



# Criminal Legal Assistance Update

2 August 2012

## Guidance on verification of financial eligibility in advice and assistance in criminal cases, and financial eligibility in summary and solemn criminal cases

In this latest update we notify you about new guidance we have produced in connection with verification of financial eligibility in criminal advice and assistance/ABWOR cases, and financial eligibility in summary and solemn criminal cases. It is hoped that these guidelines will help solicitors comply with the regulations on financial verification in criminal advice and assistance and ABWOR cases, and will assist with the assessment of summary and solemn criminal cases.

A separate mailing has also been issued to all civil and criminal solicitors dated 20 July 2012, which gives details of the changes to the Legal Aid Online system in connection with the verification of financial eligibility in all advice and assistance cases, which were implemented on 30 July 2012.

### Verification of Financial Eligibility of Criminal Advice and Assistance, and ABWOR cases

The new guidance is available at Part III Chapter 2 of the Criminal Legal Assistance Handbook. Similar guidance was issued by the Board in January 2011 for civil and children's cases. The Board's guidelines also complement the Law Society's protocol on Advice and Assistance Verification, which was issued in February 2010. The guidelines contain a model mandate which can be used to obtain clients' authorisation to allow you to contact employers, banks, DWP, etc if they do not provide you with adequate verification themselves. This mandate will also be added to the standard criminal advice and assistance/ABWOR legal aid online client mandate form (AA LAO CRIM).

#### Summary of the guidelines

- You must assess a client's financial eligibility except in the limited cases where the financial test does not apply (ABWOR cases for obstructive witnesses (OBWI), Terrorism cases (TERF), and breach of interdict arrests (BIA)).
- Clients who are on benefits, or who have no income must still be asked about any disposable capital;
- You must get financial verification in the form of documentary evidence of income and capital, where this is necessary and practicable.
- Where it is possible in criminal cases, you should obtain verification of financial circumstances before starting to work for the client. Where this is not obtained, we may not always be able to pay you for work carried out.
- Where this is not immediately practicable, the client must be asked to provide this as soon as possible, and sign a mandate allowing you to obtain verification directly from the employer, benefits agency, bank etc should this not materialise.
- For clients who receive passported benefits (income support, income-based jobseeker's allowance, and income-based employment and support allowance) we will check they are in receipt of these benefits and have an electronic link with the Department for Work and Pensions (DWP) to do so (we do however need the client's National Insurance number, benefit claimed and date of birth to allow us to do this check - if any of these elements are incorrect or not supplied we will be unable to perform this check). We need similar details for the spouse or partner if they are claiming the benefit;

- You should keep the evidence of financial eligibility on file.
- You cannot charge for any time or work involved in obtaining or assessing financial eligibility or writing for verification.
- We are not able to pay accounts for work done where solicitors have not met the statutory tests.

#### **Common issues**

Some of the most common issues we have experienced in civil and criminal advice and assistance cases are highlighted here. These sometimes prevent us from paying accounts.

#### *No explanations given for 'no evidence seen'*

We receive a large number of intimations where the "evidence seen" boxes for income and/or capital have been answered "No" but no explanation has been provided as to why it was impracticable or unnecessary to obtain this information or to explain what other reasonable steps had been taken to establish eligibility. This information must be provided.

#### *Evidence of capital also required*

In a number of cases, solicitors have not seen evidence of capital, for example, in cases where the applicant receives a passported benefit. In advice and assistance, it is only the income assessment that is passported for these benefits; you still need to see evidence of capital in these and in all other cases. You will usually be able to do this by seeing a bank statement.

#### *Capital mandate form*

The online mandate form AA/LAO/CRIM, allows the client to confirm his/her capital position. If the client has no capital, the declaration requires them to confirm this. When submitting the grant of A&A/ABWOR you should indicate that you have seen verification of capital by way of this declaration.

### **Guidance on Financial Eligibility in Summary and Solemn Criminal Legal Aid cases**

We have updated the guidance on financial eligibility for summary and solemn criminal legal aid. You can read about our approach to financial verification in summary criminal legal aid cases at Part III, Chapter 12 and solemn criminal legal aid cases at Part III, Chapter 14 of the Criminal Legal Assistance Handbook. These chapters set out the approach we are currently taking to applying the undue hardship test and assessing financial eligibility in summary and solemn criminal legal aid cases. They also deal with specific issues such as applicants who are in receipt of multiple benefits, how we verify benefits using our link to the DWP system, benefits where verification is not required, and verification of earned income by way of bank statements.

In summary and solemn cases, the Board has a responsibility to ensure that legal aid can be made available to people who would be unable to pay their own defence costs. The updated chapters provide further guidance on verification of financial eligibility.

We are grateful for your assistance and co-operation in obtaining the information to satisfy the regulatory requirements. We are trying to make these processes as straightforward as possible, and have introduced a number of changes to help simplify the system and we would also welcome any feedback on where you think further improvements can be made. It is of benefit to you, the applicant, and the Board, and the operation of the justice system that income and capital are verified appropriately and as efficiently as possible. For example, we have done this by verifying passported benefits income directly with the DWP so that you do not have to do this.

These guidelines deal with the financial assessment of summary and solemn cases under the current arrangements. If passed by the Scottish Parliament, the Scottish Civil Justice Council and Criminal Legal Assistance Bill will introduce client contributions to most other areas of criminal legal assistance. Further guidance on how financial eligibility and client contributions will be assessed will be issued well in advance of the implementation of these changes.

**For any queries about the matters raised in this Update, please contact**

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