

SUMMARY CRIMINAL LEGAL ASSISTANCE REFORM

REVISED PROPOSALS FOR SUMMARY CRIMINAL LEGAL ASSISTANCE 28.2.08

1. INTRODUCTION

This paper summarises revised proposals for the reform of summary criminal legal assistance taking into account:

- revised system model figures produced by the Crown;
- the responses received so far to the consultation document published by the Scottish Government and the Board in October 2007;
- feedback from the roadshows; and
- constructive discussions involving representatives of the Law Society and local faculties, the Scottish Legal Aid Board and the Scottish Government.

The Cabinet Secretary for Justice, Kenny McAskill, MSP, agreed an extension to the consultation period beyond 24 December 2007 to mid February 2008 to allow further discussion on possible changes to the legal aid proposals. However, such changes would only be considered where they supported the summary justice reform system model, were affordable in the very tight financial constraints that are faced, and were achievable through secondary legislation.

During this extended period detailed discussions have been held between representatives of the Law Society and local faculties, officials from the Scottish Government and the Board. A number of possible changes to the payment proposals were discussed. The profession's representatives made it clear that while they were able to negotiate legal aid changes arising from the reforms, and to take back agreed recommendations, they were not empowered to take decisions on behalf of the Society and the membership.

The profession's representatives also made it clear they favoured a time and line system for payment but would negotiate a system preferred by the Government of a front loaded system if that:-

- minimised bureaucracy;
- introduced a case disposal fee for sheriff court cases;
- retained differential payments for ABWOR and summary criminal legal aid in the JP court;
- differentiated between fees for work in the Sheriff and JP courts; and
- allowed self-certification of the ABWOR interests of justice test for some categories of case in the sheriff court.

These discussions were useful and have led to a number of changes to the original proposals (see **Appendix 1** for a summary of the original consultation proposals) reflecting preferences expressed by representatives from the profession if a front loaded system is to be introduced.

This has resulted in revised proposals and the following table shows how it is now proposed to set the fees for Sheriff/Stipendiary Magistrates and JP courts under the option favoured by the Scottish Government and the Board (see section 4 of this paper). The "case disposal fee" referred to below is the fee payable under either ABWOR or summary criminal legal aid where the case is disposed of prior to the trial in the Sheriff or Stipendiary Magistrates courts.

	Sheriff/Stip Magistrate Case disposal fee	J P Court Summary Legal Aid	J P Court ABWOR
Fees under favoured option	£515	£315	£150

These revised proposals are, however, to some extent interim in nature because current changes can only be effected through secondary legislation. It is planned to keep the operation of the new system under review with the intention of making changes should unforeseen consequences render this necessary. The Cabinet Secretary has given a commitment to an initial review of the operation of the reforms around December 2008, and in the meantime the Scottish Government would work with the profession and the Board to identify further reforms which might further support the new summary criminal justice system. Changes whether requiring primary or secondary legislative change would be introduced at the earliest legislative opportunity.

It is also planned to review the reforms fully in 18-24 months and consider whether further legislative changes may be required.

In the meantime this paper is being circulated to the profession in advance of a final meeting between the Cabinet Secretary, representatives of the Law Society, local faculties, Scottish Government and the Board, following which regulations will be made with a view to implementation of the summary criminal legal assistance reforms in June 2008. This represents a very tight and challenging timescale.

2. MAIN ISSUES ARISING FROM THE RESPONSES TO THE CONSULTATION PROPOSALS AND THE ROADSHOWS

The main legal aid issues raised in the consultation responses and the information seminars were:

- Concerns about the Government's estimates of case volumes;
- Support for the increased use of solicitors of choice in custody/undertaking cases;
- Concerns that some of the proposals may increase bureaucracy;
- Concerns about the differentials between sheriff court and district court fees;
- Access to justice concerns resulting from the higher financial test for ABWOR than for Summary Criminal legal aid;
- Concerns about the adequacy of the proposed new fee rates in general;
- Concerns about the Board wanting to see the disclosable summary; and
- Concerns about likely reduction in solicitor incomes.

These and other issues arising from the roadshows and the discussions with the profession's representatives have been taken on board in the extended consultation period and incorporated, where appropriate and possible, in the alternative proposals.

3. REVISED SYSTEM MODEL FIGURES

In January 2008, revised System Model figures were provided by the Crown Office and Procurator Fiscal Service and validated by the Scottish Court Service and Scottish Government. These figures revised the estimates for the levels of summary criminal business, post summary justice reform, including different assumptions for the levels of direct measure business.

The revised figures use 2006/07 figures instead of the 2005/06 figures contained in the consultation and are detailed in **Appendix 2**. The key changes affecting summary criminal legal assistance are:-

- a substantial increase in cases moving from the sheriff to the JP courts (12,000 RTA cases as opposed to 8,500 and 5% (4,620) common law offence cases);
- a substantial rise in anticipated direct measure challenges (16,000 to 26,000); and
- a likely increase in the anticipated levels of post conviction breaches from 6,000 to 12,900.

A key assumption is the level of challenged direct measures. It is impossible for the Crown to predict accurately how people will respond to the new measures and how the higher fiscal fines may influence behaviour.

The Crown therefore considers it prudent to assume that up to half of those who currently do not accept the fine offered may wish to resist it and insist on a hearing or press for a recall. It is for these reasons that the Crown consider it better to make a cautious assumption by moving their assumption up from the 10% used earlier rather than risk the system being unduly pressurised by unanticipated business.

The profession's representatives challenged this anticipated rise favouring the lower challenge level of police direct measures. The new system for opting out of fixed penalties issued by the police has shown a challenge rate of around 0.3% rather than the original level of anticipated rate of 5%. It was however considered that using the police direct measures figures could result in a significant underestimate, given the higher penalties being introduced.

However, as already stated, the Cabinet Secretary has given a commitment to keep under review the operation of the reforms. This will include revisiting these assumptions.

The Board looked at the likely impact of these revised assumptions on the previous costing work, as proposed in the recent consultation paper. **Appendix 3** shows these assumptions.

It is important to recognise that if no changes are made to the legal aid provisions the implementation of summary justice reforms would result in a reduction in solicitors' income of around 18%. This is because of the reduced number of cases to be dealt with in court and the substantial movement of cases from the Sheriff court to the JP court. Under the revised legal aid proposals the Government has agreed to a substantial re-investment of the savings into additional fees for solicitors. It is estimated that, overall, fees for solicitors in summary cases will reduce by 7%.

It should also be borne in mind that expenditure on summary criminal legal assistance has increased by around 12% in the past 5 years.

4. FAVOURED OPTION

Consideration of the issues raised at the roadshows, in the responses to the consultation document and from the course of the recent discussions with the profession's representatives along with the revised system model figures have allowed a number of improvements to the revised option, now favoured by the Scottish Government and the Board. This "favoured option" departs from the original consultation proposals in a number of respects by making the following changes:-

Sheriff Court Cases

- Introducing a system of fees in the Sheriff and Stipendiary Magistrate courts for cases disposed of before trial (case disposal fee) to replace the current system of differential payments for ABWOR and summary criminal legal aid. The case disposal fee for cases for which ABWOR or summary criminal legal aid has been granted in the Sheriff Court will be **£515**.
- The case disposal fee will cover:
 - all preliminary work carried out under advice and assistance;
 - all continuations without plea;
 - up to two deferred sentences. (Including up to 2 deferred sentences means the case disposal fee can be set considerably higher. This is because of the range of deferred sentences cases can attract, **Appendix 4** shows the incidence of deferred sentences in Sheriff and District Courts);
 - all police station visits unless these can be shown to be exceptional in which case a separate payment will be made on a time and line basis;
 - all work up to and including the first half hour of the trial.

The case disposal fee does not include the following for which additional payments will be made to cover:

- the third and subsequent deferred sentences at £50 each;
 - exceptional police custody visits on a time and line basis.
(Exceptional payments will only be considered where the travel to and time spent including waiting and attendance at the station exceeds 4 hours and that it can be shown that there is a need for the work to be done by the nominated solicitor as opposed to a correspondent local to the station.)
- Removing the facility for ABWOR to be provided for post conviction work following the refusal of summary criminal legal aid by the Board and for exceptional case payments in ABWOR. These are considered no longer to be necessary because of the inclusion of deferred sentences in the case disposal fee, “add-on” block payments for third and subsequent deferred sentences, and the provision of additional payments in respect of exceptional police custody visits. (This does not remove the provision for exceptional case status for cases proceeding to trial for which summary criminal legal aid has been granted.)
 - Retaining self certification of ABWOR by solicitors (rather than applications to and grants by the Board) but in prescribed cases coming before the Sheriff Court (some of which will not apply to the Stipendiary Magistrates court). A list has been prepared for such cases. Where a case type does not appear on this list an application for ABWOR will have to be made to the Board. The list will be kept under review. The list is attached at **Appendix 5** and has been agreed by the profession’s representatives.

The Profession’s representatives also accepted that where a solicitor had incorrectly or inappropriately applied either the ABWOR means test or merits test, no payment would be made from the Fund. Full guidance will be published by the Board on the appropriate application of the tests and the Board will monitor how well this operates.

The Board will, at the accounts stage, check such grants against the criteria for applying the interests of justice and means tests. However, where a solicitor has doubts about the appropriateness of a grant the Board is happy to signify its approval of the solicitor's decision in advance of carrying out the work to remove any uncertainty.

Also, it was accepted that given the level of payment now proposed the prerequisite of such a grant made either by the Board or the solicitor would be that reasonable vouching of the client's financial circumstances is required (unless circumstances are such that this cannot be obtained at the initial stages, for example, where the client appears from custody in which case it can be obtained subsequently by the solicitor).

- As regards the need for the Board to see the disclosable summary issued with the complaint it remains the position that it is for the Board to determine what information it requires to see to determine an application made to it. The disclosable summary should help solicitors address the interests of justice factors and better focus any application made. However, it is now proposed that in any application for ABWOR or summary criminal legal aid made to the Board in respect of a Sheriff/Stipendiary Magistrate's court case, the disclosable summary need not be produced so long as the interests of justice factors are adequately and appropriately addressed in the application form. The Board reserves the right however in its consideration of an individual case to continue an application for the disclosable summary or at the accounts stage to ask for the disclosable summary in respect of a case.
- Where the case is not disposed of before trial and summary criminal legal aid is granted, the current "core payment" will be replaced by the case disposal fee. All non core "add on" payments (eg trial days, rural courts, notional diets, victim statement proofs etc) will continue to be paid as at present (ie at current blocks of **£50, £100, £200 and £400**).

Additionally, those aspects of the provision of summary criminal legal aid unaffected by the consultation apply to the case disposal fee irrespective of whether the fee is payable under a grant of ABWOR or summary criminal legal aid (eg split fees on transfer, half fee where there is a breach of bail, percentage reductions for multiple co-accused represented by the same solicitor, the roll up of cases under one grant arising from the one incident etc).

JP Court Cases

- The Society's representatives proposed maintaining the split fee arrangements between ABWOR and summary criminal legal aid for JP courts. We have accepted the proposal and do not propose to introduce a case disposal fee in the JP Courts. We have however adjusted the balance between the payment for ABWOR (**£150**) and summary criminal legal (**£315**) aid to improve the payment for pleas in the JP court which is currently **£70**.
- The ABWOR payment of **£150** will cover the work done up to and including the diet at which the plea of guilty is tendered. It will therefore include all preliminary pleas, pleas in bar of trial and continuations without plea but in addition, will include up to two deferred sentences.

It will not include the following, each of which will be payable separately as a **£25** “add on” block:

- bail appeals;
 - bail subject to restriction;
 - conducting a proof in mitigation beyond the first 30 minutes; and
 - third and subsequent deferred sentences.
- The summary criminal legal aid “core” payment of **£315** will include work done up to and including the first 30 minutes of trial and will subsume work done under advice and assistance and/or ABWOR (excluding exceptional police custody visits). Additionally, it will include up to two deferred sentences.

It will not include the following, each of which will be payable separately as a **£50** “add on” blocks:

- bail appeals;
- bail appeal subject to restriction;
- conducting a trial for the first day after 30 minutes; and
- first and second trial days.

Clients under 21 on remand and third and subsequent trial days will be paid at **£100**. Third and subsequent deferred sentences will be paid at **£25**.

- It is proposed that where an application for summary criminal legal aid is made to the Board, unlike Sheriff Court cases, the application should be accompanied by the disclosable summary. The disclosable summary should help solicitors address the interests of justice factors and better focus any application made. It will also help the Board determine the existence of the statutory factors pointing towards the need for representation in what will be a more varied range of cases appearing before these courts. As in Sheriff Court cases, where the solicitor has self-certified a grant of ABWOR the Board reserves the right at the account stage to ask for the disclosable summary. Also, it was accepted that reasonable vouching of the client’s financial circumstances is required (unless circumstances are such that this cannot be obtained at the initial stages, for example, where clients appear from custody).
- Removing the facility for ABWOR to be provided for post conviction work following the refusal of summary criminal legal aid by the Board and for exceptional case payments in ABWOR. These are considered no longer to be necessary because of the inclusion of deferred sentences in the case disposal fee, “add-on” block payments for third and subsequent deferred sentences, the provision of additional payments in respect of police custody visits.

Payments for accused persons appearing from custody or on an undertaking to appear in the Sheriff/Stipendiary Magistrate and JP Courts

- Duty solicitors appearing in either the Sheriff/Stipendiary Magistrates or JP courts will be paid **£70** for work done for each accused appearing from custody or on an undertaking for which a plea of guilty is tendered. (This replaces the existing system of standard and subsequent per capita appearance fees.) Where further work has to be done then, as at present, it will be paid for up to the limit of the “follow-up” cap albeit that cap is increased

to **£150** under the consultation. The Board will have discretion to lift that cap in appropriate cases.

- Duty solicitors will be paid for work done for accused appearing from custody or on an undertaking where a plea of not guilty is tendered under the current system of an initial appearance fee followed by per capita subsequent appearance fees. The rates, for these have been increased, under the consultation, to **£63** and **£9** respectively.
- The solicitor of choice will be able to represent clients appearing from custody or on an undertaking to appear under ABWOR. ABWOR will however only be available from the solicitor of choice in custody cases where that solicitor is readily available so that there is no inconvenience to the court system, where the solicitor has a relationship with the client, and where the solicitor conducts the case personally. If the solicitor of choice is not immediately available, only the duty solicitor will be able to provide advice and representation.

In the Sheriff or Stipendiary Magistrates courts the solicitor will be paid the case disposal fee of **£515** (and in the JP court at a fee of **£150**) on the same basis as described above.

It is proposed that for an accused appearing from custody and represented by the solicitor of choice in either the Sheriff/Stipendiary or JP courts, the accused when applying for ABWOR will now be subject to a means test. (This does not affect the current arrangements for the duty scheme in which accused appearing from custody or on an undertaking do not require to meet a means test.) A prerequisite of the application for ABWOR will be the reasonable vouching of financial circumstances. It is however recognised that the solicitor may not be able to obtain this in the initial stages because of the accused being in custody. Vouching can however be subsequently obtained.

Again, as referred to earlier in this paper where the means test has been incorrectly applied by the solicitor no payment will be made from the Fund.

Advice and Assistance

- Increasing criminal advice and assistance fee rates by 10% as opposed to that proposed in the consultation of 21%. The profession's representatives expressed a clear preference to maximise the case disposal fee. The reduction in the advice and assistance increase has been used to achieve this. Where advice and assistance is granted this will be subsumed in any subsequent grant of ABWOR or summary criminal legal aid unless otherwise exempted.

5. ALTERNATIVE FEEING OPTIONS AND ISSUES

Additionally, the following proposals were discussed but, after consideration, do not form part of the revised proposal for the reasons stated:-

- **Removing the need to recover client contributions where a solicitor provides ABWOR on the day, in a cited or undertaking case, where the client receives an immediate custodial sentence thus giving the solicitor little opportunity to collect the contribution in advance or indeed afterwards.** A key feature of the reforms to summary criminal legal assistance is that only those which can currently be achieved through secondary legislation can be made. It would not be possible to introduce this change through secondary legislation.

Moreover, it is considered that the number of times when this situation is likely to arise is very small. Our figures show that only a small proportion of clients who qualify for ABWOR, on the application of a means test, are assessed as having a contribution to pay. In 2005/06 - 6%, that is 1,286 ABWOR cases, had client contributions totalling £62,095 (an average contribution of £48.28).

Also, of these cases where a contribution is assessed, it is likely that only a very small proportion of those receiving ABWOR on the day, would thereafter receive a custodial sentence.

- **Removing the proposal to bring the capital eligibility limit for summary criminal legal aid into line with that for advice and assistance (ie £1,502).** The Government's and the Board's view remains that it is appropriate to bring these into line. The general preference expressed by the profession's representatives for a case disposal fee, especially in the Sheriff court under which the ABWOR and legal aid payments would be the same, reinforces the need to consolidate the approach to financial eligibility between aid types. It is important to recognise that the impact of this proposal is extremely small and that the revised legal aid capital figure level is not an absolute threshold but merely a figure beyond which the Board then exercises a discretion to grant where hardship is perceived to exist.
- **Introducing time and line payments for summary trial.** It is not proposed to reintroduce time and line payments for summary trials for the reasons set out in **Appendix 6**.

However, were this to be effected the resultant impact on the proposed fees under the favoured option is illustrated in the follow table:

	Sheriff/Stip Magistrate Case disposal fee	J P Court Summary Legal Aid	J P Court ABWOR
Fees under favoured option	£504	£306	£150

- **Removing the proposal to subsume all police custody visits.** It is considered inappropriate to remove all but the most exceptional police custody visits from subsuming. Different approaches are taken by solicitors in different parts of Scotland, for example, police station visits appear to be a more common practice in Glasgow than elsewhere. However, there will be cases where exceptional circumstances exist, for example, which require substantial travel to or time spent at the police station or both which will need to be paid separately to the block fees.

However, were all police custody visits not to be subsumed the resultant impact on the proposed fees under the favoured option is illustrated in the following table:

	Sheriff/Stip Magistrate Case disposal fee	J P Court Summary Legal Aid	J P Court ABWOR
Fees under favoured option	£509	£310	£150

- **The favoured option proposed utilising part of the originally proposed 21% increase in advice and assistance elsewhere in the system. (10%)**

However, were the original proposal to be reinstated (ie applying a 21% increase) the resultant impact on the proposed fees under the favoured option is illustrated in the following table:

	Sheriff/Stip Magistrate Case disposal fee	J P Court Summary Legal Aid	J P Court ABWOR
Fees under Favoured option	£513	£313	£150

If however no increase was to be made for advice and assistance these payments would change as follows:

	Sheriff/Stip Magistrate Case disposal fee	J P Court Summary Legal Aid	J P Court ABWOR
Fees under Favoured option	£517	£317	£150

SUMMARY OF THE ORIGINAL CONSULTATION PAPER PROPOSALS

The Consultation Paper on the Reform of Summary Criminal Legal Assistance (published October 2007) outlined changes to the structures and payment regime for advice and assistance, the duty scheme, ABWOR and summary criminal legal aid. In summary, the consultation proposed the following structure:-

▪ **Advice & Assistance**

- 21% increase in fees.
- two levels of initial authorised expenditure, one for general advice, pre-complaint, at £35; the other for standard advice in connection with a complaint, advice relating to a direct measure where the client “opts-in” to further court procedure or to an accused in police custody/prison - £95.
- the subsuming of advice and assistance into a subsequent ABWOR or criminal legal aid block fee.
- provision for clearer specification of nature of advice and linking to subsequent grants of ABWOR/criminal legal aid.
- retention of time and line accounting for advice and assistance.

▪ **Duty Scheme**

Enhanced *per capita* duty solicitor fees incorporating cost of living increase from 1992,

- £63 initial fee.
- £9 additional cases.
- £150 follow-up with cap, with discretion to the Board to lift cap in exceptional cases.

Provision that where client’s existing solicitor is not immediately available, the duty solicitor will continue to exclusively provide advice and representation.

▪ **ABWOR**

Provision for solicitor of choice for custody cases mirroring duty scheme.

Extension of ABWOR for purposes of continuation without plea.

Fees for solicitor representing undertaking (on the day) £70/£300.

Cited cases before,

- sheriff/stipendiary magistrate £300.
- District court £200.

First CWP subsumed within fee; second or subsequent CWPs chargeable at £50/£25.

Deferred sentences/other post-conviction hearings at £50.

Creation of new interests of justice test for ABWOR replacing existing twin-tests.

Board to assume responsibility for grant of ABWOR beyond £70 block fee.

Remove need to obtain increases for deferred sentences and post-conviction hearings, which would be subsumed within templated Board grant.

▪ **Summary Criminal Legal Aid**

Retain current 14 day rule.

Requirement that copy of complaint and Crown summary of evidence be produced with a criminal application.

Requirement for details, where applicable, of any plea the Crown is prepared to accept when applying for criminal legal aid.

Vouched evidence of the accused's financial circumstances (unless the accused is in custody, where it can be produced later).

Rationalisation of advice and assistance and criminal capital limits (currently set at £1,502).

Application of standard conditions of grant to criminal legal aid certificates.

Core fixed payment for,

- sheriff/stipendiary magistrate at £525.
- district court at £325.

Retain existing first and second day trial payments; review third or subsequent day trial fee.

Post-conviction hearings and proofs in mitigation chargeable on block fee basis in both criminal legal aid and ABWOR.

The revised system model figures showed the following differences to those used in previous costing work, and were based on 2006/07 figures instead of the 2005/06 provided previously (now shown in brackets).

- 10% reduction 35,500 [36,000] in the number of accused reported to the Procurator Fiscal due to increased use of police direct measures;
- 355,000 [364,000] standard prosecution reports;
- 132,100 [135,000] were dealt with by direct measures;
- 15% increase 15,200 [20,000] in accused issues with direct measures by the Procurator Fiscal;
- 156,400 [149,000] accused prosecuted in the summary courts broken down 94,100 [110,000] sheriff and 62,300 [39,000] J.P.;
- Maximum of 26,600 [16,000] failed direct measures;
- 6,000 persons accused of breach proceedings were prosecuted in the Sheriff Court;
- 12,000 [8,500] accused prosecuted in the JP instead of the sheriff court as a result of the change in RTA legislation;
- 550 accused prosecuted at sheriff summary level instead of an indictment;
- 4,640 [no equivalent] accused charged with common law offences prosecuted in JP court instead of sheriff.

This appendix shows the assumptions and the calculations used in estimating the number of grants of advice and assistance, ABWOR, and Summary Criminal for the new system of summary criminal legal assistance.

1. MAIN FIGURES USED IN THE COSTING MODEL

The costing model estimates the numbers of summary criminal legal assistance cases, and the total expected amounts to be paid to solicitors, once the summary justice reforms have been implemented. The model uses the latest projections for the amount of summary criminal business, and direct measures, provided by the Crown in January 2008.

2. OUTLINE ASSUMPTIONS AND METHODOLOGY

As a starting point, we used the actual figures for 2006/07 for the various summary criminal legal assistance types, and compared these to the reported levels of summary criminal business for the same year. These proportions were then considered against the projected nature of the court business post summary justice reform, with the following levels of direct measure failures:

System Model Assumptions – 26,600 Direct Measure Failures
 10,100 failed Fiscal Fixed Penalties
 16,500 failed Fiscal Fines

We also adjusted certain volume proportions and grant rates, where this was considered appropriate, due to the changing nature of the summary cases to be prosecuted in the sheriff and JP courts. We also assumed that the wider summary justice changes, and these legal assistance reforms, would bring an anticipated increase in the number of guilty pleas tendered in summary cases, as it is expected that more cases should resolve at earlier stages than at present. Therefore, we assumed that there will be a 20% shift from summary criminal legal aid to criminal ABWOR.

3. Estimated Grants of General Advice and Assistance (£35) - 75,084 cases

- Fiscal Warnings – 50% = 19,650 cases.
- Fiscal Fixed Penalties – 30% = 9,240 cases. Exclude the 3,030 standard cases = 6,210 cases
- Fiscal Fines – 80% = 52,800. Exclude the 13,200 standard cases = 39,600
- 25% of Minimum Fee cases = 25% of 38,497 = 9,624 cases
- Total General cases = **75,084**

4. Estimated Grants of Standard Advice and Assistance (£95) - 23,168

- Failed Fiscal Fixed Penalties – 30% of the 10,100 (up to a maximum of) cases = 3,030 grants of A&A
- Failed Fiscal Fines – 80% of the 16,500 (up to a maximum of) cases = 13,200 grants of A&A
- Approximately 10% of current standard A&A to remain = 6,938
- Total Standard cases = **23,168**

5. Estimated grants of ABWOR JP Court - 7,103 cases

Starting point – core cases (total District Court prosecutions excluding direct measures) = 19,100 (33,700 + 600 additional SPRs, taking into account the 15,200 new direct measures.)

- Total estimated ABWOR and Summary Applications based on 47% of 19,100 core cases = 8,977
- 2006/07 figures show that District Court applications are 80% in the ratio of summary criminal and 20% ABWOR. Summary applications = **7,182**. ABWOR applications = 1,795.
- ABWOR grant rate estimated to be 70%. **1,257** grants.

New RTA cases

- 12,000 cases being referred down from the Sheriff Courts.
- We estimate that 75% (9,000) of these cases will come to us as Summary Applications, taking into account privately funded cases, SPRs against companies etc. Summary Applications -80% = 7,200, and ABWOR applications - 20% = 1,800.
- ABWOR grant rate estimated to be 70% as above. **1,260** grants.

New Common Law Cases

- 4,640 cases being referred down from the Sheriff Courts.
- We estimate that 100% (4,640) of these cases will come to us as Summary Applications (80%) 3,712, and ABWOR applications (20%) 928.
- ABWOR grant rate estimated to be 70% as above. **650** grants.

Failed Direct Measure Cases

Fiscal Fines

- 16,500 (up to a maximum of) cases being referred to the District Courts.
- We estimate that 30% (4,950) of these cases will come to us as Summary and ABWOR Applications. This is currently 26%, but this increase is to account for these cases now being more serious. Summary Applications - 80% = 3,960, and ABWOR applications - 20% = 990.
- ABWOR grant rate estimated to be 70% as above. **693** grants.

Fiscal Fixed Penalties

- 10,100 (up to a maximum of) cases being referred to the District Courts.
- We estimate that 10% (1,010) of these cases will come to us as Summary Applications (80%) 808, and ABWOR applications (20%) 202.
- ABWOR grant rate estimated to be 70% as above. **141** grants.

Estimated total ABWOR grants in J.P. Courts post SJR

- | | |
|--|--------------|
| • Number of ABWOR Grants | 4,001 |
| • Add 20% shift from Summary criminal – (16,239 x 20%) | 3,247 |
| • Total | 7,248 |
| • Less 2% Means refusals | 145 |
| • TOTAL ABWOR GRANTS | 7,103 |

6. Estimated grants of ABWOR Sheriff/Stipendiary Magistrates Courts Court - 13,139 cases

Sheriff Court Business 2006/07

Total cases prosecuted in the Sheriff Courts = 114,500 + 6,000 Breach cases = 120,500

Total estimated ABWOR grants = 11,787 (rounded up to 10% of 120,500)

Sheriff Court Business post SJR

Total cases to be prosecuted in the Sheriff Courts (including Stipendiary Magistrates Court cases and the 550 cases referred down from solemn procedure) = 88,100 + 6,000 Breach cases = 94,100.

- Total estimated ABWOR cases based on 10% of 94,100 = 9,410
- ABWOR grant rate estimated to be 90%. **8,469 grants**

• Number of ABWOR Grants	8,469
• Add 20% shift from Summary criminal – (54,692 x 20%)	10,938
• Total	19,407
• Less 6,000 Breach cases considered elsewhere	6,000
• Less 2% Means refusals	268
• TOTAL ABWOR GRANTS	13,139

7. Estimated grants of Summary Criminal Legal Aid for JP Court Cases post SJR (12,991)

Starting point – core cases (total District Court prosecutions excluding direct measures) = 19,100 (33,700 + 600 additional SPRs, taking into account the 15,200 new direct measures.)

- Total estimated ABWOR and Summary Applications based on 47% of 19,100 core cases = 8,977
- 2006/07 figures show that District Court applications are 80% in the ratio of summary criminal and 20% ABWOR. Summary applications = 7,182. ABWOR applications = 1,795.
- Summary grant rate estimated to be 83% (2006/07 = 78%. 83% taken as mid point grant rate between current District Court grant rate of 78%, and the assumed grant rate for more serious common law cases at 88%) **5,961 grants**

New RTA cases

- 12,000 cases being referred down from the Sheriff Courts.
- We estimate that 75% (9,000) of these cases will come to us as Summary Applications, taking into account privately funded cases, SPRs against companies etc. Summary Applications -80% = 7,200, and ABWOR applications - 20% = 1,800.

- Grant rate for Summary Applications will be 60% (mid point between current grant rates for RTA cases in Sheriff Courts (80%) and District Courts (40%)). **4,320** grants

New Common Law Cases

- 4,640 cases being referred down from the Sheriff Courts.
- We estimate that 100% (4,640) of these cases will come to us as Summary Applications (80%) 3,712, and ABWOR applications (20%) 928.
- Grant rate for Summary Applications will be 88% (higher end of mid point between the current grant rates for all cases in Sheriff Courts (94%) and District Courts (78%)). **3,267** grants

Failed Direct Measure Cases

Fiscal Fines

- 16,500 (up to a maximum of) cases being referred to the District Courts.
- We estimate that 30% (4,950) of these cases will come to us as Summary and ABWOR Applications. This is currently 26%, but this increase is to account for these cases now being more serious. Summary Applications - 80% = 3,960, and ABWOR applications - 20% = 990.
- Grant rate for Summary Applications will be 60% (mid point between the current 78%, and the lower fixed penalties grant rate to reflect nature of cases). **2,376** grants

Fiscal Fixed Penalties

- 10,100 (up to a maximum of) cases being referred to the District Courts.
- We estimate that 10% (1,010) of these cases will come to us as Summary Applications (80%) 808, and ABWOR applications (20%) 202.
- Grant rate for Summary Applications will be 39% (much lower than current 78%, and the Fiscal Fines rate of 60% to reflect nature of cases). **315** grants

Estimated total Summary grants in J.P. Courts post SJR

- | | |
|----------------------------|---------------|
| • Number of Summary grants | 16,239 |
| • Less 20% shift to ABWOR | 3,247 |
| • Total | 12,991 |

8. Estimated grants of Summary Criminal Legal Aid for Sheriff/Stipendiary Magistrates Courts Cases - 43,754

Sheriff Court Business 2006/07

Total cases prosecuted in the Sheriff Courts = 114,500 + 6,000 Breach cases = 120,500

Total Summary Criminal Applications = 73,054 (64% of 114,500 – Breach cases cannot generate summary applications – only ABWOR.)

Sheriff Court Business post SJR

Total cases to be prosecuted in the Sheriff Courts (including Stipendiary Magistrates Court cases and the 550 cases referred down from solemn procedure) = 88,100 + 6,000 Breach cases = 94,100.

- Total Summary Applications based on 64% of 88,100 cases = 56,383
- Summary grant rate estimated to be 97% (2006/07 = 94%. Increased to 97% to reflect more serious cases left in sheriff court, with presumption of grant on interests of justice criteria, and taking account of the current means refusal rate of 2%, with 1% refused on merits grounds.) **54,692** grants

Estimated total grants in Sheriff/Stipendiary Magistrates Courts

- | | |
|----------------------------|---------------|
| • Number of Summary grants | 54,692 |
| • Less 20% shift to ABWOR | 10,938 |
| • Total | 43,754 |

Note – this figure of 43,754 contains the estimated number (1,080) of Breach of Bail cases which will be paid at a reduced rate.

Incorporating payment for deferred sentences into the block fees

The proposal is to incorporate up to 2 deferred sentences into the standard fees, with any third and subsequent deferred sentences being paid at the current standard payments of £25 for district court cases and £50 for sheriff court cases. The Board conducted a detailed manual trawl of ABWOR and criminal legal aid accounts currently passing through the Accounts Area to show the proportion of cases which currently have deferred sentences. The result of this exercise was as follows:

Aid Type	% Cases No DS Diet	% Cases with DS Diet	% Cases with 1 DS Diet	% Cases with 2 DS Diets	% Cases with more than 2 DS Diets
ABWOR <i>(Covering both Sheriff and District courts)</i>	55%	45%	17%	11%	17%
District Summary Criminal	84%	16%	7%	6%	3%
Sheriff Summary Criminal	63%	37%	17%	10%	10%

Sheriff Court Cases Where Grants of ABWOR Could Be Made By Solicitors

Perjury etc:

Perjury,
Contempt of court

Violence:

Extortion,
Abduction,
Firearms Act 1968,
Assault to Severe Injury, and/or Permanent Impairment and/or Permanent Disfigurement
Assault & robbery,
Robbery,
Emergency Workers Act 2005,
Criminal Law (Consolidation) (Scotland) Act 1995 s.47
Hamesucken
Escaping from lawful custody/prison breaking
Children & Young Persons Act 1937 s. 12(1)

Sexual

A case as defined by s.288C of the Criminal Procedure (Scotland) Act 1995

Public Order:

Fire-raising,
Criminal Law (Consolidation) (Scotland) Act 1995 Sections 49, 49A and 49C
Criminal law (Consolidation) (Scotland) Act 1995 s.50A including charges where the racial
aggravation is libelled per s. 96 of the Crime and Disorder Act 1998
Religious Prejudice: s.74 CJ(S)A03- Aggravation libelled
Breach of ASBO/Sexual Offences Order/NHO
Breach of sexual offences Act i.e. failing to register

Dishonesty

Embezzlement,
Theft &/ or uttering - (beyond a value of £1,000)
Fraud-: Government Department/Agency/Local Authority
Identity Cards Act 2006,
Forgery and Counterfeiting Act 1981,
Criminal Law (Consolidation) (Scotland) Act 1995 s.46A
Theft OLP,
Theft HB,
Civic Government (Scotland) Act 1982 Sections 57 and 58
Immigration Act 1971

Drugs/importation

MDA 71 s.4 (3) (b), s.4 (3) (a), s.5 (3), -
Customs and Excise Management Act 1979- s. 170

RTA

RTA s.2, 5, 6, 7and 103

Other

Police (Scotland) Act 1967:-s.41 (1)(a)

TIME AND LINE OPTION FOR TRIALS

The Fixed Payment Regulations were designed to simplify the system of accounting and to increase efficiency. Block fees offer significant advantages for both the solicitor and the Board. In particular:-

- Fast and certain payment
- A reduction in administrative costs
- An overall budget that is more predictable and can be explained in terms of the number and types of cases
- Elimination or significant reduction in the need for costly review and re-negotiation of accounts.

In arriving at specific payment levels for each block of work, the Board acknowledges that in some cases the solicitor may arguably receive a greater payment on a time and line accounting but that in many cases the opposite will be true. At present payment for a summary trial commences when the first witness is sworn, and this is the starting point for calculating remuneration either under the current fixed payment arrangements or the time and line costings we have carried out. Almost 90% of summary trials conclude within the first day, about 70% within 2 hours, falling well within the range covered by the prescribed fixed payment. Beyond the generality of the fixed fee scheme, for cases where the block fee would not adequately allow for the conduct of a fair trial, the regulations allow the solicitor to apply for exceptional case status. Cases awarded this status come out of the block arrangement and time and line accounting will apply.

It has been suggested by the profession that delays in processing of business at court occasioned by factors out with solicitor control would also justify a return to time on line accounting for trial diets. The reason advanced is that a specific charge could then be made for waiting time. It should be borne in mind that a charge for waiting time is only allowable where the solicitor is not waiting for or conducting another case and a charge could only reasonably be made where the solicitor was unable to undertake any other work during that period. A solicitor who finds himself usefully providing advice and assistance to another client or for example dealing with a custody case whilst waiting for a trial to commence, would not be able to charge for waiting time.

The solicitor would be required to keep very detailed time keeping records and preparation and negotiation of detailed accounts for each case would be necessary. In addition, the Board would have to satisfy itself in every case that any charges were for work actually and reasonably undertaken and this may involve the solicitor in providing vouching/further information. The burden of these requirements is not considered to be consistent with the overarching aim of the current reforms in expediting summary criminal procedure and would remove the benefits of the block fee system as outlined above.