

THE SCOTTISH LEGAL AID BOARD

27 APRIL 2009

REVIEW AND MONITORING OF THE REFORMS OF SUMMARY CRIMINAL ASSISTANCE

1. PURPOSE

1.1 This paper provides details of the current position on the review and monitoring of the reforms of the summary criminal legal assistance which were implemented on 30 June 2008.

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3. BACKGROUND

3.1 Changes to the system of summary criminal legal assistance came into effect on Monday 30 June 2008. These changes were developed from our original reform proposals taking into account issues arising from the consultation process and further discussions held with representatives of the legal profession.

3.2 The changes to the system of summary criminal legal assistance were developed alongside the wider summary justice reforms, and were specifically designed to support the main features of these reforms such as the greater use of alternatives to prosecution, early effective preparation, early resolution of cases where appropriate, and the intention to bring cases to court more quickly.

3.3 The main features of the summary criminal legal assistance reforms were:

- Increasing duty payments
- Enabling, with appropriate checks appointed solicitors to represent their clients from custody
- Increasing criminal advice and assistance fee rates, and ABWOR block fees to assist early negotiation and information gathering.
- Extending the scope of ABWOR and consolidating the tests for its grant
- Introducing a new case disposal fee for the Sheriff and Stipendiary Magistrates Courts to pay solicitors more appropriately for work done at the earlier stages of a case.

4. SUMMARY CRIMINAL LEGAL ASSISTANCE COSTING MODEL

4.1 The costing model of the new system of summary criminal legal assistance was based on the System Model figures produced in January 2008, which used key assumptions on matters such as levels of SPRs, direct measures, and court business splits. Some of these assumptions have now been revised, for example the amount of challenged direct measures. The original costing model compared the actual payments made to solicitors for all summary criminal work in 2006/2007 (£61,686,495) to a projected spend post SJR of £57,789,452.

4.2 For the re-costing exercise which was considered at the meeting with the Cabinet Secretary on 15 December 2008, we looked at the actual receipts of advice and assistance, ABWOR and summary criminal applications received in the 5 month period since the changes were implemented, namely July to November. These figures showed that average grants of criminal advice and assistance had fallen by 64% compared to April to June 2008, while grants of criminal ABWOR had increased by 140%. Average applications for summary criminal legal aid fell by 26% in the same period. The average total applications for ABWOR and Summary Criminal Legal Aid increased by 5% over the two periods.

4.3 We then compared original Model estimate of the costs of advice and assistance, ABWOR, and Summary Criminal Legal Aid, compared to a revised forecast, based on the first 5 months worth of receipts and grants of the various aid types following the legal aid changes. The original costing model estimated the total payments to solicitors after the reforms to be £57,789,846. Our revised costing, based on the first 5 months of receipts estimated the total payments to be £58,006,229, which was £216,383 over the original estimate

4.4 For this second re-costing exercise, we have looked at the actual receipts of advice and assistance, ABWOR and summary criminal applications in the 9 month period since the changes were implemented, namely July 2008 to March 2009. These figures show that average grants of criminal advice and assistance have fallen by 65% compared to the average receipts for April to June 2008, while grants of criminal ABWOR (mainly for guilty pleas or cases continued without plea) have increased by 152%. Average applications for summary criminal legal aid following the tendering of a not guilty plea fell by 24% in the same period.

4.5 The average total applications for ABWOR and Summary Criminal Legal Aid increased by 9.7% over the two periods.

Summary Category	Est. Model Figures	Est. Model Cost (£)	Revised Forecast Figures	Revised Forecast Cost (£)	Difference (£)
Est. Total A&A	98,252	5,505,992	31,863	1,517,748	-3,988,244
Est. ABWOR grants Sheriff/Stip/JP Courts.	26,353	13,564,139	35,060	18,275,515	+4,711,376
Est No. of Post Conviction Breach cases	12,000	3,876,048	9,500	3,068,538	-807,510
Est. Total ABWOR	38,353	17,440,187	44,560	21,344,053	+3,903,866
Est. No. Summary JP Court	12,991	5,172,814	8,125	3,272,913	-1,899,901
Est No. Summary Sheriff Court	43,754	27,605,731	47,527	30,206,003	+2,600,272
Est. Total Summary	56,745	32,778,545	55,652	33,478,916	+700,371
Est. No. of Duty cases	27,712	2,064,728	28,479	1,893,697	-171,031
Est. Total Cost of Summary Criminal		57,789,452		58,529,819	+444,963

4.6 The Revised forecast figures are based on the 9 months receipts from July 2008 to March 2009. They were then “annualised” to show a full year’s worth of post reform receipts, based on the recent trends in applications received. The table below shows the monthly breakdown of the numbers of applications received for grants of advice and assistance, assistance by way of representation (ABWOR), and summary criminal legal aid from July 2008 to March 2009. Also shown for comparison purposes are the average applications received for April to June 2008, the quarter before the reforms were implemented.

AID TYPE	April – June 08 (Ave)	July 08	Aug 08	Sept 08	Oct 08	Nov 08	Dec 08	Jan 09	Feb 09	Mar 09
Criminal A& A	8,143	4,322	2,904	3,019	2,881	2,600	2,396	2,379	2,500	2,679
Criminal ABWOR	1,535	3,443	3,749	3,819	3,967	3,656	3,563	4,048	4,076	4,435
Summary Criminal Applications	6,552	5,069	4,480	4,819	5,170	4,675	4,766	5,213	5,261	5,639
Total ABWOR and summary criminal	8,087	8,512	8,229	8,638	9,137	8,331	8,329	9,261	9,337	10,074

4.7 The excess of £444,963 over the original costing model also reflects a number of grants of ABWOR cases which are made by solicitors, but which are subsequently rejected by the Board (duplicate cases or inappropriate grants) or where the Board has disagreed with the solicitor's decision on the interests of justice grounds. These cases reduce the number of ABWOR grants where a final payment will be made. In the 9 months to March 2009, there were 769 grants of ABWOR rejected in this way, (455 Sheriff and Stipendiary Court, and 314 in JP Court cases). This gave an annualised figure of 1,026 (607 Sheriff and Stipendiary, and 419 JP Court). We have allowed for one third of these cases to remain in the costings, as there was a higher proportion of rejected/inappropriate grants in the first few months, and interest of justice cases can also be reconsidered right up to the point an account has been submitted.

5. DIFFERENCES BETWEEN LEGAL AID AND JUSTICE SYSTEM CHANGES

5.1 There are three main areas where the changes in the wider justice system are yet to be fully reflected in the volumes of the different types of A&A/ABWOR and summary criminal applications we are receiving at present. These are:

- the changes in court business distributions and the shift from sheriff to JP courts;
- new Fiscal direct measures resulting in increases in grants of criminal advice and assistance
- the lower than expected challenge rate of Fiscal direct measures.

Changes in Court Business Distributions

5.2 The System Model figures in January 2008 predicted major changes to the distribution of cases prosecuted in the summary courts. Sheriff and Stipendiary cases were to fall by 22% from 120,500 to 94,100, while District/JP Court cases were only expected to fall by 7% from 67,300 to 62,300. National figures were recently published which compared the business distribution of cases for the period April 2007 to February 2008, to April 2008 to February 2009. In relation to cases prosecuted in the summary courts, the figures for these two 11 month periods were as follows:

Court	Number of Cases 2007/2008	Number of Cases 2008/2009	%Change
Sheriff Summary Court	90,549	81,380	-10.1%
Stipendiary Court	6,179	5,298	-14.3%
District/JP Court	34,013	39,927	+17.4%
Total	130,741	126,605	-3.2%

5.3 This shows that the expected shift in business from sheriff to JP courts is now starting to take place. However, we have yet to see such a shift being fully reflected in the criminal legal aid applications we are receiving. The following table shows the breakdown of the court types for the summary criminal applications received in 2007/08, from April to June 2008 (pre reforms), and for July to March 2009 (post reforms), split by court type:

COURT TYPE	2007/08	April – June 2008 (Ave)	July – March 2009 (Ave)
Sheriff Court	80%	79%	80%
Stipendiary Magistrates Court	4%	3%	5%
District/JP Court	16%	18%	15%

5.4 During 2008 and early 2009, the court split of summary applications received remained fairly consistent, with sheriff court cases in particular staying around the 80% mark. In our original costing model, based on the Scottish Government's System Model figures we had assumed that JP court cases would be 23% of the total, with sheriff and stipendiary court cases at 77% combined.

5.5 However, if we break the post reform figures down to individual months, we can start to see that perhaps a shift is emerging. March 2009 showed some slight changes. JP court cases rose to 17% of the total applications, stipendiary magistrates rose slightly to 6% and sheriff court fell to 77%. This could be the first indications of the change in court business distribution being shown in legal aid applications.

COURT TYPE	July 08	Aug 08	Sept 08	Oct 08	Nov 08	Dec 08	Jan 09	Feb 09	Mar 09
Sheriff Court	81%	82%	81%	81%	79%	80%	81%	79%	77%
Stipendiary Magistrates Court	4%	4%	5%	5%	5%	5%	5%	5%	6%
District/JP Court	15%	14%	14%	14%	16%	15%	14%	16%	17%

5.6 We are also starting to see a slight change in the profile of the case categories of the applications for summary criminal legal aid that we are receiving. This suggests that proportionately, we are now receiving slightly more serious cases than before. The table below shows the % breakdown of a number of case categories, for both April to June 2008 (pre reforms) and July to March 2009 (post reforms)

Case Category	% of total receipts April to June 2008	% of total receipts July to March 2009	Increase/ decrease
Assault	24%	28%	+4%
Police (Scotland) Act (Police assault)	5%	6%	+1%
Robbery	0%	0%	-
Sexual Offences	0%	0%	-
Housebreaking	2%	2%	-
Fraud	1%	1%	-
Embezzlement	0%	0%	-
Misuse of Drugs	8%	6%	-2%
Offensive weapons	4%	5%	+1%
Theft of motor vehicle	1%	1%	-
Theft	12%	9%	-3%
Road Traffic	13%	12%	-1%
Breach of the Peace	17%	17%	-
Vandalism	2%	2%	-
Other Criminal	10%	7%	-3%

There were cases received for all categories marked 0%, but not enough to show a whole % point against the total population

5.7 This shows that more serious categories like assault, police assault, and offensive weapons have increased their share of the total receipts, while some less serious matters such as theft, road traffic and other cases have seen their share falling. This is in line with the thinking that the profile of cases being prosecuted in the summary courts, whilst falling, would be made up of proportionately more serious matters.

5.8 We are also seeing an increase in the proportion of cases prosecuted in the courts receiving a grant of ABWOR or summary criminal legal aid. In 2006/07, 92,371 grants of ABWOR and summary criminal legal aid were made, which was 58% of the 159,500 cases in the courts. The initial costing model predicted 95,101 grants of ABWOR and summary criminal legal aid, which was 61% of the 156,400 cases predicted by the system model figures.

5.9 The latest court prosecution figures are for April 2008 to February 2009, where 126,605 cases were prosecuted in the courts (see 5.2 above). For this 11 month period, there were 80,623 grants of ABWOR and summary criminal legal aid (excluding Breach proceedings), 64% of the total cases prosecuted.

5.10 We are also starting to see increases in our rates of granting summary criminal legal aid, as predicted. In 2007/2008, our grant rates were:

- Sheriff Court - 93%
- Stipendiary Magistrates Court – 88%
- District Court – 73%

5.11 The initial costing model predicted the following grant rates, after the implementation of the summary reforms, and the associated shift in cases from the sheriff to the JP courts;

- Sheriff Court - 97%
- Stipendiary Magistrates Court – 97%
- District Court – 83% (for core cases, other cases ranging from 39% to 88%)

5.12 The following table shows the grant rates for summary criminal cases from April to March 2009. An average is shown for the pre reform months of April to June 2008:

COURT TYPE	April – June 08 (Ave)	July 08	Aug 08	Sept 08	Oct 08	Nov 08	Dec 08	Jan 09	Feb 09	Mar 09
Sheriff Court	96%	95%	97%	96%	95%	96%	96%	97%	96%	96%
Stipendiary Magistrates Court	92%	88%	93%	96%	94%	93%	92%	90%	95%	92%
District/JP Court	74%	77%	82%	78%	80%	83%	82%	78%	86%	84%
All Courts	92%	92%	94%	93%	93%	94%	93%	93%	93%	94%

New Direct Measures Resulting in Increases in Grants of Criminal Advice and Assistance

5.13 The same national figures on business distribution showed the following changes in police and fiscal direct measure between April 2007 to February 2008, and April 2008 and February 2009:

Type of Direct Measure	Number of Cases 2007/2008	Number of Cases 2008/2009	%Change
Police	16,000	47,549	+197%
Fiscal	117,277	106,501	-9.2%
Total	133,277	154,050	+15.6%

5.14 In our original costing model, we predicted that we would receive 98,252 grants of criminal advice and assistance per year after the reforms were implemented. In arriving at this figure, we took into account the System Model prediction of 136,200 Fiscal Direct Measures. Our latest re forecast, based on 9 months figures has amended this A&A figure to 31, 863. Of the 98,252 figure, we thought that a significant proportion would come from the new higher level of direct measures that the Fiscals would now be operating. In fact, we expected 65,460 grants of criminal advice and assistance to be made as a result of the higher level Fiscal warnings, fixed penalties, and fines. This clearly is not happening at these levels.

The Current Low Challenge Rate of Fiscal Direct Measures.

5.15 In December 2008, the Scottish Government advised that the assumed challenge rate of 25% of all fiscal fines was a long-term maximum assumption. It was accepted that this challenge rate will not be realised in the first year after implementation of the reforms. A challenge rate of 5% would be a more realistic assumption for the year 2008-09, but the rate should be reviewed on a regular basis. Figures for April to December 2008 suggested that the challenge rate for fiscal fines was approximately 3%.

5.16 We used the 25% challenge rate as another factor in our prediction of the levels of A&A, ABWOR and summary criminal post reform. We estimated that the previous challenge rate would generate 16,230 grants of advice and assistance, 834 grants of JP Court ABWOR and 2,691 grants of JP Court summary criminal legal aid. With the challenge rate running at much lower levels than first expected, then clearly these extra grants of criminal legal assistance are not being generated at these levels.

6. AREAS WHERE THE NEW CRIMINAL LEGAL ASSISTANCE SYSTEM IS NOT OPERATING AS INTENDED

6.1 The main areas we have seen so far have been in connection with grants of ABWOR for appointed solicitors. An appointed solicitor can only provide ABWOR in a custody case where the client has or has had a prior solicitor/client relationship with the nominated solicitor, where the solicitor has taken instructions directly from the client, and is able to act immediately at the pleading diet either in person or through another solicitor (not the duty solicitor). We check all grants of ABWOR made by appointed solicitors, and our compliance auditors are also looking closely at these cases during their visits to firms. The following are examples of cases we have identified where solicitors have granted ABWOR as an appointed solicitor incorrectly.

No Direct Instructions

6.2 The solicitor had not spoken to the client in police custody, and delegated the appearance at court to another agent. The solicitor argued that he could act as an appointed solicitor as the client had asked for him in police custody, but he could not attend.

Using the Duty solicitor to appear at the pleading diet

6.3 Although direct instructions were taken, the custody appearance was delegated to the duty solicitor. A number of solicitors still seem to think they can provide ABWOR as an appointed solicitor if they get the duty solicitor to continue the case without plea at the pleading diet, or where cases were dealt with by the duty solicitor and forwarded to the solicitor on the client's behalf. This is not the case. If the duty solicitor has any involvement in the case at the pleading diet, this means that ABWOR cannot be provided by the appointed solicitor.

Duty solicitor and CWP cases

6.4 A grant of ABWOR was recently wrongly made by a duty solicitor after a custody case had been continued without plea. It was thought that the duty follow up arrangements were only for guilty pleas. This is not the case, as the follow up payments cover CWP situations as well.

No previous solicitor/client relationship

6.5 It is not uncommon for us to receive ABWOR grants in custody cases where the relationship with the client was with other solicitors in the firm, and not with the solicitor making the grant of ABWOR, even though extensive guidance on the appointed solicitor provisions was issued last year, and was repeated in a recent mailing to the profession. The individual appointed solicitor must have the prior relationship, and must have been in a position to have taken direct instructions from the client. If a solicitor is not able to take direct instructions from the client, either at the police station, or at court, then s/he cannot admit a client to ABWOR as an appointed solicitor. This applies to all solicitors, and not just sole practitioners.

6.6 The ABWOR appointed solicitor fee is available to recognise the importance of the solicitor/client relationship in custody cases. It was almost universally accepted that allowing solicitors to appear for their own clients in custody cases was an important element of the summary justice reforms. In custody cases it was felt that clients should be able to receive advice and assistance and representation from their own solicitor, who will have a better knowledge of the accused's personal circumstances, and will be in a better position to help the client make informed decisions about the case.

6.7 The regulations do not allow for a firm to provide ABWOR as an appointed solicitor, only an individual solicitor, but the Law Society has asked the Board to keep this under review.

Undertaking cases

6.8 A number of solicitors still think they can provide ABWOR as an appointed solicitor if a client is appearing on an undertaking. This is not the case. ABWOR can only be provided by an appointed solicitor in custody cases. However, a solicitor can provide ABWOR in an undertaking case as a nominated solicitor. In these cases, the solicitor must apply the means and interests of justice tests, as in cited cases.

Contempt of Court

6.9 ABWOR not appropriate as cover is available with an application to the court under Section 30 of the 1986 Act. There is specific provision at Section 30 of the Legal Aid (Scotland) Act 1986 for legal aid in connection with proceedings for contempt of court where a person is liable to be dealt with for contempt of court during the course of or in connection with any proceedings. ABWOR cannot be provided where legal aid is available. Fees are chargeable on a detailed basis in terms of schedule 1 of the Legal Aid in Contempt of Court Proceedings (Scotland)(Fees) Regulations 1992.

Appearing on a Warrant following a previous refusal of criminal legal aid

6.10 ABWOR cannot be made available due to the previous application for full legal aid. If there has been a change in circumstances, a further application for legal aid can be made. Where an accused person is appearing from custody with a complaint for failure to appear under Section 27(1) (a) of the 1995 Act, a solicitor can act for the accused as an appointed solicitor, if appropriate, unless the accused already has a grant of ABWOR or summary criminal legal aid, chargeable as a fixed payment; this work is part of the "proceedings" for which ABWOR or legal aid is already available.

Continued pleading diets

6.11 Some solicitors are providing ABWOR after another solicitor has appeared at the pleading diet where the client pled guilty, and claiming this as ABWOR for a cited case. This is not an appropriate ABWOR grant. As the client appeared from custody, only the appointed solicitor can give ABWOR if they took direct instructions at the start of the case. In addition, a solicitor can only give ABWOR for a continued pleading diet or at a further diet where the court is considering the plea, if the client appeared unrepresented at the initial pleading diet.

7. ANALYSIS OF DUTY SCHEME PAYMENTS

7.1 The following table shows how the expenditure on the duty scheme has risen from £878,000 in 2002/03 to a forecasted figure of £1,654, 443 for 2008/09.

Year	Spend £	Number of Appearances	Average Cost £
2002/03	878,000	25,399	34.57
2003/04	930,000	30,233	30.76
2004/05	878,000	31,701	27.70
2005/06	1,031,000	31,150	33.10
2006/07	1,203,000	34,116	35.56
2007/08	1,308,000	34,493	37.92
2008/09 Forecast	1,654,443	30,808	53.70
Initial SJR Costing Forecast	2,064,728	27,716	74.50
Current SJR Costing Forecast	1,893,697	28,479	66.49

Review of the Duty Scheme

7.2 The reforms of summary criminal legal assistance introduced in June 2008, also brought changes to the duty scheme payments, and allowed “appointed solicitors” to provide ABWOR to clients appearing from custody where a prior solicitor/client relationship could be established. As part of the wider monitoring and review of the summary justice reforms, the Board intends to look closely at the operation of the duty schemes throughout the country.

7.3 The Board recognises that an effective duty scheme is an integral element of the efficient running of the criminal courts in Scotland, and in conducting this review, we will be actively seeking the views of those who operate and work in the criminal courts, by issuing a wider consultation paper in the summer outlining options for changes in the way the duty schemes are set up, and operated. This would be with a view to implementing changes for the 2010 duty plans and beyond.

7.4 As part of this review, we will conduct further analysis on the current usage of the duty schemes, looking at the type of clients who use duty solicitors, and why. We will also look at the use of the new “appointed solicitor” arrangements under ABWOR, which has allowed a client’s own solicitor to provide assistance and representation under the ABWOR scheme for the first time, and see how this is affecting the use of duty solicitors.

7.5 In addition, we have identified the following issues as worthy of further consideration as part of this review:

- Current responsibilities of the duty solicitor
- Eligibility criteria for inclusion on the duty plans
- Local Faculty and Bar Association policies
- Standard of relevant experience required for inclusion on the duty plans
- Provision of training to participate in the duty plans
- Feedback from stakeholders on duty schemes
- Adequacy of duty plan monitoring arrangements
- Ways of improving best value obtained from the duty scheme

7.6 We plan to issue a consultation paper in June 2009, based around these issues which will outline options for changes in the way that the duty schemes are set up and operated.

8. REDUCTIONS IN BUREAUCRACY

8.1 The reforms of the summary criminal legal assistance system were also designed to reduce bureaucracy where possible. The new system was devised to try to reduce the number of times a solicitor needs to interact with the Board for decisions, or extensions of authorized expenditure. In addition, the extension of the new block fees, and the subsuming of A&A into grants of summary criminal legal aid was also designed to reduce solicitor's workloads in submitting accounts. Some examples of where this has been achieved are as follows:

8.2 Subsuming advice and assistance work into subsequent grants of summary criminal legal aid allowed the new ABWOR block fees to be set at significantly increased levels. This has also lead to a 50% reduction in the numbers of criminal advice and assistance forms which needed to be filled in and submitted to the Board. **(51,971 intimations were received in 2009/09, compared to 103,932 intimations in 2007/08).**

8.3 Solicitors do not need to prepare detailed accounts for non breach ABWOR cases. The claim form is included in the body of the account synopsis form. This saves on the expense of a law accountants or in-house fee charger **(reduction of + 30,000 accounts per year).**

8.4 The extended case disposal fee and/or fixed payment now includes up to 2 diets of deferred sentences. This has reduced the number of supplementary accounts solicitors submit in summary criminal matters **(estimated reduction of 7,000 accounts per year).**

8.5 Subsuming of advice and assistance accounts into subsequent grants of ABWOR and/or summary criminal legal aid also means solicitors do not require to prepare A&A accounts **(estimated 50,000 fewer detailed advice and assistance accounts submitted in a full year).**

8.6 Criminal A&A and ABWOR accounts can be submitted online. The Board's turnaround time for online accounts is half the time of paper based accounts (15 days as opposed to 30 days).

8.7 Where the Board requests further information in support of an online account/application the solicitor receives an immediate electronic notification – this speeds up the assessment process and results in earlier payment of the account;

8.8 Our Online systems for intimating grants of Criminal A&A and ABWOR were amended to reflect the new changes, and the Online systems are perhaps easier to use than the revised paper forms. In March 2009, 69% of all grants of Criminal A&A, and 61% of all grants of Criminal ABWOR were submitted online. Similarly, 75% of Criminal A&A Increases, and 72% of Criminal ABWOR increases were submitted online.

8.9 Template increases under A&A allow solicitors to apply for the most common types of increases under A&A by simply ticking a box. These templates also cover multiple appearances at deferred diets, reducing the number of times when increases need to be submitted. Overall increase requests for Criminal A&A cases have reduced by 34% since March 2008.

8.10 Template requests for the most common expert witnesses, such as medical experts, road traffic, firearms and drugs experts have been introduced, reducing the amount of information and form filling required to obtain sanction for one of these experts.

8.11 New transfer of agency procedures were introduced, combining the transfer application and the client mandate forms, and also making the process more transparent to both solicitors involved.

9. FINANCIAL VERIFICATION AND THE DWP LINK

9.1 The reforms gave us the responsibility to ensure that grants of criminal advice and assistance and criminal ABWOR are appropriately made in all the circumstances. This includes ensuring such grants are only made to clients who genuinely qualify. Therefore, we need to be satisfied that solicitors are addressing the financial eligibility tests correctly, and explaining to us how they are satisfied their clients are financially eligible to receive criminal advice and assistance and criminal ABWOR.

9.2 It is the solicitor's responsibility to be satisfied that a client is financially eligible to receive advice and assistance or ABWOR. However, the Board expects solicitors, in most cases, to see documentary evidence of the client's and, where appropriate, any partner's financial position. Clients should be asked, if they make an appointment, to bring with them:

- documentary evidence of their capital and income
- the proof of identity that solicitors would normally ask for when signing up new clients, whether legally aided or not.

9.3 The forms ask solicitors to confirm if verification of income and capital has been seen, and if not, how the solicitor was satisfied that the client was financially eligible. So far, solicitors are indicating they have seen financial verification in only a small proportion of cases. Where no verification has been seen, solicitors need to explain to us how they were satisfied that the client was financially eligible, and what reasonable steps they have taken to verify financial circumstances. We will withhold payment of the solicitor's account if we have not been provided with this information. Where we are satisfied that reasonable steps are being taken to verify financial circumstances, there should not be any difficulty in the payment of accounts. However, solicitors are advised that verification of income must be seen if the same client returns for another case. Further guidelines on this, along with details of the link we now have with the DWP will be issued shortly.

9.4 We remain concerned that some solicitors are not seeing financial verification in sufficient numbers of case, and we will be doing more analysis work in this area.

Automatic Link with the Department for Work and Pensions for verifying passport benefits

9.5 We now have a direct link with the Department for Work and Pensions, which allows us to check cases where the client is receiving passport benefits – that is, income support, income-based jobseeker’s allowance, and the new income-related employment support allowance. solicitors still need to satisfy themselves that the client receives one of these benefits, and is therefore financially eligible, but they do not need to see documentary evidence of these benefits to do this, as we will be able to confirm this ourselves. We must be provided with the client’s national insurance number on the form to allow us to do this. If we do not get this, we will not reject the application, but we will expect the solicitor to see verification of these benefits themselves.

9.6 Where the DWP link cannot confirm the benefits being received, we are writing to the client and the solicitor for an explanation. If a satisfactory explanation is received, then solicitors’ accounts can be paid without any difficulty. If no explanation is received, and we are satisfied that the solicitor has taken reasonable steps to confirm the financial position, then the account can be paid. Solicitors are also advised that verification of income must be seen if the same client returns for another case. We also have the ability to recover any sums paid to the solicitor from the client if the client does not co-operate with us on these matters. However, this does not reduce the solicitor’s responsibilities in relation to the client’s financial eligibility.

10. PROCESSING DAYS AND DURATIONS

10.1 The following table shows our most recent figures in relation to the different types of Criminal Applications. The average processing days, records the length of time cases are with us for decisions, excluding any time when cases need to be continued for more information. The Average Total Durations are the average total times taken to intimate decisions on applications, including any time when the case was continued. Unfortunately, this information is only available from March 2009 onwards for a number of application types.

	Number of Applications			Average Process Days			Average Total Duration (days)		
	Jan09	Feb09	Mar09	Jan09	Feb09	Mar09	Jan09	Feb09	Mar09
Full Application	5,163	5,212	5,436	2.1	2.1	1.6	N/A	N/A	4.3
Sanction	506	631	561	1.7	2.0	3.7	N/A	N/A	6.2
Transfer	173	202	215	2.0	2.0	1.8	N/A	N/A	1.8
Review	230	276	258	2.1	1.9	2.8	N/A	N/A	2.8
Appeal	135	152	180	1.4	1.5	1.6	3.5	4.8	4.7
Reconsideration	91	111	130	2.2	2.0	2.7	N/A	N/A	2.7
Exceptional Cases	25	39	25	N/A	1.5	2.4	1.4	1.5	2.4

11. ANALYSIS OF ISSUES ALREADY RAISED BY THE LAW SOCIETY

Add-ons (Bail appeals, rural court and under 21 on remand)

11.1 With the introduction of the summary criminal reforms there is no longer any separate fee for the attendance of the following “additional fees” where the *case disposal* fee is payable under either Schedule 1A (Summary criminal legal aid where the case does not proceed to trial

beyond 30 minutes) or Schedule 1B (ABWOR) in terms of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Amendment Regulations 2008.

11.2 Prior to the reforms these heads of work would have attracted separate fees where the case proceeded to a full grant of summary criminal legal aid.

- Where a solicitor represents an assisted person who has been remanded in custody at or subsequent to the first calling of the case and that person was under 21 years of age. **Estimated cost of restoring these payments - £180,000**
- Rural court supplement (this was only ever payable in a sheriff court case). **Estimated cost of restoring these payments - £23,000**
- Work done in connection with a bail appeal under section 32 of the 1995 Act. **Estimated cost of restoring these payments - £68,000**

11.3 At the last meeting with Cabinet Secretary on 15 December 2008, it was recognised that the impact of the new legislation in relation to payment for bail appeals had introduced an element of unfairness as solicitors were out of pocket. The Cabinet Secretary noted that this was an unintended consequence of the reforms and that he would instruct regulations to re-instate this as a separate payment as soon as practicable.

11.4 In relation to the additional payments in respect of rural courts supplements and under 21 on remand, the Cabinet Secretary did not rule this possibility out but noted that the reforms were still in the early stages and that no clear and consistent picture of their effect was visible from the data. He agreed to consider the issue again when more information was available, and in the context of the overall funding position for legal aid.

Solemn cases reduced to summary (or any other time and line summary)

11.5 The LSS recently sought an increase in fees for those cases which commenced as solemn proceedings but which were subsequently reduced to summary proceedings. The LSS considered that the 10% increase in A&A rates should also be applied to these cases.

Estimated Cost - £90,000 (to nearest £10k based on full year 2007-08 data)

Post conviction breaches

11.6 The LSS also sought a similar increase in the time and line fees for post conviction breach cases. The new regulations made the provision for a 10% increase in all new Criminal Advice and Assistance cases from 30 June 2008 onwards. This 10% increase was limited to Criminal Advice and Assistance cases only. For Breach of Probation, Breach of Community Service etc, it was agreed as part of the extended consultation on the reform of summary criminal legal assistance last year that the previous arrangements for these cases would not be changed.

Estimated Cost - £306,850 (to nearest £10k based on 9500 cases x £323.00)

Appointed Solicitor – extension of definition to allow solicitor from “appointed firm” to act.

11.7 At present only a solicitor who has had a personal solicitor and client relationship can act as “appointed solicitor” for an accused person appearing from custody. The Law Society have asked for this to extend to the appointed solicitors “firm”.

11.8 We advised the Law Society at our last meeting on 26 March that we will shortly be undertaking a review of the current appointed solicitor arrangements. The Law Society will be fully involved in this review. It will look at the current appointed solicitor arrangements and a range of cases where ABWOR had been made available by appointed solicitors. This could lead to a recommendation to ease or tighten up the appointed solicitor arrangements. A fair balance needs to be struck between solicitor's interests, and those of the tax payer.

11.9 In relation to allowing any solicitor in the firm to be an appointed solicitor, it is important to remember that the new arrangements were introduced to recognise the importance of the solicitor/client relationship in custody cases. It was almost universally accepted that allowing solicitors to appear for their own clients in custody cases was an important element of the summary justice reforms. In custody cases it was felt that clients should be able to receive advice and assistance and representation from their own solicitor, who will have a better knowledge of the accused's personal circumstances, and will be in a better position to help the client make informed decisions about the case. It is doubtful whether the trust and confidence clients may have in their own individual solicitor also extends to other individuals in the same firm who they do not know.