



Summary criminal legal assistance reform: further guidance

Your details

Issued to all criminal legal assistance solicitors

Mailing 9: 28 August 2008

REFORM OF SUMMARY CRIMINAL LEGAL ASSISTANCE: FURTHER GUIDANCE ON FORMS AND FREQUENTLY ASKED QUESTIONS (FAQs)

This update contains further guidance on:

- completing the new application forms
- further guidance on frequently asked questions - this includes 10 points of clarification from common issues that have arisen since the reforms were implemented, as listed from page 4 of this letter .
- the frequently asked questions guidance is attached, which contains further advice on around 30 common queries.

You can find previously issued guidance in the summary criminal reforms section of our website www.slab.org.uk. If you wish printed copies of any summary criminal guidance, please contact our Communications Department on 0131 240 1985.

1. Completing the new application forms

The recent changes to the summary justice system have required the Board to update its application forms for criminal legal assistance. We have been encouraged by the profession's use of these forms and the general level of information that has been provided to date.

However, in some common instances we have to return the form to you for more information, or to seek clarification. This leads to delays in processing applications, something we are keen to avoid.

Therefore to help you avoid these delays, please note the following points when completing the new forms.

Other rights and facilities

The Board has a statutory duty to consider in all cases whether an accused person has 'other rights and facilities' before considering whether an application for legal assistance is appropriate. This has not altered in light of summary justice reform.

We have seen a number of applications where solicitors have provided ABWOR or are seeking summary criminal legal aid and this section has not been completed. In such cases, these forms are being returned for this information to be provided.

There are few cases where the 'other rights and facilities' criteria is applied. However, we must have this question addressed before we can process your application. We can only presume that this question is being missed due to unfamiliarity with the new forms, and ask that you pay particular attention to this when completing all future applications.

The other rights and facilities questions are found at:

- AA/APP/CRIM - page 4, Section D, question 11
- AA/INC/CRIM - page 5, Section G, question 1
- CRIM/SUMMARY - page 10, Section N, question 10.

Applicant's benefits

On the form CRIM/SUMMARY at Section E (page 3) we are looking for information on the applicant's financial circumstances: If an applicant for criminal legal assistance is on Income Support or Income-Based Job-Seeker's Allowance, **and that is their only source of income**, then you need not provide any further information in Section E and should proceed to complete Section F.

In such cases we do not require any of the other information regarding an applicant's partner.

In cases where the applicant receives another benefit (not income support or income-based Jobseekers Allowance), then we require the remainder of Section E to be completed. We need this additional information about income, such as child benefit, because we require to determine the exact amount of income received into the household so that we can be satisfied that an accused person cannot meet the expenses of the case without undue hardship to him or his dependants.

ABWOR

When providing intimation to the Board that you are providing ABWOR, it is important that you make clear the circumstances under which you are providing ABWOR.

In cases where you are providing ABWOR as an “appointed solicitor” (that is to say, firstly, the client is appearing from custody; secondly, you have taken instructions directly; thirdly you are able to act immediately; and fourthly, you have a previous relationship with the client) we need to know the circumstances of that grant: in particular you must tell us that you were instructed directly by the applicant and expand on the nature of the solicitor/client relationship and confirm that you were able to act immediately.

In “appointed solicitor” cases the accused is appearing from custody and no interests of justice (IOJ) test is applicable. This means, as the forms make clear, that you **do not need to complete** the IOJ factors.

However, where you are not acting as an “appointed solicitor” in a summary matter then **you must complete** the IOJ section by providing the appropriate information in the boxes provided: it is not enough to simply tick the boxes in the form. In these cases, please ensure that full details are given of the charges facing your client in the subject matter box at page 3, Section D2. In road traffic cases, please provide details of the particular sections of the road traffic legislation.

We have found examples where it has not been made clear that the solicitor is acting as the “appointed solicitor”, or where the necessary information in support of the IOJ factors has not been provided.

Please remember to complete the form in line with the instructions set out at:

- AA/APP/CRIM - page 7, Section I
- AA/INC/CRIM - page 5, Section G

This will prevent any unnecessary delays in processing applications.

2. Frequently asked questions

As part of the implementation of the summary criminal legal assistance reforms, we held seminars and issued guidance to assist prepare you for the changes. Enclosed is further guidance based on the most frequently asked questions at the seminars, together with issues raised since implementation of the reforms.

Please also note the following clarification on several issues which have arisen since the reforms were implemented.

1. Grants of ABWOR (assistance by way of representation)

When submitting the AA/APP/CRIM form for a grant of ABWOR, please ensure that the appropriate questions in section I are answered. The questions to be answered will depend on the type of ABWOR to be made available.

- Appointed solicitor - ABWOR grant in a custody case. Section I, questions 1, 2 and 3 need only be completed.
- ABWOR when the interests of justice test is applied by the solicitor in a cited or undertaking case. Section I of the form questions 4 to 12, as appropriate, need only be completed.
- ABWOR for other case. Where ABWOR is being provided for cases such as Parole Board, breach of probation etc, no interests of justice test is required. You only need to complete questions 13 and 14 of Section I.
- ABWOR where Board approval is sought. Where Board approval is required for removal of a disqualification from driving or a proceeds of crime case (where the applicant was not the accused in an earlier criminal case) you need only complete questions 15 and 16 of Section I.

2. Circumstances where £90 initial limit is applicable

The initial limit of authorised expenditure for standard advice and assistance (£90) is only applicable in two situations:

- where a complaint has been served; and
- where a direct measure is to be challenged.

It is *not* available where the client is in police custody or in prison. The correct position was stated in section 2.1 of the draft guidance but, unfortunately, incorrect guidance, suggesting that standard advice and assistance could be made available, was given at section 4.1 of the same document.

3. Obtaining increase in authorised expenditure under ABWOR

Although you are entitled to a fixed payment under ABWOR in summary criminal proceedings, the same as if legal aid had been made available, it remains ABWOR and you must always obtain a sufficient increase in the level of authorised expenditure to cover any work to be done. The initial limit of £185/£515 cover the principal core payments together with £25 for the supplementary fee where the case is disposed of at the first or second deferred sentence on an SER, together with £10 of outlays.

If you are to undertake any work for which an add-on is payable, for example a bail appeal or extended plea in mitigation in the JP court or a third and subsequent deferred sentence in the sheriff or stipendiary magistrate's court, you have to obtain a prior increase in authorised expenditure sufficient to cover the appropriate fees.

4. Providing ABWOR where plea of not guilty is accepted

You *can* act as an appointed solicitor, and be paid for providing ABWOR, as long as you take direct instructions and act for the client, personally or through the services of another solicitor, when first brought to a court to answer any complaint. You can continue to provide ABWOR until the conclusion of the first diet at which the accused is called upon to plead.

ABWOR can be provided in these circumstances regardless of the plea, whether it is one of guilty or not guilty or the case is deserted after CWP Procedure.

Subject to further consideration being given to this, the Board's initial advice was that ABWOR could not be provided in circumstances where a plea of not guilty is accepted. The considered position should now be noted.

The position where a nominated solicitor is providing ABWOR to a client appearing in a cited case or on an undertaken to appear is more complicated. It is in these situations where the provision of ABWOR is hedged by certain qualifications as to the nature of the diet and the circumstances of which a plea has been tendered. ABWOR cannot be provided except in the detailed circumstances set out in Regulation 6(1)(a) of the 2003 ABWOR Regulations.

Also see section 16 of the FAQ document for further details.

5. Verification of financial circumstances

We expect solicitors to see documentary evidence of a client's financial circumstances in the majority of cases. However, we appreciate that in certain circumstances, for example, if the client is in custody this may not always be possible. You have to confirm what evidence you saw of the client's financial circumstances when intimating the grant. Where no evidence is seen, you are asked to explain how you were satisfied that the client is financially eligible.

If you have not seen financial verification, you should give us full details of how you were satisfied your client was financially eligible from the limited information available to you, for example, your knowledge of the client's financial circumstances from recent cases. However, where the case is continued you should use the opportunity that presents to seek the necessary verification from your client.

When you come to submit your account, if no evidence has been at that stage, the Board can now withhold payment if it considers that an inappropriate grant of advice and assistance or ABWOR has been made. If no satisfactory explanation regarding the verification of financial circumstances has been provided, your account will be returned to you at that stage.

6. Case category codes: section 27(1)(a) and (b)

There are now specific category codes for work in connection with procedure under:

- section 27(1)(a) - FTA
- section 27(1)(b) - BBC.

These new category codes must be used. It is not appropriate to continue to use the code OTC when completing criminal forms.

7. Duty solicitor scheme: accused transferred or liberated

Although section (c) (CLAIM) of the duty scheme synopsis form (CRIM/ACCTS/DS) only identifies two disposals, "NG" or "CWP", this is not exhaustive. You are entitled to be paid a *per capita* fee for advising an accused who is subsequently transferred to another court, released or a fine imposed, simply complete, in the sixth column, the words "transferred" or "released" or "accepted fine".

8. Advice and assistance in solemn procedure cases

The standard limit of authorised expenditure of £90 applies for solemn cases. When you submit the AA/APP/CRIM for a solemn case please indicate that this is a solemn case in the subject matter box on page 3, section D, question 2 of the form. At section L on page 11, please check the second box for the £90 initial limit of authorised expenditure and mark "solemn" against it.

9. Outlays incurred under advice and assistance subsumed within ABWOR/legal aid certificate

Where advice and assistance is subsumed within an ABWOR or legal aid certificate, you are not entitled to any fees *and outlays* in connection with the provision of advice and assistance. The only exception to this rule is the cost of an exceptional police station visit. Consequently no outlays, broadly defined, can be paid in respect of mileage, cost of travel etc incurred by you. However, the provisions only relate to payment of the solicitor and not to third parties.

You are entitled to claim, albeit under the ABWOR or legal aid certificate, for costs incurred by others in connection with the case such as outlays/disbursements paid to a doctor/psychiatrist for a report or to a translator/interpreter etc.

The claim will be appropriately made on the account synopsis form in connection with the type of criminal legal assistance chargeable in the case.

10. ABWOR pre-complaint

ABWOR cannot be provided prior to the service or availability of a complaint. ABWOR is about representation and representation cannot be provided until there are proceedings.