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TO: All legal aid practitioners

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Your ref:

*Please quote the department above and
our reference: **Civil Registration / 2***

5 September 2003

Dear Sir / Madam

CIVIL LEGAL AID REFORM MAILSHOT 2

APPLICATIONS AND REPORTING

This mailshot covers the new applications and reporting system and is the second in a series of mailshots providing information about the civil legal aid reforms. Because it contains guidance notes it has been sent to all legal aid practitioners. The first mailshot, covering civil registration, was recently sent to all firms; if you think that your firm may not have received a copy please telephone 0131 226 7061 and ask for extension 342 to request a copy or download one from our website www.slabpro.org.uk (the username for the website is procurator and the password is LAACT1986).

The reform will include changes to the application system and the introduction of a reporting system. Copies of the following revised forms and an order form to obtain further copies will be sent to provisionally registered firms later this month:

- solicitor's form
- applicant's forms (along with information booklets)
- reporting form
- SU2
- SU4

To assist you with preparation for the implementation on 1 October, I enclose advance copies of the solicitor's form and the reporting form, along with guidance notes. There may be some minor changes to the forms before they are finalised (for example, in relation to size of the some of the text boxes or the positioning of the icons), but the changes are unlikely to be significant.

The new system will:

- simplify the applications process by, for example, relaxing the acceptance criteria for the registration of applications, reducing solicitors involvement in means assessment, cutting the number of forms and addressing the practical difficulties associated with special urgency;
- provide for more focussed applications by obtaining the solicitor's views on how the statutory tests are met and by enabling the components of the tests to be dealt with in a more detailed way, thereby leading to more informed decision making, less continuation and more consistency;
- provide the mechanism by which solicitors receive payments throughout the life of the case through the reporting system, thereby improving cash flow;

- abandon the concept of a legal aid certificate for the life of the case, thereby continuously testing the assumptions on which legal aid was originally granted, creating a fairer system for the assisted person and opponent;
- aid access to justice by providing a mechanism whereby contributions may be tailored to estimated case costs and those who otherwise might be over the capital threshold may be brought within the system;
- facilitate the transition to e-business by reconfiguring the forms.

Applications process

We are aware that many solicitors find dealing with the financial aspects of the legal aid application time consuming and problematic and would prefer to concentrate on the legal aspects of the case. We also consider there to be benefits in the Board having more direct contact with applicants on means issues to reduce the time taken to deal with these decisions. We have therefore decided to introduce two separate forms: the solicitor's form which deals with the merits of the case and the applicant's form which deals with the financial aspects.

The solicitor should complete the solicitor's form and ask the applicant to complete one of the applicant's forms (financial eligibility form CIV/FIN/2 or, if the applicant is in receipt of Income Support or Income based Jobseeker's Allowance, payments from the National Asylum Support Service or is applying on behalf of a child, CIV/FIN/1). In addition to signing the applicant's form, the applicant will need to sign the solicitor's form and (unless you are unable to obtain his/her signature in cases of special urgency and wish the Board to consider using its discretion to allow your signature) the statutory statement (previously referred to as "memorandum").

The applicant's financial forms ask for broadly the same information as is currently required. We have, however, consulted with consumer organisations and design, plain language and usability experts to make the forms more user friendly. Because of the separation between the merits and the means sides of the application, the means forms encourage applicants to contact the Board rather than their solicitor for assistance with the completion of the financial form. We recognise that many applicants will need support and assistance with the form and our guidance for applicants will direct them to staff within the Means Unit who will be able to give them the appropriate specialist advice.

Please send the completed and signed forms to the Board together. Where the solicitor's form is lacking some required information we will, rather than returning it as incomplete, register the application and undertake any part of the decision making process that is possible given the information provided. At the same time, we will contact the solicitor to request the missing information and will copy this to the applicant. Where the means form is lacking some required information we will contact the applicant to request the missing information and advise the solicitor that we have done so. We anticipate that these changes will reduce bureaucracy and increase efficiency for both the solicitors submitting the applications and the Board and overall reduce the length of time required to process civil legal aid applications.

Whilst preparing for the implementation of this reform we have also taken the opportunity of revisiting our approach to the way in which we inform applicants of a contribution we have assessed them able to pay.

As of 1 October 2003, when we determine that legal aid should be granted with a contribution we will inform applicants of the grant of legal aid and the conditions under which it is made. Included in this is a move away from the current approach of offering legal aid subject to a contribution, towards one in which the applicant takes an informed decision to instruct the solicitor to proceed to act based on his/her knowledge of the benefits and consequence of the grant of legal aid. We think that this will place a legally aided person in a position more in line with that of privately paying litigant who decides to instruct a solicitor to act.

When advising applicants of the grant of legal aid and the conditions under which it is made, we will advise them that they have a number of options open to them, these are:

- That they can pay the contribution we have assessed and ask their solicitor to start working on their behalf – as discussed above.

- If they think the contribution we have assessed has been wrongly calculated they can ask us to reconsider it either directly or through their solicitor. We will ask them to do this as soon as possible and in any event before the first instalment of the contribution falls to be paid.
- We will make it clear to them that if they do not want to pay the contribution towards the costs and as a consequence do not pay the first instalment of the contribution, the grant of legal aid will be withdrawn.

In the guidance we will issue to applicants we have also made it clear that if they do not wish to pay the contribution they should not instruct the solicitor to act. If however, regardless of this, they still issue those instructions then they may be required to pay the costs of the work done by the solicitor up to the amount of the contribution we have assessed.

Given that under the new arrangements a legal aid certificate will be issued without the necessity of any offer and acceptance process it is important that the solicitor makes sure that he/she has instructions from the client to start working.

In addition, solicitors should be aware that they should not proceed to work on a case where the client is in receipt of a passported benefit or is granted legal aid without a contribution until they have received instructions to proceed from the client. This is important since should the client's circumstances change, he/she may remain eligible to receive legal aid but become liable to pay a contribution.

Solicitor's form

The design of the form incorporates a number of fundamental changes to the process. These have been designed to provide more focus on the statutory tests, avoid the need for initial knock backs and continuations and reduce the proliferation of ancillary forms and documents. They minimise the scope of us receiving incomplete applications and facilitate improved decision making.

You will see that Section C enables you to notify us of specially urgent work already commenced under Regulation 18(1)(a). This means that you will not normally have to complete a separate SU2. The only circumstance in which this will be required is where you have submitted a solicitor's application form and then require to take special urgency steps under Regulation 18(1)(a) before we have notified you of the decision in respect of the application. In addition, whether using Section C of the solicitor's form or the revised SU2 form, you will be required to provide less information than is currently required; in particular, we will not require details of the steps undertaken. The procedure for using the form SU4 when seeking certification remains unchanged.

We recognise that in some cases it may be possible to identify the need for counsel or an expert at an early stage and have incorporated a section to allow you to apply for sanction at the time the application is submitted by completing Section F. We will only use this information and consider an application made for sanction if and when civil legal aid is granted or if the sanction is applied for under Regulation 18. The information requested is the same as would be required if you were completing a separate form to request sanction for counsel or expert witness. A separate form may still be required when sanction is requested at a later stage.

You will see from the enclosed example solicitor's form that there are some new questions, including regarding the solicitor's assessment of probable cause and reasonableness. We believe that the solicitor's form will assist solicitors to submit applications more closely focussed on the statutory tests which, in turn, will help the Board's decision-making process. Pages 3–7 of the enclosed guidance notes cover completion of this part of the form.

You will also see that in the notes we have given examples of "templates" for statements (i.e. memoranda) that we hope will be of assistance to solicitors.

We expect that the new forms may lead to a reduction in the volume of supporting information which solicitors are required to submit with applications. You will see that where there is special urgency, the supporting information need not be sent with the application but may follow when it is to hand. This will assist with some of the difficulties encountered with the timescale associated with Regulation 18.

Reporting process

The introduction of the reporting process whereby solicitors submit reports at key stages of the case will assist solicitors and the Board to review developments in the case. The receipt of reports at key stages will allow the Board to consider whether legal aid should continue and, where legal aid continues, the solicitor will have the assurance of knowing that the case has been reviewed the Board. The reports, which will be copied to the assisted person, should also be helpful in keeping them informed about their case at the key stages. It will result in a fairer system for opponents who will also have the assurance of knowing that the case is being regularly reviewed. Additionally, the reporting system provides the mechanism by which solicitors will receive payment throughout the life of the case. Each compulsory report will enable payment of the completed blocks at that stage to be paid. This will improve cash flow.

The section on the reporting form in the enclosed guidance notes cover when reports should be submitted and completion of the reporting form.

Further information

As indicated on the first page of this letter, copies of the solicitor’s form, the applicant’s forms, the reporting form, the SU2 and the SU4 will be available later this month and you are asked to use these forms with effect from 1 October. We recognise, however, that there will be cases in the system in the run up to 1 October in which old forms are still in use. These forms can continue to be used up until the end of October should, for whatever reason, you not be able to secure a supply of the new forms. Where this is the case, we will ask you for any additional information which is contained in the new but not the old forms.

We are also in the process of revising the ancillary forms, such as the forms to request sanction or cease acting. You will receive further information about these shortly but, in the meantime, please continue to use the current forms.

We understand that the Law Society will be issuing shortly detailed information about the Quality Assurance scheme and we will issue within the next week or so a mailshot covering fees and accounts.

Yours sincerely



Tom Murray
Director of Legal Services and Applications

Telephone Helpline

If you have any queries about completion of the application or reporting forms please telephone our Civil Legal Aid Reform Helpline on

0131 240 2007

You can also use this number if you have a query about the registration process or accounts under the new system

Alternatively, you can e-mail us with any queries - civilreform@slab.org.uk

If you have any queries about the Quality Assurance system please telephone the Law Society on 0131 476 8147.

Have you missed any information?

Previously issued mailshots about the civil legal aid reforms

| Details of Mailshot | Date of issue | Issued by | Issued to |
|----------------------------|------------------------------|------------------|------------------|
| Mailshot 1 – Registration | 29 August - 1 September 2003 | Board | All firms |