

GUIDANCE NOTES

SOLICITOR'S APPLICATION FORM

General

These notes are to be read in conjunction with the explanatory notes to be found on the form itself.

Unless indicated otherwise, please assume that all questions are mandatory. If you cannot provide an answer to a question, please mark the box "not applicable" or "not known". Do not leave any of the boxes blank unless the form directs you not to answer a particular question.

Please do not attach covering letters or additional sheets – if you require additional space, use appendix A and clearly state to which question(s) the additional information relates. If, in exceptional circumstances, appendix A does not provide sufficient space, please use a photocopy of the form; do not attach covering letters.

We may photocopy or scan the completed form and it will help us if you use typescript or black ink. Where typescript is not used please write legibly.

Have any specially urgent steps been certified?

If the Board has certified specially urgent steps prior to lodging this application please advise us of the legal aid reference number allocated for this and the date of certification.

Date of certification

This information allows us to link the current application with the legal aid reference number for the specially urgent work which has been certified should you not provide us with the correct legal aid reference number.

Section A Details of the applicant (questions 1 – 13)

Please try to supply all the requested details about the applicant.

Although we ask the same questions in the applicant's form, this information is essential should the solicitor's and applicant's forms become separated; without the applicant's details on the solicitor's form we may be unable to connect the two forms.

If the applicant is seeking legal aid in a representative, fiduciary, official or other capacity, then you should enter that person's details here. However, you should ensure that the applicant is fully advised as to whose means require to be declared on the applicant's form.

Question 2 – Applicant's national insurance number

It is very important that we have the applicant's national insurance number. If you are unable to supply this (because, for example, the applicant is an asylum seeker or a child and does not have a national insurance number) please include an explanation in Appendix A.

This information is particularly important for applicants who are in receipt of benefit and without it we may be unable to determine the application. We may use an applicant's national insurance number to check with the Benefits Agency the information given in the applicant's form.

Question 7 – Known as

This is only required where the applicant prefers to be known by a different surname to the one given at question 6. Otherwise, please mark the box "not applicable".

Question 9 – Maiden surname of applicant's mother

We ask for this information to help us identify the applicant where the other identifying information (particularly names) is the same as that of other applicants. We use the maiden surname of the applicant's mother (along with other details such as date of birth) to make sure that we do not confuse the details of one applicant with another. For example, should an applicants' national insurance number be incorrectly given, we can use this piece of information to avoid confusion with another applicant.

Section B - Details of solicitor(s) acting

Where two firms are involved in the representation of the applicant, details of both should be entered in this section.

The nominated solicitor should submit the application for legal aid and sign the form where indicated - the solicitor's declaration on page 6 and the statutory statement (previously referred to as the Memorandum) on page 8.

Section C - Special urgency requirements

This section is included to allow you to intimate to us special urgency steps already taken under Regulation 18(1)(a). A list of all the steps which may be taken under this regulation is attached for ease of reference.

You **do not** need to complete a separate SU2. The only circumstances in which an SU2 will be used is when you have completed and submitted a solicitor's application form and then require to take special urgency steps under Regulation 18(1)(a) before we have notified you of the decision in respect of the application.

We do not require details of the steps undertaken; please just tell us the date the special urgency work commenced (this differs from the old SU2 form).

You will still need to complete an SU4 when you wish to apply for certification of urgent work to be carried out under Regulation 18(1)(b).

Remember that to comply with the time limits in Regulation 18(3) you must send us this application form within 28 days of commencing the urgent steps whether intimated to us or following specially urgent work certified by us.

Section D - Documents necessary for the full consideration of the application

The documents listed on the form are necessary for consideration of the application in all cases, unless you have indicated why a particular document(s) is inappropriate to the specific case.

Unless you are using this application to notify us of special urgency steps or following our certification to you of special urgency steps, all necessary documents must be attached.

Where you are intimating under Regulation 18(1) (a) using this application or where we have certified that urgent work may be undertaken you need not submit all the necessary documents for an application if you are not in a position to do so. You need supply only the mandate and the statutory statement with sufficient copies to be sent to all opponents. If, in these circumstances, you are not enclosing additional documents, such as the applicant's form, please tick "to follow" as appropriate.

You are also reminded that if, for any reason, you are unable to obtain the client's signature to the statutory statement where you are undertaking Regulation 18 work, we now have the discretion to accept the statutory statement signed by the solicitor instead of the client.

Section E - Determination of statutory tests

Questions 1-25 are designed to help the Board assess whether the application meets the statutory tests of probable cause and reasonableness.

Question 1 – Nature of the case

We have introduced a new, simplified system for describing the nature of the case. This is based on category codes and uses both a general case description and sub-headings.

A list of the category codes is included in this information pack and further copies can be downloaded from our website (www.slabpro.org.uk) or obtained by telephoning 0131 226 7061.

Please refer to the list of category codes and insert the appropriate primary category code and ancillary category code(s). While there may be multiple ancillary codes there will only be one primary code for the case. For example:

- a family case e.g. DIVUN - primary category (divorce - unreasonable behaviour) with ancillary codes RES (residence), INTAL (interim aliment), PERAL (periodical allowance) and CAPSM (capital sum),
- a personal injuries case e.g. MEDNE - primary category (reparation - medical negligence) and
- judicial review e.g. JR - primary category with ancillary codes DEC (declarator) and REPO (damages)

Question 2 – Applicant’s interest in the proceedings

Where several parties are involved, please use the “other” box to show the specific interest of the applicant, for example, “third defender”.

Also use the “other” box to indicate where there is dual interest, for example, if the applicant is concerned in the proceedings in both a personal and representative capacity.

See also question 3 below.

Question 3 – Is the applicant concerned in the proceedings in a representative, fiduciary, official or other capacity

Please indicate where the applicant has already been appointed in such a capacity, or where he/she is applying for legal aid to be appointed into a representative, fiduciary, official or other capacity (for example, as an executor or applying to be appointed a guardian under the Adults With Incapacity (Scotland) Act 2000).

Please use the box to describe the capacity and indicate whether the applicant is already in a representative capacity or is applying for/intends to apply for representative capacity.

If the applicant is concerned in the proceedings in a dual capacity a separate application must be submitted for each.

Question 4 – Court

Please indicate the court in which proceedings have already been, or are to be, brought or defended.

You may wish to refer to Schedule 2 of the Legal Aid (Scotland) Act 1986 for the courts in which civil legal aid is available and excepted proceedings.

Question 6 - 8 – Opponent(s)

To make sure that intimation of the application is promptly made to the opponent, please give full and accurate information as to the opponent’s name and address.

The following is a list of some organisations where the incorrect address is often used. When giving the address for any of these organisations, please use the following:

Organisation	Address
Glasgow City Council	Glasgow City Council Legal Services City Chambers DX GW 145 Glasgow
Highland Council	The Highland Council Glenurquhart Road Inverness IV3 5NX LP9 Inverness 1
Lothian NHS Trust	Central legal Office Lothian NHS Trust Trinity House South Trinity Road Edinburgh
Scottish Executive	Scottish Executive Legal & Parliamentary Services Solicitors Office Area 1F Victoria Quay Edinburgh EH6 6QQ

(We will amend or expand this list and issue revised copies as appropriate).

Similarly, to ensure that the necessary intimation is made promptly to the solicitor concerned, where the name and address of any solicitor acting for the opponent is known, full details should be given.

Space has been provided to give details of one opponent only. If the case involves more than one opponent, please give details of the other opponents in Appendix A. For each additional opponent, supply all the information requested in questions 6 – 8.

Note that an opponent is any party interested in the proceedings other than the applicant (regulation 2(1) of the Civil Legal Aid (Scotland) Regulations 2002).

Question 9 – Any other person, firm, body or organisation jointly concerned with or having the same interest as the applicant

The Board must be told if there is someone anybody else with an interest in the case, as it may be appropriate for them to pay some or all of the costs of the action. In circumstances such as this, it may be inappropriate to make legal aid available unless not doing so would seriously prejudice the applicant.

Question 10 – Is the applicant at present a party to any other proceedings in the UK

The fact that the applicant is already a party in some other case may have a bearing on the tests of probable cause and reasonableness and it may also be relevant in assessing the applicant's means.

Question 11 – Are the proceedings covered by this application to be regarded as cross-action in relation to other proceedings

If the applicant is already liable to pay a contribution for other proceedings, an additional contribution for the cross-action would not normally be chargeable.

The Board would, however, have to consider whether it would be reasonable to make legal aid available for cross-actions if all matters in dispute could be dealt within one action.

Question 12 – Previous applications for civil legal aid

Note that this question is no longer restricted to applications during the preceding two years, but asks for details of any previous applications for civil legal aid

Question 14 – 16 - Rights or facilities for assistance in connection with the proceedings

Please provide details of any rights or facilities the applicant has for assistance in connection with the proceedings.

Question 14 relates to any right or indemnity and would include, for example, any rights under motor or house insurance.

Question 15 asks specifically about membership of a professional or other body, which provides financial or other assistance; this would also include, for example, membership of a trade union.

Question 16 covers any other rights or facilities, financial or otherwise, and includes any rights that may exist outwith any formal or contractual arrangements, for example, assistance offered by a charitable organisation or a pressure group.

It is important that the client has confirmed whether he/she has insurance and that it does not provide cover or whether he/she has assistance from a professional body and it is not available. The client may therefore need to raise the issue with his/her insurance company, trade union etc.

Question 17(a) – What steps have been taken to avoid proceedings

Please provide details of all steps taken, e.g. attempts at negotiation, mediation or arbitration.

Question 17(b) – Has any offer to settle the issues been made

Please provide details of any offer to settle made by any party to the proceedings and explain why the offer was rejected.

Note that both parts of question 17 apply to all proceedings, not just those relating to a claim for money or property.

Question 18 – What is your estimate of the applicant's prospects of success

Please provide your estimate of the applicant's prospects of winning or successfully defending the action. Please explain the reasons behind your assessment.

If you consider that the prospects of success are "poor" or "fair" please explain why it is reasonable for legal aid to be granted.

Question 20 – What is your estimate of the prospects of recovery

Where the applicant is claiming money or property, please provide your estimate of the applicant's prospects of recovery of that money or property e.g. what is the ability of the opponent to pay.

If you consider that the prospects of recovery are "poor" or "fair" please explain why it is reasonable for legal aid to be granted.

Question 21 – Likely cost of seeing the litigation to a conclusion

This information is required for three reasons:

- to allow the Board to use its discretion to grant legal aid where the applicant's disposable capital exceeds the upper limit if it appears that he/she cannot afford to proceed without legal aid

- to allow the Board to adjust downwards the applicant's contribution where the estimated case cost is lower than the assessed contribution
- as part of the cost-benefit analysis when considering whether it is reasonable for legal aid to be made available

Please give your estimate of the likely cost of seeing the litigation to a close – *on the basis of your current instructions and knowledge*. Your estimate should include the cost of any expert and/or counsel identified in Section F of the application.

Should your estimate change as the case progresses you will be able to advise us of this during the stage reporting process.

Usually we will only require you to estimate within the bands shown. However, where you have estimated that the case is likely to cost more than £5,000 please provide an estimated total cost and an explanation.

Question 22 – Wider public interest

When considering the reasonableness test, we will look at whether a case has a wider public interest. Examples of cases where such an interest could arise include judicial review, or where the outcome of the case may have a direct tangible benefit to the applicant and others. When answering this question, you will also need to have regard to Question 9 (joint or same interest)

Questions 23 and 24 – Probable cause and reasonableness

Please tell us why you think there is probable cause and why it is reasonable for legal aid to be made available. The level of detail required is likely to vary from case to case, but both questions must be answered for applications under all proceedings.

The test of probable cause has a low threshold, covering as it does such things as jurisdiction, title to sue and the legal basis of the action. For example, if dealing with a reparation case, issues such as the duty owed and how it has been breached should be addressed.

The reasonableness test includes such things as cost benefit analysis, prospect of success and recovery.

Please refer to Board guidance, particularly chapter 6 of the *Scottish Legal Aid Handbook* and (for reasonableness) the *Guidelines on Reasonableness in Civil Legal Aid Cases* issued in December 2002.

Section F Conduct of the case – applications for employment of counsel or expert witness

It is recognised that in some cases it may be possible to identify the need for counsel or an expert at an early stage. If you are in a position to do so, apply here, giving the requested information.

The Board will only use this information and consider an application made here for sanction if and when civil legal aid is granted **or** sanction applied for under Regulation 18.

The information requested is the same as would be required if you were completing a separate form to request sanction for counsel or expert witness. A separate form may be still be required when sanction is requested at a later stage.

Declarations and signatures

The form must be signed by the solicitor acting directly for the client and by the applicant.

The solicitor's declaration has been expanded to include consent to release the application and associated documentation for quality assurance and stage reporting purposes.

The solicitor's declaration also includes confirmation that a copy of the application has been retained; a copy will be needed for reference when stage reports are completed.

The applicant's declaration has been expanded to include reference to certain named bodies in the section relating to disclosure of information; this has been included at the request of the named bodies.

The applicant's declaration also includes reference to the Board's new approach to disclosure of changes to financial circumstances (i.e. where capital increase by £500 or disposable income over the year increases by £500 or decreases by £200).

Section G – Statement

Please see the guidance contained in the third paragraph of page 3 of these notes – Board's discretion to accept a statutory statement signed by the solicitor instead of the client.

Please specify in the nature of the proceedings the specific section (or where applicable) the sub section of any Act – e.g. Family Law (Scotland) Act 1985, Section 14 (2) (a) and also what this in layman's terms means – e.g. "sale of property".

Please remember, if for any reason, you have advised us that you do not wish the address of the applicant disclosed, e.g. where you are seeking interdict in respect, of domestic abuse, **do not** include the applicant's address in the statement.

We have tried to develop a "template" for statements that will be simple and straightforward for both the solicitor and the Board and also provide information in a way that will be readily understandable for opponents.

The following are examples of styles of statement that it may be appropriate to use:

(1) REPARATION - PERSONAL INJURIES

- 1.The applicant is X.
- 2.The opponent is Y.
- 3.The applicant seeks legal aid to raise an action for damages in the Sheriff Court .
- 4.The court has jurisdiction.
- 5.On 28 August 2003,the applicant slipped on oil in the opponents' factory. He sustained injury as a result of their negligence, and claims damages for his loss.

(2) DIVORCE - UNREASONABLE BEHAVIOUR

- 1.The applicant is X.
- 2.The opponent is Y.
- 3.The parties were married on__ and separated on __.
- 4.The applicant seeks legal aid to raise an action for divorce on the grounds of unreasonable behaviour in the Sheriff Court.
- 5.The court has jurisdiction.
- 6.The applicant also seeks legal aid to make the following claims for financial provision:
 - capital sum
 - periodical allowance
 - pension sharing order
 - order for transfer of opponent's title in the matrimonial home