

THE LAW SOCIETY OF SCOTLAND

SOLICITORS (SCOTLAND) (CIVIL LEGAL AID AND ADVICE AND ASSISTANCE) PRACTICE RULES 2003

Made on 29th August 2003 and amended on 25th June 2004 with the approval of the Lord President all in terms of section 34(3) of the Solicitors (Scotland) Act 1980.

1. Citation and Commencement

- (1) These rules may be cited as the Solicitors (Scotland) (Civil Legal Aid and Advice and Assistance) Practice Rules 2003.
- (2) These rules shall come into operation on 1st October 2003, save for rule 3(3) which shall come into operation on 1st October 2004.

2. Interpretation

- (1) In these rules, unless the context otherwise requires:

"the Act" means the Solicitors (Scotland) Act 1980;

"the 1986 Act" means the Legal Aid (Scotland) Act 1986;

"advice and assistance" means either or both of (i) advice and assistance on a civil matter or on a matter arising out of Part II of the Children (Scotland) Act 1995 and (ii) assistance by way of representation on a civil matter, within the meaning of section 6 of the 1986 Act, and to which Part 11 of the 1986 Act applies;

"associated solicitor" means, in relation to a practice unit, a solicitor who:

- (a) is that practice unit,
- (b) is a partner of that practice unit, where it is a firm
- (c) is a director or a member of that practice unit, where it is an incorporated practice,
- (d) is an employee of that practice unit, or
- (e) is a consultant to that practice unit;

"the Board" means the Scottish Legal Aid Board, established by the 1986 Act;

"children's legal aid" means legal aid to which section 29 of the 1986 Act applies;

"civil legal aid" has the meaning, given to it in Part III of the 1986 Act;

"compliance" means compliance in all material respects, and "comply" shall be construed accordingly;

"compliance certificate" means a certificate awarded by the Council in terms of rule 6;

"the Council" means the Council of the Society;

"employee" includes an associate;

"the Fund" has the meaning given to it in section 4(1) of the 1986 Act;

“incorporated practice” has the meaning given to it in section 34(1A) of the Act;

“legal aid” means (i) advice and assistance; (ii) civil legal aid; and (iii) children’s legal aid;

“legal aid files” means, in relation to a practice unit:

- (a) any files, papers or documents or copies thereof,
- (b) copies in printed format of any data held in any way, and
- (c) copies other than in printed format of any data held in any way

relating to the provision (whether current or past) of legal aid by that practice unit or the procedures followed, or to be followed, in doing so:

“practice unit” means (i) a solicitor who is a sole practitioner, (ii) a firm of solicitors or (iii) an incorporated practice,

“registered practice unit” means a practice unit that is registered;

“registration” means registration with the Board as a practice unit for the purpose of providing legal aid, and “registered” shall be construed accordingly;

“relevant date” means the relevant date as defined in rule 7,

“reviewer” means a person appointed by the Council in terms of rule 15;

“the Society” means the Law Society of Scotland; and

“solicitor” means a solicitor holding a practising certificate under the Act.

- (2) The Interpretation Act 1978 applies to the interpretation of these rules as it applies to the interpretation of an Act of Parliament.

3. Provision of legal aid

- (1) No solicitor shall:
 - (a) grant any application for advice and assistance,
 - (b) sign any application for civil legal aid as a solicitor nominated by the applicant, or
 - (c) sign any application for children’s legal aid as a solicitor nominated by the applicant unless he satisfies a condition set out in paragraph (2), and provided that rule 9 does not apply to him.
- (2) A solicitor satisfies a condition set out in this paragraph if he is acting:
 - (a) as a registered practice unit
 - (b) as a partner of a registered practice unit which is a firm or a director or member of a registered practice unit which is an incorporated practice, or
 - (c) as an employee of a registered practice unit, or
 - (d) as a consultant to a registered practice unit, or
 - (e) in the course of his employment by the Board, or
 - (f) pursuant to the terms of an exemption granted to him by the Council in terms of rule 16 (1).
- (3) No solicitor, firm of solicitors or incorporated practice shall apply to the Board for the registration of a practice unit which does not hold a compliance certificate.

4. Quality Assurance Scheme

The Council shall publish, and may from time to time amend, guidelines in relation to the provision of legal aid which shall set out the standards expected of solicitors and practice units in relation to the carrying out of such work. The Council may publish separate guidelines in relation to the provision of different types of legal aid. In providing legal aid, solicitors shall comply with those guidelines.

5. Obligation on practice units to ensure compliance with guidelines

A practice unit shall ensure compliance with the guidelines published in terms of rule 4 by any person undertaking any activity pursuant to the provision of legal aid by that practice unit.

6. Applications

- (1) The Council shall, subject to paragraph (3), on application for a compliance certificate being made by a practice unit, make such enquiry as to the ability of that practice unit to comply with the guidelines published in terms of rule 4 as the Council thinks fit, which may include interviewing any solicitor who is, or is to be, an associated solicitor of that practice unit, and a review of that practice unit pursuant to rules 14(1) and (2). That enquiry may be made on behalf of the Council by a reviewer. If that enquiry and review, if any, demonstrate that the practice unit complies, or will when it begins to provide legal aid comply, with the guidelines published pursuant to rule 4, the Council shall award a certificate to that effect to that practice unit, starting the date the practice unit was reviewed pursuant to rules 14 (1) and (2), or, if it has not been so reviewed, stating that fact. If that enquiry and review, if any, do not demonstrate that the practice unit complies, or will when it begins to provide legal aid comply with the guidelines published pursuant to rule 4, the Council shall, subject to rule 10, reject the application.
- (2) A practice unit may within six months of the relevant date apply for a review pursuant to rule 14(3), and provided that no previous review of that practice unit has been made pursuant to rule 14(3) since that date, the Council shall, subject to rule 14(4), instruct a review of that practice unit pursuant to rule 14(3) to be carried out not more than 12 months after the relevant date.
- (3) No application made pursuant to paragraph (1) shall be considered by the Council if it is made by a practice unit:
 - (a) having a compliance certificate on which a note has been made pursuant to rule 7, or
 - (b) within six months of
 - (i) renunciation of the compliance certificate of that practice unit pursuant to rule 8 (2), or
 - (ii) rejection of any application by that practice unit in terms of paragraph (1), or
 - (c) within 12 months of withdrawal of the compliance certificate of that practice unit pursuant to rule 7 or 8(1).
- (4) Applications made pursuant to paragraphs (1) and (2) shall be in the form determined by the Council from time to time.

7. Requirement for further review and withdrawal of compliance certificate on failure to apply or pay for further review

If, having regard to the results of a review carried out pursuant to rule 14(2), together with other relevant information, the Council decides that a practice unit should be further reviewed pursuant to rule 14(3), then it shall make a note to that effect on the compliance certificate of that practice unit. If that practice unit has not:

- (a) made any application in terms of rule 6 (2) within six months of the date the decision is made to make such a note (the date of such decision being the "relevant date"), or
- (b) in a case where the instruction of a review pursuant to rule 14(3) is made conditional by the Council on payment of the sum as provided for in rule 14(4), paid that sum to the Council by the date required by the Council,

the Council may withdraw the compliance certificate of that practice unit and if it shall do so, that compliance certificate shall cease to have effect from the date on which notification of that withdrawal is received by that practice unit.

8. Withdrawal and renunciation of compliance certificate

- (1) If, having regard to the results of a review carried out pursuant to rule 14(3), the Council decides that a practice unit does not comply with the guidelines published pursuant to rule 4, then it shall withdraw the compliance certificate of that practice unit, and that compliance certificate shall cease to have effect from the date on which notification of that withdrawal is received by that practice unit, and the provisions of rule 9 shall apply.
- (2) A practice unit may renounce its compliance certificate at any time by giving written notice to that effect to the Council. A notice of renunciation shall take effect from the date on which it is received by the Council, and the compliance certificate of that practice unit shall be withdrawn and cease to have effect from that date, and the provisions of rule 9 shall apply.

9. Effect of withdrawal or renunciation of compliance certificate

- (1) If the compliance certificate of a practice unit has been withdrawn pursuant to rule 7 or 8(1) or renounced pursuant to rule 8(2), then with effect from the date specified in rule 7, 8(1) or 8(2), as the case may be, on which that compliance certificate ceases to have effect, no associated solicitor shall
 - (a) grant any application for advice and assistance,
 - (b) sign any application for civil legal aid as a solicitor nominated by the applicant, or
 - (c) sign any application for children's legal aid.
- (2) No later than 28 days from the date in paragraph (1) each associated solicitor to a practice unit to which paragraph (1) applies who has granted any application for advice and assistance or has signed any application for civil legal aid as a solicitor nominated by the applicant or any application for children's legal aid or is otherwise providing legal aid shall:
 - (a) cease the provision of legal aid,
 - (b) in each case involving advice and assistance, notify the client in receipt of advice and assistance in writing that he and his practice unit must cease to act for that client, and
 - (c) in each case involving civil legal aid or children's legal aid, notify the applicant and the Board in writing that he and his practice unit must cease to act for the applicant, and supply to the Board a statement of his reasons for ceasing to act.
- (3) Each associated solicitor referred to in paragraph (2) shall, in each case involving civil legal aid or children's legal aid, co-operate with the applicant and the Board in the transfer of civil legal aid files to another nominated by the applicant in terms of an application made by the applicant to the Board and granted by the Board.
- (4) No practice unit to which paragraph (1) applies and no associated solicitor shall apply to the Board for payment out of the Fund of any fees or outlays incurred in respect of any legal aid which is provided by that associated solicitor after the expiry of the 28 day period referred to in paragraph (2).

10. Giving of Reasons

Where the Council is minded to:

- (a) reject an application in terms of rule 6(1), or
- (b) make a note on a compliance certificate pursuant to rule 7, or
- (c) withdraw a compliance certificate pursuant to rule 8(1)

then it shall give written notice of that fact to the relevant practice unit and supply that practice unit with copies of any information it proposes to rely on in coming to any such decision (with any deletions necessary to protect the identity of any person as appropriate), including, any report made in terms of rule 14(7), and shall have regard to written representations made to it by or on behalf of that practice unit, any associated solicitor and any other interested person.

11. Appeals

(1) Where the Council has:

- (a) rejected an application in terms of rule 6(1),
- (b) made a note on a compliance certificate pursuant to rule 7, or
- (c) withdrawn a compliance certificate pursuant to rule 8(1),

a practice unit which is the subject of any such decision and which is aggrieved by it may, within 21 days of written intimation of that decision, appeal to the Outer House of the Court of Session. The decision of the Outer House in relation to such an appeal shall be final.

(2) For the avoidance of doubt, in circumstances where a compliance certificate has been withdrawn in terms of rule 8(1) and an appeal against that decision is made in terms of paragraph (1), the provisions of rule 9 shall, subject to rule 16(2), continue to apply.

12. Updating of Certificate

Where, as a result of a review of a practice unit having a compliance certificate carried out pursuant to rule 14, the Council is satisfied that such a practice unit complies with the guidelines published pursuant to rule 4, the Council shall update the compliance certificate of that practice unit to show the date of that review.

13. Register of practice units holding compliance certificate

- (1) The Council shall maintain a register of practice units in relation to which a compliance certificate is in effect.
- (2) The Council may supply copies of entries in the register in paragraph (1) to such persons as it thinks fit.

14. Reviews

- (1) To enable it to ascertain whether a practice unit which holds, or has applied for, a compliance certificate complies, or will comply, with the guidelines published pursuant to rule 4, the Council may instruct a review of that practice unit by a reviewer specified by the Council. Where that practice unit has any legal aid files the Council may by written notice require any associated solicitor to deliver to the reviewer, or so far as he is able, to procure that any other person so delivers, by a date and to an address to be specified by that reviewer, the legal aid files specified by him. The reviewer shall review any such legal aid files, and carry out such other enquiry as he sees fit, with the object of

ascertaining whether that practice unit complies or will comply with the guidelines published pursuant to rule 4. Where that practice unit does not have any legal aid files, the reviewer shall carry out such enquiry as he thinks fit with the object ascertaining whether that practice unit complies or will comply with the guidelines published pursuant to rule 4.

- (2) Where, following a review in terms of paragraph (1), or on the basis of information received by it, it appears to the Council that a review at the premises of any practice unit is necessary or desirable to determine whether that practice unit complies or will comply with the guidelines published pursuant to rule 4, or where the Council reaches agreement to do so with a practice unit that would otherwise be subject to a review in terms of paragraph (1), the Council may by written notice require any associated solicitor to allow, or so far as he is able, to procure that any other person allows, access for that purpose by a reviewer on a date or dates to be specified by the Council to any premises, legal aid files or person. Where that practice unit has any legal aid files, the reviewer shall visit the premises, may review all or any such files and may carry out such other enquiry as he thinks fit with a view to ascertaining whether that practice unit complies or will comply with the guidelines published pursuant to rule 4. Where that practice unit has no legal aid files, the reviewer shall visit the premises and carry out such enquiry as he thinks fit with a view to ascertaining whether that practice unit complies or will comply with the guidelines published pursuant to rule 4.
- (3) A review in terms of this paragraph, which shall only be instructed pursuant to rule 6(2) subject to paragraph (4), is a review of a practice unit by a reviewer specified by the Council. The Council may by written notice require any associated solicitor to allow, or so far as he is able, to procure that any other person allows, access by that reviewer to any premises, legal aid files or person. Where a practice unit has any legal aid files, the reviewer shall visit the premises, may review all or any such files and may carry out such other enquiry as he thinks fit with a view to ascertaining whether that practice unit complies or will comply with the guidelines published pursuant to rule 4. Where that practice unit has no legal aid files, the reviewer shall visit the premises and carry out such enquiry as he thinks fit with a view to ascertaining whether that practice unit complies or will comply with the guidelines published pursuant to rule 4.
- (4) The Council may make the instruction pursuant to rule 6(2) of a review of a practice unit in terms of paragraph (3) conditional upon that practice unit paying or agreeing to pay to the Council such sum as may be required to meet the fees and costs incurred in connection with that review. The amount of such sum shall be fixed by the Council.
- (4A) Where a practice unit that would otherwise be subject to a review in terms of paragraph (1) reaches agreement with the Council that it is instead reviewed in terms of paragraph (2) pursuant to a request by that practice unit, the agreement of the Council to do so may be made conditional upon that practice unit paying or agreeing to pay to the Council such sum as may be required to meet the fees and cost incurred in connection with that review. The amount of such sum shall be fixed by the Council.
- (5) A solicitor who is a partner, director, or member of a practice unit or who is a sole practitioner shall ensure that the sum required to be paid by him or that practice unit in terms of paragraph (4) or 4(A) is paid.
- (6) A solicitor shall comply with all requirements placed in terms of paragraphs (1) to (3) above, and shall give reasonable co-operation to any reviewer acting in the course of any review or enquiry in terms of these rules.

- (7) Where:
- (a) in relation to a practice unit -
 - (i) a reviewer has completed his review of that practice unit in terms of paragraph (1), or
 - (ii) a reviewer has completed his review of that practice unit in terms of paragraph (2) or (3), or
 - (iii) any matter arises which in the opinion of a reviewer requires to be brought to the attention of the Council, or
 - (b) the Council requests it,

that reviewer shall make a written report to the Council on that review or matter or pursuant to that request.

15. Reviewers

- (1) In order to carry out reviews in terms of rule 14 and any other enquiry permitted or required in terms of these rules, the Council may appoint any person who consents to such appointment as a reviewer. Such a person shall be a solicitor.
- (2) A reviewer shall comply with any directions that may be given by the Council in respect of matters connected with reviews in terms of rule 14 or any other enquiry permitted or required in terms of these rules.
- (3) A reviewer shall be appointed for such term and be paid such remuneration as the Council may from time to time determine.

16. Exemption and Waiver

- (1) The Council may exempt any solicitor from the requirement to satisfy the conditions contained in paragraphs (a) to (e) of rule 3 (2), subject to such conditions, if any, as it considers appropriate.
- (2) The Council may waive any provision of these rules, either generally or in relation to any particular case, subject to such conditions, if any, as it considers appropriate.
- (3) The Council may, where the circumstances of any practice unit are exceptional, consider any application made by such practice unit pursuant to rule 6 (1) notwithstanding the provisions of rule 6 (3), subject to such conditions, if any, as it considers appropriate.