



Appendix 4

REFORM OF CIVIL LEGAL AID – SUMMARY OF REFORMS

There are three main strands to the reforms:

- Increase in fees
- Improved applications and reporting process
- Introduction of quality assurance and registration.

Fees

The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2003 provide for a single, simplified block fee structure which will apply to most cases in the sheriff court. The exceptions are expressly set out and include adoption cases, fatal accident inquiries and summary applications. These exceptions and Court of Session cases will continue to be paid on a time and line basis, but with fee scales increased by 19%. The increase does not, however, apply to children's cases.

The new structure will deliver better remuneration for solicitors and includes an increase in fee levels. It is also “front-loaded” to encourage early settlement of cases, and is designed to reward efficient conduct of cases.

Solicitors will receive payments as cases reach key stages. The new system will use a simplified fee table based on blocks of work. A block is a stage of work, linked to key procedural court steps which must be completed before payment can be made. Once the steps have been completed the account can be submitted. A block is made up of a certain number of units and each unit is paid at £19.

Applications and reporting

The new application form will help focus applications on the key issues. This will include assessments of how the application satisfies the statutory tests of probable cause and reasonableness as well as the prospects of success and an estimate of the likely cost of the case.

Solicitors will be required to submit reports to the Board at key stages:

- **Compulsory reports:**
- A solicitor should submit a report to the Board when a proof or debate has been assigned or 12 months after the grant of civil legal aid – whichever is the earlier.
- In family cases, involving a child welfare hearing, a solicitor should submit a report to the Board when a proof or debate has been assigned or six months after the date of grant of civil legal aid – whichever is the earlier.
- Each subsequent 12 months after the initial report.

- Final report at conclusion of proceedings (not the submission of the account).

Before the 6 or 12 month period elapses, the Board will send a reminder to the solicitor. If a report is provided within 28 days of the due date it will be considered to be “timeous”.

- **Unprompted reports** – to cover significant developments in the case, such as where the case is sisted (other than where sisted for legal aid), where a proof diet is adjourned, where a minute of tender is lodged but rejected or to advise the outcome of a debate.

The reports will allow the Board to consider whether there are any changes to the underlying assumptions that allowed legal aid to be granted.

When a compulsory report is submitted the solicitor is entitled to payment to account for the blocks completed to the point of submitting the report.

Quality Assurance and registration

There are two aspects to this registration, which is operated by the Board, and peer review, which is operated by the Society.

Registration and peer review will apply to any firm wishing to apply for civil legal aid **or** grant civil advice and assistance after 1 October.

Registration

Any firm wishing its solicitors to grant civil advice and assistance or apply for civil legal aid on or after 1 October will need to be registered with the Board. Registration will last for two years, following which re-registration will be required. There are ten administration arrangements, established by the Law Society, that must be met.

We have identified all firms who currently provide civil legal assistance and placed them on a provisional Register; unless they wish to cease to practise civil legal assistance after 1 October, they will automatically be placed on the Register from 1 October. Any firm who does not want to be on the Register can opt out by telling us so in writing. Registered firms will then have until the end of February to put in place the administrative requirements and confirm that they have done so.

Every two years firms will undergo an audit by a Board compliance auditor to confirm that they are operating within the procedures. It is not intended that these procedures will be unduly burdensome for firms; many firms will already have in place procedures to meet all the requirements and those who do not may, if they wish, seek advice from the compliance auditors.

The primary intention of the audit is to help firms meet the requirements, but where there is wilful or continued failure to adhere to the requirements, this will be reported to the Law Society to consider taking appropriate action.

Any firm not wishing to continue to grant civil advice and assistance or apply for civil legal aid after 1 October, and therefore not registering with the Board, will be able to continue with and conclude any advice and assistance or legal aid cases granted before 1 October.

Quality Assurance

From 1 October firms operating civil legal assistance will be subject to the Quality Assurance regime.

At least once every two years, firms registered to provide civil legal assistance will be subject to a Quality Assurance review. This will take the form of peer review carried out by experienced civil

practitioners recruited by the Society. The reviewers will receive guidance and training. Arrangements, including a Supervisory Committee, will be put in place to oversee the work and training of the reviewers and to ensure consistency.

The peer review will involve looking at a sample of files against agreed and tested criteria. The purpose is to review the quality of the work carried out on behalf of the client and the Board, based on evidence contained within the file. It is intended primarily to help firms meet the required standard, but in those cases where a firm fails a first and then a second review, it will result in that firm no longer being permitted to provide civil legal assistance.

When firms re-apply for registration, their application must include a Certificate of Competent Practice from the Society.

The Quality Assurance scheme will help ensure value for money for the taxpayer and assure applicants of the quality of the service provided.