

## GUIDANCE NOTES

### CONCLUSION OF CASE REPORTING FORM (CIV/CONC)

#### GENERAL

Please read these notes with the explanatory notes on the form itself.

#### Complete this form if

- the case has concluded – either by negotiation or court order

#### Do not complete this form if

- legal aid was granted prior to 1 October 2003; or
- your involvement in the case has ended (not the case itself) and you intend to submit an account (for example, if you have withdrawn from acting, you should submit a CIV/REP form or a CEASE/APP); or
- the case is dropped with no action raised and you do not intend to submit an account. In those circumstances you should submit an ad hoc stage report because there has been a change in the assisted person's circumstances.

Unless shown otherwise, you must answer all the questions. We will return the form to you if questions are left unanswered.

- If you cannot provide an answer to a question, mark the box as “not applicable” or “not known”.
- **Do not** leave any of the boxes blank unless the form directs you not to answer a particular question.

#### To ensure that we do not miss relevant information about the application:

- Use the application form – but use a covering letter for any additional explanation or details that you wish to include.
- If you need more space, use Section H and clearly state to which question(s) the information relates.
- If, in exceptional circumstances, Section H does not provide enough space, photocopy that page and attach it securely to the form.
- Type the form or complete it legibly in **black ink**.

#### SECTION A

#### Questions 1- 6 – Details of the applicant

You must give us all the details we ask for about the assisted person to allow us to verify their identity.

#### Question 5 – Other name by which the applicant is known

If the assisted person is known by and uses a different name from that in the application, include details here so we address our correspondence in the way they prefer.

*For example, Angelina Smith Shepherd may prefer to be known as Angie Shepherd, or Algernon Jacob Jones may wish to be known as Jacob Jones.*

## **SECTION B – DETAILS OF SOLICITOR ACTING**

You should give details of the nominated solicitor here, and that solicitor should submit the Conclusion of case reporting form and sign it at Section G – Solicitor's declaration.

## **SECTION C – CONCLUSION OF CASE**

### **Question 2 – Copy of the CIV/SOL form and any previous CIV/REP forms**

To help you complete the CIV/CONC form, you should refer to the statements you made in the CIV/SOL form. If you do not have a copy of the CIV/SOL form or previous CIV/REP forms, you can ask us for copies. If you submitted the civil legal aid application on an old-style form or if the case has been transferred to you and you do not have copies of the form, please answer as many questions as are applicable to you.

### **Questions 3-6 – Outcome of the case**

Where the court grants an order, we will record whether the assisted person was successful. This will assist us in producing statistical information.

Where an unsuccessful assisted person does not intend to appeal, it is important that we look at the reasons for this and assess whether we were right to grant legal aid. This will have **no** effect on the assisted person's status. Legal aid will **not** be terminated at the end of the case.

### **Questions 7 & 8 – Assessment of probable cause and reasonableness**

You should look at the information you gave in the CIV/SOL form about your assessment of the statutory tests of probable cause and reasonableness. Consider

- Did you state that the applicant had a legal basis for the claim and has this been borne out in the outcome of the case? If the assisted person has been successful, the court may have supported your assessment of the legal problem. If the assisted person has been unsuccessful, the court may have given a contrary opinion on your assessment of the law. Give us details of the outcome of the case including any information to support the original assessment (or your assessment in any subsequent stage report) even if the case was unsuccessful.
- Did you state that it was reasonable for legal aid to be granted. Was this borne out by the outcome of the case? For example, did the assisted person seek residence of children for child safety reasons and did the court decide that it was in the children's best interests to award residence in favour of the assisted person? If the assisted person was not successful or only partially successful how does this affect your initial assessment (or your assessment in any subsequent stage report) of reasonableness?

### **Question 10 – Estimate of case costs**

You should look at your assessment of the case costs in the CIV/SOL (or as amended in any subsequent stage report) . If the case cost more than your estimate, your account will **not** be capped at the estimated cost. However, you should explain why the estimated costs were different from the actual costs.

### **Question 11 – Late information**

Give us details of any information identified, for example, shortly before a proof or during a proof, that could have changed our decision to grant legal aid. This allows us to look at it and decide if the decision to grant was reasonable. This will have **no** effect on the assisted person's

status. Legal aid will **not** be terminated at the end of the case. The purpose of this is to allow us to analyse the way in which cases develop.

## SECTION D – EXPENSES

### Question 2

If applicable, please let us know why no award or agreement of expenses was obtained. If no expenses have been obtained, , the solicitor's fee will be paid from any contribution and/or property that may have been recovered or preserved. To help us discuss this matter with the assisted person, it is important for us to be able to tell them why there was no award or agreement on expenses.

Please consider our guidance in the civil legal assistance handbook on factors to take into account when deciding whether to seek an award of expenses. For example, it may be, as part of a negotiated agreement, the opponent agreed to transfer matrimonial assets in return for no expenses being due. You should explain this to us in the space provided in question 2. If you do decide to ask the court for an order of expenses, consider whether the opponent has the money to pay these.

### Question 5 (c)

If expenses have not been recovered, you should give us your brief assessment of the prospects of recovery. You should tell us

- about steps you have taken to recover expenses;
- if you have information about the opponent's financial circumstances that is more accurate than the information available to the assisted person.

*Example 1: You have served a bank arrestment because the opponent is in full time employment.*

*Example 2: You have served a bank arrestment because the opponent has substantial assets .*

*Example 3: If you have tried to serve a bank arrestment and this has failed.*

*Example 4: If the opponent is self-employed. We will then know not to serve a wages arrestment.*

*Example 5: If the opponent has previously been sequestrated.*

*Example 6: Although the assisted person may believe that the opponent has sufficient funds because of the size of property in which they live or the motor vehicle they drive, please inform us if you are aware that the property is in a third party's name.*

### Question 6 (b)

Sometimes, we may need to enforce payment of the net liability ourselves. Regulation 40(2) allows us to take enforcement proceedings, or do diligence, in our own name or in the name of the assisted person, to give effect to a decree or settlement.

Where we try to enforce payment, our priority is simply to ensure the net liability to the Legal Aid Fund is paid. Our Debt Recovery Unit will not help you recover other money owed to the assisted person, who should take action themselves to enforce any decree.

### Question 6 (c)

You may have already given a brief explanation for question 5(c) but, to help us if we have to take enforcement steps, please provide **up to date** information about the opponent's employment, banking arrangements and any known assets.

## SECTION E – PROPERTY RECOVERED OR PRESERVED

### Question 2

Please remember that the value of the property is the value of the property at the date of decree or transfer, not the date of separation.

### Question 3

You must tell us if you have paid any money to your client. Before paying any money to your client, you should consider the terms of regulation 40(3)(a) of the Civil Legal Aid (Scotland) Regulations.

This regulation requires you to tell us before you release or dispose of funds, to allow us consider whether to consent to this. If you do not, the regulation gives us the power to deduct sums due to the Fund from the next legal aid payment to be paid to you.

If you have disposed of funds (with or without our consent) you should tell us how much has been paid and when. We need this information to help us with our discussions with the assisted person.

### Question 4

Please tell us if you are attempting recovery of any principal or capital sum. You should include details of any unsuccessful steps you have taken to recover a principal or capital sum. This will prevent us from duplicating any work you have already attempted.

## SECTION F – ATTACHMENTS

This section provides details of the documentation we need to assess whether and to what extent property has been recovered or preserved. If you do not supply these documents where they are available, we will contact you to request them.

If you intend to send a document as soon as it is available, please mark it 'to follow'. If you cannot supply a document, please provide the reason at section H.

## SECTION G – DECLARATION

The solicitor acting for the client **must sign** the form. The declaration includes

- consent to release the application and associated documents for quality assurance and stage reporting and
- confirmation that you have kept a copy of the form.

You must date this declaration. **If you do not sign or date the declaration, we will return the application to allow you to complete it.**

## SECTION H – MORE INFORMATION

Section H allows you to give more information on any aspect of the case.

If this section does not allow you enough space, please photocopy the page and attach it securely to the form.

