



Civil Legal Assistance Update

4 May 2012

CIVIL UPDATE 2012

This update provides information about:

- Sanction requests for supervised contact
- Transfers of agency
- Financial verification - some situations exist where payslips will be required in addition to bank statements.
- Financial verification - information about cases where we have taken into account the resources of people owing an obligation for aliment to a child.

SUPERVISED CONTACT

Since April 2009 we have seen an increasing number of applications for sanction in family cases to cover the cost of paid for supervised contact and while the numbers of these requests are still fairly modest it is an area which has the potential to continue to increase. Supervised contact is contact that takes place in a controlled setting (usually a contact centre) where there is one to one staff support. One member of staff from the centre will be present throughout the contact period. This type of contact is distinct from supported contact which is contact that takes place in a centre but not under one to one conditions. In supported contact there will usually be a number of parties exercising contact with one or two members of staff or volunteers present.

No charge is made for supported contact but it can be charged for in relation to supervised contact. Charges vary from modest referral flat fees to more substantial costs including payment at an hourly rate of £50.

These costs can sometimes be met under a grant of civil legal aid. To help us decide whether the costs can be met under a grant of civil legal aid we need to know that any

paid for supervised contact sessions are needed to take forward consideration of the case in court and that the work will help to decide the case, either judicially or extra judicially.

When you make a sanction application you should give us enough information to decide whether or not the costs can be covered under the grant of civil legal aid. The information we need to see is:

- how many supervised contact sessions have been ordered;
- whether the court is to receive a report, either written or verbal about the outcome of the sessions;
- whether the supervised contact is to take place to assist the court in reaching a final decision on whether to allow contact in the future; and
- whether the costs of the supervised contact are to be shared between the parties in the action (including situations where one individual is paying privately while the other party is in receipt of legal aid) and if the costs are not to be shared, why this is the case.

A copy of the interlocutor ordering the supervised contact should also be sent to us.

If we are given all of this information, we will be able to make a decision on the sanction request without having to continue it for further information and therefore minimise the impact on contact taking place and the court process.

In a situation where the contact centre charges for supervised contact, we can only meet the costs of supervised contact where it has been ordered to help the court to take a final decision in a case. It is not a cost that we can meet indefinitely. If, for example, a final interlocutor is made ordering contact on a supervised, paid for basis then this would be a cost that your client would have to meet from their own funds. We have been asked to meet such costs on a number of occasions and do not think that this is a reasonable charge against the Fund once the case has concluded.

Guidance on the approach we take to requests for sanction to cover paid for supervised contact is available in the Civil Legal Assistance Handbook on the Board's website at www.slab.org.uk

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| If you have any queries regarding the above please contact Catriona Whyte, Head of Legal Services - Civil, DDI 0131 240 2088, e-mail whyteca@slab.org.uk |
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TRANSFERS OF AGENCY

We have had a number of queries recently about transfers of agency when solicitors leave firms. We are aware that solicitors leave firms for a number of reasons, such as to join another firm or to take up a post as an in-house solicitor. On some of these occasions there is full agreement between the solicitor and the firm they are leaving about whether they will take cases in which they are acting to their new firm. On other occasions there is no such agreement and there may in fact be disagreement between the solicitors about such matters. It is not for the Board to become involved in the resolution of any such disagreement. The general position, from a legal aid perspective, is that the case follows the nominated solicitor but we have arrangements in place to deal with any transfers.

The Civil Legal Assistance Handbook contains detailed guidance in respect of both advice and assistance (including ABWOR) and civil legal aid. For advice and assistance this can be found in Part III, Chapter 2.19 and for civil legal aid in Part IV, Chapter 7.1

Advice and Assistance

There is no provision in the Advice & Assistance Regulations for transferring grants of advice & Assistance but we have a pragmatic administrative arrangement in place to address certain scenarios. We will record a change in the nominated solicitor in the circumstances set out below. This avoids the need for a second application for advice and assistance and the client possibly having to pay a second contribution. We will do this only where the case is to remain with the same firm of solicitors because the nominated solicitor has:

- died, retired or otherwise left private practice;
- moved to another firm with agreement that outstanding cases are to remain with the original firm.

The criteria are that:

- the existing solicitor is unable to complete the course of advice and assistance;
- another solicitor in the same firm is to complete the advice and assistance;
- all parties (the original solicitor, the new solicitor and the client) agree to the arrangement;
- one account will be sent in at the conclusion of the advice and assistance under the new solicitor's practitioner code and paid under the mandate relating to the new solicitor.

When intimating a change of the solicitor providing advice and assistance:

- Contact our Advice and Assistance Applications Department, explaining the circumstances in which a change of nominated solicitor is necessary.
- Send a letter addressed to the Advice and Assistance Increase Unit with a list of all affected applicants and their reference numbers or, alternatively, state if all applications under the existing practitioner code and firm code are to be updated.
- Include a statement by the existing solicitor showing their consent. If this is not possible, the reasons for this must be clearly stated.
- State whether the affected clients are aware of the change in nominated solicitor and agree to it.

Should your circumstances fall outwith this criteria, a new grant of advice & assistance should be submitted, with the relevant details provided at the question - Previous Advice & Assistance. For more information please refer to the Civil Legal Assistance Handbook, Part III, Chapter 2.19 or call Alison Smith on 0131 240 1958.

Civil legal aid

Queries we have received have fallen under three main headings:

- Requests for transfer prior to a decision having been made about the application for civil legal aid.
- Transfers where the solicitor is changing firms but the nominated solicitor in the case remains the same.
- Transfers where the nominated solicitor is leaving the firm but the client wishes to remain with the firm

Transfer of an application - no legal aid decision made - where a transfer of agency is being sought prior to the determination of the application, the incoming solicitor should make a transfer application using Legal Aid Online:

- Access the civil online applications screens
- Select the civil option and then select transfer
- Input the civil legal aid reference number, (if this is not known, please contact the Board who will be able provide you with this)
- Complete the transfer registration screen and confirm you have obtained a copy of the transfer mandate.

The Board will notify the incoming solicitor of the decision taken and, where granted, the incoming solicitor will now have access to the online record including online notifications.

The incoming solicitor must check the status of the application prior to undertaking any work on behalf of the client as the application may still be outstanding. Where the work is urgent a special urgency application may require to be submitted.

Transfer of Legal Aid Certificate -Solicitor moving firm but nominated solicitor unchanged - The nominated solicitor must notify us in writing of all cases that they are taking with them to any new firm and provide details of the new firm code. As these are not transfers no client mandate is required.

Nominated solicitor moving firm but client wishes to stay with firm - Transfer applications require to be submitted by the solicitor within the firm who is now to act on behalf of the applicant. A signed mandate from the applicant is required. Alternatively, we will accept a signed letter from the acting solicitor advising that they have no objection to the cases being transferred to another solicitor within the firm, together with a list of cases to be transferred and a note of the new solicitor's practitioners' code.

If a transfer is required because the nominated solicitor commences maternity leave/ has ill health or passes away, the normal transfer procedure applies: a client's transfer mandate requires to be completed and the online transfer application submitted.

Any transfer to a new solicitor will only be effective from the date we authorise it and cannot be granted retrospectively. Any work undertaken by the incoming solicitor prior to that effective date will not be chargeable under the grant of legal aid. If the work to be undertaken is urgent you should register the transfer request online and contact the Civil Registration team on 0131 240 2070 advising of the nature of the urgency.

FINANCIAL VERIFICATION - deductions from salary

When a solicitor has to obtain documentary evidence of an applicant's financial eligibility for advice and assistance a bank statement will often be sufficient to show the net pay received. However, it is important to remember that the only allowable deductions from pay in advice and assistance are tax and national insurance. Some employees may have other significant deductions made at source. For example, those working in financial services may have their mortgage repayments deducted directly from their salaries by their employers. It is important, therefore, that if you intend to use a bank statement as evidence of earnings that you check with the client that there are no significant deductions from pay other than those allowed by regulation. When there are such deductions you should obtain additional documentary evidence such as the payslips.

FINANCIAL VERIFICATION - applications by children

You will be aware from earlier updates and from the guidance in our Handbook that the Civil Legal Aid (Scotland) Amendment Regulations 2010 introduced changes to the assessment of an applicant's financial eligibility for civil legal aid if they fall within the definition of a child. The financial resources of any person who owes an obligation of aliment (POA) to a child applicant are to be treated as part of the child's own resources unless it would be unjust or inequitable to do so.

As a result of these provisions, when the Board is assessing a child applicant's financial eligibility for civil legal aid, we have to obtain information about the resources of POAs and the information supplied forms part of the application. This leads to two consequences that POAs need to be aware of. The first is that we may have to make further enquiries about the information submitted by the POA. Our first approach would be to the person owing the alimentary obligation, but if we do not receive a response we may have to contact either the child applicant or the solicitor. The second point to note is that when we have completed our assessment in a civil legal aid case we issue to the applicant a breakdown showing the capital, income and expenditure that we have taken into account in assessing the applicant's financial eligibility. In an application by a child this will include any such capital, income and outgoings of the POA.

We understand that some of those owing an alimentary obligation may have degrees of sensitivity about information regarding their resources being available to the child as a result of these processes. Therefore, it is important that you inform them of this at the outset when you or the child asks them to provide the information to support the application. It will then be for them to decide whether to supply the information to allow the assessment to be undertaken but they should be aware that if they do not provide the information the child's application may have to be refused.

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| If you have any queries regarding the above please contact Joe Kelly, Head of Civil Legal Assistance, DDI 0131 240 2031, e-mail kellyjo@slab.org.uk |
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