The Recorder

SUMMER 2003

Issue no 37

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Chief Executive's introduction

Since the last issue of *The Recorder*, we have published our Corporate Plan for 2003-2006 and circulated it to all firms of solicitors. In making our plans for the next three years widely known to the profession, and through the various consultation exercises we are undertaking, we hope that you will feel able to contribute your views and suggestions to discussions on the way forward for legal aid in Scotland.

Earlier this year, we sent out a questionnaire to 1,000 solicitors seeking your views on our service. Feedback from the survey was encouraging, with perceptions of our service having improved significantly since the last survey in 2000. We will be holding focus groups with solicitors to follow up on the survey. Some of the key findings are summarised in an article on page 6, and we will be giving a more detailed report in the next *Recorder*, together with a report of our survey of applicants, assisted persons and opponents.

Civil legal aid reform is one of our main activities at the moment, and we are working closely with the Scottish Executive and the Law Society to implement the changes. We report in this issue on progress to date, and on what we are planning to achieve over the next few months.

We included a comprehensive article about e-business in the March issue of *The Recorder*, and we are pleased that in general this major project is making good progress. It should significantly improve, and make more effective, the delivery of advice and assistance and, in the longer term, civil and criminal legal aid. We are working with the profession to make the transition to e-business as simple for them as possible.

Reform of civil legal aid

You should ensure all colleagues who undertake legal aid work are made aware of the changes detailed in this publication.

Following the announcement on 18 February 2003 by Jim Wallace QC MSP, Deputy First Minister and Minister for Justice, that a package of reform of civil legal aid is to implemented on 1 October 2003, the Board, the Law Society of Scotland ('the Society') and the Scottish Executive have been working towards implementing the changes.

The changes are the result of partnership working between the Society, the Scottish Executive and the Board and the partnership working is continuing to enable the reforms to be implemented.

Continued on page 2

Reform of civil legal aid *(cont.)*

Four Working Groups, consisting of Board and Society representatives (and, where appropriate, others with expertise or interest in the topic), have been set up to consider in detail the various strands of the reforms:

Fees

What the changes mean

The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2003 are now in place and amend the existing fees regulations for cases where the application is granted after 1 October 2003. The regulations provide for a single, simplified block fee structure which will apply to most cases in the sheriff court. The only 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 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. Accounts will be more straightforward and less time consuming to prepare.

A block is made up of a certain number of units and each unit is paid at £19.

Implementing the reforms

The Fees Working Group is developing guidance for the profession on all aspects of the new feeing structure, as well as model accounts. The guidance is in draft form and will be finalised during the summer and circulated to practitioners during September.

Applications and reporting

What the changes mean

The new application form is being designed to 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.

The new application form will also include a section for notification of specially urgent work carried out under regulation 18(1)(a) and a section for an application for employment of counsel or expert witness. (This section will only be considered by the Board after the application for civil legal aid has been granted or where the solicitor is applying for sanction at the regulation 18 stage.)

We expect that completion of the new forms may lead to a reduction in the volume of supporting information required to be submitted with applications.

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).

If the initial 6 or 12 month period elapses and no report is received, 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.

Implementing the reforms

We are preparing new forms:

- Application forms -
  - merits form for completion by the solicitor
  - financial form for completion by the applicant
  - shorter financial form for applicants exempt from completing the full financial form
- Reporting form

The solicitor's part of the application form is being piloted with a number of firms. We will use the information gained from this, including the comments made by the pilot users, to improve and refine the form before it is finalised.

The forms, along with guidance notes, will be available during September.

Quality assurance and registration

What the changes mean

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 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. The Board will set out a number of administration arrangements that must be met. These will include procedures for:

- the opening and closing of a file for civil legal assistance, and monitoring its status
- controlling incoming and outgoing mail
- reviewing periodically a sample of cases being conducted under auspices of the civil legal assistance scheme.

Firms must undergo an inspection 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.

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. This will take the form of peer review carried out by experienced civil practitioners recruited by the Society. The peer review will involve looking at a sample of files against agreed and tested criteria.

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.

Implementing the reforms

During August, the Board will publish guidelines as to the necessary steps to obtain registration and firms will then apply to the Board for registration.

However, to encourage a smooth and efficient transition to the new system for everyone including practitioners, it is proposed that there will be a six-month transition period from 1 October. During late summer, we will write to all firms who currently practise civil legal assistance indicating that, unless they wish to cease to do so after 1 October, they will automatically be placed on the Register. 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.
To operate the quality assurance regime, the Society will recruit reviewers who will receive guidance and training. Arrangements will be put in place to oversee the work and training of the reviewers and to ensure consistency. This will include a Supervisory Committee.

Practice rules

It is intended that the quality assurance regime will be provided for by practice rules.

The practice rules have been drafted and were approved by the Council of the Law Society at its meeting on 27 June 2003. The draft practice rules have now been circulated to members of the profession and will be considered at the Society's Special General Meeting on 29 August and thereafter at its Council meeting on the same day. Should the draft rules be approved at the Council meeting on 29 August, they will then be sent to the Lord President for his approval, in terms of Section 34 (3) of the Solicitors (Scotland) Act 1980. Once the draft rules are approved by the Lord President, they will come into force on 1 October 2003, thus formalising the quality assurance process.

Further information

To make the transition as smooth and efficient as possible for all concerned, we want to give the profession as much information as we can about the reforms at the earliest stage possible.

We therefore aim to provide by end August:

- guidance on the registration and quality assurance schemes
  - an advance copy of the solicitor's form and guidance on completion of the form
  - an advance copy of the reporting form guidance on the reporting stages
  - information on the applicant's form and means assessment

by mid-September:

  - guidance on the operational aspects, including the accounts process.

The Society and the Board are running a series of evening seminars throughout the summer and into the autumn. The earlier seminars will focus on the principles of the reforms and the later seminars will concentrate on the operational aspects.

We are running the earlier seminars with the help of some local Faculties and have already held meetings in Dundee, Greenock and Inverclyde, Inverness, the Borders and Banff.

Further seminars include: **26 August - Oban and Lochaber**
27 August - Dunfermline
28 August - Stirling

These seminars will start at 5.30 p.m. and close at 7.00 p.m.

The September/October seminars have been arranged for the following dates:

1 September - Edinburgh (this seminar will be video conferenced)
10 September - Dumfries
15 September - Inverness
22 September - Glasgow
24 September - Dundee
25 September - Edinburgh
29 September - Aberdeen
1 October - Ayr

These seminars will start at 6.00 p.m. and close at 8.00 p.m. If you want further information about any of the seminars, please contact Update at the Society on 0131 476 8148.

We believe that these seminars will provide practitioners with a good opportunity to learn about how the new system will operate and to raise any queries about its operation with senior officials from the Board or the Society.

Conclusion

The new system will involve changes for both practitioners and the Board, but we believe that these reforms will bring improvements for practitioners, assisted persons and the Board.

For practitioners

- Increased fees
- A simplified fee structure which rewards efficient conduct of cases
- Payment to account as cases reach key stages
- Reduction in associated costs
- Reduction in some aspects of paperwork (e.g. supporting information submitted with applications)
- Improved decision making on the part of the Board

For clients

- Better information at the key stages of their cases
- Improved confidence that their solicitor's practice complies with externally audited quality assurance standards
- Faster resolution of some cases
- Improved decision making on the part of the Board

For the Board

- An easier and more cost effective system
- Better information at the application stage which will allow improved decision making
- Better information at key stages

Survey of solicitors' views

As part of our on-going programme of consultation with the profession, we issued questionnaires in January to a random sample of solicitors practising legal aid. Through the survey, we aimed to obtain views on the efficiency and ease of use of the legal aid process, with a view to improving procedures, communication and any other problem areas identified.

We received 164 responses out of the 1,000 questionnaires sent out,16.4%. To encourage completion, the Law Society had agreed to allow one hour's CPD for solicitors to complete the survey.

Overall, the survey shows that solicitors appear to be generally satisfied with our services. Compared to the 2000 survey, solicitors' views of our performance seem to be significantly more positive, and there are very few areas where they consider that our services have not improved. In a number of areas it appears that solicitors expectations of our levels of service are increasing.

The table below sets out the results of some of the key questions from the survey.

	Overall, how satisfied are you with the way we deal with the services provided by....?		How would you say the following elements of the Board's service are changing compared to the last survey, two years ago?	
	Positive/ neutral	***Negative %***	***Positive/ neutral %***	***Negative %***
the Board?	**79**	**19**	**81**	**15**
advice and assistance intimations and increases?	**85**	**15**	**79**	**18**
advice and assistance accounts?	**85**	**12**	**81**	**15**
criminal applications?	**93**	**6**	**69**	**12**
criminal accounts?	**87**	**10**	**69**	**10**
civil applications?	**71**	**29**	**50**	**35**
civil accounts?	**80**	**18**	**64**	**23**
children's legal aid applications?	**92**	**4**	**n/a**	**n/a**
children's legal aid accounts?	**96**	**2**	**n/a**	**n/a**
our Treasury Department?	**84**	**16**	**61**	**15**
our communications?	**88**	**12**	**80**	**16**

There remain some areas where the level of dissatisfaction is higher than we would like to see. We will concentrate our efforts in those areas to further improve the service. We are developing an action plan to address the main areas of dissatisfaction.

Advice and assistance

Benefits changes in advice and assistance

We wrote to firms on **31 March 2003** about important legal aid changes effective from April. Since then, we have a considerable number of enquiries regarding two of these changes:

- changes to income 'passporting benefits' in sections 8(b) and 11(b) of the Act
- general disregard of benefits in advice and assistance.

This article aims to further clarify the impact of these changes. We also wrote to practitioners on 17 July with further clarification.

Changes to 'passporting benefits'

These changes were effective from 6 April 2003 and had the practical effect of reducing the number of benefits automatically qualifying an applicant on income from four to two. The only two benefits which continue to have this effect are income support and income-based jobseeker's allowance. Disabled persons tax credit and working families tax credit are no longer 'passporting benefits'.

Please remember that the new 'tax credits' are **not** 'passporting' benefits. They cover a much wider range of people than the old working families tax credit (WFTC), including those who previously received WFTC. Payments are normally paid directly into the applicant's or the applicant's partner's bank account every four weeks. Most people are entitled to either Working Tax Credit or Child Tax Credit.

General disregard of benefits

This amendment to the regulations was effective from 6 April 2003. When assessing a person's eligibility for A&A, certain benefits are left out of account. The most common benefits and tax credits to be disregarded from the income assessment are:

Common Tax Credits and Benefits	Other Benefits
Working Tax Credit	Guardian's Allowance
Child Tax Credit	Child's Special Allowance
Child Benefit	Housing Benefit
Incapacity Benefit	Council Tax Benefit
Invalidity Benefit	Xmas Bonus for Pensioners
Retirement Pension	Graduated Retirement Benefit
Attendance Allowance	Back To Work Bonus
Severe Disablement Allowance	Child Maintenance Bonus
Invalid Care Allowance	Child Support Maintenance
Disability Living Allowance	Sums Payable to holders of the Victoria Cross or George Cross
Disability Working Allowance	War Widow's & Widower's Pension & War Disablement Pension
Disablement Pension	Widow's Payment
Widow's Pension	
Statutory Maternity Pay	
Widowed Mother's Allowance	
Contribution-based Jobseeker's Allowance	

Please note that only maintenance paid through the Child Support Agency (CSA) is to be disregarded. It is still in order to deduct any dependant allowance. No reference should be made to a disregarded benefit on the advice and assistance application form. Only income still to be taken into account should be included in the income assessment. If a spouse/partner is receiving a 'disregarded' benefit, and has no other income, 'nil' should be entered in the relevant boxes on the form.

If you are in doubt about whether a benefit should be disregarded, you should refer to the terms of the Social Security Contributions and Benefits Act 1992 or the Tax Credits Act 2002.

Application form

You should continue to use the existing advice and assistance application form. A new form, which will reflect these amendments to the regulations, will be available later in the year. If we have to return the form to you**,** you can amend the original form remembering to initial any amendments, and you will still get the original commencement date, as long as all other conditions are in order.
Please note - you must still complete the capital section of the application form, whatever the applicant's income circumstances.

Civil legal aid

Further improvements to the contributions system

In Issue 34 of *The Recorder*, published in March 2002, we explained several provisions designed to improve the system for paying contributions in civil legal aid.

One of the provisions gives solicitors the opportunity, at the time an offer of legal aid is made, to compare the level of contribution requested to a reasonable estimate of the total case cost. If the cost of the work envisaged is likely to be substantially less than the assessed contribution, solicitors can ask us to restrict the amount the applicant has to pay to the estimated case cost, rather than the assessed contribution. This would be subject to the proviso that, if the actual cost of the case is greater than the estimated cost, the client will be liable for any shortfall up to a maximum of the assessed contribution.

The assessment of means will be carried out in exactly the same way, and will still seek to establish the applicant's disposable income over the fixed computation period of twelve months and disposable capital over the life of the case. We should still be notified of changes in your client's financial circumstances.

This article expands on the factors that we consider should be covered in deciding if payment of a case cost estimate is appropriate.

When seeking to convert to a "case cost" based contribution, please write to **Claire Ewart, Assistant Manager (Means),** addressing, in as much detail as possible, issues such as -

- the stage the case has reached - for example, if the proceedings were commenced before qualification for legal aid became an issue, or Regulation 18 has been used for especially urgent work and a clear picture has therefore emerged of the remaining work required
- the likelihood of the case being defended
- the cost of any expert witnesses or costly items of evidence
- what, using your knowledge of prospective costs, you consider the final account is likely to be

and confirming that you have fully explained to your client that, if the total cost of the work exceeds your estimate at the end of the day, they will be expected to pay the shortfall up to a maximum of the assessed contribution.

Contributions reduced in this way will still be payable in instalments, usually over 20 months.

If we agree that the monthly instalments can be reduced and at some future point you consider that your estimate was too low, you can approach us and we will contact your client to seek payment of a higher contribution, or a revised estimate, again whichever is the lower. You should ensure that your client is aware that we may ask him or her to pay a higher monthly instalment if your estimate changes.

If your estimate is exceeded, the assisted person will be expected to pay the remaining amount due, at the instalment rate we originally offered.

Where a contribution is payable from capital, this normally has to be paid in one lump sum at the outset, but this can also be restricted to a lower estimate. However, your client must be prepared to set aside sufficient capital to pay the whole contribution assessed or the total of your account, whichever is the lower, if this proves necessary.

We hope that the opportunity to pay estimated case costs will allow more people to take up the option of legal aid, giving them all the advantages that a legally aided client enjoys.

If you would like any further information or to discuss an individual case please contact Claire Ewart, Assistant Manager, (Means).

Minimum financial threshold for Court of Session actions

We have recently reconsidered our approach to the financial threshold at which it would be reasonable to grant civil legal aid for proceedings in the Court of Session.

In cases which present no particular difficulties or complexities, and the only real issue presented in support of Court of Session proceedings is quantum, it will not generally be considered reasonable to make legal aid available to raise proceedings in the Court of Session where the likely quantum is less than £75,000. Where quantum is less than that figure, solicitors should fully explain the nature of the particular complexity or difficulty (such as jurisdiction or evidence) which would make the case unsuitable for the sheriff court.

Information to be supplied where an award of expenses has been obtained

We included in Issue 36 of *The Recorder* some guidance about the information that should be supplied by solicitors to the Board at the conclusion of a case where property may have been recovered or preserved.

It is also important in cases where no property has been recovered or preserved but an award of expenses has been obtained, that certain information is provided to us. Briefly, in these cases we need:

- a copy of the decree
- confirmation as to whether expenses have been paid by the opponent and, if not, the prospects of recovery of expenses
- information about the opponent's ability to pay, including details of any employer, bank accounts, or known assets.

This information will help us to:

- intimate the debt in expenses promptly
- recover money into the Legal Aid Fund more quickly
- contact debtors promptly, before they move away.

It may also help applicants who have paid a contribution, and to whom a refund may become available in the future, and it may allow earlier release of any property recovered or preserved that we have had to retain.

Telephone enquiries about this may be made to George Knight on 0131 226 6720 or Fiona McGilvary on 0131 226 6730.

Supporting documentation for civil legal aid applications

In Issue 34 of *The Recorder*, in March 2002, we issued guidance on our approach to the requirement for supporting documentation in civil legal aid applications. This provided information on our previously stated approach to "corroboration". It would appear that this area continues to be somewhat problematic. To assist the profession, we have summarised our requirements below – this applies to cases where the applicant is the pursuer or the defender.

For an application to meet the test of probable cause, we must have sufficient information to establish that the applicant has a plausible case, which may require more than a simple acceptance of a bald assertion made by the applicant. Where supporting information is required then this is not corroboration in the technical sense of the Civil Evidence (Scotland) Act 1988 and we do not use that terminology. There also continue to be cases, such as in a divorce, in which there are special evidential requirements, where evidence from a party other than a party to a marriage is a necessity.

In determining whether it is reasonable for legal aid to be granted, we require sufficient information to show that there is adequate evidence to litigate and that there are reasonable prospects of success or recovery. Again, if this requires supporting information or vouching to be produced, then this is not corroboration in the technical sense.

In either case, as our existing guidance indicates, if the supporting information is unavailable, the solicitor should explain why.

Clawback – information for applicants for civil legal aid

We will shortly issue a new leaflet entitled "*Civil legal aid – what you may have to pay at the end of your case if you win or keep money or property*", explaining to applicants for civil legal aid what they could have to pay if property is recovered or preserved as a result of their civil legal aid. We are aware that in the past both solicitors and their clients have felt that there was insufficient information available on this topic, and we hope that this new leaflet, combined with the recently issued guidance for solicitors on the same subject, will meet this need.

This information will augment the advice given by solicitors on the possible application of clawback to a client's case. It should, therefore, be given to all clients where clawback could apply. The principles also apply to advice and assistance, and it will also therefore be appropriate in some cases to hand it out when you are granting advice and assistance.

Copies of the leaflet will be sent by October to all solicitors' firms, and other bodies such as CABx and advice agencies.

Criminal legal aid

Criminal Legal Assistance Register

We are finding that solicitors are not always informing us when changes take place that are relevant to their, or their firm's, registration under the Code of Practice in relation to criminal legal assistance. This can cause them unnecessary problems with both applications for criminal legal assistance and accounts for such work.

Typically, this may be where registered solicitors move to another, or newly, registered firm and do not return all the requisite paperwork issued to them by the Board in connection with their move.

The Code of Practice in Relation to Criminal Legal Assistance requires a solicitor to be connected to a registered firm before he/she can be registered to provide criminal legal assistance. If a solicitor is not registered, we cannot accept any applications for criminal legal assistance – such applications are automatically rejected by our computer systems – and, additionally, any criminal legal assistance work performed by a non-registered solicitor for a registered solicitor under delegation will fail to be abated from accounts.

What is the process when a registered solicitor moves firm?

When a registered solicitor moves from one registered firm to another and notifies us of this, our Receipts and Payments Department issues a mandate for completion in relation to the new firm. Similarly, when a solicitor notifies us that he/she wishes to be registered for the provision of criminal legal assistance, he/she is sent a registration form and mandate for completion and return. It is important that the completed forms are returned as soon as possible, for the reasons explained below.

The mandate is the form by which the solicitor instructs the Board how to pay his/her firm for accounts for which he/she is the nominated solicitor and establishes a link between the firm and the solicitor. We use it to create/update the solicitor's details on our payments system. Until that process is completed, no entry can be made on the Criminal Legal Assistance Register. Even if the appropriate information for registration is supplied, until the system has been updated for the mandate information, we cannot proceed with registration.

As stated above, a solicitor can only be registered if he or she is connected to a registered firm. If that firm informs us that a registered solicitor has left, or is leaving, the firm, then unless we are given details of his/her new registered firm, we will have to remove him/her from the Register. To avoid unnecessary administration, both by the Board and the registered solicitor who wishes to remain registered, registered solicitors should make sure that the Board is advised of an impending move, preferably before it occurs.

Occasionally, the Criminal Legal Assistance Registration Unit (CLARU) is notified some time after a registered solicitor has left a firm, has withdrawn from practice, or has moved to a non-registered firm. When such circumstances arise, Compliance Partners are asked to provide CLARU with a forwarding address for them so that we can clarify their registration status.

Sanction for interpreters

We have recently reviewed our guidance in the *Criminal Fees and Taxation Guidelines*, which treats the use of an interpreter in a criminal legal aid case as work of an unusual nature, or likely to involve unusually large expenditure. This meant that solicitors had to obtain the Board's prior approval for the instruction of an interpreter or translator. We will now treat the use of an interpreter or translator as an ordinary outlay, which does not require prior authority. When submitting an account, the solicitor will need to satisfy us that the outlay was actually, necessarily and reasonably incurred, due regard being had to economy.

We will take the same approach in civil legal aid cases.

The Youth Court Pilot, Hamilton Sheriff Court

The Youth Court pilot commenced in Hamilton Sheriff Court on Monday 2 June 2003. The Youth Court is expected to deal with about 120 young people between the ages of 15 and 17 each year, over the course of its two-year pilot period. These clients, who are likely to have at least three previous offences, will be fast tracked to sheriffs with a wider range of sentencing powers, aimed at addressing the young people's offending behaviour.

A Youth Court is any court dealing with a youth court case, and these court cases should be clearly identifiable from the face of the complaint. The offender is entitled to legal representation, subject to financial eligibility, from a solicitor of choice in relation to all appearances before or leading to the Youth Court including hearings in respect of sentencing. A feature of the Youth Court is the hearing on the community-based orders.

Legal aid arrangements for these cases are largely unaffected, with a few exceptions, where various administrative arrangements have been put in place in order to provide legal aid cover. The legal aid arrangements are as follows:

Accused in custody, or on an undertaking to appear

Duty solicitor

The duty solicitor will continue to charge on a *per capita* basis when the accused first appears before the court. However, the cap of £108.85 for follow up work does not apply and the duty solicitor will be entitled to charge for all work done until the case is finally disposed of on a time and line basis, chargeable under Schedule 1. If the accused pleads not guilty at the pleading diet, an application can be made for summary criminal legal aid. Automatic criminal legal aid is available, if the accused is remanded in custody, until the application is disposed of. Following conviction, a fixed payment of £50 under criminal legal aid has been prescribed for each appearance on behalf of the assisted person, in respect of a Youth Court hearing in consideration of a community supervision order.

Solicitor of choice

The exclusive jurisdiction of the duty solicitor does not apply to proceedings taking place before a court that has been designated a Youth Court by the Sheriff Principal. A solicitor of choice will be providing automatic criminal legal aid (as does the duty solicitor) and will need to complete an automatic intimation form confirming that the accused is being provided with automatic criminal legal aid. These forms can be obtained from the sheriff clerk's office in Hamilton Sheriff Court, or from the Criminal Applications Department in the Board.

The solicitor of choice will charge on a time and line basis, under Schedule 1, from and including the pleading diet until the conclusion of the proceedings. If the accused pleads not guilty at the pleading diet, a summary criminal legal aid application needs to be made in the usual way.

If criminal legal aid is granted the solicitor is entitled to the fixed payment for work done under automatic criminal legal aid, rather than the time and line payments, from the tendering of the plea of not guilty to the determination of the application for legal aid. If the matter does not, for any reason, proceed to criminal legal aid, all work is chargeable on the time and line basis.

Cited/diet cases

Advice and assistance is available. If the accused pleads not guilty, any appearance at the pleading diet shall be made on a *pro bono* basis, and thereafter an application for summary criminal legal aid needs to be made in the usual way.

When a plea of guilty is tendered, ABWOR will be available in most circumstances. The Board considers that the criterion relating to the *age* of the accused may be a decisive factor for the solicitor in considering whether ABWOR may be provided under regulation 6(1)(c)(f) of the ABWOR regulations.

However, where there is a preliminary plea (a plea to the competency or relevancy or plea in bar of trial), ABWOR would normally only be appropriate under regulation 6(1)(a) if the solicitor can apply the criteria relating to the likelihood of loss of liberty or livelihood. Where this criterion does not apply, payment will be made to a solicitor under a new Determination by the Scottish Ministers. A solicitor can also provide representation, under the Determination, where the client has been found guilty in proceedings for which criminal legal aid was not available, until the conclusion of the case. Where these situations arise, the usual A&A/ABWOR form should still be used.

ABWOR is only available subject to financial eligibility.

“Youth Court Section”

Please note that all applications for criminal legal aid, intimations of advice and assistance/ABWOR, increases under advice and assistance or ABWOR, and any correspondence should be clearly addressed to the Youth Court Section of the Scottish Legal Aid Board. Any queries should be directed to Kingsley Thomas, Manager, Criminal and A&A Applications on 0131 240 2085.

Accounts

Civil accounts - payment on offer

In the past, because of the limitations of the computer systems, we could not make payments on offer where a solicitor had already received payments under the reimbursement of outlays or payment to account schemes. However, our systems now allow us to make a payment on offer after deducting any previous payments made. This will improve cashflow to practitioners.

Assessment issues

We have assisted a few firms with accounting issues, which has helped smooth the assessment process. These sessions include help with improving the standard of accounts that firms submit and have proved beneficial to all concerned. This can lead to a reduction in the need to return accounts for further information and helps create a better understanding of the Board's requirements. The model criminal account issued to criminal practitioners in March was introduced to give a clearer picture of our basic requirements for assessing accounts.

As an extension of this, we are inviting firms to request informal advisory sessions with Accounts staff to deal with any general accounting issues that you may have.

Please write to Judith Cemery, Manager of Accounts Assessment, if you would like to have such a meeting. It would be helpful if you could include an indication of the topics you would like to discuss/clarify.

Board news

E-business

There have been some hold ups in the development of the advice and assistance e-business system; however, these have now been resolved, and the Board is now confident that pilot site testing and training will commence in mid September. Live piloting with practitioners will now be scheduled for early December.

Annual report

We published our Annual Report for 2002-2003 at the end of July, and we have circulated it to all firms. As usual, it includes information about the Board's activities throughout the year; statistics and information about volumes, costs and trends in legal aid; and information about how we have performed against our targets for applications, accounts and other parts of our operations. We hope you will find this interesting reading, and would welcome any comments from members of the profession on its content.

E-mail addresses

Please make sure that if you e-mail us, you use our full e-mail addresses – including .uk at the end of the address. Another organisation in the USA has an address @slab.org, and is receiving quite large amounts of mail for the Board when the writer omits the final .uk.

Where can I get…?

We often receive phone calls from solicitors' offices asking us where they can obtain forms, publications etc. The list below gives details of where to obtain these.

- Application forms and accounts forms
- Scottish Legal Aid Handbook

*Available from the Board's printer, Geo Stewarts, tel 0131 659 6010, or Meadowbank Works, 67 Marionville Road, Edinburgh, EH7 6AJ (*or *DX ED419, Edinburgh 1)*

Legal aid information leaflets:

- Guidance for opponents in civil cases
- Civil legal assistance: a simple guide
- Criminal legal assistance if you are in custody
- Criminal legal assistance if you are not in custody

Available for solicitors from Geo Stewarts as above.
For the public, the leaflets are available from the Board's Communications Office and web site and a range of venues such as Citizens Advice Bureaux, other advice centres and libraries.

- Criminal Fees and Taxation Guidelines
- Guidelines on Reparation Cases, 1997
- Legal Aid Fees and Taxation Guidelines, 1994
- Criminal Accounts Assessment Manual (Fixed Payments)
- Criminal Accounts Assessment Manual (Solemn Cases and Non Fixed Payment Summary Cases)
- Guidelines on reasonableness in civil legal aid cases
- Guidance on property recovered or preserved
- Advice and assistance guidelines
- Criminal Legal Assistance Register
- Code of Practice in Relation to Criminal Legal Assistance
- The Recorder
- Annual Report 2002-2003
- Corporate Plan 2003-2006

Available from the Board's Communications Office, tel 0131 226 7061 and web site www.slabpro.org.uk

Have you received this information?

Since the last issue of *The Recorder* we have issued the following mailshots, containing important information about legal aid, to the profession:

15 August 03 Guidance for civil practitioners:

- Civil legal aid: cases involving a wider public interest
- Advice and assistance and ABWOR for immigration and asylum cases – introduction of a template approach for requests for increases in authorised expenditure

14 August 03 Postal services – a letter to office managers highlighting mail delivery issues

31 July 03 Developing... Annual Report 2002-2003. The Report shows that the legal aid system is delivering a better service due to a wide range of improvements, important developments and higher performance in the past year.

17 July 03

- Further clarification of the changes to financial eligibility for advice and assistance.
- Guidelines on sanction for counsel in children's cases.

14 July 03 Financial information supporting a civil legal aid application pilot scheme for proceedings in the Court of Session. As part of the pilot we have published guidance on what minimum financial information and verification is required at the outset, with the aim of reducing delays.

20 June 03 Duty Plans 2004 applications details, sent to all criminal legal aid practitioners.

19 June 03 Corporate Plan 2003-2006 - the plan summaries the Board's progress during the past year and sets out what it aims to achieve during the coming three years.

April 03 Letter to firms about new legal aid information leaflets and how to order these and legal aid forms

Continued overleaf

21 March 03 Model Criminal Account (to CRIMINAL legal aid practitioners ONLY) Designed to aid firms in producing properly prepared or vouched accounts which provide sufficient information to meet our requirements

31 March 03 Changes to financial eligibility – the following documents were enclosed

- keycard (including notes for guidance on advice and assistance)
- availability of ABWOR as at 7 April 03
- revised pro-forma calculation sheet and explanatory notes
- notes for guidance on use of regulation 18 (special urgency)
- revised leaflet showing uprated eligibility limits

The mailshot also gave details of a number of important changes that became effective on 6 April 03 and 7 April 03.

- changes to "passporting" benefits in sections 8(b) and 11(b) of the Legal Aid (Scotland) Act 1986
- the Advice and Assistance (Scotland) Amendment Regulations 2003, which provided for
- resources of a person's partner of the same sex to be taken into account
- an increase in "clawback" limit
- a general disregard of benefits in assessing financial eligibility for advice and assistance
- the Civil Legal Aid (Scotland) Amendment Regulations 2003, which provide for
- resources of a person's partner of the same sex to be taken into account
- an increase in "clawback" limit
- the Advice and Assistance (Financial Conditions)(Scotland) Regulations 2003, which provide for
- changes to income and capital eligibility limits
- changes to the scale of contributions
- the Civil legal aid (Financial Conditions) (Scotland) Regulations 2003, which provide for changes to income and capital eligibility limits
- further improvements to the contributions system
- guidance on new Court of Session personal injuries rules
- criminal legal aid: issue of certificates (summary cases)/payment of Crown witnesses

Legal Aid Conference

The Law Society of Scotland will be hosting its annual Legal Aid Conference in partnership with the Scottish Legal Aid Board at Dunblane Hydro Hotel on 24th October 2003 (10a.m. to 5.15p.m.) and 25th October (9.30a.m. to 1p.m.).

The Conference will cover a spectrum of civil and criminal legal aid issues, including reform of the criminal legal aid system, quality assurance under the civil legal aid reform scheme, the Coulsfield Report and the legal aid consequences, and recent developments in housing law.

There will be a keynote address given by Cathy Jamieson, Minister for Justice.

The conference will be chaired jointly by Ian Smart, Convenor, Legal Aid Committee, Law Society of Scotland and Jean Couper, Chairman, Scottish Legal Aid Board. Speakers will include members of the profession and representatives from the Board. The conference qualifies for 10 hours CPD.

For further information and booking details, contact Update Courses at the Law Society of Scotland or visit www.lawscot.org.uk

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