



Civil legal assistance update

TO: CIVIL LEGAL AID PRACTITIONERS

14 March 2008

This update for civil legal assistance practitioners contains updates on changes to civil legal assistance.

INSIDE THIS CIVIL UPDATE:

We are making significant changes to civil legal aid to make it easier and simpler for all involved in the process. This mailshot provides information about:

- major changes to forms
- improved support and training for solicitors
- our pilot scheme for getting financial information from applicants by telephone
- a number of the changes already made to reduce the information we need with civil legal aid applications
- Legal Aid Online
- clawback provisions in mortgage rights cases.

SIMPLIFYING CIVIL LEGAL ASSISTANCE

Our Civil Simplification Project is now well underway. We have already introduced a number of changes to help simplify aspects of civil legal aid. We are currently working on more significant changes to improve the civil legal assistance system.

We have been looking in detail at issues including the forms used for civil legal aid applications, the benefits of carrying out financial assessments by telephone and the support we can give legal aid suppliers. Most of this update tells you more about these developments.

Civil legal aid application forms

While we are looking at ways of simplifying all the forms in use, we are particularly considering the CIV/SOL and the sanction application form. We know solicitors often see these forms as cumbersome and asking for unnecessary information.

Before making any changes to the forms or other methods of applying for civil legal aid, we sought the views of practitioners who undertake civil legal aid. We consulted with a

range of practitioners throughout November last year. We also looked at the approaches taken in other jurisdictions.

We know that just replacing the existing civil application form with a revised form will not meet the very different needs of all the firms of solicitors doing civil legal aid. Some solicitors' offices use electronic documentation or computer systems much more than others. To allow for this we plan to introduce:

- an application form to be used where solicitors are sending us paper documentation
- a further two options where they send us the information online.

If you opt to use the online versions, you have the choice of:

- a question and answer format. Here our system will ask questions relevant to the type of case you select. Once you key in the category codes for the case you want, you will see "drop-down" boxes asking questions that are relevant to those codes only. Only occasionally will you also need to send supporting documents.
- alternatively, a format that prompts you to give us basic details about the applicant and the case you are seeking legal aid for. Instead of answering drop-down questions on that case, you will send us supporting documents electronically.

We will also be introducing separate CIV/SOL application forms for family and non-family cases so that the questions we ask will be more relevant to the type of case to be raised or defended. For example, questions about whether there is trade union or other methods of funding for a case are not likely to be relevant in family applications, but are important questions in reparation cases.

Special urgency

Each day we receive a number of applications for civil legal aid where solicitors send us an SU4 and a mandate because they need to do specially urgent work before civil legal aid is granted. This means they have to give details about the applicant and the case on the civil application form, the SU4 form and the mandate form. Not surprisingly, you dislike this duplication of effort.

We are therefore planning changes to address this. You will be able to apply for special urgency approval within the civil application form and, at the same time, we will include the mandate as part of the form.

We will also include in the body of the form full details of the steps you can undertake under regulation 18(2) (work done without needing the Board's prior approval). The list of steps that can be taken will also be split into family and non-family categories depending on the CIV/SOL form being used.

Currently we list these steps in the SU2 form, but do not include them in the notification section for regulation 18 of the current CIV/SOL application form. We expect that this change will help you complete the new form, as we currently receive several queries daily from solicitors asking whether they can do work in terms of regulation 18(2).

Don't forget that our Civil Legal Assistance Handbook, available on our website www.slab.org.uk, contains full guidance - including a section on special urgency - to help you complete our current application forms.

Sanction applications

If you need to use several experts, you currently have to complete a separate application form for each expert. This repetition is bureaucratic and cumbersome.

To address this and make it easier for you, the new form will allow you to ask for more than one expert when making an application.

Semi-automatic “template” sanctions

We also want to simplify the sanction process further by introducing templates for certain work similar to those used in advice and assistance.

In advice and assistance we introduced last year a wide range of templates to cover work to be done in certain types of cases. To eliminate unnecessary bureaucracy all you need to do is cross the box beside the relevant template to get the available increase in expenditure.

We want to introduce a similar system for more routine sanction applications to instruct an expert in civil cases. This will be a key change brought into effect with the revised forms.

You will be able to use cross boxes to show you are instructing certain experts in a case. In doing this you will be confirming that you are instructing the work in line with the guidance we issue.

Telephone financial assessment pilot

Financial assessments in civil legal aid applications can take some time. Applicants have to give us a lot of information before we can assess their application. Unfortunately this information is usually not sent to us without prompting.

We know from our surveys of applicants that not all those who apply for civil legal aid understand what information we need to see. They do not realise we need to see information such as bank statements, salary slips and details of council tax payments.

To try to simplify this, we have been piloting telephone assessments. A number of firms of solicitors are involved in the pilot.

Where an applicant for civil legal aid is not receiving benefits, the solicitor can fax a very short form to us giving the applicant’s name and telephone details. We then contact the applicant direct and arrange a time to call them to go over financial details. We fix the time of the call to suit the applicant. The benefit of this is that we can tell an applicant straightaway:

- if they are eligible
- what contribution they will have to pay (if any)
- what documents we need to see to verify the information they have given us.

Once we receive this verification the assessment is complete.

The pilot exercise is nearing its end and we will be looking at the results before deciding the next stage.

Supplier support

We want to provide more support for solicitors doing civil legal aid. We are looking at ways we can give you feedback about your civil applications to try to minimise any problems with them.

A pilot project is underway with a small number of firms to develop the best way of providing this support. We will give them information on:

- how they use templates
- what detail they give us in applications
- what information they give us with accounts
- where there may be training needs - including us giving any training and support where it is wanted.

Simplification - next steps

We expect these changes will help make a significant difference to you by reducing bureaucracy when applying for civil legal aid.

We are already at an advanced stage in changing the forms. We have nearly completed developing draft forms, but before we can issue them, we are seeking more input from you.

We are aiming to pilot use of our new draft forms to get feedback from the profession about the changes we have made and whether they help you.

If you are interested in being involved in the pilot, please contact Catriona Whyte, Head of Legal Services - Civil, on 0131 240 2088 or at whyteca@slab.org.uk

We are also happy to meet local faculties to talk about the civil simplification process. We have already met solicitors from a wide variety of areas not only to talk about simplification, but to get their views on these changes.

If you want to meet us please contact Alison Pringle at the Chief Executive's Office on 0131 240 1963 or at pringleal@slab.org.uk

DON'T FORGET - CHANGES ALREADY MADE TO MAKE COMPLETING THE EXISTING FORMS EASIER

In addition to these planned changes we have already made many changes to reduce the information you need to give us when applying for legal aid.

Information needed with applications

Once we have received a civil application, or an application for or notification of a special urgency grant, we will give you a legal aid reference number (LARN).

Once you have the LARN, if you need to send any type of application for that case, you do not have to repeat all the information that was on the first application form. The only information we need is the name of the client, the LARN, the name of the solicitor and their practitioner code. You can leave blank all other questions on the form except those giving information about the application.

This applies to all applications you send us for a case once you have the legal aid reference for that case. It includes transfer applications, sanction requests, applications seeking to amend the scope of the grant of civil legal aid, as well as civil applications lodged after a special urgency application has been made.

Cutting out unnecessary documents

We have previously issued mailshots setting out our modified approach to applications for divorce based on one or two years' separation where no ancillary craves are sought. However, some solicitors are still not aware of these changes, and are still sending us information we do not need.

We no longer need to see any statement or supporting documentation for any legal aid applications based on one or two years' separation where no ancillary craves are sought. You only need to confirm that:

- there is independent support for the period of separation
- there are children under 16
- where applicable, there is consent from the opponent to the action.

Where a divorce based on one or two years' separation is sought together with ancillary craves we do, however, still need to see statements and supporting documentation.

CIVIL FEES

Ministers are currently considering the outcomes of the review of civil fees we carried out last year.

We hope that the Cabinet Secretary for Justice will be able to take early decisions on changes to various aspects of fees. These include the introduction of exceptional cases provisions, taking complex cases out of the block fee arrangements, and an increase to the unit for block fees amongst other things.

LEGAL AID ONLINE - ARE YOU BENEFITING FROM OUR SERVICE?

Legal Aid Online is our quick and easy to use service to submit applications and accounts securely through the internet. Currently it is available for advice and assistance applications, increases and accounts.

Over the last year we have made major changes that have made significant improvements to our service. As a result we now have hundreds of solicitors firms benefiting from using Legal Aid Online.

In the last few months, half of civil advice and assistance applications have been made online.

With many solicitors now benefiting from the simpler and faster processes offered by Legal Aid Online, we are working to expand the service to include civil legal aid. This expansion will be linked to the wider changes to simplify the civil legal aid system, but with our online service offering even greater simplification improvements.

We will be keeping you updated on these online developments.

Online roadshows

During March and April, we are holding roadshows about our Legal Aid Online service, for both current users and those yet to start using Legal Aid Online. We recently wrote to solicitors with details of the dates and locations of the sessions.

More information and a booking form is available at: www.slab.org.uk/online

Not using Legal Aid Online yet?

To help you decide if you should now also starting using the service - even if you have considered it before - we invite you to attend one of our demonstration roadshows that we are holding in March and April.

The sessions will enable staff in solicitor offices to see a demonstration of how to use Legal Aid Online and find out how to make the most of the service's current features and benefits, which include:

- faster processing of advice and assistance applications, increases and now accounts
- quicker decisions
- faster payments
- less paperwork.

Both solicitors and administrative staff can use the service. All you need is access to the internet from your computer. Using Legal Aid Online means you also benefit from:

- quicker form filling - with pick lists and automatic filling in of previously given information so eliminating duplication of effort
- fewer errors and delays - as an electronic form can't be sent if there is incomplete or incorrect information
- your administrative staff filling out and processing web forms
- tracking progress from initial application to payment with information on all contact and decisions made.

You can find out more about Legal Aid Online on our website at www.slab.org.uk/online

If you are ready to start using Legal Aid Online, you just need to register your details with us:

- through our website at: www.slab.org.uk/online
- contact our Legal Aid Online team on 0131 240 2013 or email online@slab.org.uk

CLAWBACK PROVISIONS FOR MORTGAGE RIGHTS APPLICATIONS

Applications for proceedings under the Mortgage Rights (Scotland) Act have been steadily increasing since the legislation came into effect. Our approach to such applications reflects our approach in summary cause recovery of heritable property cases. We look at:

- the substantive defence
- whether there are factors that make it reasonable to defend any action raised, including, for example:
 - whether there are children living at home or elderly relatives
 - whether there is a good reason why arrears have built up and what proposals are being made to sort out any arrears.

Questions of preservation of property arise. Where the lender is raising the action to get money due to them or to take possession of the property to meet the debt owed, the property is at issue in the proceedings. If the assisted person succeeds in resisting the claim, property is preserved.

Where the assisted person continues to hold on to the property, even if they voluntarily sell it, they will have preserved property.

In such situations the clawback provisions apply. We need to know the value of the preserved property.

For clawback, this is the market value less any outstanding securities over the property.

Our Treasury Department staff will be happy to help should you have any queries about this type of case.

CHECK YOUR DETAILS

So that correspondence 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, DX or Legal Post so we can update our records and send mail to you by the right carrier.