



# Criminal legal assistance update

Issued to all solicitors registered to provide criminal legal assistance

16 April 2012

In this latest update you will find information on:

- Double jeopardy cases
- Using the Crown link to obtain copy complaints and petitions
- Legal aid online developments
- Transcriptions of court proceedings
- Solicitors' contact details for police station attendances

## Double jeopardy cases

Assistance By Way of Representation (ABWOR) can now be made available under the new Double Jeopardy (Scotland) Act 2011 where:

- An application has been made under sections 2(2), 3(3)(b) or 4(3)(b) of the Act to bring a new prosecution where a person has been acquitted of an offence;
- An application has been made under section 11(3) of the Act where a person has been acquitted of an offence involving the physical injury of another person and the injured person has since died; or
- An application has been made under section 12(3) of that Act to bring a new prosecution on the basis that the previous proceedings were a nullity.

In each of these situations initial proceedings can only be covered by ABWOR. The initial authorised expenditure limit of £90 applies, but an increase in authorised expenditure can also be applied for to cover the work required, including any counsel's fees for these High Court cases.

A new category code (DJEP) can now be used for these ABWOR cases. ABWOR covers work at these hearings only. Should the case then move to a new prosecution, a fresh application

for criminal legal aid needs to be made to the Board.

## Using the Crown link to obtain copy complaints and petitions

Our link to the Crown's systems went live on the 1<sup>st</sup> March, allowing us to obtain copies of complaints, previous convictions, summaries of evidence, and petitions direct from the Crown removing the need for agents to scan in these documents as part of the online application processes for solemn and summary criminal applications.

The process has been working well, but so far only about 55% of applications authorise us to obtain copies of these documents direct from the Crown. Enquiries with some firms have suggested that not all firms who opt out of this process actually wanted to do so, and are doing this in error.

The on-line system has been set up so that the Board is authorised to obtain the complaint from the Crown **UNLESS** you tick the box. The authorisation for this link is on the declaration page on the on-line system and reads as follows:

*"The Scottish Legal Aid Board has established a link with the Crown Office to obtain the following documentation: copy complaint,*

*schedule of previous convictions and the disclosable summary. If you do not wish the Board to obtain this information directly from the Crown Office please tick the box below. If you tick the box you will have to send us the documents via the attachments or barcode facility.”*

Therefore, if you want the Board to obtain a copy of the complaint using the Crown link, please do **NOT** tick the box. Unfortunately, once the box has been ticked, and the application has been sent to us, we cannot then reverse this process if you do want us to get the compliant direct from the Crown.

If we are unable to obtain the copy complaint from the Crown, for example, because the PF reference number does not match, then we will contact you and ask you to supply a copy. However, at present, the link is proving to be successful in well over 80% of cases.

We also plan to introduce this facility for criminal ABWOR cases to speed up and assist the Board approval of ABWOR cases, where solicitors apply the interests of justice test.

## **Legal aid online developments**

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Two new enhancements are due to be implemented on 24 April 2012:

### *ABWOR Transfers*

From 24 April, you will be able to apply online for a transfer of agency in criminal ABWOR cases where ABWOR has been provided in summary criminal proceedings. This applies only to grants of ABWOR by appointed solicitors in custody cases, or where the interests of justice criteria was met in a cited or undertaking case.

The transfer application process follows the same procedures as for summary and solemn criminal legal aid transfers.

### *Criminal Appeals - access by Edinburgh Agents*

Where an Edinburgh agent has been named by the nominated solicitor in a criminal appeal case, the Edinburgh agent will now be able to access the case and apply for sanctions.

Please note that the initial appeal application can only be made by the nominated solicitor, but thereafter the Edinburgh agent will be able to access the record and apply for sanction requests at any stage after the application has been submitted.

## **Transcriptions of court proceedings**

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We are often asked whether prior sanction is required for obtaining transcriptions of court proceedings. Please note that prior sanction is **not required** where the total cost of obtaining these transcriptions does not exceed the £2,000 threshold for unusually expensive work. In these cases, the costs need to be justified as necessary and reasonable in your final account. A copy of the court interlocutor authorising the transcripts also needs to be submitted.

However, where the cost is likely to exceed £2000, a sanction application needs to be made, and this must be accompanied by a copy of the court interlocutor authorising you to obtain the transcripts, where appropriate.

## **Solicitors' contact details for police station attendances**

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Please ensure that we have your most up to date out of hours contact numbers so that solicitors from our Solicitor Contact Line can advise you quickly if any clients detained in police custody for questioning have asked for your assistance.

It would also help if you would personalise the voicemail message on your mobile phone, identifying you and your firm. This helps us to be sure that the correct number has been used, and will allow us to leave more information about the case in the message than if you still use a standard mobile phone operator's voicemail message.

## **Who to contact if you have any questions**

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If you have any questions about any of the issues raised in this update, please contact us:

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