



Scottish Legal
Aid Board

SLAB response to
consultation on our
policy on prior approval
for unusual work in civil
proceedings
December 2022

The Scottish Legal Aid Board

www.slab.org.uk

SLAB's corporate response to the consultation

1. We consulted on elements of our policy on [prior approval for unusual work in civil legal](#) earlier this year. Thanks to all who took the time to respond to the written consultation.
2. We were pleased with the positive response to key proposals around adopting a general definition of unusual, alongside removing certain forms of work from requiring prior approval. We will soon publish an updated statement of our policy, decision-makers' guidance and refreshed guidance for solicitors covering this area.
3. Respondents made a number of suggestions as to further forms of work that could also be removed from the ambit of unusual prior approval. These were as follows:
 - **Family therapy and other dispute resolution methods or interventions:** we acknowledge that this is a developing area which is becoming increasingly frequent. However, our current view is that additional research would assist us in better understanding this work and its place with the legal assistance regime before amending our current policy.
 - **Travel to court:** issues were raised around the costs of applicants travelling to court with regards to both particular case types as well as certain protected characteristics. We have a well-established policy position on the very limited circumstances in which payment can be made for assisted persons to travel to court. In practice, requests of this nature remain rare, and as such, we intend to retain the requirement of unusual prior approval here.
 - **Equalities:** a number of points concerning the impact of an assisted person's protected characteristics on the conduct of the case were raised: for instance, a need for longer meetings or use of an interpreter. We have clear accounts assessment policies on payment for these types of work, which generally speaking, do not currently require prior approval as unusual work, and as such, policy change in this area does not appear to be required.
 - Nonetheless, we intend to complete a full equalities impact assessment to understand the range of potential impacts of our policy and will take that into account in any final decision on the policy to be adopted.
4. As such, we are grateful for these suggestions, but other than potentially for family therapy, we are not currently minded to remove any further forms of work from the requirement of prior approval.



5. In terms of ensuring we stay up to date with what is usual/unusual, we look forward to undertaking further external engagement in future, and welcome any feedback on the operation of this policy.

6. If you have any questions about this consultation, or our policy on civil unusual work more broadly, please contact Wendy Dalglish, Head of Civil and Children's Legal Assistance at DalglishWe@slab.org.uk.

Appendix: collated responses to consultation

Respondent One: Shared Parenting Scotland

Question 1

To what extent do you agree with the current defined list of unusual work?

Response: Strongly disagree. We agree that family mediation and supervised contact should not be considered unusual. These are well established processes which can lead to resolution of disputes and avoidance or limiting of court action. As noted below, adversarial court action in family cases risks further exacerbating the dispute and prolonging the dispute. Neither outcome is favourable to the children involved in the case.

Question 2

Can you identify any further specific forms of work which currently require approval as 'unusual', but which in your view should not?

Response: Yes. Family therapy should also be removed from the list. We also suggest that support should also be made readily available for child consultation/child inclusive mediation and for training for parents that is aimed at helping them to resolve disputes, reach agreement and avoid litigation. Courses currently available in Scotland include Parenting Apart provided by local Relationships Scotland organisations and New Ways For Families® (NWFF) provide by Shared Parenting Scotland. NWFF is well established in a range of other jurisdictions. It was shown to reduce time spent in court in a 2001 evaluation in Canada ([here](#)). An evaluated pilot of NWFF is currently underway in Scotland.

Question 3

To what extent do you agree with this proposed change to a principle-based definition?

Response: Strongly agree. We agree that this should simplify the assessment process and make it more accessible. In addition, it emphasises that dispute resolution is not primarily a court-based process and that input from professionals other than lawyers is essential rather than optional.

Question 4

Can you identify additional benefits or risks relating to the proposed change?

Response: Yes. By making the above measures and others such as support for child consultation and training for separating parents available quicker and more easily, SLAB is making dispute resolution between separated parents without resort to adversarial litigation more likely. This will reduce the impact on the children in these families, and therefore contribute to the obligation on SLAB to comply with articles 3, 8, 9 and 12 of the UN Convention of the Rights of the Child.

Question 5

Do you have any experience or evidence to indicate there are equalities considerations we should take into account in relation to the proposal to introduce a specific definition of unusual/remove these types of work?

Response: Yes. The limiting of this support to people who are represented by a lawyer introduces inequality due to the lack of legal aid provision in certain parts of Scotland and the lack of Scottish family lawyers who can communicate with clients in languages such as Polish. In addition, there is an inequality for the poorest parents due to the need to pay up to £1,000 in order to secure the services of a legal aid lawyer before an application is made.

Question 6

Do you have any views on how best SLAB might ensure our understanding of what is usual/unusual stays up to date with developments in practice and procedure, and how such information might be gathered from solicitors and others?

Response: SLAB could undertake regular consultation meetings with solicitors and other relevant organisations.

Respondent Two: Civil Legal Assistance Offices

Question 1

To what extent do you agree with the current defined list of unusual work?

Response: Agree. As CLAO does not do the full range of civil work, we do not have direct experience of all the items listed, but are in broad agreement with the current list. It has been pointed out that unusual reports that may be needed for AWI work may not be statutory as the statutory ones are covered under templates: this wording should be checked.

Question 2

Can you identify any further specific forms of work which currently require approval as ‘unusual’, but which in your view should not?

Response: Possibly. For some people the costs of attending court are a barrier to their participation, particularly in certain types of action, and this is likely to increase as the financial crisis deepens - solicitors are more likely to assist with this if it is not seen as an unusual step. It is also potentially an equalities issue. Although we don’t currently have a socio-economic duty, socio-economic inequality tends to intersect with other protected characteristics.

Question 3

To what extent do you agree with this proposed change to a principle-based definition?

Response: Strongly agree. For the reasons stated in the consultation paper we agree that this is a good idea.

Question 4

Can you identify additional benefits or risks relating to the proposed change?

Response: In terms of additional benefits, as well as aligning with SLAB values of transparency and responsiveness, the change would also align with some of SLAB’s other values: the use of resource would be more proportionate, and the rational approach helps to ensure that SLAB is accountable and impartial in its approach to decision making.

In terms of potential risks, the second clause of the definition, as currently proposed, and with the inclusion of the word ‘particular’ rather than e.g. phrase ‘type of’, perhaps risks being too broad and open to arguments that nothing can be considered unusual?

Question 5

Do you have any experience or evidence to indicate there are equalities considerations we should take into account in relation to the proposal to introduce a specific definition of unusual/remove these types of work?

Response: Yes. In terms of equalities considerations to take into account in relation to the proposal to introduce a specific definition of unusual and to remove certain types of work, it may be worth considering whether the definition of unusual should take account of the fact that there may be certain situations where expenditure may be unusual in the context of a particular type of case overall, but may be usual for a particular group of people with certain protected characteristics. Whilst this might be covered by the second clause '*and/or in the particular circumstances of the case at hand*', it might be preferable to phrase this second clause in a way that more specifically addresses this point, to put those considerations more at the forefront of the decision maker's mind.

Question 6

Do you have any views on how best SLAB might ensure our understanding of what is usual/unusual stays up to date with developments in practice and procedure, and how such information might be gathered from solicitors and others?

Response: Yes. This is something which ought to be considered when there are changes to legislation, rules or practice, that SLAB should consider from its own analysis of requests and via consulting stakeholders such as the profession and other relevant service providers. It might be useful to consider whether particular stakeholders should be consulted in terms of equalities duties and whether this might be another example which could be used of how data might be used with the profession regarding completing equalities data.

Question 7

Please provide your views on any further aspect of approval for unusual work that has not been covered by responses above.

Response: Nothing else to add at this point.