

## **MEMORANDUM OF UNDERSTANDING**

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

#### **CIVIL AND CHILDREN'S LEGAL ASSISTANCE**

##### **A. REVIEWERS**

- A1. The Council (the "Council") of the Law Society of Scotland ("the Society") shall, for the purposes of peer review, appoint up to the maximum number of part and full-time Reviewers as may be agreed from time to time between the Council, the Scottish Legal Aid Board ("the Board") and the Scottish Executive dependant on:
- the number and frequency of reviews to be conducted
  - the number of hours to be worked and the pattern of working to be adopted by the part-time Reviewers
  - the availability of a full-time Reviewer
  - the budget available
- A2. The recruitment and re-appointment process will follow the procedure to be agreed by the Quality Assurance Committee ("the Committee"). Recruitment and re-appointment panels will include representation by the Board, the Council and by a person independent of the Society and the Board.
- A3. Each Reviewer shall undertake the initial and ongoing training prescribed by the Committee.
- A4. Each part-time Reviewer shall be appointed for a fixed period of three years to provide a minimum of 21 hours per month.
- A5. Any full-time Reviewer shall be recruited for a fixed period, not to exceed two years and for a 35 hour week.

##### **B. QUALITY ASSURANCE ADMINISTRATOR**

- B1. The Council shall, for the purposes of administering the peer review system, employ a Quality Assurance Administrator ("the Administrator") initially for a fixed period of three years and for a 35 hour week, under terms and conditions set by the Council.

## **C. ADMINISTRATION OF PEER REVIEW SYSTEM**

- C1. The civil and children's legal assistance (civil legal aid, children's legal aid, civil advice and assistance and advice and assistance under Part II of the Children (Scotland) Act 1995) files for review will be selected randomly by the Board, but so as to provide a representative cross-section of the civil and children's legal assistance files held by a practice unit. However, where the Board or the Council has specific concerns over a case it will ask the Committee to agree for the file in respect of that case to be included in the sample for review. Where that is so, any such file requested shall be in addition to the randomly selected files. Where possible both legal aid and advice and assistance files will be reviewed. The files chosen will include all files held by the practice unit which are connected to or associated with the legal aid reference number selected randomly, for example, where a civil legal aid reference number is selected the associated advice and assistance file will be included and vice versa. The files chosen may include open as well as closed files and also files pre-dating 1 October 2003 (see paragraph C11 below).
- C2. Five randomly selected files per practitioner providing civil and children's legal assistance in a practice unit will be reviewed: this arrangement is to be kept under review by the Board and the Council.
- C3. The Committee may agree a tapering system to reduce the number of files per practitioner for practice units with higher volumes of civil legal assistance. It will be for the Committee to determine in each case whether it will apply the tapering system to a particular practice unit and, in doing so, may consider recommendations by the Board or representations by the practice unit.
- C4. The final decision about (a) when each registered practice unit is to be reviewed shall lie with the Committee and (b) subject to paragraph C1 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 in question.
- C5. The Council and the Board will, wherever possible and appropriate, co-ordinate the reviews so that the Board's administration review will be held first and followed shortly by the peer review.
- C6. The Administrator shall make arrangements for an appropriate Reviewer(s) to carry out the review. When allocating a Reviewer, the Administrator shall take into account all relevant matters including the area(s) of civil and children's legal assistance undertaken by the practice unit, the Reviewer's specialism(s), any geographical considerations and any potential conflicts. Further, 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. The Council will publish a list of Reviewers and keep this updated. 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 to the Administrator as soon as possible and in any event at least 1 week prior to the date of the review and include the reason(s) for the objection. The Administrator, seeking the advice of the Committee as required, may determine that, in the event of such a declaration of interest or representation, the review be carried out by another Reviewer.

- C7. Where the review is to be undertaken as a file review, the Administrator shall contact the practice unit and make arrangements for the Reviewer to receive the relevant files. The Administrator shall issue a written notice on behalf of the Council in terms of rule 14(1) of the Solicitors (Scotland) (Civil Legal Aid and Advice and Assistance) Practice Rules 2003 (“the Practice Rules”) requiring the relevant civil and children’s legal assistance files to be delivered by a date specified by the Administrator. Where the practice unit does not deliver the files by that date, the Administrator shall report this to the Committee who, at its discretion, may (a) report the matter to the Conduct Committee of the Society and/or (b) fail the review of that practice unit.
- C8. Where the practice unit is unable to supply one or more of the requested files, for example, the file is needed because of an impending court appearance, 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.
- C9. The practice unit may be asked by the Committee to provide evidence to substantiate the reason given for failing to supply the requested file(s). In addition, these files may be reviewed at a later date determined by the Committee.
- C10. 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 practice rule 4. The Reviewer shall apply the criteria and marking system as agreed by the Board and the Council.
- C11. A Reviewer may consider items in a file pre-dating 1 October 2003, but issues pre-dating 1 October 2003 cannot contribute to a failure (although they may contribute to a pass). Where a Reviewer identifies issues of concern that pre-date 1 October 2003 and those issues fall within the ambit of section 31 of the Legal Aid (Scotland) Act 1986, (section 31), he shall inform the Committee who may, in the event of a serious issue, consider reporting it to the Conduct Committee of the Society for their consideration.
- C12. The Reviewer shall supply the Administrator with the completed written report, using the standard form agreed by the Committee.

- C13. Where the Reviewer has minor concerns only, these shall be drawn to the attention of the practice unit by letter sent by the Administrator which shall include recommendations thought appropriate to resolve such concerns.
- C14. Where such a letter is sent to a practice unit, the unit may be asked to respond in writing to the Administrator to identify what steps have been taken to act upon such recommendations arising from these minor concerns, or explain why no steps are considered to be necessary. The letter and any reply shall be brought to the attention of the Reviewer at the next review to consider whether the necessary remedial action has been taken and, if any shortcomings are identified in a subsequent review, the Reviewer may take this into account in his overall assessment of the practice unit at that review.
- C15. Where the files are transmitted to the Reviewer, the Administrator shall make arrangements for the files to be returned to the practice unit as soon as reasonably practicable.
- C16. Where the Committee decides to satisfy itself under practice rule 14(1) on the ability of the practice unit to comply with the guidelines other than by file review (e.g. by interview with a new practice unit which has no files) the Administrator shall contact the practice unit to make the necessary arrangements. The Committee shall determine the procedure in this regard and shall, in due course, provide detail as to the steps to be followed.

#### **D. REVIEWS**

- D1. The review of the selected files under practice rule 14(1) (the routine review) will normally be conducted outwith the practice unit's premises. The practice unit may, however, request, to minimise practical difficulties, that the routine review is conducted at its premises. Where the Committee agree to such a request, the Administrator shall make the necessary arrangements in terms of practice rule 14(2). Where such a routine review is conducted at the practice unit's premises it shall be carried out in the same way as any routine review but any additional costs in conducting the review at the premises shall be borne by the practice unit.
- D2. Where, following a routine review under paragraph D1, the Committee considers or ratifies a Reviewer's recommendation under practice rule 14(2) that access to a practice unit's premises is necessary or desirable to confirm whether that practice unit complies or will comply with the guidelines pursuant to practice rule 4 (the extended review) then the Administrator shall make the appropriate arrangements. The costs of such an extended review will be borne by the Board and the consent of the practice unit to conduct such an extended review at its premises is not required.

- D3. Where the Committee instructs a review under practice rule 14(1) or (2) (a special review) in accordance with paragraphs E11-13 the costs of such a special review shall be borne by the Board and consent of the practice unit to conduct such a special review is not required.
- D4. Where the Committee determines that a practice unit shall be further reviewed pursuant to rule 14(3) of the Practice Rules (a final review), the 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. The Administrator shall advise the Board where the Committee determine a final review is required.
- D5. Where a practice unit does not pay such costs of the final review, the compliance certificate of that practice unit may be withdrawn in terms of practice rule 7.
- D6. Where, following an extended review, the Reviewer's report indicates an overall failure to meet requirements, then subject to the requirements of practice rules 7 and 8 the practice unit shall be permitted to continue to provide civil legal aid assistance. In these circumstances the Committee may instruct a special review(s) to monitor the practice unit's continued compliance with the Quality Assurance criteria.
- D7. Where a Reviewer identifies circumstances which fall within the scope of section 31, he shall inform the Administrator who shall inform the Committee.
- D8. Where the Committee ratifies a Reviewer's recommendation that a practice unit fail a review (either an extended review in terms of practice rule 14(2) or a final review in terms of practice rule 14(3)) the Administrator shall inform the Board in writing of the Committee's decision. Where a final review is failed the Committee shall withdraw the practice unit's compliance certificate in terms of practice rule 8.

## **E. THE QUALITY ASSURANCE COMMITTEE**

### **Constitution of the Committee**

- E1. The Committee shall comprise 9 members:
- Three solicitors appointed by the President including the Convener, who should be a member of the Council and the Legal Aid Committee.
  - Three lay persons chosen in the same manner as the Council chooses laypersons to sit on the current Client Relations Committee but with the Board and the Scottish Executive represented on the selection panel
  - Three representatives appointed by the President on the recommendation of the Board. These persons will be either employees or members of the Board and at least two of them will be solicitors to maintain the principle

that the Council's Committees should have at least 50% of solicitor members.

- E2. The Secretariat of the Committee will be provided by the Administrator who will attend its meetings in a non voting capacity.
- E3. The normal Law Society Standing Orders will apply to the Committee implying that the Convener will have both a deliberative and a casting vote.

### **Cycle of Meetings and the Committee's Quorum**

- E4. The Committee will normally meet once a month, except in August on Law Society Committee day (that is normally the first Thursday of each month). The Convener will have the discretion to call special meetings of the Committee in accordance with the normal Law Society Standing Orders. Participation in the meetings by telephone conferencing will be allowed as required.
- E5. The Committee shall be quorate if one member from each of the three representative constituencies is present, at least two of whom are solicitors. In the absence of the Convener or the Vice Convener the meeting may be chaired by one of the Law Society solicitor appointees.

### **Remit of the Committee**

- E6. The Committee's remit will include:
  - the appointment, re-appointment, dismissal or termination of contract, training and monitoring of Reviewers.
  - the receipt and consideration of applications for compliance certificates.
  - the instruction, receipt and consideration of routine, extended, special and final reviews.
  - the consideration of requests by practice units for routine reviews at their premises.
  - the ratification of any recommendation made by Reviewer(s)
  - the consideration of whether to make a recommendation to the Conduct Committee of the Society.
  - ensuring consistency in the peer review process
  - instructing formal notification of a practice unit's pass or fail
  - gathering statistics and analysing trends from the quality assurance process
  - fostering/encouraging good practice in the provision of quality assured services.
- E7. When considering the results of routine, extended, special or final reviews, the Committee shall have before it copies of the standard report completed by the Reviewer(s) and any letter referred to at paragraph C13 above. It may also ask the Reviewer to attend the next meeting of the Committee to discuss his/her conclusions and/or call for copies of the individual file reports for the practice unit. The Committee shall consider each report and decide, whether or not to ratify the recommendation of the Reviewer(s).

- E8. Where the Committee decides that it shall not ratify a recommendation made by a Reviewer, for example, where there is a marginal failure or the marking in the report does not reflect the recommendation, it shall record its reason for that decision. In these circumstances, the Committee may decide to:
- order the files to be reviewed by a different Reviewer or
  - order an extended or special review where appropriate.
- E9. In respect of all of the above matters the Committee will operate under delegated powers from the Council.
- E10. The Committee will also have remit to generally monitor the quality assurance review process and to make such recommendations as to any change(s) which it considers necessary. The implementation of such change(s) will require agreement between the Council and the Board and the Scottish Executive.

### **“Special” Reviews**

- E11. The Committee either on its own volition or on the basis of a request and/or information received will have the power to instruct a special review of a practice unit which will be conducted at the practice unit’s premises and the result will be reported to the Committee.
- E12. Where a practice unit has been subject to a special review and has passed, it will not be subject to a further routine review until the expiry of the normal 3 year cycle. However, a further special review may, at the discretion of the Committee, be undertaken during this period.

### **Section 31**

- E13. Where circumstances are identified (which do not pre-date 1 October 2003) which fall within the scope of section 31, the Committee shall report the matter to the Conduct Committee of the Society for their consideration.
- E14. Where a report is made under paragraph E13 the Administrator shall inform the Board.
- E15. The procedure thereafter will be identical to circumstances where a Client Relations Committee recommends prosecution for professional misconduct. The relevant solicitors will be advised by the Secretariat of the Professional Conduct Committee of the recommendation together with the date on which the matter will be considered by the Society’s Conduct Committee. Each solicitor will be entitled to make representations in writing to the Society’s Conduct Committee and the decision of the Society’s Conduct Committee to invoke section 31 will be final.
- E16. Where in the course of a review of any type, a reviewer identifies prima facie evidence of professional misconduct by a solicitor he shall report that matter to the Committee who may refer the matter to the Client Relations Department

with a request that they raise an ex proprio motu complaint of misconduct. Where such a complaint is brought and where the Society finds misconduct capable of being established beyond a reasonable doubt then the Society shall be entitled to invoke the provisions of section 31 notwithstanding any earlier decision not to invoke section 31 where such earlier decision was taken prior to the full investigation of the complaint. The Committee will be advised by the Client Relations Department of the outcome of any ex proprio motu complaint instigated by the Committee.

## **F. ADMINISTRATION REVIEWS**

- F1. Registered practice units shall also be subject once every three years to an administration review by the Board to review the unit's compliance with the ten administrative requirements established by the Council – see appendix A.
- F2. The Board will, wherever possible and applicable, try to conduct the administration review and the Criminal compliance audit on the same day.
- F3. A Reviewer undertaking a peer review of a practice unit shall, where applicable, be made aware of the results of the unit's previous administration review prior to commencing the peer review.
- F4. Where a practice unit's failure to adhere to the administrative requirements is so severe as to cause concern to the Board, this will be reported to the Committee and the Council to consider taking appropriate action.
- F5. If, exceptionally, an administration review cannot be carried out in the three year period a peer review must still be undertaken. The Board will notify the Committee if an administration review cannot be carried out, but the absence of an administration review will not prevent the carrying out of a quality assurance review.

## **G. REGISTER**

- G1. A Register of practice units registered to practice civil legal assistance shall be maintained by the Board (“the Register”).
- G2. The Register shall be published and publicly available.
- G3. A practice unit's registration shall run for three years from the date on which the administration review is undertaken.

## **H. FUNDING**

### **Reviewers**

- H1. Each part-time Reviewer shall be remunerated by the Society at a rate per day exclusive of value added tax (where applicable) as may from time to time be agreed between the Council and the Board.

- H2. Each full-time Reviewer shall be remunerated at a rate per annum for a 35 hour week as may from time to time be agreed between the Council and the Board. The Board will not be responsible for administrative or establishment overheads.
- H3. 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.
- H4. The rates of remuneration payable to part and full-time 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 Executive and the Board who shall determine the matter.
- H5. The total cost of the Reviewers' prescribed training for the purposes of peer review will be met by the Board.
- H6. 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 Executive.
- H7. The only exceptions to the above are the cost of final reviews pursuant to practice rule 14(3) and routine reviews carried out at the practice unit's premises, which shall be borne by the practice unit in question (see paragraphs D1 and 4) and where an on-site review is requested by the practice unit (see paragraph D1). The cost of final reviews and the additional cost involved in those conducted at the request of the practice unit at its premises shall be paid by the practice unit to the Society, following receipt of an invoice from the Society.

### **Administrator**

- H8. The Administrator shall be remunerated at a rate per annum for a 35 hour week as may from time to time be agreed between the Council and the Board.
- H9. The total cost of the Administrator's remuneration (including, any employers' national insurance contributions or other associated costs of employment) will be met by the Board.
- H10. The rate of remuneration payable to the Administrator shall be subject to the Society's employment procedures

### **Payments and reimbursement**

- H11. 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).
- H12. The Society shall retain for three 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.
- H13. Reimbursement to the Society of other costs associated with the implementation of the civil legal aid reforms or the administration of the new system will only be made following agreement between the Board, the Council and the Scottish Executive.
- H14. 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 Executive for consideration.

**K. GENERAL**

- K1. Any exceptions to the practice rules or this Memorandum shall be determined in consultation between the Council, the Board and the Scottish Executive.

## APPENDIX A

### 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 and 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.