

The Recorder

Key features in this Recorder:

REVIEW OF CRIMINAL LEGAL ASSISTANCE

This section includes a summary of the common issues raised during our consultation and the Board's comments.

HIGH COURT REFORM

This section highlights the progress made on the legal aid aspects of High Court Reform and the work that is to be carried out to implement the changes.

CIVIL LEGAL AID

This section highlights the difficulties in processing incomplete applications, the Board's process of verification of financial information provided by applicants and also the cover available for mediation in non-family cases. The progress on stage reporting reminders is also explained.

CRIMINAL LEGAL ASSISTANCE

This section explains the Board's policy on sanction for unusually large expenditure in criminal cases and provides details of the recent regulatory change for fixed fees.

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Issue

40

October 2004

Chairman's Introduction

Our Annual Report, which we laid before Parliament on 27 September, and the shorter Annual Review sent to all legal aid firms, show 2003-04 to be a very busy year for the Board.

Access to justice is one of the most important rights in any free society. In the past year, we have dealt with high volumes of work and a wide range of responsibilities. Our service delivery has improved further and reform of legal aid moved forward. We continue to improve and develop legal aid for people in Scotland. Increasingly we contribute to modernising the justice system through working with others to make sure the legal aid system meets the needs of applicants, the profession and the courts.

We measure our performance against six 'headline' targets – we met all six. Our overall performance has improved steadily over the last few years, and in 2003-2004 it continued this trend. As well as headline targets, we have a further 47 individual targets. We met or exceeded 46 of the 47 targets last year, and just missed the other.

However, the legal aid bill rose significantly by 7% to £146 million. This rise is largely because of more applications in some categories, particularly for summary criminal legal aid, and a large increase in the number and costs of solemn criminal cases in the High Court.

We are fortunate that in Scotland legal aid is not a fixed budget. Yet the continuing rise in costs must be a concern to all. We continue to work closely with the Scottish Executive, the legal profession and other justice system agencies to find new ways to deliver efficiency in the system and give the taxpayer the best possible value for money.

Our figures show that summary criminal legal aid applications have reached their highest ever levels at 82,999, an increase of 4% on the previous year. Also, grants by the courts for solemn proceedings (the more serious crimes) have risen by 4% to 11,399. The cost of criminal legal aid increased by over £9 million to £89.7 million. This was a 12% increase on the previous year. Within criminal legal aid, the cost of solemn cases increased by £6.5 million to £39.9 million, and summary cases rose by £2.8 million.

In solemn legal aid, much of the increase in solemn cases is because of increases in the number and costs of cases involving drugs offences and other traditionally expensive types of cases, such as for murder. Last year, more of the most serious drugs cases were heard in the High Court than the previous year, and these cost an extra £2.5 million in legal aid.

The legal aid system has a key role in helping the justice system work effectively. Our reports highlight the many developments to modernise and improve the legal aid system.

Among the areas on which we report are:

- our successful achievement of all but one of the 47 tough new performance targets we set reflecting the needs and priorities of our customers
- the successful implementation of the most significant reform of civil legal aid in 50 years
- our continued investment in redeveloping our computer systems and significant progress towards our target of making all our services available online by 2005
- developing and testing alternative ways of delivering legal aid and legal advice services, such as:
 - opening the two further Public Defence Solicitors' Offices in Glasgow and Inverness
 - working with the Scottish Executive to facilitate the work of four pilot advice partnerships in Argyll and Bute, Edinburgh, Fife and a partnership for legal advice provision for disabled people
 - completion of the strategic review of legal aid, advice and information – an opportunity to think creatively about how to improve the scope and operation of legal aid and the delivery of publicly funded legal advice
- our increasing partnership working with the Scottish Executive, relevant professional, voluntary and specialised agencies, Scottish Parliament and other parts of the justice system such as the Crown Office and Scottish Courts.

In 2005 we expect to see further reforms to solemn criminal legal aid and civil advice and assistance. Scottish Ministers are modernising the criminal justice system and as legal aid plays a key role in

making the system work effectively, legal aid will need to change with it. We report elsewhere in this Recorder about progress with our own review of summary criminal legal assistance as well as progress with the strategic review of the delivery of legal aid, advice and information carried out by a team from the Scottish Executive and the Board.

The Annual Report contains detailed statistics and accounts, and looks at trends over several years. If you would like to read the full report, it is available on our website.

Following the publication of the Annual Report, we invited representatives of our stakeholder groups such as justice organisations, other organisations and MSPs, to meetings in Edinburgh and Glasgow. We were delighted to have the opportunities to discuss with representatives of the courts, the police, advice agencies, voluntary organisations and the legal profession how legal aid is working and how it should develop within a changing justice system.

The Board recognises and values the work of the legal profession in delivering legal aid services. Our performance and the developments highlighted in the reports owe much to your co-operation and support. We intend to continue to work in partnership with the profession and I hope that in this current year we will see further developments, including the implementation of legal aid on-line, which will deliver positive benefits to the profession and your clients, as well as to the Board and the Scottish taxpayer.

Annual Report

Publication of legal aid payments

We have published information in our annual report on payments made to the top 20 solicitor firms and advocates since 1995/96. In 2002/03, we added to this information with the payments made to the highest earning solicitor advocates.

This year, we decided that it is not now appropriate to focus on the top 20 firms, advocates or solicitor advocates. We think it better to publish summary information for each firm, advocate and solicitor advocate. This gives a more balanced view of the wide range of payments from legal aid. However, rather than include this in our annual report we have decided to provide it only on our website.

We published on our website the same information for all firms as was published in last year's annual report for the 'Top 20'. That is:

- Firm Name
- Advice and assistance fees excluding VAT
- Civil fees excluding VAT
- Criminal fees excluding VAT
- VAT on fees
- Total including VAT

These figures do not include outlays. Payments for children's legal aid are included in criminal fees.

We informed the Law Society of Scotland and the Faculty of Advocates, of our plans to change the reporting of practitioners' fees from legal aid. The Law Society recently wrote to the Deans of local faculties of solicitors around Scotland expressing their support for our approach. This information is of public interest, as is clear from the level of press inquiries we receive each year about practitioners' legal aid payments when we publish our annual report.

We are satisfied that publication of this information does comply with the Data Protection Act 1998 and we have confirmed this with the Information Commissioner's office. If we refused to publish such information, it is likely that we would not be complying with the Freedom of Information (Scotland) Act 2002 when it comes into force.

Review of criminal legal assistance

We would like to thank everyone who took the time and effort to respond to our recent discussion paper setting out our proposals for the review of summary criminal legal assistance. We received 46 responses from solicitors' organisations, individual solicitors, district courts, local authorities, Crown Office, Scottish Court Service, Sheriffs' Association, the police, and other organisations.

The main features of our proposals were:

- removing the exclusive jurisdiction of the duty solicitor to act for clients appearing from custody, and reviewing duty remuneration rates;
- more consistent feeing and remuneration arrangements;
- standardising financial assessments, based on the current advice and assistance arrangements, with the removal of client contributions;
- where the interests of justice test is to be applied for trials, the defence advanced would need to be "meaningful" as opposed to the existing "non-frivolous", and this factor should be weighted more highly than the others;
- the courts should have wider powers to make publicly funded representation available, where it is felt desirable for the accused to be represented.

Our proposals were largely supported by non-solicitor organisations, but a number of solicitors did raise a number of concerns. In this article, we thought that it would be useful to clarify that the purpose of our review was to improve the efficiency of the criminal legal aid system, and help ensure that solicitors are paid properly for what they do. In order to do this, the fee structure needs to be more front loaded to ensure appropriate payments for work carried out at earlier stages in proceedings.

Several common concerns were raised.

- *The proposals appear premature when the outcome of the McInnes recommendations is not known*

We saw our review as part of the wider review of summary justice, and not merely a response to it. As Sheriff Principal McInnes noted in his report, the administration of legal aid is an important

factor to be considered in relation to the operation of the wider summary justice system. Indeed, in the practitioner workshops held by his Review Committee last year, many aspects of the current legal aid system were discussed and practitioners gave their views on how changes to legal aid could improve the operation of the justice system. We therefore see our proposals as running alongside the McInnes recommendations. Indeed, some of his key recommendations, such as Crown disclosure, would be needed to properly take forward our proposals.

- *The proposals did not provide details of new payment rates*

We agreed with Sheriff Principal McInnes when he recommended that defence solicitors should be properly remunerated for work done at an early stage. We believe that one of the failings of the current system is that the statutory payment rates under advice and assistance and ABWOR for guilty pleas are different from those under the fixed fee legislation for cases going to trial. We have made it clear that any changes to the summary criminal legal aid system should address these issues.

Our consultation, at this stage, focused mainly on the principles that the new legal aid system might take. There seems to be general agreement that a fairer payment regime for work done at early stages is needed. However, it would be premature to advise on any likely payment rates when we have no indication of when any changes are likely to be implemented. Further, it is not our intention to abolish the fixed fee system.

It should also be borne in mind that decisions on payment rates are a matter for the Scottish Executive.

- *Some respondents considered that the proposed single system of criminal legal assistance with different tests at different stages could be more, rather than less, bureaucratic.*

It was never our intention that a single criminal legal assistance system would increase the bureaucracy involved in processing legal aid applications. At present, there are seven different types of criminal legal aid for summary criminal cases – most of these have different application forms, and different mechanisms for assessing eligibility on both financial and merits grounds. There is also no flexibility or continuity between these different systems. We therefore see our single system approach as a way of reducing the bureaucracy and form filling, leading to a more streamlined and easily understood system of summary criminal legal assistance.

Many valuable suggestions were made in the responses we received, and these will help us take the review forward, and will also ensure that legal aid matters are properly considered in any wider changes to the summary justice system.

High Court reform and solemn legal aid reform

Work is well underway for the introduction of the reform of the High Court as recommended by Lord Bonomy and set out in the Criminal Procedure (Amendment) (Scotland) Act 2004. The revised arrangements will start to come into effect from early 2005. A formal launch of the reforms took place at a conference held on 4 October 2004 at the Carlton Highland Hotel in Edinburgh. Speakers included Cathy Jamieson MSP, Minister of Justice; Lord Cullen, Lord Justice General; Norman McFadyen, Crown Agent; Colin Campbell QC, Dean of the Faculty of Advocates; Duncan Murray, President of the Law Society. The Vulnerable Witnesses (Scotland) Act was also introduced and will ensure the early identification of vulnerable witnesses and resources required in court. It will also allow greater opportunity for victims of crime to inform the court of their experience. There will be a series of further events throughout Scotland to explain the details of the reforms to practitioners and others with an interest.

It is planned to reform how solicitors, solicitor advocates and advocates are paid in solemn cases. Work is underway involving the Justice Department, the Board, the Law Society and the Faculty of Advocates on developing revised payment arrangements and appropriate quality assurance regimes. These reforms will need to fit with the High Court reforms as well as operate in the Sheriff Court. It is expected that the new arrangements will be implemented in Autumn 2005. This timescale will provide experience of the new High Court procedure to help inform the solemn legal aid reforms.

However, it will be necessary to introduce some interim arrangements to accommodate the High Court reforms. Now that the draft Practice Note, proposals for court programming and the two associated Acts of Adjournment have been published, we will be discussing the likely procedures in the High Court with the Faculty of Advocates, the Law Society of Scotland, the Crown, the Justiciary Office and other agencies. We need a clearer idea as to what will be required of counsel, solicitor advocates and solicitors under the new system in order that

appropriate regulations introducing interim arrangements can be developed. Once the interim arrangements are in place, discussions will continue with Faculty, the Society, the Scottish Executive and the Board to develop new regimes for solemn legal aid.

It is also now known that the Crown will be introducing Disclosure to High Court cases with effect from 1 January 2005 and by way of pilot schemes in certain Sheriff Courts from April 2005 with the aim of introducing disclosure in all solemn cases by Spring 2006. The introduction of disclosure will have to be carefully considered by the Board in consultation with Faculty and the Law Society, with a view to issuing early guidance to the profession on the legal aid implications of this change.

Our performance

We are delighted to report that once again, we have met the targets set for all of our headline indicators so far this year.

Headline Indicator	Our target	How have we done so far this year?	Target met?
Civil applications	92%	94%	Yes
Criminal applications	99%	100%	Yes
A&A applications	96%	99%	Yes
Civil accounts	95%	97%	Yes
Criminal accounts	97%	99%	Yes
A&A accounts	96%	99%	Yes

Strategic review

Strategic review of the delivery of legal aid, advice and information - update

In the last issue of *The Recorder* we described the progress made on the review of legal aid, advice and information in Scotland being undertaken by a team drawn from the Scottish Executive and the Board.

The team submitted their report to Scottish Ministers and the Board on schedule at the end of June. By the end of the review process, the team had held over fifty meetings with stakeholder groups, including a number of local faculties and specialist solicitors' groups, as well as other justice system agencies and non-lawyer advice organisations. This reflects the range of issues included in the Review's terms of reference, which we told you about in *Recorder* 38.

The report is now with Ministers, who are considering the team's recommendations. The report itself will be published on 29 October 2004, the day of the Legal Aid Conference and will be available on the Scottish Executive's website. Summaries of the Strategic Review will be available at the Legal Aid Conference. Although it is for Ministers to decide how they wish to respond to the report, we expect that they will wish to consult on some of the recommendations before taking a final view on how to take them forward. We look forward to working with the Executive to take forward any proposals emerging from the Review and will keep you informed of progress through *The Recorder*.

Delivering legal aid online services

All Board services will be available online by the end of 2005, improving the efficiency and effectiveness of the legal aid system, and bringing benefits to the legal profession and applicants.

What Legal Aid Online will offer

In the first instance, Legal Aid Online will enable advice and assistance intimations, increases and accounts to be submitted and processed online. It will be convenient, faster, easy to use and safe and secure.

Legal Aid Online will bring:

- faster and easier processing of intimations
- faster and more accurate decisions for increase requests
- better information on the progress of cases
- faster and more accurate consideration and payment of accounts
- less administration – no returns of incomplete forms
- savings on handling and postage.

Since our update in the last issue of *The Recorder*, we have made significant progress towards launching our Advice and Assistance Online service for applications and accounts.

We have now started the piloting of the new system with some of the firms who agreed to act as pilot sites. Initial feedback is very positive.

Later this year, we expect to launch Advice and Assistance Online and make it available progressively to solicitors.

We will give demonstrations highlighting the benefits of the system and give solicitors opportunities to try out the system for themselves at this year's Legal Aid Conference on 29/30 October.

Tripartite Group

In Issue 39 of *The Recorder*, May 2004 we gave you information on the Tripartite Group, which comprises representatives of the Law Society of Scotland, the Board and the Scottish Executive. Its primary purpose is to provide a forum for discussion of strategic issues and matters of importance to each of the stakeholders.

The most recent meeting took place on 6 September 2004 and there will be a further meeting in November. The main items we have progressed are:

Summary criminal legal aid review

The Board reported on the consultation of its review of summary criminal legal aid. The outcome of the responses will be given to the Justice Minister and published – there is a separate article on this at page 5 of the *Recorder*.

Children's legal aid

The Board and the Law Society are continuing to work on proposals to enable us to grant uplifts in fees in certain cases.

Research on the availability of trainees and assistants

It was previously agreed that there should be joint research into the recruitment and retention of lawyers. An initial scoping paper has been considered. It was decided that the different options for joint research should be costed to help each organisation consider its position on funding. The research will look at both civil and criminal business and will not be restricted to firms undertaking legal aid. The first phase of the research is expected to begin in early 2005.

Strategic review

The Justice Minister received the report on the outcome of the Strategic Review of the delivery of legal aid, advice and information at the end of June. The Strategic Review will be published on 29 October 2004, the day of the Legal Aid Conference and will be available on the Scottish Executive's website. A summary of the document, will be made available at the Legal Aid Conference. It is expected that the full consultation document will be published before Christmas.

Criminal legal aid

- **Solemn legal aid reform** – Work is being carried out between the Board, the Law Society and the Faculty of Advocates on the reform of solemn legal aid fee tables to be implemented in autumn 2005. Interim arrangements on legal aid fees will be needed to introduce solemn legal aid reform in time for High Court reform in early 2005.
- **Quality Assurance** – The Society and the Board reported that good progress was being made on this. Implementation will be associated with the introduction of solemn legal aid reform.

Civil advice and assistance reform

Substantial progress has been made on reform of civil advice and assistance. It is planned to issue a consultation paper on the proposed new system in the autumn, with a view to the new system being in place in April 2005.

The Freedom of Information(Scotland) Act 2002

The Freedom of Information (Scotland) Act 2002 (the FoI Act) comes into effect on 1 January 2005 and aims to increase openness and accountability in government and the public sector. It will ensure that people can get access to information held by Scottish public authorities, and to see and question how such bodies work and how they make decisions.

As a public authority, under the FoI Act we will have to allow access to information about the provision, cost and standard of our services.

Information that will be available

The FoI Act provides a general entitlement that from 1 January 2005 anyone who asks a Scottish public authority for information that it holds is entitled to be given the information by the authority. This legal right of access includes all types of "recorded" information we hold, from any date, subject to certain conditions.

There are exemptions covering, for example, law enforcement, national security and defence, and commercial interests, and other information that is already published and therefore easily accessible. Exemptions are either absolute or non-absolute and if a non-absolute exemption applies, we still have to consider whether to release the information in the public interest.

Section 34 of the Legal Aid (Scotland) Act 1986 sets out that we may not supply information provided to us without the consent of the person who supplied it, subject to limited exceptions. The FoI Act provides an absolute exemption for information where an enactment prohibits its disclosure. We are seeking counsel's opinion on the relationship between the FoI Act and section 34.

If we decide not to release information, as we consider it exempt, we must give reasons for our decision. This 'refusal notice' will allow the applicant to ask for a review to the decision, and so to seek a determination from the Scottish Information Commissioner. We also have a duty under the FoI Act to provide advice and help to someone who has made or is proposing to make a request to us for information.

We already comply with the Scottish Executive's Code of Practice on Open Government and currently

make available a great deal of information.

Publication scheme

The FoI Act also provides that Scottish public authorities must adopt and maintain a publication scheme and in doing so must have regard to the public interest in allowing public access to information held.

We have developed a publication scheme so the public can see what information we hold, and get access to it without having to make an individual request. The scheme sets out what classes of information we publish or intend to publish, how we make it available, and whether there is a fee for it.

The main principles we have applied when compiling the scheme are:

- to publish as much information as possible – for example we publish or will publish:
 - our staff guidance on legal aid applications and accounts
 - guidance for the legal profession on legal aid applications and accounts
 - policy and research reports
- to make as much information as possible available on our website, with printed copies available on request
- usually to provide information without charge. An exception is documents for which we currently charge, such as *The Scottish Legal Aid Handbook*. We may also charge if, exceptionally, it would be particularly costly to provide the information – for example, if someone asks for multiple copies.

The draft scheme is now with the Scottish Information Commissioner for consideration and approval. The draft is also on our website at www.slabb.co.uk and we welcome comments on it.

How are we preparing for freedom of information?

We take our responsibilities under the FoI Act seriously. We have, therefore, appointed a project team comprising representatives of all areas of the Board and led by Andrew Menzies, our Director of Corporate Services and Accounts, to ensure that we are fully able to fulfil those responsibilities.

Civil legal assistance

Applications under regulation 16(3) of the advice and assistance (Scotland) Regulations 1996 (known as Hardship Applications)

We issued new forms and guidelines for applications under regulation 16(3) on 8 June 2004. We issued further guidance in a letter to all legal aid practitioners on 30 July 2004. These are available on our web site at www.slac.org.uk.

The purpose of this article is to give further information about how we apply the guidance, and to highlight some of the advice we have already issued, as we are still having to return a significant proportion of applications, as they are defective.

- One in eight applications we receive relates to property that is exempt from payment out of property recovered or received. This means no application was necessary. You should therefore ensure that you have properly applied the provisions of regulation 16(2) before making an application under regulation 16(3).
- Almost three in ten forms have not been properly completed. Practitioners have either failed to provide all the information asked for, or have used the wrong form. Please ensure you use the correct form and that you have completed all relevant information before sending your application to us.
 - For applications under regulation 16(3)(a), use form AA/HARDSHIP/1.
 - For applications under regulation 16(3)(b), use form AA/HARDSHIP/2.
- Although applications under regulation 16(3) are commonly referred to as “hardship applications”, in applications under regulation 16(3)(a) your client must demonstrate **grave** hardship or distress. Giving these words their ordinary meaning, the standard to be met is extremely high and is not met by inconvenience or

disappointment. Examples of inappropriate applications we have received include claims that not being able to renew a football season ticket, or being prevented from playing golf because of the lack of a suitable golf buggy, would cause grave hardship.

- Some applications have suggested the applicant will suffer grave hardship or distress if fees and outlays consume a large portion of the amount awarded to them. Typically, this is in reparation or criminal injuries cases, where the amounts awarded have been around £1,000 and fees and outlays (usually medical reports) have amounted to around £500 to £600. (However, please refer to page 12 of this Recorder for further guidance about reports in CICA cases.)

It is important that you tell the applicant at the beginning of the case about the range of possible outcomes and costs in the case, and that you tell them about any changes to these matters during the case. Your client should take into account the questions of expenses and payment out of property recovered or received, before deciding whether to proceed. If the applicant’s financial circumstances are broadly similar at the start and end of the case, the fact that they will have to meet your fees and outlays is unlikely in itself to support an application under regulation 16(3).

- A number of claims are made on the basis the case has been settled in such a way that compensation has been paid direct to a client, from whom payment cannot now be obtained. The solicitor could only, therefore, effect payment out of the property recovered or preserved with unreasonable or difficulty or delay. We are unlikely to grant an application in such circumstances. As far as is practicable, you should ensure that such funds are paid to you so that there is no such difficulty or delay.

Criminal injuries compensation claims

Advice and assistance is available for helping clients make applications to the Criminal Injuries Compensation Authority (CICA). Solicitors occasionally get their client's precognition as well as a medical report, in support of the application.

The CICA tell us that they simply need a completed application. They do not need a separate precognition. If there is not enough space on the application form for the client to explain the background to the incident, the explanation should be continued on a separate A4 piece of paper and stapled to the form.

The CICA get copies of police and medical records as a matter of course. The solicitor (or potentially the client) does not, therefore, need to go to the unnecessary expense of getting their own report.

In the unlikely event that the client needs to provide more information, the CICA will specifically ask for it.

In cases where the client wishes the CICA to review its original decision, again the CICA get their own information. If you consider that, in the best interests of your client, separate medical or other evidence is needed, you should ask for an increase in authorised expenditure specifically to cover it. Such requests should:

- clearly identify the purpose of the additional information and how it will help in the appeal hearing
- show the work to be carried out is directly relevant to the refusal of an application at first instance by the CICA.

Civil legal aid

Processing of civil legal aid applications

Civil applications – general issues

There are a number of general issues about the submission of applications we think would be helpful to remind solicitors of:

- When you send us a civil legal aid application, you do not need to send a separate SU2 form. Page 3, section C of the CIV/SOL form replaces this.

If, after you have sent us a civil legal aid application, you do need to carry out work under regulation 18(1)(a), please send us in an SU2 as normal.

- You can only apply for sanction and have this granted before legal aid has been made available where we have approved or acknowledged work under regulation 18 and the sanction relates to that work.
- You should continue to send us a completed intimation document (form INT/DOC) with a civil legal aid application to allow us to intimate the application to the opponent.
- We have noticed that some firms have sent photocopies of the form CIV/SOL. Please only send in photocopies where absolutely necessary. If you are having difficulties with getting stocks of CIV/SOL forms, please contact our printers.

Incomplete solicitor application forms

We will be introducing a new system of case management and document scanning for civil legal aid by the end of this year. This will allow faster processing and better control of the very large volumes of documents we deal with. To allow applications to be processed in this new system, we will need to be given full information about the case when you first send the application to us. You should ensure you have given us all the information requested in the application forms, and all necessary

documentation to allow us to consider the legal aid application.

For some time now we have not been returning incomplete civil legal aid applications sent in by solicitors, unless the applicant has not signed the application form or the statutory statement is missing. We felt it would be more helpful to solicitors and applicants if we held these incomplete applications while we wrote to the solicitors acting asking them to send us the information needed to decide the application. Unfortunately, we have found we have to hold significant numbers of applications for the provision of further information. This delays considerably the processing of all applications because of the substantial increase in administrative work imposed on our civil applications staff who have to deal with these requests for necessary information.

Currently, where an application is incomplete we tell solicitors what information we need to deal with the application. We also tell the applicant that we have done so, and explain that we cannot process their application without that information. If we receive no response from the solicitor to our letter, we issue a reminder. Because of the number of applications we have to continue in this way (currently 40% of all applications received) we can no longer issue reminder letters. You should, therefore, make sure you deal with requests for further information immediately as we will not send reminders. If we do not receive the information we need, we will not be able to process the application.

Incomplete applicant financial forms

In around 37% of applications for civil legal aid we need to carry out an assessment of the applicant's means. Unfortunately, a fairly high percentage of financial forms are submitted without the necessary verification information. This can substantially delay the processing of the application. This is because we will have to continue the application to obtain the necessary verification. It will significantly reduce the time needed to deal with civil legal aid applications if they are submitted along with the verification information. If for some reason your client does not have ready access to the necessary information, for example they may be in a domestic abuse refuge,

please let us know and we will happily give them more time to produce the information or discuss other means by which verification may be obtained.

We have issued guidance to make sure that the applicant is aware of their responsibilities and the information they should give to us. Please give the applicant a copy of the "Civil legal aid – information for applicants" booklet. The new Financial Eligibility Forms 1 & 2 state what documents the applicant should send with the form.

As part of civil reform, we have encouraged applicants to deal directly with us on their financial matters. This is happening increasingly and, when it does, our experience is that it helps the client generally and speeds up the process. We are looking further at how we can encourage applicants to provide us with the necessary information and verification at first instance.

It would help if you would advise your clients to contact our Financial Assessment Unit for help if they have any concerns about the financial information they have to give or the documents needed in support.

Any applications we receive that do not meet minimum standards will be returned with a letter explaining what is missing. Providing this information will mean that applications are processed faster and more accurately. Please stress to your clients the importance of carefully following the guidance when completing their financial statement and providing the necessary documentation.

When completing the form, the applicant should keep in mind that if the applicant is married, or living with someone as if they are married, we may also have to assess their partner's resources. When we use the term "partner", we mean any person the applicant lives with either in a legal marriage or as if they are married, regardless of the gender of that person.

We need to see certain documents to back up what the applicant has told us in the Financial Form,

such as:

- bank statements
- statement of earnings or pay slips;
- copy of benefits book or
- student loan agreement

The documents required will depend on the circumstances of the applicant. The Financial Eligibility Forms 1 & 2 provide full details of the documents to be sent to us.

We have however been monitoring our verification requirements. As a result we have made some changes and intend to make others.

For example, we

- have removed the need for both wage slips and a statement of earnings to be produced, *and*
- intend to revise the statement of earnings form itself to make it easier for employers to give us the necessary information first time.

We will now only write to applicants asking for pay slips where the statement of earnings form is inadequate. As in the past, when we have needed this information, we will make it very clear to applicants that if they have any difficulty in getting the necessary information or documents, they should let us know and we will happily give them more time or discuss alternative means of verification. We will shortly amend the financial application form and guidance notes accordingly.

Verification of financial information

We have conducted a verification exercise on civil legal aid applications to ensure that what applicants tell us about their financial circumstances is accurate. This was applied to the information given to us at first instance and also to whether information was given to us as part of an applicant's ongoing obligation to inform us of material changes in their circumstances. It is very important that we are sure that where legal aid is to be granted, only those whose financial circumstances warrant it qualify.

In the cases that we looked at there had been a:

- failure to inform us of a change in financial circumstances.

- failure to inform us of a change of address, the purchase of a property and co-habitation.
- failure to inform us of increased benefit payments, receipt of two large sums of money and cohabitation.
- failure to disclose bank accounts and regular payments from a relative.
- failure to disclose bank accounts and new employment.
- failure to co-operate with the us when investigating changes in financial circumstances.
- failure to disclose a bank account and failure to co-operate with us when investigating changes in financial circumstances.

This resulted in the termination of some of the grants of legal aid and the recovery of legal aid costs in these cases, and the re-assessment of others.

It is important that clients tell us accurately about their financial position and keep us informed of significant changes. It would be helpful if solicitors could stress the importance of this to their clients.

Applications for civil legal aid to defend interdict proceedings

It has been brought to our attention that some solicitors have a perception that we will rarely, if ever, grant applications for civil legal aid to defend interdict proceedings. This may lead solicitors not to apply for legal aid for their clients.

We have no policy or processes that prevent us from granting such applications, so long as they meet the statutory tests. In the Civil Legal Aid Merits Guidelines we published in October 2003, we gave detailed guidance about what we consider in determining probable cause and reasonableness and the evidential requirements for applications both to pursue and defend interdict actions. Provided applications meet these requirements, we will grant them.

In the year 2003/2004, we considered 553 applications for legal aid to defend interdict actions. We granted 230 applications and refused the remaining 323 applications.

Mediation in non-family cases - cover provided by legal aid

We would like to remind you that we may allow the costs of non-family mediation as an outlay in a solicitor's account under advice and assistance or civil legal aid, providing certain conditions are met. We explained these conditions in Issue 32 of The Recorder of May 2001 and you can also find them on our website.

As with family mediation cases, we will only pay the client's own share of the total mediation fee as an outlay in the solicitor's account, and not any share that is to be borne by an opponent or opponents. If the opponent is also receiving legal aid or advice and assistance, s/he should seek sanction or an increase in authorised expenditure to cover his/her share of the cost.

Under the advice and assistance payment scheme, or where civil legal aid certificate is to be paid on a time and line basis, we also consider paying the solicitor's fees to attend the mediation if you can show that this would be reasonable, necessary and would assist the process of mediation.

To date, we have received four requests for non-family mediation under advice and assistance and we have granted all of these.

We will normally only consider requests for mediation involving mediators accredited by the Association of Mediators, the Centre for Dispute Resolution (CEDR) or the Law Society of Scotland under its Accord Scheme, although we may also agree to the use of other accredited specialists. We will accept sanction applications for Core Mediation as a suitable body to provide mediation services.

Stage Reporting

We will shortly be issuing reminders to firms for 12 month stage reports. These apply to grants made under the reformed civil legal aid arrangements introduced in October 2003. We will also now be able to issue reminders for the 6 month reports. We have been able to do this following changes to our computer systems.

Civil legal aid accounts

Sanctions and reimbursements – Edinburgh agents

We will consider sanction applications we receive from solicitors acting as Edinburgh agents in Court of Session cases, even if they are not the nominated solicitor. We do this to help cases run smoothly and to minimise any prospects for delay that might arise if we were to insist on the applications for sanction coming only from the nominated solicitor. It is an administrative procedure put in place to help solicitors. It recognises that the Edinburgh solicitors may sometimes be aware of the need to instruct a particular expert earlier in the case than the nominated solicitor.

It does not, however, create any right for Edinburgh solicitors to expect us to pay them direct, as we still have to make all payments to the nominated solicitor. Applications for reimbursements must be made by the nominated solicitor, or we will return the forms.

The nominated solicitor, as instructing agent, has an obligation to pay the Edinburgh agent within a reasonable timescale. We sometimes receive complaints that the nominated solicitor is delaying settlement and we have been asked to change our process because of this. However, we can only make payment to the nominated solicitor.

We will tell the Edinburgh agent of the sums paid at the **final** accounting stage only, as we explained in a letter to the profession dated 29 March 2001. It is not practical for us to write to the Edinburgh agent at the reimbursement stage, as this would unduly slow down the process. We are aware that we have omitted to tell some agents at the final accounting stage and apologise for this. We will try to ensure that we always do this. If you find the nominated solicitor does appear to be delaying settlement, we suggest that you agree a suitable timescale in the terms of engagement.

CHAPTER II – Sheriff court civil fees (defended)

A year has now elapsed since the new payment regime was introduced for the majority of defended actions where civil legal aid is granted on or after 1 October 2003. We give below details of some of the more common accounting difficulties we have experienced.

Progress fee (Fee 2(a)/(b))

2(a) – Where Fee 2(a) is being claimed, you should include details of the dates of the diet of proof or debate has been fixed.

2(b) – Where Fee 2(b) is being claimed, it is essential that you provide a detailed narrative setting out the steps that have been undertaken that justify the fee being claimed. A fee is only payable where it is unlikely that the action would have settled without the solicitor's input and the solicitor must certify that settlement took place in consequence of one or both of the following circumstances:

- (a) settlement was expressed within an extraneous minute of agreement or a joint minute (other than a joint minute for dismissal or decree simpliciter) encompassing an outcome materially different from the terms of any interim order of court in force immediately prior to the execution of that joint Minute or Minute of Agreement;
- (b) settlement followed upon an exercise of sustained negotiation involving a significant level of discussion between solicitor, the client or the opponent (or their agent) taking place after the conclusion of work payable under paragraph 1 (instruction fee) and clearly documented on the file for perusal, if required, by the Board.

Where the solicitor fails to provide justification in support of the fee, the claim will be abated.

Extra judicial settlement (Fee 4(f))

The extra judicial settlement fee is only chargeable where no other attendance fee is charged in relation to any appearance at which authority is interponed to the Joint Minute and **is not** payable in addition to any fee under paragraph 5(a)(ii) to (iii).

Additional procedure (Fee 4(i))

This fee is only payable where the court has allowed the case to proceed by way of additional procedure. It is not appropriate to charge this fee for work in relation to procedural diets.

Preparation for Child Welfare Hearing (Fee 5c)

We regularly have difficulty with multiple charging of the above preparation fee. The fee prescribed under paragraph 5(c) is designed to cover all work preparing for Child Welfare Hearings. As such, it not only covers preparation required for the initial Child Welfare Hearing, but also any additional preparation that may be required for continued diets.

Confusion appears to have arisen as to when a further fee(s) may be charged. A further fee is payable only in relation to a further and distinct Child Welfare Hearing fixed by the court in response to further identifiable circumstances (see Note 17 of the notes on the operation of chapter II). For example, if a Child Welfare Hearing is merely continued to allow contact to be monitored or a report to be obtained from a Reporter, a further fee is not appropriate. If, however, a fresh hearing is fixed specifically as a result of either party seeking to introduce a separate and distinct issue, a further fee is appropriate.

Conduct and waiting (Fee 6)

Charges for conduct and waiting time at any hearing specified in paragraph 5(a) to (e) (proof, debate, child welfare hearing, commission and appeals) is payable on the total time engaged, even if on different occasions, and is payable cumulatively between waiting and conduct time. The total time engaged should be aggregated and charged as a global entry at the end of the account.

Criminal legal assistance

Sanction for unusually large expenditure in criminal cases

Some solicitors have asked us recently about our approach to considering sanction requests for work likely to incur unusually large expenditure in criminal cases. In Issue 39 of *The Recorder* issued in May 2004, we said it had recently been agreed that:

- you only need sanction for work likely to incur unusually large expenditure where the work is likely to cost more than £2,000
- if you want to undertake work on a specific aspect of a case and the total cost is £2,000 or less, you no longer need our prior approval for this.

This limit refers only to sanction for unusually large expenditure, and not work of an unusual nature.

For criminal cases, you do not need sanction if the work costs less than £2,000 in the following situations:

- precognition of witnesses by unqualified staff, where there are likely to be additional expenses such as an overnight stay that would avoid further travelling at a later date
- expenses of defence witnesses appearing at trials, where there were travelling expenses such as air fares
- expenses involved in your travelling to see a client who cannot travel to see you because they are in prison or hospital – however, we may still abate excessive visits to see a client in these circumstances
- procedures regarding specification of documents or precognitions on oath, where basic steps such as considering whether the evidence is likely to be material and contacting the procurator fiscal for copy statements have already been followed.

Although you do not need our prior approval for it, this work would still be subject to the usual scrutiny by our Accounts Department. However, you still have the option to apply for prior sanction to incur expenditure of less than £2,000 for any of these items if you so wish.

You still need our prior approval in the following situations, even where the expenses are less than £2,000. This is because the work is unusual, rather than unusually expensive:

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

Revised intimation form for automatic legal aid

We have recently revised the intimation form used to tell us when criminal legal aid is being provided automatically in several situations. It can be used

- in Glasgow, Hamilton and Airdrie where legal aid is available automatically in certain situations in the current Drug Court and Youth Court pilots and also in Fife for the Drug Court
- for automatic legal aid in the forthcoming Domestic Abuse Court pilot in Glasgow Sheriff Court
- in all other courts in Scotland to cover the situations where automatic legal aid is available under the following sections of Section 22 of the Legal Aid (Scotland) Act 1986:
 - section 22(1)(da) – whereby the court determines whether the applicant is insane so that the trial cannot proceed or continue
 - section 22(1)(db) – in relation to an examination of facts held under section 55 of the Criminal Procedure (Scotland) Act 1995
 - section 22(1)(dc) – an appeal under section 62 or 63 of the 1995 Act in cases involving insanity
 - section 22(1)(dd) – an appointment of a solicitor by the court to a person accused of a sexual offence under section 288B of the Criminal Procedure (Scotland) Act 1995.

The form is based on the criminal court form, and gives us enough information about the applicant and the case to enable us to issue a legal aid reference number and an accounts synopsis form. The intimation form must also be certified by the court to

confirm the proceedings qualify for automatic legal aid.

Supplies of the new form CRIM/AUTOMATIC will soon be available from our printers. For now, you can download it from our website, or get a small supply from our Communications office (tel. 0131 240 1985).

Changes to the fixed payment regulations

Following consultation with the Law Society of Scotland several important changes have been made to the summary criminal fixed payment regulations.

Criminal legal aid for failure to appear proceedings

Paragraph 4(3) of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 has been replaced with:

“(3) Except where proceedings have been brought under Section 185 of the 1995 Act, for the purposes of the reference to summary proceedings in paragraph (1) above the following are to be treated as a single matter –

- (a) a single summary complaint or complaints which arise out of the same incident; and
- (b) proceedings under Sections 27(1)(a) and 28 of the 1995 Act (breach of bail conditions) arising out of the complaint or complaints referred to in sub-paragraph (a).”

Where there is an existing criminal legal aid certificate in the proceedings and an accused person fails to appear at any diet of which they have been given due notice in connection with these proceedings

- any further proceedings, whether the client is pleading guilty or not guilty, arising out of the failure to appear are now subsumed within the existing criminal legal aid certificate and no further core fixed payment can be claimed
- it is not competent to make a further application

for criminal legal aid and we will not issue a further certificate for these ancillary proceedings

- Although you can give advice and assistance before a complaint is served, all work in connection with the subsequent proceedings is subsumed within the existing criminal legal aid certificate. You cannot give advice and assistance or ABWOR in terms of section 7(2) of the Legal Aid (Scotland) Act 1986, “in connection with proceedings before a court or tribunal at a time when [a client] is receiving legal aid in connection with those proceedings”.

As always, you can claim further fixed payments (other than the core fixed payment) for all trial diets and deferred sentences etc arising from the failure to appear charge. If you proceed to trial, separately, on the principal charges and the failure to appear complaint, you can charge as if it was the same matter. For example, if both trials last one day, you are entitled to charge at the “first day” level for the first trial and the “second day” level for the second trial – that is, £100 plus £200 = £300, rather than £100 plus £100 = £200.

This provision only affects cases where there is an existing criminal legal aid certificate for the principal proceedings. Where there is no such certificate, you can apply for criminal legal aid for a complaint for failure to appear or give your client advice and assistance or ABWOR.

This provision also applies to any appearance before a court on the first day following an arrest without warrant of an accused who has been released on bail where the constable has reasonable grounds for suspecting that the accused has broken, is breaking, or is likely to break any condition imposed on their bail. Again all work on such proceedings, arising out of a complaint or complaints for which criminal legal aid has already been made available, is subsumed within the existing core fixed payment in the principal proceedings. You cannot give advice and assistance or ABWOR for work in this or further continued hearings.

These provisions apply to all proceedings commenced on or after 28 June 2004.

Criminal legal aid for breach of bail proceedings

Summary criminal legal aid remains available for proceedings under Section 27(1)(b) of the Criminal Procedure (Scotland) Act 1995, which relates to a failure to comply with any other condition imposed on bail. However, the core fixed payment is set at £150 for proceedings in the district court and £250 for all sheriff court proceedings. You can continue to claim further fixed payments for all trial diets and deferred sentences.

These provisions apply to all proceedings commenced on or after 28 June 2004.

Changed basis for division of fixed payments on transfer

The Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 have also been amended as follows –

“(7) Where the Board grants an application for a change of solicitor under regulation 17(3) of the Criminal Legal Aid (Scotland) Regulations 1996 there shall be paid to each of the solicitors who act for the assisted person in the relevant proceedings-

- (a) an equal part of the total amount payable under paragraph 1 of the Part 1 of Schedule 1; and
- (b) the amounts payable under paragraphs 2 to 13 of Part 1 of Schedule 1 shall be payable to the solicitor who carries out the work described in those paragraphs”.

The effect of this is that only the core fixed payment (£300, £500 and £550 in rural courts) will be divided between or amongst each of the solicitors acting in the proceedings for the assisted person. This sum includes any enhanced payment under regulation 4(6) where the assisted person has been remanded in custody and is under 21 years old at any time during that remand. Otherwise, the solicitor who conducted any trial, deferred sentence, bail appeal etc under Part 1 of Schedule 1 will be paid for that work. This enables us to pay the outgoing solicitor for all individual items of work undertaken and to retain only the core fixed payment for eventual division between or amongst the various solicitors acting for the assisted person.

These provisions affect any change of solicitor under regulation 17(3) which takes place in any existing case on or after 28 June 2004.

Taking instructions on an appeal in a summary criminal case

An additional item of work has now been included within the core fixed payment in Schedule 1 Part 1 of the Table of Fees attached to the fixed payment regulations, which provides as follows –

“1. All work up to and including:

(iv) advising, giving an opinion and taking final instructions on the prospects of an appeal against conviction, sentence, other disposal or acquittal,....”

Our view is that the step of taking instructions on whether to proceed with an appeal is part of “criminal legal aid” as defined in Section 21 of the Legal Aid (Scotland) Act 1986 in that it is “incidental to criminal proceedings”.

This new provision puts the matter beyond doubt and all work in connection with giving an opinion and taking the client’s final instructions is included within the criminal legal aid certificate. The next step is to proceed with the appeal, usually by a regulation 15 grant to mark the appeal and proceed. We do not consider there would be any basis for admitting a client to advice and assistance between these two stages and we will abate any work charged under advice and assistance.

These provisions affect any change of solicitor under regulation 17(3) which takes place in any existing case on or after 28 June 2004.

You should refer to our mailshot dated 30 June 2004 for copies of the increased fee tables and further details of these changes.

The Domestic Abuse Court pilot, Glasgow Sheriff Court

The Domestic Abuse Court pilot commenced in Glasgow Sheriff Court on Monday 18 October 2004. The court aims to provide a more supportive and sensitive service to those who suffer abuse, and will fast track cases which occur in Glasgow's southside for the next 2 years. Dedicated sheriffs and procurator fiscals will deal with these cases in the domestic abuse court, and enhanced services will also be available to support people before, during and after cases go to court.

It is expected that the Domestic Abuse Court will deal mainly with accused appearing from custody, and the legal aid arrangements for these cases are as follows:

Duty Solicitor

The duty solicitor will continue to charge on a *per capita* basis when the accused first appears before the court. However, the cap of £108.85 for follow up work does not apply and the duty solicitor will be entitled to charge under Schedule 1 on a time and line basis for work done under the regulations until the case is finally disposed of. If the accused pleads not guilty at the pleading diet, an application can be made for summary criminal legal aid. Automatic criminal legal aid is available, if the accused is remanded in custody until the application is disposed of.

Solicitor of Choice

The exclusive jurisdiction of the duty solicitor does not apply to proceedings, which take place before the Domestic Abuse Court. A solicitor of choice will be providing automatic criminal legal aid (as does the duty solicitor) and will require to complete an Automatic intimation form confirming that the accused is being provided with automatic criminal legal aid. These forms can be obtained from the sheriff clerk's office or the legal aid office at Glasgow Sheriff Court, or directly from the Board's Criminal Applications Department in Edinburgh.

The solicitor of choice will charge on a time and line basis, under Schedule 1, from and including the pleading diet until the conclusion of the proceedings. If the accused pleads not guilty at the pleading diet an application needs to be made summary criminal legal aid in the usual way.

If criminal legal aid is granted, the solicitor shall be entitled to the fixed payment for work done under automatic criminal legal aid, rather than the time and line payments, from the tendering of the plea of not guilty to the determination of the application for legal aid. If the matter does not, for any reason, proceed to criminal legal aid, the work is chargeable on the time and line basis.

If cited cases do appear at the Domestic Abuse Court, advice and assistance can be made available. If the accused pleads not guilty, any appearance at the pleading diet shall be made on a *pro bono* basis, and thereafter an application for summary criminal legal aid needs to be made in the usual way.

ABWOR is available subject to the usual financial eligibility test but the merits tests have been disapplied. ABWOR is also available for the sentencing stages where summary criminal legal aid has been refused on merits.

Further information on the legal aid aspects of the Domestic Abuse Court can be obtained from Kingsley Thomas, Manager, Criminal and A&A Applications on 0131 240 2085, or Janet Cathcart, Assistant Manager, on 0131 240 2084.

Compliance issues

Civil Audits and the Register

On 1 July 2004, the new Civil Legal Assistance Register was published. Nearly 750 firms have registered with almost 1,000 branches throughout Scotland, offering Civil Legal Assistance.

We are responsible for the maintenance of the Register and for ensuring firms can demonstrate that they are meeting the Law Society's ten administrative requirements. A copy of the ten administrative requirements is available on our website. The civil compliance auditors will visit all registered firms over a three year period to review the administrative procedures in place. We have audited over 100 firms and are pleased with the positive feedback from firms who have felt that it was a constructive exercise.

Criminal Compliance audits

The Criminal Compliance Audit regime is close to the end of the second cycle of audits. We will be reviewing our approach to compliance audit over coming months alongside the development of quality assurance for civil legal assistance. It is hoped that we will be able to simplify the compliance regime with the introduction of quality assurance.

In the interim, we felt it would be useful for us to outline some key issues which are commonly misinterpreted and to reiterate what is **essential** to ensure compliance with the Code of Practice. Part 5 of the Code lists certain key issues with which firms must comply.

Personal work and time recording

There is a requirement for qualified staff to complete a time-sheet entry whenever relevant criminal legal assistance ("CLA") work is undertaken. "Relevant CLA work" includes all criminal advice and assistance work, solemn criminal legal aid and appeals. In addition, advocacy work and any travel other than travel to and from a local court, must be recorded for summary criminal legal aid, even although the fixed fee is payable.

The time-sheets the firm completes should be in the same format as the sheet submitted with the firm's System of Management and Administration (SMA)

document and should clearly record the date (or dates if the sheet is a weekly or monthly sheet) and identify the solicitor. Completed sheets must be retained for a minimum period of three years.

Case recording

In order to meet our requirements for a case file, there must be a properly formatted file attendance note supported by a time sheet entry, where the work has to be time-recorded.

All attendance notes must record:

- the name of the client
- date and times – start/finish/elapsed
- name and status of the person performing the work
- detailed client- and matter-specific narrative of the work performed, and with sufficient detail to support the time engaged in the attendance.

These details must be recorded for every attendance regardless of either the type of CLA in force, for example for summary fixed fee cases, or whether the person attending is qualified or unqualified.

Financial transactions recording

All account entries must always be fully supported by file contents, regardless of the type of criminal legal assistance being provided (that is, including summary legal aid).

Client reporting

Client's instructions must be clearly recorded on files, either as part of a sufficiently detailed file attendance note, or where appropriate, a client statement. Where a precognition is taken from a client, regard should be had to the Board's guidance in the Taxation Guidelines regarding the content of precognitions.

Criminal Legal Assistance Register – practitioner entries

When practitioners establish a link between themselves and their firm with the Board, our Receipts and Payments section automatically issues them with a mandate for completion. This document allows them to submit applications and accounts. As the Criminal Legal Assistance Register takes its information from the system operated by that area, it

cannot be updated until the mandate has been returned and processed. You should return any such mandates as quickly as possible to Receipts and Payments – if you delay, your applications may be returned.

If you have any questions or need clarification about any of these issues, contact Brian Millar, Legal Compliance Manager.

Guidelines

Guidelines for employment of experts

Many accounts for cases where experts are employed are sent to us without all the information we need to deal with them. This leads to delays in payment. We can pay much more quickly if, when you send us accounts or applications for reimbursement of outlays, you send us all the necessary information .

The main difficulties appear to be:

- experts not being given details of what expenses they can incur
- insufficient information being supplied on fee notes
- lack of supporting information with accounts or reimbursement of outlays forms.

When sending in claims, you should:

- ensure that you include interlocutors for any outlays incurred by order of the sheriff
- ensure that you have sanction for any reports ordered as a result of your own motion or a joint motion
- send us vouching for all outlays, including those in reporters' or curators' accounts
- make sure the nominated solicitor has signed and dated the claim form
- when claiming for the extension of the notes of evidence, if you did not previously obtain our sanction, tell us if these were extended by order of the sheriff.
- when claiming for outlays under advice and assistance, include copies of the AA/INC forms authorising this expenditure
- where a witness' court attendance has been cancelled, give the date on which the attendance was cancelled and the date the witness was cited for.

For expert reports, the fee notes should show:

- the number of hours spent
- the hourly rate and whether this includes VAT
- the dates of any court attendances or consultations with counsel and the time spent.

You should send us vouching for any outlays, such as travel, subsistence or photographs.

We will not pay for outlays incurred for:

- bar bills
- telephone calls from hotels
- cost of newspapers
- gratuities

We will pay 40p a mile, plus VAT, for travel by car.

Expenses of witnesses to matters of fact
You should send us a letter from the employer on letter-headed paper or bearing the firm's stamp to support the witness's loss of earnings. This should state the date and number of hours lost and a note of the total net wage loss. Overtime cannot be claimed for.

You should send us vouching for subsistence, travel and other outlays.

If the witness has travelled by car, we need to know how many miles, and we will pay petrol costs. We do not pay a mileage rate to witnesses to fact but we will pay reasonable 'out-of-pocket' expenses.

We are revising form SANC/APP. In the revised form, the solicitor will have to provide a more detailed breakdown of the costs the expert will incur.

Repeated requests for sanction or transfers of agency

Where we refuse an application for a transfer of agency, or sanction to employ an expert witness, counsel or for unusual or unusually expensive work, the legal aid regulations do not specifically allow for a review of this decision. However, it has always been our practice to reconsider these decisions on cause shown.

We will still continue with this practice, but with immediate effect, multiple requests will not be considered if no new information has been provided. If a sanction or transfer request has been refused again after reconsideration, any further requests will only now be considered if new information is provided. If no such new information is supplied, the request will be returned.

Getting copies of our publications

If you would like copies of any of our publications, other than those available from our printers, please use our Communications Department's publications direct line on 0131 240 1985. You can also leave messages about publications on this line 24 hours a day and at weekends. (Please do not use the line for matters other Board departments deal with, as this could lead to delays while we pass on your question to the correct department.)

You can also find all of our publications online on our website at www.slab.org.uk or you can order publications by e-mailing general@slab.org.uk.

Arrangements for fund payment during the festive period

The Board will be closed on the following days over the Christmas and New Year period:

- Friday 24 December 2004 (p.m. only)
- Monday 27 December 2004
- Tuesday 28 December 2004
- Friday 31 December 2004 (p.m. only)
- Monday 3 January 2005
- Tuesday 4 January 2005

Any Fund payments due over that period will reach bank accounts on the following dates:

- Friday 24 December 2004
- Wednesday 29 December 2004
- Wednesday 5 January 2005

From Monday 10 January 2005 Fund payments will revert to the normal weekly Wednesday and Friday format.

If you have any queries, please contact our Receipts and Payments office on 0131 240 2080.

Legal Aid Conference

This year's Legal Aid Conference will take place at Heriot Watt University on 29/30 October. Speakers from the Law Society, the Board and the Crown Office among others will cover a wide range of topics of interest to civil and criminal practitioners.

In addition, our Legal Aid Surgery will again be running throughout the conference to help with any legal aid queries you may have. This year there will be representatives from even more areas of the Board to help you get the information you need to assist your clients.

Have you received this information?

Since the last issue of *The Recorder*, we have issued the following mailshots, containing important information about legal aid, to the profession:

30 July 2004

Further guidance on advice and assistance applications under Regulation 16(3). Also guidelines for civil legal aid applications to pursue and defend exclusion orders.

7 July 2004

Duty plans 2005 - a mailshot to criminal legal aid practitioners about applying to be on the duty plans in 2005.

30 June 2004

Information on advice and assistance, children's legal aid and criminal legal aid, including detailed guidance and the new tables of fees. Also including a revised set of category codes for advice and assistance.

16 June 2004

Civil Reform Mailshot 11 – Registration. This was sent to the head office of firms on the provisional civil register who had not responded to mailshot 10, to remind them to return their registration form by 25 June.

8 June 2004

New forms and guidelines for applications under regulation 16(3) of the Advice and Assistance (Scotland) Regulations 1996 (commonly known as "hardship applications").



Check your details

To ensure that correspondence, *The Recorder* and other important information from us reaches you, please write to our Receipts and Payments Department immediately if your address, firm, or practitioner details change.

Please also tell us if your firm changes to, or from, Royal Mail, Hays DX or Legal Post, so we can update our records and send mail to you by the right carrier.



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