

FINANCIAL ELIGIBILITY FOR SOLEMN CRIMINAL LEGAL AID



Consultation on applying the undue hardship test

February 2010

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1. Examples

1. Introduction

Providing access to justice

- 1.1 The power to grant legal aid in solemn cases is to be transferred from the courts to the Scottish Legal Aid Board (“the Board”) on commencement of section 64 of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) (“the 2007 Act”)¹ .
- 1.2 This change entitles a person who has applied to the Board for legal aid in a solemn case to an award of legal aid provided they meet an undue hardship test. Such an award can be subject to conditions. Where we refuse an application for legal aid or grant it subject to conditions, the applicant can apply to us to review our decision.²
- 1.3 The undue hardship test the Board will be required to apply under a new section 23A to the Legal Aid (Scotland) Act 1986 (the 1986 Act) is:
- “Criminal legal aid shall be available on an application made to the Board, where a person is being prosecuted under solemn procedure, if the Board is satisfied after consideration of the person’s financial circumstances that the expenses of the case cannot be met without undue hardship to the person or the person’s dependants”.
- This test does not differ from that which the courts were required to apply or which the Board has historically been required to apply in assessing applications for legal aid in summary proceedings. It looks at the applicant’s and their dependants’ unique circumstances in assessing their actual ability to pay for their defence costs.
- 1.4 The Government has an obligation to ensure that every person who is prosecuted under solemn procedure has access to a fair trial. It is accepted that the transferring of responsibility for the assessment of criminal legal aid for solemn proceedings to the Board engages Article 6(3) of the European Convention of Human Rights (“the Convention”).
- 1.5 We believe our proposals are Convention compatible. Article 6(3)(c) of the Convention guarantees the right for people to defend themselves through legal assistance to be given to them free if they do not have sufficient means to pay for it. People are not entitled to have their defence publicly funded if they are able to pay nor does publicly funded legal assistance exclude liability to repay the fees later.³ It is self evident that by providing the undue hardship test Parliament did not intend that applicants who can afford to meet their defence costs should receive legal aid.
- 1.6 We believe that our proposals set out in this consultation paper go beyond the Convention requirements because every person who is prosecuted under solemn procedure will, from the early stages of a case, have access to publicly funded defence representation regardless of their means. Solemn criminal legal aid is available automatically until the Board determines that person’s application for solemn criminal legal aid or until they are bailed or fully committed, whichever first occurs. Thereafter legal aid will be available if the Board is satisfied, after considering that person’s financial circumstances, that the expenses of the case cannot be met without undue hardship to them or their dependants.

¹ Section 64 inserts a new Section 23A in the 1980 Act making legal aid available on application to the Board and repeals paragraphs (a) of subsection (1); and paragraph (a) of subsection (2) of Section 23 under which the courts granted legal aid in solemn proceedings. The court’s powers under Section 23(1) (b) and (2) (b) of the 1986 Act (granting legal aid in summary proceedings) are unaffected by the changes.

² Section 23A requires the Board to establish a review procedure under which a person who has been refused legal aid or granted subject to a condition may apply to the Board to review the decision taken.

³ Croissant -v- Germany 16 E.H.R.R. 135

- 1.7 This consultation paper sets out our proposals on how we plan to apply the undue hardship test in solemn criminal cases.

This consultation is not seeking views on whether the power to grant legal aid in solemn proceedings should be transferred from the courts to the Board; Parliament has already decided it should. Rather, we would welcome your views on

- how we propose to apply the test and
- whether you consider the proposed test will, for example
 - improve the consistency and transparency of the decision making process and
 - fairly and effectively assess an applicant's actual ability to meet the expenses of their defence without undue hardship.

What does the Board seek to achieve in the way in which it proposes to apply the undue hardship test?

- 1.8 The Board's aims in applying this test are to:

- assess actual ability to pay for defence costs;
- ensure undue hardship is assessed consistently and transparently;
- provide control over costs and minimise the risk of fraud;
- provide clear management information to the Board on grant and refusal rates enabling consistency, transparency and the basis for monitoring decision making;
- support an efficient and effective justice system; and
- minimise bureaucracy wherever possible and appropriate.

- 1.9 As the strategic review⁴ recognised, there is a lack of guidance on how the courts applied the test or information on the number of applications refused or why that was so. This has a number of consequences:

- It makes it difficult to assess whether the test was applied properly or consistently.
- Any information showing the distribution of income and/or capital has to be based on the applicant's declared position. The court will not have verified the information.
- The information may not therefore accurately reflect all sources of income and/or capital available to the applicant and therefore an applicant's true ability to pay for their defence costs.

- 1.10 The proposals should be seen in the context of:

- The legislation under which the Board must operate, namely the 1986 Act and its subordinate regulations, which constrain the manner in which the Board can apply the test.
- The 1986 Act makes no provision, unlike the majority of other jurisdictions, for the Board to levy or collect contributions from applicants for criminal legal aid. This means that applicants whose income and/or capital would allow them to pay something towards their defence, but could not afford the whole costs, will be eligible for criminal legal aid at no cost.

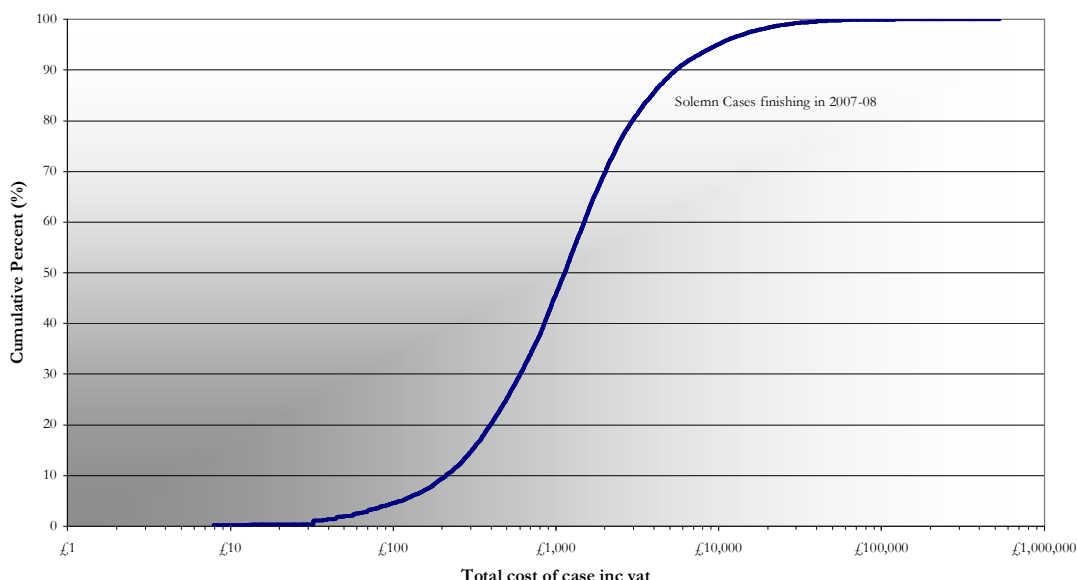
⁴ Strategic Review of the Delivery of Legal Aid, Advice and Information
<http://www.scotland.gov.uk/library5/justice/srlam-00.asp>

- The legislation makes legal aid available automatically until an applicant is bailed or fully committed, or the Board determines an application for legal aid, whichever first occurs. Such automatic legal aid is available regardless of the accused's financial circumstances and the special urgency provisions under regulation 15 will be extended under the proposals to fill any identified gaps in cover - for example, for any work that needs to be done where the application for legal aid has not been submitted.
- The solemn procedure which, at the time an application for legal aid is made, does not confirm the court in which the proceedings will be taken, the full extent of the charges against the accused or whether the case will proceed to trial. These all affect resultant case costs.
- Our Legal Aid Online service for electronically submitting and processing legal aid applications and accounts reduces bureaucracy, speeds up many processes and will support the proposals in this paper. When the legislation is commenced, it is intended that it will be possible for solicitors to apply to the Board for legal aid in solemn cases electronically.
- Over the past five years grants of solemn criminal legal aid have increased by 16.4%. Expenditure on legal aid in solemn cases has increased by 20% for the same period, reaching £37.25 million in 2008/2009.

Cumulative distribution of the total cost of solemn cases

- 1.11 The undue hardship test the Board proposes for solemn cases is essentially the same as that it applies in summary cases with the principal exception that different case costs are proposed to reflect the categories of case in the High Court and sheriff and jury courts.
- 1.12 The perception appears to exist that the cost of solemn cases under legal aid is exceptionally high. As the table below demonstrates, about 20% of such cases cost less than £700, 60% cost less than £1,500 with 95% costing less than £10,000. Only 2% of such cases cost more than £20,000.

Cumulative Distributions of the Total Cost of Criminal Cases



Note ⁵

⁵ [Note: This table does not include payments made under advice and assistance which, in the context of solemn cases, is not material given the early availability of automatic criminal legal aid. The costs include counsel and are based on solemn cases where the main payment was made in the year 2007/08. As such, they reflect each individual accused's costs and not the cost of a particular category of case.]

- 1.13 The table below shows case costs vary depending on the category of offence and the court in which the case proceeds. Cases taken before the High Court are generally more costly than those prosecuted in the sheriff court and cases involving trials have higher costs than those with pleas. The table shows the median case costs for plea, trial, and plea and trial combined. The combined costs take into account the point at which the case concludes and therefore include some cases which plead and do not proceed to trial.

Case category	High Court			Sheriff and jury		
	Plea	Trial	Combined	Plea	Trial	Combined
Assault	£3429	£7901	£4562	£1021	£2980	£1177
Drugs	£4578	£10601	£5580	£1149	£3289	£1264
Embezzlement/fraud	£2890	£11019	£3219	£1241	£2749	£1321
Murder/attempted murder/culpable homicide	£5111	£14579	£8269	£1515	£3801	£1782
Offensive weapons/breach of the peace	£3652	£14128	£4805	£896	£2349	£999
Other	£3342	£15470	£8810	£343	£3113	£373
Road traffic offences	£8451	£11814	£9477	£709	£3720	£755
Sexual offences	£7965	£13356	£10653	£1177	£5129	£1343
Theft/housebreaking/robbery	£4207	£9562	£5291	£1096	£2267	£1155

Which applicants ought to be able to meet their defence costs?

- 1.14 We have gathered information from the grants of solemn criminal legal aid made by the courts in 2007/08 to show the distribution of applicants' disposable income and capital. We do not, however, have information to show the number of refusals by the courts nor their reasons for refusal. However, when considering any information on the distribution of applicant's disposable income and capital in solemn cases, we must remember, as referred to above, that this information is based on applicants' declarations. We understand this information is not routinely verified by the courts. Sample checking by the Board suggests that not all applicants currently being granted solemn legal aid correctly declare their capital and income.
- 1.15 Our modelling has demonstrated a wide range of income and capital among applicants who were granted legal aid by the courts. This has shown us that, for High Court cases, around 4% of applicants have disposable income over £211 a week, and for sheriff and jury cases 3% of applicants exceed the threshold. Around 97% of applicants would therefore qualify on income under these proposals. Just over 1% of applicants for both High Court and sheriff and jury cases have capital over £1,639. Over 98% would therefore qualify on capital under these proposals. However, when applicants' income and capital are verified under the proposed arrangements it may be that more applicants will have income and capital above these levels. However, that said, the majority of applicants will qualify under the new arrangements as they do now and all applicants who are in receipt of a passported benefit, who do not have income, and do not have capital will qualify (subject to any subsequent material change in their financial circumstances).
- 1.16 The Board's overriding aim is to assess each individual applicant's actual ability to pay, thereby identifying applicants who genuinely cannot afford to meet their defence costs while excluding those who can. But at the same time it would recognise the costs of such cases, their complexity and the more serious implications for applicants that such prosecutions bring with them.

2. Summary of proposals

2.1 This section sets down the essential components of the Board's proposals and the next section sets them out in detail -

- All applications for legal aid in solemn cases will be made to the Board and not the courts, and it will be possible for them to be submitted and processed electronically.
- Other than as follows the test will be the same as that we apply in assessing undue hardship in summary proceedings.
- If the disposable income after making the deductions shown below is £211 or less a week (the summary legal aid limit) and there is no capital, the applicant will be eligible.
- If it is above £211, we will multiply the excess by 26 (the number of weeks over which we expect instalments could be made in a private case) and if this "capitalised" income is below the sheriff and jury trial cost or the High Court trial cost (for those cases in which the High Court has an exclusive jurisdiction) for the category of case, the applicant will be eligible.
- If the disposable capital after making the capital deductions is less than the case costs and there is no income the applicant will be eligible on capital.
- Where there is both income and capital we will look to see if capital can meet the case costs; if it cannot, we will then look at the "capitalised" income to see if that, together with the capital, can meet the balance. If not, the applicant will be eligible.
- In assessing disposable capital we will take into account assets held in common with an applicant's partner and in doing so, consider any representations about why the partner's share in such resources should be disregarded.
- Where an applicant receives a passported benefit, has no income, and has no capital, we will grant legal aid subject to the condition that they inform us of any material change in their financial circumstances.
- For all other applicants we will make an initial grant of legal aid based on the above assessments having regard to either the High Court or sheriff and jury trial cost for the category of case concerned. This will be conditional on our reassessing their financial circumstances at the conclusion of the case.
- Each grant of legal aid will be subject to a special condition that the assisted person must inform the Board of any material change in their financial circumstances. Where an assisted person becomes ineligible for legal aid because of a change in financial circumstances, we will terminate the grant.
- At the conclusion of the case, when we receive the account for work done, we will re-determine the initial grant applying the income and capital tests against the actual case costs for those grants except where the applicant is still receiving a passported benefit, or has no income, and no capital.
- Where we are satisfied on re-determination that meeting the costs of the case would not cause undue hardship to the assisted person or their dependants, we will recoup from the assisted person the payment from the Fund for the work done.
- Regardless of whether we recoup the costs or not, we will pay the solicitor for the work done subject to our usual taxation process.
- We will not recoup the costs of the case without first giving the assisted person the opportunity to make representations.
- We will require applicants to verify their declared income and/or capital. They will also have to verify outgoings over a specific level.

3. Detailed proposals

The application process

3.1 Section 23A(1) of the Legal Aid (Scotland) Act 1986, when commenced, states that the Board must be satisfied:

“After consideration of the person’s financial circumstances that the expenses of the case cannot be met without undue hardship to the person or the person’s dependants”.

3.2 All applications for solemn criminal legal aid must be made to the Board and not to the courts. It is intended that wherever possible, applications will be submitted and processed electronically.

3.3 Criminal legal aid will remain available automatically either until we determine an application for legal aid or until the accused is bailed or fully committed, whichever occurs first.

3.4 There are no proposals to reduce the automatic availability of criminal legal aid. We propose to add to the existing provisions by regulation to cover the very rare circumstances where at the early stages of a case an accused may be fully committed before they can apply for legal aid.

Applications where there is income only

3.5 We propose to ask the applicant to provide us with information about their income from all sources. By this we mean:

- pay or sick pay from work (including overtime, commission, bonuses, but after deducting income tax, national insurance etc);
- net profit from business if they are self employed or in partnership;
- private pensions;
- any other state benefit;
- student grant or bursary;
- money from any other source including maintenance payments.

3.6 We recognise that in many cases the applicant will be in custody, either initially or awaiting trial. Where the applicant has been fully committed, we will look at their actual means - for example, if custody has resulted in loss of employment then, unless there are other income streams open to the applicant, they will qualify on income.

3.7 If the applicant has a spouse or partner, we propose to ask the applicant to give us details of that person’s income from all sources. However, we will only do so if that person is living with the applicant and is not the victim, complainer or a Crown witness in the case taken against the applicant. In short, we will not ask for information about that person’s financial position if there is an obvious conflict.

3.8 We will ask for information about a spouse or partner’s income because the statutory test of undue hardship requires us to consider not only the applicant but also the applicant’s dependants, which may include a spouse or partner. Unlike most other jurisdictions we do not propose to aggregate the resources of the spouse or partner with those of the applicant.

- 3.9 We propose to use the information provided in the same way as we use it in assessing applications for summary criminal legal aid. That is, we will determine whether the spouse or partner is dependent on the applicant or whether they are in effect independent and thus able to contribute towards the cost of shared outgoings. If they can contribute, we propose halving outgoings. This would increase the applicant's actual ability to pay towards their defence costs from their resources. By independent we mean a spouse/partner who has more than £211 a week disposable income (that is, the summary criminal legal aid disposable income level).

Vouching requirements for income

- 3.11 We propose to ask the applicant to vouch their income and outgoings by giving us:

- a copy of their recent pay slip;
- a copy of their recent bank statement;
- evidence of outgoings (usually mortgage or rent payments) - in summary criminal cases evidence is required where an outgoing is £500 a month or more, but this level is currently being reviewed;
- their national insurance number to enable us to check payment of benefits.

If the applicant is held initially in custody, or remanded, the solicitor can use an extended mandate (to be included in the application) to get vouching as soon as possible after this.

Assessment of income

- 3.12 From the applicant's total income (that is, as in paragraph 3.5 and excluding that of a spouse/partner) we will then deduct actual outgoings such as:

- rent or board and lodgings;
- mortgage (including any endowment or life insurance policies linked to the mortgage);
- council tax/water charges;
- loan payments;
- maintenance payments made;
- other reasonable outgoings, such as insurance premiums, or childcare costs.

- 3.13 However, if the spouse or partner is not dependent we propose only to deduct half the total outgoings.

- 3.14 We propose then to apply an allowance for any dependant the applicant has and that will include a dependent spouse/partner. This is to ensure that day-to-day essential outgoings such as food and clothing are catered for. We propose using the allowances under summary criminal legal aid, which equate to those in the advice and assistance Keycard:

- for a spouse or partner £36.65 a week; and
- for other dependants £56.11 a week each.

- 3.15 Where a spouse or partner is not dependent on the applicant we propose not to apply an allowance for the spouse or partner on that basis.

- 3.16 A net disposable income will be left after deducting the outgoings and the allowances described above.
- If that disposable income is £211 or less (the summary legal aid disposable income limit) the applicant is eligible on income.
 - If it is above that limit, there is no capital and the applicant still has a source of income - that is, the applicant is not held on remand and has not lost their employment - we will then look at the excess disposable income to see whether it is sufficient to meet the defence costs over a reasonable period. That period will last from the raising of proceedings until the trial diet. We consider it unlikely, given the nature of solemn cases and especially those prosecuted in the High Court, that it would be feasible to suggest that payments could be made beyond the date of the trial because of the heightened risk of custodial disposal. (Around 91% of prisoners convicted in the High Court receive a custodial sentence, and around 63% in sheriff and jury cases). As this period can vary considerably we consider the most appropriate timescale would be that over which a solicitor would expect a private fee paying client to cover the costs.
- 3.17 We reckon that on average a client will have around 6 months or 26 weeks between the raising of proceedings and the trial diet during which they could be reasonably expected to pay instalments from income to their solicitor if they were paying privately for their defence. (In reality, the period between the raising of proceedings and the trial diet is likely to be considerably longer than 6 months. By using a shorter period of 6 months, the applicant is given the benefit of the doubt.) If the figure, after multiplying weekly disposable income by 26, is less than the case costs, the applicant will be eligible on income. If there is no capital to consider then we propose to make an initial conditional grant of legal aid.
- 3.18 We propose to use the trial case costs for a sheriff and jury court prosecution for the particular category of case (see paragraph 1.13), unless the case can only be prosecuted in the High Court, when we will use the High Court equivalent. We recognise these costs reflect legal aid payments and not a "private fee" rate but we consider they reflect the actual costs given that in solemn cases legal aid is in effect the market rate⁶. The reason we propose to use the sheriff and jury costs is that at the time of the application, although we will not know absolutely the court in which proceedings may ultimately be disposed, the case is most likely to be dealt with by the sheriff court (with the exception of cases where the High Court has an exclusive jurisdiction). Trial costs are used, as opposed to combined median costs, to give applicants the benefit of the doubt of the higher figure. So that an applicant is not pre-judged when applying for legal assistance, eligibility will be based on the assumption that a not guilty plea may be tendered, and that a trial will run. However, if we refuse legal aid based on these costs and it is considered that a higher "private fee" would apply solicitors may address this issue on review.
- 3.19 Appendix 1 gives examples illustrating how the assessment will work.

Applications where there is capital only

- 3.20 We propose to ask the applicant to provide us with information about their capital from all sources. By capital we mean:
- money in the bank, building society, post office, premium bonds, national certificates etc;
 - investments, stocks and shares;
 - the amount that could be borrowed against all land and buildings that the client or their spouse/partner may own including interests in any time-share properties;
 - money that is owed to the applicant or their spouse/partner;

⁶ Authority for this approach is to be found in Minutes of Proceedings of the Appeal Committee of the House of Lords 17 June 1998

- money due to the applicant from the will of someone who has died;
- money due from a trust fund;
- money that could be borrowed against business assets; and
- redundancy payment (that is, capitalised income).

3.21 In calculating the applicant's capital assets, we are proposing to include assets jointly owned or owned in common with their spouse/partner.

3.22 We propose to take into account any assets held in common by the applicant and their spouse/partner - for example, a savings account held in joint names and operable by either - on the basis that the whole amount is available to the applicant. We will consider disregarding a partner's share on cause shown - for example, where the partner's share is earmarked for any essential purchase.

3.23 We do not, however, intend to aggregate capital assets or take into account spousal capital where the spouse/partner has a contrary interest as a victim, complainer or Crown witness. Equally we will not be aggregating capital assets where the spouse/partner is separated and living apart from the applicant but assets remain jointly owned.

3.24 From the capital we will deduct £1,639 (the capital disregard applying to summary criminal legal aid) and from the resultant figure deduct allowances (as in summary criminal legal aid applications) for:

- 1st dependant £335 (but only where that spouse/partner is dependent);
- 2nd dependant £200;
- each subsequent dependant £100 each.

Vouching requirements for capital

3.25 We propose asking the applicant to vouch their capital assets by giving us copies of, for example,

- pass books or statements;
- share certificates;
- copy mortgage statements.

If the applicant is held initially in custody or remanded, vouching can be obtained at the earliest opportunity after that or the solicitor can get the applicant to sign a mandate enabling the Board to obtain the information.

3.26 We propose to exclude from capital any of the following:

- the house in which the applicant and their spouse/partner live;
- the applicant's household furniture and clothing;
- the applicant's tools and equipment they need for work;
- the value of the applicant's car unless it was not used for essential purposes and had a high net resale value (for example, sufficient to fund the case costs).

Assessment of capital

- 3.27 If the applicant is of pensionable age (60 in all cases), then in keeping with the approach to assessing capital in other aid types, we will disregard some capital to allow the interest it accrues to supplement income. We propose to disregard capital as follows:
- weekly disposal income up to £10, a disregard of £25,000;
 - weekly disposal income from £11 to £22, a disregard of £20,000;
 - weekly disposal income from £23 to £34, a disregard of £15,000;
 - weekly disposal income from £35 to £46, a disregard of £10,000; and
 - weekly disposal income from £47 to £100, a disregard of £5,000.
- 3.28 If the disposable capital, after taking into account these deductions where they apply, is less than either the High Court or the sheriff and jury court trial cost for the category of case in a particular court as shown in the table in paragraph 1.13, then the applicant will be eligible on capital. If it is over this limit, the applicant will be ineligible on the basis that they are able to meet the costs from capital. If there is no income we propose to make an initial, conditional grant of legal aid.

Applications where there is both income and capital

- 3.29 Where the applicant has both income and capital, we propose to compare the capital with either the High Court or the sheriff and jury trial case costs set out in paragraph 1.13. If the capital is less than these case costs and there is income we will add to that capital any excess of income above £211 a week to see whether over 26 weeks this can meet the case costs. If it cannot the applicant is eligible and we propose to make an initial, conditional grant of legal aid.
- 3.30 Appendix 1 has examples illustrating how the assessment will operate in practice.

4. Initial grant and re-determination of grants on conclusion of proceedings

- 4.1 Where the applicant is eligible on income/capital or a combination of the two as described in section 3 we will issue an initial, conditional grant of legal aid unless the applicant is receiving a passported benefit (or has no income) and has no capital, in which case we will grant legal aid subject only to the condition that they tell us of any subsequent material change in financial circumstances.
- 4.2 Our approach is to assess actual ability to pay for the defence costs without undue hardship. As explained in paragraph 3.18, when an application for legal aid is made to the Board, the full range of charges against the applicant, the court in which proceedings will be taken and whether the case will proceed to trial are unknown. These all affect the costs of the case.
- 4.3 In recognition that an overwhelming majority of cases are dealt with at sheriff and jury level (unless the applicant is on a passported benefit, has no income, and has no capital, as in 4.1) we propose to make an initial, conditional, grant of legal aid assessing income and/or capital against the median trial cost for the category of case in the sheriff court. If the High Court has exclusive jurisdiction for that category - for example, murder or rape - we will use the equivalent High Court median trial costs. Where
- an applicant is accused of an offence which is not within the exclusive jurisdiction of the High Court, and
 - we refuse legal aid on the basis of their income and/or capital against the median sheriff and jury trial costs, and
 - their case is remitted to the High Court

the applicant can re-apply for legal aid, and we will apply the median trial costs for that category of case in the High Court.

- 4.4 We propose to reassess the application at the end of the case when information ought to be available to show the court in which the case proceeded and whether there was a plea or trial. We will determine whether, taking into account the known case costs, as obtained from the solicitor's account, the applicant remains unable to meet the costs of their defence without undue hardship. If the solicitor has not yet sent us an account we will rely on their report of the conclusion of the proceedings under regulation 16 of the 1996 regulations to determine the outcome of the case (that is, whether it went to trial or there was a guilty plea). If actual costs are not available, we will use the trial or plea median costs of the case (as shown in paragraph 1.11). If the assisted person is no longer eligible, we propose to recoup from them the payments out of the Fund. Before doing so we will give the assisted person the opportunity to make representations, through their solicitor if necessary, to show, for example, a material change in their financial circumstances, loss of liberty leading to loss of income, or if an account has not been submitted, information to show the case costs are higher than the median.
- 4.5 Regardless of any change in eligibility we propose to pay the solicitor and counsel for the work done.

5. Change of circumstances and standard condition

- 5.1 The 2007 Act gives us the power to attach standard conditions to all the grants of solemn criminal legal aid we make. We propose to make each grant subject to standard condition that the assisted person must tell us about any material change in their financial circumstances which would affect the assumptions on which we have decided they are financially eligible for solemn criminal legal aid. We need to know about significant changes. By "material" we mean changes that significantly alter income and/or capital - for example, annual income or capital changes of over £500. The Board intends to carry out sample checks to ascertain whether in any given cases there have been material changes.
- 5.2 Where there is a material change in circumstances making the assisted person ineligible to receive legal aid, we propose to terminate the grant but only from the date of the change. They remain an assisted person up until that time. Before we do so, the assisted person will have the opportunity to make representations against the termination.

6. Review

- 6.1 A review procedure will be introduced under which anyone whose application for solemn criminal legal aid has been refused may apply to us for review of their application including review of the application of a standard condition.

7. Equality impact assessment

- 7.1 We carry out an Equality Impact Assessment on all our major new policies, functions and strategies. This helps us to ensure that there is no discrimination in the way that these are designed, developed or delivered, and that, wherever possible, equality is promoted in relation to the six main areas of race, disability, gender, religion and belief, sexual orientation, and age.
- 7.2 We have carried out an initial Equality Impact Assessment on these proposals to change the approach to granting solemn criminal legal aid. We have not identified any negative impact as a result of this. However, to help us to ensure that our assessment is as complete as possible, we would also be interested in your views as to whether you think the proposals might impact differently on particular minority groups, compared to the population as a whole.

8. Conclusion

8.1 We believe that the proposals contained in this paper will improve the consistency and transparency of the granting of applications for solemn criminal legal aid. To the extent that primary legislative change does not enable us to levy contributions, the proposals fairly and effectively assess actual ability to pay for defence costs and thereby make legal aid available to applicants who genuinely cannot afford to meet the costs of their case. This will be the majority of applicants. Clear management information will be available to the Board on grants and refusals and this, when linked with the condition-making and termination powers, will serve to control the risk of fraud. We also believe that, when linked to the provision of online services, these proposals will reduce bureaucracy. They will also support the effective working of the courts, by:

- retaining and expanding the automatic provision of legal aid;
- not interrupting the process;
- reducing the courts' administrative burden of considering such applications; and
- introducing no barriers to the timely progression of cases.