

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE SCOTTISH LEGAL AID BOARD  
AND  
THE LAW SOCIETY OF SCOTLAND**

**CIVIL LEGAL ASSISTANCE**

**A. DEFINITIONS**

In this document:

“Administrator” means the Quality Assurance Administrator appointed in terms of paragraph F1 hereof;

“Associated solicitor” has the same meaning as in Rule 2 of the Practice Rules;

“Board” means the Scottish Legal Aid Board;

“Civil legal assistance” means (a) advice and assistance which is either or both of (i) advice and assistance on a civil matter and (ii) assistance by way of representation on a civil matter, within the meaning of section 6 of the Legal Aid (Scotland) Act 1986, and to which Part II of the Legal Aid (Scotland) Act 1986 applies; and (b) civil legal aid in terms of Part III of the Legal Aid (Scotland) Act 1986;

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

“Practice Rules” means the Law Society of Scotland Practice Rules 2011 and any amendment thereof;

“Regulatory Committee” means the Regulatory Committee of the Council of the Law Society of Scotland as described in Section 3B of the Solicitors (Scotland) Act 1980

“Reviewer” means a peer reviewer appointed by the Council in terms of Rule 15(1) of the Practice Rules;

Reviews:

“Routine Review” means a peer review of a practice unit instructed by the Council in terms of Rule C3.13.1 of the Practice Rules, in order to enable the Council 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 C3.3.1 of the Practice Rules;

“Extended Review” means a peer review of a practice unit instructed by the Council in terms of Rule C3.13.2 of the Practice Rules, where following a Routine Review it appears to the Council that a review at the premises of the practice unit is necessary or desirable to determine whether that practice unit

complies or will comply with the guidelines published pursuant to Rule C3.3.1 of the Practice Rules.

“Special Review” means a peer review of a practice unit instructed by the Council in terms of Rule C3.13.2 of the Practice Rules, where on the basis of information received by it, it appears to the Council that a review at the premises of the practice unit is necessary or desirable to determine whether that practice unit complies or will comply with the guidelines published pursuant to Rule C3.3.1 of the Practice Rules.

“Final Review” means a peer review of a practice unit instructed by the Council in terms of Rules C3.5.2 and C3.13.1 of the Practice Rules.

## **B. THE QUALITY ASSURANCE COMMITTEE**

### **Constitution of the Committee, Meetings and Quorum**

- B1 The Quality Assurance Committee (“the Committee”), which is a sub Committee of the Regulatory Committee, shall comprise ten members of whom five will be solicitors. The Regulatory Committee shall recommend the members of the Committee to the Council for approval. In recommending and appointing members of the Committee, the Quality Assurance Committee and the Regulatory Committee will keep in mind their duty to act independently of the Council and any other body including the Board.

The membership shall comprise:

- The Convener of the Committee, who shall be a solicitor in practice with current or recent experience of undertaking civil legal assistance work for clients, recommended to the Regulatory Committee by the Nominations Committee. In deciding whether to recommend a person to the Council as Convener of the Committee, the Nominations Committee will allow the Board the opportunity to comment on the applications, and will take into account the views of the Board when reaching a decision. The Nominations Committee will have regard to the desirability of maintaining an overall balance on the committee of solicitors who are in private practice and those practising in entities such as law centres, advice agencies etc which may be funded by or through the Board.
- The Committee may appoint a Vice-Convener
- Four solicitors in practice with current or recent experience of undertaking civil legal assistance work for clients, recommended to the Regulatory Committee by the Committee. In relation to the appointment of two of the solicitors, the Committee shall consult with the Board and take into account the views of the Board. In particular, the Committee will take into account the benefit in carrying out its functions of including in its membership solicitors who have experience of working within the Board, or closely with it, in the area of civil legal assistance. In appointing or recommending other solicitors for appointment to the committee, the committee, will have regard to the desirability of maintaining an overall balance on the committee of solicitors who are in private practice and those practising in entities such as

law centres, advice agencies etc which may be funded by or through the Board.

- Five non solicitors, four of whom shall be chosen in the same manner as the Council chooses non solicitors to sit on its other regulatory sub committees but with the Board and the Scottish Government represented on the selection panel if they wish to be so represented. In relation to the appointment of the fifth non solicitor the Committee shall consult with the Board and take into account the views of the Board. In particular, the Committee will take into account the benefit in carrying out its functions of including in its membership solicitors who have experience of working within the Board, or closely with it, in the area of civil legal assistance.

All members of the Committee will act independently, and acknowledge that in discharging their regulatory functions on behalf of the Regulatory Committee they do not represent the Council, the Scottish Government or the Board

- B2 The Secretariat of the Committee will be provided by the Quality Assurance Administrator who will attend its meetings in a non-voting capacity.
- B3 The Committee will operate under delegated powers from the Council and Regulatory Committee. The Society's Standing Orders will apply to the Committee and the Convener will have both a deliberative and a casting vote. The Board will be entitled to receive copies of the Minutes of meetings of the Committee, and all review reports, correspondence and other documents available to or considered by the Committee in its deliberations in relation to practice units will be available to the Board contemporaneously.
- B4 The Committee will meet as many times as is necessary to deal with the business arising. The Convener will have the discretion to call special meetings of the Committee. Participation in meetings by telephone, video or other digital or electronic means of conferencing will be allowed as required.
- B5 The Committee shall be quorate if three members are present provided that one is a solicitor in practice, one is a solicitor with a close association with the Scottish Legal Aid Board, and one is a non-solicitor member.

#### **Remit of the Committee**

- B6 The Committee's remit is to discharge the functions of the Council in relation to the Practice Rules, so as to assure the quality of civil legal assistance services provided by practice units which are registered to provide such services, and to foster and encourage good practice in the provision of such services. The Committee will for these purposes:-
- Instruct, receive and consider all peer reviews of practice units.
  - Decide whether a practice unit should hold or continue to hold a compliance certificate and issue compliance certificates.
  - Determine the file sampling methodology for Civil Legal Assistance peer reviews

- Promote good practice in the provision of quality assured Civil Legal Assistance.
- Promote consistency in the quality assurance process.
- Appoint, re-appoint, dismiss or terminate contracts, train and monitor Peer Reviewers.
- Receive and consider applications for compliance certificates.
- Collect statistics and analyse trends in the quality assurance process, and make recommendations to the Society, the Board and the Scottish Government where the committee considers change necessary. The implementation of such changes requires agreement between the Society, the Board and the Scottish Government.
- Consider in appropriate circumstances whether to refer a practice unit or practitioner to the Board or to the Complaints Sub-Committee of the Society
- Consider requests by practice units for routine reviews to be carried out at their premises.

### **Section 31 of the Legal Aid (Scotland) Act 1986**

- B7 Where circumstances are identified, either by a Reviewer or by the Committee, which fall within the scope of section 31 of the Legal Aid (Scotland) Act 1986, the Reviewer shall report this to the Committee and the Committee should report the matter to the Board for its consideration, in accordance with any guidance provided by the Board or otherwise as the Committee considers appropriate.
- B8 Where a report is made to the Board under paragraph B7 the Administrator shall inform the Director of Regulation of the Society promptly.
- B9 The Committee will be advised by the Board of its decision and the outcome of any such report and the Administrator will inform the Director of Regulation of the Society without delay.
- B10 Where in the course of a review of a practice unit, a Reviewer identifies concerns about the conduct of a solicitor he/she shall report that matter to the Committee who may refer the matter in the first instance as a conduct complaint to the Scottish Legal Complaints Commission. At the time such a referral is made, the Administrator will also inform the Board of the referral, and will provide details of the nature of the complaint.
- B11 Where in the course of a review of a practice unit, a Reviewer identifies any matter which he/she considers should be reported to a Money Laundering Officer, he/she shall report this promptly to the Administrator who will be responsible for dealing with such matter in accordance with the Society's Money Laundering Prevention Procedures.

**C. REGISTER**

- C1 A Register of practice units registered to practice civil legal assistance shall be maintained by the Board (“the Register”).
- C2 The Register shall be published and publicly available.
- C3 A practice unit shall be removed from the Register on the Board’s being advised by the Committee that its compliance certificate has been renounced or terminated.
- C4 The Administrator shall maintain a record of the associated practising solicitors of each practice unit, as intimated by the Compliance Managers of the practice units.

**D. REVIEWERS**

- D1 The Council shall, for the purposes of peer review, appoint such number of Reviewers as may be agreed from time to time between the Council, the Scottish Legal Aid Board and the Scottish Government
- D2 The recruitment and re-appointment process will follow the procedure to be agreed by the Committee. Recruitment and re-appointment panels will include a member of each of the three representative constituencies of the Committee.
- D3 Each Reviewer shall be a solicitor and shall undertake the initial and ongoing training prescribed by the Committee.
- D4 The terms and conditions of appointment of Reviewers will be as agreed from time to time between the Council, the Board and the Scottish Government.
- D5 The Council will publish a list of Reviewers and keep this updated.

**E. REVIEWS**

- E1 A Routine Review will normally be conducted outwith the practice unit’s premises. The practice unit may request that the Routine Review is conducted at its premises, in which case any additional costs in conducting the review at the premises shall be borne by the practice unit. The Committee may request a practice unit to agree that a Routine Review will be conducted at its premises, in which case any additional costs shall be borne by the Board.
- E2 Where the Committee instructs an Extended Review of a practice unit the cost will be borne by the Board and the consent of the practice unit to conduct an Extended Review at its premises is not required.
- E3 Where the Committee instructs a Final Review of a practice unit, the practice unit shall be invoiced for and required to pay the cost of the final review. The cost to be charged will be determined by the Committee, but shall not exceed the

actual cost to the Society, before reimbursement from the Board, in carrying out the Final Review.

E4 Where the Committee instructs a Special Review the cost shall be borne by the Board and consent of the practice unit to conduct a Special Review is not required.

E5 Where a practice unit has been subject to a Special Review, and the outcome of that review is satisfactory to the Committee, its compliance record will be updated to show that it will not be subject to a Routine Review until the expiry of the cycle in which the Special Review occurred. However, a further Special Review may, at the discretion of the Committee, be undertaken during this period.

## **F. ADMINISTRATION OF PEER REVIEWS**

### **Administrator**

F1 The Council shall, for the purposes of administering the quality assurance process, employ a Quality Assurance Administrator on terms and conditions set by the Council

### **Selection of Files for Review**

F2 Civil legal assistance files for review will be selected randomly by the Board so as to provide a representative cross-section of the legal aid and legal advice and assistance files held by the practice unit and its associated solicitors. Files will be selected for each associated solicitor, separately from both designated and non-designated categories.

In this paragraph:

“Designated categories” are those where the subject matter of the civil legal assistance falls within such of the Board’s category codes as may be designated by the Committee from time to time.

“Non-designated categories” are all category codes not so designated.

The “current level of civil legal aid business” is the number of registrations of civil legal aid matters made by the associated solicitor in the year prior to the date of the review in question.

The “designated percentage” is the percentage of designated category files to be selected for review, as decided by the Committee from time to time.

The “non-designated percentage” is the percentage of non-designated category files to be selected for review, as decided by the Committee from time to time.

The number of designated category files to be reviewed for each associated solicitor will be the current level of business multiplied by the designated percentage. These files will be selected from all the designated category files held by the associated solicitor at the date of the review.

The number of non-designated files will be selected in a similar manner, applying the non-designated percentage to all non-designated category files.

In the event that there are fewer than five civil legal assistance files available for the practice unit, then all the available files will be reviewed. The files chosen may include open as well as closed files.

- F3 Where the Board or the Council has specific concerns over a case it will ask the Committee to include the relevant file(s) in the sample for review. Where that is so, any such file requested shall be in addition to the files selected under paragraph F2.
- F4 Where possible both legal aid and advice and assistance files will be reviewed. Where a file is selected for review, the practice unit will submit all files held by the practice unit which are connected to or associated with the Board's reference number selected. For example, where a civil legal aid reference number is selected the associated advice and assistance file will be included and vice versa.
- F5 Where a practice unit is unable for good reason to supply one or more of the requested files it shall inform the Administrator of the reason as soon as practicable and if the Committee is satisfied there is good reason for the failure to supply the requested file(s) the Administrator shall ask the Board to identify alternative file(s) to be reviewed. The files not produced may be reviewed at a later date if so determined by the Committee.
- F6 The final decision as to when each registered practice unit is to be reviewed shall lie with the Committee. Subject to paragraph F2, the final decision as to which of the practice unit's files are to be reviewed shall lie with the Board. Details about files to be reviewed shall be transmitted by the Board to the Administrator in a sufficiently detailed manner to allow the easy identification of the files, and any associated files, in question.

#### **Allocation of Reviewers**

- F7 The Administrator will make arrangements for an appropriate Reviewer(s) to carry out a review. When allocating a Reviewer, the Administrator shall take into account all relevant matters including the area(s) of civil legal assistance undertaken by the practice unit, the Reviewer's specialism(s), any geographical considerations, any potential conflicts, and whether the Reviewer has previously reviewed the practice unit within the same cycle of reviews. Reviewers will be placed under an obligation to disclose any reason why it may be inappropriate that they review a particular practice unit or file. Any practice unit may make representations to the Administrator regarding the suitability of any Reviewer to carry out a review of the practice unit. Where a practice unit objects to a particular Reviewer any representations must be sent in writing to the Administrator as soon as possible and in any event at least 1 week prior to the date of the review and must include the reason(s) for the objection. The Administrator, where necessary seeking the advice of the Committee as required, may decide whether the review should be carried out by another Reviewer.

- F8 The Administrator will make suitable arrangements for the requisition, collection, review and return of files to practice units. Where the practice unit does not deliver the requisitioned files by the specified date, the Administrator shall report this to the Committee who, at its discretion, may (a) report the matter to the Professional Conduct Committee of the Society and/or (b) treat the practice unit as having an unsatisfactory outcome of that review.

### **Conduct of Reviews**

- F9 In undertaking a review, the Reviewer shall assess the quality of the work carried out on behalf of the client and the Board in line with guidelines published by the Council pursuant to Rule 4 of the Practice Rules. The Reviewer shall apply the criteria and marking system as agreed by the Board and the Council.
- F10 The Reviewer shall supply the Administrator with the completed reports of the review in electronic or other form, using the standard forms agreed by the Committee, and providing such additional information as he/she considers appropriate or is asked for.
- F11 The outcome of an earlier review or reviews of a practice unit (whether or not in the same cycle of reviews) shall be brought to the attention of the Reviewer at the next review of that practice unit and the Reviewer will be asked to comment on any changes in performance of the practice unit since an earlier review in his/her report.
- F12 The Committee may ask a Reviewer to attend a meeting of the Committee to discuss his/her reports on a review of a practice unit.
- F13 Where, on considering the report(s) received from a Reviewer(s) on a review of a practice unit, the Committee decides not to ratify a recommendation made by a Reviewer, it shall record its reason for that decision.

## **G. FUNDING**

### **Reviewers**

- G1. Each Reviewer shall be remunerated by the Society at a rate agreed from time to time between the Council and the Board.
- G2. The cost of the Reviewers' remuneration (including, where applicable and appropriate, any employers' national insurance contributions or other reasonable associated costs of employment) will be met by the Board. In the case of a full-time Reviewer, the cost of renewing his/her practising certificate will be met by the Board. The Board will not be responsible for administration or establishment overheads relating to a full-time Reviewer.
- G3. The rates of remuneration payable to Reviewers shall be reviewed regularly by the Committee. The rates shall be reviewed not less than once per annum, but it is open to the Committee to decide that no increase is required. Where the

Committee determines that an increase is appropriate, the Committee's recommendations shall be made to the Scottish Government and the Board who shall determine the matter.

- G4. The total cost of the Reviewers' prescribed training for the purposes of peer review will be met by the Board.
- G5. Subject to paragraphs E1 and E3, travel and subsistence expenses reasonably incurred by Reviewers in the course of undertaking reviews and/or training will be met by the Board at the travel and subsistence rates laid down by the Scottish Government.

#### **Administrator**

- G6. The Administrator shall be employed and remunerated by the Society. The Administrator's contract terms and conditions will be those of the Society.
- G7. Administrative and support costs will be paid by the Board as agreed between the Society and the Board from time to time.

#### **Payments and reimbursement**

- G8. Payment of the above and, unless otherwise agreed, any additional agreed costs, shall be met, in the first instance by the Society who in turn, except where the costs should be recovered from the practice unit, shall be reimbursed by the Board following receipt of an invoice from the Society (which shall normally be rendered on a monthly basis).
- G9. The Society shall retain for at least seven years the detailed records supporting the payments it makes and the reimbursements sought from the Board. The Board will, for audit purposes, have the right to inspect these records which right will extend to Audit Scotland or their appointed auditor.
- G10. Reimbursement to the Society of other costs associated with running the civil quality assurance scheme will only be made following agreement between the Board, the Council and the Scottish Government.
- G11. Any proposed change to the scheme which may have a significant effect on the budget or any significant proposed expenditure must be referred to the Council, the Board and the Scottish Government for consideration.

#### **H. GENERAL**

- H1. Any exceptions to this Memorandum shall be determined in consultation between the Council, the Board and the Scottish Government.

#### **I. APPENDICES**

##### **APPENDIX A**

**Administrative Requirements For Civil Registration**

APPENDIX B

**Double Marking, Duration of Cycle, Designated Categories and Percentages**

APPENDIX C

**Quality Assurance Scheme Peer Review Flowchart**

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Signed for and on behalf of the Law Society of Scotland

.....  
Date

.....  
Signed for and on behalf of the Scottish Legal Aid Board

.....  
Date

## APPENDIX A

### **Administrative Requirements For Civil Registration**

Procedure for opening, and closing of a file for civil legal assistance, and monitoring its status

Procedure for recording work carried out for the client, and all material advice tendered to the client as the case proceeds.

Procedure for ensuring that all solicitors providing Civil legal assistance remain acquainted with the Regulations

Procedure to ensure that all documents and other paperwork submitted to SLAB are in order

Procedure for the control of incoming and outgoing mail

Procedure for the periodic review of a sample of cases being conducted under auspices of the civil legal assistance scheme

Procedure for the review of the conduct of a sample of cases conducted under the civil legal assistance scheme at the conclusion of the case.

Procedure for dealing with complaints either from the client, the Law Society or from SLAB arising from any civil legal assistance case.

Procedure for submitting accounts to SLAB and dealing with subsequent correspondence and queries, and recording the receipt of payment.

Procedure for ensuring that all members of the practice unit's admin and support staff are aware of the practice unit's procedures and are observing them.

## APPENDIX B

### **Double Marking, Duration of Cycle, Designated Categories and Percentages**

**Effective for the third cycle of reviews commencing in 2011  
Subject to review for subsequent cycles**

#### **1 Double Marking**

In the second cycle 25% of all files were double marked. In the third cycle 25% of all files will be double marked for the first half of the cycle (in terms of number of practice units reviewed). In the second half of the cycle double marking will be reduced to 12% of files marked.

#### **2 Duration of Cycle**

The third cycle of reviews will commence on the date of the first review of a practice unit in the cycle, and will last for six years.

#### **3 Designated Categories**

The designated categories of work will be:

Civil Advice & assistance / ABWOR

ASY - Asylum  
IMN - Immigration  
MENO - Mental Health  
AISA - Adults with Incapacity  
EMP - Employment  
ET - Employment Tribunal

Civil legal aid

ASY - Asylum  
IMN - Immigration  
JR - Judicial Review  
AISA - Adults with Incapacity

#### **4 Percentages**

10% of designated category files will be reviewed

3% of non-designated category files will be reviewed