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## Over 400,000 legal aid grants made, as costs increase to £150 million

During a year where major changes and developments were made to improve legal aid, people benefited from 408,654 grants of legal assistance, the Scottish Legal Aid Board said today on publication of its annual report for 2006-2007. The cost to the taxpayer of legal aid was £150.2 million, an increase of 2% or £2.3 million. The increase reverses the fall in costs seen the previous year and has brought spending to the second highest ever level.

The increase in the overall cost of legal aid was mainly due to higher costs for criminal legal aid, which increased 3% to £92.7 million. There was also a 5% increase in the cost of civil legal aid to £19.8 million – the first rise in the cost of civil legal aid for three years. The increases in the cost of criminal legal aid is due to higher volumes of summary and solemn – for the most serious charges – cases and a higher number of high cost solemn cases.

The Board reports that the year saw significant developments to legal aid, which are bringing improvements to the legal aid system. The key change was the Scottish Parliament passing the Legal Profession and Legal Aid (Scotland) Act 2007 which gives powers that will increase access to justice. Significant progress was also made in legal aid reforms, developing criminal legal assistance reforms, legal aid fees and simplifying civil legal assistance.

Iain A Robertson CBE, Chairman of the Scottish Legal Aid Board said:

“We work to help people get the legal help and advice they need. Legal aid enables access to justice and also supports the effective operation of the justice system. Over the last year people in Scotland benefited from over 400,000 grants of legal assistance.”

“We are committed to playing a major role in the modernisation of the justice system and to increasing access to justice. In what has been a busy and exciting year, the Scottish Parliament agreed the Legal Profession and Legal Aid (Scotland) Act 2007 which will increase access to justice. We are now playing our part in the implementing the Act and other reforms on behalf of Scottish Ministers. We are also modernising how legal aid operates through simplifying procedures and reducing bureaucracy.”

“Following the election in May 2007 we are working with the new Cabinet Secretary for Justice and the Scottish Government in the delivery of their wider justice and legal agenda.”

The 408,654 grants of legal assistance made in 2006-2007 were slightly less - by 1% - compared to 2005-2006. However, grants of civil legal aid - for cases such as divorce and contact with children in the courts - increased by 3% to 11,323 grants, reversing the falls seen in previous years. The Board also reports a 12% increase in grants by the courts for children's legal aid.

In criminal legal aid, the volume of cases continued to increase. Grants of summary criminal legal aid increased 3% to 82,686 and there were 18% more grants to 13,898 by the courts for solemn criminal legal aid. There are the highest ever levels of summary and solemn cases. The increases are generally in line with an increase in the number of accused being prosecuted in the courts. Over the last five years the number of summary criminal legal aid grants have increased by 10% and solemn criminal legal aid by 27%.

How quickly and accurately the Board deals with legal aid applications is of real importance to applicants, their advisers and others across the justice system. In the last year the Board surpassed all of its six headline performance targets, the key measures of the Board's operational performance. For 2006-2007 the Board had again increased its performance targets.

Legal aid pays for fees charged by solicitors, advocates and solicitor advocates. It also pays for outlays - for example, travel expenses and the cost of getting reports from experts such as doctors - and also includes payments to the legal profession who act as "Edinburgh agents" for other solicitors with cases in the Court of Session. Last year the cost of outlays increased 8% to £18.2 million, which is 21% higher than five years ago.

Last year payments to advocates and solicitor advocates increased by 13% to £20.8 million. Over the last five years payments to advocates and solicitor advocates has increased by 53%, which is £7.2 million higher.

Most legal aid expenditure is for fees for solicitors. In 2006-2007 payments made to solicitors were 1% lower at £122.0 million, with most paid for criminal cases. Over the last five years payments to solicitors have increased by 5%, which is £6.1 million more. The number of solicitor firms registered with the Board for civil legal assistance was 8% lower at 676 firms, and 4% less at 599 firms for criminal legal assistance.

Iain A Robertson CBE, Chairman, commented:

"In addition to the findings of our own monitoring, we have listened carefully to the many voices who are increasingly concerned about the number of solicitor firms actively providing civil legal assistance, which continues to decline. We remain concerned that there may be underlying access to justice issues which remain to be addressed. To ensure that there is adequate access to justice, it is essential that there are sufficient good quality practitioners available and that they are fairly rewarded."

"Where there are gaps in private sector provision, we and the Scottish Government need to look at the best and most cost effective ways of filling these gaps. This could include mechanisms such as contracting, grant funding or by using the Board's powers under Part V of the Legal Aid (Scotland) Act 1986 where solicitors, directly employed by the Board, can provide services."

“Scottish Ministers have already agreed that the Board will employ a small number of solicitors in the Highlands and Islands under Part V of legal aid legislation to provide a service where a member of the public cannot get a private solicitor to take on their case, for example in domestic violence situations.”

Fees paid to the legal profession are set by Scottish Ministers and the Scottish Parliament.

During the last year, the Board proposed changes to the civil legal aid block fee system, which were introduced by the Scottish Government in February 2007. These changes increase the amount solicitors are paid in certain types of case such as family cases, and are expected to be worth around £1 million a year to civil legal aid solicitors. Further changes are also being considered. Towards the end of 2006-2007, Scottish Ministers asked Scottish Government officials and the Board to carry out a review of the fee levels for civil legal aid. Work on this review is nearing completion and a report will be made to Scottish Ministers.

In criminal cases, the Board worked with the Law Society of Scotland and the Scottish Government to develop proposals for a new block fee system for solemn criminal legal aid. The Board implemented a backdated increase in fee rates for solicitors in solemn cases, which had been agreed by Scottish Ministers. The Board also worked with the Scottish Executive and the Faculty of Advocates to review fees for counsel in criminal cases, with new regulations coming into force in March 2007. There was also work on developing fee tables for counsel in appeals and civil cases, that are expected to be introduced in the next year.

In 2006 the Board launched a major project to simplify civil legal assistance for applicants, opponents, solicitors, the Board and the taxpayer. The Board held over 17 focus groups with solicitors and carried out a survey with applicants and opponents to get views on how to improve the system for the benefit of all those involved. Some changes have already been made, for example for applicants who have a contribution to pay towards the cost of their civil legal aid, extending the period they can pay, which has improved access to justice. The Board has simplified the process for solicitors applying for increases in authorised expenditure in civil advice and assistance through the use of “template” applications which group stages of work together into one increase. Many more changes are planned for the coming year.

The Board’s Chief Executive, Lindsay Montgomery said:

“It is important that civil legal aid is made as simple as possible to operate for all parties involved. Whilst the legislation and regulations are complex, we wish to work with the legal profession and others so that the civil legal aid system provides access to justice. We will do all we can to reduce unnecessary bureaucracy in legal aid.”

Other changes to increase access to justice and improve the operation of the legal aid system are highlighted in the Report:

- the Board’s web based Legal Aid Online service, which is easier and quicker to use than paper, is being used more and more by solicitors. Now over 200 firms of solicitors are registered to send

online applications, and the number of advice and assistance grants made using the online system was over four times higher than the previous year.

- The Board worked with the Scottish Government to develop the regulations that introduced important reforms to civil advice and assistance in May 2007. These reforms also saw simplification of how solicitors request increases in expenditure and further developments in online services.
- With the Scottish Government and other justice organisations, the Board developed proposals for the summary criminal legal assistance system to support the new summary justice process. A consultation on these proposals is being issued in October 2007.

The work of the Board's solicitor and applicant investigations unit which monitors and investigates possible instances of fraud and abuse of legal aid, resulted in savings of over £2.1 million in 2006-2007. Chief Executive Lindsay Montgomery said:

"Over recent years we have invested in new systems and processes which help us identify possible fraud and abuse of legal aid. Apart from protecting the taxpayer, this work also protects the interest of the vast majority of applicants for legal aid and solicitors who provide an important and quality service with honesty and integrity."

Further key information from the Report is attached to this release. The Board's Annual Report 2006-2007 and details of payments made to solicitor firms, advocates and solicitor advocates is available on its website at [www.slab.org.uk](http://www.slab.org.uk) and from its Communications Department.

**ENDS**

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## APPENDIX: KEY LEGAL AID FACTS AND FIGURES 2006-2007

(Note: the annual report figures are for the year from 1 April 2006 to 31 March 2007).

### GRANTS OF LEGAL ASSISTANCE

408,654 grants of legal assistance (advice and assistance and legal aid work) were made in 2006-2007, which is 1% less than 2005-2006. The fall is due to less advice and assistance work.

- criminal legal assistance grants increased by 2% to 278,560. Within this total, the number of summary criminal grants increased by 3%, and solemn criminal legal aid grants rose by 18%.
- there were 119,293 grants of civil legal assistance, a reduction of 7% - although within this total the number of civil legal aid grants increased by 3%, reversing the falls seen in the last three years
- 10,801 grants were made for children's legal assistance and contempt of court, a rise of 8% from the previous year.
- Over the last five years, the number of grants of legal assistance has fallen by 9%. Most of the fall has been in civil legal assistance. The number of criminal legal assistance grants is 1% higher than five years ago.

### COST TO THE TAXPAYER

Legal assistance cost the taxpayer £150.2 million in 2006-2007, an increase of 2%, or £2.3 million on the previous year (£147.9 million). Total expenditure remains slightly lower than in 2004-2005 (£152.4 million), which is when expenditure reached the highest ever level. Expenditure on legal aid was:

- £106.6 million for criminal cases, a 3% increase on the previous year (£104.0 million)
- £39.0 million on civil cases, 1% lower than the previous year (£39.5 million). This includes contributions and expenses received in civil legal aid cases of £11.7 million.
- £4.5 million on children's legal assistance and contempt of court legal assistance, an increase of 6% on the previous year (£4.3 million)
- over the last five years total expenditure has increased by 11% or £15.0 million. Most of the increase has been because of a 15% or £13.6 million rise in the costs of criminal legal assistance. Civil legal assistance expenditure has increased risen by £0.9 million, or 2%. Expenditure on children's and contempt legal assistance has increased by 13% or £0.5 million.

### LEGAL PROFESSION AND PAYMENTS MADE

The Board's website [www.slub.org.uk](http://www.slub.org.uk) includes the list for payments made to all solicitor firms, advocates and solicitor advocates in 2006-2007. Previous years are also available online.

#### Solicitor numbers

Firms of solicitors must be registered with the Board to undertake legal assistance work. In addition, individual solicitors who undertake criminal legal assistance must also be registered. As at 31 March 2007 there were:

- 599 firms and 1,459 solicitors registered to offer criminal legal assistance, both 4% lower than 2006
- 676 firms registered to provide civil legal assistance, 8% fewer than 2006 (solicitors are not registered to undertake civil work, only their firm).

#### Payments made to solicitors and fee rates

- payments were 1% lower in 2006-2007 at £122.0 million (£122.7 million in 2005-2006)
- payments over the last five years have increased by 5%, which is £6.1 million more, although payments in the last year are lower than the previous three years
- payments last year for civil legal aid were 2% lower at £16.7 million, but over the last five years are 2% higher.
- payments for criminal legal aid last year increased very slightly at £72.7 million, with an 11% increase, or £6.9 million, over the last five years.
- From 2003 solicitor fees for civil cases have been increased by 21%. A new block fee payment structure (this is not a fixed fee system), developed by the Law Society of Scotland, the Scottish Government

and the Board was introduced in October 2003. Fee tables set the structure for payment, with elements of work in civil cases broken into blocks of work, which are then charged at a block unit rate. Currently a block fee unit is £19 - but this is being reviewed. Although there is not an equivalent hourly rate for a block fee, on a time and line basis for cases outside the block fee system, for representation solicitors are paid £68 per hour and £52.60 per hour for non representation work, such as meeting clients.

- In criminal cases, a fixed fee system was introduced in 1999, where solicitors are paid a fee for most summary criminal legal aid cases £500. In solemn criminal cases, an increase in fees was made in 2006 of 8% for advocacy and 12% for all other work. This means a solicitor is paid £49.52 per hour when representing their client in court, and £47.28 per hour for non-advocacy.
- Of the 20 firms of solicitors paid the most in 2006-2007, 14 of these firms were paid a higher amount than the previous year. The highest fee earning firm was Ross Harper at £1.7 million.

#### **Advocates and solicitor advocates (counsel)**

- payments to advocates and solicitor advocates in 2006-2007 increased by 13% to £20.8 million (from £18.3 million)
- over the last five years payments have increased by 53%, which is £7.2 million higher
- Last year payments to counsel for civil legal aid increased by 7% to £4.9 million, and over the last five years payments have risen 52% or £1.7 million.
- In criminal legal aid last year, payments to counsel increased by 18% to £14.9 million, and over the last five years payments have increased by 58% or £5.5 million.
- Changes to fees for advocates and solicitor advocates have been made over the last few years. Currently, senior counsel representing someone in court in a solemn criminal murder case is paid £900 a day, and a junior advocate is paid £650 a day where they represent a client without senior counsel.
- In 2006-2007 the highest fee earning advocate was Donald Findlay at £358,400 and the highest fee earning solicitor advocate was Iain Paterson, of Paterson Bell Solicitors, who was paid £219,300. This year 10 advocates were paid over £200,000 in fees, compared to 7 the previous year, 61 advocates were paid over £100,000 compared to 43 the previous year and 10 solicitor advocates were paid over £100,000 compared to 7 in 2005-2006.

#### **Outlays**

- outlays in 2006-2007 were 8% higher at £18.2 million (from £16.8 million)
- over the last five years outlays have increased by 21%, which is £3.2 million higher.

#### **BOARD SERVICE PERFORMANCE AND COSTS**

- the Board surpassed all of its six headline performance indicators, the key measures of its operational performance. The targets balance quality of decision making with speed of processing. Two of the headline targets had been increased for 2006-2007. The Board also achieved 47 of its 48 individual and corporate targets, against tougher targets than the previous year.
- the Board's administration costs were £12.7 million in 2006-2007, an increase of 4%.

#### **CIVIL LEGAL ASSISTANCE**

##### **Civil advice and assistance and assistance by way of representation (ABWOR)**

- Solicitors made 8% fewer grants of advice and assistance and ABWOR - 107,970 compared with 117,601 in 2005-2006. This is the seventh successive year these grants fell, and means that over the last five years grants have fallen 28%.
- However, there was a 7% increase in the number of grants of ABWOR for civil matters compared to the previous year, to 3,554. ABWOR increases were in immigration and particularly mental health.
- the cost of civil advice and assistance and ABWOR fell by 7% to £19.2 million.
- the cost of advice and assistance and ABWOR for immigration - which includes asylum as well as work permits and other matters - was 36% lower at £2.3 million (£3.6 million the previous year). Within this, the cost of ABWOR for asylum tribunals almost halved to £0.8 million, as a result of reductions in the number of these grants in previous years.

## Civil legal aid

- There were 3% more grants of civil legal aid compared to the previous year - 11,323 compared with 10,982. This is the first increase in grants for four years and reverses the falls seen in recent years.
- Over the last five years the rate of reduction has been less - applications have fallen by 15% and grants by 16%.
- The net cost of civil legal aid increased by 5% to £19.8 million, which was £1.0 million more than the previous year.
- Civil legal aid may be free, or someone may have to pay towards the cost of the case.
- Most people granted civil legal aid do not pay a contribution towards the costs. Last year, 25% of people who received civil legal aid had to pay a contribution, with the average amount being £1,034, which was 4% higher than 2005-2006.  
People who received civil legal aid made payments towards the cost of their legal aid totalling £11.7 million, as contributions, expenses or from what they won or kept at the end of a case. This is 37% of the gross expenditure on civil legal aid cases.

## CRIMINAL LEGAL ASSISTANCE

### *Criminal advice and assistance and ABWOR*

- the number of grants by solicitors of advice and assistance including ABWOR for criminal cases was 144,019, 1% fewer than the previous year
- expenditure was almost unchanged at £11.9 million.

### Summary criminal legal aid

- There were 82,686 grants of summary criminal legal aid, an increase of 3% on the previous year. This reverses the slight fall seen the previous year and is now the highest ever level. Over the last five years grants of summary criminal legal aid have increased by 10%.
- Offensive weapons/vandalism/breach of the peace, which accounts for 28% of all summary criminal grants, saw a 2% increase last year, while assault cases, which are 25% of all summary criminal grants, increased by 6%.
- The cost of summary criminal legal aid also rose by 4% to £52.1 million. This is the highest level of expenditure on summary criminal legal aid since 1997-1998. The increase is because of more cases.
- Expenditure on summary criminal legal aid has increased by 13% over the past five years.
- The system of fixed payments continues to ensure general consistency in the costs of individual summary cases from year to year. Last year the average cost of a case was unchanged from the previous year at £645.

### Solemn criminal legal aid

- Grants by the courts of solemn criminal legal aid (for the most serious crimes) increased by 18% to 13,898 grants, the highest ever level. The increases are in line with a rise in the number of indictments registered by the courts.
- Over the past five years solemn criminal grants have increased by 27%.
- Assault cases, which account for a third of all solemn grants, increased by 12%, and drugs, which is the next largest category, increased by 24% compared to the previous year. The biggest increase came in offensive weapons cases, which more than doubled from 544 cases in 2005-2006 to 1,194. This rise is because of a new Crown Office and Procurator Fiscal Service policy of prosecuting offensive weapons cases under solemn procedure rather than summary.
- The cost of solemn criminal legal aid rose by 3%, or £1.1 million to £37.3 million. The increase is due to more cases and a larger number of high cost cases.
- Over the past five years expenditure on solemn criminal legal aid has increased by 20%. The increase in solemn criminal legal aid grants this year will lead to increased expenditure in future years.

## PDSO, THE PUBLIC DEFENCE SOLICITORS OFFICE

- In 2006-2007 PDSO handled 1,491 cases, including 77 solemn cases. Over the past five years the number of cases dealt with by PDSO has increased by a third.
- The cost of funding PDSO increased by 9% to £864,000, as it included costs to start up new offices.

- PDSO solicitors are paid an annual salary rather than being paid on a case by case basis in the way that private solicitors are. PDSO solicitors are governed by the same rules as private solicitors.
- The former Deputy Minister for Justice announced on 20 October 2006 that further PDSO offices would be opened. Offices have been opened in Kirkwall in March 2007 and since then in Ayr, Falkirk and Dundee. This adds to the existing offices in Edinburgh, Glasgow and Inverness.

#### **CHILDREN'S LEGAL ASSISTANCE**

- The number of grants of advice and assistance by solicitors rose by 3% to 5,868 grants. Spending was unchanged at £0.5 million.
- The number of grants of legal aid by the courts increased by 12% compared to the previous year to 4,461 grants, including five appeals (which are decided by the Board).
- The total paid for legal aid for children rose by 6%, to £4.0 million.

#### **VALUE FOR MONEY**

- The Board worked closely with the Scottish Executive to develop a programme of legal aid legislative and regulatory changes to meet their Efficient Government legal aid savings targets. These changes, together with improvements to the operation of the justice system, helped to deliver the legal aid savings target of £9 million for 2006-2007. This built on the savings in 2005-2006 of £5.7 million.
- Investigating and pursuing fraud and abuse of legal aid is important in protecting the taxpayer. It is also a protection for the vast majority of legal practitioners who provide a quality legal service with honesty and integrity. The Board has again increased the resources engaged in checking, monitoring and investigations work and during 2006-2007 it:
  - made savings and recoveries of over £2.1 million as a result of applicant and solicitor investigations activities
  - terminated or refused legal aid in 227 cases as a result of investigations into applicants' financial circumstances
  - reported 30 individuals to the procurator fiscal as a result of which the courts imposed community service orders, fines and compensation orders
  - made complaints about two solicitors to the Law Society of Scotland and de-registered two firms and two solicitors from the Criminal Legal Assistance Register.
- In its annual report, the Board reports that, working with the Scottish Ministers' Civil Recovery Unit, a binding legal agreement has been reached to recover £1.8 million of payments fraudulently obtained by a solicitor, so that there is no loss to public funds. During 2004-2005 investigations by the Board found that a solicitor had fabricated documents to fraudulently obtain £1.8 million over a seven year period from children's legal aid. Although reported to the police, no action could be taken following the tragic death of the solicitor. The Board conducted a review to ensure the case was an isolated one and to minimise the risk of a reoccurrence.

#### **BACKGROUND ABOUT LEGAL AID**

Legal aid is help towards the costs of legal advice and representation, for those who qualify, paid for out of public funds. It is designed to help individuals on low and modest incomes gain access to the legal system. Legal aid may be free, or someone may have to pay towards the cost of their case, for example from the money or property that they win or keep as a result of their legal action. Legal aid is accessed through a solicitor.

There are two main types of legal aid help: advice and assistance and legal aid.

- Advice and assistance covers a wide range of matters, so long as they are matters of Scots law. It pays for advice from a solicitor, but apart from a few exceptions under assistance by way of representation (ABWOR), it will not cover "representation" - that is, putting the case in court.
- Legal aid provides funding for the solicitor to put the case in court and some tribunals. It covers the preparation work, as well as the hearing itself, and can provide funding for advocates, experts and other costs. (Cases often begin with advice and assistance, and legal aid may be the next step if necessary.)

The main types of case that advice and assistance and legal aid can help with are:

- Civil cases -such as divorce and other matters affecting family and children and actions for compensation after an accident or medical negligence.
- Criminal cases - help and advice for someone who has been charged with a criminal offence or needing advice about a criminal matter.
- Children's cases - under the Children (Scotland) Act 1995. This helps to make sure children are protected and supervised. Legal aid also helps fund appeals against decisions of children's hearings.

Ministers in the Scottish Government decide legal aid policy. Ministers propose the legislation to set the rules and criteria for the use of legal aid, together with the fees to be paid to the legal profession. The Scottish Parliament makes and changes legislation - including the tests for granting legal aid. These tests are then applied to every single case.

In advice and assistance, solicitors apply the tests, for civil and criminal legal aid the Board applies them, except in some criminal and children's cases, where the courts decide.

If granted, legal aid is used to pay solicitors, advocates and other costs of the case. The solicitor could be in private practice, a public defender or in a law centre.

The budget for legal aid is different from other public services: it is not a set amount. If someone is granted legal aid, the Scottish Executive will provide the funds to meet the cost of their case. This means we never have to refuse someone legal aid simply because there is no money left to pay for their case.

**Ends**

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**Notes for editors**

1. The Board's Annual Report and information on payments made to all firms of solicitors, advocates and solicitor advocates is available on the Board's website, [www.slab.org.uk](http://www.slab.org.uk)