

The Recorder

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Alistair Watson - PUBLIC DEFENCE SOLICITOR

Renfrew solicitor, Alistair Watson has been appointed Director of the Public Defence Solicitors' Office and will take up his post in April. Alistair (38) is an experienced criminal practitioner having been court partner of Cameron Pinkerton and Co for seven years before selling up his own firm, Watson and Mackay Solicitors, in 1996.



Commenting on his appointment, Alistair said: I am honoured to be given the opportunity of this challenging appointment and am looking forward with enthusiasm to establishing an office which will provide the people of Edinburgh with a first class, streamlined and effective legal defence service. It is crucial that those facing criminal charges who cannot afford to pay for a solicitor have proper and effective representation in court. Our office will provide just that and will very effectively meet a clear public need."

A graduate of the University of Dundee, Alistair spent his traineeship with Gilruth Pollock and Smith Solicitors in his home town of Dundee and later worked in the procurator fiscal service between 1984 and 1989. He is currently a member of the Law Society's Admissions Committee and previously served on its Criminal Law Committee, as well as being Convenor of the local Court Committee and a member of the Dean's Council in his local Faculty.

Alistair has a particular interest in education and training, and he is a member of the committee of the University of Strathclyde's Centre for Professional Legal Studies where he is involved in setting up and convening criminal law courses. He also teaches a criminal law course for paralegals. Alistair is married with two young daughters.

When Alistair takes up his post in April, one of his first priorities will be to recruit his team of public defence solicitors and the necessary support staff for the Public Defence Solicitors Office. Adverts for these posts will appear in the national press and the Law Society Journal in early summer.

A new Chairman for the Board



The Secretary of State for Scotland has announced that Mrs Jean Couper has been appointed Chairman of the Board, from 1 April. She will succeed Christine Davis CBE, who has served nine years on the Board and a similar period under the previous legal aid administration.

Jean Couper has been a member of the Board since 1 April 1994 and has served on the Audit, Business and Information Systems Committees as well as a number of working groups. Jean runs her own management consultancy business, Catalyst Consulting, which she set up in 1995, and is a Non-Executive Director of the Health Education Board for Scotland.

Earlier in her career she worked in production management within the engineering and textiles industries, before entering management consultancy with Arthur Young and Price Waterhouse.

We also have a new face at the Board - Margaret Scanlan LLB became a Board member on 1 September 1997 and will serve for an initial four years. Margaret is presently a consultant with Russells, Gibson and McCaffrey in Glasgow. She replaces Pamela Bowman who was appointed a sheriff.



In March, three of our Board Members - Sheila Campbell, Bob Livingstone and Colin McEachran - will retire. The Scottish Office has advertised two Board Members' posts, and the appointments are expected to be announced next month.

Code of Practice

In October the Board published a consultation paper on the Code of Practice and registration for solicitors undertaking criminal legal aid work. The deadline for responses was 31 December and we have received a good number of comments. We would like to thank everyone who took the time to write to us. All the comments will now be carefully considered, and we will reply to those of you who wrote with queries about specific issues. A final version of the Code of Practice will be produced, and passed to the Secretary State for Scotland for his approval.

We will ensure that the new Code, together with appropriate guidance notes, examples of acceptable procedure documents and forms are distributed to all criminal practitioners as soon as the Secretary of State's approval is obtained. We expect the final Code of Practice to be available in April, when solicitors can begin to apply for registration. All applications must be with the Board by 31 July, which will allow us to process the applications, advise on any changes and give time for implementation. We will keep you regularly updated through The Recorder and circulars to the profession.

In the meantime, if you have questions about any aspect of the Part V legislation please contact Hilary Quick, Project Manager, or [Fiona Shaw](#), Communications Manager.

A good performance - but could do better.....

The Board is doing a good job, particularly in the helpfulness and courtesy of our staff and in keeping you, the profession, informed, but there are still a number of areas where we need to improve. Those are the feelings of most of the solicitors who responded to our recent questionnaire.

We sent out 1,000 questionnaires to solicitors in Scotland with legal aid practitioner codes. This was done on a random basis, so that we would be able to gather information from solicitors in all types of practice, in all areas of Scotland and with varying degrees of experience. We received 200 responses - a high response rate for this type of survey.

We are very grateful to everyone who took the trouble to send us a reply. If anyone else would like to give their views, we always welcome constructive feedback (good or bad) from the profession about our service.

We are still gathering more information through interviews and focus groups with some of the respondents. We are also conducting a survey of solicitors in the Glasgow sheriff courts. Until we have analysed the results of all of this information it would be premature to draw any firm conclusions or to draw up new plans for future action. But there are some messages that are quite clear from the initial analysis, and these are summarised below.

- 96% of respondents were satisfied with the helpfulness and courtesy of our staff, but 33% were unhappy with the level of consistency in the information they were given - clearly an area we need to give more attention to.
- Most solicitors were satisfied with the time taken to deal with advice and assistance applications and criminal applications and the consistency of decisions in those areas - however, we shall be examining the way we deal with civil applications and continuing to improve our consistency.
- Accounts are generally paid within a satisfactory timescale, although the timescale in civil is less satisfactory.
- 92% of solicitors were pleased with the content of The Recorder, and almost as many with our circulars to the profession. Some were less happy with the frequency of The Recorder, however you have probably already noticed that we are now issuing it more frequently and on a more regular basis.
- Our other publications, such as the Legal Aid Handbook, Reparation Guidelines and Annual Report, were generally felt to be good, although we could improve the layout of the Handbook, and there was less satisfaction with the Taxation Guidelines. In consultation with the Law Society we have recently been working on a complete rewrite of the criminal part of the Taxation Guidelines, so we hope that you will see a significant improvement in these when the new Criminal Taxation Guidelines are issued within the next few weeks.

As part of our ongoing programme of customer satisfaction we are also surveying other people involved in the legal aid process. We are looking at ways of assessing what the public knows about legal aid and how they rate the service that they receive from the Board when they contact us. Everyone visiting our office is being given a questionnaire on the service they receive from our staff. We shall be seeking the views of people involved in the courts, such as the courts service and JPs, and people in the community such as Citizens Advice Bureaux.

The questionnaires are yielding a lot of detailed information, and we need to analyse this properly before setting out our specific plans. In our May issue of The Recorder, however, we shall be reporting in more detail about the questionnaire results and action we shall be taking in the areas where the profession highlighted improvements that could be made.

New Criminal Applications System

A new computer system for criminal (and children's) applications came into operation in September 1997. We are now able to store and access more information about a case, and many of the tasks previously carried out manually are now performed automatically. Thanks to the new system, our turnaround times have improved further and our standard letters and certificates are now much more informative. This article highlights some key aspects of the new system.

Applicant's personal identifier

We have been issuing the applicant's personal identifier since the new advice and assistance system was introduced in April 1996 and will now do so for criminal cases. An applicant will have the same personal identifier regardless of the type of legal aid. Thus any personal identifier issued previously for an advice and assistance case will be exactly the same for a criminal application from the same person. This means that, if there has been no change in the applicant's personal details (name, address, marital status, etc.) since the last application, you can simply quote the applicant's identifier, together with the name and date of birth, on any new application form without completing all the other details.

Account synopsis form

We are now issuing a green account synopsis form automatically with all new legal aid certificates. For certificates issued before 22 September 1997, the old style account synopsis form should still be used. These forms are still available from our printers.

Legal aid case reference numbers

You should continue to quote the individual legal aid case reference number allocated to each application on all correspondence to help us link it to the correct case.

Criminal appeals - matters of special urgency (Regulation 15)

We are now issuing both the certificate and an account synopsis form when we grant legal aid under Regulation 15 for a criminal appeal. The legal aid case reference number for this grant should be clearly quoted on the full application form so that we can allocate the same reference number to the full application. Only one account should be rendered using the account synopsis form issued with the Regulation 15 grant. When full legal aid is granted for a criminal appeal case, no account synopsis form will be issued if Regulation 15 cover was previously granted.

Applying for sanction to employ counsel or an expert witness or for unusual or unusually expensive work

The sanction form (SANC/APP) must be used when applying for sanction to employ counsel or an expert witness or for unusual work or work involving unusually large expenditure. Use of this form will allow us to prioritise these requests and ensure that they are dealt with as quickly as possible.

Sanction for counsel - CR33 forms

Where we grant sanction for counsel, you will be notified of this grant, but the CR33 form will now be sent direct to Faculty Services. This will save unnecessary administration by solicitors and will also assist Faculty members. When a case is indicted in the High Court you should still submit the SANC/APP form and we will send out the CR33 in cases where the employment of counsel does not specifically require our approval.

Applying for transfer of agency

All applications for transfer of agency must be submitted on the form TRANS/APP (which may be sent by fax in a case of extreme urgency). The use of this form is mandatory and will enable us to prioritise these applications and ensure a quick turnaround. We cannot deal with requests made by letter or telephone.

Children's legal aid under section 29 of the Legal Aid (Scotland) Act 1986

Where an application is to be made to the sheriff for legal aid in proceedings involving children, please use the revised application form CHILD/APP. This is the new four page form with "Children Court" shown on the top right hand corner of the front page. Similarly, where an application is to be made to the Board for legal aid for an appeal in proceedings involving children, the revised form CHILD/APPLIAPP (with "Child Appeal Board" in the top corner) must be used. We are unable to accept the old style forms.

Use of faxes

We are, of course, always prepared to deal with requests faxed to us, but often the poor quality of faxed paper can result in costly double handling of paperwork. Where there is

extreme urgency, a fax may be sent. In other cases, however, because of our improved turnaround times, the application may simply be sent to us by post or through DX.

Application Forms

Civil legal aid - applications by children

In Issue 18 of The Recorder we said we were currently revising our application forms. A new financial statement form has now been introduced for completion by, or on behalf of, a child applying for civil legal aid. There will no longer be any need for a Part G Financial Statement to be completed in the case of a child applicant.

The new, single page form CIV/CHILD/APP (with "Financial Statement for an applicant who is a child" in the top right hand corner of the front page) is now available from the printers - Geo. Stewart and Co. You can post your order form to Stewarts at 67 Marionville Road, Edinburgh, EH7 6AJ or fax it to 0131 652 1348.

Covering Letters

When submitting advice and assistance intimations, solicitors do not need to send covering letters. All the information we require is contained within the intimation form. A letter is only necessary when additional relevant information accompanies the intimation, such as information clarifying the applicant's financial circumstances. Please also remember to include the applicant's personal identifier on the advice and assistance intimation form.

Legal Aid for Curators AD LITEM

We have recently reviewed the approach we take to the funding of work done by curators ad litem following representations made to us from a number of sources including the Scottish Association of Children's Curators and the Family Law Association.

As a result we have agreed that a different approach is warranted to the funding of work done by curators up to the point at which a decision is taken to assist as a party to the action.

In the past while we have made increases in authorised expenditure available under advice and assistance to curators to prepare and submit applications for civil legal aid we have not made increases available to cover the costs of the initial investigations or the preparation and submission of reports.

The Board will now consider requests for increases in authorised expenditure under advice and assistance to cover the costs of the initial investigations and reports. However, before a request is made we would expect the curator to apply to the court for an order for expenses from an appropriate party to the action. While recognising that each case must be dealt with on its own merits, an increase will normally only be considered reasonable where an order for expenses has been refused or postponed. As with all requests for increases, they must contain sufficient information to enable us to be satisfied that the request represents a reasonable expenditure of public funds.

Following the initial enquiries if the curator is of the view that he should enter the process then a request may also be made for an increase in authorised expenditure to cover the costs of preparing and submitting an application for civil legal aid.

As regards applications for civil legal aid in these cases it may be helpful at this stage to outline our requirements. We consider that probable cause can be established if the applicant demonstrates that he is entitled to enter the proceedings on the ward's behalf.

With regard to reasonableness, the applicant should focus on the need for the ward's

interests to be separately represented in the proceedings. An application should address such matters as for example:-

- any conflict of interest which has arisen or might arise between the child and both parents · any way in which the views of the child are not identical or broadly similar to one or other parent
- any undue pressure placed on a child or manipulation of the child by one or other of the parents
- any open conflict between the parties such that the interests of the child are in danger of being overlooked
- where the views of the child can only be conveyed to the court by representation as opposed to some other means such as report, interview or appearance as a witness.

The foregoing serve only as examples and are not intended to be exhaustive of the circumstances that may present in such cases. Our experience is however that in many applications we receive only a copy of the interlocutor of appointment and a statement from the curator to the effect that "I have been appointed curator and therefore need legal aid." This approach is patently insufficient. It must be remembered that irrespective of the terms of appointment, the statutory tests of probable cause and reasonableness must be addressed and met before a grant of civil legal aid can be made.

In all cases we would expect to receive the following, unless an explanation for its absence is provided:-

- a copy of the pleadings to date
- a copy of the interlocutor of appointment
- a note by the curator stating why he considers there is a need for separate representation, and
- copies of any statements obtained or reports prepared as part of the initial investigations.

Finally, please remember that if work requires to be done as a matter of special urgency to protect the applicant's position before the application is determined, a request for certification may be made under Regulation 18 in the normal way.

New Information Leaflets

We will shortly be producing a series of four information leaflets for applicants, which will replace the *Guide to Legal Aid in Scotland* and our *Charter Standard Statement*.

The leaflets will cover:

How legal aid can help you if you have been charged with a criminal offence

How legal aid can help you if you have a civil dispute

What civil legal aid may cost you, and

What you can expect from the Scottish Legal Aid Board.

Copies of all four leaflets will be sent to all legal aid firms in Scotland, as well as being available in Citizens Advice Bureaux, libraries and other advice or community centres. If you would like additional copies, please contact our Communications Office on ext. 426.

Yellow Pages Advertisements

You may be aware of the recent *Yellow Pages* promotion for firms carrying out legal aid work.

The promotion involves a series of advertisements featured in the *Yellow Pages* directories under the general *solicitors* heading. The advertisements will carry a heading showing the legal aid logo followed by a list of those firms taking part in the relevant area which wished to indicate that they undertook legal aid work. It has been drawn to our attention that some firms may be concerned that if they do not participate they will be seen as not carrying out

legal aid work in the relevant area. They may feel pressurised to participate because of this and the use of the legal aid logo in these advertisements.

We would like to make it clear that this scheme is not a Board initiative but a *Yellow Pages* promotion. The decision to subscribe is entirely one for the firm concerned. We place no requirement on firms carrying out legal aid work to participate and we draw no distinctions between those firms who chose to subscribe and those who do not.