

2 PART TWO: CONDITIONS FOR REGISTRATION

2.1 APPLICATIONS AND CHANGES

- 2.1.1 Both solicitors and firms require to register. Applications for registration must be made in the form determined by the Board and satisfy the conditions set down in this Part of the Code.
- 2.1.2 A solicitor or firm must notify the Board of any changes to:
- ▶ any information or documentation which has been provided to the Board, at any time, relevant to that solicitor's or firm's registration
 - ▶ any additional relevant information or documentation within five days of the change occurring or as soon as reasonably practicable thereafter.

2.2 SECTION A: CONDITIONS FOR INDIVIDUAL SOLICITORS

- 2.2.1 A registered solicitor will not be eligible to provide criminal legal assistance unless working in the course of a connection with a registered firm. Furthermore, an application for registration by a solicitor cannot be considered unless any firm with which he is connected is registered or has applied for registration.

2.2.2 Compliance with the Code of Practice

- 2.2.2.1 A solicitor applying for registration shall certify that he complies with the terms of this Code of Practice.

2.2.3 Attendance at Courses

- 2.2.3.1 A solicitor other than a second year trainee applying for registration shall have attended or conducted, within the twelve months prior to application, one or more courses relevant to the provision of criminal legal assistance. These courses shall amount to five or more hours duration in total and may include a course or courses in criminal law, evidence and pleading, legal aid or professional ethics. Alternatively, a solicitor other than a second year trainee shall undertake to complete attendance at, or conduct of, such a course or courses within a period of six months following his registration.
- 2.2.3.2 For the avoidance of doubt, preparation time for any course shall not be considered in addition to the actual duration of the course.

2.2.4 Records of Course Attendance

- 2.2.4.1 A solicitor applying for registration shall maintain a record of courses attended by him relevant to the provision of criminal legal assistance. A copy of the solicitor's record of Continuing Professional Development required by the Law Society of Scotland, if suitably annotated to highlight the relevant courses, would suffice for this purpose.

2.3 SECTION B: CONDITIONS FOR FIRMS

2.3.1 A firm must be registered or have applied to be registered before any solicitor connected with it may be registered in relation to his connection with that particular firm.

2.3.2 Compliance with the Code of Practice

2.3.2.1 A firm applying for registration shall certify that it complies with the terms of this Code of Practice.

2.3.3 Nomination of Compliance Partner

2.3.3.1 Subject to paragraph 2.3.3.2. below, a firm shall nominate a Partner, known as a “Compliance Partner”, to be the Board’s point of contact within that firm. The nomination shall be made as part of the firm’s application for registration. Any subsequent changes shall be notified to the Board.

2.3.3.2 Neither a sole practitioner, nor the Public Defence Solicitors’ Office, nor an incorporated practice shall be required to nominate a compliance partner. Where the words “Compliance Partner” are used, they will apply to any sole practitioner, to the Director of the Public Defence Solicitors’ Office and to any Director of an incorporated practice nominated by such a practice to be responsible for compliance with this Code on behalf of the practice.

2.3.3.3 Responsibilities of the Compliance Partner shall include:

- ▶ 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 within five working days or as soon as reasonably practicable of any changes within the firm relevant either to registration or compliance with this Code of Practice
- ▶ 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 non-compliance.

2.3.4 Maintenance of Records

2.3.4.1 A firm applying for registration shall maintain records as described in Part Five of this Code.

3 PART THREE: STANDARDS OF PROFESSIONAL CONDUCT

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, including the Code of Conduct for Criminal Work.

3.2 POLICY FOR STANDARDS OF PROFESSIONAL CONDUCT

- 3.2.1 A firm shall be responsible for establishing, maintaining and enforcing a declared policy for that firm relating to standards of professional conduct. Embodied in this policy must be the standards of professional conduct described in this part of the Code.
- 3.2.2 A firm is responsible for ensuring that this policy is communicated to all legally qualified and non-legally qualified staff within the firm who are giving or assisting in giving criminal legal assistance.
- 3.2.3 An individual solicitor is responsible for familiarising himself with, and adhering to, the firm's declared policy towards standards of professional conduct.
- 3.2.4 Appropriate corrective action and/or disciplinary action shall be taken by the firm when breaches of standards are identified.

3.3 KNOWLEDGE AND EXPERIENCE

- 3.3.1 A firm or solicitor shall deploy the knowledge and experience necessary for each case which is taken on.
- 3.3.2 A solicitor shall attend courses relevant to the provision of criminal legal assistance, including courses in criminal law, evidence and pleading, legal aid or professional ethics. These courses shall amount to five or more hours duration in total within any two year period. Time spent in preparation for any course will not be considered in addition to the actual duration of the course.
- 3.3.3 Where a solicitor has attended sufficient courses within the period of twelve months preceding his application for registration, the period of two years within which he must attend further sufficient courses will run from the date of his registration. A second year trainee will be required to attend sufficient courses within the two years immediately following the completion of his traineeship. Where a solicitor undertakes to complete his attendance at courses within six months of his registration, the period of two years will run from the date of his completion of attendance at such courses.
- 3.3.4 For the purposes of paragraphs 3.3.2 and 3.3.3 above, conducting courses shall be considered equivalent to attending courses.

3.4 TARGETS

- 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:
- ▶ 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 *bona fide* 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.
- 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.

3.5 INDUCEMENTS

- 3.5.1 No solicitor or other member of a firm's staff shall offer to any person any inducement to become or remain a client, such inducement involving the transfer, or promise to transfer, to any person of any consideration, financial or otherwise; nor shall he make a legal aid application, or application for advice and assistance, on the basis of any such inducement or in response to any direct or indirect proposal which would involve the transfer of any financial or other consideration to any person.
- 3.5.2 No solicitor or other member of a firm's staff shall accept instructions from any person whom he knows to have received any consideration from a third party to become a client of the firm.
- 3.5.3 No expenses shall be paid to any person for travelling to or attendance at court, other than a witness cited to give evidence on behalf of the defence or a witness cited to give a precognition on oath who is entitled to travel and subsistence at the levels set by the Board from time to time.

3.6 RESOURCES

- 3.6.1 A firm or solicitor shall have appropriate resources available, including time and technical and administrative support, to ensure that proper attention can be given to each individual case.

3.7 CO-OPERATION

- 3.7.1 A firm or solicitor shall co-operate with the Board in answering any questions about the firm's or solicitor's applications, legal aid accounts, compliance with this Code of Practice or performance on behalf of clients (including questions relating to the measurement of that performance). Any documentation which may be requested shall be made available and, if requested, authorised officers of the Board shall be allowed access to the firm's or solicitor's premises and records to assess compliance with this Code. Responses to any requests for information shall be made timeously.

3.8 MANDATES

- 3.8.1 A firm or solicitor shall 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.

3.9 CONSULTATION WITH CLIENTS AT LIBERTY

- 3.9.1 A solicitor should, in general, consult in person with clients who are at liberty only at a solicitor's office, a court or a designated consulting room.
- 3.9.2 In exceptional circumstances a solicitor may consult with a client at a locus 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.

3.10 WITNESSES

- 3.10.1 When establishing necessary evidence in a case, a solicitor must take all reasonable steps to do so with due regard to economy, including obtaining police statements from the relevant police force(s). Where witnesses are cited to appear for the defence, he must be able to justify their citation and show that he has taken reasonable steps to ascertain what their evidence is.

3.11 WITNESS EXPENSES, PROFESSIONAL & EXPERT WITNESS FEES

- 3.11.1 A firm or solicitor shall submit accounts to the Board as soon as possible after the conclusion of a matter or a case. These should include fees for professional and expert witnesses and claims of expenses of witnesses suffering loss of earnings as a result of being cited to give evidence for the defence in court. The appropriate justification for such expenses, in the form of vouchers/claim forms etc., must be submitted to the Board. Insofar as it applies to the submission of accounts, this paragraph shall not apply to solicitors employed by the Board.
- 3.11.2 A firm or solicitor should pay witnesses for their necessary expenses or fees without delay and certainly no later than the date of payment of the relevant account by the Board.

4 PART FOUR: STANDARD OF SERVICE

4.1 MONITORING OF PERFORMANCE

- 4.1.1 The Board will monitor the standard of service provided by firms and solicitors, as defined in this Part. Solicitors and firms will be required to supply to the Board any information which it requests for the purposes of monitoring this performance. In addition, solicitors and firms shall give clients copies of any questionnaire issued by the Board for the purpose of measuring client satisfaction, with a request that the completed questionnaires be returned direct to the Board by the client.
- 4.1.2 The Board may also maintain records of applications and accounts submitted or information provided by firms or solicitors which fail to meet the requirements of this Part.

4.2 SECTION A: STANDARD OF PROFESSIONAL SERVICE

- 4.2.1 Solicitors and firms registered under this Code of Practice will be expected to deliver a standard of professional service which can be expected of solicitors displaying ordinary professional competence.
- 4.2.2 In particular, without prejudice to the generality of the preceding paragraph, solicitors and firms of solicitors will be expected:
- ▶ to take instructions from their clients as to the plea to be tendered initially and any subsequent changes
 - ▶ to ensure that clients are given sound and well-informed advice and information at all times
 - ▶ to have such meetings with clients as are necessary for the proper conduct of their cases and to avoid and certainly not instigate meetings which cannot reasonably be expected to advance those cases in some significant respect
 - ▶ to take only such precognitions as may reasonably be expected to be necessary for the preparation of the client's case
 - ▶ to take advantage of facilities offered by, or available from, the prosecution to discuss cases and facilitate their efficient progress
 - ▶ to cite all witnesses required for the defence in good time for any diet of trial at which those witnesses are to be led in evidence
 - ▶ to provide competent and responsible representation at any diet of the court at which representation for an accused person is required
 - ▶ to avoid unnecessary disruption of or delay to court business
 - ▶ to handle cases promptly and expeditiously, and with due regard to economy.

4.3 SECTION B: RELATIONSHIP WITH THE BOARD

- 4.3.1 It is the responsibility of firms and individual solicitors to submit applications, accounts and supporting documentation to the Board in a clearly legible, preferably typed or printed form which meets the requirements of this Section. Detailed examples relating to the meeting of these requirements are contained in the Appendix to this Code.
- 4.3.2 In communication with the Board, solicitors are expected to provide adequate and timeous information to enable their enquiries or requests to be dealt with properly and efficiently and not make enquiries or requests where it is unnecessary to do so.
- 4.3.3 The provisions in this Section relating to accounts shall not apply to solicitors employed by the Board.

4.4 VALIDITY OF APPLICATIONS

- 4.4.1 Applications for, and in connection with, criminal legal assistance shall conform to the requirements in each of the sections below.

4.4.2 Accurate

- 4.4.2.1 Every effort should be made to provide full and accurate details of the applicant, any person applying on behalf of the applicant, any co-accused and the case particulars to enable the Board to identify the applicant and any previous application for criminal legal assistance made by him.

4.4.3 Complete

- 4.4.3.1 Applications for criminal legal aid or advice and assistance shall be in the form required by the Board and all information requested by the Board shall be supplied. Where appropriate, applications should be accompanied by supporting information and documentation.

4.4.4 Timeous

- 4.4.4.1 Applications shall be submitted in accordance with the time limits specified in the Regulations. Where the latter allow a discretion to the Board, and the application seeks to take advantage of this, it shall be supported by appropriate information.

4.4.5 Competent And Appropriate

- 4.4.5.1 Applications shall be for competent proceedings. Applications shall be necessary and properly directed towards the appropriate form of criminal legal assistance as provided in the legislation.

4.5 VALIDITY OF ACCOUNTS

4.5.1 The solicitor nominated³ by the assisted person is responsible for authorising the accounts being submitted for payment to the Board, irrespective of by whom they were prepared. Firms shall also be responsible for ensuring that accounts submitted by any of its offices comply with the requirements of this Part of this Code.

4.5.2 Accounts and relative documentation presented to the Board in connection with criminal legal assistance shall conform to the requirements in each of the sections below.

4.5.3 Accurate

4.5.3.1 Accounts shall be clearly, accurately and logically presented in a form which enables the Board to assess them.

4.5.4 Complete

4.5.4.1 Accounts shall be accompanied by such documents and information as the Board has given notice to the firm or solicitor that it requires to see. All entries contained in accounts shall be supported by entries on the file or by appropriate vouchers.

4.5.5 Timeous

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.

4.5.6 Appropriate

4.5.6.1 All entries on accounts shall aim to constitute reasonable remuneration for work actually and necessarily done with due regard to economy.

4.5.6.2 The entries should form a proper charge against the Legal Aid Fund and be charged at the correct rate (including charges for expert witnesses).

³ as defined in Regulation 2 of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989.

5 PART FIVE: SYSTEM OF MANAGEMENT AND ADMINISTRATION

5.1 A firm shall establish and maintain a documented system of management and administration as a means of ensuring and demonstrating that the requirements of this Code of Practice are consistently met. The system shall be detailed in manuals or handbooks etc. and shall include, as appropriate, policies, procedures and instructions. The system shall be effectively implemented by all legally qualified and non-legally qualified staff within the firm who are giving or assisting in giving criminal legal assistance.

5.2 PERSONAL WORK AND TIME RECORDING

5.2.1 A chronological record shall be maintained of activities undertaken by each individual providing criminal legal assistance. The record will show the actual times involved, to the nearest 5 minutes, in such activities as:

- ▶ attendance in court or with clients or witnesses
- ▶ travel
- ▶ dictating
- ▶ other activities relating to criminal legal assistance

For each activity the record should show:

- ▶ date
- ▶ solicitor's name
- ▶ name of client or witness
- ▶ identifier to link to the relevant case file
- ▶ detail of work done
- ▶ start and finish times and duration of work done (except correspondence)

Any time, to the nearest five minutes, not engaged on criminal legal assistance or engaged in dictating should be noted as such in the record.

5.2.2 Procedures shall state where and in what manner this record is held, e.g. personal files, computer systems, diaries etc. Records shall be maintained and accessible for a period of three years.

5.3 CASE RECORDING

5.3.1 Case files shall be maintained containing records to demonstrate work done and time spent on every aspect of each criminal legal assistance case. Such records shall include the following details:

- ▶ date
- ▶ name and status of person performing work
- ▶ name of client or witness
- ▶ detail of work done
- ▶ start and finish times and duration of work done (where work is chargeable on time)
- ▶ financial transactions

5.3.2 Procedures shall state where and in what manner these records are held, e.g. case files, computer systems, diaries etc. Records shall be maintained and accessible for a period of three years from date of payment of the relevant account by the Board.

5.4 FINANCIAL TRANSACTION RECORDING

5.4.1 Records of all financial transactions with, or on behalf of, all criminal legal assistance clients shall be maintained and accessible.

5.5 TRAINING

5.5.1 Procedures shall be in place to ensure that all staff, as defined in paragraph 5.1, are suitably equipped for the work they do in terms of education, training and/or experience. Such procedures shall ensure that any training and education needs are identified and reviewed annually with the staff concerned and that training is appropriately given. Training and education records shall be maintained for all such staff.

5.6 SUPERVISION OF STAFF

5.6.1 Adequate supervision procedures shall be in place which enable the firm to satisfy itself that work carried out by individual solicitors is in accordance with the provisions of Parts Three and Four of this Code. The level of supervision required will be dependent upon the complexity of the work and the individual solicitor's knowledge and experience.

5.6.2 Where criminal legal assistance work is delegated by the solicitor nominated⁴ by the assisted person to non-legally qualified staff or other registered solicitors within or outwith the firm, the nominated solicitor shall maintain responsibility for the standard of work and shall ensure that it is completed in a satisfactory manner.

5.7 DOCUMENT CONTROL

5.7.1 The firm shall operate a procedure for document control which ensures that the latest issue of pertinent documents is available for use. Controlled documents shall include:

- ▶ Legal Aid (Scotland) Act 1986, as amended
- ▶ Regulations and Rules of Court applying to criminal legal assistance
- ▶ the Scottish Legal Aid Handbook
- ▶ legal aid and advice and assistance application forms
- ▶ key card for advice and assistance
- ▶ Taxation Guidelines
- ▶ manuals and handbooks etc. which detail the firm's system of management and administration

⁴ as defined in Regulation 2 of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989.

5.7.2 The procedure shall define how and by whom any changes to the firm's policies or procedures are to be made, ensuring that changes are reviewed by the relevant partners, the documentation involved is updated and new copies are distributed as necessary.

5.7.3 The firm shall maintain up to date files containing:

- ▶ The Recorder
- ▶ circular letters from the Board
- ▶ other relevant Board publications.

5.8 INFORMATION RECEIVED FROM THE SCOTTISH LEGAL AID BOARD

5.8.1 On receipt of information from the Board the firm must ensure that:

- ▶ such documents as are described in paragraphs 5.7.1 and 5.7.3 are circulated to the appropriate staff
- ▶ guidelines issued by the Board are reviewed by the firm and the appropriate action is incorporated into the firm's management and administration system.

5.9 CASE REVIEW

5.9.1 The firm shall operate a documented procedure to ensure that all criminal legal assistance cases are conducted timeously, effectively and in accordance with this Code of Practice. To ensure that action is taken as and when required for the proper conduct of cases in accordance with Part Four, Section A of this Code, the procedure shall:

- ▶ provide for an effective diary and file-checking system and
- ▶ provide for the effective coordination of all staff, as defined in paragraph 5.1 above.

5.9.2 The procedure shall also provide for the review of a cross-section of active and concluded criminal legal assistance cases to determine continued compliance with this Code by solicitors in the conduct of these cases.

5.10 CLIENT REPORTING

5.10.1 The firm shall have a procedure in place to ensure that:

- ▶ the client's instructions are recorded
- ▶ the client is given timeous and accurate information, including information about the consequences of any decision he is being invited to take, and is kept adequately informed of progress; guidance on the extent to which this may be charged to the Legal Aid Fund is contained in the Board's Taxation Guidelines
- ▶ at the conclusion of a case, the outcome is reported and any further action the client is required to take is explained to him
- ▶ original documents and other property held by the solicitor or firm and belonging to the client are returned to him at the conclusion of the case to which they relate
- ▶ the client is advised whether the matter should be reviewed in future, and if so, when.

5.11 CORRECTIVE ACTION

- 5.11.1 The firm shall ensure that appropriate action is taken to deal with any problems which are identified. Such problems may include:
- ▶ complaints to the solicitor by clients
 - ▶ complaints to the Law Society
 - ▶ Notices of Non-Compliance received from the Board
 - ▶ failures of the firm's system of management and administration.
- 5.11.2 After identification of such a problem, the firm shall ensure that:
- ▶ remedial action is taken on the specific problem raised and
 - ▶ appropriate long term action is taken to prevent, as far as is possible, a recurrence of the problem; such action will be appropriate to the severity of the problem.
- 5.11.3 Procedures shall be in place to ensure that all identified problems are recorded, that appropriate action is taken and that records of such corrective action are maintained.

APPENDIX

Examples Relating to the Submission of Materials to the Board

This Appendix gives detailed examples of how the requirements of Part Four, Section B of the Code of Practice should be met. The examples are not exhaustive, but where given they must be followed.

Validity of Applications

Applications for, and in connection with, criminal legal assistance shall conform to the requirements of each of the sections below.

Accurate

Every effort should be made to provide full and accurate details of the applicant, any person applying on behalf of the applicant, any co-accused and the case particulars to enable the Board to identify the applicant and any previous application made by him or her.

Examples: the applicant's name and designation should be correctly and precisely stated and show all forenames, previous names, maiden names and aliases and name at date of birth, if different

the name and designation of any person applying on behalf of the applicant should be correctly and precisely stated and show all forenames and age at last birthday

the applicant's address and date of birth and age at last birthday should be correctly stated

the names and designation of any co-accused should be correctly stated

the court details should be accurately stated in criminal legal aid applications, together with the procurator fiscal's reference number and the date of any intermediate diet fixed

case details should be clearly described

forms should not be submitted in which the applicant's or the solicitor's signature is omitted or altered without appropriate authentication or in which the date of any signature is left blank or altered

where any factor is adduced in support of an application, full information should be supplied.

Where a factor does not apply this should be stated. The overuse of stock phrases should be avoided, e.g.

"our client is of limited intelligence"

"this case carries a maximum penalty of x months imprisonment"

"representation of the accused is in the interest of the court, the prosecution and the witness"

"the Crown is represented by a professional lawyer".

Complete

Applications for criminal legal aid or advice and assistance shall be in the form required by the Board and all information requested by the Board shall be supplied. The only exceptions are:

- ▶ where any form refers to information “if known”
- ▶ where the applicant is unaware of either the place of his birth or his mother’s maiden surname.

Where the latter applies, the omission must be drawn to the Board’s attention. If any other question is inapplicable, this must be clearly stated. On no account should a form be submitted with the response boxes left blank.

Where appropriate, applications should be accompanied by supporting information and documentation.

Example: applications may be supported by wage slips, complaints, petitions, indictments, schedules of previous convictions, defence statements, reference numbers of previous applications, previous requests for increases in authorised expenditure, opinions of counsel.

Competent And Appropriate

Applications shall be for competent proceedings. Applications shall be necessary and properly directed towards the appropriate form of criminal legal assistance as provided in the legislation.

Examples: solicitors should understand when leave to appeal is required and use the appropriate form of application

solicitors should appreciate what the limits for Advice & Assistance are and use them properly as described in the Regulations and the “keycard”

for restorations of driving licences, solicitors should submit to the Board sufficient information to justify authority to provide ABWOR

solicitors should not make claims under Advice & Assistance for work actually carried out under the Duty Solicitor scheme.

Validity of Accounts

The solicitor is responsible for authorising the accounts being submitted for payment to the Board, irrespective of by whom they were prepared. Firms shall also be responsible for ensuring that accounts submitted by any of its offices comply with the requirements of this Part of this Code.

Accounts and relative documentation presented to the Board in connection with criminal legal assistance shall conform to the requirements in each of the sections below.

Accurate

Accounts shall be clearly, accurately and logically presented in a form which enables the Board to assess them. ➤

Examples: the Account Synopsis should contain the correct Practitioner Code and account point and clearly identify any agents employed and show their status

entries should consist of appropriately detailed narrative to explain the work done

charges should be correct in accordance with the fee tables contained within the Regulations

any arithmetical calculations should be correct.

Complete

Accounts shall be accompanied by such documents and information as the Board has given notice to the firm or solicitor that it requires to see. All entries contained in accounts shall be supported by entries on the file or by appropriate vouchers.

Examples: claims for outlays should be submitted in conjunction with the account and be accompanied by appropriate vouchers

if requested by the Board, detailed file notes should be made available

a detailed explanation of the benefits of a locus visit should be given to justify why this was necessary. Any relevant sketches or photographs should be included

waiting time and Court time should be correctly and accurately apportioned and should be charged to the relevant account.