

# Procedure for Consideration of Exclusion of Solicitor or Advocate under Section 31 of Legal Aid (Scotland) Act 1986

## Preliminary

1. This document details the procedure which the Scottish Legal Aid Board will follow in determining whether to exclude a solicitor or advocate under Section 31 of the Legal Aid (Scotland) Act 1986 and is hereinafter referred to as “this Procedure”.
2. This procedure is in accordance with, and sits within, the Board’s wider statutory powers, functions, duties and obligations, and nothing arising from, ascertained through or undertaken as part of steps taken under this Procedure limits or restricts the competent exercise of such other powers or functions or the fulfilment of such other duties or obligations, as the Board may have in relation to any matter.

## Definitions

3. The following definitions are used in this Procedure:

“**the Act**” means the Legal Aid (Scotland) Act 1986.

“**the Board**” means the Scottish Legal Aid Board.

“**Case Presenter**” means the person responsible for the preparation and presentation of a referral for consideration of exclusion to the Section 31 Committee. The Case Presenter is also responsible for undertaking or overseeing such administrative work as is required to facilitate the effective operation of the business of the Section 31 Committee. The Case Presenter shall be a solicitor, and ordinarily one employed by the Board (or another such solicitor taking over the role as circumstances require), but external solicitors or counsel may be instructed as accords.

“**Compliance manager**” means the manager of the Compliance Department of the Scottish Legal Aid Board or such other member of staff of the Board acting in that capacity for the purposes of this Procedure.

“**Equalities groups**” means persons for whom statute provides protection against discrimination on the grounds of protected characteristics.

“**Meeting of Directors**” means a meeting of not less than two directors of the Board constituted for the purposes detailed in paragraphs 5 and 15-17 of this procedure. The Case Presenter shall also be in attendance. Any decision of a Meeting of Directors shall be by simple majority, except where only two directors are in attendance, when unanimity is required.

**“Conduct”** means the conduct of a solicitor or counsel when acting or selected to act for the persons to whom legal aid or advice and assistance is made available; their professional conduct generally; and in the case of a member of a firm of solicitors or a director of an incorporated practice, such conduct on the part of any person who is for the time being a member of the firm or director of the practice.

**“Respondent”** means the solicitor or advocate in respect of whom proceedings for exclusion under Section 31 of the Act are contemplated or initiated under this Procedure.

**“Section 31 Committee”** means a committee of not less than three members established by the Board for the purposes of determining proceedings under Section 31 of the Act in accordance with this Procedure. A Section 31 Committee (hereinafter referred to as a “Committee”) shall comprise either (a) the Chair of the Board, who will convene the Committee and at least two other members selected by the Chair, from the group comprising the membership of the Board and the Chief Executive of the Board or (b) where the Chair declines membership of a Committee or is otherwise unavailable, at least three members selected from the said group in consultation with the Chair (unless such consultation is impracticable), one of whom will be appointed convenor. A Committee may co-opt such further persons as members as it considers appropriate from time to time. In the event that the convenor or any other selected members of a Committee is unable to attend a meeting, further members may be drawn from membership of the Board or co-opted for the purposes of that meeting. If the appointed convenor is not in attendance for a meeting of a Committee, that meeting will be convened by a Committee member nominated in advance by the appointed convenor or otherwise agreed by the attending members for that meeting. Senior members of Board staff may attend Committee meetings as the convenor directs. The quorum of a Section 31 Committee shall be three. The Board has authorised a Committee constituted under this Procedure to determine any decision to exclude a solicitor or advocate under section 31 of the Act on its behalf.

## Equalities

4. (a) The Board seeks to ensure that this Procedure operates with full regard to the interests and requirements of all equalities groups. The Board shall take such steps and make such adjustments as are reasonable or otherwise required or appropriate, and all parts of this Procedure may be subject to such steps or adjustments as accords. The Board encourages notification of any relevant requirements or issues that arise for any person involved with the operation of this Procedure.
- (b) The Board will monitor, consider and make any indicated relevant change in respect of equalities impacts in relation to the operation of this procedure or more widely.

### Initial investigation and the decision to initiate proceedings

5. (a) Where, following investigation, the Compliance Manager considers that there may be good reason for believing a solicitor or advocate has exhibited conduct which may make it appropriate for the Board to consider excluding that solicitor or advocate either from being selected by a person to whom legal aid or advice and assistance is made available to advise or act for them, or from giving advice and assistance to or acting for a person to whom legal aid is made available, he or she shall report on the investigation to the Director of Operations.  
  
(b) Where the Director of Operations agrees with the Compliance Manager's assessment they shall notify the Principal Legal Adviser. Following receipt of such notification the Principal Legal Adviser shall appoint, or act as, the Case Presenter. The Case Presenter shall in liaison with the Compliance Manager then prepare a Report and draft Grounds of Referral (hereinafter known as the "Section 31 Report"). Having done so the Case Presenter shall submit the Section 31 Report to a Meeting of Directors of the Board constituted for the purpose of considering the Section 31 Report and determining whether proceedings to consider exclusion of the Respondent should proceed in accordance with this Procedure.
6. If it is determined by directors at the Meeting of Directors in terms of paragraph 5 that no proceedings should take place at that time, any matters arising in the Section 31 Report or such other facts and circumstances as exist at that time, whether known to the Board or not, may still be referred to or founded upon as accords in any subsequent proceedings under this Procedure.

### Initiation of proceedings

7. Where it is determined in terms of paragraph 5 that proceedings should take place, the Case Presenter shall, by email, give notice to the Respondent to advise him/her that proceedings have commenced to consider his/her exclusion from the provision of legal assistance under Section 31. The said notice of proceedings should be in accordance with paragraph 13 below, but will not be invalidated by any variation therefrom.
8. The Respondent shall be invited to, within seven days of receipt of the emailed notice, acknowledge receipt in writing, whether electronically or otherwise.
9. If the Respondent fails to acknowledge receipt within seven days of the emailed Scottish Legal Aid Board Section 31 Procedure notice, the Case Presenter shall intimate the notice of proceedings by first class post and recorded delivery post to the Respondent's place of business or such other method of delivery as may in the circumstances be appropriate.
10. The notice of proceedings shall be deemed to have been received by the Respondent on either: (1) the day on which the Case Presenter receives written acknowledgement by the Respondent, provided such acknowledgment

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is received within seven days of email transmission; or (2) on the day after posting the notice in accordance with paragraph 9.

11. Following receipt by the Respondent of the notice of proceedings, the Respondent shall submit any representations or response he or she seeks to make, to the Case Presenter on the standard response form “Form R” (a specimen-only copy of which is which is appended to this procedure). The Form R shall be submitted within 21 days of the date of receipt of the notice, or such other period which may be agreed by the Board on cause shown, provided that agreement to such further period is established within the initial period of 21 days. If no Form R detailing the response and/or representations is received, or a further period agreed, within the foregoing period the Case Presenter may extend the period for response by a further days. If no Form R is received by the end of the extended period, the Case Presenter may proceed under this procedure on the basis that the Respondent does not intend to provide a response.

12. The Board may agree further continuations on grounds of ill health where adequate supporting medical evidence is provided by the Respondent.

13. The notice issued by the Case Presenter under paragraph 7:

(a) shall contain or have attached:

- (i) A statement of the grounds upon which exclusion may be considered;
- (ii) The standard response form Form R;
- (iii) A copy of the Section 31 Report;
- (iv) Details of any bundles of evidence or other material supporting the grounds of referral for exclusion (and detail as to how, and in what format, these bundles may or will be made available);
- (v) A copy of this Procedure; and
- (vi) Any other papers that may in the circumstances be relevant.

(b) shall advise the Respondent:

- (i) That the procedure may result in exclusion from the provision of legal assistance in terms of Section 31(3), and the consequences of exclusion under Section 31;
- (ii) That the timescale for any relevant representations or response in connection with the grounds, the facts supporting same, or against the possibility of exclusion, or otherwise, is that they are to be submitted to the Board on Response Form “Form R” within 21 days, or such other period to which consent may be given on cause shown, provided that consent to such further period is agreed within the initial period of 21 days; and that on special cause shown the Board may exercise discretion to allow late representations beyond the foregoing period if received prior to the First Meeting;
- (iii) That if the Respondent disputes any of the grounds, and wishes to challenge these, written specification of the nature and extent of the challenge, including specification of any contrary position upon which the Respondent tends to rely, should be detailed on the response Form R so that

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fair notice of any such matters is given to the Board, and that the Board can take those matters into consideration both in assessing whether and how the matter proceeds in accordance with the Procedure, but also that in any onward referral to the Committee any disputed issues are clearly articulated;

(iv) That on expiry of the relevant period per the foregoing paragraphs, and any preliminary consideration of the response, that the Board, where it intends to proceed under this procedure, will fix a meeting of the Section 31 Committee, known as a First Meeting, to consider the Section 31 Report and any representations or response received, and to assess and determine the appropriate further procedure, or where circumstances permit, determine the issue;

(v) Of the potential availability of an Oral Hearing:

(1) if requested by the Respondent and the Section 31 Committee do not consider such a hearing to be unnecessary; or

(2) where the Section 31 Committee considers that there is a clearly identified justification for such a hearing under reference to the terms of written representations submitted by the Respondent, the nature of any factual dispute, any complexity identified or otherwise;

(vi) That an Oral Hearing will not be assigned unless justified by the written representations or otherwise considered appropriate by the Section 31 Committee;

(vii) That the Respondent should have regard for the possibility that an Oral Hearing is thereafter assigned and ensure that the representations made beforehand in response to the Section 31 procedure notification include all averments that would be necessary to constitute fair notice of the position that the Respondent would propose to put at such a hearing, and that he Respondent will not be permitted, other than in exceptional circumstances, to put any position at an Oral Hearing of which such notice has not been so given;

(viii) That in the event of a determination excluding the Respondent, there is a statutory right of appeal to the Court of Session in terms of Section 31(4) of the Act;

(ix) That a finding of exclusion and the reasons therefore may be published by the Board;

(x) That this procedure is in accordance with, and sits within, the Board's wider statutory powers, functions, duties and obligations, and nothing arising from, ascertained through or undertaken as part of steps taken under this procedure limits or restricts the competent exercise of such other powers or functions or the fulfilment of such other duties or obligations, as the Board may have in relation to any matter, whether detailed in this procedure or otherwise.

(c) Shall require the Respondent, within 21 days (or such other period agreed as above), to furnish the Board, on Form R, with:

(i) Any written representations in accordance with the foregoing including:

(1) Response to the grounds, including whether the grounds are accepted or denied, and any representations that are relevant to further consideration of the matter;

- (2) Where any factual matters relating to the grounds are disputed, specification of the nature and extent of that dispute, including specification of any contrary position that the Respondent might seek to rely on in due course or wishes the Board to accept;
  - (3) Any material that would have a bearing on Section 31 Committee deliberations as to the merits of the case and as to any disposal;
  - (ii) If the Respondent wishes to request an Oral Hearing, identification of what information or matters additional to his/her representations the hearing would address;
  - (iii) An estimate of the likely duration of the hearing, and particularly, if it is likely to take more than one day, and if evidence is to be taken from witness in relation to disputed facts, the anticipated number of witnesses;
  - (iv) Any address or addresses to which correspondence or formal notifications issued by the Board to the Respondent in relation to this procedure should be sent.
14. Where the Respondent submits a Response that includes specification that there are or may be disputed issues of fact, the Case Presenter shall, as soon as practicable, investigate and prepare an assessment of evidential matters which are or may be capable of agreement, and as appropriate will seek to liaise with the Respondent or their legal representative on the agreement of evidence by joint minute.
  15. The Case Presenter shall further refer the Section 31 Report, the grounds of referral, and any Response Form R from the Respondent, to a further Meeting of Directors, and shall also report on any assessment of agreement of evidence, and in particular where there are further matters agreed or susceptible to agreement or other consideration.
  16. That Meeting of Directors will consider the material put before it and whether, in the light of any representations made or otherwise, there is any basis for not proceeding to refer the matter to a Section 31 Committee.
  17. If the Meeting of Directors determines not to refer the matter to a Committee the Case Presenter shall notify the Respondent of this decision, and, that notwithstanding the decision not to proceed at that time, any alleged conduct, facts and circumstances which gave rise to the initial consideration of proceedings may still be referred to or founded on in any other proceedings under this procedure which might be considered appropriate at a later date.
  18. If the Meeting of Directors does not make a determination in accordance with paragraph 17 it shall refer the matter to a Committee in accordance with paragraph 20 hereof.
  19. The Case Presenter shall report a decision of the Meeting of Directors under paragraph 17 to the Board.

### Referral to a Section 31 Committee

20. Where the Meeting of Directors has referred the matter to a Section 31 Committee in accordance with paragraph 18, the Case Presenter shall notify the Chair of the Board, and invite the Chair to nominate and appoint the membership of a Committee to consider the referral in accordance with this procedure.
21. Upon constitution of a Committee referred to in the preceding paragraph, the Case Presenter will make arrangements for the Committee to meet as soon as practicable, and hold the First Meeting prescribed by paragraph 23. Meetings or hearings under this procedure may be held by video conference or in person, or otherwise as the Chair directs.
22. The Case Presenter will issue copies of the relevant papers to the Committee members prior to the First Meeting date.

### First meeting

23. The First Meeting of the Committee shall be a meeting of the Committee members to consider the matter in the light of the relevant papers produced for the hearing, and to determine the appropriate further procedure.
24. At the First Meeting the Committee shall consider the Report, the grounds and any representations, and any request for an Oral Hearing.
25. Where, as a result of the Respondent's representations, it has been established that there are areas of disputed facts material to the case, or the Committee otherwise considers it useful, at the First Meeting the Case Presenter shall advise the Committee on any of the following:
  - (a) The nature and extent of any factual matters in dispute;
  - (b) The extent to which agreement of evidence has been assessed and the extent or likelihood of agreement of evidence by joint agreement;
  - (c) Any available indication of matters which appear incapable of agreement, and in relation to which evidence may require to be led; and
  - (d) Any other relevant matters which the Committee wishes to be addressed upon to enable it to determine the appropriate further procedure.
26. In the event that the Committee considers that it is in a position so to do, it may consider and determine the referral and any ancillary issues at the First Meeting and in the event that the Committee establishes that it is appropriate so to do, it may consider and make:
  - (a) An order excluding the Respondent in terms of paragraph 54 hereof; or
  - (b) an order dismissing referral in terms of paragraph 53 hereof.
27. If the Committee considers that, for any reason, it is not in a position to determine the referral at the First Meeting it may do any one or more of the following:

- (a) Seek further information;
- (b) Consult with any professional or other body;
- (c) Continue or adjourn the First Meeting;
- (d) Fix an Oral Hearing;
- (e) Take such other steps as appears appropriate to the proper and expeditious conduct of proceedings, including such inquiries as are required to identify suitable date or dates for any Oral Hearing and the likely duration and where evidence may or will require to be heard, the nature and number of witness or nature of other evidence;
- (f) Make such order as is appropriate in relation to the lodging of further documents and the timescales for that;
- (g) In all deliberations, whether at the First Hearing or otherwise, the Committee will have due regard to equalities impacts, including appropriate consideration of the relevant protected characteristics of the Respondent, as known to the Committee, and separately, the public sector equality duty. Without prejudice to that generality this applies to accessibility and participation in this procedure, and to decision making in the case.

28. Where evidence is required, there shall be a presumption that the evidence in chief of any witnesses to be adduced and relied upon by the Respondent or the Case Presenter, will be taken and presented in the form of a signed written statement from the witness, lodged/ exchanged no later than such date prior to the Oral Hearing as the Committee directs, and that the attendance of the witness at the Oral Hearing be restricted to the purposes only of cross-examination and re-examination. The presumption may be rebutted but only by specific direction of the Committee, either upon written application made prior to an Oral Hearing on cause shown or at its own instance.
29. Where the Committee assigns an Oral Hearing the Case Presenter shall contact the Respondent in writing to advise that an Oral Hearing is in process of being assigned and the Respondent will be asked to respond, within 14 days, with an indication of unsuitable dates. Thereafter the Case Presenter will arrange a date or dates for the Oral Hearing to be assigned, and written notification will be issued to the Respondent.
30. All communications in relation to the referral will be sent to the Respondent, unless the Respondent directs that correspondence be sent or copied to a legal representative.
31. The Respondent must lodge with the Case Presenter, no later than the date directed by the Committee under paragraph 28 or in the event that no such date was directed, no less than 21 days prior to the date of commencement of the Oral Hearing:
- (a) Witness statements that the Respondent intends to rely on; such statements to include the witness' full names and addresses;
  - (b) An inventory of any productions and documents which he or she intends to refer to or rely on at the hearing, together with the productions and documents referred to therein annexed in order. If the Respondent intends to use paper copies, five full sets of copies should be provided.



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32. The requirements of the foregoing paragraph apply reciprocally to the Case Presenter.
33. On cause shown, the Committee may excuse any failure to comply with the arrangements under paragraph 31 and 32 on such terms as it thinks fit, or make such further order as it thinks appropriate.

### Oral hearing

34. The purpose of any Oral Hearing will be to:

- (a) Seek to determine or resolve any preliminary matters;
- (b) Seek to determine or resolve any disputed issues;
- (c) Enable clarification of any matter(s) of uncertainty or difficulty;
- (d) Permit matters pertinent to the disposal of the matter to be determined by the Committee; or
- (e) Take, request or order such other steps as appears appropriate to the proper and expeditious conduct of the proceedings (including all options available to the Committee at the First Meeting, such as continuing or adjourning the hearing);

so that the Committee might properly determine the issues and the referral by establishing whether it is appropriate to consider and make:

- An order excluding the Respondent, in which event the Committee may proceed to deal with the referral in terms of paragraph 54 hereof; or
- An order dismissing the referral, in which event the Committee may proceed to dispose of the referral in terms of paragraph 53 hereof.

35. Subject to paragraph 45 only issues or matters fair notice of which has been given previously in the relevant papers will be capable of being canvassed before the Committee unless the convener otherwise determines on cause shown.

36. The Respondent, at his or her option and expense, may be represented by a solicitor, solicitor advocate or counsel at any Oral Hearing. Representation at an Oral Hearing by a person other than in accordance with the foregoing provision will be at the discretion of the convener.

### Procedure at oral hearing

37. Unless the Committee determines otherwise, the hearing shall be conducted in the following stages:

- (a) The preliminary stage
- (b) The factual stage
- (c) Disposal.

## Oral hearing - Preliminary Stage

38. At the preliminary stage of the Oral Hearing, the Committee shall:
  - (a) ask the Respondent to confirm his/her name;
  - (b) read the grounds for proposed exclusion out to the Respondent;
  - (c) enquire whether the Respondent wishes to make any further representations or admissions as to the alleged facts, beyond the response Form R already lodged, and establish the nature of the further material and the appropriate steps required or consequences, if any;
39. Where facts have been admitted by the Respondent, the convener shall announce that such material facts have been found established.
40. If there is no dispute as to material facts, the case may proceed to the disposal stage on the basis of submissions and supporting material.

## Oral hearing - Factual Stage

41. The Case Presenter shall commence the presentation of evidence and lead evidence relating to the grounds of referral.
42. The Respondent may present his or her case to the Committee and present evidence in support of his or her case.
43. Where a witness is called to give oral evidence, any signed or authenticated written witness statement from that witness shall stand as that witness's evidence in chief unless the Committee orders otherwise, but a witness may be examined on other matters relevant to the referral where the matters were not covered by the written statement where the Committee considers it would be useful.
44. The Committee may allow reasonable cross-examination and re-examination of witnesses.
45. The Committee may hear final submissions in relation to the evidence from the Case Presenter and from the Respondent. Prior to or during submissions, the Case Presenter may amend the grounds of referral where such amendment is relevant to the issue of whether a good reason may exist to exclude the respondent, the amendment is supported by the evidence which has been presented to the Committee and such amendment is not unfair to the Respondent.
46. If, after receiving or hearing the material presented by the Case Presenter and from the Respondent where submitted, the Committee considers that there are further matters or issues which might usefully be addressed to assist the Committee in its deliberations, it may invite either or both parties to present further evidence, material or submissions as the Committee sees fit.

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47. When the Committee has heard all evidence, and/or submissions from the Case Presenter and from the Respondent it shall determine what facts have been proved and whether it considers that good reason to exclude the respondent in terms of section 31 (3) of the 1986 Act could be established by those facts.
48. Where the Committee, upon determination of the proven facts, considers that the facts established manifestly do not and could not support a finding that there was good reason to exclude it may determine that no good reason to exclude exists, and proceed to determine the referral in accordance with paragraph 53. Otherwise the Committee shall proceed in accordance with the following section of the procedure.

### **Oral Hearing - Further Procedure where “Good Reason” may be established from the facts as agreed or proved**

49. Before making a decision on the determination of the referral at an oral hearing the Committee shall, in the light of the facts that have been held as proved, invite representations from the Case Presenter and Respondent, as to any relevant matters which relate to the Committee’s determination of the referral, and including whether “good reason” to exclude has been established by the proven facts, and if so, matters consequential to that.
50. The Committee may then determine the referral, in accordance with Paragraphs 52 - 56 of this procedure, immediately or may adjourn to consider the matter further in which case a decision will be issued within six weeks of the conclusion of the evidence and submissions. This period may be extended by the convener where unforeseen circumstances prevent the Committee from reaching and issuing a decision within the said period of six weeks.
51. The Case Presenter shall seek to provide the Committee with such further information as it requires on issues arising during the course of the Oral hearing.

### **Determination of the Referral**

52. The Committee may determine the referral whether at the First Meeting, any continuation or adjournment thereof, an Oral Hearing or any continuation or adjournment thereof.

#### *Dismissal of the Referral*

53. If the Committee determines that there is no good reason to make an order under Section 31 excluding the Respondent it shall dismiss the referral. Written notification of the dismissal will be issued to the Respondent within 14 days of the decision. Written reasons may, but need not, be given. Where a determination is made under this paragraph after the Committee has adjourned to consider its decision, but before an adjourned hearing date, the adjourned hearing will be cancelled, and the written notification will include notification of the cancellation of the adjourned hearing.

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### *Order for Exclusion*

54. If the Committee determines that there is good reason to make an order excluding the Respondent under Section 31, it shall, on behalf of and as authorised by the Board, make an order excluding the Respondent in terms of Section 31 of the Act which order shall include a determination of the effective date of the exclusion and the duration of the exclusion and any other relevant provision in connection therewith. The Committee will also provide written reasons for its decision and direct the issue a notice in terms of paragraph 55.
55. Where so directed in terms of paragraph 54, the notice to the Respondent intimating the decision and reasons of the Committee will be issued as soon as possible and otherwise within 14 days of the date of decision. The said notice will be sent to the Respondent's correspondence address, the last known business address and to the Respondent's representative, if any, unless the Respondent specifies an alternative and sufficient form of intimation. The Respondent will be advised of the statutory right to appeal to the Court of Session against the Board's decision to exclude him or her from involvement in the provision of advice and assistance or legal aid.
56. The notice of the decision will also advise the Respondent:
  - (a) that any professional duties as an officer of court or otherwise to ensure that court diets are covered, continue, and;
  - (b) that his or her legal aid or advice and assistance cases should be transferred to another solicitor or advocate who is able to deal with them, prior to the effective date of exclusion or within fourteen days of the decision if the effective date of exclusion is immediate.
  - (c) In the event that the effective date of exclusion is not immediate, that the Board may require reports from the Respondent as to the progress of transfer of, withdrawal from, the provision of legal assistance, and that if the Board is not satisfied that adequate steps are being taken, that the Board may take such steps as it thinks fit to protect and promote the best interests of assisted persons, including corresponding with the Respondent's clients in all active or non-concluded legal assistance cases to appraise them of the exclusion and of the requirement to instruct other representation in the event of a wish or need for continued publicly funded legal assistance.
  - (d) That the Board will notify the Law Society of Scotland (where the Respondent is a solicitor) or Faculty of Advocates (where the Respondent is an advocate) of its decision to exclude the Respondent, and the reasons therefor, irrespective of whether, separately, a complaint or referral has been, or is then, made by the Board to the Scottish Legal Complaints Commission.
  - (e) That the Board may publicise the decision to exclude the Respondent and the reasons therefor.

### **Publication and Effect of Decision**

57. If no appeal to the Court of Session against the Board's decision to exclude has been intimated, and after the elapse any such further period as the Board considers appropriate from the date of notification of the Board's decision to

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exclude the Respondent, without prejudice to such further steps as the Board might take:

(a) the Board will notify the Law Society of Scotland (where the Respondent is a solicitor) or Faculty of Advocates (where the Respondent is an advocate) of its decision to exclude the Respondent concerned.

(b) the Board may publicise its decision to exclude the solicitor or counsel from the provision of legal aid or advice and assistance, and the reasons therefor.

58. To ensure the interests of relevant persons are protected, and without prejudice to any steps taken under any other provision of this procedure or otherwise, the Board may notify all clients in receipt of legal aid or advice and assistance in all active or non-concluded cases of the Respondent (where a solicitor) and instructed agents of the Respondent (where an advocate) of the decision to exclude the Respondent from the provision of legal aid or advice and assistance, or take such other steps as are reasonable and appropriate to protect and promote the interests of assisted persons.

## APPENDIX

### Specimen Response Form - Form R

SPECIMEN ONLY

#### SCOTTISH LEGAL AID BOARD



#### SECTION 31 OF THE LEGAL AID (SCOTLAND) ACT 1986 SECTION 31 PROCEDURE - RESPONSE FORM

Form R

You have had intimation that the Board has started procedure under section 31 of the Legal Aid (Scotland) Act 1986 in relation to you.

If you wish to provide a response, you should use this form. If you require this form in an alternative format please contact [communications@slab.org.uk](mailto:communications@slab.org.uk).

You are not required to provide a response to the Board, but if you do not, then the Board will deal with the referral on the basis of the materials it has before it without the benefit of any information from you or your legal adviser.

For further information on Section 31 procedure, please see the separate Section 31 Procedure document which was sent with the Grounds of Referral.

#### Responding to the Grounds of Referral

Please identify which one of the following three options applies to you by ticking the relevant box and complete the form accordingly.

If you **accept, or do not intend to challenge, all the grounds of referral**, complete

- Section B, *and*
- Section C - Other Information
- **Do not** complete Section A.

If you **dispute or challenge all the grounds of referral**, complete

- Section A, *and*
- Section C - Other Information
- **Do not** complete Section B at this stage.

If you **dispute or challenge some the grounds of referral**, complete

- Section A - for the grounds you dispute
- Section B - for the grounds you do not dispute
- Section C - Other Information

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**SECTION A - FOR COMPLETION WHERE THE GROUNDS OF REFERRAL ARE DENIED OR ADMITTED ONLY IN PART**

Note - this section is for completion where some or all the grounds of referral are not accepted by you. In this situation the Board requires to establish where any areas of dispute are before considering how any such dispute is to be resolved, and any grounds established (or not). It is only if grounds of referral are agreed or established in due course that the Board would seek and consider any explanation or mitigation. Accordingly, this section does not seek any information at this stage relating to mitigation where grounds are disputed. If in due course grounds are admitted or established, an opportunity to provide further information will be provided at that time.

Where there are parts of the grounds that are accepted at the current time, any explanation or mitigation can be provided in Section B.

**THE GROUNDS OF REFERRAL AND YOUR RESPONSES**

**A1:** Ground of Referral 1 is:

*[to be completed before issue]*

**A1.1:** Is there any part of referral Ground 1 that you do not dispute? If so, please summarise below:

**A1.2:** While you do not have to do so, this is your opportunity to explain your position in relation to any allegation(s) in ground 1 which you are denying and it may be useful or important for you to do so.

If you wish to present, or rely on, a contrary or alternative position in relation to the allegation you must provide fair notice of that position below. Separately, by detailing your position below SLAB may investigate and consider the position further and with more information, it may determine whether it is appropriate to continue with the section 31 referral.

**A1.3:** The Section 31 Report and related bundles explain and detail the material that SLAB has considered in preparing this referral under its section 31 procedure. If you have any comments on the content or terms of the evidence upon which SLAB has relied in relation to Ground 1, please provide them below:

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**A1.4:** If you wish to comment on the availability of additional relevant evidence that SLAB ought to be aware of, please do so below:

**A2:** *[Repeat section A1 for each further ground of the Grounds of Referral]*

**SECTION B - FOR COMPLETION ONLY IN RELATION TO THE GROUNDS OF REFERRAL TO THE EXTENT THEY ARE ADMITTED**

If there is anything you would like the Board to have regard to as it considers your referral under section 31 by way of explanation or mitigation please summarise below:

**SECTION C - OTHER INFORMATION**

**C1.1:** Are there any matters which have a bearing on further procedure? If so, please summarise below:

**C1.2:** Please tell us if you need communication support or other reasonable adjustment, for example specific arrangements to take part in video or in person hearings, in relation to this procedure, and any other equalities information that you wish to make us aware of:

**C1.3:** If you accept the Grounds of Referral, and have asked for an Oral Hearing referring to paragraphs 13(b)(v) and (vi) of the Section 31 Procedure, please outline why you think an Oral Hearing is appropriate or necessary:

**C1.4:** If you are disputing the grounds of referral in whole or in part, and intend to lead evidence, an Oral Hearing may be required to hear evidence.

Please provide the following information - Details of witnesses and the matters they will be speaking to:



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**C1.5:** Email address for correspondence in connection with the referral or other contact details of representative:

Form R completed by:

Date:

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Respondent / Solicitor for Respondent