

Rule C3: Civil Legal Aid

Interpretation

3.1 In this rule 3, ~~unless the context otherwise requires,~~ terms listed in the first column of rule 3.1 shall have the meanings respectively ascribed to them in the second column of that rule:

Comment [SH1]: To avoid confusion

Term

Definition

ABWOR

advice and assistance provided to a person by taking on ~~his~~ behalf of that person any step in instituting, conducting or defending proceedings (a) before a court or tribunal; or (b) in connection with a statutory enquiry whether by representing ~~him~~ that person in those proceedings or by otherwise taking any steps on ~~his~~ behalf of that person (as distinct from assisting ~~him~~ that person in taking such a step ~~on his behalf~~ on that person's behalf)

Comment [SH2]: Changes to make drafting gender neutral

advice and assistance

advice and assistance on a civil matter within the meaning of section 6 of the 1986 Act and to which Part II of the 1986 Act applies excepting any matter arising out of Chapters 2 and 3 of the Children (Scotland) Act 1995 and the Children's Hearings (Scotland) Act 2011

associated practising solicitor

in relation to a practice unit, a practising solicitor who is a manager, employee, consultant or associate of that :

~~(a) is a manager of that practice unit,~~

~~(b) is an employee of that practice unit, or~~

~~(c) is a consultant to that~~ practice unit

the Board

the Scottish Legal Aid Board, established by section 1 of the 1986 Act

civil legal aid

the meaning given to it in Part III of the 1986 Act

compliance

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

Comment [SH3]: Unnecessary

compliance certificate

a certificate awarded by the Council in terms of rule 3.5

employee

~~includes an associate~~

Comment [SH4]: Unnecessary if definition of associated practising solicitor amended as above

the Fund

the meaning given to it in section 4(1) of the 1986 Act

legal aid

(i) advice and assistance and (ii) civil legal aid

legal aid files

~~in relation to a practice unit, all documents or records held by any method by which information is stored in a way accessible for future reference~~

Comment [SH5]: Would simplify and clarify that includes all material, no matter how held

~~(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~~

Comment [SH6]: wording unnecessary now

practising solicitor

as defined in Schedule 1 but including a registered European lawyer providing or seeking to provide legal aid pursuant to regulation 14 of the European Lawyer Regulations provided that nothing in these rules shall confer on any registered European lawyer any entitlement to practice under the title of "solicitor"

registered practice unit

a practice unit that is registered with the Board as a practice unit for the purpose

~~of providing legal aid, and “registered” and “registration” shall be construed accordingly~~

Comment [SH7]: To incorporate following definition

registration

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

Comment [SH8]: As comment above

relevant date

the relevant date as defined in rule 3.6.1

reviewer

a person appointed by the Council in terms of rule 3.13

Provision of legal aid

3.2.1 No practising solicitor shall:

- (a) grant any application for advice and assistance;
- (b) sign any application for civil legal aid as a practising solicitor nominated by the applicant; or
- (c) sign any application for ABWOR as a practising solicitor nominated by the applicant

~~unless that solicitor is acting (i) as an associated practising solicitor of a registered practice unit; or (ii) in the course of employment by the Board, satisfies a condition set out in rule 3.2.2, and provided that rule 3.8 does not apply to him.~~

~~3.2.2 A practising solicitor satisfies a condition set out in this rule 3.2.2 if he is acting:~~

- ~~(a) as a registered practice unit;~~
- ~~(b) as a manager of a registered practice unit; 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 3.15.~~

Comment [SH9]: The ability to exempt has been deleted as it was never exercised & wording simplified

3.2.3 No ~~practising solicitor or~~ practice unit shall apply to the Board for ~~the registration of a practice unit which does not unless it~~ holds a compliance ~~certificate~~.

Comment [SH10]: Wording simplified

Quality Assurance Scheme

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

Comment [SH11]: No longer necessary as scheme now only covers one type

3.3.2 Every practice unit applying for or holding a compliance certificate shall designate one of its managers as Compliance Manager, to whom notices and other communications to the practice unit from the Society, the Council or the Board which are related to (i) this rule 3; (ii) the practice unit's compliance certificate (or any application for same); or (iii) otherwise related to the practice unit's registration or its provision of legal aid, may be addressed.

3.3.3 The designation required by rule 3.3.2 shall be made and intimated in writing to the Society (which intimation shall include full contact details for the manager so designated) ~~at the same time as submitting the application for a compliance certificate.:~~

~~(a) — in the case of a practice unit which is applying for a compliance certificate, on submission of the application for same;~~

~~(b) — in every other case, within 28 days of these rules coming into operation.~~

Comment [SH12]: No longer necessary

3.3.4 Any change to the identity or contact details of a Compliance Manager shall be intimated to the Society, in writing, within 28 days of the effective date of the change.

Obligation on practice units to ensure compliance with guidance

3.4 A practice unit shall ensure compliance with the guidance published in terms of rule 3.3.1 by any person undertaking any activity pursuant to the provision of legal aid by that practice unit.

Applications

3.5.1 The Council shall, subject to rule 3.5.3, on application for a compliance certificate being made by ~~or on behalf of a~~ practice unit, make such enquiry as to the ability of that practice unit to comply with the guidance published in terms of rule 3.3.1 as the Council thinks fit, which may include interviewing any practising solicitor who is, or is to be, an associated practising solicitor of that practice unit, and a review of that practice unit pursuant to rules ~~3.12.3.1 and 3.13.2.~~ ~~Any such That~~ enquiry may be made on behalf of the Council by a ~~reviewer~~.

Comment [SH13]: Simpler

3.5.2 If the ~~at~~ enquiry ~~made in terms of rule 3.5.1 and review, if any,~~ demonstrates that the practice unit complies, or will when it begins to provide legal aid comply, with the guidance published pursuant to rule 3.3.1, the Council shall award a certificate to that effect to that practice unit, starting ~~on the date the practice unit was reviewed pursuant to rules 3.13.1 and 3.13.2, or, if it has not been so reviewed, stating that~~

Comment [SH14]: Former 3.5.1 divided into separate provisions for readability

Comment [SH15]: 3.5.1 includes any review within the enquiry so unnecessary to repeat

Comment [SH16]: Already covered in 3.5.1

~~fact and starting~~ on such date as the Council considers appropriate. If that enquiry ~~and review, if any, does~~ not demonstrate that the practice unit complies, or will when it begins to provide legal aid comply, with the guidance published pursuant to rule 3.3.1, the Council shall, subject to rule 3.9, reject the application.

Comment [SH17]: On occasion it is helpful to backdate the certificate to assist the practice where there has been no delay on its part and the firm and/or its clients might be prejudiced if legal aid is not in place on a particular date. Also there is no need or benefit in stating on the certificate whether or not a review has taken place.

~~3.5.2 A practice unit may within six months of the relevant date apply for a review pursuant to rule 3.13.3, and provided that no previous review of that practice unit has been made pursuant to rule 3.13.3 since that date, the Council shall, subject to rule 3.13.4, instruct a review of that practice unit pursuant to rule 3.13.3 to be carried out not more than 12 months after the relevant date.~~

Comment [SH18]: Provision moved to 3.6 and amended – see below

3.5.3 No application ~~made pursuant to rule 3.5.2 for a compliance certificate~~ shall be considered by the Council if it is made by a practice unit:

Comment [SH19]: Previous incorrect cross reference removed – this seems simpler

- (a) having a compliance certificate on which a note has been made pursuant to rule 3.6.1; or
- (b) within six months of
 - (i) renunciation of the compliance certificate of that practice unit pursuant to rule 3.7.2; or
 - (ii) rejection of any application by that practice unit in terms of rule 3.5.24; or
- (c) within 12 months of withdrawal of the compliance certificate of that practice unit pursuant to rule 3.6.1 or 3.7.1.

~~3.5.4 Applications made pursuant to rules 3.5.1 and 3.5.2 shall be in the form determined by the Council from time to time.~~

Comment [SH20]: No specific form of application

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

Comment [SH21]: Charging provisions removed

3.6.1- If, having regard to the results of a review carried out pursuant to rule 3.123.2(ba) (an extended review), or to rule 3.123.23(cb) (a special review), together with other relevant information, the Council decides that a practice unit should be further reviewed pursuant to rule 3.123.2(d)3 (a final review), 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 3.6.25.2 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 3.13.3 is made conditional by the Council on payment of or agreement to pay the sum as provided for in rule 3.13.4, 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 does so, it shall notify the practice unit of the withdrawal of the compliance certificate and the compliance certificate shall cease to have effect three working days after receipt of that notice.

3.65.2 A practice unit may, within six months of the relevant date, apply for a final review in terms of pursuant to rule 3.1~~23.2(d)3~~, and, provided that no previous review of that practice unit has been made pursuant to rule 3.1~~2.2(d)3-3~~ since that date, the Council shall, ~~subject to rule 3.13.4~~, instruct a review of that practice unit pursuant to rule 3.1~~2.2(d)3-3~~ to be carried out not more than 12 months after the relevant date.

Comment [SH22]: Moved from what was 3.5.2 – makes more sense here

Withdrawal and renunciation of compliance certificate

3.7.1 If, having regard to the results of a review carried out pursuant to rule 3.1~~23.32(d)~~ (a final review), the Council decides that a practice unit does not comply with the guidance published pursuant to rule 3.3.1, then it shall withdraw the compliance certificate of that practice unit. The Council shall notify the practice unit of the withdrawal of the compliance certificate and the compliance certificate shall cease to have effect three working days after receipt of that notice, and the provisions of rule 3.8 shall apply.

3.7.2 A practice unit may renounce its compliance certificate at any time by giving 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 3.8 shall apply.

Effect of withdrawal or renunciation of compliance certificate

3.8.1 If the compliance certificate of a practice unit has been withdrawn pursuant to rule 3.6.1 or 3.7.1 or renounced pursuant to rule 3.7.2, then with effect from the date specified in rule 3.6.1, 3.7.1 or 3.7.2, as the case may be, on which that compliance certificate ceases to have effect, no associated practising solicitor shall

Comment [SH23]: Previously omitted but seems to be required

- (a) grant any application for advice and assistance,
- (b) sign any application for civil legal aid as a practising solicitor nominated by the applicant, or
- (c) sign any application for ABWOR as a practising solicitor nominated by the applicant.

3.8.2 No later than 28 days from the date in rule 3.8.1 each associated practising solicitor to a practice unit to which rule 3.8.1 applies who has granted any application for advice and assistance or has signed any application for ABWOR or civil legal aid as a practising solicitor nominated by the applicant or is otherwise providing legal aid shall:

- (a) cease the provision of legal aid,
- (b) in each case involving advice and assistance or ABWOR, notify the client in receipt of advice and assistance or ABWOR in writing that the solicitor and the he and his practice unit with which the solicitor is associated must cease to act for that client, and
- (c) in each case involving civil legal aid, notify the applicant and (where the compliance certificate has been renounced) the Board in writing that the solicitor and he and his the practice unit with which the solicitor is associated must cease to act for the applicant and supply to the Board a statement of the his reasons for ceasing to act.

Comment [SH24]: To make gender neutral

3.8.3 Each associated practising solicitor referred to in rule 3.8.2 shall, in each case involving civil legal aid, co-operate with the applicant and the Board in the transfer of civil legal aid files to another practising solicitor nominated by the applicant in terms of an application made by the applicant to the Board and granted by the Board.

3.8.4 No practice unit to which rule 3.8.1 applies and no associated practising solicitor shall apply to the Board for payment out of the Fund, from any contribution, expenses recovered or from any property recovered or preserved, of any fees or outlays incurred in respect of any legal aid which is provided by that associated practising solicitor after the expiry of the 28 day period referred to in rule 3.8.2.

Giving of Reasons

3.9 Where the Council is minded to:

- (a) reject an application in terms of rule 3.5.24, or
- (b) make a note on a compliance certificate pursuant to rule 3.6.1, or
- (c) withdraw a compliance certificate pursuant to rule 3.7.1

then it shall give 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 3.123.48, and shall have regard to written representations made to it by or on behalf of that practice unit, any associated practising solicitor and any other interested person.

Appeals

~~3.10.1 Where the Council has:~~

- ~~(a) rejected an application in terms of rule 3.5.1,~~
- ~~(b) withdrawn a compliance certificate pursuant to rule 3.6 or rule 3.7.1,~~

~~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.~~

~~3.10.2 For the avoidance of doubt, in circumstances where a compliance certificate has been withdrawn in terms of rule 3.7.1 and an appeal against that decision is made in terms of rule 3.10.1, the provisions of rule 3.8 shall continue to apply.~~

Comment [SH25]: Deleted as doubts expressed as to vires for this provision

Updating of Certificate

3.1~~0~~⁴ Where, a review of a practice unit having a compliance certificate has been carried out pursuant to rule 3.1~~2~~³, and the Council is satisfied that such a practice unit complies with the guidance published pursuant to rule 3.3.¹, the Council shall update the compliance certificate of that practice unit to show the date of that review.

Register of practice units holding compliance certificate, and of associated solicitors

3.1~~1~~².1 The Council shall maintain a register of practice units in relation to which a compliance certificate is in effect.

3.1~~1~~².2 The Council shall maintain a register of practising solicitors who carry out legal aid work and are associated with registered practice units.

3.1~~1~~².3 All registered practice units will maintain a complete and accurate list of the name and contact details of all practising solicitors associated with the practice unit who carry out legal aid work. ~~The Compliance Manager of each registered practice unit will supply a copy of the relevant list to the Society within 28 days of these rules coming into force.~~ Any application for a compliance certificate must be accompanied by a list of the names and contact details of all practising solicitors associated with the applicant practice unit who it is intended will carry out legal aid work, if the application is granted. Any changes to any information contained in any list provided to the Society pursuant to this rule shall be intimated by the relevant Compliance Manager to the Society, in writing, within 28 days of the effective date of the change.

Comment [SH26]: No longer required

3.1~~1~~².4 The Council may supply copies of entries in the register in rule 3.1~~1~~².1 and 3.1~~1~~².2 to such persons as it thinks fit.

Reviews

3.1~~2~~³.1 To enable it to ascertain whether a practice unit which holds, or has applied for, a compliance certificate complies, or will comply, with the guidance published pursuant to rule 3.3.¹, the Council may instruct a review of that practice unit (~~“a routine review”~~) by a reviewer or reviewers specified by the Council. Any review instructed in terms of rule 3.12 will encompass a review of any legal aid files of the practice unit as may be specified by the Council or the reviewer(s) and such other enquiry as the Council or any reviewer considers necessary or desirable to meet the objects of the review. Any practice unit which is the subject of any review in terms of rule 3.12 shall provide the reviewer(s) with all legal aid files and any other documentation which the Council or any reviewer reasonably requires in order to complete the review, all as specified by the Council or any reviewer, and all in a format, by a date and at a place so specified. Where that practice unit has any legal aid files the Council may by notice to the practice unit require the practice unit and any associated practising solicitor to deliver to the reviewer, or so far as it or 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 guidance published pursuant to rule 3.3. Where that practice unit does not have any

Comment [SH27]: There is a great deal of repetition in several of the provisions in what was 3.13 – this is an attempt to avoid that – 3.12.1 applies to all reviews, with 3.12.2 covering different types.

~~legal aid files, the reviewer shall carry out such enquiry as he thinks fit with the object of ascertaining whether that practice unit complies or will comply with the guidance published pursuant to rule 3.3.~~

3.12.2 ~~Reviews instructed in terms of rule 3.12 may include: Where,~~

(a) ~~a routine review, which may be instructed in respect of a practice unit which has applied for a compliance certificate, or periodically in respect of registered practice units; such reviews usually encompass the review of legal aid files specified in a notice by the Council to the practice unit, such review to take place at a location other than the premises of the practice unit, unless otherwise agreed between the Council and the practice unit; or~~

Comment [SH28]: Charging provisions removed

(b) ~~an extended review, which may be instructed in respect of any practice unit where, following any routine review of that practice unit, a routine review in terms of rule 3.13.1, it appears to the Council that a further review ("an extended review") (which may be at the premises of the any practice unit) is necessary or desirable to determine whether that practice unit complies or will comply with the guidance published pursuant to rule 3.3; or~~

(c) ~~a special review, which may be instructed in respect of any practice unit where, on the basis of information received by it, it appears to the Council that a review ("a special review") at the premises of any practice unit is necessary or desirable; to determine whether that practice unit complies or will comply with the guidance published pursuant to rule 3.3, or, or~~

(d) ~~a final review, which may only be instructed pursuant to rule 3.6.2, at the premises of the practice unit.~~

~~(c) the Council reaches agreement to do so with a practice unit that would otherwise be subject to a routine review, the Council may by notice to the practice unit require the practice unit or any associated practising solicitor to allow, or so far as it or 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 guidance published pursuant to rule 3.3. 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 guidance published pursuant to rule 3.3.~~

3.13.3 ~~A review in terms of this paragraph ("a final review"), which shall only be instructed pursuant to rule 3.5.2 subject to rule 3.13.4, is a review of a practice unit by a reviewer specified by the Council. The Council may by notice to the practice unit require it or any associated practising solicitor to allow, or so far as it or 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 guidance published pursuant to rule 3.3. 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 guidance published pursuant to rule 3.3~~

~~3.13.4 The Council may make the instruction pursuant to rule 3.5.2 of a review of a practice unit in terms of rule 3.13.3 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.~~

Comment [SH29]: Charging provisions removed

~~3.13.5 Where a practice unit that would otherwise be subject to a review in terms of rule 3.13.1 reaches agreement with the Council that it is instead reviewed in terms of rule 3.13.2 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.~~

~~3.13.6 A practising solicitor who is a manager shall ensure that the sum required to be paid by him or that practice unit in terms of rules 3.13.4 or 3.13.5 is paid.~~

~~3.123.37 A practice unit practising solicitor shall comply with all requirements made in terms of rules 3.123.1 to 3.13.3, and shall give reasonable co-operation to any reviewer acting in the course of any review or enquiry in terms of this rule 3.132, including allowing access to its premises and making available its associated practising solicitors.~~

3.12.43.8 Where:

- (a) a reviewer has completed a routine, extended, special or final review of a practice unit, or
- (b) any matter arises which in the opinion of a reviewer requires to be brought to the attention of the Council; or
- (c) the Council requests it,

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

Reviewers

3.13.1 In order to carry out reviews in terms of rule 3.123 and any other enquiry permitted or required in terms of these rules, the Council may appoint any practising solicitor~~person~~ who consents to such appointment as a reviewer. ~~Such a person shall be a practising solicitor.~~

Comment [SH30]: Simpler

3.13.2 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 3.123 or any other enquiry permitted or required in terms of this rule 3.

~~3.14.3 A reviewer shall be appointed for such term and be paid such remuneration as the Council may from time to time determine.~~

Comment [SH31]: Removed – covered by Memo of Understanding between Society and SLAB

Exemption

~~3.15.1 The Council may exempt any practising solicitor from the requirement to satisfy the conditions contained in (a) to (e) of rule 3.2.2, subject to such conditions, if any, as it considers appropriate.~~

~~3.15.2 The Council may, where the circumstances of any practice unit are exceptional,
consider any application made by such practice unit pursuant to rule 3.5.1
notwithstanding the provisions of rule 3.5.3, subject to such conditions, if any, as it
considers appropriate.~~

Comment [SH32]: Removed as never exercised