

**INTERNATIONAL LEGAL AID GROUP CONFERENCE:  
8 TO 10 JUNE 2005 – KILLARNEY, IRELAND  
NATIONAL REPORT - SCOTLAND**

**Key points**

- Over several years, the volumes and cost of criminal legal assistance have increased, while those of civil legal assistance have fallen. Total expenditure on all forms of legal aid is at its highest ever level.
- The Board, Scottish Executive and the professional bodies have been and continue to be involved in a wide ranging programme of reform to the structures and in particular payment regimes for all forms of legal aid. This is designed to ensure proper remuneration for work done by lawyers, while focusing expenditure more effectively, providing better overall financial control and introducing quality assurance arrangements for all aspects of legal assistance.
- Much of this reform work has been necessitated by, or contributes towards, reforms in the wider justice system, of which legal aid is a key element.
- Substantial further reform and a move towards a more planned and better coordinated system is likely as a result of the recent Strategic Review of Legal Aid, Advice and Information.

**Overview**

1. Legal advice and assistance is available on any matter of Scots Law. Legal aid is available for both civil and criminal proceedings. It covers the cost of assistance from, and representation in court by, solicitors and advocates where this

is required, as well as any out of pocket expenses incurred by solicitors in providing these services.

2. The total gross cost of legal aid in 2003/04 was at its highest ever level at €229m<sup>1</sup>, a 9% increase on the previous year. The increase over a ten year period has been 19%. In 2004, Scotland had an estimated population of 5,078,400, meaning that the overall per capita gross cost of legal aid was approximately €45. The net cost in 2003/04 was €212m, giving a net per capita cost of €42.
3. Responsibility for policy matters on legal aid rests with the Scottish Executive (the devolved government of Scotland). This includes matters of eligibility, the proceedings for which legal aid is available and the rates payable to solicitors and advocates.
4. The responsibility for the administration of the legal aid system in Scotland rests entirely with the Scottish Legal Aid Board (the "Board") which is an independent statutory body. Ministers are expressly prohibited by statute from intervening in the Board's handling of individual cases.
5. The Board is a non-Departmental public body (NDPB) and acts independently within the powers afforded to it by statute. Its Management Statement and Financial Memorandum are

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<sup>1</sup> 1 GBP = 1.4544 EUR

determined by the Scottish Executive after consultation with the Board.

6. The Board currently consists of a chairman and 12 members. At least 2 members must be members of the Faculty of Advocates; at least 2 members must be members of the Law Society of Scotland and at least one other member must have experience of the procedure and practice of the courts. The Board currently employs around 300 staff.

7. The functions of the Board under the Act are :-

- advising Scottish Ministers on the current operation and development of legal aid provision
- investigating different ways of delivering a legal aid service
- developing operational plans and procedures, including e-business, to improve the delivery and administration of legal aid
- considering applications for civil and where appropriate criminal legal aid and making decisions on whether to grant or refuse these.
- examining accounts sent in by solicitors and advocates for all legal aid work, and paying them the appropriate amount for the work they have done
- collecting expenses and contributions
- registering firms and solicitors under the Code of Practice in relation to criminal legal assistance and monitoring their ongoing compliance
- investigating and pursuing abuse of legal aid
- advising Scottish Ministers on legal aid matters
- administering the Legal Aid Fund
- carrying out research

- operating the Public Defence Solicitors Office
- running pilot projects under Part V of the Act.

8. Payments made out of the Legal Aid Fund are financed by a grant from the Scottish Executive, contributions from assisted persons, recovery of expenses, and any property recovered or preserved by the assisted person in the proceedings. The grant is not cash limited as it covers the shortfall between the payments made out of the Fund and the "income" received from contributions/expenses/damages. The cost of running the administration of the Board is paid by a grant-in-aid from the Scottish Executive, which is cash-limited.

9. Legal aid is increasingly and appropriately seen as part of the wider justice system. This is particularly important as there is currently a significant reform programme in Scotland affecting in particular the criminal justice system. Legal aid is a key element of the criminal justice system and is increasingly recognised as having an important role in ensuring the effectiveness of reforms, for example to court structures or procedures. Specific examples are given below. It is also increasingly recognised that trends and reforms in the wider justice system have a clear impact on expenditure under legal aid.

10. Despite its core statutory functions being largely administrative in nature, the Board has in recent years become considerably more proactive in identifying and pursuing reform both of the legal aid system and other areas with which it interacts.

11. Legal aid is also seen more and more as being part of the wider system of advice provision, which also includes a wide range of services provided by not-for-profit agencies or local government. The

Scottish Executive and the Board have recently worked together to explore the interaction and coordination of these different sources of help, which in turn suggests a need for further proactive and strategic engagement. This was one of the major themes of the joint Strategic Review of the Delivery of Legal Aid, Advice and Information, published last year and which forms the subject of a separate paper to the conference.

### **Types of Legal Aid**

12. The following paragraphs provide a relatively brief description of the various forms of legal aid in Scotland. A more detailed description of legal aid and the functions, structure and operation of the Board can be found in the background information published to accompany the Strategic Review, available at [http://www.slac.org.uk/about\\_us/revi-ew/background.pdf](http://www.slac.org.uk/about_us/revi-ew/background.pdf).

### **Advice and Assistance**

13. Advice and assistance enables persons of limited means to obtain advice from a solicitor, or where appropriate, from counsel, on any matter of Scots Law. Applicants can raise questions relating to marriage, employment, injury, wills, criminal matters, and so on. A solicitor will often provide advice and assistance to ascertain if a client has a sufficiently strong case to apply for civil legal aid. Advice and assistance does not cover a solicitor representing his/her client in court or at a tribunal (although see ABWOR below).
14. An application for advice and assistance must be made to a solicitor. The applicant must provide his/her solicitor with information about his/her income/capital and that of his/her spouse. The solicitor undertakes a short calculation and

can then tell the applicant there and then if he/she is eligible.

15. Applicants in receipt of various state benefits and with disposable capital of less than €2054 will be eligible for advice and assistance without payment of a contribution.
16. An applicant whose disposable income (in respect of the seven days up to and including the date of application) does not exceed €125 and with disposable capital of less than €2054 will also be eligible for advice and assistance without payment of a contribution.
17. If disposable income is between €125 and €295, and disposable capital does not exceed €2054, the applicant will be eligible for advice and assistance subject to the payment of a contribution, calculated on a sliding scale between €10 and €170. Any contribution due to be paid by the applicant is paid to the solicitor.
18. If disposable income exceeds €295 and/or disposable capital exceeds €2054, the applicant will be ineligible for advice and assistance.
19. The solicitor is required to intimate to the Board that he/she has made a grant of advice and assistance. A solicitor can make a grant of advice and assistance up to €124. (In certain special cases set out in regulations, this initial limit can be €233). Any further expenditure requires the prior authorisation of the Board.

### **Assistance by Way of Representation (ABWOR)**

20. ABWOR is a form of advice and assistance under the Legal Aid (Scotland) Act 1986. ABWOR is provided by a solicitor or counsel in connection with any proceedings before a court, tribunal, or statutory inquiry as prescribed by regulation.

### *ABWOR - criminal matters*

21. ABWOR allows a solicitor, in certain circumstances, to represent a client who is not in custody on the matter at issue and intends to plead guilty or, having made a not guilty plea, now intends to change that plea to guilty. A solicitor can make the grant if the applicant qualifies financially for advice and assistance and where he is satisfied that the sentence is likely to result in the applicant losing their liberty or livelihood, or if they cannot understand the proceedings or state their own case.

### *ABWOR - civil matters*

22. ABWOR is also available for a number of civil proceedings, for example, petitions by a debtor for his own sequestration; proceedings arising from a failure by a person to pay a fine or other sum or obey an order of the court; proceedings before an Employment Tribunal (subject to additional tests relating to the ability of the applicant to understand the proceedings or the complexity of the case); and proceedings before the Immigration Appellate Authorities (which comprises adjudicators and the Asylum and Immigration Tribunal).

### **Advice and assistance – volumes and costs**

23. Numbers of advice and assistance intimations have fluctuated over the years and reached a peak in 2001/02. They have since fallen by 9% and are now at almost the same level as ten years ago.
24. The biggest reductions in the last two years have been seen in relation to civil matters. This area has traditionally been and continues to be dominated by family-related issues, but covers a very wide range of subjects including housing, debt, employment, state benefits, personal injury, mental health and immigration/asylum.

25. Over the last ten years or so, social welfare subjects have become more significant at the expense of more traditional areas such as family and personal injury. However, almost all areas have seen similar relative reductions over the last couple of years.
26. The main exception to this trend is immigration and asylum. Although accounting for only 6% of all cases, this area has grown by 263% in just five years. This is primarily a result of changed government policy on the location of those seeking asylum within the UK.
27. Criminal advice and assistance also reached a peak in 2001/02 and has dropped since, although less dramatically than civil. The volume in 2003/04, at just under 160,000 (including ABWOR), is still higher than at any time prior to 2000/01.
28. The cost of advice and assistance in 2003/04 was €50 million. This represents a new peak in spending on advice and assistance, 2% higher than the previous year and 43% higher than ten years ago.
29. The total cost of civil advice and assistance (including ABWOR) was almost €31million in 2003/04, compared to just over €18million for criminal<sup>2</sup>. Much of the increase in recent years has stemmed from the rise in the volume and cost of asylum and immigration cases.

### **Reform proposals**

30. The Board, the Law Society of Scotland and the Scottish Executive recently consulted on proposed reforms of civil advice and assistance. Following this consultation, we intend to implement

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<sup>2</sup> A further €1million was spent on advice and assistance on matters relating to children, which are neither civil nor criminal.

the reforms in stages from April to November 2005. For the first time, civil and criminal matters will be treated differently<sup>3</sup>.

31. The reforms will see changes to the unrestricted right of a solicitor to grant advice and assistance. A broad list of subjects will be set out in relation to which advice and assistance will remain available largely as at present. For other matters, solicitors will be able to provide diagnostic advice, with further advice requiring the authority of the Board. There are a number of other technical changes, including a substantial increase in the fees payable, but the overall thrust of the reforms is to focus advice and assistance on matters that require the assistance of a solicitor and to provide better control of expenditure for the Board.

### **Civil Legal Aid**

32. Civil legal aid is available in relation to various court, tribunal and other proceedings. It is not available for actions for defamation or verbal injury, election petitions, simplified actions of divorce, small claims and certain proceedings under the Debtors (Scotland) Act 1987 or for proceeding before any courts or tribunals not listed in the Legal Aid (Scotland) Act 1986.
33. An application for civil legal aid must be made, through a solicitor, to the Board which requires to satisfy itself that the application meets the 3 statutory tests of financial eligibility, probabilis causa (that the applicant has a stable case), and reasonableness.

34. Civil legal aid is available without contribution where disposable income and capital are less than €4263 and €9403 respectively.

35. It is available subject to a contribution where disposable income is between €4264 and €13919 and/or disposable capital between €9404 and €15677.

36. The level of contributions is, if payable from income, one third of the applicant's disposable income over the lower income limit and, if payable from capital, the entire amount of disposable capital over the lower capital limit. Contributions towards civil legal aid are collected by the Board and, where they are payable from income, are payable over 20 months. Where contributions are payable from capital, contributions are generally collected as a lump sum at the outset of the case.

37. Where the contribution looks likely to exceed the cost of the case by a substantial amount, the Board may agree to collect a lower amount. The client will remain liable for the full contribution should the cost of the case turn out to be more than the contribution.

38. Civil legal aid is not available to anyone with disposable income in excess of €13919. Where disposable capital exceeds €15677, the Board has discretion to grant legal aid where it appears to the Board that the applicant cannot afford to proceed without legal aid: the Board is very rarely required to exercise this discretion.

39. The Strategic Review recommended that the upper eligibility limits and contribution structure be reformed to introduce greater 'tapering' of eligibility for those who currently exceed the limits. This would bring more people into eligibility, but on the basis that they would pay

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<sup>3</sup> The Board has also suggested that criminal advice and assistance be reformed alongside wider reforms of criminal legal assistance. This is considered further below.

substantial contributions that would cover the cost of an average case.

40. Where an assisted person wins their case and is awarded expenses by the court, these are paid to the Board to cover the costs of the case. If, after recoupment of these expenses and any client contribution that may be payable, there is still a "net liability" of the legal aid fund, the Board will recover as much of this as possible from any property recovered or preserved as a result of the action taken under legal aid.

#### **Civil legal aid: volumes and cost**

41. Applications for civil legal aid peaked in 1992/93 at 36,018. Since then the numbers have dropped steadily to 18,175 in 2003/04, a reduction of 50%.
42. This trend shows no signs of halting; the reduction in 2003/04 was in fact greater than in the previous two years. Although we believe that much of the reduction stems from demographic and socio-economic changes, as well as different patterns of advice-seeking and dispute resolution, we remain concerned that continued reduction may result in problems of access to justice.
43. The mix of case types in civil legal aid has not changed a great deal over the years. Civil legal aid always has been and remains a family law and, to a lesser degree, reparation (mostly personal injury) orientated service.
44. Family law includes actions relating to separation or divorce and matters often considered alongside such actions, including those relating to financial arrangements and children, interdicts and exclusion orders. Although the long term trend has seen a reduction in all types of case, we are now seeing a particularly sharp fall in relation to family law.

We are exploring the reasons for this at present.

45. Solicitors are increasingly expressing the view that legal aid work, paid at rates well below those chargeable for private work, is not profitable and that many firms will stop providing this service. We have certainly seen a reduction in recent years in the number of firms providing a civil legal assistance service. We are closely monitoring the position, particularly since civil legal aid fee reforms in 2003, as we are concerned to maintain an adequate level of supply.
46. Gross expenditure on civil legal aid rose from €22.8 million in 1987/88 to a peak of €51 million in 1996/97. It then fell for six years, before rising slightly in 2003/04 to €43.6 million (some 15% below the 1996/97 peak). These figures include solicitors' and advocates' fees, outlays (disbursements) and VAT.
47. The reduction in spending in recent years is the result of the fall in volumes noted above: the cost per case has continued to increase and at €3430 was almost 50% higher in 2003/04 than in 1996/97.
48. The Board recovers part of the cost of legal aid in a variety of ways. In 2003/04, we recovered contributions of €2.1 million, expenses of €12.7 million and amounts from property recovered and preserved of €1.7 million. These recoveries were our highest ever and represented 38% of the gross cost of civil legal aid, meaning that civil legal aid cost just over €27.1 million in the year. The average net cost of a civil legal aid case was €2132.
49. The cost of a particular case and recoveries against that cost may be spread over a number of years. The level of recoveries also varies from year to year, although the proportion of gross cost recovered has increased markedly in the last few

years: for most of the 1990s the proportion varied between 21% and 29%, but has since 1999/00 been 30% or higher. The figures for 2002/03 and 2003/04 (36% and 38% respectively) are largely a result of improved success in the Board's recovery of expenses from opponents in legal aid cases.

50. Over 25% of civil legal aid costs relate to outlays: costs incurred by the solicitor in the course of a case on such items as court dues, sheriff's officers' fees, travelling expenses, witness expenses and expert witness fees. Over the last ten years there has been a rise in the proportion of the total costs of civil legal aid accounted for by outlays.

#### **Reform of civil legal aid**

51. New block fee arrangements were introduced for most civil legal aid cases in October 2003. The new fees are simpler than the previous 'time and line' system and were designed to deliver an overall fee increase of 21% while providing greater predictability for the Board. The new fees were also accompanied by new requirements for solicitors to report to the Board at key stages of the case. This allows the Board to consider whether the grant of legal aid should continue, or whether developments in the case mean that it should be withdrawn.
52. In July 2004 a second tranche of reforms was introduced. All solicitors providing a civil legal assistance service were required to register with the Board, certifying compliance with a series of administrative practice requirements. All registered firms are now subject to a peer review of a random sample of their legal aid or advice and assistance files. The reviews are carried out by solicitors under the aegis of the Law Society of Scotland, paid for by the Board, using criteria developed by the Board and Society working together.

#### **Criminal Legal Aid**

53. Criminal legal aid essentially consists of legal representation in criminal proceedings in the High Court and in the sheriff and district courts. As well as representation, criminal legal aid also includes all such assistance as is usually given by a solicitor or counsel in the steps preliminary to or incidental to criminal proceedings.
54. Criminal proceedings are classed as summary or solemn. Summary proceedings are the less serious e.g. most road traffic prosecutions, breach of the peace, minor theft, and assault etc which are dealt with in the District Court or by the sheriff sitting alone. The maximum period of imprisonment available on conviction for a summary offence is six months. Solemn proceedings are the most serious type of proceedings e.g. murder, culpable homicide, serious assault, rape, fraud etc - and are dealt with in the sheriff court or the High Court and may involve a jury trial.

#### **Duty Solicitor Scheme**

55. Criminal legal aid is available automatically through the duty solicitor for -
- attendance at identification parades
  - pre-bail work in solemn cases
  - the initial hearing in summary cases where the accused is appearing from custody (and thereafter if the accused pleads guilty)

#### **Criminal legal aid in summary proceedings**

56. Summary criminal legal aid is available after the first appearance where the accused pleads not

guilty<sup>4</sup>. In order to qualify for summary criminal legal aid, the Board must be satisfied that the accused or his family would suffer undue hardship if the accused had to pay for his/her own defence. Additionally, the Board must be satisfied that it is in the interests of justice that the accused should receive criminal legal aid. Criminal legal aid is non-contributory.

### **Criminal legal aid in solemn proceedings**

57. If an accused person is charged and brought before the sheriff in a solemn case then s/he is automatically entitled to criminal legal aid until s/he is given bail or placed in custody. The accused person can choose his/her own solicitor or ask to see the duty solicitor.
58. Automatic legal aid only covers the first stage of the case, so it is necessary for the accused person to apply for solemn criminal legal aid straight away. The application has to be made to the court, which must be satisfied, after consideration of the applicant's financial circumstances, that the expenses of the case cannot be met without undue hardship to him or his dependants and that the applicant does not have available to him other rights and facilities making it unnecessary for him to obtain legal aid.
59. The court does not require to consider whether it is in the interests of justice for legal aid to be given, whether in solemn proceedings or in the limited summary proceedings in relation to which the court may make legal aid available. Consideration of the interests of justice applies only in

the case of applications submitted to the Board.

### **Appeals**

60. Application must be made for a fresh grant of criminal legal aid in connection with an appeal. Except where the applicant had criminal legal aid for the proceedings at first instance, full information must be provided about his financial circumstances and the availability of other rights and facilities. The statutory test is whether the financial circumstances of the applicant are such that the expenses of the appeal cannot be met without undue hardship to the applicant or his dependants.
61. Where the applicant wishes to be represented in an appeal at the instance of the prosecutor, only the financial eligibility criteria apply. The need to apply any other criteria will depend on the statutory or other basis under which the appeal is made. In some cases, the Board must be satisfied that in all the circumstances of the case it is in the interests of justice that the applicant should receive criminal legal aid.

### **Criminal legal aid – volumes and costs**

62. Applications for summary criminal legal aid have risen rapidly over the few years and are now at their highest ever level at 82,999. This trend is broadly in line with those elsewhere in the justice system i.e. more cases are being prosecuted in the courts most likely to attract legal aid.
63. There is also some evidence that the structure and payment regime for summary criminal legal aid may encourage more initial pleas of not guilty and that this may have contributed to the overall growth: the most profitable fees are paid for work that follows a plea of not guilty. Although this has always been so, it has been suggested that the

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<sup>4</sup> ABWOR is available if the accused intends to plead guilty at the first appearance and for any subsequent diets of deferred sentence.

introduction of fixed payments in 1999 (see below) may have added to the incentive for solicitors to advise clients to plead not guilty. Nevertheless, we believe that the strongest drivers of the upward trend are to be found elsewhere in the criminal justice system. In addition, the increase in expenditure resulting from this upward trend would have been far more problematic had fixed payments not been in place.

64. The total cost of criminal legal aid in 2003/04 was the highest ever at €130million. This marked an 11% increase on the cost the previous year and 31% on 2000/01. It should be noted that the cost of criminal legal aid fell sharply at the end of the 1990s, with the 2003/04 spend the first in six years to exceed the previous peak year of 1997/98. Although some of these trends are attributable to volume fluctuations, the introduction of fixed payments for summary cases (see below) appears to have been the primary driver of the reduction in the late 1990s.

#### **Registration and Code of Practice**

65. From October 1998, all solicitors providing criminal legal assistance (criminal legal aid and advice and assistance on criminal matters) have to be registered by the Board. To be registered, solicitors and firms must comply with a Code of Practice drawn up by the Board in consultation with the legal profession and approved by Scottish Ministers. The Board audits compliance by the profession with the Code.
66. We are currently developing a peer review process for criminal legal assistance, similar to that introduced in 2004 for civil legal assistance. Peer review criteria were developed and piloted in the pilot Public Defence Solicitors' Office (see below) and are now being refined to cover all aspects of criminal legal assistance, again in consultation with the Law Society of Scotland.

67. At the same time, we are developing a peer review system in conjunction with the Faculty of Advocates, to assess the work carried out by counsel. A different model is being developed here: as counsel's work is not file based, the process currently being discussed is based on an assessment of advocacy, using senior counsel as reviewers.

#### **Reform agenda**

68. Following a review of the operation of the High Court (the supreme criminal court of first instance in Scotland) carried out by Lord Bonomy, various procedural and structural reforms were implemented in the period running up to April 2005. These changes necessitated some reform of solemn legal aid and in particular arrangements for the payment of counsel.
69. We are also developing a more wide reaching package of reforms of fee structures and levels for solemn legal aid, covering solicitors and solicitor-advocates. The key feature of the reforms will be a move towards block fees rather than the current arrangements (see below).
70. The Board has also recently reviewed the operation of aspects of summary criminal legal assistance and issued proposals for reform in 2004. The main thrust of the proposals is to remove some of the artificial barriers between different forms of legal aid (advice and assistance, ABWOR, the duty solicitor scheme and summary criminal legal aid) to create a more seamless, efficient and effective process.
71. The reformed system would encourage the early investigation of cases, allowing a realistic assessment of available defences to be made before an application for 'full' legal aid has to be made. This would be supported by the payment regime to remove the current

disjunction between the fee available for an early guilty plea under ABWOR and that paid for summary criminal legal aid when the accused pleads not guilty (even if they subsequently change their plea at the next available opportunity).

72. We believe that such a system would ensure proper remuneration for lawyers while also protecting clients and the interests of justice. Full funding would remain available as at present for cases in which the client has a meaningful defence to the charges against them.
73. To be fully effective, we believe that changes would also be required to the operation of the courts and the prosecution. This has been the subject of a separate review of the summary justice system and Ministers have indicated their intention to pursue these wider reforms at the earliest opportunity.

#### **Fees payable to solicitors**

74. The Board pays solicitors according to the rates set out in Tables of Fees approved by Parliament. The level of fees for civil advice and assistance and solemn criminal legal aid have recently been increased for the first time since 1992. The new feeing system for most civil cases outlined above was calculated to represent an average increase in fees of 21%. The previous fees had not been increased since 1995. The uprating of civil advice and assistance fees, introduced in two stages, matched that level of increase.
75. The fees for solemn criminal legal aid were increased by 15% for advocacy and 5% for waiting time and meetings with the client. More fundamental reform of the feeing structure is the subject of considerable current development work. The fixed fee structure for summary criminal cases introduced in 1999 was calculated to deliver an overall reduction in the cost of this

type of work and has not been uprated since.

#### **Civil legal aid**

76. A solicitor can send the Board his/her bill in two forms, depending on which court the case is raised in:
- s/he can claim fees for every letter, meeting, time in court, telephone calls etc, or
  - s/he can claim a “block fee”, where a fee is paid for a stage or specified item of work.
77. The solicitor will also charge us for “outlays” incurred (e.g. medical reports).

#### **Criminal legal aid**

78. In solemn legal aid cases, the solicitor must send the Board a detailed breakdown of time at meetings, number of phone calls, time at court, length of letters etc. The rates are now €64 for an hour in a meeting or €92 for an hour in court.
79. Since 1 April 1999, summary cases have been paid on a “fixed payment” basis. This has a core fee for all work up to a certain stage of the case and additional payments for further steps in the case. The core payments are –
- €436 for a case in the district court
  - €727 for a case in the sheriff court (€799 in certain remote courts).
80. There are additional payments for bail appeals (€73), diets of deferred sentence (€36 in the district court, €73 in the sheriff court) and trials lasting longer than thirty minutes:
- The payment for the first day of a trial, after the first thirty minutes is €73 in the district court and €145 in the sheriff court

- For the second day of a trial, the payment is €73 in the district court and €291 in the sheriff court
- For the third and any subsequent day of trial, the payment is €145 per day in the district court and €582 per day in the sheriff court.

81. These fees are paid plus value added tax. Solicitors can also claim reimbursement of most outlays, although not those relating to the taking of precognitions (witness statements). The cost of precognitions is included in the core payment.
82. Separate rates also apply to the duty solicitor who may have attended the accused person when he was first arrested.

#### **Fees payable to counsel**

83. The methods of remunerating counsel are complex and vary both between aid types and between different courts. For some courts and for some types of work, fees are prescribed in regulation. However, even where this is the case, the Auditor of Court (who 'taxes' fees to a level s/he considers reasonable) has wide discretion to allow higher fees. This discretion also applies where no fee has been prescribed, either for a particular court or particular item of work.
84. The Board has been concerned for a number of years that this leads to uncertainty and fee inflation, with Auditors allowing ever higher amounts, often well in excess of the fees set out in the regulations where these exist.
85. The Board has recently worked with the Faculty of Advocates to introduce a table of fees for work in solemn criminal cases. This is based on a series of fixed blocks, including daily rates, with the overall fee varying according to the type of

case. The fees are not subject to increase by the Auditor and so provide far greater certainty and control.

86. We are currently working to develop similar tables for civil work and for other courts.

#### **Current policy developments**

##### **Strategic review**

87. A Strategic Review of the Delivery of Legal Aid, Advice and Information was carried out by a team from the Board and the Scottish Executive in 2004. The remit of the Review was broad, covering both legal aid and publicly funded legal advice and information more widely. The report of the view was submitted to Ministers and the Board in June 2004 and published in October 2004. The Executive is about to consult on whether and how they wish to take forward the Review's recommendations. The Review is dealt with in detail in a separate paper to the conference.

##### **Pilot Legal Advice and Information Partnerships**

88. As detailed in a paper to the Harvard conference<sup>5</sup>, the Board has recently facilitated the work of four pilot partnerships. Three of these brought together funders and providers of legal advice services at a local level, while the other had a national remit to look at the accessibility of advice and information for disabled people.
89. The partnerships used information provided by separate needs assessment and supply mapping exercises to develop strategic plans for the delivery of legal advice services. The key finding from the

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[http://www.ilagnet.org/conference/general2003/papers/scotland\\_lancaster.pdf](http://www.ilagnet.org/conference/general2003/papers/scotland_lancaster.pdf)

process has been that cross-sectoral partnerships have much to offer in terms of improving working relationships and collaborative working. However without other changes (for example in how funding decisions are made) it would be unreasonable to expect that on their own such partnerships will lead to substantial improvements in the meeting of unmet need for advice services.

90. The partnerships also gave us the opportunity to test out the practical application of the needs assessment information. We found that this was a valuable addition to existing information about demand for services, and that it required the adoption of a structured and transparent approach to reasoning about priorities. This was seen as a welcome improvement on the disjointed approach to setting of priorities that many providers have to operate within.
91. Supply mapping proved difficult in the absence of a common quality system across all sectors and services, and therefore an absence of shared understanding of how to describe and assess advice. The results were therefore of limited use in planning terms, as there was no consistent way of assessing what a service delivers. All partnerships believed this to be a major drawback: the development of a common quality system would appear to be required before embarking on further detailed gap analysis of need and supply.
92. These lessons were fed in to the strategic review, which concluded that partnerships had an important role to play in the planning process, but that this did not extend to having responsibility for resource-allocation decisions.

### **Part V pilot projects**

93. Also detailed in the Harvard paper, the Board has been running four pilot projects in which we employ solicitors to provide a range of services in conjunction with local advice giving organisations. We will shortly publish an evaluation of the projects. Our monitoring thus far suggests that, overall, each of the projects has been successful in delivering its objectives.
94. The projects have also faced several challenges. One project, which was designed to provide an asylum law casework service as well as developing capacity in that area in Scotland, has suffered because of the small pool of available solicitors with the necessary experience to work in the project. Both this and another project have also faced challenges in balancing a casework and development role. In part, this is due to the pressures that casework inevitably brings, but also because a mixed role such as this requires skill sets that not all lawyers have developed in private practice.
95. We are very positive about the difference the pilots have made on the ground and our own experience of running them, which has been a completely new venture for the Board. We are keen to launch further pilots and, depending on the outcome of the forthcoming consultation on the Strategic Review, to develop our role in this area in new ways.

### **Public Defence Solicitors' Office (PDSO)**

96. Previous ILAG conferences have been updated on progress with the pilot Public Defence Solicitors' Office in Edinburgh. The PDSO opened in October 1998 as a five-year pilot scheme to compare the provision of criminal legal aid by private solicitors with salaried solicitors employed by the Board.

97. Following an independent evaluation (see [www.scotland.gov.uk/cru/resfinds/lstf37-00.asp](http://www.scotland.gov.uk/cru/resfinds/lstf37-00.asp)), the Board recommended to Ministers that further limited experimentation be provided for in new legislation.
98. The Criminal Justice (Scotland) Act 2003 was subsequently passed, allowing the Board to develop a small number of new Offices. We have now opened offices in Glasgow, Scotland's largest city, and Inverness, a smaller city in the north of the country with a large rural hinterland and several small courts, which will also be served by the PDSO.
99. An additional research report on the operation of the offices is required by 2008. Work on developing the evaluation objectives and methodology is progressing. We are keen that the objectives do not simply set out a comparison of the PDSO and private sector firms in terms of cost and approach to cases. We believe that the PDSO should have wider objectives, for example to ensure provision in areas where it may not always be cost-effective for private lawyers to operate or to take a more holistic approach to their clients' needs by developing good working relationships with other service providers.

## Expenditure - Headline Figures

	<u>1994/95</u>	<u>1995/96</u>	<u>1996/97</u>	<u>1997/98</u>	<u>1998/99</u>	<u>1999/00</u>	<u>2000/01</u>	<u>2001/02</u>	<u>2002/03</u>	<u>2003/04</u>
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
<b>Criminal</b>										
<b>A&amp;A</b>										
<b>Criminal A&amp;A</b>	<b>6,959</b>	<b>7,309</b>	<b>7,502</b>	<b>7,583</b>	<b>7,504</b>	<b>7,512</b>	<b>8,281</b>	<b>8,583</b>	<b>8,880</b>	<b>9,012</b>
<b>Criminal ABWOR</b>	<b>1,774</b>	<b>2,061</b>	<b>2,163</b>	<b>2,258</b>	<b>2,408</b>	<b>2,384</b>	<b>2,798</b>	<b>2,880</b>	<b>3,361</b>	<b>3,444</b>
<b>Legal Aid</b>										
Summary	49,352	49,868	53,265	52,654	48,589	44,927	40,407	42,016	46,056	48,859
Solemn	25,897	23,670	25,695	28,496	25,888	23,641	27,342	31,197	33,461	39,870
Duty	918	847	877	904	943	870	835	813	878	945
<b>Total criminal legal aid</b>	<b>76,167</b>	<b>74,385</b>	<b>79,837</b>	<b>82,054</b>	<b>75,420</b>	<b>69,438</b>	<b>68,584</b>	<b>74,026</b>	<b>80,395</b>	<b>89,674</b>
<b>Public Defence Solicitors' Office</b>				<b>25</b>	<b>405</b>	<b>430</b>	<b>390</b>	<b>364</b>	<b>319</b>	<b>376</b>
<b>Criminal Legal Assistance total</b>	<b>84,900</b>	<b>83,755</b>	<b>89,502</b>	<b>91,920</b>	<b>85,737</b>	<b>79,764</b>	<b>80,053</b>	<b>85,853</b>	<b>92,955</b>	<b>102,506</b>
<b>Civil</b>										
<b>A&amp;A</b>										
<b>Civil A&amp;A</b>	<b>15,256</b>	<b>15,593</b>	<b>16,633</b>	<b>16,984</b>	<b>18,315</b>	<b>18,133</b>	<b>18,648</b>	<b>17,810</b>	<b>18,856</b>	<b>18,707</b>
<b>Civil ABWOR</b>	<b>49</b>	<b>107</b>	<b>160</b>	<b>180</b>	<b>233</b>	<b>258</b>	<b>472</b>	<b>1,006</b>	<b>1,865</b>	<b>2,546</b>
<b>Civil legal Aid (gross)</b>	<b>30,233</b>	<b>32,210</b>	<b>35,064</b>	<b>34,311</b>	<b>32,093</b>	<b>30,246</b>	<b>28,755</b>	<b>28,347</b>	<b>27,071</b>	<b>29,994</b>
<b>Civil recoveries</b>	<b>7328</b>	<b>8001</b>	<b>9445</b>	<b>8992</b>	<b>9448</b>	<b>9967</b>	<b>9280</b>	<b>8540</b>	<b>9,668</b>	<b>11350</b>
<b>Civil legal aid (net)</b>	<b>22,905</b>	<b>24,209</b>	<b>25,619</b>	<b>25,319</b>	<b>22,645</b>	<b>20,279</b>	<b>19,475</b>	<b>19,807</b>	<b>17,403</b>	<b>18,644</b>
<b>Civil total (gross)</b>	<b>45,538</b>	<b>47,910</b>	<b>51,857</b>	<b>51,475</b>	<b>50,641</b>	<b>48,637</b>	<b>47,875</b>	<b>47,163</b>	<b>47,792</b>	<b>51,247</b>
<b>Civil total (net)</b>	<b>38,210</b>	<b>39,909</b>	<b>42,412</b>	<b>42,483</b>	<b>41,193</b>	<b>38,670</b>	<b>38,595</b>	<b>38,623</b>	<b>38,124</b>	<b>39,897</b>
<b>Other</b>										
<b>Contempt of Court</b>	<b>24</b>	<b>20</b>	<b>26</b>	<b>31</b>	<b>28</b>	<b>31</b>	<b>41</b>	<b>40</b>	<b>59</b>	<b>87</b>
<b>Children Legal Aid</b>	<b>1590</b>	<b>1675</b>	<b>1764</b>	<b>1639</b>	<b>1719</b>	<b>1725</b>	<b>2501</b>	<b>2827</b>	<b>3357</b>	<b>2733</b>
<b>Children A&amp;A</b>									<b>595</b>	<b>645</b>
(shown separately for 2002/03 and 2003/04 only, previously included in either civil or criminal A&A)										
<b>Legal Aid total (gross)</b>	<b>132,052</b>	<b>133,360</b>	<b>143,149</b>	<b>145,065</b>	<b>138,125</b>	<b>130,157</b>	<b>130,470</b>	<b>135,883</b>	<b>144,758</b>	<b>157,218</b>
<b>Legal Aid total (net)</b>	<b>124,724</b>	<b>125,359</b>	<b>133,704</b>	<b>136,073</b>	<b>128,677</b>	<b>120,190</b>	<b>121,190</b>	<b>127,343</b>	<b>135,090</b>	<b>145,868</b>