



The Recorder

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General information

Please see page 2 to
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articles in this issue.

This edition of the Recorder provides news and guidance on a wide range of changes and developments to legal assistance. Highlighted below are some of the significant issues detailed in this edition.

Civil, children's and criminal legal assistance

Information from applicants under advice and assistance - page 6

Regulations now provide for the supply of information by a client receiving advice and assistance failing which the Board can recover from the applicant all fees and outlays paid out of the Fund.

Civil legal assistance

Reform of civil advice and assistance - page 10

The reforms will be introduced in 3 phases. The first stage is increased fees for work done on or after 30 April 2005. This is the balance of the 21% increase, following the 5% interim increase made in June 2004. The next stage of reforms will be introduced in autumn.

Civil advice and assistance - solicitor hardship provisions - page 12

In civil advice and assistance, significant changes have been made to the solicitor hardship provisions. The Board is now able to recover from the client fees and outlays paid to a solicitor from the Fund from expenses or property recovered or preserved at a future date.

Information from applicants and assisted persons in civil legal aid cases - page 14

The Board now has new powers to suspend or withdraw civil legal aid and to recover the amounts paid from the Fund where an applicant or assisted person fails to provide information to the Board, such as in connection with a re-determination. You should encourage your clients to provide us with the information about changes in circumstances that we request.

Restricting contributions to solicitors' estimates of civil legal aid case costs - page 14

To benefit your clients who are assessed as having a contribution to pay, we encourage you to use the option of restricting their contribution to your estimate of the case cost.

Are you charging appropriately for civil legal aid accounts? - page 18

We are concerned that solicitors may be undercharging in a number of areas under the new civil regime.

Further news and guidance

Also included in this issue is guidance about grave hardship applications, advice and assistance templates, adults with incapacity, mediation on non-family cases, legal assistance for asylum and immigration and sheriff court civil fees (defended).

Criminal legal assistance

New tables of fees - page 22

New tables of fees for counsel in criminal proceedings apply to proceedings concluded on or after 4 April 2005.

Summary criminal legal aid - page 24

We are changing our practice in issuing criminal legal aid certificates where we will use a single grant where several complaints are served at the outset but the charges in these complaints arise from the same incident. Also new fixed payments have been prescribed to deal with situations where trials have been adjourned after commencements.

Further news and guidance

Also included are updates on criminal reforms, quality assurance in legal assistance, the review of summary criminal legal assistance, eligibility for ABWOR, ABWOR for obstructive witnesses and vulnerable witnesses.

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Chairman's Introduction



Over the coming year there will be significant changes in legal assistance including reform of civil advice and assistance, reform of feeing arrangements for solemn legal aid and the introduction of peer review quality assurance arrangements for criminal legal assistance. It is important that these reforms are fully informed by consultation with the profession and other interested groups. It is also important that once the reforms are decided upon the profession have sufficient opportunities to learn about the changes and the implementation of them. In February we wrote to all local Faculties looking to set up visits and to run a series of roadshows, some to be hosted jointly with the Law Society of Scotland, to help us do this.

During the first half of 2005 – 2006 we will conduct a series of reviews of our internal processes to look at how we take decisions on cases and how we progress them. Through this we aim to identify ways in which we can further improve our systems and processes.

We continue to monitor the reform of civil legal aid. Having now seen a reasonable number of legal aid accounts under the new regime we are concerned that solicitors are

undercharging in a number of areas. We detail these on page 18 of this edition. I hope you will find this information useful.

Our programme of system development continues apace. We are now implementing a new civil applications computer system and, after an initial period of training and settling in, I believe you will see a number of improvements in our work as a result of this major new system. These include:

- the ability to process cases more quickly
- easier location of case information which will be held digitally removing the need for paper files
- easier tracking of the progress of civil cases
- revised standard letters to make them more informative and clearer
- the provision of much better management information on legal aid.

The online advice and assistance system is operating successfully with a number of pilot firms and this has proved invaluable in helping us develop the system. However, we are currently

re-writing significant parts of the system to fit with the proposed changes in civil advice and assistance. Once the reforms to civil advice and assistance are implemented in the autumn the online system will become more widely available to the profession.

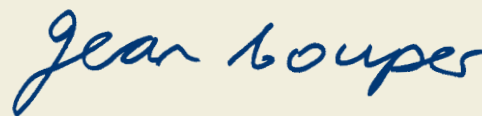
More generally all legal aid services will be available online by the end of December 2005.

We expect to publish in May our Corporate Plan for 2005-2006, which provides more information on our plans for the coming year.

The report of the Strategic Review of Legal Aid was published in October 2004. The purpose of the review was to look at the functions and delivery of legal aid, and it was carried out by a team from the Scottish Executive Justice Department and the Board, advised by a Reference Group. We understand that the Scottish Executive plan to publish the consultation document in the next few weeks. Until the outcome of the consultation is known we cannot be sure which aspects of the review will be implemented in the short term.

However, we are determined to work closely with the Scottish Executive, the Law Society and other stakeholders to address Ministers' decisions through implementing short term changes and developing proposals and plans for longer term implementation to improve the delivery of legal advice, assistance and representation.

The coming year will provide considerable challenges for the Board and the profession but also opportunities to increase further the effectiveness of legal aid. The Board is committed to work closely with the profession; we will do our very best to support you in dealing with the changes ahead and take advantage of the significant opportunities to deliver services more efficiently and effectively.



Jean Couper
Chairman

Tripartite Group

Meetings of the Tripartite Group, which comprises representatives of the Law Society of Scotland, the Scottish Executive and the Board, took place on 22 November 2004 and 8 February 2005. The main items discussed at the meetings were:

- **Summary criminal legal aid review**

The Board reported on progress with the review and the Scottish Executive on progress with the proposed White Paper. There is an article on this on page 21.

- **Children's legal aid**

The Board and the Society are discussing uplifts in fees for children's legal aid cases. Prior to drafting proposals, the Society was starting to identify the specific types of case that might be appropriate for uplifts and the features of these cases which would justify such uplifts being made.

- **Research on the availability of trainees and assistants**

It was previously agreed that there should be joint research into the recruitment and retention of lawyers. A paper detailing the costing of the research was discussed and further work on the research criteria would be carried out.

- **Monitoring of civil legal aid reforms**

The group is looking at how the reforms of civil legal aid can be monitored – further details of this are on page 11.

- **Strategic Review**

The Scottish Executive is planning to publish the consultation paper shortly, and specific events and roadshows are to be set up once the publication date has been finalised.

Legal Aid Online

We have been running our pilot Online system for advice and assistance for six months. Feedback from the pilot sites has been very useful in helping us further develop the software for the new system. The changes have been particularly focused on making it easier to input applications, increases and accounts and on enhancing the flow of information back to the solicitor. We are currently testing these changes.

Additionally we have been carrying out work to enhance the speed and volume capabilities of online services, making access faster and even more reliable. This is also being tested at the moment, and these will be implemented alongside the software improvements.

We are also rewriting the system to accommodate the reform of civil advice and assistance which is due to be introduced in the autumn.

However in advance of that, we are now seeking more firms to join our Online pilot from May. Anyone interested should contact Diane Ireland at the Board, on 0131 240 2013 or email irelanddi@slab.org.uk for a no obligation discussion.

Shortly, we will be starting to develop civil legal aid and criminal legal aid online systems.

Civil, children's and criminal legal assistance

Advice and assistance guidance – for civil, children's and criminal cases

Information from applicants under advice and assistance

Any person receiving or who has received advice and assistance is now required to submit to us any information we ask for. If they do not, we are entitled to recover from that person any sums paid out of the Fund in respect of the fees and outlays of that person's solicitors. This is a significant change and should be carefully noted.

You should make your clients aware of the need to respond to any requests for information we make and of the consequences of failing to do so.

Advice and assistance subject matter

It has become increasingly important for the legal profession to be confident as to whether the advice and assistance they are giving is categorised as civil, criminal or children's.

There are now several parallel registration schemes for solicitors undertaking civil, criminal or children's work. There are also different levels of fees given that civil and children's advice and assistance fees were increased by 5% as at 28 June 2004, and were increased to the extent of the balance of the agreed 21%, with effect from 30 April 2005.

Following a recent change in the regulations, we now have the ability, with the authority of regulation, to issue guidance as to whether the subject matter of advice and assistance is civil, criminal or children's. Although most matters can clearly be recognised as civil, criminal or children's, there are some which it may be helpful to clearly categorise for the purposes of compliance and also for the payment of accounts.

We will shortly be reviewing and clarifying this guidance.

Grants of advice and assistance

We have previously published guidance to the profession on the approach that should be taken to multiple grants of advice and assistance but we are, unfortunately, continuing to receive intimations of grants which we do not consider to have been made in accordance with the legislation. Regulations are now in place which give us the power to prescribe, in accordance with any guidance issued from time to time, whether advice and assistance relates to one or more distinct matters. Guidance we issue now has the authority of regulation.

Current guidance on what we consider to be an inappropriate use of advice and assistance is set out at page A:11 of the Scottish Legal Aid Handbook and the latest advice to solicitors is contained in issue 38 of *The Recorder* (December 2003). We will shortly be reviewing and clarifying our guidance, which we will publish in the new Handbook.

These provisions allow our Accounts Department to pay on only one certificate in circumstances where the client should only have been admitted to advice and assistance once, in line with guidance we issue.

information

The Handbook and previous Recorder is available:

- online at www.slab.org.uk in the legal profession section
- printed copies can be ordered by calling our Communications Office on 0131 240 1985.

Advice and assistance increases

In preparation for the changes that will be implemented as part of civil advice and assistance reform, we have transferred the administration and assessment of criminal advice and assistance increase applications to our Criminal Applications Department.

Please therefore note the following contacts for increases:

Criminal advice and assistance increases

Telephone: 0131 226 7061 ext 461
Fax number: 0131 226 5477 or 0131 220 2904

Civil and children's advice and assistance increases

Direct telephone: 0131 240 2064 or 0131 240 2065
Fax number: 0131 220 3462 or 0131 220 2904

If you telephone the Board's general number to ask for advice and assistance increases, you will be asked by our switchboard if you are calling regarding a civil or a criminal increase matter.

Other rights and facilities

The provision relating to "other rights and facilities" has, to date, only applied to ABWOR. Regulations are now in force which extends the test to be applied as to the availability of other rights and facilities beyond ABWOR to the whole of advice and assistance under Part II of the Act. You should not admit a person to advice and assistance where it appears to you that the client has other rights and facilities available making advice and assistance unnecessary, or has a reasonable expectation of obtaining financial or other help from another body.

You are entitled to make advice and assistance available if the applicant has not succeeded in enforcing or obtaining such rights, facilities or help and has, in your opinion, taken all reasonable steps, short of proceedings by way of declarator or similar action, to enforce or obtain them.

If other rights or facilities are subsequently identified, after you start providing advice and assistance, or the rights, facilities or help are qualified in some way, you should require your client to sign an undertaking to pay us any sum received from that body on account of the expenses of the advice and assistance. The sort of financial or other help from a body of which a client is a member might include –

- legal expenses insurance
- cover under car insurance policy
- assistance available from a trade union or a local authority
- advice on general issues from Scottish Prison Complaints Commissioner.

We now have the power to pay such sums as are recovered under advice and assistance, and also in terms of the civil and criminal regulations, into the Fund.

Eligibility limits

Keycard and eligibility limits

Changes to the eligibility limits for advice and assistance and civil legal aid were made on 11 April 2005. The revisions were detailed in our mailing to the profession on 7 April.

The mailing also included a revised Keycard dated April 2005. This year's Keycard has six pages of information and is coloured blue. We hope that the new style Keycard is a useful desk resource for daily use.

Please note that the Keycard contains one error that you should amend. In the civil legal aid section on clawback limits, we provide a table of the limits to be applied. The £4,395 limit should be applied for civil legal aid applications dated 12 April 2004 to 10 April 2005, and not 12 April 2003.

We have also published a revised edition of our leaflet "Do I qualify financially for advice and assistance or civil legal aid? This was included in our mailing and further copies can be ordered from Stewarts, the Board's printers, on tel 0131 659 6010 or by using the usual order form. An online calculator based on this leaflet will shortly be available on our website www.slab.org.uk

information

The mailing, Keycard and leaflet are available:

- online at www.slab.org.uk in the legal profession section
- printed copies can be ordered by calling our Communications Office on 0131 240 1985
- leaflets should be ordered from Stewarts on 0131 659 6010

Sanction in legal aid cases

Sanction for counsel – civil and criminal cases

We have noticed that in criminal and civil cases, unnecessary applications for sanction for the employment of junior counsel have been made. Where a case is raised in the High Court or the Court of Session, you do not need sanction for junior counsel as you are automatically entitled to employ junior counsel in those circumstances. Sanction is only needed where you wish to employ

- junior and senior counsel
- senior counsel alone
- more than one junior counsel.

Sanction for experts

We are aware that when solicitors ask us for sanction to use experts it is very important that we keep any delays in the processing of these applications to an absolute minimum. To minimise the risk of us having to continue a sanction request it is important that solicitors submit all of the information we need with the application.

We have previously told solicitors that in certain situations detailed information in support of a request for sanction is not needed. These situations are:

- valuations in matrimonial cases up to a cost of £250
- routine medical reports in reparation cases up to a cost of £450
- health and safety reports in reparation cases up to a cost of £750
- actuarial reports in matrimonial cases falling within the Board's existing guidelines up to a cost of £500
- road traffic experts (both civil and criminal) up to a cost of £750
- firearms experts in criminal cases up to a cost of £250
- drugs experts in criminal cases up to a cost of £250
- medical reports in criminal cases up to a cost of £300.

Where the sanction request is for one of these experts, we do not need to see pleadings or any information about the expert beyond details of their location.

In all other situations, however, solicitors must provide:

- a copy of the most up-to-date pleadings available
- details of the particular expert to be instructed including their name and location
- a detailed breakdown of the fees to be charged by the expert including their hourly rate
- details of a competitive quote from another expert where the sanction request is likely to cost in excess of £1,500.

If this information is provided with an application we should be able to take a decision straight away.

Please remember that if you already have sanction to get an expert's report under civil or criminal legal aid, you do not need separate sanction to cover any necessary attendance at court by that expert. If however the report was obtained before legal aid was granted, whether using advice and assistance or not, sanction will be needed under the grant of civil or criminal legal aid for the expert's attendance at court.

Civil Legal Assistance

Civil legal assistance news

Reform of civil advice and assistance

At the Joint Legal Aid Conference on 29 October 2004, Hugh Henry MSP, Deputy Minister for Justice, indicated that the Scottish Executive intends to take forward the proposals for the reform of civil advice and assistance that had been developed by the Tripartite Group (comprising representatives of the Board, the Law Society and the Scottish Executive).

In December last year, the Scottish Executive issued, on behalf of the Tripartite Group, a consultation paper, setting out the proposals for the first stage of the reform and asking for views on the desirability and feasibility of the changes proposed. The covering letter set the current proposals in the context of the Executive's commitment to continue to modernise legal aid.

To facilitate this exercise, they invited the selected consultees to a number of meetings. Four such "stakeholders" meetings were held in January and were attended by representatives of a number of interested bodies. A separate meeting for solicitors was held on 31 January. These meetings have been constructive.

The key elements of the reform are:

- changes to the way in which solicitors apply for advice and assistance and increases
 - solicitors will be able to grant advice and assistance and apply for increases in certain listed categories of case
 - "templated" increases will be used for a large number of these
 - where the client's problem is not on the list, a solicitor will still be able to grant civil advice and assistance, but only initially to diagnose the client's problem and decide whether further advice and assistance from a solicitor is needed
- fee rates for solicitors will be increased by 21% (including the 5% increase in July 2004)
- arrangements for the payment of minimum fees will be ended
- there will be changes to the assessment of financial eligibility and the payment of contributions.

The implementation of the reforms will be phased. Increased fees were introduced in April 2005. They will apply to fees for work done or outlays incurred on or after 30 April 2005.

The diagnostic stage and other changes in the applications and increases process will come into effect in the autumn. The changes to applicant's financial eligibility and contributions will be introduced in the third stage.

We will be introducing new versions of the advice and assistance forms to coincide with the introduction of the diagnostic stage in the autumn. The new civil advice and assistance form will be used for both diagnostic and full grants of advice and assistance. These stages do not apply to criminal advice and assistance so a separate form for criminal matters will also be introduced. Although both forms will be four pages, they are much clearer and better designed than before.

We are currently seeking views on the new forms. Draft versions of both forms are available in the legal profession section of our website www.slab.org.uk. We would welcome any comments on the draft forms – you can read details on how to give your views on our site. We will inform you about when and how the changeover to the new forms will take place.

We will be running jointly with the Law Society, a series of roadshows to explain the new civil advice and assistance system. Information on these roadshows will be sent to you in the summer.

Monitoring of civil legal aid reforms

When the reforms of civil legal aid reform were introduced, the Minister for Justice stated that we would review how the reforms had progressed. The Law Society of Scotland, the Scottish Executive and the Board are working, under the auspices of the Tripartite Group, to monitor how the changes in civil legal aid have operated.

The main elements of the reforms were:

- an increase in solicitors' fees
- an improved applications and reporting process
- the introduction of quality assurance and registration.

We will be looking at these elements to assess whether the reforms have been successful. There will be a wide variety of work carried out where:

- we will identify areas that need to be improved or developed in the short term
- we will carry out a review of payments made to solicitors under the new fees tables
- we will be analysing volumes of applications and the geographical spread of solicitors practising civil legal assistance across Scotland
- we will be assessing the success of the peer review process and will provide feedback on the issues arising from reviews
- we will be conducting solicitor and applicant surveys on the impact of civil legal aid reform

We would welcome any views you may have on the reform of civil legal aid – please contact Marie-Louise Fox, Legal & Policy Support to the Chief Executive, by email to foxma@slab.org.uk

We will also shortly be introducing revised civil legal aid forms. We will be making a number of changes to the existing forms in response to comments received from practitioners and from consultation with the Law Society of Scotland, Association of Personal Injury Lawyers and others. As well as listening to your feedback, we have been looking at ways to improve the usability of our forms and improve the Board's processes for considering applications. We will also be introducing some new forms and producing updated guidance for each form to help you complete them.

We will keep you informed on when and how the changeover to new forms will take place. We will automatically supply starter packs and tell you when new forms can be ordered.

Improving our forms is a continuous process, and we welcome feedback and suggestions from the profession. If you have any suggestions for changes to our forms, please contact Colin Sim, Acting Communications Manager by email to simco@slab.org.uk

Civil advice and assistance guidance

Solicitor hardship provisions - future recovery of payments

Significant changes have been made that you should make your clients aware of

Occasionally we are called upon to make payments out of the Fund to a solicitor who, in terms of regulation 16(3)(b) of the Advice and Assistance (Scotland) Regulations 1996 has taken all reasonable steps to obtain payment out of the property and the payment out of that property could only be effected with unreasonable difficulty or after unreasonable delay. Until recently, we have not had the power to recover such payments from any property subsequently recovered or preserved or expenses paid to the client at a later stage.

Regulations now allow us, where we have paid fees and outlays to a solicitor in these circumstances, and where we identify expenses or property recovered or preserved, to recover such property or expenses from the client or any solicitor acting for the client.

The sum recoverable by us is the amount of fees and outlays paid, less any amount which would have been properly payable by way of fees and outlays under section 12(3)(d) of the Act.

You should be aware, and should advise your client, where you have received payment of fees and outlays under the solicitor hardship provisions, or where you subsequently act for a client in connection with a matter where you are aware that fees have been paid to an earlier solicitor, of the Board's powers.

Grave 'hardship' applications

Applications under Regulation 16(3) of the Advice and Assistance (Scotland) Regulations 1996 (Hardship Provisions)

We issued new forms and guidelines for applications under regulation 16(3) on 8 June 2004, and further guidance in a letter to all legal aid practitioners on 30 July 2004 and in issue 40 of *The Recorder*. This article gives further guidance on some issues that have arisen recently.

Payments from the Criminal Injuries Compensation Authority (CICA)

Some solicitors have told us they believe that payments from the CICA are exempt from clawback. This is not correct. The exemptions are listed in regulation 16(2) of the Advice and Assistance (Scotland) Regulations 1996. Unless a particular type of property falls within that list, it must be used as a source of payment of your fees and outlays in accordance with section 12(3) unless a successful application is made to waive payment in terms of regulation 16(3).

Completion of forms

We still receive many incomplete forms, particularly where either the solicitor or the applicant has not signed the forms where required. Please check forms are complete before you send them to us, as we will return inadequately completed forms.

Grave hardship

We continue to receive claims for grave hardship that are inappropriate, since the applicant's expenditure was on non-essential items. Recent examples have included satellite television subscriptions, and purchases of Playstations, DVD players and digital cameras. By contrast, items we have accepted as reasonable and essential in the circumstances of individual cases are, for example, cookers, carpets, washing machines and beds.

Queries about recovery or preservation in advice and assistance cases

If you have any questions about whether property has been recovered or preserved or whether any exemption applies, please contact our Psums team on tel 0131 220 1965.

information

The forms and guidance are available:

- online at www.slab.org.uk in the legal profession section
- printed copies can be ordered by calling our Communications Office on 0131 240 1985.

Advice and assistance templates

As a step towards simplifying the process for seeking requests for increases in authorised expenditure in a number of key areas, we have already introduced “templates” for some increase requests. In August 2003 we issued guidance notes dealing with immigration and asylum cases, and in May 2004 we issued notes covering reparation claims, family law matters and employment tribunal cases.

We have recently issued further guidance notes covering:

- aliment
- contact and residence
- family law where there are financial assets over £50,000 and issues to be resolved involving children of the marriage
- family law where there are financial assets of less than £50,000 and there are issues to be resolved involving children of the marriage
- criminal injuries compensation applications
- dampness and housing repairs
- interdicts against abuse
- other interdicts
- eviction
- recovery of heritable property in terms of mortgage rights
- housing benefit
- Social Security matters
- restoration of driving licences.

We would urge you to make full use of these guidance notes. They substantially simplify the process for seeking increases in authorised expenditure. They minimise the need to make multiple requests for increases. It reduces the administration for both the solicitor and Board and it gives a degree of certainty about the level of expenditure that will be allowed in any one case. Using this guidance will be of benefit to everyone.

information

These guidance notes are available:

- online at www.slab.org.uk in the legal profession section
- printed copies can be ordered by calling our Communications Office on 0131 240 1985.

Civil legal aid guidance

Information from applicants and assisted persons

You should encourage your clients to provide us with the information we ask for about changes in circumstances. The Board now has new powers to suspend or withdraw legal aid and to recover the amounts paid from the Fund where your client fails to provide information to the Board.

Regulations have now been put in place which allows us to recover any cost to the Legal Aid Fund where applicants or assisted persons do not provide us with necessary information.

These are important provisions which allow us:

- to require an assisted person, during the computation period or otherwise, to provide information to enable us to carry out a re-determination. To date, the only sanction available has been the suspension or termination of civil legal aid, a sanction of limited value in the event that the proceedings have concluded.

The sanction now is the same as that which has existed for many years where an applicant has given us false information: we can suspend or terminate the civil legal aid and recover all fees and outlays paid to that person's solicitor and counsel, less any amount received by way of contribution from the applicant.

- to require an applicant for civil legal aid, having completed a pro-forma and made an application which is subsequently refused, to give us information or further information to allow us to carry out a proper means assessment and set a contribution if applicable.

If the applicant does not provide such information, we can treat the application as having been abandoned and, where we do, to give intimation of the abandonment to the applicant and any opponent. We have the right to recover from the applicant the total amount paid out of the Fund under special urgency provisions in respect of the fees and outlays of the applicant's solicitor's and counsel, again less any amount received by way of contribution.

These regulations will enable us to carry out our functions and recover the correct level of contribution from both applicants or assisted persons, where one is due. The assisted person or applicant can, at any time, avoid these consequences by providing the information.

Restricting contributions to solicitors' estimates of civil legal aid case costs

To benefit your clients who are assessed as having a contribution to pay, we encourage you to use the option of restricting their contribution to your estimate of the case costs

For the last three years, we have restricted the initial level of your client's contributions to what you estimate the case will cost, if this is less than the assessed contribution. In some cases, this can mean your client pays significantly smaller instalments. Unfortunately, very few solicitors have taken advantage of this option so far. We are surprised at this given that there are clear benefits to your clients and that it is relatively easy in many cases, such as undefended divorce actions, to provide fairly accurate estimates.

This option is part of our ongoing commitment to review our arrangements for collecting contributions and to be as flexible as possible in order to help those who are granted legal aid to use it.

We published the policy in *The Recorder* issue 34 in March 2002, and a reminder in issue 38 in December 2003. We encouraged all solicitors to consider whether there were cases where they could use this provision to benefit their clients.

Payment based on assessment of income		Payment based on solicitor's estimate of case costs		Potential saving for assisted person	
Contribution	Monthly instalment	Contribution	Monthly instalment	Potential total saving	Monthly saving
£1563	20 x £78.15	£400	20 x £20.00	£1163	£58.15
£5346	1 x £3634.10 (based on capital) plus 19 x £90.10	£1000	20 x £50.00	£4346	£40.10 <small>(and no need to pay capital element of contribution)</small>
£2003	20 x £100.15	£700	20 x £35.00	£1303	£65.15
£1849	20 x £92.45	£600	20 x £30.00	£1249	£62.45

We have undertaken some analysis of the position since our previous article in *The Recorder* issue 38. The table above shows some typical examples of the benefits and savings to assisted persons when their solicitors have taken up this option.

Unfortunately, although you can see from this that assisted persons can make very significant monthly savings, very few solicitors have taken up this option.

Between our most recent advice in December 2003 and 31 January 2005, we granted legal aid subject to payment of a contribution in around 2,800 cases. However, although 61 firms have opted for contribution instalments based on estimated cases costs, this has only been for 84 cases. This means that just 3% of cases where an assisted person is making a contribution have benefited from the option of payment based on the solicitor's estimate.

In addition, most solicitors (79%) marginally over-estimated the costs of cases, which meant either that we could refund some of even the reduced amounts we had collected based on estimates, or that we did not have to collect all of the reduced amounts. The small number of under-estimates of the costs of cases were also marginal, and we could arrange with the assisted persons concerned that they could continue paying at affordable rates until they had paid the full costs of the cases.

Given how much clients can save, and the prospect that some clients might proceed with cases they would have abandoned because they could not pay the assessed, higher instalments, we urge you to consider if you can use this option in more cases.

If you have any queries, please speak to any member of staff in our Debt Recovery Unit, tel 0131 240 1993.

information

These guidelines are available:

- online at www.slab.org.uk in the legal profession section
- printed copies can be ordered by calling our Communications Office on 0131 240 1985.

MRSA reparation guidelines

We have been receiving a number of applications for actions for damages where a patient has contracted MRSA during medical treatment. Our general approach to probable cause and reasonableness in reparation actions was set out in the Civil Legal Aid Merits Guidelines (CIVIL/GUIDE/D/1) in October 2003. We have now identified some additional evidential requirements for cases involving MRSA, which we hope will assist avoid applications being continued to provide more information.

Please now provide the following items in support of any MRSA reparation application:

- statement of applicant setting out the full facts and circumstances of the claim
- supporting statement by third party speaking to the fact and circumstances
- report on liability to address whether the hospital was at fault, and in particular confirm whether guidelines were in place and were complied with
- report on causation (which should confirm the fact that the applicant contracted MRSA)
- a copy of any guidance issued by the relevant hospital/Healthcare Trust in relation to MRSA, at or since the relevant time.

information

The civil legal aid merits guidelines are available:

- online at www.slab.org.uk in the legal profession section
- printed copies can be ordered by calling our Communications Office on 0131 240 1985.

Civil legal assistance guidance

Adults with incapacity

You will be aware that Scottish Ministers recently announced their intention to change some of the legal aid arrangements in relation to cases under the Adults with Incapacity (Scotland) Act 2000. Where the applicant is not the incapable adult, financial eligibility for advice and assistance will be calculated by reference to the incapable adult's resources. Free legal aid will be made available for welfare guardianship proceedings. The Scottish Executive is considering the legislative changes needed to implement the proposed new arrangements. The detail of those arrangements will be announced in due course.

Until amending legislation is in force, applications for advice and assistance and civil legal aid must be assessed on the present basis. Where an applicant for advice and assistance is not the incapable adult, it is the applicant's resources that the solicitor must assess. Civil legal aid is available for proceedings under the Act, including welfare guardianship. Financial eligibility for civil legal aid for the proceedings listed in Regulation 14(3) of the Civil Legal Aid (Scotland) Regulations 2002 is assessed by reference to the adult's resources.

Mediation in non-family cases – cover provided by civil legal assistance

Since 1995 the cost of mediation in family cases has been allowed in certain circumstances as an outlay in a solicitor's account. The reimbursement of these costs has been sought in relatively few cases. Nevertheless, we recognise mediation as an option that may be preferred by some individuals in certain circumstances. We are aware that mediation may also be available in non-family cases. Although the level of demand for mediation in such cases is unclear,

we consider that it should be given the same recognition as mediation in family cases. Accordingly, we continue to welcome requests for increases in expenditure under advice and assistance or for sanction in civil legal aid cases to cover the costs of mediation in non-family cases.

We may allow the costs of non-family mediation as an outlay in your account under advice and assistance or civil legal aid, provided certain conditions are met. There is no restriction on the type of case which can be considered suitable for mediation, but you should refer to guidelines we have recently produced.

information

These guidelines are available:

- online at www.slab.org.uk in the legal profession section
- printed copies can be ordered by calling our Communications Office on 0131 240 1985.

Legal assistance for asylum and immigration

Regulation 18 cover: review of a decision of the Asylum and Immigration Tribunal

Regulations provide for the availability of special urgency cover for “(w) *initiating an application to the Court of Session for a review of decision of the Asylum and Immigration Tribunal under Section 103A of the Nationality Immigration and Asylum Act 2002*”.

Transitional provision is also made for the application of the new regulation 18(2) provisions to applications for a review of a decision of the Immigration Appeal Tribunal which are preserved by Articles 7 and 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (Commencement No.5 and Transitional Provisions) Order 2005. The Immigration Appeal Tribunal is replaced by the Asylum and Immigration Tribunal on 4 April 2005.

The new regulation 18(2) provisions came into force on 4 April 2005.

The **transitional provisions** are:

5. (1) Where any of the cases specified in paragraph (2) are pending immediately before 4th April 2005, regulation 4(a) (the special urgency provisions) shall apply as though the reference to section 103A of the National, Immigration and Asylum Act 2002 were a reference to the relevant section of that Act referred to in paragraph (2).

The cases are –

- an application to the Court of Session under section 101(2)
- where a party is entitled to make an application to the Court of Session under section 101(2)
- an appeal to the Court of Session under section 103
- an application for leave to appeal to the Court of Session under section 103
- where a party has been granted leave to appeal to the Court of Session under section 103
- where a party is entitled to apply for leave to appeal to the Court of Session under section 103.

ABWOR: Asylum and Immigration Tribunal

These regulations provide ABWOR, substituting a new paragraph 3(l) in the 2003 Regulations, as follows –

“(l) proceedings before the Asylum and Immigration Tribunal, as established by virtue of Section 26 of the Asylum and Immigration treatments of claimants, etc. Act 2004”.

This replaces the existing availability of ABWOR for “proceedings before an Adjudicator or the Immigration Appeal Tribunal”.

These ABWOR arrangements came into force on 4 April 2005.

information

The regulations are available on the HMSO website - www.scotland-legislation.hmso.gov.uk/legislation/scotland/s-stat.htm

Civil and children's legal assistance – accounts

Increase in civil and children's advice and assistance and ABWOR fees

Regulations have been laid which allow solicitors the balance of the agreed 21% increase on civil and children's advice and assistance and civil ABWOR fees. The regulation substitutes new tables of fees in place of the tables introduced last year in connection with the interim increase of 5%.

These increased fees apply only in relation to fees for work done or outlays incurred on or after 30 April 2005.

These regulations implement the first stage of the advice and assistance civil reform arrangements.

information

The regulations are available on the HMSO website - www.scotland-legislation.hmso.gov.uk/legislation/scotland/s-stat.htm

Are you charging appropriately for civil legal aid accounts?

Sheriff Court Civil Fees (Defended) – The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2003 - Chapter II

Our experience in assessing accounts submitted under this table suggests that, on occasion, solicitors are not claiming some chargeable items of work. This is based on correspondence in cases with individual firms. We show below some of the more common accounting issues which have arisen.

- **Instruction fee (Fee 1 (b))** – You are entitled to charge the full instruction fee of 20 units even where no written defences have been lodged. The fee is chargeable as long as an order dispensing with written defences has been made.
- **Transfer of agency (Fee 1(d))** – This is payable to the incoming solicitor where defences have been, or should already have been, lodged by the previous solicitor. There are no other necessary qualifying criteria to be met.
- **Progress fee (Fee 2(b))** – This fee is chargeable where the action settles prior to the allowance of proof or debate as long as you can show that either:
 - settlement was expressed in a joint minute or minute of agreement, which was materially different from that of any interim order or
 - settlement follows upon an exercise of sustained negotiations.

- **Motions (fee 3(a)(i))** – it is important that you include the actual time spent in argument both at the initial and any continued hearings. The block fee covers your first 15 minutes. After the first 15 minutes, we will pay a minimum of one unit for each subsequent attendance. In addition, any travel time under the following rules is payable. No charge is allowed for waiting time.
- **Travel** – Excess travel time is payable at 0.8 units per 15 minutes and is allowable only in relation to an attendance at court, subject to the following conditions:
 - (a) the solicitor claiming travel time is a solicitor with whom the client has had significant contact in relation to the conduct of the case;
 - (b) the solicitor's attendance was necessary for the advancement of the case;
 - (c) the distance travelled is at least 10 miles in each direction from the solicitor's normal place of work (and no travel time shall be payable in respect of the first 10 miles travelled in each direction);
 - (d) when payment for travel time is claimed for more than one case, the time shall be apportioned equally between the various cases for which the solicitor attended court (including non legally aided cases); and
- **Minute of amendment (Fee 3(b))** – Remember that, where a minute of amendment is chargeable, we will also pay a separate motion fee for lodging the minute.
- **Report fee (Fee 4(h))** – It is important that you provide details of the actual sheetage of the report. A fee is payable for any report longer than four sheets, irrespective of whether you or the court instruct the report.
- **Preparation for proof (Fee (a)(iii))** – Where a proof takes place and evidence is lead, the full preparation fee (36 units) is chargeable.
- **Conduct and waiting (Fee 6)** – There appears to be some confusion about charging for continued child welfare hearings. All continued child welfare hearings attract conduct and waiting time.

Travel expenses may only be incurred where travel time is chargeable.

It is essential that you make it clear in the account that any time and mileage claimed is in respect of the excess travel (that is, excluding the first 10 miles in each direction).

Criminal legal assistance

Criminal legal assistance news

High Court reform

Before the introduction of the High Court reforms, you should have received guidelines from us on taking precognitions and employing counsel in High Court cases. These guidelines highlight our policies following the introduction of crown disclosure and the new High Court procedures. We will be monitoring the progress of the new High Court procedures to ascertain whether any further legal aid changes are needed.

We would welcome any comments on the way in which the High Court reforms are operating, as far as legal aid issues are concerned.

Solemn legal aid reform

Revised tables of fees have been introduced for counsel in High Court and sheriff court solemn cases. The new tables make provision for the new procedures in the High Court. They will provide greater clarity for counsel and the Board as to what is chargeable.

Work is underway to reform fees for solicitors. We are currently working with the Law Society of Scotland and the Scottish Executive to produce a revised fee scheme for solicitors in solemn cases which are planned to be introduced in the autumn of this year.

We will be running a series of roadshows in several venues around Scotland in the summer on the proposed reforms. This will be run jointly with the Law Society of Scotland.

Quality assurance in criminal legal assistance

We continue to work with the Law Society and separately with the Faculty of Advocates on developing quality assurance regimes for all practitioners undertaking criminal legal assistance. We expect to implement the new arrangements in the autumn. We are also taking the opportunity to review the Board's "Code of practice for criminal legal assistance" to take account of the new quality assurance regime.

Peer review pilot for criminal legal assistance for solicitors

In 2004, the Board began a pilot project of peer review using the PDSO, the Public Defence Solicitors' Office.

A set of peer review criteria was produced for the pilot scheme, and these are available on our website www.slac.org.uk. Practising solicitors were appointed as assessors. They assessed live cases conducted by the PDSO's solicitors. This was a very useful exercise and much was gained from the experience of the assessors in using the peer review criteria. This is being used to inform the development of the new peer review quality assurance regimes.

Review of summary criminal legal assistance

The final version of our proposals for the reform of summary criminal legal assistance is now available on the Board's website. This also includes the result of our consultation on the proposals. Our review sought to improve the efficiency of the criminal legal aid system, and help make sure that solicitors were paid properly for what they do. The main features of our proposals were:

- the introduction of a single, more integrated system for the work currently covered by criminal advice and assistance, ABWOR, and summary criminal legal aid
- removing the exclusive jurisdiction of the duty solicitor to act for clients appearing from custody, and reviewing duty remuneration rates
- more consistent feeing and remuneration arrangements
- revised financial eligibility tests
- where the interests of justice test is to be applied for trials, the defence advanced would need to be "meaningful" as opposed to the existing "non-frivolous", and this factor should be weighted more highly than the others
- the courts should have wider powers to make publicly funded representation available, where it is felt desirable for the accused to be represented.

In the last edition of *the Recorder*, we reported on the main issues raised in the responses to our consultation on our proposals. In addition to the issues raised, a number of positive suggestions were made, such as measures to further streamline of our administrative procedures and the type of information which could be submitted to the Board with applications for criminal assistance. These will help us take the review forward, and make sure that legal aid matters are properly considered in any wider changes to the summary justice system.

Our proposals have now been submitted to the Scottish Executive. In their response to Sheriff Principal McInnes' review of summary justice, "Smarter Justice, Safer Communities – Summary Justice Reform – Next Steps", published on 22 March 2005, the Executive indicated that they would work with the Board and the legal profession to develop a reformed system of summary criminal legal aid. They will bring forward proposals for changes to the system for summary criminal legal assistance in the light of the Board's proposals and will include measures to underpin the planned changes in procedure and court management.

The Executive is committed to working with the Board and the profession in developing its detailed proposals for summary criminal legal assistance.

information

The report is available:

- online at www.slab.org.uk in the about us section
- printed copies can be ordered by calling our Communications Office on 0131 240 1985.

Criminal legal assistance guidance

New tables of fees for counsel in criminal proceedings

There are new tables of fees for the remuneration of counsel (including members of the Faculty of Advocates and solicitor advocates) providing criminal legal aid. Recent regulations substitute a new Schedule 2 to the Criminal Legal Aid (Scotland) (Fees) Regulations 1989. The new provisions apply to proceedings concluded on or after **4 April 2005**.

Criminal fees guidance will shortly be published to assist in the preparation of fee notes.

The main changes are:

- the Schedule has moved away, in cases at first instance, from the concept of a prescribed fee capable of being enhanced in the individual circumstances of the case
- the Tables of Fees set prescribed fees for counsel depending on the status of counsel (senior, leading junior, junior and junior with leader) and the nature of the case. Cases are set down in a number of categories according to the charges, from murder, rape etc in the top category to relatively minor matters such as malicious mischief, theft etc in the lowest category. It is the most serious charge on the indictment which determines the category of case.
- the fees prescribed for counsel in a sheriff court are set at 80% of the level of the High Court fees
- the highest fee is reserved for work in connection with a hearing under section 76 of the 1995 Act
- there are prescribed fees for the conduct of a preliminary hearing including the managed meeting (or equivalent) and any note on the line of evidence prepared by counsel. There are separate fees prescribed for the initial preliminary hearing and for adjourned hearings or further diets. There is provision for payment of counsel who conducts the communication with the Crown but does not attend the preliminary hearing, and vice versa.
- there is now a list of miscellaneous hearings with set fees relating to each type of hearing. It is important when submitting your fee at the conclusion of the case that the nature of each hearing is clearly set out in the fee note and that a clear distinction is made between an adjourned trial diet and a trial diet where the trial proceeds.
- counsel are no longer paid on the basis that they have a "place of business" in Edinburgh or, in the case of solicitor advocates, on the basis of the solicitor advocate's place of business in relation to Edinburgh. The prescribed fees will relate to cases in any court. A supplementary travel fee of £100 per day is only available to counsel where necessary travel is undertaken exceeding a round trip of 180 miles.
- there is a clear basis on which preparation will be payable referable to the number of sheets contained in the case documentation which is objectively verifiable. The "documentation" consists of Crown statements, precognitions, productions and labels. Where the case proceeds to trial most of the preparatory work will be subsumed within the trial fees except in cases involving an exceptional level of preparation, where the additional level of preparation will always be payable. There is a minimum level of preparation which is not separately payable and is always subsumed within the instructions.

- fees in relation to appeal proceedings remain broadly on the former system although the daily rates have been increased in line with inflation. There is a clearer structure for payment and for identification of the situations in which separate preparation is payable. We will be meeting with Faculty in the near future with a view to developing new arrangements for remuneration of counsel in appeal proceedings, and will, of course, liaise with the Law Society in this process.

information

The regulations are available on the HMSO website - www.scotland-legislation.hmso.gov.uk/legislation/scotland/s-stat.htm

Eligibility for ABWOR

We are often asked to clarify the eligibility criteria for the tests a solicitor has to apply before admitting a client to assistance by way of representation (ABWOR).

Different merits eligibility criteria apply depending on the type of case:

- where ABWOR is being granted for pleas to the competency or relevancy of the complaint, or for pleas in bar of trial, you must be satisfied that the offence is such that the court is likely to impose a custodial sentence **and** that it is in the interests of justice to tender the plea or raise the question.
- however, the majority of ABWOR cases are for guilty pleas (with or without a change of plea) or for proofs in mitigation. In these cases, you must be satisfied that the court is likely to impose a sentence that would deprive the applicant of his/her liberty or livelihood, **or** that the applicant would be unable to understand the proceedings.

In this second category of case, you only need to be satisfied on one of the criteria, not both.

We hope the following guidance will help you apply these tests.

Likely loss of liberty or livelihood

You must consider whether the court is likely to impose a sentence that would deprive the accused of liberty or lead to loss of livelihood.

Where there is a real risk of imprisonment, this test can be satisfied, but the risk must be real and not simply theoretical. It is not enough that imprisonment is one of the sentencing options open to the court for the charge. There must be factors which show that imprisonment must be seriously regarded as likely. This may be apparent from the nature of the charge, or may depend on the accused's record. The accused must be faced with loss of liberty, having regard to:

- the nature of the charge
- any general policies of the particular court
- the accused's general background
- relevant previous convictions and
- any other relevant factors.

Where you feel a sentence likely to lead to loss of livelihood could be imposed, either the applicant must be employed, or there must be realistic prospects of future employment. The risk of loss of livelihood in a particular case will depend on the applicant's circumstances and the nature of the offence.

Applicant unable to understand the proceedings

Here, you should consider whether the accused him/herself is unable

- to understand the particular proceedings or state his/her own case because of age, inadequate knowledge of English, mental illness or other physical disability or otherwise or
- to state his/her own case including presenting his/her own story.

You should also consider any evidence about any mitigating factors that the applicant may seek to call on.

We cannot give specific guidance about the ages below or above which representation ought to be regarded as normal. It has to depend on the individual circumstances of the case.

You must still indicate on the accounts synopsis form why you felt it was appropriate to grant ABWOR, from the following:

- likely loss of liberty
- likely loss of livelihood
- unable to understand proceedings because of age
- unable to understand proceedings because of inadequate knowledge of English
- unable to understand proceedings because of mental illness
- unable to understand proceedings because of other mental or physical incapacity
- unable to understand proceedings because of other incapacity.

If this section of the synopsis form is blank, we will return the account.

We also remind you to complete the section on the first page of the synopsis form referring to the court. As well as adding the location of the court here, you must also specify the type of court involved (sheriff or district for ABWOR cases).

ABWOR – representation of obstructive witnesses

The Criminal Procedure (Scotland) Act 1995 includes provision for orders to be made in respect of witnesses apprehended under section 90A of the Act. ABWOR is now available to cover the conduct of appearances on behalf of a witness under sections 90B (Orders), 90C (Breach of Bail), 90D (Review of Orders) and 90E (Appeals in respect of Orders). Criminal legal aid is not available for these proceedings.

You do not need to carry out a means assessment in admitting your client to ABWOR.

Summary criminal legal aid – change of practice in issuing criminal legal aid certificates

There are several situations where separate complaints raised by the procurator fiscal arise out of the same incident. Under the fixed payments regulations, solicitors are entitled to only one core fixed payment although additional fixed payments are payable for attendances at trial, deferred sentences, etc.

The regulation 4.3 was amended to state: “...the following are to be treated as a single matter –

- a single summary complaint or complaints which arise out of the same incident; and
- proceedings under sections 27(1)(a) and 28 of the 1995 Act (breach of bail conditions) arising out of the complaint or complaints referred to in sub-paragraph (a).”

Our recent practice has been to make only one grant of summary criminal legal aid where the procurator fiscal deserts a complaint and reissues a fresh complaint or complaints in identical terms and with the addition of a further charge arising from the same incident. This also applies where the fresh complaint has slightly amended charges arising out of the same incident.

Similarly, as we informed the profession in issue 40 of *The Recorder* (page 20), we will not make a further grant in connection with a complaint for failure to appear, since the proceedings are subsumed within the existing grant. Although you are not entitled to a separate core fixed payment, any additional work created by the failure to appear charge, such as a separate trial or deferred sentence, will attract additional fixed payments. As always, if you have to proceed to trial, separately, in connection with the principal charge or charges and the failure to appear complaint, with both trials lasting one day, you are entitled to charge at the “first day” level for the first trial and the second or subsequent day level for the second trial, treating them if it was one trial and benefiting from the higher fees.

We now intend to extend this approach of using a single grant to the situation where separate complaints are served at the outset but the charges in these complaints arise from the same incident. The prime example is a “split RTA”, where a charge for driving whilst disqualified is in a different complaint from that containing associated charges. Currently, we make more than one grant and inform our Accounts Department not to pay out more than one core fee in respect of the related proceedings.

This change will be brought in with immediate effect. This will save your time and resources, and ours. Since no further core fixed payment is payable, there is no benefit to you or us in you having to make, and us having to consider, a separate application for legal aid.

Summary criminal legal aid applications

Where we receive a properly completed summary criminal application, we are able to take a decision, and intimate the grant or refusal within one or two days. However, around 25% of all summary criminal applications have to be continued for further information to allow us to take a decision. This represents about 20,000 cases every year, and has the impact of adding around 16 days to the average time taken to intimate the final decision of cases that are continued.

A recent survey showed that the main reasons for continuations are:

- proof of income – 65%
- copy complaints – 12%
- benefits details – 8%
- more information on defence – 6%
- details of any capital – 3%
- schedule of previous convictions – 3%
- clarification of financial outgoings – 2%
- clarification of possible other rights and facilities – 1%.

In all, about 78% of the cases continued are for financial information. This affects about 15,000 to 16,000 cases every year. Proof of income, or full details of a client’s benefits are

needed in order for us to be satisfied that a client is financially eligible for legal aid. We are looking to improve the information sent to accused persons about legal aid, so that clients are more aware that they ought to take proof of income with them when they visit their solicitor for the first time.

Regulation 8 (1)(b) of the Criminal Legal Aid (Scotland) Regulations 1996 requires summary criminal legal aid applications to be submitted within 14 days of the tendering of the not guilty plea. However, regulation 8 (2)(b) allows us to consider late applications with a ‘special reason’. Many applications are submitted without wage slips or copy complaints to comply with the 14 day rule. We would prefer that these applications are submitted later with full supporting information. This can be considered a ‘special reason’ and will help to reduce the administrative work for everyone.

We are also looking at other ways of reducing the number of continuations to bring further benefits to solicitors as well as the Board, and to help reduce court adjournments. We are also working closely with the courts to try to minimise the number of adjournments for legal aid reasons.

Any other suggestion which solicitors may have for reducing continuations will be gratefully received – please contact Kingsley Thomas, Criminal and Advice and Assistance Applications Manager on tel 0131 240 2085 or email thomaski@slab.org.uk

Fixed payments – trials adjourned after commencement

New fixed payments have been prescribed to deal with a situation where the trial, having commenced (and, therefore, a “trial” in terms of the Fixed Payment Regulations), is adjourned. Because a trial is defined by reference to when it starts and not what actually happens at the hearing, a situation can arise where a trial is adjourned on a number of occasions resulting in the payment of a fee of £400 per day for what can be extremely formal appearances of very short duration. These regulations now prescribe fixed payments for an adjourned trial diet – defined in the regulations as “a diet which follows a trial that

has commenced by the leading of evidence” – at two levels.

The fee payable for “conducting an adjourned trial diet, during which no evidence is led, where there was no intention nor anticipation that evidence would be led, the only matter in consideration being the determination of the further procedure of the trial proceedings”, is £25 in the district court and £50 in the sheriff court. This would include what is commonly referred to as a “notional diet”.

The fees payable for “conducting an adjourned trial diet, during which no evidence is led, where there was an intention and an anticipation that the trial would proceed through the continued leading of evidence” is £50 in the district court and £100 in the sheriff court.

Vulnerable witnesses

The Vulnerable Witnesses (Scotland) Act 2004 is being implemented incrementally from 1 April 2005, beginning with provisions relating to child witnesses in the High Court and sheriff court solemn cases and in the consideration of grounds of referral to a children’s hearing by the sheriff court. We have recently published a guidance note to help solicitors who want to obtain sanction from us to use special measures to assist vulnerable child witnesses when they are giving their evidence.

Under the 2004 Act, witnesses under the age of 16 are entitled to give evidence by the use of standard special measures involving –

- the use of a live television link where witnesses are in another part of the court building,
- the use of a screen; and
- the use of a supporter.

In addition, there are further special measures that may be used to give support to a child including –

- the use of a live television link from a place other than a court building; and
- the use of prior statements as evidence in chief.

Where the standard special measures are identified as necessary to support a child witness, we do not see the work as unusual and you do not need sanction for this work. Likewise, if the cost of this work is £2,000 or less there is no need to obtain sanction under the unusually large expenditure provisions.

Where the work being undertaken is one of the further special measures, this is unusual work where prior sanction is needed. We are very happy to consider any requests for sanction in these circumstances. Please provide sufficient supporting information to show why, in addition to or in substitution for the standard special measures, the child needs the further measure to help them give their best evidence.

Where this work is likely to involve expenditure of over £2,000, you also need sanction to incur unusually large expenditure.

To avoid any difficulties in the assessment of accounts, you should provide a detailed breakdown of the time spent and the rates charged as part of your account.

These guidelines should help the smooth running of the new provisions. If you have any queries about these matters please contact Philip Shearer, Solicitor, on shearerph@slab.org.uk

These guidance is available:

- online at www.slab.org.uk in the legal profession section
- printed copies can be ordered by calling our Communications Office on 0131 240 1985.

Board news

Our performance

We are pleased to be able to report that, once again, we have met the targets set for all our headline indicators during the year so far, and done significantly better than target in several areas.

Headline indicator	Our target	How have we done so far this year?	Target met?
Civil applications	92%	93%	Yes
Criminal applications	99%	99%	Yes
Advice and assistance applications	96%	99%	Yes
Civil accounts	95%	98%	Yes
Criminal accounts	97%	99%	Yes
Advice and assistance accounts	96%	99%	Yes

Performance figures shown are to February 2005.

Our 2005-2006 targets

We expect to publish in May our Corporate Plan 2005-2006, which sets out our deliverables for the coming year. This is the final plan in a three-year planning period. A key part of our plan is our performance targets for the coming year.

In developing our 2005-2006 plan, we conducted a review of our targets. We consulted a wide range of stakeholders, within the legal profession, the wider advice sector and the justice system, seeking their views on whether the current targets meet their needs and reflect their priorities.

During our three-year planning period we have substantially increased our performance indicators and targets both in terms of timeliness of processing and the consistency of decision-making. We believe our targets

represent an appropriate and balanced way of measuring our performance and expect to achieve these in the coming year.

As a result of the review, we have increased three of our six headline indicators:

- civil legal aid applications by 1% to 93%
- advice and assistance applications by 1% to 97%
- civil accounts by 1% to 96%

The Corporate Plan also details changes being made to the individual performance targets which combine to form the headline targets. Changes to individual targets for 2005-2006 include:

Civil legal assistance

- increased from 87% to 90% the percentage of civil legal aid applications which should meet our timeliness service standard

- increased by 1% to 96% the target that application are free of material errors in decision making
- increased by 1% to 96% the target for both the timeliness and accuracy of civil legal aid accounts

Criminal legal assistance

- reduced from 12 days to 11 days the timeliness target for dealing with summary criminal applications – a reduction of 8%

Advice and assistance

- increased the percentage of cases meeting our timeliness service standard for three of the four individual targets, such as registration of intimations of grants by 2% to 97%

We will also continue to focus on completing work, as quickly as is practical, on the small number of applications that fail to meet our targets for speed of decisions.

These changes to our targets are reflected in our 2005-2006 service standards, which are available on our website www.slab.org.uk

We intend to carry out a more fundamental review of our performance indicators and targets in the coming year. As a result of the investment in recent years in new systems we expect to be able to substantially reduce the timescales for processing legal aid applications and accounts. We will consult widely on this review so that our targets both reflect the needs of applicants and the justice system.

Every legal aid firm will receive a copy of our Corporate Plan when it is published. It will also be available on our website www.slab.org.uk

The Freedom Of Information (Scotland) Act 2002

The Freedom of Information (Scotland) Act 2002 (FOISA) came into effect on 1 January 2005 and the Board, in common with all other public bodies in Scotland, is bound by its provisions which are intended to increase openness and accountability in government and the public sector.

Rights of access

FOISA provides a general entitlement that from 1 January 2005 any person who requests information from a Scottish public authority which holds it is entitled to be given the information by the authority.

This legal right of access includes all information held in a recorded form (such as computer printouts, handwritten notes or photographs) and it does not matter how old the information is. The information may be requested by anyone (for example, they do not have to reside in Scotland), but the request must be in writing or other permanent form.

We must respond to all requests promptly and, in any event, within 20 working days of receipt. We are entitled to charge fees in accordance with The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 and The Freedom of Information (Fees for disclosure under Section 13) (Scotland) Regulations 2004 and will do so, although the first £100 of work is always free to the applicant.

FOISA provides 17 exemptions – circumstances in which we may not have to supply the information requested. Examples of absolute exemptions include information that is otherwise accessible and information the disclosure of which is prohibited under another enactment.

Examples of non-absolute exemptions include information intended for future publication and information the disclosure of which would substantially prejudice the effective conduct of public affairs. If we think that a non-absolute exemption applies we must consider the public interest test, that is whether the public interest

in disclosing the information is not outweighed by that in maintaining the exemption.

If we consider the information exempt and decide not to release it to the applicant, we must give reasons for our decision. If the applicant is dissatisfied with the way in which we have handled the request for information, s/he may ask us to review our decision and, if s/he subsequently remains dissatisfied, may complain to the Scottish Information Commissioner.

Requests received

By the end of the first quarter since FOISA came into effect, we had received just over 50 requests for information. Requests have been received from various sources, including the media, applicants for legal aid, assisted persons, opponents, firms of solicitors and commercial organisations. Requests have also covered a variety of matters, including cases relating to the Proceeds of Crime Act, contracts awarded by the Board in relation to conferences, details of the Board procurement strategies, and opponents seeking further information about why the other party in the case received legal aid.

We have also received several requests for information in relation to amounts paid to solicitors and advocates under legal aid; we have, for example, been asked for the amounts paid in specific cases and which cases resulted in the highest amounts being paid from the Legal Aid Fund. Having sought the advice of senior counsel on this point, we believe that information identifying the costs of an individual case or class of case and/or details of specific payments made to lawyers is not exempt information under FOISA and would therefore ordinarily be disclosed. Where we receive such requests we will, other in exceptional circumstances, advise the solicitor or advocate in advance of the information we intend to disclose.

Some opponents of legally aided persons have tried to use FOISA to obtain further information about the other party's application for legal aid. We believe that most, if not all, of this information falls within section 34 of the Legal Aid (Scotland) Act 1986 in that it is

information furnished for the purpose of the Act by or on behalf of the person seeking or receiving legal aid. Therefore, unless one of the limited exceptions applies, we are precluded from disclosing this information without the consent of the person seeking or receiving legal aid.

Requests for this type of information are likely to be refused on the basis that we are, under section 26 of the Freedom of Information (Scotland) Act 2002, exempt from disclosing the information – disclosure of the information is prohibited under an enactment. In these circumstances, we will contact the applicant or assisted person to ask whether they consent to the release of the information. However, should they not consent, we will remain unable to disclose the information.

It should also be remembered that FOISA is not the most appropriate statute under which to seek disclosure of personal information: section 38 of the 2002 Act provides an exemption for personal information. In very broad terms, if the Board holds personal data about an individual, we will, under the Data Protection Act 1998, disclose the information to that person, but will not disclose the information to a third party other than in accordance with the DPA.

Publication scheme

FOISA also provides that Scottish public authorities must adopt and maintain a publication scheme.

We have developed a publication scheme which sets out what classes of information we publish or intend to publish, how we make it available, and whether there is a fee for it. In developing the scheme we had regard to the public interest and tried to include as much information as we can.

Our scheme can be found on our website at www.slac.co.uk and we welcome comments on it.

Changes in Board membership

One serving Board member, Yvonne Osman, completed her extended term of office on 31 December 2004. Yvonne was appointed in April 1996. We are grateful for her substantial contribution to our work.

Two new Board members, Susan McPhee and Elaine Rosie, have joined the Board. Their appointments are from 1 January 2005 to 31 March 2008.

Susan McPhee has been the Head of Social Policy and Public Affairs with Citizens Advice Scotland since 1998. Before this, she was a legal services adviser with Citizens Advice Scotland, having previously been a solicitor in private practice from 1981 to 1990.



Elaine Rosie has been the Development Manager with Shelter Scotland since 2000, with responsibility for training and the Scottish Homelessness Advisory Service.



Before this she was the Depute Director of Shelter Scotland for eight years, with responsibility for managing all Shelter's advice and legal services provision in Scotland.

We welcome the appointment of Susan and Elaine and look forward to working with them.

New PDSO Director

Matthew Auchincloss has been appointed as Director of PDSO, the Public Defence Solicitors' Office. Matthew will lead the public defenders at offices in Edinburgh, Glasgow and Inverness, who provide people with advice and representation in criminal court cases.



Matthew is a leading Edinburgh criminal lawyer who has worked as a solicitor with PDSO in Edinburgh since 2003. He took up his post as Director in February, succeeding Alistair Watson, the first director of PDSO, who was recently appointed as a Sheriff at the Kilmarnock courts.

Information and communications update

Over the next months the Board will be making further improvements and changes to the information we publish for the profession and public. Highlighted below are some of the developments that we will be letting you know more about as the changes are introduced.

Scottish Legal Aid Handbook

We expect to publish shortly a revised Scottish Legal Aid Handbook. We aim to make the Handbook the key reference material for the legal aid professional and to provide you with the right information, when you need it.

We have already published a revised and updated to January 2005 legislative edition of the Handbook, which is only available online on our website, www.slab.org.uk

We will be publishing completely revised Handbooks on civil and children's legal assistance and then a further volume on criminal legal assistance. These include:

- all current legal aid legislation
- all our policies on applications, and practical advice covering all stages of a case, including
 - applying for, and provision of, advice and assistance and ABWOR, and our approach to different types of case
 - applying for, and provision of, legal aid, and our approach to different types of case
 - procedures after legal aid is granted – for example, the requirements for sanction for certain types of work, reporting procedures, amendments to grants or changes in circumstances
 - clawback and expenses in civil cases
- information about registering to provide different types of legal assistance.

The Handbooks will incorporate all our current guidance notes on applications, such as the Advice and Assistance Guidelines, the Civil Merits Guidelines, guidelines on sanction for counsel, expert witnesses, and unusual expenditure, and other guidance published in mailshots and Recorder articles. We plan to issue additional guidance on criminal legal assistance and on accounts later.

We will publish the Handbook online on our website, on CD-ROM, and as a loose-leaf paper version. It will be fully indexed and updated regularly.

We will be writing to practitioners in advance of publication with details of how to obtain the Handbook.

Our website www.slab.org.uk

We continue to develop and improve our website, www.slab.org.uk. We are currently working on a major redevelopment of our site, to bring a fresh new look and to make it easier to find information. We will also be adding a number of new services to our site over the next few months.

We are always working to further improve the information and service we offer to the general public. We have introduced a new facility on our website www.slab.org.uk making it easier to find firms of solicitors who offer legal aid services. People can search for a specific firm by name, or by inputting their town or postcode, or by clicking on a map. This produces a list of the 20 firms nearest to their location, along with the firms' details. This "find my nearest" service uses the information from the registers for criminal and civil legal assistance.

We have been running this service since summer 2004, and usage has increased steadily. It is used daily by people seeking a legal aid solicitor and currently about 500 maps are being delivered a week. We will shortly be adding on a travel directions service, to make it even easier for someone to get to their solicitor's office.

One of the main questions that research and feedback from our website tells us is that people want to know is if they qualify financially for legal aid. In 2004 we introduced a new leaflet "Do I qualify financially for advice and assistance or civil legal aid?" which sets out a number of steps people can follow to work out if they are likely to qualify. We will shortly introduce an online financial eligibility calculator, based on this leaflet on our website.

As part of our move to mainly electronic delivery of information and communications, we are reviewing the materials we issue to the profession, such as the Recorder and mailshots. With publication of the new Legal Aid Handbook, we will be introducing new regular updates to it, and this brings the opportunity to review what guidance for the profession we publish and how. The last solicitors' survey suggested a number of changes and improvements that we could make to ensure our guidance and information meets the needs of legal professionals. One area that the survey found support for was the use of email newsletters. We therefore intend to introduce these over the next months.

We welcome your feedback on our website and are keen to hear your views and suggestions for additional information or services. Our redeveloped website will enable you to give us your views online, but meantime please contact Colin Sim, Acting Communications Manager tel 0131 240 2033 or email simco@slab.org.uk with your comments.

Legal aid surgeries

We recently began a rolling programme of legal aid surgeries. The surgeries provide anyone with a problem or query relating to legal aid to have a one-to-one, confidential discussion about the matter with an expert from the Board.

Our experience of running surgeries shows that members of the public find this a valuable opportunity to discuss their legal aid issues. Two surgeries have taken place in central Glasgow and Kirkcaldy and both were very well received by those who attended.

We are currently planning the next surgeries, and will let practitioners in the areas where a surgery will take place know in advance, as these may be of interest to your clients. We also run newspaper adverts to publicise the surgeries.

If you think holding a legal aid surgery would be of particular benefit in your area, please let us know – contact Colin Sim, Acting Communications Manager tel 0131 240 2033 or email simco@slab.org.uk with your comments.

General information

Writing to us

We receive a significant amount of correspondence that is addressed to the wrong department – for example, letters relating to criminal legal aid applications that are addressed to our Civil Application Department. It is not practical for our mailroom staff to examine each piece of correspondence that comes in to check that the department shown is the correct one. Wrongly addressed mail, therefore, will be delivered to the wrong department, causing delays and extra work.

We would be grateful, therefore, if you and your staff could ensure that if you are addressing letters etc to a specific department, it is the correct one.

Getting copies of our publications

If you would like copies of any of our publications, other than those available from our printers, please use our Communications Department's publications direct line on 0131 240 1985. You can also leave messages about publications on this line 24 hours a day and at weekends. (Please do not use the line for matters other Board departments deal with, as this could lead to delays while we pass on your question to the correct department.)

You can also find all of our publications online on our website at www.slab.org.uk and can order publications by e-mailing general@slab.org.uk.

Interested in working for the Scottish Legal Aid Board as a solicitor?

We are committed to continually improving the quality and effectiveness of the legal aid system, for the legal profession, their clients and the public. As such, we always welcome speculative applications from qualified solicitors who would be keen to work with us in positively influencing the delivery of justice in Scotland.

Some of the solicitors we recruit have experience in legal aid work, but we equally welcome applications from recently qualified solicitors with a real interest in the legal aid field. Our solicitors are involved in a varied caseload which can span the whole spectrum of legal issues. They also provide advice to management and give input to recommendations for changes to the legislative process relating to legal aid.

Qualified solicitors within the Board earn between £24,070 and £41,450, depending on their experience. We also offer flexible working hours, performance-related pay progression, a bonus scheme for high achievement and a contributory final salary pension.

For more information, please visit our web site at www.slab.org.uk or telephone Jennifer McLean on 0131 240 2027.

Fax numbers

It is also important that you send any faxes to the correct department and fax number to avoid delays. Listed below are our fax numbers that you should use.

Department	Fax number
Legal Services and Applications	0131 225 3705
Advice and assistance - registration	0131 220 5464
Advice and assistance – civil and children’s’ increases	0131 220 3462 or 0131 220 2904
Advice and assistance – criminal increases	0131 226 5477 or 0131 220 2905
Criminal applications	0131 226 5477 or 0131 220 2905
Civil - applications	0131 220 4879
Civil - financial eligibility assessment unit	0131 226 1940
Corporate Services and Accounts	0131 220 5133
Civil accounts	0131 220 4895
Criminal accounts	0131 220 3908
Advice and assistance accounts	0131 220 4882
Accounts technical specialists	0131 225 4931
Accounts administration services	0131 225 2497
Treasury	0131 220 5091
Audit and Compliance	0131 225 9850
Chairman and Chief Executive’s Office	0131 220 5145
Communications and general Board faxes	0131 220 4878
Legal aid forms order –Stewarts the Board’s printers	0131 652 1348

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:

- **8 December 2004**
Letter to the Compliance Partner at all firms registered to provide criminal legal assistance – new edition of the Criminal Legal Assistance Register published
- **29 December 2004**
Letter to all criminal legal aid practitioners containing guidelines about:
 - taking precognitions in High Court cases
 - sanction for the employment of counsel in High Court cases
- **30 March 2005**
Letter to all legal aid practitioners containing
 - advice and assistance guidance – seeking requests for increases in authorised expenditure and
 - guidelines on vulnerable witnesses – sanction in legal aid cases – effective 1 April 2005
- **7 April 2005**
This letter to all legal aid practitioners contains information on a range of legal aid changes, including
 - annual changes to financial limits – effective 11 April 2005 - changes to capital eligibility limits; changes to income eligibility limits; increase in “clawback” limit
 - administrative changes - special urgency provisions: pro forma calculation and mandate; financial eligibility leaflet for the public
 - advice and assistance - advice and assistance: whether civil, criminal or children’s matter and whether it relates to one or more distinct matters; “other rights and facilities” extended to advice and assistance

- criminal legal assistance - new tables of fees for counsel in criminal proceedings; new fixed payments for adjourned trial diets where no evidence is led; ABWOR for representation of obstructive witnesses
- civil and children’s legal assistance - future recovery of payments made under the “solicitor hardship” provisions; increase in civil and children’s advice and assistance and ABWOR fees; power of Board to obtain information from assisted persons and applicants for civil legal aid; Council Directive on cross-border disputes: modified application requirements; special urgency cover for review of decision of Asylum and Immigration Tribunal; new ABWOR provisions for Asylum and Immigration Tribunal.

The mailshot also contained a new Keycard - effective 11 April 2005, and an updated edition of Leaflet 6 - Do I qualify financially for civil legal assistance?

information

These mailshots are available:

- online at www.slab.org.uk in the legal profession section
- printed copies can be ordered by calling our Communications Office on 0131 240 1985.



Check your details

So that correspondence, *The Recorder* and other important information from us reaches you, please write to our Receipts and Payments Department immediately if your address, firm, or practitioner details change.

Please also tell us if your firm changes to or from Royal Mail, Hays DX or Legal Post so we can update our records and send mail to you by right carrier.



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EH3 7SW

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