



## Update

21 December 2010

### **Use of special urgency procedures and media coverage of Mary Forbes v Trump International Golf Links and Aberdeenshire Council**

Solicitors may have seen a press article in the Sunday Herald dated 12 December 2010 referring to the case of Mary Forbes v Trump International Golf Links and Aberdeenshire Council.

The article referred to a quote from the Board which stated:

“The initial application did not meet the reasonableness test for civil legal aid as there were other people with an interest in the case who could have helped to fund the court action.”

However, it incorrectly attributed the following quote to the Board:

“Where persons embark on legal actions without full legal aid being granted there is a risk that they will become liable for expenses and find themselves in the difficult position that this lady is in. This is not a course of action that she should have taken in the way that she did.”

The quote given to the Sunday Herald was:

“The Board has received an application for legal aid to judicially review the Board’s decision to refuse legal aid in the action against Aberdeenshire Council and Trump International Golf Links. As the Board would have refused this second application for legal aid it has been referred to the Sheriff Principal of Lothian and Borders to take a decision on the application in line with legal aid legislation. The initial application did not meet the “reasonableness” test for civil legal aid as there were other people with an interest in the case who could have helped to fund a court action.”

The Board has been reviewing the operation of the special urgency arrangements and will be proposing a number of changes to improve value for money.

We would also remind solicitors of the current guidance on the use of Regulation 18 and the risk this may create for their clients in terms of potential expense if civil legal aid is not subsequently granted. In the Civil legal aid handbook, paragraph 6.12, we state:

“It is important to note that work done under regulation 18(1)(a) or (b) is not a grant of legal aid. You must still apply for, and be granted, legal aid before the work is covered. We may grant legal aid if we are satisfied there was probable cause at the time the work was done and that it is reasonable to make legal aid available. If legal

aid is not subsequently granted, arrangements exist that afford a substantial measure of protection to solicitors but not to applicants. Thus, for example, an applicant is not entitled to the benefit of modification of liability in expenses if legal aid is not subsequently granted, and it is important to bear this in mind when, for example, raising proceedings about to become time-barred. Where work is being done solely by virtue of the provisions of regulation 18, the applicant is not entitled to be described as an assisted person.”

**Ends**