



FACULTY OF ADVOCATES

Response from the Faculty of Advocates

To

Legal Aid Accounts Assessment

Introduction

The Faculty of Advocates acknowledges and welcomes transparency in the activities of the Board in assessing accounts. We are aware of cases where the process works well, as well as cases where it seems less efficient. Transparency seems to us to be a key factor in honing the process to be the best available for the current system. We are at the same time constantly aware, as the Board is, that there are elements of that system that still make it difficult for counsel to be paid for various elements of the work that they do, as changes in the court procedures are not matched by changes in the legal aid fee structures. We see advantages in the Board continuing to seek to understand how our work changes and what amount to the 'usual' steps taken in providing services to individuals involved in litigation.

Question 1

What are your views on how we assess reasonableness as part of the taxation test?

SLAB should change the content of the factors taken into account in the assessment of reasonableness

SLAB should include additional factors

SLAB should remove one or more of the factors

SLAB should continue with the current set of factors

Please provide further information of any changes proposed and the reason(s) for your answer.

SLAB should continue with the current set of factors

Question 2

What are your views on the process for seeking further information to support account entries that have been abated?

The current process of accounts assessment can involve counsel in collating responses or providing information which the Board has already received. We would suggest that notes provided in earlier stages of the litigation to explain the novelty or difficulty of the case, to support sanction for counsel will often contain the answers to questions we are asked at the accounts assessment stage. Similarly, we believe that there is an element of repetition of work done to explain the fees we have charged in cases where a cost limitation exercise has been carried out in relation to the case, with the need for various steps examined along the way. We would welcome examination of whether the Board is using all the information that it has at its disposal when it comes to the process of assessing accounts. Also of interest would be the question of whether the Board is able, or would at any point in the future be able, to take information of use to it directly from the court system.



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The process works best when specific questions are asked. On a very practical level, we have experienced more difficulty in working with abated fee notes since the pdf format was adopted over paper copies. It is harder to keep the abatements and fee entries in view and related to each other, and this format could usefully be reviewed.

Question 3

What are your views on how we could best keep up to date on what is 'usual' in any given practice area?

We would suggest that informal discussion groups with contributors from various practice areas would be a useful approach, and we see benefits in this also in all parties working together to identify instances of the problem identified in the introduction: of fee regulations not keeping pace with court practice.

Question 4

Does the assessment process set out on page 11 or appended policy statements raise any concerns in relation to treatment of care experienced young people, equality groups or other vulnerable people?

Yes, No

Please provide the reason(s) for your answer.

Our experience is that that treatment of these groups has an important impact on taking instructions in particular. The assessment process set out can be used to accommodate this. We would wish to emphasise the significance of the skill and experience of counsel as a factor in approaching cases of this nature, where travel is often required to meet the client and much time may need to be taken to explain concepts to vulnerable individuals.

Question 5

To what extent is the purpose of the policy statements clear and understandable?

We have found it clear and easy to understand.

Question 6

How useful is seeing the policy statements as an underpinning for future guidance?

Please provide reasons for your response.

We would anticipate that this will be useful, and hope that it will inform similar consultation on any such guidance.

Question 7

What are your views on how the meetings and letters policy as stated are reflected in current practice?

These are areas of more concern to solicitors.

Question 8

What are your views on how the civil and children's counsel fees policy as stated is reflected in current practice?



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While a practice rather than a policy issue we would be grateful for clarity about work covered by sanction for counsel in advance of work being carried out. It is too late at the assessment of accounts stage to discover that work is not covered or, if covered, there is no sanction for counsel. We propose a single page summary of what is covered by legal aid, maintained on an ongoing basis, setting out whether there is sanction in place. Such a summary could be set out with “tick boxes”. It could also specify whether the cover is A&A, Special Urgency, Full Civil or Children’s Legal Aid. Such a summary would save SLAB, solicitors and counsel confusion and additional work when it comes to assessment.

Question 9

What are your views on the proposed changes to our policy on outlays related to travel and associated expenses?

The approach seems to us consistent, but we must draw attention to recent experiences of members in trying to secure accommodation at appropriate rates. Aberdeen has always been a particular problem, but there have been recent changes in the market elsewhere in Scotland associated with demand for UK holidays. Business in Selkirk recently required overnight accommodation that could be secured most cheaply at £122. In Inverness a visit requiring a stay of several nights involved one night where the rate rose to £185. Paying these sorts of rates and claiming the allowed outlays means that counsel see their fee reduced by something in the region of 10 or 15 %.

Question 10

What are your views on the proposed policy on travel to court?

We agree with this approach.

Question 11

What are your views on the proposed policy on overnight travel?

We agree with this approach.

Question 12

What are your views on the proposed changes to our spoken language interpreting and translation policy?

This is a matter with which solicitors are principally concerned.

Question 13

To what extent do you agree or disagree with our approach to funding adjustments from the Legal Aid Fund?

Completely agree

Partially agree

Completely disagree

Please provide the reason(s) for your answer.

We understand the approach, but we note that we are not sharing here the experience of any counsel for whom adjustments may be required.

Question 14



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What are your views on whether the current approach to guidance as set out for criminal legal assistance applications would be beneficial for accounts assessment?

We have limited experience of using such guidance.

Question 15

Are there particular examples from other organisations or features that you would like to see incorporated into accounts assessment guidance?

Please provide reasons for your response.

No.

Question 16

Please provide your views on any further aspect of accounts assessment that has not been covered by responses above.

We have nothing to add. Much of our experience with the current system has seen it work well, and we believe that this approach will improve this across areas where frustrations do arise.