AN BORD UM CHÚNAMH DLÍTHIÚIL

LEGAL AID BOARD

Circular on Legal Services

A guide to decision making and best practice

July 2017

Tenth Edition

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Introduction

The Circular on Legal Services – Guide to Decision Making and Best Practice aims to allow us to perform our functions under the Civil Legal Aid Act 1995 in a way that reflects our commitment to providing a professional legal aid and advice service.

Since we were established, we have adopted procedures and policies about providing legal services on an ongoing basis. Most of these procedures and policies were issued as Circulars. The Circular on Legal Services was first issued as a single document in 2001 and this July 2017 edition is the latest updated version.

The Circular seeks to meet the requirements for fair procedures and natural justice, as well as other constitutional and human rights principles, in how we process and make decisions on applications for legal services – as well as how we provide legal services to people who rely on us. It is essential that all members of staff involved in providing legal services are familiar with the contents of this Circular. In particular, solicitors will be aware that compliance with our procedures and policies is part and parcel of their terms and conditions of employment. Solicitors should also ensure that they are familiar with the provisions of the Act and Regulations made under the Act. To assist in this we have prepared informal consolidations of:

- The Civil Legal Aid Act 1995 and all amendments made to it.
- The Civil Legal Aid Regulations 1996, 2002, 2006, 2013, and 2016.

Both of these are available on iLAB.

Up to date versions of these Circulars and the Administrative Procedures Handbook are always available on the Notes workspace of all staff.

Change is always ongoing. Over time, some procedures and policies will no longer be needed, while new ones will need to be drawn up. The Professional Practice Work Group (PPWG) monitors and reviews existing procedures and policies and identifies when new ones are required. The Director of Civil Legal Aid, Regional Managers and the PPWG always welcome contributions from all members of staff to assist them with this task.

The Circular follows the conventions in the Administrative Procedures Handbook. You can find a guide to these conventions in the Introduction to the Handbook. For ease of use it is in ten parts. Any time the Circular is changed, staff will be notified electronically and the Bulletin Board will be updated. We aim to publish a new version of the Circular each year.

You should also be aware of the Family Mediation Procedures Handbook, which you can find on the Lotus Notes "Administrative Procedures Handbook" tile.

Any issues in relation to the policy/principles contained in this document regarding the provision of legal services should be referred, at any stage, to the Director of Civil Legal Aid or the secretary of the PPWG. Operational matters should be referred to Legal Services.

Sometimes you will see references in the Circular to functions of particular members of the Management Advisory Team. The Chief Executive can at any time nominate other members of staff to carry out these functions.

The principal functions of the Board - Civil Legal Aid Act 1995

Section 5 of the Civil Legal Aid Act 1995, provides that:

> *"The principal functions of the Board shall be… to provide, within the Board's resources and subject to the other provisions of this Act… legal aid and advice in civil cases to persons who satisfy the requirements of this Act, and… a family mediation service;"*

Glossary

Our aim in drafting this new version of the Circular has been to avoid legal language so it is easy to understand for everyone. Inevitably, an amount of legal terms will be used. Where possible we try to explain what the terms means as we go along.

Some terms which will be used frequently in this Circular:

Legal aid, legal advice, (civil) legal services: are all defined in detail in Part 1.

Legal Aid Fund: The Legal Aid Board's central bank account

Applicant: the person making the application for legal services.

Plaintiff: the person who is taking a civil claim. Note: in family law and judicial review proceedings the Plaintiff is called the Applicant. In non-family law civil proceedings in the District Court, the Plaintiff is now referred to as the Claimant.

Defendant: the person who is has been sued in a civil claim or the person who has been accused of a crime in a prosecution. Note: in family law and judicial review proceedings and in civil proceedings in the District Court the Defendant is called the Respondent.

Civil law: The area of law that deals with disputes which are not of a criminal nature – usually between individuals, companies, statutory bodies etc.

Family law: the area of law dealing with family relationships, such as between spouses, civil partners, and parents and children.

Non-family law: any area of civil law that is not family law

Torts: The area of law that deals with civil wrongs committed by one person or body against another. This is a large area of law that includes such matters as negligence (breach of a duty of care), personal injuries, misrepresentation, trespass, and defamation.

Criminal law: the area of law that deals with the prosecution of criminal offences.

Solicitor: a type of lawyer who practices generally, can conduct litigation, and can act in place of their client in transactions. Can practice by themselves, be employed by a firm or by a state body such as the Legal Aid Board.

Private practitioner: a solicitor in private practice, either by themselves or as a partner or associate in a firm of solicitors. In the Board, "private practitioner" usually refers to a solicitor in private practice who has been entered onto one of the Board's private practitioner panels.

Barrister: a type of lawyer who specialises in advocacy and practice before the higher courts. Also known as "Counsel". Can only act on the instructions of a solicitor and must practice as a sole practitioner. Barristers have the qualification of "Barrister-at-Law" and for that reason are often referred to as "BLs".

Senior Counsel: An experienced barrister particularly learned in the law who has been appointed by the Government to that rank. Abbreviated "SC".

Pleadings: documents exchanged between the Plaintiff and the Defendant that either set out the Plaintiff's claim or the Defendant's defence to that claim.

Personal Injury Summons, Plenary Summons, Special Summons, Family Law Civil Bill, notice of application: these are all examples of court documents which are used to start various types of proceedings.

Appearance: A document by which a Defendant formally acknowledges that they have been served with proceedings.

Defence: A type of pleading in which the Defendant or respondent sets out their defence to the Plaintiff's claim. In family law proceedings the defence often contains a counterclaim which sets out any claims which the defendant/respondent may wish to make against the plaintiff/applicant.

Injuries Board: A Government body to which almost all personal injury claims must be referred to attempt settlement before personal injury proceedings can be issued.

PIAB: The Personal Injuries Assessment Board.

Part 1.
Introduction to Civil Legal Aid and Advice

This part deals with:
1. What is civil legal aid and advice?
2. Who can receive civil legal services?
3. What matters are civil legal services available for?
4. Other legal aid schemes run by the Board
5. Legal Aid schemes not run by the Board

1. What is civil legal aid and advice?

Civil legal aid and advice is the service which provides assistance with civil legal problems for persons unable to pay for their own legal representation.

Legal advice
Legal advice is any oral or written advice given by a solicitor or a barrister in civil matters. It can include writing letters on a client's behalf and acting for them in negotiations (including reaching legally binding agreements) with other persons. We provide legal advice through solicitors in our law centre network.

When we grant legal advice to a financially eligible person, that only includes advice provided by a law centre solicitor. If they require advice from a barrister (such as Counsel's opinion), or from any other professional not employed directly by us, an application must be made for authority to engage Counsel or the professional concerned.

Legal aid
Legal aid means that the applicant will be represented by a solicitor or barrister in civil proceedings in the:
- International Protection Appeals Tribunal
- District Court
- Circuit Court
- High Court
- Court of Appeal
- Supreme Court
- Court of Justice of the European Union

We can also provide legal aid in certain inquests. (➔ **Part 4**)

Legal aid starts once any steps necessary to start proceedings are taken, or an appearance/defence needs to be filed.

Section 28(1) states that a person shall not be granted legal aid unless the person is granted a legal aid certificate". A legal aid certificate must be applied for on behalf of the applicant, and granted, before legal aid can be provided. A law centre cannot file an appearance or defence for someone unless a legal aid certificate has been granted.

In most cases, we provide legal aid through solicitors employed in our law centres. In some cases, we provide legal aid through solicitors in private practice who have agreed with the Board to provide service according to our terms and conditions and to be placed on one of our panels. These cases include some family law disputes where the matters are being dealt with in the District Court.

"Legal services"

We often refer to civil legal aid and advice collectively as "legal services" or "civil legal services". If you see these expressions in the Circular, take them as referring to both.

The law

The law which provides for civil legal aid services can be found in the Civil Legal Aid Act 1995 (referred to throughout this document as "the Act"), which established **the Legal Aid Board** as an independent statutory body. The Board was originally established in 1980 on an administrative basis only. Further and more detailed provisions, particularly (but not exclusively) relating to the financial criteria, can be found in the Civil Legal Aid Regulations 1996, 2002, 2006, 2013, and 2016 (collectively the Civil Legal Aid Regulations 1996-2016 and referred to in this document as simply "The Regulations").

It is important to note that we are required to act under the Act and Regulations at all times, we have no power to vary the requirements unless the Act and Regulations say that we can do so. This can arise, for example, when applicants ask why we cannot take electricity bills into account in the determination of financial eligibility, or if a client asks why their settlement has to be paid into the Legal Aid Fund. As a body established by law, we can only do what the law says we can do. That being said, the Oireachtas may amend the Act and the Minister can amend the Regulations.

2. Who can receive civil legal services?

Only available to natural persons

Legal services under the Act are usually available to natural persons only (i.e. to individuals) and not to legal persons (e.g. a company).

The only exception is in child abduction cases, where the applicant is a state body in another jurisdiction (equivalent to the Child and Family Agency – for example, a Health and Social Care Trust in Northern Ireland or a local authority in England and Wales) and we must give assistance under the relevant Convention. In these cases the child is usually alleged to have been abducted out of State care in another jurisdiction.

"Persons of insufficient means"

Section 29

It is important to know that civil legal services are only available to people who do not have enough money to pay for a solicitor themselves. What that means is that, except in limited circumstances, we assess each application for civil legal services to see if the applicant is financially eligible for the service.

A person is financially eligible for legal services when their **disposable income** and the value of their **disposable capital (excluding the family home)** are less than prescribed limits. These limits are determined by the Minister for Justice and Equality (through a set of Regulations, currently the Civil Legal Aid Regulations 1996-2016) and may change from time to time.

- **Disposable income** means income after income tax, PRSI, USC, PRD, allowances for children and spouses, and accommodation costs. The disposable income limit is currently €18,000 per annum.
- **Disposable capital** means that outstanding loans are deducted from the applicant's capital. The disposable capital limit is currently €100,000.

➔ The Administrative Procedures Handbook covers in greater detail the financial criteria for civil legal services and the process of applying

Not available from any other source

Sections 26(2(c) and 28(4)(a)

We cannot grant civil legal services if legal assistance is available from another source.

This is not an exhaustive provision, but examples of other sources could include other legal aid schemes such as the Mental Health Tribunals legal aid scheme,

the Criminal Law (Mental Health) Review Board legal aid scheme, or from a trade union or representative body of which they are a member. It may also apply for example, if they have already received the same advice privately but have come to us to receive a second opinion. Again this is because we are spending taxpayers money providing this service and must use our limited funds to benefit those most in need.

Family mediation and alternative dispute resolution

One of our goals is to encourage the use of alternative dispute resolution – in other words, options that don't involve going to court - and mediation to resolve family related disputes. Family mediation is a service to help couples who have decided to separate or divorce, or who have already separated, to negotiate their own terms of agreement, taking into account the needs and interests of all involved. In certain circumstances, mediation can also assist in disputes within families.

Since November 2011 we have provided family mediation services. The role of family mediation is to encourage the separating couple to co-operate with each other in working out mutually acceptable arrangements on all or any of the following:

- Parenting the children
- Financial support
- Family home and property
- Pensions
- Other issues related to the separation

Unlike civil legal aid and advice, family mediation is free for the client.

We provide family mediation through 16 mediation offices.

3. What matters are civil legal services available for?

In principle, civil legal services are available for all civil matters, other than those which are excluded by law. All civil matters are in scope unless specifically excluded. There is a general perception - even among the legal profession - that we only deal with family law cases. While these make up the largest part of our work, they are far from being the only type of case we handle. Never tell any person that comes to the law centre that we "only deal with family law".

This section deals with some of the matters that are excluded from the scope of civil legal services. The general rule is that everything is included unless it is excluded.

Criminal cases are excluded from civil legal services

Legal aid for people charged with criminal offences (known as the "defendant" in the District Court and the "accused" in other courts) is not part of the scope of civil legal aid. These involve the prosecution of criminal offences.

They are recognisable by the title of the proceedings, which in the case of public prosecutions (which make up the overwhelming majority of criminal prosecutions) takes the format "The People at the suit of the Director of Public Prosecutions (Prosecutor/Complainant) v *x* (Accused/Defendant)" or (in the District Court) "Director of Public Prosecutions (at the suit of Garda *y*) (Prosecutor/Complainant) v *x* (Accused/Defendant)".

In criminal cases an application for legal aid for the accused/defendant is normally made to the judge.

A person who is in Garda station custody may be entitled to legal aid under the Garda Station Revised Scheme. Also be aware that certain matters which are heard in the civil courts – such as bail appeals and habeas corpus applications (application to bring a prisoner before the court) that are really connected with criminal matters are under the scope of what are known as "ad-hoc" legal aid schemes – the Custody Issues Scheme and the Criminal Assets Bureau Legal Aid Scheme. We administer these schemes, but applications are not made to law centres. They should be made through a private solicitor.

A question which arises sometimes is whether civil legal aid is available for contempt cases. Broadly speaking, a person can be in contempt "in the face of the Court" (ie acting in Court in a manner which is offensive to the Court) or in civil contempt (e.g. refusing to comply with a court order). In the former case, the person is facing a criminal charge for which civil legal aid is not available. In the latter case, the contempt is a civil matter for which civil legal aid, in theory at least, is available. Part 4 includes guidelines for dealing with non-family law cases where the person's imprisonment is being sought for breaching a court order. These are general guidelines for which there is at least one exception. In non-family law debt cases the judge can grant a legal aid certificate as he/she would in a criminal case if he/she is considering imprisoning a debtor for non payment on a debt instalment order.

While the accused/defendant cannot avail of civil legal services, the person who made the complaint – **against whom the crime is alleged to have been committed** - can receive civil legal advice if the case is a rape case or in certain sexual assault cases. In addition, where the complainant's prior sexual history becomes a fact in issue in a rape trial, we can grant civil legal aid to the complainant, if they are referred by the Director of Public Prosecutions. Civil legal advice is also available to alleged victims of human trafficking.

Other matters that are excluded from civil legal services

Any matter that is covered by any other legal aid scheme is excluded from the scope of civil legal aid and advice, even if the matter is nominally civil.

The Act also sets out a list of civil matters which are excluded from the scope of civil legal aid. These are known as "designated matters", and are as follows:

- defamation (except in cases where the applicant for legal services is based in another EU state, other than Denmark);
- disputes concerning rights and interests in or over land;
- small claim cases;
- alcohol/club licensing;
- conveyancing (when it is not connected to a matter for which legal services have already been provided);
- election petitions – where a person challenges the result of an election;
- applications made in a representative, fiduciary or official capacity; and
- group/class actions.

But note that there are some exceptions to the designated matters – these are dealt with below.

"Test" cases should not be confused with group / class actions

A class action is a case where a plaintiff takes an action on behalf of a particular group or class of persons. Class actions are extremely rare in Ireland and are only provided for in very limited circumstances (such as Part IV of the Civil Liability Act 1961). They are outside the scope of civil legal services.

In the Irish legal system, a decision of a court generally (but not always) binds the same court, while a decision of a higher court always binds a lower court. Sometimes a person may take a case with the intent of establishing a precedent which will be followed in later, similar cases – this is called a "test" case. If a person applies for legal aid for a "test" case, we will judge the case on its own merits like any other.

Exceptions to the exclusions

We talked about the "designated" matters which are excluded from the scope of civil legal services above. Within the designated matters there are some exemptions for which we **can** provide legal aid. These are:

Section 28(9)(b)

Defamation: If the applicant is granted legal aid for a matter other than defamation, legal aid will not be stopped if the other party counter-sues them and includes defamation in their claim.

There is also an exemption where the applicant is resident in another EU jurisdiction (except Denmark) and they are applying for legal aid under Council Directive 2003/8/EC (see ➔ **Part 4** for details).

Disputes concerning rights and interests over land:

Section 28(9)(c)(i)-(iii)

The following types of disputes concerning rights and interest over land are within the scope of civil legal aid, as an exemption to the general exclusion:

- Proceedings under the following legislation:
  - Landlord and Tenant Acts 1967 to 1994 (in so far as they relate to residential property),
  - the Residential Tenancies Act 2004
  - the Married Women's Status Act 1957,
  - the Family Home Protection Act 1976 ,
  - the Family Law Act 1981 ,
- Disputes between married couples as to the title to or possession of any property;
- Disputes over a property:
  - between engaged couples or cohabiting couples; or
  - between formerly engaged couples or cohabiting couples, who were co-owners of the property concerned while they were engaged or cohabiting.
- Disputes over the applicant's home, but only if the Board considers that one or more of the following apply:
  - The applicant suffers from an infirmity of mind or body due to old age or to other circumstances, or
  - may have been subjected to duress, undue influence or fraud in the matter,

  and in either case that a refusal to grant legal aid would cause hardship to the applicant.

Section 28(9)(c)(iv)

Representative applications:

- in connection with the preparation of an assent, if the Board is satisfied that the assent relates to the applicant's home and where—
  - (I) a grant of representation has been taken out on behalf of the applicant, or
  - (II) the applicant had taken out a personal grant of representation,

and that a refusal to grant legal aid would cause hardship to the applicant;

Section 28(9)(c)(v)

Licencing: If the granting of the licence would cause hardship to the applicant.

Section 28(9)(c)(vi)

Conveyancing: If it was connected with a previous case for which legal aid or advice was granted. For example, in divorce and judicial separation proceedings, a judge may make an order requiring the family home to be transferred into the sole name of one of the parties. If (s)he makes such an order, we can act on behalf of the legally aided party for the purposes of that transaction.

Section 28(9)(c)(vii)

Inquests: If a request is made by a coroner on behalf of a family member of the deceased in certain inquests (➔ **see Part 4 for further details**)

Legal aid is only available before a civil court or a prescribed Tribunal

Section 27(2)

Legal aid is generally only available in the civil courts – the District Court, Circuit Court, High Court, Court of Appeal, and Supreme Court, as well as when any of these courts makes a reference to the Court of Justice of the European Union on a point of EU law. It is also available in "prescribed tribunals",

though at the moment, the only prescribed tribunal is the International Protection Appeals Tribunal.

It is worth noting however, that while we cannot grant a legal aid certificate for a matter before a tribunal which is not prescribed – eg. the Labour Court – there is no problem with legal advice being granted prior to the applicant appearing before the tribunal. There is also no problem, if a right of appeal from a decision of the tribunal concerned to a court exists, for the applicant to return to the law centre to apply for legal aid in respect of any such appeal.

Section 28(8) ***Legal Aid is only available for the lowest Court having jurisdiction***.
If more than one court has jurisdiction in a matter ("concurrent jurisdiction") then legal aid is only available to taker the case in the lower jurisdiction.

Matters other than family law
Over 80% of the cases we take on are family law matters, which has given rise to a public perception that we "only" deal with family law. This is not true, and the scope of the Act is very wide and encompasses most areas of civil law. There are only a handful of civil matters that are actually excluded from the scope of civil legal aid.

It is important that managing solicitors ensure that persons are not effectively refused legal services at law centre level by being advised by staff in a law centre, for example, that the centre deals only with family law cases.

4. Other legal aid schemes run by the Board

While civil legal aid and advice and family mediation make up the vast majority of our work, we also run a number of other legal aid schemes on an administrative basis. These are as follows:

Criminal Assets Bureau - ad-hoc legal aid scheme
The Criminal Assets Bureau Ad-hoc Legal Aid Scheme applies to any persons who are respondents and/or defendants in *any* court proceedings brought by, or in the name of, the Criminal Assets Bureau or its Chief Bureau Officer, including court proceedings under the Proceeds of Crime Act 1996, the Revenue Acts or the Social Welfare Acts.

Garda Station Legal Advice Revised Scheme
The Garda Station Legal Advice Revised Scheme commenced on August 15th 2014 and replaces the old Garda Station Legal Advice Scheme which had been administered by the Board since the Scheme's transfer from the Department of Justice & Equality in 2011.

The Garda Station Legal Advice Revised Scheme provides that, in certain circumstances, legal advice will be provided to persons detained under certain legislation in Garda stations. The Revised Scheme provides for payments to be made to solicitors in respect of their consultations with detainees and will also provide for payments in respect of solicitor attendances at Garda stations for the purposes of accompanying a detainee to a Garda/detainee interview or an identity parade in which the detainee is involved.

Legal Aid – Custody Issues Scheme (formerly the Attorney General's Scheme)
The Scheme, which was formerly known as the "Attorney General's Scheme", was renamed by the Department on the 1st January 2013 as the "Legal Aid – Custody Issues Scheme".

The Legal Aid - Custody Issues Scheme provides payment for legal representation in certain types of litigation, in the High Court, Court of Appeal, and the Supreme Court, not covered by civil legal aid or the criminal legal aid scheme.

The cases covered include certain types of judicial review, bail applications, extradition, European arrest warrants and applications to Court to test the legality of a prisoner's detention (an Article 40 application – otherwise known by the common law term "*habeas corpus*"). It is an ex gratia scheme set up with funds made available by the Oireachtas.

5. Legal aid schemes not run by the Board

Legal aid for the accused/defendants in criminal proceedings

This is the main scheme of criminal legal aid for persons who are accused /defendants in criminal cases being prosecuted by a Garda on behalf of the Director of Public Prosecutions (in the District Court) or the Director of Public Prosecutions (in the Circuit Criminal Court or Central Criminal Court) or on appeal to the Circuit Court or Court of Appeal. We currently have no involvement in this scheme. Applications for criminal legal aid are made by a solicitor to the judge where appropriate. A statement of means is completed.

There are plans for this scheme to be transferred to us, but this has not yet occurred. Details of the scheme are available on the Department of Justice and Equality's website.

Legal aid at Mental Health Tribunals

This is a scheme of civil legal aid for persons involuntarily detained in an approved centre. Details are available on the Mental Health Commission website.

Other schemes

There are a number of other ad-hoc or statutory legal aid schemes. The key thing to remember is that once a matter is under the scope of another legal aid scheme it is automatically taken out of the scope of civil legal aid and advice. Applications for civil legal aid for matters under the scope of another scheme may be refused for this reason.

Part 2.
Legal advice

This part deals with:
1. Applying for legal advice
2. Criteria for obtaining legal advice
3. Granting legal advice
4. Additional services at advice stage
5. Situations where it becomes clear that legal advice should not continue

1. Applying for legal advice

The full process of applying for legal services is outlined in Chapter 3 of the ➔ **Administrative Procedures Handbook.** The applicant completes the application for legal services form, available on our website or from any law centre, and returns it to the law centre of their choice (usually the one nearest to them).

2. Criteria for obtaining legal advice

When an application is received, the law centre carries out some preliminary checks and then financially assesses the application. If the matter is clearly out of scope, make an application for a legal aid certificate with a recommendation that it be refused. See ➔ **Chapter 3 of the Administrative Procedures Handbook.**

The merits criteria for civil legal advice can be found in section 24 of the Act. In principle, all applications for legal services must meet these criteria. A full outline of the grounds relied on when considering applications for legal services can be found ➔ **Part 5** but here are some of the main principles.

The reasonably prudent person

Section 24(a)

A person applying for civil legal services will not be granted legal aid or advice unless we are of the opinion that the average member of society – **not a well off person –** would pay for legal services from their own money.

The test is whether a person of average means who is not financially eligible for legal services, would seek legal advice in the particular circumstances or would seek to take or defend particular proceedings in the circumstances. For example, would a person who had to pay for a judicial separation from their own money, actually spend money on obtaining a judicial separation, knowing that they would shortly become eligible for a divorce? The situation is not so clear cut, of course, as such a person may be in need of the other reliefs (custody, access, guardianship, maintenance) and may not be in a position to wait for a divorce. But this is something we must consider in the context of applications.

Solicitor or barrister would likely to advise to obtain service from own means

Section 24(b)

The second of the general criteria ➔is that we cannot grant legal advice or aid to someone who, were they to consult a solicitor or barrister in private practice, would be advised not to take the case. This is important because we do not have a limitless budget and cannot fund persons to take cases of little value and/or prospects of success. That is not to say that the person must have an absolute guarantee of success, if there is are reasonable prospects of success, legal aid may be granted.

Refusing legal advice on the merits criteria

It is possible for legal advice to be refused on the merits criteria. In practice it would be **extremely rare** that an application that would be refused on the merits criteria solely from the application for legal services form.

Occasionally law centres receive applications to defend criminal proceedings and these are clearly outside the act and can be dealt with at the application stage after consulting the managing solicitor. Outside of this, a solicitor should at least take a first consultation and obtain further details of the matter. If it becomes clear at the first consultation that legal advice should not continue because the application would not satisfy the merits criteria, then you can make an application to Legal Services at that point.

You should only make an application to Legal Services to refuse legal advice on the merits criteria prior to a first consultation after the managing solicitor considers the application.

Previous clients of the Board who have received legal services for the same matter

If it appears that an applicant has already received (or applied and been refused) legal services for the same matter, any member of staff in the law centre can (after consulting with the managing solicitor) make an application for legal advice to be refused on the grounds that:

- the matter is one in respect of which the applicant has already received legal services; or
- the matter is one in respect of which does not meet the criteria that are set out in section 24 of the Act.

Such applications are in practice rare. However you should be mindful that the provision to refuse legal advice is there, where an applicant makes repeated and/or vexatious applications for legal services for substantially the same matter.

Clients who insist on "my day in Court"

In many cases, both sides of a particular case are legally aided. This is especially true in family law cases. Where both parties are legally aided and may have a very small financial stake in the case, the temptation to insist on their "*rights*" to the full is greater than it might be for persons who are paying for legal services themselves.

Law centre solicitors are under the same obligation to deter unreasonable applicants from proceeding to assert or defend their "*rights*" as they would be if dealing with fee paying clients.

Take for example a dispute concerning access to a child. The father wishes to have access or to have access increased and the mother refuses. It is not a privilege of either party to insist on changing access, or to insist on refusing it, unreasonably. If you consider that a party is being unreasonable and should perhaps accept a settlement, then it is your duty to bring that to the attention of the Board and to advise the parties that legal services may be withdrawn from one or both of them unless they accept a reasonable arrangement.

It is the duty of the Board and of each solicitor to consider whether or not it is reasonable that public money should be expended. It is not the right of any client to *"insist"* on substantial expenditure unless there is very good reason for it. It is reasonable to suggest that a client seek an appointment for mediation or an information session about mediation in the above case if the client has not already chosen to do so. It should also be mentioned that the client's costs may be increased by going to court.

It may be unfair that a person who qualifies for legal aid should be in a position to put a person who has to pay for legal services to substantial expense without very good reason.

It is not suggested that the legally aided client has to accept "second best" because they are on legal aid. The point is that legal aid should not over empower one party over another.

3. Granting legal advice

If the applicant is found financially eligible, then legal advice is usually granted locally, subject to the principle that if the application is later found to be out of scope, legal advice can be withdrawn.

Typically there is no formal "decision" to grant in this case and the case is placed on the applications record. If the matter is priority, offer the next available appointment with a solicitor. If not, grant a first consultation appointment according to the procedure in ➔ **Chapter 5 of the Administrative Procedures Handbook.**

We aspire to ensure that all financially eligible applicants for legal services receive a first consultation with a solicitor within a month of their application. Certain matters are prioritised and will be given the earliest possible appointment with a solicitor.

In order to ensure that every applicant receives an appointment with a solicitor at the earliest opportunity, in law centres with a waiting time estimated more than four months, applicants on the applications record are offered a **first consultation** at an early date. We aspire that this appointment should take place within one month, but it should it take place no later than four months after their completed application.

After that appointment, if they require further legal services, they remain on the applications record and continue to wait until a more substantive legal service (a **second consultation**) can be provided.

In some law centres the total waiting time for legal services is less than four months. In such cases, and for priority cases in all law centres, substantive legal services begins with the first consultation.

Scope of legal advice

Section 26 Section 26 of the Act provides that legal advice shall consist of any oral or written advice given by a solicitor or by Counsel.

However, except in international protection cases, law centres only have delegated sanction to grant legal advice provided by a law centre solicitor. They do not have sanction to seek advice from Counsel or any other professional. If advice from Counsel is required, they must make an application to Legal Services for authority to seek Counsel's opinion.

In international protection cases, law centres have delegated sanction to:

- Grant legal advice provided by a member of the international protection solicitors' panel
- Grant a medico-legal report, in cases where allegations of torture having occurred are raised by the applicant

4. Additional services at advice stage

Seeking authority for expenditure from Legal Services at advice stage

Where a law centre is seeking to incur expenses at advice stage e.g. Counsel's opinion, interpreters, or engage other professionals prior to a legal aid certificate being granted, authority to do so must be sought from Legal Services. This is done by way of a Submission for Authority on EOS. Legal Services will consider the submission and grant or refuse, as appropriate, authority.

Authority at advice stage should be distinguished from seeking authority for additional services once a legal aid certificate has already been granted, which is done by way of submission for an amended legal aid certificate.

The Submission for Authority on EOS is only used at advice stage – before a certificate has been granted

Where additional services are being requested after a legal aid certificate is granted, the Submission for an Amended Legal Aid Certificate should be used

The exception to this rule is where a law centre is seeking authority for conveyancing services to be provided in connection with a matter for which legal aid was previously provided. See ➔ **Part 2** for further details.

Procedure 2.1 Making a Submission for Authority at advice stage

This procedure describes how to make a submission for Counsel's opinion. It however can be suitably adapted for the making of a submission to incur any expenditure at advice stage.

1. On the Submissions tab in EOS, select "Create New Submission"
2. Select the following options:
   Submission Type: Submission for Authority
   Type of Proceedings: The matter you are looking for advice on
   Court: No Court Required
   Litigation Options: None
   Recommendation: Grant
   Decision Maker: Legal Services Submissions Inbox
   Status: To Be Submitted
   Additional Authority: Junior Counsel Opinion or Senior Counsel Opinion as appropriate.
3. In the **Authority Reason**, make your submission to Legal Services, setting out the point(s) of law on which the opinion is sought, the time involved and any other relevant information.
4. Click the "Add Additional Authority" button.
5. If you need to enclose any documents with the Submission, choose them from the "Documents" drop down.
6. Click the "Make Submission" button

Remember that you must click on the Documents tab and click the "Available to Legal Services" checkbox beside any documents you need to make available to Legal Services. It is important, therefore, that all documents necessary for a submission are uploaded prior to the submission being made.

Seeking counsel's opinion

If you decide that the written opinion of Counsel is required to consider the merits of a particular case, as distinct from engaging counsel for court proceedings, make an application for authority to Legal Services to obtain Counsel's opinion via EOS. Set out the following in the Statement of Facts:

- the facts of the case;
- the point(s) of law on which the opinion is sought;
- the time involved; and
- any other relevant information.

Only seek an opinion when the full facts are available and where you are not in a position to offer a reasonably definitive view. In urgent cases, you may have to rely on whatever facts are reasonably available.

If approved, authorisation will issue via EOS. The contribution payable is limited to the legal advice contribution. Where the matter at issue is clearly a designated matter under the terms of the Civil Legal Aid Act 1995 and none of the exceptions apply, do not seek an opinion - because a certificate will not ultimately be issued.

The Board and its solicitors have built up significant expertise and legal knowledge in the area of family law. Counsel's opinion at advice stage will not normally be required – or authorised - unless there is an exceptional or significant point of law involved.

Engaging interpreters

We have a contract in place for the supply of interpreter services for all offices excluding Criminal Legal Aid. At the time of writing, this contract is with Translation.ie. If you require an interpreter at advice stage, seek approval by way of submission for authority. If approval is granted the interpreter must be engaged from the company that currently has the contract for the supply of interpreter services for the time being. Legal Services may refuse to pay for an interpreter that has been engaged without authority. In certain circumstances, Legal Services may grant authority to use an alternative company where it is not possible to use the contractor. Interpreter attendance forms must be completed in respect of both law centre and asylum clients.

Further details about engaging interpreters can be found in Part 10 of this document and must be consulted if you are considering whether to engage an interpreter.
We have separate contracts for the provision of interpreter services and the provision of translation of documents. At time of writing these are held by different companies and it is important to engage the correct company for the correct service. Translation.ie should not be engaged for the translation of documents. See the section ➔ **Translation of documents** later in this Part for further details.

Engaging professionals

Where you require an opinion from a professional for the purpose of advising an applicant on his/her legal entitlements, make an application to Legal Services via EOS setting out the position in full. Make the application when all available relevant information has been provided. If approved, authorisation will be granted via EOS. The contribution payable is limited to the legal advice contribution.

The procedure for doing this on EOS is similar to that outlined in ➔ **Procedure 1.1**, save that the Additional Authority sought should be for the particular professional.

Tracking decisions on submissions

Where a submission has been made (whether to a Managing Solicitor or Legal Services) on EOS, the Submissions screen displays the current status (e.g. Submitted, Granted, or Refused) of each submission made on the case.

To track the decision making process, click the SUBx link to enter the submission, and then click on the Actions link. This will display the status history of the submission:

By hovering over an action you can obtain more details such as comments left by the person who made the decision in question.

5. Situations where it becomes clear that legal advice should not continue

As mentioned above, unless an application is clearly outside the scope of civil legal services, a first consultation will be granted. However there are situations where, during legal advice, it will become apparent that civil legal aid is unlikely to be granted.

Situations where the matter is out of scope

It may become clear that the matter is in fact out of the scope of civil legal services. Once this becomes clear, as solicitor you owe a duty to your client to inform them at an early date that the matter is very likely to be out of scope of civil legal services and that, while you can make an application for a legal aid certificate, you will have to do so accompanied by a recommendation that it be refused. If the client wishes you to make one to make an application, do so the earliest possible date so that the client is made clear of the outcome as soon as possible. Inform the client of the review and appeal provisions (➔ **Part 4).**

Situations where a legal aid certificate may not be granted

Likewise it may also become apparent that the client's case is not stateable, is very weak, or is otherwise unlikely to satisfy the merits criteria. Again you should inform the client of this at an early point and offer to make an application for a legal aid certificate. You should be clear that the application will be accompanied by a recommendation to refuse. Inform the client of the review and appeal provisions.

Making clients aware of the extent of legal advice

No matter what the case, ensure that the client is always aware that the service the law centre is providing is **legal advice <u>only.</u>** The client may come to believe, if several consultations have taken place, that the granting of legal aid is a formality. However where the matter is destined to go to Court, you must always apply for a legal aid certificate. The grant of legal aid is <u>never a formality</u> (except in the small number of matters which are automatic grants e.g. child abduction applicant, foreign maintenance applicant, complainants in rape and certain sexual assault cases). We must consider each and every application on its merits and take a decision whether to grant or refuse legal aid, in accordance with the rules of fair procedures and natural justice. The next Part of this Circular deals with the process of applying for legal aid in greater detail.

Part 3.
Legal aid

This part deals with:
1. Deciding to apply for a legal aid certificate
2. Applying for a legal aid certificate
3. The statement of facts
4. Legal aid for appeals
5. Amending the legal aid certificate

The grant of legal advice extends up to the time when proceedings need to be started or defended. Proceedings can be started by issuing an originating summons, civil bill, notice of application or other initiating document. Proceedings are usually defended by entering an appearance and delivering a defence to proceedings which the other party has issued. Before a law centre can represent a litigant in civil proceedings, a member of staff[1] in that law centre must apply for **legal aid** on the applicant's behalf. The solicitor will make the application to a decision maker through EOS and the decision maker will grant or refuse the application. Where an application is refused, it is possible to seek a review or appeal of that decision.

The Act provides for "certifying committees" to consider applications for legal aid, however all the functions of the certifying committees have been delegated to the Board's staff and they are no longer constituted. For all practical purposes the decision maker for most family law matters in the District Court (applications for guardianship, access, maintenance, custody, and domestic violence remedies) and appeals of the same matters is the law centre managing solicitor. For most other matters, it is Legal Services.

This Part explains in detail the process of applying for legal aid, the criteria which apply, and the process by which decisions are made, reviewed, and appealed.

1. Deciding to apply for a legal aid certificate

What is a legal aid certificate?

Section 28

The Act provides that "a 'certificate' means a civil legal aid certificate issued by the Board…authorising the grant of legal aid to the person to whom the certificate relates"

A legal aid certificate is a document issued to a solicitor enabling them to represent a client in specified proceedings. It may also authorise them to spend money on specific services, such as Counsel, expert witnesses, reports. A solicitor can only represent a client in legal proceedings on foot of a legal aid certificate. They can only engage Counsel, commission reports, and call expert witnesses if the legal aid certificate authorises to them to do so. A legal aid certificate can be amended at a future date if we consider that an amendment is required. Amendments to legal aid certificates are dealt with later in this Part.
It is the practice to word certificates in general terms so as to allow law centres a reasonable amount of flexibility in dealing with the various steps to be taken once the decision to grant a certificate has been reached. Solicitors should always check the certificate to make sure that the authority granted by the certificate covers him/her to take the necessary action and incur particular expenses such as counsel. If solicitors engage counsel or particular witnesses without the necessary authority the Board may be in difficulty in making the necessary payment.

When should I apply for legal aid?

[1] Usually though not always a solicitor. A non-solicitor member of staff can make the application in certain circumstances, for example. an application for a private practitioner legal aid certificate (see the next page). In this Part the term "solicitor" is used unless dealing specifically with circumstances where a non-solicitor staff member can make the application.

As a solicitor, it is for you to use your professional judgement as to if and when to apply for legal aid. Solicitors for the prospective Plaintiff are encouraged to use all means short of litigation to avoid the dispute going to Court, keeping their client's best interest at heart at all times. Methods such as alternative dispute resolution, negotiation, and mediation are encouraged. Solicitors for the applicant in family law proceedings are reminded of their obligations to do so under the Family Law Acts (and to certify to the Court that they have done so) and this should under no circumstances be a "box checking" exercise, but should be the recommended way of solving disputes.

If it has come to the point where the other side have issued proceedings, the solicitor will need to apply for a legal aid certificate to defend those proceedings.

Applying for legal aid where there is little or no likelihood of success

It is not necessary to consult Legal Services, or that a formal process be applied, before an applicant is advised that s/he is ineligible for legal advice/aid or is unlikely to be legally aided. It would make very little sense to have such a requirement for the vast majority of cases where the subject matter is clearly out of scope, or the applicant does not have a case in law, etc. Law centres have delegated authority to refuse legal aid on financial grounds. (➔ **Administrative Procedures Handbook**)

If cases are clearly out of scope, there is a procedure in place (➔**Administrative Procedures Handbook**) for advising applicants of this and informing them that the matter will be referred to Legal Services if they wish.

The best course in all cases if you consider that an applicant is ineligible, or is unlikely to be legally aided given the merits of the case generally, is to inform the applicant that it is unlikely that we will grant legal advice/aid, but indicate that the case will be referred to Legal Services or other appropriate decision maker for decision if the applicant so wishes.

Applications by members of staff other than solicitors

Regulation 5(5)

Applications for legal aid can be made by paralegal and clerical members of staff in the following circumstances:

- Private family law proceedings in the District Court and appeals of the same matters to the Circuit Court
- Childcare
- Divorce/judicial separation
- International protection appeals

It is only appropriate for a non-solicitor member of staff to make an application where the recommendation will be Grant, or the recommendation will be to refuse on some ground other than the merits of the case (e.g. financial eligibility). If the recommendation will be to refuse on merits grounds, the submission should be made by a solicitor.

2. Applying for a legal aid certificate

Regulation 5(5)

The application for a legal aid certificate is made to the relevant decision maker via EOS. The Submissions tab in EOS allows a user to make submissions for legal aid certificates.

The Regulations provide that an application for a certificate must be made in writing in the prescribed form and must include:-

- the information deemed necessary by the Board to enable it to decide whether or not a certificate should be granted;
- an opinion signed by a member of staff as to whether a certificate should be granted; and
- a statement that the applicant has been advised on matters in respect of which a member of staff is required to give advice under the Act and Regulations.

The Board has mandated the use of EOS as the "prescribed form" for the purposes of the Regulations, and has decided that the completion of the form using a solicitor's user account on EOS is sufficient to satisfy the writing/signature requirements.

Procedure 3.1 Applying for legal aid on EOS

1. On the Submissions tab in EOS, select "Create New Submission"
2. Select the following options:
   Submission Type: Submission for a Legal Aid Certificate (Family Law or Non Family Law, as appropriate)
   Type of Proceedings: The matter for which you are instituting or defending proceedings, as appropriate.
   Court: The Court in which you intend to bring to or in which the plaintiff is bringing the proceedings. (Where making a submission for a legal aid certificate the "No Court Required" option should **not** be chosen).
   Litigation Options: The appropriate option (usually Institute or Defend, but you should **not** choose "None Required" when making a submission for a legal aid certificate).
   Recommendation: Grant or Refuse, as appropriate.
   Decision Maker: Legal Services Submissions Inbox
   Status: To Be Submitted
3. If you need to enclose any documents with the Submission, choose them from the "Documents" drop down.
4. In the Statement of Facts, enter your submission for a legal aid certificate, in accordance with the guidelines in this Circular. If the submission is likely to be lengthy, you should create it as a document on the Documents tab (from the Statement of Facts template), check the "Make Available to Legal Services" checkbox beside it. You may then simply make reference to that submission in the Statement of Facts field.
5. Additional Authorities, such as the services of Counsel, GPs reports, witnesses etc may be applied for by choosing the relevant service from the "Additional Authority" drop down, entering in the reason you are seeking the additional authority (in line with any directions given in this Circular) and clicking "Add Additional Authority". It is possible to add more than one additional authority in a submission.
6. When finished, click the "Make Submission" button.
7. Check that your submission has the status of "submitted" and not "saved as a draft" as EOS allows you to save a draft submission without submitting it and users may inadvertently choose this option.

Remember that you must click on the Documents tab and click the "Available to Legal Services" checkbox beside any documents you need to make available to Legal Services.

We will now look at each of the headings in the submission in greater detail:

Submission Type

You must choose the type of submission you are making. While EOS offers a range of submission types, the following are applicable for applications for legal aid:

- **Legal Aid Certificate (Family Law)**
  This covers any family law proceedings where the applicant will be represented by a law centre solicitor (except for matters under the Guardianship of Infants Act 1964, Family Law (Maintenance of Spouses and Children Act) 1976, or Domestic Violence Act 1996 and the proceedings will be taken in the District Court or on appeal to the Circuit Court).
- **Legal Aid Certificate (Non Family Law)**
  This covers any non-family law proceedings.
- **Delegated Legal Aid Certificate**
  This covers any family law proceedings where the applicant will be represented by a law centre solicitor under the Guardianship of Infants Act

1964, Family Law (Maintenance of Spouses and Children Act) 1976, or Domestic Violence Act 1996 and the proceedings will be taken in the District Court or on appeal to the Circuit Court.

- **Private Practitioner Legal Aid Certificate**
  This covers any proceedings where the applicant will be represented by a member of a private solicitors panel.

Court

Choose the court in which the Plaintiff is bringing the claim.

Section 28(8) Solicitors for the Plaintiff should take note that the Act provides that a legal aid certificate should always be granted in the lowest Court having jurisdiction:

District Court: claims less than €15,000
Circuit Court: claims between €15,000 - €75,000 (- €60,000 in personal injuries) and market value of land is less than €3 million
High Court: Claims greater than the jurisdiction of the Circuit Court.

Where a claim can be potentially brought in either the High Court or Circuit Court, the claim should be brought in the Circuit Court.

Type of proceedings

The list of proceedings available will be filtered to show only proceedings available for the particular case category, i.e. either all family law or non-family law. It is important to note that when the certificate is generated, the Type of Proceedings will be what you choose here when making the submission – not the case type in EOS.

If the case type for which the certificate is granted is different from the case type on EOS, the latter should be updated to the new case type at the earliest opportunity. Is it possible to update the case type on EOS once a cert is granted.

Litigation options

EOS provides drop down menus in the Submission screen allowing you to choose the proceedings which you wish to institute, including whether you are instituting or defending the proceedings, the subject matter of the proceedings which you wish to institute, and the Court in which you intend to take the proceedings.

Legal Services have the option to change on EOS the options that you have chosen, if granting the certificate. For example, if you have chosen to institute proceedings in the High Court which would be within the jurisdiction of the Circuit Court, it is open to Legal Services to change the Court you have chosen to institute proceedings. Legal Services should contact by email the solicitor who has made the submission where they propose to do this.

Statement of facts

This box allows you to enter a statement of facts.

Applications for delegated/Private Practitioner legal aid certificates
For family law proceedings in the District Court (or on appeal to the Circuit Court) where the application is for a delegated/private practitioner legal aid certificate, the application is to the Managing Solicitor or their nominee and the recommendation will be Grant, you can simply give the cause of action and the court venue, along with a recommendation that it be Granted. A more detailed statement of facts will be required if the recommendation is Refuse.

Other applications
A full statement of facts will be required. If the statement will be brief, it is acceptable to type it into the box provided. In most cases though, and particularly in non-family law cases, it is recommended to create the statement as a separate Word document on the Documents tab. A blank Word document is available as a template in “Other Templates”. You should make the Statement of Facts available to Legal Services by checking the box beside it. You can then make reference to the fact that a full Statement of Facts is available on the Documents

tab here. Remember to include any required information for the particular case type e.g. divorce and separation.

Guidelines for creating Statements of Facts can be found later in this Part

Decision maker
Usually the submission type will only allow you to select the correct decision maker. This is Delegated Certificate Grantor where the submission type chosen is Delegated Legal Aid Certificate or Private Practitioner Legal Aid Certificate, and Legal Services Submissions Inbox in most other instances.

Additional authorities
Where additional services are required, you may need to submit further information setting out the services that are required, the reason for the particular service and the benefit to be derived.

When seeking additional services, add a request for an Additional Authority in EOS when making the submission for a legal aid certificate/amended legal aid certificate.

In relation to seeking additional authorities, you should ensure that:

- the correct additional authority is being sought;
- all additional authorities which the law centre is seeking at the point in question are included; and
- only brief details should be included in the "Reason" part of the Add Additional Authority dialog, with fuller details included in the Submission of Facts text box on the main Submission page.

The grant of an additional authority will usually specify a maximum limit which you may spend on engaging the witness or commissioning the report concerned. The current limits can be found in Part 10, Appendix A to this Circular but they may be revised from time to time. It is the responsibility of the solicitor to ensure there is absolute clarity in relation to fees where they seek to engage a person to provide a service on behalf of the client. It is also the solicitor's responsibility to limit the Board's expenses in engaging witnesses/commissioning reports – just because the Board specifies a limit in the terms of the authorisation does not mean you are required to spend exactly the limit specified – only that this limit may not be exceeded.

Applying for the authorisation of Counsel as an additional authority
You must indicate in the Statement of Facts whether the services of counsel are necessary.

If the case is an application for judicial separation, divorce, or dissolution of civil partnership, you should indicate the issues in dispute, for example:

- ownership of the family home;
- a tenancy;
- other property;
- other assets;
- child dependant maintenance;
- adult dependant maintenance;
- pension;
- access; or
- custody.

Authority to retain counsel in matrimonial cases is only likely to be granted if there are valid child welfare, property ownership, or pension issues in dispute. You can furnish additional information as to why the services of counsel are necessary in any other case.

Where Counsel is authorised and engaged they will be paid strictly according to the fee scale contained in Part 10, Appendix B to the Board's Terms and Conditions for the retention of Counsel. You should be aware that any expenditure occurred on behalf of a client may be

deducted from potential settlements and they should consider whether the particular service is necessary.

One application for a certificate per case

Although the system allows you to make multiple applications for certificates, in practice you should only make one application for a legal aid certificate per case.

Where the proceedings on the certificate need to be amended (e.g. to substitute divorce for judicial separation, or to defend cross-proceedings) then the application for this should be made by way of submission for amended legal aid certificate.

Where an applicant subsequently makes a fresh application for legal services in relation to new proceedings, the correct approach is to create a new case on EOS under that applicant.

Legal aid certificate only covers proceedings in a single court jurisdiction

It is important to note that a legal aid certificate only covers proceedings in a single court jurisdiction. Where an appeal to a higher court is to be made, a new legal aid certificate must be sought. The applicant must make a fresh application for legal services, be financially assessed, and pay a contribution in respect of the new legal aid certificate.

However, a fresh legal aid certificate does not need to be sought in respect of an appeal from a county registrar to the Circuit Court or an appeal from the Master/a Deputy Master to the High Court.

Accepting the legal aid certificate

When a legal aid certificate is granted, this strictly speaking constitutes an *offer* of civil legal aid by the Board to the applicant. A legal aid certificate is generated on EOS and appears on the Documents tab.

The certificate doesn't take effect until the applicant:

- signs a printed copy of the certificate; and
- where applicable, pays the legal aid contribution (or such portion of the contribution which it has been agreed should be paid up front, if an instalment arrangement has been approved).

If the applicant does not sign the form of acceptance within one month from the date of its receipt, the certificate will cease to have effect. There is no way to cancel the certificate on EOS, but the file closure reason should be recorded as "Certificate not taken up" and Legal Services notified by email.

Regulation 8(2) Regulation 8(2) provides that the Board may allow the applicant to accept the certificate after the month period is up if there is "good and sufficient reason". Managing solicitors may use their discretion to allow an applicant to accept the certificate late in exceptional circumstances. In other circumstances the law centre should consult with Legal Services.

The submission and a copy of the certificate will be placed on the applicant's file and a copy of the certificate will be given to the applicant.
Slightly different procedures apply to private practitioner certificates which are dealt with in the ➔ **Administrative Procedures Handbook,** and to certificates granted to clients who do not live in the jurisdiction and whom you will never meet (for example, applicants in child abduction or enforcement of foreign maintenance).

Applying for legal aid in an emergency

Regulation 10(1) Where a certificate needs to be issued **very quickly**, you can apply for an emergency legal aid certificate.

We may grant an emergency certificate where:

- it is satisfied that it is essential in the interests of preserving the applicant's rights to issue the certificate and
- that it would cause severe hardship to him or her if the ordinary procedure for the granting of a certificate were followed.

The emergency procedure was created when applications for legal aid certificates were made by post and the means testing procedure was carried out manually. Nowadays, EOS makes it quick and easy to assess an applicant's financial eligibility, and allows an application for a legal aid certificate to be transmitted to Legal Services instantaneously.

It is considered that the circumstances where a legal aid certificate would be issued without assessing an applicant's financial eligibility would be very rare, and will apply only in situations where an applicant needs to go to Court within hours.

Nonetheless, the procedure is still in force. Where it is decided to use the procedure:

1. Fill out an application form for an emergency legal aid certificate
2. Scan the form and upload it to EOS
3. In the event EOS is not available, scan and e-mail the form to Legal Services
4. Call Legal Services and alert the HEO in your Unit that an emergency application for legal aid has been made
5. If it is decided to grant the certificate, we will issue an emergency legal aid certificate to the law centre either via EOS or by e-mail.
6. The applicant must sign the undertaking below.

Agreement in relation to the emergency certificate issued to an applicant under Paragraph 10 of the Regulations

I agree to abide by the conditions on which an emergency legal aid certificate has been granted to me and to pay any contribution assessed on the basis of my statement of means, and any other payment for which I may become liable in connection with the grant of the certificate, including any additional contribution for which I may become liable on the basis of a more detailed assessment of my means which the Legal Aid Board may arrive at following the issue of the emergency certificate.

If it subsequently transpires that I am not eligible for legal aid on financial grounds, I undertake to pay the Legal Aid Board the total cost incurred by the Board in providing me with legal services.

SIGNED _____

DATE _____

3. The statement of facts

Except for family law proceedings in the District Court where the recommendation will be to grant, all applications for legal aid certificates must include a full statement of facts. This section of the Circular provides directions as to what must be included in a Statement of Facts.

About the statements of facts

A fully completed statement of facts will provide all of the information needed for a speedy decision on an application. Applications are considered on the basis of the written submissions and the accompanying documentation. Where a statement of facts will be particularly lengthy, type "See separate statement of facts" and create a separate statement of facts using the templates provided on the Documents tab in EOS and make it available to Legal Services. (*AAA.Statement of facts)*

If the information provided initially in connection with an application is inadequate, Legal Services will contact the solicitor concerned for further material before a decision can be taken on the case. This is essential to ensure that the client's case is fairly presented.

In deciding what information should be provided, a solicitor should put themselves in the position of a third party and consider what information they would require in order to make an informed decision having regard to the terms of the Act and the Regulations.

One of the basic principles underlying the legislation - and one which must be considered in each instance - is whether a reasonably prudent person would, in fact, be likely to fund the action in question from his or her own resources if the case was as strong (or as weak) as that presented by the applicant. In other words, the purpose of the legislation is to put the applicant in the position of a litigant of modest (though not too modest) means in the real world. In order to apply this principle in individual cases, we obviously need to get a full picture of the case.

Format
The Statement of Facts **must** include each of the headings here. Where applicable numbered points should be used, particularly in the "Facts of the case", "Analysis", and "Recommendation" section.

Introduction
Head the Statement of Facts with the words **"Statement of Facts",** the Client Name and Case Reference.

Cause of action
Describe the following:

- What type of case is contemplated (e.g. a personal injury action, an equity action, application under section 117 of the Succession Act)
- What court will most likely be dealing with the matter

Facts of the case
This section should contain mostly **relevant** facts with a minimum of opinion.

The facts should be those which the solicitor/Counsel will rely on when drafting the client's Statement/Indorsement of Claim or Defence. If these documents have already been drafted it is permissible to copy from them verbatim. If acting for the Plaintiff/Applicant you must establish a cause of action: for example, in a divorce case, that the applicant meets the requirements of Article 41.2 of the Constitution. In non-family law cases you must ensure that every element of the tort, breach of contract, or other grounds to take a claim has been made out.

You should have regard to the guidelines for decision makers in Part 5 of this Circular before detailing the facts of the case. **If there is a section which requires the decision maker to seek certain information from you, provide this information now**. Otherwise the decision maker will be compelled to seek the information from you and this will delay the granting of the certificate.

Expert witnesses required
If the establishment of any facts require an expert report to be obtained then details of such expert should be provided. You must justify the retention of an expert witnesses that you propose to obtain reports from or call during the case. For example in a medical negligence case you may need to obtain the report of a medical professional to establish whether the actions complained of were likely to have caused the injuries to the Plaintiff. In other personal injuries cases you may need to obtain an engineer's report in relation to alleged defects.

Analysis of the case
This should be thorough but concise and contain a mixture of facts and opinion. It must include:

- A brief statement of the law which applies to the case which is intended to be pursued or defended. If a counsel's opinion has been obtained then reference should be made to it and made available to Legal Services in EOS.
- A statement as to whether any proposed action or defence has met the requirements of such law to successfully pursue or defend and reference may be made to the opinion of counsel if available.
- If there is a relevant statutory period in which to bring the proceedings then the solicitor's best estimate of when such period should expire. The Risk tab in the case should have been fully completed prior to the application being made.
- The likely amount or value of any award which will benefit the applicant from taking such proceedings or the likely liability which the applicant will incur should he/she be unsuccessful in defending the proceedings. In this context refer to the likely cost of bringing or defending the proceedings.
    - In relation to non-family law, the other side's case, in so far as can be ascertained. In the case where there have been no communications with the other side you should make points which you anticipate the other side will make.
- On the basis of the facts established at the time of the application what prospects of success the applicant has in the proceedings, in the solicitors professional judgement. The solicitor may refer to counsel's opinion or any relevant law.

Recommendation

A solicitor must give a recommendation in every case that a full statement of facts is required. The starting point of any recommendation should be an analysis of the merits criteria in section 24 and 28 to the case. **You must make explicit reference to the particular provisions in the Act upon which you are basing your recommendation.**

A recommendation either way based on unsound legal reasoning can have adverse consequences for the applicant. Clearly, an unsound recommendation to refuse may result in a citizen not having his/her rights vindicated. On the other hand, a recommendation to grant can result in applicants becoming involved in litigation with no prospect of success or likely benefit, and awards of costs made against them. In such cases the applicant will take no comfort from the inevitability of failure and it is possible that they may seek to hold the Board responsible in the event their action is thrown out.

The solicitor, as an employee of the Board, a lawyer and an officer of the Court in recommending a grant or refusal is expected to provide an independent and dispassionate assessment of the case.

Recommending a grant

A positive recommendation should flow from the facts of the case and the analysis conducted.

Section 28(2)

This section states that if all the criteria (28(2)(b)-(e) (or 28(2)(b) and (d), where the case concerns the welfare of a child or a sex offender's order)) are met then subject any other provisions of the Act the Board must grant legal aid. These criteria are:

Section	Criteria
S28(2)(b)	the applicant has as a matter of law reasonable grounds for instituting, defending, or, as may be the case, being a party to, the proceedings the subject matter of the application,
S28(2)(c)	the applicant is reasonably likely to be successful in the proceedings, assuming that the facts put forward by him or her in relation to the proceedings are proved before the court or tribunal concerned
S28(2)(d)	the proceedings the subject matter of the application are the most satisfactory means (having regard to all the circumstances of the case, including the probable cost to the applicant) by which the result sought by the applicant or a more satisfactory one, may be achieved.
s28(2)(e)	having regard to all the circumstances of the case (including the probable cost to the Board, measured against the likely benefit to the applicant) it is reasonable to grant it.

Consider each of these criteria and indicate your reasoning why you think each one has been met. Then proceed to review the criteria in section 24.

Section 24
The case **must** meet both of the criteria in section 24. Again, consider each of these criteria and indicate your reasoning why you think each one has been met. If a case does not **meet either criterion** you **must** recommend a refusal.

Section	Criteria
S24(a)	a reasonably prudent person, whose means were such that the cost of seeking such services at his or her own expense, while representing a financial obstacle to him or her would not be such as to impose undue hardship upon him or her, would be likely to seek such services in such circumstances at his or her own expense and
S24(b)	a solicitor or barrister acting reasonably would be likely to advise him or her to obtain such services at his or her own expense.

In general, if one of the criteria contained in section 28(2) have not been met it will be difficult to meet the criteria in section 24. That being said it is open to you to make the case that notwithstanding that one or more of the criteria in section 28(2) have not been met it may still be possible to recommend a grant under section 24.

If the case meets all the criteria in section 24 and 28 your recommendation should be to grant.

Recommending a refusal
If the case does not meet one or more of the criteria in section 28(2)(b) – (e) the case is unlikely to meet the criteria of section 24(a) and (b). Where a number of the applicable criteria in section 28 (b) – (e) are not met then this should point towards recommending a refusal.

It is not acceptable to make a positive recommendation having conducted an analysis and the conclusion made pointing towards a negative recommendation/refusal. In particular, you should not make a positive recommendation knowing that the applicant's prospects of success are poor. **In these cases, you must recommend a refusal**.

All recommendations to refuse from a solicitor making the application must cite one or more of the grounds in the Act together with a reason why the particular ground applies in the case concerned.

You must be able to back up this opinion. In this case the Statement of Facts must state the facts grounding the negative opinion and that this opinion must be supported by reference to the law and the relevant provisions of the Act and Regulations

When recommending a refusal you must:

- have advised the applicant as to the substantive law governing the relevant issue;
- have advised of the provisions of the Act and the Regulations;
- confirm that the applicant was advised of those matters;
- provide the substance of the legal advice in the application;
- where a matter is excluded by the Act and/or Regulations, confirm that the applicant was so advised but sought to proceed with the application;
- have notified the applicant of the statutory obligation to express an opinion that legal aid should be refused in the particular case and explain in as simple terms as possible the reasons for the opinion along the lines of the legal advice already conveyed to the applicant;

- Give the applicant the opportunity to forward written submission(s) before making the application and require that any such submissions be sent in within 14 days of being notified; and
- advise the applicant of the option of submitting this information directly to the Board rather than via his/her law centre
- substantiate the basis for a negative opinion by reference to the facts, the law and the relevant provisions of the Act and the Regulations, in particular;
- set out the specific merit criteria of the Act (e.g. Section 24 (a) and (b) and/or Sect 28(2) (a) to (e) of the Act) which are relied on in recommending a refusal.
- set out a summary of the reasons for recommending the refusal which can be relied on by the decision –maker.

In recommending a refusal you should refer to **all** relevant sections of the Act that are applicable, including sections 24 and 28(2). (There may be other specific provisions that are relevant, including section 28(4)). In referring to the sections you should provide reasons why the relevant criteria have not been.

Documents attached

You can attach relevant documents to a submission for legal aid.

You should not submit material that is not relevant to making a decision. Any documents that are included with a submission should be referred to in the submission and should be included specifically to inform the application. For example it is not appropriate that all court documents be submitted where the documents might include Notices to Produce, a Notice of Trial, Notices to Cross – Examine etc. However, if available/drafted, the Statement of Claim, Civil Bill, or Claim Notice, and/or Defence (and Counterclaim) should be included, for both plaintiffs and defendants. To include a document, click the "Available to Legal Services" checkbox beside the relevant document in the Documents tab on EOS.

It is not necessary to attach any Court documents for family law matters in the District Court.

Recommending a refusal solely on grounds other than the merits

On occasion you may find yourself making a statement of facts where the grounds for refusal is not the merits of the case. For example,

- The matter is a criminal matter (section 26(2)(a))
- The matter is a designated matter (section 26(2)(b) in conjunction with section 28(9)(a) – consider whether the case would fit the exemptions under section 28(9)(b) first)
- The applicant could obtain legal services from another source (section 28(4)(a))
- The applicant has previously failed to comply with the terms of a grant of legal aid (section 28(4)(b))
- The cost to the applicant of engaging a solicitor and, where necessary, a barrister to represent him or her in the proceedings without legal aid would be less than the contribution payable by him or her (section 28(4)(c))
- The matter is before a tribunal which one which has not been designated by the Minister in accordance with section 27(2)(b)

A submission where the reason for recommending refusal is one of these reasons should follow the normal format up as far as the facts of the case. The case analysis should focus on the reasons the applicant fits into one of these categories.

If the matter is a criminal or designated matter the analysis need not be particularly detailed but should show to the decision maker that the matter is clearly a criminal/designated matter. However it will be unusual that you will need to make a submission on this grounds. ➔ **Chapter 3 of the Administrative Procedures Handbook** contains procedures for dealing with applicants whose case is quite clearly outside the scope of civil legal aid without proceeding to a formal application. In the case of a criminal matter a copy of the charge sheet or summons will be sufficient to ground a refusal.

Where the applicant has previously failed to comply with the grant of legal aid explain fully the circumstances involved.

Where it would be cheaper for the applicant to obtain legal representation privately, present evidence as to why this is the case e.g. at least two quotes from local private solicitors to do the same work. In principle the applicant's contribution will need to be substantially in excess of €417 (if the case is in the District Court) or €5,000 (if the case is in the Circuit Court) before we would consider a refusal on this basis. We would be unlikely to refuse legal representation in the Superior Courts on this ground unless there were exceptional circumstances.

In all circumstances the recommendation for refusal must be grounded in the particular provision of the Act which allows us to refuse.

4. Legal aid for appeals

As and from 1st June 2017, legal aid for an appeal will in general no longer be extended by way of amending a legal aid certificate. This means that where a legally aided person requires further legal aid to appeal an order of a lower court to a higher court they must make a **fresh application for legal services** to the law centre who will process it as if it were a new application. It will be treated as a priority matter.

For appeals of matters within the scope of the District Court private family solicitors' panel legal aid for the appeal can be granted (by way of a delegated/private practitioner legal aid certificate) by the law centre managing solicitor or the Dolphin House Service.
In the case of other appeals, a new application for legal aid must be made to Legal Services. It is often the case that a Court Office will list the Law Centre as being on record in an appeal even if it is the client who has filed the Notice of Appeal. It is not considered necessary that there should be a formal application to come off record in the event that the person is not granted legal aid certificate for the purpose of the appeal.

In those circumstances a solicitor should write to the Court Office noting that a legal aid certificate is not available for the appeal.

5. Amending the legal aid certificate

As legal proceedings progress, you may encounter circumstances where it appears you may need to exceed the authority granted in the original certificate. This can happen in some of the following circumstances:

- Cross-proceedings have been issued and need to be defended.
- Counsel needs to be retained when it was originally not envisaged.
- Expert witnesses need to be retained or reports need to be commissioned.

In circumstances such as these, you must apply for authority to exceed the terms of the original certificate. This authority is granted by amending the legal aid certificate. The document amending the legal aid certificate is called an **amendment to the legal aid certificate.**

The application should be concise but should provide essential information including the reason(s) why the additional steps and/or services are necessary. When the additional services relate to the engaging of a witness, an estimate of the fees involved should be obtained and included.

As with all submissions to decision makers, submissions for amendments to legal aid certificates are made on EOS. There are a number of different reasons to amend a certificate which will be considered in greater detail in the following pages.

➔ Procedure 6.3 in Chapter 6 of the Administrative Procedures Handbook contains the procedure for applying for a delegated legal aid certificate on EOS

Re-entry of proceedings

Applications for legal aid to re-enter, or defend the re-entry of, proceedings in which the applicant was legally aided may to be made by way of an application for an amendment to the original legal aid certificate if, but only if:

- the application for the amendment is made no later than 4 months from the date that the Court Clerk/Registrar signs the order(s) to which the re-entry relates; or,
- where the original order(s) provided for the taking of certain steps by a specific date and the application for the amendment is made no later than 4 months from the date by which it was ordered that the matter(s) to which it relates were to be carried out.

If neither of these conditions are applicable, then the applicant must make a new application for legal services and it will be processed in the same way as any new application.

It is possible to apply for additional services while applying for an amended certificate for a re-entry eg. Counsel.

Enforcement

A solicitor can apply for an amended legal aid certificate for enforcement in the same Court if, but only if, any of the following circumstances are met

- Fresh proceedings are not involved and the court Order requires a certain action to take place immediately or creates an immediate liability that is not met; or
- where the application for the amendment is made no later than 4 months from the date that the Registrar signs the order(s) to which the enforcement proceedings refer.

If neither of these conditions are applicable, then the applicant must make a new application for legal services and it will be processed in the same way as any new application.

Example 1

You acted for the Plaintiff in a personal injuries matter in the Dublin Circuit Court and obtained judgement for your client. The Defendant fails to meet the judgement. You can now apply for legal aid by way of amending the original certificate.

Example 2

You acted for the Applicant in an application for a maintenance order in the Dublin Metropolitan District Court and the district judge granted the order sought. The maintenance debtor fails to meet the terms of the order. As the maintenance creditor your client wishes to take proceedings for an instalment order. This is a new application and they must complete a new application form.

It is possible for a solicitor to apply for additional services while applying for an amended certificate for a enforcement eg. Counsel. The appropriate enforcement fee is payable to Counsel.

The merits test for amending certificates

It's important to note that the merits test is still relevant, and applies, to any application for legal aid to amend a certificate. Take the example of applying for an amendment to a certificate to enforce a judgement. If the judgement is for a relatively small amount or there is little prospect of making a recovery but the person insists on steps being taken, it may be appropriate to make the application to amend the certificate with a recommendation for refusal. It is important to include a full Statement of Facts with applications to amend certificates in the same way that you would with an application for a certificate.

➔ **Part 5** deals with the decision making process, for both applications for legal aid and additional services, in greater detail.

Procedure 3.2 Applying for an amended legal aid certificate

1. On the Submissions tab in EOS, select "Create New Submission"
2. Select the following options:
   Submission Type: Submission for an Amended Legal Aid Certificate
   Recommendation: Grant or Refuse, as appropriate.
   Decision Maker: Legal Services Submissions Inbox
   Status: To Be Submitted
3. If seeking *additional steps:*
   Type of Proceedings: The matter for which you are instituting or defending proceedings, as appropriate.
   Court: The Court in which you intend to bring to or in which the plaintiff is bringing the proceedings.
   Litigation Options: The appropriate option.
   If seeking *additional services*, you must choose the Type of Proceedings, Court, and Litigation Options you are already authorised for on your original certificate.
4. If you need to enclose any documents with the Submission, choose them from the "Documents" drop down.
5. In the Statement of Facts, enter your submission for the additional steps required, in accordance with the guidelines in this Circular. If the submission is likely to be lengthy, it is permissible to create it as a document on the Documents tab (from the blank document template), check the "Make Available to Legal Services" checkbox beside it. You may then simply make reference to that submission in the Statement of Facts field.
6. If seeking *additional services:*
   Additional Authority: Choose the relevant additional service you require.
   Authority Reason: Enter your submission for the additional service required, in accordance with the guidelines in this circular
7. Click "Add Additional Authority". It is possible to add more than one additional authority in a submission.
8. When finished, click the "Make Submission" button
9. Check that your submission has the status of "submitted" and not "saved as a draft" as EOS allows you to save a draft submission without submitting it and users may inadvertently choose this option.

Remember that you must click on the Documents tab and click the "Available to Legal Services" checkbox beside any documents you need to make available to Legal Services.

Part 4.
Providing legal services in certain matters

This part deals with:

1. Introduction
2. Child abduction and enforcement of foreign orders
3. Debt
4. Property
5. Conveyancing
6. Personal injuries
7. Medical negligence
8. Other professional negligence
9. Enforcement of certain Court orders in the District Court
10. The Maintenance Act 1994 and Council Regulation (EC) 4/2009
11. Inquests
12. Complainants in rape and certain sexual assault cases
13. Sex offender order
14. Services to potential victims of human trafficking
15. Civil legal aid and advice in Ireland for applications resident in other EU member states
16. Police Property Act 1897
17. Motions for attachment and committal outside of family law
18. Section 20(1) of the International Protection Act 2015

1. Introduction

As mentioned in Part 1, the scope of civil legal aid is very broad. All matters of civil law are, in principle, included unless otherwise excluded – either because they are a "designated" matter under the Act, or because there is another legal aid scheme that deals with them.

Over 80% of the cases the Board deals with are family law. This Part of the Circular deals with some of the less common areas of practice a solicitor in the Board may deal with.

2. Child abduction and enforcement of foreign orders

Section 28(5)(b)

Child abduction cases into Ireland on foot of the Child Abduction and Enforcement of Custody Orders Act 1991 are one of a small number of matters for which the grant of legal aid is mandatory, though only for the applicant. No means or merits test is undertaken and no contribution is payable.

Processing of applications in child abduction matters

The Child Abduction and Enforcement of Custody Orders Act 1991 gives the force of law to the Hague Convention and the Luxembourg Convention. The Conventions contain administrative and judicial measures designed to secure the return of children who are removed to any contracting State in defiance of a court order made in another contracting State or against the wishes of a parent with custody rights. They apply to children under 16 years of age.

Under the Convention each State has a "Central Authority" for the purpose of transmitting incoming and outgoing applications for the return of children who have been abducted to any contracting State. In Ireland, the Minister for Justice and Equality has been designated as the Central Authority.

Where a child is abducted into the State, the Central Authority, on receipt of an application, will take or cause to be taken the following actions:-

- initiate steps to trace the child;
- seek the child's return or secure access to the child; and/or

- arrange, if necessary, for court proceedings to return the child.

We are required to treat these applications as urgent. The convention requires that we seek the "prompt return" of children who are abducted to this jurisdiction when requested to do so. EU law also affects these applications. Article 11(2) Council Regulation (EU) 2201/2003 requires the Court to make its decision using the "most expeditious procedures available" and no later than 6 weeks after the application is lodged.

The Central Authority also has obligations to assist in relation to certain access applications.

When a referral is received by the Board from the Central Authority, it is treated as an application for legal services. Legal Services will nominate a law centre and the Central Authority will provide all the relevant documents directly to the law centre. A legal aid certificate will be issued by Legal Services.

The Central Authority has an obligation to keep other central authorities informed of the progress of applications made under the conventions. Solicitors should, therefore, keep the Central Authority informed of the progress of a case.

Where outgoing applications arise i.e. where a child is removed from this State, the Irish Central Authority will transmit an application to the central authority of the country to which the child has been taken which will, in turn, set in train the procedures necessary to take action in that matter.

A general point about these cases is that even though they involve children the court is usually limited to determine whether it or the requesting country has jurisdiction to decide issues relating to the welfare of the children. The issues are much narrower than a full custody/access dispute.

Child abduction/affidavits of laws

The Civil Legal Aid Act 1995 requires us to grant a legal aid certificate to the applicant in child abduction cases. The extent of the service to be provided is, however, a matter for us having regard to the terms of the Act and the Regulations.

Accordingly, when applying for an amendment to a certificate to incur the expenditure involved in obtaining an affidavit of laws, state the issue(s) on which the affidavit is to be sought. Provide the relevant facts that are to be considered by the foreign lawyer.

A central issue on which affidavits of laws are sought is whether or not the non abducting parent has rights of custody/access to the child that will be recognised by the courts in the jurisdiction from which the child has been abducted. Given that the purpose of the conventions and legislation is to secure the return of children to the country from which they have been abducted, we consider that the court should have available to it the best and the clearest information on the law of the State from which the child has been abducted. In that context, we consider that it is appropriate that it should grant only one affidavit of laws on the issue in relation to whether or not a non abducting parent has rights of custody/access.

Where both parties are legally aided, we consider that both parties should agree on the issue on which an affidavit of laws is sought. In that context, we are likely to grant authority for the engaging of an expert witness for the purpose of drafting an affidavit to be available to the court.

Independent foreign lawyer

The person who swears the affidavit should not be the former counsel / lawyer of either of the parties as, obviously, each party will object to same. Furthermore, Binchy, in *Conflict of Laws* says, on page 108, that *"there is, perhaps, some reason to doubt the general advisability of obtaining evidence as to foreign law from a lawyer who has actually been involved in the proceedings."*

The affidavit of laws should only deal with issues in relation to rights of custody / access. Other matters such as, for example, the welfare of the children, undertakings etc. should be dealt with separately.

You should also refer to the section on Engaging of Witnesses, which sets out the procedures for obtaining authority to engage witnesses, and the level of fees payable to the different categories of witnesses. A decision on whether to grant an amendment will be made having regard to the provisions of the Act and the Regulations.

Respondents

Respondents in child abduction cases apply to law centres as usual. They are subject to the usual eligibility tests and are liable for a legal advice or legal aid contribution.

When completing a Statement of Facts while making an application for legal aid to defend an application under the child abduction legislation:

- set out the facts of the case
- consider, and outline, any of the defences available on foot of the Convention are available to the client (respondent in the proceedings). Specific defences that may be available on foot of the Convention are:-
    - the child is settled in its new environment;
    - the applicant in the abduction proceedings was not exercising rights of custody at the date of removal;
    - the applicant in the abduction proceedings consented to the removal of the child;
    - the applicant in the abduction proceedings subsequently acquiesced to the removal of the child;
    - there is a grave risk that return of the child would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation; and
    - the objections of the child to return.

We have best practice guidelines in child abduction cases which can be found later in this Circular.

Enforcement of foreign orders

It should be noted that the obligation arises in cases on foot of the Child Abduction and Enforcement of Custody Orders Act 1991. There may be obligations in other cases however not every case that involves a dispute in relation to a child who has been removed to this jurisdiction is necessarily entitled to legal aid. Certain case types e.g, enforcement of Orders from another EU jurisdiction may require the granting of legal aid if the person had legal aid in the country that made the Order but there may be no such requirement if they were not so legally aided. Legal Services will seek to determine if the grant is automatic or not prior to referral of the case.

3. Debt

Section 28(2)

Debt cases are within the remit of the Act and are not excluded unless they fall within the jurisdiction of the District Court Small Claims procedure.

Applications for legal aid in relation to such cases are subject to the means and merits test set out in sections 24 and 28(2) of the Act. The likelihood of not being granted a legal aid certificate for court proceedings is not a basis for declining to grant legal advice about the matter. However, legal aid will not generally be granted where the Plaintiff is seeking judgement for a liquidated sum and the Defendant (being the legally advised person) accepts that the sum is owed.

Persons with general debt / financial management issues should be referred to the local Money Advice and Budgeting Service (MABS) office for assistance. We should give out general advice to clients about the regimes that are available on foot of the insolvency legislation however solicitors should not act as personal insolvency practitioners.

4. Property

In general, disputes involving rights and interests over land are excluded from the scope of civil legal services.

General exemptions

Section 28(9)(c)

However there are a number of exemptions to the general provision where we cannot grant legal aid for disputes concerning rights or interests in or over land. These can be found in section 28(9)(c) of the Act.

Section 28(9)(c)(i) provides for an exemption for legal proceedings under

- the Landlord and Tenant Acts, 1967 to 1994 (in so far as they relate to residential property),
- the Residential Tenancies Act 2004
- the Married Women's Status Act, 1957
- the Family Home Protection Act, 1976
- the Family Law Act, 1981
- proceedings arising out of a dispute between spouses as to the title to or possession of any property.

Section 28(9)(c)(ii)(I) provides for an exemption for legal proceedings arising out of a dispute as to the title to or possession of any property and are between engaged or cohabiting persons.

Section 28(9)(c)(ii)(II) provides for an exemption for legal proceedings arising out of a dispute as to the title to or possession of any property where the parties were formerly engaged or cohabiting and at the time they were engaged or cohabiting either or both of them owned the property concerned.

Section 28(9)(c)(iii) provides for an exemption where the subject matter is the applicants home (or what would be the applicant's home but for the dispute), but only where the following two criteria are met:

- the applicant suffers from an infirmity of mind or body due to old age or to other circumstances, **or**
- the applicant may have been subjected to duress, undue influence or fraud in the matter,

and in either case:

- that a refusal to grant legal aid would cause hardship to the applicant.

Mortgages

Section 28(9)(c)(iii)

From time to time we receive applications for legal services from persons with mortgage difficulties.

Sometimes it is argued that the mortgage is invalid because the applicant didn't validly consent, or defectively consented, to the property being mortgaged. We take the view that disputes about the validity of a mortgage are not disputes about rights or interests in or over land. Legal aid may be granted for such cases subject to the application of the merits criteria.

However, our experience is that in the vast majority of cases involving difficulties with a mortgage, there is no dispute about the validity of the mortgage. Legal advice may be given in relation to these difficulties. Our approach is that proceedings taken against a borrower do not necessarily constitute a dispute concerning rights and interests in or over land however the requirements set out in sections 24 and 28(2) of the Act still need to be met i.e., the applicant is required to satisfy the merits test.

The application may fail to satisfy the likelihood of success test if the plaintiff and defendant are agreed on the fact that the mortgage is valid *and* the amount is owed. If there's no defence its unlikely that we will grant legal aid. This does not stop you continuing to provide legal advice to the applicant so long as you do not act for them in any proceedings.

Abhaile - Free Mortgage Arrears Support

A limited scheme of free financial and legal advice has been established by the Government for insolvent persons who are seeking advice in relation to their home mortgage arrears and who are in danger of having their principal private residence being repossessed. We have circulated an information note about Abhaile to staff. Refer any person who might meet the criteria for admission to the scheme to their local MABS service.

The current version of the ➔ Administrative Procedures Handbook contains an additional Chapter which details the criteria for admission to the Abhaile service.

Decision making guidelines in respect of applications for court reviews of rejected personal insolvency arrangements can be found in ➔ **Part 5.**

Dispensing with the consent of a spouse to the sale of a family home

Proceedings under Section 4 of the Family Home Protection Act 1976 (dispensing with the consent of a spouse to the sale of the family home) should not normally be legally aided. If the applicant is already attending a private solicitor who is handling the conveyance they should be asked to do the court application.

This doesn't stop you from making an application for legal aid where you believe that some exceptional circumstances exist – outline fully the nature of the exceptional circumstances. The application can be made in the District Court.

Local authority evictions

Applications for legal aid to defend proceedings taken by a local authority on foot of section 62 of the Housing Act 1966, as amended by the Housing (Miscellaneous Provisions) Act 2014, to have a tenant ejected / evicted from the premises are proceedings that concern rights and interests in or over land are not within the scope of civil legal aid, unless any of the exceptions in Section 28(9)(c)(i)-(iii) apply.

The process set out in section 62 of the 1966 Act as amended introduces a 'tenancy warning procedure' that allows a local authority to issue a tenancy warning where in the opinion of the authority, the tenant or a member of his or her household has breached a specific term of the tenancy agreement. The recent amendments provide for different recovery methods depending on whether the property has been abandoned, there are allegations of anti-social behaviour, there are alleged arrears of rent or where on the death of the tenant an application by a resident in the household to succeed has been refused.

Instituting or defending ejectment proceedings is not normally in the scope of civil legal aid.

Excluding order from a rented local authority house for anti –social behaviour

The Housing (Miscellaneous Provisions) Act 1997 as amended provides that a tenant may be evicted from a rented local authority house for anti-social behaviour. The local authority or housing associations who provide social housing may apply to the District Court for an excluding order against any member of a household on foot of Section 3 of the Housing (Miscellaneous Provisions) Act 1997. These cases come within the scope of civil legal aid and are not excluded under Section 28(9)(a)(ii). Applications for legal services in respect of this type of proceedings should be processed in the normal way. The merits test will be applied to each case and the solicitor should recommend whether a legal aid certificate be granted or refused.

Succession to certain tenancies by family members

Section 9(1) of the Housing (Private Rented Dwelling) Act 1982, provides that if the original tenant or his spouse dies within the *"relevant period,"* the right to retain possession passes to a member of the family, from the date of that death to the expiration of the relevant period or for five years from the date of that death, if longer.

However, an entitlement to a new tenancy for the family member may exist under the Landlord and Tenant (Amendment) Act 1980. Section 13 (1) stipulates that the right to a new tenancy arises if an equity of *"long occupation"* can be raised. If the long occupation can be established, an entitlement to a new tenancy up to a maximum of 35 years, subject to the other provisions of the 1980 Act, may exist. An application for this relief is a matter which comes within the scope of the provisions of Section 28(9)(c)(i) of the Civil Legal Aid Act 1995, and for which legal aid may be granted.

An application under section 23 of the 1980 Act to fix the terms of a new tenancy is a matter which comes within the scope of the provisions of Section 28(9)(c)(i) of the Civil Legal Aid Act, 1995, and for which legal aid may be granted.

"Disputes concerning rights and interests in or over land" in Section 28(9)(a)(ii) incorporates proceedings arising out of a dispute "as to the title to or possession of property."

5. Conveyancing

Section 26(3)(a)

One of the exemptions to the exclusions in the Act relates to the provision of conveyancing services. We may provide conveyancing services if, but only if, it is a matter connected to a matter for which legal services have already been granted. This most commonly arises in the context of a property adjustment order granted as ancillary relief in divorce or judicial separation proceedings.

The Board has decided the provision of conveyancing services is to be construed narrowly to mean the transfer of an existing interest in property. This means that you can only take the steps necessary to transfer an existing interest in the property being transferred and/or such other interest as is determined by a court. It should be pointed out that minimum searches on title should be carried out in the context of disclosure/discovery during family law proceedings. It is essential that title defects going to the value of property should be identified before the hearing or settlement. Ideally, during the course of the proceedings, you should be in a position to advise the client as to what the likely attitude of lenders will be if the court orders the transfer of title(see below)

If the Court makes an order subject to certain conditions, which indirectly improves the title, effecting such improvements shall be a matter for the client personally and not the Board.

Extent of services to be provided

If you are carrying out a conveyance, you should take appropriate instructions from the client with regard to their awareness of his/her interest in the property and matters pertaining to the title thereof and you should carry out appropriate searches and provide appropriate advice at an early stage.

Advise the client in the following terms in each particular case:

- of the extent of the conveyancing service which can be provided. Point out clearly in layman's terms and, if appropriate, in writing that any transfer of an interest in property either to or from the client arising from the resolution of the dispute shall be limited to the transfer of the interest in such property as it stands at that date;
- explain to the client that it is open to them to arrange for any rectification of the title, as may be appropriate, at his or her own expense independently of the Board at any time after the grant of legal services to the client;
- subject to the requirement to seek adequate disclosure/discovery in the context of any litigation make clear to the client that we will not, in general, provide legal services that will involve investigation of title or removal of

burdens, apart from the removal of burdens from a folio in the Land Registry involving, for example, the discharge of a mortgage. We may however do so where certification of title is required on foot of a compulsory first registration in the Land Registry;

- We will not:
    - provide legal services relating to the purchase of property;
    - act for a party in a conveyance of property to third parties; and
    - engage in transactions involving third parties such as securing new mortgages or other refinancing arrangements for clients, as this generally involves the certification of title save that the Board may provide appropriate conveyancing services for the refinancing of the transfer of a house to a spouse, including the investigation and certification of title, where not to do so would cause hardship.

While this approach is adopted so as to provide a uniform and standard set of criteria to be taken into account in reaching a decision, we will exercise its discretion in each and every case by reference to the particular facts of the case.

Conveyancing a mortgaged property

As noted above we will not generally engage in transactions involving third parties.

An issue arises in terms of a mortgaged property. An order of the court to transfer a property from one party to another is addressed to, and binding on, the parties in the case (i.e. in divorce/separation the spouses). However it is not binding on third parties including for this purpose the lender (i.e. the bank/building society that provided the loan to purchase the property). It will often be the case that there will be a condition in the mortgage requiring the borrower to seek the lender's consent to the transfer or sale of the property. It will sometimes be the case that such consent will not be given.

When acting in relation to the conveyance of a mortgaged property you should:

1. Seek the consent of the lender to the transfer of title and mortgage
2. If the lender is not willing to consent to the transfer of the mortgage, confirm whether they are willing to consent to the transfer of title
3. Draft a Deed of Transfer incorporating the consent
4. Finalise stamping and registration
5. Provide a qualified certificate of title

Application for conveyancing services

Anyone who wishes to obtain a conveyancing service from us who has already received legal services for the same or related matter, should be granted the service provided it falls within the conditions set out above.

A person who obtains a service in this way **doesn't need to**:

- fill out a new application form,
- be financially assessed again, nor
- pay a second contribution.

For the purpose of managing risk, a new physical file should be opened. Likewise a new case should be opened on EOS. As no further contribution is payable, do not create a new means test or passport the new case. The case is not placed on the applications record and does not need to go through the applications (APPxxx) workflows on EOS. Place the case into the appropriate conveyancing workflow.

If you consider that conveyancing services ought to be provided for the refinancing of the transfer of a house to a spouse and certification of title is involved, or if certification of title is involved for the purpose of a first registration, make an application by way of Submission for Authority on EOS to Legal Services for the purpose of getting a decision. Any decision to refuse the service is subject to review / appeal. If a decision from Legal Services is not required, the decision to grant is informal and made locally and without any "application" process.

Outlay
The costs associated with the conveyancing of a property are not costs which we can reasonably pay for out of the Legal Aid Fund. These are effectively part of the price of buying the property concerned and are not our responsibility. Advise the applicant in advance that they will have to pay these costs themselves.

Land Registry/Registry of Deeds searches
We have an agreement with the Property Registration Authority to allow our staff access to the Landdirect website free of charge. To access Landdirect, click on "RDC/LAB Library" in your LAB Portal, then click Landdirect database. A user guide is also available via your portal page.

Staff should **never** pay for or use an external company to carry out Land Registry or Registry of Deeds searches. In the event of difficulty, contact **Research and Information.**

Stamping a deed of transfer

Procedure 4.1 How to have a deed of transfer e-stamped

The process of stamping a deed of transfer is as follows:

1. The form below should be completed and returned by email to estamp@legalaidboard.ie
2. On receipt of the form, it will be entered on to the Revenue website
3. The Revenue website will issue the Stamp Duty Certificate.
4. The certificate will be issued by email along with a copy of the Stamp Duty return to the person who made the request..
5. In the event where the stamp duty is incorrect, an amended (stamp duty) certificate can be applied for.

Stamp Duty E- Filing

1 **Instrument Details**	
Category of Instrument	Conveyance/Transfer of Property
Date of Execution	

2 Instrument Party Details	
Name of Vendor1 Tax Reference Number	
Name of Vendor2 (If Any) Tax Reference Number	
Name of Vendor3 (If Any) Tax Reference Number	
Solicitor/Agent for vendor (If any)	

Name of Purchaser1 Tax Reference Number	
Name of Purchaser2 (If Any) Tax Reference Number	
Name of Purchaser3 (If Any) Tax Reference Number	
Relation between Vendor/Purchaser (If Any)	

3 Property Details Type of Property Address Line 1 Address Line 2 County Folio Number Type of Contract (if any) Local Property Tax Number Type of Property (House/Appartment) Size of Property(Estimated) Purchaser information (Owner Occupier/ First time buyer)	Residential

4 Consideration Information . *Residential* Valuation (Estimated) Consideration(If any) €	

5	Relief Claimed (S97 SDCA 1999 for dissolution of marriage)

6. Personal injuries

Personal injuries cases are claims in torts law where the wrongful act resulted in injuries to the wronged person. They may be expensive and time consuming. Although personal injuries claims will often be taken on by private solicitors on a “no win no fee” basis, they are still the largest area of civil law outside of family law that we deal with.

Law Centre (Montague Court)

In order to provide a quality service to clients, improve our expertise in this area, and manage risk effectively, a specialisation in personal injuries cases has been developed at Law Centre (Montague Court), which also deals with medical negligence cases. The Director of Civil Legal Aid can make directions as to which cases to refer to Montague Court. You can find the procedure for referring cases in ➔ **the Administrative Procedures Handbook.** It is not

envisaged that all personal injuries cases or even plaintiff cases will be taken on by Montague Court.

Personal Injuries Assessment Board

The Personal Injuries Assessment Board Act 2003 provides for the establishment of a statutory body, the **Personal Injuries Assessment Board (PIAB),** to provide independent assessment of personal injury compensation for victims of workplace, motor and public liability accidents. PIAB operated under the title "Injuriesboard.ie" for a period between 2007 and 2016.

All personal injuries claims must be submitted to PIAB prior to instituting legal proceedings. The only exception is medical negligence cases which do not come within its remit. There may be other cases which PIAB are unable to process but which must nevertheless be referred to them.

If PIAB does not resolve the claim, an Authorisation will be provided to the applicant enabling him/her to take a case to court.

Statute of Limitations

In most cases, a person must issue proceedings within two years of the date of the accident. It is essential that the date of the event causing the injuries is ascertained as soon as possible. When a person submits a claim to PIAB, this time limit will be put on hold once the person receives confirmation that the application is complete and the claim is registered. Time will start to run again six months after the date of issue of an Authorisation.

Procedure 4.1 Calculating the Statute of Limitations expiry date for a personal injuries case using EOS.

1. Open the case.
2. Click on the "Risk" tab.
3. By default, all PI cases are High Risk. If the risk level is "Low" or "Medium", change the risk level to "High".
4. Complete the form as follows:
    a. **Date of Incident:** The date the alleged incident occurred.
    b. **Date of Knowledge of Incident:** The date the person became aware of the alleged incident
    c. **Date of PIAB Acknowledgment:** The date the person received confirmation from PIAB that the application is complete and the claim is registered
    d. **Date of PIAB Authorisation:** The date of issue of an Authorisation from PIAB
    e. **Statute of Time Modifier: "**Personal Injuries (2 Years)"
    f. **Reason for High Risk:** "Case involves a Statute of Limitations/Other Deadline".
5. You will notice that the Date of Statute Expiry is automatically completed.
6. Click the "Update Details" button.

➔ **See also the information regarding Risk in Chapters 3 & 5 of the Administrative Procedures Handbook**

Where the expiry of the *limitation period* under the Statute is imminent and the application for legal services is proximate to the *expiration date (within less than three months),* bring the application to the attention of the Director of Civil Legal Aid so he may consider whether meaningful legal services can be provided within the timeframe.

If it is considered that such services cannot be provided, write a letter to the applicant in accordance with a draft approved by the Director of Civil Legal Aid.

Legal aid for intended Plaintiffs in personal injury cases

In any case where the applicant is seeking to **take a claim** in personal injuries they should be advised the following at the first point of contact where they indicate that their claim will be on this basis:

- Complete the Information Gathering – Personal Injuries form (➔ **Chapter 5** - which they should be furnished with immediately) and to return it to the law centre as soon as possible;
- Visit at least two private solicitors and ask them to take on the case on a conditional fee arrangement basis, the condition being that the solicitor will not seek any fee from the client if they were to fail to obtain either a favourable settlement or judgement for the Plaintiff in the proceedings (ie. *no foal no fee*);
- if the solicitor agrees to take on the case on this basis, they should notify the law centre at the earliest opportunity that they are withdrawing their application for legal services;
- if the solicitor concerned refuses to take on the case on this basis they should obtain a letter from the solicitor stating that this is the case; and
- having visited two such solicitors and obtained two such letters/other evidence, they should retain these letters/other evidence and bring them to the law centre at the time of first consultation.

When you receive an application for legal services by an intended Plaintiff in relation to a personal injury matter:-

- ascertain whether the matter falls within the remit of PIAB, and, if so, direct the applicant to it; or
- if the applicant has already been to PIAB and has a written Authorisation from them, process the application in the normal manner.

A person is entitled to legal advice in respect of any matter that falls within the remit of PIAB, but this legal advice does not extend to paying for any reports. It does extend to giving general advices to the client about the case, including about how the Form A should be filled out, and also to taking steps to ensure that the client has identified the correct legal defendant(s) for the purpose of the referral to PIAB. This may involve Companies Registration Office searches being undertaken and other enquiries being made.

Before an application for legal aid is made on behalf of an intended Plaintiff in a personal injuries case, the applicant should bring the two letters they were earlier advised to obtain from private solicitors indicating that they will not take the case on a "no win no fee" basis. When making the application for legal aid, scan these letters, upload them to EOS, and make them available to Legal Services. If the applicant is unable to provide these letters, give them time to obtain the letters, having regard to the expiry date of the Statute of Limitations.

If the applicant is unwilling or otherwise objects to providing the letters concerned, make an application for legal aid recommending:

- that having regard to section 24(a) and section 28(4)(a) of the Civil Legal Aid Act, the application should be **refused**;
- that the **grounds for refusal** be that the applicant may obtain the cost of the proceedings the subject matter of the application from, or be provided with legal representation by, a body or association of which he or she is a member or any other source, and this being the case, reasonably prudent person, whose means were such that the cost of seeking such services at his or her own expense, while representing a financial obstacle to him or her would not be such as to impose undue hardship upon him or her, would not be likely to seek such services in such circumstances at his or her own expense; and
- the **reason for refusal** should be that a private solicitor would take on such a case on a no win no fee basis and the solicitor should make their submission on this basis.

It is understood that applicants may experience difficulty in obtaining the letters from private solicitors (e.g who may charge to provide them). If the case falls into this category then the applicant needs to provide full details of the efforts made to comply with the Board's requirement.

Legal Services will consider the submission on the basis of the solicitor's recommendation and make a decision.

Legal aid for Defendants in personal injury cases

Applicants who are or may become Defendants in personal injury cases are entitled to seek legal advice / aid in relation to the proceedings in the normal manner. Where an applicant has received notification from PIAB of a claim against him/her, advise the applicant:

- of the process involved including the option of having the claim assessed
- of the potential costs implications of proceeding to a full hearing in court and the steps that can be taken by a successful plaintiff to enforce a judgement.
- that he or she will be responsible for the assessment fee (currently €1,050) in the event that he / she is consenting to having the claim assessed.

Workflows

EOS provides a set of workflows for both plaintiffs (PERP.Personal Injuries Plaintiff) and defendants (PERD.Personal Injuries Defendant) in personal injuries.

Making an application for legal aid

As in all cases the Statement of Facts should include all the information which the decision maker must have regard to when taking a decision. Providing this information at submission time means that the decision maker does not have to seek it later, which will delay a decision. For more details see ➔ **Part 5.**

7. Medical negligence

Medical negligence cases are difficult to prove and costly to run. It is also widely recognised that they require specialist expertise / experience. The Board's Law Centre (Montague Court) specialises in these cases and all medical negligence cases should be referred promptly to Montague Court once any such cases are identified..

Applicants intending to take claims in medical negligence

In any case where the applicant is seeking to take a claim in medical negligence, they should be advised the following at the first point of contact (ie. the law centre where the application is originally made) where they indicate that their claim will be on this basis:

- to visit at least two private solicitors and ask them to take on the case on a conditional fee arrangement basis, such condition being that the solicitor will not seek any fee from the client if they were to fail to obtain either a favourable settlement or judgement for the Plaintiff in the proceedings (ie. *no win no fee*);
- if the private solicitor agrees to take on the case on this basis, they should notify the law centre at the earliest opportunity that they are withdrawing their application for legal services;
- if the private solicitor concerned refuses to take on the case on this basis they should obtain a letter from the solicitor stating that this is the case; and
- having visited two such private solicitors and obtained two such letters/other evidence, they should retain these letters/other evidence and bring them to the law centre at the time of first consultation.

➔ For the procedure to refer cases to Law Centre (Montague Court), see Chapter 6 of the Administrative Procedures Handbook

Legal advice in medical negligence proceedings

In the first instance, all relevant medical records in respect of the applicant's alleged complaint should be obtained promptly. If the application relates to a fatal injury the Post Mortem Report, Coroner's Autopsy, Death Certificate and the file on the Inquest, where appropriate, should be provided by the applicant, simultaneously, with the medical records. The medical records extend beyond the written records and include diagnostic radiological imaging, and other miscellaneous documents which include written complaints, clinical risk

management/ assessment reports and multi-disciplinary case conference notes. It should furthermore be noted:-

- Medical records in respect of public institutions (public funded hospitals) are obtainable under the Freedom of Information legislation. The applicant must make the request for the records, in writing. There is no fee or charge. From the date of receipt of the written request to the date of release of the records, generally, takes, six to eight weeks;
- Medical records in respect of private institutions (privately funded hospitals) do not come within the remit of the Freedom of Information legislation. The applicant must make the request for the records, in writing. There may be a fee/charge. Under these guidelines, as a general rule, any such fees or charges must be discharged by the applicant, directly to the relevant institution;
- Medical records held by a General Practitioner do not come within the remit of the Freedom of Information legislation irrespective of whether the applicant is a private or public patient. The Medical Council of Ireland has set a schedule fee of €250.00 in respect of these records.- subject to change, this is the recommended fee could be much higher; and
- Radiological imaging (x-rays, scans, ultrasounds) attract a fee/charge of €6.30 per image.

The Board will not be responsible for the payment of fees/charges in respect of the matters above other than in circumstances where it can be shown that it would cause hardship to the client if the Board does not pay. Applications to have the Board make the payment should be forwarded to Legal Services for consideration.

On completion of the review of the medical records, the Statement of Facts including any corrections or clarifications, the client's instructions and following a consideration of the relevant legal issues, if the solicitor is of the opinion that the contents justify obtaining an independent medical expert opinion/ report, from an expert outside the jurisdiction the solicitor should:-

- consider whether the expenditure in obtaining a medical expert opinion/report is justified in all the circumstances; e.g. the damage may be to small to be concerned with*;* and
- affirm the opinion / report is necessary and provide reasons.

On receipt of the application Legal Services may authorise obtaining an independent medical expert opinion/ report in accordance with the approved rates. An established expert in that particular area who is currently in practice should be approached to do the report. .

Applying for legal aid

The findings and conclusions contained in the independent medical expert report should determine whether or not there is a stateable case. In circumstances, where the findings and conclusion are not supportive of a stateable case the applicant/ client should be advised of the legal and procedural implications of instituting proceedings in such circumstances. The Board should be notified of the client's up to date instructions and an application for legal aid with the appropriate recommendation should be made to Legal Services

Prior to the application for legal aid being made, the applicant should bring the two letters they were earlier advised to obtain from private solicitors indicating that they will not take the case on a "no win no fee" basis. These letters should be scanned by the solicitor, uploaded to EOS, and made available to Legal Services. If the applicant is unable or unwilling to provide these letters the procedure applies as for intended plaintiffs in personal injuries cases as detailed above.

Where the findings and conclusions are supportive of a finding of negligence, junior counsel's opinion may be obtained on, among other things, the issues of causation, nexus, liability and damages. All of the relevant medical records together with the independent medical expert's opinion should be furnished to counsel together with a copy of the client's Statement of Facts and a case summary prepared by the solicitor including full details in respect of special damages.

Where counsel's opinion is supportive the solicitor should advise the client in accordance with the legal opinion. On the client's instructions a further application to Legal Services should be made for an amended legal aid certificate for authority to engage Counsel to draft the Personal Injuries Summons.

The application should be supported by the independent medical expert report and Counsel's Opinion with a recommendation from the solicitor on the estimated numbers of hours required to draft the Personal Injuries Summons and possibly the Section 8 Letter.

8. Other professional negligence

A difficulty that is experienced with cases of this nature, as with medical negligence cases, is that of obtaining expert evidence to suggest that the applicant has a reasonable chance of success in establishing negligence.

Any question of obtaining independent expert evidence must be referred to Legal Services for approval. It would be helpful in cases of this kind to have the following information:-

- what expert evidence is likely to be available?
- what act or acts of 'negligence' are alleged? and
- when did the applicant first come to believe that his/her loss was due to professional negligence and what action, if any, did the applicant take in the meantime?

For professional negligence cases not involving personal injuries the statute of limitations is generally 6 years from the date the negligence occurred. If it is clear that the case presents no prima facie or arguable cause of action there should be no necessity to obtain expert evidence or an opinion from counsel prior to a formal application for legal aid being made.

Legal advice may also be sought in relation to complaints made to the Solicitors Disciplinary Tribunal or to other professional bodies but legal aid is not available for representation before those bodies.

It is considered appropriate to provide general information about the procedures that such bodies apply and an overview of the sort of material that ought to be included in any document being submitted to the body. It is not considered appropriate to assist the person with the drafting of an affidavit or other pleading.

9. Enforcement of certain Court orders in the District Court

Enforcement of access and custody orders

Section 18A of the Guardianship of Infants Act 1964 (inserted by section 60 of the Children and Family Relationships Act 2015) provides a new civil remedy of an "enforcement order", available where a parent or guardian has been granted access or custody to a child and has been unreasonably denied such access or custody. Legal aid is available to take proceedings for an enforcement order subject to the normal rules.

It should be noted that the criminal offence created by section 5 of the Courts Act (No. 2) 1986 of non compliance with a District Court custody or access order remains on the statute book. Legal aid is not available to prosecute this offence, This can be sometimes confusing for applicants as these proceedings may be heard at sittings of the District Court for family law matters. However, if a person presents seeking legal aid to prosecute this offence the application may be accepted on the basis that the solicitor will advise the applicant on other remedies (such as an enforcement order under the 1964 Act as amended) that may be available.

Enforcement of domestic violence orders

Non-compliance with any order made under the Domestic Violence Act 1996 is an offence punishable on summary conviction by a fine and/or imprisonment. Therefore, the Board

cannot grant legal aid for this matter. Again the solicitor may advise the applicant on other available remedies.

Enforcement of maintenance orders

In relation to applications for legal aid certificates for enforcement of maintenance orders, if the maintenance is being paid through the District Court Clerk there should be no requirement that a legal aid certificate be granted to the maintenance creditor on the basis that the enforcement would normally be dealt with by the court clerk.

In relation to the defence of proceedings for failure to comply with a maintenance Order, Section 63 of the Civil Law (Miscellaneous Provisions) Act 2011 inserts a new section 8 to the Enforcement of Court Orders Act 1940.

The new section provides for attachment and garnishee type orders for the purpose of enforcing maintenance. Legal aid is available to take or defend such applications. Section 31 of the Act inserts a new section (9A) in the Family Law (Maintenance of Spouses and Children) Act 1976 providing that a failure to comply with a District Court Maintenance Order be treated as a contempt of court. Section 9A(8) specifically obliges a District Judge to inform a maintenance debtor of their entitlement to seek legal advice and legal aid on foot of the Civil Legal Aid Act 1995 for the purpose of the application. This effectively brings the defence of maintenance enforcement proceedings within the realm of civi2l legal aid.

Because of the possibility of the maintenance debtor being imprisoned, applications to defend proceedings on foot of 9A are prioritised after the maintenance debtor has appeared in court and been advised of their entitlement to seek legal advice and/or aid and every effort should be made to ensure the maintenance debtor is legally represented on the return date.

10. The Maintenance Act 1994 and Council Regulation (EC) 4/2009

The Maintenance Act 1994 gives effect to the New York Convention which facilitates the recovery abroad of maintenance. Section 4(1)(a) of the Act enables the appointment of a Central Authority for Maintenance Recovery and gives that Authority the functions required of a Central Authority under the New York Convention.

The New York Convention provides for the recovery of maintenance abroad where no order is in place and the enforcement abroad of maintenance orders.

Both Conventions use the word "shall" rather than "may" when setting out the assistance obligations on the part of the Central Authority. On foot of section 28(5) of the Civil Legal Aid Act 1995, the Board is obliged to grant legal aid certificates to persons seeking to enforce Orders for maintenance made outside the jurisdiction and to persons seeking to initiate proceedings for maintenance in this jurisdiction. The certificates are granted without reference to the person's means and without the requirement that a financial contribution be discharged.

Council Regulation (EC) 4/2009 applies to the enforcement and recovery of maintenance within the European Union. The provisions of the Regulation replace the provisions of the New York Convention insofar as they provide for a separate system of Central Authorities (receiving and transmitting agencies) between the member states. There are also detailed provisions regarding the automatic recognition and enforcement of orders between the member states.

As the Maintenance Regulation envisages that orders made in the member states should be treated the same as domestic orders for enforcement purposes it is appropriate to refer enforcement of EU orders to the District Court PP panel if the Law Centre is not in a position to provide the service in time for the court hearing. This can arise, for example, where the Central Authority has requested the District Court clerk to pursue enforcement and an enforcement summons has been issued returned to a particular date. As the maintenance creditor will be living abroad the law centre may have to choose the PP from the panel acting as representative of the Central Authority.

A common feature of the provisions dealing with enforcement of foreign orders is that under the various Irish provisions giving effect to the Maintenance Act 1994 and the EU Maintenance Regulation is that the foreign order is treated as an Irish maintenance order for enforcement purposes. In that context where a timely service is not available for representation on behalf of the creditor in maintenance enforcement proceedings before the District Court **and** the Court is likely to require representation for the creditor consideration can be given to asking a PP to deal with the moving the enforcement summons. In cases to which the EU Maintenance regulation does not apply guidance should be sought from the Director of Civil Legal Aid.

The Board does not generally regard maintenance recovery applications as matters requiring a priority service and cases referred to law centres should be placed on the applications record according to the date of receipt of the application by the Board. The Board does however need to be mindful of the State's international obligations. Where a timely service cannot be provided by the law centre then the PP service should be used where this is permitted as above.

11. Inquests

Section 24A

In certain inquests, under section 60(5) of the Coroners Act 1962, a family member of the deceased may make apply to the coroner for a request to be made to us for legal aid to be provided at the inquest. A request can only be made in certain categories of death and may only be made on behalf of one family member. It is for the coroner to identify if the request may be made in any particular case. We are not involved in this process.

Legal aid or advice cannot be provided by us in respect of an inquest where no request has been made by a coroner.

Outside of this limited range of cases applications for legal services in respect of inquests remain outside of the scope of the Civil Legal Aid Act 1995.

Chapter 3 of the ➔ Administrative Procedures Handbook details the process for processing requests for legal aid at inquests

12. Complainants in rape and certain sexual assault cases

The Board provides legal advice and legal aid to complainants in certain cases of sexual assault.

Section 26(3A)

Legal advice service

Legal advice is available to a complainant in a prosecution for the offence of:-

- Rape under the common law;
- Rape under section 2 of the Criminal Law (Rape) Act 1981;
- Aggravated sexual assault under section 3 of the Criminal Law (Rape) (Amendment) Act 1990;
- Rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990;
- An offence under section 6 (inserted by section 2 of the Criminal Law (Sexual Offences) (Amendment) Act 2007) of the Criminal Law (Sexual Offences) Act 1993;
- An offence under the Criminal Law (Sexual Offences) Act 2006; or
- An offence of incest under section 1 or 2 of the Punishment of Incest Act 1908.

A person seeking this service is not required to undergo a means test or to pay a financial contribution.

Extent of legal advice service

At pre trial stage, law centres should explain to complainants the procedures and reassure them about, e.g., any delays in the progress being made in the case.
Occasionally a member of staff may also accompany the client during the trial itself, primarily to provide reassurance regarding actual procedures. It is not expected that a staff member would sit through a lengthy trial.

The availability of the legal services is restricted to complainants after the proceedings have actually been commenced, as opposed to persons making serious allegations.

The Criminal Law (Rape) (Amendment) Act 1990, provides that all rape cases will be heard by the Central Criminal Court, which almost always sits in Dublin. It is not considered feasible to limit the provision of the legal services envisaged under this Act to particular staff or law centre based in Dublin. Accordingly, all law centres should deal with such applications for legal services insofar as the pre-trial stage is concerned. At trial Dublin based staff will usually provide assistance, if required to do so.

Legal aid service

Section 28(5A)

Legal aid is available to a complainant in certain sexual assault cases where the prior sexual history of the complainant is being raised by a person accused of one or more of the following offences:-

- A rape offence;
- Aggravated sexual assault;
- Aiding abetting, counselling or procuring aggravated sexual assault;
- Aiding abetting, counselling or procuring attempted aggravated sexual assault;
- Incitement to aggravated sexual assault; and
- Conspiring to commit any of the foregoing offences.

This service means that the Board will appoint a solicitor and barrister to represent a complainant in court when the issue of previous sexual history is being raised. A person who seeks to avail of this service does not have to undergo the means test, the merits test or to pay a financial contribution. Where these cases are heard in Dublin, representation will be provided by Dublin law centres (or the law centre that is local to the court in the event of the trial taking place outside of Dublin).

It is important to note that this service to complainants is provided under the Civil Legal Aid Act 1995 and is *not* criminal legal aid. Defendants in rape cases apply for criminal legal aid as usual and the Board doesn't deal with this aspect.

13. Sex offender order

Where an applicant is applying for legal aid to defend proceedings for a Sex Offenders Order Legal Services will not apply either the likelihood of success test or the cost-benefit analysis when assessing the merits of the case (i.e. the same modified merits test that applies in family law proceedings where the welfare of children is at stake).

14. Services to potential victims of human trafficking

The Garda National Immigration Bureau, in the course of Garda investigations into human trafficking, from time to time, identifies persons who may have been victims of human trafficking. These persons may be called by the State as witnesses in prosecutions against alleged perpetrators of human trafficking. Where this occurs the GNIB may formally refer the potential victim to the Board.

Applying for the service

The referral is made by the Garda Siochana to Law Centre (Smithfield). The person must complete an application form. They are not financially assessed and do not pay a contribution towards their legal services.

Extent of services provided

The service will be primarily provided out of Law Centre (Smithfield) by solicitors who have received specialist training. Law Centre (Smithfield) may decide to refer certain applications to Law Centre (Galway – Seville House). No other law centres are involved.

The services will be provided to "potential victims" acting as witnesses in prosecutions taken under specified provisions of the Criminal Law (Human Trafficking) Act 2008. The solicitor will, at the pre-trial stage, explain and re-assure the potential witness about the procedures that will arise and to notifying them about their rights as appropriate including on issues such as seeking compensation from the alleged trafficker involved in the case.

A solicitor should not prepare a statement to the Gardaí on behalf of the client nor engage in any collation or preparation of material in anticipation of a criminal trial. The solicitor should only deal with the potential victim and should not take instructions from any other representative that the potential victim may also have acting for them.

A solicitor or caseworker should not accompany a client, other than a minor client or a client regarded as exceptionally vulnerable, during an interview by investigating Gardaí.
If a potential victim of human trafficking is charged with a criminal offence they should be advised of the existence of the criminal legal aid scheme and assisted in obtaining representation on foot of that scheme.

A solicitor or caseworker may, where considered appropriate and necessary, accompany the client during the trial itself, primarily to provide reassurance regarding the actual procedures.

Due to the sensitivity of human trafficking cases and the potential ongoing danger to potential victims as the case progresses, every care should be taken to ensure that the confidentiality of client is maintained. For example, it may be preferable to contact clients directly by telephone to arrange appointments rather than sending letters to them at addresses which may compromise their anonymity.

15. Civil legal aid and advice in Ireland for applicants resident in other EU member states

Background

Section 28(5) & Council Directive 2003/8/EC

The European Union has enacted legislation to facilitate citizens in member States of the Union making applications for civil legal aid and advice in other jurisdictions. In this section of the Circular a reference to "member State" excludes Denmark.

There are two major aspects of this to note. The first is that citizens of Ireland, who wish to take applications in other member States, may apply to us on the prescribed application form, and Legal Services will transmit the application to the legal aid authority in the jurisdiction concerned, who will take the decision on whether legal assistance in that jurisdiction will be granted. The other aspect, and the one we will primarily deal with here, allows applicants in other member States to apply for legal aid in Ireland through the legal aid authority in their home country. The legal aid authority will transmit the application to us.

Application process

It is important to note that in either case, the normal Application for Legal Services form should not be completed. Instead there is a separate application form which has been laid down by the European Commission. It is this form which must be completed if a person in another member State wishes to apply for legal services in Ireland or if an Irish or other EU citizen resident in Ireland wishes to apply for legal services in another member State. A copy of the form is available on our website.

While the financial eligibility criteria to be applied are in principle, those under the Civil Legal Aid Regulations 1996 to 2016, the Directive also provides that the financial eligibility criteria cannot be used to refuse an applicant under the Directive legal aid if they can prove that they are unable to pay the cost of the proceedings as a result of differences in the cost of living between their home country and Ireland.

Applications from the legal aid authority in the applicant's home country will be financially assessed by Legal Services. If the applicant is financially eligible for legal services (under whichever criteria is applied), the application will be forwarded to a law centre. The applicant will be provided with legal services in the appropriate manner.

If a legal aid certificate is required, an application is made to Legal Services for a legal aid certificate. The merits criteria under the Act will be applied but it is important to note that the Directive has additional merits criteria which do not form part of the Act, namely:

- the importance of the individual case to the applicant
- (in defamation only) the nature of the case when the applicant is claiming damage to his or her reputation but has suffered no material or financial loss or when the application concerns a claim arising directly out of the applicant's trade or self-employed profession.

Any applicant wishing to seek legal aid **in another EU jurisdiction** should complete the application form under the Directive. The form should be forwarded to Legal Services for transmission to the relevant receiving authority.

Scope of legal services to be provided

Legal aid and advice under the Directive can be provided in two areas which are normally excluded from the scope of civil legal aid and advice under the Act. These are the granting of civil legal aid in tribunals other than prescribed tribunals (i.e. other than the International Protection Appeals Tribunal) and in defamation cases.

In relation to defamation, we are required to take into account the nature of the case when the applicant is claiming damages to his or her reputation, but has suffered no material or financial loss. We may grant applications for legal aid in relation to defamation where the applicant is domiciled or habitually resident in another Member State.

As regards tribunals, the effect of the Directive is to make legal aid available for proceedings before a tribunal, where the applicant is domiciled or habitually resident in another Member State.

Costs

The Directive provides that the following costs should be borne by the legal aid authority in the jurisdiction where the proceedings are occurring:

- interpretation;
- translation of the documents required by the court or by the competent authority and presented by the recipient which are necessary for the resolution of the case; and
- travel costs to be borne by the applicant where the physical presence of the persons concerned with the presentation of the applicant's case is required in court by the law or by the court of that Member State and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means.

However we will not bear excessive travel costs. The solicitor applying for the amended certificate to cover the costs of travel should agree the costs of travel in advance.

Particular arrangements with regard England and Wales, Scotland, and Northern Ireland

The legal aid authorities in England and Wales, Scotland, and Northern Ireland have asked us to refer Irish residents enquiring about legal aid in those jurisdictions direct to the legal aid authority in the relevant jurisdiction.

- **Legal Aid Agency** (England and Wales) 00 44 845 345 4 345
- **Scottish Legal Aid Board** 00 44 131 226 7061
- **Legal Services Agency Northern Ireland** (048) 9040 8888

The Board will for the present continue to accept applications from residents of England and Wales, Scotland, and Northern Ireland on the cross-border legal aid form. Any change in this respect will be communicated to staff prior to such changes coming into effect.

The above telephone numbers are correct at time of writing but staff may wish to check the website of the relevant authority for up to date contact details.

Outside the European Union

The cross-border application form should only be used for applicants within the scope of the Directive (i.e. member states of the EU, other then Denmark). Any applicant resident in Denmark or outside the European Union applying for legal aid for proceedings in Ireland should use the standard Application for Legal Services form.

16. Police (Property) Act 1897

The Police (Property) Act 1897 applies to property which has come into the possession of the Garda Siochana in relation to any criminal charge.

Under section 1(1) of the Act, either the Garda or a person claiming ownership of the property can make an application to the District Court for the property to be delivered to person the Court appearing to the Court to be the owner of the property, or if the Court cannot ascertain who the owner is, to make an order for disposal of the property in whatever way the Court sees fit.

Note that these applications are civil cases, and are within the scope of the Act. Applications are subject to the usual means and merits criteria. However it is not expected that legal aid would be granted to a Garda taking such an action in the course of his duty.

If an order is granted it does not stop a person taking legal proceedings to recover the property, as long as such proceedings are commenced within six months of the order being made. Applications for civil legal services can also be made for these proceedings however such applications are to be classified as High Risk and the statute expiry date set for six months from the date the order was made.

17. Motions for attachment and committal outside of family law

Where an application is made to a Court for attachment and committal for breach of a court order, an application by the Respondent for civil legal services may be made. These applications will be treated as priority and may be granted legal advice by the law centre subject to the usual financial eligibility criteria.

An application for a legal aid certificate can be made to Legal Services. While the merits criteria will apply, the decision maker will take into consideration the fact that the applicant is at risk of losing his/her liberty if the order sought is granted. These applications are to be treated with priority by solicitors and decision makers alike. The merits criteria apply in these cases.

18. Section 20(1) of the International Protection Act 2015

Section 20(1) of the International Protection Act 2015 provides that an immigration officer or a member of the Garda Síochána may, in certain circumstances, detain an applicant for international protection in a prescribed place of detention. Section 20(2) provides that, as soon as is practicable, the international protection applicant must be brought before a District Judge who may commit the person to a place of detention or order the person's release, either with or without conditions.

As a general principle we provide representation in relation to a hearing under section 20(2) of the International Protection Act 2015. Any person who seeks legal aid for the purpose of such a hearing will have his or her application processed at one of the law centres who provide legal services for international protection.

It is likely that the majority of persons to whom this section might be applied will be existing clients of the Board in relation to an international protection application. If a standalone application for legal services is received in relation to such a hearing it must be dealt with on a priority basis and a solicitor assigned as soon as possible.
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Part 5.
Decision making

This part deals with:
1. Fair procedures
2. Process of decision making in general
3. Criteria for granting applications for civil legal services
4. Family law
5. Non-family law
6. Legal aid for appeals
7. Applications for additional services
8. Applications for legal aid to take proceedings against the Board
9. Applications for legal aid for court reviews of rejected personal insolvency arrangements
10. Granting legal aid
11. Refusal of legal advice/aid
12. Withdrawing legal services from a client before a case has concluded

The decision making process is one of the most important functions an employee or member of the Board can exercise. People apply for legal services in relation to matters which can be of great personal importance to them – including matters in relation to their family. A grant or refusal of legal services can be of great personal impact. With that in mind, it is important that our decision makers always exercise their authority with the utmost of fairness and impartiality, always following procedures.

The goal of this Part of the Circular is to provide decision makers with clear, consistent guidelines in the use of the authority which they have been delegated. Decision makers have at all times the discretion to grant or refuse legal services in accordance with the law and to the extent of the authority with which they have been delegated.

1. Fair procedures

Decisions should always be taken impartially and fairly. There are a number of general principles which it is important for decision makers to bear in mind, no matter what is the application before them.

No one shall be a judge in their own case

This means that a decision maker shall not take a decision in any case which they have a personal interest in or where it **might be perceived** that they could have a personal interest in the case.

Where it becomes clear to a decision maker in Legal Services that they might have a personal interest in a case, they must excuse themselves. The decision should be then taken by another Unit who will act as the applying law centre's Unit for the purposes of the case in question.

This principle does not mean that a managing solicitor cannot grant delegated legal aid certificates to applicants which they will represent in court. However, if the managing solicitor forms a view that an application for legal aid for their own client should be refused, the matter should be referred to Legal Services for a decision.

Let the other side be heard

There are two aspects to this, one relates to solicitors, and one to decision makers.

Solicitors

A solicitor is under the following duties in relation to an application:

- to inform the client that they are going to make an application for legal services
- to allow the client to put fully their case for a grant of legal aid to them
- to put their client's case fully forward even if they ultimately recommend a refusal
- to give the decision maker all the information he/she needs to make an informed decision.

Decision makers
If a decision maker feels that they have not got sufficient information to make an informed decision, they should revert to the solicitor and ask them to provide more information.

This does not mean that the applicant is entitled to an oral hearing of their decision. Given the volume of applications received, this would be impractical. The topic of oral hearings at the appeal committee is dealt with in ➔ **Part 6.**

Decision must be reasonable
A decision must have been made according to clear and rational principles. In other words there should be logic behind the decision. It is also important not to take into account anything irrelevant when making the decision.

Decision maker must exercise independent discretion
Within Legal Services, authority to refuse is vested in different grades, depending on the subject matter of the application and the level of spending involved. Usually the application will be first considered by an officer of the grade immediately below who will either grant the application or recommend to the decision maker that the application be granted/refused.

It is important that where this procedure applies, the decision maker **must make his/her decision independently and it must be clear from the written decision that they have done so.** It is not enough to simply "rubber stamp" the recommendation made either by the solicitor or the initial officer in Legal Services. The decision maker must show that they have read the application, considered all the information in support of the application, and formed a view. A record of the decision should be made on the case on EOS.

Decisions should be made promptly
It is recognised that in certain situations it may take time to obtain all the information required to make a decision. However, once all the information is available, the decision maker should consider all of the papers promptly and come to a decision to grant or refuse the application made.

Many of the most difficult decisions also happen to be in cases where there is an impending statutory deadline for commencing proceedings. It is important to bear this in mind. The decision should wherever possible be taken to allow due time for the proceedings to be commenced prior to them becoming statute barred.

Board can only act within its powers
We are a public body created by statute, the Civil Legal Aid Act 1995. Our powers and functions directly derive from the Act and the Regulations which have been made on foot of the Act. Every decision must be grounded in the Act and/or the Regulations. The decision recorded on EOS, and the consequent letter that issues from the decision maker in the case of a refusal or partial grant, must show that the decision maker has grounded the decision in the Act and Regulations.

Duty to give reasons
As a matter of general administrative and constitutional law we are obliged to give reasons for our decisions where the decision is anything other than a full grant of the application sought.

Decisions should be in plain English

The requirement to ground decisions in the law should not be read to say that our decisions should be couched in legalese. It is important that our decisions be transparent and understandable by the applicant. An applicant who understands why a decision has been made is less likely to challenge the decision.

For example, take the refusal on financial eligibility. Formerly decisions on this matter would have read:

"This application has been refused under section 29 of the Civil Legal Aid Act 1995 with reference to Regulation 13(3) of the Civil Legal Aid Regulations 1996 for the reason that your disposable income exceeds €18,000. Regulation 13(3) of the Civil Legal Aid Regulations 1996-2016 specifies that "an applicant whose disposable income exceeds €18,000 per annum shall not be eligible to obtain legal aid or advice".

This is legalese and may be difficult for the applicant to understand. More recent decisions read as follows:

"Unfortunately the Board must refuse your application for legal services as your disposable income exceeds the maximum laid down by Regulations[1]. We calculated your disposable income as €_____, but the law states that the Board cannot legally assist any person whose disposable income is in excess of €18,000."

The letter goes on to explain how disposable income is calculated.

While the section of the Act or Regulations must be quoted, it is important not to blind the applicant with them. The meaning of the particular section of the Act or Regulations must be explained in plain English. The sample decisions in this Part will give decision makers guidelines on how such explanations can be offered.

Review and appeal procedures

It is important to note though from the outset that every decision short of a full grant of the application sought **must** inform the applicant that these procedures exist and how to go about them.

This being said, a decision maker must always exercise their discretion "blind" to the fact that these procedures exist and as if they were the person who had final say over the application. To do so otherwise is to abdicate the decision making responsibility to another.

Board must comply with administrative law

The Board is a public body. When the Board or any of its officers takes a decision on the grant and refusal of legal services, it is exercising a public function laid down by law. In exercising these public functions the Board is subject to a body of law known as "public law" or "administrative law".

Judicial review is a process by which the High Court can review the decision making process within a public body. A judicial review is not an appeal of a decision of a public body and does not involve the court considering the merits of the case and substituting its own decision for that of the body. Rather, it is a review of the manner in which the decision is made to ensure it is consistent with fair procedures.

Normally an applicant for judicial review seeks an order quashing the decision of the public body. The matter is remitted back to the public body to reconsider its decision in line with the judgement of the Court. The Court can also issue an order prohibiting the public body from acting beyond its powers or requiring the public body to take a particular action. It can also grant a declaration that the public body did not act in accordance with the law. It is important to note that in all cases the Court does not substitute its own decision for that of the public body.

The above is by way of introduction only. Administrative law is a vast topic in and of itself and beyond the scope of this Circular. Suffice to say however that the Board is bound by it in all decisions that it makes. Following the guidelines in this Part should assist decision makers in complying with their obligations under administrative law.

2. Process of decision making in general

Submission

A decision is normally triggered, in the first instance, by a solicitor or other staff member making an application for a decision to be made. Except in limited cases (e.g. financial eligibility) the application is made by way of a Submission on EOS.

The completion of the submission was dealt with in Part 3 in terms of a submission for legal aid, but the principles apply in terms of making any submission to a decision maker.

It is not necessary to provide the applicant with a copy of the application though it may be appropriate depending on the circumstances of the case.

Who is the decision maker?

Managing solicitor/delegated certificates grantor

Applications for private family law remedies in the District Court or for a Circuit Court Appeal can be granted at **law centre** level by the managing solicitor or a person who has been delegated the authority to do so by the managing solicitor.

These include:

- Applications under the Domestic Violence Act 1996
    - **Barring order** – an order directing a person to leave the place where the applicant is and not return for the period of the order.
    - **Safety order** – an order requiring a person not to use violence or threaten to use violence against the applicant.
    - **Protection order** – similar to a safety order but granted for a limited period, until an application for a safety order or barring order is heard.
    - **Interim Barring Order** – a barring order granted in urgent and severe cases of domestic violence granted for a limited period, until an application for a barring order is heard.

- **Maintenance** – an application by a spouse to require the other spouse to make payments for their upkeep, or by a parent to require the other parent to make payments for the upkeep of a child
    - This includes applications to **vary** (change) or **discharge** (end) the maintenance order.
    - It also includes applications to **enforce** the maintenance order if payments aren't being made through the District Court Clerk.
    - **Attachment of Earnings** – an order requiring the payments to be deducted at source from a person's income - from a where these are the sole proceedings being taken at that point in time;
- Any proceedings under the Guardianship of Infants Act 1964 including but not limited to:
    - **Guardianship** – establishing parental responsibility
    - **Custody** – an application to decide who has primary care and control of a child
    - **Access** – contact between a parent who doesn't have custody and a child.
    - Variation of access and custody
- Under the Family Home Protection Act 1976, Section 9 - where proceedings relate to the **disposal or removal of property belonging to the household**.

Applications for a change of solicitor (other than a managing solicitor) can also be made to the managing solicitor in the law centre. This function cannot be delegated further.

A certificate granted in a law centre is known as a **Delegated Legal Aid Certificate** if it is being granted for representation by the law centre and a **Private Practitioner Legal Aid Certificate** if it is being granted for representation by a member of the solicitors panel.

Some of the above proceedings cannot be referred to the District Court family law solicitors panel (proceedings under the Family Home Protection Act 1976).

Applications are made on EOS to the **Delegated Certificates Grantor.** All managing solicitors have been given that user role. IT Unit will give the user role to another member of staff on request by the managing solicitor.

Legal Services
In all other cases the decision maker is Legal Services. Submissions to Legal Services are made in the first instance to the "Legal Services Submissions Inbox". Upon receipt of a submission staff in Legal Services will refer the submission to the correct decision maker.

Consideration by decision maker
Upon being allocated the submission the decision maker will be notified through an alert in EOS. They should read the submission, after which they may:

- form a view that the submission does not give them all the information that is required to enable them to take a decision. In this case they should contact the solicitor by email within EOS (or in very urgent cases by phone)and ask them for further information; or
- form a view that the submission is complete and they may consider it.

Following this they should re-read the submission, having regard to the following:

- the Act and Regulations;
- the general principles of decision making outlined above; and
- any specific guidance given in this Part regarding decision making.

They will then:

- decide to grant the application;
- decide to refuse the application; or
- having formed a view that the decision should be made at a higher level within Legal Services, decide to refer the application.

Where we consider material other than that provided in the application – in other words, material provided by a third party - and is considering refusing the application, the applicant will be advised by the member of staff who submitted the application that:-

- such additional material is being considered and is being made available to the applicant;
- an opportunity will be given to submit comments thereon within a specified time period; and
- such comments should be transmitted through the law centre.

The Board will then make a decision on the application.

Deciding to grant the application
The application will be granted on EOS. There is no need to give reasons where an application is granted in its entirety. There are specific procedures for the issuing of decisions in specific cases and these are noted later on in this Part. In particular where an application for legal aid is granted a legal aid certificate must be issued (EOS generates a legal aid certificate on the Documents tab automatically when the decision maker grants the submission).

Deciding to refuse the application
The decision maker may, if they have the authority, decide to refuse the application.

In this case:

- The Refusal screen on EOS must be completed
    - Each ground under which the application has been refused must be selected.
    - The reasons for the refusal must be **fully detailed**.
- A letter must be issued to the solicitor
    - Stating that the application has been refused
    - The Grounds (quoting appropriate sections of the Act and Regulations).
    - The reasons for the refusal **in plain English.**
    - The fact that the applicant has the right of review and appeal and explaining what is involved in a review and/or appeal.
    - The fact that the applicant has one month to seek a review and another month after that to seek an appeal
    - advise that an appeal committee may consider an appeal by reference to:-
        - the specific reason(s) as stated in the refusal letter, or
        - all aspects of the application; and
        - the decision will be sent to the solicitor and forwarded to the applicant.

The template letters contained in this Part and available on EOS must be used.

3. Criteria for granting applications for civil legal services

Section 24 and 28 of the Act specify the criteria for the grant of civil legal services. These are the criteria that the decision maker must consider when deciding whether to grant civil legal services – including any additional services, whether by way of authority at advice stage or amendment to a legal aid certificate. Solicitors must bear the criteria in mind at all times when making an application and in particular when making a recommendation to grant or refuse.

All recommendations to refuse, whether from a solicitor making the application or from a decision maker to a higher decision maker, must cite one or more of the grounds in the Act together with a reason why the particular ground applies in the case concerned.

In relation to the decision itself, the decision should reference the particular legislative provision(s) upon which the refusal is based but it should also set out, in language that the client will understand, the reasons for the refusal. It is not sufficient that refusals are by reference to the legislation alone. It is not necessary that every aspect of the submission for a certificate is addressed when issuing a refusal however it is a requirement that sufficient reasons are given and that the decision does not entirely ignore the submissions made

Guidelines for decision making
Section 24 (a) and (b) provide general conditions which must be met before the Board can grant legal aid. Unfortunately, these provisions are couched in highly unspecific terms, and seem at first sight, to offer a margin of discretion to the Board. However, the solicitor's submission is of critical importance here as the solicitor is best placed to offer a view on the matter. Section 28(2) is of assistance in that it defines 3 (where welfare of children are involved) to 5 requirements which if met require the Board to grant legal aid. Further detail is provided on these conditions below. Some of the other merit criteria such as those described in section 28(9) (designated matters) are standalone criteria.

Section 24 and section 28 are related and provide generally applicable merits criteria to which decision makers should adhere. Leaving aside the application of specific merit criteria such as those contained in Sections 28(9)

1. The decision maker should first enquire whether the case is one in which the Board is required to grant legal aid under section 28(2) because 5 (or 3) of the requirements set out in paragraphs (a) to (e) are met.
2. If the decision maker decides that the requirements of section 28(2) are met then he/she must then consider whether the conditions of section 24(a) and (b) are met.
3. If some of the criteria contained in Section 28(2) are not met the Board is not required to grant legal aid under its provisions but may decide to do so if, for example, it is satisfied that the provisions of Section 24 are met or other mandatory provisions apply.
4. If after a review of the application of sections 28(2) and 24(a) and (b) the decision maker then must review the other standalone merit criteria to see whether any of these criteria either require or permit the grant or refusal of legal aid.

The following table describes each part of the merits criteria in detail:

Section	Ground	Summary
S24(a)	a reasonably prudent person, whose means were such that the cost of seeking such services at his or her own expense, while representing a financial obstacle to him or her would not be such as to impose undue hardship upon him or her, would be likely to seek such services in such circumstances at his or her own expense, ***and***	Would an average person pay for the case themselves if they had the money?
S24(b)	a solicitor or barrister acting reasonably would be likely to advise him or her to obtain such services at his or her own expense.	Would a solicitor barrister advise them to take or defend the case?
S28(2)(a)	the applicant satisfies the criteria in respect of financial eligibility specified in section 29,	Are they financially eligible?
S28(2)(b)	the applicant has as a matter of law reasonable grounds for instituting, defending, or, as may be the case, being a party to, the proceedings the subject matter of the application,	Does the person have a case in law to bring or defend a case?
S28(2)(c)	the applicant is reasonably likely to be successful in the proceedings, assuming that the facts put forward by him or her in relation to the proceedings are proved before the court or tribunal concerned	Is the case likely to succeed or be defended successfully? **This does not apply in proceedings where the welfare of a child is the subject matter of the dispute or to sex offenders register order cases.**

S28(2)(d)	the proceedings the subject matter of the application are the most satisfactory means (having regard to all the circumstances of the case, including the probable cost to the applicant) by which the result sought by the applicant or a more satisfactory one, may be achieved.	Have the parties tried to settle/and/or use ADR if these options are available?
s28(2)(e)	having regard to all the circumstances of the case (including the probable cost to the Board, measured against the likely benefit to the applicant) it is reasonable to grant it.	Is this a worthwhile case when you take into account the costs of bringing or defending the case? **This does not apply in proceedings where the welfare of a child is the subject matter of the dispute or to sex offenders register order cases.**
s28(4)(a)	the applicant may obtain the cost of the proceedings the subject matter of the application from, or be provided with legal representation by, a body or association of which he or she is a member or any other source,	Can the applicant get legal representation from another source?
S28(4)(b)	the applicant has on a previous occasion obtained legal aid or advice within the meaning of the Scheme or under this Act in respect of another matter and has, without reasonable explanation, failed to comply with the terms on which such legal aid or advice was granted,	Has the applicant previously not complied with the requirements of the Board in relation to a legal aid matter.
S28(4)(c)	the cost to the applicant of engaging a solicitor and, where necessary, a barrister to represent him or her in the proceedings without legal aid would be less than the contribution	The Board may refuse to grant legal aid. This should be considered in the following circumstances: • Any case where the applicant's contribution has been capped due to it exceeding the rate which the Board pays a private practitioner to perform the same service. • Any other District Court or Circuit Court family law case where the applicant's contribution is

	payable by him or her under section 29 and regulations (if any) under section 37	in excess of the following amounts: o €417 in the District Court o €5,000 in the Circuit Court.
S28(4)(d)	such information as is reasonably required by the Board from the applicant to enable it to make a decision on whether to grant a legal aid certificate or not has not been provided by him or her	The applicant does not provide the necessary information to permit a decision to be made after being given an opportunity to do so.
S28(9)(a)	the matter is out of the scope of civil legal aid by reason of being a designated matter	The type of matter is not expressly excluded (e.g. defamation, licensing etc). Beware the exceptions to the exclusions!

It should be noted that the Board is required under section 5 to provide legal services within its resources to cases which satisfy the requirements of the Act. In the general operating environment of the Board demand generally exceeds resources. The Board therefore needs to carefully apply these merit criteria so that resources are spent on cases which are likely to achieve a tangible result for legal aid applicants.

4. Family law

Cases where the welfare of a child is the subject matter of the dispute

Section 28(3)

In the above section of the Circular we examined in detail the merits criteria in the Act. When the welfare of a child is the subject matter of a dispute, neither the likelihood of success test (section 28(2)(c)) nor the cost-benefit analysis test (section 28(2)(e)) apply. The Board has previously called the merits test in these cases the "reduced" merits test.

The test has been generally applied widely, not just to childcare cases, but to all cases where the welfare of a child might be at stake (e.g applications for guardianship, custody, access, maintenance in respect of children, and judicial separations/divorces where ancillary orders in respect of the children will be sought).

It is important to note that the "reduced" merits test does not apply to all family law cases – for example, if a couple have no children it would not apply.

The same "reduced" merits test applies to applications in relation to a sex offenders order – these are relatively rare.

Judicial separation

Judicial separation is a remedy which relieves a married couple of their obligation to live together. It is equivalent to a divorce in all respects except the most important one – **it does not dissolve the marriage, and the parties are not free to remarry**.

Nonetheless, because the law in Ireland does not allow a couple to divorce until they have been living separately for four of the past five years, the Board frequently receives applications for legal services for separation. It is possible for a legal separation to be concluded by way of an agreed deed of separation. Where it is possible to agree a separation without going to Court the Board encourages the parties to do this.

Applying for a judicial separation allows a couple to avail of what are known as *ancillary reliefs*, dealing with a couple's children, property, maintenance, and pension.

In relation to an application to for a legal aid certificate to take judicial separation proceedings, order to determine if the requirements of section 24 and section 28(2)(d) are met, solicitors are required to give the following information to Legal Services as part of the application:

1. The date upon which the parties separated (if they are living separate and apart);
2. Whether there are dependent children of the marriage or not;
3. The existence of any court orders in relation to the children;
4. The issues that are likely to be disputed;
5. A copy of the record (attendance note or letter) detailing the discussion that the solicitor had with the client in relation to marriage guidance counselling, mediation, other formal ADR forms and the possibility of negotiating the terms of a separation agreement or consent terms (in the event of a pension adjustment order being required);
6. The client's attitude to the aforementioned dispute resolution options – including any objections the client has on the basis of the behaviour of the other party;
7. The attempts that have been made to negotiate a separation agreement or consent terms; and
8. The likelihood of the client wanting a divorce.

For the purpose of determining the application, Legal Services should have regard to the following:

1. The length of time the parties have been living apart and the likely proximity of any divorce proceedings (noting that some clients may not wish to seek a divorce);
2. If there are issues in dispute in relation to access / maintenance, whether there are District Court Orders already in place;
3. Whether or not there are issues that cannot be resolved in the District Court – if there are no such issues the Board should be reluctant to grant a certificate;
4. Whether there are dependent children of the marriage (the requirement to explore non court based options should be considerably greater if there are no dependent children);
5. The level of urgency in relation to issues that are not resolvable before the District Court – primarily property and pension issues; and
6. The extent of the efforts to try and negotiate a solution and the client's attitude towards a non court based approach – where the client has displayed a willingness to try and resolve the issues, there should be a greater inclination to grant a certificate.

Divorce

Only a Court can grant a divorce in Ireland. While there is the real prospect of applicants for judicial separation immediately applying for a divorce – which may result in "repeat trips" to Court – the fact is that a divorce is unobtainable without going to Court. A person cannot remarry without obtaining a divorce. For these reasons we are very slow to refuse an application for a legal aid certificate for divorce proceedings to a financially eligible person.

In relation to an application to for a legal aid certificate to take divorce proceedings, in order to determine if the requirements of section 24 and section 28(2)(d) are met, solicitors are required to give the following information to Legal Services as part of the application:

1. Whether there is a Judicial Separation Order or a Separation Agreement already in place and if so the date of such Order / Agreement;
2. Whether the client was legally aided for the purpose of the earlier proceedings / Agreement;
3. Whether the applicant wishes to re-open the issues that were the subject of the Order / Agreement; and
4. In the event that there is an earlier Order / Agreement, the prospects of successfully revisiting the provisions of the Order / Agreement.

For the purpose of determining the application, Legal Services should have regard to the following:

1. The existence of a Judicial Separation Order / Separation Agreement;

2. Whether the applicant was legally aided for the purpose of the earlier proceedings / Agreement; and
3. In the event of such an Agreement, the prospect of successfully changing the core provisions and particularly the provisions in relation to property / assets and pensions, of the Order / Agreement.

If Legal Services determine that there is little or no prospect of the provisions of a Judicial Order / Separation Agreement being revised by a Court, a legal aid certificate should be granted but limited to making the primary application (for a divorce) and for an Order on foot of section 18(10).

Cohabitant relief

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 introduced a "redress scheme" for certain cohabiting couples (both opposite-sex and same sex) who are not married but were in an intimate and committed relationship which has broken down. The scheme allows them access to certain remedies in the courts, such as maintenance orders, pension adjustment orders, and property adjustment orders.
To avail of the scheme, the parties need to have lived together for five years or for two years if they have a child together.

It is possible to contract out of the redress scheme and either of the parties can apply for civil legal advice in relation to this. The two parties should be represented by separate law centres in this case.

When considering an application for legal aid to take an action for cohabitant relief, the decision maker must first be satisfied that the Applicant meets the criteria for the scheme:

- Lived with the intended Respondent for five years OR for two years and has a child with the intended Respondent
- Lived in an intimate and committed relationship with the intended Respondent during this period.
- Is not married to anyone else and has not lived away from their spouse for 4 out of the last 5 years

If the Applicant fails to meet this criteria **the application must be Refused.**

The decision maker should then consider the following factors which the solicitor should have addressed in the submission:

- The Applicant's financial circumstances and needs
- Whether the Applicant is financially dependent on the other party and whether that financial dependence arose from the relationship or the end of the relationship
- Whether the Applicant was married/civil partnered before and if so the rights and entitlements of the former spouse/civil partner
- Whether there are dependent children and the financial circumstances they find themselves in
- The duration and nature of the parties relationship and the contribution they made towards their home
- Whether the Applicant, by reason of the responsibilities they assumed during the period of cohabitation, gave up the opportunity to work in order to look after the home and the effect that has had on their career.
- Whether the Applicant suffers any physical or mental disability
- Whether there are any issues regarding the conduct of the parties.

The specific remedies that are to being sought under the 2010 Act. These remedies will need to be significant that cannot be obtained by the Applicant other than by recourse to an action for cohabitant relief. It should be noted that the Court does not have the power to order the sale of the "family home" in proceedings brought under this legislation. In any case where either or both of the parties have children, the "reduced" merits test applies.

District Court private family law matters and appeals

As noted above, applications for civil legal aid for District Court private family law matters (and appeals to the Circuit Court) are made to the managing solicitor or another person in the law centre to whom the managing solicitor has delegated responsibility.

The "reduced merits" test applies to all of these applications save an application for spousal maintenance alone, which is rare.

Grant the application if (<u>all</u> of the below factors must be present):

- The staff member making the application recommended a grant
- You are satisfied that the case falls within the type of cases for which legal aid can be granted at law centre level (see earlier in this part)
- The applicant is financially eligible
- None of the reasons below to refer the application to Legal Services apply.

Refer the application to Legal Services if (<u>at least one</u> of the below factors are present):

- The solicitor making the application recommended a refusal
- The applicant previously had a legal aid certificate revoked or terminated for any reason other than change of circumstances
- The applicant's contribution, as calculated before the cap was applied, was substantially in excess of €417 (As a guideline, the contribution should have been calculated at €1,000 minimum prior to capping).
- Any additional services are being sought.

All applications which include a request for additional services should be referred to Legal Services

At Legal Services level, grant the application if:

- The application is for a domestic violence remedy or to defend an application for a domestic violence remedy, <u>unless</u> there are extremely strong reasons relating to the applicant's previous behaviour as to why such an application should not be granted.
- For any other application, at least one of the factors for refusal do not apply.

At Legal Services level, consider refusing the application if:

- The applicant previously had a legal aid certificate revoked or terminated for any reason other than change of circumstances
  [Refuse under s28(4)(b)]
- The application is for spousal maintenance alone and in the solicitor's opinion there is no prospect of success in the application.
  [Refuse having regard to s24(b) and s28(2)(c), and (e)].
- The application is to appeal an application for spousal maintenance alone and the District Court refused the original application
  [Refuse having regard to s24(b) and s28(2)(c), and (e)].

District Court family law matters outside the scope of civil legal aid

It should be noted that the defence of prosecutions for a breach of a domestic violence order do not come within the realm of civil legal aid. Where the matter involves enforcement of an access order , sometimes a summons for breach of an access order on foot of section 5(2) of the Courts (No. 2) Act 1986. While this section creates an offence which is a criminal matter and therefore strictly speaking outside the scope of civil legal aid, these cases are heard at sittings of the District Court for family law matters.

While the Board cannot provide legal aid for the defence or prosecution of a criminal offence, the application should be accepted on the basis that the solicitor will discuss with the applicant civil remedies which apply in relation to the enforcement of access orders. For example, section 18A of the Guardianship of Infants Act 1964 (inserted by section 60 of the Children and Family Relationships Act 2015) provides a new civil remedy of an "enforcement

order", available where a parent or guardian has been granted access or custody to a child and has been unreasonably denied such access or custody.

5. Non family law

Claims in contract or torts generally

If you receive an application for legal aid for a claim in contract or torts (e.g. personal injuries), seek the following information:

1. The relevant facts;
2. A broad statement of the law and how the law applies to the facts. This must include addressing the ingredients of the tort or breach of contract, for example:
   For common law negligence
   a. That a duty of care (including statutory duty) for the Plaintiff existed on the part of the Defendant
   b. That there was a breach of that duty (including statutory duty)
   c. That the breach was caused by the Defendant's actions
   d. That it was not too remote – that is, that there is "proximity" between the Defendant's actions and the Plaintiff's injuries. If there are too many intervening acts between the Defendant's act and the Plaintiff's injuries, the Court will not grant judgement for the Plaintiff.
   e. That the breach resulted in loss to the Plaintiff
   f. If contributory negligence on the part of the Defendant is being alleged, specify this also.
   For a breach of contract
   a. That the elements of a contract existed (offer, acceptance, consideration, intention to create legal relations)
   b. That the parties to the contract were the Plaintiff and the Defendant
   c. That there were express or implied terms of the contract
   d. That there was breach of the express or implied terms of the contract on the part of the Defendant
   e. That the breach resulted in loss to the Plaintiff
3. The likelihood of the case being successfully prosecuted / defended;
4. The extent of the injuries / loss to the applicant – including if the injuries/loss are trivial;
5. In the event that the applicant is seeking to take a money damages case, the known resources of the intended defendant and the prospect of making a successful recovery in the event that a judgement is obtained against the defendant (including whether the defendant had insurance that might be able to meet the claim);
6. Any history of litigation – in particular if there is a history of litigation between the parties it may be that the provisions of section 24 and section 28(2) are less likely to be met; and
7. If the case is in torts, and there were previous criminal proceedings arising out of the alleged tort, what the outcome of those proceeding were.
8. If the case is for personal injuries:
   a. Any evidence establishing the injuries sustained e.g medical reports
   b. The extent of the applicant's injuries
9. The likelihood of the applicant pursuing the case at his or her own expense if he or she were a reasonably prudent person whose means were such that the cost of seeking the services, while representing a financial obstacle to him or her would not be such as to impose undue hardship upon him or her, would be likely to seek such services in such circumstances at his or her own expense and a solicitor or barrister acting reasonably would be likely to so advise.
10. The Risk tab is fully completed, including a correctly calculated Statute of Limitations expiry date.

If the applicant is the intended Plaintiff, grant the application if (<u>all</u> factors must be true):

- The applicant has a cause of action (a reason to go to Court). In deciding this, look at the facts of the case and the law as outlined by the solicitor and decide whether the facts of the case match the law as outlined, i.e. that all the elements of the tort or

breach of contract are present. If it appears that the solicitor has addressed some but not all the elements of the tort or breach of contract is in order to revert to the solicitor and ask them to revise their statement of facts prior to taking a decision..

- The applicant has reasonable prospects of success, in the opinion of their solicitor or Counsel. If there were previous criminal proceedings and the Defendant was convicted, this threshold should be considered met.
- The damages the applicant would be likely to be awarded would be more than the costs to the Board of the case
- The proceedings are not statute barred
- The solicitor considers that a reasonably prudent person would pursue the case if they were spending their own money
- The intended Defendant is
    - a legal person (a company or statutory body)
    - a partnership or firm,
    - a natural person and that it is

    apparent that the defendant would have the resources to meet a judgement .
- None of the reasons to refuse apply, or if any do apply, having weighed up and considered the entirety of the circumstances of the application, it is considered reasonable to grant the application.

If the applicant is the Defendant, grant the application if (<u>all</u> factors must be true):

- The applicant has a legal defence
- The applicant intends to enter a Defence to the proceedings
- The applicant has a reasonable chance of successfully defending the proceedings, in the opinion of their solicitor or Counsel
- The solicitor considers that a reasonably prudent person would defend the case if they were spending their own money
- If the applicant is making a Counterclaim, apply the factors for granting legal aid to a Plaintiff also.
- None of the reasons to refuse apply, or if any do apply, having weighed up and considered the entirety of the circumstances of the application, it is considered reasonable to grant the application.

Consider refusing the application if (<u>any</u> factors below are true):

- The likelihood of success is, in the solicitor or Counsel's opinion lower than having reasonable prospects of success
  [Refuse having regard to s24(a) & (b) s28(2)(c)]
- The damages the applicant would receive would be less than the estimated cost to the Board of the proceedings
  [Refuse having regard to s24(a) & (b) and s28(2)(d) and (e)]
- It is apparent that the intended Defendant would not have the resources to meet any judgement obtained against them.
  [Refuse having regard to s24(a) & (b) and s28(2)(d) and (e)]
- The applicant is seeking to re-litigate a relatively recent judgement obtained against them
  [Refuse having regard to s24(a) & (b) and s28(2)(e)]
- The proceedings are summary proceedings in the High Court and the applicant accepts that the debt is owed
  [Refuse having regard to s24(a) and s28(2)(b),(c) and (d)]
- The proceedings are summary proceedings in the High Court and the solicitor recommends refusal on the basis that the applicant has no genuine Defence to the proceedings and entering a Defence would only ultimately serve to increase the costs of the action
  [Refuse having regard to s24(a) and s28(2)(b),(c) and (d)]
- The applicant is the intended Plaintiff and the proceedings are statute barred. [Refuse having regard to s24(a) & (b) and s28(2)(b) and (c)]

It should be noted that while many of these applications will relate to specific court proceedings, this does not preclude an application being made to terminate legal services at any stage where it is considered that the provisions of section 24 are not met.

Statutory time limits/statute of limitations

Many non-family law cases have time limits in which proceedings must be instituted. If they are not instituted within the time limit they will be "statute barred". This means that the claim is bound to fail, as long as the Defendant remembers to plead the Statute of Limitations (the law that sets out these time limits) in their Defence. Cases where the Statute of Limitations applies, and the applicant is the intended Plaintiff, are always classified High Risk on EOS.

The decision maker, in the first instance, should note the date the solicitor has calculated as the statute expiry date (entered on the Risk tab in EOS) and the issues involved. If a legal aid certificate is granted, the solicitor/Counsel drafting the proceedings will need adequate time to properly do so, including time to properly prepare. Depending on the complexity of the applicant's case the part of the document(s) starting Court proceedings which sets out the Plaintiff's claim may be quite complex and take time to properly draft.

If the statute expiry date is about to pass, and the applicant has only recently applied for legal services, then the application should be brought to the attention of the Director of Civil Legal Aid. The Director will decide whether the applicant should be advised that it is simply not possible to give any meaningful consideration to the merits of the case within the remaining statutory time period. In these circumstances a template letter will be provided to the law centre in order that the applicant can be informed that the Board is not in a position to provide assistance prior to the expiry of the statutory deadline.

➔ See also the section on "Risk" in Chapter 3 of the Administrative Procedures Handbook

Plaintiffs in personal injuries and medical negligence cases

Personal injuries cases are cases where an injury to the Plaintiff is alleged to have been caused by the wrongful act of the Defendant. Medical negligence cases are a particular type of personal injuries case where the injury is alleged to have been caused by the breach of duty of care by a Defendant **who is a medical professional**.

These types of cases will often be taken on by a private solicitor on what is known as a "no foal no fee" or conditional fee arrangement. What this means is that the private solicitor will agree that they will not issue any bill of costs until and unless they agree a settlement with the Defendant or are successful in obtaining damages for their client in Court.

. A person seeking legal services in relation to taking a claim in personal injuries or medical negligence must be advised by a law centre at the first point it becomes clear that their claim is for personal injuries or in medical negligence that they should seek two letters from private solicitors that they would not be willing to take on the case on a no foal no fee arrangement.

A law centre is not allowed to stop processing an application merely because the letters are not obtained. Indeed, it should process the case as normal and offer a first consultation and in due course a second consultation. At each consultation the person should be advised that they should seek the letters from the private solicitors and the standard letters offering consultations have been amended to advise the person in such terms.

If you receive an application for legal aid <u>to take a claim</u> for personal injuries or in medical negligence:

1. Check the date of application on EOS
2. Where it is after 24th February 2015, ask the law centre to scan and upload to EOS the two letters which the applicant has provided from private solicitors stating that they are unwilling to provide services on a no foal no fee basis.

3. Check that the letters have been scanned and uploaded and that they are from genuine private solicitors

Grant the application if (<u>both</u> factors must be true):

- The letters have been provided and are from genuine private solicitors
- The applicant must satisfy the normal criteria to grant legal aid for a Plaintiff in a non-family law case

Consider refusing the application if (<u>all</u> factors must be true):

- The application was received after 24th February 2015
- The two letters have not been provided without any reasonable explanation
- There are no extenuating circumstances (e.g. hardship would result if they were unable to take the claim) that would weigh in favour of granting legal aid to the applicant.

Scenario

You have received an application for legal aid to take a personal injuries claim. The solicitor advises that the law centre have advised the applicant to attempt to retain a solicitor on a no foal no fee basis but the applicant refuses to do so on the basis that "Its my right to legal aid". The solicitor is recommending refusal under s28(4)(a). There is no suggestion that the applicant would suffer any hardship from failing to take the claim, and no other extenuating circumstances that you have been advised of.

Sample decision

Having had regard to section 28(4)(a) of the Civil Legal Aid Act 1995, the Board is refusing legal aid

The reasons for this decision are:

- **Section 28(4)(a):** Notwithstanding subsection (2), the Board may refuse to grant a legal aid certificate if it is of the opinion that…the applicant may obtain the cost of the proceedings the subject matter of the application from, or be provided with legal representation by, a body or association of which he or she is a member or any other source

  Reason: The Board considers that you would be able to obtain the cost of proceedings through a "no foal no fee" arrangement with a private solicitor.

6. Legal aid for appeals

Appeals from a trial court to an appellate court, except for family law matters in the District Court must be authorised by Legal Services

As and from 1st June 2017 legal aid for appeals should be the subject of a fresh application for legal services (which involves the filling out of a new application form and a new means test).

Appeals of family law matters in the District Court

Guidelines on appeals of District Court family law matters can be found earlier in this Part. In general these will be treated as a fresh application for legal aid.

Appeals to the Circuit Court in non-family law matters

If you receive an application for legal aid to appeal of an order of the District to the Circuit Court (in a non-family law matter), the matter should be treated as a fresh application for legal aid.

If the applicant is the appellant, you should ask the solicitor to provide an opinion on the merits of appeal, including the appellant's grounds of appeal and their prospects of success.

Appeals to the High Court and Court of Appeal

In this section the expression "trial court" refers to the Court in which the proceedings were originally commenced (Circuit Court or High Court) and the expression "appellate court" refers to the Court to which the appeal is being made (the High Court or Court of Appeal).

These may be granted by:
Higher Executive Officers and above **If you receive an application for legal aid to appeal of an order of a trial court to an appeal court (other than from the District Court to the Circuit Court) take the following steps:**

- Grant Counsel's opinion to seek the merits of appealing the case
- Ask the solicitor to provide a view on whether it is reasonable to appeal the case, having applied section 24(a) and (b) of the Act.

On receipt of Counsel's opinion, grant the application if:

- Counsel has advised in writing that there are substantial grounds for appealing the case
- The solicitor certifies that in his/her opinion it is reasonable to appeal the case, having applied Section 24 (a) and (b) of the Act

Consider refusing the application if:

- Counsel has advised that there are little or no grounds for appealing the case
- The solicitor has not certified that it is reasonable to appeal the case

Appeals to the Supreme Court

Since the passing of the Court of Appeal Act 2014 appeals of civil cases tried in the High Court are now heard by the Court of Appeal rather than the Supreme Court.

Legal aid to **take a further appeal** from the Court of Appeal to the Supreme Court or to take a "leap frog" appeal (where the appeal is directly from the High Court to the Supreme Court, "leap frogging" the Court of Appeal) will be granted only in specific circumstances where in Counsel's opinion there is an important point of law to be litigated. These may be granted at Assistant Director level or above only following a full and thorough application of each of the merits criteria (or "reduced" merits criteria if applicable) to the case.

References to the Court of Justice of the European Union

Under Article 267 of the Treaty on the Functioning of the European Union an Irish Court may be required to make a reference to the Court of Justice of the European Union for a decision on the interpretation on an issue of European Union law. In general the requirement to make such a reference arises where the court considering the matter is a court of final appeal although the possibility does arise in the lower courts as well. It s a matter for the Irish Court to make such a reference and when such a reference happens it will be a matter for the Board to determine whether to grant a new Certificate to provide the services in the matter. The Board should require both the Board solicitor and the Senior Counsel (or Junior if no Senior has been retained) to provide an opinion as to why the Board should pursuant to the Act provide services in relation to the reference.

7. Applications for additional services

As previously noted in ➔ **Parts 2 & 3** the "default" grant of legal advice allows the services of a law centre solicitor only, while a "default" grant of legal aid allows the services of either a law centre solicitor or (in certain cases) a private practitioner. Any spending over and above this must be specifically authorised by Legal Services. This is done by way of **authority** at advice stage and **amended legal aid certificate** at aid stage.

Criteria for granting additional services generally

The general criteria for granting any additional authority is the same as that for a grant of legal aid i.e. the factors in sections 24-28 of the Act apply. The "reduced merits" test applies if the subject matter of the proceedings is the welfare of a child or a sex offenders order.

The refusal of an application for an amended certificate must be grounded in the Act and regulations.

A refusal of an application to amend a certificate can be grounded on any of the merits criteria in the Act. The following criteria are considered especially relevant to granting applications for additional services. If the application is for an appeal the full merits criteria (or the "reduced" merits test, where appropriate) should be applied.

Section	Ground	Notes/Reasons
S24(a)	a reasonably prudent person, whose means were such that the cost of seeking such services at his or her own expense, while representing a financial obstacle to him or her would not be such as to impose undue hardship upon him or her, would be likely to seek such services in such circumstances at his or her own expense,	Would an average person with means pay for the additional service themselves and
S24(b)	a solicitor or barrister acting reasonably would be likely to advise him or her to obtain such services at his or her own expense.	Is this something that legal professionals would be likely to advise getting.
s28(2)(e)	having regard to all the circumstances of the case (including the probable cost to the Board, measured against the likely benefit to the applicant) it is reasonable to grant it.	Is the cost of the additional service out of proportion to the case. **This does not apply in proceedings where the welfare of a child is the subject matter of the dispute or to sex offenders order cases.**
S28(4)(d)	such information as is reasonably required by the Board from the applicant to enable it to make a decision on whether to grant a legal aid certificate or not has not been provided by him or her	The necessary information has not been provided on which a decision can be based.

Limits to amounts authorised

Appendix A of this Circular contains the limits beyond which fees for additional services will not be paid. All grants of additional services (aside from Counsel) will contain a statement that the amount authorised will be not greater than relevant amounts in Appendix A.

Junior Counsel

Counsel may not be retained without authorisation from Legal Services

The grant of the services of a barrister(s) is never automatic and authorisation must be sought from Legal Services. The barrister to be engaged must be on the Board's Barrister's Panel and payment will be in accordance with the Board's Terms and Conditions for the Retention of Counsel. The grant of Counsel will contain a statement to this effect.

If you receive an application for Junior Counsel seek the following information:

- The reasons which it is considered <u>essential</u> that Junior Counsel should be engaged.

Grant the application if (<u>any</u> of the following criteria are true):

- The case is a childcare case and there are criminal proceedings pending against one of the parties

- There are other exceptional circumstances involved and the solicitor has provided full details of the circumstances
- The application is for nullity
- The case is in, or likely to be in the High Court, Court of Appeal, or Supreme Court
- The case is in, or likely to be in the Circuit Court:
    - and it is a non-family law case
    - and the solicitor makes a case that it is of reasonable complexity
- The case is a judicial separation or divorce case and there are property, pension, or child welfare issues in dispute.

Consider refusing the application if (<u>any</u> of the following criteria are true):

- The only reason the law centre wishes to retain Counsel is that they are unable to provide a solicitor on the day in question.
  (Refuse under s24(a) and (b))
- Having regard to the reasons provided, the decision maker does not consider that Counsel would be essential.
  (Refuse under s24(a) and (b))
- The case is in the District Court and there are no exceptional circumstances involved.
  (Refuse under s24(a) and (b))
- The reasons are not clear and a proper explanation is not forthcoming
  (Refuse under s28(4)(d))

Senior Counsel

The grant of Senior Counsel – for either an opinion or representation in court - is not automatic. The solicitor must make out a case for engaging Senior Counsel and if they do not the Board will not grant the services of Senior Counsel. As an example it is likely that judicial review proceedings can, in many cases, be competently presented by a junior counsel.

Prior to making an application for Senior Counsel a solicitor must, where it is likely that costs will be recovered:

- Ensure that the client understands the implications for the costs of the case and what will be recovered from the client at the conclusion of the case.
- Seek the client's approval for the expenditure to be involved.

If you receive an application for Senior Counsel seek the following information:

- The reasons which it is considered <u>essential</u> that Senior Counsel should be engaged.
- Satisfy yourself that the applicant approves the engaging of Senior Counsel.

Grant the application if:

- Junior counsel has already been authorised, or will be simultaneously authorised,
- **and** the solicitor has made out a case as to the need to engage Senior Counsel in the particular application concerned.
- **<u>and any</u> of the following criteria are true:**
    - where an applicant has been granted a legal aid certificate to institute/defend High Court non-family law proceedings e.g. personal injury, medical negligence, professional negligence;

      where an applicant has been granted legal aid to institute judicial review proceedings in the High Court

      where junior counsel's opinion has been sanctioned and obtained in non-family law proceedings other than medical negligence and the advices indicate that quantum is in the remit of the High Court. Prior to granting a legal aid certificate to institute proceedings, senior counsel's opinion should be obtained unless the opinion has been obtained from junior counsel with a particular expertise in the relevant area;
    - where there are High Court family law proceedings which involve substantial capital assets and monies and junior counsel states in writing that the services of senior counsel are necessary in the case. The solicitor should also certify that in his/her opinion such services are warranted; and

- where there are High Court family law proceedings which involve a complex issue of law and junior counsel states in writing that the services of senior counsel will add significant value to the case. The solicitor should also certify that in his/her opinion such services are warranted.

Consider refusing the application if:

- The solicitor has not made out a case for engaging Senior Counsel. (Refuse having regard to s24(a) and (b))

Psychological/psychiatric reports

These may be granted by:

- Higher Executive Officers and above

If you receive an application for a report, seek the following information:

- The reasons for which a report is sought

Grant an application for one psychological/psychiatric report where (<u>either</u> factor is true):

- the welfare of children is an issue in the case;
- in nullity cases; where the solicitor certifies that such a report is necessary.

The grant will provide generally that:

- one report is being authorised
- The Board will only pay 50% of the costs, if the other party is not legally aided

But a solicitor can make an application for full funding, if exceptional circumstances arise.
Consider refusing the application if it does not fall into either category above.

If you receive an application for a second or subsequent report, seek the following information:

- the date the original psychiatrist/psychologist report was obtained;
- what has happened in the meantime to justify obtaining a second or follow-on report;
- the specific reasons which justify the additional expenditure; and
- a certification by the solicitor that the report is necessary for the case.

Grant the application if:

- Having considered the above the decision maker is satisfied that the solicitor has made an appropriate case that a second or subsequent report would be beneficial to the applicant's case and
- The solicitor has certified that the report is necessary for the case.

Consider refusing the application if:

- It does not appear that there would be any benefit to the applicant in granting the second report
  [Refuse having regard to s24(a) and (b)]
- The solicitor does not certify that the report is necessary to the case.
  [Refuse having regard to s24(a) and (b)]

Translation of documents

The Board has a contract for the translation of documents (at time of writing, with WordPerfect Translations Limited). Any amended certificates granted for the purposes of obtaining a translation of documents will require that the translation be obtained from the presently contracted firm, and at a rate not greater than the Board's agreed rates (which are contained in Appendix A). Note: at the time of writing, this contract does not cover translations to and from the Irish language.

Authority will normally be granted in respect of the following classes of documents:

- Birth, Death, Marriage Certificates etc;
- Military Records;

- Passports and other Identity documents (usually National I.D. Cards; Employment I.Ds, student cards)
- Medical Certificates;
- Court Orders; and
- Summonses.

As regards any other document that is considered necessary to support a client's case, a brief description of the content of the document should be obtained from the client, and he or she should mark relevant passages for translation within the document. A caseworker/solicitor who is of the opinion that the contents justify translating the document should:-

- consider whether the expenditure involved in obtaining a translation appears to be justified in the circumstances;
- certify that in his/her opinion such a translation is necessary; and
- provide reasons for this opinion.

Contact details for WordPerfect Translations are available on the LAB Bulletin Board.

Research, Learning and Development Unit

Prior to web pages being submitted for translation, caseworkers/solicitors should submit a query for information to Research, Learning, and Development Unit regarding the availability of a corresponding document. If the result of the query does not produce a satisfactory result, the document should be submitted with a request for translation. The request must be accompanied by the response from the query. A decision will be taken and the usual review and appeal procedures apply.

DNA paternity testing in family law cases

If you receive an application for an amended certificate for DNA paternity testing, seek the following information:

- Check if a legal aid certificate has been granted
- Is the other party legally aided?
- Is the paternity of the child a fact in issue in the proceedings?

Grant the application if (<u>both</u> factors are true):

- The welfare of a child is the subject matter of the proceedings
- The paternity of the child is a fact in issue

Consider refusing the application if:

- Neither of the above factors are true. (But note distinction between DNA paternity testing for family law cases and DNA testing in asylum and immigration cases). [Refuse having regard to s24(a) and (b)]

The terms of the grant will be:

- The parties will each pay 50% of the cost of the DNA testing
- The Board will pay half of the applicant's share– in other words, 25% of the total cost
- The applicant will pay the remainder of their share up front (another 25%)
- If the applicant's contention regarding the alleged paternity of the child is found to be true, the Board will refund the 25% that the applicant paid up front.
- The solicitor will be required to make an application for the costs of the DNA testing to the Court and advise the other party in advance. If successful in this they should inform Legal Services.

The above terms will be incorporated into any amended legal aid certificate authorising DNA testing.

For accounting purposes, the monies recovered in respect of DNA testing should be lodged to the Board's main current account and should be recorded as "other" on the bank lodgement notification form with a brief explanation provided, i.e. DNA testing and legal aid certificate number.

DNA testing in asylum and immigration cases

Applications in relation to DNA testing for the purpose of immigration and asylum related matters will be dealt with on a case by case basis. Legal Services may attach such conditions to such grants as it may from time to time see fit.

8. Applications for legal aid to take proceedings against the Board

On occasions law centres receive applications for legal services where the intended defendant (or one of the co-defendants) will be the Legal Aid Board itself. This most often (but not exclusively) takes the form of a judicial review of a decision of the Board, or an action in professional negligence.

The Board has developed a system whereby:

- **Applications** for legal aid to take proceedings against the Board are dealt with through Head Office, Cahirciveen, by the Director of Decision Making and Support.
- **Defence of actions** against the Board are the responsibility of the Director of Civil Legal Aid who is based in Dublin.

Any person may approach a law centre and apply for legal services to take legal proceedings against the Board. The law centre will consider the application as usual and then forward it to the Director of Decision Making and Support. Once received in Head Office, the file is clearly marked as one to be handled on a restricted circulation basis. EOS, the Board's case management system, has been designed to facilitate the restriction of a case to specified staff. The Director of Decision Making and Support, in consultation with the managing solicitor, or solicitor who has conduct of the case, will restrict the case to specified staff in Head Office and the law centre.

The Director of Decision Making and Support (or staff in Legal Services under the supervision of the Director) will consider the application. Having regard to the material supplied by the applicant's solicitor and in the absence of the application being clearly spurious or vexatious, a decision is usually taken to approve the engaging of a barrister to consider the matter. The application is progressed in the normal manner, subject to a liberal interpretation of the merits criteria in the Act. The purpose of this approach is to ensure that the Board gives every opportunity to an applicant who has to rely on it for legal services, particularly where it relates to potential proceedings against the Board.

In order to further develop this approach, to respond to concerns about the provision of opinions from barristers to Head Office and to deal with what is an exceptional set of circumstances, the following approach is to be adopted:-

- the applicant's solicitor should obtain from the barrister an opinion on the likelihood of obtaining leave from the High Court to issue judicial review proceedings if that is the remedy being sought;
- assuming that the response to the issue of leave is favourable, the barrister should express an opinion on the prospects of an applicant being successful in the actual judicial review proceedings, including, in particular, an indication of the likelihood of success; for example, applicant has a better than 50-50 chance of succeeding in the proceedings;
- if the matter is a professional negligence matter the barrister should express an opinion on the prospects of the applicant being successful; for example, applicant has a better than 50-50 chance of succeeding in the proceedings;
- the applicant's solicitor should then prepare a formal application for a legal aid certificate, in accordance with standard practice, and express an opinion on the granting of legal aid with specific reference to the provisions of section 24(a) and (b) of the Act and also having regard to section 28(2)(c) of the Act;
- the application should be submitted to the managing solicitor of the law centre (this will not be relevant if it is the managing solicitor who has conduct of the matter);

- the managing solicitor should review all the papers, in particular the opinion from the barrister and the opinion of the applicant's solicitor; and
- the managing solicitor should then form his/her own professional opinion on the application and forward that opinion with the application to Head Office.
- If the managing solicitor expresses an opinion that legal aid should be granted with specific reference to the provisions of Section 24 of the Act, a legal aid certificate should be issued for the appropriate proceedings.

It is to be noted, however, that the procedures set out above were predicated on the basis that a solicitor/barrister would form an opinion that legal aid should be granted. Circumstances arise where a solicitor or barrister, as appropriate, might form an opinion that legal aid should not be granted.

The following approach is to be adopted in circumstances where an applicant's solicitor forms an opinion that a certificate should not be granted having regard to the provisions of the Civil Legal Aid Act 1995:-

- the solicitor should have regard to the safeguards set out above and the "*liberal interpretation of the merits criteria"* as referred to above;
- it is open to the solicitor to form an opinion that the application for legal aid is one for which legal aid would not be granted, having regard to the merits criteria in the Act;
- nevertheless and notwithstanding that opinion, the solicitor may obtain, at his/her discretion, an opinion from a barrister before communicating formally with the applicant;

The solicitor should write to the applicant:

- setting out the facts and the appropriate legal advice;
- advise the applicant that he/she is not in a position to recommend the grant of a legal aid certificate;
- state the reasons why the solicitor is not in a position to recommend the grant of legal aid, having regard to particular sections of the Act;
- invite the applicant to submit any observations either to the solicitor or to the Managing Solicitor;
- consider any observations received, and
- arrive at a final opinion on the refusal of the application for a legal aid certificate; and
- if the solicitor remains of the opinion that legal aid should be refused, a formal application should be prepared, in accordance with standard practice.

The application should be submitted to the managing solicitor of the law centre (unless it is the managing solicitor who is acting for the applicant):

- the managing solicitor should review all of the papers and in particular any opinion from a barrister and the opinion of the applicant's solicitor
- the Managing Solicitor should then form his / her own professional opinion on the application and forward that opinion, with the application, to Head Office;
- in the event that the application is refused the applicant should be notified of the refusal and the reasons for the refusal in accordance with standard practice;
- however, the applicant should be given the specific option of authorising the provision of additional material to Legal Services for the purpose of a review of such a negative decision and should also be advised that specific arrangements will be in place to ensure that access to any material provided is strictly controlled;
- subject to any review, an applicant has the same right of appeal as in any other case, and may provide such additional information to an appeal committee as the applicant considers appropriate; and
- the appeal committee will make a decision on the application and the applicant will be advised of the decision.

Nothing in the foregoing precludes an applicant, who has been fully informed as to the specific arrangements that are in place for dealing with these applications, from providing any information about the case direct to Head Office at any time while the application is under consideration.

Procedure 5.1 Restricting a case on EOS

Use this procedure with caution! Once a case has been restricted, only the persons to which the case has been restricted can access the case. There is no way for IT to remove a restriction placed on a case – only a user to whom the case has been restricted can do so.

1. Click on the twisty beside the case number and person's name.
2. Click the "Restrict Case" link
3. Use the "Resources for case law centre" combo box to select the names of the users to which you are restricting the case to.
4. Click the "Restrict Case" button.

Only persons to whom the case has been restricted have access to the case on EOS. This also means that, if a case is restricted by a user in Legal Services, and they do not include law centre staff on the list of users to whom the cases is restricted, a situation may arise where a law centre is unable to access its own case.

A restricted case will not appear on EOS reports that are run by staff, including Head Office staff, who do not have access to the case.

9. Applications for legal aid for court reviews of rejected personal insolvency arrangements

A personal insolvency arrangement is a type of solution which allows an insolvent person – a person who is unable to pay their debts as they fall due – to restructure their debts, including their secured debts (such as their mortgage). It must be approved by a qualified majority of creditors at a creditors meeting (or where there is just one creditor, by the sole creditor). Section 115A of the Personal Insolvency Act 2012 (as amended) provides a procedure whereby a personal insolvency practitioner can apply, on behalf of a debtor, for a personal insolvency arrangement to come into effect notwithstanding the fact that the proposal has been rejected by creditors at a creditors meeting or by the sole creditor. Legal aid is available under the Abhaile scheme for these applications. Regulation 13(10) of the Civil Legal Aid Regulations 1996 to 2016 provides that the financial eligibility criteria do not apply to such applications, which the applicant makes directly to Legal Services. The merits criteria in the Act do apply. The following guidelines are designed to aid decision makers in deciding whether or not to grant legal aid in such applications.

Check to see if application is within the scope of the service

The decision maker must in the first instance ensure that the application falls within the scope of the Abhaile scheme. That involves an examination of the following criteria:

1. The application must relate to an application under section 115A of the Personal Insolvency Act 2012 (as amended), to have a personal insolvency arrangement come into effect notwithstanding that it has not been approved in a creditors meeting or by the sole creditor. Legal aid is not available under Abhaile for any other type of court application. In particular it is not available for an application under section 119A for a court review of a rejected variation of a personal insolvency arrangement. (Check that the PIA document is headed "Standard Personal Insolvency Arrangement" rather than "Standard Variation of Personal Insolvency Arrangement – if the latter, the application is under s119A and falls outside the scope of Abhaile).

2. The application relates to a court review of a rejected personal insolvency arrangement. The section 115A procedure is not available in relation to other forms of personal insolvency (debt relief notices, debt settlement arrangements, bankruptcy). The applicant must enclose a copy of the personal insolvency arrangement.
3. The person must be insolvent – that is, they are unable to pay their debts in full as they fall due.
4. The debts covered by the proposed PIA include a "relevant debt" i.e. a debt which is:
    a. Secured on the person's principal private residence – i.e. the home in which the person ordinarily lives; and
    b. The person was in arrears on the mortgage on that home on 1st of January 2015, (or they were in arrears before then, but have entered into an alternative repayment arrangement with the lender).
5. A person **is not eligible** if their home is disproportionate to the reasonable living accommodation needs of the borrower and his or her dependents.
6. The person's Personal Insolvency Practitioner must consider that there are reasonable grounds for applying to the Court to have the PIA "confirmed". The PIP must set out these grounds on the Application for Legal Services form.

Where these matters are not in order it does not necessarily mean legal aid is not available to assist the debtor with their particular problem. It only means that the application is not within the scope of the Abhaile scheme. The correct course of action may be for the decision maker to advise the applicant that legal aid is not available under the Abhaile scheme and that they should make a suitably amended application to a law centre on the normal application form. It may be that the applicant will insist on having the application determined. As the application form specifically relates to legal aid for a court review of a rejected PIA, the decision maker may form a view that legal aid may be refused under section 24 and 28(2)(b), as the applicant does not have as a matter of law grounds for instituting the proceedings the subject matter of the application.

The "reasonable living accommodation needs" of the borrower

The purpose of this particular term of the Abhaile criteria is to exclude borrowers who may wish to retain what might be categorised as "trophy homes". Section 23 of the 2012 Act requires the Insolvency Service of Ireland (ISI) to publish guidelines as to the reasonable living expenses (RLEs) of debtors who wish to enter personal insolvency solutions (including PIAs). These include guidelines as to calculating the reasonable living accommodation needs. The guidelines are available on the ISI website.

A decision maker is not expected to carry out a calculation of these needs in the same way a PIP would, however where a person's accommodation costs clearly appear excessive to their family size this may constitute grounds for deciding that the person does not meet the criteria for being granted legal aid without reference to their financial resources under Regulation 13(10).

The concept of a "relevant debt"

It is important to have regard in particular to the presence or otherwise of a "relevant debt" – the person's principal private residence, where that person was in arrears on the mortgage on 1st January 2015, or was in arrears before that date but had entered into an alternative repayment arrangement with the lender. That is a key factor which opens up access to the PIA review procedure.

A principal private residence (PPR) is defined in the 2012 Act as meaning
"a dwelling, in which the debtor ordinary resides, and includes
(a) any building or structure, or
(b) any vessel (whether mobile or not)

together with any garden or portion of ground attached to or occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling."

There are a number of matters to consider:

- The definition, under the 2012 Act, of a person's PPR and whether there is a PPR included in the PIA for the purposes of the 2012 Act.
- Whether the borrower was in arrears on 1st January 2015. In this regard, the courts have held that a late payment (or even a series of late payments) do not constitute arrears for the purposes of this provision. Arrears of more than 31 days are effectively required.
- An alternative repayment arrangement has been defined (see *Re Hill & Personal Insolvency Acts* [2017] IEHC 18) as "an arrangement as a result of which some alternative terms and conditions as to the repayment of a secured loan were agreed to govern the repayment obligations of the borrower". In the absence of evidence of an ARA being agreed between the debtor and their lender this may not be satisfied.

A decision maker may, having regard to the above criteria, form a view that there is no relevant debt and that this is a basis for forming a view that the application does not fall within the criteria for being granted legal aid without reference to their financial resources (Regulation 13(10)) and/or should be refused legal aid under section 28(2)(b) on the basis that the person does not have as a matter of law grounds for taking the application. In that regard the words "ordinarily reside" should be given their ordinary and natural meaning. It should be noted that the central object of the s115A procedure is to allow the debtor to continue to reside in their PPR. If the debtor has moved out of the PPR on any more than a temporary basis then this is may not be satisfied.

Time limit for instituting proceedings

In principle an application for legal aid should fall to be determined before proceedings are instituted.

The time limit for instituting proceedings is fourteen days from (and including) the date of the creditors meeting (or if there is only one creditor, the date that the notice that the sole creditor has rejected the PIA was served on the debtor). There is no jurisdiction on the Court to extend this limit. Where this deadline is expired, and proceedings have not yet been instituted, legal aid must be refused (under section 24(a) and (b) and section 28(2)(b)) for the reason that the time limit for instituting proceedings is expired.

In practice, it is our experience that the debtor/PIP may have instituted the proceedings prior to legal aid being sought. If this is the case (and confirmation should be sought from the applicant and copies of the court documents obtained) the application may be considered regardless of the statute expiry date

Creditors meeting

As noted above a personal insolvency arrangement will not come into effect unless it is approved at a creditors meeting (unless there is just one creditor, where that creditor can serve a notice instead).

Section 115A(9)(g) of the 2012 Act provides that a court cannot make an order under section 115A unless either:

- at least one class of creditors has accepted the proposed Arrangement, by a majority of over 50 per cent of the value of the debts owed to the class.
- there is just one creditor

If you receive an application for legal aid, ask for a copy of the results of the creditors meeting.

If this criteria is not met the application (to the court) cannot be granted. This being the case the decision maker may form a view that legal aid should be refused under sections 24 and 28(2)(b), (c), and (e).

The merits of s115A cases generally

The applicant's PIP must certify that there are reasonable grounds for applying to the court to have the PIP confirmed. This is a requirement of the Abhaile scheme and of Regulation 13(10), which disapplies the financial eligibility test for applications under the Abhaile scheme. It is important to note that Regulation 13(10) only disapplies the means criteria. The merits criteria still apply, and although we will take due regard of the PIP's certificate that there are reasonable grounds to have the PIP confirmed, the decision maker must make their own judgement as to whether the requirements of sections 24 and 28(2) (other than section 28(2)(a)) are met by the application.

The criteria the court must consider when deciding on an application are found in section 115A(8) and (9). The criteria in section 115A(8) and (9) must be satisfied for an order to be granted.

Section 115A(3) provides that within 14 days of being served with the proceedings a creditor may lodge a notice with the court setting out their objections to the proposed PIA. The grounds upon which objections to a PIA can be raised are found in section 120:

> "a) that the debtor has by his or her conduct within the 2 years prior to the issue of the protective certificate under section 95 arranged his or her financial affairs primarily with a view to being or becoming eligible to apply for a Debt Settlement Arrangement or a Personal Insolvency Arrangement;
> (b) the procedural requirements specified in this Act were not complied with;
> (c) a material inaccuracy or omission exists in the debtor's statement of affairs (based on the Prescribed Financial Statement) which causes a material detriment to the creditor;
> (d) the debtor, when the Personal Insolvency Arrangement was proposed, did not satisfy the eligibility criteria specified in section 91;
> (e) the Personal Insolvency Arrangement unfairly prejudices the interests of a creditor;
> (f) the debtor has committed an offence under this Act, which causes a material detriment to the creditor;
> (g) the debtor had entered into a transaction with a person at an undervalue within the preceding 3 years that has materially contributed to the debtor's inability to pay his or her debts (other than any debts due to the person with whom the debtor entered the transaction at an undervalue);
> (h) the debtor had given a preference to a person within the preceding 3 years that had the effect of substantially reducing the amount available to the debtor for the payment of his or her debts (other than a debt due to the person who received the preference).

Section 115A(8)(b) effectively allows these objections to be raised in relation to an s115A application in the same way they might have been had the PIA been approved by the creditors. A decision maker may wish to consider these grounds if they are raised by a creditor in a notice of objection.

If you receive an application for legal aid, ask if proceedings have already been instituted. If they have, ask for a copy of both the initiating documents (the originating notice of motion and the statement of grounds) and any Notice(s) of Objection served by the objecting creditors at this point.

There are two main issues upon which court reviews of rejected PIAs have turned:

- The concept of "unfair prejudice"
- The ability of the debtor to continue to reside in their home long term

The concept of "unfair prejudice"

Section 115A(9)(f) refers to the PIA not being "unfairly prejudicial" to the interests of any interested party.

The jurisprudence in relation to unfair prejudice appears to be particular to the circumstances of the particular cases concerned. However it appears that the Court will in particular not allow a term which involves "warehousing" a part of the debt (ie. a term under which the

creditor will not seek any repayments on the "warehoused" part of the debt for a particular period) if that term is regarded as being overly restricted – e.g. where the warehousing will last the lifetime of the debtor and have 0% interest, or where the creditor will be restricted in the future in renegotiating that warehousing.

A decision maker may wish to examine any term in relation to warehousing debt. However, they should be careful about refusing legal aid under this point without sight of the Notice(s) of Objection as it may be that the objection falls on other grounds. The Court has rejected any contention that warehousing itself runs contrary to the 2012 Act and for this reason it should also be noted that the mere fact that there is a term which involves warehousing will not necessarily act as a bar to the coming into effect of the PIA. Unfair prejudice must be caused by the term.

It also might be the case that terms which depart from the standard PIA terms may be examined. Again it may be difficult to do this in the absence of the notice of objection. In *Re JD & Personal Insolvency Acts* [2017] IEHC 19 the High Court overturned a Circuit Court decision that where an estranged co-debtor did not consent to a mortgage the Court could not make an order as it would effectively change the terms of the mortgage. Ms Justice Baker held that the fact that the debtor was not the sole owner of the home concerned should not prohibit them availing of the section 115A procedure.

The ability of the debtor to continue to reside in the PPR

The objective of the court review procedure is to allow the debtor to continue to reside in their PPR. Section 115A(9)(b)(iii) and 115A(9)(d) cover this aspect of the test. The key factor is that the cost of allowing the debtor to reside in their PPR should not be disproportionally large. This may be a factor for example if the loan repayments will be large or if the PPR requires substantial work to be done to it to render it habitable.

A decision maker is not expected to conduct the sort of examination an accountant/PIP might of the debtor's finances in order to determine whether or not the debtor will be able to continue to reside in the PPR. However if it is obvious in the circumstances of the case that the debtor will not realistically be able to do so then this might form a reason for refusal having regard to sections 28(2)(c) and (e).

Conduct of the debtor

Section 115A(10) requires the court to have regard to the conduct of the debtor in the two years prior to a protective certificate (a court order which grants the debtor protection from their creditors while seeking to put in place an insolvency solution – similar to examinership in company law) when deciding whether or not to approve a PIA. In addition s120(a) allows a creditor to object where the debtor has arranged their financial affairs with the aim of being able to avail of an insolvency solution. The court might not grant an order in circumstances where the debtor had not engaged in the process in good faith.

Applications for legal services when case has concluded or is near conclusion

Paragraph 51 of the Abhaile solicitors panel terms and condition provides that "Legal services cannot be provided under the PIA Review Legal Aid Service without a valid legal aid certificate."

Regulation 11(2) of the Civil Legal Aid Regulations 1996 to 2016 provides that "A certificate which is granted after the commencement of the proceedings in respect of which it is sought shall not be extended to cover any action taken or costs incurred prior to the issue of the certificate." While this does not serve to prevent legal aid being granted in relation to proceedings already issued (and given the fourteen day time limit to issue proceedings it may be necessary for a debtor to issue proceedings in the absence of legal aid in order to defeat the statute) it does mean that a person is not legally aided in relation to any actions taken before the certificate is granted. While there is no explicit prohibition on granting legal aid in a case where proceedings are concluded a decision maker could take the view that Regulation 11(2) effectively amounts to an implicit prohibition on doing so. Legal aid could be possibly be refused under section 28(4)(e) of the 1995 Act in such circumstances.

The wording of legal aid certificates
Note that although the rules of court require the application (to the court) to be made in the name of the PIP, the application for legal aid is made in the name of the debtor and therefore if legal aid is granted the legal aid certificate should be in the name of the debtor. The PIP is regarded as the debtor's agent for the purposes of the court application.

General
The decision making process in relation to section 115A applications will be kept under review as jurisprudence continues to emerge from the Courts in relation to these applications. It is important to note that these guidelines do not restrict the authority of any decision maker to refuse legal aid under any provision of the Act where they form a view that it is necessary to do so.

At its inception it was expected that the Abhaile scheme would run for a three year period, i.e. until mid-2019. We may terminate the operation of the legal aid panel at any time upon giving one months notice to the panel members.

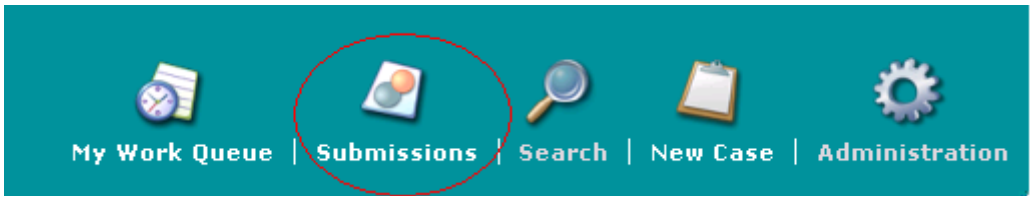
The area of personal insolvency law is still an evolving one and these guidelines will be kept under review as the law develops over the lifetime of Abhaile.

10. Granting legal aid

Once a decision is taken to grant a legal aid certificate the certificate should be granted using EOS and the law centre notified. It is good practice, when specific terms are being attached to the grant of legal aid, to draw the law centre's attention (via email) to those terms.

Procedure 5.2 Granting a legal aid certificate

1. Click the "Submissions" button at the top of the screen in EOS (as illustrated below, not to be confused with the Submissions tab in a case).



2. Choose to filter Submission "For My Decision" and click "View Submissions".
3. Find the submission you want to grant and click the Submission Identifier "SUBx" link to open it.
4. Review the submission as per the guidelines above.
5. In the "Actions" box on the right hand side of the screen, click "Grant this Submission".
6. You are given the option to change the type of proceedings which are being authorised. Normally these should be left as is.
7. If there are additional authorities (services) requested, such as a witness, you must now choose whether they should be Included or Excluded in accordance with the terms of this Circular. If you do not have authority to grant the services sought, you should Exclude them and advise the solicitor that they must make a new submission for an amended legal aid certificate to Legal Services.
8. In most cases you may now simply click "Grant" and the certificate will be granted.
9. The granted certificate will be generated and appear on the Documents tab in the case. You should go to the Documents tab and click the checkbox "Available to Legal Services".

11. Refusal of legal advice / aid

Throughout this Part we have given guidelines as to when legal aid should be granted and/or refused. We now turn to the question of what the procedure is when a decision maker has either:

- Formed an opinion that legal advice/aid should be refused, but that they do not have the authority to refuse it; or
- Decided to refuse legal advice/aid

Referring a decision to a higher decision maker

The decision maker may form a view that the application should be refused or partially granted, but that they do not have the authority to do In this case the application should be referred to a higher decision maker. This is usually either the head of a unit (HEO) or Assistant Director where appropriate. In the absence of the Assistant Director, or having consulted with the Assistant Director, it may be appropriate in certain cases to refer the case to the Director of Decision Making and Support. All cases involving actions against the Board or an appeal to the Supreme Court must be referred to the Director of Decision Making and Support or the Assistant Director in their absence.

Where a referral is made by a decision maker who could have granted the application, it must be accompanied by a recommendation in the format below. This is not necessary where the initial decision maker did not have the authority to grant the application and only handled it for processing purposes (i.e. by the staff who monitor the Legal Services Submissions Inbox).

Recommendation to decision maker recommending a refusal

Recommendation

Applicant's name:	
Case Ref (EOS): **Sub No:**	
Solicitor: **Law Centre:**	
Subject matter of application	

Facts as presented by solicitor:

Is the solicitor recommending a "grant" or a "refusal"?

Analysis of facts, relevant provisions of legislation in recommendation:

Submitted for consideration by: **Date:**	

Making the decision

The higher decision maker will consider the submission from the solicitor and the recommendation made by the staff member who initially considered the application, and take a decision to grant or refuse.

If the decision is made to refuse, it must be grounded in the Act and Regulations and there must be reasons to refuse, **which must relate to the grounds.** The decision maker must prepare a record of the decision stating the grounds and reasons. EOS facilitates this by allowing the decision maker, when refusing, to select the particular grounds under the Act they are refusing. They can then type a note of the reasons. The reasons should be specific to the case – it is not acceptable to use "cut and paste" text. Above all they must directly relate to the grounds. The decision should be recorded on EOS and only in exceptional circumstances (e.g. if a decision needs to be made and the IT system is unavailable) should the record be handwritten and if it is it must be scanned and recorded on EOS at the earliest possible opportunity.

Communicating the refusal

Once a decision, at whatever level, is taken to refuse legal aid, it must be communicated to the applicant. This will usually be done via their solicitor unless it is done before legal advice has been granted or there is an exceptional reason not to do so.

It is very important that applicants are made aware (and **informed in writing** when the decision issues) that there are procedures in place for decisions at first instance to be reviewed. There is also an appeal procedure in place for all decisions for the Board. These are heard by a statutory committee of the Board, the appeal committee, who have the final say.

This refusal letter is based on an application for legal aid which has been refused having regard to the merits criteria. It can be adapted for any refusal of an application to the Board except for financial eligibility grounds.

Sample refusal letter

10th March 2015

Client Name: Mark Markson
Subject Matter: Defence of claim for liquidated sum
Application for: Legal Aid

Dear John,

I refer to the application for legal aid that you made on behalf of the above client on 5th March 2015.

The statement of facts you made on the clients behalf, the material submitted in support of the statement, and the recommendation you made has been considered by the Board. The following decision has been made:

Having had regard to section 24 (a) and (b) and section 28 (2) (c) and (d) of the Civil Legal Aid Act 1995, the Board is refusing legal aid

The reasons for this decision are:

- **Section 28(2)(c):** because the applicant is not reasonably likely to be successful in the proceedings, assuming that the facts put forward by him or her in relation to the proceedings are proved before the court or tribunal concerned.

  Reason: The claim is for a liquidated sum which the applicant accepts that he is owed. There is no defence to these proceedings. Entering an Appearance will only delay judgement being obtained and increase the applicant's costs.

- **Section 24(a):** a reasonably prudent person, whose means were such that the cost of seeking such services at his or her own expense, while representing a financial obstacle to him or her would not be such as to impose undue hardship upon him or her, would be likely to seek such services in such circumstances at his or her own expense,

  Reason: The above being the case, a reasonably prudent person would not pay for a service which would ultimately cost him more money in legal costs.

- **Section 28(2)(d):** because having regard to all the circumstances of the case (including the probable cost to the Board, measured against the likely benefit to the applicant) it is not reasonable to grant it.

  Reason: Contesting these proceedings will only increase the applicant's costs. There is no benefit to the applicant in doing so. Having considered this, I do not believe it is reasonable to grant legal aid to the applicant.

- **Section 24(b)** a solicitor or barrister acting reasonably would be likely to advise him or her to obtain such services at his or her own expense.

  Reason: A solicitor or barrister acting reasonably would be unlikely to advise a person to obtain legal services where he ultimately will gain no benefit from the proceedings and will only bring further costs on himself.

Applicant's options
The applicant has the option to request a **review** this decision. A review means that the applicant, through you as their solicitor, or on their own initiative, can submit further information and ask that the decision be re-considered in the light of such new information. A request for a review must be submitted within one month of the applicant being notified of the decision. I will notify you of the outcome of the review after the review has been completed..

The applicant may also **appeal** the decision to an *appeal committee*, which consists of members of the Board of the Legal Aid Board. They will consider your appeal and take a decision, which will usually be either to confirm the decision, or they may overturn this decision and grant legal aid. The Committee have wide powers and are not confined to either of these approaches. Usually, an appeal does not involve the applicant submitting any further information to the Board. However, if the applicant asks for a review and submits further information, they will have a further month after we tell them the outcome of the review to appeal. I will notify you of the outcome of the appeal once I have received the decision from the Secretary to the Appeal Committee. An appeal must be submitted within one month of the applicant being notified of the decision.

You are required to immediately notify the applicant of this decision and inform him/her of his/her options to seek a review and or appeal.

Please take instructions from your client and let me know if they wish to take either of these steps. Any response must be received by **10th April 2015.**

Yours sincerely,

_____
Jane Jones
Legal Services

Refusal under the financial eligibility criteria alone

Law centres have delegated authority to refuse legal services under the financial eligibility criteria. Where a refusal is under the financial eligibility criteria (and only the financial eligibility criteria), the letters in Chapter 4 of the ➔ **Administrative Procedures Handbook** should be used.

Refusals of legal aid at law centre level

Managing solicitors have authority to refuse legal aid in the same circumstances in which they have authority to grant it. In addition managing solicitors also have authority to refuse legal services on the basis that the applicant does not satisfy the financial eligibility criteria. Letters of refusal must be sent to the applicant and:

- In the case of a refusal on the financial eligibility criteria alone must follow the format in Chapter 4 of the ➔ **Administrative Procedures Handbook**
- In any other case the format of the letter above, substituting the appropriate decision, grounds, and reasons but otherwise following the format exactly.

Precedent letters available on EOS must be used.

12. Withdrawing legal services from a client before a case has concluded

The Board endeavours to provide a quality service to every client, from the moment they apply to the time the case is concluded and the file closed. However, circumstances may arise where it may be necessary to withdraw legal services from a client before the case has concluded. This generally occurs either because the applicant has become financially ineligible, or the solicitor-client relationship has broken down.

The process of withdrawing legal services falls under three categories:

- **Withdrawal of legal advice:** this applies when a legal aid certificate has not been granted.
- **Termination of legal aid:** this ceases the provision of legal aid by the Board.
- **Revocation of the legal aid certificate:** this differs from termination in that the legal aid certificate is held to have never come into being. While the outcome may appear the same, there are costs implications for the client, as they may be asked to pay the full costs the Board incurred in providing them with legal services. Revocation, as opposed to termination, rarely occurs in practice.

Whichever option is being chosen, the procedure is relatively similar. The phrase "withdrawal of legal services" is used to encompass all three.

Instances where withdrawal of legal services does not apply

It is not considered that the procedures below are necessary where the client fails to give instructions in the sense that he or she is no longer in contact with the Board. In those circumstances it is considered appropriate to close the file and to notify Legal Services where counsel has been authorised / retained in order that a proper record can be kept of outstanding fees to counsel.

Likewise it is not considered necessary to apply to court to come off record in such cases where the proceedings are dormant / inactive. If however the proceedings are active and an application to come off record is necessary, consideration should be given to seek to terminate the legal aid certificate.

Withdrawal of legal advice

Section 26(7)

Withdrawal of legal advice ceases the provision of legal advice by the solicitor. Section 26(7) of the Act provides that the Board may cease to grant legal advice where it considers that "*it is no longer reasonable*" for a person to continue receiving it.

Examples of circumstances in which the Board may be justified in withdrawing legal advice are provided under Regulations 4(6) and 13(5) of the Regulations and include:

- Failure to comply with a condition of the grant of legal advice (e.g. being more than 21 days in arrears of an instalment arrangement)
- Where the applicant's financial circumstances change (➔ Administrative Procedures Handbook)
- Unreasonable behaviour (see the section on unreasonable behaviour below – the same principles apply),
- if the applicant's own behaviour causes the cost of the Board to provide legal advice to unreasonably increase (e.g. if the applicant, dissatisfied with the advices of Counsel, insisted on second or further opinions to be obtained)
-

Revocation of legal aid certificate

Regs. 9(4) and 13(5(b)

Revocation differs from termination in that the legal aid certificate is held to have never come into being. While the outcome may appear the same, there are costs implications for the client, as they may be asked to pay the full costs the Board incurred in providing them with legal services.

Revocation, as opposed to termination, rarely occurs in practice. The most common circumstance where it would occur is under Regulation 9(4) – i.e. where a person has made an untrue statement of income or capital in their application for legal services form or where a person has failed to disclose any material fact. The Board might exercise its discretion to revoke a certificate may come about either as a result of:-

- a person's law centre advising the Board of the relevant circumstances; or
- the Board receiving information from another source.

The **change in circumstances** procedure in the ➔ **Administrative Procedures Handbook** details what a law centre must do if it becomes aware that a person's actual means are different from what was on their application form. Of particular note, solicitors should ensure that where an affidavit of means is required to be sworn during proceedings, that it is immediately compared with the client's application form to ensure it does not materially differ.

Termination of legal aid certificates

Reg. 9(3)

Termination of a legal aid certificate ends the Board's provision of legal aid to a client, from the date the certificate is terminated. The circumstances where a legal aid certificate fall into two categories: grounds related to a persons behaviour, and grounds unrelated.

Grounds for termination other than a person's behaviour

There are a number of grounds on which the Board might decide to terminate a certificate. Some of these grounds are unrelated to the person's behaviour, namely:-

- at the client's own request (Regulation 9(3)(a)) – this is almost unknown to happen. Where a case is settled, there is no need to seek termination as the certificate is spent once proceedings are concluded.
- where the person is more than 21 days in arrears in paying the contribution or is otherwise not complying with a condition attached to a certificate (Regulation 9(3)(b)); This is rarely an issue save where an instalment arrangement has been agreed, as clients will generally pay the contribution on acceptance of the legal aid certificate.
- where the person is no longer eligible for legal aid on financial grounds (Regulation 9(3)(d)) - the **change in circumstances procedure (➔ Administrative Procedures Handbook)** applies; or
- where it is considered unreasonable in the particular circumstances of the case, which may not relate to the client's behaviour, that the person would continue to receive legal aid (Regulation 9(3)(e) e.g, new evidence comes to light in the case that indicates that it is unlikely that the case will be successfully prosecuted.

As noted above terminations on the first reason are almost unknown and terminations for the second reason are relatively rare. Where the termination procedure is initiated for any of the above reasons, the person should communicate to the Board through the law centre in relation to showing cause, as these relate to entirely objective matters.

Unreasonable behaviour by persons in receipt of legal services

Reg. 9(3)(c) and (e)

In addition the Board may terminate legal services on the basis of the person's behaviour including where it considers that the person is behaving unreasonably in the context of the court proceedings. It is considered that there are two particular aspects to this namely:

- the person's general behaviour; and
- the person's approach to, or instructions in, the court proceedings.

The ➔ **Administrative Procedures Handbook** gives examples of what might constitute unreasonable behaviour. These are examples only and in determining the unreasonableness of any behaviour regard has to some extent to be had to the nature of the issue that is the subject matter of the dispute. For example it is acknowledged that persons who are facing applications to have their children taken into care are likely to be experiencing a number of problems and to be very emotional about the prospect of losing the care of their child. It cannot be expected that their behaviour will necessarily match the behaviour of for example a client with a plaintiff personal injury case. This is not to say that legal aid will *never* be terminated in such circumstances – the Board will always have regard to any threat to the health or welfare of its staff in such instances.

It is possible for the person's approach to the proceedings to constitute behaviour that is considered unreasonable. For example if in a private family law dispute that is likely to require significant resources, the person indicates that they will not entertain any settlement and they insist on bringing the matter to a conclusion through the courts, this could constitute unreasonable behaviour particularly if the other party is willing to negotiate.

In both types of circumstances the general approach should be that the solicitor writes to the client warning them that their behaviour may lead to the termination of legal services. The person is therefore afforded the opportunity to desist from the behaviour. There may be circumstances in which the behaviour is such that it is appropriate to move to the termination process without warning.

When a solicitor makes an application to terminate the legal aid certificate the solicitor should in general write to the person informing them that they have made the application. Again there may be circumstances where it is not appropriate to do so e.g, where the person is posing a physical threat.

The procedure for withdrawal of legal services

1. Where the reason for the withdrawal of legal services in unreasonable behaviour, the person will be warned in writing that their behaviour may lead to the termination of legal services. The person is therefore afforded the opportunity to desist from the behaviour. There may be circumstances in which the behaviour is such that it is appropriate to move to the termination process without warning.
2. The solicitor should write a detailed letter to Legal Services:
    a. Stating that they are recommending the revocation/termination of the legal aid certificate or withdrawal of legal advice, as appropriate.
    b. Giving a detailed account of the circumstances that are giving rise to the recommendation to withdraw services, including a full account of any unreasonable behaviour
    c. Giving the ground in the Regulations under which legal services should be withdrawn
3. Legal Services will consider the request and may inform the solicitor that they do not believe the circumstances warrant the withdrawal of legal services. If however, the decision maker forms an intention to withdraw legal services, they will write to the client informing them of the fact that:

a. An intention to withdraw legal advice/revoke/terminate the legal aid certificate has been formed
b. The ground (citing the relevant provisions of the Act/Regulations) that this step is being taken
c. The reasons why the step is being taken – the contents of the letter from the solicitor (or third party) will be substantively restated, where appropriate
d. The fact that the client will have thirty days to respond to this letter, either directly or through their solicitor showing cause as to why the certificate should not be revoked or terminated or legal advice withdrawn.

4. If no response is received, or the applicant does not show cause, Legal Services will write the client advising them that:
    a. legal services have been withdrawn with effect from a specified date or that the certificate has been revoked
    b. The grounds and reasons for the withdrawal of legal services
    c. The fact that the applicant's response, if one was received, was taken into account when making the decision
    d. The applicant's avenues for a review or appeal
    e. If the certificate is revoked, what the cost implications are for the client

Where there is no breakdown in the client-solicitor relationship and communications are through the solicitor they should remain through the solicitor. However, it is common, in circumstances where withdrawal of legal services is contemplated for the client-solicitor relationship to have broken down completely. In such cases Legal Services will correspond directly with the client and copy the law centre on all correspondence unless it is inappropriate for it to do so.

It is possible for Legal Services to form an intention to withdraw legal services because of information supplied by a person other than a law centre. When this occurs the law centre should be provided with a copy of the correspondence, unless, in the opinion of the decision maker, there are strong reasons not to do so. The procedure above starts from step 3 and the client should be advised to communicate through their solicitor unless it is inappropriate in the circumstances to do so.

Note that it is not possible for an applicant to review or appeal an "intention" to the formation of an intention to withdraw legal advice, or to revoke or terminate a certificate. The review and appeal procedure only comes into play once the final decision to revoke, terminate, or withdraw is made.

Legal services during the "showing cause" period

The Act and the Regulations are silent on what legal services should be provided during the "showing cause period. The following approach should be adopted:

- generally, as it will, in most cases, be the law centre/solicitor which has initiated the process for the withdrawal of services, the law centre/solicitor will most likely have a conflict in terms of providing services but should continue to act to the extent that services need to be provided during the showing cause period. It is emphasised that this is the general approach only and is not appropriate in every case. For example in a child care matter where the basis of the application may be difficulty getting instructions, it may be appropriate to engage in further work until such time as the certificate is terminated;
- if issues arise as to the necessity for the solicitor to engage in work on behalf of the person, the solicitor should request Legal Services for a decision on the matter;
- a law centre should not come off record until a final decision has been made on the application to terminate (including, if the person exercises their option to do so, when an appeal of the decision is decided); unless there are extremely exceptional circumstances and even then only with the express written authority of the Director of Civil Legal Aid; and
- any decision by Legal Services authorising a particular course of action will be made having regard to:-
    - the interests of the person; and

- the interests of staff; and
- the interests of the Board; and
- the provisions of the Safety, Health and Welfare at Work legislation and its impact upon staff of the Board.

Where the Board considers material other than that provided in the application, and is considering refusing the application, the applicant will be:-

- advised that such additional material is being considered and furnished with copies of that material;
- given an opportunity will to submit comments thereon within a specified time period; and
- such comments may be transmitted through the law centre or direct to the Board.

Where the applicant submits further information directly to the Board, the law centre will be given a copy of any such information so as to enable the relevant member of staff to review his/her own opinion and amend same, if appropriate, in light of that information.

Part 6.
Review and appeal of decisions

This part deals with:
1. Reviews and appeals generally
2. Reviews
3. Appeals
4. Submitting an appeal
5. Decision making at the Appeal Committee

Any decision of the Board made by a decision maker at first instance can be **reviewed** and/or **appealed.** This allows the applicant to have their application reconsidered by the decision maker in light of fresh information, or for the initial decision to be appealed to an appeal committee of the Board.

This Part deals with reviews and appeals of decisions other than refusals of legal services on financial eligibility grounds only. The review and appeal procedure in cases of refusal of legal services on financial eligibility grounds only can be found in ➔ **Chapter 4 of the Administrative Procedures Handbook.**

For reviews and appeals of refusals of legal services on financial eligibility grounds, see ➔ Chapter 4 of the Administrative Procedures Handbook

1. Reviews and appeals generally

When the review and appeal procedure applies
It is Board policy, in line with fair procedures, that applicants are told in writing about the review and appeal procedures every time:

- an application for legal services is refused prior to the first consultation (usually but not exclusively, on financial eligibility grounds);
- an application for a legal aid certificate is refused;.
- An application for an authority or amended legal aid certificate is refused;
- An application for a change of solicitor is refused; or
- Legal services are withdrawn.

The procedures are not limited to the above circumstances but apply to any decision of the Board. However, it is important to note that the forming of an "intention" to withdraw legal services is **not** a decision which is reviewable or appealable. The applicant is given a one month period to show cause why legal services should not be withdrawn. It is only at the end of that period, **if** the Board ultimately decides to withdraw legal services, that they may seek a review or an appeal of the decision.

Time limits for reviews and appeals
There is generally a one month time limit for new information in support of a review to be submitted or an appeal to be lodged.

However, if new information in support of a review is lodged, the clock for an appeal to be lodged is **stopped** until the result of the review is communicated to the applicant and then **reset to one month** from the date the result of the review issues.

2. Reviews

An applicant, either through their solicitor or directly, may ask the initial decision maker to **review** any decision. A review means that the applicant or their solicitor can submit further information in writing to the decision maker and ask them to re-consider the decision.

The purpose of the review is to allow the initial decision maker to re-examine – and if appropriate, reverse - their decision to refuse in the light of the new information which is being submitted.

Requesting a review

A review may be requested:

- By the applicant's solicitor, on the instructions of the applicant or;
- By the applicant themselves.

If the applicant themselves requests the review:

- relevant correspondence from the Board will be issued directly to the applicant;
- copies of any additional information furnished directly to the Board by the person will be transmitted to the managing solicitor and solicitor for the purpose of enabling each or either of them to submit an opinion to the Board as to whether or not the initial decision should stand; and
- the applicant will be notified of the managing solicitor and / or solicitor's opinion.

Any information in support of a review must be submitted within one month of the date the decision issues.

Time limit for review

Where an applicant wishes to have a decision reviewed, any further relevant information must be furnished to the solicitor / staff member or the Board within one month from the date on which the applicant was informed of the refusal. It is important to note that the Board cannot review a decision where the information is submitted after that.

Who conducts the review?

In principle the reviewing person is the same decision maker that took the original decision. In practice, all decisions to refuse by managing solicitors will be reviewed by Legal Services if it relates to a refusal of legal aid or advice, or the Director of Civil Legal Aid if it relates to a complaint or request for change of solicitor. Within Legal Services, It may be appropriate for requests for reviews to be referred to the initial decision maker's line manager on a case by case basis. In particular, if no new information is received the review must be conducted by a higher decision maker.

Original decision maker	**Reviewer**
Managing solicitor	Legal Services if relating to a decision to refuse legal services or Director of Civil Legal Aid if relating to a complaint or request for change or solicitor
Legal Services	Legal Services
Director of Decision Making and Support	Director of Decision Making and Support or Chief Executive as appropriate

Conducting the review

Where a decision is being reviewed, the following information will be considered by the Board:-

- the material that was considered in making the initial decision;
- the further information furnished by the person; and

the managing solicitor and / or solicitor's opinion as to whether the decision should stand.

On receipt of a request for a review, a staff member may change their recommendation. Where this is the case, the change of opinion must be substantiated by reference to the facts, the law and the relevant provisions of the Act and Regulations.

If there is no change in the opinion, this must be stated and, at the same time, it must be confirmed that if further information was provided that it has been taken into account.

An applicant who was not provided with a copy of the material comprising the application should be advised that same will be made available. Otherwise, the only material to be provided to the applicant is the opinion of the member of staff, if it has changed.

Communicating the decision

If the original decision is overturned on review, a letter will issue to the solicitor / staff member informing them of the decision.

If the original decision is upheld, the letter of refusal will:-

- state the reason(s) for the refusal;
- confirm that the further information furnished was taken into account;
- advise of the right to appeal the decision to an appeal committee;
- advise that the appeal must be lodged within a period of one month from the date on which the applicant is informed of the refusal;
- be sent to the relevant law centre; and
- be forwarded by the law centre to the applicant.

Sample letter upholding decision – for solicitor

10th April 2015

Client Name: Mark Markson
Subject Matter: Defence of claim for liquidated sum
Review of: Decision to refuse legal aid

Dear John,

On 10th March the above named applicant was refused legal aid. On the 14th March 2015 you asked that this refusal by reviewed in the light of new information which you submitted. The information included the following (outline of information in narrative form and any additional materials)

The decision has now been reviewed in the light of the further information. The outcome of the review is as follows:

The decision made on 10th March 2015 to refuse legal aid stands.
This decision was made having regard to section
28(2)(c) and (d) of the Civil Legal Aid Act 1995

The reasons for the original decision to refuse legal aid were:

- **Section 28(2)(c):** because the applicant is not reasonably likely to be successful in the proceedings, assuming that the facts put forward by him or her in relation to the proceedings are proved before the court or tribunal concerned.

  Reason: The claim is for a liquidated sum which the applicant accepts that he is owed. There is no defence to these proceedings. Entering an Appearance will only delay judgement being obtained and increase the applicant's costs.

- **Section 28(2)(d):** because having regard to all the circumstances of the case (including the probable cost to the Board, measured against the likely benefit to the applicant) it is not reasonable to grant it.

Reason: Contesting these proceedings will only increase the applicant's costs. There is no benefit to the applicant in doing so. Having considered this, it is not considered reasonable to grant legal aid.

The applicant may **appeal** the original decision to an *appeal committee*, which consists of members of the Board of the Legal Aid Board. They will consider the appeal and take a decision, which will usually either be to confirm the original decision, or they may overturn the decision and grant legal aid. The Committee have wide powers and are not confined to either of these approaches.

You should give a copy of this letter to your client and ensure that they are aware that they have the right to appeal. An appeal may be lodged on your client's behalf using EOS. Alternatively your client may, if they wish to do so, appeal directly in writing via post, email, or fax. Any appeal must be lodged within one month from the date the applicant has been notified of the decision. You should therefore immediately notify the applicant of the this decision.

[If the case is at risk of becoming statute barred you should take instructions urgently and you may contact me by phone to discuss the option of an early hearing.]

Yours sincerely,

_____
Jane Jones
Legal Services

Sample letter upholding decision – direct to client

10th April 2015

Subject Matter: Defence of claim for liquidated sum
Review of: Decision to refuse legal aid

Dear Mr Markson,

On 10th March the application your solicitor made for legal aid for you in the above matter was refused. You have requested a review of this decision in the light of new information which you submitted on the 15th March 2015. The information included the following (outline of information in narrative form and any additional materials)

The decision has now been reviewed in the light of the new information. The outcome of the review is as follows:

The decision made on 10th March 2015 to refuse legal aid stands.
This decision was made having regard to section
28(2)(c) and (d) of the Civil Legal Aid Act 1995

The reasons for the original decision to refuse legal aid were:

- **Section 28(2)(c):** because you are not reasonably likely to be successful in the proceedings, assuming that the facts put forward by you in relation to the proceedings are proved before the court or tribunal concerned.

  Reason: The claim is for a liquidated sum which you accept that you owe. There is

no defence to these proceedings. Entering an Appearance will only delay judgement being obtained and increase your costs.

- **Section 28(2)(d):** because having regard to all the circumstances of the case (including the probable cost to the Board, measured against the likely benefit to the applicant) it is not reasonable to grant it.

  Reason: Contesting these proceedings will only increase your costs. There is no benefit to you in doing so. Having considered this, it is not considered reasonable to grant legal aid.

You may **appeal** the original decision to an *appeal committee*, which consists of members of the Board of the Legal Aid Board. They will consider the appeal and take a decision, which will usually either be to confirm the original decision, or they may overturn the decision and grant legal aid. The Committee have wide powers and are not confined to either of these approaches.

If you wish to appeal you should write to me or fax me using the contact details at the top of this letter. You may also email me at info@legalaidboard.ie. Please include the word "Appeal" in the subject line and mark it for my attention.

If you decide to appeal you should do so as soon as possible as I must receive your appeal no later than **one month from now.** Unfortunately if I receive your appeal after that time, the Committee will be unable to consider it.

Yours sincerely,

_____
Jane Jones
Legal Services

3. Appeals

Reg. 12

An applicant, either through their solicitor or directly in writing (to the Legal Aid Board, Quay Street, Cahirciveen, Co. Kerry), may also appeal to an *appeal committee*, which consists of members of the Board.

They will consider the appeal and take a decision, which will usually either be:

- to confirm the decision maker,
- or they may overturn the decision.

However the Committee are not limited to these choices, and may "otherwise alter" any decision made by a decision maker.

Usually, an appeal does not involve the submission of any further information to the Committee, though it is open to the Committee to ask for such further information.

Time limit

In principle, an appeal must be made within thirty days of the date the original decision issues. It is very important to note though, that if the applicant asks for a review and submits further information, the clock for a review stops and is reset back to one month, from the date the outcome of the review issues.

It is important to note that the appeal committee cannot consider an appeal where it is lodged subsequent to the relevant one month period.
Neither the Act nor the Regulations make any provision for reducing the time periods for the processing of applications. Special circumstances may arise where this is necessary in particular cases. We will adhere to the principles of fair procedures if time constraints arise.

Decision maker cannot appeal own decision

While any decision of the Board can be appealed, it is not open to a decision maker to refer their own decision to the Committee.

It is for the applicant, in conjunction with their solicitor, to decide whether or not to seek a review or appeal of a decision affecting them. A decision maker at first instance is expected to make a decision *as if* they were the final arbiter and not to take into account the fact that a review/appeal option exists. To do so otherwise is to abdicate the responsibility for making the decision in the first instance.

4. Submitting an appeal

All appeals of refusals of legal aid on merits grounds **must** be made on the Appeal Committee Submission form, available on EOS and illustrated below.

Guidelines for making submissions

The outline of the case should include relevant factual information and a concise assessment of the applicant's case in law. The statement should include also, any further comments or information that the solicitor may wish to submit on the matter. A typed version of any hand-written document from the applicant in relation to the appeal should be included where the document is not easily legible.

An opinion from a solicitor is not required for an appeal and the solicitor should not make a recommendation as to whether or not legal aid should be granted in the appeal committee submission.

It is essential that an appeal committee has sufficient information to make a decision on any application. Where a refusal is based upon a point of law, the appeal should set out why it is believed that the applicant has a good case in law. This does not mean that the solicitor has to delve into case law for every appeal or to argue the obvious, in detail, but it does mean that when the legal basis is not very clear, solicitors will have to exercise their own judgement in each case as to how much legal argument should be presented.

A fully completed submission is an absolute requirement for any cases placed before the committee where the refusal was for any reason other than financial eligibility grounds. Legal Services may decline to forward a submission to the Committee where it is not fully completed and refer it back to the solicitor concerned.

Solicitor must submit appeal without delay

It is essential that once an applicant has decided to appeal to the Committee, the appeal must be submitted without delay. You should ensure that the appeal is submitted having regard to the possible expiry of the statute of limitations and any court dates that may be pending. If necessary, contact Legal Services with a view to having the appeal heard at the earliest possible date. If a delay occurs, give an explanation why.

Procedure 6.1 Submitting an appeal to an appeal committee of the Board

1. Open the case.
2. Click on the "Documents" tab.
3. Click on "Add New Document", then choose "AAA.Appeal Committee Submission" from Other Templates. Give it a name such as "Appeal Committee Submission 1st September 2012". Click "Add Document".
4. Click the Appeal Committee Submission you have just created. When the

Download File dialog box appears, click Open.
Complete the appeal committee submission in Microsoft Word. When finished, click the "EOS" tab in the Word Ribbon and click "Publish to EOS".

5. Click the "Available to Legal Services" checkbox beside the Appeal Committee submission.
6. Click on the Submissions tab on the case and clicking the "SUBx" link to the submission.
7. In the Actions box on the right hand side of the page, click "Make an Appeal".
8. In the Documents drop down, choose the Appeal Committee Submission you created.
9. In the Grounds for Appeal, type "See Appeal Committee submission".
10. Click "Make Appeal". The appeal will be made and you will be returned to the Submissions tab.
11. Click on the "Details" tab and in the box "Alerts", click "create"
12. Click "User Roles" and select "Legal Services: Submissions Inbox" from the dropdown.
13. In the Description box, type "Appeal submitted on this case"
14. The "action due" and "delivery date" fields will default to today's date. These can be left as they are.
15. Click "include email" and "acknowledgement required".
16. Click "Save Alert".

Completed submissions, along with all relevant documents relating to the decision should be forwarded/made available on EOS to Legal Services in good time to facilitate the collation and circulation of documents to the appeal committee members. Do not submit documents that are not relevant to the question of whether or not to grant a legal aid certificate. Do not forward any additional documentation at appeal stage unless it is information that has come to light since the decision to refuse was made.

AAA.Appeal Committee Submission
Available via "Other Templates"

Appeal Committee Submission

1. Name of applicant:

2. Subject matter at appeal:

3. If the appeal relates to a Court Order, the date of the Order:

4. The date of any court proceedings pending relevant to the subject matter of the application **including date action becomes barred under the Statute of Limitations 1957 (as amended)**

5. Executive/certifying committee decision: (Specify relevant paragraph of Act / Regulations):

6. Brief outline of the facts of the case:

7. Outline of the court history, if applicable:

8. Outline of the appellant's case in law and how it might apply to the facts:

9. Any other information as may be relevant to the appeal.

10. The following documents should be among those enclosed with this submission. Their relevance to the submission should be referred to at paragraph 8 above. No document should be included that has not been alluded to in the aforementioned

paragraphs. No document should be included that has not previously been furnished to Legal Services:
(a) Application for Legal Aid (together with statement of facts);
(b) The originating court document if court proceedings are in being;
(c) Any other court documents relevant to the appeal
(d) Any submission from the appellant;
(e)Other relevant documents.

SIGNED:_____ **DATE:** _____
Solicitor for the appellant

Direct appeal from applicant
An applicant has the option of appealing directly without involving his solicitor.

An appeal committee submission is normally completed by the relevant solicitor but may be completed by Legal Services in certain limited circumstances, for example where the relationship between the applicant and the solicitor has broken down.

5. Decision making at the Appeal Committee

Oral hearings are the exception not the rule
Generally appeals are decided by an Appeal Committee only on the basis of the papers before the Committee.

An oral appeal would only be appropriate where there are issues of fact that cannot be gleaned from the papers and it is unlikely that the submission of further paperwork will establish them. If a client, who wishes to appeal, requests that they be heard orally by an Appeal Committee, the Director of Decision Making and Support will decide whether that request should be acceded to. This is itself a decision for the purposes of the Act and Regulations and may be appealed to the appeal committee itself. If that happens, the papers relating to the appeal should be forwarded to the Appeal Committee. The Appeal Committee should be notified of the client's wish for an oral appeal and the reasons why the Executive refused that request.

The Committee should consider the papers and determine, on a case by case basis, whether it is in a position to make a decision in the absence of hearing the client in person or if it considers that there may be additional factual information that the client may have and has not already furnished, that will enable it to reach a better informed decision. It is not considered appropriate that a decision of the executive not to accede to a request for an oral appeal is a decision that can be appealed in isolation of the appeal itself.

Role of the secretary
The Secretary of the Appeal Committee shall attend the meetings for the purpose of recording the decision of the committee and clarifying any points in relation to the practice and procedure of the Board. The Secretary is the only member of staff of the Board who shall attend appeal committee meetings.

The Secretary shall not have been involved in the decision making process for any of the appeals being considered at the appeal committee meeting.

Procedure where an appeal committee seeks further information
In considering an appeal, an appeal committee may seek clarification on, for example, points of law, interpretation of the Act and Regulations or policy decisions/precedents established by the Board. Any such material will be furnished to the applicant and the appeal committee. The applicant will be invited to make submissions on such material prior to the appeal committee making its decision.

Where an appeal committee considers material other than that contained in the application the applicant will be advised that:-

- such additional material is being considered and is being made available to the applicant;
- if so requested, an opportunity will be given to submit comments within a specified time period; and
- such comments should be transmitted through the law centre.

Consideration of additional material at appeal stage

In general, an appeal does not involve the submission and consideration of additional material.

However where an appeal committee considers any additional material (i.e. material not considered in the making of the decision) and is considering refusing the appeal, the person will be notified in writing of the nature and content of the additional material and will be furnished with copies of it;

The person will be given an opportunity to submit his / her comments within a time period specified in the letter being issued with the material.

Issuing the decisions of the appeal committee

Having considered the papers generally and any comments, the appeal committee will make a decision on each appeal before it.

Following each meeting of an appeal committee, the secretary to the committee will send a memo of decisions made by the committee to Legal Services. Legal Services will issue an individual letter communicating the decision to each applicant's solicitor or, if the appeal was lodged directly by the applicant, the letter will be sent directly to the applicant with a copy to their solicitor.

Where the appeal committee affirms the refusal, the letter to the person will state:-

- the reason for the decision; and
- The materials on which the appeal was based (list of materials submitted to the Appeal Committee

Part 7.
Recovery of costs

This part deals with:

1. Introduction
2. Recovery of costs from the other party
3. Recovery of costs from legally aided persons
4. Recovering costs
5. Guidelines on the interpretation of financial hardship when recovering costs from legally aided persons

1. Introduction

Section 33 & 34

The cost of legal proceedings represents a large part of the Board's outgoings. Over 80% of the work we do is in family law. In family law, the normal rule is that both sides pay their own costs.

This is different to almost all other types of civil cases, where "costs follow the event" – the loser pays both sides costs. This being the case, it is important that we are able to seek to recover our costs.

There are two aspects to the recovery of costs:

- from the other party to the dispute (either via an award of costs in Court or an agreement as to costs)
- from a legally aided person.

This part of the Circular sets out the position in relation to the recovery of our costs and of statutory obligations on solicitors to ensure that we recover our costs. The relevant sections are 33 and 34 of the Act and, in particular, Section 33 (7) and (8).

The cost may be recovered as a result of the provision of legal aid or legal advice only. The term *"money"* includes damages in accordance with Section 33(7).

Informing the client about costs

Civil legal aid is not free. Just as an applicant must pay a contribution at the start of the case, they may be under an obligation to pay back the some or all of the cost we spent on their legal aid, if monies or property are recovered on their behalf (including an award of damages). It is important that clients are fully aware that we may retain our costs where there is any possibility of a client recovering monies or property.

Section 68 of the Solicitors (Amendment) Act 1994 contains a requirement that all solicitors inform their clients of the basis they intend to charge them. To that end, an applicant must be sent the standard Letter of Engagement as per ➔ **Chapter 5 of the Administrative Procedures Handbook**. The solicitor taking the case **must check** that this letter has been sent. There is a standalone letter regarding costs sent to applicants who have been referred to private practitioners.

You should advise clients from time to time of the potential costs of representation. For example, every additional authority/amended legal aid certificate granted is a potential extra cost to the client. If you feel that additional services are required, discuss this with the client beforehand – with particular emphasis on the costs implications - and obtain their consent. This is particular the case with retaining Counsel. Both Legal Services and the law centre should record all items of financial expenditure (whether billable or not) on the Financial tab in EOS.

If there is the possibility of a settlement that will give rise to a liability for costs, you should make the client aware of the likely amount of costs that will be deducted from the settlement. It is important for you to be aware of costs when you are negotiating a settlement and that such costs are taken into account. It should be the norm to get written instructions from the client in relation to the settlement and those instructions should acknowledge the requirement to lodge settlement monies to the Fund and our entitlement to deduct costs from the amount of the settlement. Authority should be sought from the client to enable the solicitor to endorse the settlement cheque if that is possible.

2. Recovery of costs from the other party

We may recover costs from the other party to a dispute, either as a result of a court order for costs, or an agreement with the other party as part of a settlement of a dispute.

Orders that a Court can make as to costs

If a case is tried and proceeds to judgement the Court may be asked to rule on costs. The normal rule outside of family law is "costs follow the event" – in other words, **the loser pays both sides costs**. In family law the usual order is "no order as to costs" which means that **both sides pay their own costs**. These are both the "usual" orders, but the Court's discretion is wide and it is not unknown for there to be no order as to costs in a non-family law case or for costs to follow the event in a family law case. There are other orders the Court can make (e.g. "costs thrown away", where the winner pays both sides costs. This is very rare).

Where costs are awarded it is usually on a "party/party" basis. That doesn't include costs which have been incurred or increased through caution, negligence, mistake, or payment of special fees to Counsel or special charges or expenses. If these are included it is referred to as a "solicitor/client" basis.

When an order for costs is made or a settlement is reached, the solicitor should liaise with Legal Services on the issue of the recovery of costs. You should be aware of the facility for a barrister to claim 'commercial' rates of costs where costs are recoverable on a party / party basis.

How costs are calculated

The costs to be recovered from the other party may be agreed between the parties. If the parties cannot agree costs may be decided by a Taxing Master[2] or the County Registrar. Where the costs are to be agreed, Legal Services will have an input into the amount. It must be remembered however that the costs are the client's costs. If there is likely to be a solicitor client charge in addition to the party / party costs it is particularly important that client consent is obtained to any settlement of the party / party costs and that prior to the settlement of those costs the client is aware of the amount of costs to be deducted on a solicitor / client basis.

When advising the client in this regard you must inform the client of his or her right to seek to have the costs taxed (assessed) by the County Registrar / Taxing Master. In default of agreement, the matter will be referred, where necessary, to cost drawers for the purpose of preparing a bill of costs or in certain cases the solicitor may be able to present the bill of costs to the County Registrar / Taxing Master.

In determining whether to proceed with the recovery of some or all of the costs from the other party, Legal Services will have regard to:

- the nature of the proceedings;
- the resources of the other party, including the likelihood of the recovery of costs;
- the actual cost incurred; and
- the level of fees to be paid to barristers.

[2] A Taxing Master is an officer of the Superior Courts that assesses the costs of legal actions. When Part 10 of the Legal Services Regulation Act 2015 is commenced they will be renamed as Legal Costs Adjudicators.

In non-family law cases solicitors/Counsel should always seek their costs if judgement is in their client's favour.

3. Recovery of costs from legally aided persons

Section 33

We have seen from the above that we may be able to recover costs from the opposing side in a case if they reach a settlement or if the Court orders that one party (usually the losing party) pays both sides costs.

This may be enough to cover what it cost us to fund the person's legal aid, once the person's contribution has been taken into account. However as we have seen, in family law proceedings both sides will be normally ordered to pay their own costs. In addition even where costs are awarded against the other party that may not be enough to satisfy the cost we spent in providing legal aid.

To that end, the Act allows us to recover our costs from any money or property awarded or obtained by the legally aided person during the time they are legally aided. If money was preserved or recovered, it must be paid into the Legal Aid Fund to allow us to recover our costs. If property was preserved or recovered, it may be subject to an appropriate charge in favour of the Fund, though the applicant has the option of paying our costs in cash first.

There are provisions to allow us to waive our right to recover some or all of our costs, in cases of hardship. These will be examined later in this Part.

What property is subject to the charge?

Section 33(7)

Any **money** or **real property recovered** or **preserved** in the course of providing legal services is subject to the charge, unless it is exempt.

Recovery is where the client succeeds in claiming ownership of someone else's property, or obtaining possession of property to which the title was not in issue or in compelling the sale and distribution of proceeds of sale. At the end of the dispute there is a **gain** for the legally aided individual as a result of the proceedings.

Preservation is where the legally aided individual succeeds in fending off a claim by someone else to his or her property or to possession of his or her property, i.e. at the end of the dispute the legally aided individual keeps all or part of what he or she regards as his or her own. In other words the legally aid person gets to **keep** what was in dispute during the proceedings. This includes property which they only got to keep part of.

What property is not subject to the charge?

Section 33(8)(a)

The person's **normal place of residence** is excluded from the process of recovering costs. *"The normal place of residence"* is considered to mean the applicant's normal place of residence before the proceedings or dispute took place. A person may at any one time have more than one normal place of residence. It doesn't have to be a "family home" as defined in other legislation. But if the family home is sold, the proceeds are in principle subject to the charge. It is possible to apply for a waiver (we will deal with this later in this Part).

Can money or property recovered on behalf of a third party be charged?

Sometimes a client will look for a settlement or order where the money or property will be preserved, not for their own benefit, but for someone else's – for example, to create a trust for their children under the age of 18. If this happens the question arises as to whether costs can still be recovered.

If you are dealing with a client who seeks such a settlement/order you must raise this in your application for legal aid. If the client raises the issue after legal aid is already granted you must apply to Legal Services for an amended certificate before seeking such a settlement/order.

If a Court decides to make an order conferring a benefit on a third party without any application to do so, we may look behind the order and examine the circumstances and the context in which the order was made and decide to recover our costs, if we think the applicant remains in effective control of the money or property concerned.

If, in a settlement, a person doesn't recover or preserve money or property directly, but effectively remains in control of the money or property, we may recover our costs from that money or property.

Settlements with non legally aided persons

Section 33(5)

The Act provides that a legally aided person can't agree to a settlement with a non legally aided person where:

- They give up their costs;
- They agree to meet the non-legally aided person's costs; or
- They accept a sum in satisfaction of their costs

without our approval.

If you are negotiating a settlement with a non legally aided person, and any of the above criteria apply, you must apply to Legal Services to agree to the settlement.

If a settlement is being negotiated and money or property is an issue between the parties:-

- you should apply to Legal Services for a decision on whether costs will be retained
- if it is not possible/feasible to contact Legal Services, you should only proceed with a settlement if the client is fully advised of the liability for costs; and
- in all cases, you should settle cases only on the basis that the full costs will be recovered by us and that the primary liability for costs will rest with the legally aided person.

As a decision maker, if you receive a submission for authority to conclude a settlement, you must not approve it unless the following conditions are included in the settlement (<u>all</u> conditions that are appropriate in the particular case):

- Any money received will be paid into the Legal Aid Fund
- Any property recovered or preserved will be charged with the amount remaining of our costs (if no money is received, or the money received won't cover our costs)
- In non family law cases, that confirmation the person's solicitor will, where appropriate, seek liberty to apply to the court in relation to the issue of solicitor/client costs for the purpose of Order 99 of the Rules of the Superior Courts, or other appropriate procedure

4. Recovering costs

There are three main aspects to recovering costs:

a. Arranging for money recovered to be paid to the Legal Aid Fund
b. Calculating the bill of costs
c. Enforcing the charge

Arranging for money recovered be paid into the Legal Aid Fund

All awards/settlement monies received which are to be paid to the client must first be paid into the Legal Aid fund. This is a requirement of the Civil Legal Aid Act. It will stay there until we decide how much is to be deducted and refund the difference. The client will be presented with the bill of costs and the amount we are going to retain.

If for any reason, money recovered or awarded to the client is not lodged to the Fund, you should take all necessary precautions to ensure that we recover our costs. If we are not successful in recovering its costs in such cases, you should liaise with Legal Services on the possibility of issuing debt proceedings for the amount in question.

Where the Court has ordered costs
In proceedings, other than family law proceedings, in which:-

- Money or property is recovered by or preserved for or on behalf of a legally aided person; and
- costs will not or are unlikely to be recovered from the other party;
- you should, where appropriate, seek the following:-
  - an order that such monies be paid directly into the legal aid fund; and
  - liberty to apply to the court in relation to the issue of solicitor/client costs for the purpose of Order 99 of the Rules of the Superior Courts.

Calculating the Bill of Costs

Section 33(6)

Once the money has been lodged to the Fund – or if there is no money to lodge to the Fund and it is proposed to charge real property – the next step is to calculate the Bill of Costs.

Our costs can be agreed between the parties, measured by the Court, or determined by a Taxing Master/the County Registrar. Usually we draw up a Bill of Costs and present it to the client. The client does have the right to have the costs assessed by a Taxing Master/the County Registrar and you should inform clients of this right. Usually our Bill of Costs is accepted.

What's included in our costs

Section 34

Our costs are the total cost of the legal services provided in relation to a particular matter.

These include:

- Solicitor's fees: we charge an hourly rate for solicitor's time – currently €150 per hour (note though, that in judicial separation and divorce cases, solicitor's fees can be capped).
- Counsel's fees.
- Fees or expenses for obtaining reports
- Witnesses' expenses
- Court charges (i.e. the costs of "stamping" documents and otherwise doing business with the Court).

What's deducted from our costs

- Any costs recovered or recoverable from the other side.
- The contributions(s) the person paid towards their legal services at the start of the case.

If either, or both of these, is enough to satisfy our costs, then the process ends at this point and there is no need to present the bill of costs to the client.

Cost of providing legal services – hourly rate
From time to time we revise the hourly rate used for the purpose of assessing the cost of providing legal services in individual cases. The rate reflects the real costs to us of providing legal services by a solicitor within a law centre, including Head Office costs. The rate is reviewed from time to time.

Our hourly rate is currently €150 per hour

The hourly rate to be charged should be the rate that was in being when the case was opened. The rate has been €150 for many years, however, you should be able to check the applicable rate on the person's letter of engagement or section 68 letter on file.

Cap on solicitor's fees in judicial separation and divorce cases
We cannot charge a person more than it cost us to provide legal services.

If any type of case is *potentially* referable to a private practitioner – regardless of whether it was or not it was actually referred – there is a "cap" or limit on the solicitor's fees element of the costs recovered. This limit is the fee the private practitioner would have been paid for the same case. This includes any services provided under the initial grant of legal aid and for which we paid (or would have paid) the private practitioner a fee. It doesn't include any additional expenditure that was authorised – e.g. witnesses' expenses or reports that were specifically authorised and paid for by us.

This cap – which operates on the same principle as the cap on the person's legal aid contribution - is applicable in all cases potentially referable to a private practitioner. In reality, most cases referred to a private practitioner in the District Court do not involve the recovery or preservation of any property or money other than maintenance, which is always waived in any event. So for practical purposes, it applies only to judicial separation and divorce cases.

At time of writing the cap is €5,000 for a judicial separation or divorce case.

Preparing the bill of costs
As the solicitor you should draw up the draft bill of costs and send it to Legal Services for finalisation. If you have logged everything on the Financial tab on EOS you can check this and use it to prepare the bill of costs. In particular, you should keep a record on the file of the hours you spend on the case and enter this on the Financial tab on EOS. EOS will calculate the total for you.

Once that is done it can be presented to the client. If the client accepts the bill of costs (having being informed of their right to taxation in default of agreement) arrangements can be made, through Legal Services, for the costs to be deducted from the money lodged to the Fund or a charge applied to the real property recovered or preserved.

In preparing a bill of costs for the client where there is no party / party recovery the bill should:

- Be readily understandable.
- Not be too light on detail.
- Not be overburdened with unnecessary information so as to make it incomprehensible.
- Be in narrative form.
- Focus on the extent of the professional work necessarily involved in confronting the issues.
- Contain particulars of counsel's fees and counsel's fee note should be attached.
- Attach vouchers for outlays.
- Set out the approximate number of solicitor hours spent on the matter.
- Set out the actual costs being charged if the costs are 'capped'.

Enforcing the charge

We previously looked at the situation where money is recovered or preserved. The money is paid directly into the Legal Aid Fund prior to the bill of costs being issued. One the bill of costs is accepted by the client, our costs will be deducted and the remainder refunded to the client. This is done by Legal Services.

A court may order that a property be sold and your client will be paid a portion of the proceeds. You will not be involved in the sale of the property and will have no control over the sale proceeds. If that happens, ask the client for the name of the solicitor who is handling the sale. Write to the solicitor stating:

- the legal requirement to lodge of any settlement money to the Fund

- that we are entitled to deduct our costs from that money
- asking them to keep you informed of progress.
- Seek to get an undertaking from the solicitor that he will preserve the Board's costs out of sale proceeds.

Of course, the private solicitor has no responsibility for this. However, if they don't keep you informed, you should write to your client for updates. If your client doesn't respond, and the title to the property is registered, search the Land Registry from time to time. If you find out that the property has been sold without any money being recovered by us, inform Legal Services. The charge may now be a debt which we may sue to recover. However that decision which will be taken at Legal Services level.

Financial advice to clients

You should not put yourself in a position which might lead a legally aided person to believe that a solicitor was providing financial advice. It would take little to give some clients grounds for the belief that they were receiving investment advice from a competent person.

5. Waiving our right to recover costs

Section 33(8)

The Act provides that an applicant can apply to the Board for a waiver of the money or property that we are entitled to recover, if not to do so would create hardship for the legally aided person.

Section 33(8) accordingly gives the Board a discretion to waive its right to recover its costs where it is of the opinion that not to do so would "*create hardship*" for the person. While hardship will inevitably depend upon the circumstances of a particular case, the Board considers that it is necessary to set down principles, criteria and guidelines to assist in determining whether or not hardship might ensue for a particular person as a consequence of the Board seeking to recover its costs.

Monies received that we will always waive recovering our costs from

We will <u>always</u> waive our right to recover costs from any of the following monies received.

- Newly awarded maintenance – whether it is a lump sum or a periodical payments order
- The first €3174.35 of any maintenance arrears recovered
- The first €3174.35 of any social welfare payments payable, or of certain payments payable under employment law.

The client does not need to make an application for the Board to waive recovering our costs from any of these sources. We are required to do so. This doesn't mean we can't recover our costs from other money or property received.

Informing clients of the right to apply for a waiver

Where recovery of costs arises you should always inform your client of the right to apply for a waiver. At the same time you should make clear to the client that it is a right only to apply – the decision is not a formality, and we will consider each application on its merits. You can advise the client of whether you think the application is likely to succeed or not. You should print and give the client a copy of the guidelines in this part of the Circular.

General principles applying to waivers of costs

The following principles have been agreed by the Board:

- hardship is to be considered by reference to the position of the legally-aided person at the end of the provision of legal services; and
- the financial circumstances of the legally-aided person must be examined at the date of the decision on the issue of hardship; and
- the establishment of criteria to be taken into account and the preparation of guidelines so as the achieve a consistency in the treatment of all persons in relation to the retention by the Board of the costs of providing legal services are essential; and

- while guidelines are essential so as to provide a uniform and standard set of criteria to be taken into account in reaching a decision, the Board must exercise its discretion in each and every case by reference to the particular facts of the case.

Deciding on applications

The application is made by way of Submission for Waiver of Costs on EOS.

If you receive an application for a waiver of costs, seek the following information:

- Ask the law centre to conduct a new financial assessment of the applicant (irrespective of whether the applicant was originally passported)
- Ask the solicitor to take instructions as to what the client intends to use the money recovered for and if there is the possibility, in their opinion, that the client would be able obtain funds for the same purpose elsewhere
- Ask the solicitor for their opinion as to whether the client would face hardship

Grant a full waiver if (<u>one</u> of these criteria and <u>none</u> of the criteria to consider refusing are true):

- The money lodged is the proceeds of the sale of the family home
    - <u>and</u> amounts to less than €50,000
    - <u>and</u> the applicant wishes to use the money to buy a new property in which to live
- The money lodged is from any other source <u>and</u> amounts to less than €4,000.
- The applicant suffered a financial loss and the money would compensate them for that loss
- The applicant lost the house in which they lived as a result of the proceedings
    - <u>and</u> they wish to use the money to buy a new property in which to live
- Where the money lodged is of such a low amount that any recovery of costs, even after a partial waiver, would lead to the applicant having gotten no benefit from the proceedings in the first place.
- The applicant's personal circumstances are such that in the decision maker's view, it would be just to grant a full waiver.

Grant a partial waiver if (<u>one</u> of these criteria and <u>none</u> of the criteria to consider refusing are true):

- The money lodged is the proceeds of the sale of the family home
    - <u>and</u> amounts to more than €50,000 but less than €76,000
    - <u>and</u> the applicant wishes to use the money to buy a new property in which to live
- The money lodged is from any other source <u>and</u> amounts to more than €4,000 and less than €18,000

The terms of a partial waiver will be, if the money was the proceeds of the family home

- All of the first €50,000 will be waived
- The remainder will be waived using the following formula:

$$\frac{\text{Remainder}}{26{,}000} \times 100 = \text{Percentage of costs payable}$$

The terms of a partial waiver will be, if the money was not the proceeds of the family home

- All of the first €4,000 will be waived
- The remainder will be waived using the following formula:

$$\frac{\text{Remainder}}{14{,}000} \times 100 = \text{Percentage of costs payable}$$

Consider refusing the application if (any <u>one</u> of these criteria are true):

- No money has been lodged to the Legal Aid Fund
  (Refuse under section 33(8)(b) giving full reasons as to why)
- Only real property has been recovered or preserved
- The money lodged is more than €76,000
  (Refuse under section 33(8)(b) giving full reasons as to why)
- The money lodged is more than €18,000 and is not the proceeds of the sale of the family home
  (Refuse under section 33(8)(b) giving full reasons as to why)
- The applicant is no longer financially eligible for legal services
  (Refuse under section 29)
- In the solicitor's opinion, the client would not face hardship if the Board deducted its costs
  (Refuse under section 33(8)(b) giving full reasons as to why)
- It appears that the client would be able to obtain a loan for the same purpose elsewhere
  (Refuse under section 28(4)(a))

Decision maker has discretion

As usual the guidelines in this Part are just guidelines. As a decision maker, you have discretion to fully, partially, or not waive the costs in any case. But any decision must be grounded in the Act, and reasons must be given. In particular if you are going to depart from any guideline in this Part that suggests that a full or partial waiver should be **granted,** you must:

- Ground the decision in the Act.
- Give full reasons, including a clear statement as to why the guidelines have been departed from – particularly if you are relying on section 33(8)(b) on its own.

Part 8.
Best practice - delivering a quality service

This part deals with:

1. Best Practice Guidelines.
2. Alternative dispute resolution
3. Guardianship/Access/Custody
4. Domestic violence
5. Maintenance
6. Separation and divorce
7. Child abduction
8. Child care
9. Arrangements to appoint persons to assist clients of impaired capacity in child care proceedings
10. International protection
11. Complaints in certain sexual assault cases

1. Best practice guidelines.

We are committed to providing our clients with a quality professional service. Our Customer Charter sets out the standards of service our clients are entitled to expect from us as well as our expectations of our clients. You should be familiar with our mission and vision and of the commitments we set out in the Charter. We expect all staff to meet these commitments. We draw attention to the file review process and complaints procedure which is outlined in the ➔ **Administrative Procedures Handbook.** In the first instance solicitors should ensure that the client has received a letter of engagement setting out our terms and conditions for providing services to our clients.

The use of best practice guidelines assists in the management and throughput of cases. It also contributes to the development of a quality service. The guidelines form part of a wider commitment to delivering a quality service to our clients. This is consistent with a general commitment among legal aid providers across the world to ensure that legally aided persons get a proper service. The guidelines do not preclude solicitors from taking immediate and decisive action where necessary.

We endorse the Law Society of Ireland's Family Law Handbook, Code of Practice:
"*There can be a concern that solicitors and court procedures may add to the distress and anger that can arise when relationships break down. In general, solicitors should deal with matters in a way designed to preserve people's dignity and to encourage them to reach agreement wherever possible. The result will often be to achieve the same or more satisfactory solutions than going to court but at less cost both in terms of emotion and money. Various methods of alternative dispute resolution are now available and should be considered fully with our clients. This Code believes that family law disputes should best be resolved in a constructive and non-confrontational way*."

The Code of Practice also includes the following provisions:

G E N E R A L

1. At an early stage, you should explain to your client the approach you adopt in family law work.

2. You should encourage your client to see the advantage to the parties of a constructive and non-confrontational approach as a way of resolving differences. You should advise, negotiate and conduct matters so as to help the parties settle their differences as speedily and amicably as possible and reach agreement, while allowing them time to reflect, consider and come to terms with their new situation.

3. If there are contentious issues concerning children, you should advise your client that the court will, by law, prioritise the best interests of the child. and may require to hear the voice of the child. You should make sure that your client understands that the best interests of the child should be put first. You should explain that, where a child is involved, your client's attitude to the other parent will affect the family as a whole and the child's relationship with his or her parents.

4. You should maintain professional objectivity and respect for all parties involved in the family law dispute, taking into account the long term consequences of your actions for all concerned. In practice, issues relating to children and finances should be kept separate, where possible.

5. You should encourage the attitude that the dispute is not a contest in which there is a winner and a loser, but rather that it is a search for fair solutions. You should avoid using words or phrases that suggest or cause a dispute where there is no serious dispute. You should stress the need for your client to be open and honest in all aspects of the case and you must explain what could happen if your client does not conduct him or herself in this way.

6. Emotions are often intense in relationship disputes. You should avoid inflaming them in any way. You should take great care when considering the effect your correspondence could have on other parties and on your own client. Your letters should also be clear and free of jargon. Remember that clients may see assertive letters between solicitors as aggressive declarations of war.

Best practice guidelines and private practitioners

Our services are normally provided through our law centres and the guidelines apply to law centre solicitors.

We provide services through private practitioners in a number of instances, most notably for private family law cases involving children in the District Court. ➔ **Part 9** of this Circular discusses the solicitors' panels in more detail. Private solicitors providing services as part of a solicitors' panel are expected to follow the best practice guidelines just like a law centre solicitor would.

2. Alternative dispute resolution

We have been one of the most significant providers of legal services in the area of family law since it we were set up in 1980. Many of those services have been provided in a court room environment, and we are mindful of the negative impact that the court process can have on the family dynamic where unhappy differences have arisen. Since November 2011 we also provide family mediation.

We are committed to developing a greater focus on the development and availability of family mediation and dispute resolution models that do not involve the adversarial court process.

Family mediation
Family mediation is a free professional and confidential service for couples, married and non-married, who have decided to separate or divorce and who together want to negotiate the terms of their separation or divorce. Mediation helps them to reach an agreement that meets their interests and those of their children. Family mediation also deals with a small number of cases which involve conflict between other members of a family.

There are a number of full-time and part-time family mediation offices located throughout the country. From the time an applicant in a family law matter other than domestic violence first applies to a centre they should be informed of what mediation is about and be given details of the closest office.

Dolphin House family mediation initiative
A joint initiative operates between us and the Courts Service at the Dublin Metropolitan District Court at Dolphin House whereby the Courts Service staff will refer persons wishing to apply to the Court for family law remedies (other than domestic violence) to our family mediation services for an information session regarding mediation.

Centres operating the pilot scheme for mandatory referral to a mediation information session
In some law centres we operate a pilot scheme whereby any applicant who has a dependant child and who is seeking legal aid for family law proceedings (other than domestic violence) must attend with the family mediation office for an information session about mediation prior to a certificate allowing representation in court being granted. An applicant does not have to attend an information session prior to an advice appointment.

Script offering alternative dispute resolution to clients
The Board has developed a script for solicitors in order that they may engage in dialogue with appropriate clients as to the options other than litigation. The script is not exhaustive however, it is intended to be used as a guide or a prompt for solicitors who wish to explore ADR options with suitable clients.

I understand that you have a problem in relation to custody / access / guardianship/separation / divorce / arrangements for your child XX.

I will take a few minutes just to explain why the Board believes that trying to resolve your problem / issue without engaging in the court process will be more beneficial to you. You have a number of options rather than going straight to the court process and I will explain them briefly to you.

First of all I am obliged by law to discuss with you the possibility of you reconciling with your spouse and of giving you details of marriage guidance counselling services which you may wish to avail of. I am giving you a leaflet which has information in relation to counselling services in this area.

If it is your view that the marriage is over and you want to formally separate or divorce I would first of all encourage you to try and agree the terms on which this might be achieved without having to go to court to do so. There are significant benefits from trying to sort out the problem without going to court. The court process is often long drawn out. It is also 'adversarial' in nature. What this means in practice is that relations with your spouse are likely to become more strained as the delays and frustrations that are often part of the process can have a very negative effect (both on you and on your children). You will also have to be ready to go into the witness box to give evidence about the breakdown of your marriage and to be questioned by lawyers retained on behalf of your spouse. People who appear before a Judge can come away disappointed and the very fact, when there are children involved, that parents have gone into the Court, given formal evidence and been questioned by the other parent's lawyer can have a negative impact on their relationship.

Alternative dispute resolutions are more informal and relaxed than a court and you will not be cross-examined by solicitors and or barristers. Provided everyone enters the process in good faith, the process is faster and less acrimonious / bitter than court proceedings. You can set your own agenda according to what matters most to you and your family and you will have a greater degree of control, including the pace at which you negotiate.

The process is likely to be far less stressful than court proceedings, which are widely regarded as being one of the most stressful events that a person can encounter. There should be no surprises and each party should know what to expect; and if the process is successful you will have an agreement with your partner which both of you will have had responsibility for, and which, hopefully, will be a more effective basis in the long run than a court imposed solution, for maintaining a relationship with your partner for the benefit particularly of any children.

Mediation
If you opt for mediation, the Board can provide a trained mediator who will assist both you and the other party in trying to agree a solution to the problem. The mediator's role would not be to impose a solution on you, but instead to work with you and your spouse to see if you can reach an agreement that is in the best interests of you (and your child / children).

You will remain in control and the only solution that will result from mediation is one that has been agreed by you. From your child's point of view, in the vast majority of cases it is important that parents are able to communicate with each other in the long run and you support the child's relationship with his / her father / mother.

While in the mediation process you can continue to have legal assistance or advice from the Board. I should make it clear that you will not be accompanied by a solicitor to the mediation. I can provide further information / leaflet on this option if you agree it is one you wish to engage in is suitable for you, for example, what happens if the process does not work.

Collaborative process
The formal collaborative process involves a commitment from both you and your ex-partner and you both sign and agree binding participation agreements, and an absolute commitment on the part of the solicitors not to represent you in court should the process fail. Four way face to face meetings are held as a matter of course. I have an information leaflet which explains the process in detail.

A less formal alternative is a structured negotiation process which again involves both parties signing participation agreements, but if the process fails, I can go on to represent you in court. This method in similar to negotiating a separation agreement but facilitates face to face meetings in a formal setting with pre planned agendas.

Separation agreement / consent terms
A separation agreement may also be an option for you. This does not necessarily involve any face to face meetings. I would establish if your spouse has retained a solicitor and then seek to negotiate on your behalf, terms of agreement in relation to the issues in dispute, that are mutually acceptable to both you and your spouse. If terms can be agreed we can them include them in a written agreement or, if necessary, make an application to Court have them included in a court order. This will be necessary if you are seeking a divorce or if there is a pension.

Conclusion
I have given you a number of leaflets and a lot of information for you to think about. From the information you have given me my view is that x approach might be suitable for you. You may need to go away and think out what we have discussed and when you decide you might ring the office and make an appointment at which we can decide on how to proceed.

Collaborative practice

We have sought to promote the collaborative model of dispute resolution for a number of years now for the benefit of legally aided persons. Solicitors who have received the training and who are '*opposed*' by a Legal Aid Board colleague who has likewise received the training are actively encouraged to consider whether the client is a suitable candidate to engage in the process.

If a solicitor considers that a client is a suitable candidate, and if the client is happy to engage in the process, make contact with the opposing solicitor to ascertain if there is willingness on the part of the other party. In the event that that willingness is there, the parties should sign a participation agreement and the case should proceed accordingly.

If, during the course of the process, it becomes necessary to retain an independent expert such as a child psychologist, auctioneer, accountant or pension advisor, make an application to Legal Services for sanction for the costs of that professional.

In the event that the process breaks down, Legal Services should be informed with a view to alternative representation being provided to both parties.

To facilitate the model and the development of the collaborative process generally, we have issued:-

- an Information Leaflet for clients or would be clients;
- Frequently Asked Questions in relation to both the collaborative and the structured negotiation models; and
- lists of those solicitors who have received training in collaborative practice.

Participation agreements

Two template participation agreements, one where children are involved and the other where there are no children, are available in law centres.

3. Guardianship, access, and custody

While the terms ”custody“ and “access” are used in the guidelines, solicitors are encouraged, when dealing with clients, to concentrate on the day to day care arrangements rather than using particular terminology.

Best Practice Guidelines: Custody/Access/Guardianship
Applicant

This is a summary of the steps which commonly occur in a case where you are looking to be appointed guardian of your children or if you want to seek custody of them or, indeed, access to them. It is often the case that you will already have contacted the District Court office and started the court procedure before you have contacted us. This summary assumes that you have not taken any step before you have contacted us. While estimates of the timeframes for particular actions are provided these can vary considerably from case to case due to circumstances outside of our control.

As you can obtain legally recognised rights of guardianship, access and custody without going to court, the process starts with us formally requesting the other party to agree to your request and allowing him/her an opportunity to respond. If there is a positive response then we will assist in agreeing a parenting plan which will cover what is agreed in relation to custody/access/guardianship and also, if appropriate, assist in the completion of the necessary Statutory Declaration of Joint Guardianship.

Please note that there may a slight difference as to how your application for legal services is treated in one law centre rather than another. Due to the level of demand at some of our law centres, those centres operate a system whereby you will be offered an early appointment to be provided with legal advice only. You will be given a written record of the advice given to you on that occasion. The law centres operating this system will not be in a position to take any other steps on your behalf at that time. You will be offered a second consultation in due

course by that law centre. For law centres who do not operate this system (and for private practitioners who may be delivering the service as outlined above) then the details outlined below at Step 1 for first consultation/second consultation will apply at first consultation stage.		
Step	**Details**	**When will it happen? (Estimate Only)**
Step 1. First/Second Consultation	• We obtain information from you in relation to the following matters (amongst other things): who is named as parent on the birth certificate; the relationship between you and the other parent/party at the time of the birth of the child and after; the way in which parental responsibilities have been shared; the history of contact with the child; the provision of financial support details of any previous agreements, proceedings or court orders between you. • We will ascertain from you if the child has had an opportunity to make his/her views on the matter known and explore how the child's voice can be heard. • On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances. • We will also advise you about whether counselling might be appropriate in your situation and also about alternative ways of resolving your dispute other than court proceedings ie mediation. • If this is an advice only appointment we will advise you of the documentation you may need to get prior to your next appointment. • Where applicable, at Second consultation, we will update the information from you. • We will write to the other parent/party requesting their agreement to custody and/or/access and/or Guardianship. At that time we will enquire whether they are interested in attending counselling/mediation services.	
Step 2. Positive response from other Side	We send you their response and try to agree matters	3 Weeks after Step 1.
Step 3. Negative or unacceptable response from Other Side	If proceedings are necessary, we will apply on your behalf for a Legal Aid Certificate to institute proceedings seeking an Order of Custody or Access, as appropriate and/or Guardianship Order	3 Weeks after Step 2
Step 4. Institution of Proceedings for Access and Guardianship	• We will draft Court Papers and serve them on the other side. • We will discuss whether it may be necessary to seek authority from the Legal Aid Board for a welfare report/voice of the child report. • We let you know the hearing date	4 Weeks after Step 3.
Step 5. Preparation for hearing	• We make sure the case is listed • You give us any updates prior to the Hearing.	Usually 2 weeks before the hearing
Step 6. Hearing	• If agreement is not reached the Court hears your evidence, the other side's evidence, submissions and allows both sides to be cross examined.	This will vary in different Court Areas and you will be advised of

	• If appropriate, request the court to seek a report from an expert on any matter affecting the welfare of a child or to appoint an expert to determine and convey the views of the child • The Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on behalf of the other party and that evidence will be subject to cross-examination by your solicitor. • The Court can grant the order for custody/access and/or guardianship; refuse to make any orders and/or adjourn the matter.	local arrangements.
Step 7. After the Hearing	• We write to you to confirm outcome • Based on the decision made by the Court, formal orders are drawn up and sent out to you and the other party. • If the Order sought is not granted or you are in some way unhappy with the order that is granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	Again this may depend on local Court arrangements but approximately 6 weeks after the date of the Court decision.
Step 8. Close File	We write to you confirming that all matters have now been completed and your file is to be closed.	16 weeks after Step 1 (assuming the case is not adjourned)

Best practice guidelines: custody/access/guardianship - respondent

Best Practice Guidelines: Custody/Access/Guardianship
Respondent

This is a summary of the steps which commonly occur in a case where you are defending an application for custody/access/ guardianship. While estimates of the timeframes for particular actions are provided these can vary considerably fro case to case due to circumstances outside of the control of the Board or private solicitor involved.

As it is possible to obtain legally recognised rights of guardianship, access and custody without going to court, the process commences with us formally requesting the other party to agree to your request and allowing him/her an opportunity to respond. If there is a positive response then we will assist in agreeing a parenting plan which will cover what is agreed in relation to custody/access/guardianship and also, if appropriate, assist in the completion of the necessary Statutory Declaration of Joint Guardianship.

Please note that there may a slight difference as to how your application for legal services is treated in one law centre rather than another. Due to the level of demand at some of our law centres, those centres operate a system whereby you will be offered an early appointment to be provided with legal advice only. You will be given a written record of the advice given to you on that occasion. The law centres operating this system will not be in a position to take any other steps on your behalf at that time. You will be offered a second consultation in due course by that law centre. For law centres who do not operate this system (and for private practitioners who may be delivering the service as outlined above) then the details outlined below at Step 1 for first consultation/second consultation will apply at first consultation stage.

Step	Details	When will it happen? (Estimate Only)
Step 1. First/Second Consultation	• We obtain information from you in relation to the following matters (amongst other things): who is named as parent on the birth certificate; the relationship between you and the other parent/party at the time of the birth of the child and after; the way in which parental responsibilities have been shared; the history of contact with the child; the provision of financial support details of any previous agreements, proceedings or court orders between you.. • We will ascertain from you if the child has had an opportunity to make his/her views on the matter known and explore how the child's voice can be heard. • On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances. • If this is an advice only appointment we will advise you about the documentation you have received and about the law and the court procedure. We will also advise you about whether counselling might be appropriate in your situation and also about alternative ways of resolving your dispute other than court proceedings ie mediation • Where applicable, at Second consultation, we will update the information from you. • We write to other side to confirm we are acting and see if agreement is possible • If appropriate, we will apply on your behalf for a Legal Aid Certificate to Defend proceedings for an Order for Custody/Access and/or Guardianship	
Step 2. Positive response from other Side	We send you their response and try to agree matters	3 Weeks after Step 1.

Step 3. Preparation for hearing	• You give us any updates prior to the Hearing. • We will discuss whether it may be necessary to seek authority from the Legal Aid Board for a welfare report/voice of the child report.	Usually 2 weeks before the hearing
Step 4. Hearing	• If agreement is not reached Court hears your evidence, the other side's evidence, submissions and allows both sides to be cross examined. If appropriate, request the court to seek a report from an expert on any matter affecting the welfare of a child or to appoint an expert to determine and convey the views of the child • The Court will hear evidence from any witnesses that attend to give evidence on the applicant's behalf and that evidence will be subject to cross-examination by your solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor. • The Court can grant the order for custody/access and/or guardianship order;refuse to make any orders and/or adjourn the matter.	This will vary in different Court Areas and you will be advised of local arrangements.
Step 5. Adjourned hearing	• The Court receives any reports, reviews the case and hears any further evidence. • The Court can then make temporary or final orders and/or adjourn the case again.	This will vary in different Court Areas and you will be advised of local arrangements.
Step 6. After the Hearing	• We write to you to confirm outcome • Based on the results in Court formal orders are drawn up and sent out to you and the other party. • If you are in some way unhappy with the order that is granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	Again this may depend on local Court arrangements but approximately 6 weeks after the date of the Court decision.

Step 7. Close File	We write to you confirming that all matters have now been completed and your file is to be closed.	16 weeks after Step 1 (assuming the case is not adjourned)

4. Domestic Violence

Introduction

This part of the Circular deals with best practice in relation to domestic violence cases.

When a client is alleging that he/she is the victim of domestic violence there is an obligation on the part of the Board's staff to process the application for legal aid and take the necessary steps to obtain any available remedies without delay. Applications for legal aid to seek remedies for domestic violence are treated as priority cases. "Domestic violence" may include behaviour which falls short of actual violence and may include any behaviour which reasonably creates fear on the part of the applicant and any dependent children or subjects them to intolerable circumstances in the conduct of normal living. Each case should be assessed for priority in terms of whether a domestic violence remedy may possibly be available in the particular circumstances.

The Board acknowledges that in domestic violence situations it may be inappropriate to encourage a client to seek agreement and in many of the cases the only appropriate remedy is an order on foot of the domestic violence legislation.

Best practice guidelines: domestic violence - applicant

Best Practice Guidelines: Domestic Violence
Applicant

This is a summary of the steps which commonly occur in a case where you are seeking a barring order or safety order. It is often the case that you will already have contacted the District Court office and started the court procedure before you have contacted us. This summary assumes that you have not taken any step before you have contacted us. While estimates of the timeframes for particular actions are provided these can vary considerably fro case to case due to circumstances outside of the control of the Board or private solicitor involved.

Step	**Details**	**When will it happen? (Estimate Only)**
Step 1. First Consultation	• We obtain information from you in relation to the following matters (amongst other things): the relationship between you and the other party; your living arrangements; details of any previous agreements, proceedings or court orders between you and advise you whether a domestic violence remedy is available to you. • If appropriate, we apply for a Legal Aid Certificate on your behalf. • We will draft the necessary court documents for a court application. • We will discuss with you	Usually all of these steps are taken within 1 week after First Consultation **(AFC)**

	whether you need to consider a preliminary application for a Protection Order or an Interim Barring Order (both of which can be granted without notice to the other party for limited periods). • If appropriate, we will arrange for you to attend Court to have the proceedings instituted and obtain a Protection Order or in exceptional cases an Interim Barring order	
Step 2. Preparation for Hearing	• 2nd Consultation with you • We will discuss with you whether you need to arrange for any witnesses to attend Court to give evidence on your behalf. • If the attendance of any witness requires the payment of a fee/expenses for attendance then prior authorisation is required from the Legal Aid Board and such authority will be sought at this point. • If any witnesses need to be served with a witness summons then we will arrange for the issue of that witness summons and for service of the summons upon the witness.	Usually within 3 weeks AFC
Step 3. Hearing	• You attend Court to give evidence • The other party has an opportunity to attend the hearing if he/she so wishes. • Your evidence will be subject to cross-examination by the other party, or by the other party's solicitor, if he/she is legally represented at the hearing. • The other party also has an opportunity to give evidence and that evidence will be subject to cross examination by your solicitor • The Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor.	Usually within 4 weeks AFC

	Similarly, the Court will hear evidence from any witnesses that attend to give evidence on behalf of the other party and that evidence will be subject to cross-examination by your solicitor. • Court may grant or refuse order or may adjourn the case	
Step 4. After the hearing	• If the order is granted you should obtain copy order from Court although it is likely that the court office will send a copy of the order out to you and to the other party and to your local Garda Station. • If the Order sought is not granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	5 Weeks AFC
Step 5. Close File	We will write to you confirming that all matters have now been completed and file is to close.	7 weeks AFC (assuming the case is not adjourned)

Best practice guidelines: domestic violence - respondent

Best Practice Guidelines: Domestic Violence
Respondent

This is a summary of the steps which commonly occur in a case where you are defending an application for a barring or safety order. While estimates of the timeframes for particular actions are provided these can vary considerably fro case to case due to circumstances outside of the control of the Board or private solicitor involved.

Step	**Details**	**When will it happen? (Estimate Only)**
Step 1. First Consultation	• We obtain information from you in relation to the following matters (amongst other things): the relationship between you and the other party; your living arrangements; details of any previous agreements, proceedings or court orders between you and advise you on the documentation that you have been served with and whether a domestic violence remedy is available to the other party. • If appropriate, we apply for a Legal Aid Certificate on your behalf to defend the	Usually these steps are taken within 1 week after First Consultation **(AFC)**

	proceedings taken against you. If the applicant is legally represented then we will make contact with his/her solicitor to see if a negotiated settlement may be possible.	
Step 2. Preparation for Hearing	• We will discuss with you whether you need to arrange for any witnesses to attend Court to give evidence on your behalf. • If the attendance of any witness requires the payment of a fee/expenses for attendance then prior authorisation is required from the Legal Aid Board and such authority will be sought at this point. • If any witnesses need to be served with a witness summons then we will arrange for the issue of that witness summons and for service of the summons upon the witness.	Usually within a week of hearing
Step 3. Hearing	• You attend Court to give evidence • The other party gives evidence first and that evidence will be subject to cross examination by your solicitor. • You then give your evidence and that evidence will be subject to cross-examination by the other party, or by the other party's solicitor, if he/she is legally represented at the hearing. • The Court will hear evidence from any witnesses that attend to give evidence on the applicant's behalf and that evidence will be subject to cross-examination by your solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor. The Court may grant or refuse order or may adjourn the case.	Usually within 2 weeks AFC
Step 4. After the hearing	• If the order sought by the Applicant is Granted then you should obtain copy order from	3 Weeks AFC

	Court, although it is likely that the court office will send a copy of the order out to you and to the Applicant and to your local Garda Station • If the Order sought is granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	
Step 5. Close File	We will write to you confirming that all matters have now been completed and your file is to be closed.	5 weeks AFC (assuming the case is not adjourned and no Appeal is made)

5. Maintenance

Best practice guidelines: maintenance – applicant

Best Practice Guidelines: Maintenance
Applicant

This is a summary of the steps which commonly occur in a case where you are seeking the payment of maintenance. As it is possible to obtain a legally binding agreement for maintenance payments without going to court, the process commences with us formally requesting the other party to agree matters and allowing him/her an opportunity to respond. It is also in the interests of all parties to consider non court based methods of resolving this issue and you should both consider attending with the family mediation service to see if a negotiated resolution is possible.

It is often the case that you will already have contacted the District Court office and started the court procedure before you have contacted us. This summary assumes that you have not taken any step before you have contacted us.

While estimates of the timeframes for particular actions are provided these can vary considerably from case to case due to circumstances outside of the control of the Board or private solicitor involved. You should note that in terms of trying to bring matters to finality, there are a number of factors that are outside our control. How your spouse/partner deals with the issue will have a significant bearing on how the matter proceeds. Delays can also be experienced in the court system.

Please note that there may a slight difference as to how your application for legal services is treated in one law centre rather than another. Due to the level of demand at some of our law centres, those centres operate a system whereby you will be offered an early appointment to be provided with legal advice only. You will be given a written record of the advice given to you on that occasion. The law centres operating this system will not be in a position to take any other steps on your behalf at that time. You will be offered a second consultation in due course by that law centre. For law centres who do not operate this system (and for private practitioners who may be delivering the service as outlined above) then the details outlined below at Step 1 for first consultation/second consultation will apply at first consultation stage.

Step	**Details**	**When will it happen? (Estimate Only)**
Step 1. First/Second Consultation	• We obtain information from you in respect of the following matters (amongst other things): details in relation to	

	the family circumstances; the history of your relationship with the other parent/party and whether financial support has been paid to date; details of any previous agreements, proceedings or court orders between you; each of your respective incomes, outgoings and assets insofar as they can be ascertained. • On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances. • We will also advise you about alternative ways of resolving your dispute other than court proceedings ie mediation. • If this is an advice only appointment we will advise you of the documentation you may need to get prior to your next appointment. • Where applicable, at Second consultation, we will update the information from you and request you to provide us with full verifiable details of your financial circumstances. • From that information provided, we prepare a statement of means setting out you income/expenditure and assets/debts. • We will write to the other party requesting their agreement to make regular binding maintenance payments and offer the option of mediation as a alternative method of resolution to court proceedings.	
Step 2. Positive response from or on behalf of your spouse/partner	• We send you their response and try to agree matters • We will request that they provide proof of their financial situation. • We will conclude an agreement on your behalf and, if no Court Order is required then your file will be closed in accordance with Step 8. • If a Court Order is required then it will be obtained by consent in accordance with	3 Weeks after Step 1.

	Step 6.	
Step 3. Negative or unacceptable response from or on behalf of your spouse/partner	If, appropriate we will apply for a Legal Aid Certificate on your behalf to institute maintenance proceedings	1 Week after Step 2.
Step 4. Institution of maintenance proceedings	• We will draft Court papers, have them issued and serve them on the other party. We let you know the hearing date	2 Weeks after Step 3
Step 5. Preparation for hearing	• We make sure the case is listed • You give us any up to date information or instructions, particularly in relation to your financial circumstances prior to the hearing. • We will write to the other party/other party's solicitor requesting that they provide proof of their financial situation. • We will discuss with you whether you need to arrange for any witnesses to attend Court to give evidence on your behalf. • If the attendance of any witness requires the payment of a fee/expenses for attendance then prior authorisation is required from the Legal Aid Board and such authority will be sought at this point. • If any witnesses need to be served with a witness summons then we will arrange for the issue of that witness summons and for service of the summons upon the witness.	Usually 2 weeks before the hearing
Step 6. Hearing	• You attend Court to give evidence • If agreement is reached between you and the other party then the Court is informed of that and the Court will make an order, by agreement. • The other party has an opportunity to attend the hearing if he/she so wishes. • Your evidence will be subject to cross-examination by the other party, or by the other party's solicitor, if he/she is legally represented at the hearing.	This will vary in different Court Areas and you will be advised of local arrangements. but usually within 6 to 8 weeks after Step 4.

	• The other party also has an opportunity to give evidence and that evidence will be subject to cross examination by your solicitor • The Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on behalf of the other party and that evidence will be subject to cross-examination by your solicitor. • Having heard the evidence, the Court can grant an Order for maintenance, refuse to make any order and/or adjourn the matter.	
Step 7. After the Hearing	• We will write to you to confirm the outcome of the Court hearing. • If the Court has granted an order for maintenance then you will receive the formal Maintenance Order from the court office. • If the Order sought is not granted or you are in some way unhappy with the order that is granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	Again this may depend on local Court arrangements but approximately 6 weeks after the date of the Court decision.
Step 8. Close File	We will write to you confirming that all matters have now been completed and your file is to be closed.	Approximately 16 weeks after Step 1 (assuming the case is not adjourned)

Best Practice Guidelines: Maintenance - Respondent

Best Practice Guidelines: Maintenance
Respondent

This is a summary of the steps which commonly occur in a case where you are defending a maintenance application. As it is possible to obtain a legally binding agreement for maintenance payments without going to court the process commences with us formally requesting the other party to agree matters and allowing him/her an opportunity to respond. While estimates of the timeframes for particular actions are provided these can vary considerably fro case to case due to circumstances outside of the control of the Board or private solicitor involved.

Please note that there may a slight difference as to how your application for legal services is treated in one law centre rather than another. Due to the level of demand at some of our law centres, those centres operate a system whereby you will be offered an early appointment to be provided with legal advice only. You will be given a written record of the advice given to you on that occasion. The law centres operating this system will not be in a position to take any other steps on your behalf at that time. You will be offered a second consultation in due course by that law centre. For law centres who do not operate this system (and for private practitioners who may be delivering the service as outlined above) then the details outlined below at Step 1 for first consultation/second consultation will apply at first consultation stage.

Step	**Details**	**When will it happen? (Estimate Only)**
Step 1. First/Second Consultation	• We obtain information from you in respect of the following matters (amongst other things): details in relation to the family circumstances; the history of your relationship with the other parent/party and whether financial support has been paid to date; details of any previous agreements, proceedings or court orders between you; each of your respective incomes, outgoings and assets insofar as they can be ascertained. • On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances and we will advise you about the nature of the documents that have been served upon you. We will also advise you on the strength of your defence • We will also advise you about alternative ways of resolving your dispute other than court proceedings ie mediation. • If this is an advice only appointment we will advise you of the documentation you may need to get prior to your next appointment. • Where applicable, at Second consultation, we will update the information from you and request you to provide us with full verifiable details of your financial circumstances. • From that information provided, we prepare a statement of means setting out you income/expenditure and assets/debts.	

	• We will write to the other side requesting their agreement to no payment (if your financial circumstances indicate you cannot afford to pay any sum) or an agreed amount. We will request on your behalf that he/she provides full verifiable details of his/her financial circumstances also.	
Step 2. Response from other side	• We will send you his/her response and try to agree a negotiated settlement of the matter. • We will request that they provide proof of their financial situation. • If the response is positive then we will conclude an agreement on your behalf and, if no Court Order is required then your file will be closed in accordance with Step 6. • If a Court Order is required then it will be obtained by consent in accordance with Step 4. • If there is response or if the response is negative then, if necessary, we will apply for a Legal Aid Certificate on your behalf to defend the maintenance proceedings that have been instituted against you.	Within 2 Weeks after Step 1.
Step 3. Preparation for hearing	• You give us any up to date information or instructions, particularly in relation to your financial circumstances prior to the hearing. • If this has not already been provided, we will write to the other party/other party's solicitor requesting that they provide proof of their financial situation. • We will discuss with you whether you need to arrange for any witnesses to attend Court to give evidence on your behalf. • If the attendance of any witness requires the payment of a fee/expenses for attendance then prior authorisation is required from the Legal Aid Board and such authority will be sought at this	2 weeks before the hearing

	point. • If any witnesses need to be served with a witness summons then we will arrange for the issue of that witness summons and for service of the summons upon the witness.	
Step 4. Hearing	• It will be necessary for you to attend Court on the day of the hearing. • The other party will also be in attendance. • If agreement is reached between you and the other party then the Court is informed of that and the Court will make an order, by agreement. • • If no agreement is reached then the application will proceed before the Court. The other party gives evidence first and that evidence will be subject to cross examination by your solicitor. • You then give your evidence and that evidence will be subject to cross-examination by the other party, or by the other party's solicitor, if he/she is legally represented at the hearing. • The Court will hear evidence from any witnesses that attend to give evidence on the applicant's behalf and that evidence will be subject to cross-examination by your solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor. • Having heard the evidence, the Court can grant an Order for maintenance, refuse to make any order and/or adjourn the matter.	This will vary in different Court Areas and you will be advised of local arrangements but usually within 2 weeks after Step 2.
Step 5. After the Hearing	• We will write to you to confirm the outcome of the Court hearing. • If the Court has granted an order for maintenance then	Again this may depend on local Court arrangements but approximately 6 weeks after the date of the Court decision.

	you will receive the formal maintenance Order from the court office. • If you are in some way unhappy with the order that is granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	
Step 6. Close File	We will write to you confirming that all matters have now been completed and your file is to be closed.	Approximately 16 weeks after Step 1 (assuming the case is not adjourned)

Note on enforcement
Enforcement proceedings are not covered by the legal aid certificates referred to above, unless the application is within four months of the closure of the file. A separate application for legal services and a legal aid certificate are required to represent parties in maintenance enforcement proceedings.

6. Separation, Divorce, Co-Habitant Relief, and Dissolution of Civil Partnership

Introduction
These guidelines have been drafted primarily with the client being contemplated as the initiator (Applicant) of the separation or divorce. They should be read appropriately if the client is the "Respondent" or recipient of correspondence from his or her spouse's solicitor.

General case progress
While the guidelines do not generally attempt to put time limits on each of the steps to be taken in relation to the processing of a separation/divorce case, every effort will be made to bring finality to a case at the earliest possible opportunity.

As it is possible to obtain a legally binding separation agreement without going to court, the process commences with us formally requesting the other party to agree matters and allowing him/her an opportunity to respond. It is also in the interests of all parties to consider non court based methods of resolving this issue and you should both consider attending with the family mediation service to see if a negotiated resolution is possible.

Separation agreement
This is where all matters arising from the breakdown of the marriage/relationship can be resolved without the necessity of Court proceedings.

Best practice guidelines: separation agreement

Best Practice Guidelines: Separation Agreement

This is a summary of the steps which commonly occur when your solicitor is negotiating a separation agreement on your behalf. It is our general practice to write to you when any of these happen. If you are expecting a step to be taken but have not received confirmation you should contact the Law Centre immediately for an update. While estimates of the timeframes for particular actions are provided these can vary considerably fro case to case due to circumstances outside of the control of the Board or private solicitor involved.

As the case progresses we may need to take additional steps which may require more time. We will keep you informed if this happens. From the date the file is opened you may be

required to respond to requests for information (and/or documents) from us and/or the other side. This is normal. If you delay in providing this information the case itself will be delayed. If the other side delay in responding to our requests we have the option of terminating negotiations and instituting proceedings for Judicial Separation.

Please note that there may a slight difference as to how your application for legal services is treated in one law centre rather than another. Due to the level of demand at some of our law centres, those centres operate a system whereby you will be offered an early appointment to be provided with legal advice only. You will be given a written record of the advice given to you on that occasion. The law centres operating this system will not be in a position to take any other steps on your behalf at that time. You will be offered a second consultation in due course by that law centre. For law centres who do not operate this system (and for private practitioners who may be delivering the service as outlined above) then the details outlined below at Step 1 for first consultation/second consultation will apply at first consultation stage.

Step	**Details**	**When will it happen? (Estimate Only)**

Step 1. Consultation	• We obtain information from you in respect of the following matters (amongst other things): details in relation to the family circumstances; arrangements in relation to children; property owned by either party; pension entitlements of either party; living arrangements; the history of your relationship with your spouse/partner; whether financial support has been paid to date; details of any previous agreements, proceedings or court orders between you; each of your respective incomes, outgoings and assets insofar as they can be ascertain On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances. • We will also advise you about alternative ways of resolving your dispute other than court proceedings ie mediation. • If this is an advice only appointment we will advise you of the documentation, including your state marriage certificate/Registration of Civil Partnership/ Cohabitation Agreement you may need to get prior to your next consultation. Where applicable, at Second consultation, we will update the information from you and request you to provide us with full verifiable details of your financial circumstances. We will write to the other party enquiring as to whether they are prepared to negotiate an agreement and offer the option of mediation as a alternative method of resolution to court proceedings.	
Step 2. Positive response from or on behalf of your spouse/partner	• We will send you any response that we receive, take your instructions in relation to any such response and, if appropriate, try to	3 weeks after step 1

	agree terms. • We will request your spouse/partner to provide proof of his/her financial situation in a sworn document called an Affidavit of Means and we will prepare an affidavit for you to complete and furnish it to your spouse/partner or his/her solicitor.	
Step 3. Agreement drafted	• We will draft an agreement and when you approve same we will send to the other side • We will enter into correspondence to finalise the terms of the agreement but will only agree any changes when you have authorised same..	This will depend on the nature and complexities of the matters to be agreed and whether or not a mediated agreement has already been concluded. If a mediated agreement has been concluded then it would expected to complete this step within 6 to 8 weeks of Step 2.
Step 4. Finalisation of Separation agreement	• When the terms have been agreed by you and your spouse/partner we will incorporate them into a Separation Agreement. This will be prepared in duplicate • Both you and your spouse/partner will sign these documents and each of you will retain a copy. • You may also both agree to sign, at the same time, a Deed of Waiver which is a document confirming that neither of you will have any claim on any property either of you acquire in the future.	4 to 6 weeks step 3
Step 5. Implementation.	• We will advise you of any of the steps necessary to implement the terms of the agreement • If courts orders are necessary or if the agreement is to be ruled by the court then we will apply for legal aid on your behalf to make the appropriate application to court. • We will advise you on the extent of conveyancing services that can be provided by the Legal Aid Board in the event that the any term of the agreement relates to the transfer of the interest of one spouse/partner to another.	Varies depending on terms

	• We will advise you about making a will.	
Step 6. Close File	We will write to you confirming that all matters have now been completed and your file is to be closed.	3 weeks after step 5

Best practice guidelines: judicial separation - applicant

Best Practice Guidelines: Typically contested Judicial Separation Applicant

This is a summary of the typical procedural steps in a contested Judicial Separation. It is our general practice to write to you when we take any of the steps below. If you are expecting a step to be taken but have not received confirmation you should contact the Law Centre immediately for an update.

While many Judicial Separation cases are similar each case is unique. While estimates of the timeframes for particular actions are provided these can vary considerably from case to case due to circumstances outside of the control of the Board or private solicitor involved. As the case progresses we may need to take additional steps which may require more time. We will keep you informed if this happens. From the date the file is opened you may be required to respond to requests for information (and/or documents) from us and/or the other side. This is normal. Failure or delay on your part to respond to these requests may delay the case and have adverse consequences in terms of the outcome of the case.

Please note that there may a slight difference as to how your application for legal services is treated in one law centre rather than another. Due to the level of demand at some of our law centres, those centres operate a system whereby you will be offered an early appointment to be provided with legal advice only. You will be given a written record of the advice given to you on that occasion. The law centres operating this system will not be in a position to take any other steps on your behalf at that time. You will be offered a second consultation in due course by that law centre. For law centres who do not operate this system (and for private practitioners who may be delivering the service as outlined above) then the details outlined below at Step 1 for first consultation/second consultation will apply at first consultation stage.

Step	**Details**	**When will it happen? Time required?**
Step 1. First/Second Consultation	• We obtain information from you in respect of the following matters (amongst other things): details in relation to the family circumstances; arrangements in relation to children; property owned by either party; pension entitlements of either party; living arrangements; the history of your relationship with your spouse; whether financial support has been paid to date; details of any previous agreements, proceedings or court orders between you; each of your respective incomes, outgoings and assets insofar as they can be ascertained.	If agreement is possible then the matter will proceed as a separation agreement unless particular court orders, such as a pension adjustment order, are required.

	• On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances. • We will also advise you about alternative ways of resolving your dispute other than court proceedings ie mediation. • If this is an advice only appointment we will advise you of the documentation, including your state marriage certificate, you may need to get prior to your next appointment. • Where applicable, at Second consultation, we will update the information from you and request you to provide us with full verifiable details of your financial circumstances. We will discuss with you the information that will be required from you in order to complete an Affidavit of Means and an Affidavit of Welfare in due course. • We will write to the other party enquiring as to whether they are prepared to negotiate an agreement and offer the option of mediation as a alternative method of resolution to court proceedings.	
Step 2. Positive response from or on behalf of your spouse	• We send you their response and try to agree matters • We will request that they provide proof of their financial situation. • We will conclude an agreement on your behalf and, if no Court Order is required then your file will be closed in accordance with Step 15. • If a Court Order is required then it will be obtained by consent in accordance with Step 12.	4 weeks after Step 1
Step 3. Negative or unacceptable response from or on behalf of your spouse	• If, appropriate we will apply for a Legal Aid Certificate on your behalf to institute proceedings for Judicial Separation.	9 weeks after Step 1
Step 4. Preparation of	• If necessary, and upon	5 to 8 weeks after

Court Papers	payment of your legal aid contribution, we will brief a barrister to draft the appropriate proceedings. • We will discuss these draft proceedings with you and any notifications that may be required to be given to the Trustees of any relevant pension and once you approve same we will arrange for them to issue from the court office. • We will require you to complete an Affidavit of Means which provides full verifiable details of your financial circumstances and also complete an Affidavit of Welfare which provides full details in respect of any dependant children.	Step 3
Step 5. Serve Papers	• Once the papers are issued by the court office and returned to us then we will arrange for these proceedings to be sent to your spouse in accordance with the Court Rules.	This will vary in different Court Areas due to the length of time it may take the court office to issue the proceedings and you will be advised of local arrangements. Approximately 8 to 10 weeks after Step 4.
Step 6. Response to the Proceedings	• If the other party wishes to defend the proceedings then he/she or his/her solicitor will send to us a document called an "Appearance". • We will write to you to let you know if this document has been received.	3 weeks after Step 5
Step 7. No Response from other side to the proceedings	• If no response within a period of approximately 3 weeks then we will write to the other party warning him/her that we will issue an application to compel him/her to do so. • If there is still no response after 14 days then we will send documents notifying your spouse that you are applying to the Court for the orders sought in the proceedings regardless of the fact that there has been no response from him/her. (Go to Step 9)	3 weeks after Step 6
Step 8. Response Received to the proceedings	• We will notify you when an Appearance has been received. The Appearance is merely an indication that your Spouse wishes to defend the	3 weeks after 5

	proceedings. • The document which sets out your spouse's answers to the details set out in your proceedings is called a Defence. Your spouse's Affidavit of Means and Affidavit of Welfare will accompany that document. • If the Defence is not received within say 6 weeks of the receipt of the Appearance then we will write to your spouse/spouse's solicitor warning him/her that we will issue an application to compel them to send us this document. • If there is still no response after 14 days then we will send documents notifying them that you are applying to the Court for the orders sought in the proceedings regardless of the fact that there has no Defence has been received. (Go to Step 9) • We will contact you when we receive the Defence and Affidavits on behalf of your spouse. • We will contact you to make arrangements to discuss these documents with you.	
Step 9. County Registrar's Court	• If an Appearance has not been furnished and the other party does not attend the Court then an Order will be sought putting the case in for hearing in the Circuit Court before a Judge (Go to Step 12). • If a Defence has not been furnished then an Order will be sought directing other side to file this document within a certain time period. • If, following the expiry of that time (or any extention of time granted by the County Registrar) the Defence still has not been furnished then an Order will be sought putting the case in for hearing in the Circuit Court before a Judge (Go to Step 12).	4 weeks after Step 7 or 4 weeks after Step 8.
Step 10. Case Progression Hearing	• Once a Defence has been received, we will write to your spouse/spouse's solicitor	This will vary in different Court Areas and you will be advised of local arrangements.

	requesting that they provide proof of their financial situation as set out in their Affidavit of Means. • Further, once the Defence has been received a hearing is arranged before the County Registrar. • The purpose of this hearing is for the County Registrar to decide if the case is ready to be heard before the Circuit Court. • If your spouse/spouse's solicitor has not provided the financial verification requested we will bring this to the attention of the County Registrar at this hearing and seek an appropriate order to compel him/her to do so. • It will not be necessary for you attend this hearing. • If the case is not ready to proceed to trial the County Registrar will direct what steps are to be taken by either side to get the case ready for hearing and adjourn the hearing for that purpose. • Once the parties have complied with the County Registrar's Order the case will be put in for hearing in the Circuit Court before a Judge (Go to Step 12).	Approximately 8 to 10 weeks after Step 8.
Step 11. Pre-trial preparation	• We will discuss with you the documentation furnished by your spouse to verify his/her financial circumstances. If you feel that your spouse is not being truthful with regard to disclosing details of his/her financial circumstances then we will discuss with you whether it would be advisable for you to apply to Court for a formal Order for Discovery compelling him/her to do so. • It is likely you will need to update your Affidavit of Means and Affidavit of Welfare and we will discuss this with you. • We will arrange a meeting between you and your barrister before the case commences in order to discuss matters relating to the	4 to 6 weeks before date the case is listed for hearing

	proceedings. • If appropriate, we will ascertain from you if a child has had an opportunity to make his/her views on the matter known and explore how the child's voice can be heard. • We will discuss whether it may be necessary to seek authority from the Legal Aid Board for a welfare report/voice of the child report. • We will discuss with you whether you need to arrange for any witnesses to attend Court to give evidence on your behalf. • If the attendance of any witness requires the payment of a fee/expenses for attendance then prior authorisation is required from the Legal Aid Board and such authority will be sought at this point. • If any witnesses need to be served with a witness summons then we will arrange for the issue of that witness summons and for service of the summons upon the witness. • We will explore the possibility that it may be possible to resolve matters by agreement and, if appropriate, arrange a Settlement Meeting which will be attended by the other side.	
Step 12. Judicial Separation Hearing	• You attend Court to give evidence • If agreement is reached between you and your spouse then the Court is informed of that and the Court will make orders, by agreement. • Your spouse does have an opportunity to attend the hearing if he/she so wishes. • Your evidence will be subject to cross-examination by your spouse/your spouse's solicitor, if he/she is legally represented at the hearing. • Your spouse also has an opportunity to give evidence and that evidence will be	This will vary in different Court Areas and you will be advised of local arrangements.

	subject to cross examination by your solicitor • If appropriate, request the court to seek a report from an expert on any matter affecting the welfare of a child or to appoint an expert to determine and convey the views of the child • The Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on behalf of the other party and that evidence will be subject to cross-examination by your solicitor. • The Court can grant the order for Judicial Separation together with any other appropriate orders relating to matters such as custody/access, domestic violence, property, pensions, succession rights etc; it can refuse to make any orders and/or adjourn the matter. In the event that the matter is adjourned then at the adjourned hearing: • The Court can receive any up to date reports as may have been directed, review the case and hear any further evidence. • The Court can then make temporary or final orders and or adjourn the case again.	
Step 13. After Hearing	• We will write to you to confirm the outcome • Based on the decision made by the Court, formal orders are drawn up and sent out to you and the other party. • If the Orders sought by you are not granted or you are in some way unhappy with the orders that are granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	This will vary in different Court Areas and you will be advised of local arrangements.
Step 14. Implement	• We will advise you on what	8 to 10 weeks after receipt

Decision	steps need to be taken to implement the terms of the Order made by the Court and the extent of the legal services that can be provided to you in relation to this on foot of the legal aid certificate already granted to you. • If necessary, we will contact the Trustees of any pension scheme with details of any pension adjustment order to be implemented. • We will advise you on the extent of conveyancing services that can be provided by the Legal Aid Board in the event that the Court made a property adjustment order directing the transfer of the interest of one spouse to another. • We will advise you of the options that will be available to you in the event that your spouse does not comply with any of the orders made by the Court and the possible consequences for you of not complying with those orders. • We will advise on the appropriateness or otherwise of making/updating your will bearing in mind the orders made by the Court.	of the perfected court order
Step 15. Close File	We will write to you confirming that all matters have now been completed and the file is to be closed.	3 weeks after Step 14.

Best practice guidelines: judicial separation - respondent

Best Practice Guidelines: Typical Contested Judicial Separation
Respondent

This is a summary of the typical procedural steps in a contested Judicial Separation. It is our general practice to write to you when we take any of the steps below. If you are expecting a step to be taken but have not received confirmation you should contact the law centre immediately for an update.

While estimates of the timeframes for particular actions are provided these can vary considerably from case to case due to circumstances outside of the control of the Board or private solicitor involved. While many Judicial Separation cases are similar each case is unique. As the case progresses we may need to take additional steps which may require more time. We will keep you informed if this happens. From the date the file is opened you may be required to respond to requests for information (and/or documents) from us and/or the other side. This is normal. Failure or delay on your part to respond to these requests may delay the case and

Step	Details	When will it happen? Time required?
Step 1. First/Second Consultation	• We obtain information from you in respect of the following matters (amongst other things): details in relation to the family circumstances; arrangements in relation to children; property owned by either party; pension entitlements of either party; living arrangements; the history of your relationship with your spouse; whether financial support has been paid to date; details of any previous agreements, proceedings or court orders between you; each of your respective incomes, outgoings and assets insofar as they can be ascertained. • We will discuss with you the papers you have received from your spouse or your spouse's solicitor • We will advice you about entering a document called an Appearance which tells the court and your spouse that you will be engaging in the proceedings • On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances. • We will also advise you about alternative ways of resolving your dispute other than court proceedings ie mediation. • If this is an advice only appointment we will advise you of the documentation, including your state marriage certificate, you may need to get prior to your next appointment. • Where applicable, at Second consultation, we will update the information from you and request you to provide us with full verifiable details of your financial circumstances. We will discuss with you the information that will be required from you in order to complete an Affidavit of Means and an Affidavit of	

	Welfare in due course. • We will write to the other party enquiring as to whether they are prepared to negotiate an agreement and offer the option of mediation as a alternative method of resolution to court proceedings.	
Step 2. Positive response from or on behalf of your spouse	• We send you their response and try to agree matters • We will request that they provide proof of their financial situation. • We will conclude an agreement on your behalf and, if no Court Order is required then your file will be closed in accordance with Step 11. • If a Court Order is required then it will be obtained by consent in accordance with Step 8.	4 weeks after Step 1
Step 3. Negative or unacceptable response from or on behalf of your spouse	If, appropriate we will apply for a Legal Aid Certificate on your behalf to defend proceedings for Judicial Separation.	9 weeks after Step 1
Step 4. Preparation of Court Papers	• If necessary, and upon payment of your legal aid contribution, we will brief a barrister to draft a defence and, if appropriate a counterclaim. • We will enter an Appearance if you have not already done so. If there is already an Appearance filled we will lodge a notification that we are acting for you • Upon receipt of the draft Defence, we will discuss this defence and any notifications that may be required to be given to the Trustees of any relevant pension. We will require you to complete an Affidavit of Means which provides full verifiable details of your financial circumstances and also complete an Affidavit of Welfare which provides full details in respect of any dependant children. • Once you approve the Defence, Affidavits and Notice to Trustees (if	6 to 8 weeks after Step 3

	necessary) then we will arrange for them to be lodged in the Court office	
Step 5. Serve Papers	• At the time of lodging your Defence and Affidavits in the court office, we will also send them to your spouse or his/her solicitor.	. Approximately 8 to 10 weeks after Step 4.
Step 6. Case Progression Hearing	• Once your Defence has been lodged and sent to the other side, we will write to your spouse/spouse's solicitor requesting that they provide proof of their financial situation as set out in their Affidavit of Means. • Further, once the Defence has lodged in the Court Office then a hearing is arranged before the County Registrar. • The purpose of this hearing is for the County Registrar to decide if the case is ready to be heard before the Circuit Court. • If your spouse/spouse's solicitor has not provided the financial verification requested we will bring this to the attention of the County Registrar at this hearing and seek an appropriate order to compel him/her to do so. • It will not be necessary for you attend this hearing. • If the case is not ready to proceed to trial the County Registrar will direct what steps are to be taken by either side to get the case ready for hearing and adjourn the hearing for that purpose. • Once the parties have complied with the County Registrar's Order the case will be put in for hearing in the Circuit Court before a Judge (Go to Step 8).	This will vary in different Court Areas and you will be advised of local arrangements. Approximately 8 to 10 weeks after Step 5
Step 7. Pre-trial preparation	• We will discuss with you the documentation furnished by your spouse to verify his/her financial circumstances. If you feel that your spouse is not being truthful with regard to disclosing details of his/her financial circumstances then we will discuss with you	4 to 6 weeks before date the case is listed for hearing

	whether it would be advisable for you to apply to Court for a formal Order for Discovery compelling him/her to do so. • It is likely you will need to update your Affidavit of Means and Affidavit of Welfare and we will discuss this with you. • We will arrange a meeting between you and your barrister before the case commences in order to discuss matters relating to the proceedings. • If appropriate, we will ascertain from you if a child has had an opportunity to make his/her views on the matter known and explore how the child's voice can be heard. • We will discuss whether it may be necessary to seek authority from the Legal Aid Board for a welfare report/voice of the child report. • We will discuss with you whether you need to arrange for any witnesses to attend Court to give evidence on your behalf. • If the attendance of any witness requires the payment of a fee/expenses for attendance then prior authorisation is required from the Legal Aid Board and such authority will be sought at this point. • If any witnesses need to be served with a witness summons then we will arrange for the issue of that witness summons and for service of the summons upon the witness. • We will explore the possibility that it may be possible to resolve matters by agreement and, if appropriate, arrange a Settlement Meeting which will be attended by the other side.	
Step 8. Judicial Separation Hearing	• You attend Court to give evidence • If agreement is reached between you and your spouse then the Court is	This will vary in different Court Areas and you will be advised of local arrangements.

	informed of that and the Court will make orders, by agreement. • Your spouse will give evidence first as they commenced the proceedings • Your spouse can be cross examined by your legal representative. • You will also be given an an opportunity to give evidence and your evidence will be subject to cross-examination by your spouse/your spouse's solicitor, if he/she is legally represented at the hearing. • If appropriate, request the court to seek a report from an expert on any matter affecting the welfare of a child or to appoint an expert to determine and convey the views of the child • The Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on behalf of the other party and that evidence will be subject to cross-examination by your solicitor. • The Court can grant the order for Judicial Separation together with any other appropriate orders relating to matters such as custody/access, domestic violence, property, pensions, succession rights etc; it can refuse to make any orders and/or adjourn the matter. In the event that the matter is adjourned then at the adjourned hearing: • The Court can receive any up to date reports as may have been directed, review the case and hear any further evidence. • The Court can then make temporary or final orders and or adjourn the case again.	
Step 9. After Hearing	• We will write to you to confirm	This will vary in different

	the outcome • Based on the decision made by the Court, formal orders are drawn up and sent out to you and the other party. • If the Orders sought by you are not granted or you are in some way unhappy with the orders that are granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	Court Areas and you will be advised of local arrangements.
Step 10. Implement Decision	• We will advise you on what steps need to be taken to implement the terms of the Order made by the Court and the extent of the legal services that can be provided to you in relation to this on foot of the legal aid certificate already granted to you. • If necessary, we will contact the Trustees of any pension scheme with details of any pension adjustment order to be implemented. • We will advise you on the extent of conveyancing services that can be provided by the Legal Aid Board in the event that the Court made a property adjustment order directing the transfer of the interest of one spouse to another. • We will advise you of the options that will be available to you in the event that your spouse does not comply with any of the orders made by the Court and the possible consequences for you of not complying with those orders. • We will advise on the appropriateness or otherwise of making/updating your will bearing in mind the orders made by the Court.	8 to 10 weeks after receipt of the perfected court order
Step 11. Close File	We will write to you confirming that all matters have now been completed and the file is to be closed.	3 weeks after Step 14.

Best practice guidelines: divorce - applicant

Best Practice Guidelines: Typical Contested Divorce Applicant

This is a summary of the typical procedural steps in a contested Divorce. It is our general practice to write to you when we take any of the steps below. If you are expecting a step to be taken but have not received confirmation you should contact the Law Centre immediately for an update.

While estimates of the timeframes for particular actions are provided these can vary considerably from case to case due to circumstances outside of the control of the Board or private solicitor involved. While many divorce cases are similar each case is unique. As the case progresses we may need to take additional steps which may require more time. We will keep you informed if this happens. From the date the file is opened you may be required to respond to requests for information (and/or documents) from us and/or the other side. This is normal. Failure or delay on your part to respond to these requests may delay the case and have adverse consequences in terms of the outcome of the case.

Please note that there may a slight difference as to how your application for legal services is treated in one law centre rather than another. Due to the level of demand at some of our law centres, those centres operate a system whereby you will be offered an early appointment to be provided with legal advice only. You will be given a written record of the advice given to you on that occasion. The law centres operating this system will not be in a position to take any other steps on your behalf at that time. You will be offered a second consultation in due course by that law centre. For law centres who do not operate this system (and for private practitioners who may be delivering the service as outlined above) then the details outlined below at Step 1 for first consultation/second consultation will apply at first consultation stage.

Step	**Details**	**When will it happen? Time required?**
Step 1. First/Second Consultation	• We obtain information from you in respect of the following matters (amongst other things): The length of time you have lived apart from your spouse; details in relation to the family circumstances; arrangements in relation to children; property owned by either party; pension entitlements of either party; living arrangements; the history of your relationship with your spouse; whether financial support has been paid to date; details of any previous agreements, proceedings or court orders between you; each of your respective incomes, outgoings and assets insofar as they can be ascertained. We will ask you to confirm that reconciliation is not an option • On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances. • We will also advise you about alternative ways of resolving	.

	your dispute other than court proceedings ie mediation. • If this is an advice only appointment we will advise you of the documentation, including your state marriage certificate, you may need to get prior to your next appointment. • Where applicable, at Second consultation, we will update the information from you and request you to provide us with full verifiable details of your financial circumstances. We will discuss with you the information that will be required from you in order to complete an Affidavit of Means and an Affidavit of Welfare in due course. • We will write to the other party telling them we will be commencing divorce proceedings and enquiring as to whether they are prepared to negotiate the terms of an agreement to put before the court and offer the option of mediation as a alternative method of resolution to court proceedings.	
Step 2. Positive response from or on behalf of your spouse	• We send you their response and try to agree matters • We will request that they provide proof of their financial situation. • We will conclude an agreement on your behalf • We will apply for a legal aid certificate on your behalf so that we can represent you in court to obtain your Decree of Divorce on an uncontested basis and, proceed to draft the documents necessary for court accordance with Step 8..	4 weeks after Step 1
Step 3. Negative or unacceptable response from or on behalf of your spouse	If, appropriate, we will apply for a Legal Aid Certificate on your behalf to institute proceedings for Divorce	9 weeks after Step 1
Step 4. Preparation of Court Papers	• If necessary, and upon payment of your legal aid contribution, we will brief a barrister to draft the appropriate proceedings. • We will discuss these draft	5 to 8 weeks after Step 3

	proceedings with you and any notifications that may be required to be given to the Trustees of any relevant pension and once you approve same we will arrange for them to issue from the court office. • We will require you to complete an Affidavit of Means which provides full verifiable details of your financial circumstances and also complete an Affidavit of Welfare which provides full details in respect of any dependant children.	
Step 5. Serve Papers	Once the papers are issued by the court office and returned to us then we will arrange for these proceedings to be sent to your spouse in accordance with the Court Rules.	This will vary in different Court Areas due to the length of time it may take the court office to issue the proceedings and you will be advised of local arrangements. Approximately 8 to 10 weeks after Step 4.
Step 6. Response to the Proceedings	• If the other party wishes to defend the proceedings then he/she or his/her solicitor will send to us a document called an "Appearance". • We will write to you to let you know if this document has been received.	1. weeks after Step 5
Step 7. No Response from other side to the proceedings	• If no response within a period of approximately 3 weeks then we will write to the other party warning him/her that we will issue an application to compel him/her to do so. • If there is still no response after 14 days then we will send documents notifying your spouse that you are applying to the Court for the orders sought in the proceedings regardless of the fact that there has been no response from him/her. (Go to Step 9)	3 weeks after Step 6
Step 8. Response Received to the proceedings	• We will notify you when an Appearance has been received. The Appearance is merely an indication that your Spouse wishes to defend the proceedings. • The document which sets out your spouse's answers to the details set out in your proceedings is called a	3 weeks after 5

	Defence. Your spouse's Affidavit of Means and Affidavit of Welfare will accompany that document. • If the Defence is not received within say 6 weeks of the receipt of the Appearance then we will write to your spouse/spouse's solicitor warning him/her that we will issue an application to compel them to send us this document. • If there is still no response after 14 days then we will send documents notifying them that you are applying to the Court for the orders sought in the proceedings regardless of the fact that there has no Defence has been received. (Go to Step 9) • We will contact you when we receive the Defence and Affidavits on behalf of your spouse. • We will contact you to make arrangements to discuss these documents with you.	
Step 9. County Registrar's Court	• If an Appearance has not been furnished and the other party does not attend the Court then an Order will be sought putting the case in for hearing in the Circuit Court before a Judge (Go to Step 12). • If a Defence has not been furnished then an Order will be sought directing other side to file this document within a certain time period. • If, following the expiry of that time (or any extention of time granted by the County Registrar) the Defence still has not been furnished then an Order will be sought putting the case in for hearing in the Circuit Court before a Judge (Go to Step 12).	4 weeks after Step 7 or 4 weeks after Step 8.
Step 10. Case Progression Hearing	• Once a Defence has been received, we will write to your spouse/spouse's solicitor requesting that they provide proof of their financial situation as set out in their Affidavit of Means. • Further, once the Defence	This will vary in different Court Areas and you will be advised of local arrangements. Approximately 8 to 10 weeks after Step 8.

	has been received a hearing is arranged before the County Registrar. • The purpose of this hearing is for the County Registrar to decide if the case is ready to be heard before the Circuit Court. • If your spouse/spouse's solicitor has not provided the financial verification requested we will bring this to the attention of the County Registrar at this hearing and seek an appropriate order to compel him/her to do so. • It will not be necessary for you attend this hearing. • If the case is not ready to proceed to trial the County Registrar will direct what steps are to be taken by either side to get the case ready for hearing and adjourn the hearing for that purpose. • Once the parties have complied with the County Registrar's Order the case will be put in for hearing in the Circuit Court before a Judge (Go to Step 12).	
Step 11. Pre-trial preparation	• We will discuss with you the documentation furnished by your spouse to verify his/her financial circumstances. If you feel that your spouse is not being truthful with regard to disclosing details of his/her financial circumstances then we will discuss with you whether it would be advisable for you to apply to Court for a formal Order for Discovery compelling him/her to do so. • It is likely you will need to update your Affidavit of Means and Affidavit of Welfare and we will discuss this with you. • We will arrange a meeting between you and your barrister before the case commences in order to discuss matters relating to the proceedings. • If appropriate, we will ascertain from you if a child has had an opportunity to make his/her views on the	4 to 6 weeks before date the case is listed for hearing

	matter known and explore how the child's voice can be heard. • We will discuss whether it may be necessary to seek authority from the Legal Aid Board for a welfare report/voice of the child report. • We will discuss with you whether you need to arrange for any witnesses to attend Court to give evidence on your behalf. • If the attendance of any witness requires the payment of a fee/expenses for attendance then prior authorisation is required from the Legal Aid Board and such authority will be sought at this point. • If any witnesses need to be served with a witness summons then we will arrange for the issue of that witness summons and for service of the summons upon the witness. • We will explore the possibility that it may be possible to resolve matters by agreement and, if appropriate, arrange a Settlement Meeting which will be attended by the other side.	
Step 12. Divorce Hearing	• You attend Court to give evidence • If agreement is reached between you and your spouse then the Court is informed of that. • The court will have to hear evidence from you confirming that you have lived apart for the period required and that there is no prospect of a reconciliation and that proper financial provision has been made for the family members bearing in mind the financial circumstances of the family. The court can incorporate your agreement into its Order if it is satisfied to do so.. • Your spouse does have an opportunity to attend the hearing if he/she so wishes. • Your evidence will be subject to cross-examination by your	This will vary in different Court Areas and you will be advised of local arrangements.

	spouse/your spouse's solicitor, if he/she is legally represented at the hearing. • Your spouse also has an opportunity to give evidence and that evidence will be subject to cross examination by your solicitor • If appropriate, request the court to seek a report from an expert on any matter affecting the welfare of a child or to appoint an expert to determine and convey the views of the child • The Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on behalf of the other party and that evidence will be subject to cross-examination by your solicitor. • The Court can grant the order for Divorce together with any other appropriate orders relating to matters such as custody/access, domestic violence, property, pensions, succession rights etc; it can refuse to make any orders and/or adjourn the matter. In the event that the matter is adjourned then at the adjourned hearing: • The Court can receive any up to date reports as may have been directed, review the case and hear any further evidence. • The Court can then make temporary or final orders and or adjourn the case again.	
Step 13. After Hearing	• We will write to you to confirm the outcome • Based on the decision made by the Court, formal orders are drawn up and sent out to you and the other party. • If the Orders sought by you are not granted or you are in some way unhappy with the orders that are granted then	This will vary in different Court Areas and you will be advised of local arrangements.

	we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	
Step 14. Implement Decision	• We will advise you on what steps need to be taken to implement the terms of the Order made by the Court and the extent of the legal services that can be provided to you in relation to this on foot of the legal aid certificate already granted to you. • If necessary, we will contact the Trustees of any pension scheme with details of any pension adjustment order to be implemented. • We will advise you on the extent of conveyancing services that can be provided by the Legal Aid Board in the event that the Court made a property adjustment order directing the transfer of the interest of one spouse to another. • We will advise you of the options that will be available to you in the event that your spouse does not comply with any of the orders made by the Court and the possible consequences for you of not complying with those orders. • We will advise on the appropriateness or otherwise of making/updating your will bearing in mind the orders made by the Court.	8 to 10 weeks after receipt of the perfected court order
Step 15. Close File	We will write to you confirming that all matters have now been completed and the file is to be closed.	3 weeks after Step 14.

Best practice guidelines: divorce - respondent

Best Practice Guidelines: Typical Contested Divorce
Respondent

This is a summary of the typical procedural steps in a contested Divorce. It is our general practice to write to you when we take any of the steps below. If you are expecting a step to be taken but have not received confirmation you should contact the Law Centre immediately for an update.

While estimates of the timeframes for particular actions are provided these can vary considerably from case to case due to circumstances outside of the control of the Board or private solicitor involved. While many Judicial Separation cases are similar each case is unique. As the case progresses we may need to take additional steps which may require more time. We will keep you informed if this happens. From the date the file is opened you may be required to

respond to requests for information (and/or documents) from us and/or the other side. This is normal. Failure or delay on your part to respond to these requests may delay the case.

Please note that there may a slight difference as to how your application for legal services is treated in one law centre rather than another. Due to the level of demand at some of our law centres, those centres operate a system whereby you will be offered an early appointment to be provided with legal advice only. You will be given a written record of the advice given to you on that occasion. The law centres operating this system will not be in a position to take any other steps on your behalf at that time. You will be offered a second consultation in due course by that law centre. For law centres who do not operate this system (and for private practitioners who may be delivering the service as outlined above) then the details outlined below at Step 1 for first consultation/second consultation will apply at first consultation stage.

Step	**Details**	**When will it happen? Time required?**
Step 1. First/Second Consultation	• We obtain information from you in respect of the following matters (amongst other things):The length of time you have lived apart form your spouse; details in relation to the family circumstances; arrangements in relation to children; property owned by either party; pension entitlements of either party; living arrangements; the history of your relationship with your spouse; whether financial support has been paid to date; details of any previous agreements, proceedings or court orders between you; each of your respective incomes, outgoings and assets insofar as they can be ascertained. • We will discuss with you the papers you have received from your spouse or your spouse's solicitor • We will advice you about entering a document called an Appearance which tells the court and your spouse that you will be engaging in the proceedings • On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances. • We will also advise you about alternative ways of resolving your dispute other than court proceedings ie mediation. • If this is an advice only appointment we will advise you of the documentation,	

	including your state marriage certificate, you may need to get prior to your next appointment. • Where applicable, at Second consultation, we will update the information from you and request you to provide us with full verifiable details of your financial circumstances. We will discuss with you the information that will be required from you in order to complete an Affidavit of Means and an Affidavit of Welfare in due course. • We will write to the other party enquiring as to whether they are prepared to negotiate an agreement and offer the option of mediation as a alternative method of resolution to court proceedings. •	
Step 2. Positive response from or on behalf of your spouse	• We send you their response and try to agree matters • We will request that they provide proof of their financial situation. • We will conclude an agreement on your behalf and, if necessary or required, we will apply for a legal aid certificate to represent you in court in relation to the Court making a Decree of Divorce on an uncontested basis so that the court can make orders in the terms of the agreement reached between you and your spouse.	4 weeks after Step 1
Step 3. Negative or unacceptable response from or on behalf of your spouse	If, appropriate we will apply for a Legal Aid Certificate on your behalf to defend proceedings for Divorce and/or to bring a claim for another remedy	9 weeks after Step 1
Step 4. Preparation of Court Papers	• If necessary, and upon payment of your legal aid contribution, we will brief a barrister to draft a defence and, if appropriate a counterclaim. • We will enter an Appearance if you have not already done so. If there is already an Appearance filled we will lodge a notification that we are acting for you	5 to 8 weeks after Step 3

	• Upon receipt of the draft Defence, we will discuss this defence and any notifications that may be required to be given to the Trustees of any relevant pension. We will require you to complete an Affidavit of Means which provides full verifiable details of your financial circumstances and also complete an Affidavit of Welfare which provides full details in respect of any dependant children. • Once you approve the Defence, Affidavits and Notice to Trustees (if necessary) then we will arrange for them to be lodged in the Court office.	
Step 5. Serve Papers	• At the time of lodging your Defence and Affidavits in the court office, we will also send them to your spouse or his/her solicitor.	. Approximately 8 to 10 weeks after Step 4.
Step 6. Case Progression Hearing	• Once your Defence has been lodged and sent to the other side, we will write to your spouse/spouse's solicitor requesting that they provide proof of their financial situation as set out in their Affidavit of Means. • Further, once the Defence has been lodged in the Court Office a hearing is arranged before the County Registrar. • The purpose of this hearing is for the County Registrar to decide if the case is ready to be heard before the Circuit Court. • If your spouse/spouse's solicitor has not provided the financial verification requested we will bring this to the attention of the County Registrar at this hearing and seek an appropriate order to compel him/her to do so. • It will not be necessary for you attend this hearing. • If the case is not ready to proceed to trial the County Registrar will direct what steps are to be taken by either side to get the case ready for hearing and adjourn	This will vary in different Court Areas and you will be advised of local arrangements. Approximately 8 to 10 weeks after Step 5

	the hearing for that purpose. • Once the parties have complied with the County Registrar's Order the case will be put in for hearing in the Circuit Court before a Judge (Go to Step 8).	
Step 7. Pre-trial preparation	• We will discuss with you the documentation furnished by your spouse to verify his/her financial circumstances. If you feel that your spouse is not being truthful with regard to disclosing details of his/her financial circumstances then we will discuss with you whether it would be advisable for you to apply to Court for a formal Order for Discovery compelling him/her to do so. • It is likely you will need to update your Affidavit of Means and Affidavit of Welfare and we will discuss this with you. • We will arrange a meeting between you and your barrister before the case commences in order to discuss matters relating to the proceedings. • If appropriate, we will ascertain from you if a child has had an opportunity to make his/her views on the matter known and explore how the child's voice can be heard. • We will discuss whether it may be necessary to seek authority from the Legal Aid Board for a welfare report/voice of the child report. • We will discuss with you whether you need to arrange for any witnesses to attend Court to give evidence on your behalf. • If the attendance of any witness requires the payment of a fee/expenses for attendance then prior authorisation is required from the Legal Aid Board and such authority will be sought at this point. • If any witnesses need to be served with a witness summons then we will	4 to 6 weeks before date the case is listed for hearing

	arrange for the issue of that witness summons and for service of the summons upon the witness. • We will explore the possibility that it may be possible to resolve matters by agreement and, if appropriate, arrange a Settlement Meeting which will be attended by the other side.	
Step 8. Divorce Hearing	• You attend Court to give evidence • If agreement is reached between you and your spouse then the Court is informed of that .The court will have to hear evidence, usually from the Applicant, but it can be from you or your spouse that you have been living apart for the length of time required and that there is no prospect of a reconciliation and that proper financial provision has been made for family members bearing in mind the financial circumstances of the family. The Court can incorporate your agreement into its Order if it is satisfied to do so. • If the matter is contested, your spouse will give evidence first as he/she commenced the proceedings • Your spouse can be cross examined by your legal representative. • You will also be given an opportunity to give evidence and your evidence will be subject to cross-examination by your spouse/your spouse's legal representative, if he/she is legally represented at the hearing. • If appropriate, a request can be made to the court to seek a report from an expert on any matter affecting the welfare of a child or to appoint an expert to determine and convey the views of the child • The Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-	This will vary in different Court Areas and you will be advised of local arrangements.

	examination by the other party or his/her solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on behalf of the other party and that evidence will be subject to cross-examination by your solicitor. • The Court can grant a Decree of Divorce together with any other appropriate orders relating to matters such as custody/access, domestic violence, property, pensions, succession rights etc; it can refuse to make any orders and/or adjourn the matter. In the event that the matter is adjourned then at the adjourned hearing: • The Court can receive any up to date reports as may have been directed, review the case and hear any further evidence. • The Court can then make temporary or final orders and or adjourn the case again.	
Step 9. After Hearing	• We will write to you to confirm the outcome • Based on the decision made by the Court, formal orders are drawn up and sent out to you and the other party. • If the Orders sought by you are not granted or you are in some way unhappy with the orders that are granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	This will vary in different Court Areas and you will be advised of local arrangements.
Step 10. Implement Decision	• We will advise you on what steps need to be taken to implement the terms of the Order made by the Court and the extent of the legal services that can be provided to you in relation to this on foot of the legal aid certificate already granted to you. • If necessary, we will contact the Trustees of any pension scheme with details of any pension adjustment order to be implemented. • We will advise you on the extent of conveyancing	8 to 10 weeks after receipt of the perfected court order

	services that can be provided by the Legal Aid Board in the event that the Court made a property adjustment order directing the transfer of the interest of one spouse to another. • We will advise you of the options that will be available to you in the event that your spouse does not comply with any of the orders made by the Court and the possible consequences for you of not complying with those orders. • We will advise on the appropriateness or otherwise of making/updating your will bearing in mind the orders made by the Court.	
Step 11. Close File	We will write to you confirming that all matters have now been completed and the file is to be closed.	3 weeks after Step 14.

Best practice guidelines: dissolution of civil partnership - applicant

Best Practice Guidelines: Typical Contested Dissolution of Civil Partnership Applicant

This is a summary of the typical procedural steps in a contested Dissolution of a Civil Partnership It is our general practice to write to you when we take any of the steps below. If you are expecting a step to be taken but have not received confirmation you should contact the Law Centre immediately for an update.

While estimates of the timeframes for particular actions are provided these can vary considerably from case to case due to circumstances outside of the control of the Board or private solicitor involved. While many dissolution cases are similar, each case is unique. As the case progresses we may need to take additional steps which may require more time. We will keep you informed if this happens. From the date the file is opened you may be required to respond to requests for information (and/or documents) from us and/or the other side. This is normal. Failure or delay on your part to respond to these requests may delay the case and have adverse consequences in terms of the outcome of the case.

It should be noted that orders in relation to children are not generally made in proceedings under the *Civil Partnership and Certain and Obligations of Cohabitants Act 2010* but regard may have to be had to the impact of any decisions made in the proceedings that may impact upon dependent children. If there are dependent children then reliefs may be sought in relation to these children in concurrent (or in entirely separate) proceedings under the Guardianship of Infants Act 1964 (as amended by the *Children and Family Relationships Act 201*5) and, in those circumstances, please note the Best Practice Guidelines in relation to Custody/Access/Guardianship at 3 above.

Please note that there may a slight difference as to how your application for legal services is treated in one law centre rather than another. Due to the level of demand at some of our law centres, those centres operate a system whereby you will be offered an early appointment to be provided with legal advice only. You will be given a written record of the advice given to you on that occasion. The law centres operating this system will not be in a position to take any other steps on your behalf at that time. You will be offered a second consultation in due course by that law centre. For law centres who do not operate this system (and for private practitioners who

may be delivering the service as outlined above) then the details outlined below at Step 1 for first consultation/second consultation will apply at first consultation stage.		
Step	**Details**	**When will it happen? Time required?**
Step 1. First/Second Consultation	• We obtain information from you in respect of the following matters (amongst other things): The length of time you have lived apart from your partner; details in relation to the family circumstances; arrangements in relation to children; property owned by either party; pension entitlements of either party; living arrangements; the history of your relationship with your partner; whether financial support has been paid to date; details of any previous agreements, proceedings or court orders between you; each of your respective incomes, outgoings and assets insofar as they can be ascertained. We will ask you to confirm that reconciliation is not an option • On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances. • We will also advise you about alternative ways of resolving your dispute other than court proceedings ie mediation. • If this is an advice only appointment we will advise you of the documentation, including your Deed of Civil Partnership and copy orders of any previous court proceedings, that you may need to get prior to your next consultation. • Where applicable, at Second consultation, we will update the information from you and request you to provide us with full verifiable details of your financial circumstances. We will discuss with you the information that will be required from you in order to complete an Affidavit of Means and, if appropriate, an	.

	Affidavit of Welfare in due course. • We will write to the other party telling them we will be commencing dissolution proceedings and enquiring as to whether he/she is prepared to negotiate the terms of an agreement to put before the court and offer the option of mediation as a alternative method of resolution to court proceedings.	
Step 2. Positive response from or on behalf of your partner	• We send you the response and try to agree matters • We will request that he/she provide proof of his/her financial situation. • We will conclude an agreement on your behalf • If necessary, we will apply for a legal aid certificate on your behalf so that we can represent you in court and we will proceed to draft the documents necessary for court accordance with Step 8.	6 weeks after Step 1
Step 3. Negative or unacceptable response from or on behalf of your partner	If, appropriate we will apply for a Legal Aid Certificate on your behalf to institute proceedings for Dissolution of your Civil Partnership.	10 weeks after Step 1
Step 4. Preparation of Court Papers	• If necessary, and upon payment of your legal aid contribution, we will brief a barrister to draft the appropriate proceedings. • We will discuss these draft proceedings with you and any notifications that may be required to be given to the Trustees of any relevant pension and once you approve same we will arrange for them to issue from the court office. • We will require you to complete an Affidavit of Means which provides full verifiable details of your financial circumstances and, if appropriate, also complete an Affidavit of Welfare which provides full details in respect of any dependant children.	6 to 8 weeks after Step 3
Step 5. Serve Papers	• Once the papers are issued by the court office and returned to us then we will arrange for these	This will vary in different Court Areas due to the length of time it may take the court office to issue the

	proceedings to be sent to your partner in accordance with the Court Rules	proceedings and you will be advised of local arrangements. Approximately 8 to 10 weeks after Step 4.
Step 6. Response to the Proceedings	• If the other party wishes to defend the proceedings then will send to us a document called an "Appearance". • We will write to you to let you know if this document has been received.	3 weeks after Step 5
Step 7. No Response from other side to the proceedings	• If no response within a period of approximately 3 weeks then we will write to the other party warning him/her that we will issue an application to compel him/her to do so. • If there is still no response after 14 days then we will send documents notifying your spouse that you are applying to the Court for the orders sought in the proceedings regardless of the fact that there has been no response from him/her. (Go to Step 9)	3 weeks after Step 6
Step 8. Response Received to the proceedings	• We will notify you when an Appearance has been received. The Appearance is merely an indication that your partner wishes to defend the proceedings. • The document which sets out your partner's answers to the details set out in your proceedings is called a Defence. Your partner's Affidavit of Means and, if appropriate, Affidavit of Welfare will accompany that document. • If the Defence is not received within say 6 weeks of the receipt of the Appearance then we will write to your partner/partner's solicitor warning him/her that we will issue an application to compel him/her to send us this document. • If there is still no response after 14 days then we will send documents notifying him/her that you are applying to the Court for the orders sought in the proceedings regardless of the fact that no Defence has been received.	3 weeks after 5

	(Go to Step 9) • We will contact you when we receive the Defence and Affidavits on behalf of your partner. • We will contact you to make arrangements to discuss these documents with you.	
Step 9. County Registrar's Court	• If an Appearance has not been furnished and the other party does not attend the Court then an Order will be sought putting the case in for hearing in the Circuit Court before a Judge (Go to Step 12). • If a Defence has not been furnished then an Order will be sought directing other side to file this document within a certain time period. • If, following the expiry of that time (or any extention of time granted by the County Registrar) the Defence still has not been furnished then an Order will be sought putting the case in for hearing in the Circuit Court before a Judge (Go to Step 12).	4 weeks after Step 7 or 4 weeks after Step 8.
Step 10. Case Progression Hearing	• Once a Defence has been received, we will write to your partner/partner's solicitor requesting that he/she provide proof of his/her financial situation as set out in his/her Affidavit of Means. • Further, once the Defence has been received a hearing is arranged before the County Registrar. • The purpose of this hearing is for the County Registrar to decide if the case is ready to be heard before the Circuit Court. • If your partner has not provided the financial verification requested we will bring this to the attention of the County Registrar at this hearing and seek an appropriate order to compel him/her to do so. • It will not be necessary for you attend this hearing. • If the case is not ready to proceed to trial the County Registrar will direct what	This will vary in different Court Areas and you will be advised of local arrangements. Approximately 8 to 10 weeks after Step 8.

	steps are to be taken by either side to get the case ready for hearing and adjourn the hearing for that purpose. • Once the parties have complied with the County Registrar's Order the case will be put in for hearing in the Circuit Court before a Judge (Go to Step 12).	
Step 11. Pre-trial preparation	• We will discuss with you the documentation furnished by your partner to verify his/her financial circumstances. If you feel that your partner is not being truthful with regard to disclosing details of his/her financial circumstances then we will discuss with you whether it would be advisable for you to apply to Court for a formal Order for Discovery compelling him/her to do so. • It is likely you will need to update your Affidavit of Means and Affidavit of Welfare and we will discuss this with you. • We will arrange a meeting between you and your barrister before the case commences in order to discuss matters relating to the proceedings. • We will discuss with you whether you need to arrange for any witnesses to attend Court to give evidence on your behalf. • If the attendance of any witness requires the payment of a fee/expenses for attendance then prior authorisation is required from the Legal Aid Board and such authority will be sought at this point. • If any witnesses need to be served with a witness summons then we will arrange for the issue of that witness summons and for service of the summons upon the witness. • We will explore the possibility that it may be possible to resolve matters by agreement and, if appropriate, arrange a Settlement Meeting which will be attended by the other side.	4 to 6 weeks before date the case is listed for hearing

Step 12. Dissolution Hearing	• You attend Court to give evidence • If agreement is reached between you and your partner then the Court is informed of that. • The court will have to hear evidence from you confirming that you have lived apart for the period required and that there is no prospect of a reconciliation and that proper financial provision has been made for dependent members of the family bearing in mind the circumstances of the family. The court can incorporate your agreement into its order if it is satisfied to do so. • Your partner does have an opportunity to attend the hearing if he/she so wishes. • Your evidence will be subject to cross-examination by your partner or his/her legal representative, if he/she is legally represented at the hearing. • Your partner also has an opportunity to give evidence and that evidence will be subject to cross examination by your legal representative • The Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on behalf of the other party and that evidence will be subject to cross-examination by your solicitor. • The Court can grant the order for Dissolution together with any other appropriate orders relating to matters such as domestic violence, property, pensions, succession rights etc; it can refuse to make any orders and/or adjourn the matter. In the event that the matter is adjourned then at the adjourned	This will vary in different Court Areas and you will be advised of local arrangements.

	hearing: • The Court can receive any up to date reports as may have been directed, review the case and hear any further evidence. • The Court can then make temporary or final orders and or adjourn the case again.	
Step 13. After Hearing	• We will write to you to confirm the outcome • Based on the decision made by the Court, formal orders are drawn up and sent out to you and the other party. • If the Orders sought by you are not granted or you are in some way unhappy with the orders that are granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	This will vary in different Court Areas and you will be advised of local arrangements.
Step 14. Implement Decision	• We will advise you on what steps need to be taken to implement the terms of the Order made by the Court and the extent of the legal services that can be provided to you in relation to this on foot of the legal aid certificate already granted to you. • If necessary, we will contact the Trustees of any pension scheme with details of any pension adjustment order to be implemented. • We will advise you on the extent of conveyancing services that can be provided by the Legal Aid Board in the event that the Court made a property adjustment order directing the transfer of the interest of one partner to another. • We will advise you of the options that will be available to you in the event that the other party does not comply with any of the orders made by the Court and the possible consequences for you of not complying with those orders. • We will advise on the appropriateness or otherwise of making/updating your will bearing in mind the orders made by the Court.	8 to 10 weeks after receipt of the perfected court order

Step 15. Close File	• We will write to you confirming that all matters have now been completed and the file is to be closed.	3 weeks after Step 14

Best practice guidelines: dissolution of civil partnership - respondent

Best Practice Guidelines: Typical Contested Dissolution of Civil Partnership Respondent

This is a summary of the typical procedural steps in a contested Dissolution of a Civil Partnership It is our general practice to write to you when we take any of the steps below. If you are expecting a step to be taken but have not received confirmation you should contact the Law Centre immediately for an update.

While estimates of the timeframes for particular actions are provided these can vary considerably from case to case due to circumstances outside of the control of the Board or private solicitor involved. While many dissolution cases are similar, each case is unique. As the case progresses we may need to take additional steps which may require more time. We will keep you informed if this happens. From the date the file is opened you may be required to respond to requests for information (and/or documents) from us and/or the other side. This is normal. Failure or delay on your part to respond to these requests may delay the case and have adverse consequences in terms of the outcome of the case.

It should be noted that orders in relation to children are not generally made in proceedings under the *Civil Partnership and Certain and Obligations of Cohabitants Act 2010* but regard may have to be had to the impact of any decisions made in the proceedings that may impact upon dependent children. If there are dependent children then reliefs may be sought in relation to these children in concurrent (or in entirely separate) proceedings under the Guardianship of Infants Act 1964 (as amended by the *Children and Family Relationships Act 201*5) and, in those circumstances, please note the Best Practice Guidelines in relation to Custody/Access/Guardianship at 3 above.

Please note that there may a slight difference as to how your application for legal services is treated in one law centre rather than another. Due to the level of demand at some of our law centres, those centres operate a system whereby you will be offered an early appointment to be provided with legal advice only. You will be given a written record of the advice given to you on that occasion. The law centres operating this system will not be in a position to take any other steps on your behalf at that time. You will be offered a second consultation in due course by that law centre. For law centres who do not operate this system (and for private practitioners who may be delivering the service as outlined above) then the details outlined below at Step 1 for first consultation/second consultation will apply at first consultation stage.

Step	**Details**	
Step 1. First/Second Consultation	• We obtain information from you in respect of the following matters (amongst other things): the length of time you have lived apart from your partner; details in relation to the family circumstances; arrangements in relation to children; property owned by either party; pension entitlements of either party; living arrangements; the history of your relationship with your partner; whether financial support has been paid to date; details of any	

	previous agreements, proceedings or court orders between you; each of your respective incomes, outgoings and assets insofar as they can be ascertained. • We will discuss with you the papers you have received from your partner/partner's solicitor • We will advise you about entering a document called an Appearance which tells the court and your partner that you will be engaging in the proceedings • On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances. • We will also advise you about alternative ways of resolving your dispute other than court proceedings ie mediation. • If this is an advice only appointment we will advise you of the documentation, including your Deed of Civil Partnership, you may need to get prior to your next consultation. • Where applicable, at Second consultation, we will update the information from you and request you to provide us with full verifiable details of your financial circumstances. We will discuss with you the information that will be required from you in order to complete an Affidavit of Means and, if appropriate, an Affidavit of Welfare in due course. • We will write to the other party enquiring as to whether they are prepared to negotiate an agreement and offer the option of mediation as a alternative method of resolution to court proceedings.	
Step 2. Positive response from or on behalf of your partner	• We send you his/her response and try to agree matters • We will request that he/she provide proof of his/her financial situation.	4 weeks after Step 1

	• We will conclude an agreement on your behalf and, if necessary, we will apply for a legal aid certificate to represent you in court so that the court can make orders in the terms of your agreement.	
Step 3. Negative or unacceptable response from or on behalf of your partner	• If, appropriate we will apply for a legal aid certificate on your behalf to defend the proceedings for Dissolution and/or to bring a counterclaim for another remedy	9 weeks after Step 1
Step 4. Preparation of Court Papers	• If necessary, and upon payment of your legal aid contribution, we will brief a barrister to draft a defence and, if appropriate, a counterclaim. • We will enter an Appearance if you have not already done so. If there is already an Appearance filed we will lodge a notification that we are acting for you. • We will discuss this document and any notifications that may be required to be given to the Trustees of any relevant pension. We will require you to complete an Affidavit of Means which provides full verifiable details of your financial circumstances and, if appropriate, also complete an Affidavit of Welfare which provides full details in respect of any dependant children.	6 to 8 weeks after Step 3
Step 5. Serve Papers	• We will lodge your Defence and Affidavits in the court office and send copies to your partner or his/her solicitor.	Approximately 8 to 10 weeks after Step 4.
Step 6. Case Progression Hearing	• Once a Defence has been lodged and sent to the other side, we will write to your partner or his/her solicitor requesting that he/she provide proof of their financial situation as set out in his/her Affidavit of Means. • Further, once the Defence has been received a hearing is arranged before the County Registrar. • The purpose of this hearing is for the County Registrar to decide if the case is ready to be heard before the Circuit	This will vary in different Court Areas and you will be advised of local arrangements. Approximately 8 to 10 weeks after Step 5

	Court. • If your partner or his/her solicitor has not provided the financial verification requested we will bring this to the attention of the County Registrar at this hearing and seek an appropriate order to compel him/her to do so. • It will not be necessary for you attend this hearing. • If the case is not ready to proceed to trial the County Registrar will direct what steps are to be taken by either side to get the case ready for hearing and adjourn the hearing for that purpose. • Once the parties have complied with the County Registrar's Order the case will be put in for hearing in the Circuit Court before a Judge (Go to Step 8).	
Step 7. Pre-trial preparation	• We will discuss with you the documentation furnished by your partner to verify his/her financial circumstances. If you feel that your partner is not being truthful with regard to disclosing details of his/her financial circumstances then we will discuss with you whether it would be advisable for you to apply to Court for a formal Order for Discovery compelling him/her to do so. • It is likely you will need to update your Affidavit of Means and Affidavit of Welfare and we will discuss this with you. • We will arrange a meeting between you and your barrister before the case commences in order to discuss matters relating to the proceedings. • We will discuss with you whether you need to arrange for any witnesses to attend Court to give evidence on your behalf. • If the attendance of any witness requires the payment of a fee/expenses for attendance then prior authorisation is required from the Legal Aid Board and such authority will be sought at this	4 to 6 weeks before date the case is listed for hearing

	point. • If any witnesses need to be served with a witness summons then we will arrange for the issue of that witness summons and for service of the summons upon the witness. • We will explore the possibility that it may be possible to resolve matters by agreement and, if appropriate, arrange a Settlement Meeting which will be attended by the other side.	
Step 8. Dissolution Hearing	• You attend Court to give evidence • If agreement is reached between you and your partner then the Court is informed of that. The court will have to hear evidence from you or your partner that you have lived apart for the period required and that there is no prospect of a reconciliation and that proper financial provision has been made for dependent members of the family bearing in mind the circumstances of the family. The court can incorporate your agreement into its order if it is satisfied to do so. • If the matter is contested your partner will give evidence first as he/she commenced the proceedings • Your partner can be cross examined by your legal representatives. • You will also be given an opportunity to give evidence and your evidence will be subject to cross-examination by your partner or his/her solicitor, if he/she is legally represented at the hearing. • The Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on behalf of the other party and that evidence will be	This will vary in different Court Areas and you will be advised of local arrangements.

	subject to cross-examination by your solicitor. • The Court can grant a Decree of Dissolution together with any other appropriate orders relating to matters such as domestic violence, property, pensions, succession rights etc; it can refuse to make any orders and/or adjourn the matter. • In the event that the matter is adjourned then at the adjourned hearing: • The Court can receive any up to date reports as may have been directed, review the case and hear any further evidence. • The Court can then make temporary or final orders and or adjourn the case again.	
Step 9. After Hearing	• We will write to you to confirm the outcome • Based on the decision made by the Court, formal orders are drawn up and sent out to you and the other party. • If the Orders sought by you are not granted or you are in some way unhappy with the orders that are granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	This will vary in different Court Areas and you will be advised of local arrangements.
Step 10. Implement Decision	• We will advise you on what steps need to be taken to implement the terms of the Order made by the Court and the extent of the legal services that can be provided to you in relation to this on foot of the legal aid certificate already granted to you. • If necessary, we will contact the Trustees of any pension scheme with details of any pension adjustment order to be implemented. • We will advise you on the extent of conveyancing services that can be provided by the Legal Aid Board in the event that the Court made a property adjustment order directing the transfer of the interest of one partner to another.	8 to 10 weeks after receipt of the perfected court order

	• We will advise you of the options that will be available to you in the event that your spouse does not comply with any of the orders made by the Court and the possible consequences for you of not complying with those orders. • We will advise on the appropriateness or otherwise of making/updating your will bearing in mind the orders made by the Court.	
Step 11. Close File	• We will write to you confirming that all matters have now been completed and the file is to be closed.	3 weeks after Step 10

Best practice guidelines: cohabitant relief - applicant

Best Practice Guidelines: Typical Contested Claim for Cohabitant Relief Applicant

This is a summary of the typical procedural steps in a contested Application for Cohabitant Relief It is our general practice to write to you when we take any of the steps below. If you are expecting a step to be taken but have not received confirmation you should contact the Law Centre immediately for an update.

While estimates of the timeframes for particular actions are provided these can vary considerably from case to case due to circumstances outside of the control of the Board or private solicitor involved. While many cases seeking cohabitant relief are similar, each case is unique. As the case progresses we may need to take additional steps which may require more time. We will keep you informed if this happens. From the date the file is opened you may be required to respond to requests for information (and/or documents) from us and/or the other side. This is normal. Failure or delay on your part to respond to these requests may delay the case and have adverse consequences in terms of the outcome of the case.

It should be noted that orders in relation to children are not generally made in proceedings under the *Civil Partnership and Certain and Obligations of Cohabitants Act 2010* but regard may have to be had to the impact of any decisions made in the proceedings that may impact upon dependent children. If there are dependent children then reliefs may be sought in relation to these children in concurrent (or in entirely separate) proceedings under the Guardianship of Infants Act 1964 (as amended by the *Children and Family Relationships Act 201*5) and, in those circumstances, please note the Best Practice Guidelines in relation to Custody/Access/Guardianship at 3 above.

Please note that there may a slight difference as to how your application for legal services is treated in one law centre rather than another. Due to the level of demand at some of our law centres, those centres operate a system whereby you will be offered an early appointment to be provided with legal advice only. You will be given a written record of the advice given to you on that occasion. The law centres operating this system will not be in a position to take any other steps on your behalf at that time. You will be offered a second consultation in due course by that law centre. For law centres who do not operate this system (and for private practitioners who may be delivering the service as outlined above) then the details outlined below at Step 1 for first consultation/second consultation will apply at first consultation stage.

Step	**Details**	**When will it happen? Time required?**

Step 1.First/Second Consultation	• We obtain information from you in respect of the following matters (amongst other things): The length of time you have lived with and apart from your partner; the date your relationship broke down; details in relation to the family circumstances; arrangements in relation to children; property owned by either party; pension entitlements of either party; living arrangements; the history of your relationship with your partner; whether financial support has been paid to date; details of any previous agreements, proceedings or court orders between you; each of your respective incomes, outgoings and assets insofar as they can be ascertained. • On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances. • We will also advise you about alternative ways of resolving your dispute other than court proceedings ie mediation. • If this is an advice only appointment we will advise you of the documentation, including any cohabitation agreement and copy orders of previous court proceedings, you may need to get prior to your next consultation. • Where applicable, at Second consultation, we will update the information from you and request you to provide us with full verifiable details of your financial circumstances. We will discuss with you the information that will be required from you in order to complete an Affidavit of Means and, if appropriate, an Affidavit of Welfare in due course. • We will write to the other party telling him/her we will be commencing proceedings and enquiring as to whether	.

	he/she is prepared to negotiate the terms of an agreement to put before the court and offer the option of mediation as a alternative method of resolution to court proceedings.	
Step 2. Positive response from or on behalf of your partner	• We will send you the response we receive, take your instructions on what is contained in it and, if appropriate, try to agree matters • We will request that he/she provide proof of his/her financial situation. • We will conclude an agreement on your behalf • We will apply for a legal; aid certificate on your behalf so that we can represent you in court and proceed to draft the documents necessary for court accordance with Step 12.	4 weeks after Step 1
Step 3. Negative or unacceptable response from or on behalf of your partner	If appropriate, we will apply for a legal aid certificate on your behalf institute proceedings.	11 weeks after Step 1
Step 4. Preparation of Court Papers	• If necessary, and upon payment of your legal aid contribution, we will brief a barrister to draft the appropriate proceedings. • We will discuss these draft proceedings with you and any notifications that may be required to be given to the Trustees of any relevant pension and once you approve same we will arrange for them to issue from the court office. • We will require you to complete an Affidavit of Means which provides full verifiable details of your financial circumstances and, if appropriate, also complete an Affidavit of Welfare which provides full details in respect of any dependant children.	5 to 8 weeks after Step 3
Step 5. Serve Papers	• Once the papers are issued by the court office and returned to us then we will arrange for these proceedings to be sent to the other party in accordance with the Court Rules.	This will vary in different Court Areas due to the length of time it may take the court office to issue the proceedings and you will be advised of local arrangements. Approximately 8 to 10

		weeks after Step 4.
Step 6. Response to the Proceedings	• If the other party wishes to defend the proceedings then will send to us a document called an "Appearance". • We will write to you to let you know if this document has been received.	3 weeks after Step 5
Step 7. No Response from other side to the proceedings	• If no response is received within a period of approximately 3 weeks then we will write to the other party warning him/her that we will issue a court application to compel him/her to do so. • If there is still no response after 14 days then we will send documents notifying your partner that you are applying to the Court for the orders sought in the proceedings regardless of the fact that there has been no response from him/her. (Go to Step 9)	3 weeks after Step 6
Step 8. Response Received to the proceedings	• We will notify you when an Appearance has been received. The Appearance is merely an indication that your partner wishes to defend the proceedings. • The document which sets out your partner's answers to the details set out in your proceedings is called a Defence. Your partner's Affidavit of Means and Affidavit of Welfare will accompany that document. • If the Defence is not received within say 6 weeks of the receipt of the Appearance then we will write to your partner/partner's solicitor warning him/her that we will issue an application to compel them to send us this document. • If there is still no response after 14 days then we will send documents notifying them that you are applying to the Court for the orders sought in the proceedings regardless of the fact that there has no Defence has been received. (Go to Step 9) • We will contact you when we receive the Defence and	4 weeks after 5

	Affidavits on behalf of your partner. • We will contact you to make arrangements to discuss these documents with you.	
Step 9. County Registrar's Court	• If an Appearance has not been furnished and the other party does not attend the Court then an Order will be sought putting the case in for hearing in the Circuit Court before a Judge (Go to Step 12). • If a Defence has not been furnished then an Order will be sought directing other side to file this document within a certain time period. • If, following the expiry of that time (or any extension of time granted by the County Registrar) the Defence still has not been furnished then an Order will be sought putting the case in for hearing in the Circuit Court before a Judge (Go to Step 12).	4 weeks after Step 7 or 4 weeks after Step 8.
Step 10. Case Progression Hearing	• Once a Defence has been received, we will write to your partner/partner's solicitor requesting that he/she provide proof of his/her financial situation as set out in his/her Affidavit of Means. • Further, once the Defence has been received a hearing is arranged before the County Registrar. • The purpose of this hearing is for the County Registrar to decide if the case is ready to be heard before the Circuit Court. • If your partner has not provided the financial verification requested we will bring this to the attention of the County Registrar at this hearing and seek an appropriate order to compel him/her to do so. • It will not be necessary for you attend this hearing. • If the case is not ready to proceed to trial the County Registrar will direct what steps are to be taken by either side to get the case ready for hearing and adjourn	This will vary in different Court Areas and you will be advised of local arrangements. Approximately 8 to 10 weeks after Step 8.

	the hearing for that purpose. • Once the parties have complied with the County Registrar's Order the case will be put in for hearing in the Circuit Court before a Judge (Go to Step 12).	
Step 11. Pre-trial preparation	• We will discuss with you the documentation furnished by your partner to verify his/her financial circumstances. If you feel that your partner is not being truthful with regard to disclosing details of his/her financial circumstances then we will discuss with you whether it would be advisable for you to apply to Court for a formal Order for Discovery compelling him/her to do so. • It is likely you will need to update your Affidavit of Means and Affidavit of Welfare and we will discuss this with you. • We will arrange a meeting between you and your barrister before the case commences in order to discuss matters relating to the proceedings. • We will discuss with you whether you need to arrange for any witnesses to attend Court to give evidence on your behalf. • If the attendance of any witness requires the payment of a fee/expenses for attendance then prior authorisation is required from the Legal Aid Board and such authority will be sought at this point. • If any witnesses need to be served with a witness summons then we will arrange for the issue of that witness summons and for service of the summons upon the witness. • We will explore the possibility that it may be possible to resolve matters by agreement and, if appropriate, arrange a Settlement Meeting which will be attended by the other side.	4 to 6 weeks before date the case is listed for hearing
Step 12. Court Hearing	• You attend Court to give evidence	This will vary in different Court Areas and you will

	• If agreement is reached between you and your partner then the Court is informed of that. • The court will have to hear evidence from you confirming that you are qualifying cohabitants and the relationship has ended. The court can incorporate your agreement into its order if it is satisfied to do so. • Your partner does have an opportunity to attend the hearing if he/she so wishes. • Your evidence will be subject to cross-examination by your partner or his/her legal representative, if he/she is legally represented at the hearing. • Your partner also has an opportunity to give evidence and that evidence will be subject to cross examination by your legal representative. • The Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on behalf of the other party and that evidence will be subject to cross-examination by your solicitor. • The Court can grant the orders for financial or other relief together with any other appropriate orders relating to matters such as property, pensions, succession rights; it can refuse to make any orders and/or adjourn the matter. In the event that the matter is adjourned then at the adjourned hearing: • The Court can receive any up to date reports as may have been directed, review the case and hear any further evidence. • The Court can then make temporary or final orders and	be advised of local arrangements.

	or adjourn the case again.	
Step 13. After Hearing	• We will write to you to confirm the outcome • Based on the decision made by the Court, formal orders are drawn up and sent out to you and the other party. • If the Orders sought by you are not granted or you are in some way unhappy with the orders that are granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	This will vary in different Court Areas and you will be advised of local arrangements.
Step 14. Implement Decision	• We will advise you on what steps need to be taken to implement the terms of the Order made by the Court and the extent of the legal services that can be provided to you in relation to this on foot of the legal aid certificate already granted to you. • If necessary, we will contact the Trustees of any pension scheme with details of any pension adjustment order to be implemented. • We will advise you on the extent of conveyancing services that can be provided by the Legal Aid Board in the event that the Court made a property adjustment order directing the transfer of the interest of one partner to another. • We will advise you of the options that will be available to you in the event that the other party does not comply with any of the orders made by the Court and the possible consequences for you of not complying with those orders. • We will advise on the appropriateness or otherwise of making/updating your will bearing in mind the orders made by the Court.	8 to 10 weeks after receipt of the perfected court order
Step 11. Close File	• We will write to you confirming that all matters have now been completed and the file is to be closed.	3 weeks after Step 10

Best practice guidelines: cohabitant relief - respondent

Best Practice Guidelines: Typical Contested Claim for Cohabitant Relief Respondent

This is a summary of the typical procedural steps in a contested claim for Cohabitant Relief. It is our general practice to write to you when we take any of the steps below. If you are expecting a step to be taken but have not received confirmation you should contact the Law Centre immediately for an update.

While estimates of the timeframes for particular actions are provided these can vary considerably from case to case due to circumstances outside of the control of the Board or private solicitor involved. While many cases seeking cohabitant relief are similar, each case is unique. As the case progresses we may need to take additional steps which may require more time. We will keep you informed if this happens. From the date the file is opened you may be required to respond to requests for information (and/or documents) from us and/or the other side. This is normal. Failure or delay on your part to respond to these requests may delay the case and have adverse consequences in terms of the outcome of the case.

It should be noted that orders in relation to children are not generally made in proceedings under the *Civil Partnership and Certain and Obligations of Cohabitants Act 2010* but regard may have to be had to the impact of any decisions made in the proceedings that may impact upon dependent children. If there are dependent children then reliefs may be sought in relation to these children in concurrent (or in entirely separate) proceedings under the Guardianship of Infants Act 1964 (as amended by the *Children and Family Relationships Act 201*5) and, in those circumstances, please note the Best Practice Guidelines in relation to Custody/Access/Guardianship at 3 above.

Please note that there may a slight difference as to how your application for legal services is treated in one law centre rather than another. Due to the level of demand at some of our law centres, those centres operate a system whereby you will be offered an early appointment to be provided with legal advice only. You will be given a written record of the advice given to you on that occasion. The law centres operating this system will not be in a position to take any other steps on your behalf at that time. You will be offered a second consultation in due course by that law centre. For law centres who do not operate this system (and for private practitioners who may be delivering the service as outlined above) then the details outlined below at Step 1 for first consultation/second consultation will apply at first consultation stage.

Step	**Details**	
Step 1. First/Second Consultation	• We obtain information from you in respect of the following matters (amongst other things): the length of time you have lived with and apart from your partner; the date when your relationship ended; details in relation to the family circumstances; arrangements in relation to children; property owned by either party; pension entitlements of either party; living arrangements; the history of your relationship with your partner; whether financial support has been paid to date; details of any previous agreements, proceedings or court orders between you; each of your respective incomes, outgoings and assets insofar as they can be ascertained. • We will discuss with you the	

	papers you have received from your partner/partner's solicitor. • We will advice you about entering a document called an Appearance which tells the court and your partner that you will be engaging in the proceedings • On the basis of that information, you will be given legal advice as to the most appropriate steps to be taken by someone in your circumstances. • We will also advise you about alternative ways of resolving your dispute other than court proceedings ie mediation. • If this is an advice only appointment we will advise you of the documentation, including any Cohabitation Agreement you may need to get prior to your next consultation. • Where applicable, at Second consultation, we will update the information from you and request you to provide us with full verifiable details of your financial circumstances. We will discuss with you the information that will be required from you in order to complete an Affidavit of Means and, if appropriate, an Affidavit of Welfare in due course. • We will write to the other party enquiring as to whether he/she is prepared to negotiate an agreement and offer the option of mediation as a alternative method of resolution to court proceedings.	
Step 2. Positive response from or on behalf of your partner	• We will send you the response we receive and take your instructions on this response and, if appropriate, try to agree matters • We will request that he/she provides proof of his/her financial situation. • If appropriate, we will conclude an agreement on your behalf and, if necessary, apply for a legal aid certificate	4 weeks after Step 1

	to represent you in court so that the court can make orders in the terms of your agreement. •	
Step 3. Negative or unacceptable response from or on behalf of your partner	• If, appropriate we will apply for a legal aid certificate on your behalf to defend the proceedings for Cohabitant Relief and/or to bring a counterclaim for another remedy	9 weeks after Step 1
Step 4. Preparation of Court Papers	• If necessary, and upon payment of your legal aid contribution, we will brief a barrister to draft a defence and or counterclaim on your behalf. • We will discuss this document and any notifications that may be required to be given to the Trustees of any relevant pension. We will require you to complete an Affidavit of Means which provides full verifiable details of your financial circumstances and, if appropriate, also complete an Affidavit of Welfare which provides full details in respect of any dependant children.	6 to 8 weeks after Step 3
Step 5. Serve Papers	• We will lodge your Defence and affidavits in the court office and send copies to your partner or his/her solicitor. We will enter an Appearance if you have not already done so. If there is already an Appearance filled we will lodge a notification that we are acting for you.	Approximately 8 to 10 weeks after Step 4.
Step 6. Case Progression Hearing	• Once a Defence has been lodged and sent to the other side, we will write to your partner or his/her solicitor requesting that he/she provide proof of his/her financial situation as set out in his/her Affidavit of Means. • Further, once the Defence has been received a hearing is arranged before the County Registrar. • The purpose of this hearing is for the County Registrar to decide if the case is ready to be heard before the Circuit Court. • If your partner or his/her	This will vary in different Court Areas and you will be advised of local arrangements. Approximately 8 to 10 weeks after Step 5

	solicitor has not provided the financial verification requested we will bring this to the attention of the County Registrar at this hearing and seek an appropriate order to compel him/her to do so. • It will not be necessary for you attend this hearing. • If the case is not ready to proceed to trial the County Registrar will direct what steps are to be taken by either side to get the case ready for hearing and adjourn the hearing for that purpose. • Once the parties have complied with the County Registrar's Order the case will be put in for hearing in the Circuit Court before a Judge (Go to Step 8). •	
Step 7. Pre-trial preparation	• We will discuss with you the documentation furnished by your partner to verify his/her financial circumstances. If you feel that your partner is not being truthful with regard to disclosing details of his/her financial circumstances then we will discuss with you whether it would be advisable for you to apply to Court for a formal Order for Discovery compelling him/her to do so. • It is likely you will need to update your Affidavit of Means and Affidavit of Welfare and we will discuss this with you. • We will arrange a meeting between you and your barrister before the case commences in order to discuss matters relating to the proceedings. • We will discuss with you whether you need to arrange for any witnesses to attend Court to give evidence on your behalf. • If the attendance of any witness requires the payment of a fee/expenses for attendance then prior authorisation is required from the Legal Aid Board and such authority will be sought at this	4 to 6 weeks before date the case is listed for hearing

	point. • If any witnesses need to be served with a witness summons then we will arrange for the issue of that witness summons and for service of the summons upon the witness. • We will explore the possibility that it may be possible to resolve matters by agreement and, if appropriate, arrange a Settlement Meeting which will be attended by the other side.	
Step 8. Court Hearing	• You attend Court to give evidence • If agreement is reached between you and your partner then the Court is informed of that. The court will have to hear evidence from you or your partner that you are both qualifying cohabitants and your relationship has ended. The court can incorporate any agreement you reach between you into its order if it is satisfied to do so. • If the matter is contested then your partner will give evidence first as he/she commenced the proceedings • Your partner can be cross examined by your legal representative. • You will also be given an opportunity to give evidence and your evidence will be subject to cross-examination by your partner or his/her solicitor, if he/she is legally represented at the hearing. • The Court will hear evidence from any witnesses that attend to give evidence on your behalf and that evidence will be subject to cross-examination by the other party or his/her solicitor. Similarly, the Court will hear evidence from any witnesses that attend to give evidence on behalf of the other party and that evidence will be subject to cross-examination by your solicitor. • The Court can grant the orders for financial or other relief together with any other	This will vary in different Court Areas and you will be advised of local arrangements.

	appropriate orders relating to matters such as property, pensions, succession rights; it can refuse to make any orders and/or adjourn the matter. • In the event that the matter is adjourned then at the adjourned hearing: • The Court can receive any up to date reports as may have been directed, review the case and hear any further evidence. • The Court can then make temporary or final orders and or adjourn the case again.	
Step 9. After Hearing	• We will write to you to confirm the outcome • Based on the decision made by the Court, formal orders are drawn up and sent out to you and the other party. • If the Orders sought by you are not granted or you are in some way unhappy with the orders that are granted then we will advise you whether or not, based on the particular circumstances of your case, an appeal should be made.	This will vary in different Court Areas and you will be advised of local arrangements.
Step 10. Implement Decision	• We will advise you on what steps need to be taken to implement the terms of the Order made by the Court and the extent of the legal services that can be provided to you in relation to this on foot of the legal aid certificate already granted to you. • If necessary, we will contact the Trustees of any pension scheme with details of any pension adjustment order to be implemented. • We will advise you on the extent of conveyancing services that can be provided by the Legal Aid Board in the event that the Court made a property adjustment order directing the transfer of the interest of one partner to another. • We will advise you of the options that will be available to you in the event that your partner does not comply with any of the orders made by the	8 to 10 weeks after receipt of the perfected court order

	Court and the possible consequences for you of not complying with those orders. • We will advise on the appropriateness or otherwise of making/updating your will bearing in mind the orders made by the Court.	
Step 11. Close File	• We will write to you confirming that all matters have now been completed and the file is to be closed.	3 weeks after Step 10

7. Child abduction

There are three aspects to the provision of legal services in child abduction matters, namely:-

- the position in relation to legal aid in child abduction cases which is dealt with in ➔ **Part 2** of the Circular;
- best practice in relation to representing an applicant in child abduction proceedings; and
- best practice in relation to representing a respondent in child abduction proceedings.

This part of the Circular should be read in conjunction with the relevant paragraphs in ➔ **Part 2 and Part 5** of this Circular.

Best practice in relation to an applicant in child abduction proceedings

To date the Board has always authorised the retention of junior counsel on behalf of the applicant in child abduction cases. Much of the work done by law centres involves ascertaining facts and other information from the client rather than the giving of legal advice. It is considered that in cases of this nature there is opportunity for significant paralegal involvement in the preparation of the case, under the direction of a solicitor.

It is the case however that a number of matters that present as child abduction cases may have inter-related issues with EU law and in particular with Council Regulation (EC) 2201/ 2003 (Brussels IIA). Solicitors need to be mindful of this interaction and the potential remedies that are available on foot of EU legislation vis-à-vis other international Conventions. Regard also needs to be had to the fact that there is no automatic entitlement to legal aid for a person who is seeking to enforcement a judgement or court decision that has been obtained in another country.

Key stage 1: Initial consultation and legal advice

On receipt of papers from the Central Authority, make contact with client to confirm / obtain instructions in relation to, among other things:-

- the existence of court orders in the country of habitual residence;
- the de facto custody arrangements prior to the removal;
- the interaction between the parties prior to the removal and, in particular, whether there are any issues in relation to possible consent to the removal;
- the travel arrangements made, if known;
- the existence of passports;
- the possible wishes of the child(ren);
- the other parent's connections to Ireland, if any;
- the possible whereabouts of the child(ren) in this country; and
- the possibility of reaching an agreement with the other party.

Key stage 2: Application for legal aid
As the grant of legal aid is mandatory, a legal aid certificate will have issued. Amendments to a legal aid certificate must be sought in the usual manner.

Key stage 3: Pleadings
Abduction Applicant.Pre-hearing Motion Served

- If instructions are that the Respondent may leave the jurisdiction, Crime Branch at Garda Headquarters should be notified, and they will notify the ports and airports;
- draft or instruct barrister to draft special summons, notice of motion and grounding affidavit;
- engross, and swear grounding affidavit, and lodge at the Central Office as soon as possible;
- contact the High Court Registrar in order to seek an ex-parte hearing. At the ex parte hearing, seek orders allowing service of the special summons on the Respondent, restraining the Respondent from removing the child(ren) from the jurisdiction pending further order of the Court and a hearing date for the case, with liberty to notify An Garda Siochana and the Child and Family Agency;
- copies of the documents must be available to the Court Registrar. The Court Registrar will indicate when the order is ready for collection if the order is granted;
- on collecting the order, summons and notice of motion, insert the return date on the notice of motion at the Central Office and ensure that the copy order to be served has a penal endorsement on it;
- arrange personal service of the documents on the Respondent. An affidavit of service must be sworn by the summons server. Swear affidavits of service 10 days after service;
- contact the local Gardaí in the area where the child(ren) are and the Crime Branch at Garda Headquarters to inform them of the making of the order. They will contact the local Gardaí where the child(ren) are;
- in certain circumstances (bank holiday intervening), the Gardaí will notify the Respondent of the making of the order;
- a replying affidavit may be served. If further affidavits are prepared, file the originals in the Central Office and serve copies on the Respondent / Respondent's solicitor;
- consider whether an affidavit of laws is required and, if so, how it might be obtained; and
- ascertain the client's understanding of the views of the children and consider how they might be expressed.

Key stage 4: Court proceedings

- The notice of motion will come on for hearing and time may be sought to file replying affidavits or supplementary affidavits; and
- a notice to cross examine should be served if it is considered necessary to cross examine the Respondent or any deponent who has sworn an affidavit on behalf of a Respondent.

Key stage 5: Enforcement

- In the event that the court makes an order that the child(ren) be returned to the country of their habitual residence, arrangements should be made for the handing over of the children to the applicant to facilitate their return;
- the court should be informed immediately of any potential difficulties in arriving at such arrangements and, depending on the circumstances, every effort should be made to ensure that the Respondent is not given the opportunity to remove the children in a manner designed to defeat or frustrate the court's order; and
- a copy of the order, with a penal endorsement thereon, should be served on the Respondent at the earliest opportunity.

Key Stage 6: File closure

- File should be closed in accordance with the Circular and client advised of same; and
- claim forms for fees or witness expenses should be forwarded to the Board within two weeks of the completion of the hearing.

Best practice in relation to a respondent in child abduction proceedings

Key stage 1: Initial consultation and legal advice

Having established financial eligibility and collected the appropriate contribution, take instructions establishing the following:-

- are there court orders in existence regarding the child(ren);
- if there are orders in existence, why did the respondent not apply to have the orders varied;
- are the child(ren) of an age where his/her views should be taken into consideration and if so what are those views according to the client;
- why did the Respondent move to Ireland;
- how long has the Respondent been living in Ireland;
- does the Respondent allege there is a risk of psychological harm to the child(ren);
- does the Respondent allege there is consent on the part of the applicant to allow the removal of the child(ren);
- did the Respondent have 'rights of custody' in the country of habitual residence;
- what are the prospects of reaching an agreement with the other party; and consider whether or not the client should be advised to return with the children to have the substantive issues dealt with in the jurisdiction of country of habitual residence.

The client must be advised of the nature of the court order that has already issued, including the requirement that the child(ren) be produced in court and the potential consequences of failing to comply with the order. All instructions should be carefully recorded in writing as should the advices given including advices in relation to the likely / possible outcomes of the case.

Key stage 2: Application for legal aid

Apply for a legal aid certificate with an opinion as to whether a certificate should be granted by reference to the information sought at Key stage 1. (See Part 2 of the Circular, Legal services for certain matters.)

Key stage 3: Pleadings

- If legal aid is granted, draft or instruct a barrister to draft a Defence to the case and a replying affidavit or replying affidavits;
- consider what proofs are required in addition to the client's oral instructions and what period of time will be needed to obtain those proofs; and
- in the event that further affidavits are received from the applicant's solicitor, consider whether these affidavits require the client's further instructions and affidavits to be sworn in reply.

Key stage 4: Court proceedings

- The notice of motion will come on for hearing and time may be sought to file replying affidavits or supplementary affidavits. The client must be advised to produce the child(ren) in court on the return date; and
    - a notice to cross examine should be served if it is considered necessary to cross examine the applicant or any deponent who has sworn an affidavit on behalf of the applicant.

Key stage 5: Enforcement

In the event that an order is made that the child(ren) be returned to their country of habitual residence, the Respondent should be advised of the nature of the order and the consequences of any attempt to frustrate the order.

Depending on the circumstances of the case it may be appropriate to apply to the court for a stay on the order pending consideration of a possible appeal.

Key stage 6: File closure

- File should be closed in accordance with the Circular and client advised of same; and
- claim forms for fees or witness expenses should be forwarded to the Board within two weeks of the completion of the hearing.

8. Child care

This part of the Circular deals with best practice in relation to representing a Respondent in proceedings under the Child Care Act 1991, where the proceedings have been initiated by the Child and Family Agency (Tusla). These proceedings are conducted in the District Court.

This is a summary of the steps which commonly occur in a case where our client is defending an application for a Care Order (Interim/Full) or a Supervision Order. The proceedings are initiated by the Child and Family Agency and, once commenced, the process is controlled by the Court rather than the participants and, therefore, it is not possible to provide estimates of the timeframes for particular actions or Court Hearings.

Cases on foot of the Child Care Act 1991 are prioritised by the Board and persons who have been served with applications on foot of section 13 (Emergency Care order), 17 (Interim Care Order), Section 18 (Full Care Order) or Section 19 (Supervision Order) of the Act will be given the earliest possible appointment. Every effort will be made to see him/her before the next court date. Where there are co-Respondents (usually the mother and the father of the child who is the subject of the application) it is generally considered to be in their best interests that each co-Respondent obtains separate legal representation.

Stage 1: Pre Court

On receiving a completed Application for Legal Services, offer the applicant an appointment with a solicitor at the earliest possible opportunity. Every effort should be made to ensure that that appointment will take place before the next court hearing. Applications for Legal Services may be made prior to any court proceedings being instituted in a matter involving a pre-birth, voluntary care or where there is involvement by the Child & Family Agency. Initially these matters will be dealt with by an advice only consultation

The client may indicate they would like the solicitor to attend a case conference or case conferences organised by the Child and Family Agency. Do not attend such conferences other than in the most exceptional circumstances.

Request the client to bring all documentation that they have received from Tusla to their first consultation. Explain the nature of the documents that the client has received from Tusla. Explain the Court process and take instructions in relation to the factual detail and the recent history. Ask the client for a copy of any grounding affidavit sworn on behalf of Tusla.

If necessary, obtain the client's written authority to enable information to be obtained from Tusla.

If an Emergency Care Order has already been made, write to Tusla's solicitor requesting notes of the evidence given before the Court on foot of the ex parte application.

Keep the client informed of the process and what the potential outcomes or likely outcome will be.

It is generally the situation that Tusla applies to the Court initially for an Interim Care Order. This is a temporary Order that can only last for a maximum of 29 days, unless the client agrees to a longer period. There may actually be a number of Interim Orders sought until such time as the hearing for a Full Care Order is ready to take place.

Make an application for a legal aid certificate and ensure the client signs it. No financial contribution is payable. The Legal Aid Certificate will cover the client for all Court Hearings that take place in respect of emergency, Interim or Full Care Orders.

Contact Tusla's solicitor to get copies of social work, psychological and other reports and copies the notes of any case conferences that have taken place. Every effort should be made to get the documentation at the earliest possible opportunity.

Consider as to whether or not a replying affidavit (to the grounding affidavit) should be filed with the Court on the client's behalf and, if so, furnish a copy to the solicitors for Tusla.

Discuss with the client that the Court is a 'court of enquiry' and that the Court's considerations must have regard to the welfare of the child as the first and paramount consideration. Advise that the Court that it must give due consideration to the wishes of the child and have regard to the principle that it is generally in the best interest of a child to be brought up in his or her own family.

Upon receipt of the documentation from Tusla's solicitor, review it with the client and particularly obtain his/her responses to the allegations including factual allegations being made by Tusla.

If care proceedings have been served upon the client and you feel that supervision proceedings might be an alternative, discuss with the client whether they might be willing to consent to a Supervision Order.

Take instructions as to whether the client wishes to contest the next court application, particularly if it is the first application at which they will have had legal representation. If the client wishes to contest the next application, make enquiries to ascertain what evidence might be available to support Tusla's case. Discuss whether any members of the client's family or other persons such as their GP or teachers may be of assistance to the case. Such persons, who it is considered can give evidence to benefit the client's case, should be contacted in relation to assessing their assistance to the case and, if appropriate, their availability to give evidence.

Review the material that has been furnished by Tusla's solicitor and determine, in consultation with the client if appropriate, what material, if any, can be submitted to the court in report form prior to the case commencing.

Ensure the client is aware that you will not be in a position to furnish them with copies of any reports that you obtain from Tusla as those reports are prepared exclusively for the Court and can only be released upon the direction of the Court. If for some reason, the client requires a copy of any report, then an appropriate application will need to be made to the Court for permission to release that document to the client.

Discuss with the client whether it is appropriate to apply to have a guardian ad litem appointed to represent the child/children. If it is considered appropriate to make such an application, identify possible persons who it is considered would be suitable to act as a guardian ad litem. In considering their suitability have regard to the contents of the Children Acts Advisory Board publication Giving a voice to children's wishes feelings and interests. This document sets out, among other things, the standards for qualification for a guardian ad litem. In such circumstances, liaise with Tusla's solicitor to ascertain if the appointment of a (particular) guardian ad litem can be agreed. It will, however, be a matter for the Court to decide whether such a guardian should be appointed and who that will be.

Contact should be made with Tusla to see if there is any prospect of reaching a settlement that is mutually acceptable to the client and Tusla and discuss this with the client. Every effort should be made to see if a satisfactory agreement can be reached without the necessity of any further contested Court Hearings. Particular regard should be had to whether it might be possible to resolve the matter by agreeing to a Supervision Order on that basis that any application for a Care Order would be struck out or would be adjourned for a period of time without any such Care Order being put in place.

Stage 2: Pre Court Hearing

Following any interim hearing, discuss with the client the development of a longer term strategy for the conduct of the case. Potential expert witnesses might be identified and enquiries made whether they can undertake an assessment and prepare a report that might be helpful to the client's case. Any such witnesses should have a speciality that will be able to give an expert opinion on an issue that is central to the case. Legal aid authority must be sought in advance for the payment of their fees. Any such expert witnesses will have to be fully and properly briefed to include a comprehensive letter of instruction.

Give careful consideration as to whether all relevant material has been made available by Tusla including whether all social work files have been made available. An application for discovery may have to be made. In the absence of an application for discovery, a request under the Freedom of Information legislation can be considered.

If a guardian ad litem has been appointed then, if appropriate, make contact with Tusla's solicitor with a view to agreeing a joint letter to the guardian giving relevant background information.

If there has been a contested hearing at an earlier application for an interim care order and if there is no significant change in circumstances, you may (if appropriate) advise the client that there is little to be gained by contesting further interim applications and that it may be in their best interests not to contest further interim applications and instead to concentrate on addressing the issues or concerns that gave rise to the proceedings. Discuss this with the client and take instructions.

If a guardian ad litem has been appointed then make contact with the guardian's solicitor seeking copies of any reports prepared by the guardian for submission to the Court. Similar to Tusla reports, we will not be in a position to release copies of any of these reports to the client but you should discuss them in detail.

Prior to the matter coming on for full hearing, efforts should be made with the Tusla solicitor to agree the evidence that may be agreed and, if possible, narrow the issues in dispute. It is recognised that because of the nature of the proceedings it may be difficult to narrow the issues. A check should also be made in relation to the availability of expert witnesses that may be called.

Stage 3: Court Hearing (Interim Order/Full Order)

Take final instructions from the client prior to the commencement of the hearing. If any further reports have been furnished late in the day then discuss the content of these reports with the client and ask him/her for their views on the contents. If there are substantial amounts of new material made available just before the Court discuss with the client whether an adjournment of the matter should be sought to enable you to properly consider and discuss with you the details in this material.

The proceedings are heard by the Court in private. Only those parties connected with the proceedings can attend the Court. If is possible that the Judge will allow an accredited journalist to sit in and report on the proceedings. Any Court report, however, cannot identify the client, the children or the other parties involved.

Tusla present their case first. Tusla's lawyer will outline the circumstances and history for the Court and then call the witnesses that they will be relying upon in seeking the Order from the

Court. If appropriate, cross-examine Tusla's witnesses. If there is a guardian ad litem then the guardian will give evidence and, if appropriate, may be cross-examined.

Throughout the hearing regard should be had to the strength of your case, bearing in mind the evidence that will be presented to the Court by Tusla. In quite a lot of Child Care cases, the reality is that the 'high point' of a Respondent's case may well be reached at the conclusion of Tusla's presentation of their evidence. At that point, you may need to discuss with the client whether putting him/her in the witness box to give evidence is likely to further their case. The decision on whether or not the client is to give evidence is their own. The option of not calling a client is something to be seriously considered only where the Tusla evidence is particularly weak and/or the client's evidence is most likely not to be helpful.

If the client wishes to contest any evidence given on the part of Tusla then they will need to give evidence and will do so at that point. The client will then be cross examined by Tusla's lawyers.

In recent times the solicitor for the Guardian has also engaged in cross examination but the legal basis for this is not beyond question. Any witnesses on their behalf will then give their evidence and they too will be subject to cross-examination by Tusla's lawyer and, if appropriate, the guardian's lawyer.

Upon hearing all the evidence, the Court may make a number of Orders. If it is an application for a Care Order (Interim or Full), the Court may say that it is not satisfied that the necessary threshold of evidence has been reached and dismiss the application or, in some circumstances, it may say that while it will not make a Care Order, it is appropriate to make a Supervision Order. If the Court makes an Interim Care Order then it will do so for the appropriate period of time and put the matter in for further hearing. The Court may grant a full Care Order for such period of time as it feels appropriate up until the child's 18th birthday. Often a court may make an order for a shorter period to give parents some prospect of being reunited when they have addressed Tusla's concerns. Alternatively, the Court may make no order and adjourn the matter to a later date for further consideration.

When the Court gives its decision, discuss with the client whether an application should be made to have the case reviewed at a later date.

Discuss with the client whether a request should be made to the Court to make a direction that the matter come back before the court in the event of any significant change in the child protection plan for example any change of the particular foster placement.

Stage 4: Post hearing

At the conclusion of the case, advise the client of the decision; any review dates that are set by the Court; the possibility of seeking to discharge, at some point in the future, any Order that might be made if there is a change in circumstances at that time; the possibility of appealing and the merit or otherwise of doing so; the steps that it is considered the client might take in order to improve their circumstances; the need to remain engaged with Tusla in relation to access and the possibility of making an application to the Court for access if suitable arrangements cannot be agreed with Tusla.

General

Throughout the course of the case, keep the client informed informally and in writing of developments, including Court dates. It will greatly assist if the client responds punctually to all requests for instructions and information relating to the case and attends for consultations when requested and attends the Court Hearings.

9. Arrangements to appoint persons to assist clients of impaired capacity in child care proceedings

The purpose of appointing a person to assist clients of impaired capacity is to ensure the provision of an effective legal aid service to the client. The client must have some capacity,

but the solicitor must be of the opinion that the capacity is so impaired that it is essential that the solicitor have professional assistance to communicate effectively with the client in relation to the subject matter of the proceedings.

It is difficult to be definitive as to the range of circumstances in which a solicitor might required to make an application to have a person appointed to assist and support a client. It is possible that this form of assistance may be required, for example, in a childcare matter and, if so, if it is envisaged that this person is to be furnished with social work reports or other reports connected to the proceedings then application will have to made to the Court in advance seeing authority for these reports to be furnished to the person and for permission for that person to sit in on the proceedings with the client. Similar considerations may apply to any other proceedings subject to the "in camera" rule. Regard must be had to the particular circumstances of a client and the case and also to the availability of a suitably qualified / experienced person to assist. The following are some of the factors that ought to be considered when determining whether an application ought to be made:

- whether the client has a psychiatric history
- the psychiatric evidence available
- the client's level of comprehension in relation to the proceedings and the potential outcomes
- the level of family or other support that is available to the client
- whether there is a history of aggression or physical threat
- the solicitor's relationship with the client
- any negative connotations that the appointment of such a person might have in relation to their defence of the application by the Child and Family Agency
- the likely availability of a suitable person to assist

The criteria for making a decision on such an application

An application for the appointment of a person to assist a client will be treated as an application for an amendment to a legal aid certificate. The provisions of the Act and Regulations will apply to such an application. Of particular relevance is Regulation 9(1) which authorises us to amend a certificate "if it appears to be necessary in the particular circumstances of the case to do so".

We will consider the factors identified above, together with any other information that a solicitor might submit or that might be submitted on behalf of the client. Ultimately, it will make a determination on the basis of whether or not the appointment of a person is necessary to achieve the purpose set out above.

The role of the person so appointed

The role of the person appointed is to provide assistance and support to the client. The person will not be acting as a guardian ad litem and will not be giving instructions to the solicitor. If there is any disagreement between the person so appointed and the client, the solicitor is obliged to act in accordance with the client's instructions. Having regard to this, it is envisaged that the person's role will be:

- to explain to the client the nature of the proceedings and the potential outcomes
- to relay information from the solicitor to the client and from the client to the solicitor
- to attend the court with the client when it is considered essential by the solicitor
- to discuss with the client the options that might be available and to assist the client in giving instructions to the solicitor in relation to those options

To enable the person appointed to perform their functions effectively it is envisaged that the person would sit in on at least some consultations with the client.

The criteria for identifying suitable persons to provide assistance

The person to be appointed must have some level of speciality/professional expertise and must not be personally connected to the client. It is considered that qualifications /

experience in for example social work, psychology, and psychiatry would establish suitability in many cases. These examples are by no means exhaustive and there may be other specialities that can offer meaningful assistance and support depending on the particular circumstances of the case.

Fees and expenses

The Board will pay fees and expenses incurred by any person appointed under these arrangements, on the basis of an hourly rate where the person:

- attends with the client and/or the solicitor at court hearings
- attends at consultations between the client and solicitor
- attends with the client on other occasions when specifically requested to do so by the solicitor and where the solicitor certifies that the attendance was essential and was approved in advance by the solicitor

The fee currently payable is €65 per hour and has regard to the very specific functions to be performed by the appointed person. The appointed person will be entitled to claim travelling and subsistence expenses at civil service rates and subject to the provisions of the relevant Department of Public Expenditure and Reform circulars on such expenses. These arrangements are not intended to provide for payment for persons who might be providing assistance and support to the client in any event

10. International protection

Introduction

These guidelines are a statement of best practice for the provision of legal services by solicitors/paralegals in respect of international protection cases. Solicitors/paralegals should broadly comply with the Guidelines. Circumstances may arise where a solicitor/paralegal does not follow these guidelines. In such circumstances the specific reasons for not doing are to be noted in writing on the applicant's file. This is necessary for effective risk management/quality assurance purposes and to protect the Board where complaints are made to the Board and/or proceedings are initiated against the Board alleging negligence in the provision of services.

The Board will endeavour to allocate cases to solicitors in a timely manner so as to ensure compliance with statutory deadlines. Should a case be allocated within close proximity to a deadline, the solicitor will be contacted so as to ensure that they are in a position to deal with it.

Authority to act for a client and additional services

- One legal aid certificate will be granted to a private practitioner on referral, to cover any advice and/or legal aid required from questionnaire/interview/appeal stage until finalisation of the case. For the avoidance of doubt, please note that such legal aid certificate granted to an applicant does not authorise the taking of judicial review proceedings.
- There will be no requirement for a private practitioner whose applicant has been granted such a certificate to apply to us for an amended legal aid certificate to cover each individual stage of the process.
- Where a private practitioner considers it necessary to have a document translated or to obtain a SPIRASI or GP report (or any other report), an application for an amended legal aid certificate must be made in all instances to Head Office in Cahirciveen (PPUnit@legalaidboard.ie).
- For law centre solicitors, a legal aid certificate is not necessary at the advice stage, however a submission for a legal aid certificate must be made if an appeal to the International Protection Appeals Tribunal is pursued.

Key stage 1 – approach at first instance/pre questionnaire

- The applicant will be given general information and advice on the completion of the questionnaire at the first meeting. The applicant should leave this

consultation with all of the information they need to enable them to complete the questionnaire.

- Information must be given on possible issues such as : admissibility; nexus; safe country of origin; exclusion; the importance of filling in family details for any potential future family reunification application; implications of 15(3) (a-c) regarding any children born or later entering Ireland and the duties of the International Protection applicant.
- Information must be given on the international protection process and the basis for granting asylum status as per the checklist at Appendix A.
- The applicant must be informed that the basis for granting subsidiary protection (SP) is that a person is in need of international protection due to a real risk of serious harm, meaning:
    - Death penalty or execution;
    - Torture or inhuman or degrading treatment; or
    - Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.
- The applicant must be informed of the permission to remain (PTR) procedure to include consideration at first instance; ongoing duty to inform the Minister of any changes in circumstances that might affect PTR; and 5 day statutory period following receipt of the International Protection Appeals Tribunal decision to file further PTR submissions before final review by the Minister. The importance of the client keeping the Board/PP informed of any change of address should also be highlighted. Further country of origin information (COI) may need to be sought and further instructions may need to be taken following receipt of the Tribunal decision before any further PTR submissions are made for the Minister's final review. Given the five-day window for reviewing a negative PTR decision, the PTR application should be kept under review and updated where necessary.
- The information provided should include answers to all of the necessary and important questions relating to, for example, the applicant's family; health information; travel history and personal circumstances, including a synopsis of the details of their claim. The applicant should be provided with a detailed overview of the international protection process.
- Inquiries should be made with IPO at the outset regarding any visa/EURODAC hits and instructions must be taken to assess whether a risk of Dublin III transfer arises to any other relevant DIII country and consideration must be given to whether there are any grounds in each client's circumstances to resist such transfer that should be brought to the early attention of the IPO, eg. if there is family in Ireland; Article 17 discretion in humanitarian cases (submissions must also be made to the Minister in such cases); systemic deficiencies in the International Protection process in the proposed country of transfer.
- All of the information and advice detailed above must be provided to the applicant during the consultation even in circumstances where they have returned their completed questionnaire to the IPO before the first consultation.
- At this information and advice session a certain amount of factual information should be obtained from the client including medical details and contact details of the GP as well as an authority to obtain medical information if required.
- After the information session a query will, if necessary, be raised in respect of relevant country of origin information with Research, Learning, and Development. Also consider if further documentary/medical reports may assist and should be obtained.
- The pre-questionnaire checklist at Appendix A should be used to ensure that all necessary points were covered during the consultation in terms of information given to the client.
- A post-attendance letter should be sent to the client synopsising the process as outlined. The letter should also confirm the documents which the client was advised to seek or said they could get.

Key stage 2 – Pre-interview consultation

- A further consultation between the applicant and a solicitor should be arranged when the questionnaire/translated questionnaire has been received from the International Protection Office. The focus in this meeting is on legal advice based on all of the information contained in the completed questionnaire.
- The solicitor, in taking the client's instructions and in advising the client shall have regard to the checklists at Appendix B-J:
- -Appendix B: Credibility Assessment
- -Appendix C: IPA Pre-Interview Checklist
- -Appendix D: Determining Nationality, Former Habitual Residence and Article 1E Countries
- -Appendix E: Persecution Flowchart
- -Appendix F: State Protection Flowchart
- -Appendix G: Internal Protection Alternative Checklist
- -Appendix H: Section 15(c) Analytic Flowchart
- -Appendix I: Standards of Probability and Assessment of Future Risk
- -Appendix J: Article 1(F) Exclusion Checklist 1 and 2
- Written submissions may be made to the IPO following consultation with the applicant and review of the applicant's file. Submissions should be made where a client has an arguable claim for refugee status or subsidiary protection status, and the submission should set out the basis for contending that the client is entitled to such status. The submission should include a brief synopsis of the facts and link those facts to a statement of the law. If possible the applicant will approve the submissions prior to the submissions being sent to the IPO. These submissions might include: a reference to nexus; internal relocation and state protection issues; address any inconsistencies or reasons for absence of documentation; include relevant COI; and address any potential issues that might risk a 'papers only' or 'accelerated appeal'. Submissions should also include Permission to Remain issues. Submissions in relation to Dublin III might include for example arguments in relation to the exercise of Article 17 discretion or submissions in relation to family applicants in accordance with Article 10. Submissions may be made in relation to language analysis reports if it is considered necessary.
- Drafting the submission may commence after receipt of the questionnaire and carrying out COI and other relevant research. They can be completed following the pre-interview client consultation and further review of the file.

The appendices to the guidelines referred to above are available on iLAB

Key stage 3 - outcomes at first instance

- If a positive refugee status (RS) recommendation is received, the client should be written to confirming: the outcome of the application; the fact that they will receive further correspondence from the Department of Justice and Equality (DJE) explaining the implications of protection status; and that the solicitor will be closing the file.
- If a negative refugee status recommendation is received and positive subsidiary protection (SP) recommendation is received, the client should be written to confirming: the outcome of the application; the fact that they will receive further correspondence from the Department of Justice and Equality (DJE) explaining the implications of subsidiary protection status; and take the applicant's instructions re. the possibility of appealing the negative refugee status recommendation.
- Negative RS/SP and positive permission to remain (PTR) recommendation: the client should be written to confirming: the outcome of the application; the fact that they will receive further correspondence from the Department of Justice and Equality (DJE) explaining the implications of being granted PTR;

and take the applicant's instructions re. the possibility of appealing the negative RS/SP recommendation.

- Negative RS/SP/PTR: The solicitor shall review the recommendation of the International Protection Office and take the applicant's instructions as to whether they wish to appeal the negative RS/SP recommendation to the IPAT. If the client instructs that they want a review by the Minister of their PTR claim, the request must be made within five days of the negative RS/SP appeal decision from the IPAT.
- If the client is not appealing or seeking a review - a letter should be sent to the client notifying them that the case is completed and file will be closed.

Key stage 4 – filing an appeal

- The Solicitor shall review the recommendation of the IPO and arrange a consultation within the timeframe for lodging an appeal to advise on the reasons for refusal and take the applicant's instructions.
- Where an applicant fails to attend for a consultation, the office should attempt to contact the applicant by telephone and to give them an opportunity to explain their reasons for missing the appointment.
- A further appointment may be offered should there be sufficient time prior to the expiry of the time period for filing a Notice of Appeal.
- No Appeal should be filed in the absence of any current clear instruction in that regard. The instruction can only be made after the recommendation of the IPO has been notified to the client.
- Solicitors must be mindful of the urgency of making an appeal and that specified deadlines must be met.

Oral appeals and appeals on the papers
The applicant should confirm whether they wish to have an oral hearing and the solicitor should:

- Explain the procedure of the oral hearing to the applicant. If the client instructs that they do not wish to avail of an oral hearing, take instructions as to the reasons and have the applicant sign an Authority confirming that they do not wish to avail of an oral appeal hearing.
- If a solicitor forms the view that, notwithstanding an applicant's right to opt for an oral appeal, it is in the applicant's best interests to opt for an appeal on the papers, the solicitor should prepare a detailed attendance setting out the advice to the applicant and confirm that advice by letter. A Notice of Appeal submitted in such a case must be submitted in as much detail as if the applicant had not been entitled to an oral appeal.
- In the event that the matter is proceeding to an oral hearing, outline the type of questioning and the issues that may arise at the hearing; have the client sign the Notice of Appeal; ascertain whether an interpreter is required for the oral hearing and if so, seek specific details in relation to language and dialect.

Documentation
A solicitor should ask the applicant to provide any documentation, including any identity and supporting documentation, and official documents/ correspondence relating to their application, including the envelope in which the documents were received.

Appeal Forms
The solicitor should select the correct appeal form. Appeals must be submitted within the required time-limit indicated on the refusal letter.

Notice of Appeal - Refugee and Subsidiary Protection Status Appeal (Form 1)
This form is used if the applicant is appealing the recommendation not to grant refugee status, or the recommendation to grant neither refugee status nor subsidiary protection status.

Notice of Appeal - Inadmissible Status Appeal (Form 2)

This form is used if the applicant is appealing the decision that their international protection application was deemed inadmissible

Notice of Appeal - Subsequent Status Appeal (Form 3)
This form is used if the applicant is appealing the decision that a subsequent protection application should not be accepted.

Notice of Appeal - Dublin III
This form is used if the applicant is appealing the decision not to grant refugee status under the Dublin III System Regulations.

The solicitor should clarify with the applicant whether any documentation or other proofs may be obtainable prior to the submission of the Notice of Appeal/oral hearing.

All Notices of Appeal must:

1. Contain the applicant's name; applicant's temporary residence certificate number; country of origin; date of birth; ethnic group; religion; area of former habitual residence in country of origin; profession.
2. Set out any other bio-data relevant to the claim; identify any changes to the bio-data previously provided in relation to the claim as well as explanations of differences where they arise.
3. Be responsive to the grounds of refusal.
4. Be case specific.
5. Identify the Convention reason(s).
6. Cite relevant COI information that supports the claim. This information must be specific to the applicant's claim and be set out in a detailed and nuanced manner.
7. Where submissions in relation to errors of law are made include a statement of the law, including UNHCR Handbook, relevant legislation, jurisprudence (national and international) and any relevant statements from leading scholars. The stated position of the law should be applied to the facts of the applicant's case.
8. Where submissions are made in relation to errors of fact arising from the International Protection Office (IPO) recommendation, including negative/adverse credibility findings, these must be clarified and specifically addressed. The Notice of Appeal should incorporate a summary of the error of fact; the clarification provided by the applicant (in his or her words); and an explanation for the error of fact where applicable.
9. Address any procedural issues arising from the first instance interview. The procedural irregularity should be explained, as well as a statement provided from the applicant regarding how this affected his or her ability to present his/her claims.
10. Make a case as to why the applicant should be recognised as a refugee and/or beneficiary of subsidiary protection.
11. Identify any witnesses who are required to attend the oral hearing.
12. Identify the language and dialect of interpreter if required for oral hearing.
13. Be accompanied by relevant and clearly marked country of origin information and redacted decisions. In the event that same is unavailable at the time the Notice of Appeal is lodged, the COI should be made available at the earliest opportunity thereafter, particularly where no oral hearing is to take place. The IPAT should be advised that further documentation shall follow in the cover letter.
14. Once the Notice of Appeal is drafted, the solicitor should sign as legal representative. Should the applicant fail to return/ to sign his/her Notice of Appeal, submit the unsigned Notice of Appeal to the IPAT in any event where you have received instructions from the applicant.

Appeal forms can be submitted to:
The International Protection Appeals Tribunal
6/7 Hanover Street East
Dublin D02 W320
Tel: +353 (0) 1 474 8400
Scanned by email to: info@protectionappeals.ie

Key stage 5 – IPAT hearings and recommendations

The IPAT will notify the law centre once a date for the oral hearing has been scheduled. The solicitor is expected to represent the applicant at the hearing which will be held in the offices of the IPAT in Hanover Street on the date specified.

Recommendations from International Protection Appeals Tribunal (IPAT)

If IPAT affirms the negative recommendations from the IPO the solicitor should advise the applicant of options open to them including:

- The possibility of voluntary repatriation;
- Advice regarding any possible grounds for judicial review;
- Five day statutory time-limit for review of refusal of PTR.

Permission to remain applications

The applicant should be asked to keep the Minister and the solicitor informed of significant changes in circumstances that might affect the application (and provide supporting documentation) - in particular, but not limited to:

- Any changes to their family's circumstances or composition;
- Any changes to their marital status; and
- Any major changes to their health.

Sections 49(6) (b) and 49(9) (b) of the 2015 Act not only allow but oblige an applicant to inform the Minister of any change in circumstances which occurs (i) between the initial application for protection and the making of the IPO protection recommendation and (ii) during the 5 day period following the receipt by the applicant of the protection appeal decision by the IPAT.A permission to remain refusal under s.49(4) is covered by the special provisions relating to judicial review contained in s.5 of the Illegal Immigrants (Trafficking) Act 2000, and it therefore must be challenged by way of judicial review within 28 days.

Statutory deadline missed

In the unlikely event of a statutory deadline being missed, either through your or the applicant's fault, the solicitor should immediately furnish the IPAT with an application for an extension of the time within which to lodge the appeal (which is available in the body of the appeal form). The Managing Solicitor must be notified immediately if it is an in-house Board client. PPs should notify the Board immediately in circumstances where a request for an extension is refused.

Judicial Review

General advice to the applicant should include at all stages whether there are grounds for the institution of judicial review proceedings. If you are of the view that judicial review issues arise at any stage you should notify the applicant immediately.

Withdrawals from the process

If the applicant wishes to withdraw from the International Protection process you should advise him/her of the consequences and seek the applicant's written instructions and reasons for withdrawal.

Identifying potential victims of human trafficking

The solicitor should be aware of the definition of a victim of trafficking.
A victim of trafficking is a person who:

- Has been transported, recruited, and/or harboured [either] within a country and/or across transnational borders;
- By the use or threat of: fear, fraud, force, deception, coercion, and/or abduction;
- For the purposes of abuse, or the giving or receiving of payments and/or benefits;
- For the purpose of being exploited for labour, sexual exploitation or removal of organs.

When children and mentally impaired persons are trafficked, no violence, deception, or coercion needs to be involved. In such exploitative conditions simply transporting or harbouring constitutes trafficking.

Where it appears to a solicitor that a client may be a victim of trafficking, the client should be immediately referred to An Garda Síochána. The solicitor may also need to consider referring the client to a relevant agency.

Unaccompanied minors
If a solicitor becomes aware that a client may actually be an unaccompanied minor they should contact the Unaccompanied Minors' Unit in Smithfield law centre- smithfieldseparatedchildren@legalaidboard.ie.

Post IPO interview/review positive permission to remain recommendations
If a positive Permission to Remain (PTR) recommendation is received following a Ministerial review, the client should be written to confirming:

- The outcome of the application;
- The fact that they will receive further correspondence from the DJE explaining the implications of their status; and
- That the law centre will be closing its file.

If a positive PTR recommendation is received at IPO interview stage, the applicant may wish to let the PTR stand if appealing negative Refugee Status or Subsidiary Protection recommendations.

A client is not to be assisted in the registration process with the Garda National Immigration Bureau following a positive decision as this is an administrative matter to be addressed by the client.

Key stage 6 - deportation
If a client has been served with a deportation order pursuant to s.51(1) of the 2015 Act, the solicitor must write to the client to explain its implications in terms of reporting requirements and to offer an appointment, with the solicitor/caseworker if the solicitor considers it appropriate and necessary.

If considered appropriate, the solicitor may submit written representations to the Minister for Justice and Equality setting out reasons as to why their client should not have had a deportation prder made in respect of them or submit grounds upon which the deportation order should be revoked. At this stage, the possibility of making an application for re-admission into the process should also be considered and made if appropriate.

If it is considered that the decision to issue a deportation order is flawed and merits the institution of judicial review proceedings, that possibility will be investigated by the solicitor. If the solicitor is of the view that no judicial review issues arise:

- He/she should make a clear note on the file to that effect;
- The client should be so informed in writing;
- The client should be advised of the possibility of obtaining a second opinion independently and instructing a private solicitor to institute review proceedings, and
- The client should be advised that the law centre will be closing their file after the reporting date has passed.

If a solicitor is of the view that there is a potential judicial review issue, the client should be so advised in writing and advised to obtain immediate private legal representation to pursue this option.

If a barrister has set out views on the prospects of JR, this must be included with the letter to the client. We will not discharge fees in respect of any counsel opinion that was not authorised in advance by Legal Services in Caherciveen. If a legal aid certificate is granted for counsel's opinion, the solicitor must so inform the client.

If the solicitor is of the view that no possible grounds exist for Judicial Review:

- The client must be informed in writing by the law centre; and
- the client should be informed of the possibility of obtaining a further opinion independently, and of the importance of meeting statutory time limits in relation to judicial review.
- Where the barrister and solicitor are of the view that no grounds exist but the client instructs that they want to challenge the decision of the IPAT:
- No JR query should be raised; and
- The solicitor should make an application for counsel's opinion/legal aid certificate, having particular regard to the provisions of Paragraph 5 (5) (b) of the Regulations.

11. Complainants in certain sexual assault cases

Introduction

This part of the Circular deals with best practice guidelines in relation to the provision of legal aid for a complainant in certain sexual assault cases where the prior sexual experience of the complainant is being raised. The term complainant refers to a person who has made a complaint to the Gardaí about rape and/or sexual assault and in respect of which criminal proceedings have been initiated against the person alleged to be responsible.

General guidelines

The Board acknowledges that this is an essential and valuable service which is restricted to providing representation to defend an application on behalf of the defendant for leave to cross examine the complainant on previous sexual experience pursuant to Section 3 Criminal Law Act 1991 as amended by Section 13 of the Criminal Law (Rape)(Amendment) Act 1990. Legal representation does not generally cover the hearing of evidence before a jury.

Approach

Key stage 1: Application for legal aid and pre-trial preparation

The grant of legal aid is mandatory and a legal aid certificate to include authorisation for junior counsel will issue from legal services via EOS on foot of a submission for same. There is no contribution payable for these cases.

- Having indicated availability to accept the case to Legal Services, apply for a legal aid certificate with an opinion to grant the certificate. Indicate that the services of junior counsel are required.
- On foot of receipt of the details of the case, contact should be made with the solicitor dealing with the case from the Office of the Director of Public Prosecutions to establish:
  - (i) Has the DPP been put on notice that the defence intend to apply for leave to cross examine the complainant on previous sexual history pursuant to Section 3 Criminal Law Act 1991 as amended by Section 13 of the Criminal Law(Rape)(Amendment) Act 1990; and
  - (ii) Is the jury charged and the trial ongoing.
- If the trial has not commenced, the solicitor for the complainant should ask the DPP to notify him/her of the date of listing of the trial, the date of hearing and confirmation that the jury has been charged.
- If the trial is ongoing, arrange for the papers to be forwarded to the Board, which may include:
  - (i) Confirmation that the DPP is on notice of the intention by the defence to apply for leave to cross examine the complainant
  - (ii) Statement of evidence / complainant
  - (iii) Statement of charges
  - (iv) Memoranda of interviews with accused.

Key stage 2: Brief Counsel

- Instruct a barrister who is experienced in the defence of applications / criminal law
- Forward papers including precedent letter [EOS reference].
- Arrange for a consultation with the client prior to the hearing

Key stage 3: Consultation and court proceedings

- Meet with the client on the day of the hearing and explain the Board's role including the limitation of legal aid which is confined to taking instructions in relation to the defence of the application. This should be re-emphasised as the solicitor should not discuss the case generally with the client;
- Record with the instructions, the advices given;
- Manage the client's expectations, including informing the client what the prospects are of the application being refused. It should be borne in mind, generally speaking, a person convicted by a jury may appeal to the Court of Appeal on the basis that the conviction is unsafe and unsatisfactory. For example, the basis of an appeal might be that the trial judge erred in admitting / excluding certain evidence;
- Attend counsel at the hearing to indicate the clients instructions;
- If the application is granted, agree questions to be put to complainant;
- If the application is granted and the questions are agreed it should not be normal practice to remain in court for the cross-examination of the complainant however depending on the particular case it may be appropriate to do so; and
- If the application is refused, advise the client of same.

Key stage 4: File closure

Files should be closed within 1 month of the completion of the hearing and claim forms for fees should be forwarded to the Board within two weeks of the completion of the hearing or as soon as available.

Part 9.
Professional practice

This part deals with

1. Solicitors engaging in private practice
2. Referring cases to private solicitors
3. Swearing documents
4. Clients being accompanied to interviews
5. Capacity to instruct
6. Conflict of interest
7. Conflicts of interest in professional negligence cases
8. Solicitor advocacy
9. Services where proceedings are in a different court jurisdiction
10. Law centre on record
11. In camera rule and its effect on practice
12. Anti money laundering legislation
13. Performance/file review process
14. Engaging private solicitors generally
15. Referring to the solicitors panels
16. Instructing Counsel
17. Engaging witnesses
18. Releasing a law centre file
19. Taking up a case from a private solicitor with fees outstanding

This chapter deals with a number of issues to do with professional practice. It is primarily (though not exclusively) aimed at employed solicitors of the Board.

1. Solicitors engaging in private practice

As a solicitor of the Board, **if you engage in private practice you are in breach of your contract of employment**. You won't be covered by our professional negligence insurance. You may expose us to an action in negligence, depending on the circumstances of the case.

If it comes to management's attention that you have been advising or representing any person privately as a solicitor, we **will** take disciplinary action against you, up to and including dismissal. If you feel there are exceptional circumstances that mean you should be allowed to deal with something privately as a solicitor, you should bring it to the attention of the Director of Civil Legal Aid or Chief Executive. However, the circumstances would need to be totally exceptional before the Director or Chief Executive would even consider allowing you to act.

2. Referring cases to private solicitors

As civil servants, we are not allowed to show any favouritism towards any private solicitors. If a person asks you to "recommend a solicitor", for whatever reason, you **must politely refuse.** You can direct them towards the Law Society of Ireland website at www.lawsociety.ie. There is a "Find a Solicitor" page which will allow them to search for local solicitors.

When referring to private practitioners on the Board's panels, we must follow the procedures in the ➔ **Administrative Procedures Handbook.** This means that we will give applicants the panel for the county and ask them to pick their own solicitor. We normally cannot pick the solicitor for them. There are limited circumstances when it might be permissible to assist them and the Handbook details this.

Enforcement of foreign maintenance

Where a request is received through the Central Authority for Maintenance Recovery to enforce a maintenance order in the District Court it can be referred to a private practitioner under the District Court scheme. As the maintenance creditor (the person to whom the

maintenance is owed) lives outside Ireland, the managing solicitor can select a solicitor on the panel.
The solicitor should practice in the District Court Area where the application is to be made.
The managing solicitor should operate a strict rota to ensure that the private solicitors on the panel in the particular District Court Area receive a fair distribution of these cases.

3. Swearing documents

Section 72 of the Solicitors (Amendment) Act 1994

As a solicitor you can take oaths or statutory declarations in the same way as a Commissioner for Oaths However you are not allowed to do so in any proceedings in which you are acting as solicitor or if you have an interest in the proceedings.

The Law Society has published a practice note (Practice Note in relation to the Administration of Oaths by Solicitors, June 2005) in which it states that solicitors should not swear oaths for proceedings in which any solicitor in the firm is acting. This being the case, and given that as a matter of practice, law centre solicitors don't act in cases that other solicitors in the same law centre are acting, you should not swear oaths for any other solicitor in the same law centre.

However you can swear oaths for Board solicitors from other law centres or for private practitioners representing legally aided persons. **You may not charge for doing so, or take money for doing so.**

You may not take payment for any taking of oaths or swearing of documents in the course of your employment with the Board.

The Practice Note also deals with practices that are in breach of the legislation, including leaving blanks in the document that are filled in after swearing, having the client sign an affidavit to be sworn later and without the deponent being present, and sending documents to clients by post asking them to sign '*between the pencil marks'* and return. Managing solicitors should be satisfied that these practices are not occurring in their law centres.

4. Clients being accompanied to interviews

Sometimes clients ask for another person to come with them to a consultation, for "support" or other reasons. Paragraph 2.1 of the Guide to Professional Conduct of Solicitors in Ireland provides as follows:-

> *"Duress or undue influence*
> *A solicitor should not accept instructions which he suspects have been given by a client under duress or undue influence. Particular care should be taken where a client is elderly or otherwise vulnerable to pressure from others. A solicitor will usually, but not always, see a client alone. In the case of suspected duress or undue influence the solicitor should ensure that a client is seen alone."*

Because of this, and also because there is no solicitor/client confidentiality between the third party and the solicitor, we are of the view that clients should not be accompanied to consultations, other than in exceptional circumstances. Ultimately you must decide whether those circumstances exist in any particular case.

5. Capacity to instruct

You may have concerns from time to time about whether a client is fit to give instructions. The Law Society issued a Practice Note in December 1998 in relation to this. It makes it clear that it is a matter for the solicitor to determine whether a client is of unsound mind. It states that in **marginal** cases, a solicitor should obtain a medical certificate confirming mental health.

On the broader issues it states:-

- that if a client is of unsound mind, he or she does not have the legal capacity to enter into a contractual relationship with a solicitor; and
- if the solicitor determines that the client does not have capacity, he / she should take reasonable steps to ensure that the client's interests are protected, which may involve a lessening of the professional duty of absolute confidentiality in the client's own interest.

There is a legal presumption of capacity and different levels of capacity are required in differing situations.

You don't need to make a determination as to capacity at advice stage. Just make careful notes and write to the client afterwards to confirm the advice given.

At the legal aid stage, first have regard to the nature of the case, before determining what impact a client's mental health difficulties may have - if any - on the conduct of the proceedings and your ability to represent the client appropriately. This is particularly important in family law proceedings. In some cases, the client is an unwilling participant and the fact that they have mental health difficulties won't affect the fact that there is a case before the Court and the judge is going to make a decision. For example in childcare cases, you should continue to represent the client even if they lack full capacity.

Approach

You should take the following approach:

- have regard to the nature of the case in determining what impact a client's mental health difficulties may have, if any, on the conduct of the proceedings and the solicitor's ability to represent the client appropriately;
- where the client's capacity is an issue, it is a matter for you to determine if the client has capacity;
- the determination may be an ongoing process, particularly if litigation is involved;
- any medical report is made at a point in time and the client's situation may change from time to time;
- You rely solely on a medical report and must form your own opinion on the issue of capacity;
- if a medical report is being sought, you must advise the client of the relevant test of capacity and they must consent to the obtaining of the report;
- advise the client of the consequences of a favourable or unfavourable report; and
- maintain detailed records and attendance notes.

In any case in which you have doubts about a client's capacity to give instructions and the nature of the case is such that a lack of capacity may impact on the conduct of the case and your ability to represent the client appropriately, you may apply for authority to obtain a medical report to assist in determining whether or not the client has capacity. When applying, you should set out the likely consequences to the client if the report expresses the view that (a) the client has capacity and (b) the client does not have capacity.

6. Conflict of interest

Generally the same law centre will generally not provide legal representation to both sides of the same case, for conflict of interest reasons. A person who applies to a law centre for legal services where the other party has already applied will be referred to another law centre to make their application.

There is an exception in cases referable out under the District Court family law private practitioner scheme. Both parties can in that case apply to the same law centre, provided that one or (ideally) both of the parties will be represented by a private practitioner. However, the person or persons who are being represented by a private practitioner must be referred without having received a first consultation in the law centre.

➔ The procedure for conducting the conflict check is contained in Chapter 3 of the Administrative Procedures Handbook

However conflict arises in circumstances wider than simply representing both sides of the same case. If we were to take a very strict view of conflict possibilities - for example a stricter view than would ordinarily be taken by solicitors in private practice - it could become very difficult to operate the service, particularly given that the Board is a single legal entity and all law centre solicitors are employed by the Board. In practice it has proved difficult to get solicitors / law centres to take certain 'conflict' cases, particularly those involving allegations of professional negligence against a solicitor. The Director of Civil Legal Aid may require a law centre to take a case where it is considered that an alleged or perceived conflict is not enough for the law centre to refuse to take the case. In determining where to assign conflict cases the Director of Civil Legal Aid may have regard to, among other things, the existing case mix of the law centre.

If you consider that a conflict situation has arisen, you should take appropriate steps to deal with the situation. You should in the first instance judge for yourself whether or not there is a conflict situation and should take steps to avoid it. You may refer also to the guidelines on conflict and professional negligence cases. You may also consult with Legal Services if you experience any particular difficulties.

7. Conflicts of interest in professional negligence cases

A situation of conflict for a law centre can arise from either of the following:-

- a personal relationship between a member of staff at the law centre and the person against whom the allegation is being made; or
- a professional relationship between the solicitor/law centre and the person against whom the allegation is being made.

Where there is a personal conflict between the staff member and the intended Defendant

Law centres should facilitate any individual who has a *personal conflict,* where there is an application for legal services that involves a claim of professional negligence, even if the subject matter is of a family law nature.

Another solicitor in the law centre should deal with the application, unless there are specific circumstances which cause concern to the other solicitor. If this happens, refer the matter to another law centre. If there is only one solicitor in the law centre, contact Legal Services.

Where there is a professional relationship with the law centre

The allegations may be against a person who was previously:

- a client of the law centre
- a expert witness or professional engaged by the law centre

In either case, the law centre should refer the person to another law centre.

Allegations against a solicitor in the same county

If the allegation is against a solicitor who previously practiced in the Circuit Court county in which the law centre is located, outside Dublin, the law centre should refer the application to a neighbouring law centre. In Dublin the Director of Civil Legal Aid should be consulted as to an appropriate Dublin law centre to refer the applicant to.

Allegations against other professionals practicing in the same county

If there no professional relationship between the law centre and the individual professional involved – i.e. the law centre never engaged their services - the law centre should be in a position to deal with the particular application.

In the case of a complaint/professional negligence allegation against private solicitors and/or key professionals, either in the caring services or operating independently in the same Circuit Court county or Child and Family Agency area, which have frequent contact with the law centre, a special arrangement should be made.

In the event of a personal/professional conflict, where:-

- the individual against whom the complaint is made is not a solicitor, the application should be handled by the nearest geographical law centre (rather than have particular law centres twinned with others for general purposes of professional negligence actions); or
- the complaint is against a solicitor, it should be dealt with by the nearest geographical law centre outside the Circuit Court county.

Complaints from members of the public regarding misconduct, inadequate professional services, excessive fees should be referred to the appropriate professional body.

8. Solicitor advocacy

The Board seeks at all times to promote a greater culture of advocacy among its solicitors. Solicitors provide advocacy services in the District Court. In the past this experience may have become more limited in the Dublin area on account of the general reliance on private practitioners for private law cases.

We previously provided an intensive training programme to enable solicitors to improve their skills. We remain committed to providing training on an ongoing basis to those who put the skills to meaningful use. We wish to further enhance the advocacy capacity of law centres particularly in relation to judicial separation and divorce cases in the Circuit Court. Most solicitors employed by us have very significant experience in the area of family law. Pleadings can be produced using EOS in a relatively straightforward way. Counsel is never automatically authorised and authorisation for Counsel must be sought from Legal Services in every case.

Management may issue guidelines from time to time to promote a greater level of solicitor advocacy, particularly in the Circuit Court. We will monitor compliance with any guidelines issued and this will form part of your performance assessment.

9. Services where proceedings are in a different court jurisdiction

Section 30(2)

The Act provides that a person is entitled to apply for legal aid or advice through any law centre irrespective of his or her place of residence.

Law centres often receive applications for legal services where the applicant resides in the county in which the law centre is located, but they will be taking or defending proceedings at a District Court or Circuit Court venue in another county. The application should be processed and, if financially eligible, the person may be seen for a first and subsequent consultations up to the point of the hearing. At that point you should contact the law centre that is local to the venue – unless they are the solicitors for the other party or otherwise have a conflict of interest – and ask them to act on an agency basis for the purpose of the court hearing.

A law centre that is requested to provide an agency service must be fully briefed in relation to the case or cases that they are requested to provide agency services for.

Childcare matters

It may be the case in childcare matters, particularly where the parents are separated, that proceedings for a care order can arise at a District Court venue located a substantial distance from the law centre. It may also be the case that these matters may involve several applications by the Child and Family Agency for interim care orders before the application for the care order is heard and determined.

As with all matters where an agency service is likely to be provided, the application should first be processed and financial eligibility determined in the law centre where the application is received, and the applicant seen for a first consultation. If, after that, it becomes apparent that a childcare matter at a District Court venue over 150km from your law centre is likely to have several interim hearings before a final determination, contact the local law centre in the area and ask them to agree to the file being transferred. It may be that they are already acting for the other parent and if that is the case, ask another law centre in the area to take the case on the same basis. If there is not another law centre within 80 kilometres then the Director of Civil Legal Aid/Regional Manager should be consulted.

Law centres who are asked to take a case on this basis must accept unless they are already acting for the other parent or there are other exceptional circumstances which stop them accepting the case. Because these cases are priority, demand for services at the law centre will not be accepted as exceptional circumstances which stop the law centre accepting the case.

Child abduction matters

In relation to child abduction cases that are before the High Court in Dublin, solicitors in the non Dublin law centres who have such cases that are subject to interim applications or return dates should request the Dublin law centres and in particular the centres in the middle of the city to provide an agency service in respect of those dates. You should not travel significant distances for such cases other than for a full hearing.

10. Law centre on record

Section 30(6A)

The Act provides that, where a legal aid certificate is granted for proceedings in any court or before any prescribed Tribunal, the proceedings shall be issued in the name of the law centre (unless the service is being provided by a private practitioner).

What should be in the law centre's name?

The law centre is on record, not the individual solicitor. All proceedings should be in the name of the law centre rather than the individual solicitor. Certificates pursuant to sections 5 and 6 of the Judicial Separation and Family Law Reform Act 1989 and sections 6 and 7 of the Family Law (Divorce) Act 1996 should be signed by the solicitor in the solicitor's name. Correspondence to the other party can be addressed to either the law centre/firm or solicitor with conduct of the file.

What should be in the staff member's name

Outgoing letters should be in the name of the individual solicitor / paralegal or may, as appropriate be in the name of other staff members.

Letters should not be sent solely in the name of the law centre. All correspondence must be signed by and in the name of a staff member.

Names of law centres

For the purpose of proceedings law centres are named as follows:

Law Centre (Jervis Street)	Law Centre (Smithfield)	Law Centre (Montague Court)
Law Centre (Finglas)	Law Centre (Clondalkin)	Law Centre (Tallaght)
Law Centre (Blanchardstown)	Law Centre (Popes Quay)	Law Centre (South Mall)
Law Centre (Galway – Seville House)	Law Centre (Galway-Francis St)	Law Centre (Limerick)
Law Centre (Wicklow)	Law Centre (Wexford)	Law Centre (Waterford)
Law Centre (Kilkenny)	Law Centre (Portlaoise)	Law Centre (Tullamore)
Law Centre (Newbridge)	Law Centre (Navan)	Law Centre (Dundalk)

Law Centre (Cavan)	Law Centre (Monaghan)	Law Centre (Letterkenny)
Law Centre (Sligo)	Law Centre (Castlebar)	Law Centre (Athlone)
Law Centre (Ennis)	Law Centre (Nenagh)	Law Centre (Tralee)
Law Centre (Longford)	Law Centre (Chancery Street)	

11. In camera rule and its effect on practice

In camera is a Latin phrase meaning "in chambers" (referring to the judge's chambers). It means that the case will be heard **in private** and members of the public are not allowed to attend. Almost all family law cases are subject to this rule. Section 34 of the Judicial Separation and Family Law Reform Act 1989 applies the *in camera* rule to all judicial separation proceedings.

In general neither you, a client, nor any other person can tell anyone not directly involved in Court proceedings anything about what occurred at the court hearing which was held in private. Solicitors must ensure that clients are aware of what the *in camera* rule means for them and that they cannot talk about what has happened in court to anyone not affected by the proceedings.

Problems arose with the operation of the *in camera* rule in family law cases. In 2013 the Oireachtas amended the Civil Liability and Courts Act 2004 to address some of these problems.

Giving copies of court documents to third parties

Where the *in camera* rule applies, you cannot give anyone copies of Court documents unless the law allows you to do so.

Section 40(4) of the 2004 Act allows copies of or extracts from court orders to be supplied to relevant persons who have been allowed to receive these orders by the Minister. If a person who is allowed to receive a court order does so, they can only use it and disclose it to others as part of their job. The list of people who can be supplied court orders is on iLAB.

Section 40(8) allows the Court to order copies of court documents, information, or evidence in the proceedings to be disclosed to third parties if necessary to "protect the legitimate interests" of a party or other person affected.

If a third party requests court documents or information in relation to proceedings that are covered by the in camera rule, you must refuse to give the information or supply the documents, unless the person is on the list of people who can be supplied the information or the Court has approved of you doing so.

If there are any difficulties refer to Legal Services.

Clients being accompanied to Court

Section 40(5) of the 2014 Act allows a party to be accompanied to Court, if the Court approves it. The Court can give directions as to this.

Reporting of family law proceedings

The law reports and members of the press can report on family law proceedings provided that the reporter or journalist doesn't publish anything that would identify the parties or any child. However the Court can, either on its own or when a party applies, exclude the press.

12. Anti-money laundering legislation

Introduction

You need to be aware of the broad purpose of the anti money laundering legislation, its implications for law centres and of the policies and procedures adopted by the Board. As a

solicitor, you are bound by the anti money laundering requirements set out in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ("the 2010 Act").

Statutory position

It may be a criminal offence if you fail to comply with the anti-money laundering obligations. The Law Society has issued Guidance Notes to assist solicitors in complying with their obligations. You can find the most recent (2010) version of the Guidance Notes on the LAB Bulletin Board.

Among the requirements of the legislation are:

- Solicitors / the Board are required to take measures to identify new clients and maintain records of their identity and also to apply other Client Due Diligence (CDD) procedures including the ongoing monitoring of the business relationship;
- We are required to have internal procedures for staff training and awareness; and
- You are required to report suspicious transactions to the Garda Siochana and the Revenue Commissioners.

Exemptions for solicitors

The obligations to identify and verify clients and to report suspicious transactions only arises where you carry out any of the following services:-

- providing assistance in the planning or execution of transactions for a client concerning any of the following:-
  - buying or selling land or business entities;
  - managing the money, securities or other assets of clients;
  - opening or managing bank, savings or securities accounts;
  - organising contributions necessary for the creation, operation or management of companies;
  - creating, operating or managing trusts, companies or similar structures or arrangements:
- Acting for or on behalf of clients in financial transactions or transactions relating to land.

If you consider that information - or anything else on which you base your suspicion that a money laundering offence was committed - came to you in privileged circumstances, you are obliged not to make a money laundering report. But if that happens, you should consider whether you should be continuing to act.

Carrying out the anti-money laundering check

➔ The procedure for carrying out the anti-money laundering check is contained in Chapter 3 of the Administrative Procedures Handbook

It is important to note that while the procedures are designed so that administrative staff can carry out the check, the responsibility is on you as the solicitor. When meeting the client for the first time you must be satisfied that the check has been carried out, if it applies. Do not proceed with the consultation if you are not satisfied of this.

Procedures for staff training and awareness

Solicitors are required to provide anti money laundering training to relevant staff in two areas:

- on how to identify a transaction or other activity that may be related to money laundering (or terrorist financing) and
- on how to proceed once such a transaction or activity has been identified.

All employees involved in the day-to-day business of the law centre should be aware of the policies and procedures in place in their law centre to prevent money laundering.

Internal reporting procedures

Section 42(1) of the 2010 Act requires a designate person to report to the Gardaí and the Revenue Commissioners any knowledge or suspicion they have that another person is engaged in money laundering or terrorist financing. Section 44 of the Act provides that such reports may be made "*in accordance with an internal reporting procedure established by an employer…."*.

One of the Regional Managers has been appointed as the Board's Money Laundering Reporting Officer (MLRO). The MLRO has responsibility for making reports to the Gardaí and the Revenue Commissioners. Solicitors who wish to make a report should contact the MLRO for the purpose of reviewing the circumstances of the case and determining whether a report should or can be made.

The following form should be used to report potential money laundering to the MLRO

Legal Aid Board
Internal Money Laundering Reporting Form

TO: MLRO
FROM: …… ……
Law Centre/Section…… Position ……
CLIENT:
Name(s) ……
Permanent Address ……..
…… Date of Birth ……...
Nationality …….. Occupation/Employer …….
EOS reference …… Date client relationship commenced …
PPSN ……...

INFORMATION/SUSPICION:
Transaction/Instruction
……...
Reason for suspicion (please attach copies of any relevant documents) ……
……...
……...
……...
SIGNATURE…… Date: ……
MLRO USE:
Date received ……... Time received ……..…… Ref……..
Garda/revenue advised? ….Yes/No Date…… Ref ……

Reports to the Garda Siochana / Revenue
The MLRO is responsible for making reports to the Gardaí and Revenue. Reports should be in a standard form as per the format recommended by the Law Society. The MLRO provides the liaison between the law centre and the Gardaí and Revenue.

"Tipping Off"
Section 49 of the Act prohibits any person who knows that a report has been made from making any disclosures likely to prejudice any ongoing or future investigation.

There are a number of defences to the offence of "tipping off". You can cease acting for a client after making a report to the Gardaí and Revenue and indicate that you are ceasing to act on account of your unhappiness with a particular transaction.

Training
The managing solicitor is responsible for informing new staff of the requirements of the legislation as they apply to the law centre's business.

The requirements will also form part of the induction training for new staff. Periodic updates will be included in Board publications. If any law centre requires further training or is uncertain in relation to the obligations that the anti money laundering legislation impose they should contact the MLRO.

Compliance
The MLRO is responsible for ensuring that the requirements under the Act in relation to identifying clients, retaining files, training staff, and having a reporting system in place, are met. Spot checks will be carried out to ensure that clients are being appropriately identified.

General
There is a significant emphasis in the 2010 Act on taking a risk based approach in terms of compliance with the terms of the legislation. We consider that the area of our business that is most likely to give rise to potential money laundering concerns is transferring property / money between spouses.

The provisions of paragraphs 2.12 to 2.14 of the Law Society's 2010 Guidance Notes are specifically drawn to the attention of solicitors. They provide as follows:-

> *"2.12 Practitioners should be particularly careful where they act to transfer property, even between spouses, if there are suggestions that the assets have been purchased with untaxed income or if the solicitor or barrister has other reasons for believing that the assets have been so acquired. A solicitor or barrister who advises on or effects such a transaction could commit the offence of money-laundering. The legislation does not require actual knowledge on the part of the solicitor or barrister that the assets are 'tainted'. The test is recklessness. The legislation does not contain any de minimis provision and an asset is considered tainted even if only a small proportion of the funding arose from untaxed income and regardless of the length of time that has elapsed since the asset was acquired.*
>
> *2.12 Where the transfer of such 'tainted' assets is being ruled or ordered by the court, practitioners should ensure that the court is fully aware of the provenance of the assets or of any suggestion of funding, whether in whole or in part, from untaxed income. A failure to disclose to the court a fact relating to the status of such property could amount to concealment on the part of the practitioner.*
>
> *2.14 Where the transfer of such 'tainted' assets is being sought by agreement of the parties, without the intervention of the court, a practitioner should not complete any such transaction until the client has regularised the situation in respect of those assets. If a client refuses to do so, the solicitor should cease to act. Penalties for money-laundering offences include imprisonment for up to 14 years."*

Any concerns in relation to the application of the anti money laundering provisions to the circumstances of a particular case should be brought to the attention of the MLRO.

13. Performance/file review process

Background
Having regard to the need to ensure effective risk management the Board has put in place the following formal structured systems of case file reviews. The systems are designed to contribute to the effective management of performance and of the appropriate management of risk.

Own file review process

A regular review of all cases in law centres is essential for the purpose of assuring the quality of legal services provided and to ensure that there is a proper structure in place to limit the scope for potential professional negligence actions against the Board.

The process requires that solicitors review their files and ensure that the workflow/case status on EOS is up to date (in practice, the workflow should be kept up to date as the case is in progress by marking checklist items/milestones as Done or Not Needed and progressing to the next appropriate workflow when required). Each solicitor is required to review their files three times a year to ensure the workflow/status is up to date.

The review dates are as follows:

Before the end of May	All files which were open on 30th April
Before the end of September	All files which were open on 31st August
Before the end of January	All files which were open on 31st December

Each solicitor is also required to submit a Declaration, in the format below, that they have reviewed their files and that there are no issues that might give rise to a claim in respect of breach of professional duty against the solicitor or the Board. The Declaration should be suitably qualified if a solicitor has concerns about a particular case.

Declarations should be scanned and emailed to your Regional Manager or the Director of Civil Legal Aid, as appropriate.

Solicitors are required to declare that they are broadly familiar with the contents of the Administrative Procedures Handbook. Managing solicitors must sign a different version of the declaration also stating that they regularly discuss the contents of the Handbook with staff, and that the risk register is up to date and they monitor it regularly.

Declaration by solicitor following review of files

I declare that I have reviewed all of my files for the four month period ending _____ and that the case status on EOS is up to date.

I further declare that, at the date of this declaration and following a review of all case files, I am not aware of any circumstances that may give rise to a claim in respect of breach of professional duty against myself or against the Legal Aid Board.

I further declare that I am familiar with the contents of the Board's Administrative Procedures Handbook.

NAME (BLOCK CAPITALS):

LAW CENTRE:

SIGNED: **DATE**:

Declaration by managing solicitor following review of files

I declare that I have reviewed all of my files for the four month period ending _____ and that the case status on EOS is up to date.

I further declare that, at the date of this declaration and following a review of all case files, I am not aware of any circumstances that may give rise to a claim in respect of breach of professional duty against myself or against the Legal Aid Board.

I further declare that I am familiar with the contents of the Board's Administrative Procedures Handbook and that I regularly discuss the contents of the Handbook with staff.

I further declare that the risk register which I have attached is up to date and that I monitor it regularly.

NAME (BLOCK CAPITALS):

LAW CENTRE:

SIGNED: **DATE**:

File review process

- Primary responsibility for the provision of a professional and timely service lies with the individual solicitor to whom the case is assigned;
- primary responsibility for managing the risk of providing an inadequate and unprofessional service lies with the solicitor to whom the case is assigned, through, for example, regular case file reviews, and providing the required case status returns and declarations in accordance with the Circular on the matter;
- the primary responsibility for appraising the performance of solicitors in a law centre lies with the managing solicitor of that law centre;
- the primary responsibility for appraising the performance of managing solicitors in law centres lies with the Director of Civil Legal Aid/Regional Manager ;
- to assure performance to the satisfaction of the Board, reviews of the documented aspects of the legal service provided will be carried out in an appropriate manner, as set out in this document and having regard to the requirements of effective oversight and confidentiality;
- for the purpose of this structured system of file reviews, 'file review' means that a reviewer, as set out below, shall be entitled to have full access to the case file and sight of all such necessary documents as to enable that reviewer carry out the review process;
- expert or welfare reports directed to be procured by the court in family law cases, such as section 47 reports, will not be reviewed or examined as part of this process (in the light of the obiter dicta of Ms Justice Laffoy) and any such report should be identified by the solicitor with conduct of the file beforehand and placed in an envelope on the file;
- a review should take place with each solicitor on an annual basis;
- reviews will be carried out in the law centre on the basis of the relevant checklist available on the bulletin board and at appendix C. The checklists, which should be completed, are benchmarked against the Board's best practice guidelines, and take full account of the need for effective risk management. In the event that no checklist is available for the case type, a short note should be done on a separate page setting out the pertinent facts and time-lines on the case;
- all personal injury and other files involving statutory deadlines will be reviewed;
- initially five files that commenced four or more years prior to the review will be reviewed;
- if the reviewer considers that there is an element of systematic delay that is not warranted by the circumstances of the case a further seven files that commenced four or more years prior to the review will be reviewed;
- a minimum of five other files, selected at random, will be reviewed;

- a written report will be prepared on the reviews in the format set out on the bulletin board under 'Procedures' and a copy furnished to the relevant solicitor;
- copies of the checklists, together with a copy of the review report, should be furnished to the Director of Civil Legal Aid/Regional Manager ;
- in the event that the reviewer considers that a file review identifies areas of concern, the reviewer will identify those concerns to the solicitor and every effort should be made by the solicitor to address those concerns within an agreed timeframe. (Such concerns could include, among other things, a failure to proactively manage files giving rise to undue delay, a failure to communicate with clients, and a failure to record and manage information on the file appropriately). The reviewer should monitor on a regular basis whether the concerns are being addressed by the solicitor. If the concerns are not being addressed, the solicitor should be so informed in writing and the concerns must be brought to the attention of the Director of Civil Legal Aid/Regional Manager. It will be a matter for the Director of Civil Legal Aid/Regional Manager , in consultation with the reviewer, to determine whether a more comprehensive review of case files should take place;
- in the event that the file reviews identify areas of major concern, the reviewer should identify those concerns to the solicitor in writing and the concerns must be brought to the attention of the Director of Civil Legal Aid/Regional Manager immediately. The Director of Civil Legal Aid/Regional Manager , in consultation with the reviewer, will determine whether a more comprehensive review of case files should take place. The solicitor, the subject of the review, will be notified in writing in advance of the review and of the major concerns giving rise to it;
- it is imperative that any file that constitutes a professional negligence risk be brought to the attention of the Director of Civil Legal Aid immediately.
- the Director of Civil Legal Aid/Regional Manager will review a proportion of the case files that have been reviewed and the Report of File Reviews completed by managing solicitors. In the event that the Director of Civil Legal Aid/Regional Manager is not satisfied that the review has taken place or has taken place in accordance with the agreed procedures, or if it becomes apparent that this review identifies major concerns that should have been brought to the attention of the Director of Civil Legal Aid/Regional Manager by the managing solicitor on foot of the original review, the Director of Civil Legal Aid/Regional Manager will determine whether a standard review in accordance with the process herein, or a more comprehensive review, of the solicitor's case files be undertaken by the Director of Civil Legal Aid/Regional Manager. A more comprehensive review will have no restriction on the number of files reviewed. The solicitor the subject of the review will be notified in writing in advance of the review and, if relevant, of the major concerns giving rise to it.
- fair procedures will apply at all stages of the process, as will any relevant provisions of the Industrial Relations Recognition and Procedures Agreement between the Legal Aid Board and Unite and SIPTU.

A solicitor who considers that a particular file in respect of which access is being sought contains material of an unusually sensitive nature may advise the Director of Civil Legal Aid/Regional Manager of this fact. If, following consultation between the solicitor and the Director of Civil Legal Aid/Regional Manager, the latter considers that a review of the file is still essential to enable the Board to discharge its functions and duties under the Act, the review of the file, will be facilitated.

In relation to private practitioners the above procedure may be followed with relevant adaptations. In particular the Director of Civil Legal Aid/Assistant Director or other relevant staff member nominated by the Director of Civil Legal Aid will be substituted for the Director of Civil Legal Aid/Regional Manager.

14. Engaging service providers generally

You are reminded of the provisions from the public service Code of Standards and Behaviour which include a requirement that you should not use your official position to benefit yourself or others with whom you have personal or business ties. You should not brief Counsel who is a family member (spouse, parent, child, sibling etc). When making referrals to private

practitioners the applicant must always be allowed choose the private practitioner themselves except in two circumstances:

- in enforcement of foreign maintenance cases where the person who is owed maintenance lives outside Ireland, and
- in the exceptional circumstances outlined in the ➔ **Administrative Procedures Handbook.**

You cannot, as a staff member of the Board, ever "recommend" a particular private solicitor.

It is recognised that you may be friendly with certain barristers. This does not in itself stop you retaining them as Counsel. However, you should ensure that work is spread among as many barristers as possible, having regard to the number of appropriately specialised barristers practicing in the relevant Circuit.

15. Referring to the solicitors panels

The Board has in place arrangements for the retention of private solicitors on a case by case basis in relation to:-

- private family law matters in the District Court (and appeals in those matters to the Circuit Court;
- separation and divorce cases in the Circuit Court; and
- appeals in asylum and asylum related matters.

Legal aid certificates may be granted at law centre level for District Court matters (and appeals to the Circuit Court) in accordance with the provisions set out in Part 1 of the Circular, the provisions set out in the Administrative Procedures Handbook and any guidelines that may be issued from time to time by or on behalf of the Director of Civil Legal Aid.

There are currently restrictions on the granting of private practitioner legal aid certificates for divorce and separation matters. A law centre may not issue a certificate without the prior approval of the Director of Civil Legal Aid.

➔ The procedure for referring to private solicitors can be found in Chapter 8 of the Administrative Procedures Handbook

Sometimes we operate pilot solicitors panels in other areas of law. When we do so, the Director of Civil Legal Aid issues instructions as to how these pilot schemes will operate. These instructions must be followed. At the moment there is a pilot scheme operating for childcare cases in the District Court in Dublin, Donegal, and Wexford.

16. Instructing Counsel

We have put in place a panel of barristers who have agreed to provide services on foot of the Board's Terms and Conditions for the Retention of Counsel. This is available on the LAB Bulletin Board under "Barristers Panel". The Terms and Conditions themselves can be found in Appendix B of this Circular. When engaging Counsel you should check that the barrister you propose to engage is listed on this panel. The panel is updated regularly and you should always refer to the latest version of the panel.

Staff should be aware of the following in relation to the retention of Counsel:

- You can only retain a barrister if you received authorisation from Legal Services first;
- You must make clear the terms upon which the barrister is retained. It is advisable to send the barrister a copy of the legal aid certificate which sets out the extent of the service authorised. Pay particular attention if instructing a barrister who is not normally briefed, particularly in relation to the fee payable. Ensure that you point out that any fees payable are in accordance with the Board's terms and conditions;
- Make sure the barrister is on the Barrister's Panel

- If the terms of retention are on the basis of a set number of hours you may need to reiterate to the barrister what the number of hours are. If you consider that the number of hours are insufficient, an application can be made to extend the hours;
- If a barrister sends in a fee note that is outside the terms of his or her retention you should return the fee note to him or her advising him / her of this. Do not simply place it on the file to deal with at a later stage; and
- Ultimately it is your responsibility, as the instructing solicitor, to ensure that the barrister is aware of the extent of his instructions and the fees that will be payable to him.

Authorisations prior to 1st August 2012

You should refer to the November 2011 version of the Handbook for the arrangements that apply where Counsel was authorised prior to 1st August 2012.

17. Engaging witnesses

Authority to engage witnesses

Section 11(7)&8

The Act provides that we can enter into contracts for services under terms and conditions and fee structures to be the determined by the Board with the approval of the Minister for Justice and Equality and the consent of the Minister for Public Expenditure and Reform.

Fees and expenses

You must seek the approval of Legal Services when engaging witnesses **before** you engage them. This is done by

- making a Submission for Authority at advice stage
- including a request for additional authority when making a Submission for a Legal Aid Certificate
- making a Submission for an Amended Legal Aid Certificate at aid stage.

When making the application you should tell Legal Services what fees you expect to have to pay. (Decision makers should ask this if the solicitor doesn't state it in their application).

The decision will be taken in accordance with the guidelines on decision making in ➔ **Part 5.** If granted, Legal Services will convey authority in writing, issue the certificate, or issue an amended certificate. The authority or certificate will specify the maximum fee payable. Its important to note that the amount authorised is a **maximum**. You are under an obligation to get the best value for the taxpayer (while at the same time doing what is best for your client). There is no obligation to spend every penny of the amount authorised. Either way you cannot spend in excess of what was authorised. When the witness' bill is presented we will not pay in excess of what was authorised. Nor will we pay any fees for a witness who was not authorised in the first place – retrospective approval is never granted.

Legal Services cannot authorise payment in excess of the rates in Appendix A. These rates have been sanctioned by the Department of Justice and Equality and the Department of Public Expenditure and Reform.

This applies to all witnesses, including lawyers in foreign jurisdictions from whom affidavits of laws are sought.

18. Releasing a law centre file to a client or a private solicitor

A request for the release of a law centre file must be made in writing. If made by a solicitor on behalf of a former client, it must enclose a duly signed authority of the former client.
On receiving the appropriate request for the release of a file, the file should be reviewed by the assigned solicitor/managing solicitor, as appropriate. The portion of the file to be released is to be determined by the reviewer in accordance with paragraph 7.6 of the Law Society of

Ireland's Guide to Professional Conduct of Solicitors in Ireland, which includes the extract below, and also having regard to the provisions of the Freedom of Information Act 2014:-

> *"Once the fees and outlays of the first solicitor have been paid, the file belongs to the client. The file transferred should include instructions, briefs, copies of correspondence written to third parties and documents prepared by third parties for the benefit of the client. Any item which deals with the substance of the matter and which would assist the new solicitor should be included. Certain papers belong to the previous solicitor and may be retained by him. These include letters, papers and documents prepared by that solicitor for his own benefit and for which he has not charged and does not intend to charge the client."*

The provisions of the Freedom of Information Act essentially give a client (or an applicant) a right to be given most, if not all, of the documents or records in the Board's possession that relate to them. Having regard to both the Law Society's guidelines and the Freedom of Information legislation, the general approach should be to give to a requesting solicitor (or a client) all of the material on the client file. If there is documentation on the file that has been obtained conditionally it may be necessary to seek authority from the creator or sender of such documents to pass them to a new solicitor. It may also be necessary to require the new solicitor to undertake to meet certain conditions in relation to the documentation before it is released to the solicitor e.g, that they will not provide copies of it to the client.

Documentation which is to be released to a private solicitor should be photocopied and the copies retained in the law centre. This applies regardless of whether the file is an open file or a closed one. (There is however no need to copy the file this where the file is being passed to another law centre).

If a file is still active when a request is made, the issue of costs owing to the Board must be addressed. In such circumstances, the file is not to be released until an undertaking in writing has been furnished by the requesting solicitor or client. A model form of undertaking is illustrated below.

AAA.Undertaking re costs owing to LAB
Available via Other Templates

UNDERTAKING

I_____ , acknowledge that the sum of €_____ is due to the Legal Aid Board and that this sum is to be discharged in the event of any general damages or any money (including costs) or other properties being recovered by or preserved.

I hereby undertake to discharge all costs that may be payable to the Legal Aid Board.

I further undertake to notify the Law Centre (_____) of the outcome of the case within four weeks of its determination. I confirm that the above amount is owing to the Legal Aid Board and that this sum is to be discharged from the proceeds of the sale of my property

Signed: _____ Date _____/_____/____

19. Taking over a case from a private solicitor where fees are outstanding

Sometimes an applicant applies for legal aid in circumstances where a private solicitor has been dealing with their case and they still owe that private solicitor fees. Sometimes the private solicitors will refuse to hand over files when there are still fees or costs owing.

Act and Regulations
The law in relation to the taking of decisions in relation to any application for legal aid is set out in the Act and Regulations. There is no provision in the Act that enables us to refuse to grant legal aid because a person has not paid fees that are due to a private solicitor, even if the legal aid sought is in respect of services provided by that private solicitor.

Regulation 8(3) provides that the expense of taking any action, which is outside the scope of the certificate, should not fall on us to pay. In addition, Regulation 11(2) provides that a legal aid certificate, which is granted after the commencement of the proceedings in respect of which it is sought, shall not be extended to cover any action taken or cost incurred prior to the issue of the certificate – in other words, legal aid is never granted retrospectively.

We cannot pay to a private solicitor any costs incurred by that private practitioner prior to the grant of legal aid. Nor can we provide the type of undertaking normally sought by private solicitors in respect of costs they incurr.

Because of this we have to consider:
- whether or not an application can be made for legal aid: and
- whether or not services can be provided to the individual.

Application for legal aid
A solicitor should consider on a case-by-case basis whether an application can be made for legal aid based on the information provided by the client and in the absence of the file, in relation to the matters at issue.

In any case where a person applies for legal aid, and proceedings are in being, it is a matter for the solicitor to consider whether and to what extent he/she can provide legal advice to the client in relation to the matter.

The client should be given specific advice in relation to the capacity of the solicitor to provide appropriate professional advice in the absence of the case file.

If so requested by the client, the solicitor must submit an application for a legal aid certificate in the normal way. In applying for legal aid the solicitor should state the legal advice given and whether, in his/her professional opinion, it is possible to either:-
- process the application for legal aid in the absence of the file; or
- provide professional services to the applicant, either legal advice or legal aid.

Application for legal aid in the absence of the file
It will be a matter for the Board to make a decision having regard, in particular, to the provisions of section 24, section 28 (2)(b) and section 28 (4)(d). We cannot refuse to grant legal aid because fees have not been paid to a private solicitor. Nor can we use this a basis not to provide legal services.

Professional service
If legal aid is granted, it is a matter for the professional judgment of the individual solicitor as to whether or not it is essential that the file be obtained by the client from the former solicitor. In arriving at this decision, regard should be had to the possibility of obtaining information from the court office and/or from the solicitor for the other party. Regard would also be had to the stage at which the proceedings, if any, had reached and the scope for starting afresh based on any proceedings that had been issued.

If the solicitor forms a view that it is necessary to request the file from the previous solicitor, the letter on the next page should be sent to the previous solicitor.

If the solicitor is willing to accept an undertaking as outlined in the terms of the first letter, the letter on the following page may be sent.

A solicitor should not seek to come on record in any case where legal aid has been granted without forming a view as expressed in the preceding paragraph. If a solicitor considers that a professional service cannot be provided to the client, the client should be advised accordingly and also advised that the solicitor proposes to request that the legal aid certificate be terminated.

Conclusion

Any issues arising in relation to this should be brought to the attention of Legal Services and/or the Director of Civil Legal Aid for consideration.

AAA.Letter requesting file from previous solicitor
Available via Other Templates

LEGAL AID BOARD

M/S John Smith and Co
Solicitors
1 Main Street,
Ballymore,
Co. Dublin.

2nd September 2015

Re: X client

Dear Sirs

We have received instructions from the above named for whom we understand you previously acted. We also understand that there may be costs outstanding to you.

We would like to obtain the client's file and in this regard we are enclosing a signed authority. In terms of any undertaking that you might require please note that the Legal Aid Board ("the Board") is a creature of statute and section 33(7) of the Civil Legal Aid Act 1995 provides as follows:

> *(7) Subject to subsection (8), any general damages or any money (including costs) or other property recovered by or preserved for a person in receipt of legal aid or advice in a matter, or on his or her behalf, by the Board, whether by order of any court or tribunal or by virtue of any settlement reached to avoid or bring an end to any proceedings or otherwise, shall, in the case of general damages or money be paid by the person or the Board into the Fund and in the case of other property be made by the person or the Board subject to an appropriate charge in favour of the Fund for the purpose of the recovery by the Board of its costs in providing such legal aid or advice.*

In the light of this section it is the Board's view that while its law centres are in a position to give undertakings in relation to prior solicitors' costs, they cannot give undertakings that prioritise those costs. What they can undertake is to discharge the costs of a prior solicitor on a pro rata basis based on the work done on the file, in other words if the amount available to discharge costs is less than the full amount of those costs, the costs paid out to each legal representative will be apportioned on the basis of the work done (the costs to be taxed for the purpose of apportionment if it is not possible to agree them). We can give such an undertaking in respect of any costs recovered and in respect of any settlement monies / proceeds of sale that are paid to the Board's account. You might note however that while it is a statutory requirement that any settlement monies be paid to the Board's account, the Board is dependent on the client endorsing any settlement cheque in the Board's favour thus enabling the settlement monies to be lodged. Any undertaking given would be qualified by reference to settlement monies actually received into its account.

We would be obliged to hear from you.

Yours faithfully

_____

Jane Jones
Solicitor

AAA.Letter of undertaking re costs to private solicitor

Available via Other Templates

LEGAL AID BOARD

M/S John Smith and Co
Solicitors
1 Main Street
Ballymore
Co. Dublin.

10th September 2015

Re: X client

Dear Sirs

We refer to previous correspondence and undertake to discharge your costs on the terms set out in our letter of the x day of x the critical aspects of which are as follows:

1. The Board's costs will rank in equal priority;
2. Costs to be taxed in default of agreement;
3. Costs to be discharged from settlement monies received only in the event that the Board is in receipt of those monies.

Yours faithfully

_____

Jane Jones
Solicitor

Part 10.
Appendices

Appendix A
Fees and expenses for professional and expert witnesses including interpreters and translation services

The sums listed below represent maximum fees payable and where possible lower amounts should be negotiated.

	The current fees payable to medical practitioners are as follows:-	**€**
1.	Standard GP up to:	215
	Consultant up to:	385
	Family Assessment Report Fees Psychologist / Psychiatrist	
	Examination and first report up to	385
	Examination and report - second family member	385
	Each additional family member – interview	300
	Each group session- interview	300
2.	Follow up report	
	G.P. / Consultant up to-	185
	Psychiatrist / Psychologist up to	300
3.	Attendance at Court (To include consultation with Counsel on day of hearing if necessary)	
	Half day (a.m. or p.m.) up to	515/ 555
	Full day up to	765 / 805
	(The €515 applies where the Consultant is within 30 kilometres of the Court venue: €555 applies where Consultant is in excess of 30 kilometres of Court).	
4.	Consultation with Counsel other than on day of hearing up to	210 per hour
5.	Consultation with another party's medical advisor	
	By telephone up to	60
	By Correspondence up to	85
	By Attendance at Examination up to (Depending on whether travel is greater or less than 10 miles).	150/175
	Standby fees (payable where a medical practitioner has been notified of the possibility of being required to give evidence on a certain day and has confirmed his or her availability to be called on that day) For standby fees within 20 miles of consultants / psychiatrists/ psychologists hospital up to	385
	For standby for Court more than 20 miles from consultants/ psychiatrists / psychologists hospital up to	425

Professional Witnesses other than Medical Practitioners
The sums listed below represent maximum fees payable and where possible lower amounts should be negotiated. These fees are contemplated for the professional assessment and report. They do not include court attendance fees.

For complex/long cases an all-in fee should, where possible, be agreed in advance.

Accountants	**€**
Partners/Associates up to -	205 per hour
Assistants up to -	105 per hour
Consulting Actuaries up to	1015
Engineers/Architects/Quantity Surveyors	
Overall rate, i.e all- in (excl VAT) maximum fee for report up to	720
Photographs	
Rate to be allowed for expert witnesses- up to	Four per photograph
Vocational rehabilitation Consultant / Occupational Therapist and Vocational Evaluator	
Overall rate, i.e. all-in (excl VAT) maximum fee for report up to	490
Pensions Consultants	300

Civilian witnesses
All civilian witnesses attending court should be informed in advance of their attendance or before they are invited to submit a claim that all claims in respect of expenses such as taxies, loss of earnings, parking, meals and travel must be supported by a voucher. **Claims not supported by vouchers will not be paid.** Civilian witnesses are not entitled to claim mileage at civil service rates even if they are employed or have been employed in public service. If the civilian witness has to use his / her own private car, travel expenses will be met at the rate of 68.47 cent per mile (42.55 cent per kilometre)

Claims in respect of loss of earnings must be certified by the claimant's employer and state the gross and net loss of earnings being claimed. An individual who is self-employed must obtain a note from his accountant to the effect that his / her loss of earnings is justified. Witnesses attending as expert witnesses and claiming appropriate loss of earnings or fees must submit their PPS Number, as same will be subject to withholding tax.

There is an expectation that employees of State Bodies such as Local Authorities and Health Boards would not suffer loss of income or be obliged to take annual leave when attending Courts as witnesses in legally aided cases. Where such individuals claim loss of earnings or compensation for having to take annual leave, they should be advised of the foregoing expectation and told to approach their employer.

It is imperative that all witnesses must be informed to keep their expenses at a reasonable level particularly if they have to travel from abroad.

Outlay / fees - responsibility of legally-aided person
There are a few categories of cases in which the legally aided person is considered to be responsible for fees and outlay, namely:

Commissioners' fees
The cost of these fees, where the client is required to swear an affidavit, is to be a

matter for the client to pay, separately from the contribution. In the rare case where to ask the client to pay these fees would cause genuine hardship, the law centre may discharge the fees from petty cash at the managing solicitor's discretion. In such cases the cost of discharging the fee should form part of the bill of costs when recouping the cost of legal services from the client and Legal Services should be informed appropriately.

Valuations
The current position is that the client has an interest in property and, as they are seeking to verify the value of that property, the Board's general approach is that the client should be asked to pay for the valuation.

Law centres are requested to arrange joint valuations where both parties are represented by centres and even to seek that outcome where one party is privately represented.

If a client indicates that he or she is unable to meet the cost of a valuation (or his or her share of the cost of a valuation), the Board may consider an application to fund the valuation on the basis that not to do so would cause hardship to the client and would not be in the best interests of the client's case or where other exceptional circumstances exist.

Advertisements
In circumstances where the applicant is not aware of the place of residence of the respondent in the proceedings. A legally aided person is responsible for ascertaining the address of the proposed respondent or is required to meet the cost of advertisements in the media.

Translations
The following are the Board's agreed rates for translations:

Translate into English from	
Language	**Cost per word €**
Acholi	0.059
Albanian	0.059
Amharic	0.059
Arabic	0.059
Armenian	0.059
Azerbaijan	0.059
Bajuni	0.059
Belorussian	0.05
Bengali	0.059
Bosnian	0.059
Burmese	0.059
Chewa	0.059
Chinese (Mandarin)	0.059
Croatian	0.059
Czech	0.059
Dari	0.059

Translate from English into	
Language	**Cost per word €**
Acholi	0.059
Albanian	0.059
Amharic	0.059
Arabic	0.059
Armenian	0.059
Azerbaijan	0.059
Bajuni	0.059
Belorussian	0.05
Bengali	0.059
Bosnian	0.059
Burmese	0.059
Chewa	0.059
Chinese (Mandarin)	0.059
Croatian	0.059
Czech	0.059
Dari	0.059

Dutch	0.059
Farsi	0.059
French	0.059
Georgian	0.059
German	0.059
Greek	0.059
Hebrew	0.059
Hindi	0.059
Italian	0.05
Kazhak	0.05
Kikongo	0.059
Kinyamulenge	0.059
Kinyarwanda	0.059
Kurdish Kirmanji	0.059
Kurdish Sorani	0.059
Kyrgyz	0.059
Lingala	0.059
Malay	0.059
Malayalam	0.059
Moldovan	0.05
Nepalese	0.059
Oromo	0.059
Pashto	0.059
Polish	0.059
Portugese	0.059
Punjabi	0.059
Romanian	0.05
Russian	0.05
Serbian	0.059
Sindhi	0.059
Sinhala	0.059
Somali	0.059
Swahili	0.059
Swedish	0.059
Tagalog	0.059
Tamil	0.059
Tigrinya	0.059
Turkish	0.059
Ukrainian	0.05

Dutch	0.059
Farsi	0.059
French	0.059
Georgian	0.059
German	0.059
Greek	0.059
Hebrew	0.059
Hindi	0.059
Italian	0.05
Kazhak	0.05
Kikongo	0.059
Kinyamulenge	0.059
Kinyarwanda	0.059
Kurdish Kirmanji	0.059
Kurdish Sorani	0.059
Kyrgyz	0.059
Lingala	0.059
Malay	0.059
Malayalam	0.059
Moldovan	0.05
Nepalese	0.059
Oromo	0.059
Pashto	0.059
Polish	0.059
Portugese	0.059
Punjabi	0.059
Romanian	0.05
Russian	0.05
Serbian	0.059
Sindhi	0.059
Sinhala	0.059
Somali	0.059
Swahili	0.059
Swedish	0.059
Tagalog	0.059
Tamil	0.059
Tigrinya	0.059
Turkish	0.059
Ukrainian	0.05

Urdu	0.059
Uyghur	0.059
Uzbek	0.059
Vietnamese	0.059
Yoruba	0.059

Urdu	0.059
Uyghur	0.059
Uzbek	0.059
Vietnamese	0.059
Yoruba	0.059

All rates are quoted exclusive of VAT @ 23%
Please note: There are differing rates depending on language

Engaging interpreters

The Board has in place a contract for the supply of interpreter services for all offices excluding Criminal Legal Aid. At the time of writing, this contract is with Translation.ie (expiry date 2 February,2016). Approval for an interpreter at advice stage must be sought by way of submission for authority. If approval is granted the interpreter must be engaged from the company that currently has the contract for the supply of interpreter services for the time being. Legal Services may refuse to pay for an interpreter that has been engaged without authority. In certain circumstances, Legal Services may grant authority to use an alternative company where it is not possible to use the contractor. Interpreter attendance forms must be completed in respect of both law centre and asylum clients.

The Board **does not fund** travelling expenses for interpreters, unless an interpreter is requested to travel a particular distance due to the lack of interpreters in a location, and in this case the cost of travelling must be authorised in advance by the Board. Interpreter services can also be provided over the phone. In relation to seeking travel approval for clients whose cases do not relate to asylum matters Translation.ie will email the request for travelling expenses to legalservices&support@legalaidboard.ie with the law centre name in the subject line so that the relevant staff can consider the request and respond by email, copying the relevant law centre staff member. Translation.ie can then respond directly to the law centre confirming whether or not an interpreter is available for the required appointment.

If it emerges that an interpreter is required *following* the granting of a legal aid certificate, an amendment to the certificate should be sought rather than authority. See the section ➔ **Legal aid as an amendment to a certificate** later in this Part.

Once approval has been granted by Legal Services, bookings should be made via the Translation.ie client portal booking system/secure email. For client portal set-up/access/instructions on using the portal please see contact details provided below. You MUST ensure that you provide the EOS/law centre reference number in the relevant field when making a booking. In relation to bookings for asylum matters please specify if the case relates to Subsidiary Protection (SP). Please also ensure that all interpreter bookings are closed off (input end time) on the client portal booking system for the purposes of invoicing.

Contact details
Ronan ronan@translation.ie is the contact IT person who deals with client portal set-up access/instructions on using the client portal booking system.
Dmitrij/Natalia deal with interpreter bookings.

Translation.ie contact details
1. Bookings manager - Dmitrij Lagodin dl@translation.ie 01 6520760
2. Interpreting Manager - Natalia Holovacova natalia@translation.ie www.translation.ie
3. Operations Director - Ronan Power 0872870540 01 652 0760 ronan@translation.ie
4 .Managing Director Crystal Li 0867702828 crystal@translation.ie

Law Centres will receive invoices (monthly in arrears) by email on an excel spreadsheet from Translation.ie with all bookings for the relevant law centre. Please select the entry for each client and approve each for payment prior to sending to Legal Services for processing and payment.

Invoices should sent on to Legal Services for payment as soon as possible so that the Board does not become liable for late payment interest.

Note aside: Authorisation for engaging interpreters in aslyum cases is automatically granted.

Private Practitioners make their bookings via email /phone contact. Invoices in respect of PP bookings (law centre clients) will be directed by Translation.ie to Legal Services Support. Invoices in respect of PP bookings (asylum clients) are emailed by translation.ie to Interpretations@legalaidboard.ie (Smithfield Support Unit NBS) for approval, processing and onward transmission to Finance Unit for payment.

Note that the Board has separate contracts for the provision of interpreter services and the provision of translation of documents. At time of writing these are held by different companies and it is important that the correct company be engaged for the correct service. Translation.ie should not be engaged for the translation of documents. See the section ➔ Translation of documents later in this Appendix for further details.

The following rates are indicative and are only a summary, a full list of languages covered and rates are available on the LAB Bulletin Board.

For scheduled interviews/hearings/interviews held on site, First Hour Cost €23, cost per each addition 15 mins €5.75

For telephone interpretation cost per minute is €0.63.

On-site interpreter service (25 hours per week, in total covering all languages required) - €23 per hour

Generic costs for on-site Interpretation Services		
Per defined period	Cost	
Per Hour	€23.00	
Per Day	€161.00	7 hours
Per Week	€644.00	35 hours
Per Month	€2,576.00	140 hours

Asylum and related matters specific reports

The current fee payable for a SPIRASI report is €492.

The current fee payable for the two stages of a contra expertise language analysis report is €1,463.

Hardship and decisions generally

Notwithstanding the foregoing, the Board exercises its discretion in each and every case by reference to the facts of the particular case and, in particular, whether the decision not to authorise expenditure would be likely to create hardship.

Appendix B
Terms and Conditions for the Retention of Counsel (Barristers)

Introduction

1. The Civil Legal Aid Act, 1995 ("the Act") provides that the Legal Aid Board ("the Board") may establish and maintain a panel of barristers who are willing to provide legal aid and advice on such terms as the Board may, with the consent of the Minister for Justice and Equality and the Minister for Public Expenditure and Reform, determine. Subject to the provisions of the Act, any eligible barrister who is prepared to comply with such terms and conditions shall be entitled to have his or her name entered on the said Panel.

Operative date

2. The operative date for these provisions shall be the 1st day of August 2012. These provisions shall apply to all authorisations in relation to the retention of counsel granted after the operative date. Authorisations granted prior to the 1st day of August 2012 shall not be affected and shall continue to be governed by the arrangements previously in place.

Panel of barristers

3. Any barrister wishing to be considered, in accordance with the provisions of these terms and conditions, to have his or her name placed on the Panel must apply in writing to the Board on the form prescribed by the Board.

4. Any barrister wishing to apply to be placed on the Panel must be admitted to practice by the Chief Justice of Ireland. They must have professional indemnity insurance that is adequate for the purpose of the services provided. The Board requires that the minimum cover for any one case is €1m. The Board may revise this amount from time to time.

5. Barristers on the Panel must comply with the tax clearance procedures specified in the Department of Finance Circular 43/06 entitled 'Tax clearance Procedures-Public Sector Contracts' or any such circular amending or replacing that circular.

6. The Panel shall be in place for a period of three years from the 1st day of August 2012 or such other date or period as the Board may determine.

7. Barristers on the Panel must have access to e-mail facilities and must have IT software that is compatible with Microsoft Office software in order to ensure the effective and efficient administration of the Scheme.

Scope and operation of the panel

8. The Panel shall be maintained in alphabetical order on a national basis and shall comprise the names of all barristers whose applications for placement have been accepted by the Board. For ease of reference the Panel may be maintained in the form of separate lists of barristers on the Panel who are willing to provide services in each County. Barristers may choose to provide services in as many Counties as they wish.

9. Every barrister who has been accepted for membership of the Panel will be allocated a supplier number which must be quoted on all correspondence.

10. A barrister from the Panel may be retained where the Board has authorised the retention of counsel for proceedings in the District Court, the Circuit Court, the High Court, the Central Criminal Court, the Court of Appeal, the Supreme Court, the European Court of Justice, the Refugee Appeals Tribunal and such other Court or

Tribunal as may be determined by the Board from time to time. The Board may also authorise counsel for the purpose of furnishing an Opinion on a matter.

11. The Board authorises the retention of counsel on a case by case basis. A letter of authorisation or a legal aid certificate containing the authority to retain counsel will be furnished with each brief.

12. The Board acknowledges that the primary responsibility for ensuring clarity in relation to the extent of a barrister's retainer in each individual case lies with the instructing solicitor. In order to avoid any uncertainty or lack of clarity in relation to the extent of the services which the Board has authorised, a barrister should satisfy themselves in relation to the extent of the services authorised. This authority may be determined by reference to a relevant legal aid certificate, and/or any amendments thereto, or written authority. As noted above, a copy of this authority should accompany the instructions to counsel and, if this is not done, counsel should request a copy of same prior to providing any services.

13. The Board will be responsible for fees, costs or expenses incurred where they have been approved in writing in advance. The Board will not be responsible for any fees, costs or expenses in the absence of such prior approval.

Quality service

14. The Board acknowledges that the conduct of barristers is regulated by the Bar Council and it notes that barristers are expected to provide a service in keeping with the General Council of the Bar of Ireland's Code of Conduct and Disciplinary Code that are issued from time to time by the Bar Council.

15. The Board is committed to the provision of a quality legal service to its clients and as part of this commitment has developed best practice guidelines for the provision of legal services in relation to certain matters. On foot of those guidelines it is expected that barristers will furnish draft pleadings, opinions and other documents within a maximum period of six weeks of being briefed / requested to do so.

16. As part of its commitment to ensuring that its clients receive a quality service, the Board reviews a number of solicitor files of legally aided clients. In the event that a file review identifies issues of concern or delay on the part of the barrister, the Board may inspect other solicitor files of legally aided clients where that barrister was engaged by the Board. Any concerns identified will be brought to the attention of the barrister.

Exclusion/removal/withdrawal from the panel

17. The Board is responsible for maintaining the panel of barristers and it reserves the right to suspend or remove a barrister from the panel where it considers it appropriate to do so. It acknowledges that the Bar Council is the regulatory body for barristers and it does not seek to interfere with the regulatory aspect in any way. The Director of Civil Legal Aid may suspend or remove a barrister from the Panel if it is considered that:-
    a. the barrister's conduct when providing or selected to provide legal services or his or her professional conduct generally render him or her unsuitable, in the opinion of the Board, to provide such services; or
    b. the barrister has failed to comply with these Terms and Conditions; or
    c. the barrister has not participated in the Scheme to a satisfactory level, including but not confined to his/her refusal on a regular basis to accept a legally aided person as a client or to give a client appropriate legal advice or aid.

18. If the Director of Civil Legal Aid decides to suspend or remove a barrister from the Panel, the barrister will be notified in writing of the grounds for the decision. The

barrister may, within a period of one month from the date of such notification, appeal in writing the decision to the Board's Chief Executive setting out the grounds of appeal in full. The Chief Executive may restore the barrister if satisfied that a case for restoration to the Panel is made out. Any appeal does not operate to delay or negate the suspension or removal of the solicitor from the Panel, unless the Director of Civil Legal Aid or the Chief Executive determines otherwise.

19. Barristers who wish to withdraw from the Panel must inform the Board, in writing, of their intention to withdraw. Barristers shall give one month's notice of intention to withdraw from the Panel. Barristers who withdraw from the Panel should complete all outstanding cases that have been referred to them. In the event that they are unable to do so they should pass the case to another barrister and agree the division of the fee payable (ref paragraph 29).

Complaints

Section 31(4) of the Act provides that:

" Where a person to whom the Board has decided to grant legal aid or advice has -

…….
(b) accepted the nomination of a barrister pursuant to subsection (2) or been granted the services of a barrister pursuant to an application under subsection (3),

the person may apply to the Board to have the services of that solicitor or barrister dispensed with and the services of another solicitor of the Board or solicitor from the solicitors' panel or, as may be appropriate, barrister from the barristers' panel obtained in the matter and where the Board considers it reasonable in all the circumstances, it may consent to the application.

20. If a client makes a complaint to a law centre about the performance of a barrister and it is not possible to address the complaint to the client's satisfaction, the client shall be requested to put the complaint in writing. A copy of the complaint shall be forwarded to the barrister for his / her observations. The Board shall consider the complaint in accordance with its complaints procedure and also in accordance with the terms and conditions contained herein.

Fees and claims for payment

21. A barrister shall be paid a fee in respect of any case which they undertake under the Act. Such fee shall be calculated in accordance with the provisions of the First Schedule hereto.

22. Upon completion of a matter, a claim form (in an approved format) shall be completed and signed by the barrister and furnished to the instructing law centre for approval / certification and forwarding to the Board. A case shall be deemed to be completed at the end of the full hearing.

23. In cases that are exceptionally time consuming and lengthy the Board may consider paying an interim fee to a barrister.

24. If a solicitor is not in a position to certify the claim form as presented, he or shall return it to the barrister with a view to addressing the issue of concern. An incomplete or uncertified application for the payment of a fee cannot be processed.

25. No fee shall be payable in respect of a case where the brief is withdrawn by the Board prior to any work being carried out by the barrister. If the brief is withdrawn by the Board after the institution of proceedings and prior to the case being set down for trial, half the case fee shall be payable unless the legal aid certificate / authorisation is limited to a certain piece of work, e.g, drafting a court pleading, in which case the

specific fee shall apply. However, if the case is settled with the assistance of the barrister the full case fee shall be payable.

26. Travelling expenses shall be payable to a barrister at 50% of the highest travelling rate payable to civil servants and shall be subject to the same conditions as apply to civil servants. Travelling expenses shall be allowable only in respect of travelling expenses actually and necessarily incurred in attending sittings of courts. No travelling expenses shall be payable in respect of a Dublin-based barrister for attending courts in the Dublin area. Travel expenses shall only be payable if the Board considers that the barrister is practising within his or her normal Circuit(s).

27. Fees due under these arrangements shall be paid in accordance with the Prompt Payments legislation on receipt of a properly completed claim form.

28. In exceptional cases a special fee shall be agreed between the Board and the barrister prior to the case being undertaken by him or her. This will only arise in cases of anticipated unusual length, difficulty and / or legal complexity.

29. Should work be carried out by more than one barrister, the relevant case fee shall be divided between them in such manner as may be agreed by the barristers or, in default of agreement, as may be determined by the Board.

30. In matters not covered by the provisions of the First Schedule hereto an appropriate fee shall be agreed between the Board and the barrister prior to the matter being undertaken by him or her.

31. In the event of a client obtaining an award of costs against a non-legally aided person, the barrister shall be entitled to be paid such sums as may be recovered, on a party and party basis, from the non-legally aided person, if greater than the case fee.

General

32. Nothing in these Terms and Conditions shall give rise to, or be construed as giving rise to, a relationship of employer and employee between the Legal Aid Board and any barrister on the Panel.

SCHEDULE ONE

Fees for Services: THE CENTRAL CRIMINAL COURT, HIGH COURT, COURT OF APPEAL, AND SUPREME COURT (exclusive of VAT)	Fee Junior Counsel	Fee Senior Counsel
Representation on foot of Section 4(A) of the Criminal Law (Rape) Act 1981		
Case Fee:- to cover all work carried out by counsel in regard to the case to include as appropriate, consultations and court appearances, including any interim applications.	€800	
Refresher:- an additional sum of €450.00 shall be payable by way of refresher in respect of each second or subsequent day of a hearing. In order for a refresher to be payable a matter must be listed for hearing and must involve evidence or legal submissions in excess of thirty minutes. Refreshers will not be payable in relation to mention dates or where matters are adjourned for the purpose of dealing with ancillary issues.	€450	
All other High Court, Court of Appeal, and Supreme Court proceedings		
Case Fee:- to cover all work carried out by him or her in relation to the case including as appropriate, consultations, drafting or settling of pleadings, preparatory work, settlement negotiations and court appearances including any mention dates and any interim or post hearing applications.	€2,135	€3,150
Refresher:- an additional sum shall be payable by way of refresher in respect of each second or subsequent day of a hearing. The refresher fee payable to junior counsel shall be in the sum of €1,000 save in the event that both Junior and Senior Counsel are retained in which case the refresher fee payable shall be €300 per day for Junior Counsel (payable in the event that Junior Counsel is in attendance in court). In the case of a matter before the Supreme Court, a full refresher will be paid to both counsel if both counsel advocate before the Court. If Junior Counsel does not advocate before the Court the lower fee shall be payable. In order for a refresher to be payable a matter must be at hearing and listed for further hearing and must involve legal submissions and / or evidence in excess of thirty minutes. Refreshers will not generally be payable in relation to mention dates or where matters are adjourned for the purpose of dealing with ancillary issues e.g, costs, or issues incidental to the substantive Order made, for example the practical arrangements for the return of a child on foot of an Order made in child abduction proceedings. If more than half an hour's court time is involved in addressing the issue the Board may pay an additional sum of €105 to Junior Counsel and €150 to Senior Counsel. A refresher fee shall be payable in the event that a court requires written submissions to be made in relation to the substantive issue(s) in the case. The full refresher fee shall be payable to both Junior and Senior Counsel in this event. No fee shall be generally payable in the event that the submissions relate to an ancillary event e.g, costs, however the Board may pay an additional fee of €105 to junior counsel and / or €150 to senior counsel in the event that the submission is extensive.	€1,000 € 300	€1,350
Taking judgement:- an additional sum shall be payable for taking judgement (a refresher shall not be payable in these circumstances).	€150	€200
Re-entry / enforcement:- If, following the completion of a case, and		

authorisation / legal aid certificate is granted for an application to enforce the order or orders made therein or to re-enter the matter for other reasons, the fee payable on such application shall be at the refresher rate. **General:** - Where the Board determines that counsel should be paid for Court work in the superior courts by reference to a set number of hours the hourly rate. The case fee payable in respect of an appeal from the Circuit Court to the High Court shall be that applicable to a case in the Circuit Court.	€105	€150

Fees for services THE CIRCUIT COURT (exclusive of VAT)	***Fee Junior Counsel***	***Fee Senior Counsel***
All court proceedings		
Case Fee:- where counsel is briefed prior to the institution of proceedings to cover all work carried out by him or her in regard to the case to include as appropriate, consultations, drafting or settling of pleadings, preparatory work, interim applications, case progression hearings, settlement negotiations and court appearances.	€1,145	€1,650
Where counsel is briefed after the Notice of Trial has been served or the matter has been given a hearing date, the case fee (€750) shall cover all work carried out by him or her in regard to the case to include as appropriate, consultations, preparatory work, further interim applications, settlement negotiations and court appearances.	€750	
An additional sum shall be payable in respect of each interim or interlocutory application on foot of section 35 of the Family Law Act 1995 or section 37 of the Family Law (Divorce) Act 1996. A similar additional sum may be payable for other interim or interlocutory applications subject to them being approved in advance on foot of the legal aid certificate granted to the client. No additional fee shall be payable in respect of an application for judgement in default.	€200	
Refresher:- An additional sum shall be payable by way of refresher in respect of each second or subsequent day of a hearing, or part thereof. The refresher fee payable to junior counsel shall be in the sum of €400 save in the event that both Junior and Senior Counsel are retained in which case the refresher fee payable shall be €300 per day for Junior Counsel (payable in the event that Junior Counsel is in attendance in court). In order for a refresher to be payable a matter must be at hearing and listed for further hearing and must involve legal submissions and / or evidence in excess of thirty minutes. Refreshers will not generally be payable in relation to mention dates or where matters are adjourned for the purpose of dealing with ancillary issues e.g, costs, or issues incidental to the substantive Order made however the Board may pay an additional fee of €76 to junior counsel and / or €114 to senior counsel in the event that the submission is extensive.	€400	€650
Taking judgement:- An additional sum shall be payable for taking judgement (a refresher shall not be payable in these circumstances).	€150	€200
Re-entry / enforcement:- If following the completion of a case legal aid is granted for an application to enforce the order or orders made therein or to re-		

enter the matter for other reasons, the fee payable on such application shall be at the rate of a refresher. **General : -**Where the Board determines that counsel should be paid for Court work in the superior courts by reference to a set number of hours work the hourly rate. The case fee payable in respect of an appeal from the District Court to the Circuit Court shall be that applicable to a case in the District Court.	€76	€114

Fees for services THE DISTRICT COURT	***Fee Junior Counsel***	***Fee Senior Counsel***
Proceedings on foot of Parts III and IV of the Child Care Act 1991		
Case fee:- to cover all work carried out by him or her in regard to the case to include as appropriate, consultations, preparatory work, settlement negotiations and/or court appearances incidental to the full hearing.	€750	€1,050
An additional sum of €150 shall be payable in respect of each application for an interim care order, where the solicitor considers that it is necessary for the barrister to attend. A fee equivalent to the refresher fee shall be payable in respect of the first application for an interim care order.	€150 (€400)	
Refresher:- an additional sum shall be payable by way of refresher in respect of each second or subsequent day of a hearing, or part thereof. The refresher fee payable to junior counsel shall be in the sum of €400 save in the event that both Junior and Senior Counsel are retained in which case the refresher fee payable shall be €300 per day for Junior Counsel (payable in the event that Junior Counsel is in attendance in court). In order for a refresher to be payable a matter must be listed for hearing and must involve legal submissions and / or evidence in excess of thirty minutes. Refreshers will not be payable in relation to mention dates or where matters are adjourned for the purpose of dealing with ancillary issues or issues incidental to the substantive Order made. A refresher will be payable in respect of a review of a full care order(s) i.e, if final orders are already in place and the matter is listed for review. A refresher will also be payable in respect of any other review (consequent upon a care order being made) subject to the matter involving legal submissions and / or evidence in excess of thirty minutes.	€400	€500
Taking judgement:- an additional sum shall be payable for taking judgement. (a refresher shall not be payable in these circumstances).	€150	€200
Private family law proceedings – District Court **Case fee**:- in respect of Junior Counsel for private family law matters in the District Court shall be in accordance with the below. The fees shall cover all work carried out by him or her in regard to the case to include as appropriate, consultations, preparatory work, settlement negotiations and/or court appearances. No additional sums shall be payable either in relation to interim applications or in relation to second or subsequent days of hearing.		
a) Maintenance only b) Guardianship only c) Custody and or access only	€339 €339 €339	

d) Domestic violence only e) Custody and/or access and guardianship f) Maintenance and custody/ and or access /and/or guardianship g) Domestic violence and maintenance h) Domestic violence and custody/ and or access /and / or guardianship i) Maintenance and Domestic violence and custody / and or access /and/or guardianship	€339 €339 €423 €423 €423 €508	
Other civil proceedings **Case fee:-** shall cover all work carried out by him or her in regard to the case to include as appropriate, consultations, preparatory work, interim applications, settlement negotiations and/or court appearances incidental to the full hearing.	€508	
Refresher:- An additional fee shall be payable by way of refresher in respect of each second or subsequent day of a hearing, or part thereof. In order for a refresher to be payable a matter must be listed for hearing or must involve legal submissions and / or evidence in excess of thirty minutes. Refreshers will not be payable in relation to mention dates or where matters are adjourned for the purpose of dealing with ancillary issues e.g, costs, or issues incidental to the substantive Order made.	€400	
General: -Where the Board determines that counsel should be paid for District Court work by reference to a set number of hours work the hourly rate.	€76	€114

Fees for services REFUGEE APPEALS TRIBUNAL	***Fee Junior Counsel***	***Fee Senior Counsel***
Asylum appeals **Case fee :-** in respect of a matter before the Refugee Appeals Tribunal where Junior Counsel drafts the Notice of Appeal and attends the hearing. The fee shall cover all work carried out by him or her in regard to the case to include as appropriate, research, drafting the Notice of Appeal (Form 1), consultations, preparatory work and Tribunal appearances. No additional sums shall be payable either in relation to interim applications or in relation to second or subsequent days of hearing.	€385	
Case fee:- in respect of a matter before the Refugee Appeals Tribunal where Junior Counsel drafts the Notice of Appeal but is not required to attend the Tribunal. The fee shall cover all work carried out by him or her in regard to the case to include as appropriate, research, drafting the Notice of Appeal (Form 2), consultations and preparatory work.	€195	
Asylum appeals **Case fee:-** in respect a matter before the Refugee Appeals Tribunal where Junior Counsel does not draft the Notice of Appeal (Form 1) but attends the hearing. The fee shall cover all work carried out by him or her in regard to the case to include as appropriate, consultations, preparatory work and Tribunal appearances. No additional sums shall be payable either in relation to interim applications or in relation to second or subsequent days of hearing.	€210	
General:- Where the Board determines that counsel should be paid for Refugee Appeals Tribunal work by reference to a set number of hours work the hourly rate payable shall be as advised.	€76	

FEES FOR NON-COURT WORK	***Hourly Fee Junior Counsel***	***Hourly Fee Senior Counsel***
The Board may authorise a fee to advise on a particular issue. Such a fee shall be calculated on an hourly rate and the authorisation will grant a certain number of hours. The hourly rate shall be €76 for Junior Counsel and €114 for Senior Counsel unless the Board determines that the matter is one that is being litigated in the Superior Courts or would be likely to be litigated in the High Court were proceedings to be instituted in which case the higher hourly rate shall apply.	€76 (€105)	€114 (€150)

Addendum – Fees for Services pursuant to Scheme of Aid and Advice - Home Mortgage Arrears

PIA REVIEW LEGAL AID SERVICE	Fee junior counsel	Fee senior counsel
PIA application / appeal to the Court – first instance hearing at Court:- case fee to cover all work carried out by him or her in regard to the case to include as appropriate, consultations, negotiations, legal submissions, preparatory work, and/or court appearances incidental to and including the full hearing.		
Circuit Court	€1,750	
High Court without senior counsel	€2,650	
High Court with senior counsel	€2,150	€3,650
PIA appeals from one court jurisdiction to another where the case was fully heard at first instance:- case fee to cover all work carried out by him or her in regard to the appeal to include as appropriate, consultations, negotiations, legal submissions, preparatory work, and/or court appearances incidental to and including the full hearing.		
Circuit Court to the High Court - without senior counsel	€1,750	
Circuit Court to the High Court - with senior counsel	€1,145	€2,650
High Court to the Court of Appeal / Supreme Court (without senior counsel)	€2,650	
High Court to the Court of Appeal / Supreme Court (with senior counsel)	€2,150	€3,650
PIA REVIEW LEGAL AID SERVICE		
Case fee where the case goes to a full hearing and is related to a similar case (spouse / partner) involving the same home:- case fee to cover all work carried out by him or her in regard to the case to include as appropriate, consultations, negotiations, legal submissions, preparatory work, and/or court appearances incidental to and including the full hearing.		
Circuit Court	€825	
High Court without senior counsel	€1,425	
High Court with senior counsel	€1,075	€1075
PIA appeals from one court jurisdiction to another where the case goes to a full hearing and is related to a similar case (spouse / partner) involving the same home:- case fee to cover all work carried out by him or her in regard to the appeal to include as appropriate, consultations, negotiations, legal submissions, preparatory work, and/or court appearances incidental to and including the full hearing.		
Circuit Court to the High Court - without senior counsel	€495	
Circuit Court to the High Court - with senior counsel	€345	€795
High Court to the Court of Ap peal / Supreme Court (without senior		

counsel) High Court to the Court of Appeal / Supreme Court (with senior counsel)	 €795	€1,095
PIA REVIEW LEGAL AID SERVICE **PIA application / appeal to the Court: Case fee where the case is at first instance and does not progress beyond the case management / progression stage and is not settled:-** to cover all work carried out by him or her in regard to the case to include as appropriate, consultations, preparatory work, legal submissions, and/or court appearances. Circuit Court High Court without senior counsel High Court with senior counsel **PIA appeals from one court jurisdiction to another where the case did not progress beyond the case management / progression stage and the judicial refusal to allow it progress is appealed:-** case fee to cover all work carried out by him or her in regard to the appeal to include as appropriate, consultations, negotiations, legal submissions, preparatory work, and/or court appearances. Appeal from the Circuit Court to the High Court Appeal from the High Court to the Court of Appeal / Supreme Court without senior counsel Appeal from the High Court to the Court of Appeal / Supreme Court - with senior counsel	 €495 €795 €645 €495 €795 €645	 €1,095 €1,095
PIA REVIEW LEGAL AID SERVICE **Case fee where the case is related to a similar case (spouse / partner) involving the same home and does not progress beyond the case management / progression stage and is not settled**:- to cover all work carried out by him or her in regard to the case to include as appropriate, consultations, preparatory work, and/or court appearances. Appeal from the Circuit Court to the High Court Appeal from the High Court to the Court of Appeal / Supreme Court without senior counsel Appeal from the High Court to the Court of Appeal / Supreme Court - with senior counsel	 €250 €400 €325	 €550

Appendix C
File review forms

Report of File Review

1. Solicitor:

2. Reviewer:

3. Date of Review:

4. Personal injury / statutory deadlines reviewed, the year(s) in which those files were opened, and the case reference numbers:

Reviewers observations on conduct of these files having regard to existing circulars / best practice guidelines and including details of any areas of concern:

5. Files reviewed that commenced four or more years prior to the review, the year(s) in which those files were opened, the case reference numbers and the subject matters:

Reviewers observations on conduct of these files having regard to existing circulars / best practice guidelines and including details of any areas of concern:

6. Random files reviewed including the year(s) in which the files were opened, the case reference numbers and the subject matters:

Reviewers observations on conduct of these files having regard to existing circulars / best practice guidelines and including details of any areas of concern:

7. Action identified as being required to address any issues of concern:

8. Identify any area of disagreement between the jobholder and the reviewer in relation to either areas of concern expressed by the reviewer or action identified by the reviewer as being required:

File Review
Checklist – separation, divorce, Dissolution Of civil partnership and Cohabitation Relief cases

1. Date of first consultation :

2. Is there a clear note of the basic information (KS1)?

3. Is there a note or a letter to the effect that dispute resolution options were discussed and Section 5, 6, or 7 was complied with (KS1)?

4. Is there a clear record of the advice given, including advice in relation to the range of settlement options (KS3)?

5. Was the appropriate preparatory work done (KS4)?

6. Were attempts made to enter into a settlement process or is there a note to the effect that a conscious decision has been taken to press ahead with proceedings (KS5)?

7. Were the settlement negotiations successful and if so on what date was agreement reached (KS5)?

8. On what date was a Separation Agreement executed or Consent Orders obtained (KS 6 and 7)?

9. In the event that the case was contested on what date was a legal aid certificate applied for (KS8)?

10. Was the letter sent on foot of Section 40 (KS8)?

11. On what date were proceedings issued / a defence filed (KS8)?

12. Was the client furnished with copies of the proceedings filed on his / her behalf (KS8 and 10)?

13. Is there a note of any discussion with the client about whether discovery was necessary (KS10)?

14. Were any preliminary applications to court filed (and authorised if such authorisation was required) (KS2, 9 and 11)?

15. Prior to the Notice of Trial being served were the relevant proofs identified (and subsequently available for the hearing) (KS12)?

16. On what date was a Notice of Trial served (KS13)?

17. If counsel was briefed, did the client meet with counsel before the day of the hearing (KS14)?

18. On what date was the case heard (KS14)?

19. Was the client written to immediately after the hearing with an explanation of the outcome and advice in relation to a possible appeal if the case was contested (KS15)?

20. Was there a pension involved and if so was it fully addressed? If not was the client informed of what further steps would need to be taken to address it (KS15)?

21. If the client was the applicant, was a draft Order furnished to the County Registrar / the opposing solicitor for approval (KS15)?

22. Was the client furnished with the original certified copy Order (KS18)?

23. Any other comments?

File Review
Checklist - asylum cases

1. On what date did the client first register?

2. On what date was the client first seen by a solicitor / paralegal (KS1)?

3. Is there a clear record that the client was appropriately advised pre Questionnaire / pre interview (KS1)?

4. If the provisions of the Dublin II Regulation are applicable was the client advised of the option of making a submission to ORAC (KS2)?

5. If the client expressed concerns about the ORAC interview were these concerns followed up with ORAC (KS4)?

6. If the client received a positive recommendation from the RAC was s/he written to (KS6)?

7. If the client received a negative recommendation from the RAC is there a clear record of the client giving instructions to appeal (KS6)?

8. If the Notice of Appeal was prepared by a law centre solicitor or by a barrister, is there a written authority from the client to sign the Notice of Appeal (KS6)?

9. Was the Notice of Appeal submitted within the statutory period (KS6)?

10. Was the client furnished with a copy of the Notice of Appeal (KS6)?

11. Was country of origin information submitted before the hearing or is there a note to the effect that it was deemed not to be necessary (KS6)?

12. If no oral hearing was available or requested, did the Notice of Appeal

13. respond to the grounds of refusal identified in the Section 13 Report?
    - identify a Convention reason?
    - address issues of credibility identified in the Section 13 Report in a fact / case specific way?
    - make a case specific argument as to why the applicant should be recognised as a refugee?
    - adhere to the UNHCR checklist? (KS7)?

14. Was a decision made to seek a medical report or not (KS8)?

15. Was the client written to, confirming the date of the oral hearing (KS11)?

16. Was the barrister informed of the hearing date on receipt of the notification from the RAT (KS11)?

17. Is there an attendance note on the file in relation to the hearing (KS11)?

18. If the RAT decision was negative, was the decision furnished to the barrister within seven days (KS12)?

19. Was the client written to within ten days with advices in relation to judicial review (KS12)?

20. If the RAT decision was positive was the client written to (KS12)?

21. Was the client written to, or other contact made, after the Section 3 letter was received (KS13)?

22. Is there a clear record of advices given and instructions received at Section 3 stage (KS13)?

23. Was a leave to remain application made within the statutory period (KS13)?

24. If a Deportation Order was served, was the client written to (KS14)?

25. Were any potential JR issues followed up promptly?

26. Has the file been appropriately maintained (File management)?

27. Any other comments / observations?

File Review
Check list – custody and access

1. Date of first consultation (KS1)?

2. Is there a clear note of the basic information (KS1)?

3. Is there a note or a letter to the effect that dispute resolution options were discussed and the solicitor's obligations on foot of Section 20 of the Guardianship of Infants Act 1964 (as amended) were complied with (KS1)?

4. Is there a clear record of the advice given, including advice in relation to the appropriateness of the remedy sought and the possibility of reaching an agreement without the necessity of contested court proceedings (KS1)?

5. Were attempts made to enter into a settlement process or to reach an agreement (KS1)?

6. Was the appropriate preparatory work done (KS2 and 3)?

7. Date of hearing

8. Was the client advised in writing of the outcome of the case, the possibility of there being an appeal in the event that the case was contested, and the steps available to enforce the Order in the event of there being a breach (KS4)?

File Review
Check list – domestic violence

1. Date of first consultation (KS1)?

2. Is there a clear note of the basic information including details of the alleged behaviour giving rise to the relief sought (KS1)?

3. Is there a clear record of the advice given, including advice in relation to the likely availability of a Barring / Safety Order and the possibility of reaching an agreement without the necessity of contested court proceedings if it is considered that this is appropriate (KS1)?

4. Was the appropriate preparatory work done, including having witnesses or proofs available for the court (KS2)?

5. Date of hearing.

6. Was the client advised in writing of the outcome of the case, the possibility of there being an appeal in the event that the case was contested, and the steps available to enforce the Order in the event of there being a breach (KS3)?

File Review
Check list – guardianship

1. Date of first consultation (KS1)?

2. Is there a clear note of the basic information (KS1)?

3. Is there a note or a letter to the effect that dispute resolution options were discussed (KS1)?

4. Is there a clear record of the advice given, including advice in relation to the nature and implications of appointing a father a guardian and the possibility of reaching an agreement without the necessity of contested court proceedings (KS1)?

5. Were attempts made to enter into a settlement process or to reach an agreement (KS1)?

6. Was the appropriate preparatory work done including having a copy of the child / children's birth certificates available (KS2)?

7. Date of hearing.

8. Was the client advised in writing of the outcome of the case, the possibility of there being an appeal in the event that the case was contested, and the possibility of further applications being made to the court at a later stage (KS3)?

File Review
Checklist – maintenance

1. Date of first consultation :

2. Is there a clear note of the basic information (KS1)?

3. Is there a clear record of the advice given, including advice in relation to the range of settlement options, and of the client's expectations being appropriately managed (KS1)?

4. Was the appropriate preparatory work done including the exchanging of Statements of Means and vouching documentation (KS1 and 2)?

5. Were attempts made to enter into a settlement process (KS2)?

6. Date of hearing.

7. Was the client advised in writing immediately after the hearing, of the outcome of the case, the possibility of there being an appeal in the event that the case was contested, and the steps available to enforce the Order in the event of there being a breach (KS4)?

File Review
Checklist - personal injury / other statutory deadline cases

1. Date of accident / cause of action / letter of PIAB authorisation:

2. Was it established that this is a PIAB case?

3. Was a letter of claim sent?

4. If the case is was a post PIAB case, was it established how much time was left to run on the statute in accordance with Section 50 of the PIAB Act 2003?

5. Date proceedings issued:
   (if proceedings have issued, proceed to Q7)

6. Date of application for legal aid:

7. Date of first appointment with solicitor:

8. Date of application for a legal aid certificate:

9. Date certificate granted:

10. Date proceedings served:

11. Were the requirements for pleadings set out in the Civil Liability and Courts Act 2004 complied with?

12. Date Statement of Claim served (if required):

13. Date Defence filed:

14. Date Notice of Trial served:

15. Date of hearing:

16. Date of decision / settlement:

17. Was advice given in relation to the possibility of an appeal?

18. Date settlement monies received:

19. Comments:

File Review
Checklist - subsidiary protection cases

CHECKLIST FOR SUBSIDIARY PROTECTION CASES			
PREPARATION BY THE SOLICITOR FOR THE INITIAL CONSULTATION			
Private Practitioner:		**Client:**	
Did Solicitor require client to bring in/send in any documents/information? If so, what?	**YES/NO?**	What preparatory work or research was done in advance of the consultation? Is this documented?	
Was the need to use an interpreter considered and, if so, was an appropriate interpreter used?	**YES/NO?**		

INITIAL CONSULTATION – PROCESS					
Date of pre-interview consultation:		Length of pre-interview consultation:		Was specific documentation requested and its importance explained to the client?	

Did client display communication difficulties and, if so, what was done to ameliorate the situation?	**YES/NO?**	Were there other consultations prior to the ORAC interview?	**YES/NO?**
Was client informed of the specific criteria which must be satisfied in order to qualify for Subsidiary Protection (under the new SP arrangements), including the definitions of serious harm?	**YES/NO?**	Did the solicitor form a view as to the strength of the client's case and inform the client of the options open to him/her?	**YES/NO?**

SUBSIDIARY PROTECTION APPLICATION			
Was the application in statutory form and signed by the applicant?	**YES/NO?**	Did the solicitor consider submitting (additional) COI?	**YES/NO?**
Was the application submitted in time? If not was a skeletal argument advanced and a request for an extension of time made?	**YES/NO?**	Was COI relevant to the claim and significant parts indicated?	**YES/NO?**
Was consideration given to updating any previous application?	**YES/NO?**	Were the material elements of the claim and submission clear?	**YES/NO?**
Were the grounds for the application clearly stated?	**YES/NO?**	Did solicitor explain ORAC procedure and importance of the interview to the client?	**YES/NO?**

Was client's documentation submitted with the application and its relevance made clear?	**YES/NO?**	Were all credibility issues raised by ORAC addressed?	**YES/NO?**
Was client given a copy of the application?	**YES/NO?**		

ORAC SUBSIDIARY PROTECTION DECISION	
If the decision was positive: Did solicitor inform client of next steps?	**YES/NO?**

If the decision was negative:-			
Did solicitor consider whether a further consultation was needed before filing an appeal?		Was client advised of right to an oral appeal?	
Was appropriate consideration given to whether there might be supporting witnesses that might be called?		Was the notice of appeal in the statutory form, signed by the applicant and submitted in time?	
Did the solicitor consider relevant grounds for an appeal and/or JR?		Were all credibility issues raised by RAT addressed in the notice of appeal?	
Did the solicitor have a planned approach to take at an oral RAT hearing?		If the notice of appeal was not submitted on time was a skeletal argument advanced and a request for an extension of time made?	
		Did the solicitor file any additional material?	

RAT HEARING ON SUBSIDIARY PROTECTION APPLICATION

Procedure:

Did the solicitor/counsel explain the hearing procedure to the client?	**YES/NO?**

Instructing counsel:

Did the solicitor/counsel instruct counsel? If so:-	**YES/NO?**	Did counsel meet with the client prior to the sp hearing?	
How many days prior to the hearing was counsel instructed?		If counsel did not meet with the client prior to the sp hearing did solicitor fully brief counsel?	

Witnesses:

Were witnesses other than the applicant called?	**YES/NO?**	What evidence were the witness(es) to provide?	

Negative decision:

If the decision was negative:-			
Did solicitor/counsel inform client of the next steps?		Did the solicitor/counsel consider the possibility of judicial review of either the ORAC or the ORAT decision?	

Conclusion: