

Scottish



Legal Aid Board

**CIVIL ACCOUNTS
ASSESSMENT MANUAL**

[NEW CIVIL LEGAL AID FEES]

NEW CIVIL LEGAL AID FEES

An important part of the Civil Legal Aid Reform structure is a new fees regime. Although new, the individual elements of the scheme are readily recognisable to solicitors who have undertaken civil legal aid in the past. The regulations provide for a single, simplified block fee structure, which will apply to most cases in the Sheriff Court. The exceptions, chargeable on a detailed account basis, are expressly set out in the regulations and include adoption cases, fatal accident inquiries and summary applications. These exceptions and Court of Session cases will continue to be paid on a time and line basis but at increased rates.

The new system differs from the former provisions in that the type of account lodged is determined by the nature of the proceedings.

The fees contained in Schedule 6 (block fees) have been converted into units, each unit currently set at £19.00, to facilitate the future adjustment of rates.

It is hoped that this guidance will assist solicitors to understand and implement the new fees. It will be developed over the coming months, and examples added to take account of any issues or problems which arise.

The regulations are in place. The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2003 (SSI 2003 No. 178) apply to all cases where civil legal aid is granted on or after 1 October 2003. There will, in effect, be two sets of civil fees regulations and two fee regimes running in tandem.

Cases where civil legal aid has been granted prior to 1 October 2003 will continue to be dealt with in terms of The Civil Legal Aid (Scotland) (Fees) Regulations 1989 unaffected by the terms of the new regulations. Also, the new regulations only apply to cases where civil legal aid is granted. Children's legal aid, although regulated, to the extent of the feeing arrangements, by the Civil Fees Regulations is unaffected by the new amendment regulations.

The amendment regulations introduce three new Schedules:-

- Schedule 5 - an updated detailed Table of Fees (time and line)
- Schedule 6 - new, simplified block fee Tables for the Sheriff Court consisting of three Chapters:-
 - Chapter I - undefended Table of Fees
 - Chapter II - defended Table of Fees
 - Chapter III - list of factors allowing an uplift to the fees prescribed in Chapter 2
- Schedule 7 – list of proceedings chargeable on a detailed rather than a block fee basis

The only civil proceedings which will continue to be charged in terms of the old Schedules 1 to 3 are:-

- summary causes – Schedule 2, Chapter III; and
- executry business – Schedule 2, Chapter IV

A feature of Schedule 6, Chapter II (the defended block fee table) is a set of notes or rules providing guidance and forming a framework for resolving any taxation issues which may arise from the application of the Table of Fees. Reference will be made to these during the course of the guidelines.

COURT OF SESSION PROCEEDINGS

A solicitor's fees in relation to proceedings, where civil legal aid is granted on or after 1 October 2003, in the Court of Session shall be calculated in accordance with **Schedule 5** (detailed fees) only.

The fee structure for the Court of Session is currently being reviewed as part of the Civil Legal Aid Reform proposals.

The existing procedure for an additional fee under Regulation 5(4) of the Civil Fees Regulations remains but any uplift is now restricted to 50% in cases to which the new regime applies.

Payments to account will continue to be dealt with in terms of the former provisions of Regulation 11, ie. where a proof or debate or hearing exceeds 20 days or 2 years from the Notice of Grant of civil legal aid.

SHERIFF COURT PROCEEDINGS

Undefended

Undefended proceedings will be charged under **Schedule 6, Chapter 1**.

It is no longer competent to mix undefended and defended block fees in the same account. Where an undefended action becomes defended at any point in the proceedings the solicitor shall charge the whole account on the block defended table of fees. The block defended fees have been set at a level which subsume any element of work which has been undertaken by the solicitor when the action has been undefended. Cases may commence as undefended but become defended at any stage in the proceedings and vice versa. The most common example is in an action of divorce with ancillary craves where the parties have managed to reach agreement on the terms of settlement and the court has interponed authority to a joint minute to allow the action to proceed by way of proof by affidavit evidence. The solicitor will, of course, still be entitled to charge a fee for the framing of any necessary affidavits which are necessary to allow the court to grant decree of divorce.

The process fee and posts and incidents have now been subsumed within the fees, which have been increased in line with the settlement and converted into units.

The format of the table remains largely unchanged except for the provision of an additional fee under Part 1 (all actions except actions of divorce or separation in aliment) for drawing, intimating and lodging any written motion for *interim* orders or diligence, including the first quarter hour of argument and an attendance fee per quarter hour thereafter.

Reference is made to the guidance on motion fees (page 7) as to basis of charging.

Defended

Listed proceedings chargeable on a detailed basis under Schedule 5

The new block fees apply to all defended Sheriff Court actions with the exception of those laid out in **Schedule 7** i.e. –

- Adoptions (including freeing for adoption)
- Conveyancing work required to implement an Order of the Court
- Fatal accident inquiries
- Minute procedure in a closed process
- Proceedings where the assisted person is a curator *ad litem*
- Proceedings where the assisted person is a third party minuter
- Work carried out under Regulation 18 in a case which does not proceed to a grant of civil legal aid.
- Work in connection with drafting and submitting an account of expenses or disputing (on receipt) an opponents account of expenses, including attendance at taxation and taking/opposing Notes of Objections, including taxations instructed by the Board
- Summary applications

Work done in relation to any of the above proceedings shall be charged under **Schedule 5**.

Regulation 18 cases

As can be seen, all work carried out under Regulation 18 in a case which does not proceed to civil legal aid shall be chargeable on a detailed basis. The following block fees apply to all work including work done under Regulation 18 where civil legal aid is made available at any stage.

In the unusual event of a change of solicitor at this stage, in a case which does not proceed to a grant of civil legal aid, both the outgoing and the incoming solicitors will charge, separately, on a detailed basis for work carried out. If, however, the incoming solicitor applies for civil legal aid and the case proceeds to a civil legal aid certificate *both* solicitors shall submit a block fee account in respect of any work which they have carried out.

If both solicitors have carried out work which falls within instruction fee, the fee will be apportioned equally between them. (see page 5).

Over the transition period any detailed fees charged up to and including 30 September 2003 shall be charged under **Schedule 3** work from 1 October 2003 shall be charged under **Schedule 5**.

Block fees chargeable under Schedule 6, Chapter II

New simplified block fees have been prescribed which, unlike the fees prescribed in the existing Schedule 2:

- update Schedule 2 to include procedures which although covered in the judicial table did not have a prescribed legal aid fee;
- allow solicitors more readily to estimate likely case costs for the benefit of the client;
- enable interim payment of fees to be made of blocks completed as at the various reporting stages throughout the lifetime of the case;
- will facilitate E-commerce transactions when introduced;
- provide for waiting time at advocacy rates in connection with certain hearings;
- allow for travel to be chargeable in certain circumstances in addition to the block fees; and
- will allow solicitors to prepare their own accounts in-house. The table has a total of 28 chargeable items.

All Sheriff Court proceedings are chargeable under **Schedule 6** with the sole exception of the proceedings listed in Schedule 7 (above). This is the most important Table of Fees and is likely to be the prescribed basis of charging in some 90% of Sheriff Court cases.

The work in each block requires to be completed before a charge can be made against the Fund.

The fees prescribed in the blocks include –

- all correspondence, telephone calls or communication of whatever nature with the Board;
- all fees incurred by any other solicitor in relation to work done in any part of the case, which shall not be a chargeable outlay;
- copyings; and
- posts and incidental expenses

1 *Instruction Fee*

(a) This fee applies where 1(b) is not being claimed. It will arise in situations where instructions are received not to proceed or, alternatively, no further instructions are given, for whatever reason, all prior to the date appointed for the lodging of defences or the making of an order dispensing with written defences.

(b) This enhanced fee subsumes the former precognitions fee and covers all work undertaken from the time instructions are initially received to raise or defend an action up to the date appointed for the lodging of defences or the making of an order dispensing with written defences. (20 units)

(c) **Counterclaim** – Again, like its predecessor, this fee simply covers the additional work incurred where a counterclaim is lodged. (4 units)

(d) **Transfer of Agency** – This fee is chargeable by an incoming solicitor where there has been a transfer of agency and prescribes a fee for work involved in familiarising the previous agent’s file. It is only chargeable where defences have, or should already have been lodged.

No separate Instruction Fee can be claimed. (8 units)

Transfer of Agency

The fee under paragraph 1(d) “*Transfer of Agency*” is payable on each transfer of agency but it is not payable where an advice and assistance account in respect of the same matter is charged to the Board or the client.

Where there is a transfer of agency, the solicitor from whom agency is transferred shall be paid the whole fee for any completed block done by that solicitor. If there are any partially completed blocks the work shall be apportioned equally between the total number of solicitors who have undertaken work relative to the block fee being claimed. For example, if there are 2 solicitors involved in any particular block payment will be made on a 50/50 split; 3 solicitors 1/3rd split, and so on. The legislation prevents the Board from considering requests from solicitors asking that the fee be split in any other manner.

Solicitors can always come to an arrangement between themselves. As in the criminal summary fixed fee regime where a solicitor, in the circumstances of the case, elects to waive his or her right to payment to any part block fee payment the remainder will be split equally amongst those solicitors entitled to make a claim.

With this in mind we can only consider claims for completed blocks until such time as the incoming solicitor can certify that he/she has completed the uncompleted element of the partial block fee being claimed. This may be by way of a staged payment or a final claim. At this stage payment will be made, on a pro-rated basis, to both solicitors in respect of the block to be split.

2. Progress Fees

(a) This fee subsumes the former Adjustments and Options Hearing fees. It covers all work from the lodging of defences until a point that a Proof or Debate is fixed, including any adjustments and attendance at the Options or Continued Options Hearings. (19 units)

(b) This is a new fee which applies to cases where a settlement is reached **prior** to a proof or debate being fixed. It is designed to cover all work involved in reaching a settlement (negotiations, discussion, voluntary disclosure and all meetings and correspondence) in a situation where this involves the “active participation” of agents.

Note – this fee can not be charged in addition to fee 2(a). However, a solicitor does not require to choose which route to pursue. If settlement, as a result of significant negotiation, is achieved, a claim is made under 2(b). If settlement is not achieved and the case proceeds, a claim shall be made under 2(a).

In the event that the case does not proceed to the conclusion of the steps prescribed by these blocks or settlement in circumstances other than those envisaged by 2(b), no charge can be made under this block and the solicitor will require to rest on the instruction fee.

It is only chargeable in the circumstances prescribed. The solicitor requires to certify that one or both of the following situations apply:-

- 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.
- 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 the work covered by the Instruction Fee.

The purpose of this fee is to recognise a substantial piece of work on the part of the solicitor involving the parties and resulting in an early settlement of the proceedings which, otherwise, would have been unlikely. The criteria set down are aimed at identifying, objectively, either the outcome by turning around the case or the level of work undertaken – and justifying what is a significant fee – in achieving the same.

The factors that the Board or Auditor shall take into account in terms of the regulations in assessing a claim based on paragraph 2(b) will be a lengthy meeting or series of meetings and/or correspondence or other communication between the parties which, together, justify the conclusion that, but for this significant work, the case would have proceeded further at potential cost to the Fund or the parties.

It is important to realise that this fee is not chargeable as a matter of course on settlement of an action.

It is not chargeable, for example, for a settlement in circumstances where the solicitor has simply received instructions from the client not to proceed; or the opponent is prepared to concede, perhaps on civil legal aid being made available to the pursuer; or any other circumstances which lead to a settlement without significant input from the solicitor lodging the claim.

This work shall be clearly documented on the file for perusal, if required, by the Board.

3. Motions and Minutes etc.

- (a) The fee covers work involved in drawing, intimating, lodging, receiving or opposing (if so advised) any **reponing note, written motion or minute** for any party. It includes motions for interim orders.

The fee is payable only in relation to time engaged in the *conduct* of the hearing and any continued hearing. The conduct of the hearing is the actual time involved in the substantive argument and does not include any formal attendance at a hearing for the purpose of seeking an adjournment or other formal attendance not devoted to the stating of the argument.

(i) This fee can only be charged where a hearing before the Sheriff is involved. It does not matter whether the motion is opposed or unopposed. (6 units)

Note – The fee payable under paragraph 3(a)(1) includes the first quarter hour of argument, even if involving appearances on different dates. The fee is not chargeable on a quarter hour block but rather in *actual time* on the total number of minutes taken up in argument at a hearing or continued hearings.

Example 1:-

First Appearance - advocacy 5 mins
Second Appearance - advocacy 6 mins

The initial fee, including the first quarter hour of argument, in this example, would cover *both* court diets. No further attendance fee under paragraph 3(a)(iii) is chargeable in this example.

Example 2:-

First Appearance - moving for adjournment (unopposed) – no charge
Second Appearance - Motion for adjournment (opposed) – 8 mins – advocacy 8 mins
Third Appearance - argument on substantive issue – 10 mins (adjourned) - advocacy 10 mins

In the first appearance the 15 minutes, included in the block fee, does not start to run. 8 minutes of the block is taken up in the second appearance. The third appearance takes the total time for advocacy to 18 minutes. The fee chargeable is one unit under paragraph 3(a)(iii), the first 15 minutes being included in the block fee prescribed by paragraph 3(a)(i).

Argument covers not only argument on the substantive issue raised in the motion but would also include argument on, for example, an associated legal point or, when opposed, on the need to adjourn.

Waiting time is not chargeable. It is only chargeable under paragraph 6 (“conduct and waiting”).

(ii) The fee where no hearing is required. (2 units)

(iii) The fee for attendance where the hearing, including any continuation, exceeds 15 minutes, as prescribed by paragraph 3(a)(1). (1 unit)

(b) **Minute of Amendment.** This fee covers drawing or receiving where the assisted person is bringing the Amendment and no answers are lodged. (4 units)

Note – This fee is only chargeable where –

- it can be shown that the Minute was necessary due to a new development in the case;
- it contains relevant information which was previously unknown to the solicitor; or
- the work could not have been done at an earlier stage in the proceedings

The purpose of these provisions is to ensure that the Board is not charged for work carried out by the solicitor bringing the Amendment where the work could have been done at an earlier stage prior to the Record being closed. The fact that the court allows a Minute of Amendment does not in any way affect the reasonableness of the work having been carried out unnecessarily at this late stage.

This does not apply to the solicitor having to respond to the Minute of Amendment.

(ii) The fee where the amendment is sought by another party and no answers are lodged. (2 units)

(iii) The fee where the Minute is answered, to include adjustment. (6 units)

(c) **Specification of Documents** (i) This fee covers drawing, intimating and lodging the Specification. (4 units)

(ii) The fee chargeable to the opposing solicitor is (2 units).

4. *Miscellaneous Fees*

(a) **Affidavits** – As in Schedule 4 this covers framing, per sheet (1 unit). However, unlike the old fees, no separate notarial fee can be claimed. The above fee subsumes the notarial work unless the affidavit has required to be notarised by an external Notary Public for which a fee of 1 unit will be chargeable. Where the affidavit requires to be notarised outwith the UK, payment of the reasonable outlay will be made.

The following fees under paragraph 4(b), (c), (d) and (e) are payable only once in any case:

(b) **Contact Arrangements** – This fee is for work carried out in arranging or attempting to arrange *interim* contact arrangements, if appropriate. (6 units)

(c) **Notice to Admit** – This fee is for preparing and serving/receiving a Notice to Admit and serving a counter notice, if required. (4 units)

(d) **Joint Minute of Admissions** – Fee for preparing/considering/executing a joint minute of admissions. (4 units)

(e) **Settlement Conference/negotiation** – This fee is payable for work in participating in a settlement conference or negotiation **after** the allowance of a proof or debate in circumstances where the solicitor making the claim is authorised in advance by the client to participate.

This is the second opportunity given to settle a case. The first in the fee prescribed by paragraph 2(b) [see p. above] **before** the allowance of a proof or debate.

The purpose of this fee is to identify the situation where a meeting or, otherwise, negotiation, takes place specifically with a view to settling the matter (thus the reference to the conference or negotiation being “authorised in advance by the client ...”).

For the same reason, payment of the fee is hedged by the qualification that a settlement conference or negotiation takes place in one location or by telephone. This fee is payable in relation...

relation to one meeting (including a continued meeting) in relation to any case and is payable only where:-

- negotiation commences more than 14 days prior to the proof; and
- the fee under paragraph 4(f) is not charged in the case

As in paragraph 2(b) this fee does not simply follow from settlement. It is recognition of a specific attempt to 'step back' and settle a case at this stage.

Where this fee is claimed the work done shall be clearly documented on the file, for perusal, if required, by the Board. (Subject to a maximum charge of 8 units).

- (f) ***Extra Judicial Settlement*** – Fee for all work required to formalise settlement. (8 units)

This fee can only be claimed where no other attendance fee is claimed in relation to any appearance at which authority is interponed to the Joint Minute.

It is not payable where any fee is claimed under paragraph 5(a)(ii) or (iii) which fees subsume this work. The preparation fee under paragraph 5(a)(i) is, therefore, chargeable in addition.

- (g) ***Minute of Agreement*** – Fee for drawing/revising a Minute of Agreement necessary to accomplish or record the overall settlement, per sheet (1 unit)

This fee is subject to a maximum charge of 8 units.

- (h) ***Report Fee*** - Fee for instructing (if required), perusing and taking instructions on **any** report at least **4 sheets long** obtained from a **professional or expert witness**.

- (i) Where the report is sought by the Assisted Person's solicitor (4 units)
- (ii) Where the report is ordered by the court (4 units)

This fee represents a departure from the provisions in Schedule 2 where a fee is only allowed where reports are obtained under an order of court.

- (I) ***Additional Procedure*** – Additional fee where Additional Procedure invoked (including attendance at any procedural hearing(s) (4 units)

Again, there is no provision for this in Schedule 2.

- (j) ***Third Party Minuter*** - Additional fee where action involves a third party minuter at any stage (4 units)

5. ***Preparation***

(a) ***Preparation for proof fee***

- (i) Fee where action **settled or abandoned** not later than **14 days** before the diet of proof. (18 units)

Note – This fee is chargeable only once in a case.

- (ii) Fee where the action settles within 14 days of, or on the day of, or after the Diet of proof but without evidence being led (24 units)

Note – This fee is chargeable only once in a case.

(iii) Fee in any other case where evidence is lead (including settling with witnesses and enquiring for cause at avizandum, if required.) (36 units)

Note – This fee is chargeable only once in a case. It includes any preparation for a debate on evidence.

Preparation fees

A solicitor is not entitled, in terms of the Table of Fees, to receive payment by way of a preparation fee unless the proof is fixed and the case subsequently proceeds to proof or has been “settled or abandoned”. Where the case has been settled or abandoned and a proof or debate has been fixed, the solicitor will be entitled to the lowest preparation rate. In the event that the case is settled or abandoned within 14 days of the proof diet the middle preparation fee falls to be charged. It is thought that most cases, notwithstanding the circumstances, will involve settlement or abandonment. A possible exception is where legal aid is withdrawn and the client refuses to abandon the proceedings. No preparation fee would be payable in these circumstances.

(b) **Preparation for Debate** – Fee to cover all work in preparing for any debate (8 units)

Note – This fee can only be claimed in relation to a debate in law.

(c) **Preparation for Child Welfare Hearing** – Fee to cover all preparation (4 units)

Note – This fee covers preparation for all continued diets. A further preparation fee can only be claimed in relation to a subsequent *distinct* Child Welfare Hearing being fixed by the Court in response to further identifiable circumstances.

The Board will assume that any hearing following shortly after the initial diet is a continuation unless there is clear information in support of any further hearing being a distinct Child Welfare Hearing being fixed by the court.

Payment of the fee for attending the hearing will always be payable.

(d) **Commission to Take Evidence** – Fee to cover all work preparing for the taking of evidence or executing specification on open commission or on optional procedure.

The usual requirements regarding sanction remain unchanged.

(i) Fee for solicitor arranging commission (8 units).

(ii) Fee for opposing solicitor (4 units).

(iii) Where optional procedure adopted, fee for each person on whom the specification is served (1 unit).

(iv) Fee for perusing documents recovered, per 15 minutes (1 unit). This work is covered by a time charge.

(e) **Preparation for Appeal** – This fee is for all work preparing (including marking or noting) of appeal for an appeal to the Sheriff Principal. (12 units)

This fee should not be treated as an inference that an appeal is automatically covered under the original grant of legal aid where this is a case of first instance. Appellate proceedings before the Sheriff Principal are “distinct proceedings” in terms of the Regulations and a fresh application is generally required.

[The exception to this rule is where an appeal is being taken or opposed in connection with an *interim* order, and the applicant holds a legal aid certificate for proceedings in the court of first instance, that certificate can be extended to cover such an appeal, rather than requiring a fresh application].

6. **Conduct & Waiting** – The fee chargeable for waiting for or attendance by solicitor at the conduct of any hearing referred to in paragraphs 5(a) to (e), per 15 minutes. (1 unit)

Waiting time – Fees are now chargeable in legal aid cases for waiting in connection with certain hearings and at the same level of remuneration as for the conduct of the proceedings. Waiting time can only be claimed in relation to attendance at the hearings specified in paragraph 5. It is only chargeable from the time appointed by the court for the hearing to commence or from the conclusion of any other business (including non legal aid cases) ending prior to the hearing commencing, whichever is the shorter.

Conduct - This fee covers attendance by a solicitor at the conduct of any of the hearings referred to in paragraph 5. It is payable either in respect of advocacy or in attending with counsel and is payable at the same rates notwithstanding. The fees, chargeable under Schedule 2, for instructing counsel to revise pleadings or to attend court and for attending consultation with counsel have been subsumed within the fees chargeable under paragraph 6.

The conduct and waiting fees are chargeable based on the total actual time engaged *throughout the proceedings*, even if on different occasions, rounded up at the conclusion of the proceedings, and is payable cumulatively between waiting and conduct time.

This means that a record should be kept on file of the *actual* waiting and conduct time spent at each hearing. The cumulative time spent at the conclusion of the proceedings is then rounded up to the nearest 15 minutes and the total fee under paragraph 6 is chargeable to the Board on this basis.

It is not appropriate for a solicitor to round up waiting time and conduct time, separately or cumulatively for each hearing.

TRAVEL TIME

The block fees chargeable include all travel to court, unless:

- (a) The solicitor claiming travel time is a solicitor with whom the client has had significant contact in relation to the conduct of the case. If the nominated solicitor or another solicitor in the firm who has had significant involvement with the client is unable to attend a hearing in a distant court then a local agent, properly instructed, should be used. It is not a proper charge to instruct a solicitor local to the firm, without such involvement, to undertake this work in another jurisdiction.

- (b) The solicitor's attendance was necessary to advance the case. Local agents should be used for distant court attendances unless the solicitor who has had significant contact in relation to the conduct of the case can demonstrate that it is reasonable and necessary to protect the client's interests that the solicitor requires to attend court personally.

Various consideration should be taken into account in forming a view:-

- the distance involved;
- the nature and purpose of the Hearing; and/or
- what is to be achieved in furthering the case by personal attendance;
- the nature and complexity of the proceedings;
- the availability of local agents.

It is not possible to prescribe the circumstances in which a local agent should be instructed but the following list is an indication of the situations in which the Board would not, in normal circumstances, consider it reasonable for a solicitor to undertake the travel, and the increased expenditure:-

- where it is known in advance that the Hearing is to be adjourned;
- where the Hearing is routine or procedural, or which does not advance the cause;
- where negotiations take place at court which could have been carried out earlier by way of correspondence in a more economical manner.

These situations are simply a statement of the most obvious examples of a situation in which the Board would not consider it appropriate to pay for the additional cost of a solicitor's personal attendance at court. It is by no means an indication that all other situations would be considered appropriate and should not be construed as such.

- (c) The distance travelled is at least 10 miles in each direction from the solicitor's normal place of work (and no travel time shall be payable in respect of the first 10 miles travelled in each direction).

Example 1

The solicitor's normal place of work is 9 miles from the court. No travel time is chargeable.

Example 2

The solicitor's normal place of work is 14 miles from the court. The total return journey amounts to 28 miles from which falls to be deducted the 20 mile corridor (each direction) in respect of which travel has been subsumed by the fees. The total distance for which the charge can be made is 8 miles.

- (d) When payment for travel time is claimed for more than one case, the time shall be apportioned equally between the various cases for which the solicitor attended court (including non-legally aided cases).

Travel expenses can only be incurred where travel time is chargeable.

Travel expenses – Where travel time is chargeable, reasonable travel expenses i.e. mileage or train fares, can be claimed. The regulations provide that the solicitor should travel by public transport where it is more cost effective to do so. An obvious example of this would be taking a train from Glasgow to Edinburgh as an alternative to driving.

Time spent on travel is chargeable at 80% of the unit per 15 minutes.

It should be charged separately from conduct and waiting time incurred under paragraph 6.

EMPLOYMENT OF COUNSEL

As indicated, there are no prescribed fees to cover work undertaken by a solicitor who has obtained sanction to employ the services of counsel.

The solicitor will still be entitled to charge any completed block fee where counsel has acted. For example, where counsel has conducted the proof the solicitor will still be entitled to make a claim for the attendance at the proof diet. In line with normal practice the solicitor should continue to prepare a full and proper account and include counsel's fees.

Payment will continue to be made to counsel direct.

The solicitor should be aware that where counsel has been sanctioned fees will only be allowed for the following items of work:-

- except on cause shown, fees to counsel will be restricted to only two consultations in the course of the cause ; and
- except on cause shown, fees to counsel shall not be payable for attendance at hearings which are routine or procedural or which do not advance the cause.

STAGE REPORTING

The current situation where the grant of a civil legal aid certificate entitles the solicitor to conduct a litigation to a conclusion without reference to the Board, apart from sanction requests etc, irrespective of any change in the prospects of success or the cost of litigation as it develops will radically change in case where civil legal aid is granted on or after 1 October 2003.

As part of the civil legal aid reform arrangements, solicitors will now have an obligation to report at "key" stages during the proceedings. These reports will include details of the progress made in the case since civil legal aid has been granted and allow the Board to take a more pro-active and informed view as to the continuing probable cause and reasonableness in allowing civil legal aid to continue.

The reporting procedure will be compulsory in certain situations but the system will also operate an *ad hoc* or "unprompted" reporting regime to allow solicitors to submit reports at key stages during the proceedings.

The reporting stages agreed with the Law Society of Scotland for the purposes of the new civil regime are as follows:

Compulsory Reporting Stages

- A solicitor should submit a report to the Board when a proof or debate has been assigned or 12 months after the grant of civil legal aid – whichever is the earlier.
- In family cases, involving a child welfare hearing, a solicitor should submit a report to the Board when a proof or debate has been assigned or six months after the date of grant of civil legal aid – whichever is the earlier.
- Each subsequent 12 months after the initial report.
- Final report at conclusion of proceedings for which legal aid has been granted (not the submission of the account).

The separate provision in family cases, involving a Child Welfare Hearing, have been made to reflect the potential for the different case profile in certain family cases which might involve a number of Child Welfare Hearings and where the setting of a proof or debate may be later in the proceedings or not arise at all. On receipt of a reminder from the Board after six months from the date of grant of civil legal aid where no Child Welfare Hearing has taken place the solicitor should simply advise the Board of this fact and the system will be reset to expect a 12 month report (or a report when a proof or debate has been assigned if earlier).

Ad hoc or Unprompted Reporting Stages

A solicitor should submit a report to the Board in circumstances in which there has been a material change in the underlying factors in which civil legal aid was granted, which circumstances shall include:-

- where the case is sisted (not, however, where sisted for legal aid).
- to advise of the outcome of a debate.
- where a proof diet is adjourned.
- where a minute of tender is lodged but rejected.
- where there has been a material change in circumstances.

PAYMENTS TO ACCOUNT

Fees

Payments to account can only be made to a solicitor on receipt of a report lodged at a compulsory reporting stage.

The Board's system will flag up the 6/12 month time-based report stages respectively and will also give solicitors 28 days grace in which to provide the report. A report provided within the 28 days will be considered to be timeous.

In the event that a compulsory report is not timeous, no payment to account shall be made. This, however, will not preclude payments to account at a later stage in the same proceedings where the solicitor does lodge a compulsory report timeously.

Payment in respect of the work where a payment to account has been withheld will be paid at the conclusion of the proceedings on receipt of the solicitor's final account. The Board does reserve the right, however, to challenge any work carried out in circumstances where the Board would have considered suspending or terminating the certificate or would have challenge the course of action taken by the solicitor had the solicitor reported timeously.

Cases where civil legal aid is granted prior to 1 October 2003 shall continue to be dealt with as before.

Block Accounts

The solicitor shall be entitled to payment of any blocks *completed* as at the stage of each compulsory report. The claim should be submitted on form SLA/POA/3.

Detailed Accounts

The payment on account rules under schedule 5 (detailed fees) will be:-

1. The solicitor is again entitled to submit a claim at each compulsory report stage, and should submit the claim on form SLA/POA/3 detailing a note of the fees incurred as at the date of the report.
2. No detailed account is required at this interim account stage. The interim payment payable by the Board shall be 75% of the fees that are eligible for payment and earned during the period covered by the claim.

Outlays

The current administrative arrangements for payment to account of outlays will continue.

ADDITIONAL FEES

The rules for considering payment of an additional fee (previously a percentage uplift) in defended Sheriff Court cases has radically altered for those cases where legal aid has been granted on or after 1 October 2003. [For cases granted prior to the 1 October the existing rules and regulations still apply].

Both the *factors* and the *procedures* have changed:

Factors to be applied:-

The 8 factors (a) to (g) or "pillars of wisdom", as they were more commonly known, will no longer apply. They have been replaced by six clearly identifiable and objectively verifiable criteria which the Board will now consider before allowing any additional fee. It is important that the solicitor can demonstrate in the application for an additional fee that any or all of the circumstances.../

circumstances below have had *a significant effect on the conduct of the case* which justifies a payment over and above the prescribed fee. The Board has sole discretion when considering whether or not to allow any uplift although given the nature of the factors there should be little room for disagreements.

Circumstances in which Board may allow an additional fee

The factors set out in Schedule 6 Chapter III are as follows:-

1. That the client's inadequate knowledge of English required the obtaining of instructions through an interpreter.
2. That the assisted person although able to attend at the solicitor's office suffered for a significant period of the case from a mental disorder within the meaning of section 1 of the Mental Health (Scotland) Act 1984.
3. That the assisted person suffered from a physical disability which necessitated a significantly lengthier process than would normally have been encountered in the taking and obtaining of instructions.
4. That the assisted person was, for a significant period in relation to the overall duration of the case, unable to attend at the solicitor's office by reason of disability, illness or imprisonment.
5. That the nature or circumstances of the case necessitated significant attendance to its progress outwith normal office hours.
6. That the law in relation to the matter at issue was particularly complex and involved an area of law with which a solicitor engaged in general court practice would be unlikely to be familiar.

NOTE:

The additional fee allowable shall be 10 per cent of the fee authorised under Schedule 6, Chapter II in respect of each factor which exists, up to a maximum in any case of 40 per cent of that fee.

Except where an uplift is granted on ground 5 or 6 above, the element of the solicitor's fee subject to an uplift will exclude any amount charged in relation to time spent travelling to, or waiting or appearing at, court. This provision does not appear to specifically exclude other travel.

Only one of paragraphs 2, 3 and 4 may be claimed in any case.

Procedure for applying for an additional fee (uplift)

The arrangements currently envisaged are as follows:

- No motion is made to the court;
- An application can be made before the account is submitted or in tandem with the account;

- The solicitor should submit an application to the Board setting out each factor under which an additional fee is being claimed and the detailed circumstances in support of the uplift.
- A report on the outcome of the application, or a request for further information, will be sent to the solicitor within 28 days of receipt of the application;
- If the application is granted, the additional fee percentage will be clearly recorded and, if prior to lodging account, a copy of the confirmatory letter from the Board should accompany the solicitor's account ;
- In the event that the application is rejected a solicitor can seek a review of the decision. The review application will be considered within 28 days of receipt of the review request.

