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24 January 2007

CIVIL LEGAL ASSISTANCE

This letter to all civil legal assistance practitioners informs you about some important developments in civil legal aid and civil advice and assistance.

1. CIVIL LEGAL AID FEES

Regulations have now been signed by Scottish Ministers which make important changes to the operation of block fees.

As a result of the Board's monitoring of the 2003 civil legal aid reforms we identified a number of areas in which changes to the block fee structure were required. We discussed these with the Law Society of Scotland. The Scottish Executive has now put the necessary regulations in place. We estimate that these changes will add around £1million in fees to solicitors in a full year. A summary of the changes is attached.

The changes will come into effect on 10 February 2007.

We shall write separately about the detailed implementation of the changed fees. (The regulations have not yet been published on the Office of Public Sector Information website, but we will include a link to them from the Board's website when they are available.)

During the Stage 3 Debate in December on the Legal Profession and Legal Aid (Scotland) Bill, the Deputy Justice Minister announced that she had asked her officials to work with the Board to undertake a review of the level of civil legal aid fees in the New Year.

We are shortly to meet officials from the Executive to discuss how the review is to be conducted and the timescale for doing so. We shall keep you informed about progress on the review.

REFORM OF CIVIL ADVICE AND ASSISTANCE

You may recall that civil advice and assistance was to be reformed in early 2006. These reforms flowed from a consultation on this subject in 2005 based on proposals developed by the Board, the Scottish Executive and the Law Society of Scotland. Unfortunately, the reforms could not be taken forward in the original timetable because the necessary regulations were not in place. We now understand that the regulations will be in place to allow the reforms to be implemented from **1 May 2007**.

We will arrange roadshows around Scotland to explain the reforms and how they are to be implemented. These will take place in March and April. We will also be issuing further mailings about the changes.

PEER REVIEW/QUALITY ASSURANCE

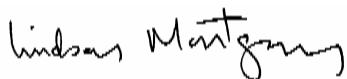
The next cycle of peer reviews will start in February and the Law Society of Scotland will shortly write to firms about this. The peer review system is operated by the Law Society of Scotland in conjunction with the Board, and we also meet the cost of running it. There are two elements of the system: peer review of cases and our administrative audit, the latter being carried out by the Board.

We have reviewed the operation of the administrative audits and decided we can reduce some of the bureaucracy in civil legal assistance by reducing the number of these. In future administrative audits will only be carried out where a solicitor is setting up on their own for the first time, in which case the audit will be carried out before the peer review, or where the Quality Assurance Committee (QAC) asks the Board to carry out an audit having identified material issues affecting the Society's administrative requirements.

Otherwise all that firms will be asked to do is confirm in writing to the Board at the beginning of each peer review cycle that they have systems in place to meet the Society's requirements. A letter asking firms to do this will be shortly sent by the Board to all firms currently on the Register.

The QAC support these changes and the revised approach will be introduced from the start of the new cycle.

Yours faithfully



Lindsay Montgomery
Chief Executive

CIVIL LEGAL AID FEES – SUMMARY OF THE CHANGES

- Provision for payment in cases where the action is disposed of or resolved without an action being raised;
- Increase in the number of units payable in undefended actions of divorce or separation and aliment where proof is by means of affidavits;
- Changes to the defended instruction fee 1(b) to provide for payment of the higher instruction fee in cases where the courts do not always fix a procedural timetable for the lodging of defences;
- Changes to the progress fee(s) to cater for cases where following an options hearing the court, for the purposes of settlement, fixes a diet other than a diet of proof or debate **and** provision for payment in certain circumstances where no settlement was achieved but the solicitor can demonstrate that an exercise of sustained negotiation has taken place;
- New fees will also be introduced for the following areas of work
 - to cover all work for the preparation and attendance at any Continued Options Hearing;
 - in cases which involve complex financial disputes, complex pensions sharing arrangements and for contentious contact disputes;
 - all work in connection with a peremptory diet (excluding court work which will be paid separately);
- Changes to the preparation for proof fees to cover cases where the courts fixes an evidential child welfare hearing;
- Payment for the conduct and waiting of all court hearings which are not otherwise covered by any block fee (e.g. peremptory diets, procedural hearings etc) **and** the removal of the aggregation rule which applied to court hearings (fees will now be charged on the total time engaged per day rather than the total engaged in the case);
- Payment of all travel time and outlays where the 20 mile threshold distance is exceeded;
- Provision to allow for an application for an uplift in fees in cases which raised unusually complex issues of fact, including detailed consideration of extensive documentary evidence;
- **Accounts should now be charged on a detailed basis for the following work:-**
 - division and sale of heritable property;
 - proceedings arising under the Mortgage Rights (Scotland) Act 2001;
 - work in connection with the registration and enforcement of a decree and work in connection with letters of inhibition; and
 - work in relation to a motion for modification of expenses of the assisted person.
- The fees for solicitors in respect of summary cause proceedings have been increased by 21%.