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Code of Practice - Registered?

The Code of Practice for criminal legal assistance comes into effect in less than three weeks on 1 October. Any solicitor or firm intending to carry out criminal legal assistance after that date must be registered with the Board.

At 4 September, 415 firms and 1,131 solicitors had been successfully registered.

If you have applied for registration and have not heard from the Board by 21 September, you should contact our Compliance Auditors on 0131 226 7061 ext. 215 or 333.

Code of Practice news

If you or your firm have not applied for registration, or will not be registered by 1 October, you must ensure that any current criminal legal assistance clients are transferred to a registered solicitor before 1 October.

A solicitor or firm can apply for registration, or reapply if an earlier application was refused, at any time, including after 1 October. Once an application is accepted, and the firm and individual registered, they can continue to provide criminal legal assistance from that date onwards.

Publication of the register

On 1 October we will publish the Criminal Legal Assistance Register, which will give details of all solicitors and firms who are registered at that date and are therefore eligible to carry out criminal legal assistance work. Copies will be sent to the Law Society of Scotland and the Scottish Courts Service and a regularly updated copy will appear on the Board's web site <http://www.slab.org.uk>

Code of Practice logo

The Board has produced a logo indicating that a solicitor or firm is registered to practice criminal legal assistance work. We will be distributing small window stickers to registered firms in the next two weeks. The logo can also be used on stationary or other printed materials used by a registered solicitor or firm while they continue to be registered.



Compliance Auditors

After 1 October, our Compliance Auditors – Jane Macnaughton, Fiona Mackintosh, Robertson Mair and Brian Millar – will be visiting solicitors' offices and monitoring compliance with the Code. The auditors will make prearranged visits to offices to inspect the records, systems and procedures.

Duty solicitor scheme

Solicitors who currently appear on the duty scheme must be registered in order to continue to act under the scheme. Even if you are on the current duty plan, which runs to December, you will have to be registered to continue on the plan after 1 October. If you are on the plan but will not be registered by 1 October, you should contact Marcia Dodds, Duty Plan Officer, immediately on 0131 226 7061 ext. 343.

For information or advice on the Code or applications after 1 October, you should contact David Buchanan-Cook, Manager, Compliance Audit, on 0131 226 7061, ext. 444.

PDSO team announcement

Director of the Public Defence Solicitors' Office, Alistair Watson, has announced his team of solicitors for the pilot scheme which will open in Edinburgh on 1 October.

The five public defence solicitors are:

- Elaine Crawford – obtained her law degree and diploma in legal practice from Glasgow University in 1989 and 1990 respectively. She has experience of all aspects of criminal court work and joins the PDSO from More and Company, Edinburgh.
- Kenneth Cloggie – studied law at Dundee University, graduating in 1992. He has practised as a criminal defence solicitor for over four years and comes to this post from More and Company, Kirkcaldy.
- Glenn Fraser – studied for his law degree and diploma in legal practice at Strathclyde University. Following his traineeship, Glenn joined Ross Harper and Murphy as a criminal assistant and more recently comes to the PDSO from Nigel Beaumont and Company, Edinburgh.
- Jill Malloy – graduated from Dundee University in 1992 and went on to study for her diploma in legal practice at Strathclyde University. She has experience in criminal defence work and joins the PDSO from Drummond Miller WS.
- Matthew Nicholson – graduated in 1993 from Dundee University and after completing his diploma in legal practice joined local criminal defence practice More and Company, Edinburgh where he became a senior assistant.
- Alistair Watson and his team have now moved into their premises at 37 York Place, Edinburgh EH1 3TR. Their contact details are: Telephone - 0131 557 1222 Fax - 0131 557 2212
- DX address – DX 551262 Edinburgh 22

Direction criteria

To ensure that clients are assigned to the PDSO on a random basis, and to ensure an appropriate workload, all persons born in the months of January and February seeking criminal legal assistance in relation to summary proceedings in Edinburgh Sheriff or District Court must instruct the PDSO.

'Criminal legal assistance' refers to both criminal legal aid and advice and assistance in criminal matters. In all cases in which a complaint has been issued, it should be clear to the client or any solicitor approached by the client which court will hear the case. If the court is either Edinburgh Sheriff or District Court, the accused will be notified when the complaint is served on them that they *must* contact the PDSO if they wish to receive criminal legal assistance for their case. Unless there are compelling reasons for the exercise of discretion by the PDSO, such clients will be required to use the PDSO for the duration of their case.

If the accused person attends another solicitor, that solicitor should check whether the client is required because of his date of birth to use the PDSO and if so, direct him accordingly. Solicitors will not be remunerated for any A&A provided in relation to the proceedings and any application for summary criminal legal aid will automatically be rejected. Although it is accepted that mistakes may be made by solicitors, repeated

attempts to claim payment for work done under A&A or to apply for summary criminal legal aid for a directed client will be viewed very seriously by the Board as such behaviour runs contrary to the Code of Practice.

Where no complaint has yet been served, any solicitor can grant advice and assistance but only for work prior to the eventual service of a complaint, if any. Solicitors should bear in mind that if a complaint is subsequently served which relates to proceedings in one of the Edinburgh courts, direction to the PDSO will apply for all further criminal legal assistance. Solicitors may, therefore, prefer to direct the client to the PDSO at the advice and assistance stage if they can easily identify the court in which any proceedings are likely to be heard.

Investors in People recognition

We have recently gained the national Investors in People standard in recognition of the way in which our staff are managed, trained and developed in order to meet the Board's aim of continually improving its services.

We aim to give the legal profession the support they need to provide the best possible service to legally aided clients. Our staff are the key to that support and we believe that the effectiveness of the investment we have made in them is shown in the results of our recent customer surveys. 96% of solicitors were satisfied with the helpfulness and courtesy of our staff and the great majority were also satisfied with the level of knowledge shown. We have greatly improved the training and development we provide so that staff are better equipped with both technical and communication skills.

This does not mean that we shall now be resting on our laurels. Our plans for training and development of staff are equally demanding for the future and we shall be particularly addressing the areas where solicitors were less satisfied – for instance, we shall be continuing our legal training for staff and seeking to improve the quality of our written correspondence.



INVESTOR IN PEOPLE

The test of "reasonableness" in relation to divorce and connected matters

We have, in the past, issued guidelines to help you prepare legal aid applications in relation to divorce and related family matters. Previous notes for guidance have mainly been directed at how to establish *probabilis causa litigandi* and we have not specifically addressed the question of reasonableness. These notes are intended to give you further guidance on some factors which are relevant to the test of reasonableness and highlight certain matters you may not previously have addressed when applying for legal aid in family matters. The notes must be read in conjunction with previous notes for guidance* and are not intended to be an exhaustive list of all the factors that the Board will have regard to in assessing an application.

Divorce

Where legal aid is sought for an action of divorce on a fault ground and where there are no other craves, we will now expect solicitors to address why it is thought reasonable to make legal aid available where, in a private case, a client would be likely to wait and proceed on the basis of separation. Such reasons may be, for example where simplified procedure has already been tried and failed, where the applicant is likely to be prejudiced by any delay or where the personal circumstances of the applicant are such as they merit raising the action. We would emphasise that these examples are not exhaustive of the reasons and this

approach would only apply where there were no ancillary craves.

Ancillary Claims

In applications where there are ancillary claims, whether by a pursuer or defender, the present application form specifically states that a solicitor does not require to provide details of attempts to settle the case without recourse to the court. We do, however, now consider that information about negotiations or attempts to limit the scope of the dispute between the parties about financial matters or residence and contact are relevant to the reasonableness test. Legal aid applications must therefore now address the extent to which there have been negotiations to resolve the subject matter of the ancillary claims and provide details of why these negotiations have failed. You should also bear in mind that in applications for residence or contact orders, the Board is unlikely to consider it reasonable to make legal aid available if there is no dispute between the parties and the purpose of the order is simply to validate an agreed arrangement.

Variations of Existing Orders

When you are seeking legal aid to vary any existing orders you must take care to give details of the change in circumstances that has led to the variation and why the change is considered material. We do not consider that passage of time, in itself, provides a basis to seek variation.

This note should help you focus your legal aid application and enable you to provide us with the information that we need to assess the application. However, as is always the case, it is for guidance only and the Board will deal with each application on its individual merits.

*Previous notes for guidance on this subject appear in the Scottish Legal Aid Handbook, Section B at pages 30-31 and 41-47, or can be found in issues 2, 4, 5 and 6 of The Recorder.

High Court precognitions

The Board published new Criminal Fees and Taxation Guidelines in March of this year. In preparing this publication we considered the basis and validity of all the Board's existing taxation practices and whether they were consistent with a proper interpretation of the Legal Aid (Scotland) Act 1986 and the appropriate fees regulations.

As you will be aware, there was a practice relating to the level of remuneration payable for taking precognitions in respect of solemn High Court proceedings whereby a solicitor was entitled to charge according to the nature of the precognition –material or formal – rather than the status of the individual taking the precognition. This practice arose from a taxation held before the Auditor of the Court of Session in 1982 in the case of H.M.A -v- Moffat which involved an interpretation of the then existing Table of Fees which allowed remuneration 'according to circumstances'. The outcome of this taxation was also the basis for the practice whereby a solicitor could charge qualified rates for an unqualified person accompanying counsel in High Court proceedings.

The Board has decided that this practice is not consistent with the current fees regulations which provide for reasonable remuneration for work actually done depending on whether the individual carrying out that work is qualified or unqualified. Accordingly this practice does not comply with the Act and regulations and the practice must be discontinued.

We are now giving notice that any account lodged in respect of a certificate issued on or after 1 October 1998 will be assessed on the basis of the status of the individual taking the precognition or attending court with counsel. As regards the taxation of entries relating to precognitions, the Board will continue to distinguish between material and formal precognitions in determining whether it is reasonable to expend qualified time in taking a precognition.

Solicitors are referred to the Criminal Fees and Taxation Guidelines paragraph 2.7.1.

Expert witnesses in civil cases – breakdown of charges

If sanction is granted for the employment of an expert witness subject to a ceiling of expenditure, this does not allow the witness to automatically claim a fee at that ceiling. All claims must be adequately vouched and include a detailed breakdown showing how the claim has been calculated.

In the case of an expert, we would expect to see details of the time engaged on each of the main aspects of the work (e.g. perusing papers, site visits, consultations, writing reports, travel, waiting, attending court etc.) and a note of the hourly or other rate(s) charged by the expert and by anyone assisting him in parts of the work. Any outlays incurred must be individually specified. Travel costs should include a note of the form of travel used. Any subsistence and overnight accommodation charges must also be specified.

If the solicitor is in any doubt as to the charges likely to be allowed, our accounts assessment staff will be happy to offer guidance. The solicitor must make the expert fully aware of any limit set on the cost of the work and of the basis upon which charges are likely to be allowed.

By following this advice, solicitors can avoid problems at the accounting stage and can expect a quicker turnaround of accounts.

Legal aid forms update

All our application forms have been revised recently. Some forms have only had minor revisions, while some others have been changed extensively. All the new forms are now in circulation and should be used straight away.

Code of Practice: Firms' Code Number

From 1 October 1998, all solicitors and firms wishing to provide criminal legal assistance need to be registered with the Board. All criminal applications forms (summary, court grant, appeals) and forms which are used for criminal cases (advice and assistance, sanctions, transfers) have been amended to include the firm's code number in the solicitor's details section of each form.

Please note that the firm's code number must be entered on any criminal form submitted from 1 October. If not, the form will be returned.

Summary Criminal form - CRIM/SUM/APP

Following suggestions from the Law Society and the profession, we have reorganised the summary criminal form to make it easier to complete.

Page 2 of the form now contains the applicant's financial statement and a new section is included on page 2 for the applicant to provide brief details of the nature of the defence being advanced to the charge(s). This section must be completed by, or on the instructions of, the applicant in all cases. Page 2 is then completed by the applicant's declaration covering the information shown in pages 1 and 2.

Pages 3 and 4 of the new form now have the case details and the interests of justice information. These pages can be completed by the solicitor who should also provide all address, practitioner code and firm code details and sign the declaration at the foot of page 4. Separate sheets can be provided for the detail of the defence if there is insufficient space on the form.

As the firm's code number must be entered on this form, the new form must be used after 1 October 1998. New forms can be used prior to this date. Any old forms received after 1 October will be returned.

Advice and Assistance form - AA/APP

Only minor changes have been made to sections of this form. More information about the subject matter, particularly in criminal cases, is now requested. This should help us to eliminate duplicate cases more easily. The financial section of the form has also been brought up to date. The firm's code number is now included at Part E.

Advice and Assistance form - AA/INC

The same additional information about the subject matter is also being requested on the increase form. This will help us link cases more easily. New questions are being asked about the reason for the increase which will allow us to assess the requests more easily and

therefore reach a decision more quickly. We are now asking for brief background details to be completed on each increase request together with an approximate value of the case. This should reduce the number of cases continued for this information. In the increase form, the firm's code is included at Part A.

Transfers of Agency - TRANS/APP

The two sides of the old transfer form have now been split into two separate forms, TRANS/APP and CEASE/APP (see below). The TRANS/APP form should only be used where a new solicitor is requesting a transfer of agency. The form can be used for all types of full legal aid. Boxes for the firm's code number for both the local and Edinburgh agents are also included in the form.

Ceasing to Act - CEASE/APP

This is a new form and should only be used when an existing nominated solicitor is intimating to the Board that he/she is no longer acting for the client. Again, this form can be used for all types of full legal aid.

Civil Legal Aid Special Urgency form - CIV/SU4

This form now has an additional question 3 in Part B which asks for confirmation of the court in which proceedings have been, or are to be, brought.

All other applications forms have only been amended in very minor ways, such as, including the firm's code number. The new forms are now available from the printers and from 1 October only new forms should be used.

Criminal Account Synopsis Forms

We have noticed that solicitors are still ordering large numbers of the form ACC/CRIM/1. From 22 September 1997 this form has been computer generated and issued automatically by the Board. Therefore, the old form should only be used for cases with legal aid certificates issued prior to that date. Some solicitors are completing the old form as well as sending in the computer generated form, which is unnecessary. Only the computer generated form should be sent in with criminal accounts for cases with an effective date on or after 22 September 1997.

Staff changes at the Board

To help the Board meet its business objectives, there have been a number of new appointments and changes of responsibility among key staff.

- Jim Edgar has joined the Board as Director of Finance. Jim is a qualified management accountant and has spent most of his career with the Department of Social Security, including the last two years as Chief Accountant with the Child Support Agency.
- Solicitor Helen May joined our Legal Services Department in August. Helen graduated from Aberdeen University in 1988 with an LL.B, Dip.LP.. Following her traineeship, she practised as a solicitor in Falkirk and Hamilton before moving to Paisley where for the past four years she has specialised in criminal law.
- In our Operations Department, in addition to her responsibilities for accounts assessment Judith Cemery, Manager of Accounts, has taken over line management responsibility for the Treasury Division. Derek Arthur, who managed the Civil Applications Division, is now also responsible for criminal advice and assistance and applications.

Feedback on the Annual Report

Thank you to everyone who took the time to complete the questionnaire included with the Board's Annual Report 1997-98. The response was very positive, with 76% of respondents stating that the Annual Report contains the information you want about the Board's activities. 81% found the information you wanted easy to find in the document and you made some useful suggestions on how we could improve the Annual Report for future years. For example, a number of you asked for further breakdown of costs and outlays in civil legal aid cases and to show figures for legal aid payments net of VAT. We will be looking carefully

at all the comments we received to see, where possible, we can provide the information you asked for and make improvements to next year's report.

Reporters and sub-committee members 1997/98

In previous years details of the practitioners who acted as reporters and co-opted members of sub-committees was included in the Board's Annual Report. However, we felt that a more effective way of informing the profession would be to publish the list in The Recorder. The following practitioners acted as external reporters to the Board during 1997/98:

Members of the Faculty of Advocates

G C Bell, QC	L J Dunlop, QC	G W M Liddle
L J Dorrian, QC	C J Harris, QC (resigned March 1998)	J N Wright, QC

Solicitors

I M Banks, Greenock	J P Hunter, Hawick	L G Murray, Glasgow
M J Burns, Dingwall	C J B Jackson, Leven	G S Peterson, Lerwick
A Cruickshank, Elgin	M K Lucas, Arbroath	A S Pollock, Glasgow
A D Currie, Jedburgh	H A Macandrew, Turriff	A Prentice, Edinburgh
C J Flanagan, Dunfermline	R H McFarlane, Cupar	A J Tyler, Edinburgh
K H R Graham, Edinburgh	W C MacReath, Glasgow	C L Viviani, Dunfermline
E A Grant, Paisley	D S Millar, Edinburgh	S R Waters, Alloa
C Hennessy, Glasgow	S N Moffat, Edinburgh	P B Watson, Glasgow
G M Hay, Peterhead	B A Murphy, Ayr	D S Williamson, Edinburgh

Co-opted members of Sub-Committees

The following practitioners acted as co-opted members of sub-committees during the year:

Legal Services Sub-Committee

C J Harris, QC (resigned March 1998)
D S Millar
A Prentice
D S Williamson (resigned June 1997)