



Criminal advice and assistance/ABWOR - Legal Aid Online client mandate form

AA/LAO/CRIM

Issued
10/08

Use AA/LAO/CRIM for criminal advice and assistance/ABWOR or children's advice and assistance.

Use this form where you are making a criminal advice and assistance/ABWOR application using Legal Aid Online, and are seeing a repeat client or a new client out of the office where their circumstances are straightforward, such as they receive passport benefits. In other situations, you should use the printed application form to ensure you collect all the required information. Remember that you are responsible for completing the application form and should ensure all information required is provided.

SECTION A - KEY DETAILS

Solicitor's name _____

Applicant's personal identifier _____ National Insurance no _____

Applicant's full name _____ Applicant's date of birth _____

If new client: address _____

*Subject matter _____ *Category codes _____

*If incident-dates and locations _____ ABWOR _____ Yes / No _____

*Summary complaint served Yes / No If Yes, court location & type _____ Is applicant in custody? Yes / No _____

*Direct measure issued? Yes / No Challenged? Yes / No *PF or police ref number _____

Other rights or facilities that might fund case? Yes Details: _____

Applicant previously received advice on this matter from ANY other solicitor? Yes Details: _____

Bank account details no account Details (If supplied): _____

Financial details - capital nil or £ _____

Financial details - income nil or £ _____

Contribution due General nil or £ _____ Standard nil or £ _____

What documentary evidence seen of income and capital? _____

SECTION B - CHECKLIST OF OTHER INFORMATION YOU MAY REQUIRE TO COLLECT

Is applicant living with a spouse/partner? (collect details if partner has capital / income)

Add further information below or overleaf (use this space to record any additional info such as detailed above, or for any financial calculations)

SECTION C - EQUALITY - FOR NEW CLIENTS - GIVE CLIENT EQUALITY CARD

Q1 Did not answer Q2 Ethnic origin Q3: Disability Yes No Did not answer

SECTION D - DECLARATION BY APPLICANT

- I declare that my application will be made electronically by my solicitor and the information given in this application is, to the best of my knowledge and belief, correct.
- I agree to the Scottish Legal Aid Board asking other people or bodies about this application. This could include my solicitor, my employer, my bank, the Department for Work and Pensions or HM Revenue and Customs. I authorise those other people or bodies to provide the information the Board asks for.
- I understand that I may have to pay for my advice and assistance from any money or property that I get or keep, if my contribution and any expenses recovered are less than my solicitor's charges.
- I agree to the disclosure of this application, associated papers and my case file held by my solicitor for quality assurance purposes including peer review, at any stage during or after the advice and assistance.
- If a grant of general criminal advice and assistance is upgraded to standard criminal advice and assistance, or if ABWOR is subsequently granted for this general criminal advice and assistance case, I understand that I may have to pay a contribution assessed and shown at Section A. This is instead of any contribution for general criminal advice and assistance.

Signature of applicant/representative Date

Data Protection Act 1998 - Access to Personal Data The personal information provided by you or on your behalf will be used in accordance with the Data Protection Act 1998 and for the Board's functions under the Legal Aid (Scotland) Act 1986. You have the right to make a formal request in writing to see the personal information we hold about you, to inspect it and to have it corrected if it is wrong. The Board may receive information about you from certain third parties (for example, some government departments and agencies), or give information to them. However, we will not pass on information about you unless the law allows us to do so.

Signature of solicitor Date

*Required online

Only complete these pages where it is an ABWOR application

SECTION E - ABWOR (ASSISTANCE BY WAY OF REPRESENTATION)

If this application is for ABWOR where it is:

- granted by the appointed solicitor in a custody case → go to Question 1.
- granted by the solicitor where an interests of justice test is applied → go to Question 4.
- granted for other types of case where no interests of justice test is applied → go to Question 13.
- granted subject to the Board's approval in the case categories: removal of a disqualification from driving, or proceeds of crime → go to Question 15.

APPOINTED SOLICITOR ("Appointed solicitor" is a solicitor with whom the person appearing in answer to the complaint)

1 Were you instructed directly by the applicant?

Yes / No

If No - ABWOR cannot be granted

3 Please describe the nature of the solicitor/client relationship with the applicant (other than that relating solely to this appearance).

3 Having taken instructions, were you able to act immediately, in person or through the services of another solicitor, at the pleading diet?

Yes / No

If No - ABWOR cannot be granted

INTEREST OF JUSTICE TEST APPLIED

Where the ABWOR merits tests have been incorrectly or inappropriately applied, we may not pay your account.

In determining if it is in the interests of justice to make ABWOR available, you must take into account factors specified in regulation 7 of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003, as amended. These statutory factors are shown below. If you believe that any of the statutory factors at Questions 9, 10 and 11 apply, please give a relevant explanation against that factor. You should answer these questions with reference to the disclosable summary of evidence. You need to tell us which aspects of the disclosable summary of evidence support the factors which you feel are present in the case - for example, aspects relating to the description of the locus, the description of events, any police interviews or medical evidence, caution and charge replies which may be appropriate. You may wish to send us a copy of the disclosable summary of evidence to assist in that process.

4 Is the disclosable summary of evidence attached?

Yes / No

5 Have you taken or are you taking a preliminary plea?

Yes / No - *If no → go to Question 7*

6 If Yes, state the basis of the preliminary plea.

- plea to relevancy
- plea to competency
- plea in bar of trial
- other/outcome if known-specify:

7 Have you tendered a guilty plea or continued without plea?

- Tendered a guilty plea → go to Question 9
 - Continued without plea
- If the plea is not guilty, you should apply for summary criminal legal aid on form CRIM/SUMMARY.*

8 If the case was continued without plea, why was this?

- negotiation
- investigation
- Crown motion production of documentation
- other - please specify:

9 Is it **LIKELY** that if the offence is proved, that the court would impose a sentence which would deprive the applicant of their liberty or lead to the loss of their livelihood? Please cross all boxes that apply.

- Yes - loss of liberty
- Yes - loss of livelihood
- No → go to Question 10.

If Yes, please explain why such a sentence is likely in this case.

Tell us which aspects of the disclosable summary of evidence are relevant to this factor or, where the summary is not enclosed, provide details of the relevant information contained in the summary.

You should refer to the nature and circumstances of the offence(s). If appropriate, include details of the estimated value of any goods stolen, property damaged, injuries suffered etc, and any relevant previous convictions. Also attach any supporting documentation such as a schedule of previous convictions or if appropriate, a copy of driving licence or a copy of letter from employer where loss of livelihood is possible.

10 Does the determination of the case involve consideration of a substantial question of law, or issues of a complex or difficult nature? Please cross all boxes that apply.

- Yes - substantial question of law
- Yes - complex or difficult nature
- No → go to Question 11.

If Yes, please explain what these are. Tell us which aspects of the disclosable summary of evidence are relevant to this factor or, where the summary is not enclosed, provide details of the relevant information contained in the summary.

For example, any relevant case law etc.

- 11 Will the applicant be unable to understand the proceedings or to state their own case because of their age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise?

Please refer to our guidance in the Criminal Legal Assistance Handbook for further information on applying the test to, for example, inadequate knowledge of English. Please cross all boxes that apply.

If Yes, please give details of the reason and explain why. Tell us which aspects of the disclosable summary of evidence are relevant to this factor or, where the summary is not enclosed, provide details of the relevant information contained in the summary.

For example, if you consider the applicant's physical or mental health is a factor, you should detail any medical assistance or support they receive. You should also show how this affects their abilities to follow proceedings, provide instructions etc. The particular effects of any addiction should be shown. You should also state any difficulties you have in getting instructions from the applicant.

- Yes - age
- Yes - inadequate English
- Yes - mental illness
- Yes - other mental or physical disability
- Yes - other incapacity
- No → go to Question 12.

- 12 Please explain any other interest of justice factors or additional information and why you took them into account. Please state which aspects of the disclosable summary of evidence are relevant to this factor or, where the summary is not enclosed, provide details of the relevant information contained in the summary.

OTHER CASES

- 13 What category of case has ABWOR been granted for under regulation 3 or 4 of the Advice and Assistance (Assistance by Way of Representation)(Scotland) Regulations 2003, as amended, where no interests of justice test is applied?

- (PAR) Proceedings in Parole Board cases
 - (CJPO) Return of sound equipment
 - (TERF) Warrant for further detention or extension under the Terrorism Act 2000
 - (OBWI) Obstructive witness order under sections 90B-90E
 - (VFBO) Variation/termination of a football banning order
 - (BNHO) Revocation/variation of a non-harassment order
 - (BRLO) Variation/revocation/breach of a restriction of liberty order
 - (DTTO) Variation/revocation/review/breach of requirement of a DTTO
 - (RPRB) Progress review of a probation order
 - (PBO) Breach of a probation order
 - (CPPO) Conviction of probationer following offence during probation period
 - (BCS) Breach of a community service order
 - (CSO) Amendment/revocation of a community service order
 - (BSA) Breach of a supervised attendance order
 - (SAO) Amendment/revocation of a supervised attendance or
- Other categories not listed above - refer to Board guidance:

- 14 Where appropriate, in which court was the ABWOR provided?

- JP court
- Stipendiary magistrate's court
- Sheriff court
- High Court

BOARD APPROVAL SOUGHT

- 15 Where you are requesting prior Board approval, what is the case category?

You should refer to regulation 5 of the ABWOR regulations for more information on the procedures covered by ABWOR. Remember that certain proceedings, including those relating to a restraining order, civil recovery and forfeiture, calling before a sheriff exercising civil jurisdiction or the Court of Session, are civil matters, for which civil legal aid, not ABWOR, is available.

- Removal of a disqualification from driving
- Proceeds of crime

- 16 Please explain why you wish us to approve the grant of ABWOR.

You should address the criteria to be considered as set out in our guidance in the Criminal Legal Assistance Handbook, available on our website at www.slab.org.uk You need our approval BEFORE proceeding to provide ABWOR.