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To: Legal firms

Helpline direct dial number:
0131 240 2007

Email: civilreform@slab.org.uk

Your ref:

Please quote the department above and
our reference: **Civil Registration / 1**

29 August 2003

Dear Sir / Madam

CIVIL LEGAL AID REFORM MAILSHOT 1

CIVIL REGISTRATION

As you I hope you will be aware from the various documents issued by the Board and the Law Society, a package of reform of the civil legal aid system is to implemented on 1 October 2003.

The reforms cover:

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

A summary with information on the various elements is enclosed at appendix 4.

This mailshot covers the civil registration process and is the first in a series of mailshots providing information about the reforms.

Registration requirements

Under the new scheme:

- Any firm providing civil legal assistance (i.e. civil legal aid or civil advice and assistance) will require to be registered for that purpose.
- Registration will require compliance with the ten administrative requirements developed by the Law Society in consultation with the Board and the Scottish Executive. The ten administrative requirements are attached at appendix 1.
- The auditing will take the form of a short review by the Board's compliance staff every two years.
- Separate to the registration process is the Quality Assurance scheme to be operated by the Law Society. Guidance, prepared by the Society, will be issued shortly on this.

We wish to have a smooth and efficient transition to the new system for practitioners, applicants and the Board and, to help facilitate this, there will be a six month transition period from 1 October.

The Board has compiled a list of those firms that have in the recent past undertaken civil advice and assistance or civil legal aid work. These firms will be entered provisionally on the Register at 1 October 2003. The list has been placed on **our website** www.slabpro.org.uk in the "What's new" section. The login details for the site are username: procurator and password: LAACT1986. Please access our website or, if you are unable to do so, telephone our Helpline on 0131 240 2007 to check whether your firm has been included.

If your firm has been included in the list and you do want to provide civil legal assistance after 1 October:

You do not need to do anything at the moment in terms of notifying us about registration. You will automatically be placed on the provisional Register at 1 October 2003.

However, you should determine whether your firm has in place procedures for the ten administrative requirements set out by the Law Society. You may well decide that you meet all ten requirements but, if you feel that some changes are required, please start developing and implementing procedures in relation to the administrative requirements.

You will be asked to confirm to the Board by the end of February 2004 that your procedures comply with the Law Society requirements and that they have been implemented. We will, at a later date, send you a form for this purpose.

If your firm has been included in the list and you do NOT want to provide civil legal assistance after 1 October:

If you do not want your firm to be involved in providing civil legal assistance after 1 October please advise the Board by return, or at least by 26 September 2003, using the enclosed form (appendix 2).

The effect of this will be that, after 1 October 2003, solicitors within the firm will not be permitted to grant civil advice and assistance or submit civil legal aid applications. You will, however, be entitled to see any existing cases under civil legal assistance to a conclusion and to be remunerated as appropriate.

If your firm has NOT been included in the list and you do want to provide civil legal assistance after 1 October 2003:

If your firm has not been included in the list and you do want to provide civil legal assistance after 1 October 2003, please complete and return the enclosed form (appendix 3). We will then include your firm in the provisional Register and you should determine whether your firm has in place procedures for the ten administrative requirements. However, this provisional arrangement will only apply until February 2004.

If your firm has NOT been included in the list and you do NOT want to provide civil legal assistance after 1 October 2003:

You do not need to do anything in terms of notifying us about registration. Your firm will not be included in the provisional Register at 1 October 2003.

If your firm is included in the provisional register and, at any time after 1 October 2003, you decide that you want the firm to be removed from the Register, you should write to the Board. The effect of this will be that, from the date of your letter, solicitors within your firm will no longer be permitted to submit new civil legal aid applications or make new grants of advice and assistance, although they will continue to be entitled to see any existing cases under civil legal assistance to a conclusion and to be remunerated as appropriate.

From 1 April 2004, the new regime will be in full operation, and an unregistered firm will have to apply to the Board to be registered before its solicitors will be allowed to submit applications for civil legal assistance.

Summary of timetable

- August 2003: the Board has prepared a provisional Civil Legal Assistance Register and written to all firms.
- 26 September 2003: any firm NOT wanting to continue to provide civil legal assistance after 1 October 2003 should advise the Board of this. Any firm not on the provisional Register must advise the Board it wishes to be included.
- 1 October 2003: firms only permitted to submit applications if they have been provisionally registered.
- October 2003 to February 2004: firms wishing to continue to provide civil legal assistance will devise their procedures to conform to the ten requirements. Board compliance staff will be available for consultation and assistance.
- 29 February 2004: firms must have certified to the Board that they have introduced procedures which comply with the Law Society requirements
- March 2004: firms will be informed of their registration status—no firm will be registered without having completed the certification above.
- 1 April 2004: the Board will only accept applications for civil legal assistance from fully registered firms. A two year cycle of audits of compliance with the ten administrative requirements will begin.

When the audits of compliance with administrative requirements commence we will, where appropriate and convenient to the firm, endeavour to hold these audits together with the Criminal Legal Assistance Register audits to minimise this impact.

We hope that by phasing in the registration process with a six month transition period we will help firms move to the new system with the minimum of disruption. For the vast majority of firms who wish to provide civil legal assistance after 1 October 2003, all that will initially be required is a check to make sure that you have been identified for inclusion in the provisional Register.

You will then have until the end of February 2004 to certify that by the end of March you will be compliant with the ten administrative requirements. We anticipate that for the majority of firms, little or no change of procedures will be required. However, if you would like some help or guidance in putting the procedures together or advice on the extent of the written documentation required to support them, the Board's civil compliance auditors will be happy to provide advice.

We have set up a **Telephone Helpline on 0131 240 2007** to allow you easy and quick access to members of staff able to assist you with any queries on the main aspects of the reforms: applications and reporting (means, merits and the processing of applications), registration and accounts. Please telephone this number if you have a query about the registration process or want a member of our staff to check for you whether your firm has been identified for inclusion in the provisional Register.

You will receive shortly a further mailshot providing further details about the applications and reporting process.

Yours faithfully



Tom C Murray
Director of Legal Services and Applications

Telephone Helpline

If you have a query about the registration process or whether your firm has been identified for inclusion in the provisional Register please telephone our Civil Legal Aid Reform Helpline on
0131 240 2007

You can also use this number if you have a query about applications or accounts under the new system.

Alternatively, you can e-mail us with any queries - civilreform@slab.org.uk

If you have any queries about the Quality Assurance system please telephone the Law Society on 0131 476 8147.

Attachments

1. List of the 10 administrative requirements
2. Form to be completed by any firm whose name appears on the list of firms, but who does not want to undertake civil legal assistance after 1 October 2003
3. Form to be completed by any firm whose name does not appear on the list of firms, but who does wish to undertake civil legal assistance after 1 October 2003
4. Summary of the reform package.

Appendix 1



ADMINISTRATIVE REQUIREMENTS FOR CIVIL REGISTRATION

Procedures are required for the following:

- opening, and closing of a file for civil legal assistance, and monitoring its status
- recording work carried out for the client, and all material advice tendered to the client as the case proceeds
- ensuring that all solicitors providing civil legal assistance remain acquainted with the regulations
- ensuring that all documents and other paperwork submitted to the Board are in order
- the control of incoming and outgoing mail
- the periodic review of a sample of cases being conducted under auspices of the civil legal assistance scheme
- the review of the conduct of a sample of cases conducted under the civil legal assistance scheme at the conclusion of the case
- dealing with complaints from the client, the Law Society or the Board arising from any civil legal assistance case
- submitting accounts to the Board and dealing with subsequent correspondence and queries, and recording the receipt of payment.
- ensuring that all members of the firm's administrative and support staff are aware of the firm's procedures and are observing them.

Appendix 2

FORM TO BE COMPLETED BY ANY FIRM WHOSE NAME APPEARS ON THE LIST OF FIRMS, BUT WHO DOES NOT WANT TO UNDERTAKE CIVIL LEGAL ASSISTANCE AFTER 1 OCTOBER 2003



TO: The Scottish Legal Aid Board

FROM:

Please enter the name of firm

Firm legal aid code

Principal business address:

Name of senior partner / sole practitioner:

Please print in capital letters

DECLARATION

- As senior partner / sole practitioner in the above firm, I hereby request that the name of the firm above NOT be entered on the provisional Civil Register as at 1 October 2003.
- I confirm that I am aware that solicitors in my firm will no longer be able to submit applications for civil legal aid to the Board or grant civil advice and assistance after 30 September 2003, although we can continue to work on cases already granted before that date.

Signature:

Date:

Please return this form by 26 September 2003 to:

The Civil Registration Unit
Scottish Legal Aid Board
Post: 44 Drumsheugh Gardens, Edinburgh, EH3 7SW
Hays DX: DX ED555250 EDINBURGH 30
Legal Post: LP2 EDINBURGH 7

Appendix 3

FORM TO BE COMPLETED BY ANY FIRM WHOSE NAME DOES NOT APPEAR ON THE LIST OF FIRMS, BUT WHO DOES WISH TO UNDERTAKE CIVIL LEGAL ASSISTANCE AFTER 1 OCTOBER 2003



Application by firm of solicitors for registration

Name of applicant firm:

Principal business address:

Name of senior partner / sole practitioner:
Please print in capital letters

DECLARATION

- As senior partner / sole practitioner in the above firm, I apply for the name of the firm to be entered on the Register for Civil Legal Assistance as at 1 October 2003.
- I confirm that the details contained in this application are correct.
- I confirm that the above firm intends to comply with the requirements for registration.
- I undertake to allow audits of my procedures and reviews of my files to be undertaken by the Board from time to time to ensure that the firm can be certified in the timescales required to provide civil legal assistance.

Signature:

Date:

Please return this form by 26 September 2003 to:

The Civil Registration Unit
Scottish Legal Aid Board
Post: 44 Drumsheugh Gardens, Edinburgh, EH3 7SW
Hays DX: DX ED555250 EDINBURGH 30
Legal Post: LP2 EDINBURGH 7



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.