



Children's advice and assistance accounts form

(Use this form where advice and assistance is given in relation to proceedings under Part II, Chapters 2 and 3 of the Children (Scotland) Act 1995)

- **Guidance on how to complete the form**
- **Example of a form that we will issue**

GUIDANCE NOTES

CHILDREN'S ADVICE AND ASSISTANCE ACCOUNT SYNOPSIS

GENERAL NOTES

Please ensure you:

- complete all sections of this form that we have not already completed, unless they do not apply
- attach all necessary documentation such as vouchers, increase requests, and the account.

If you do not, we will return your account for you to send the missing information.

If you are submitting a final account and have already asked for, or been paid, a reimbursement of outlays, include all outlays in the final account. We will deduct any previous payments from the final account and if you have not included them in your final account, we may pay you less than you are due.

If you do not have enough space to answer a question on the form, please **continue your answer on a separate sheet**, which you should then attach to the form.

SECTION A – REGISTRATION DETAILS

1. Type of claim

Please tick the relevant box to show if you are:

- sending us your final account
- sending us your final account with an application under regulation 16(3) of the Advice and Assistance (Scotland) Regulations 1996 – payment of fees and outlays from property recovered or preserved
- making a nil claim – that is, you are not claiming for this grant of advice and assistance

4. Firm code

Please check the firm code is correct. If it is incorrect, please amend it so that we pay the correct firm.

5. Branch code

Please check the branch code is correct. The branch code relates to the branch to which PAYMENT is to be made. Our Receipts and Payments Department sent you a mandate to sign, allowing you to name branches to which you wished to be linked, and issued you with a branch code or codes. If you are only linked to one branch code, we will automatically pay the account to that code. If you are linked to more than one branch

code, mark clearly to which branch code you want us to make the payment. (Branch codes were previously known as "account points".)

6. Solicitor's own internal reference

If you wish to amend or insert your internal reference, do so here.

SECTION B – DETAILS OF ACCOUNT

1. Apportioned entries

If you travel to visit the client, you must equally apportion travel time and mileage among all the clients you have visited on that day, whether legal-aided or private.

List all the cases and clients dealt with, including advice and assistance and civil legal aid references. If your clients included private clients, show this in the "Legal aid reference" box by writing in "private client" instead of a reference number.

2. Amounts claimed

Please enter the totals you are claiming as follows:

- Fees (excluding VAT)
- Outlays should be broken down into travel, expert outlays, other outlays and counsel. Except court dues, all should include VAT.
- When calculating mileage and any accommodation costs, please add VAT, as we must pay this on these outlays. Enter these outlays in the travel column.
- You should not deduct the client's contribution from your total. We will do this automatically when processing your payment.

SECTION C – SUPPORTING DOCUMENTATION

Please include all necessary supporting documentation, and tick the boxes to show which supporting documentation is enclosed.

SECTION D

1. Change of solicitor

We need to know if there has been a change of solicitor in order to check for duplicate claims. We also need this information where property has been recovered or preserved or there is a prospect of this. It allows us to enquire more widely as to the position of expenses or recovery or preservation in the context of all advice given on the same matter. If expenses or property are eventually recovered at a later stage, we are entitled to use these to offset any payments made from the legal aid Fund.

2. Appointment to act

a) Appointed by the children's hearing to act as "legal representative" for the child in terms of the Children's Hearings (Legal Representation) (Scotland) Rules 2002 (SSI 2002 No.63)

If you have been appointed under these Rules to act as the child's legal representative at the children's hearing, then the local authority pays for work carried out. You cannot, instead or in addition, submit a claim for payment from the Legal Aid Fund. You must therefore make no claim against the Fund.

b) Appointed by the children's hearing or sheriff to act as "safeguarder" for the child in terms of section 41, Children (Scotland) Act 1995

A safeguarder, even if they so happen to be a practising solicitor, cannot provide advice and assistance to a child. In terms of section 6 of the 1986 Act, advice and assistance can only be provided by a solicitor acting as a solicitor. A safeguarder appointed under section 41(1) of the 1995 Act by a children's hearing or a sheriff can receive payment from the relevant local authority for work carried out in terms of section 41(4) of the 1995 Act. We cannot pay any charges made by a safeguarder for work carried out in that capacity.

It is important to note rule 3.9 of the Act of Sederunt (Child Care and Maintenance Rules) 1997 which states:

- (1) a safeguarder may appear personally in the proceedings or instruct an advocate or solicitor to appear on his behalf.
- (2) where an advocate or a solicitor is appointed to act as a safeguarder, he shall not act also as an advocate or solicitor for the child in the proceedings.

Unlike the position for curators *ad litem*, therefore, a safeguarder cannot carry out a dual function and act as both a safeguarder to the child and a solicitor to the child.

A separate solicitor can be instructed by the safeguarder to act for the child. However, in this circumstance, the safeguarder cannot apply for advice and assistance on the child's behalf unless the child has sufficient capacity to instruct the safeguarder to do so.

If the safeguarder, whether or not they are a practising solicitor, instructs a solicitor to appear on their behalf, as opposed to the child's behalf, then the solicitor instructed can provide advice and assistance to that safeguarder assuming that the safeguarder is eligible to receive advice and assistance. In this circumstance it is the safeguarder's personal resources that must be taken into account when the solicitor determines eligibility. In addition, where the solicitor grants advice and assistance to the safeguarder then it is only the solicitor who can receive payment from the Fund for all work carried out. The safeguarder, even if a practising solicitor, cannot make a claim against the Fund in this circumstance.

c) Appointed by the sheriff to act as a common law curator *ad litem* instead of a safeguarder to the child or relevant person

A curator *ad litem*, even if they so happen to be a practising solicitor, cannot provide advice and assistance to a child. In terms of section 6 of the 1986 Act advice and assistance can only be provided by a solicitor acting as a solicitor.

At present there are no statutory provisions, unlike those for safeguarders, concerning remuneration of curators *ad litem* in children's proceedings. Any charges made by a curator for work carried out solely in that capacity cannot be paid from the legal aid Fund or by the relevant local authority.

Unlike the position for safeguarders, however, a curator *ad litem* is entitled to act in a dual capacity as both curator to the child and solicitor to the child. The curator can apply for advice and assistance on behalf of the child in terms of regulation 6(2) of the Advice and Assistance (Scotland) Regulations 1996, unlike the position for safeguarders, who are not listed in regulation 6(2).

Where such a curator/solicitor carries out this dual capacity, however, we can only pay for those charges applicable to the provision of legal services by that person acting as a solicitor under advice and assistance. No charge can be made from the Fund for work that is carried out in that person's sole capacity as a curator *ad litem*.

The curator *ad litem* can instruct a separate solicitor to act for the child even where that curator so happens to be a practising solicitor. As stated above the curator can, in terms of regulation 6(2), apply for advice and assistance on the child's behalf. In this circumstance, the solicitor instructed by the curator to act for the child must take into consideration the child's resources. If a solicitor grants advice and assistance to the child then it is only the solicitor who can receive payment from the Fund for work carried out. The curator *ad litem*, even if they are a practising solicitor, cannot claim against the Fund.

If the curator *ad litem*, whether or not they are a practising solicitor, instructs a solicitor to appear on their behalf, as opposed to the child's behalf, then the solicitor instructed can provide advice and assistance to the curator assuming that the curator is eligible to receive advice and assistance. In this circumstance it is the curator's personal resources that must be taken into account when the solicitor determines eligibility. In addition, if the solicitor grants advice and assistance to the curator *ad litem* then it is only the solicitor who can receive payment from the Fund for the work carried out. The curator *ad litem*, even if a practising solicitor, cannot claim against the Fund in this circumstance.

d) Appointed by the sheriff to act as a common law curator *ad litem* as well as a safeguarder to the child

Paragraph 2(c) above applies. Only the provision of legal services by that person acting as a solicitor to the child can be paid for from the Fund.

3 If you were appointed as curator *ad litem* did you also provide additional legal services to the child/relevant person.

If the answer is NO and you did not provide any legal services to or on behalf of the child or relevant person you cannot submit a claim for payment from the Legal Aid Fund. You must therefore make no claim.

4 If yes, explain how these legal services differ from the work you carried out in your capacity as a curator *ad litem*.

Work carried out in the sole capacity as a curator *ad litem* cannot, as explained earlier, be paid from the Fund. Such curatorial work can include, for example, the provision of a written report as a curator *ad litem* for the court and observing contact visits in relation to the provision of such a report. Legal services could, for example, include assisting the child to apply for children's legal aid for the court proceedings or considering another party's grounds for appeal.

5 If your client was a child under 12 years of age and you were not acting in a representative capacity, explain how you were satisfied that the child had the capacity to instruct you directly and understand the proceedings

If we receive an account in respect of a solicitor acting directly for a child aged 12 or more we are entitled to assume that you (the solicitor) have satisfied yourself that the child has a general understanding of what it means to instruct a solicitor. If the child is under 12 years of age when you first provide advice and assistance to them we need you to give us information confirming how you satisfied yourself that the child in question did in fact have a general understanding of what it means to instruct a solicitor. The younger the child, the more onerous will be the task of persuading us that the child had sufficient capacity and that an account is payable.

SECTION E

Please sign and date the declaration.



ACKNOWLEDGEMENT OF CHILDREN'S ADVICE AND ASSISTANCE AND ACCOUNT SYNOPSIS

(bar code)

Firm's name and address

Date of acknowledgement:

A&A reference:

Client's name:

Client's personal identifier:

Name and address of organisation submitting account, if different from firm shown:

Keep this acknowledgment of a grant of advice and assistance and send it with your account to the Board's Accounts Registration Section.

SECTION A		REGISTRATION DETAILS		
1	Advice and assistance for matters relating to the Children (Scotland) Act 1995, Part II Chapters 2 and 3 only	£95	<input type="checkbox"/>	
2	Type of claim (mark one box only)			
	MPS	Application under regulation 16(3) of the A&A (Scotland) Regulations 1996 <input type="checkbox"/>		
	NIL	No claim <input type="checkbox"/>		
	MPS	Final account <input type="checkbox"/>		
Solicitor and firm to whom payment is to be made				
3	Solicitor's code number	4	Firm's code number	5
				Branch code
6	Your internal reference			
7	Final authorised expenditure	£		
8	Client's contribution	£		
9	Commencement date			
0	Category code			
11	Subject matter			
12	Client's date of birth		13	Client's address

SECTION B		DETAILS OF ACCOUNT		
1	If you have seen more than one client at the same location on one day, including private clients, give details here. (See notes for guidance.)	Legal aid reference	Client's name	
		FOR BOARD USE ONLY		
2	Amounts claimed	Amounts paid	With VAT	No VAT
	Fees (excl. VAT)	Fees		
	Court dues (if applicable)	Court dues (if applicable)		
	Travel	Travel		
	Expert outlays (incl. VAT)	Expert outlays		
	Other outlays (incl. VAT)	Other outlays		
	Counsel (incl. VAT)	Counsel		
	TOTAL	TOTAL		

SECTION C		DOCUMENTS ENCLOSED IN SUPPORT OF ACCOUNT	
Letters authorising or refusing expenditure requests	<input type="checkbox"/>	All counsel/solicitor advocate fees	<input type="checkbox"/>
Vouchers for outlays	<input type="checkbox"/>	Copy grounds for referral	<input type="checkbox"/>
Copy grounds of appeal	<input type="checkbox"/>	Confirmation of appointment as safeguarder/curator	<input type="checkbox"/>

SECTION D			
1	Has there been a change in solicitor? If YES, please provide details in the box below	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2	Were you appointed to act by:		
	a) the children's hearing, as "legal representative" for the child in terms of the Children's Hearings (Legal Representation) (Scotland) Rules 2002	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	b) the children's hearing or sheriff, as "safeguarder" for the child in terms of section 41 Children (Scotland) Act 1995 ?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	c) the sheriff, as a common law curator <i>ad litem</i> instead of a safeguarder to the child or relevant person?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	d) the sheriff, as a common law curator <i>ad litem</i> as well as a safeguarder to the child?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If the answer to any of these questions is YES, you may not be able to make a claim against the Legal Aid Fund (see notes for guidance).			
3	If you were appointed curator <i>ad litem</i> , did you provide additional legal services to the child/relevant person? If NO, you cannot make any claim on the Legal Aid Fund (see notes for guidance)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4	If YES, explain how these legal services differ from the work you carried out in your capacity as curator.		
5	If your client was a child under 12 years of age and you were not acting in a representative capacity, explain how you were satisfied that the child had the capacity to instruct you directly and understand the proceedings		
6	Has children's legal aid been granted in terms of section 29 of the Legal Aid (Scotland) Act 1986 in relation to this subject matter?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	If YES, enter: the legal aid reference number		the date of the legal aid certificate

SECTION E		EXPENSES AND PROPERTY RECOVERED OR PRESERVED (To be completed for all account types)	
1	Is there an award or agreement as to expenses in favour of the applicant?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Have the expenses been paid in full?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	How much are the expenses? (Break down into fees, VAT and outlays.)	£	
2	Did the advice and assistance concern a claim for property (including money) either by or against the applicant	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3	If YES, did the applicant get or keep any property in connection with this matter, including any rights under a settlement?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4	If YES, what is the nature and value of the property (including money). What was the basis of the claim? Was the applicant successful in either keeping property or getting it returned, and to what value?		
5	If NO, is there still the possibility of expenses being recovered or property (including money) being recovered or preserved? Please provide details below:		
6	Is the property, or any part of it, subject to an exemption by virtue of regulation 16(2)? If so, which exemption applies?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

SECTION F		CERTIFICATE (to be completed for all claims)	
I certify to the best of my knowledge and belief that the items charged in this account are accurate and represent a true and complete record of all the work done, that all the work was carried out by the solicitor unless otherwise stated in the account and that the person carrying out the work was not engaged in any other business at the time and place except as apportioned in the account.			
Date		Solicitor	