

REPORT

To: SOCIAL WORK COMMITTEE	Subject: PANEL OF SAFEGUARDERS FOR NORTH LANARKSHIRE	
From: DIRECTOR OF ADMINISTRATION		
Date: 14 December 2001	Ref: JAF/AH	

1. Introduction

- 1.1 The report advises of draft legislation and a draft grant scheme proposed by the Scottish Executive to provide legal representation at Children's Hearings and seeks authority to recruit additional legally qualified members to North Lanarkshire Council's Panel of Safeguarders.

2. Background

- 2.1 In terms of the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995 and the Social Work (Panels of Persons to Safeguard the Interests of Children) (Scotland) Regulations 1984 the Council is required to appoint Panels from which persons may be appointed to safeguard the interests of children at a Children's Hearing or before the Sheriff.
- 2.2 The Committee, at its meeting on 24 August 1999, agreed that the membership of the Panel of Safeguarders be increased to twelve and, at its meeting on 23 November 1999 approved appointments to the Panel for the period from 1 January 2000 to 31 December 2002.
- 2.3 Following a Court of Session case in which it was held that the absence of provision of state funded legal representation before Children's Hearings was, in certain circumstances, a breach of Article 6 of the European Convention on Human Rights, the Scottish Executive propose to bring forward a Statutory Instrument making the provision for legally qualified safeguarders or curators *ad litem* to fulfil that role.
- 2.4 At present the North Lanarkshire Panel of Safeguarders includes seven legally qualified members. Given the anticipated increase in the requirement for safeguarders, it is considered that this number should be increased.

3. Proposals

- 3.1 The procedure adopted for the recruitment of safeguarders in 1999 involved the placing of advertisements in all North Lanarkshire newspapers seeking interest from persons who wished to be considered for inclusion on the Panel of Safeguarders, the taking up of the necessary references, consultation with the Chair of the Children's Panel, the Sheriff Principal, the Reporter to the Children's Panel and the Director of Social Work and interview of applicants by an Interview Panel consisting of the Convener of the Social Work Committee, the Sheriff Principal, the Authority Reporter, a member of the Children's Panel representing the Chair and officers from the Departments of Administration and Social Work. It is proposed that this process be, again, followed.
- 3.2 The Scottish Executive have, however, indicated that the new scheme is likely to come into force in late February 2002. The first appropriate time for the placing of advertisements will occur only following the holiday period. This will not afford sufficient time for recruitment and training of additional members prior to late February. It is, accordingly, proposed that, in addition to interview of legally qualified applicants who respond to the advertisement, arrangements be now made to interview legally qualified persons who, in the period since the last appointment of members to the Council's Panel of Safeguarders, have expressed an interest in appointment.

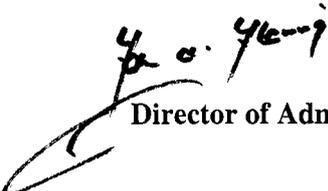
4. Corporate Considerations

- 4.1 The appointment of additional members to the Panel of Safeguarders and the fees payable to safeguarders in providing legal representation are to be funded by the Scottish Executive through a grant scheme. A draft grant scheme, a copy of which is attached as the Appendix to this report, has been issued for consultation. There are a number of concerns regarding this draft scheme and the Scottish Executive have been advised of those concerns. In general, however, it is the case that the proposals should have no adverse financial impact on the Council.

5. Recommendations

- 5.1 It is recommended that the Committee

- (a) approve the increase in the membership of the North Lanarkshire Panel of Safeguarders;
- (b) approve the advertisement for an recruitment of additional legally qualified persons to be members of that Panel;
- (c) agree that, having regard to the anticipated date of commencement of the scheme, arrangements now be made to interview and consider applications from legally qualified persons who have, in the period since the last appointment of persons to the Panel of Safeguarders, expressed an interest in appointment; and
- (d) otherwise note the position.


Director of Administration

Enc

Members seeking further information on the contents of this report are asked to contact John Fleming, Head of Central Services on Extension 2228.



SCOTTISH EXECUTIVE

CHILDREN'S HEARINGS (LEGAL REPRESENTATION) (SCOTLAND) RULES 2001 CHILDREN'S LEGAL REPRESENTATION GRANT SCHEME

DIRECTION ON BEHALF OF THE SCOTTISH MINISTERS

Under the terms of Rule 6 of the Children's Hearings (Legal Representation) (Scotland) Rules 2001, on behalf of the Scottish Ministers, I direct Scottish local authorities to observe the terms, conditions and rates payable as described in the attached Children's Legal Representative Grant Scheme.

Signed.....

Date.....

Head of Young People and Looked After Children Division

DRAFT

GRANT SCHEME FOR PERSONS APPOINTED BY A CHILDREN'S HEARING TO ACT AS A CHILD'S LEGAL REPRESENTATIVE

Criterion

1. Under the terms of the Children's Hearings (Legal Representation) (Scotland) Rules 2001 (the "2001 rules") persons will be appointed to act as a "legal representative" where the Children's Hearing or Business Meeting consider that one or more of the Court of Session's stated criterion apply.
2. Also, in order to ensure that children's rights may be vindicated and in the interests of justice, the 2001 Rules introduce powers to enable Business Meetings to appoint a Legal Representative. In order to deal effectively with urgent cases where children are to appear under warrant, children's reporters have also been issued with guidance encouraging them to make arrangements for a potential legal representative to be on hand should the Children's Hearing wish to make such an appointment.

Qualification of "Legal Representatives"

3. Scottish Ministers consider that persons who are to act as legal representatives must be legally qualified and should have a good understanding of the nature and ethos of Children's Hearings. Specifically, Scottish Ministers consider children's legal representatives at Children's Hearings must be persons who are:

Category 1: Solicitors holding practising certificates and appointed to a local authority panel of safeguarders

Category 2: Solicitors holding practising certificates and appointed to a panel of curator *ad litem*

4. Children's Legal Representatives must therefore be appointed only from the categories of persons described above.

Fee Structure

5. Representation in a Children's Hearing does not involve the adversarial approach found in other judicial settings. Consultation with the Scottish Safeguarder's Association has suggested that the fee for representation at a Hearing should be free-standing from that relating to Safeguarder appointments. In that light, in accordance with Rule 6 of the 2001 rules the fee structure will be:

Flat fee of £120 Payable for the preparation for and attendance at proceedings up to and including the conclusion of the Hearing following acceptance of the grounds of referral or having been established by the Sheriff. No fee is payable in respect of travelling time.

Flat fee of £40 Payable for attendance at each subsequent review hearing. No fee is payable in respect of travelling time.

The actual cost of public transport (standard class) and mileage rates at the relevant local authority rates would also be payable.

6. There may be some cases where, prior to a Children's Hearing, the Scottish Legal Aid Fund has met (or will be meeting) a solicitor's costs under the terms of the advice and assistance scheme and that solicitor is subsequently appointed to represent the child as a Legal Representative. In such cases because the individual will already be familiar with the case papers etc, local authorities shall pay the Legal Representative a flat rate of £40 instead of the fee of £120. Thereafter, a fee of £40 (as above) will become payable for each subsequent review hearing. However, a solicitor may not claim from the Fund for any work provided after the solicitor is appointed as Legal Representative.

Grant Scheme

7. The Legal Representative Grant Scheme has been set-up to enable local authorities to reclaim costs from the Scottish Executive expended in order to facilitate legal representation of children at Hearings. The grant scheme is intended to operate until a longer-term option can be established.

8. When a Children's Hearing or Business Meeting consider it necessary to protect a child's rights by appointing a Legal Representative, the Children's Reporter will inform the appropriate person in the relevant local authority. The local authority will then make the appointment from persons in Categories 1 and 2 (see paragraph 3 above) recording the details of the individual selected for the case and advising the reporter in order that papers/reports may be issued.

9. It should be noted that rule 6(2) requires all claims to be made within 3 months of the Children's Hearing to which it relates. At the end of each calendar month, local authorities should therefore send a claim to the Scottish Executive (address below) detailing the cases which required representation, the cost and the name and address of the representative appointed. Each claim must list the date and location of the Children's Hearing; the SCRA unique reference number of the case; a breakdown of the fee rate payable; the itemised costs of any travel and subsistence.

Conditions of Grant

10. The purpose of the grant is to refund to local authorities the fees accruable in respect of the legal representation of children at Children's Hearings. Annex A contains the conditions under which the Scottish Executive will make grant payments. It should be noted that no changes to these conditions will be made without the written agreement of the Scottish Executive.

Set-up costs

11. The Scottish Executive recognises that local authorities may incur costs in order to set-up and maintain the administrative systems necessary to manage a system of children's Legal Representatives. On receipt of an itemised account of costs necessarily incurred, the Executive may meet such costs up to a maximum of £3000 per authority. Claims for set-up

costs must be submitted within 2 calendar months of the date of the regulations coming into force.

Address for Applications

12. Applications for grant should be sent to:

Miss Eileen Flanagan
Scottish Executive Education Department
Children & Young People Group
Young People & Looked After Children Division
Area 2-B(South)
Victoria Quay
EDINBURGH
EH6 6QQ

Annex A

Payment

1. Following receipt of detailed claim forms for each calendar month (i.e. the first payment will cover the period December 2001) and provided the necessary checks have proved satisfactory, payment of grant for the month will be made before the end of the following month (ie. the payment for December 2001 will be made before the end of January 2002). The claim forms should be signed by the [Chief Finance Officer]. A copy of the claim form which should be used is attached as ANNEX B.

2. In accordance with general practice applicable to expenditure from public funds, the grant – including set-up costs - for the period December 2001 to March 2002 will only be available during the financial year ending 31 March 2002, and **it will not be possible to carry forward any unspent balance to the following year.**

3. In submitting claims for payment, local authorities should note the following:

- Actual expenditure should be shown for the completed period, and anticipated expenditure for the next period to follow.
- The form should be completed and submitted to this office at the end of each calendar month beginning with the December 2001.
- Introductory arrangements require an estimate to be made for likely costs in March 2002 – this must be received by 15th February 2002 – with a further form outlining **actual** costs for March being submitted at the end of that month. Financial adjustments +/- as applicable will be actioned in the payment made at the end-April payment.
- Forms should be signed by the [Chief Finance Officer].

Monitoring, auditing and repayment of Grant

4. The grant is to be spent in accordance with purpose of the scheme; you will have to demonstrate that the resources have been used as agreed. Local authorities shall commission an Internal Audit Service to review, test and report on its system of internal financial control.

5. As part of this process you will be required to present by 31 July 2002, **a certificate (copy attached as ANNEX B)**, which confirms that the expenditure incurred was eligible for grant in terms of this scheme and the grant application. The certificate is to be signed by the [Chief Finance Officer]

6. In the light of the importance Ministers attach to this interim scheme we would also be grateful to be kept informed of the general progress being made in implementing this project. This is intended to be an initial response to the Court of Session's judgement in the case of S v Principal Reporter and Lord Advocate. However, by the end of April 2002 **the Department must be provided with a report covering the four months to 31 March of that year. It must be signed by the Chief Finance Officer**, and should detail activity together with financial and other relevant information which will indicate progress in relation to planned activity during the period from commencement of the scheme to 31 March. The report should also contain information on plans for the coming year. **Thereafter, an annual report must be provided at the end of each financial year.**

7. The grant scheme will be monitored by the Scottish Executive's Young People and Looked After Children Division which track activity in order to inform policy in respect of any longer term response. Grant for future years will depend on development of long term policy options for the legal representation of children at Hearings.

8. In the event of an overpayment of grant (including circumstances where the grant has not been properly used to meet eligible expenditure), a sum equal to the amount of the overpayment shall be repayable to the Minister for Education, Europe and External Affairs by the education authority.

9. The authority shall also repay to the Minister for Education, Europe and External Affairs such amount as he may, after consultation with it, require in the event of its failing to comply with any of these requirements.

10. The authority shall give the Minister for Education, Europe and External Affairs and the Head of The Scottish Executive Education Department, as Accounting Officer, access to such accounts and other documents in respect of the grant as may be required in order to ensure that the requirements of grant have been fulfilled.

ANNEX A

APPLICATION FOR GRANT

This application relates to period [.....

- 1. Local Authority -----
- 2. Application is made for payment of grant of £----- . A note detailing the SCRA Reference number of cases, the names of children's Legal Representatives appointed and the fees and travel expenses paid are attached.

3. Payment should be made to the following bank account

Name of Bank	-----
Address	-----

Sort Code	-----
Account Name	-----
Account No	-----

- 4. We certify that the grant requested has been used for the benefit of children who required legal representation at Children's Hearings. We further certify that the resources to be distributed will be additional to the existing or planned budgets for the financial year 2001-02.
- 5. We undertake to submit to the Scottish Executive Education Department, by the end of each financial year a report in the form requested in paragraph [6].

Signed-----
(Director of Education)

Date-----

Signed-----
(Director of Finance)

Date-----

Please return the form to

Miss E Flanagan
The Scottish Executive Education Department
Area 2 B (South)
Victoria Quay
EDINBURGH, EH6 6QQ

ANNEX B

CHILDREN'S LEGAL REPRESENTATION GRANT SCHEME: CERTIFICATE

Under the terms of the Children's Legal Representative Grant Scheme, in [financial year], I hereby certify that the [name of local authority] received [£amount received] from the Scottish Executive as full reimbursement of monies expended in order to ensure that children were legally represented at Children's Hearings convened in the local authority area:

(Signed).....

(NAME).....

Position.....

(Date).....