

## **Draft Code of Practice for Children’s Legal Assistance – Further Comments**

The Law Society has welcomed the opportunity to engage with the Scottish Legal Aid Board in relation to the drafting of a Code of Practice for Children’s Legal Assistance. Over the past year, we have commented on various drafts of the Code, and have continually made comments to improve the effectiveness and workability of the draft Code. We are pleased that the Board has requested and has been generally receptive to our suggestions, which has allowed considerable progress to be made in this way on a number of issues, including provisions relating to time recording, the registration and CPD requirements, removal of the need for a written record of training, and increasing the period allowed for making certain intimations to SLAB to minimise the likelihood of unintended consequences.

The draft Code is now at the stage of submission to the Scottish Government for approval. Although we note the considerable progress that has been made, the Society continues to have some concerns over the current drafting of the Code. The following concerns have previously been raised with SLAB and remain:

1. Time Recording – we welcome the removal of the requirement for specific time recording for phone calls and letter writing, and we do not object to the requirement for specific time recording for court attendance, waiting and travel time. However, we do not accept the need for a record of specific start/finish times (as opposed to durations) for perusal of papers or preparation for hearings, and we doubt the need for this in relation to meetings with clients. This is an unnecessary burden on the profession, and in our view disproportionate and objectionable. It has repeatedly been suggested to us that the purpose of this is to avoid fraud. Given that the majority of solicitors carrying out children’s legal assistance work are unlikely to be recording actual start and finish times for the remainder of their work, such a requirement is unlikely in any event to make it possible to detect such fraud. We consider that the profession should be made aware that such detailed time recording is likely to be required.
2. Standards of service – we did not comment previously on this section of the code, as it was understood that this would be amended to refer to the quality assurance criteria without specifying standards in the code. However, the draft Code continues to contain a number of specific standards. We wish to be given the opportunity to comment on these before the code is finalised. We understand also that the Quality Assurance Committee will wish to comment. This will be brought before them at their January meeting.
3. Failure to attend a hearing/court calling – we do not accept that it is necessary or appropriate to include failure to attend a hearing or court calling as an indicator that the solicitor did not have adequate resources to accept instructions in a case. However, if it is to remain in the Code, there needs to be clarification that a solicitor does not necessarily have a duty to attend every Children’s Hearing or court hearing. This is often a matter of professional judgment for a solicitor. Additionally, there may

be a number of Children's Hearings in a case for which a client would wish, and perhaps expect, representation but for which there would be no payment for the solicitor. In such cases there is no "failure". We are concerned that without express clarification within the Code, an apparent requirement for a solicitor to represent a client at every Children's Hearing and court hearing might, if the Code were made publicly available, lead to complaints from clients due to a misunderstanding of the duty.

4. Relationship with SLAB – the draft Code requires solicitors and other staff to conduct themselves in a professional manner and at all times demonstrate respect and civility when communicating with SLAB staff. SLAB has declined to make this requirement mutual, and in the absence of inclusion in the Code, we have requested to see the guidance provided to SLAB staff concerning respect and courtesy to solicitors. We would also note that, although discourteous communication could be the subject of a complaint to the firm, the consequence of non-compliance with the Code is potential de-registration and it seems a disproportionate penalty for discourtesy. We question the necessity of this section in the code.
5. Cover (duty) scheme – we are very concerned at the lack of detail currently available on the proposed cover scheme. Although we note that a number of firms expressed interest in registering for the scheme, this was on the basis of general principle without any detail of the scheme being available at the time, and we would be concerned if firms were asked to register without having adequate time to consider both the full details of the duty scheme, and the registration requirements within the code of practice – including details of the quality assurance scheme. Until further information is available, firms may consider it advisable to register under notice that they may choose to de-register once full details of the scheme are known.

We will continue to monitor the progress and implementation of the new Code of Practice for Children's Legal Assistance, and to make comments with a view to ensuring a Code that is fit for purpose. If you have any questions or comments on this issue, please contact Marina Sinclair-Chin (email: [marinasinclair-chin@lawscot.org.uk](mailto:marinasinclair-chin@lawscot.org.uk)).