

New Multi-Party Action Powers Announced

With effect from 1 April 1992 the Board will have a discretionary power to contract in personal injury cases involving ten or more claimants. Under the contracts we will be able to select the firm or firms to undertake the generic work on behalf of all the legally aided claimants, and contract firms will be obliged to provide detailed six-monthly reports on the progress of the actions to us and three-monthly reports to the claimants. In return contract firms will be eligible for more advantageous payment on account arrangements for the generic work. In the majority of cases claimants will be able to instruct the solicitors of their choice to undertake the non generic work.

Value for Money

The new provisions in the Civil Legal Aid (General) (Amendment) Regulations 1992 are being introduced following the Board's report to the Lord Chancellor in September 1991. We

are delighted that the Regulations are in place and are now consulting with the Law Society and others over the Arrangements and administrative procedures which are needed to implement them. We hope to be in a position to start using the powers from 1 June 1992 although the number of contracts entered into will initially be limited until the new procedures become established, it is likely that they will be used for new rather than existing actions. We are confident that the new Arrangements will ensure better value for money for the claimant and the taxpayer through the improved selection powers, monitoring procedures and a formalised co-ordinated approach.

Generic Accounts

The Board is also introducing a new method of making generic payments on account in multi-party actions. Because our computer system requires that all civil legal aid payments from the fund

must be by reference to a certificate, the present system is that one or more assisted persons are selected and all generic payments are channelled through their certificates. Although this procedure has no adverse effect on the assisted persons selected a number of administrative difficulties have led to requests from solicitors and area offices for payments to be made other than by reference to any one person's certificate. The difficulties related to the fact that the chosen certificates might be discharged or revoked, and that generic payments could not easily be kept separate from specific payments. To avoid these difficulties area offices may now set up generic accounts for each firm undertaking generic work.

Each generic account will have a reference number like a certificate which will enable generic payments to be more easily identified. The procedure is not compulsory and will be left to the discretion of individual

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area offices in individual actions. Generic accounts will be particularly suitable in new actions and for representation pursuant to a contract under the Board's new multi-party action Arrangements.

Financial Eligibility and Remuneration Rates April 1992

Amendment Regulations

A number of Amendment Regulations come into force on 1 and 6 April 1992. You will probably be aware that these amendment Regulations increase some of the financial eligibility limits as well as giving effect to the overall 3% increase in the rates of remuneration. Full details of the

eligibility limits and remuneration rates are given in this issue of Focus which also includes details of the other changes of significance. Legal Aid account holders are being sent the new Green Form key card (number 24) which should be used from 6 April and additional copies may be obtained from your local area

office in the usual way. The Board's leaflets are being updated and will be reissued as soon as possible. You may wish to note that the eligibility limits and remuneration rates will also be publicised in the professional journals, including the Law Society's Gazette.

All income and capital figures are "disposable". The financial eligibility limits and dependants' allowances for legal advice and assistance, civil legal aid and criminal legal aid with effect from 6 April are:

Legal Advice and Assistance (Green Form and ABWOR) – See key card number 24

Disposable Capital

| | no dependants | one dependant | two dependants |
|--|---------------|---------------|----------------|
| Capital limits for advice and assistance | £1000.00 | £1335.00 | £1535.00 |
| Capital limits for ABWOR | £3000.00 | £3335.00 | £3535.00 |

Plus £100 for each additional dependant

All applicants in receipt of income support are eligible for ABWOR, regardless of capital.

Weekly Dependants' Allowances

| Partner: | £40.69 | | | |
|-------------|------------------------|---------------------|---------------------|---------------------|
| Dependants: | Under 11yrs. £18.19 | 11-15yrs. £26.75 | 16-17yrs. £31.94 | 18 & over £42.00 |

Disposable Income

Free limit: £75.00 per week
Upper limit: £145.00 per week

| Weekly disposable income more than | but not exceeding | contribution |
|------------------------------------|-------------------|--------------|
| £75.00 | £80.00 | £5.00 |
| £80.00 | £86.00 | £12.00 |
| £86.00 | £92.00 | £19.00 |
| £92.00 | £98.00 | £25.00 |
| £98.00 | £104.00 | £32.00 |
| £104.00 | £110.00 | £38.00 |
| £110.00 | £116.00 | £45.00 |
| £116.00 | £122.00 | £51.00 |
| £122.00 | £128.00 | £58.00 |
| £128.00 | £134.00 | £64.00 |
| £134.00 | £140.00 | £70.00 |
| £140.00 | £145.00 | £75.00 |

(All those in receipt of income support, family credit or disability working allowance are eligible for advice and assistance on income without a contribution but their capital must be assessed).

Civil Legal Aid – Financial Eligibility

Income and Capital limits

| | £ per year |
|---------------------|-----------------------------|
| Lower income limit | 3060.00 |
| Upper income limit | 6800.00 |
| | 7500.00 for personal injury |
| | £ |
| Lower capital limit | 3000.00 |
| Upper capital limit | 6750.00 |
| | 8560.00 for personal injury |

All applicants in receipt of income support are eligible for civil legal aid, regardless of capital.

Capital disregards for pensioners

| Annual disposable income (excluding net income derived from capital) | amount of capital disregard |
|--|-----------------------------|
| £ | £ |
| up to 350 | 35000 |
| 351-800 | 30000 |
| 801-1200 | 25000 |
| 1201-1600 | 20000 |
| 1601-2050 | 15000 |
| 2051-2450 | 10000 |
| 2451 & above | 5000 |

Yearly Dependants' Allowances

| Partner: | £2122 | | | |
|-------------|--------------|-----------|-----------|-----------|
| Dependants: | Under 11yrs. | 11-15yrs. | 16-17yrs. | 18 & over |
| | £948 | £1395 | £1665 | £2190 |

Legal Aid Eligibility

| | For Free Civil, Legal Aid | For Civil Legal Aid with Contribution |
|---|---------------------------|---------------------------------------|
| Rented Home | Gross weekly and (yearly) | Gross weekly and (yearly) |
| Single person | £110.46 (£5,744) | £219.42 (£11,410) |
| Lone parent with 2 children of 4 and 12 | £154.67 (£8,043) | £263.17 (£13,685) |
| Couple | £168.00 (£8,736) | £276.96 (£14,402) |
| Couple with 2 children of 4 and 12 | £227.25 (£11,817) | £336.23 (£17,484) |
| Owner Occupied Home | | |
| Single person | £202.71 (£10,541) | £311.69 (£16,208) |
| Lone parent with 2 children of 4 and 12 | £246.46 (£12,816) | £355.42 (£18,482) |
| Couple | £260.23 (£13,532) | £369.19 (£19,198) |
| Couple with 2 children of 4 and 12 | £319.52 (£16,615) | £427.77 (£22,244) |

- The examples given are by way of illustration only. Eligibility depends on the circumstances of the particular applicant.
- The examples for *rented* accommodation are based on a rent of £30.91 per week (£1607.39 per year) including water rates.
- The examples for *owner-occupied* accommodation are based on a mortgage of £91.78 per week (£4772.75 per year) including water rates.
- All the examples are based on community charge per person of £282 per year.

Criminal Legal Aid – Financial Eligibility

Income and capital limits

| | |
|------------------------------|-----------------------------|
| | <i>£ per week (average)</i> |
| Free legal aid income limit | 65.00 |
| No upper income limit | |
| | <i>£</i> |
| Free legal aid capital limit | 3000.00 |
| No upper income limit | |

Contributions from income

Weekly Disposable income

| <i>More than</i> | <i>but not exceeding</i> | <i>Weekly contribution</i> |
|------------------|--------------------------|----------------------------|
| £65.00 | £69.00 | £2.00 |
| £69.00 | £73.00 | £3.00 |
| £73.00 | £77.00 | £4.00 |
| £77.00 | £81.00 | £5.00 |
| £81.00 | £85.00 | £6.00 |
| £85.00 | £89.00 | £7.00 |

Contribution increasing by £1.00 for each £4.00, or part of £4.00 by which the average weekly disposable income exceeds £89.00.

Remuneration Rates 1992 Increase

The figures in brackets are the London Rates - applicable to a fee-earner whose office is in the London Legal Aid Area.

Green Form and ABWOR (except Mental Health Review Tribunals and warrants of further Detention)

| | Rate from 1.4.91 | Rate from 1.4.92 |
|--|-----------------------------|-----------------------------|
| Preparation | £42.00 per hour (£44.50) | £43.25 per hour (£45.75) |
| Advocacy | £53.00 | £54.50 |
| Attendance at court where counsel assigned | £28.50 | £29.50 |
| Travelling and waiting | £23.50 | £24.25 |
| Routine letters written and telephone calls | £3.25 (£3.40) | £3.35 per item (£3.50) |

Mental Health Review Tribunals

| | From 1.4.92 |
|--|--------------------------|
| Preparation | £52.00 (£55.50) per hour |
| Advocacy | £63.00 |
| Attendance at court where counsel assigned | £29.50 |
| Travelling and waiting | £24.25 |
| Routine letters written and telephone calls | £3.70 per item |

Remuneration Rates 1992 Increase

ABWOR – applications for warrants of further detention

The figures in brackets are the London Rates – applicable to a fee-earner whose office is in the London Legal Aid Area.

Advocacy

| | |
|--|-----------------|
| by a duty solicitor in unsocial hours | £72.66 per hour |
| by a duty solicitor in all other hours | £54.50 |
| by an own solicitor | £54.50 |

Preparation

| | | |
|--|--------|----------|
| by a duty solicitor in unsocial hours | £57.67 | (£61.00) |
| by a duty solicitor in all other hours | £43.25 | (£45.75) |
| by an own solicitor | £43.25 | (£45.75) |

Travelling & Waiting

| | |
|--|--------|
| by a duty solicitor in unsocial hours | £32.33 |
| by a duty solicitor in all other hours | £24.25 |
| by an own solicitor | £24.25 |

Letters written & Telephone calls – per item

| | | |
|--|-------|---------|
| by a duty solicitor in unsocial hours | £4.47 | (£4.67) |
| by a duty solicitor in all other hours | £3.35 | (£3.50) |
| by an own solicitor | £3.35 | (£3.50) |

Criminal Legal Aid

Magistrates' Court

| | Rate from 1.4.91 | Rate from 1.4.92 |
|--|--------------------|------------------------------------|
| Preparation | £42.00 (£44.50) | £43.25 per hour (£45.75) |
| Advocacy | £53.00 | £54.50 |
| Attendance at court where counsel assigned | £28.50 | £29.50 |
| Travelling and waiting | £23.50 | £24.25 |
| Routine letters written and telephone calls | £3.25 (£3.40) | £3.35 per item (£3.50) per item |

Remuneration Rates 1992 Increase

The figures in brackets are the London Rates – applicable to a fee-earner whose office is in the London Legal Aid Area.

Crown Court and Court of Appeal

| Class of work | Grade of fee-earner | Rate |
|---|---|--------------------------------------|
| <i>Preparation</i> | Senior solicitor | £51.50 per hour (£54 per hour) |
| | Solicitor, legal executive or fee earner of equivalent experience | £43.50 per hour (£45.75 per hour) |
| | Articled clerk or fee-earner of equivalent experience | £28.75 per hour (£33.00 per hour) |
| Advocacy | Senior Solicitor | £62.50 per hour |
| | Solicitor | £54.50 per hour |
| Attendance at court where counsel assigned | Senior solicitor, | £41.25 per hour |
| | Solicitor, legal executive or fee earner of equivalent experience | £33 per hour |
| | Articled clerk or fee-earner of equivalent experience | £20 per hour |
| Travelling + waiting | Senior solicitor, solicitor | £24.25 per hour |
| | Legal executive or fee-earner of equivalent experience | £24.25 per hour |
| | Articled clerk or fee-earner of equivalent experience | £12 per hour |
| Routine letters written and routine telephone calls | | £3.35 per item (£3.50 per item) |

Remuneration Rates 1992 Increase

Standard Fees in the Crown Court

Preparation

| | Lower standard fee | | Lower fee limit | | Principal standard fee | | Upper fee limit | |
|---|--------------------|--------------------|--------------------|--------------------|------------------------|--------------------|--------------------|--------------------|
| | Rate | New Rate | Rate | New Rate | Rate | New Rate | Rate | New Rate |
| | 1.4.91 | 1.4.92 | 1.4.91 | 1.4.92 | 1.4.91 | 1.4.92 | 1.4.91 | 1.4.92 |
| | £ | £ | £ | £ | £ | £ | £ | £ |
| Jury trials (including prepared for trial with no jury sworn) | 122.00 (130.00) | 125.50 (135.00) | 168.00 (175.00) | 173.00 (180.00) | 235.00 (246.00) | 242.00 (254.00) | 293.00 (307.00) | 302.00 (316.00) |
| Guilty pleas | 77.00 (82.00) | 79.00 (85.00) | 103.00 (107.00) | 106.00 (110.00) | 165.00 (172.00) | 170.00 (180.00) | 212.00 (222.00) | 218.00 (228.00) |
| Appeals against conviction | 48.25 (51.00) | 49.50 (53.00) | 64.00 (66.00) | 66.00 (68.00) | 144.50 (150.00) | 148.50 (154.50) | 218.00 (229.00) | 225.00 (236.00) |
| Appeals against sentence | 34.25 (37.00) | 35.25 (38.00) | 49.00 (51.00) | 50.50 (52.50) | 88.00 (92.00) | 90.50 (95.00) | 123.00 (127.00) | 127.00 (131.00) |
| Committals for sentence | 40.00 (42.00) | 41.00 (43.50) | 48.00 (50.00) | 49.50 (51.50) | 92.00 (97.00) | 94.75 (100.00) | 133.00 (137.00) | 137.00 (141.00) |

1.4.91

1.4.92

Advocacy in respect of bail applications £24.50 (£27.00)

£25.25 (£27.75) per hour

Attendance at Court (including waiting where counsel assigned)

£20.25

£20.75

Travelling

£17.50

£18.00

Additional standard fee: preparation in cases where counsel is briefed to appear unattended: £29.00 (£31.00 London).

Additional standard fee for listening to tape of police interview: £10.45 for every ten minutes of the total running time of all tapes or parts of tapes listened to and by the same amount for any remaining period.

Court Duty Solicitor

Rate 1.4.91

New Rate 1.4.92

Standard rate

£38.25

£48.88 per hour

Enhanced rate

£47.81

£61.10

All Travelling

£23.50

£24.25

Remuneration Rates 1992 Increase

Advice and assistance at police stations

| | Rate from 1.4.91 | Rate from 1.4.92 |
|---|--|--|
| Availability during duty period (standby payment) | £3.40-£81.60 max (£3.45-£82.80 max) | £3.50 per hour served, to a maximum of £84.00 (£3.55 per hour served, to a maximum of £85.20) |
| Advising and assisting other than over the telephone: | | |
| Duty Solicitor unsocial hours | £56.00 | £57.50 per hour |
| Duty Solicitor all other hours | £42.00 (£44.75) | £43.50 (£46.50) |
| Own Solicitor | £42.00 (£44.75) | £43.50 (£46.50) |
| Travelling and Waiting | | |
| Duty Solicitor unsocial hours | £56.00 | £57.50 |
| Duty Solicitor all other hours | £42.00 (£44.75) | £43.50 (£46.50) |
| Own Solicitor | £23.50 | £24.25 |
| Advising and assisting over the telephone | | |
| | £19.00 (£19.50) | £19.75 (£20.50) |
| Routine telephone calls | £2.10 (£2.15) | £2.25 per item (£2.40) |

Remuneration Rates 1992 Increase

Civil Legal Aid – in Family Proceedings

Care proceedings – ie proceedings for an order under Parts IV or V of the Children Act 1989 – care and supervision/protection of children.

Preparation

| Item | Magistrates' Court or County Court | High Court |
|---|---------------------------------------|-----------------------------|
| Writing routine letters | £3.60 per item | £4.15 per item |
| Receiving routine letters | £1.80 per item | £2.05 per item |
| Routine telephone calls | £3.60 per item | £4.15 per item |
| All other preparation work | £57.25 per hour (£60.25) | £64.50 per hour (£68.75) |
| Travelling and waiting | £28.75 per hour | £31.50 per hour |
| Attending Counsel in conference or with counsel at court | £32.00 per hour | £36.50 per hour |
| Attending court without counsel (advocacy) | £63.00 per hour | £63.00 per hour |

Fees for Junior Counsel

| | Magistrates' Court or County Court | High Court |
|--|---------------------------------------|-------------------|
| With a brief on an unopposed application for an injunction, or procedural issue | Standard £75.00 Maximum £125.00 | £87.00 £144.00 |

With a brief on the trial of a cause or matter or on the hearing of an application where the hearing lasts for:

| | | |
|----------------------|-------------------------------------|--------------------|
| one hour | Standard £112.50 Maximum £225.00 | £131.50 £264.00 |
| a half day | Standard £157.00 Maximum £264.00 | £182.00 £300.00 |
| a full day | Standard £313.00 Maximum £501.00 | £363.00 £576.00 |
| more than a full day | Discretionary | Discretionary |

For each day or part of a day on which the trial of a cause or matter, or the hearing of an ancillary application, or a children appointment, is continued after the first day.

Discretionary

Discretionary

Conference (including time reasonably spent in preparation and conference, but not otherwise remunerated)

£17.50 Standard per half hour

£20.00 Standard per half hour

Complex items of written work (such as advices on evidence, opinions and affidavits of a substantial nature, requests for particulars or answers)

£81.50 Standard per item

£94.75 Standard per item

All other written work

£49.50 Standard per item

£56.25 Standard per item

Except where the court is within 40 kilometres of Charing Cross or where there is no local Bar in the court town, or within 40 kilometres thereof, for travelling time

£15.65 Standard per hour

£18.25 Standard per hour

+ expenses

+ expenses

Taxation and review of taxation County Court and High Court Only

| | | |
|---|---------------|---------------|
| Preparing the bill (where allowable) and completing the taxation (excluding preparing for and attending the taxation) | £31.50-£50.25 | £31.50-£88.00 |
| Preparing for and attending the taxation (including travelling and waiting) | Discretionary | Discretionary |
| Review by a district judge or judge (including preparation) | Discretionary | Discretionary |

Remuneration Rates 1992 Increase

Prescribed Family Proceedings

County Court and High Court proceedings (matrimonial and non-care Children Act)

| | County Court | High Court |
|--|---|-----------------|
| Writing routine letters | £3.60 per item | £4.15 per item |
| Receiving routine letters | £1.80 per item | £2.05 per item |
| Routine telephone calls | £3.60 per item | £4.15 per item |
| All other preparation work | | |
| | Where the proceedings were conducted in the divorce registry or in another court on the South-Eastern Circuit at the time when the relevant work was done: | |
| | £40.25 per hour | £46.00 per hour |
| | All other circuits: | |
| | £38.20 per hour | £43.00 per hour |
| | +50% | +50% |
| Care and conduct of the proceedings | £28.75 per hour | £31.50 per hour |
| Travelling and waiting | £32.00 per hour | £36.50 per hour |
| Attending counsel in conference | | |
| Attending with counsel at any trial hearing or appointment | £32.00 per hour | £36.50 per hour |
| Attending without counsel at any trial, hearing or appointment | £52.00 per hour | £55.00 per hour |

Fees for Junior Counsel

| | | |
|--|--|--|
| With a brief on an unopposed application for an injunction, or procedural issue | Standard £75.00 Maximum £125.00 | £87.00 £144.00 |
| With a brief on the trial of a cause or matter or on the hearing of an ancillary application or on a children appointment where the hearing lasts for: | | |
| one hour | Standard £112.50 Maximum £225.00 | £131.50 £264.00 |
| a half day | Standard £157.00 Maximum £264.00 | £182.00 £300.00 |
| a full day | Standard £313.00 Maximum £501.00 | £363.00 £576.00 |
| more than a full day | Discretionary | Discretionary |
| For each day or part of a day on which the trial of a cause or matter, or the hearing of an ancillary application, or a children appointment, is continued after the first day | Discretionary | Discretionary |
| Conference (including time reasonably spent in preparation and conference, but not otherwise remunerated) | Standard £17.50 per half hour | Standard £20.00 per half hour |
| Complex items of written work (such as advices on evidence, opinions and affidavits of a substantial nature, requests for particulars or answers) | Standard £81.50 per item | Standard £94.75 per item |
| All other written work | Standard £49.50 per item | Standard £56.00 per item |
| Except where the court is within 40 kilometres of Charing Cross or where there is no local Bar in the court, town, or within 40 kilometres thereof, for travelling time | Standard £15.65 per hour + expenses | Standard £18.25 per hour + expenses |

Remuneration Rates 1992 Increase

Prescribed Family Proceedings *(continued)*

Taxation and review of taxation

| | County Court | High Court |
|---|---------------|---------------|
| Preparing the bill (where allowable) and completing the taxation (excluding preparing for and attending the taxation) | £31.50-£50.25 | £31.50-£88.00 |
| Preparing for and attending the taxation (including travelling and waiting) | Discretionary | Discretionary |
| Review by district judge or judge (including preparation) | Discretionary | Discretionary |

Magistrates' Court Proceedings

Family proceedings other than care proceedings

| | |
|---|--------------------------|
| Preparation | £43.25 (£46.00 per hour) |
| Advocacy | £54.50 per hour |
| Attendance at court where counsel assigned | £29.50 |
| Travelling and Waiting | £24.25 |
| Routine letters written and routine telephone calls | £3.35 (£3.50 per item) |

Civil Legal Aid in the Magistrates' Court

The rates for civil legal aid for Magistrates' Court proceedings other than family proceedings are the same as for criminal legal aid.

Representation in Contempt Proceedings

| | |
|------------------------------------|--------|
| Standard fee per day of appearance | £70.25 |
|------------------------------------|--------|

Independent Social Workers

From 1 April 1992 the fees payable to independent social workers are:

| | |
|-------------|-----------------|
| Preparation | £16.50 per hour |
| Travel | £11.00 per hour |

Conciliation Reports

From 1 April 1992 the amount allowable as a disbursement when a solicitor makes a referral to a recognised conciliation service under a Green Form will be increased to £32.50. This is broken down to:

| | |
|-------------------|--------|
| Report | £23.00 |
| Solicitor's costs | £9.50 |

Mileage

The mileage rate remains at 35.7p per mile.

Regulation 100 Payment on Account Scheme – Civil Legal Aid

Improvements have been made to the Regulation 100 payments on account scheme. This will mean some changes affecting the period for which a certificate must have been in force for a payment to be possible, the level of payment and the period or “window” during which a claim may be made. The changes will be fully implemented in December 1992, but there are transitional arrangements which phase in the changes. For solicitors all the changes will be computer driven and claim forms will be dispatched at the appropriate time. The claim form for solicitors will be amended as soon as possible to reflect these changes. For the Bar claims must be submitted when appropriate.

Payments for solicitors can be made after the certificate has been in force for twelve months with the percentage paid remaining at 54% for 1992/1993. This reduction from 18 to 12 months in solicitors’ claims will be phased in starting in September. For the Bar, the payment intervals are unchanged, ie. with the first payment at 18 months but the

maximum payment will now be 62% for 1992/1993.

The detailed arrangements are:

Solicitors’ Claims

- A payment on account may be made when 12 months have elapsed from the date of issue. The certificate is eligible for further claims for payments on account 24 months and 36 months following the date of issue but see Transitional Arrangements below for exceptions to this.
- A claim form for each certificate will be sent to the last recorded conducting solicitor 10 months, 22 months and 34 months after the date of issue.
- When the claim is submitted by the solicitor it will be entered on the computer and held on file until the certificate becomes 12, 24 or 36 months old. The payment will be calculated using the maximum payment percentage at that date.
- Claims submitted after the eligibility date, but before four months have elapsed from the eligibility date, will be entered, calculated as at the eligibility date and paid.

- Claims received after the end of the six month “window” will not be paid.

Claims by Counsel

- Certificates will be eligible for a payment on account when 18 months, 30 months and 42 months have elapsed from the date of issue. No claim forms are sent to Counsel. It is the responsibility of counsel to submit a claim when a certificate for which they are instructed becomes eligible.
- Counsel may submit a claim two months in advance of the eligibility date for the certificate and up to four months after the eligibility date.
- Claims submitted before the eligibility date will be entered on the computer and held until the eligibility date is reached. The payment will be calculated using the maximum payment percentage at the eligibility date.
- Claims submitted after the eligibility date, but within four months of the eligibility date, will be entered, calculated as at the eligibility date and paid.

Maximum Payment Percentages

Solicitors

Date of issue

1st April 1992 to 31st March 1993
 1st April 1993 to 31st March 1994
 1st April 1994 to 31st March 1995
 1st April 1995 onwards

Maximum Payment Percentage

54%
 62%
 70%
 75%

Counsel

Date of issue

1st April 1992 to 31st March 1993
 1st April 1993 to 31st March 1994
 1st April 1994 onwards

Maximum Payment Percentage

62%
 70%
 75%

Transitional Arrangements for Solicitors

1. During a three month transitional period from September some certificates older than 12 months will be eligible for two payments within a 12 month period although the maximum payment percentage will be held at 54% from 1st April 1992.
2. Claim forms for certificates which become eligible for a payment on account in September 1992 will be sent out during July 1992. Certificates eligible will be those where the date of issue is:

March }
April } 1989, 1990 or 1991
September }

3. Claims forms for certificates which become eligible for a payment on account in October 1992 will be sent out during August 1992. Certificates eligible will be those where the date of issue is:

May }
June } 1989, 1990 or 1991
October }

4. Claim forms for certificates which become eligible for a payment on account in November 1992 will be sent out during September 1992. Certificates eligible will be those where the date of issue is:

July }
August } 1989, 1990 or 1991
November }

Payments on Account of Disbursements in ABWOR Cases

From 1st April 1992 a new specific power is introduced to make payments on account of disbursements incurred, or about to be incurred in connection with proceedings covered by an ABWOR approval. There is no power to make payments in respect of profit costs or counsel's fees. You are reminded that prior authority is required for experts' reports/evidence and unusually large expenditures.

A suitable application form will be introduced for claiming payments on account but in the meantime applications should be made by letter to the area office which granted the approval. A suggested letter appears below.

Applications must be for more than £30 (although this can be the total amount of more than one disbursement in the particular case).

You should note that even where there is no deficiency to be claimed from the area office on the conclusion of the case, there is a requirement to submit a statement of costs, the amount of any contribution payable and the value of any solicitor's charge arising. This can be done in the form of a letter where no claim is being made, although in all other cases the claim should be made in the usual way but showing the payment(s) on account already received. Any payment on account greater than the amount assessed to be payable from the Legal Aid Fund (if any) is repayable by the solicitor and will be recouped. (Continued over page).

RE: NAME OF CLIENT:

ABWOR APPROVAL NO:

APPLICATION FOR PAYMENT ON ACCOUNT OF DISBURSEMENTS

I request payment on account of the following disbursement(s):

| | |
|----------------------|--------------------------------|
| Type of disbursement | Amount £ |
| eg. medical report | (minimum £30 inclusive of VAT) |

I confirm that the disbursement(s) claimed has/have already been incurred or will be incurred in the near future and that any authority required by Regulation 22(7) of the Legal Advice and Assistance Regulations 1989 has been obtained.

My legal aid account number is:

Green Form Advice to Children and Legal Aid Applications by Minors and Patients

From 1st April the Family Proceedings Rules 1991 have been amended so as to allow minors with the leave of the court or of sufficient understanding to be able to commence, pursue and defend Children Act 1989 and inherent jurisdiction (wardship) proceedings without a next friend or guardian ad litem (see new rule 9.2A).

Both the Legal Advice and Assistance Regulations 1989 and the Civil Legal Aid (General) Regulations 1989 have been amended to reflect this change.

Thus from 1st April where a) a child (up to the age of 16) has obtained leave of the court to conduct proceedings or b) a solicitor considers that a child is able, having regard to his understanding, to give instructions and has accepted instructions in relation to proceedings under the Children Act 1989 or the inherent jurisdiction, the child may sign his or her own Green Form without authority from the area office. The solicitor can also sign and make an application for civil legal aid for a minor (up to the age of 18) in the same circumstances.

Before obtaining the child's signature to a Green Form or signing a legal aid application on behalf of a minor, the solicitor must be satisfied that the matter falls within rule 9.2A as indicated above. All other cases must continue to be dealt with in the usual way.

The solicitor will also need to take instructions as to the child's or minor's financial circumstances – the financial assessment provisions have not been amended. This means that the child client will be assessed on the basis of his or her own means for civil legal aid and that in Green Form cases it may not be appropriate for the resources of any adult to be taken into account in the means assessment of the child (see paragraph 5 of Schedule 2 Legal Advice and Assistance Regulations 1989).

The declaration to be signed by the applicant in form CLA5 does not need to be signed by the minor client although the solicitor must sign the "Statement by nominated solicitor" personally (as he will be the minor's agent). He/she should, in accordance with the statement,

give the client the leaflet "What Happens Next".

When submitting an application for civil legal aid for a minor in these circumstances, the solicitor should note that he or she will be treated as the minor's agent for all purposes including the receipt of notices. The solicitor should insert his or her own address as the correspondence address for the application and that will then be used by the Legal Aid Assessment Office and the Area Office for all communications.

We have received some comments about certificates and notices being sent direct to children following the implementation of the Children Act and you should note that a correspondence address must be inserted in *all* cases where we are to send items to an address other than the applicant's address.

You will have read in the last issue of FOCUS that we are going to introduce a simplified means form where a child has no assets. Where the solicitor is making the application, he or she must personally sign that form (or the existing means form CLA4A before the new form is introduced or in cases not covered by the new form). The solicitor should supply details of the child's means in accordance with the instructions given.

The civil legal aid position has also been amended so that from 1st April 1992 it will no longer be necessary for an undertaking to be signed by those applying for legal aid on behalf of minors or patients. This will mean that offers of legal aid will only be made where there is a contribution to be collected. This will speed up the issue of certificates in such cases.

Introduction of Disability Working Allowance and Disability Living Allowance

New benefits for people with disabilities will be introduced on 6 April 1992 under the Disability Living Allowance and Disability Working Allowance Act 1991. These are reflected in the eligibility and means assessment changes brought about by the Amendment Regulations. Disability working allowance is a means tested benefit modelled on family credit which can be claimed by people with disabilities who work for at least 16 hours a week. Disability living allowance is a non-contributory, non-means tested benefit created by merging and extending attendance allowance and mobility allowance.

For eligibility purposes disability working allowance is treated in the same way as family credit – that is to say it

- is a passport to Green Form advice/ABWOR *provided* the applicant is also eligible on capital,
- is a passport to free criminal legal aid,
- is neither a passport to free civil legal aid nor disregarded in means assessment.

Disability living allowance is disregarded for all means assessments (mobility component only disregarded for Green Form/ABWOR) but is not a passport to any type of advice and assistance/legal aid.

Police Station Advice and Court Duty Solicitor Schemes

The relevant Regulations have been amended from 1 April 1992 so that the increased unsocial hours rates are payable when work is done other than on a business day. Previously the increased rates were triggered by work on Saturdays, Sundays or bank holidays.

Surprisingly Good Friday and Christmas Day are not legally regarded as bank holidays and the change means that the increased rates will be payable for work on Good Friday and Christmas Day.

Representation in Contempt Proceedings

Up until now only a standard fee has been payable for representation in proceedings for contempt – that is contempt in the face of the court and not for breach of a court order. (See Legal Update, Focus 1991 issue two).

The relevant Regulations have been amended with effect from 1 April 1992 so that the paying authority may, where it is of the opinion that there are exceptional circumstances, allow a reasonable fee *having regard to the amount of the standard fee*. The standard fee has been increased to £70.25 but if you are granted representation by the court and wish to apply for a non-standard, assessed fee in a case to be dealt with by the Board (that is all cases *except* those in the Court of Appeal, Criminal Division and Crown Court criminal proceedings), you should send the grant of representation produced and issued by the court on form RCP1 or RCP1(A) to Room 207, Legal Aid Accounts Department, 12 Roger Street, London WC1N 2JL, together with a letter which must:–

1. Indicate that you wish to apply for a non-standard fee.
2. Give details of the exceptional circumstances of the case to justify the payment of a non-standard fee (e.g. work required to be undertaken by the court after the court hearing and before a further court hearing in the case).
3. Give full details of the work done and time spent.
4. Give the calculation of your claim based on the rates which would normally be claimable in that court.

Your claim will be considered and you will be notified of the amount allowed. You will receive only the standard fee where it is *not* considered that there are exceptional circumstances.

Complete List of Amendment Regulations coming into force on 1 and 6 April 1992

1. The Legal Advice and Assistance (Amendment) Regulations 1992 – in force 1 April 1992 – S.I. No. 591
2. The Legal Advice and Assistance (Amendment) (No.2) Regulations 1992 – in force 6 April 1992 – S.I. No. 719
3. The Civil Legal Aid (General) (Amendment) Regulations 1992 S.I. No. 590 – in force 1 April 1992 (except payments on account) [and the Civil Legal Aid (General) (Amendment) (No.2) Regulations 1992] – S.I. No. 721
4. The Civil Legal Aid (Assessment of Resources) (Amendment) Regulations 1992 – in force 6 April 1992 – S.I. No. 718
5. The Legal Aid in Family Proceedings (Remuneration) (Amendment) Regulations 1992 – in force 1 April 1992 – S.I. No. 596
6. The Legal Aid in Criminal and Care Proceedings (General) (Amendment) Regulations 1992 – in force 6 April 1992 – S.I. No. 720
7. The Legal Aid in Criminal and Care Proceedings (Costs) (Amendment) Regulations 1992 – in force 1 April 1992 – S.I. No. 592
8. The Legal Advice and Assistance at Police Stations (Remuneration) (Amendment) Regulations 1992 – in force 1 April 1992 – S.I. No. 594
9. The Legal Advice and Assistance (Duty Solicitor) (Remuneration) (Amendment) Regulations 1992 – in force 1 April 1992 – S.I. No. 639
10. The Legal Aid in Contempt Proceedings (Remuneration) (Amendment) Regulations 1992 – in force 1 April 1992 – S.I. No. 595

Additional copies of Legal Aid Focus can be obtained from Caroline O'Dwyer
Legal Aid Board Head Office, 5th & 6th Floors,
29-37 Red Lion Street, London WC1 4PP.



UPDATE

Legal

(Issue 1
Feb. '91)

Criminal Legal Aid - Factors Determining "Interests of Justice"

We recently decided to adopt the guidance on Section 22 Legal Aid Act 1988 produced by the Justices' Clerks' Society on the grant of Criminal Legal aid.

The guidance will be used by the area offices and area committees when considering applications for review of refusals of criminal legal aid. It is hoped that use of the guidance will ensure consistency of decision making between courts and area offices.

The Board has sent the guidance to all Magistrates' Courts in England and Wales and copies are being provided to all the Board's area committee members. The guidance will be reproduced in full in the 1991 Handbook (due out Summer 1991). In the meantime copies can be obtained from Legal Aid Board Head Office.

Appealing your Costs Assessment

Since April 1989, solicitors and counsel have had the right of appeal to the Legal Aid Board from an Area Committee's review of costs assessments by the area office.

If you're dissatisfied with the decision of the Area Committee and the Committee considers your case involves a **principle of general importance**, it will certify that your case may go forward to the Costs Appeals Committee of the Board. The Costs Appeals Committee can reverse, affirm or amend the Area Committee's decision.

The following pages contain a list of decisions on points of principle taken to date by the Costs Appeals Committee which will be of help to practitioners when claiming costs from the legal aid fund.

How to Appeal

- *The Area Committee will advise you of its decision on your review of the costs assessment by the area office.*
- *If you are dissatisfied with this decision and consider the case involves a point of principle of general importance, you should write to the area office within 21 days to apply for a certification.*
- *If the Area Committee decides your case does involve a principle of general importance, it will notify you of the certification.*
- *Once you have received certification, you should apply to Legal Aid Board Head Office, which will put forward your case and any supporting submission to its Costs Appeals Committee. The reference to Head Office is not automatic even if a point is certified.*
- *The Committee will consider the papers considered by the Area Committee along with your submission and notify you of its decision at the earliest opportunity.*
- *You have 21 days to appeal at each stage of the appeals procedure: from the Area Office assessment to the Area Committee's review, from the Area Committee's review to certification and then to the Costs Appeals Committee.*



Points of Principle of General Importance:

In House Photocopying

In house photocopying is clearly an office overhead. (Ref: CRIMLA 1 - 18.12.89)

Confirmation to Clients of Next Hearing Date and Final Outcome

The solicitor may, if he considers it appropriate, write to his client after each court appearance giving details of the decision of the court and the client's next appearance before the court. The solicitor may also write to his client at the conclusion of the matter giving the decision of the court. (Ref: CRIMLA 2 - 6.3.90)

Medical or Psychiatric Reports in Mitigation

Only in exceptional cases will costs of medical or psychiatric reports be allowed for use in mitigation on conviction where no request has been made of the Court. (Ref: CRIMLA 3 - 27.3.90)

Enhanced Rates - Foreign Language spoken by Solicitor

When a solicitor who is able to speak a foreign language is able to deal with a case without an interpreter enhanced rates may be allowed. (Ref: CRIMLA 4 - 27.3.90)

Substantiation of Claims

In the absence of evidence to substantiate claims for work done the Board will not normally allow those claims. Items claimed should be supported by proper records. (Ref: CRIMLA 5 - 27.3.90)

Disbursements - Blood Tests

The obtaining of blood test is a matter requiring prior permission pursuant to Regulation 17(4) The Legal Advice and Assistance Regulations (No. 2) 1980 (now Regulation 22(7) The Legal Advice and Assistance Regulations 1989) unless such permission has been included in the approval of ABWOR itself. The position is not affected by any adjournment or order of the Court relating to the obtaining of blood tests. (Ref: ABWOR 1 - 27.3.90)

Work done after Amendment showing Change of Solicitor

The Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 do not permit payment for work after the amendment of a criminal legal aid order to the solicitor no longer assigned under that order. (Ref: CRIMLA 6 - 14.5.90)

Attendance at Formal Remand Hearings

Attendance at formal remand hearings should not be necessary unless the solicitor is aware that he has an application to make or oppose or the Court appearance presents a convenient and economical opportunity for the solicitor to obtain further instructions from a client who is in custody. (Ref: CRIMLA 7 - 14.5.90)

Authority for the Signature of a fresh Green Form

There is no power to grant retrospective authority for the signature of a fresh Green Form where such authority is required and there is also no power to allow costs in Green Form or ABWOR cases where such authority is required but has not been obtained. An approval of ABWOR by the area office does not alter the position. (Ref: LAA 1 - 14.5.90)

Work done before Issue of Legal Aid Order - Regulation 44(7) Legal Aid in Criminal and Care Proceedings (General) Regulations 1989

The provisions of Regulation 44(7) Legal Aid in Criminal and Care Proceedings (General) Regulations 1989 apply to any legal aid order, including orders following a renewal to Court or a review by the Area Committee. Further, the provisions of Regulation 44(7)(b) of the Regulations refer only to the original legal aid application. (Ref: CRIMLA 8 - 24.7.90)

Attendances on Clients Remanded in Custody at a Distance

Where a solicitor is representing a client in a local court where that solicitor normally practises and the client is remanded in custody at a distance, then the solicitor will normally be permitted to attend this client in custody to take instructions, although in all cases all the circumstances should be taken into account, including, by way of example, the nature and seriousness of the charge, whether the client is under a disability, the relationship, if any between the solicitor and client, the practicability of taking instructions at court and the likelihood of the client being granted bail or being moved to a place of detention closer to the solicitor's office. (Ref: CRIMLA 9 - 4.9.90)

Transcription of Taped Interviews

Where a solicitor applies for prior authority to transcribe a tape using an outside agency and satisfies the Area Committee that such a transcript is necessary then authority should normally be granted. Where a solicitor chooses to transcribe a tape in-house the work of transcription would not normally be regarded as fee earner's work and will not therefore be remunerated under the Legal Aid Order. (Ref: CRIMLA 10 - 4.9.90)

Separate Representation

Where the interests of justice require it two or more legally aided defendants represented by the same firm of solicitors can be represented by separate advocates in court. It is for the solicitor to justify both the separate representation and the number of advocates used. Where separate representation is justified the firm of solicitors may appear by in-house solicitor, solicitor agent or counsel but where non-assigned Counsel is briefed the assessment will be on the maximum fee basis. Where it is sought to justify separate representation on the basis of interests of justice and it appears that there is a conflict which is such that the solicitor should withdraw from acting for one or more defendants, the Board should, in determining the solicitor's fees, consider whether it was reasonable for the solicitor to continue to act in those circumstances. (Ref: CRIMLA 11 - 4.9.90)

Determination of Costs

Where the Board disallows a specific item for a specific reason the item should be identified and the reason given but the Board is not precluded from reducing claims for classes of work without specifically identifying particular items of work. An Area Committee may determine a review of an assessment without considering the solicitor's file of papers provided that it otherwise has sufficient information to determine the appeal or the solicitor has failed to provide that information after having been given an opportunity to do so. Where, in determining costs, the Board has taken into account some specific factor or factors other than the nature, importance, complexity, or difficulty of the work and time involved it should indicate that factor or factors. (Ref: CRIMLA 12 - 4.9.90)

Meaning of the Limitation "Limited to Obtaining Counsel's Opinion"

A certificate bearing the limitation "Limited to obtaining Counsel's Opinion" covers the obtaining of only one opinion (which may follow a conference). Work undertaken by the solicitor to clarify a genuine ambiguity in the opinion itself could however be allowed. (Ref: CLA 1 - 4.9.90)

Enhanced Rates in Criminal and Care Cases

Claims for enhanced rates in criminal and care proceedings under the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 may be assessed on the basis of broad average direct cost of the work (the A figure) to which is added a percentage uplift (the B figure) to take into account all the relevant circumstances of the case.

The A figure will be reached with regard being had to the rate likely to be allowed by the appropriate Crown Court for the relevant level of fee earner at the time to which the costs claim relates.

As to the B figure 35% should be considered as a starting point in respect of preparation. Solicitor advocacy would normally be expected to carry an uplift of 40-60% and attendances with counsel 20%. Travel and waiting would not normally be expected to attract enhanced rates. Each case must be considered on its own particular merits, having regard to all the relevant circumstances of the case.

Routine letters and telephone calls should be allowed at the scale rate per item with non-routine letters remunerated according to length and content on a time basis and timed telephone calls which represent attendances whereby material progress is made also being allowed on a time basis.

(Ref: CRIMLA 13 - 24.7.90 and 4.9.90)

Delay in Submitting Costs Claim

The fact that a particular solicitor or firm submits a large number of criminal bills in time and only rarely submits bills out of time does not constitute good reason for delay in submitting the bill in any particular case. (Ref: CRIMLA 14 - 1.10.90)

Allowance for Checking the Bill and Signing the Report on Case in Matrimonial Cases

Schedule 2 Part V of the Matrimonial Causes (Costs) Rules 1988 prescribes a taxation item in those cases to which the Rules relate. This has no direct relevance to a Regulation 105 assessment and Note 18(i) to the Senior Registrar's Practice Direction of 23 August 1988 states that the drawing of a bill of costs is not fee earner work and, save in exceptional circumstances, no charge should be made for such work. However, on an assessment to which the Rules relate, where a claim is made for preparing the bill (and the case is not exceptional justifying such a payment), consideration should be given to making a small allowance which is for the solicitor's time in checking the bill and signing the Report on Case. An allowance of £10 to £15 would be appropriate for cases within Regulation 105(3)(a) The Civil Legal Aid (General) Regulations 1989 [bills up to £500] although a higher allowance may be appropriate for more complex cases. (Ref: CLA 2 - 1.10.90)

Payment of Witness Expenses

The effect of the provisions of Section 25(3) Legal Aid Act 1988 and Regulations 15 and 16 of the Costs in Criminal Cases (General) Regulations 1986 made under the Prosecution of Offences Act 1985 is that witness expenses, defined as including compensation for trouble or loss of time and out of pocket expenses, are not payable under a criminal legal aid order unless the Court directs that they may not be paid from Central Funds. If the Court does so direct then they may be paid under the legal aid order where they were reasonably incurred in accordance with Regulation 7 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989. (Ref: CRIMLA 15 - 1.10.90)

When the Duty Solicitor Rate is Payable

Duty solicitor rates rather than own solicitor rates are only payable when a solicitor is advising as a duty solicitor within the Duty Solicitor Arrangements or when advice is commenced in a duty period and continues without interruption beyond the end of the duty period. (Ref: DS 1 - 1.10.90)

Failure to Report a Significant Change

If a solicitor fails to report a significant change, which is known to him, in either the circumstances of the assisted person or the case, costs subsequently incurred may be considered not to have been reasonably incurred and may be disallowed. (Ref: CLA 3 - 1.10.90)

Scope of ABWOR Approval

The scope of an ABWOR includes negotiations for settlement of the proceedings covered, provided that the negotiations reasonably relate to the scope of the particular ABWOR approval. The scope does not include implementation of any settlement save to obtain a final order within the scope of the ABWOR approval. (Ref: ABWOR 2 - 14.11.90)

Correction of Prosecution Papers

The primary responsibility for the accuracy and admissibility of prosecution papers lies with the Crown Prosecution Service and in the event of inaccuracies or objections to admissibility these should, in the first instance, be drawn to the attention of the Crown Prosecution Service who should be invited to correct them. There may, however, be rare cases where it is justified for the defence solicitors to correct the prosecution papers. (Ref: CRIMLA 16 - 3.12.90)

Inspection of Original Documents in Medical Negligence Cases

When assessing the merits of possible medical negligence proceedings it would not be reasonable for a solicitor to inspect the original records as a matter of course but where a solicitor has reason to believe that the copy records supplied are incomplete or inaccurate it would be reasonable for him to inspect the originals. Where cases fall within this principle a certificate limited to obtaining or perusing medical records will cover inspection of original records. (Ref: CLA 4 - 3.12.90)