



# Reform of summary criminal legal assistance

## Consultation paper

October 2007

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## Foreword

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### Reform of summary criminal legal assistance: consultation paper

This consultation paper sets out proposals for changes to summary criminal legal assistance. These support the reforms to summary criminal justice set out in the recently published Summary Justice System Model paper describing how summary justice cases will be dealt with in Scotland. <http://www.scotland.gov.uk/Publications/2007/09/06092618/0>. The structure of the proposed revised summary criminal legal assistance system has been developed by the Scottish Legal Aid Board in discussion with the Scottish Government.

The criminal justice system in Scotland is undergoing its largest and most far reaching reforms in at least a generation. The summary reforms aim to ensure that fewer cases go to court needlessly, and that those cases which do go to a court get there more quickly, are better prepared and progress more speedily. They aim to save time and expense; to avoid wasted effort; and to reduce the demands made on victims and witnesses.

The proposals in relation to legal aid have the same aims. Scottish Ministers want public funds to support an efficient and fair system and solicitors to be appropriately and fairly remunerated. They believe that the proposals for remunerating solicitors set out in the consultation paper achieve this.

Although the summary justice system deals with less serious offences, summary justice accounts for around 96% of criminal court business, with over 130,000 cases every year. In 2006-2007, a total of £65.2 million was spent on summary criminal legal assistance.

The aim is to introduce the changes outlined in the consultation by March 2008. Before then, we are anxious to hear the views of the legal profession and other interested parties. This consultation exercise will be supported by a number of information seminars in venues across the country in October and November, held jointly by the Scottish Government, the Scottish Legal Aid Board and the Crown. Details can be found on the Board's website at <http://www.slab.org.uk/profession/summarycriminal>

We look forward to hearing your views.

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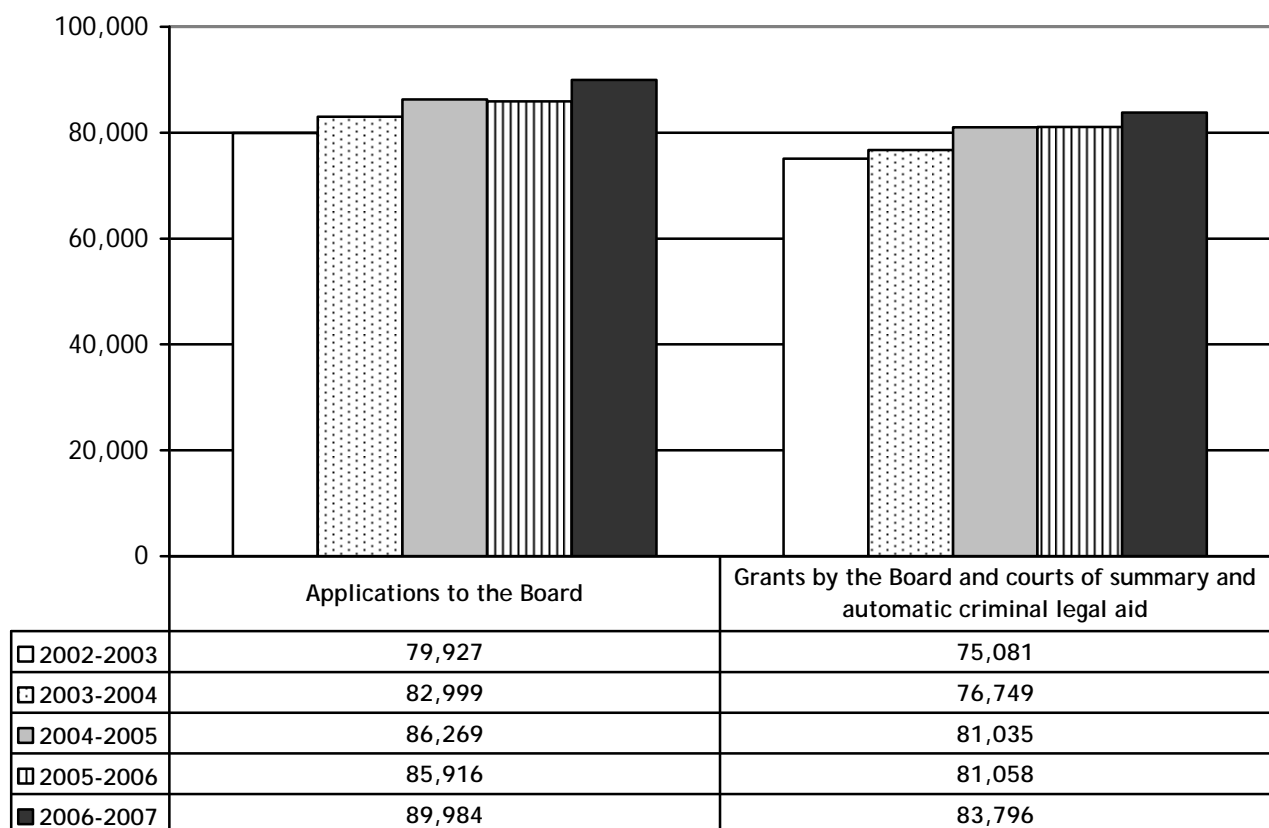
LINDSAY MONTGOMERY  
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Scottish Legal Aid Board

# 1. INTRODUCTION

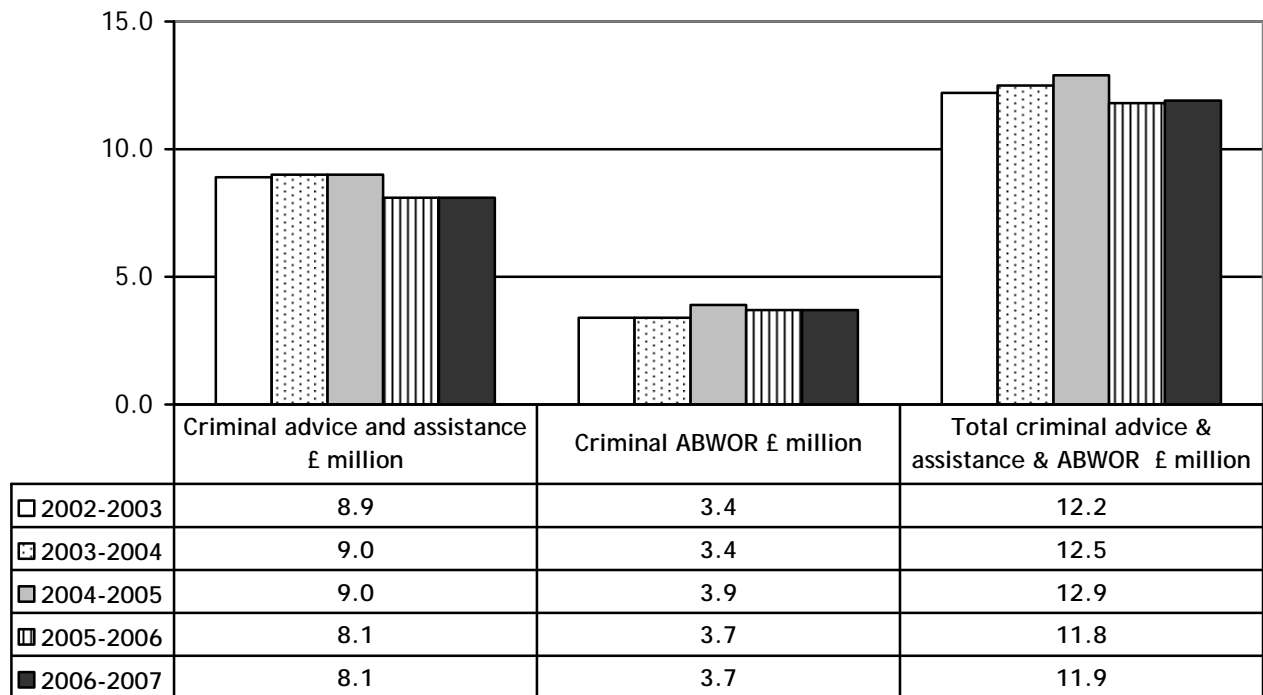
## Why reform summary criminal legal assistance?

- 1.1 Summary criminal legal assistance provides legal advice, assistance and representation for criminal matters to people who would otherwise not be able to afford it, whether or not they have been charged with an offence. It combines four types of legal assistance: advice and assistance, assistance by way of representation (ABWOR), the duty scheme and summary criminal legal aid. Apart from the introduction of fixed fees for summary criminal legal aid cases in 1999, this system has remained largely unchanged for over 20 years. Appendix 1 summarises the current arrangements.
- 1.2 Although there was a small fall in 2005-2006 in applications for summary criminal legal aid, over the last five years applications increased by 13%, grants by 12% and expenditure on summary criminal legal aid by 13%. The following charts illustrate these increases.

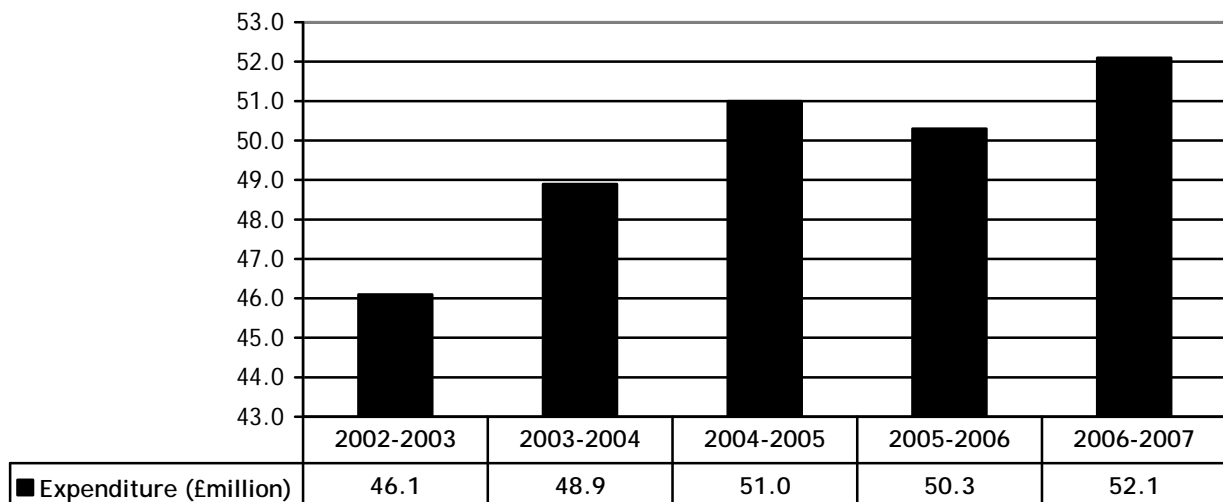
Summary criminal legal aid applications to the Board and grants made by the Board and courts for summary criminal legal aid and automatic criminal legal aid



### Criminal advice and assistance and ABWOR expenditure (£ million)



### Summary criminal legal aid expenditure (£ million)



1.3 The criminal justice system in Scotland is undergoing the largest and most far reaching reforms in at least a generation. Where the summary justice reform programme required legislative change, this was included in the Criminal Proceedings etc (Reform) (Scotland) Act 2007 (the 2007 Act), which received Royal Assent in February 2007. The recently published summary justice system model explains what changes will be introduced to improve the system of summary justice in Scotland in ways that are intended to be:

- fair to the accused, victims and witnesses
- effective in deterring, punishing and helping to rehabilitate offenders
- efficient in the use of time and resources
- quick and simple in delivery.

- 1.4 The key changes to the wider summary justice system that affect summary criminal legal assistance and which our proposals seek to take into account are:
- the increased use of direct measures (non court options as they were previously known);
  - the increased use of undertakings; and
  - the provision by the Crown of a summary of evidence.
- 1.5 In all cases regardless of how they are initiated, we understand that the Crown will:
- provide a summary of evidence with every complaint
  - have in place arrangements for a procurator fiscal to be available to discuss the case
  - be in a position to indicate the extent to which any plea may be adjusted at the outset of the proceedings
  - following the tendering of a not guilty plea, operate a presumption that all the outstanding charges in the complaint will be taken to trial unless there is a substantial change in circumstances.
- 1.6 It is planned to roll out these wider changes and the changes to summary criminal legal assistance in March 2008. However, leading up to this date an increasing number of cases will be initiated by way of undertaking and consideration is being given to introducing interim changes to accommodate this change in the way criminal cases are progressed - for example, by enabling a client's existing solicitor to provide assistance in these cases.
- 1.7 Summary criminal legal assistance is a key component of the summary justice system. Components cannot function effectively in isolation. Reform of summary criminal legal assistance is therefore needed to ensure that these wider measures work as effectively as possible. The proposals set out the broad structure of a more integrated summary criminal legal assistance scheme. This will reflect and underpin the new summary justice process.
- 1.8 The proposals should be seen in the context of the Board's Legal Aid Online service, a system it is developing for electronically submitting and processing of all kinds of legal aid applications and accounts. The service reduces bureaucracy, speeds up many processes and will support the reforms proposed in this paper. Changes will be made to this system to accommodate the reforms of summary criminal legal assistance.
- 1.9 In addition to supporting the reform of summary justice, the proposed changes to summary criminal legal assistance seek to remove what have been described as the perverse incentives in the criminal system, which provide significantly higher payments to solicitors in cases where clients plead not guilty.

## What do the summary criminal legal assistance proposals seek to achieve?

- 1.10 The proposed reforms are intended to benefit those seeking advice and assistance and representation, practitioners and the taxpayer by:
- retaining high quality provision
  - improving flexibility and continuing to reduce bureaucracy where possible and appropriate
  - appropriately rewarding work undertaken in progressing the case
  - supporting investigation and preparation of cases to facilitate the resolution of cases at the earliest possible stage
  - providing a system that is cost effective and efficient.

## Structure of consultation paper

- 1.11 The proposals are in five sections. The first four mirror what the summary justice model intends to achieve, namely:

- greater use of direct measures
- bringing cases to court more quickly
- dealing with cases at the earliest stage in proceedings and at more effective court hearings
- early, effective preparation

and the last explains our proposals for:

- remuneration.

- 1.12 A series of joint information seminars will be hosted by the Scottish Government, the Board and the Crown Office and Procurator Fiscal Service over the consultation period to raise awareness and encourage discussion of both the wider justice system reforms and these proposals. Information on the dates and venues for these free seminars is available on the Board's website at: <http://www.slab.org.uk/profession/summarycriminal>
- 1.13 The attached response form includes a series of consultation questions. These should help you structure your response, focus it on the key issues we want your views on and help us analyse your responses. Should you wish to make points not covered by these questions, please do so, but distinguish these from any responses to the specific questions.
- 1.14 The views and suggestions detailed in consultation responses will be analysed and used as part of the decision making process. A summary of key themes from the consultation responses is expected to be published by the end of January 2008.
- 1.15 The closing date for written responses is **Monday 24 December 2007**.

## 2. PROPOSALS

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### Preamble

- 2.1 Under the current system ABWOR is intended to be available, subject to the merits and means tests, in cases where an accused is not in custody for the solicitor to tender a plea of guilty or to make a preliminary plea in court on behalf of the client.
- 2.2 Summary criminal legal aid is intended to provide representation of an accused at trial and the stages following it up to and including advice on the prospects of appeal. But it is only available once a plea of not guilty has been tendered. Only around 15% of cases for which legal aid has been granted proceed to trial, which means legal aid is used in the majority of cases only to investigate and tender guilty pleas.
- 2.3 Once a not guilty plea has been tendered, where an application for summary criminal legal aid is made, ABWOR is unavailable to change that plea to one of guilty.
- 2.4 We think the system needs to revert to what was originally intended - that is, the provision of:
  - ABWOR for preliminary and guilty pleas; and
  - summary criminal legal aid for representation at trial.
- 2.5 In addition, we think ABWOR should be expanded to include investigation following a continuation without plea (C.W.P.) and that it should be available for a guilty plea irrespective of whether an application for legal aid has been made.

### Greater use of direct measures (non-court options as they were previously known)

- 2.6 At present a solicitor is entitled to give a client criminal advice and assistance on any matter of Scots law. We think that some changes are needed to ensure that criminal advice and assistance is focused on those matters on which advice from a solicitor is appropriate.
- 2.7 We think the best way to do this is to identify the circumstances in which initial advice will be given and decide how it can be best managed, in each situation.
- 2.8 We have identified five main types of initial advice:
  - advice before the service of a complaint or an undertaking to appear
  - advice relating to a direct measure (a non-court option such as a fiscal fine) which is accepted
  - advice following the service of a complaint or an undertaking to appear
  - advice relating to a direct measure where the client "opts in" to further court procedure
  - advice to an accused in police custody or in prison.

- 2.9 In each we need to have a clear idea as to the exact nature of the initial advice given:
- to be satisfied that it is of value in itself
  - so an account for the work done can be properly assessed
  - so that it can be linked to any subsequent grant of ABWOR or summary criminal legal aid (thereby avoiding duplication of payments).
- 2.10 Where the client's problem concerns general advice on a criminal matter before the service of a complaint or an undertaking to appear, or it relates to a direct measure which is accepted, we propose that a solicitor will be able to make a grant of criminal advice and assistance to an initial level of authorised expenditure of £35. This should be sufficient for a solicitor to briefly meet with the client, give initial advice and perhaps contact the Crown by telephone or letter.
- 2.11 Where a solicitor does work that exhausts this initial lower level of authorised expenditure, they will be able to apply to the Board for an increase in authorised expenditure to do more work. This could be dealt with by the solicitor seeking an increase in authorised expenditure in the normal way. Or, without prior Board authority, they could move on to the standard initial level of authorised expenditure (£95) in prescribed circumstances - for example, they may need to visit the client in police custody or, if they consider it may not be in the interests of justice that the prosecution proceeds, to contact the procurator fiscal early in the case.
- 2.12 We propose that payment for all criminal advice and assistance will be on a time and line basis and subject to the Board's current taxation criteria. The current arrangement for payment of minimum fees for work done under criminal advice and assistance (which has already been removed in civil legal assistance) will be removed. This will direct funding towards the payment of initial advice a solicitor needs to give to progress the case.
- 2.13 The Legal Profession and Legal Aid (Scotland) Act 2007 provides (at section 69), yet to be commenced, that where there is urgency and it has not been possible to obtain the Board's prior approval, the Board may retrospectively approve an increase in authorised expenditure.

### 3. CASES WILL COME TO COURT MORE QUICKLY

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3.1 Under the wider summary justice reforms the number of cases in which undertakings will be used will gradually increase with a corresponding decrease in the cited cases from which these undertakings will be taken. At present, appearances on undertaking or from custody are routinely dealt with by the duty solicitor.

#### Accused persons appearing from custody or on an undertaking

3.2 We propose to make changes to the duty scheme to accommodate this change in approach by the Crown. The changes are:

- the standard appearance and *per capita* case fees are revised to better remunerate solicitors taking part in the scheme
- the capped fees for follow-up work and named hearings, chargeable on a detailed basis, are revised but in addition we propose the Board should be given some discretion to authorise further work beyond the "cap".

3.3 At present, many accused persons appearing from custody or on undertakings already have their own solicitor. We think they should be able to receive advice and assistance and representation from their own solicitor, who will have a better knowledge of the accused person's circumstances and will be in a better position to help the client make informed decisions about the case. Currently, the solicitor provides advice and assistance, if the client is financially eligible to receive it, but then provides the representation free because currently there is no mechanism to pay this from public funds. We therefore propose that:

- ABWOR should be made available to an accused person from their existing solicitor who will be able to advise and represent the accused, and be paid for the work done, in the same way as the duty solicitor.
- ABWOR should only be available from the client's existing solicitor where that solicitor is readily available so there is no delay to court business. The regulations should make it clear that if the client's existing solicitor is not immediately available, only the duty solicitor will continue to provide advice and representation.
- ABWOR for accused persons appearing from custody should not be subject to any means or merits tests or to a contribution because it is comparable to the automatic criminal legal aid provided by the duty solicitor.
- ABWOR provided to an accused person appearing on an undertaking should, however, be subject to an interests of justice merits test, a means test and, if appropriate to the payment of a contribution. We consider such accused people are not at the same disadvantage as those deprived of their liberty.

3.4 In undertaking cases, the Crown will serve a summary of evidence with every complaint on the day of the appearance. While the measures referred to in 3.3 will help inform decision making, it is clear it will not always be possible to have an early exchange of information in the run-up to the appearance as would be the situation in cited cases. Inevitably there will be cases in which a C.W.P. will be needed to enable the accused to make an informed decision as to the appropriate plea to be tendered.

- 3.5 In the past, pleas of not guilty have tended to be made to cover situations where insufficient information is available simply because no publicly funded representation is available for a C.W.P.
- 3.6 While ABWOR is available for those accused who consider they are in a position to plead guilty at the undertaking hearing, we propose that ABWOR should also be available for a C.W.P.
- 3.7 In these circumstances the solicitor will remain responsible for assessing the means and merits of the client's application for the initial ABWOR.
- 3.8 If, after continuing the case, a guilty plea is considered appropriate, an application for approval to continue to provide ABWOR for that plea may be made to the Board.

## 4. CASES WILL BE DEALT WITH AT THE EARLIEST STAGE IN PROCEEDINGS AND AT MORE EFFECTIVE COURT HEARINGS

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### Cited cases

- 4.1 Under the summary justice reform, many cases will still be initiated by citation. The complaint when served will be accompanied by the summary of evidence.
- 4.2 Advice and assistance will still be available to an accused person for advice following the service of a complaint and ABWOR is available for all the summary criminal proceedings currently listed in regulation 6 of the ABWOR regulations. (See Appendix 1, for details).
- 4.3 We think, however, that some changes are needed to the operation of ABWOR to encourage early communication and, where necessary, to enable further investigations with a view to preparing for and securing the most appropriate plea at the earliest stage. In addition, we think the merits criteria for ABWOR need changing.
- 4.4 We think the best way to do this is to:
- substantially increase the ABWOR block fee for the work done by solicitors in investigating the case and representing their clients
  - extend ABWOR to make it available for a continuation(s) without plea where the solicitor needs to carry out further investigative work (either in cited or undertaking cases with a view to determining the appropriate plea)
  - consolidate the existing dual merits criteria for ABWOR
  - remove the need to obtain increases in authorised expenditure to cover the costs of deferred sentences and other post conviction hearings.
- 4.5 In addition we propose that, other than in custody or undertaking cases (paragraphs 3.3 and 3.4) or where instructions in a cited case are received at the pleading diet (paragraph 4.8) the responsibility for deciding on the merits of an application whether to make ABWOR available should be passed from the solicitor to the Board. We consider this appropriate against the background of significantly increased payments, coupled with the increase in scope of the work that can be carried out under ABWOR. However, the solicitor would still have to carry out the means test for ABWOR because transferring this part of the test would need primary legislation. Solicitors will have to verify that clients are financially eligible.
- 4.6 We do not believe this will significantly increase the total number of cases which come to the Board because most of the new ABWOR applications would previously have been applications for summary criminal legal aid. Nor do we believe it will impact on how long the Board takes to make decisions because we currently deal with the majority of applications for summary criminal legal aid within 48 hours. Where, however, there is particular urgency, applications and grants can be made by fax, telephone or online.

- 4.7 At present, the solicitor must apply differing criteria, depending on the type of court process (for example, a preliminary plea or a guilty plea) before deciding whether the client is eligible to receive ABWOR (see Appendix 1 under "ABWOR"). We believe this leads to confusion in the operation of the merits test and propose that the existing tests are consolidated so that there is one interests of justice test for representation for pleas under ABWOR (and one interests of justice test for representation for trial under summary criminal legal aid). The application to the Board will be accompanied by a copy of the complaint and the summary of evidence along with details, where applicable, of any plea the Crown is prepared to accept.
- 4.8 Where instructions are only received at the pleading diet, we propose that if ABWOR is used either to C.W.P. or tender a plea of guilty the £70 block fee currently payable should remain for the work to be done. In these circumstances the solicitor will remain responsible for the means assessment and merits tests before deciding if the client is eligible to receive ABWOR.
- 4.9 If, after continuing the case, a guilty plea is considered appropriate, the solicitor can apply to the Board for approval to continue to provide ABWOR for that plea. In considering such an application we propose the Board will determine the merits of the application by applying the interests of justice test (paragraph 4.7).
- 4.10 We propose to introduce a system of block payments (as currently exist under summary criminal legal aid) to remove the necessity of solicitors seeking increases in authorised expenditure to cover the costs of deferred sentences and other post conviction hearings.

## 5. EARLY, EFFECTIVE PREPARATION FOR TRIAL

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- 5.1 At present, tendering a not guilty plea triggers two essential components of the summary criminal system:
- an application for summary criminal legal aid, which can only be made available at the conclusion of the first diet at which the accused has tendered a plea of not guilty (section 21(3) of the 1986 Act)
  - disclosure of the Crown statements to the defence.
- 5.2 It is intended to retain the current 14 day rule, which states that applications for summary criminal legal aid have to be made to the Board within 14 days from pleading not guilty. This is needed to control when an application is made to ensure there is a balance between lodging applications too early, when insufficient information is available and too late, when insufficient time is available before the hearing.
- 5.3 Currently solicitors understandably find it convenient to apply early for summary criminal legal aid but possibly before all the necessary supporting evidence is available. We think that some changes are needed to the way solicitors apply to the Board for summary criminal legal aid.
- 5.4 We think that the best way to do this is for:
- the Board to issue guidance on the circumstances in which it will favourably view a non-timeous application for summary criminal legal aid - for example, to allow the solicitor to delay sending us the application to clarify matters contained in the summary of evidence
  - solicitors to send us with the application
  - a copy of the complaint and the Crown's summary of evidence
  - details, where applicable, of any plea the Crown is prepared to accept (bearing in mind we understand the Crown will be unlikely to accept any such plea once a trial diet has been fixed unless there is a substantial change in circumstances)
  - vouched evidence of the accused's financial circumstances (unless the accused is in custody, in which case it should be produced as soon as possible thereafter).
- 5.5 We also think the way the Board decides on applications for summary criminal legal aid should be changed:
- Currently, the means test applied by the Board (the "undue hardship" test) differs in approach, both to disposable income and capital, from that applied by the solicitor in assessing the client's eligibility to receive ABWOR. For example, the Board applies a capital limit of £6,879 (see Appendix 1 "Summary Criminal Legal Aid ") while the solicitor applies a limit of £1,502. If granted, the end result of the application is essentially the same - that is, representation in court.
  - The "undue hardship" test should be reviewed to bring it more into line with the advice and assistance/ABWOR financial eligibility criteria. A staged approach would

be appropriate and we propose to bring the capital eligibility limit for summary criminal legal aid into line with that for advice and assistance – that is, £1,502. Applicants with capital above that level would be ineligible unless, taking into account their disposable capital and the likely cost of the case, the accused or their dependants could not meet these costs without undue hardship.

- At the moment the Board can only apply a condition to a grant to enable it to satisfy itself it remains in the interests of justice for the assisted person to continue to receive legal aid. There are provisions in the Legal Profession and Legal Aid (Scotland) Act 2007 (section 65), yet to be commenced, which give the Board, across all aid types, the power to make legal aid available subject to any conditions it considers expedient. We propose to make use of these provisions to enable the Board to make criminal legal aid available subject to standard conditions, such as those shown at paragraph 5.6, which affect both aspects of the statutory test.

5.6 Under the new scheme, we propose that:

- The information the solicitor gives may satisfy the Board that it is in the interests of justice to grant criminal legal aid. In these circumstances the Board will grant legal aid but with standard conditions attached.
- The standard conditions would allow the Board to re-visit a grant where, for example:
  - there is a significant change in financial circumstances
  - the Board is no longer satisfied that it remains in the interests of justice that the assisted person continues to receive criminal legal aid
  - the assisted person has caused the proceedings to be conducted unreasonably (for example, repeatedly failing to attend diets) so as to incur an unjustifiable expense to the Legal Aid Fund, or has failed to comply with a regulation or condition imposed.

5.7 We also propose that where the Board has refused summary criminal legal aid as not in the interests of justice the current regulations, which prevent the grant of ABWOR following a not guilty plea and/or the submission of an application for summary criminal legal aid, are removed. ABWOR will therefore be available where the applicant is eligible to receive it for a plea of guilty and subsequent procedure.

## 6. REMUNERATION

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### Preamble

- 6.1 Our proposals are intended to “front-load” the system by facilitating investigation and preparation for the early disposal, where appropriate, of cases. This will inevitably result in a significant shift in the balance of remuneration away from summary criminal legal aid (other than for cases that need to proceed to trial) to ABWOR for the vast majority of cases that plead. In addition, due to the fact that the same work can be undertaken at various stages of the single summary criminal process, chargeable under block fees for various aid types, there is a risk that this will lead to some duplication of payment for the same work. For this reason, the ABWOR block fees will continue to include any advice and assistance which has been provided to the client. In addition, the “core” fixed payment for summary legal aid will allow for and subsume earlier work in the same process.

**The proposed payment figures, shown in square brackets are demonstrative only, and subject to decisions yet to be taken.**

### Advice and assistance

- 6.2 It is proposed to abolish the minimum fee arrangement in criminal advice and assistance. This allows a solicitor to claim a block fee of £25, with no reference to the actual work done, rather than sending the Board a detailed account.
- 6.3 Advice given by a solicitor to a client at this early stage may be the only advice given. It would continue to be chargeable on a detailed basis up to the £35 or the £95 initial authorised expenditure and, subject to the increase having been approved, up to the maximum authorised level of expenditure at the time the work is done.
- 6.4 We propose that the fees payable for criminal advice and assistance should be increased [by 21%] to encourage early preparation of cases and to bring them into line with recent increases in civil advice and assistance.
- 6.5 In cases which proceed to ABWOR, the cost of any advice and assistance provided at an earlier stage would be included within the ABWOR block fee. This is to ensure that work normally undertaken in progressing the case, which has been built into the block ABWOR fee, is chargeable only once (including all advice and assistance in the ABWOR fee is a feature of the current ABWOR block (£70) and as such is not novel in approach.)
- 6.6 Currently, any account in which ABWOR has been given is an “ABWOR account”, payable at the £70 block fee rate for all work up to and including tendering a plea of guilty. ABWOR is broadly defined and includes “taking any steps in ... conducting or defending any proceedings”. This can result in a solicitor either charging an account under advice and assistance (an example being attendance at a police station) and undertaking work in court at no charge), or only charging the block ABWOR fee. The higher ABWOR fee allows more scope for giving both advice and representation at this stage.
- 6.7 Outlays, reasonably incurred, will be separately chargeable.

- 6.8 All work under advice and assistance must be actually, necessarily and reasonably done. In assessing an account, before the service of a complaint or other documentation, we must be satisfied that there is a clear need for advice at that stage. The reason for the advice will have to be clear, by reference to a particular incident if appropriate, so that as part of a simplified accounting procedure we can link the advice to any further work the solicitor does in the same case under ABWOR or criminal legal aid.

## Duty solicitor

- 6.9 The duty solicitor is paid a prescribed fee for each person represented. This is a *per capita* fee, currently £47.95 for the first case and £6.48 for each additional case up to a maximum total fee of £103.95 a session. The *per capita* payments made to duty solicitors should remain but should be increased to a level reflecting what they would have been had they been increased year on year in line with inflation from 1992. [The proposed fees are £63.00 and £9.00] subject to the maximum total fee.
- 6.10 There is a separate fee chargeable by the duty solicitor for “follow-up” work up to a maximum fee (currently £121.91). Follow-up work will continue to be chargeable under the duty scheme for additional interviews with the accused or attendances at court and at prescribed hearings, as at present, but the upper capped payment should be reviewed on the same basis as the “per capita” fee. [The proposed fee is £150].

## ABWOR provided in custody cases

- 6.11 ABWOR may be provided by the client’s existing solicitor for clients appearing from custody which is not subject to financial assessment of the applicant’s means. The accused’s own solicitor would effectively assume the same role as the duty solicitor and would charge on the same basis as the duty solicitor for this work. The proposed fees for this ABWOR will be at the same rates as for the duty solicitor (that is, as in paragraphs 6.9 and 6.10).

## ABWOR

- 6.12 A block fee for all work in connection with a plea of guilty has been in place since the initial ABWOR regulations in 1987. The fee is currently £70 and needs to be reviewed in the light of the new summary justice model and its emphasis on the early disposal of summary cases.
- 6.13 We believe that a more substantial block fee should be available to a solicitor under ABWOR (except where accused appears on undertaking or cited on the day) to reflect the likely work involved, including investigation, in the new process. [The fee proposed is £300 in the sheriff court and stipendiary magistrates court and £200 in the district court which will include one continuation without plea. Fees will be prescribed for second (£50) and subsequent (£25) continuation without plea.]

- 6.14 We propose the £70 ABWOR block fee currently payable should remain where ABWOR is used:
- for an immediate guilty plea or C.W.P. in an undertaking case
  - for a cited case where instructions to tender a plea of guilty are received on the day of the pleading diet.
- 6.15 The cost of any advice and assistance initially provided will, as now, be included within the £70 ABWOR block fee and that fee, in turn, will form part of any subsequent grant of ABWOR by the Board for investigation.
- 6.16 An exceptional case category will be introduced in ABWOR, similar to that currently available under summary criminal legal aid, whereby work falling within that category will be paid on a time and line basis as opposed to a block fee.
- 6.17 With the extension of ABWOR to include further investigation and attendance at a continuation without plea, representation under ABWOR could result in a plea of not guilty. Where a not guilty plea is tendered and the Board grants summary criminal legal aid, all work done under ABWOR would be included within the summary criminal legal aid fixed payment. The block ABWOR fee would not be separately chargeable in addition to the core fixed payment.

## Criminal legal aid

- 6.18 Criminal legal aid would continue to be available only where the accused person has tendered a plea of not guilty and would continue to be payable by way of fixed payments.
- 6.19 The core fixed payments will also be increased to enable preparation for trial to be done while allowing for the payments under advice and assistance to be included in these payments. [The fee proposed is £525 in the sheriff and stipendiary magistrates courts and £325 in the district courts, retaining exceptional case status on a time and line basis where appropriate]. In addition, we intend to retain the existing payments for the first day (after the first 30 minutes) (£50/£100) and the second day (£50/£200) but to review the £400 payment for the third or subsequent day of trial. This fee was a proxy for the unusually complex case which, it was anticipated, might proceed to a third or subsequent day. This fee is now redundant given the introduction of exceptional case status.
- 6.20 In cases which proceed to criminal legal aid, the cost of any advice and assistance and/or ABWOR provided at the earlier stages will be included within the core criminal legal aid fixed payment.
- 6.21 Our understanding of the Crown's approach to plea resolution, as set out above at paragraph 1.4, when added to sentence discounting will mean the need to plead on the day of the trial ought to be substantially reduced. However, it is proposed to keep this under review.

## Post-conviction work: ABWOR and criminal legal aid

- 6.22 Post-conviction hearings, currently chargeable only under ABWOR, should also be chargeable as an extension of an existing summary criminal legal aid certificate to avoid the need to change aid types following conviction.
- 6.23 We propose that the tables of fees for ABWOR and summary criminal cases should prescribe fees for post-conviction hearings [proposed at £50] and proofs in mitigation [proposed £50/£100], at the same rate regardless of aid-type. These fees will be developed on the basis of a fixed payment structure, as currently applied under criminal legal aid.

## Summary and worked examples

- 6.24 Appendix 2 provides a summary of what the changes will mean for solicitors and some examples of how the changed payment structure might affect solicitors' fees in various situations.

## 7. EQUALITY IMPACT ASSESSMENT

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- 7.1 An equality impact assessment has been carried out on our proposals for the reform of summary criminal legal assistance. We have not identified any negative impact as a result of these proposals. However, to help us ensure that our assessment is as complete as possible, we would also be interested in your views as to whether you think the proposals might impact differently on particular minority groups, compared to the population as a whole.

## 8. CONCLUSION

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- 8.1 We believe that the proposals in this paper will complement the wider summary justice reforms and will also improve the provision of summary criminal legal assistance in a number of important respects. Frontloading of payments for work done and the provision of advice and representation by a client's existing solicitor will help resolve cases at the earliest possible stage and will help the accused to make informed decisions, as will extending ABWOR to cover continuations without plea. Increased rates of pay at the early stages will appropriately reward the work undertaken and will help retain the provision of high quality services. The proposed procedural changes will focus expenditure on the areas where advice from and representation by solicitors is appropriate, thereby achieving better value for the taxpayers.
- 8.2 We are keen to hear your views on the proposals contained in this paper. The closing date for comments is **Monday 24 December 2007**.

## APPENDIX 1

### SUMMARY OF THE CURRENT ARRANGEMENTS

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#### Criminal advice and assistance

1. Advice and assistance helps to pay a solicitor to give advice on any matter of Scots law whether that involves a civil or criminal matter. For example, in criminal matters as well as giving a person general legal advice, a solicitor can advise an accused person on how to prepare for their court appearance, or can write to the court intimating a guilty plea on their behalf. Where the applicant is financially eligible for criminal advice and assistance, the cost of this will be met from public funds through the Board, apart from any amount the person may have to pay as a contribution to the solicitor. In all cases however the solicitor must be satisfied the client does not have other rights and facilities available to fund the work, such as trade union membership or insurance cover.
2. Generally, advice and assistance will not enable the solicitor to represent the person in court except in certain types of proceedings laid down by Parliament. In these proceedings cover is available under a special type of advice and assistance called ABWOR (Assistance By Way of Representation).

#### ABWOR

3. ABWOR is mainly used where a plea of guilty is tendered but it is also available for other forms of representation in court as laid down by Parliament. It covers preliminary pleas, for example, where a charge is considered incompetent or irrelevant.
4. The solicitor must apply criteria, laid down by Parliament, before deciding whether the client is eligible for ABWOR. Primarily these criteria require the solicitor to be satisfied that the court is likely to send the client to prison or that the client will lose their job as a result of the sentence or that the client is cannot understand the proceedings. Differing criteria apply for other types of court process such as, for example, preliminary pleas. In all cases however the solicitor must be satisfied the client does not have other rights and facilities available to fund the work, such as trade union membership or insurance cover.
5. ABWOR cannot be made available to make a not guilty plea, or where the accused is held in custody or where an applicant has previously tendered a plea of not guilty and wishes to change that plea.

#### Availability and eligibility

6. Advice and assistance (which includes ABWOR) is granted by the solicitor and not by the Board. The solicitor must be satisfied the advice or assistance relates to a matter of Scots law.

7. Solicitors must apply a means test to satisfy themselves their clients are financially eligible to receive advice and assistance. The applicant must be eligible on both income and capital limits. Currently, disposable income (that is total income less standard allowances laid down by Parliament) must not exceed £215 per week and disposable capital (that is total capital less standard allowances laid down by Parliament) must not exceed £1,502.
8. Where the applicant receives income support or income based job seekers' allowance, they are automatically eligible on income. Where the applicant receives other benefits, most of these and tax credits are disregarded from the income assessment. The applicant receiving benefits must still pass the disposable capital test.
9. Depending on their financial circumstances, the applicant may expect to pay a contribution ranging from £7.00 to £124.00.
10. It is for the solicitor to collect the contribution from the applicant. The Board deducts the amount of the assessed contribution from the solicitor's final account at the conclusion of proceedings, on the assumption that the solicitor will have collected it. In practice, many applicants' financial circumstances are such that the solicitor does not assess that they have to pay a contribution. However, where the solicitor assesses that a contribution is payable, in many cases they may not collect it.
11. Once a solicitor grants the application for advice and assistance they are authorised to carry out work and incur outlays up to an initial value of £80. In ABWOR cases a higher limit of £150 applies where a second or subsequent hearing is fixed by the court. If the solicitor considers either limit is not enough for the work they wish to do, they must ask the Board for an increase in authorised expenditure to cover that additional work. The Board must authorise this before the solicitor can start the work. An increase cannot be backdated and the Board cannot pay for any work carried out which exceeds the initial or increased authorised level of expenditure at any given time.
12. However, where a grant of ABWOR is made, because of the feeing arrangements currently in place, the solicitor can receive only a maximum payment of £70 for all the work he has done up to and including the tendering of a plea. This applies irrespective of whether a guilty plea is tendered with or without a preliminary plea having been argued.

## Feeing arrangements

13. Where a contribution is payable by a client, a solicitor has to use this to cover their account before sending an account to the Board.
14. After taking into account the contribution, the solicitor is entitled to send their account to the Board for payment for work done and outlays incurred in connection with the advice and assistance. They must satisfy the Board that the work has actually been done and that it was necessarily and reasonably done (that is, that the work advanced the case). Detailed tables of fees are laid down and generally they are based on time and line accounting.
15. Under criminal advice and assistance the maximum payment to a solicitor for the work done and outlays incurred is £80 unless the Board authorises an increase or the work falls within the higher initial limit. Payment is made on the basis of "time and line" accounting

reflecting both the time taken and the number of letters, telephone calls etc. made. However, where the fees allowable to a solicitor, calculated in this way, amount to less than £25 or where a solicitor elects to claim only this fee, the solicitor does not need to send a detailed time and line account to receive the £25 minimum payment.

16. Under ABWOR the solicitor will receive only £70 for all work up to and including the first diet at which the plea is tendered. Where the court fixes a second or subsequent diet the solicitor may continue to act up to a limit of £150 on a time and line basis. Once this limit is exhausted the solicitor must seek further increases in authorised expenditure from the Board.

## The duty solicitor scheme

17. When an accused person is taken into police custody and is asked at the police station to take part in an identification parade or if they have been charged with murder, attempted murder or culpable homicide, they have the right, if they want to, to use the duty solicitor. They can do this regardless of their financial circumstances. They will not have to apply for legal aid for this nor pay for using the duty solicitor. Where an accused person has been asked to take part in an identification parade or has been charged with murder, attempted murder or culpable homicide, they also have the right to use their solicitor as if that solicitor were the duty solicitor, and again, they will not have to apply for legal aid or pay for using their own solicitor.
18. Conversely, where, an accused is in custody at the police station for some other reason, (that is other than on a charge of murder, attempted murder or culpable homicide) they do not have the right to use the duty solicitor. The duty solicitor may agree to attend, or the accused may ask their solicitor to attend. In either case, if the accused person is eligible, that solicitor may be able to give them advice and assistance. Depending on the accused person's financial circumstances, they may have to pay towards the costs of the advice and assistance given.
19. Where the police keep the accused person in custody (usually in the police station) they will appear before a sheriff or magistrate in court on the first court day after their arrest. They have the right to instruct the duty solicitor, regardless of their financial circumstances. The duty solicitor can represent the accused person at their first appearance in court and, if they plead guilty, to deal with any follow up hearings until the end of the case. The accused person will not have to apply for legal aid for this, and will not have to pay for instructing the duty solicitor.
20. On the other hand, if the accused person wants their solicitor of choice rather than the duty solicitor to represent them at the first appearance in court, they have the right to ask that solicitor to do so but the accused will be liable for the costs of representation. Public funds cannot pay for this although, if the accused is eligible to receive advice and assistance, their solicitor of choice may grant that to provide advice before appearing in court but not for court appearances. Any solicitor who acts for an accused person and is to be paid from public funds must be on the Criminal Legal Assistance Register. (All solicitors who provide advice and assistance, ABWOR or legal aid in criminal matters must be registered with the Board to do so.) All duty solicitors must be similarly registered.
21. Duty solicitors are paid by the sessions the court fixes to deal with the accused persons appearing from custody. They are paid £47.95 for the first session which includes

payment for the first accused with £6.48 for each additional accused up to a maximum of £103.95. They receive a maximum fee of £121.91 for any preliminary pleas and for any follow up work after a guilty plea has been tendered.

## Summary criminal legal aid

22. When the person decides to plead not guilty then regardless of whether they are appearing from custody or not, they can apply for criminal legal aid. How they do this depends on the seriousness of the charges. Where charges are less serious (summary - that is, non-jury) they must apply to the Board for summary criminal legal aid within fourteen days of pleading not guilty, although the Board may accept a late application where special reasons exist.
23. A decision to grant will depend on whether:
- (a) The Board considers that the applicant could pay their own legal costs without undue hardship to them or their dependants. This will depend on their financial circumstances, and the likely cost of the case. There is no statutory guidance for assessing financial eligibility based on this test. In 2001 the Board decided, in assessing applications under this test, to use similar capital and income limits to those used in civil legal aid. Thus a capital limit of £6,879 and an upper income limit of £194 a week are applied with the added flexibility that these limits may be exceeded for more complex cases which would be more expensive to fund privately.
  - (b) The applicant might be able to get help with the costs of the case from somewhere else - for example, an insurance company or trade union.
  - (c) It is in the interests of justice for the applicant to be granted legal aid. This includes questions such as:
    - is the applicant likely to go to prison or lose their job if found guilty;
    - will the case be complicated to argue in court because the evidence is difficult;
    - can the applicant understand the proceedings;
    - is it in someone else's interests for the applicant to be represented in court;
    - does the applicant have a non-frivolous defence.

These do not exclude the Board taking other factors into account - for example, the minor or straightforward nature of a case or the lack of serious consequences for the accused. Nor is it suggested that the matters are listed in any particular order of importance or priority. The Board must look at all the circumstances of the case and take a balanced decision.

24. The Board may also grant legal aid, by telephone to a solicitor in court for example, where there is special urgency making it difficult to apply in the normal way. The greatest use made of the special urgency provisions is, however, in criminal appeals - for example, where the solicitor marks the appeal before making a full application for legal aid for the appeal.

## Summary criminal legal aid granted by the court

25. The court may also grant legal aid in a summary case but this is limited to where a person has not previously been sentenced to imprisonment or detention and the court is considering such a sentence. In these cases the court has to consider only whether the person could pay their own legal costs without undue hardship to them and their dependants.

## Feeing arrangements

26. Where a solicitor gives criminal legal aid for summary proceedings (other than in some excluded proceedings, such as summary criminal legal aid granted as a matter of special urgency), they are entitled to a fixed payment for the work done.
27. Fixed payments were introduced in 1999 and they represented a radical departure from the former system of time and line accounting. Fixed payments are based on a prescribed "rate for the job" which is designed to ensure remuneration for solicitors undertaking summary criminal legal aid with a degree of "swings and roundabouts" for payments for any individual case. Payments are made for blocks of work which differ depending on the court in which the work is done. ( For example, £500 would be payable for any work done up to and including the first 30 minutes for a trial in the sheriff court or in the district court where the proceedings are set down before a stipendiary magistrate. Additional blocks would be payable for work done for later stages in the process - for example, the remainder of the first day of trial at £100 and the second day at £200. But for the same work before a lay magistrate in the district court the payments are £300, £50 and £50 respectively.)
28. In June 2002 the fixed payment regulations were changed to take into account "exceptional cases". It was recognised that there could be exceptional cases where an assisted person would be deprived of a fair trial because of the amount of the fixed payment. Where this arises, the Board may, using criteria laid down by Parliament, decide that instead of receiving the fixed payment, the solicitor should be paid on a detailed time and line basis.
29. In summary criminal cases which are exempted from fixed payments (for example, cases reduced from solemn to summary procedure or work done under the special urgency arrangements) payment is on a time and line basis for work actually and reasonably done (that is, work necessary to further the defence in the case). For outlays, travel and waiting time actually and reasonably undertaken or incurred, due regard must be had to economy (that is, whether the work was carried out in the most efficient and cost-effective manner consistent with the conduct of the case). These cases are, however, small in number.
30. In the event of a question or dispute between the Board and the solicitor the matter is referred to another party, the Auditor of Court, to decide.

## Transfers

31. The person getting legal aid may change their solicitor but will have to show the Board that there are good reasons for this. These could include the ill health of the solicitor, a conflict of interest between solicitor and assisted person or the assisted person moving from the area where the solicitor works, making it more convenient to instruct another solicitor.

## APPENDIX 2

# SUMMARY OF WHAT THE CHANGES WILL MEAN FOR SOLICITORS

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### Advice and assistance

1. Advice and assistance will still be granted by the solicitor in the normal way for all advice and investigation following the service of a complaint (including a direct measure that the client has not accepted), and in these circumstances:
  - the authorised expenditure will increase from £80 to £95 (with increases in authorised expenditure sought in the normal way where appropriate to cover work which has to be done)
  - the cost of the work done in progressing the case to the tendering of a guilty plea will be subsumed in any grant of ABWOR, as in the current system, or subsequent grant of summary criminal legal aid.
2. However, where the advice is given prior to the service of a complaint or in cases where a direct measure is accepted by the client:
  - the authorised expenditure will be £35 (with increases in authorised expenditure sought in the normal way where appropriate to cover the work which needs to be done)
  - where the case subsequently proceeds further, the cost of the work done in progressing the case will be subsumed into any grant of ABWOR or summary criminal legal aid except where the client appeared from custody.

### Clients Appearing from Custody

3. The duty system is largely unchanged by the reforms except that it is intended to:
  - increase the standard appearance fee from £47.95 to £63 and the subsequent per capita fee from £6.48 to £9;
  - increase the capped fees for follow-up work and named hearings from £121.91 to £150; and
  - to give the Board discretion to authorise further work beyond the “cap”.
4. The accused person appearing from custody will also be able to get advice and representation from their own solicitor using ABWOR where that solicitor is available to provide the advice and representation. ABWOR:
  - will be granted by the solicitor
  - will not be subject to a merits or means test.

Where ABWOR is granted, the solicitor:

- will be able to provide the same level of advice and representation as provided by a local duty solicitor
- will be paid for the work done under ABWOR at the same rates that apply under the duty scheme.

## Clients Appearing on Undertaking

5. Clients appearing on an undertaking will be able to get advice and representation from their own solicitor using ABWOR:
  - ABWOR will be granted by the solicitor who will apply the current means test and the proposed interests of justice test.
  - ABWOR, when granted, will cover the tendering of a preliminary plea, a guilty plea or a continuation without plea.
  - The work done will be subject to the current £70 block fee.
  - Where the case proceeds following the fixing of a continuation without plea hearing to a guilty plea, the solicitor will be able to apply to the Board for ABWOR to tender that plea.
  - The work done will be subject to the increased ABWOR block fee of £300 (or £200) and the add-on blocks of £50 for post conviction work.
  - Where the case proceeds to ABWOR granted by the Board or summary criminal legal aid the work done in progressing the case will be subsumed within the larger ABWOR block or summary criminal legal aid "core" fixed payment.

## Cited Cases

6. Clients whose cases are cited will be able to receive initial advice and assistance from their solicitor in the normal way; and where granted:
  - The authorised expenditure limit will increase from £80 to £95.
  - Where the case proceeds to representation by that solicitor, they can apply to the Board for ABWOR to tender a preliminary plea, to tender a guilty plea or to continue the case without plea for which a block payment of £300 for sheriff/stipendiary magistrate or £200 for district court will be paid.
  - Where the case is continued without plea, the blocks will cover the first continuation without plea with a second receiving a block of £50 and a third and subsequent £25.
  - Where, following conviction, there are deferred sentences or other post conviction hearings, blocks of £50 are payable.
  - Where the case proceeds to trial and the Board grants summary criminal legal aid or

ABWOR, the work done progressing the case under advice and assistance will be subsumed into the grant of ABWOR and that grant, if leading to a not guilty plea, will be subsumed within the core fixed payment under summary criminal legal aid.

## Cases Proceeding to Trial

7. Applications made to the Board for summary criminal legal aid are largely unaffected by the reforms in that an application for summary criminal legal aid can still only be made at the conclusion of the first diet at which the accused has tendered a plea of not guilty.
  - The Board will issue guidance as to the circumstances in which it will favourably view a non-timeous application for summary criminal legal aid.
  - The application will be accompanied by a copy of the complaint, the Crown's summary of evidence, details, where applicable, of any plea the Crown is prepared to accept and supported by vouching of the accused financial circumstances (unless the accused is in custody in which case it should be produced as soon as possible thereafter).
  - In determining such applications, the Board will apply a new capital threshold under the undue hardship test of £1,502.
  - The interests of justice test will remain as before.
  - Where granted, the core fixed payment will increase in sheriff and stipendiary court cases from £500 to £525 and for district court cases from £300 to £325.
  - However, the increased payment for third and subsequent days of trial will now be redundant as this was a proxy for unusually complex cases now replaced by exceptional case status and will be replaced by a lower rate.
  - The cost of work done in progressing the case under advice and assistance and/or ABWOR will be subsumed into the core fixed payment.

## Worked Examples

The following are some examples of how the changed payment structure could affect solicitors' fees when they undertake certain pieces of work during a summary case in the sheriff court. [**The new payment figures are demonstrative only, and subject to decisions yet to be taken**].

As a guide to help assess the number of chargeable hours reflected in the fees, in the following examples we have used the mid-point fee between the current fees, following two interim increases, for solemn work of £68.04 (advocacy) and £48.40 (non-advocacy average) - that is, an hourly rate of £58.00.

### Example 1 (Cited)

A&A/ABWOR provided in a cited case to client, taking in all court attendances, up to and including hearing where a plea of guilty is tendered not involving a continuation without plea (C.W.P.), where client given A&A prior to pleading diet. (See example 5A below where client seen for first time at pleading diet.)

Current payment: £70/£120  
 New payment: £300

A payment of £70 (the current ABWOR fee) in this example assumes that the solicitor has not already given advice and assistance costing over £70, say in connection with an attendance at a police station, and wishes to provide ABWOR. If the solicitor has, and does not wish to restrict the fee down to £70 (including representation in connection with the plea of guilty, ABWOR will not be provided, and no fee for the representation element is chargeable.) The average fee, where such work has been undertaken under A&A, is estimated at £120.

The new front-loaded ABWOR fee better allows for further investigation, negotiation and representation. The block ABWOR fee, where ABWOR is provided at any stage, as currently includes all work, of whatever nature, done under A&A prior to tendering the guilty plea.

The higher the ABWOR fee, the greater its capacity to subsume work undertaken under general A&A in addition to the representational aspects of the solicitor's work.

**Example 2 (Cited):**

A&A/ABWOR given to client, as in Example 1, who pleads guilty after a C.W.P. (whether client seen before or, for first time, at the pleading diet).

Current payment £70/£120  
 New payment £300 (including first C.W.P.) + £50 (second) + £25 (third or subsequent C.W.P.s).

Current payments calculated as in Example 1 above.

The new front-loaded ABWOR fee recognises and is better able to reflect disposal of case at a C.W.P. ABWOR is not currently available for a C.W.P., but a C.W.P. hearing may well take place at some stage prior to the hearing where guilty plea is tendered, although neither is separately chargeable or appropriately reflected in the current fee.

Further post-conviction hearings - for example, deferred sentence, DTTO etc - are separately chargeable in addition under both systems.

**Example 3 (Cited)**

Circumstances as in examples 1 and 2, but client pleads not guilty and criminal legal aid granted by the Board.

Current payment, say, £60 + £500 = £560  
 Current payment, say £70 + £500 = £570 (alternative)  
 New payment £525

ABWOR is not currently available for a not guilty plea. General A&A may be available at the pleading diet for some initial advice. The Board will only allow A&A for a meeting with the client and not for waiting time or representation at court. Often, only a meeting lasting not more than 30 minutes is chargeable. We have, however, allowed £60 in the example to reflect cases involving more work on the day, and £70 where earlier advice has been given, as in Examples 1 and 2 above.

The new system will allow the solicitor to investigate with a view to a possible guilty plea and be paid under ABWOR if that transpires. If not, and client pleads not guilty, the work, including A&A, will still be payable under the criminal legal aid fee which itself includes a large element for investigation. Both fees are not chargeable.

Under the new provisions, A&A, where provided, and the extent to which provided, would be subsumed within the legal aid fee.

(Advice and assistance is now given to a much greater extent during a summary criminal process where a criminal legal aid certificate is issued than was the case before 1999. The average advice and assistance account is about £70, and this is the figure used in the alternative example. Under the current system the solicitor might charge the advice and assistance in addition to the legal aid fixed payment. Part of this work is work which would have been chargeable under a detailed criminal legal aid account before fixed payments were introduced and on which the fixed payments were calculated.)

#### Example 4 - Custody

Advice and assistance given to client in custody by client's own solicitor at the pleading diet, followed by plea of guilty.

Current payment, say,	£60	
New payment	£63 + up to £150	= up to £213
	£9 + up to £150	= up to £159

This example assumes a level of general A&A provided to the client for a meeting at the pleading diet, as in Example 3.

The calculations for the new payment are done on two assumptions depending on whether the client is the first or subsequent accused in custody seen by the solicitor of choice. A higher fee is available to the solicitor under the new provisions where follow-up work (maximum £150) is undertaken in tendering a plea.

#### Example 5 - Undertaking

A&A/ABWOR provided to client at court on an undertaking followed by plea of guilty at the pleading diet.

Current payment, say,	£60 (A&A) or £70 (ABWOR)
New payment	£70.

The £60 quoted represents A&A currently given to client, rather than ABWOR. See Example 3.

Solicitor entitled to provide ABWOR to client on an undertaking to appear.

#### Example 5a - Cited

A&A/ABWOR provided to client at court in a cited case where client seen for the first time at the pleading diet, followed by plea of guilty at pleading diet.

Payment as in Example 5 above (where C.W.P. procedure, see Example 2 above).

### Example 6 - Undertaking

A&A/ABWOR provided to client at court on an undertaking, followed by plea of guilty at C.W.P.

Current payment, say	£60 (A&A) or £70 (ABWOR)
New payment	£300 + £50 + £25 (per subsequent C.W.P.)

Solicitor entitled to provide ABWOR, rather than advice and assistance, to client on an undertaking to appear.

Payment made as in Example 2 above.

### Example 7 - Cited/Custody/Undertaking

Plea of not guilty, no advice and assistance provided, and application for legal aid granted by the Board.

Current payment	£500
New payment	£525

In circumstances where all information is available and the Board is satisfied that the case is proceeding to trial, there is a higher "core" block fee (with, of course, additional fixed payments as in the current system).

Please use the enclosed response form to give your written comments, and then send your response by **Monday 24 December 2007** to:

Consultation on the reform summary criminal legal assistance  
Communications Department  
Scottish Legal Aid Board  
44 Drumsheugh Gardens  
Edinburgh EH3 7SW

or e-mail: [general@slab.org.uk](mailto:general@slab.org.uk)

If you have any questions about the consultation, please telephone: Kingsley Thomas at the Scottish Legal Aid Board on 0131 240 2085.

You can download the consultation response form, this paper and details of the information seminars online at <http://www.slab.org.uk/profession/summarycriminal>

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