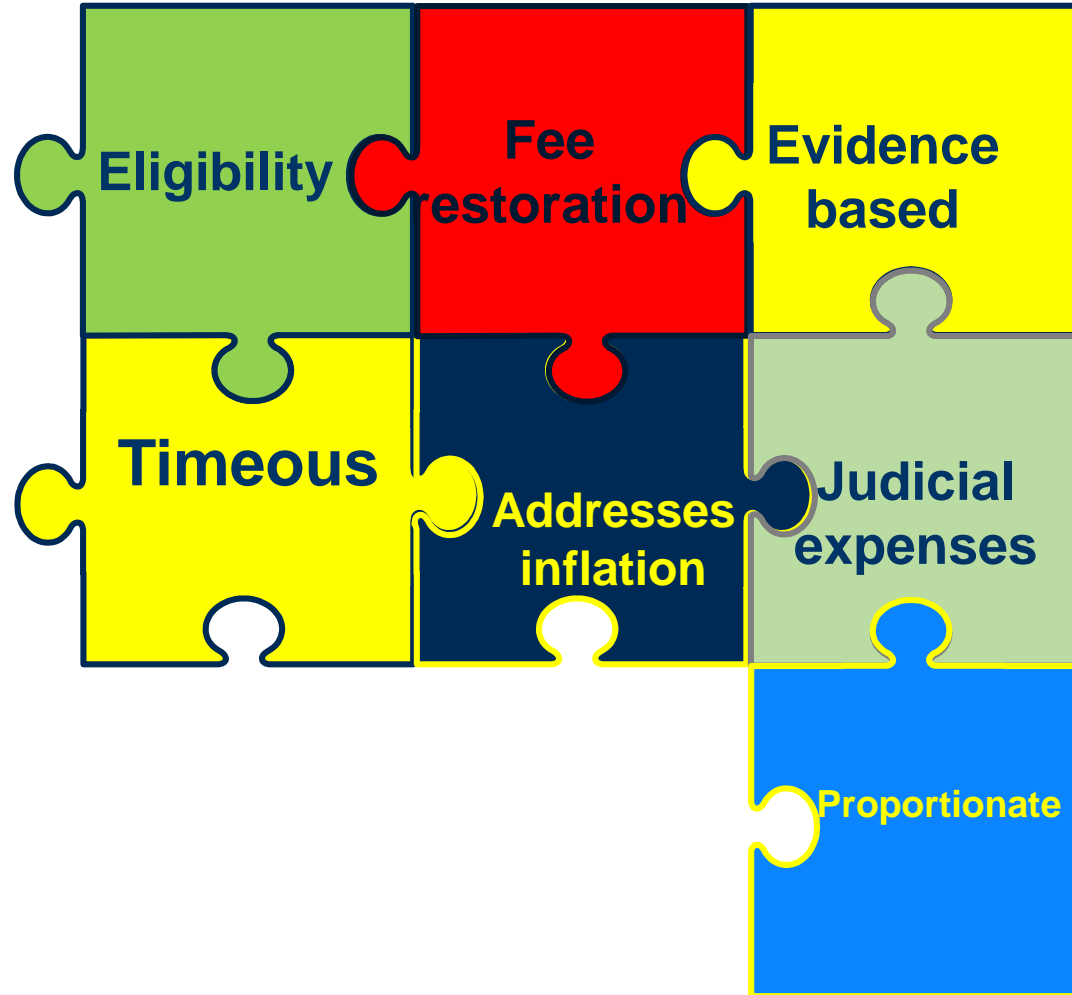
Evidence-based

- Importance of evidence to review processes
- Including information from billing data from legal aid
- Informed by comparative processes, Office of Manpower Economics and other data
- But challenges around “highly intrusive” process – GDPR, confidentiality and privilege issues around private cases



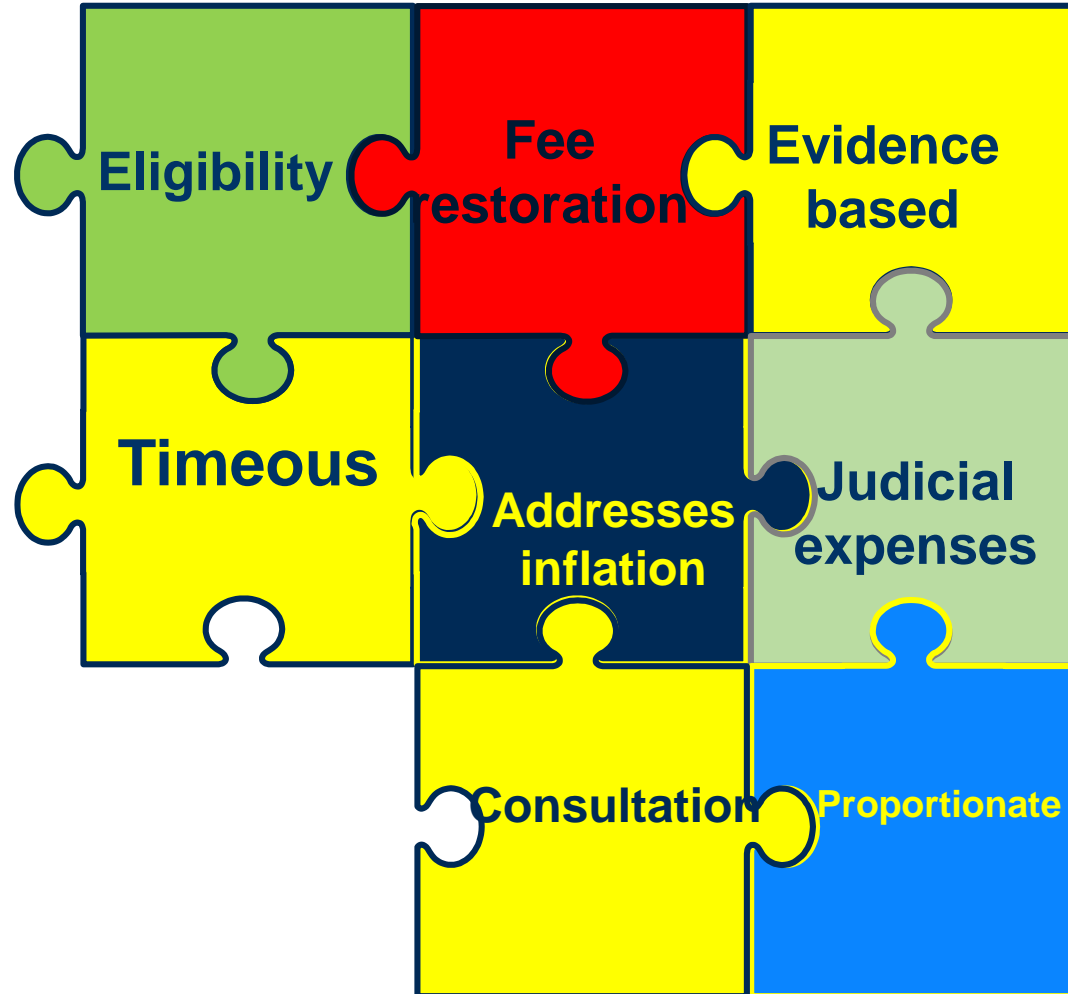
Linked to judicial expenses

- Important for framework to have regard to work of Costs and Funding committee of Scottish Civil Justice Council
- Retaining link, at least in civil actions, with wider practice
- Sharing and developing best practice, evidence



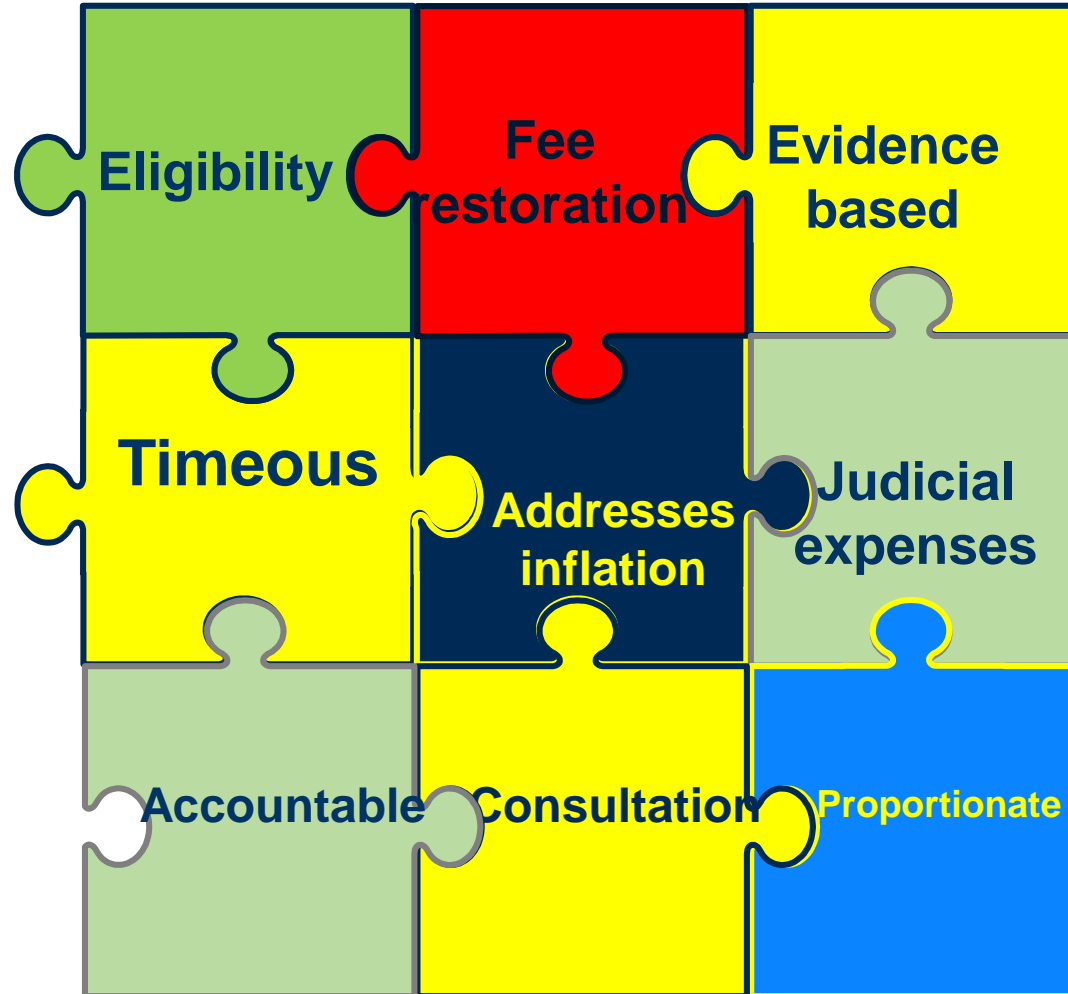
Proportionate

- Tied to the evidence required and timescales involved, important that the framework and process is proportionate
- If information required from practitioners, important to know why and for what purposes



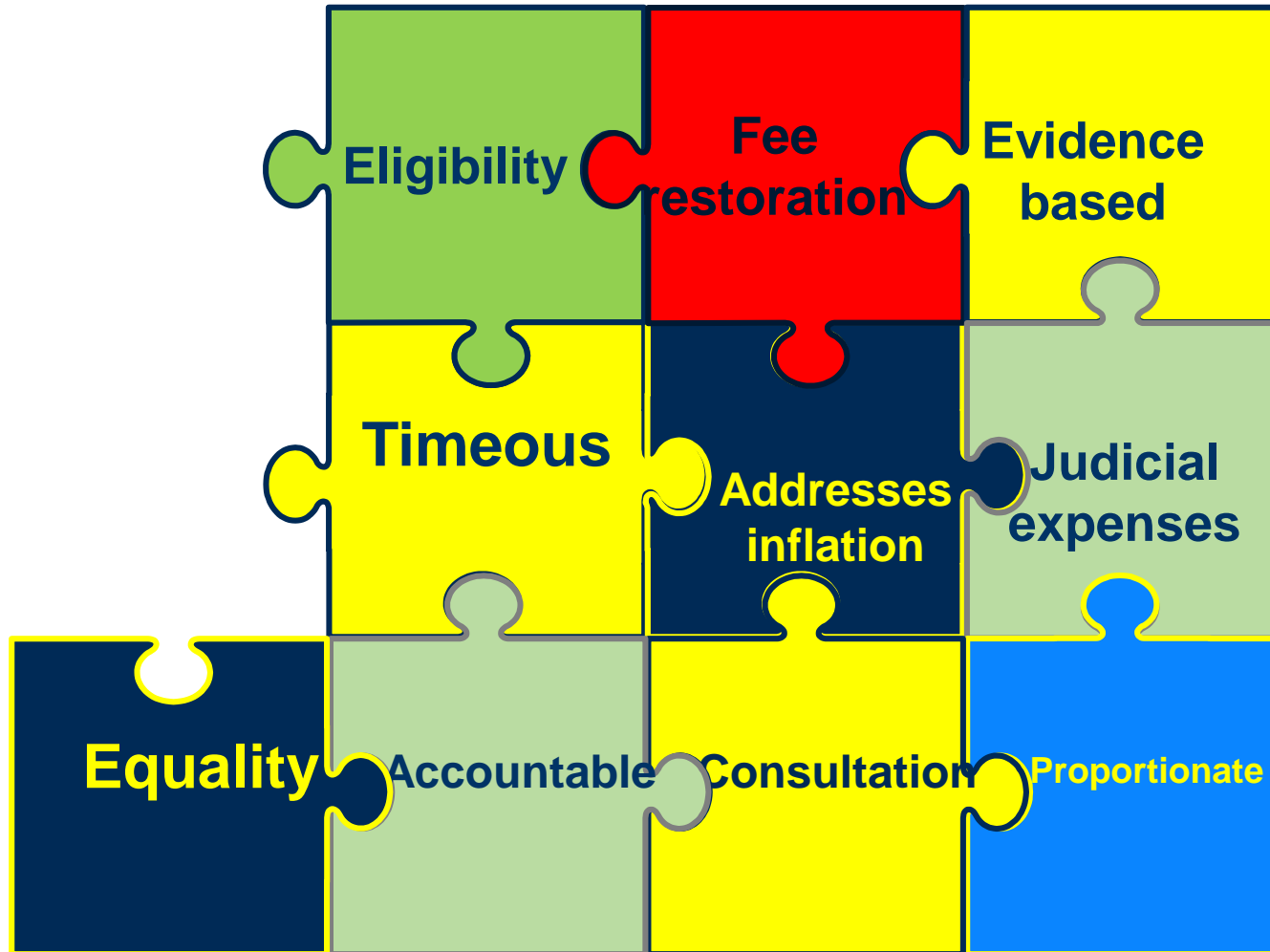
Consultation

- Fee review frameworks require public confidence in process and outcome
- Effective communication and opportunity to consult critical – highlighting any areas of difficulty and any variation in impact, for instance, geographically



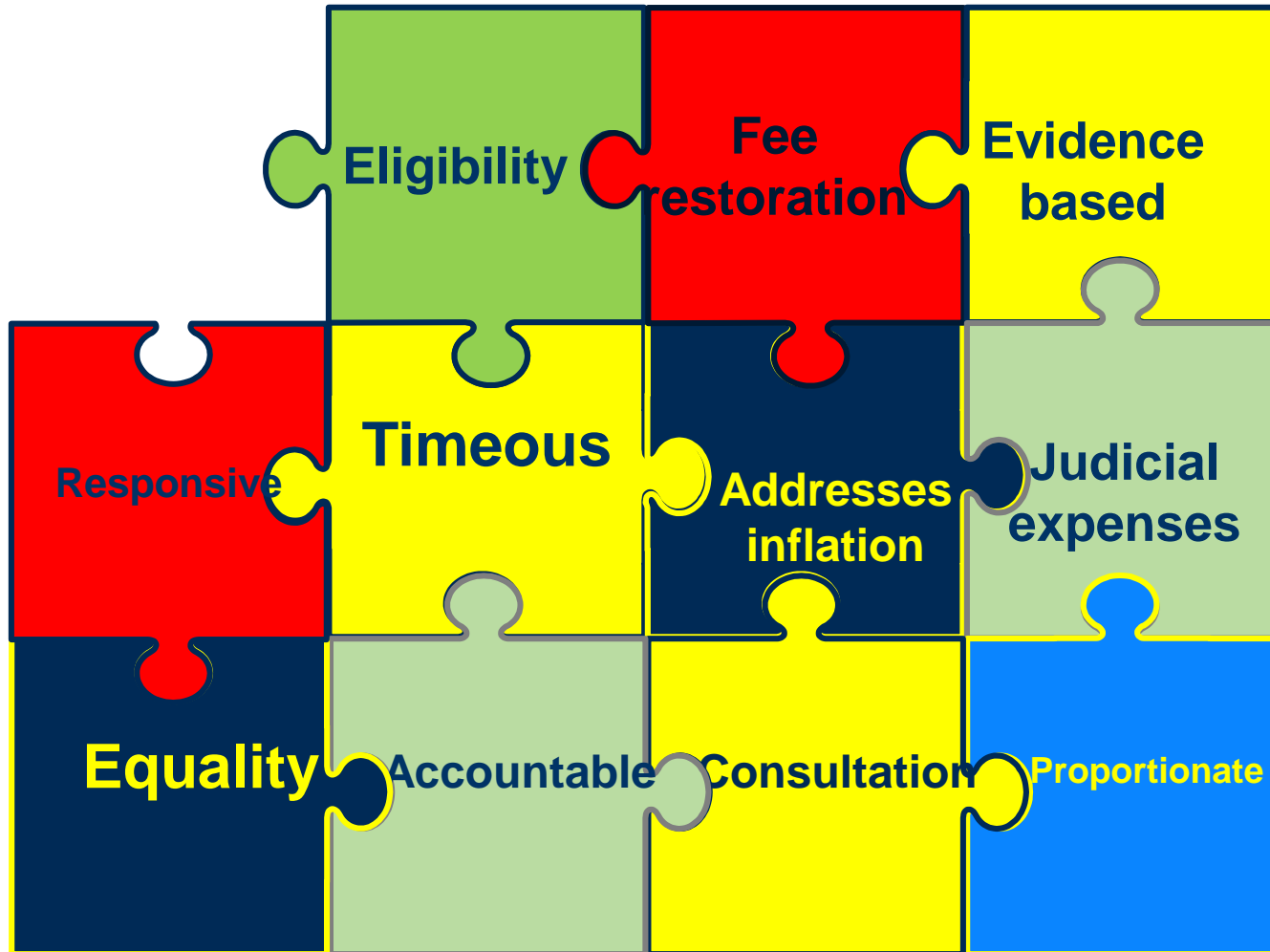
Accountability

- Responsibility for access to justice, compliance with human rights core to government and devolution settlement
- Similarly, scrutiny process at Scottish Parliament key to accountability in delivering these outcomes
- Opportunity to delegate authority, as Hong Kong, around fee increases up to CPI



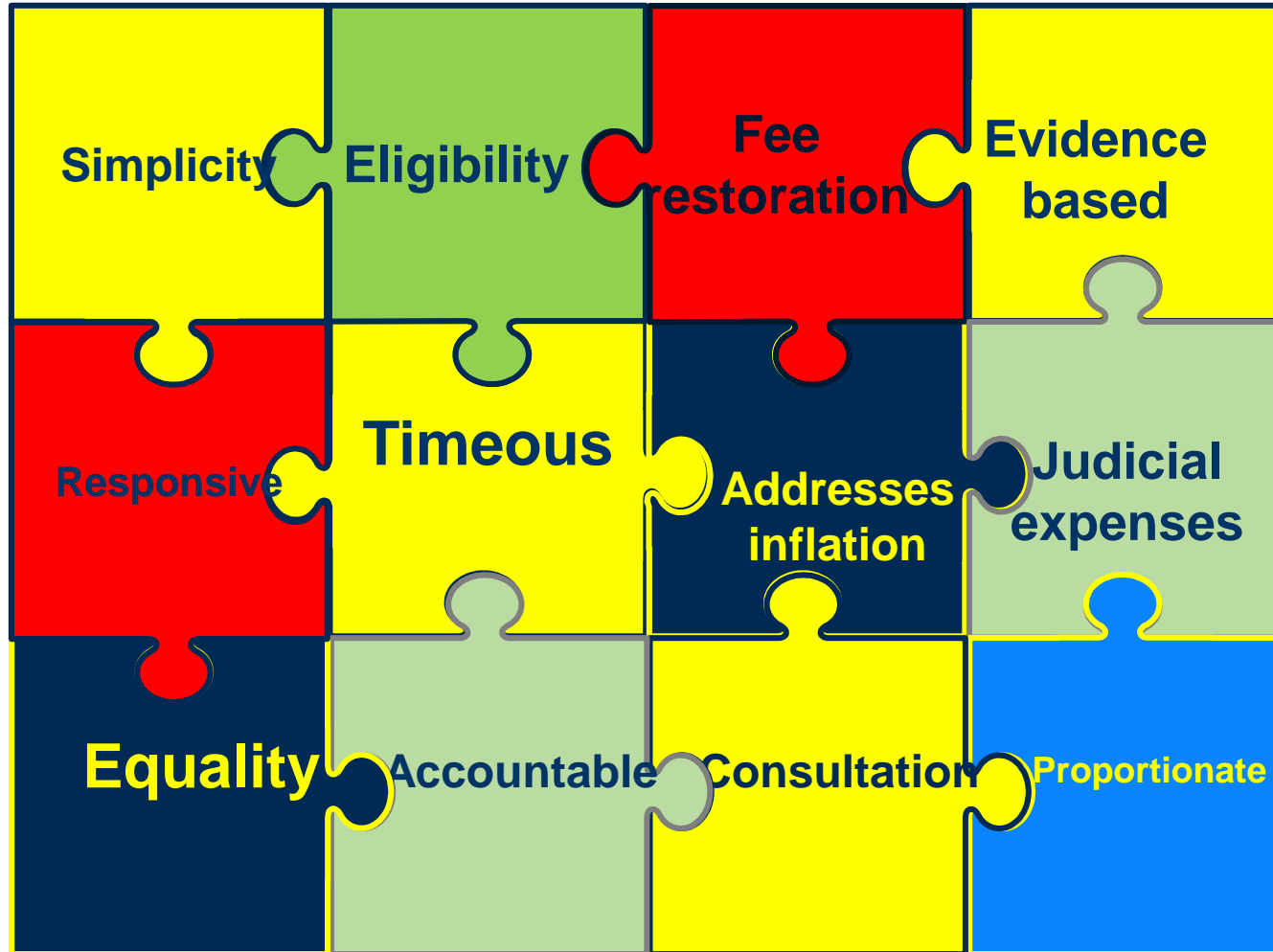
Equality

- Critical that fee framework cognisant of equality impacts of review and change
- Composition of profession changing and important to promote diversity at all levels
- Business and regulatory impact assessment also important step



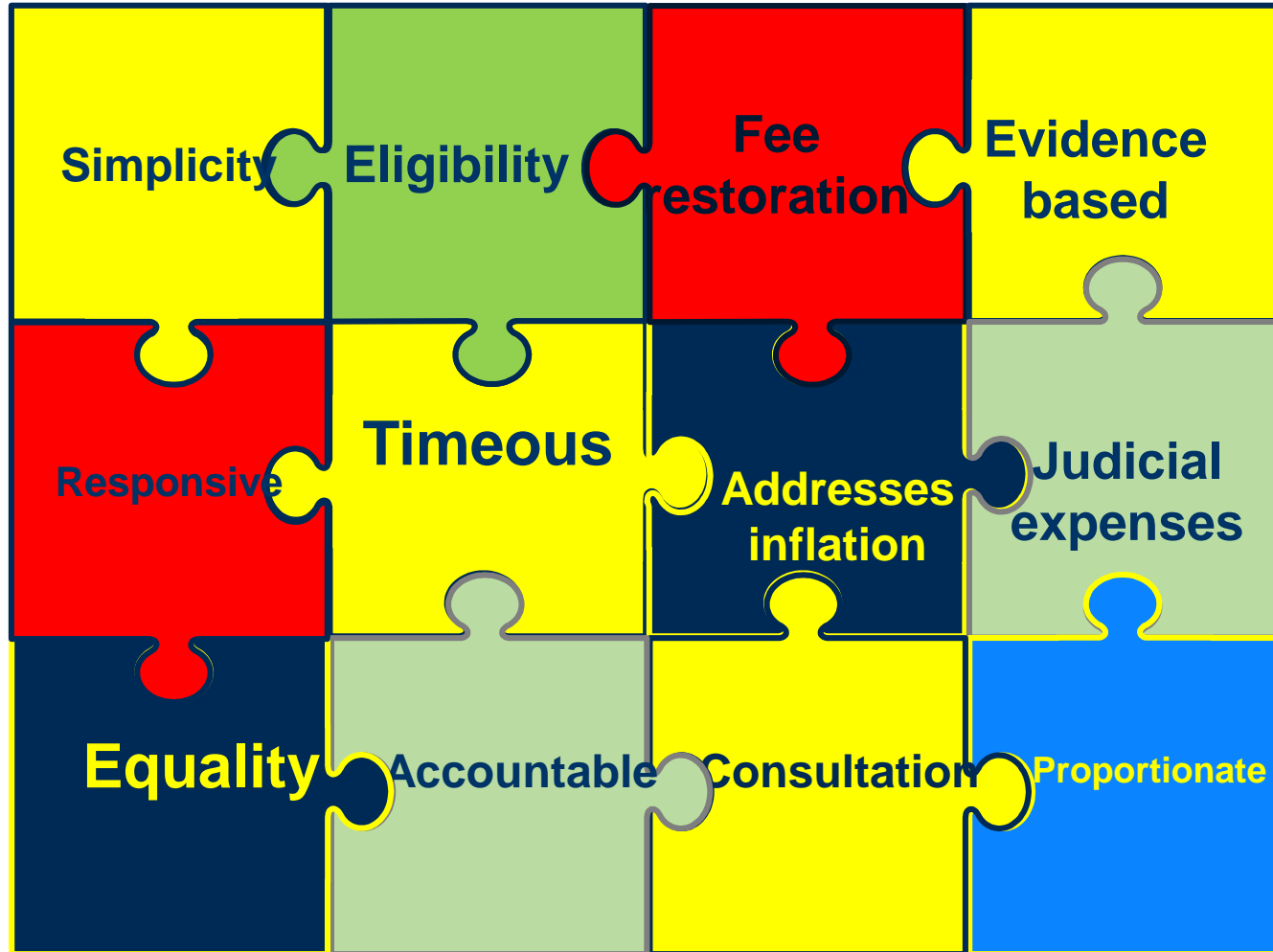
Responsive fee framework

- Importance of change mechanism between reviews
- Court actions can create significant new areas of work, for instance, the Supreme Court decision in *Cadder* and the fallback to advice and assistance
- Fees set for particular types of work do not deliver intended outcomes, for instance, s42 fees and repeat telephone consultations with vulnerable clients



Simplification

- Work underway around simplification of fees
- Where possible, to simplify into blocks for routine work
- Incentivising early pleas and generating system savings, for instance, through s76 fees or single grant for legal aid
- Simplifying rather than replacing existing fee structures
- Allowing, for instance, interest on late payments in common with good practice across public sector
- And revising treatment of outlays – a significant financial overhead and risk for firms





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Thank you