



The Recorder

Key features in this Recorder includes:

Legal aid: a modern system for a modern Scotland

Justice Minister Cathy Jamieson MSP highlights her approach to further reform of legal aid, including interim fee increases for civil advice and assistance and solemn criminal legal aid, whilst work on different reform packages is progressed.

Civil legal aid reform

This section contains further updates and guidance on civil reform issues. It also includes further information on children's legal aid being brought under the reformed civil legal assistance regime and details of an uplift in fees in certain cases.

Civil legal assistance

This section includes new guidance on criteria for Court of Session actions and bonds of caution.

Treasury

The Board has changed practice in property recovered or preserved on the granting of standard securities.

Sanction in legal aid cases

This section includes revised guidance on expenditure limits and when to seek Board approval.

Criminal legal aid

The Board has finalised a discussion paper on the review of summary criminal legal assistance.

Contents

- Chief Executive's Introduction page 2
- Legal aid: a modern system for a modern Scotland - by Justice Minister MSP Cathy Jamieson ... page 3
- Tripartite group page 5
- Strategic review page 6
- Civil legal aid reform page 7**
 - Memorandum of Understanding
 - Children's legal aid
 - Registration
 - Expiry dates of certificates
 - Identifying the correct opponents
 - Supporting documentation
 - Stage reporting
 - Applicant's financial eligibility forms
- Civil legal aid guidance page 13**
 - Criteria for Court of Session Actions
 - Bonds of caution guidance
 - Guidelines for applications to pursue and defend exclusion orders
- Civil legal aid accounts page 16**
 - New civil legal aid fees
 - Civil payments to account
- Treasury page 17**
 - Standard securities
 - Clawback limits for civil legal aid and advice and assistance
- Advice and assistance page 19**
 - Hardship applications
 - Advice and assistance increases guidance
- Sanction in legal aid cases page 20**
 - Sanction for expert witnesses or for unusual work or work likely to incur unusually large expenditure
 - Sanction reconsideration requests
 - Criminal sanctions
- Criminal legal aid page 22**
 - Review of summary criminal legal assistance
 - Criminal compliance issues
- Board news page 23**
 - Our performance
 - Opportunities for access
 - New Board Members appointed
 - Delivering Legal Aid Online services
 - www.slab.org.uk
 - Scottish Legal Aid Handbook
 - Opening of further Public Defence Solicitors' Offices
 - Legal Aid Conference
- Forms and information page 28**
 - Legal aid forms update
 - Obtaining copies of our publications
 - Have you received this information?
 - Check your details

Issue

39

May 2004

Chief Executive's Introduction



Welcome to the first edition of *The Recorder* in 2004. This edition is bigger than usual reflecting the large number of initiatives and developments underway to improve legal aid.

We have also changed its presentation to hopefully improve readability.

The Justice Minister Cathy Jamieson MSP recently visited the Board to discuss taking forward her plans for modernising the justice system and within this, legal aid. I am delighted to be able to include an article by the Minister on her plans. It highlights her approach to further reform of legal aid, including interim fee increases for civil advice and assistance and solemn criminal legal aid, whilst work on different reform packages is progressed.

We recently published our Corporate Plan for 2004-2006. Achieving our performance targets is a key priority. The targets reflect our commitment to delivering our service on time and to a high standard. I am therefore delighted that in the last year, we have achieved all our headline targets. For 2004-2005, we have set higher targets and also introduced significantly shorter timescales for Legal Aid Online services compared to paper processing.

Over the next few months we hope to make substantial progress with the Scottish Executive and the Law Society of Scotland on the reform of civil advice and assistance so that it works effectively with the reformed civil legal aid introduced from October 2003.

On the criminal side there is a substantial project with the Scottish Executive and the Law Society of Scotland on reforming the arrangements for solemn legal aid. We are also working with the Faculty of Advocates on developing a scheme of graduated fees for

criminal cases. These reforms are important to the implementation of the reform of the High Court, which is expected to come into effect in early 2005. We have completed our review of the interests of justice test in criminal legal aid, which also considers wider aspects of criminal legal assistance. This will contribute to Scottish Minister's intended reforms. We are publishing our discussion paper and welcome comments on our proposals.

We are also making progress with delivering Legal Aid Online services, formerly called eBusiness, which will bring a wide range of benefits to the profession. Over the coming year we will be encouraging greater use of electronic communications instead of paper. We will be further enhancing the information and ease of use of our website, www.slab.org.uk, over the next months. We will be publishing online a revised Scottish Legal Aid Handbook, as the key reference material for the profession and providing regular updates to it.

To deliver our plans we will continue to identify and respond to the opportunities and the needs of our stakeholders and customers. Our common approach is to work in partnership and to consult with those with an interest in legal aid and access to justice.

I hope this edition of the Recorder provides you with useful information on legal aid, its operation and development.

Lindsay Montgomery

Chief Executive

Legal aid: a modern system for a modern Scotland

A view from... the Justice Minister

Justice Minister Cathy Jamieson MSP recently visited the Board to discuss modernisation of the justice system. We are delighted that she agreed to write an article for The Recorder to set out her plans to inform legal aid practitioners.



The justice system in Scotland is going through a period of significant change. From the reorganisation of the High Court and Summary Justice to the recently passed Vulnerable Witnesses Bill, providing a system fit for a 21st century Scotland is no mean task.

An essential component of the modernisation of our legal system has to include the modernisation of legal aid. Not just the scheme that is currently administered by the Scottish Legal Aid Board, but a root and branch reform of the way we provide access to justice for all.

Modernisation has to be based on the three core principles of:

- fair reward for work done
- the introduction of quality assurance where it is not in place already and
- value for money in the use of taxpayers money.

My overall aim is that we build on the many strengths of the current system so that we can inspire greater public confidence in providing a valuable service to the people of Scotland.

Strategic Review

Last December we launched, along with the Scottish Legal Aid Board, a Strategic Review of the delivery of legal aid, advice and information.

The final report is expected in June 2004. It will examine the roles and contribution of all those involved in the delivery of publicly funded legal advice, as well as the role, functions and powers of the Board.

This is a wide-ranging review and we have taken soundings from across the justice sphere. We need to remember that in this modern age, that legal advice, information and representation is available from a wide range of organisations and agencies, as well

as from solicitors. All of these providers have a role to play in meeting the needs of the people who use these services.

Civil Legal Aid

The civil legal aid reforms that were introduced last October have far reaching implications. The changes were the result of partnership working between the Law Society of Scotland, the Scottish Executive and the Board and the work continues as the reforms are implemented.

These reforms have three main strands. The first is a substantial increase in fees for solicitors, together with a simplified block fee structure for most sheriff court cases. The system allows for staged payments to be made before a case has concluded and it is "front-loaded" to encourage early settlement of cases, rewarding good practice.

The second is the introduction of progress reports to the Board for cases that legal aid has been made available for so that the Board can be satisfied that the statutory tests continue to be met.

The third strand of the reform is that of quality assurance. Any firm that provides civil legal assistance must now be registered on the Board's civil legal assistance register, ensuring that solicitors' offices are operated to agreed standards. Another part of the quality assurance process is 'peer review', which involves the inspection of files by experienced civil practitioners to ensure that they meet agreed quality standards.

The advantages of these reforms are significant. Efficient and effective practitioners receive fair reimbursement for the work they do, whilst the users of legal aid have the confidence of a quality assured service.

Advice and Assistance

Civil advice and assistance has been the subject of much recent discussion between the Law Society of Scotland, the Board and the Executive.

We need to introduce a more fluent structure, improving the services provided, increasing fees payable and reducing unnecessary expenditure.

The Board and the Law Society have produced proposals for reform and the Executive is looking at these as a part of the Strategic Review.

In the meantime, and in order to reflect the changes introduced as a result of civil legal aid reform, we will implement a 5 per cent interim increase in solicitors' fees for civil advice and assistance, with effect from June 2004.

Once we have the report from the Strategic Review I will look at a more comprehensive package of reform, based on the principle of ensuring that the reward for such work is fair and in line with other parts of the legal aid system. I want this initiative to move forward quickly, with final decisions being taken in the autumn.

Criminal Legal Aid

Criminal legal aid accounts for 70 per cent of legal aid spending and is the fastest growing of all legal aid types. It must ensure that the principles enshrined in the European Convention on Human Rights are upheld, but it must also meet these goals in an effective and efficient manner. I also want to ensure that providers of criminal legal aid receive fair reward for their work.

At a recent meeting with the Law Society I agreed a 5 per cent increase in fees for solicitors in solemn legally aided cases for meeting with clients and for waiting time, and a 15 per cent increase for advocacy, that would take effect from June 2004.

The Law Society of Scotland, the Board and the Executive will be taking forward a review of solemn legal aid and the introduction of quality assurance in criminal legal aid. Separately, work is underway with the Faculty of Advocates on a revised system of feeing for criminal work, including the introduction of

a quality assurance scheme for advocates. I expect to see this package in place in good time for the full implementation of the High Court reforms by early 2005.

In summary justice we will also be looking at the results of the consultation on the McInnes report and I'm looking forward to receiving the Board's proposals for reforming the criminal legal aid system.

The Task Ahead

The legal aid budget is demand led and is growing substantially. Of course, I want to see legal aid available to those who need it. But the reality is that the more we spend on fees, the less there is for other improvements, such as increased eligibility and our first priority, like the profession's, must always be the user.

Although we try to get the detail of our regulations right when they are approved, as the law and legal practice change over time, they can lose their value for money focus. I have therefore asked my officials and the Scottish Legal Aid Board to keep the way the legal aid regulations work under regular review and to propose changes to the regulations which cut down on unnecessary expenditure. By keeping the regulations up to date, in line with value for money considerations, we can ensure that we target the money available to provide the right type of rewards for work done by the profession.

It is important that the legal profession is fully engaged in the process of modernising legal aid. Their input is vital in ensuring that everyone involved in the system works together to provide greater access to legal information, advice and representation, quality assured legal assistance, the best possible value for money and also fair remuneration for professionals.

Our long terms goals of a safer and stronger Scotland, confident and prosperous communities and excellent public services can only happen with the involvement of all the stakeholders. The work has already started but there is a great deal still to do. I look forward to continuing that work with the co-operation of all concerned.

Tripartite Group

Members of the profession who deal with legal aid may have seen reference from time to time to the Tripartite Group. This article seeks to give more information about this Group, how it operates and an outline of matters it is currently considering.

The Group comprises representatives from the Scottish Executive who chair the Group, the Law Society of Scotland and the Board. Attendance varies but the main representatives of each of the organisations on the Group are:

Scottish Executive

- Head of Civil and International Group
- Head of Access to Justice Division
- Head of Legal Aid Policy Team

Law Society of Scotland

- President
- Vice President
- Convener, Legal Aid Committee
- Vice Convener, Legal Aid Committee

Scottish Legal Aid Board

- Chairman
- Chief Executive
- Director of Legal Services & Applications

The Group meets three or four times each year. Its primary purpose is to provide a forum for discussion of strategic issues and matters of importance to each of the stakeholders. Increasingly the Group is concerned with ensuring that there is adequate planning and resourcing of the range of major reform initiatives such as reform of civil advice and assistance, reform of solemn fees etc.

The most recent meeting was held on 6 May 2004. The main items discussed were:

- **Reform of civil legal aid** - There was an update from the Board and the Law Society on the reforms implemented from 1 October 2003 and progress on arrangements for the introduction of registration and quality assurance from 1 July 2004.

- **Reform of civil advice and assistance including fees and related work plan** - The Group considered an outline project plan for the reform of civil advice and assistance which would see a package of reforms including increased fees introduced from 1 April 2005. An interim increase of 5% for civil advice and assistance fees will be implemented in June 2004.
- **Progress on the Strategic Review of Legal Aid** - there is a separate article on this on page 6 of this *Recorder*.
- **Reform of solemn legal aid and related work plan** - An interim increase of 5% for meeting with clients and waiting time and 15% for advocacy will be implemented from June 2004. Further review and reform of solemn criminal legal aid will be taken forward during 2004 to ensure that the changes necessary to tie in with the reform of the High Court in early 2005 are put in place.
- **Introduction of quality assurance in criminal legal assistance** - Initial work is now underway on developing a peer review based quality assurance scheme for criminal legal assistance for solicitors.
- **Research on the availability of trainees and assistants in firms undertaking legal aid** - It was agreed that there may be value in undertaking further research into the availability of trainees and assistants in firms undertaking legal aid. Dr Anita Morrison, Team Leader of Legal Studies Research at the Scottish Executive will discuss this further with the Society and Board to establish whether there is scope for joint research looking at both civil and criminal business.
- **Children's legal aid** - there is a separate article on this on page 7.

It is planned to include update reports in *The Recorder* following future Tripartite Group meetings to keep the profession informed and aware of what is being taken forward.

Strategic Review of the delivery of legal aid, advice and information update

In the last issue of *The Recorder* we said that the strategic review of legal aid, advice and information in Scotland announced by Justice Minister Cathy Jamieson is underway.

The review has been divided into four broad stages:

- Stage 1 PLANNING – assessing the scope of the review and planning work
- Stage 2 FACTFINDING – assessing current arrangements; exploring and identifying possible improvements
- Stage 3 OPTIONS FOR CHANGE – discussing and developing options for improvement and change
- Stage 4 WRITING - report and recommendations

The Review is being carried out by a team from the Scottish Executive Justice Department and the Board, who are advised by a Reference Group.

The role of the Reference Group is to provide advice and guidance to the review team and maintain a focus on the terms of reference.

It is a well focused but broadly based group, with membership drawn from a range of bodies involved in legal aid and information and as such can provide expert guidance to the review. The members contribute from their individual experience and not as a representative of their organisation.

Members of the Reference Group are:

- **Chair:** Valerie Macniven, Head of Civil and International Group, Justice Department, Scottish Executive
- Jean Couper, Chairman, Scottish Legal Aid Board
- Margaret Scanlan, Board Member, Scottish Legal Aid Board
- Lindsay Montgomery, Chief Executive, , Scottish Legal Aid Board
- Colin Imrie, Head of Access to Justice Division, Justice Department, Scottish Executive
- Professor Alan Paterson, University of Strathclyde and an academic expert in the field of access to justice and legal aid

- Lord Kingarth, Senator of the College of Justice
- Morag McLaughlin, Head of Policy, the Crown Office
- Gerry Brown, Solicitor
- Simon Di Rollo, Advocate
- Pat Stewart, Manager, Aberdeen Citizens Advice Bureau
- David Campbell, an independent lay member

The team has now almost completed the initial fact-finding stage of the review involving meeting with and obtaining the views of a range of stakeholders, including those in the legal profession, the not-for-profit sector and local authorities. Further meetings are now being held with representatives from the various stakeholder groups to explore the issues raised and responses to them.

Further information about the review and updates on its progress can be found on the Board's website at www.slab.org.uk in the "About us" section.

It is expected that the report, with recommendations, will be made to Scottish Ministers and the Board at the end of June.

Civil legal aid reform

Memorandum of Understanding

We are in discussions with the Law Society of Scotland over the terms of the Memorandum of Understanding, which is the document that will lay down the protocols for the operation of the quality assurance regime. Once finalised, this document will be made available on the websites of both the Law Society and the Board.

Children's legal aid

All children's legal aid work has been brought within the scope of the current quality assurance regime and peer review process.

The measure has caused some confusion particularly amongst those members of the profession who are involved only in what might be termed the "criminal" aspects of this work. We understand the perception to be that by registering under what is a civil system, those firms are committing themselves or are being seen to be involved in civil legal assistance. That is not the intention.

This is an interim measure which has been put in place pending the introduction of a distinct system dealing with children's legal aid. Its intention is to bring children's legal aid work within peer review and secure for those firms the enhanced fees payable under the new regime.

Unless those firms registering also conduct civil legal assistance, they will not be shown on the civil register of firms, but instead will be held on a separate register of those firms providing children's legal aid.

The necessary amendments to the fees regulations will be in place by the "go live" date of July.

In addition, it has been agreed to make provisions enabling the Board to grant uplifts in fees in certain cases. It has been decided to introduce these provisions as soon as practicable after 1 July rather than delaying the introduction of enhanced payments, which would have been the consequence of

further amendments at this stage. We have however received an assurance from the Scottish Executive that arrangements will be put in place to give appropriate consideration to any case in which legal aid is granted on or after 1 July which would fall within the scope of the provisions but concludes before they are introduced.

Registration

We will be issuing civil reform mailshot 10 shortly in which we explain how firms can advise us in the run up to 1 July 2004 that they have in place the necessary procedures to comply with the Law Society of Scotland's requirements for the provision of civil legal assistance.

In previous mailshots and in the roadshows about civil legal aid reform, we undertook:

- to advise and publish proforma procedures and
- that any firm could make use of our civil compliance auditors to provide guidance and assistance in developing procedures to comply with the Law Society's ten requirements.

A proforma set of procedures that will meet the ten requirements has been posted on the Board's website www.slab.org.uk. Alternatively, you can also ask our civil compliance officers to send the guidelines – see below for details.

We would emphasise that these are merely suggestions for very basic procedures to meet the requirements. If your firm already has office procedures in operation that you feel will meet the requirements, our Civil Compliance Auditors will be happy to provide advice and guidance on this or any other area of civil compliance. Please contact: Emma Thornthwaite, tel 0131 226 7061 ext 353, or Isobel Tripp, tel 0131 226 7061 ext 429.

If your firm feels that a general seminar at local faculty level would be useful to discuss with compliance staff the procedures required or civil registration requirements generally, please contact Brian Miller, Legal Compliance Manager, direct tel 0131 240 2043 or email millerbr@slab.org.uk.

Expiry date of certificates

We will no longer allocate expiry dates to legal aid certificates when our new civil computer and document scanning system becomes operational later this year. However, until then certificates will continue to include expiry dates.

Currently, legal aid certificates are granted with a time limit of one year within which action has to be taken. You should continue to apply for an extension to the expiry date if action could not be taken within this period by writing to us. When our new system is introduced, this situation will no longer arise.

You should also keep in mind that, where legal aid has been granted, and action is not taken, you should still submit a compulsory stage report 12 months after the grant of civil legal aid to inform us of the progress of the case and address whether the tests of probable cause and reasonableness continue to be met. In addition, where proceedings have not been raised and where there has been a material change affecting the assumptions on which the grant of legal aid has been made, you should submit an unprompted stage report.

Identifying the correct opponents

It has been brought to our attention that, on occasion, not all opponents are named in a legal aid application. Where legal aid is granted and proceedings are raised against an opponent against whom legal aid was not granted, you will not be covered under the grant of legal aid for work relating to that opponent until regulation 18 certification is given to cover any urgent work and an AMND/APP is granted to amend the grant of legal aid to include the additional opponent. It is important that you provide details of all opponents to ensure that we consider whether to grant legal aid against all parties.

Where an opponent's details are omitted, this also means that we cannot intimate to them that legal aid has been applied for in a case to

which they are a party. We have an obligation to intimate details of applications to opponents and this causes difficulties when we do not have full details.

It has also been brought to our attention that in cases involving decisions on parole matters, the Parole Board for Scotland should be included as an opponent. It would appear that, in the past, solicitors have omitted to do this and have named the Scottish Ministers as the opponents.

Supporting documentation

Currently, we return papers that are submitted in support of civil legal aid applications once a decision has been made. We will be introducing a new document scanning system later this year and we will no longer return the papers submitted with civil legal aid applications. Instead, the documentation will be scanned, kept for a short time and then destroyed. You should, therefore, only submit copies of any documents such as statements, initial writs, reports, passports, bank/building society passbooks, title deeds and birth/marriage/death certificates etc and not the originals. Where, for some good reason, you cannot submit a copy of the document and you need it to be returned to you, you should clearly mark the document "Valuable documentation" and it will be returned to you.

Stage reporting

Further to our *Civil Legal Aid Reform Mailshot 2* issued on 5 September 2003, this guidance gives information about the issues that you should address when submitting a reporting form.

General issues

- Please ensure that you keep a copy of the civil legal aid application form on your file for future reference. If you have not kept a copy of the solicitor's section of the form, and you cannot remember the information you submitted on it, please ask us for a copy.

If you submitted the application on the old style of form, please provide a summary of the case to date. You do not need to ask for a copy of the form. If legal aid has been transferred to you from another solicitor and you do not know what information was previously sent to us, please provide a summary of the case to date and address whether the tests of probable cause and reasonableness continue to be met.

- For your convenience, the form CIV/REP (reporting form) and form SLA/POA/3 (accounting form) are two of the many forms available on the Board's website www.slab.org.uk. You can avoid handwriting the form by filling it out on your PC, printing it and sending it to us.

Compulsory reports

Compulsory reports must be submitted:

- when a proof or debate has been assigned or 12 months after legal aid is granted – whichever is the earlier
- in family cases, involving a child welfare hearing, when a proof or debate has been assigned or six months after legal aid is granted – whichever is the earlier
- each subsequent 12 months after the initial report
- final report at conclusion of proceedings (**not** when the account is submitted).

Issues to be addressed where a proof or debate has been assigned

- Regardless of the type of hearing assigned, you should tell us what has happened in the case to date.
- You should provide details of
 - the issues that have been agreed between the parties
 - the issues that are outstanding between the parties and
 - what issues will be covered at the hearing.

Issues to be addressed where 12 months have passed since the grant of legal aid

- You should provide details of
 - the negotiations have taken place between the parties
 - the issues that remain outstanding between the parties
 - what steps have been taken to settle the case and
 - how the case is likely to settle through further negotiation
 - where proceedings have not been raised, the reason for this.

Issues to be addressed in family cases, involving a child welfare hearing, when a proof or debate has been assigned or where six months have passed since the grant of legal aid

- You should provide details of
 - the issues that have been agreed between the parties
 - the issues that are outstanding between the parties and
 - what issues will be covered at the hearing *or*
 - the negotiations have taken place between the parties
 - the issues that remain outstanding between the parties
 - what steps have been taken to settle the case and
 - how likely the case is to settle

Issues to be addressed each subsequent 12 months after the initial report

- where proceedings have not been raised, the reason for this
- the issues that remain outstanding between the parties
- what steps have been taken to settle the case and how likely the case is to settle

Probable cause and reasonableness

You should always answer the questions on whether the tests of probable cause and reasonableness continue to be met, referring to our “*Civil legal aid merits guidelines*,” issued in October 2003. These guidelines were designed to provide a basic background to the factors that will be considered in assessing probable cause and reasonableness, and the evidential requirements for applications. They cover a wide range of topics and types of application.

It may assist you to take each crave in turn and give concise comments on whether the basic test of probable cause has been met and what the factors are that make it reasonable for legal aid to be granted for this crave.

Special urgency

Where legal aid has not yet been granted and the case is proceeding under the special urgency provisions, you should still submit a report at the relevant compulsory stages.

Conclusion of proceedings

When a case has concluded, you should submit a report. We are developing a form to be used specifically at the conclusion of proceedings. We will tell you when this form is available. Until this is issued, you should use the CIV/REP form. You should tell us

- whether the expectations you had at the beginning of the case have been achieved
- the outcome of the case
- whether your initial assessment of the prospects of success and prospects of recovery were justified, and
- whether the estimate of case costs was reasonable.

If the way in which the case concluded did not meet your expectations, please explain why.

Interim payments

Where you have submitted a compulsory report and you are seeking an interim payment, you should indicate this on the reporting form. You will be entitled to payment of any blocks completed as at the stage of each compulsory report. You should submit the claim on form SLA/POA/3 within 28 days of the relevant compulsory stage to our Accounts Department. The form is not yet available from our printers but it is published on our website www.slab.org.uk along with guidance on how to complete the form, or you can contact us for copies.

Unprompted reports

- You cannot claim interim payments where an unprompted report is submitted.
- It is not appropriate to submit an unprompted report where an options hearing has been assigned, where defences have been lodged or where interim orders have been granted, unless there is an important factor that may change the way we have viewed the case. We do not categorise these as key stages in proceedings or stages in the case that we need to be made aware of.
- Where a case is sisted for legal aid, you do not have to submit a stage report. However, where legal aid is subsequently granted and the case remains sisted, you should submit an unprompted stage report to tell us of the progress being made in the case. You should submit this report as soon as possible after the grant of legal aid is made, up to three months after the grant of legal aid.

When should an unprompted report be submitted?

The Civil Legal Aid (Scotland) Regulations 2002 as amended introduced new provisions that impose a duty on the solicitor, counsel and the applicant or assisted person to report changes in circumstances to the Board. Regulation 23 states that a solicitor should immediately inform us of:

- any change in the applicant's or assisted person's circumstances, financial or otherwise;
- any change in the circumstances, financial or otherwise, so far as is known to that applicant or assisted person, of any other person with whom that applicant or assisted person is jointly concerned, or who has the same interest in, the matter; or
- any circumstance, financial or otherwise, which may affect our determination that the applicant or assisted person has probable cause or that it is reasonable in the particular circumstances of the case that that person should receive, or continue to receive, legal aid. Regulation 23(4) states that a solicitor is not precluded from making a report because of any privilege arising out of the relationship between solicitor and client.

You should, therefore, submit unprompted reports where there has been a material change affecting the assumptions on which the grant of legal aid has been made. As a result of these changes, the statutory tests of probable cause and reasonableness may no longer continue to be met, the assisted person may no longer be financially eligible to receive legal aid or there may be a need to reassess eligibility. The report will allow us to take the appropriate action. Such circumstances could include:

- where the case is sisted (not, however, where it is sisted for legal aid)
- to tell us of the outcome of a debate that has changed the nature of the assisted person's case

- where a proof diet is adjourned – you should tell us why it has been adjourned and what further work will be carried out
- where a minute of tender is lodged but rejected – you should address why it has been rejected
- where the prospects of success or recovery change
- where there has been significant increase in the likely total cost of the case
- where a case is transferred to you and your view about any aspect of the application, particularly in relation to probable cause and reasonableness and the prospects of success and recovery are significantly different from that of the solicitor who made the application
- where you become aware of the following changes in the assisted person's financial circumstances:
 - the assisted person's overall disposable income increases by £500 or more, or decreases by £200 or more, within the 12 month computation period (even where legal aid may have been terminated beforehand or the case concluded) or
 - the assisted person's capital increases by £500 or more, during the life of the case (even where legal aid may have been terminated beforehand).

Applicant's financial eligibility forms

When we introduced the new civil legal aid forms, the civil legal aid application form was split into two separate forms: the solicitor's form, which deals with the merits of the case, and the applicant's form which deals with the financial eligibility.

The solicitor should complete the solicitor's form and ask the applicant to complete one of the applicant's forms themselves (financial eligibility form CIV/FIN/2 or, if the applicant is in receipt of Income Support or Income based Jobseeker's Allowance, payments from the National Asylum Support Service or is applying on behalf of a child, CIV/FIN/1). Because of the separation between the merits and the financial sides of the application, the financial forms encourage applicants to contact the Board rather than their solicitor for assistance with the completion of the financial form.

Solicitors have told us that they are experiencing difficulties in helping their clients complete the financial eligibility forms. Under the new arrangements, solicitors need not become involved in this process if they do not wish to do so. Instead, solicitors can rely upon the Board's Financial Assessment Unit to deal direct with their client over the completion of the form.

We recognised that many applicants will need support and assistance with the eligibility forms and our guidance for applicants directs them to staff within the Financial Assessment Unit who will be able to give them the appropriate specialist advice.

In revising these forms we took great pains to make sure that they were easily understandable and that the navigation through them was clear. From the research we have been able to conduct since the forms were introduced, it appears that applicants do not find the forms complicated but are instead surprised by the detail of the supporting documentation they are now expected to produce.

It would, therefore, be helpful if solicitors could tell their clients, as early as possible, what they need to send us in support of the form. This will give their clients time to put together the necessary documentation before the forms are sent to the Board.

You should also note that when completed and signed, both the CIV/SOL and financial eligibility form should be sent to the Board together. Where the financial form is lacking some required information, we will contact the applicant to request the missing information and inform the solicitor that we have done so.

Forms

Our article on page 28 of this edition of *The Recorder* provides you with up to date information on the forms and covers some of your frequently asked questions. It includes information on ordering forms, forthcoming changes and in particular, how to obtain electronic forms for completion on computer.

Civil legal aid guidance

Criteria for Court of Session actions

In Issue 37 of *The Recorder* we published guidance on our approach to the financial threshold at which it would be reasonable to grant civil legal aid for proceedings in the Court of Session.

We have since given consideration to a number of observations received. One concern raised relates to the availability of jury trials in the Court of Session and whether this should be regarded as sufficient to make it reasonable to grant legal aid for proceedings in the Court of Session whatever the value of the claim.

If you intend to raise a Court of Session action for a claim valued at less than £50,000, you should give us detailed reasons for this, including:

- information about any particular complexities or novel points of law that arise in the case
- whether the case could be viewed as a test case
- where it has been stated that a jury trial will be sought, detailed arguments to show that a jury trial would be appropriate and reasonable in all the circumstances – simply stating that a jury may make a higher award is not, on its own, sufficient justification for Court of Session proceedings
- where the case is seen as suitable for the new personal injury case procedure in the Court of Session (in place since 1 April 2003) full information as to why that procedure would be more suitable than sheriff court procedure.

Bonds of caution guidelines

The Board has recently given consideration to situations where premiums for Bonds of Caution may be met from the Legal Aid Fund. Payment of such premiums may be appropriate in guardianship proceedings and certain executry matters. It would not, however, be appropriate to make any

payment in situations where a litigant has been requested to find caution of expenses before the case can continue.

Guidelines have been prepared detailing our approach to requests for payment of premiums from the Fund to assist the profession. The guidelines are set out below on caution for expenses, executries and adults with incapacity.

Caution for expenses

In actions where the court considers that someone has no basis for their claim and little likelihood of success, it may make an order to find caution for expenses as a condition for continuing with their case. These orders may be made against a legally assisted individual. Where it makes an order, the court will usually fix an amount for the individual to pay into the court. This will normally be a sum of money rather than any form of bond. The purpose of lodging this money, or a guarantee of payment, is to try to ensure the opponent's expenses can be met at the conclusion of the case if the individual against whom the order has been made loses and is ordered to pay expenses.

These orders are made in actions where there is seen to be no real basis for the case. We would not, therefore, fund either a caution or the costs of caution for expenses in such a situation. If you ask for this, you and the legally assisted party must comment on the appropriateness of legal aid continuing. If you do not give us this information, we will continue the application for it. In any event, if such an order was made we would expect an ad hoc report from the solicitor acting.

Under regulation 30(b) of the Civil Legal Aid (Scotland) Regulation 2002, if there is no longer probable cause or it is unreasonable for legal aid to continue, we may terminate the grant. Where a court has decided that a case has so little merit that caution for expenses is necessary, this is a change of circumstances. We need detailed comments on probable cause and reasonableness to consider the possibility of terminating the grant of civil legal aid.

Bonds of caution in executries

Background

Where an individual dies without leaving a will and the court appoints an executor to administer the estate, the executor may require a bond of caution. An insurance company normally provides the bond of caution at a premium of between £250 and £450. Bonds of caution are not required in small estates where the value of the estate is £25,000 or less. In addition, bonds of caution are not required where the whole estate is passing to a surviving spouse to meet their legal and prior rights.

The bond of caution provides indemnity to any beneficiaries of the estate if there is any error or maladministration by the executor.

Procedure

Where solicitors wish to get funding under advice and assistance for the cost of the premium, they must ask for an increase in authorised expenditure.

Before we can consider any request for an increase, we need the following information:

- What is the value of the estate and, in particular, is it more than £25,000?
- Why are those involved in winding up the estate not meeting the costs of the premium for the bond of caution at the outset, ultimately recovering it from the estate?
- If there is no means for paying the premium of the bond of caution other than by an increase in authorised expenditure, you must give us detailed information to support this.
- Is the applicant the surviving spouse and are there other beneficiaries?

In the vast majority of cases, we would expect the solicitor or other parties involved in winding up the estate to meet the costs of the premium for the bond of caution. If this is not possible, you must give us full reasons why not to allow us to consider whether it would be reasonable to allow an increase in authorised expenditure.

Bonds of caution – adults with incapacity

Background

Where someone is seeking either an appointment as a guardian to an adult with an incapacity or an intervention order in relation to the adult, they must obtain a bond of caution. An insurance company will provide this bond subject to payment of a premium. The cost of this is usually chargeable against the estate of the adult with incapacity. The purpose of the bond of caution is to indemnify that adult against any error or maladministration on the part of the guardian or the person who obtains the intervention order. Guardians may be appointed either to administer the estate of an incapable adult generally or, more specifically, to represent an adult with an incapacity involved in any litigation.

At the time an individual is appointed as a guardian to the incapable adult there may be no fund or estate to meet the costs of this premium. In such situations, it may be appropriate for us to meet the costs of the premium for the bond of caution.

Procedure

If you want cover for the costs of the premium, you should ask for sanction to cover this. Before we can consider the request, we need the following information:

- details of the circumstances leading to the appointment of the guardian
- where litigation is involved, details of the litigation including any claims that may be made in the litigation
- sufficient information to show that there are no funds to meet the costs of the premium either from the estate or any other source.

Guidelines for civil legal aid applications to pursue and defend exclusion orders

Civil Legal Aid Merits Guidelines were issued to the profession in October 2003. These are available from the Board's website or printed copies can be ordered from the Board's Communications Department on 0131 240 1985.

These guidelines were issued primarily for the use of Board staff considering applications for civil legal aid. They are designed to give a basic background to the factors that will be considered in considering probable cause and reasonableness, and the evidential requirements for applications. They are designed to show what information the Board needs to see in civil legal aid applications, and how it reaches its decisions.

Two new guidelines (along with an updated contents page) will be issued to the profession shortly as a mailshot. These guidelines relate to applications to Pursue and Defend Exclusion Orders.

Civil legal aid accounts

New civil legal aid fees

Since the introduction of new civil legal aid fees on 1 October 2003, we have received a number of incorrectly charged accounts.

In particular, accounts have been submitted in relation to grants of legal aid made before 1 October 2003, but with work done after 1 October 2003 wrongly charged on the new rates.

The rates of charge introduced on 1 October 2003 apply only to grants of legal aid made on or after that date.

The only exception to this is where work has been undertaken under regulation 18 but the case does not proceed to a grant of full legal aid. Where such work has been commenced before and concludes after 1 October 2003, the initial work is chargeable under Schedule 3, with the work done after 1 October 2003 charged on the new Schedule 5 fees.

If you have any queries on accounts related matters you should contact Steven Carrie on 0131 240 2054 or Ross Marriott on 0131 226 7061 ext 251.

Civil payments to account

We can only make payments to account to a solicitor on receipt of a report lodged at a compulsory reporting stage.

If a compulsory report is not timeous, we cannot make a payment to account. This, however, will not preclude payments to account at a later stage in the same proceedings where the solicitor does lodge a compulsory report timeously.

Payment in respect of the work where a payment to account has been withheld will be paid at the conclusion of the proceedings on receipt of the solicitor's final account. We do reserve the right, however, to challenge any work carried out in circumstances where we would have considered suspending or terminating the certificate or would have challenged the course of action taken by the solicitor had the solicitor reported timeously.

Cases where civil legal aid was granted before 1 October 2003 will continue to be dealt with as before.

Block accounts

The solicitor is entitled to payment of any blocks *completed* as at the stage of each compulsory report. The claim should be submitted on form SLA/POA/3.

Detailed accounts

The payment on account rules under schedule 5 (detailed fees) will be:

1. The solicitor is again entitled to submit a claim at each compulsory report stage, and should submit the claim on form SLA/POA/3 giving a note of the fees incurred as at the date of the report.
2. No detailed account is required at this *interim* account stage. We can make an *interim* payment of 75% of the fees that are eligible for payment and earned during the period covered by the claim.

The form SLA/POA/3 is available online at www.slab.org.uk in the Legal Profession section. Printed forms will be issued to the profession shortly, but until then, they are available by contacting Steven Carrie on 0131 240 2054.

Treasury

Standard securities

Change of practice with regard to property recovered or preserved

The purpose of this article is to inform practitioners of a change in certain circumstances in the Board's practice in one aspect of how we deal with debts to the Fund.

In civil legal aid cases, if property is recovered or preserved and there is a net liability on the Fund, and the property consists of or includes an interest in land, the Board may require the assisted person, at their own expense, either to sell that interest and pay the amount of the net liability out of the proceeds or to grant a standard security in favour of the Board to secure the amount owed. (Regulation 40 (3) (iv) of the Civil Legal Aid Scotland Regulations 2002, and previous regulations.)

Where the principal constituent of the property recovered or preserved is the matrimonial home, in the vast majority of cases the Board would not wish to exercise its power to require the sale of the house. We are aware, however, that in many such cases, the assisted person may have little capital or income to allow them to pay the sum owed to the Board. In such cases, our practice has been, and will continue to be, to try to obtain a method of repayment that, on balance, meets the reasonable needs of both the assisted person and the Fund. In many cases, we are able to agree a schedule of payment by instalments, based on the assisted person's ability to pay.

In some cases, however, the assisted person has no practical ability in the short term to pay the sum owed to the Fund, either by lump sum or instalments. One option may be for the assisted person to raise capital from a commercial lender against the security of the property to pay the sum owed. If that also is not possible, the only viable option left may be to defer payment of the sum owed and grant a standard security in favour of the Board. If this course of action is pursued, it is important that the assisted person is aware that the rate of interest payable is the judicial

rate of interest, currently 8%. (Regulation 41 (1) & (2).)

The Board's historic practice in such cases has been to liaise with the assisted person and/or his or her legal advisers with a view to them granting a standard security in favour of the Board. That has led in a number of instances to very substantial delays and loss of interest income to the Fund when the assisted person is unwilling or reluctant to grant a standard security.

In cases where there is no other method of payment available and it is clear that the assisted person will not grant a standard security, or is deliberately delaying the process, the Board may now take steps in appropriate cases to "require" the granting of a standard security. This will require us to raise an action for payment with a crave for an order ad factum praestandum and an order directing the Sheriff Clerk to sign the security if necessary.

The taking of such steps is likely to increase the amount owed by the assisted person to the Board. The Board would prefer not to have to take such steps and incur further expenditure that increases the indebtedness of the assisted person, but we have a statutory obligation to properly manage the Fund and must use the powers available to us, when appropriate, to protect the position of the Fund.

Annual statements for standard security cases

As a result of new computer systems in our Treasury Department, it is now possible for us to provide individuals who have granted standard securities to the Board with annual statements of the amount due, including interest. The first statements are being issued in May 2004 and thereafter will be issued annually in April each year.

Clawback limits for civil legal aid and advice and assistance

In our mail shot to practitioners dated 5 April 2004, we notified you of the increase in the clawback limit in both civil and advice and assistance cases to £4,395. We stated that the relevant date for determining the clawback figure to be applied is the date of the order or settlement to prevent or bring to an end proceedings.

By way of clarification, whilst the clawback figures laid down from time to time attach themselves to the date of the order or settlement, the relevant figure to apply in each case depends on the date on which the application was made for civil legal aid or advice and assistance.

The figures in regulation 16(2) of the Advice & Assistance (Scotland) Regulations 1996 and regulation 33 of the Civil Legal Aid (Scotland) Regulations 2002 were both increased from £2,500 to £4,200 with effect from 1 December 2002, without qualification. If the date of the court order or settlement was caught by these regulations, this is the figure to apply.

The subsequent amendments made by way of Scottish Statutory Instruments are qualified to the extent that the regulations, and, therefore, the substituted figures, apply only to cases where an application for advice and assistance or civil legal aid is made on or after the date on which the regulations come into force (and prior to the next set of regulations).

The following table summarises the position:

DATES	CLAWBACK LIMIT
Date of order or settlement is prior to 1 December 2002	£2,500
Date of order or settlement is between 1 December 2002 and 5 April 2003	£4,200
Date of application for advice and assistance or civil legal aid is between 6 April 2003 and 11 April 2004	£4,275
Date of application for advice and assistance or civil legal aid is between 12 April 2004 and the date of the next amendment	£4,395

If practitioners have any queries about the correct limit to be applied in any particular case, please contact the Board's Treasury Department on 0131 220 1965.

Advice and assistance

Hardship applications

New forms and guidelines for applications under Regulation 16(3) of the Advice and Assistance (Scotland) Regulations 1996 (commonly known as “hardship applications”)

The Board has approved guidelines to be used in the assessment of applications made under Regulation 16(3) of the Advice and Assistance (Scotland) Regulations 1996. We have introduced two separate forms for:

- applications under Regulation 16(3)(a) – applicant grave hardship or distress
- applications under Regulation 16(3)(b) – solicitor has taken all reasonable to obtain payment but this cannot be obtained without unreasonable delay or difficulty.

The new forms will make the application process clearer and will assist you in deciding whether an application should be made under Regulation 16(3)(a) or (b). The new guidelines will provide information on the Board’s policy in this area to assist you in completing the applications.

We expect to issue a mailing to all practitioners with the new forms and guidance in June.

Advice and assistance increases guidance

As a step towards simplifying the process for seeking requests for increases in authorised expenditure in a number of areas, we have been considering introducing further guidance notes for certain increase requests. This approach provides greater certainty as to the subject matter of the increase request and reduces administration for both the solicitor and the Board.

In August 2003 we issued guidance notes dealing with immigration and asylum cases. We have now prepared guidance notes covering reparation claims, family law matters and Employment Tribunal cases, and these were issued as a mailshot to the profession on 13 May. The guidance is available on our website www.slub.org.uk, or printed copies can be ordered from our Communications Department direct tel 0131 240 1985.

Sanction in legal aid cases

Sanction for expert witnesses or for unusual work or work likely to incur unusually large expenditure

For some time now we have been considering the approach we take to requests for sanction to employ experts or to undertake unusual work or work likely to incur unusually large expenditure in both civil and criminal cases. As a result, a number of changes in our handling of such matters have recently been agreed.

Unusually large expenditure

Our current guidance on unusually large expenditure is that where costs are likely to be over £1,000 you must obtain our prior approval before undertaking the work. We have recently agreed that this is no longer an appropriate level of expenditure and increased the limit over which sanction is required to £2,000 for all cases.

If solicitors want to undertake work in relation to a specific aspect of a case and the total cost is £2,000 or less, then our prior approval for this is no longer necessary. This limit refers only to sanction in relation to unusually large expenditure.

Where the work being undertaken is however not only likely to involve expenditure of £2,000 or less but is also "unusual" work, sanction is still needed. In addition, where solicitors would feel more comfortable obtaining our prior sanction even if it is to incur expenditure of less than £2,000 and the work is not unusual, they can do so.

Sanction of specific experts

It has also been agreed that where certain experts are sought for specific types of cases, there is no need for solicitors to provide substantial information in support of those requests for sanction. In these cases, all that is needed is the name and location of the expert to be instructed together with confirmation that the fees to be charged are within the approved level of expenditure.

There is no need to provide copies of pleadings or other documentation.

The categories of case where minimal information is required are:

- valuations in matrimonial cases up to a cost of £200
- 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.

In all other cases details of the expert to be instructed together with a breakdown of the costs likely to be incurred by the expert should still be provided together with copies of all relevant pleadings, charges or other documents. If the cost of the report is to exceed £1,500 in civil cases or £800 in criminal cases, competitive quotes should also be provided in support of the application for sanction.

Accounts information

In all cases, a detailed breakdown of the time spent and the rate charged is required for the Accounts Department to properly assess the outlay claimed.

Sanction reconsideration requests

The Board has no statutory or regulatory duty to reconsider an application for sanction which has been refused by us. We do however have an administrative process for requests to reconsider a sanction application.

As from 1 June 2004, the Board will consider one review of the initial refusal where the solicitor is responding to the stated reasons given for refusal. Thereafter, in the absence of any further issues raised by the Board, or new issues not previously raised by the applicant's solicitor, generally no further reconsideration will be given to the sanction request.

This will apply to sanction applications for counsel, expert witnesses, unusual work and unusually large expenditure where sanction is required in line with current guidance.

Criminal sanctions

In May 2002 the Board issued guidelines for solicitors in relation to requests for sanction for the employment of counsel in civil and criminal applications. The guidelines for criminal cases detail factors that will be taken into account in considering whether the employment of counsel is justified.

We will shortly be publishing revised guidelines for criminal applications. The revised guidelines take into account both the changes to the sentencing powers of sheriffs and the transfer of business from the High Court to the sheriff court by making it clear that while the severity of the likely sentence on its own may not always be viewed as sufficient to justify the use of counsel, it is a factor that will be taken into consideration when there are other factors present to support the use of counsel.

The guidelines for criminal cases have also been altered in relation to solicitor advocates. While the Board cannot sanction the general use of a solicitor advocate for a case in the sheriff court or district court, because of the terms of Regulation 2 of the Criminal Legal aid (Scotland) (Fees) Regulations 1989, consideration may be given to requests for sanction for unusual work or unusually large expenditure to cover the use of a solicitor advocate in the sheriff court or district court case if their involvement is restricted to using their specialist skills for the specialised pleadings aspects of a case.

We are currently consulting on these proposed changes and once the consultation process is complete the revised guidelines will be issued to the profession.

Criminal legal aid

Review of summary criminal legal assistance

We have now finalised and published our discussion paper on the review of summary criminal legal assistance.

When this review began, its main purpose was to examine the application of the interests of justice test in the granting of summary criminal legal aid. However, as the review has progressed, its scope has been extended to consider the structure of summary criminal legal assistance more widely.

In this context we have considered the efficiency and effectiveness of the current system of advice and assistance, ABWOR, the duty solicitor scheme and summary criminal legal aid and the interaction between each of these elements in the summary justice process. In developing our proposals for change, we were keen to take account of Sheriff Principal McInnes' review of summary justice.

The purpose of our discussion paper is:

- first and foremost to put into the public domain the Board's views on how summary criminal legal assistance needs to develop, but also
- to inform and contribute to the strategic review of legal aid and Scottish Ministers' intended reform of the criminal justice system as a whole, as well as
- to complement and contribute towards consideration of Sheriff Principal McInnes' review of summary justice.

We are seeking comments by **16 July 2004**.

We have sent our discussion paper to a wide range of organisations. You can obtain a copy of the discussion paper on our website at www.slab.org.uk, or you can request a printed copy from our Communications Department, direct tel 0131 240 1985 or email general@slab.org.uk

Written comments should be submitted to: Communications Department, Scottish Legal Aid Board, 44 Drumsheugh Gardens, Edinburgh EH3 7SW. You can also fax them to 0131 240 4878 or email to general@slab.org.uk

If you have any queries on the paper, contact Kingsley Thomas, Manager of Criminal Applications, direct tel 0131 240 2085 or email thomaski@slab.org.uk

Criminal compliance issues

Registration status of solicitors

Every firm and solicitor wishing to provide criminal legal assistance (CLA) must be entered on the Criminal Legal Assistance Register (CLAR), established and maintained by the Board under section 25A of the Act. The Code of Practice in relation to criminal legal assistance further states that:

"Where CLA work is delegated by the solicitor nominated by the assisted person to...other registered solicitors within or outwith the firm, the nominated solicitor shall maintain responsibility...."

It has come to our attention that some firms have been instructing solicitors (sole practitioners) who are not registered on CLAR to undertake court representation for some of their legally-aided clients. **This is contrary to section 25A(2) of the Legal Aid (Scotland) Act 1986.**

As the nominated solicitor, it is your responsibility to ensure that any solicitor you instruct in a criminal legal assistance case is registered to provide criminal legal assistance. We issue a copy of CLAR annually to every registered firm, and our website contains an up-to-date list of both registered firms and solicitors, so it is not difficult to determine if a solicitor is registered.

With the assistance of the courts, we will be carrying out checks on the registration status of solicitors who have been appearing in court in criminal legal assistance cases. Work carried out by solicitors not on the criminal register is not payable by the Board and such practices may be viewed as a compliance failure.

Board news

Our performance

A key priority for the Board is to achieve the range of performance targets that we have set. These targets reflect our commitment to applicants, opponents and the profession to deliver our service on time and to a high standard.

Our targets reflect our service standards, which are available on our website www.slab.org.uk. Our targets are also set out in our Corporate Plan each year and we report on our performance in our Annual Report.

We have developed headline indicators, which combine individual targets for timeliness of processing and the consistency of decisions for each type of legal aid. All of these headline performance targets were increased compared to 2002-2003.

We work hard to achieve our targets. We are therefore pleased that over the past year to March 2004, we have surpassed all of our headline indicator targets, as shown in the table below.

This year our focus has been on maintaining previous improvements on performance on speed of processing, while improving the quality of our decision making. We have also increased our focus on completing work on the small number of applications and accounts that have failed timeliness targets.

For 2004-2005, we have reviewed and revised our targets. They are in the main higher than last year. Our Corporate Plan 2004-2006 sets out these targets.

Headline Indicator	Our target	How we did 2003 - 2004	Target met?
Civil Applications	90%	93%	Yes
Criminal Applications	95%	99%	Yes
A&A Applications	95%	98%	Yes
Civil Accounts	91%	98%	Yes
Criminal Accounts	96%	99%	Yes
A&A Accounts	95%	98%	Yes

Opportunities for access

The commitment to improving and developing legal aid in Scotland to provide greater opportunities for access to justice is central to the strategy set out in the Board's Corporate Plan for 2004-2006.

The plan, titled "Opportunities for access," covers the second year of a three-year planning period that started in 2003. A copy of the Plan has been sent to all legal aid firms.

Jean Couper, Chairman of the Board commented: "We made substantial progress in the past year and we expect significant further changes in the next two years in access to justice and the operation of legal aid. Our corporate plan sets out our commitment to working with the Scottish Executive and others to continue the development of the legal aid system and to deliver a range of work which will provide greater opportunities for people to access more efficient, effective and quality assured legal aid services."

There are three key themes to the Board's strategy for 2004-2006:

- increasing access to quality assured legal advice, assistance and representation for those who need it and who qualify for legal aid
- working with others to improve the efficient and effective operation of the legal aid system and its interaction with the justice system
- increasing the Board's efficiency and effectiveness, and providing best value

A key priority in the plan is achieving the range of performance targets that we have set and which reflect our commitment to applicants, opponents and the profession to deliver our service on time and to a high standard. These targets are, in the main, higher than last year. We have increased all headline indicators, increased accuracy targets considerably and raised over half of the individual timeliness targets.

The introduction of Legal Aid Online services, where applications and accounts are submitted electronically, rather than on paper will bring significantly shorter timescales and increased accuracy targets. All Board services will be available online by 2005, bringing a range of benefits to the profession, applicants and opponents. Legal Aid Online services will be introduced in the coming year, with advice and assistance expected to be available to solicitors from this summer.

The plan sets out our commitment to engaging with our customers and stakeholders and to further improving our service to them. In the next two years we will move towards mainly electronic delivery of information and communications and will enhance the information and ease of use of our website. Also in the coming months we will publish a revised Scottish Legal Aid Handbook, as the key legal aid reference material for the profession in the next months. The new Handbook will include all current guidance for the profession about our legislation, applications and accounts. It will be available online and regularly updated.

Scottish Ministers are modernising the justice system, and are taking this forward through new legislation and reviews. Over the next two years we expect significant further changes in access to justice and the operation of legal aid and are committed to working with the Scottish Executive and others to continue the development of the legal aid system.

In the last year, by working in partnership with the legal profession, we successfully implemented the most significant reform of civil legal aid in 50 years. We expect the pace of development and change will increase.

During 2004-2005 we will work with the Scottish Executive and Law Society of Scotland to reform civil advice and assistance. Over the next two years, we look forward to working with the profession and others to implement reform of criminal legal assistance, to improve the efficiency and effectiveness of the legal aid system and to fit with the Scottish Executive's modernisation of the criminal justice system.

In October 2003 Justice Minister Cathy Jamieson MSP, announced a Strategic Review of the delivery of legal aid, advice and information. We welcome the review and believe that it provides an excellent opportunity to engage with stakeholders and think creatively about how to improve the scope and operation of the legal aid system and the delivery of publicly funded legal advice, benefiting the people of Scotland.

The outcomes of the Strategic Review will impact on many of the deliverables set out in this plan. Later this year we expect to action some of the recommendations from the Review, and to plan the implementation of others to be delivered in the longer term.

"Opportunities for access," the Board's Corporate Plan 2004-2006 is available on our website at www.slab.org.uk and from our Communications Department, direct tel 0131 240 1985 or email general@slab.org.uk

New Board Members appointed

Justice Minister Cathy Jamieson MSP has announced the appointment of two new Board Members, the re-appointment of two existing Board Members, and a short-term extension for one further existing Member.

Twelve Board Members, appointed by the Justice Minister, oversee our work. To provide a balanced range of knowledge and experience, they include people from the wider community as well as solicitors and advocates. The Scottish Executive runs an open recruitment process, including advertising for potential Members.

The two new Board Members have joined for four years, starting from 1 April 2004. They are:

- **Sheriff Kenneth Ross** - Sheriff Ross has been a sheriff in Dumfries since 2000. Before this, he served as a sheriff in Linlithgow for three years and as a temporary sheriff for 10 years. Before becoming a sheriff, he was a solicitor for 23 years. He had an active court practice during which he, for a time, acted as a

part-time procurator fiscal. He is a former President of the Law Society of Scotland (1994-95) and served on their Council for nine years.

- **Mr Satnam Singh** - Mr Singh is a qualified social worker and Registered Mental Nurse. He works part-time with the British Association of Adoption and Fostering as a black and minority ethnic issues policy consultant. He also works with the Open University as an associate lecturer in social work. Before this, he worked for seven years as a senior social work practitioner with Barnardo's. He is currently a non-executive director of the Lothian NHS Board, and has held a number of other appointments. Mr Singh has also published several research articles on black and minority ethnic social welfare issues.

Existing members Willie Gallagher and Professor Ian Percy CBE have been reappointed for a second term. In addition, Scottish Ministers have asked Mrs Yvonne Osman to remain on the Board until 31 December 2004. Yvonne has completed her second and final term of Board membership but we are delighted that she has agreed to stay on to allow Ministers to re-advertise for one further non-legally qualified member.

Delivering Legal Aid Online services

All Board services will be available online by the end of 2005, improving the efficiency and effectiveness of the legal aid system, and bringing a range of benefits to the legal profession and applicants.

Since our update in the last edition of The Recorder in December, significant progress has been made towards launching our Advice and Assistance Online service for applications and accounts. We have been further developing our computer systems and working with fifteen legal firms who will begin piloting our advice and assistance online service in the next month.

The pilots will help us finalise the new online service and identify what information and support the profession may need to gain the most benefits from our service. From late summer, we expect to launch Advice and Assistance Online and make it available progressively to solicitors.

We plan to demonstrate through local faculty meetings and with firms how our Legal Aid Online service works and show you the benefits of using it. We will be informing you about the security measures built into the system, the simple technical requirements for using it and answering your questions. One of our experienced staff members, Diane Ireland has joined our Legal Aid Online team. She will be our key link with the profession for our new services. Diane will be working with the advice and assistance pilot firms over the next months. She will also be promoting the service and will be the first point of contact for firms interested in our online services.

What Advice and Assistance Online will offer

Advice and Assistance Online will enable online submission and processing of advice and assistance intimations, increases and accounts. It will be convenient, faster, easy to use and safe and secure.

Advice and Assistance Online will bring:

- faster and easier processing of intimations
- faster and more accurate decisions for increase requests
- better information on progress of cases
- faster and more accurate consideration and payment of accounts
- reductions in administration – no returns of incomplete forms
- savings on handling and postage

A better service standard from the Board

Moving from paper based processes to online services offers considerable opportunities to develop innovative ways of administering and delivering legal aid, bringing a range of benefits to legal aid customers.

Advice and Assistance Online will allow the Board to substantially improve the speed of service we offer. We have developed indicative service standards for cases that use our online service. These are included in our Corporate Plan 2004-2006. We will be revising these standards and targets following our pilots and consultation.

To underline the benefits our new online service will bring the profession, and your client, the legal aid applicant, we have given you some examples of our targets.

Our Advice and Assistance Online targets include:

- registration of advice and assistance applications online will be 3 days, compared to 10 days for paper based applications
- requests for increase in authorised expenditure will be actioned in 5 days, instead of 7 days
- online advice and assistance accounts will be paid in 15 days, rather than 30 days

A new name for a new era of legal aid

We have renamed our new services "Legal Aid Online," to better reflect the range of services and information that you will be able to use through the internet. Our new name also shows that we expect our new online services to become an everyday part of legal aid work, rather than our previous "eBusiness" name which suggested to some that they may need to be a computer expert to use our service.

We will be working this year to extend Legal Aid Online services into civil legal aid and criminal legal aid. We expect these to be available from early 2005.

Legal Aid Online also now includes the development of our website at www.slab.org.uk to make it the key source of legal aid information that is accessible, easy to use and contains the information our customers need. You can read more about how we are delivering on these plans in the next article.

www.slab.org.uk - the new home for legal aid information online

We launched our redeveloped website in December as part of our plans to improve our information services to the profession and public. All of our information is now on one site, at [**www.slab.org.uk**](http://www.slab.org.uk)

Over the next few years we will move towards mainly electronic delivery of information and communications, and encourage the transition away from paper through further enhancing the information and ease of use of our website.

The first stage has been to move all of the former content of our SLABPro site into the "legal profession" section on our new site. Our former site has now been closed, but if you do visit it, you will be redirected to our new site.

Our new site has open access - you no longer need to use a username and password to access information for the legal profession. We have also made changes to ensure that all firms can access our site, ending the problem a small number of firms have had because of the way their IT systems firewalls have prevented access to our former site.

We are currently working on the second stage of our redevelopment. We have been listening to your views and comments on our site, and plan to make it easier for the profession to find information on our site. As well as making changes to the look of the site, we will be preparing to include a new online edition of the Scottish Legal Aid Handbook.

The next stages of the site will also make it easier for the public to find out about legal aid services. We will be introducing a new service to make it easier to find firms of solicitors who offer legal aid services. We will be offering a "find my nearest" service and providing location maps, using the information from our registers of criminal legal assistance and civil legal assistance.

We are keen to hear your views and suggestions for additional information or services on our site. Please contact Colin Sim by email to general@slab.org.uk or direct telephone 0131 240 2033 with your feedback and ideas.

Scottish Legal Aid Handbook

We are currently revising our Scottish Legal Aid Handbook and expect to publish it this summer.

Our aim in publishing the revised Handbook is to make it the key reference material for the profession, to provide you with the right information, when you need it. The new edition will include a wider range of information than the existing version, covering all aspects of legal aid from registering to provide legal aid, applying for legal aid and steps in carrying out the work, through to submitting accounts and dealing with matters such as contributions and recoveries. It will include information previously published in other materials, such as guidelines and mailshots. It will be fully indexed, and kept up to date on a regular basis.

We will shortly be consulting local faculties to seek the profession's input as to the format in which it should be published.

We have already published revised legislative sections of the Handbook on our website at www.slab.org.uk in the "legal profession" section. We will inform the profession by mailshots and in *The Recorder* when we have published the full revised edition of the Handbook on our website.

Opening of further Public Defence Solicitors' Offices

Two further Public Defence Solicitors' Offices, one in Inverness and the other in Glasgow, have opened for business in May. It follows an announcement by Justice Minister Cathy Jamieson MSP last October that the system of public defenders would be expanded outside of Edinburgh, where an office has been running for six years.

As reported in the last edition of *The Recorder*, we have been working in partnership and co-operation with those involved in the justice system in these areas to establish the new offices and to develop constructive relationships. Staff for both the Glasgow and Inverness offices started work in May.

We have also now opened our office in the centre of Inverness, to serve people facing criminal charges in the Highlands and Moray, including the courts at Inverness, Elgin, Dingwall, Tain and Dornoch. We expect to learn a great deal from the new office about the challenges of running a legal practice in a rural area, as well as helping inform consideration of the future use of public defenders in other parts of Scotland.

Legal aid conference

This year's annual Legal Aid Conference, hosted by the Law Society of Scotland in partnership with the Board, will be taking place on Friday 29th and Saturday 30th October. This year's venue is Edinburgh Conference Centre, at Heriot-Watt University, Riccarton in Edinburgh.

The Conference will cover a wide range of civil and criminal legal assistance issues, giving practitioners an opportunity to update their knowledge and discuss recent legal aid developments. This year there will also be participation by the Crown Office. The conference has become the most important event for legal aid practitioners, as well as enabling participants to qualify towards their CPD requirements.

Further information on the conference and booking information will be issued by Update courses at the Law Society of Scotland, or visit their website at www.lawscot.org.uk

Forms and Information

Legal aid forms update

This article aims to provide you with up to date information on the forms and to cover some of your frequently asked questions. We would encourage you to ensure that your office staff read this information so that they are able to deal with your requests to obtain our forms.

We receive enquiries daily from solicitors' offices about our legal aid forms. Over the past months, the volume of orders for forms is up to double the level of orders we have received in the previous year. We want to ensure solicitors have adequate supplies to make applications to us, but to balance this with prudent management of the level of stocks you maintain in your office.

We currently offer our range of legal aid forms in both printed and electronic formats. We hope that having the forms available from our website in electronic format will encourage more solicitors to complete the forms electronically, making the process more efficient and easy to operate.

When we introduce our Legal Aid Online services in the coming year, you will be able to transact electronically with us, for example by making an application or submitting an account using a web browser. This will make transactions easier and more effective than using paper.

Electronic forms

Can I complete a form on my computer, rather than by hand?

We know that some solicitors are completing application forms by hand and find this time consuming. All forms associated with legal aid applications are available in a format to let you complete them on computer. The forms are on our newly redesigned website at www.slab.org.uk (you no longer need a password to access the site) in the profession section of the site. The site has information about how to use and download them onto your computer.

The forms that solicitors are most likely to wish to complete on computer are available in a format to let you fill them in on screen. You can type into the answer boxes and then, when completed, print out the form. The forms are in pdf format, and you need Adobe Reader (formerly called Adobe Acrobat Reader) to use them. This software is free and can be downloaded from Adobe's website at www.adobe.co.uk or follow the instructions on our website.

Can I save the information data typed into the electronic forms?

Adobe Reader will not, however, enable you to save onto your computer the information you have typed into the form. If you wish to keep an electronic copy of the application, you can purchase software to do this. Adobe sell software from their online store that allows you to save the data from forms. It is called Adobe Acrobat Approval (version 5) and costs £35 (excluding VAT). Other software products are available which also allow you to save information from forms, including other Adobe Acrobat software that costs £259, as well as from other companies.

Will you issue a new CDROM or disc with the electronic forms?

We do intend to issue a new CD-ROM with electronic forms, but have postponed this until further new forms are introduced. We now expect to issue a new CDROM in the summer. Meantime, the forms are available on our website, but we do not have a CDROM that can be supplied to your office.

Printed forms

How do I obtain printed forms?

Our forms are available by ordering direct through our printers, Stewarts. You do not need to call the Board to order our forms. We produce an order form that lists all of the forms that can be ordered. This form is included with all orders supplied by Stewarts, or is available on our website at www.slab.org.uk

To place an order you can **call Stewarts on 0131 659 6010** - you do not need to have an order form to do this. Alternatively, you can

send the order form to Stewarts by fax or mail (if faxing an order, you do not also need to send it by mail as confirmation of your order form).

When placing an order, you **must** give your firm code and/or practitioner number.

How long will it take to get printed forms?

Stewarts have a service standard with the Board to process and pack your orders within two working days. We then issue these to you using the mail services of Hays DX, Legal Post or Royal Mail. Allowing for the time for these to reach you, you can expect to receive your order within one working week.

What if I need a form more urgently?

All of our forms are on our website, and this should be your first step to obtain them. Alternatively, you can call our Communications office on 0131 240 1985. They hold a small supply of forms that can be mailed to you or, if especially urgent, faxed to you. Please remember that if you do have one printed form left, you can photocopy this until your printed supplies have arrived. If using a photocopied form, please make sure that the copy is accurate and of a good standard.

You should, however, ensure your office staff maintain an adequate stock of forms to avoid such urgent situations.

How many forms can I order?

Currently, there are no restrictions on how many forms you can order, apart from civil legal aid forms. However, over the past year, forms orders have almost doubled, and the volume we supply to firms is not mirrored by the volume of applications we receive. We would ask for your co-operation so that you maintain adequate supplies of the forms for use, but that you perhaps share your stocks throughout your firm's office, rather than building up a stockpile. We are monitoring this situation and may introduce different ordering procedures.

What about problems with civil forms?

When we introduced our revised forms for civil legal aid in September, we said we

expected to replace the new forms within six months. We put in place a mechanism to enable us to effectively manage supplies of the forms over that period, by limiting the number of packs that could be ordered, based on the volumes of civil applications that we had previously received from firms.

We recognise that this has caused some supply difficulties to firms, and for a period our printers were receiving orders that were over ten times our previous daily average. This meant that for a short time, orders were not dispatched as quickly as usual, and some members of the profession thought there were supply problems, and ordered even more forms. We have learned from this experience for when we plan our next changeover of forms.

We have changed our process to allow more firms who submit a higher volume of applications to order five packs of civil forms at one time. However, we do ask for your help in ensuring you order an appropriate number for your likely use. Some firms have asked for a supply of forms that is over ten times the volume of applications they submitted the previous year, so please carefully consider what is an appropriate supply, given that you can have further forms within a working week.

Is there a problem in getting printed forms or leaflets?

There should be no supply problems in providing your firm with forms or leaflets. However, if you do experience any difficulties, please contact us to enable us to resolve any problem. – see below for information on our contact details.

What if I am unhappy with the service provided in obtaining the forms?

The customer service staff of our printers, Stewarts, aim to be as helpful as they can be, but we have given them guidance on our policy for placing orders. If you do wish to discuss a particular issue or problem and Stewarts cannot resolve it, they will tell you who at the Board to contact.

We do wish to ensure our forms service meets your needs, and we welcome feedback

on any problems you may have. If you wish to discuss an issue, please contact: Colin Sim, email simco@slab.org.uk or call 0131 240 2033, or Don Innes, email innesdo@slab.org.uk or call 0131 240 2020.

What about forms that are not on the order form?

We also issue a number of forms direct from our computer systems, relating to specific situations. If you want a copy of one of these forms, you should contact the appropriate applications or accounts department at the Board.

General questions

Q Are you going to change any of the forms?

Over the coming year we expect to replace most of our current range of forms as we move to providing Legal Aid Online services and as we make changes to our internal systems, to help deliver you and the applicant a better service.

We will keep the profession 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. Until we notify you that new forms are available, you should not place orders for forms in the belief that there are new versions.

Q Which forms are going to change?

We expect to issue revised civil legal aid and general application forms later this year. We have been listening to your feedback and looking at ways in which the availability and usability of these forms can be developed and improved. For example, following comments from the profession, we plan to make the statutory statement (memorandum) a separate document to complete instead of including it within the solicitor's civil application form.

Later in the year, we will be issuing new advice and assistance forms and then forms for criminal legal aid and legal aid for children.

We will keep you informed of these changes in *The Recorder*, mailshots, and on our website.

Q Who do I contact if I have any queries or feedback on forms?

- If you have questions or queries on supplying or using the electronic or printed forms, you can contact the Board's Communications office, on tel 0131 240 1985 or email general@slab.org.uk
- If you have questions about how to complete a question on the form, you should contact the appropriate department at the Board.
- If you have any feedback on the forms to make them easier to use or suggested changes, you can contact: Colin Sim, email simco@slab.org.uk or call 0131 240 2033

Obtaining copies of our publications

If you wish to obtain copies of any of our publications, other than those available from our printers, please use our Communications department's new publications direct line on 0131 240 1985. Messages relating to publications can also be left on this line 24 hours a day and at weekends. (Please do not use the line for matters relating to other Board departments, as this could lead to delays while your question is referred to an appropriate department.)

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

Have you received this information?

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

15 December 2003

Criminal Legal Assistance Register -sent to compliance partners at firms registered to provide criminal legal assistance

24 February 2004

Civil reform mailshot 9 Registration and peer review including information that the full register will become operational on 1 July 2004 - sent to all civil legal aid practitioners

5 April 2004

New eligibility limits for advice and assistance and civil legal aid from 12 April 2004 - sent to all legal practitioners. Also included

- Keycard - the redesigned Keycard now includes all updated allowances, the clawback limits for Advice and Assistance and Civil Legal Aid, plus the income and capital eligibility limits, for ease of reference.
- New information leaflet for the general public 'Do I qualify financially for advice and assistance or for civil legal aid?'
- New (interim) special urgency mandate and calculation form, CIV SU MAN including Notes for guidance in the use of Regulation 18 (special urgency)

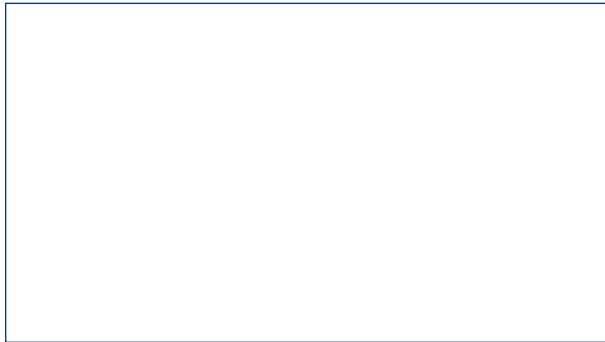
13 May 2004

Advice and assistance increases guidance - letter to all practitioners

- Letter included guidance notes for seeking requests for increases in authorised expenditure covering reparation claims, family law matters and Employment Tribunal cases.

17 May 2004

Opportunities for access - Corporate Plan 2004-2006 - sent to all legal aid firms



Check your details

To ensure that correspondence, *The Recorder* and other important information from the Board reaches you, please make sure that you tell us immediately if you change address or firm.

Please also remember to tell us if your firm changes to or from Royal Mail and Hays DX or Legal Post so that we can update our records and send mail to you by the most appropriate means. You should notify our Receipts and Payments Department in writing of any change in address or practitioner details.



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