



Compliance Update

Issued to all firms registered to provide criminal legal assistance

9 August 2010

We would like to update you about some significant trends and issues arising from the compliance audits performed in 2009-10.

Compliance Audit Results

We performed Compliance Audits of 176 firms in the year, and the results are set out below. Criminal Legal Assistance (CLA) income received by these firms in 2009-10 was around £43m, and the audited firms include 18 of the top 20 CLA-earning firms of 2008-09.

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| Satisfactory ¹ | 38 | 74% |
| NNC1 | 92 | |
| NNC2 | 26 | 15% |
| NNC3 | 18 | 10% |
| Continued | 2 | 1% |
| Total | 176 | |

We are pleased that the majority of firms were found generally to comply with the requirements of the Code of Practice for criminal legal assistance. Firms with less than satisfactory performance are being supported by Compliance in making the necessary improvements to achieve a satisfactory standard of compliance.

The main issues we identified in these 176 audits are set out opposite:-

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| The use of unregistered solicitors. | Only solicitors registered by the Board on the Criminal Legal Assistance Register can provide criminal legal assistance. The Code sets out time-limits for notification to the Board of any changes regarding a solicitor's registration—for example, moving from one registered firm to another. |
| Solicitor not completing the requisite CLA-related CPD requirements. | A solicitor is required to attend relevant courses amounting to 5 hours within any two year period. |
| Non-cooperation with enquiries by Compliance staff. | The Code at para. 3.6.1 sets out the requirement for a solicitor or firm to co-operate in answering any questions about applications, accounts and compliance with the Code of Practice. |
| Not meeting the mandatory criteria for Appointed Solicitor ABWOR grants. | ABWOR can only be provided if the following criteria have been met: <ul style="list-style-type: none"> • the client appears from custody on the matter for which ABWOR is being granted, and • there is a previous client/solicitor relationship, and • there are instructions direct from the client, and • the solicitor is able to represent the client immediately. |

¹ **Satisfactory**—no adverse findings arising from the audit.

Notice of Non-Compliance (“NNC”) Level 1—some relatively minor matters which require to be addressed .

NNC Level 2—more serious matters that require to be addressed before the next scheduled visit.

NNC Level 3—fundamental findings of non-compliance which, if not corrected, could lead to the firm's de-registration

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| Inappropriate multiple A&A applications. | Where there are matters for one client that arise at the same time, and have sufficient commonality, then with due regard to economy and in compliance with Regulation 8(2), a single grant of A&A is appropriate—if necessary, an increase in authorised expenditure can be sought. |
| Lack of effective procedures for pursuing and obtaining verification of a client's financial circumstances. | Where necessary and practicable, the solicitor is required to obtain and retain on file documentary evidence that the client qualifies financially for Advice & Assistance. |
| The full fee claimed incorrectly in ABWOR or summary criminal legal aid in relation to proceedings under Section 27(1)(b), and overcharging in co-accused cases. | In relation to these proceedings, either a half or percentage of the core fee should be charged. |
| Incorrect grants of A&A in Appeal and/or CPA – Section 27(1)(a) matters. | Where summary criminal legal aid or ABWOR is already in force for the substantive matter, it is not competent to grant A&A/ABWOR in these types of case. |
| Account entries not supported by file content. | All entries in accounts should be for work actually and necessarily done with due regard to economy, and this should be demonstrable from file contents. |
| Failing to meet Part 5 requirements—specifically Parts 5.2 Personal Work and Time Recording, as well as 5.3 Case Recording, 5.6 Supervision and 5.10 Client Reporting. | Specific information is required to be recorded on timesheets and on file notes, as well as details of the advice given, instructions received and outcome of the case, etc |

To provide more assistance to firms, we will issue additional guidance on the issues identified in the list above.

Notice of Non Compliance Level 3

As set out in the Compliance Audit Results table on page 1, a total of 18 firms were served with Notices of Non-Compliance Level 3 (“NNC3”) in the year to 31 March 2010. The key areas of failure were in the validity of applications and accounts, failings in time-recording, and the lack of the required detail on attendance notes or an absence of narrative within the files.

It is of considerable concern that there are 5 firms which have now received consecutive Notices of Non-Compliance Level 3. We regard continued Level 3 outcomes most seriously and we are currently deciding on the appropriate course of action we intend to adopt for each of these firms.

Compliance Audit Outcomes

Along with the completed Compliance Audit Report, we send to Compliance Partners a Compliance Audit Effectiveness Questionnaire. This is used to assess where the audit process and our interaction with firms could be improved. This year, 46 questionnaires were returned, with an overall effectiveness ratio of 88%, indicating a high level of satisfaction with the input of, and the interaction with, the Compliance Auditors.

Compliance Audit work also uncovered a number of issues relating to accounts which has resulted in repayments being requested of £218,000 (inc. VAT).

The Compliance Auditors are always prepared to provide assistance and guidance to firms on how their systems could be improved. Since they see the systems of all registered firms as part of their work, they can provide advice on what they have found works best.

Criminal Legal Assistance Register

As at 30 July 2010, there were 572 firms and 1,390 solicitors registered. This compares to 564 firms and 1,359 individual solicitors as at 30 July 2009. Last year, 27 firms came off and 35 firms were added to the register.