

# **SUMMARY CRIMINAL LEGAL ASSISTANCE REFORMS**



**Your guide to the changes**

**Draft as at 9 June 2008**

# THE SCOTTISH LEGAL AID BOARD

## SUMMARY CRIMINAL LEGAL ASSISTANCE REFORM YOUR GUIDE TO THE CHANGES

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## **1. HOW THE REFORMS WERE DEVELOPED**

1.1 Summary criminal legal assistance provides legal advice, assistance and representation to people who would otherwise not be able to afford it in connection with a criminal matter, whether or not they have been charged with an offence. It is provided by a combination of four types of legal aid: advice and assistance, assistance by way of representation (ABWOR), the duty scheme (automatic legal aid) and summary criminal legal aid.

1.2 The criminal justice system in Scotland is undergoing the largest and most far reaching reforms in at least a generation. Where the summary justice reform programme required legislative change, this was included in the Criminal Proceedings etc (Reform) (Scotland) Act 2007 which received Royal Assent on 19 January 2007. Last year, the Scottish Government published the summary justice system model which explained what changes are being introduced to improve the system of summary justice in Scotland in ways that are intended to be:

- fair to the accused, victims and witnesses;
- effective in deterring, punishing and helping to rehabilitate offenders;
- efficient in the use of time and resources; and
- quick and simple in delivery.

1.3 These changes are already being rolled out across the country, and in addition there are increasing numbers of cases initiated by way of undertaking.

1.4 Summary criminal legal assistance is a key component of the summary justice system. Each component cannot function effectively in isolation. Reform of summary criminal legal assistance was therefore needed to ensure that these wider measures work as effectively as possible. The reforms set out the broad structure of what will be a more integrated summary criminal legal assistance scheme, reflecting and underpinning the new summary justice process from the service of the complaint, or other initiating document, to the final disposal of the case but excluding any appeal procedure. Of necessity, however, these reforms have had to be effected within a very short timescale, and also only through secondary legislation, there being no window available for primary legislative change.

1.5 The reforms should be seen in the context of the development by the Board of its Legal Aid Online scheme, a system for the electronic submission and processing of all kinds of legal aid applications and accounts. This system in itself reduces bureaucracy, speeds up many processes and will support the reforms proposed in this paper.

1.6 The reforms, where they affect the uprating of fees, also need to be seen in the context of the ongoing development of the quality assurance peer review scheme for work done under summary criminal legal assistance.

1.7 The Consultation Paper on the Reform of Summary Criminal Legal Assistance was published on 1 October 2007, with a 12 week consultation period running to 24 December 2007. The consultation paper outlined changes to the structures and payment regime for advice and assistance, the duty scheme, ABWOR and summary criminal legal aid designed to support the wider reforms of the summary criminal system.

1.8 The Cabinet Secretary for Justice, Kenny McAskill MSP announced an extension to the consultation period beyond 24 December 2007, to allow for further discussions on possible changes to the legal aid proposals, provided they supported the summary justice reform system model, were affordable within the very tight financial constraints that are faced, and were achievable through secondary legislation.

1.9 The revised proposals were therefore developed following consideration of all the issues raised at the roadshows and in the consultation responses, the revised system model figures, and the recent discussions with the profession’s representatives. These discussions and negotiations culminated in a meeting with the Cabinet Secretary on 26 March 2008, and the consideration of further issues raised at that meeting.

The final proposals were then approved and announced by the Cabinet Secretary on 8 April this year. The reforms will come into effect on 30 June 2008.

## 2. SUMMARY OF THE REFORMS OF SUMMARY CRIMINAL LEGAL ASSISTANCE

The basic fee structure and the main features of the summary criminal legal assistance reforms are:-

	Sheriff/stipendiary magistrate’s court		J P court legal aid	J P court ABWOR
	Legal aid case disposal fee/core fixed payment	ABWOR case disposal fee		
Fixed Payments	<b>£515</b>	<b>£515</b>	<b>£315</b>	<b>£150</b>

### 2.1 Advice and assistance

- Criminal advice and assistance fee rates increased by 10%.
- Where advice and assistance is granted, this will be subsumed within any subsequent grant of ABWOR or summary criminal legal aid except the cost of an exceptional police station visit.
- Two levels of initial authorised expenditure, one for general advice, pre-complaint, at £35; the other for standard advice in connection with a Complaint or advice relating to a direct measure which is to be challenged, at £90.
- Abolition of the £25 minimum fee.

### 2.2 Assistance by way of Representation (ABWOR)

- The grant of ABWOR may be transferred as with summary criminal legal aid
- ABWOR will be available for a client’s own appointed solicitor in custody and undertaking cases
- ABWOR will be available for continuations without plea
- Consolidation of the existing merits criteria for ABWOR
- Introduction of templated increases in authorised expenditure
- Increased fixed payments

### 2.3 Sheriff and Stipendiary Magistrate’s court cases

- Introduction of a new “case disposal fee” for cases for which ABWOR or summary criminal legal aid has been granted in the Sheriff and Stipendiary Magistrate’s court at **£515**, covering:
  - all work carried out under advice and assistance except a police station visit which can be shown to be exceptional, in which case a separate payment will be made on a detailed fee basis;

- all continuations without plea;
  - all work up to and including the first 30 minutes of the trial, (where a trial commenced) and
  - a first or second deferred sentence
- The case disposal fee does *not* include the following for which additional payments will be made to cover:
    - third and subsequent deferred sentences at £50 each;
    - additional payment for hearings where a social enquiry report is considered by the court during one of the first two deferred sentences, at £25 (payable once per case);
    - an exceptional police custody visit, on a detailed fee basis, where the travel to and time spent including waiting and attendance at the station exceeds two hours and that it can be shown that there was a need for the work to be done by the nominated solicitor as opposed to a correspondent local to the station.
  - Where the case proceeds to the first day of trial, the current “core fixed payment” will remain, but paid at £515. The core fixed payment will now subsume work done under advice and assistance (excluding an exceptional police station visit) and also ABWOR. All non-core “add on” payments (trial days, notional diets, victim statement proofs etc), together with enhanced fees (under-21 in custody, rural court supplements) will continue to be paid as at present (at current blocks of **£50, £100, £200 and £400**).
  - ABWOR will continue to be granted by the solicitor. However, where a solicitor has incorrectly or inappropriately applied either the ABWOR means test or merits test, we may not pay the account from the Fund.

## 2.4 JP court cases

- The split fee arrangements between ABWOR and summary criminal legal aid for JP courts will be maintained, with the fees set for ABWOR at **£150** and summary criminal legal aid at **£315**.
- The ABWOR payment of **£150** will cover the work done up to and including the diet at which the plea of guilty is tendered. It will therefore include any preliminary plea, plea in bar of trial and continuations without plea and, in addition, will include a first or second deferred sentence.

It will *not* include the following, each of which will be payable separately as an “add on”:

- bail appeal (£50);
  - conducting a proof in mitigation beyond the first 30 minutes (£50);
  - third and subsequent deferred sentences (£25); and
  - additional payment for hearing where a social enquiry report is considered by the court during one of the first two deferred sentences (£25).
  - An appeal under Section 174(1) of the 1995 Act, which will be chargeable on a detailed basis in addition to the fixed payment for the summary proceedings.
- The summary criminal legal aid “core” fixed payment of **£315** will continue to include all work done up to and including the first 30 minutes of trial but will now subsume work done under advice and assistance (excluding an exceptional police custody visit) and

ABWOR (now possible with the extension of the availability ABWOR to CWP procedure). It will also include up to two deferred sentences.

- It will *not* include the following, each of which will be payable separately as an “add on”:
  - bail appeal (£50);
  - conducting a trial for the first day after 30 minutes;
  - second and subsequent trial days;
  - third and subsequent deferred sentences (£25); and
  - additional payment for hearings where a social enquiry report is considered by the court during one of the first two deferred sentences, at £25 (payable once per case);

## **2.5 Payments for an accused person appearing from custody or on an undertaking to appear in the sheriff/stipendiary magistrate and JP courts**

### *Duty solicitor*

- Duty solicitors appearing in either the sheriff/stipendiary magistrate’s or JP courts will be paid **£70** for work done on the day for each accused appearing from custody or on an undertaking for which a plea of guilty is tendered. Further work will be paid for up to the limit of the “follow-up” cap, to be increased to **£150** (which includes the £70). Work in connection with a CWP as well as a guilty plea will now be covered by the follow-up arrangements. The Board will have discretion to lift that cap in appropriate cases.
- Duty solicitors will be paid for work undertaken for an accused appearing from custody or on an undertaking where a plea of not guilty is tendered, or the case continued without plea, under the current system of an initial appearance fee followed by subsequent *per capita* appearance fees. The rates, for these will be increased to **£63** and **£9** respectively. Thereafter, the cap for each session will rise to **£140** and **£93**.

### *Appointed solicitor*

- An “appointed solicitor” (solicitor of choice) will be able to represent a client appearing from custody under ABWOR. ABWOR will only be available from the appointed solicitor in custody cases where the solicitor with whom the person appearing in answer to the Complaint has (or has had) a solicitor and client relationship that is demonstrable by reference to circumstances apart from those relating to the appearance. The solicitor, having taken instructions, must also be able to act immediately, in person or through the services of another solicitor (other than the duty solicitor), at the pleading diet.

In the sheriff or stipendiary magistrate’s courts, the appointed solicitor will be paid the case disposal fee of **£515** and in the JP court at a fee of **£150** on the same basis as described above.

## **2.6 Other Provisions for Summary Criminal Legal Aid**

- The “14 day rule”, prescribing the timescale from the pleading diet when an application for legal aid needs to be submitted, will be retained. The Board will still have the discretion to accept a late application.
- The Board will ask for details, where appropriate, of any plea the Crown is prepared to accept when considering an application for criminal legal aid.

- The Board will not be insisting on the submission of the disclosable summary of evidence with applications as a matter of course, but reserves the right to continue for sight of this, where the information accompanying the application is insufficient.
- Rationalisation of advice and assistance and summary criminal capital limits (2008/09 level set at **£1,561**), the latter being subject to the undue hardship test.

### 3. DUTY SOLICITORS SCHEME

#### 3.1 *Summary of the Changes*

- Introduction of a new £70 fee for advising and representing clients who plead guilty
- Increased standard appearance and *per capita* case fees to better remunerate solicitors taking part in the scheme; and
- The capped fees for session and follow up work and named hearings, chargeable on a detailed basis, are revised and the Board now has the discretion to authorise further work beyond the follow up “cap”.

#### *Details of the Changes*

3.2 Duty solicitors appearing in either the Sheriff/Stipendiary Magistrates or JP courts will be paid **£70** for work done for each accused appearing from custody or on an undertaking for which a plea of guilty is tendered. (This replaces the existing system of standard and subsequent *per capita* appearance fees.)

3.3 There will still be a separate fee chargeable by the duty solicitor for “follow-up” work up to a maximum fee of **£150**. Follow-up work will continue to be chargeable under the duty scheme for additional interviews with the accused or attendances at court and also at prescribed hearings, as at present.

3.4 Duty solicitors will be paid for work done for accused appearing from custody or on an undertaking where a plea of not guilty is tendered under the current system of an initial appearance fee followed by *per capita* subsequent appearance fees. The rates, for these will be increased, as per the original consultation, to **£63** and **£9** respectively. Thereafter, the caps for each session will rise to **£140** and **£93**.

3.5 Where further work has to be done then, as at present, it will be paid for up to the limit of the “follow-up” cap albeit that cap is increased to **£150**. The Board will have discretion to lift that cap in appropriate cases.

### 4. CRIMINAL ADVICE AND ASSISTANCE

#### 4.1 *Summary of the Changes*

- Increasing criminal advice and assistance fee rates by **10%**.
- Where advice and assistance is granted this will be subsumed in any subsequent grant of ABWOR or summary criminal legal aid unless otherwise exempted.
- Two levels of initial authorised expenditure, one for general advice, pre-complaint, at **£35**; the other for standard advice in connection with a complaint, advice relating to a direct measure where the client “opts-in” to further court procedure or to an accused in police custody/prison - **£90**.
- Scrapping of the £25 minimum fee.

## *Details of the Changes*

4.2 At present a solicitor is entitled to provide criminal advice and assistance to a client on any matter of Scots law. The reforms will bring changes to ensure that criminal advice and assistance is focussed on those matters on which advice from a solicitor is appropriate.

4.3 Where the problem presented by a client concerns general advice prior to the service of a complaint or an undertaking to appear or relates to a direct measure which is accepted, a solicitor will be able to make a grant of criminal advice and assistance to an initial level of authorised expenditure of **£35**. The reason for this reduced initial level of authorised expenditure is that this should be sufficient for a case such as this to meet with the client, give initial advice and perhaps contact the Crown by telephone or letter. It would also be wasteful of time and resources to prescribe a higher limit and then seek to reduce claims at the assessment process.

4.4 Where a solicitor has undertaken work and exhausted this initial lower level of authorised expenditure, the solicitor will be able to make application to the Board for an increase in authorised expenditure where further work needs to be done. Advice given by a solicitor to a client at this early stage may represent the only advice given and would continue to be chargeable on a detailed basis up to the appropriate initial level of authorised expenditure (whether £35 or £90) and, subject to obtaining an increase in authorised expenditure, up to the maximum authorised level of expenditure at the time the work is done.

4.5 Payment for all criminal advice and assistance will still be paid on a time and lime basis and be subject to the Board's current taxation criteria. The current arrangement for payment of minimum fees for work done under criminal advice and assistance is being removed (which has already been removed in civil legal assistance). This currently allows a solicitor to lodge with the Board a block fee of £25, rather than a detailed account, with no reference to the actual work done. This avoids the potential for wasteful expenditure and ensures that ongoing funding is directed towards the payment of the initial advice a solicitor has to give to progress the case.

4.6 Where advice and assistance is granted this will now be subsumed into any subsequent grant of ABWOR or summary criminal legal aid unless otherwise exempted for an exceptional police custody visits where the travel to and time spent including waiting and attendance at the station exceeds 2 hours and that it can be shown that there is a need for the work to be done by the nominated solicitor as opposed to a correspondent local to the station. Where authority is granted in these circumstances, payment will be made on a time and line basis.

4.7 Fees payable for criminal advice and assistance will be increased by 10% and this will apply equally to work done in summary and solemn cases.

### **USING THE NEW CRIMINAL ADVICE AND ASSISTANCE/ABWOR FORM – AA/APP/CRIM FOR ADVICE AND ASSISTANCE CASES**

4.8 The application form for criminal advice and assistance/ABWOR (AA/APP/CRIM) has been completely revised to take into account the new reforms. This form can be used for

- advising the Board that you have granted general advice and assistance cases before a direct measure or summary complaint has been served, or if the direct measure is accepted (maximum expenditure £35);
- advising the Board that you have granted standard advice and assistance following the issue of a summary complaint or if the direct measure is challenged (initial authorised expenditure of £90);

- advising the Board that you have granted ABWOR for a JP court case on a block fee basis (£150);
- advising the Board that you have granted ABWOR in the sheriff court or stipendiary magistrates court case (£515);
- advising the Board that you have granted ABWOR for parole board proceedings, or other breach proceedings under regulation 3 or 4 of the Advice and Assistance (ABWOR) (Scotland) Regulations 2003 as amended (£90 or £165 as appropriate);
- requesting the Board approval to provide ABWOR in a case involving removal of a disqualification from driving, or proceeds of crime.

4.9 The information provided by you in this form will be electronically scanned. It is therefore important that you should put a cross or write clearly within the white boxed areas. We ask you to complete the form in CAPITALS and in black ink; that all required questions are completed; and that you do not write “Nil” or put a line through financial questions but instead use the check boxes provided. Clearly, when using this form to advise us of a grant of general (£35) or standard (£90) advice and assistance, section I of the form covering ABWOR does not need to be completed.

*Section A – Solicitor acting for the applicant*

4.10 Please complete all the questions in this section. We need the solicitor’s and the firm’s name and address as well as the code numbers to ensure that we address correspondence correctly. If you wish you can use a name and address stamp to complete question 5, but you must complete the codes at questions 1 to 3 in the white box areas.

*Section B – The Applicant*

4.11 If you quote the applicant’s personal identifier you must still answer questions 4, 6 and 7 (applicant’s name and date of birth) and add any information about the applicant in Section C that has changed since the last application. We need the client’s name and date of birth on every form to help us check that new forms are registered against the correct client. If you do not know the applicant’s personal identifier, or the applicant has not had advice and assistance before, you must answer all the questions in this section.

*Section C – Applicant’s Details*

4.12 This section only needs to be completed for a client’s first application or where any of the address details may have changed since the last application.

*Section D – The Case*

4.13 At question 1 – category code, the primary code is the main subject matter of the advice and assistance. Under the secondary code you can include the category codes of up to three related matters on which you are advising your client under this grant of advice and assistance. You should use the category code card to select the correct codes.

4.14 At question 2 – subject matter, please enter a brief description of the advice given and subject to the work you are doing for your client.

4.15 At question 3, please enter the date(s) of the any alleged offences, together with an indication of their locations. This helps us to distinguish cases from each other.

4.16 At questions 5 to 7, please show whether a complaint has been served on your client, and if so, give details of the court and the PF reference. This helps us link cases together as well as distinguishing cases, and could help avoid unnecessary correspondence about the case at a later date.

4.17 At questions 8 to 10, please show whether a direct measure has been issued, and if so, give details of the PF reference number of police reference number as appropriate. Again, this helps us link cases together and distinguish cases, and could help avoid unnecessary correspondence about the case at a later date.

4.18 At question 11, please indicate whether your client has any other rights or facilities which might help fund the case such as assistance from a trade union or insurance company. If your client does have these facilities you cannot grant advice and assistance without first obtaining Board approval. However, in certain circumstances, we may authorise a grant. For example, there may be a conflict of interest with the solicitor appointed by your client's insurance company. There is space here to allow you to tell us why you feel we should grant advice and assistance despite the existence of these other rights and facilities.

4.19 At question 12, if you are aware that the client has already received advice and assistance on this matter from another solicitor, you need our approval before giving further advice. At this question, say why you feel a further application for advice and assistance is appropriate. If you mark "yes" to this question, you must also complete section L, question 2.

#### *Section E – Applicant's Circumstances*

4.20 The financial eligibility test for all criminal advice and assistance and criminal ABWOR has not changed as a result of the summary criminal reforms. This section of the form is largely unchanged from before. The only new questions here are at section E 7 and 8 where appropriate details of a bank, building society or post office account are now required for checking purposes. In addition, at section H – Eligibility on disposal income, there is now the facility to indicate any client contribution at the general or standard advice and assistance levels. Please see section 10 of these guidelines for more details.

#### *Section J – Equality*

4.21 The Scottish Legal Aid Board has to collect information to monitor equality of access to people applying for and/or receiving services paid for from the public funds we administer. You should have the Board's equality card which you should give to your client and ask them to write in their answer. Your client does not have to answer these equality questions. If they choose not to do so, put a cross in the box at question 1.

#### *Section K – Declaration by applicant*

4.22 You should make sure that your client understands that, by signing this declaration:

- they authorise us to ask other people or bodies for information about the application;
- they may have to pay for their advice and assistance from any property recovered or preserved as a result of the grant;
- the consent to the disclosure of the application for quality assurance purposes;
- they agree that if a contribution is assessed for a general advice and assistance case, if this is subsequently upgraded to standard criminal advice and assistance, or if ABWOR is subsequently granted, the higher level contribution assessed will need to be paid instead of any contribution for general advice and assistance previously calculated.

## *Section L – Advice and Assistance/ABWOR intimation*

4.23 For advice and assistance, the initial limit of expenditure applicable will be either £35 or £90. £35 applies if advice is being given prior to the service of a complaint or direct measure, or if the direct measure is accepted. The £90 limit should be indicated here if advice is being given after the issue of a summary complaint or if the direct measure is being challenged. If you have admitted your client to the lower level, and a summary complaint is subsequently issued, you can automatically move from the £35 to £90 level of authorised expenditure without applying to the Board for any authority to do so. However, any contribution paid by your client will change from the general scale to the standard scale. Please note that only one contribution requires to be paid in these circumstances.

4.24 At question 2, mark the upper box if you are intimating a grant of advice and assistance that you have already made and you do not need our authority. Mark the lower box if you need to ask for our authority to grant advice and assistance, for example, where the client has already received advice and assistance about the same matter from another solicitor, or if a client has other rights and facilities that could make it unnecessary for them to receive advice and assistance.

### *Question 3 – Documentary evidence of financial circumstances*

4.25 We would expect you to see documentary evidence of the client’s financial position in the vast majority of cases. **Please refer to Section 7** of these guidelines for more information on the ways we recommend that you see documentary evidence to satisfy yourself that the client is financially eligible.

4.26 If you have not seen any evidence, please explain how you are satisfied that the client was financially eligible. Not seeing vouching does not mean we will return the form. However, you should still make arrangements to see this verification from the client at a later date. If you are subsequently applying for an increase in authorised expenditure, you will have the chance to confirm that you have seen verification at that stage. Likewise, when submitting your final account for payment, you will need to confirm what verification you have seen at that stage. If we are not satisfied that you have taken reasonable steps to satisfy yourself that the client was financially eligible to receive advice and assistance, your account may not be paid.

## **5. CRIMINAL ABWOR**

### *5.1 Summary of the Changes*

- Making ABWOR available for a client’s own appointed solicitor of choice in custody and undertaking cases.
- increased block fees for the work done by solicitors in representing their clients – Sheriff/Stipendiary Magistrates Court - £515, JP Court - £150;
- extension of ABWOR to make it available for a continuation(s) without plea where the solicitor needs to carry out further investigative work (either in cited or undertaking cases);
- consolidation of the existing merits criteria for ABWOR; and
- Introduction of a series of templated increases in authorised expenditure to cover the costs of deferred sentences and other post conviction hearings.

## *Details of the Changes*

5.2 At present, many accused persons appearing from custody or on undertakings already have their own solicitor. From 30 June, such persons will be able to receive advice and assistance and representation from their own solicitor. That solicitor will have a better knowledge of the accused person's circumstances and be in a better position to help the client make informed decisions about the case.

5.3 The appointed solicitor (solicitor of choice) will be able to represent a client appearing from custody under ABWOR. ABWOR will only be available from the appointed solicitor in custody cases where the solicitor with whom the person appearing in answer to the complaint has (or has had) a solicitor and client relationship that is demonstrable by reference to circumstances apart from those relating to the appearance. The solicitor must have taken instructions directly from the client and must be able to act immediately in person or through the services of another solicitor (other than the duty solicitor) at the pleading diet.

5.4 Where an accused appears from custody and is represented by their appointed solicitor, the accused will be subject to a means test. (This does not affect the current arrangements for the duty scheme in which accused appearing from custody or on an undertaking are not subject to a means test.) A prerequisite of the application for ABWOR will be the reasonable vouching of financial circumstances. It is however recognised that the solicitor may not be able to obtain this in the initial stages because of the accused being in custody. Vouching can however be subsequently obtained.

5.5 ABWOR for accused persons appearing from custody is not subject to any merits test, but will be subject to the usual means test with a payment of a contribution, where appropriate.

5.6 ABWOR provided to an accused person appearing on an undertaking should however be subject to an interests of justice merits test a means test and also be liable, if appropriate, subject to the payment of a contribution.

5.7 In the Sheriff or Stipendiary Magistrates courts the solicitor will be paid a case disposal fee of **£515**, covering:

- all preliminary work carried out under advice and assistance;
- all continuations without plea;
- up to two deferred sentences;
- all police station visits unless these can be shown to be exceptional in which case a separate payment will be made on a time and line basis;
- all work up to and including the first half hour of the trial, or proof in mitigation.

5.8 The case disposal fee does not include the following for which additional payments will be made to cover:

- the third and subsequent deferred sentences at £50 each;
- additional payment for hearings where a social enquiry report is dealt with, and is conclusive of the case of £25.
- exceptional police custody visits on a time and line basis, where the travel to and time spent including waiting and attendance at the station exceeds 2 hours and that it can be shown that there is a need for the work to be done by the nominated solicitor as opposed to a correspondent local to the station.

5.9 In JP Court Cases, the ABWOR fee is set at **£150**. This payment of **£150** will cover the work done up to and including the diet at which the plea of guilty is tendered. It will therefore include all preliminary pleas, pleas in bar of trial and continuations without plea but in addition, will include up to two deferred sentences. It will not include the following, each of which will be payable separately as a **£25** “add on” block:

- bail appeals;
- bail subject to restriction;
- conducting a proof in mitigation beyond the first 30 minutes;
- third and subsequent deferred sentences: and
- additional payment for hearings where a social enquiry report is dealt with, and is conclusive of the case of **£25**.

5.10 Self-certification of ABWOR by solicitors remains in sheriff, stipendiary magistrates and JP Court cases. The solicitor must take into account the following factors:

1. *Is it likely that if the offence is proved, that the court will impose a sentence which would deprive the applicant of liberty or lead to the loss of the applicant’s livelihood?*

Where this factor is judged to be present, you need to explain why such a sentence is likely. It is not sufficient for a custodial sentence to be a possible outcome of a case. The test to be applied is whether such an outcome is “likely”. In completing this section, you should refer to the nature and circumstances of the offence(s). If appropriate, include details of the estimated value of any goods stolen, property damaged, injuries suffered, and any relevant previous convictions. You may also find it useful to attach any supporting documentation such as a schedule of previous convictions, a copy of the driving licence or a copy of a letter from an employer where loss of livelihood is possible.

You should also tell us which aspects of the disclosable summary of evidence are relevant to this factor.

2. *Does the determination of the case involve consideration of a substantial question of law, or issues of a complex or difficult nature?*

You need to explain what these issues are. Any references to case law should make clear how the circumstances of that case are relevant to the present case.

3. *Will the applicant be unable to understand the proceedings or to state his or her own case because of age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise?*

If you consider the applicant’s physical or mental health to be a factor, you should give details of any medical assistance or support that they receive. You should show how this affects their abilities to follow proceedings, or provide instructions etc. The particular affects of any addictions should be shown, and you should make clear any difficulties you have in getting instructions from the applicant.

When addressing a client’s ability to understand the proceedings or state his/her own case, it is insufficient to state ‘depression’ or ‘mental health difficulties’; rather, detail should be provided to expand upon the nature of the client’s difficulties. Factors such as,

for example, medication taken by a client, any support they receive from a health worker, details of the impact their disability has on their everyday etc are all relevant.

5.11 Where a solicitor has incorrectly or inappropriately applied the ABWOR merits test, or where we are not satisfied that the solicitor has taken reasonable steps to satisfy himself that the client was financially eligible to receive advice and assistance, we may not make payment from the Fund. Where we receive intimation of a grant of ABWOR but do not consider it was in the interests of justice to provide ABWOR, we will still issue an accounts synopsis, but we will write and tell you why we took that view. If we do not receive any further clarification from you on why you felt the grant of ABWOR was appropriate, we may not pay any ABWOR account that you may submit for the case.

5.12 In the past, pleas of not guilty have tended to be made to cover situations where insufficient information is available simply because no publicly funded representation is available for a Continuation without plea (CWP). While ABWOR is available for those accused who consider they are in a position to plead guilty at the undertaking hearing, ABWOR will now be available for a CWP.

5.13 Where, following a continuation, it is considered appropriate to tender a plea of not guilty and summary criminal legal aid is granted by the Board, work done under the initial grant of ABWOR will be subsumed into the summary criminal legal aid fixed payment.

5.14 We are also introducing a series of templated increases in authorised expenditure to cover the costs of deferred sentences and other post conviction hearings. This removes the necessity of seeking increases in authorised expenditure to cover the costs of each deferred sentences and other post conviction hearings.

5.15 4 new templated increases in authorised expenditure have been introduced at this stage covering:

- 6 further appearances for Drug Treatment and Testing Order hearings chargeable on a time and line basis - **£600**.
- 3 further appearances for other post conviction hearings, chargeable on a time and line basis - **£300**
- 3 further appearances for the third or subsequent deferred sentence hearings in the sheriff or stipendiary magistrates court - **£175**. This covers 3 appearances at the fixed fee of **£50** per case, with **£25** to cover any outlays.
- 3 further appearances for the third or subsequent deferred sentence hearings in the JP Court - **£100**. This covers 3 appearances at the fixed fee of **£25** per case, with **£25** to cover any outlays.

#### *Post-Conviction Work: ABWOR*

5.16 The Tables of Fees for ABWOR prescribe fees for the third and subsequent deferred sentences at **£50** in sheriff and stipendiary magistrates court cases, and **£25** in JP court cases.

5.17 ABWOR can still be provided for other post-conviction hearings under regulation 3 or 4 of the Advice and Assistance (ABWOR) (Scotland) Regulations 2003, as amended. No interests of justice test is required for these cases. ABWOR can be provided in this way for the following cases:

- Proceedings in Parole Board cases
- Return of sound equipment

- Warrant for further detention or extension under the Terrorism Act 2000
- Obstructive witness order under sections 90B - 90E
- Variation/termination of a football banning order
- Revocation/amendment of a non harassment order
- Variation/revocation/breach of a restriction of liberty order
- Variation/revocation/review/breach of requirements of a DTTO
- Progress review of a probation order
- Breach of probation order
- Conviction of a probationer following an offence during probation period
- Breach of community service order
- Amendment/revocation of a community service order
- Breach of a supervised attendance order
- Amendment/revocation of a supervised attendance order

5.18 For these cases, payment continues to be chargeable on a time and line basis. The initial level of authorised expenditure has now been raised to **£90**, with **£165** for Parole Board cases. Prior authority to exceed these limits must still be obtained using the new increase form, AA/INC/CRIM.

*ABWOR Cases Where Board Approval is required*

5.19 There is no change in these cases and the Board’s approval is still needed before ABWOR can be provided for:

- Removal of a disqualification from driving
- Proceeds of Crime proceedings

*Petition for removal of disqualification*

5.20 You cannot give ABWOR for a petition for the removal of a disqualification from driving until you have obtained our prior authority. Before we can authorise this, we must be satisfied that it is reasonable in all the circumstances. Any request should address matters such as

- the loss of an employment opportunity for which a driving licence is required,
- the absence of suitable alternative transport such as public transport, and
- whether the restoration of a driving licence is not likely to pose a danger to the public because of more temperate habits on the part of the applicant.

5.21 Wherever possible, you should provide verification in the form of letters from potential employers, references, medical reports etc.

*Proceeds of Crime (Scotland) Act 1995 and Proceeds of Crime Act 2002*

5.22 You must get our prior approval in connection with applications under the provisions of the Proceeds of Crime (Scotland) Act 1995 and the Proceeds of Crime Act 2002. Regulation 5(2)(i) provides for ABWOR in relation to “representations made to the court under section 92 of the Proceeds of Crime Act 2002 by any person, other than the accused, whom the court thinks is likely to be affected by a confiscation order.” These are the criminal proceedings for which ABWOR is made available and the reference to one section (section 92) rather than a number of different procedures, under the 1995 Act, makes the application of the new provision simpler. Representations made to the court on behalf of the accused are covered by the criminal legal aid certificate whether under the 1995 or 2002 Acts.

5.23 You should be satisfied that the proceedings under the new Act are proceedings in a criminal court or in the sheriff court where the sheriff is exercising criminal jurisdiction. Section 92(13) of the Proceeds of Crime Act 2002 defines “a court where referred to in sections 92 to 118 (confiscation orders) as meaning the High Court of Justiciary or the sheriff court. On the other hand, section 119, relating to restraining orders, defines “court” where it appears in sections 119 to 140 and Schedule 3 as meaning the Court of Session (where the diet fixed for the purposes of section 76 of the Criminal Procedure Act is held in the High Court of Justiciary) or the sheriff exercising their civil jurisdiction (where the diet is held in the sheriff court). If the proceedings in which you are involved are under sections 119 to 140, these are not criminal but civil proceedings.

5.24 Any proceedings that are before the civil courts will still require a civil legal aid application. Under no circumstances can any case proceeding in a civil court be covered by a criminal certificate or any element of criminal proceedings be conducted under a civil certificate.

#### *Appeals against preliminary pleas*

5.25 Any preliminary pleas such as pleas to the competency or relevancy will be covered by the new ABWOR block payments of **£150** in the JP court, and **£515** in the sheriff or stipendiary magistrates’ courts. However, any appeal against a preliminary plea, under Section 174 of the 1995 Act will be dealt with in addition to the block fee, on a detailed basis.

5.26 An increase in authorised expenditure will need to be applied for to cover the cost of this appeal using the AA/INC/CRIM form. The work undertaken for this appeal can then be charged on a detailed or time and line basis. This only applies to the appeal work. A separate account, covering the work for the appeal will need to be submitted to the Board for consideration.

### **USING THE NEW CRIMINAL ADVICE AND ASSISTANCE FORM – AA/APP/CRIM – ABWOR CASES**

5.27 The application form for criminal advice and assistance/ABWOR (AA/APP/CRIM) has been completely revised to take into account the new reforms. This form can be used for

- advising the Board that you have admitted a client to ABWOR for a JP court case on a block fee basis (£150);
- advising the Board that you have admitted a client to ABWOR in the sheriff court or stipendiary magistrates court case (£515);
- advising the Board that you have admitted a client to ABWOR for parole board proceedings, or other breach proceedings under regulation 3 or 4 of the Advice and Assistance (ABWOR) (Scotland) Regulations 2003 as amended (£90 or £165 as appropriate);
- requesting the Board approval to provide ABWOR in a case involving removal of a disqualification from driving, or proceeds of crime.
- advising the Board that you have granted general advice and assistance cases before a direct measure or summary complaint has been served, or if the direct measure is accepted (maximum expenditure £35);
- advising the Board that you have admitted a client to standard advice and assistance following the issue of a summary complaint or if the direct measure is challenged (initial authorised expenditure of £90);

5.28 When using this form to advise us of a grant of ABWOR, section I of the form has to be completed. If you previously granted advice and assistance, either general or standard, and are

now providing ABWOR for this case, you should use the increase form AA/INC/CRIM to tell us about this.

5.29 The information provided by you in this form will be electronically scanned. It is therefore important that you should put a cross or write clearly within the white boxed areas. We ask you to complete the form in CAPITALS and in black ink; that all required questions are completed; and that you do not write “Nil” or put a line through financial questions but instead use the check boxes provided. Clearly, when using this form to advise us of a grant of general (£35) or standard (£90) advice and assistance, section I of the form covering ABWOR does not need to be completed.

#### *Section A – Solicitor acting for the applicant*

5.30 Please complete all the questions in this section. We need the solicitor’s and the firm’s name and address as well as the code numbers to ensure that we address correspondence correctly. If you wish you can use a name and address stamp to complete question 5, but you must complete the codes at questions 1 to 3 in the white box areas.

#### *Section B – The Applicant*

5.31 If you quote the applicant’s personal identifier you must still answer questions 4, 6 and 7 (applicant’s name and date of birth) and add any information about the applicant in Section C that has changed since the last application. We need the client’s name and date of birth on every form to help us check that new forms are registered against the correct client. If you do not know the applicant’s personal identifier, or the applicant has not had advice and assistance before, you must answer all the questions in this section.

#### *Section C – Applicant’s Details*

5.32 This section only needs to be completed for a client’s first application or where any of the address details may have changed since the last application.

#### *Section D – The Case*

5.33 At question 1 – category code, the primary code is the main subject matter of the advice and assistance. Under the secondary code you can include the category codes of up to three related matters on which you are advising your client under this grant of advice and assistance. You should use the category code card to select the correct codes.

5.34 At question 2 – subject matter, please enter a brief description of the advice given and subject to the work you are doing for your client.

5.35 At question 3, please enter the date(s) of the any alleged offences, together with an indication of their locations. This helps us to distinguish cases from each other.

5.36 At questions 5 to 7, please show whether a complaint has been served on your client, and if so, give details of the court and the PF reference. This helps us link cases together as well as distinguishing cases, and could help avoid unnecessary correspondence about the case at a later date.

5.37 At questions 8 to 10, please show whether a direct measure has been issued, and if so, give details of the PF reference number of police reference number as appropriate. Again, this helps

us link cases together and distinguish cases, and could help avoid unnecessary correspondence about the case at a later date.

5.38 At question 11, please indicate whether your client has any other rights or facilities which might help fund the case such as assistance from a trade union or insurance company. If your client does have these facilities you cannot grant advice and assistance without first obtaining Board approval. However, in certain circumstances, we may authorise a grant. For example, there may be a conflict of interest with the solicitor appointed by your client's insurance company. There is space here to allow you to tell us why you feel we should grant advice and assistance despite the existence of these other rights and facilities.

5.39 At question 12, if you are aware that the client has already received advice and assistance on this matter from another solicitor, you need our approval before giving further advice. At this question, say why you feel a further application for advice and assistance is appropriate. If you mark "yes" to this question, you must also complete section L, question 2.

#### *Section E – Applicant's Circumstances*

5.40 The financial eligibility test for all criminal advice and assistance and criminal ABWOR has not changed as a result of the summary criminal reforms. This section of the form is largely unchanged from before. The only new questions here are at section E 7 and 8 where appropriate details of a bank, building society or post office account are now required for checking purposes. In addition, at section H – Eligibility on disposal income, there is now the facility to indicate any client contribution at the general or standard advice and assistance levels. Please see section 10 of these guidelines for more details.

#### *Section I – ABWOR (Assistance by Way of Representation)*

5.41 The new form can be used for advising us about ABWOR in four separate instances:

- Where ABWOR is granted by the appointed solicitor in a custody case;
- Where ABWOR is granted by the solicitor where an interests of justice test is applied by the solicitor;
- Where ABWOR is granted for other types of case where no interests of justice test is applied;
- Where ABWOR is granted subject to the Board's approval for removal of a disqualification from driving, or proceeds of crime.

#### *Appointed solicitor – ABWOR granted in a custody case*

5.42 The appointed solicitor (solicitor of choice) will be able to represent a client appearing from custody under ABWOR. ABWOR will only be available from the appointed solicitor in custody cases where the solicitor with whom the person appearing in answer to the complaint has (or has had) a solicitor and client relationship that is demonstrable by reference to circumstances apart from those relating to the appearance. The solicitor must have taken instructions directly from the client and must be able to act immediately in person or through the services of another solicitor (other than the duty solicitor) at the pleading diet. If either answer to questions 1 and 3 is negative, ABWOR cannot be granted. At question 2, please provide details of the solicitor/client relationship to confirm that the grant of ABWOR is appropriate.

### *ABWOR where interests of justice test applied by the solicitor*

5.43 Section 5.10 of the Guidelines gives details of the factors to be considered by the solicitor, when considering a grant of ABWOR. These are:

- Whether it is likely that if the offence is proved, that the court will impose a sentence which would deprive the applicant of liberty or lead to the loss of the applicant's livelihood;
- Whether the determination of the case involves consideration of a substantial question of law or issues of a complex or difficulty nature;
- Whether the applicant would be unable to understand the proceedings or to state his or her own case because of age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise. When any of these factors apply in a case you need to give a relevant explanation against that factor.

5.44 You should answer these questions with reference to the disclosable summary of evidence telling us which aspects of the disclosable summary support the factors which you feel are present in the case, for example, aspects relating to the description of the locus, the description of events, any police interviews or medical evidence etc. You may wish to send us a copy of the disclosable summary of evidence to assist in that process. Please refer to section 5.10 of these guidelines. Although the decision to grant ABWOR is made by the solicitor, where the Board does not feel that this test has been correctly or appropriately applied, we may not pay your account.

### *ABWOR for other cases*

5.45 Where ABWOR is being provided under regulation 3 or 4 of the Advice and Assistance (ABWOR) (Scotland) Regulations 2003 as amended, no interests of justice test is applied. At question 13 please indicate the nature of the proceedings for which ABWOR is being provided.

### *ABWOR where Board approval is sought*

5.46 Board approval for a grant of ABWOR is required for cases involving removal of a disqualification from driving, or proceeds of crime proceedings. Please refer to section 5.19 of these guidelines for guidance on the factors which the Board is looking for in these cases.

### *Section J – Equality*

5.47 The Scottish Legal Aid Board has to collect information to monitor equality of access to people applying for and/or receiving services paid for from the public funds we administer. You should have the Board's equality card which you should give to your client and ask them to write in their answer. Your client does not have to answer these equality questions. If they choose not to do so, put a cross in the box at question 1.

### *Section K – Declaration by applicant*

5.48 You should make sure that your client understands that, by signing this declaration:

- they authorise us to ask other people or bodies for information about the application;
- they may have to pay for their advice and assistance from any property recovered or preserved as a result of the grant;
- the consent to the disclosure of the application for quality assurance purposes;

- they agree that if a contribution is assessed for a general advice and assistance case, if this is subsequently upgraded to standard criminal advice and assistance, or if ABWOR is subsequently granted, the higher level contribution assessed will need to be paid instead of any contribution for general advice and assistance previously calculated.

### *Section L – Advice and Assistance/ABWOR intimation*

5.49 For ABWOR cases, the initial limits of expenditure applicable can be either £185, £550, £165, or £90, depending on the type of ABOR being used.

- £185 applies for ABWOR cases on a block fee basis in JP court cases. This is the £150 block fee with the £25 fee for any diet where the SER is being considered, together with £10 for any outlays.
- £550 applies for ABWOR cases on a block fee basis in Sheriff Court and Stipendiary Magistrates Court cases. This is the £515 block fee with the £25 fee for any diet where the SER is being considered, together with £10 for any outlays.
- £165 applies for ABWOR cases for Parole Board proceedings, or if a second or subsequent diet has been ordered by the court for any other cases where ABWOR is available on a chargeable basis.
- £90 applies where it relates to ABWOR for any other summary criminal matter.

5.50 At question 2, mark the upper box if you are intimating a grant of advice and assistance that you have already made and you do not need our authority. Mark the lower box if you need to ask for our authority to grant advice and assistance where the client has already received advice and assistance about the same matter from another solicitor, or if a client has other rights and facilities that could make it unnecessary for them to receive advice and assistance.

### *Question 3 – Documentary evidence of financial circumstances*

5.51 We would expect you to see documentary evidence of the client’s financial position in the vast majority of cases. **Please refer to Section 7** of these guidelines for more information on the ways we recommend that you see documentary evidence to satisfy yourself that the client is financially eligible.

5.52 If you have not seen any evidence, please explain how you are satisfied that the client was financially eligible. Not seeing vouching does not mean we will return the form. However, you should still make arrangements to see this verification from the client at a later date. If you are subsequently applying for an increase in authorised expenditure, you will have the chance to confirm that you have seen verification at that stage. Likewise, when submitting your final account for payment, you will need to confirm what verification you have seen at that stage. If we are not satisfied that you have taken reasonable steps to satisfy yourself that the client was financially eligible to receive advice and assistance, your account may not be paid.

## **6. USING THE NEW AA/INC/CRIM INCREASE FORM IN BOTH A&A AND ABWOR CASES.**

6.1 The criminal advice and assistance/ABWOR increase form has been completely revised as a result of the summary criminal reforms. This form can be used for three separate purposes:

- Applying to the Board for an increase in authorised expenditure;
- Advising the Board that ABWOR is now being provided following an initial grant of A&A
- Seeking Board approval for a grant of ABWOR.

### *Section A – About this advice and assistance/ABWOR application*

6.2 You should indicate here what the purpose of submitting this form is. When applying to the Board for an increase in authorised expenditure, this can be for general advice and assistance (£35), standard advice and assistance (£90) or following a grant of ABWOR to cover, for example, deferred sentences.

### *Section B – Solicitor acting for the applicant*

6.3 Please complete all the questions in this section. We need the solicitors and the firm's name and address as well as the code numbers to ensure that we address correspondence correctly. If you wish you can use a name and address stamp to complete question 5, but you must complete the codes at questions 1 to 3 in the white box areas.

### *Section C – Application details*

6.4 If you quote the applicant's personal identifier you must still answer questions 4, 6 and 7 (applicant's name and date of birth) and add any information that has changed since the last application. We need the client's name and date of birth on every form to help us check that new forms are registered against the correct client. If you do not know the applicant's personal identifier, or the applicant has not had advice and assistance before, you must answer all the questions in this section.

### *Section D – The applicant and case*

6.5 This only needs to be completed if section C, question 6 has been selected, that is the increase form is being submitted without a reference number, and is not being attached to a new grant of advice and assistance or ABWOR.

### *Section E – Updated case information*

6.6 This section should be completed with updated information since the AA/APP/CRIM form was submitted. If you gave initial general advice and assistance on this matter and the summary complaint has now been issued and you are applying for an increase in expenditure, please use this section to update information such as the PF reference number and date of offences etc.

### *Section F – Increase in authorised expenditure*

6.7 Completing this section allows us to consider the most urgent requests further. Please be realistic in completing this section. We would normally expect a case to be urgent if a decision is required within 2 to 3 days. If every case is identified as urgent, this prioritisation will not work. You must tell us either the date of the court appearance, or another reason for urgency. If you do not, or you do not satisfy us that the case is urgent, we will deal with the application for an increase within our normal timescales. Examples of the reasons for urgency that we would be likely to accept are an imminent court appearance or the need to prepare essential documents to avoid a court appearance.

### *Section F – Increase in authorised expenditure*

6.8 The summary criminal reforms give us the opportunity for introducing templated increases in authorised expenditure for criminal cases for the first time. Templates make it easier and simpler for you to apply for an increase in authorised expenditure. They enable you to request a single, substantial increase in authorised expenditure when required to allow you to undertake all

the work normally needed in one go. Templates bundle together elements of work when you may previously have had to make several requests for increases in expenditure such as for each deferred sentence, and you do not have to keep making requests to the Board. This should make it simpler and less bureaucratic for you.

6.9 The form now gives the opportunity to apply for the four new templated increases which have been introduced at this stage covering:

- Six further appearances for DTTO hearings chargeable on a time and line basis - £600;
- Three further appearances for other post-conviction hearings, chargeable on a time and line basis - £300;
- Three further appearances for the third or subsequent deferred sentence hearings in the sheriff or stipendiary magistrate court - £175. This covers three appearances at the fixed fee of £50 per case with an additional £25 to cover any outlays required;
- Three further appearances for the third or subsequent deferred sentence hearings in the JP court - £100. This covers three appearances at the fixed fee of £25 per case with £25 to cover any outlays if required.

6.10 If a case is not disposed of within these three or six hearings, then a further template can be applied for any further deferred hearings.

#### *Non-template increase request*

6.11 Question 6, 7 and 8 only need to be completed if you are not seeking an increase using a template.

#### *Section G – ABWOR (Assistance by Way of Representation)*

6.12 The new increase form can also be used for advising us that ABWOR is now being provided in a case where you have previously granted criminal advice and assistance, either general (£35) or standard (£90). This form can be used for ABWOR in four separate instances:

- Where ABWOR is granted by the appointed solicitor in a custody case;
- Where ABWOR is granted by the solicitor where an interests of justice test is applied by the solicitor;
- Where ABWOR is granted for other types of case where no interests of justice test is applied;
- Where ABWOR is granted subject to the Board's approval for removal of a disqualification from driving, or proceeds of crime.

#### *Appointed solicitor – ABWOR granted in a custody case*

6.13 The appointed solicitor (solicitor of choice) will be able to represent a client appearing from custody under ABWOR. ABWOR will only be available from the appointed solicitor in custody cases where the solicitor with whom the person appearing in answer to the complaint has (or has had) a solicitor and client relationship that is demonstrable by reference to circumstances apart from those relating to the appearance. The solicitor must have taken instructions directly from the client and must be able to act immediately in person or through the services of another solicitor (other than the duty solicitor) at the pleading diet. If either answer to questions 1 and 3 is negative, ABWOR cannot be granted. At question 2, please provide details of the solicitor/client relationship to confirm that the grant of ABWOR is appropriate.

### *ABWOR where interests of justice test applied by the solicitor*

6.14 Section 5.10 of the Guidelines gives details of the factors to be considered by the solicitor, when considering a grant of ABWOR. These are:

- Whether it is likely that if the offence is proved, that the court will impose a sentence which would deprive the applicant of liberty or lead to the loss of the applicant's livelihood;
- Whether the determination of the case involves consideration of a substantial question of law or issues of a complex or difficulty nature;
- Whether the applicant would be unable to understand the proceedings or to state his or her own case because of age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise. When any of these factors apply in a case you need to give a relevant explanation against that factor.

6.15 You should answer these questions with reference to the disclosable summary of evidence telling us which aspects of the disclosable summary support the factors which you feel are present in the case, for example, aspects relating to the description of the locus, the description of events, any police interviews or medical evidence etc. You may wish to send us a copy of the disclosable summary of evidence to assist in that process. Please refer to section 5.10 of these guidelines. Although the decision to grant ABWOR is made by the solicitor, where the Board does not feel that this test has been correctly or appropriately applied, we may not pay your account.

### *ABWOR for other cases*

6.16 Where ABWOR is being provided under regulation 3 or 4 of the Advice and Assistance (ABWOR) (Scotland) Regulations 2003 as amended, no interests of justice test is applied. At question 13 please indicate the nature of the proceedings for which ABWOR is being provided.

### *ABWOR where Board approval is sought*

6.17 Board approval for a grant of ABWOR is required for cases involving removal of a disqualification from driving, or proceeds of crime proceedings. Please refer to section 5.19 of these guidelines for guidance on the factors which the Board is looking for in these cases.

### *Section H – Solicitor's declaration*

6.18 If you did not see evidence of a client's financial circumstances at the time of admitting the client to advice and assistance, we would expect you to be able to see this prior to submitting any increase request, or intimation that ABWOR is now being provided/sought. Please refer to Section 7 of these guidelines for more information on the ways we recommend that you see documentary evidence to satisfy yourself that the client is financially eligible.

6.19 If you have still not seen any evidence, please explain how you are satisfied that the client was financially eligible. Not seeing vouching does not mean we will return the form. However, you should still make arrangements to see this verification from the client at a later date. When submitting your final account for payment, you will need to confirm what verification you have seen at that stage. If we are not satisfied that you have taken reasonable steps to satisfy yourself that the client was financially eligible to receive advice and assistance, your account may not be paid.

## **7. FINANCIAL ELIGIBILITY, VERIFICATION AND CONTRIBUTIONS FOR ADVICE AND ASSISTANCE AND ABWOR CASES**

### *Assessing your client for financial eligibility and contributions*

7.1 The reforms to be implemented on 30 June 2008 will not make any changes to the financial eligibility tests. Your client's financial eligibility will continue to be assessed on their disposable income in the seven days before applying and on their disposal capital. The current limits for financial eligibility and clawback are included in the *Keycard 2008*, with the rates that were effective 7 April 2008.

### *How to complete the application form when your client receives a passport benefit or has disregarded benefit payments*

7.2 On the new application forms, you now show where your client receives a passport benefit (income support or income-based Jobseeker's Allowance) or other form of benefit. You provide these details in Section G on page 5. However, when completing Section G on financial eligibility on income, if your client receives a passport benefit (income support or income-based Jobseeker's Allowance), or has no income, please use the cross boxes to show Nil income.

7.3 Where your client receives a disregarded benefit or tax credit (refer to the *Keycard* for a list of these), the amount received should not be included as income at Section H question 1.

### *Financial eligibility verification*

7.4 Although from 30 June 2008 there are no changes to financial eligibility tests, you still need to provide more information on the evidence you have seen to be satisfied your client is financially eligible. This is to ensure that there is evidence that the public money spent each year on criminal advice and assistance is only funding cases where the client meets the rules set by Parliament.

### *Evidence of financial circumstances*

7.5 We would expect the solicitor to see documentary evidence of the client's and where appropriate, any partner's financial position, in the vast majority of cases. Where clients make an appointment to see the solicitor, they should be asked to bring along with them documentary evidence of their capital and income along with the proof of identity required when signing up new clients, whether legally aided or not.

7.6 We would recommend therefore that solicitors should see, wherever practicable, the following:

### *For income*

- where the client is employed, a recent wage slip or bank statement
- where the client is receiving benefits, an up to date letter of award, benefit book (in the limited cases where payment is made in this way) or a bank statement (which might simply be an ATM receipt showing the credit) We are currently working towards the introduction of a direct link with the DWP, which will allow us to check all benefits cases ourselves, and remove the need for solicitors to see any verification of benefits. We hope to have this automatic link available by September 2008.

### *For capital*

- a bank statement and statement/pass book and certificate for savings and/or investments.

### *Completing the application form to show evidence seen*

7.7 On the new application forms, at Section L Question 3 you should mark the boxes to show whether you have seen documentary evidence of the applicant's income *and capital*. You should also then give details of that evidence. If you have not seen any evidence, you should explain how you were satisfied without any verification that the client was financially eligible. This does not mean we will return the form. However, we may want to make our own checks about this directly with the client. We also carry out checks with individuals and bodies such as the Department for Work and Pensions and banks to confirm the information about the financial circumstances of clients receiving advice and assistance.

### *What to do if documentary evidence is not available*

7.8 We appreciate that in some circumstances, clients may not have documentary evidence available when consulting a solicitor. Where they do not – for example, in an emergency, where they are part of some acrimonious dispute which prevents access to documentation or where they are in custody, you may be satisfied from the limited information available.

7.9 However, you should then seek verification from the client, preferably before seeking any increase in authorised expenditure, but always at the earliest opportunity. You should then take a copy of this for your file.

### *Giving details of evidence seen on the increase form*

7.10 The increase form AA/INC/CRIM includes a question on financial verification which you should complete if you did not give this information on the application form. We will not refuse to consider an increase where you do not give us details of financial evidence. However, as with applications, we will be monitoring grants of advice and assistance where no documentary evidence of financial eligibility has been seen. This may help us identify whether solicitors need any further guidance on this matter.

### *Contributions - Standard advice and assistance cases*

7.11 Where you grant advice and assistance for standard advice and assistance, where a complaint has been served or if a direct measure is being challenged, the financial eligibility assessment and contribution levels are unchanged. Currently contributions range from £7 to £124. You carry out the eligibility test and collect any contribution assessed at this stage, as before.

### *Contributions - General Advice and Assistance*

7.12 Where advice is given before a direct measure or summary complaint has been served, or if the direct measure is being accepted, a different contribution scale applies. For general advice and assistance, the maximum contribution any client has to pay is £35. A sliding scale, based on a simplified version of the structure for approved cases, sets out contribution levels for different bands of disposable income. This contribution payable is less than for standard advice and assistance. The diagnostic scale is included in the *Keycard 2008*, and is shown in the table below.

7.13 As with standard advice and assistance, you carry out the eligibility test and collect any contribution assessed at that stage.

#### *General advice and assistance being upgraded to standard advice and assistance*

7.14 Where you have already admitted a client to general advice and assistance at the early stage of a case, if this is likely to proceed further once the complaint has been issued, you should assess and enter on the application form the contribution due under both general and standard advice and assistance. You then apply the appropriate contribution depending on the outcome of the application – and only one contribution is payable.

7.15 It is important that your client is aware that the contribution they may have to pay if the case progresses to standard advice and assistance instead of general advice and assistance could be the higher amount. This issue is included in the fifth bullet point of the declaration that the client signs. You may wish to ensure your client understands the difference in contribution to be paid.

#### **Example**

*Your client's case is a general matter and their disposable income is £185 per week. Your client's contribution would be £28. However, once the complaint has been issued, this general advice and assistance is automatically upgraded to standard advice and assistance raising the initial limit of expenditure from £35 to £90. Your client's contribution is therefore £91.*

#### *General advice and assistance client contribution amounts*

<b>General advice and assistance - disposable income range</b>	<b>Maximum contribution</b>
Disposable Income not exceeding £95	No contribution to pay
Exceeding £91 but not exceeding £123	£7
Exceeding £119 but not exceeding £151	£14
Exceeding £147 but not exceeding £177	£21
Exceeding £175 but not exceeding £200	£28
Exceeding £196 but not exceeding £223	£35

(For standard advice and assistance cases under approved categories, please see the *Keycard 2008*.)

## **8. SUMMARY CRIMINAL LEGAL AID**

### *8.1 Summary of the changes*

- Increased fixed fees of Sheriff/Stipendiary magistrates Court - £515, JP Court £315.
- Requirement for details, where applicable, of any plea the Crown is prepared to accept when applying for criminal legal aid.
- Rationalisation of advice and assistance and summary criminal capital limits (2008/09 level set at £1,561).
- Retention of the current 14 day rule, specifying the timescale from the pleading diet when an application for legal aid needs to be submitted. We retain the discretion to accept late applications.

- The Board will not be insisting on the submission of the disclosable summary of evidence with applications, but reserves the right to continue for sight of this, where it is felt appropriate.

### *Details of the Changes*

8.2 Summary Criminal legal aid continues to be available only where the accused person has tendered a plea of not guilty and continues to be payable by way of fixed payments.

8.3 The core fixed payments are increased. The fees are now £515 in the Sheriff and Stipendiary Magistrates Courts and £315 in the District Courts with retention of exceptional case status on a time and lime basis where appropriate. In cases which proceed to criminal legal aid, the cost of any advice and assistance and/or ABWOR provided at the earlier stages will be subsumed within the criminal legal aid fixed payments.

8.4 As at present, the tendering of a not guilty plea will trigger two essential components of the summary criminal system, namely:

- a summary criminal legal aid application, which can only be made available at the conclusion of the first diet at which the accused has tendered a plea of not guilty (section 21(3) of the 1986 Act); and
- disclosure of the Crown case to the defence.

8.5 The current 14 day rule, which states that applications for summary criminal legal aid have to be submitted to the Board within 14 days from pleading not guilty will remain. Currently solicitors will understandably tend to submit applications for summary criminal legal aid early for reasons of convenience but at a time when all the necessary supporting evidence may not be available.

8.6 The Board will favourably view a non timeous application for summary criminal legal aid to allow the solicitor to delay the submission of the application until such time as the Crown has disclosed its case to the defence.

8.7 The application will still need to be accompanied by a copy of the complaint, but the Board will not be insisting on the submission of the disclosable summary of evidence with applications, although a solicitor may wish to submit this along with the application. The Board reserves the right to continue for sight of this, where it is felt appropriate.

8.8 The application will need to contain details, where applicable, of any plea the Crown is prepared to accept (bearing in mind we understand the Crown will not be prepared to accept pleas after the intermediate diet).

8.9 Some changes are also being brought in to the way in which the Board applies the means test (the “undue hardship” test). This ‘undue hardship’ test has been reviewed to bring it more into line with the advice and assistance/ABWOR financial eligibility criteria. At this stage, the capital eligibility limit for summary criminal legal aid is being brought into line with that for advice and assistance, namely £1,561. Applicants with capital above that level will be ineligible unless the costs of the case taking into account their disposable capital is such that the accused or their dependants could not meet these costs without undue hardship.

## **Fees for Sheriff/Stipendiary Magistrates Court Cases**

8.10 Introduction of a new case disposal fee for cases for which summary criminal legal aid has been granted in the Sheriff Court at **£515**, covering:

- all preliminary work carried out under advice and assistance;
- all continuations without plea;
- up to two deferred sentences;
- all police station visits unless these can be shown to be exceptional in which case a separate payment will be made on a time and line basis;
- all work up to and including the first half hour of the trial, or proof in mitigation.

8.11 The case disposal fee does not include the following for which additional payments will be made to cover:

- the third and subsequent deferred sentences at **£50** each;
- additional payment for hearings where a social enquiry report is dealt with, and is conclusive of the case of **£25**.
- exceptional police custody visits on a time and line basis, where the travel to and time spent including waiting and attendance at the station exceeds 2 hours and that it can be shown that there is a need for the work to be done by the nominated solicitor as opposed to a correspondent local to the station.

8.12 Where the case is not disposed of before trial and summary criminal legal aid is granted, the current “core payment” will be replaced by the case disposal fee. All non core “add on” payments (eg trial days, rural courts, notional diets, victim statement proofs etc) will continue to be paid as at present (ie at current blocks of **£50, £100, £200 and £400**).

## **Fees for JP Court Cases**

8.13 The fees set for JP court cases where summary criminal legal has been granted is **£315**.

8.14 The summary criminal legal aid “core” payment of **£315** will include work done up to and including the first 30 minutes of trial and will subsume work done under advice and assistance and/or ABWOR (excluding exceptional police custody visits). Additionally, it will include up to two deferred sentences.

8.15 It will not include the following, each of which will be payable separately as a **£50** “add on” blocks:

- bail appeals;
- bail appeal subject to restriction;
- conducting a trial for the first day after 30 minutes;
- first and second trial days; and
- additional payment for hearings where a social enquiry report is dealt with, and is conclusive of the case of **£25**.

## 9. FINANCIAL ELIGIBILITY FOR SUMMARY CRIMINAL APPLICATIONS

9.1 Section 24 (1)(a) of the Legal Aid (Scotland) Act 1986 states that the Board must be satisfied –

*“after consideration of the financial circumstances of the accused person, that the expenses of the case cannot be met without undue hardship to him or his dependants.”*

9.2 In assessing this test, we must receive full information about the applicant’s own financial situation but also that of any spouse or partner who is living with them, where that spouse or partner receives an income. This is because the test must consider where undue hardship would be caused to dependants. Unlike Advice and Assistance, we do not combine the applicant’s and their spouse or partner’s finances in our financial assessment. However, we do use the information to allow us to take into account any sharing of outgoings.

9.3 The income of any spouse or partner does not need to be declared if it is not material or substantial, or where the spouse or partner has a contrary interest in the case. So if the spouse or partner’s take home income is less than £10,306, the current upper income limit, or the spouse or partner is the victim, complainer or a crown witness in the case, their income does not need to be declared..

### *Income*

9.4 The financial determination is based on the test applied in connection with civil legal aid, which addresses the question of ability to pay for representation in court proceedings. Therefore, we use a weekly equivalent of the current upper income limit of £10,306 (effective from 7 April 2008). This weekly figure of £198 gives an initial cut off point for eligibility on disposable income.

9.5 The following items will be taken into account as income –

- Pay or sick pay from work (including overtime, commission, bonuses, but after deducting income tax, national insurance, etc)
- Net profit from business if self employed or in partnership.
- Private Pension
- Any other State benefits
- Student grant or bursary
- Money from any other source including maintenance payments.

9.6 Consideration is then given to the following weekly payments –

- Rent or board and lodgings
- Mortgage (including any endowment or life insurance policies linked to the mortgage)
- Council Tax/water charges
- Loan payments
- Maintenance payments made
- Other reasonable outgoings

9.7 If any one item exceeds £500 per month, documentary evidence of these payments need to be included with the application.

9.8 Where the spouse or partner is in receipt of a substantial income, we will make an allowance for half of any essential outgoings from the applicant's income. The full outgoings will be taken into account if the spouse or partner has no income.

#### *Dependants' Allowances*

9.9 An allowance can be given for each dependant at the rates given by the current Advice and Assistance Keycard. With effect from 7 April 2008, these rates are:

- Partner living with the applicant - £34.45 (This will only be given where that partner's income is below the upper income limit).
- Dependant person, being a member of the applicant's household (each) - £52.59

#### *Disposable Income*

9.10 Once these deductions have been subtracted from income, if the remaining figure is less than £198, then the applicant qualifies on disposable income. However, if the figure exceeds £198, then the nature of the case involved needs to be looked at before we can determine whether or not it would cause undue hardship to expect the applicant to pay for his/her own legal costs.

9.11 A number of factors need to be looked at in this assessment. These include –

- The number of witnesses involved;
- The likelihood that expert evidence would be required;
- Legal complexities involved;
- Any aspects of the case likely to lead to the requirement for significant preparation time.

#### *Capital*

9.12 The summary criminal reforms bring a rationalisation of advice and assistance and summary criminal capital limits. The 2008/09 level is set at £1,561. In this context capital means savings and anything else of value owned by the client:-

- the amount that could be borrowed against all land and buildings the client or their partner own including interests in timeshares;
- money in the bank, building society, post office, premium bonds, national savings certificates etc;
- investments, stocks and shares;
- the value of other non essential possessions, such as a boat, a caravan, second car, jewellery (but not wedding or engagement rings), antiques or items bought for investment purposes;
- money that is owed to the client or their partner;
- money due from the will of someone who has died;
- money due from a trust fund;
- money that can be borrowed against business assets;
- redundancy payments.

9.13 The following, however can be excluded from capital:-

- the home in which the client and their partner lives;
- the client's household furniture and clothing;

- the client’s tools and equipment they need for work;
- the value of any property or item that is the subject of the dispute;
- the value of the client’s car unless it is of high net value.

### *Dependants’ Allowances*

9.14 An allowance can be given for each dependant at the rates given by the current Advice and Assistance Keycard. With effect from 7 April 2008, these rates are:

- First dependant (Partner living with the applicant) - £335 (This will only be given where that partner’s income is below the upper income limit)
- Second dependant - £200
- Each other subsequent dependants (each) - £100

9.15 Additionally, if the client is of a pensionable age (60 in all cases), various disregards of capital can be allowed, as follows:

Weekly disposable Income up to £10	Disregard £25,000
Weekly disposable Income £11- £22	Disregard £20,000
Weekly disposable Income £23 - £34	Disregard £15,000
Weekly disposable Income £35 - £46	Disregard £10,000
Weekly disposable Income £47 - £95	Disregard £5,000

### *Disposable Capital*

9.16 The initial capital limit is £1,561. Any applicant with disposable capital below this limit qualifies for summary criminal legal aid. However, if the figure exceeds £1,561, as is the case for disposable income, the nature of the case involved needs to be looked at before we can determine whether or not it would cause undue hardship to expect the applicant to pay for his/her own legal costs.

A number of factors need to be looked at in this assessment. These include –

- The number of witnesses involved;
- The likelihood that expert evidence would be required;
- Legal complexities involved;
- Any aspects of the case likely to lead to the requirement for significant preparation time.

9.17 We way the Board undertakes the “undue hardship” test in relation to both income and capital is subject to ongoing review.

## **10. USING THE NEW SUMMARY CRIMINAL APPLICATION FORM CRIM/SUMMARY**

10.1 The application form for summary criminal legal aid (CRIM/SUMMARY) has been completely revised to take account of the new reforms. This has also given us the opportunity to bring this form into line with the current style of legal aid application forms to be more compatible with our new IS systems which will be introducing facilities for scanning documents. Summary criminal legal aid applications can still only be made after the tendering of a not guilty

plea, and the application must still be accompanied by a copy of the complaint and any previous convictions and evidence of the client's income.

#### *Section A – About any previous applications*

10.2 It is important that you complete this section and provide the reference numbers of any previous applications, either advice and assistance or ABWOR, that may have been made in connection with the same case. At question 2, if you are aware that any other solicitors have applied for criminal legal aid in this case and you know the reference numbers, please include them at this point.

#### *Section B – Solicitor acting for the applicant*

10.3 Please complete all the questions in this section. We need the solicitor and the firm's name and address as well as the code numbers to ensure that we address correspondence correctly. If you wish to use a name and address stamp to complete question 5, you must complete the codes at questions 1 to 3 in the white box areas.

#### *Section C – The applicant*

10.4 If you quote the applicant's identifier you must still answer questions 4, 6 and 7 (applicant's name and date of birth) and add any information that has changed since the last application. We need the client's name and date of birth on every form to help us check that new forms are registered against the correct client. If you do not know the applicant's personal identifier, or the applicant has not had summary criminal legal aid before, you must answer all the questions in this section.

#### *Section E – Financial statement*

10.5 The information contained here will allow the Board to determine whether or not the applicant can meet the cost of the case without causing undue hardship to them or their dependents. If the applicant spouse or partner receives an income, this information must be given here. We do not aggregate the applicant and their spouse or partner's finances in the financial assessment. However, we do use the information to allow us to take into account any sharing of outgoings as part of the financial assessment (for further details please see Section X).

#### *Section F – Evidence of financial circumstances*

10.6 To allow us to assess financial eligibility you should send us copies of the applicant's documents as evidence of their income, outgoings or capital. If the applicant receives employment income or income from a pension, you should send us a copy of their last pay slip or pension payment advice, together with details of their main bank or building society account. Alternatively, send us a copy of their recent bank or building society statement if payments are shown on it. For any other money received or payments made, please either send us a copy of the applicant's bank or building society statement where these are shown, or alternatively any other documentary evidence. If the applicant is receiving state benefits or tax credits, we do not require any documentary evidence as we will automatically check all these details with the Department for Work and Pensions.

#### *Section G – Capital and any other assets*

10.7 In this context capital means savings and anything else of value owned by the client. This excludes the client's main residence. In this section, please provide details of any cash, money

in bank or building society, property owned (other than the main household), shares or any other capital assets.

*Section H – Weekly income from all sources*

10.8 In this section, please provide details of benefits, pay, pension payments, student grants or any other income which the applicant and his/her partner may receive.

*Section I – Payments due by applicant*

10.9 In order to apply the undue hardship test, the Board still has the facility to take into account significant household payments made by an applicant. Please provide details of rent/mortgage payments, council tax, loans, maintenance and any other payments being made regularly by the applicant. If any one item exceeds £500 per month, documentary evidence of these payments will be required.

*Section K – Nature of the defence*

10.10 As in the previous form, a brief statement of the defence being advanced should be included here, even where a separate statement is being submitted with the form.

*Section L – Equality*

10.11 This section is being introduced to the summary criminal form for the first time, after being introduced to the advice and assistance forms last year. The Scottish Legal Aid Board has to collect information to monitor equality of access to people applying for and/or receiving services paid for from the public funds we administer. You should have the Board's equality card which you should give to your client and ask them to complete their answer. Your client does not have to answer these equality questions. If they choose not to do so, please put a cross at question 1.

*Section M – Declaration by applicant*

10.12 You should make sure that your client understands that, by signing this declaration:-

- they authorise us to ask other people or bodies for information about the application; and
- they consent to the disclosure of the application for quality assurance purposes.

*Section N – The case*

10.13 At question 1 – category code, please indicate all the charges brought against the applicant by entering the number of charges from relevant categories of case. At questions 2, 3 and 4, please provide details of the pleading diet, intermediate diet and trial diet dates. The not guilty plea cannot be in the future, as the application is only competent following the tendering of the not guilty plea. At questions 5, 6 and 7, please provide details of the courts, PF reference number and the names of any co-accused. If you are acting for any of the co-accused and already have a legal aid reference number, please provide these details at questions 8 and 9.

10.14 At question 10, please indicate whether your client has any other rights or facilities which might help fund the case, such as assistance from a trade union or insurance company. If your client does have these facilities, we may still be able to consider the legal aid application. For example, there may be a conflict of interest with the solicitor appointed by your client's

insurance company. At question 11, there is space to allow you to tell us why you feel we should grant legal aid despite the existence of these other rights and facilities.

10.15 At questions 12 and 13, please indicate whether any negotiations have taken place with the Fiscal and the details of this.

### *Section O – Interests of justice*

10.16 The Board's application of the interests of justice test has not changed as a result of these reforms. We must still take into account the factors specified in Section 24(3) of the Legal Aid (Scotland) Act 1986. The form still addresses these factors in turn, and if you believe that any of these factors apply at questions 4, 5, 6 and 7, you should give a relevant explanation against that factor. You need to tell us which aspects of the disclosable summary of evidence support the factors which you feel are present in the case, or why these are being disputed – for example, aspects relating to the description of the locus, the description of events, any police interviews or medical evidence, caution and charge replies which may be appropriate. You may find it helpful to send us a copy of the disclosable summary of evidence to help us decide this application.

10.17 At questions 2 and 3, please provide details of any pleas which may have been offered by the Procurator Fiscal and where appropriate why any pleas were not acceptable.

10.18 Question 4 – likelihood of loss of liberty or livelihood. If you feel either apply, you need to explain why such a sentence is likely. It is not sufficient for a custodial sentence to be a possible outcome of a case. The test to be applied is whether such an outcome is “likely”. In completing this section you should refer to the nature and circumstances of the offence(s). If appropriate, include details of the estimated value of any goods stolen, property damaged, injury suffered and any relevant previous convictions. You may also find it useful to attach any supporting documentation such as a schedule of previous convictions, a copy of the driving licence, or a copy of a letter from an employer where loss of livelihood is possible.

10.19 At question 5 – substantial questions of law etc, you need to explain what these issues are. Any references to case law should make it clear how the circumstances of that case are relevant to the present case.

10.20 At question 6 – abilities of the applicant, please indicate whatever aspect may apply here. Where appropriate you should give details of any medical assistance or support the applicant may receive. You should show how this affects their abilities to follow proceedings, or provide instructions etc. The particular affects of any addiction should be shown, and you should make clear any difficulties you have in getting instructions from the applicant. When addressing a client's ability to understand the proceedings or state his/her own case, it is insufficient to state “depression” or “mental health difficulties”; rather, details should be provided to expand upon the nature of the client's difficulties, and the Board would expect to have information on factors such as, for example, medication taken by a client, any support they receive from a health worker, details of the impact their disability has on their everyday life etc.

10.21 At question 7 – interests of someone else, please provide details of who this is, and their relationship to the accused.

10.22 At question 9, please provide full information on the detail and nature of the defence, together with any other factors or additional information which may help us decide the application. It is not appropriate to state here merely “alibi” or “incrimination” without providing further details of that defence. A brief explanation of the defence is required, for example where the client was, or who is being incriminated.

### *Section P – Declaration by the solicitor*

10.23 Please indicate here whether or not automatic legal aid under Section 22(1)(d) of the Legal Aid (Scotland) Act 1986 applied in this case.

### *Section Q – Attachments*

10.24 In each summary criminal legal aid application you must include a copy of the complaint, schedule of any previous convictions, and evidence of employment income. You may also find it useful to enclose a copy of the disclosable summary of evidence, and where appropriate copies of the applicant's driving licence/insurance policies, employer's letters, bank or building society accounts which will all assist with the assessment process. In certain circumstances the Board may continue an application for sight of these documents where this is felt appropriate.

## **11. USING THE NEW SANCTION FORM – SOLEMN, AND SUMMARY CRIMINAL**

11.1 The sanction form has been revised for use where full legal aid has been granted in all solemn or summary matters. The form can be used for applications for counsel, expert witnesses or unusual work/unusually large expenditure.

### *Section A – Solicitor making the application*

11.2 Please ensure that your code numbers are clearly completed together with your name and firm's name.

### *Section B – The applicant*

11.3 Where legal aid has been granted, the reference number must be included here. The PF reference number, applicant's forename and surname must also be included to ensure that the request is linked to the right case.

11.4 At question 1, please provide the date when the next court appearance is due to take place, if known. This helps us prioritise our work to ensure that urgent cases are dealt with appropriately. At questions 2, 3 and 4, please provide background details to the case which will assist in considering the sanction request.

### *Section D – Templates for expert reports*

11.5 A number of new expert witness templates have been introduced covering drugs experts (£250), firearms experts (£250), road traffic experts (£750) and medical reports (£300). Where experts are sought for these specific types of case, there is no need to provide substantial information in support of these requests. In these cases all that we need is the name and location of the expert to be instructed together with confirmation that the fees to be charged are within the approved level of expenditure.

### *Section E – Sanctions for experts where a template is not used*

11.6 In this section, please provide full details of the expert you wish to use which is not covered by a template, or where the cost of this expert exceeds that covered by the template. At question 4, you need to provide an indication of the work required by the expert. At question 5, please provide full details of the charges involved in using this expert. If the cost of the report is to exceed £800, competitive quotes should also be provided in support of the application for

sanction. If you do not have any comparative quotes, for example due to a lack of alternative specialists in this field, please provide details at question 9. At question 10, please provide details of why you believe you need to instruct this expert. This should include how the use of this expert will be of material assistance in supporting the applicant's case, or immaterially undermining the case against them.

#### *Section F – Sanction for counsel*

11.7 At questions 1 and 2, please indicate who you propose to instruct, and what counsel is being asked to do.

11.8 At question 3, please explain why you believe you need to instruct counsel in the case. This should include a detailed explanation of the background and any complex, novel or unusual issues and why you feel that these are beyond the competence of either a practising solicitor or junior counsel acting alone, as appropriate. A copy of the indictment, petition, complaint or note of appeal as appropriate must also be included and you should highlight appropriate sections being relied on in the sanction request. In order to fully consider these requests we need a full detailed explanation of the pertinence circumstances, rather than a mere list of abstract factors, or a broad reference to the proceedings being complex, difficult or novel. Full guidance on sanction for the employment of counsel in criminal cases is available on the Board's website at [www.slab.org.uk](http://www.slab.org.uk).

#### *Section G – Sanction for unusual work or unusually large expenditure*

11.9 Prior sanction for work likely to incur unusually large expenditure is required where these costs are likely to exceed £2,000. However, this limit refers to sanction in relation to unusually large expenditure, and not work of an unusual nature. In criminal cases, the following situations could be considered to fall into the category where sanction would not be required if the work was less than £2,000:

- Precognition of witnesses by unqualified personnel where this involved additional expense such as an overnight stay.
- Expenses of defence witnesses appearing at trials.
- The expense involved in a solicitor travelling to see a client who is unable to travel to see the solicitor due to being in prison or hospital. However excessive visits to see a client in these circumstances could still be abated by the Board.
- Procedures regarding Specification of Documents or precognitions on Oath, where basic steps such as contacting the PF for copy statements has already been followed.

11.10 The following situations still require prior approval by the Board, even where expenses are less than £2,000. This is because the work is considered to be unusual rather than unusually expensive:

- precognition of witnesses by qualified staff;
- expenses of clients travelling to see their solicitor;
- travelling abroad to obtain precognitions by either qualified or unqualified staff.

#### *Section I – Attachments*

11.11 If you have already given us a copy of the most up to date petition, indictment or complaint, and there have been no material changes since then, this does not need to be included again.

## **12. USING THE NEW TRANSFER FORMS – CRIM/TRANSFER & CRIM/CEASE**

### **CRIM/TRANSFER – Solicitor seeking transfer**

12.1 The Summary Justice Reforms have given us the opportunity to revise the style of our application forms, but in relation to transfers of agency, it has also given us the chance to resolve concerns which have been expressed to us about the current transfer arrangements. Following discussions with the Law Society of Scotland, it was agreed that changes would be introduced in the transfer form to the extent that this form would effectively include both the client mandate and reasons for the transfer. It was agreed that the transfer form would be signed by the incoming solicitor and the applicant, and a copy sent to the existing nominated solicitor who could continue to act to preserve their client's position until the Board made its decision.

12.2 A new section has been added to the form here at Section F – Applicant's mandate. This form must now be signed by the applicant in each case. By signing this mandate the applicant confirms that he/she has read and agrees with the reasons provided for seeking a transfer of legal aid. The client is also agreeing to a copy of this form being provided to the previous solicitor. If the Board agrees to the transfer, the client is instructing the transfer of the case papers to the new solicitor.

#### *Section A – Details of solicitor requesting the transfer*

12.3 Full details of the incoming solicitor must be provided here. If known, the previously instructed solicitor's details should be provided at Section B.

#### *Section C – The applicant*

12.4 You must provide at least a legal aid or ABWOR reference number or the PF reference number. Forms may be returned where neither reference numbers are given. This is to ensure that the transfer is linked to the correct case.

12.5 The Summary Criminal Reforms also introduce the ability to apply for a transfer of an ABWOR case where ABWOR has been provided on a fixed fee basis.

### **CRIM/CEASE – Solicitor ceasing to act form**

12.6 This form can still be used where you are intimating to the Board that you no longer act for the client for this legal aid case.

#### *Section A – Solicitor ceasing to act*

12.7 Full details must be provided here of your code numbers, name and address.

#### *Section B – The applicant*

12.8 The legal aid or ABWOR reference number, or the PF reference number must be included here. If both are missing, the form may be returned. This is to ensure that the cease to act intimation is linked to the correct case.