



glasgow bar association
established 1959

Room 1.29
Glasgow Sheriff Court
1 Carlton Place,
Glasgow
G5 9DA

10th December 2021

Dear Sirs,

RESPONSE TO THE SCOTTISH LEGAL AID BOARD CONSULTATION

APPROACH TO ACCOUNTS ASSESSMENT

The Executive Committee of the Glasgow Bar Association (GBA) welcomes this opportunity to respond to this consultation on behalf of its members.

The GBA is the largest association of Solicitors in Scotland, representing Solicitors in the West of Scotland and acting on behalf of our clients throughout Scotland. Glasgow Sheriff Court is the busiest Court in Scotland. It has also been billed as the busiest Court in Europe. Glasgow has the highest population pro rata of the most socially deprived and vulnerable members of Scottish society within its jurisdiction.

The Aims and Objectives of the Glasgow Bar Association are: -

1. To promote, represent and protect the rights and interests of its Members in the practice of law; and by extension those of its members' clients and therefore the wider public including the most vulnerable members of society.
2. To promote access to legal services and to justice.
3. To consider and, if necessary, formulate proposals and initiate action for law reform.
4. To consider and monitor proposals made by other bodies for law reform and draft legislation and to make comments, recommendations and representations thereon to the appropriate quarters.
5. To arrange conferences and lectures and otherwise to provide opportunities for its Members and others to study and keep up to date with current and proposed law practice and procedures.

This response arises from a call for views contained within a consultation paper produced by the Scottish Legal Aid Board in September 2021. The response should be read in conjunction with that document. We respond to the specific questions posed as follows:

1. *What are your views on how we assess reasonableness as part of the taxation test?*

Assessing reasonableness in relation to accounts can be a difficult task. On occasion it appears to us that SLAB do not accept as reasonable charges items which require to be undertaken as part of our professional obligations. An example of this would be a letter of engagement, which is currently not chargeable. Such an item is required and therefore should be paid for as reasonable. To put this another way, it is unreasonable to expect solicitors not to be paid for work which is necessary. Therefore where work is necessary in terms of professional obligations, this is a factor which should be taken into account in assessing the reasonableness of a charge.

2. *What are your views on the process for seeking further information to support account entries that have been abated?*

Whilst the process works reasonably well on the whole, many situations where further information or clarification is required could be remedied with a telephone call from the accounts assessment department to the solicitor when assessing the account at first instance. This would save both parties time and effort in responding to each query in writing (often with multiple or duplicate replies) and would allow accounts to be paid fully at first the first time of asking.

3. *What are your views on how we could best keep up to date on what is 'usual' in any given practice area?*

The easiest way is as described at answer 2 – speak to solicitors who undertake the work. If there is any doubt then speak to another solicitor who undertakes the same type of work. What is “usual” in any practice area will change over time and therefore the only place to get up to date information is from those practicing in that particular area.

4. *Does the assessment process set out on page 11 or appended policy statements raise any concerns in relation to treatment of care experienced young people, equality groups or other vulnerable people?*

Yes. Solicitors are often required to undertake different or extra work for young or vulnerable people, which is not required for the majority of other cases. Such work often falls into the “unusual” category, requiring further justification at accounts stage. Given the difficulty in having such accounts paid fully, and the laborious nature of responding to abatements, there is a concern that this policy may put

solicitors off taking on work for such clients. In turn this leads to a clear impact on access to justice for young and vulnerable people.

5. *To what extent is the purpose of the policy statements clear and understandable?*

The purpose of the policy statements is clear, though there are so many policy statements listed at Appendix D that it is unlikely that any individual solicitor is aware of all of the guidance.

6. *How useful is seeing the policy statements as an underpinning for future guidance?*

The policy statements are useful as they give a guide as to SLAB's thinking and may prevent needless abatements to accounts, but as mentioned above they are extremely lengthy and not particularly user friendly.

7. *What are your views on how the meetings and letters policies as stated are reflected in current practice?*

The policies appear to allow flexibility though due to many clients vulnerabilities meetings and letters are becoming longer and more frequent. Therefore it may be helpful if such lengthy meetings/letters are considered normal without requirement for further, in depth, explanation.

In relation to the formal/non-formal letters, there is an argument to remove this distinction. Any letter sent during a case should advance the position in the case and therefore be non-formal: if it doesn't advance the position it shouldn't be sent (and therefore not charged for). We do not see that there is any justification for a letter being deemed as formal and therefore somehow less important. Put another way, there is either a requirement to send a letter (and therefore the solicitor should be paid for it) or there isn't and therefore it should not be charged for.

8. *What are your views on how the civil and children's counsel fees policy as stated is reflected in current practice?*

No view.

9. *What are your views on the proposed changes to our policy on outlays related to travel and associated expenses?*

The increase to the mileage rate is long overdue and welcomed.

We submit that a cap on accommodation/food is not required, and may even be detrimental. In many areas it is almost impossible to find accommodation and sustenance within the proposed cap, particularly during the summer months in areas frequented by tourists. Putting a cap on this risks solicitors not taking on work in

these areas for fear of having to bear the accommodation costs themselves. It is already the case that very few solicitors north of the central belt take on childrens/civil legal aid cases and clients require to instruct solicitors from further afield, principally Glasgow and Edinburgh. If a cap on accommodation and food is brought in then it is unlikely that solicitors from the central belt would be willing to take on these cases. This in turn would lead to further access to justice issues for such clients who would be left unable to find solicitors to act in their cases.

10. What are your views on the proposed policy on travel to court?

Standardising the approach to travel across the different legal aid types as far as possible would be welcomed.

11. What are your views on the proposed policy on overnight travel?

No view.

12. What are your views on the proposed changes to our spoken language interpreting and translation policy?

No view.

13. To what extent do you agree or disagree with our approach to funding adjustments from the Legal Aid Fund?

We agree that the policy requires addressed. At present the policy would leave those clients requiring interpreters or other assistance in civil legal aid requiring to pay more in clawback or contributions than those who do not. This should not happen and would potentially appear to run contrary to anti-discrimination legislation.

14. What are your views on whether the current approach to guidance as set out for criminal legal assistance applications would be beneficial for accounts assessment?

We submit that what is required is a single, simple document which provides standard guidance for all account types to which practitioners could refer. At the moment the guidance appears to be piecemeal and found in numerous different areas. One document available to all on the SLAB website may be of assistance to the profession.

15. Are there particular examples from other organisations or features that you would like to see incorporated into accounts assessment guidance?

No

16. Please provide your views on any further aspect of accounts assessment that has not been covered by responses above.

The sheer volume of information is the biggest problem when negotiating SLAB's website for clarity on matters, it is not particularly "user friendly".

Secondly, at the assessment stage the lack of recognition of the difficulties when dealing with vulnerable individuals leads to repeated abatement of repetitive phone calls/meetings which are needed in order to ensure that the client is fully aware of what is going on. In particular this happens with mental health tribunal and children's cases. AA & ABWOR are proportionally the accounts which are most abated.

This concludes the Glasgow Bar Association response to the consultation. We give our consent to publication of our response.

Yours faithfully,

The Executive Committee of the Glasgow Bar Association