

## Legal Services and Applications Department

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TO: Criminal practitioners working in the Edinburgh courts

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Please quote the department above and our reference: *KT*

15 June 2007

*This mailshot for criminal practitioners contains information about legislative changes for the Edinburgh Criminal Justice Project.. It also contains guidance on how to complete application forms for these cases.*

### **AMENDMENTS TO LEGAL AID REGULATIONS FOR THE EDINBURGH CRIMINAL JUSTICE PROJECT – JUNE 2007**

Please note that changes to the criminal legal aid, advice and assistance and ABWOR regulations for cases referred to this Project have now come into force. These payment arrangements for solicitors in a court designated by the Sheriff Principal as a Summary Justice Pilot Court have to be read in line with the changes made as a result of:

- The Advice and Assistance (Scotland) Amendment (No. 2) Regulations 2006 (S.S.I. 2006 No. 233).
- the Criminal Legal Aid (Summary Justice Pilot Courts and Bail Conditions) (Scotland) Regulation 2006 (S.S.I. 2006 No. 234).
- The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendments Regulations 2006 (S.S.I. No. 345).

#### **Custody Cases**

The solicitor of choice is able to provide “free” ABWOR, with no eligibility tests. The block fee of £70 for attendance at, and all work prior to the tendering of a guilty plea will apply, and the solicitor can continue to have the facility to self-certify an increase to £150 for the first deferred sentence, with the opportunity to apply for further increases in expenditure for further deferred sentences. If the deferred sentence is held later in the same day, these increases in expenditure can still be self certified or applied for as long as sentence was deferred under Sections 201, 202, or 203 of the Criminal Procedure (Scotland) Act 1995.

A block fee of £44.40 will be paid for attendance at, and all work prior to the tendering of a not-guilty plea. If a solicitor has already been advising a client in relation to the matter under advice and assistance, a separate AA/APP/CRIM form will need to be submitted for the separate ABWOR payment.

#### **Undertaking Cases**

The solicitor of choice is able to provide ABWOR, subject to the usual financial and merits tests applied by the solicitor. The same payments will apply as above, with the same facility for increases in authorised expenditure.

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### **Duty Scheme**

The usual duty scheme rates still apply - £47.95 for the first accused and £6.48 for any subsequent accused, up to a maximum of £103.95 for the first session and £69.71 for the second session. However, the capped follow-up fee of £121.91 for deferred sentences has been removed. Work is paid on a time and line basis. If the deferred sentence is held later in the same day, the follow up fee will apply as long as sentence was deferred under Sections 201, 202, or 203 of the Criminal Procedure (Scotland) Act 1995.

A new session can be declared for an afternoon appearance: £47.95 can be paid for the first accused, with £6.48 for subsequent accused up to the maximum of £69.71.

### **Change of Pleas**

ABWOR is now available in cases where there is a change of plea to guilty, and a summary criminal application has been refused on interests of justice grounds.

### **Deferred Sentences**

Although not part of the legal aid regulation changes, I can also confirm that the additional deferred sentence fee for summary fixed payment cases will also apply if the deferred sentence is held later in the same day, as long as sentence was deferred under Sections 201, 202, or 203 of the Criminal Procedure (Scotland) Act 1995.

### **Criminal A&A/ABWOR intimations and increase forms**

It is important that the new criminal advice and assistance intimation and increase forms (AA/APP/CRIM and AA/INC) are identified as “Edinburgh CJ Project cases” to ensure that appropriate decisions are taken by Board staff. As ABWOR is now available for custody and undertaking cases in this Project, we need to be advised that these are Project cases when submitting the AA/APP/CRIM form, or an AA/INC form for an increase to cover a deferred sentence. Also, we would normally refuse an increase to represent a custody client at a deferred sentence as this could only be covered under the duty scheme. However, in cases referred to this Project, these increases can now be considered by us.

Therefore, in the subject matter boxes of both AA/APP/CRIM and AA/INC forms please include the words “Edinburgh CJ Project”. On the increase form, please also include in the text at Section G that the case is an Edinburgh Project case. This will help us to ensure that these cases are dealt with differently by our assessment officers. **It is important that this information is included on all increase applications, otherwise the requests may be refused.**

The new changes will only apply to cases referred through the Edinburgh Criminal Justice Pilot route. We understand that these are cases which originated from Drylaw and Leith Police stations. The usual advice and assistance, ABWOR, legal aid and duty scheme provisions will continue to apply to all other cases.

### **Board contact**

Please contact Kingsley Thomas (0131 240 2085), Janet Cathcart (0131 240 2084) or Alison Craig (0131 240 2098) at the Criminal Applications Department of the Scottish Legal Aid Board if you have any issues about these Project cases.