

Legal Services Department

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TO: All legal aid solicitors

Direct dial number:

Your ref:

Please quote the department above and
our reference: chld 07/08

24 July 2008

This letter is to practitioners who undertake children's legal assistance work. It contains important information about changes effective 1 September 2008.

It is about new guidance in the Children's Legal Assistance Handbook concerning payment of curators *ad litem* and safeguarders in proceedings under Part II, Chapters 2 and 3 of the Children (Scotland) Act 1995 and reminds practitioners about multiple applications.

1. NEW CHAPTER IN CHILDREN'S LEGAL ASSISTANCE HANDBOOK ON PAYMENT OF CURATORS *AD LITEM* AND SAFEGUARDERS

The payment mechanisms for persons appointed to act as a safeguarder or a curator *ad litem* in children's proceedings (proceedings under Part II, Chapters 2 and 3 of the Children (Scotland) Act 1995) can cause solicitors confusion and can be seen as complex.

In light of this we have inserted a new Chapter 10 into the Children's Legal Assistance Handbook which is available on our website www.slab.org.uk to now deal specifically with this issue. A copy of this chapter is attached for information. Please note that the online Handbook that is available on our website will always contain the most up to date guidance and legislation.

We have also amended Chapter 11 explaining the situation regarding Safeguarders and Curators who want to appeal on behalf of the child to the Sheriff Principal or Court of Session. Also amended is Chapter 4 in relation to applications for advice and assistance on behalf of children by a safeguarder or curator *ad litem*.

This new Chapter 10 outlines all the options open to such persons appointed to hold these offices in children's proceedings before the sheriff whether a practising solicitor or not, and explains what can and cannot be paid from the legal aid Fund in terms of the Legal Aid (Scotland) Act 1986, the Children (Scotland) Act 1995 and the Act of Sederunt (Child Care and Maintenance Rules) 1997.

The new guidance explains that there is at present no statutory payment mechanism for a person appointed to act as a curator *ad litem* unlike the position for a person appointed to act as a safeguarder. This has been and will continue to be brought to the Scottish Government's attention. However, in the absence of a change to current legislation certain payments simply cannot be made from the Fund.

It is essential that practitioners become familiar with this new guidance as in certain circumstances, explained in Chapter 4 (advice and assistance) and 10 (court grants of legal aid), **we may refuse to pay an entire account** or refuse to accept an application for legal aid, explained in Chapter 11.

This new guidance will apply to all children's legal aid and advice and assistance granted on or after **Monday 1 September 2008.**

Ignorance of the existence of this new guidance will not be considered an acceptable reason to receive payment for any work carried out. In addition, the fact that we may have previously made payments for work carried out will also not be considered justification to receive payment from the Fund. We will not however seek to recoup any previous payments made in error from the Fund in this respect.

Please also note that Sheriffs Principal and the Sheriffs Association have been advised of this new guidance. A copy of this mailshot is also being sent to the Scottish Courts Service for their information.

In light of this new guidance an amended accounts synopsis form has been devised in relation to the submission of advice and assistance accounts. This form will now automatically be issued to you upon registration of an advice and assistance application.

Guidance to help you complete this new accounts synopsis form is also attached. The guidance includes a copy of the new accounts form. This guidance is also available in the legal profession section of our website www.slab.org.uk

It should also be noted that in light of recent legal aid regulations, as from 30 June 2008 the minimum fee in respect of children's advice and assistance has now been abolished and thus cannot be claimed in respect of children's legal aid granted to a client after this date.

2. MULTIPLE APPLICATIONS

Guidance regarding this issue was given to practitioners in a previous mailshot dated 18 June 2007. Despite this the Board continues to receive notification of multiple grants of legal aid from the court to register and multiple legal aid and sanction applications.

Please note that if you represent a relevant person who has more than one child in the court proceedings in question the Board does not expect to receive separate grants of legal aid by the Sheriff in respect of each child.

Unless the Sheriff directs otherwise only one CHILD/APP Form requires to be submitted to the sheriff on behalf of your client in respect of the children in question if the children's proceedings are to be heard together/simultaneously.

Only one CHILD/APPL/APP Form requires to be submitted to the Board for appeals to the Sheriff Principal and the Court of Session in the same circumstances.

If, however, your client has more than one grant of children's legal aid in respect of the conjoined proceedings then please note that thereafter you only require to submit one sanction application to the Board (SANC/APP Form) in respect of one of the legal aid certificates. If you submit more than one sanction application, only one will be registered and the other or others will be returned to you. Only one account should be submitted under the youngest child's certificate and "Nil" accounts should be submitted for the other certificates held by your client.

This should save on administration and processing time for all parties concerned and will ensure greater efficiency and more accurate statistical information being produced by the Board.

3. WHO TO CONTACT IF YOU HAVE ANY QUERIES

If you have any queries on these changes, please contact Liz Cuschieri on 0131 240 2179 or Laura Thomson on 0131 240 1896.

10 SAFEGUARDERS AND CURATORS AD LITEM

CHAPTER 10: SAFEGUARDERS AND CURATORS AD LITEM IN PROCEEDINGS UNDER PART II CHAPTERS 2 AND 3 OF THE CHILDREN (SCOTLAND) ACT 1995

Unless otherwise stated, "the Act" or "the 1986 Act" means the Legal Aid (Scotland) Act 1986, and "the regulations" means the Legal Aid (Scotland) (Children) Regulations 1997.

10.1 Introduction

The office of a safeguarder and/or a curator *ad litem* appointed by a sheriff to safeguard the child's interests in the proceedings is distinct from the office of solicitor even when those offices coincide in the one person (*Nugent –v- Nugent Glasgow Sheriff Court 1998 unreported* and *Henderson –v- Henderson 1994 SCLR 553*).

A person appointed to act as a safeguarder and/or curator *ad litem* in children's proceedings need not be a practising solicitor, as such persons do not provide legal services, even if they so happen to be a practising solicitor.

Children's legal aid is defined in section 29(11) of the 1986 Act and consists of representation by a **solicitor** and, where appropriate, **counsel** in any proceedings (including appeals) that are listed at section 29(1) of the 1986 Act. It includes all assistance a **solicitor** or **counsel** usually gives in the steps preliminary or incidental to such proceedings.

We can, therefore, only pay for the provision of legal services (legal representation and assistance) by a solicitor or counsel. We cannot pay for work carried out by a safeguarder or a curator even where that person happens to be a practising solicitor.

In terms of section 41(4) of the Children (Scotland) Act 1995 (the 1995 Act), a safeguarder can be paid for their work by the local authority.

There is no statutory payment mechanism for a curator *ad litem*.

10.2 Appointment as safeguarder

Where the safeguarder appointed by the sheriff happens to be a practising solicitor, then in terms of rule 3.9(2) of the Act of Sederunt (Child Care and Maintenance Rules) 1997 that safeguarder cannot also act as a solicitor for the child.

Rule 3.9 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 also act as advocate or solicitor for the child in the proceedings.

Therefore if the solicitor safeguarder concludes that, in addition to their role, the child needs legal representation, the safeguarder must instruct another solicitor to represent the child. Equally if the safeguarder is not a practising solicitor and decides the child needs legal representation, the safeguarder can instruct a solicitor to represent the child.

In an application for legal aid in the above circumstances, therefore:

- the nominated solicitor will be the name of the solicitor who has been instructed by the safeguarder to represent the child
- the name of the nominated solicitor cannot therefore be the same name as the safeguarder appointed by the sheriff
- the safeguarder can, however, sign the legal aid application on behalf of the child.

If legal aid is granted, the nominated solicitor instructed by the safeguarder to represent the child can send us an account. We will meet the cost of all reasonable and necessary work carried out by the solicitor acting for the child.

We cannot and will not, however, pay any charge for work carried out by the safeguarder even if the safeguarder so happens to be a solicitor. The safeguarder can obtain payment from the local authority in terms of section 41(4) of the 1995 Act.

10.3 Non-payment of accounts

If a sheriff grants a legal aid application made by a solicitor acting in a dual capacity as both safeguarder and solicitor to the child, despite this being in clear breach of rule 3.9(2) and therefore incompetent, we have to register the grant of legal aid but we will not pay any of the account.

A flowchart at the end of this chapter sets out the circumstances in which we can and cannot pay a solicitor for work done where a safeguarder has been appointed to a child.

10.4 Solicitors representing the safeguarder

There is nothing to prevent safeguarders, whether practising solicitors or not, from instructing solicitors to represent them, as opposed to the child, in terms of the Child Care and Maintenance Rules.

If the safeguarder is a practising solicitor there is equally nothing in these rules to prevent one person acting in these two different capacities.

However, in terms of section 29(2) of the 1986 Act children's legal aid is only available to a child and to relevant persons. It is not available to anyone else, irrespective of any office that they hold.

10.5 Non-payment of accounts

If a sheriff grants a legal aid application by a solicitor acting for a safeguarder despite this being incompetent in terms of section 29(2) of the 1986 Act we must register the grant but we will not pay any of the account.

A flowchart at the end of this chapter sets out the circumstances in which we can and cannot pay a solicitor for work done where a safeguarder has been appointed to a child.

10.6 Solicitor acting as a safeguarder to the child and separate solicitor acting as solicitor to the child

There is nothing to prevent safeguarders, whether practising solicitors or not, from instructing solicitors to act for children in terms of the Child Care and Maintenance Rules.

In such a circumstance, the solicitor acting for the child applies to the sheriff for legal aid on behalf of the child and that solicitor will be the nominated solicitor. The safeguarder appointed to the child can, however, sign the legal aid application on behalf of the child. Such an application is competent in terms of both section 29(2) of the 1986 Act and the Child Care and Maintenance Rules.

When determining the application the sheriff must apply the statutory merits test laid down in section 29(4) (a) of the 1986 Act – that is, whether it is in the child’s interests to grant legal aid.

The solicitor making the application will have to satisfy the sheriff that this test has been met despite a safeguarder, who is a practising solicitor, having been already appointed in the proceedings to safeguard the interests of the child.

If the sheriff is so satisfied and grants legal aid to the child, the nominated solicitor instructed by the safeguarder to act for the child can send us their account. We will pay for all reasonable and necessary work the solicitor acting for the child carries out.

However, none of the work carried out by the safeguarder will be paid from the Fund. The safeguarder can seek payment for the work they have carried out from the local authority in terms of section 41(4) of the 1995 Act.

A flowchart at the end of this chapter sets out the circumstances in which we can and cannot pay a solicitor for work done where a safeguarder has been appointed to a child.

10.7 Appointment as curator ad litem

Where, as sometimes happens, the curator *ad litem* appointed by the sheriff in the proceedings so happens to be a practising solicitor and decides to act in dual capacity as both curator and solicitor to the child, that curator can make an application, in their capacity as a solicitor, for legal aid on behalf of the child to the sheriff. On such an application this person will be both the nominated solicitor and the child’s representative by virtue of their appointment as a curator *ad litem*.

However, for the reasons explained in paragraph 10.1

- we can only pay those charges applicable to actual legal representation (that is, the provision of legal services by a solicitor) to the child
- we cannot pay any charges that relate to work carried out in the capacity of curator.

For example:

- Charges relating to drafting a written report for the sheriff will not be met from the Fund as this is clearly work carried out in the capacity of a curator and does not amount to provision of legal services to the child.
- Charges associated with observing contact visits will be considered to be curatorial in nature and are not considered to amount to legal representation of the child.
- Charges associated with spending time with relevant persons or carers (unless the time is spent obtaining precognitions from these people because they are witnesses or potential witnesses) will not be met from the Fund as, again, we consider these charges to be curatorial in nature. It is open to a relevant person to apply for legal aid and have their own solicitor to keep them apprised of the court proceedings and advise them accordingly.

We will also take the above approach where a sheriff appoints a curator *ad litem* to act for an incapable adult relevant person who lacks capacity to directly instruct their own solicitor.

A flowchart at the end of this chapter sets out the circumstances in which we can and cannot pay a solicitor for work done where a curator *ad litem* has been appointed to a child.

10.8 Solicitors representing a curator

There is nothing to prevent a curator, whether a practising solicitor or not, from instructing a solicitor to represent them, as opposed to the child.

However, in terms of section 29(2) of the 1986 Act, children’s legal aid is only available to a child and to relevant persons. It is not available to any other person or office.

10.9 Non-payment of accounts

If a sheriff grants a legal aid application by a solicitor representing a curator despite this being incompetent in terms of section 29(2) of the 1986 Act, we have to register the grant of legal aid but we will not pay any of the account.

A flowchart at the end of this chapter sets out the circumstances in which we can and cannot pay a solicitor for work done where a curator *ad litem* has been appointed to a child.

10.10 Curator to child instructing separate solicitor to act as solicitor to child

A curator to the child, whether a practising solicitor or not, can instruct a solicitor to act for the child.

In such a circumstance, the solicitor acting for the child applies to the sheriff for legal aid on behalf of the child and that solicitor will be the nominated solicitor. The curator appointed to the child can, however, sign the legal aid application on behalf of the child. Such an application is competent in terms of both section 29(2) of the 1986 Act and the Child Care and Maintenance Rules.

When determining the application the sheriff must apply the statutory merits test laid down in section 29(4) (a) of the 1986 Act – that is, whether it is in the child's interests to grant legal aid.

The solicitor making the application will have to satisfy the sheriff that this test has been met despite a curator, who is a practising solicitor, having been already appointed in the proceedings to safeguard the interests of the child.

If the sheriff is so satisfied and grants legal aid to the child, the nominated solicitor instructed by the curator to act for the child can send us their account. We will pay for all reasonable and necessary work the solicitor acting for the child carries out.

However, none of the work carried out by the curator will be paid from the Fund. Unlike the position for safeguarders, there is currently no statutory payment mechanism for curators.

A flowchart at the end of this chapter sets out the circumstances in which we can and cannot pay a solicitor for work done where a curator *ad litem* has been appointed to a child.

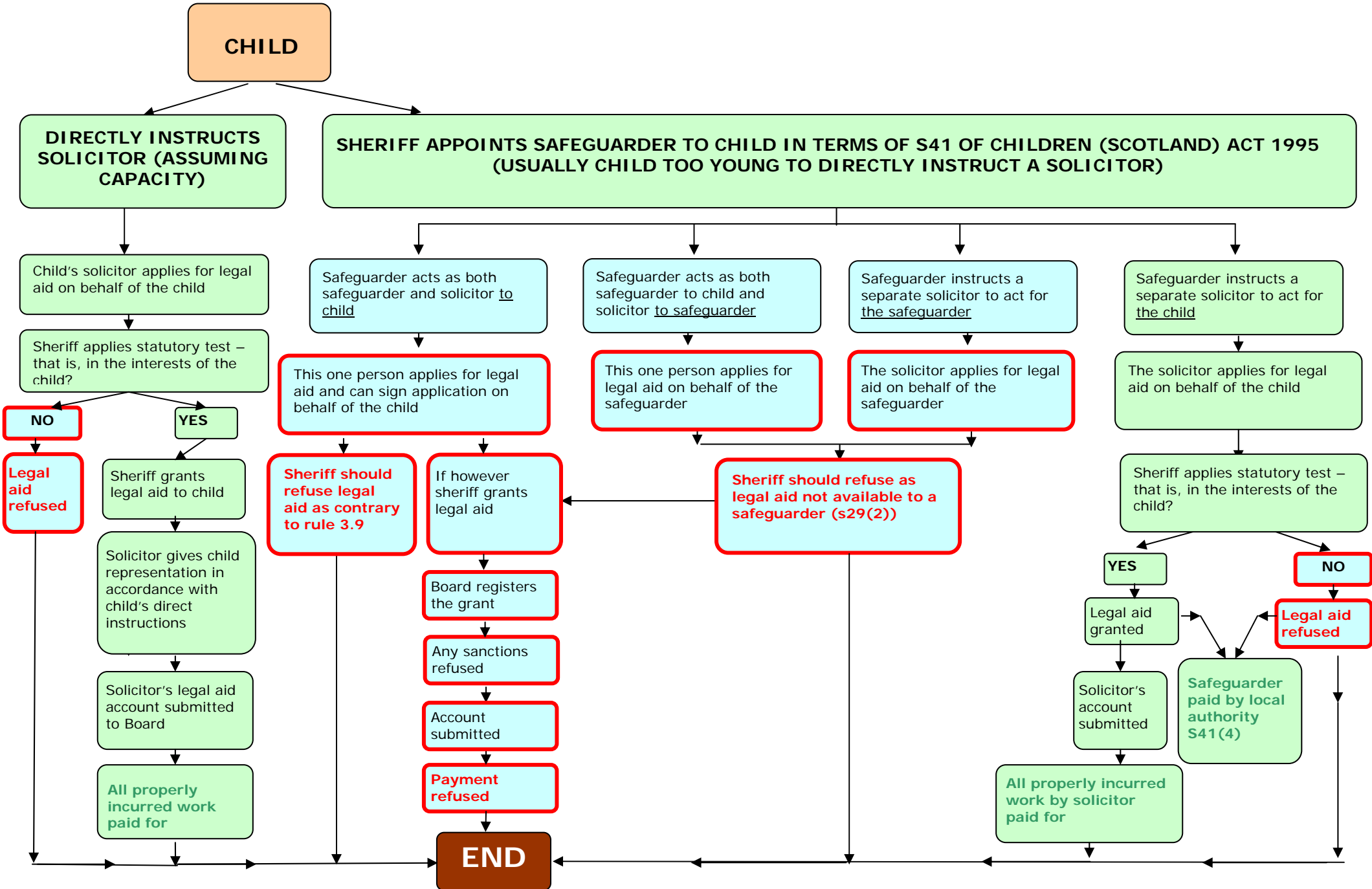
10.11 Appointment as safeguarder and curator *ad litem*

If a person is appointed by the sheriff to act as both safeguarder and curator *ad litem* the Board will apply paragraphs 10.1, 10.7, 10.8, 10.9 and 10.10 which apply to someone appointed to act as a curator *ad litem*.

10.12 Advice and assistance cannot be given by safeguarders and curators *ad litem*

Safeguarders or curators *ad litem*, even if they are practising solicitors, cannot provide advice and assistance to a child – see chapter 4 for more details about advice and assistance.

SAFEGUARDERS IN PROCEEDINGS UNDER PART II CHAPTERS 2 AND 3 OF THE CHILDREN (SCOTLAND) ACT 1995



CURATORS IN PROCEEDINGS UNDER PART II CHAPTERS 2 AND 3 OF THE CHILDREN (SCOTLAND) ACT 1995

CHILD

DIRECTLY INSTRUCTS SOLICITOR (ASSUMING CAPACITY)

SHERIFF APPOINTS CURATOR AD LITEM TO CHILD UNDER THE COMMON LAW (USUALLY CHILD TOO YOUNG TO DIRECTLY INSTRUCT A SOLICITOR)

Child's solicitor applies for legal aid on behalf of the child

Sheriff applies statutory test – that is, in the interests of the child?

NO

Legal aid refused

YES

Sheriff grants legal aid to child

Solicitor gives child representation in accordance with child's direct instructions

Solicitor's legal aid account submitted to Board

All properly incurred work paid for

Curator acts as both curator and solicitor to child

This one person applies for legal aid and can sign application on behalf of child

Sheriff applies statutory test – that is, in the interests of the child?

YES

Legal aid granted to child

Account submitted

Only work amounting to the provision of legal services to child can be paid

NO

Legal aid refused

Curator acts as both curator to child and solicitor to curator

This one person applies for legal aid on behalf of the curator

Sheriff should refuse as legal aid not available to a curator (s29(2))

Curator instructs a separate solicitor to act for the curator

Solicitor applies for legal aid on behalf of the curator

If, however, sheriff grants despite legal aid not being available to a curator

Board registers the grant

Any sanctions refused

Account submitted

Payment refused

END

Curator instructs a separate solicitor to act for the child

The solicitor applies for legal aid on behalf of the child

Sheriff applies statutory test – that is, in the interests of the child?

YES

Legal aid granted

Solicitor's account submitted

All properly incurred work by solicitor only paid for. (No separate payment mechanism such as local authority available to curator)

NO

Legal aid refused



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	