



Statement

13 January 2011

Importance of proving eligibility to access public funds through legal aid

The Board's position is that to discharge its responsibility as a public body and to be fully accountable to the taxpayer, those who apply for legal aid must provide proof that they are eligible to access public funds. A summary criminal legal aid case costs an average of around £650. There is no reason why this requirement should cause any delays in the summary justice system. The Crown Office Procurator Fiscal Service and the Scottish Courts Service have confirmed that they are not aware of any legal aid processes causing delays in the court system. We welcome any feedback from justice system partners on any legal aid issues that may impact on the justice system.

Providing proof of financial eligibility should not impact on the summary justice system because it is programmed in such a way that allows ample time for applicants and solicitors to lodge legal aid applications and to provide us with the information we require.

- A legal aid application should be submitted within **14 days** of a plea of not-guilty.
- There are usually **56 days** after the pleading diet until the intermediate diet.
- A trial diet is usually set for **28 days** after the intermediate diet.

The Board's average processing time to conclude its part of the legal aid application process is between **1 - 2 days**. This has not changed over recent months. The majority of legal aid applications are processed using Legal Aid Online so there are no time delays in the postal process.

The average total processing time for a summary criminal legal aid application (that is, the Board's processing time of 1-2 days, and any periods of time the application is with the solicitor awaiting further information) is currently 14 days. This has increased in recent months, however, as the Board's processing time has not changed it means that applicants and solicitors are taking longer to submit the information required. However, a period of 14 days, within the summary justice timeline outlined above should not cause delays in the court process.

The Board has made the process straightforward as possible:

- Where we can verify receipt of a passport benefit, we do so direct with the Department of Work and Pensions and no documents are required from the solicitor or the applicant.
- For most other applicants, only a bank statement is required. Bank statements are easily accessed free of charge through the major banks or Post Office.

Previously other types of documents were required, such as wage slips. We now request bank statements because these are easier to access and because they will usually contain an applicant's full financial circumstances. We also started to use the link with the DWP for criminal legal aid applications, where previously it had only been used for advice and assistance (a different form of legal aid). We consulted with the Law Society of Scotland and issued guidance to solicitors to inform them that we were making this change. Vincent McGovern, member of the Law Society's Legal aid Negotiating Team said today:

“There was consultation between the Law Society of Scotland and the Scottish Legal Aid Board on changes to verification of legal aid applications to ensure that those granted legal aid met the financial eligibility rules. The Society understands that applicants, particularly in these difficult times, require to so satisfy the Board and to provide sufficient verification of their financial circumstances.”

We welcome the Law Society's understanding of the importance of verification of applicants' financial circumstances. We know that many solicitors advise their clients beforehand to bring proof of eligibility with them to meetings. This is best practice. It should be made clear to applicants that proof is required before legal aid can be granted.

We recognise that there are sometimes difficulties. Sometimes, incorrect basic personal information is supplied, for example, incorrect surname or date of birth, by the applicant or their solicitor. If incorrect personal information is provided to the DWP, they will not be able to verify that the applicant receives the benefit they have declared. We have to continue the application for this information or for a bank statement.

We often see situations where the applicant declares that they have no bank account but later provides a wage slip which shows that their wages are paid to a bank account. To ensure that no false information has been provided, we have to ask the applicant for a bank statement.

Where legal aid is refused because an applicant has too much income or capital, they can apply to us to ask us to review this decision. If the review is also refused, we notice that solicitors sometimes submit a fresh application but there have been no changes in the applicant's financial circumstances. This repeated application process could lead to delays in court procedure and is not justified in the Board's view where an applicant has had no change in circumstances.

Ends

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