



Responses to the Consultation on Revisions to the Code of Practice for criminal legal assistance

The consultation document was published on 10 November 2006, and responses were requested by 19 January 2007.

1. Acknowledgements

The Board would like to express its appreciation of the co-operation and assistance received from those who responded to this consultation.

2. Executive Summary

2.1 We intimated this consultation to all Compliance Partners on 10 November 2006, giving details of where the consultation document could be found on the Board's website and how paper copies could be requested. We also issued the consultation document to local faculties, bar associations, and others involved in the criminal justice system: in all, another 118 individuals and organisations were sent the Consultation document. The closing date for comments and responses was 19 January 2007, although we were able to accommodate extensions to this period for a small number of individuals.

2.2 We received only 44 responses—30 from individual solicitors, and 3 from firms (representing 8 solicitors), 7 from Faculties, Societies and Bar Associations, 2 from Judges and 2 from Justice agencies.

2.3 Of the 30 responses from solicitors, 23 came from solicitors in 5 firms and 19 of these were practically mirror images of each other.

2.4 We did not receive an official response from the Law Society of Scotland. The Conveners of the Society's Criminal Law Committee and the Legal Aid Solicitors' Committee wrote to advise that both Committees were concerned at the timing of the revisions to the Code; that they were of the view that this should be considered once the Criminal Proceedings Etc. (Reform) (Scotland) Bill has been enacted and when new legislation regarding disclosure has been enacted after Lord Coulsfield's review. They were concerned about the proposed introduction of peer review at a time when the issue of the review of solemn fees has not been resolved. Notwithstanding the official stance at the time of the formal consultation, Board officials met informally with two members of the Law Society Council in March 2006 to discuss the proposed changes, and their views were shared with the Legal Services Committee when it considered the revised Code and then instructed some final changes.

2.5 Responses show that in terms of the proposed **deletions**, solicitors' and firms' responses in favour of the deletion of the section on "**Targets**" are nearly unanimous, while the reverse is the case for deletions of the "**Mandates**" and "**Timeous**" sections. Respondee are ambivalent about the deletion of the "**Appendix**". However, for both Solicitors/Firms and Local Faculties, the number of "no responses" or "don't know" exceed those who expressed a view: for example, in terms of the total responses to all the questions in this part of the consultation, 39 of those responding for Solicitors/Firms and Local Faculties said "Yes" to the proposed deletions, 33 said "No", making a total of 72 responses—but 88 of these groups did not respond at all or "did not know".

2.6 As far as all the proposed **additions** to the Code are concerned, the results show that those solicitors/firms responding are unanimously against the changes mooted in 3.1 regarding **conduct**, and virtually unanimous against the **non-discrimination** and **apportionment** changes. The responses for the proposed change about **practising certificates** and the Compliance Partner's responsibility therefor are evenly split. Local Faculties are in favour of the conduct and practising certificate changes, but not in favour of the non-discrimination and apportionment changes.

2.7 As for the various **text changes**, the overall “No” response at 67% of Solicitors/Firms responding gives a clear picture that they are not in favour of the proposed changes to the text of the Code.

2.8 There are *wide variations* between the responses of the various groups. For example, 24% of Solicitors/Firms responding were against the proposed deletions, while only 4% of Local Faculties were so minded. For the proposed additions to the Code, 14% of Solicitors/Firms responding were in favour: this rose to 36% in favour by Local Faculties. For the indicated textual changes, 7% of Solicitors/Firms were in favour, compared to 21% for Local Faculties. In all three areas of consultation, Judges and Justice Agencies were in favour of the proposed changes.

2.9 The comparison of the Solicitors/Firms and local Faculties responses would tend to suggest that the former’s responses are not wholly representative of the views of the profession: this is borne out by the fact that 23 of the 30 individuals’ responses came from 5 firms, and 19 of those individual responses were almost identical (including the errors). While the number of solicitors represented by the 7 Faculties, Societies and Bar Associations which responded is not known, the responses by those Faculties and Bar Associations which did respond are more positive than those for the limited numbers of individuals who responded.

2.10 Given the very low response rate, and the mirrored responses from the majority of those solicitors who did respond, the responses cannot be said necessarily to reflect the weight or range of views within the population of solicitors in criminal legal assistance as a whole.

3. Introduction

3.1 The original Code of Practice for criminal legal assistance was published in April 1998. Following the introduction of fixed payments early in 1999, the time-recording requirements were revised to reduce the level of time-recording required for such cases, and a formal consultation process was undertaken on these and other proposed revisions to the Code. We discussed points arising from that process with the Law Society of Scotland and the Scottish Executive at that time and submitted a final draft of the Code with the Scottish Executive for approval by Ministers in June 2003. However the revised Code was never submitted to Ministers for such approval.

3.2 A letter intimating this consultation was sent to all Compliance Partners on 10 November 2006: this gave details of where the consultation document could be found on the Board’s website. For those solicitors who did not have internet access and who wanted a paper copy, a contact phone number and e-mail address were provided: only one such request was received. The consultation document was also issued to local Faculties, Bar Associations, and others involved in the criminal justice system: in all, the Consultation document was sent to another 118 individuals and organisations. The closing date for comments and responses was 19 January 2007, although we were able to accommodate extensions to this period for a small number of individuals.

4. Responses

4.1 We received a total of 44 responses—

- 30 from individual solicitors¹ (of which 23 were from 5 firms), and 3 from firms² (representing 8 solicitors)
- 7 from Faculties, Societies and Bar Associations [46 in total]

¹ There were 1,462 registered solicitors as at 4 April 2007.

² There were 602 registered firms as at 4 April 2007

- 2 from Judges
- 2 from Justice agencies.

Expressed representatively, the response rates expressed as a percentage of the total populations are as follows:–

Group	Responses as % of Population
Solicitors	2.05
Firms	0.05
Faculties/ Bar Associations / Societies	15.22

There is no information about how many solicitors or firms are represented in the membership of Faculties, Societies and Bar Associations which responded (7 of 46), and correspondingly, how many individual solicitors are represented by those which chose not to respond.

4.2 We did not receive an official response from the Law Society of Scotland. The Conveners of the Society’s Criminal Law Committee and the Legal Aid Solicitors’ Committee wrote to advise that both Committees were concerned at the timing of the revisions to the Code; that they were of the view that this should be considered once the Criminal Proceedings Etc. (Reform) (Scotland) Bill has been enacted and when new legislation regarding disclosure has been enacted after Lord Coulsfield’s review. They were concerned about the proposed introduction of peer review at a time when the issue of the review of solemn fees has not been resolved.

Notwithstanding the official stance at the time of the formal consultation, Board officials met informally with two members of the Law Society Council in March 2006 to discuss the proposed changes, and their views were shared with the Legal Services Committee when it considered the revised Code and then instructed some final changes.

4.3 Details of those who responded and gave consent for their names to be published are set out in **Annex 1** on page 9. Not all respondees used the form in the Consultation document to record their views—they used a letter format instead. Where not expressly stated, responses were interpreted on the basis of the comment made. Additionally, because the official response form was not completed in these cases, it was not always explicitly stated whether the respondee gave consent to the response being made public—in these cases the response has not been made public.

4.4 Of the 44 responses—30 from individuals and 3 from firms, 7 from Faculties, Societies and Bar Associations, 2 from Judges and 2 from Justice agencies—the disclosures for consent to publish were as follows:–

Responding as ..	Total	Consent to Disclose	
		✘	✔
Solicitors / Firms	33	16	17
Faculties/ Bar Associations / Societies	7	1	6
Judges	2	1	1
Justice agencies	2	0	2
Total	44	18	26

4.4 Of the 30 responses from solicitors, 23 came from solicitors in 5 firms.

4.5 Given the very low response rate, and the mirrored responses from the majority of those solicitors who did respond, the responses cannot be said necessarily to reflect the weight or range of views within the population of solicitors in criminal legal assistance as a whole.

5. Findings

5.1 **Annex 2** on page 11 details the questions set out in the Consultation document and the results of the responses received, along with the narrative responses made.

There were also comments received from practitioners on 12 other areas of the Code which were not part of the Consultation and which therefore have not been included in this paper. The fact that the changes made to the Code following the consultation exercise in 1999 and the further changes and alterations made in 2002-04 have not previously been circulated to the profession might account for some of the comments that were made.

5.2 The results of the consultation by respondee are set out in **Annex 3** on page 25. It is interesting to note that 23 of the 30 individual solicitors' responses came from 5 firms and their responses tended to mirror each other.

5.3 The responses by group are shown in **Annex 4** on page 29. In terms of the proposed **deletions**, the table shows that solicitors' responses in favour of the deletion of the section on "**Targets**" are nearly unanimous. The reverse is the case for deletions of the "**Mandates**" and "**Timeous**" sections, while respondees are ambivalent about the deletion of the "**Appendix**". It is interesting to note that the number of those in both Solicitors/Firms and Local Faculties not responding exceeded those who expressed a view: for example, in terms of the totals, 39 of those responding for Solicitors/Firms and Local Faculties said "Yes" to the proposed deletions, 33 said "No", making a total of 72 responses—but 88 of these groups did not respond at all or did not know on this area of the consultation.

5.4 As far as all the proposed **additions** to the Code are concerned, as shown in Annex 4 below, the results are completely different. Solicitors/Firms are unanimously against the changes mooted in 3.1 regarding **conduct**, and virtually unanimous against the **non-discrimination** and **apportionment** changes. The responses for the proposed change about **practising certificates** and the Compliance Partner's responsibility therefor are evenly split. Local Faculties are in favour of the conduct and practising certificate changes, but not in favour of the non-discrimination and apportionment changes.

5.5 As for **text changes**, the "No" response at 67% of Solicitors/Firms responding gives a clear picture that they are not in favour of the proposed changes to the text of the Code.

5.6 The results in the tables in Annex 4 show **wide variations** between the responses of the various groups. For example, 24% of Solicitors/Firms responding were against the proposed deletions, while only 4% of local Faculties were so minded. For the proposed additions to the Code, 14% of Solicitors/Firms responding were in favour: this rose to 36% in favour by local Faculties. For the indicated textual changes, 7% of Solicitors/Firms were in favour, compared to 21% for local Faculties. In all three areas of consultation, Judges and Justice Agencies were in favour of the proposed changes.

5.7 The comparison of the Solicitors/Firms and local Faculties responses would tend to suggest that the former's responses are not wholly representative of the views of the profession: this is borne out by the fact that 23 of the 30 individuals' responses came from 5 firms, and 19 of those individual responses were almost identical. While the number of solicitors represented by the 7 Faculties, Societies and Bar Associations which responded is not known, the responses by those Faculties and Bar Associations which did respond are more positive than those for the limited numbers of individuals who responded. Overall, though, the comments received indicated

a majority were in favour of the deletions in the Code, a majority were not in favour of the additions to the Code, and a majority were not in favour of the other changes to the Code.

5.8 Some of the comments made (which have been included in Annex 2 on page 11) reflect a widespread misunderstanding of, particularly, criminal quality assurance and how it is to be organised. This may be indicative of a lack of communication to the profession at large of the progress of discussions with the Law Society about this issue.

Concerns expressed were that the Board will itself assess the standard of the professional service, including the assessment of advocacy skills, without appropriate discussion with the Law Society of Scotland and Faculties/Bar Associations. This is not the case: firstly, as in the Civil Quality Assurance scheme, the criteria for quality assurance have already been discussed extensively with Law Society representatives and are shortly be piloted with a small number of firms and the PDSO; secondly, there will be a Criminal Quality Assurance Committee (comprised of representatives from the Board, the Law Society and lay members—a similar setup to that already in place for Civil quality assurance) to oversee the work and training of the reviewers and ensure consistency throughout the process, and thirdly the peer reviewers will be experienced criminal practitioners recruited by the Criminal Quality Assurance Committee and will be given additional guidance and training.

A number of comments mentioned the lack of an increase in summary and solemn fees as being the reason for not accepting some of the proposed changes and in particular suggested that there should be no agreement to peer review until these demands had been met. However, the levels of fees are the responsibility of the Scottish Executive, not the Board.

Conclusions

We received a total of only 44 responses—30 from individual solicitors, and 3 from firms (representing 8 solicitors), 7 from Faculties, Societies and Bar Associations, 2 from Judges and 2 from Justice agencies. Of the 30 responses from solicitors, 23 came from solicitors in 5 firms and 19 of these were practically mirror images of each other. The responses represent a return rate of 2.05% from solicitors, 0.05% from Firms, and 15.22% from Faculties/Bar Associations/Societies.

There are *wide variations* between the responses of the various groups, and in particular the comparison of the Solicitors/Firms and Local Faculties responses would tend to suggest that the former's responses are not wholly representative of the views of the profession. While the number of solicitors represented by the 7 Faculties, Societies and Bar Associations which responded is not known, the responses by those Faculties and Bar Associations which did respond are more positive than those for the limited numbers of individuals and firms who responded.

Given the very low response rate, and the mirrored responses from the majority of those solicitors who did respond, the responses cannot be said necessarily to reflect the weight or range of views within the population of solicitors in criminal legal assistance as a whole.

Annexes

1.	Respondees to the Consultationpage 9
2.	Results of the Consultationpage 11
3.	Responses by Respondeepage 25
4.	Responses by Grouppage 29

Annex 1: Respondee³ to the Consultation

Name/Organisation		Responding as ..	
1	Peter Lockhart	Solicitor	
2	J B D Henderson	Inverness Legal Services for Criminal Advocacy	Solicitor
3		Judge	
4	Andrew Bryson	Nelsons Solicitors, Falkirk	Solicitor
5	Gordon Addison	Nelsons Solicitors, Falkirk	Solicitor
6	Stephen Biggam	Marshall Wilson, Falkirk	Solicitor
7	Eamonn McGeechan	McCusker McElroy & Co, Paisley	Solicitor
8		Solicitor	
9		Solicitor	
10		Solicitor	
11		Solicitor	
12		Solicitor	
13		Solicitor	
14		Solicitor	
15		Solicitor	
16	Lynn Bentley	Aberdeen Considine & Co., Aberdeen	Solicitor
17	Peter Shepherd	Aberdeen Considine & Co., Aberdeen	Solicitor
18	Emma Skett	William McCluskey Solicitors	Firm
19		Solicitor	
20		Solicitor	
21	Michael Allan	Michael S Allan, Aberdeen	Solicitor
22	Keidra Morrison	Michael S Allan, Aberdeen	Solicitor
23	James Duncan	Michael S Allan, Aberdeen	Solicitor
24	Lynne Newland	Michael S Allan, Aberdeen	Solicitor
25	George Mathers	George Mathers & Co., Aberdeen	Solicitor
26	Leslie Green	George Mathers & Co., Aberdeen	Solicitor
27	Paul Barnett	George Mathers & Co., Aberdeen	Solicitor
28		Solicitor	
29		Solicitor	
30		Solicitor	
31	John McLeod	George Mathers & Co., Aberdeen	Solicitor
32		Solicitor	
33	John MacRitchie	Society of Solicitors for Peterhead and Fraserburgh	Faculty
34	Kenneth Dalling	Society of Solicitors & Procurators of Stirling	Faculty
35		Firm	
36	Kenneth Waddell	Peacock Johnston, Glasgow	Firm
37	Alison Marshall	Faculty of Solicitors in Roxburgh	Faculty
38	James Steel	Aberdeen Bar Association	Faculty
39		Faculty	
40	Ross Brown	Society of Solicitors Airdrie	Faculty
41	Alison McKay	Society of Procurators and Solicitors in the City and County of Perth	Faculty
42	Mrs Marlyne Parker	District Courts Association	Judge
43	Alison di Rollo	COPFS	Justice Agency
44	Fiona Duncan	Scottish Courts Service	Justice Agency

³ The blanks represent those who did not consent to their names being disclosed

Annex 2: Results of the Consultation

Proposed Change	In Favour	Against	Don't Know	No Response	Illustrative Comments
DELETIONS					
<p>3.4 TARGETS</p> <p>3.4.1 A firm or solicitor shall not set targets for staff which relate wholly or partly to criminal legal assistance, unless those staff are given written instructions specifying:</p> <ul style="list-style-type: none"> • the targets themselves • the purpose of the targets • the responsibilities of the staff in relation thereto • the consequences of their not being met • that fees earned in pursuance of such targets must only be earned by work legitimately carried out for <i>bona fide</i> clients and not by the performance of superfluous work, which the Board defines as that which is not reasonable or not necessary for the proper handling of clients' cases. <p>3.4.2 Any such instructions shall be exhibited to the Board. The Board must be satisfied that any targets are realistic in relation to the productive capacity of the staff concerned and to the probable number of clients served.</p>	22	2	0	20	No comments were made on this paragraph by any of the respondents.
<p>3.8 MANDATES</p> <p>3.8.1 A firm or solicitor shall</p>	9	15	0	20	No comments were made on this paragraph by any of the respondents.

Proposed Change	In Favour	Against	Don't Know	No Response	Illustrative Comments
ensure that all mandates requesting the transfer of papers and legal aid relating to a criminal matter are completed and executed by the client in the form agreed by the Scottish Legal Aid Board and the Law Society of Scotland.					
3.8.2 The mandate shall include the place and date of signing and a full explanation of why it has been issued.					No comments were made on this paragraph by any of the respondents.
4.5.5.1 Accounts shall be submitted to the Board within the time limits specified in the Regulations. Where offers are made in settlement of accounts, or abatements are proposed to them, responses shall be made within the time limits stated by the Board.	9	14	0	21	<p>“It would be helpful if (a) time limits were published, and (b) SLAB would extend the limit (if for example a sole practitioner fell sick).” [J B D Henderson]</p> <p>“The consultation document refers to the permissive (“may”) albeit in the context of the negative (“may not”) regarding non payment of accounts. It is only fair that there is a saving provision regarding the non timeous submission of accounts. Though it is in the interest of solicitors that accounts be submitted timeously there can be any number of circumstances from which time limits are missed. Such circumstances should not necessarily prevent payment of the account. The general provision is for a five year negative prescription regarding payment of sums due. It is unduly harsh for the Board to restrict that period, for example, in relation to fixed payment claims to a period of four months.” [Society of Solicitors & Procurators of Stirling, Society of Solicitors Airdrie]</p> <p>“This appears to be an unnecessary alteration removing a definite time limit and leaving matters at the Board's discretion.” [Faculty]</p> <p>Fully agree with the tightening up of submission of accounts [District Courts Association]</p> <p>Comment: The Regulations specify the time limits for submission of accounts, and this information is also set out in the Criminal Accounts Taxation Manual on the Board's website. It states the following:- The Criminal Legal Aid (Scotland) (Fees) Regulations 1989, Regulation 9 provides that accounts prepared in respect of fees and outlays allowable to solicitors shall be submitted to the Board not later than six months after the date of conclusion of the proceedings in respect of which that legal aid was granted. The ‘conclusion of the proceedings’ would be the last court date e.g. final diet of deferred sentence. Regulation 9(2) provides that the Board may accept accounts submitted in respect of fees and outlays later than the six months referred to in paragraph (1) if it considers that there is a special reason for late submission. Examples of possible “special reasons” are:- (i) lengthy incapacity or death of the nominated solicitor (ii) fire or other accidental damage to the solicitor's premises (iii) the work in the proceedings in the court of first instance becomes a matter of appeal and the solicitor cannot release his file for accounting purposes</p>

Proposed Change	In Favour	Against	Don't Know	No Response	Illustrative Comments
					<p>(iv) where proceedings deserted <i>pro loco et tempore</i> and fresh proceedings brought within 6 months of the desertion the account for the original proceedings to be submitted within 6 months after conclusion of the fresh proceedings. Where no fresh proceedings account to be submitted within 12 months of desertion.</p> <p>The Board would be unlikely to accept as a "special reason" (a) ignorance of the regulations (b) forgetfulness (c) lack of staff etc.</p> <p>The proposal here is to <u>remove</u> para. 4.5.35.1: if these limits are not observed, the solicitor may not receive payment: this is a more effective sanction than any action by the Board on non-compliance with the Code.</p>
Appendix	7	2	12	23	No comments were made on this paragraph by any of the respondents.
ADDITIONS					
3.1 A solicitor shall act independently, honestly and in accordance with the standards of ethics and conduct defined in this Part of the Code and in any relevant practice rules and codes of conduct issued by the Law Society of Scotland for guidance in assessing whether a solicitor's conduct meets the standard required of a member of the profession. A solicitor is also an officer of the court and as such has obligations and duties to the Court. A solicitor therefore should always act properly when dealing with criminal legal assistance work.	5	30	1	8	<p>"Act properly' is vague. I would prefer 'act in accordance with his professional obligations'". [J B D Henderson]</p> <p>"A Solicitor always has and always will have an obligation to the Court. That obligation is and should not be any concern of the Board. The Board are the purse holders and should act as such." [19 solicitors/firms]</p> <p>"COPFS welcomes the explicit recognition that a solicitor is also an officer of the court and as such has obligations and duties to the Court. We note that these obligations and duties are not defined, either in the SLAB Code or in the Law Society Code of Conduct. In order to provide a more effective benchmark for the standard that "a solicitor therefore should always act properly when dealing with criminal legal assistance work", we consider it would be helpful to set out the basic obligations and duties that are expected—such as appear in the Solicitors (Scotland) Rules of Conduct for Solicitor Advocates 2002. These Rules set out in some detail a solicitor advocate's duty in relation to other members of the legal profession; the client and the Court, and specify additional special duties in criminal cases. The development of similar Rules for solicitors would provide welcome clarification of standards of conduct expected." [Justice Agency]</p> <p>"The Solicitors obligation to the Court remains. This is not a concern of the Scottish Legal Aid Board whose function is to provide funding for legal expenses. I can assure you that Sheriffs and Judges can look after themselves." [Gordon Addison, Nelsons]</p> <p>"3.1 This is unnecessary. Solicitors in Scotland who carry out Criminal Assistance work are still regulated by their professional body, the Law Society of Scotland. The Law Society, as the Board are aware, are responsible for ensuring that professional standards are met at all times. To point out that solicitors are also officers of the court and therefore have responsibilities to the court is trite. All solicitors are aware of that position and the great majority practice on that basis. Solicitors are aware of the standards of professional conduct expected of them and that should be sufficient and accepted by the Board. For the Board to suggest otherwise is inflammatory and insulting. The Board have a particular function and that is to oversee and administer the provision of Legal Aid. The professional obligations of any particular solicitor are a matter for him or her; the client; the court and the Law Society." [Solicitor]</p> <p>"These additions are not necessary and do not make sense." [Aberdeen Bar Association]</p> <p>"This is unnecessary. Solicitors in Scotland who carry out Criminal Assistance work are still regulated by their professional body, the Law Society of Scotland. The Law Society, as the Board are aware, are responsible for ensuring that professional standards are met at all times. To point out that solicitors are also officers of the court and therefore have responsibilities to</p>

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					<p>the court is trite. All solicitors are aware of that position and the great majority practice on that basis. Solicitors are aware of the standards of professional conduct expected of them and that should be sufficient and accepted by the Board. For the Board to suggest otherwise is inflammatory and insulting. The Board have a particular function and that is to oversee and administer the provision of Legal Aid. The professional obligations of any particular solicitor are a matter for him or her; the client; the court and the Law Society. Surely that is sufficient?" [Society of Procurators and Solicitors in the City and County of Perth]</p> <p>Comment: This was added to emphasise that there are generally-accepted standards of conduct for solicitors, who are also officers of the court and have responsibilities to the court. As is rightly pointed out, there is nothing new in this, and as is also pointed out above, "the great majority practice on that basis". By contrast, the Crown Office would welcome an explicit statement detailing a solicitor's duty in relation to other members of the legal profession, the client and the Court in criminal cases.</p>
3.2.5 Solicitors must not discriminate on grounds of race, sex, sexual orientation, religion or disability in their professional dealings with clients, employees or other lawyers.	5	30	1	8	<p>"Add 'A solicitor is always entitled not to take on a particular client'" [J B D Henderson]</p> <p>"Para 3.2.5 is not necessary in the Code. Solicitors have to comply with the various discrimination rules. Failure to abide by these rules will result in appropriate action being taken by the Court or by the Law Society. It is of no business of SLAB." [24 solicitors / firms]</p> <p>"Paragraph 3.2.5 is unnecessary. The Scottish Legal Aid Board does not have to state the law in a Code of Conduct." [Gordon Addison, Nelsons]</p> <p>"This requirement is not necessary" [Aberdeen Bar Association]</p> <p>Again, this is Insulting and inflammatory. Are the Board seriously suggesting that any such discrimination exists within the profession in Scotland? The Board may have a duty to comply with such legislation but that should not affect solicitors - they have duties of their own and once the Board has either granted or refused Legal Aid (of whatever kind) the matter is one for the solicitor and the client. The Board's duty to comply with the relevant legislation ends when the relevant application has been dealt with." [Society of Procurators and Solicitors in the City and County of Perth]</p> <p>Comment: This was inserted to reflect the Board's duty to comply with such legislation and hence the need to ensure that solicitors providing criminal legal assistance are aware of that responsibility in their performance of that work.</p>
3.3.2 A solicitor shall at all times be in possession of a valid practising certificate which does not have a restriction preventing the provision of criminal legal assistance; the Compliance Partner shall ensure that all the firm's registered solicitors hold current practicing	20	15	0	9	<p>"Unnecessary" [Solicitor]</p> <p>Comment: The intention is to allocate responsibility to the Compliance Partner for ensuring all registered solicitors have valid practicing certificates, and define what "valid" means. A solicitor's not having a valid practicing certificate will have serious repercussions for that firm if any accounts are submitted with charges for that person's time/work.</p>

Proposed Change	In Favour	Against	Don't Know	No Response	Illustrative Comments
certificates.					
4.5.6.4 Where the work or time being charged in an account to the Board includes a visit or visits to a prison or prisons, some of which is covered by another type of legal aid, by a fixed payment or by private fee, the solicitor should present with his account a sheet showing the number and identity of the individuals seen during such a visit or visits and the calculation of the apportionment applied to the account. The total claim should not be apportioned between the criminal legal assistance cases to the exclusion of any non-criminal legal assistance case(s).	6	18	0	20	<p>“Apportionment is always a problem. If I see the client on 3 time-and-line cases in 15 minutes, how is this charged? Suggest add ‘The solicitor will be entitled to be paid an apportioned charge for each relevant case.’” [J B D Henderson]</p> <p>“It is unduly burdensome to require solicitors to submit a “sheet” as described with every legal aid account. It is entirely appropriate that a record of such apportionment should be kept in the file and indeed if a question arises the solicitor can justify any apportionment.” [Society of Solicitors & Procurators of Stirling, Society of Solicitors Airdrie]</p> <p>Comment: This section was added to clarify for the profession that fixed payments include all time spent on the case (including travel time), and therefore no separate time charge is allowable, although mileage is. To allow the Board to check that proper apportionment between such cases and those where a time-and-line charge is appropriate, our Accounts Assessment staff need to be aware of any other clients being seen at the same time. For example, in a situation where travel is necessary and 3 time-and-line cases and 1 fixed payment cases are dealt with, the time charge needs to be divided by 4—with each time-and-line case bearing a quarter of the cost. The final quarter-cost is allocated to the fixed payment case but it is already included in the fixed payment, and so there can be no separate time charge. It is not acceptable to apportion the time charge only over the 3 time-and-line cases.</p> <p>The answer to the “3 clients seen on time-and-line in 15 minutes” question is, calculate the cost of the time and split it evenly over the relevant accounts.</p>
CHANGES					
2.1.2 A solicitor or firm must notify the Board in advance or, which failing, not later than five working days of any changes to information or documentation relevant to that solicitor's or firm's registration.	4	35	0	5	<p>“The deletion of the words “as soon as reasonably practicable thereafter.” is not acceptable. The period of 5 days now becomes an absolute. It gives no leeway where, for example, there are only two solicitors in a firm and one leaves when the Compliance Partner is on holiday. As proposed, the Compliance Partner would be in breach of the Code. That would be a ludicrous and ridiculous position a Solicitor could find himself in.” [13 solicitors/firms]</p> <p>“The deletion of the words “as soon as reasonably practicable thereafter.” is not acceptable. The period of 5 days now proposed would become an absolute. It gives no leeway where, for example, there are only two or three solicitors in a firm and one leaves while the Compliance Partner is on holiday. As proposed, the Compliance Partner would be in breach of the Code. That would be a ludicrous and ridiculous position for a Solicitor to find himself in. 5 days does not give enough time to deal with “emergency” situations.” [Peacock Johnston]</p> <p>“It is entirely appropriate that a solicitor should notify changes in advance within a reasonable period of time. It is inappropriate that the saving provision of “as soon as reasonably practical thereafter” should be removed. There are any number of situations which could necessitate a change which simply cannot reasonably be notified within five days.” [Society of Solicitors & Procurators of Stirling, Society of Solicitors Airdrie]</p> <p>“Para 2.1.2 - This should have a measure of latitude in appropriate circumstances.” [Aberdeen Bar Association]</p> <p>“The deletion of the words “as soon as reasonably practicable thereafter” is not acceptable. The period of five days would</p>

Proposed Change	In Favour	Against	Don't Know	No Response	Illustrative Comments
					<p>become absolute and that is not in any one's interest. It gives no leeway where, for example, there are only 2 solicitors in a firm and one leaves when the Compliance Partner is on holiday. As proposed, the Compliance Partner would be in breach of the Code." [11 solicitors]</p> <p>There should be a saving provision of 'as soon as reasonably practical'". [Faculty]</p> <p>Comment: The "saving provision of 'as soon as reasonably practical'" was removed because Compliance Auditors were finding regular situations where they were discovering changes to firms' registration details which had not been notified to the Board, even although the changes had happened many months previously. For example, letters were sent to all Compliance Partners in October 2006 requesting confirmation that the data recorded in the Criminal Legal Assistance Register for their firm was correct. Following that exercise, over 120 solicitor movements had to be recorded in the Register.</p> <p>There are serious implications if the Board is not notified of a firm changing address, its name, its registered solicitors, its Compliance Partner. It means that the information we publish on our website about where to get a solicitor is wrong, it means that applications coming from an unregistered solicitor will be rejected by the Board's systems, causing extra work for staff to resolve the issue and extra pressure on them to do so immediately to avoid prejudicing the client or impacting adversely on court business. It could also result in accounts being paid to the wrong firm.</p> <p>As explained in the consultation document, there are a limited number of changes that can/need to be intimated—</p> <ul style="list-style-type: none"> ➢ registered solicitor moves in; ➢ registered solicitor moves out; ➢ firm's procedures change; ➢ Compliance Partner changes. <p>No examples of the "number of situations which could necessitate a change which simply cannot reasonably be notified within five days" have been provided.</p>
<p>2.3.3.4 Responsibilities of the Compliance Partner shall include:</p> <ul style="list-style-type: none"> • making the application for the nominating firm to be registered and informing the Board of any changes • certifying that the firm and its staff comply with this Code of Practice when the application is made • notifying the Board in advance or, which failing, not later than five 	4	34	0	6	<p>"There should be a saving provision of 'as soon as reasonably practical'". [Society of Solicitors & Procurators of Stirling]</p> <p>"Para 2.3.3.4 - This should have a measure of latitude in appropriate circumstances." [Aberdeen Bar Association]</p> <p>"It is important that there is a direct responsibility to the Compliance Partner and that the person nominated should be the Board's point of contact within the particular firm" [District Courts Association]</p> <p>Comment: See comments in para. above</p>

Proposed Change	In Favour	Against	Don't Know	No Response	Illustrative Comments
<p>working days of changes within the firm relevant either to registration or compliance with this Code of Practice</p> <ul style="list-style-type: none"> liaising with the Board on any issue related to this Code of Practice receiving and handling enquiries from the Board regarding suspected non-compliance with this Code of Practice, whether on the part of the firm or any individual solicitor within it ensuring that necessary action is taken in the event of any noncompliance. 					
3.2.4 The Compliance Partner shall ensure that appropriate corrective action is taken by the firm when breaches of standards are identified.	8	10	5	21	"3.2.4 - unnecessary in my view." [TB Cruickshank, George Mathers & Co.]
3.7.2 In exceptional circumstances a solicitor may consult with a client at a <i>locus</i> other than those referred to above, for example, where a client is unable to attend the solicitor's office due to illness, infirmity or age, at the home of the client or a hospital. If travel costs are incurred, these will have to be fully justified in the account.	6	18	1	19	<p>"3.7.2 Policy fails to recognise particular problems of rural areas" [Faculty of Solicitors in Roxburgh]</p> <p>"Surely this is a matter of common sense and a matter for the Board's auditors? Surely this does not require to be specified in the Code of Practice?" [Society of Procurators and Solicitors in the City and County of Perth]</p> <p>Comment: it is not clear how there are particular problems for rural areas in the application of this paragraph.</p>
<p>4.1 MONITORING OF PERFORMANCE</p> <p>4.1.1 The Board will monitor the standard of service</p>	3	36	0	5	<p>"I am opposed to quality assurance due to the (unpaid) time involved" [J B D Henderson]</p> <p>"4.1.1 is unacceptable. Until there is an appropriate increase in Summary and Solemn Legal Aid Fees there should be absolutely no Peer Review." [Gordon Addison, Nelsons]</p>

Proposed Change	In Favour	Against	Don't Know	No Response	Illustrative Comments
<p>provided by firms and solicitors, as specified in this Part. Solicitors and firms will be required to supply to the Board any information which it considers necessary for the purpose of monitoring performance. The Board may also assess the standard of professional service by such means as it thinks fit, including interviewing the nominated solicitor, analysing solicitors' case files by appropriately qualified persons and assessing advocacy skills. Where such assessment extends to the application of a solicitor's professional judgement, it will be carried out by solicitors experienced in the provision of criminal legal assistance. Such solicitors will be drawn from a panel appointed and remunerated by the Board and agreed with the Law Society of Scotland.</p>					<p>“Para 4.1.1 This is very unacceptable. Peer review itself is not an issue. However, an acceptable package relating to increased summary and solemn fees should be introduced before we, as solicitors, agree to peer review. There has been no increase in the summary fee for 8 years and peer review should be introduced after an acceptable proposal for increasing fees has been negotiated and accepted. The use of the words, “it considers necessary” in the second sentence must not be included. These words are too wide in meaning. They have to be justified and open to review or challenge. What the Board “considers necessary” and what the objective, reasonable person consider necessary may be at two ends of a scale. This section needs clarifying and should not be accepted. Perhaps the wording should be, “it reasonably and objectively considers to be necessary”. [Peacock Johnston]</p> <p>“This is very unacceptable. An acceptable package relating to increased summary and solemn fees should be introduced before we agree to peer review. There has been no increase in the summary fee for 8 years and peer review should be challenged until an acceptable proposal for increasing fees has been accepted. The use of the words “it considers necessary” in the second sentence must not be accepted. These words are too wide. They have to be justified and open to review or challenge. What the Board “consider necessary” and what the reasonable person consider necessary may be at the other end of the scale. This section needs clarifying and should not be accepted” [25 solicitors / firms]</p> <p>“4.1.1. It is suggested that changes to this paragraph “reflect the way that quality assurance may be carried out”. Though the permissive is suggested (“may”) the section undoubtedly reads as directive “will”. I am concerned at the suggestion that the Board “as it thinks fit” will assess the standard of the professional service to include assessment of advocacy skills. It is inappropriate for the Board to take such power unto itself without (firstly) discussion with the Law Society of Scotland and as necessary Bar Associations and (secondly) a full explanation of the further (unremunerated) procedures with which solicitors would require to co-operate” [Society of Solicitors & Procurators of Stirling, Society of Solicitors Airdrie]</p> <p>“4.1.1 The Society respectfully submits that “client satisfaction” is either borne out by repeat instructions or not. The practical situation is that those solicitors who are engaged In Criminal Assistance find themselves being judged - sometimes on a daily basis - by their clients and, perhaps more importantly, by their local Sheriffs. Surely if there is a matter which is so grave that a Sheriff brings it to the attention of the Board or Society that is all that is required? Advocacy skills in these circumstances can really only be judged not only by knowledge of the file but by knowledge of the client and the “hoped for” result. The Law Society already makes provision for all solicitors to comply with CPD and the Society submits that nothing more is required in this regard. In any event, what the Board ‘consider necessary” and what the reasonable person considers necessary” may be entirely different. If the Board intend to monitor the performance of solicitors engaged in Criminal Assistance it should be open and transparent in this regard. Finally, surely an acceptable package relating to increased summary and solemn fees should be introduced before the Board can expect solicitors to agree to peer review?” [Society of Procurators and Solicitors in the City and County of Perth]</p> <p>“We believe it is unfair for the Board to adopt this draconian approach by placing Criminal Legal Aid Practitioners at a disadvantage by such an onerous duty to provide any information that the Board considers necessary. It would be preferable for that to be assessed by an independent body. We also object to the rest of the paragraph which makes reference to the Board assessing, by such means as it thinks fit, the standard of professional service. These are mailers best regulated by the Law Society and it is not clear what the appropriately qualified persons phrase entails whether or not that is legally qualified staff.” [Marshall Wilson]</p> <p>“Further detail is required as regards the proposed assessment. All reviews etc should be carried out by experienced</p>

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					<p>criminal practitioners.” [Faculty of Solicitors in Roxburgh]</p> <p>Comment: Agreement has been sought with the Law Society on the criteria to be assessed as part of the peer review process, and “solicitors experienced in the provision of criminal legal assistance” will be selected as peer reviewers by a joint panel of the Board and the Law Society. It is accepted that some of this is prospective—eg. assessment of advocacy skills—but the Code needs to anticipate what the situation will be.</p> <p>The Board has no responsibility for setting fee levels—that is a matter for the Scottish Executive.</p>
<p>4.2.2 In particular, without prejudice to the generality of the preceding paragraph, solicitors and firms of solicitors will be expected:</p> <ul style="list-style-type: none"> to take instructions from their clients as to the plea to be tendered initially and any subsequent changes, to maintain sufficient records of advice given and action taken on these instructions and to act in accordance with those instructions insofar as to do so would be consistent with solicitors’ professional and ethical responsibilities to identify and obtain salient details about the case, taking advantage of facilities offered by, or available from, the prosecution including timeous communication and negotiation with the Crown where appropriate to provide accurate and appropriate advice regarding the client’s case, including the implications of the plea 	3	35	0	6	<p>“This just adds an unnecessary bureaucratic burden. However, the phrase ‘in accordance with the Board guidelines’ should be deleted. It is in specific and suggests that in fact the Scottish Legal Aid Board determine what happens in a file rather than a solicitor acting in his client’s best interests.” [Gordon Addison]</p> <p>“Para 4.2.2 this is just adding to the bureaucratic burden on solicitors. Solicitors will never take action without instructions. It is not necessary to add more recording in files than at present. All solicitors, and nearly all accused, are aware of discounting for early pleas. It is unnecessary to include this part.” [25 solicitors]</p> <p>“4.2.2 We believe that this is completely disingenuous of the Board. Essentially the Board is selling out the practical requirements that the Board require Solicitors to meet in order for such professional service to be judged by the Board as suitable or not.... We see no reason why this should be incorporated into a Code of Conduct for Solicitors in relation to the provision of criminal legal services and we believe that the Legal Aid Board’s intention is to set up exact criteria which require to be met and, if not, then a Solicitor will have failed in relation to his provision of professional service and by subject to removal from the Criminal Legal Aid Register and, again, it seems to place onerous duties upon the Criminal Legal Aid Practitioner with no leeway for individual approaches to the provision of legal services.” [Marshall Wilson]</p> <p>“4.2.2 Point 2: there is an assumption that the Crown will correspond or negotiate timeously and make items available. Point 3: Clarification is required as regards how far reaching the implications any client is advised of should be. Point 4: There is the onus on the Crown and client also to ensure this is possible. Point 6: Until disclosure is received it is impossible to assess what preconditions are required” [Faculty of Solicitors in Roxburgh]</p> <p>Para 4.2.2: "to identify and obtain" etc.: I feel this is unworkable given the Crown still do not disclose well and frequent difficulty in obtaining someone suitable in the Crown to discuss the case with. The Crown are still far behind other jurisdictions in disclosure matters.” [J B D Henderson]</p> <p>“These requirements need to be agreed in tandem with pay scales.” [Aberdeen Bar Association]</p> <p>“With all due respect, this paragraph simply reflects the work which solicitors already do, Quite often a solicitor does not see a client from the pleading diet until the intermediate diet or trial. Quite often a client is not able to provide a solicitor with a great deal of detail and it is left to the solicitor to sally forth with the information given. That is hardly the solicitor’s fault. It is highly unlikely that the relevant solicitor was, in fact, present when the alleged offence was committed or is in any other way able to expand the case of his or her client! In any event, a change of plea is only ever tendered with the client’s specific instructions and more often than not the client is personally present when this is done (in which case the terms of the plea are clarified by the Bench). What more are the Board seriously suggesting is done? Clients who are unhappy about the representation provided for them are entitled to complain to the Law Society of Scotland. The Board will be aware that only a minority of complaints made against solicitors are by clients who are in receipt of Criminal</p>

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<p>to be tendered</p> <ul style="list-style-type: none"> to ensure that clients are given sound, timely, comprehensive and well-informed advice and information at all times and are kept informed as to the progress of their case to have such meetings with clients as are necessary for the proper conduct of their cases 					<p>Assistance. If there is a dispute between what the Board considers necessary and what the instructed solicitor considered necessary this is a matter for taxation. This proposed amendment is entirely unnecessary.” [Society of Procurators and Solicitors in the City and County of Perth]</p> <p>“Paragraph 4.2.2 You seem to suggest that the guidelines are sacrosanct. You basically seem to want to impose a duty on solicitors to do and accept what you say without allowing us the opportunity for discretion. If a client instructed us to do the same we would simply refuse to act. There must be a degree of professional responsibility when dealing with professionals. It may well be that the intention of these amendments is not to impose a “Big Brother” style of “Government” on solicitors but there does not appear to be any information given as to why these changes are necessary.” [Solicitor / firm]</p> <p>We approve of the proposed additions and textual amendments to section 4, and have the following further suggestions.</p> <ul style="list-style-type: none"> “To comply with the provisions of section 257 of the Criminal Procedure (Scotland) Act 1995 with regard to the agreement of evidence, identifying relevant evidence and taking the necessary steps to secure its agreement before the intermediate diet, First Diet or Preliminary Hearing, as the case may be” “To comply with Article 13 of the Law Society’s Code of Conduct for Criminal Work in relation to the precognition of witnesses” “To advise the Crown as soon as possible if the defence will be seeking an adjournment” “When seeking to use electronic evidence, to seek early agreement with the Crown and the court of the best means of facilitating this e.g. operator, cabling, software, hardware” <p>We would also like to take this opportunity to emphasise the desirability of electronic communication becoming an integral part of the administration of firms involved in criminal legal assistance — and, in early course, a condition of registration. We see significant benefits to the efficient administration of justice through the wider use of email and, looking ahead to COPFS plans to improve the disclosure of evidential material, we would like to see the defence adopt modern IT systems which would allow them to connect securely to an on-line disclosure system, making the process of disclosure speedier and more reliable. Taken together with the standards of professional service specified elsewhere in the Code — particularly para 4.2.2:</p> <p>“• To identify and obtain salient details about the case, taking advantage of facilities offered by, or available from, the prosecution including timeous communication and negotiation with the Crown where appropriate.”</p> <p>“The introduction of online business as an administrative standard will assist in the effective preparation of the accused’s defence and/or the early (and therefore most advantageous) resolution of a satisfactory plea, as well as significant reduction in inconvenience to witnesses and expense to the Crown.” [COPFS]</p> <p>Comment: These requirements reflect areas of the peer review criteria which have already been identified and discussed with the Law Society, and will be piloted shortly. They are a general statement of what the solicitor should do in a criminal case. They are not a statement of what the peer review criteria are or might be, but simply a statement of standards on which peer review criteria might be based.</p> <p>It is accepted that again some of this is prospective—eg. disclosure by the Crown Office.</p>
4.4.3.1 Applications shall be in the form required by the Board or, as the case may be, by the Court, and all information requested by the Board or the Court shall be supplied. Where	4	34	2	4	<p>“Para 4.4.3.1. The use of the Applicant’s Identifier means that all of this information is unnecessary. All that will happen is that more time will be spent completing forms, which will increase the attendances with the client. This may result in increased claims against the fund.” [25 solicitors / firms]</p> <p>“4.4.3.1. Again adding to the burden of administration is ludicrous. Forms should be simplified and the use of the</p>

Proposed Change	In Favour	Against	Don't Know	No Response	Illustrative Comments
the information is not known, inapplicable or unavailable, the reason for this should be stated. Where appropriate, applications should be accompanied by supporting information and documentation. A solicitor shall not sign or ask a client to sign a blank form or a form which is incomplete in respect of the client's full name, address, or date of birth. The client should insert the date of his signature on the form. In addition, there are further requirements for advice and assistance and criminal legal aid applications which are set out in the paragraphs below.					<p>applicant's identifier should mean that most of this is unnecessary." [Gordon Addison, Nelsons]</p> <p>"Para 4.3.3.1 [<i>sic</i>]- If the information required is not known, unless it requires further explanation, that should be sufficient. The present practice of completing the Legal Aid Identifier on the personal details part without the name address or dob of the client, all accepted by SLAB, is unobjectionable and saves considerable time and should be retained." [Society of Solicitors for Peterhead and Fraserburgh]</p> <p>"4.4.3.1. It is proposed that the client should insert the date of signing as well as their signature. There is ample "guidance" as to the undesirability of having clients sign blank forms. A requirement for the client to date the form as opposed to the solicitor to date the form is unnecessary. A significant number of clients have enough difficulty signing their name without being asked to add the date. When clients add the date it often requires correction and where such corrections are not identified by the solicitor (and initialled by the client) there can be difficulty in securing the registration of application. The requirement to have a client provide the date upon the form is unduly burdensome." [Society of Solicitors & Procurators of Stirling, Society of Solicitors Airdrie]</p> <p>"Surely this information will be necessary only where the client has not had legal Aid previously and thus has no personal identifier." [Aberdeen bar Association]</p> <p>"Where the applicant's identifier is known to the solicitor this is surely always used by the solicitor, since it means that other parts of the relevant form do not require completion. Where the applicant's identifier is unknown other personal information is required. It is a mystery to the Society why the Board are able to process Advice and Assistance Applications with only the applicant's identifier, but not applications for Criminal Legal Aid." [Society of Procurators and Solicitors in the City and County of Perth]</p> <p>Comment: As identified in the comments above, using the Legal Aid Identifier obviates the necessity of repeating all the client's details on subsequent forms, <u>provided the client's details have not changed since the last application submitted on his behalf</u>. The reason that the LA Identifier does not work with Criminal forms is that the criminal applications system does not have that facility: the system is in the process of being redeveloped and that facility will be included. However, this is not the issue that the change seeks to address. As was explained in the consultation paper, this paragraph is aimed at tackling the signing of blank forms.</p>
4.4.5.2 Applications for or in connection with criminal legal assistance should follow the guidance issued by the Board in the Criminal Legal Assistance Handbook, in The Recorder, or in periodic mailshots to the profession. If for any reason such guidance is not being observed, this fact should be brought to the Board's attention in a covering letter which should set out why	7	16	1	20	<p>"4.4.5.2. ... I respectfully submit [it is] inappropriate for the Board to direct "guidance" be observed. Solicitors require to comply with the Act, with Regulations and indeed with code. "Guidance" however, is only that." [Faculty]</p> <p>Comment: In dealing with the assessment of application, and accounts, the Board must start with an opening position, and what we expect that position to be is set out here. As explained in the paragraph, "... <i>If for any reason such guidance is not being observed, this fact should be brought to the Board's attention in a covering letter which should set out why the solicitor feels such guidance should not apply in the particular circumstances of the case.</i>"</p>

Proposed Change	In Favour	Against	Don't Know	No Response	Illustrative Comments
the solicitor feels such guidance should not apply in the particular circumstances of the case.					
4.5.1 The nominated solicitor is responsible for authorising the account being submitted for payment to the Board, irrespective of by whom it was prepared.	11	12	0	21	No comments received.
4.5.6.1 Except where special provision is made, or where fixed payments apply, charges in accounts should represent work actually and reasonably done, travel and waiting time actually and reasonably undertaken or incurred, due regard being had to economy. For advice and assistance in a criminal matter, the charges which may be included in an account are fees for work actually, necessarily and reasonably done and outlays actually, necessarily and reasonably incurred in connection with the matter on which criminal legal assistance was given.	9	14	0	21	“4.5.6.1 Unnecessary. I prefer the original wording.” [Solicitor]
4.5.6.2 The entries should form a proper charge against the Legal Aid Fund and be charged at the <u>rates which apply from time to time as set out in the Fees Regulations (including chargeable outlays). They should also conform to guidelines published in the Board's Taxation Guidelines or as set out from time to time in</u>	6	33	0	5	<p>“Para 4.5.6.2 the use of the word “conform” is not acceptable. Solicitors should “consider” the Taxation Guidelines. The Board’s view and the Solicitor’s view may be different. This is why cases are taken to taxation. It is when issues are taken to taxation that all issues are considered fully, possibly taking into account facts and circumstances which were not considered at earlier similar taxations” [14 solicitors / firms]</p> <p>“The use of the word “conform” is not acceptable. Solicitors should “consider” the Taxation Guidelines. The comments made referring to Para 4.2.2 applies here also. The Board’s view and the Solicitor’s view may be different. This is why cases are taken to taxation.” [10 solicitors / firms]</p> <p>“Paragraph 4.5.6.2 You basically seem to want to impose a duty on solicitors to do and accept what you say without</p>

Proposed Change	In Favour	Against	Don't Know	No Response	Illustrative Comments
<p><u>The Recorder or in periodic mailshots to registered solicitors and firms.</u></p>					<p>allowing us the opportunity for discretion. If a client instructed us to do the same we would simply refuse to act. There must be a degree of professional responsibility when dealing with professionals. It may well be that the intention of these amendments is not to impose a “Big Brother” style of “Government” on solicitors but there does not appear to be any information given as to why these changes are necessary.” [Solicitor / firm]</p> <p>“Surely if there is a dispute between the Board and a solicitor seeking payment that is a matter for taxation rather than inclusion within the Code of Practice?” [Society of Procurators and Solicitors in the City and County of Perth]</p> <p>Comments: This expands and clarifies the explanation of the charging regime and imposes a requirement for observing the Taxation Guidelines and other guidance published by the Board. Since the Board must have a start-point for assessing accounts, its expectations are set out here: where the solicitor diverges from that position, we would expect the solicitor to set his position out clearly for us to review when assessing the account.</p> <p>To assist in clarifying what we mean here, we will consider including here what we have included when dealing with applications, viz., <i>If for any reason such guidance is not being observed, this fact should be brought to the Board’s attention in a note to the relevant account which should set out why the solicitor feels such guidance should not apply in the particular circumstances of the case.</i>”</p>
<p>5.2 PERSONAL WORK AND TIME RECORDING</p> <p>5.2.1 A chronological record shall be maintained of criminal legal assistance activities undertaken by each individual solicitor in respect of the following:</p> <ul style="list-style-type: none"> • all criminal legal assistance work of any kind relating to an attendance at court, prison or elsewhere where travel time and/or outlays are chargeable. • travel where an outlay is chargeable; and • any other work chargeable on a time basis, including work where an additional fee can be charged based on time spent. <p>For each activity, the record shall show:</p>	5	26	1	12	<p>No comments received.</p> <p>This section was amended by special ministerial dispensation when fixed payments were introduced in 1999. This has been the standard against which we have been auditing firms since then.</p>

Proposed Change	In Favour	Against	Don't Know	No Response	Illustrative Comments
<ul style="list-style-type: none"> • date • solicitor's name • name of client • identifier to link to the relevant case • detail of work done • start and finish times of work done • type of criminal legal assistance being under taken, i.e. Solemn, Summary, Advice and Assistance or Appeals • where travel time is being charged, the departure point and destination should be noted, and where waiting time is being charged, the <i>locus</i> should be identified. 					

Annex 3: Responses

Name	Organisation	Code Deletions				Code Additions				Text Changes											
		Section 3.4 - Targets	Section 3.8: Mandates	Section 4.5.5.1: Timeous	Appendix	Para 3.1	Para 3.2.5	Para 3.3.2	Para 4.5.6.4	Para 2.1.2	Para 2.3.3.4	Para 3.2.4	Para 3.7.2	Para 4.1.1	Para 4.2.2	Para 4.4.3.1	Para 4.4.5.2	Para 4.5.1	Para 4.5.6.1	Para 4.5.6.2	Para 5.2.1
LOCAL FACULTIES																					
John MacRitchie	Society of Solicitors for Peterhead & Fraserburgh	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	✓	✓	✓	✓
Kenneth Dalling	Society of Solicitors & Procurators of Stirling								x	x	x			x		x	x			x	
Alison Marshall	Faculty of Solicitors in Roxburgh	✓	✓			✓	✓	✓	✓	✓	✓	x	x	x	x	?	x	✓	x	✓	
James Steel	Aberdeen Bar Association	✓	x	✓	✓	✓	x	✓	x	x	x	✓	x	x	x	?	✓	✓	✓	x	x
						x	x	x		x	x			x	x	x					
Ross Brown	Society of Solicitors Airdrie								x	x	x			x		x	x			x	
Alison McKay	Society of Procurators and Solicitors in the City and County of Perth									x				x	x	x				x	
Solicitors & Firms																					
Peter Lockhart																	x				
J B D Henderson	Inverness Legal Services for Criminal Advocacy	✓	✓	✓	✓	?	?	✓	x	x	x	✓	x	x	x	x	✓	✓	✓	✓	✓
Andrew Bryson	Nelsons Solicitors, Falkirk	✓	✓	x		x	x	x	✓	x	x	x	✓	x	x	x	x	✓	✓	x	x
Gordon Addison	Nelsons Solicitors, Falkirk	x	x	x	x	x	x	x		x	x		x	x	x	x				x	
Stephen Biggam	Marshall Wilson, Falkirk																				
		✓	✓	✓	✓			x		x	x	✓	✓	x	x	✓	✓	✓	✓	x	✓
Kenneth Waddell	Peacock Johnston	✓	✓	✓		x	x	✓	x	x	x	✓	✓	x	x	✓		✓	✓	✓	?

Name	Organisation	Code Deletions				Code Additions				Text Changes											
		Section 3.4 - Targets	Section 3.8: Mandates	Section 4.5.5.1: Timeous	Appendix	Para 3.1	Para 3.2.5	Para 3.3.2	Para 4.5.6.4	Para 2.1.2	Para 2.3.3.4	Para 3.2.4	Para 3.7.2	Para 4.1.1	Para 4.2.2	Para 4.4.3.1	Para 4.4.5.2	Para 4.5.1	Para 4.5.6.1	Para 4.5.6.2	Para 5.2.1
						x	x	x		x	x			x	x	x				x	x
						x	x	x		x	x			x	x	x				x	x
						x	x	x		x	x			x	x	x				x	x
						x	x	x		x	x			x	x	x				x	x
						x	x	x		x	x			x	x	x				x	x
						x	x	x		x	x			x	x	x				x	x
						x	x	x		x	x			x	x	x				x	x
						x	x	x		x	x			x	x	x				x	x
						x	x	x		x	x			x	x	x				x	x
						x	x	x		x	x			x	x	x				x	x
Lynn Bentley		✓	x	x	?	x	x	✓	x	x	x	?	x	x	x	x	x	x	x	x	x
Peter Shepherd		✓	x	x	?	x	x	✓	x	x	x	?	x	x	x	x	x	x	x	x	x
Emma Skett	William McCluskey Solicitors					x	x	x		x	x			x	x	x				x	x
															x						x
		✓	x	x	x	x	✓	✓	✓	x	x	✓	✓	x	x	x	✓	✓	✓	x	x
Michael Allan		✓	x	x	?	x	x	✓	x	x	x	?	x	x	x	x	x	x	x	x	x
Keidra Morrison		✓	x	x	?	x	x	✓	x	x	x	?	x	x	x	x	x	x	x	x	x
James Duncan		✓	x	x	?	x	x	✓	x	x	x	x	x	x	x	x	x	x	x	x	x
Lynne Newland		✓	x	x	?	x	x	✓	x	x	x	?	x	x	x	x	x	x	x	x	x
George Mathers	George Mathers & Co.	✓	x	x	?	x	x	✓	x	x	x	x	x	x	x	x	x	x	x	x	x
Leslie Green	George Mathers & Co.	✓	x	x	?	x	x	✓	x	x	x	x	x	x	x	x	x	x	x	x	x

Name	Organisation	Code Deletions				Code Additions				Text Changes											
		Section 3.4 - Targets	Section 3.8: Mandates	Section 4.5.5.1: Timeous	Appendix	Para 3.1	Para 3.2.5	Para 3.3.2	Para 4.5.6.4	Para 2.1.2	Para 2.3.3.4	Para 3.2.4	Para 3.7.2	Para 4.1.1	Para 4.2.2	Para 4.4.3.1	Para 4.4.5.2	Para 4.5.1	Para 4.5.6.1	Para 4.5.6.2	Para 5.2.1
Paul Barnett	George Mathers & Co.	✓	x	x	?	x	x	✓	x	x	x	x	x	x	x	x	x	x	x	x	x
						x	x	x		x	x			x	x	x				x	x
		✓	x	x	?	x	x	✓	x	x	x	x	x	x	x	x	x	x	x	x	x
		✓	✓	✓	✓	x	x	x	x	x	x	x	x	x	x	x	?	✓	x	x	
John McLeod	George Mathers & Co.	✓	x	x	?	x	x	✓	x	x	x	x	x	x	x	x	x	x	x	x	x
		x	x	✓	?	x	x	✓	x	x	x	x	x	x	x	x	x	x	x	x	x
Judges																					
Mrs Marlyne Parker	District Courts Association	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	?	✓	✓	✓	✓	✓	✓	✓	✓
Justice Agencies																					
Alison di Rollo	COPFS	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Fiona Duncan	Scottish Courts Service																				

Annex 4: Responses by Group

	Solicitors/Firms				Local Faculties				Judges				Justice Agencies			
	Yes	No	Don't know	No Response	Yes	No	Don't know	No response	Yes	No	Don't know	No response	Yes	No	Don't know	No response
Deletions																
Section 3.4: Targets	17	2	0	14	3	0	0	4	1	0	0	1	1	0	0	1
Section 3.8: Mandates	5	14	0	14	2	1	0	4	1	0	0	1	1	0	0	1
Section 4.5.5.1: Timeous submission of accounts	5	14	0	14	2	0	0	5	1	0	0	1	1	0	0	1
Appendix	3	2	12	16	2	0	0	5	1	0	0	1	1	0	0	1
Totals	30	32	12	58	9	1	0	18	4	0	0	4	4	0	0	4
%	23	24	9	44	32	4	0	64	50	0	0	50	50	0	0	50

As shown above, Solicitors/firms' responses in favour of the deletion of the section on "Targets" are nearly unanimous. The reverse is the case for deletions of the "Mandates" and "Timeous" sections, while respondents are ambivalent about the deletion of the "Appendix". The number of those not responding in both Solicitors/firms and Local Faculties exceeded those who expressed a positive or negative view: for example, 72 responded positively or negatively, but 76 did not respond at all on this area of the consultation.

	Solicitors/Firms				Local Faculties				Judges				Justice Agencies			
	Yes	No	Don't know	No Response	Yes	No	Don't know	No response	Yes	No	Don't know	No response	Yes	No	Don't know	No response
Additions																
Para 3.1: Conduct	0	28	1	4	3	2	0	2	1	0	0	1	1	0	0	1
Para 3.2.5: Non-discrimination	1	27	1	4	2	3	0	2	1	0	0	1	1	0	0	1
Para 3.3.2: Practising Certs.	15	14	0	4	3	1	0	3	1	0	0	1	1	0	0	1
Para 4.5.6.4: Apportionment	2	15	0	16	2	3	0	2	1	0	0	1	1	0	0	1
Totals	18	84	2	28	10	9	0	9	4	0	0	4	4	0	0	4
%	14	64	1	21	36	32	0	32	50	0	0	50	50	0	0	50

As shown above, Solicitors/firms who responded "Yes" are in a minority of nearly 1-to-5 to those who responded "No". Only the amendment to para. 3.3.2 concerning practising certificates shows a majority in favour. Local Faculties are much more closely split, and "no responses" equal the "No" total.

Textual Changes	Solicitors/Firms				Local Faculties				Judges				Justice Agencies			
	Yes	No	Don't know	No Response	Yes	No	Don't know	No response	Yes	No	Don't know	No response	Yes	No	Don't know	No response
Para 2.1.2: Notification	0	30	0	3	2	5	0	0	1	0	0	1	1	0	0	1
Para 2.3.3.4: CP responsibilities	0	30	0	3	2	4	0	1	1	0	0	1	1	0	0	1
Para 3.2.4: Corrective action	4	9	5	15	2	1	0	4	1	0	0	1	1	0	0	1
Para 3.7.2: Travel costs	4	15	0	14	1	3	0	3	0	0	1	1	1	0	0	1
Para 4.1.1: Peer review	0	30	0	3	1	6	0	0	1	0	0	1	1	0	0	1
Para 4.2.2: Standards	0	31	0	2	1	4	0	2	1	0	0	1	1	0	0	1
Para 4.4.3.1: Form completion	2	29	0	2	0	5	2	0	1	0	0	1	1	0	0	1
Para 4.4.5.2: Board guidance	3	13	1	16	2	3	0	2	1	0	0	1	1	0	0	1
Para 4.5.1: Account authorisation	6	12	0	15	3	0	0	4	1	0	0	1	1	0	0	1
Para 4.5.6.1: Appropriate charges	5	13	0	15	2	1	0	4	1	0	0	1	1	0	0	1
Para 4.5.6.2: Taxation Guidelines	2	29	0	2	1	1	0	5	1	0	0	1	1	0	0	1
Para 5.2.1: Time recording	2	25	1	5	1	1	0	5	1	0	0	1	1	0	0	1
Totals	28	266	7	95	18	34	2	30	11	0	1	12	12	0	0	12
%	7	67	2	24	21	41	2	36	46	0	4	50	50	0	0	50

As shown above, the “No” response at 67% of solicitor/firms responding gives a clear picture that they are not in favour of the proposed changes to the text of the Code.