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TO: All legal aid solicitors

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our reference: chld 07/08

24 July 2008

This letter is to practitioners who undertake children's legal assistance work. It contains important information about changes effective 1 September 2008.

It is about new guidance in the Children's Legal Assistance Handbook concerning payment of curators *ad litem* and safeguarders in proceedings under Part II, Chapters 2 and 3 of the Children (Scotland) Act 1995 and reminds practitioners about multiple applications.

1. NEW CHAPTER IN CHILDREN'S LEGAL ASSISTANCE HANDBOOK ON PAYMENT OF CURATORS *AD LITEM* AND SAFEGUARDERS

The payment mechanisms for persons appointed to act as a safeguarder or a curator *ad litem* in children's proceedings (proceedings under Part II, Chapters 2 and 3 of the Children (Scotland) Act 1995) can cause solicitors confusion and can be seen as complex.

In light of this we have inserted a new Chapter 10 into the Children's Legal Assistance Handbook which is available on our website www.slab.org.uk to now deal specifically with this issue. A copy of this chapter is attached for information. Please note that the online Handbook that is available on our website will always contain the most up to date guidance and legislation.

We have also amended Chapter 11 explaining the situation regarding Safeguarders and Curators who want to appeal on behalf of the child to the Sheriff Principal or Court of Session. Also amended is Chapter 4 in relation to applications for advice and assistance on behalf of children by a safeguarder or curator *ad litem*.

This new Chapter 10 outlines all the options open to such persons appointed to hold these offices in children's proceedings before the sheriff whether a practising solicitor or not, and explains what can and cannot be paid from the legal aid Fund in terms of the Legal Aid (Scotland) Act 1986, the Children (Scotland) Act 1995 and the Act of Sederunt (Child Care and Maintenance Rules) 1997.

The new guidance explains that there is at present no statutory payment mechanism for a person appointed to act as a curator *ad litem* unlike the position for a person appointed to act as a safeguarder. This has been and will continue to be brought to the Scottish Government's attention. However, in the absence of a change to current legislation certain payments simply cannot be made from the Fund.

It is essential that practitioners become familiar with this new guidance as in certain circumstances, explained in Chapter 4 (advice and assistance) and 10 (court grants of legal aid), **we may refuse to pay an entire account** or refuse to accept an application for legal aid, explained in Chapter 11.

This new guidance will apply to all children's legal aid and advice and assistance granted on or after **Monday 1 September 2008.**

Ignorance of the existence of this new guidance will not be considered an acceptable reason to receive payment for any work carried out. In addition, the fact that we may have previously made payments for work carried out will also not be considered justification to receive payment from the Fund. We will not however seek to recoup any previous payments made in error from the Fund in this respect.

Please also note that Sheriffs Principal and the Sheriffs Association have been advised of this new guidance. A copy of this mailshot is also being sent to the Scottish Courts Service for their information.

In light of this new guidance an amended accounts synopsis form has been devised in relation to the submission of advice and assistance accounts. This form will now automatically be issued to you upon registration of an advice and assistance application.

Guidance to help you complete this new accounts synopsis form is also attached. The guidance includes a copy of the new accounts form. This guidance is also available in the legal profession section of our website www.slab.org.uk

It should also be noted that in light of recent legal aid regulations, as from 30 June 2008 the minimum fee in respect of children's advice and assistance has now been abolished and thus cannot be claimed in respect of children's legal aid granted to a client after this date.

2. MULTIPLE APPLICATIONS

Guidance regarding this issue was given to practitioners in a previous mailshot dated 18 June 2007. Despite this the Board continues to receive notification of multiple grants of legal aid from the court to register and multiple legal aid and sanction applications.

Please note that if you represent a relevant person who has more than one child in the court proceedings in question the Board does not expect to receive separate grants of legal aid by the Sheriff in respect of each child.

Unless the Sheriff directs otherwise only one CHILD/APP Form requires to be submitted to the sheriff on behalf of your client in respect of the children in question if the children's proceedings are to be heard together/simultaneously.

Only one CHILD/APPL/APP Form requires to be submitted to the Board for appeals to the Sheriff Principal and the Court of Session in the same circumstances.

If, however, your client has more than one grant of children's legal aid in respect of the conjoined proceedings then please note that thereafter you only require to submit one sanction application to the Board (SANC/APP Form) in respect of one of the legal aid certificates. If you submit more than one sanction application, only one will be registered and the other or others will be returned to you. Only one account should be submitted under the youngest child's certificate and "Nil" accounts should be submitted for the other certificates held by your client.

This should save on administration and processing time for all parties concerned and will ensure greater efficiency and more accurate statistical information being produced by the Board.

3. WHO TO CONTACT IF YOU HAVE ANY QUERIES

If you have any queries on these changes, please contact Liz Cuschieri on 0131 240 2179 or Laura Thomson on 0131 240 1896.