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**Draft Code of Practice in relation to  
Children's Legal Assistance Cases**

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## 1 PART ONE: INTRODUCTION

- 1.1 This document sets down the Code of Practice for solicitors and firms providing children's legal assistance<sup>1</sup>. It has been prepared by the Scottish Legal Aid Board ('the Board') in terms of Section 28N of the Legal Aid (Scotland) Act 1986 (as amended) ('the Act').
- 1.2 Unless otherwise stated, all references in this Code to "solicitors" shall apply to sole practitioners, second year trainees who have a restricted practising certificate, including any solicitors who act only as agent for other solicitors, and to any solicitors employed by the Board for the purpose of providing children's legal assistance<sup>2</sup> as they apply to solicitors who are partners or employees of a firm of solicitors. Unless otherwise stated, references to "firms" shall apply to sole practitioners as they apply to firms of solicitors, Alternative Business Structures, and also to solicitors employed by the Board, under Part V of the Act.
- 1.3 Every solicitor and firm of solicitors wishing to provide children's legal assistance must be entered on the Children's Legal Assistance Register established and maintained by the Board under Section 28M of the Act. To be entered, and retained, on the Register, firms and solicitors must conform to the terms of this Code of Practice. The specific conditions for entry on the Register are defined in Part Two of this Code.
- 1.4 Solicitors and firms of solicitors shall operate in accordance with the relevant legal aid legislation and any guidance issued by the Board together with any rules and guidance in respect of a solicitor's conduct as required by the Law Society of Scotland.
- 1.5 This Code of Practice sets out the standards required by the Board in relation to the provision of children's legal assistance. The Board requires that:
- firms and individual solicitors act in accordance with the standards of professional conduct defined in Part Three of this Code;
  - services provided by firms and solicitors and materials submitted to the Board be of the standard and in the format defined in Part Four of this Code; and
  - firms operate procedures that meet the requirements of this Code.
- 1.6 The Board will monitor compliance with the Code of Practice and may request corrective action in cases of non-compliance. Solicitors and firms that fail to comply with the Code risk having their names removed from the Register in accordance with sections 28Q and 28R of the Act.

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<sup>1</sup> Defined by the Legal Aid (Scotland) Act 1986 S41 (as amended) as (a) children's legal aid, and (b) advice and assistance in relation to children's hearings, pre-hearing panels (as defined in section 79(2)(a) of the Children's Hearings (Scotland) Act 2011) or proceedings under Part 10 or Part 15 of the 2011 Act.

<sup>2</sup> Hereafter referred to as "solicitors employed by the Board".

## **2 PART TWO: CONDITIONS FOR REGISTRATION**

### **2.1 APPLICATIONS AND CHANGES**

2.1.1 Both solicitors and firms require to register. Applications for registration must be made in the form determined by the Board and satisfy the conditions set down in this Part of the Code.

2.1.2 A solicitor or firm must notify the Board in advance or, which failing, not later than twenty working days of any changes to information or documentation relevant to that solicitor's or firm's registration or longer if special reason for exceeding twenty working days can be shown. Identification in advance of the special reason will prevent this period being extended indefinitely and as such a special reason request must be made at the outset of the period.

### **2.2 SECTION A: CONDITIONS FOR INDIVIDUAL SOLICITORS**

2.2.1 A registered solicitor will not be eligible to provide children's legal assistance unless working in the course of a connection<sup>3</sup> with a registered firm. Furthermore, an application for registration by a solicitor cannot be considered unless any firm with which he is connected is registered or has applied for registration.

2.2.2 A solicitor shall at all times be in possession of a current valid practising certificate which does not have a restriction preventing the provision of children's legal assistance; the Compliance Partner shall ensure that all the firm's registered solicitors hold current valid practising certificates.

#### **2.2.3 Compliance with the Code of Practice**

2.2.3.1 A solicitor applying for registration shall certify that he complies with the terms of this Code of Practice.

#### **2.2.4 Pre Registration Requirements**

2.2.4.1 A solicitor applying for registration shall have, within 12 months prior to registration carried out 5 hours undertaking any or all of the following :-

- attendance or conduct of one or more courses relevant to the provision of children's legal assistance; these courses may include a course or courses in child law, the children's hearings system, evidence and pleading, legal aid, professional ethics or other such courses accepted by the Board as having relevance to the provision of children's legal assistance,
- any group<sup>4</sup>, collaborative, online and distance learning and/or communication with relevant professionals or bodies,
- conduct or observation of a children's panel hearing(s) &/or associated court proceeding(s).

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<sup>3</sup> Section 41 of the Legal Aid (Scotland) Act 1986 defines 'connected' as including a sole solicitor and a solicitor who is a partner, director or employee of a firm, and cognate expressions shall be construed accordingly. .

<sup>4</sup> A group as prescribed by the Law Society of Scotland..

2.2.4.2 If the Board does not accept that a course has relevance to the provision of children's legal assistance or a solicitor has not carried out any of the above requirements within 12 months prior to application then the Board will consider registering a solicitor on the condition that the above requirements have been carried out within six months of registration. Evidence of this will be made available to the Board on request.

2.2.4.3 For the avoidance of doubt, preparation time in relation to any course that is conducted by the solicitor shall be considered in addition to the actual duration of the course/seminar.

2.2.4.4 A solicitor applying for registration will confirm that they have a working knowledge and familiarity with the contents of all documents as specified in 5.7 of the Code.

## **2.2.5 Records of Course Attendance**

2.2.5.1 A solicitor applying for registration shall demonstrate attendance at courses, group or collaborative internet study and/or communication with relevant professionals or bodies, and or conduct or observation of children's panel hearing(s) &/or associated court proceedings. This shall be produced to the Board on applying for registration or within 6 months of registration and at any time thereafter if required by the Board.

## **2.3 SECTION B: CONDITIONS FOR FIRMS**

2.3.1 A firm must be registered or be applying for registration before any solicitor connected with it may be registered in relation to his connection with that particular firm.

### **2.3.2 Compliance with the Code of Practice**

2.3.2.1 A firm applying for registration shall certify that it will comply with the terms of this Code of Practice.

### **2.3.3 Nomination of Compliance Partner**

2.3.3.1 Subject to paragraphs 2.3.3.2 and 2.3.3.3 below, a firm shall nominate a Partner, known as the "Compliance Partner", to be the Board's point of contact within that firm. The Compliance Partner does not require to be registered. The nomination shall be made as part of the firm's application for registration. Any subsequent changes shall be notified to the Board within twenty working days or longer if special reason for exceeding twenty working days can be shown. Identification in advance of the special reason will prevent this period being extended indefinitely and as such a special reason request must be made at the outset of the period.

2.3.3.2 If the Board it is not reasonably satisfied that the nominee is capable of properly discharging the responsibilities set out in paragraph 2.3.3.4 below. The Board reserves the right to reject the nomination of a particular compliance partner, and in such circumstances will provide detailed reason for doing so whether made as part of a firm's initial application for registration or in the event of any subsequent change.

- 2.3.3.3 Where the words “Compliance Partner” are used, they will apply to a sole practitioner, firms, companies, to the Head of Service of a Civil Legal Assistance Office, the Director of the Public Defenders Solicitor’s Office, to the Director of an incorporated practice, nominated by such a practice, a Compliance Manager of an Alternative Business Structure to be responsible for compliance with this Code on behalf of the practice.
- 2.3.3.4 The Compliance Partner will ensure that all solicitors and the firm comply with the Code and the Compliance Partner’s responsibilities shall include:
- making the application for the firm to be registered
  - certifying that the firm and its staff comply with this Code of Practice producing the written record<sup>5</sup> or records of courses attended by him (if appropriate) and any other individual solicitors of the firm applying for registration or providing written confirmation that such courses will be attended by him (if appropriate) and any other individual solicitors of the firm within six months of registration
  - notifying the Board in advance or, which failing, not later than twenty working days of changes within the firm relevant either to registration or compliance with this Code of Practice or longer if special reason for exceeding twenty working days can be shown. A special reason request must be made at the outset of the period.
  - liaising with the Board on any issue related to this Code of Practice
  - receiving and handling enquiries from the Board regarding suspected non-compliance with this Code of Practice, whether on the part of the firm or any individual solicitor within it
  - ensuring that necessary action is taken in the event of any non-compliance.

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<sup>5</sup> The written record can be held in physical and/or electronic format.

### **3 PART THREE: STANDARDS OF PROFESSIONAL CONDUCT**

3.1 A solicitor shall act independently, honestly and in accordance with the standards of ethics and conduct defined in this Part of the Code and any rules and guidance of the Law Society of Scotland in assessing whether a solicitor's conduct meets the standard required of a member of the profession.

3.2 A solicitor is also an officer of the court and as such has obligations and duties to the Court. A solicitor should always act properly when dealing with children's legal assistance work within the associated children's panel proceedings.

#### **3.3 POLICY FOR STANDARDS OF PROFESSIONAL CONDUCT**

3.3.1 A firm, and in particular the Compliance Partner shall be responsible for maintaining and enforcing a standard declared policy for that firm relating to standards of professional conduct in the provision of children's legal assistance. That policy will be the standards of professional conduct described in this part (Part 3) of the Code.

3.3.2 A firm, and in particular the Compliance Partner, is responsible for ensuring that this policy is communicated to all legally qualified and non-legally qualified staff within the firm who are giving or assisting in giving children's legal assistance.

3.3.3 An individual solicitor is responsible for familiarising himself with, and adhering to, the standard declared policy towards standards of professional conduct.

3.3.4 A firm, and in particular the Compliance Partner shall ensure that appropriate corrective action is taken by the firm if breaches of standards are identified.

3.3.5 Solicitors must not discriminate on grounds of any protected characteristic under the Equality Act 2010 in their professional dealings with clients, employees, other lawyers, or others involved in the children's hearings and the justice system.

#### **3.4 KNOWLEDGE AND EXPERIENCE**

3.4.1 A firm or solicitor shall deploy the knowledge and experience necessary for each case which is taken on.

3.4.2 In addition to paragraph 2.2.4 regarding initial requirements for registration, a solicitor shall thereafter carry out 5 hours within the timescale of 3.4.4

- attend or conduct of one or more courses relevant to the provision of children's legal assistance, these courses may include a course or courses in child law, the children's hearings system, evidence and pleading, legal aid, professional ethics or other such courses accepted by the Board as having relevance to the provision of children's legal assistance,
- partake in any group, collaborative, online and distance learning and/or communication with relevant professionals or bodies,
- conduct or observe a children's panel hearing(s) &/or associated court proceeding(s).

3.4.3 A registered solicitor shall retain a working knowledge of and familiarity with all documents as specified in 5.7 of the Code and demonstrate a continued awareness of same and any updates or amendments there to by the Board and/or relevant bodies.

3.4.4 Where a solicitor has attended sufficient courses within the period of twelve months preceding his application for registration, the period of two years within which he must attend further sufficient courses will run from the date of his registration. Where a solicitor undertakes to complete his attendance at courses within six months of his registration, the period of two years will run from the date of his completion of the requirements of 3.4.2.

### 3.5 RESOURCES

3.5.1 A firm or solicitor shall have appropriate resources available, including suitably qualified staff and technical and administrative support, to give proper attention to each individual case involving children's legal assistance. A firm or solicitor shall not accept instructions where they are unable to adequately represent their client resulting in for example, persistent unnecessary requests for employment of counsel or repeated use of external agents.

### 3.6 CO-OPERATION

3.6.1 A firm or solicitor shall co-operate with the Board in answering any questions about the firm's or solicitor's applications, legal aid accounts, compliance with this Code of Practice or performance on behalf of clients (including questions relating to the measurement of that performance). Any documentation which may be requested shall be made available and, if requested, authorised officers of the Board shall be allowed access to the firm's or solicitor's premises and records to assess compliance with this code. Responses to any requests for information shall be made timeously.

### 3.7 CONSULTATION WITH ADULT CLIENTS

3.7.1 A solicitor should, in general, consult in person with adult clients who are at liberty only at a solicitor's office, a children's hearing centre, a court or a designated consulting room.

3.7.2 In exceptional circumstances a solicitor may consult with a client at a *locus* other than those referred to above, for example, where a client is unable to attend the solicitor's office due to illness, infirmity or age, at the home of the client or a hospital. If travel costs are incurred and can be charged for, these will have to be fully justified in the account.

### **3.8 CONSULTATION WITH CHILD CLIENTS**

- 3.8.1 A solicitor should in general consult in person with child clients who are at liberty/not residing in secure accommodation at a solicitor's office, a children's hearing centre, a court or a designated consulting room.
- 3.8.2 A solicitor may however consult with a child client at a locus other than those referred to above (for example at home, at a foster carer's home, at school or within a young person's centre) where it can be demonstrated that the child's best interests would be better served in so doing. If travel costs are incurred and can be charged for these will have to be fully justified in the account.

### **3.9 COURT WITNESSES**

- 3.9.1 When establishing necessary evidence in a case, a solicitor must take all reasonable steps to do so with due regard to economy, including obtaining police statements from the relevant police force(s) if available or the Scottish Children's Reporter Administration unless it can be demonstrated that personal precognition is reasonable and necessary. Where witnesses are cited to appear for the client in court, the solicitor must be able to justify their citation and show that he has taken reasonable steps to ascertain what their evidence is.

### **3.10 Witness Expenses, Professional & Expert Witness Fees**

- 3.10.1 A firm or solicitor shall submit accounts and other associated documents specified by the Board in accordance with the timescales specified by the Regulations. These accounts should be submitted in the electronic format prescribed by the Board unless the Board, in special circumstances, agrees to accept transmission by other means. These accounts should include fees for professional and expert witnesses, witness expenses and other outlays actually and reasonably incurred. The appropriate justification for such expenses, in the form of vouchers / claim forms etc., must be submitted to the Board. Insofar as it applies to the submission of accounts, this paragraph shall not apply to solicitors employed by the Board.
- 3.10.2 A firm or solicitor shall pay all other outlays including witness expenses and fees without delay and certainly no later than 10 working days from the date of receipt of payment of the relevant account by the Board.

### **3.11 MANDATES**

- 3.11.1 Legal Aid Online Client Mandates with declarations by the applicant (or representative) and solicitor must be completed in every case, kept in the client file and be readily available and accessible to the Board. Files are required to be retained and be available for a period as specified by the Law Society of Scotland.

## **4 PART FOUR: STANDARD OF SERVICE**

### **4.1 MONITORING OF PERFORMANCE**

4.1.1 The Board will monitor the standard of service provided by firms and solicitors, as specified in this Part (Part 4)<sup>6</sup>. Solicitors and firms will be required to supply to the Board any information which it considers necessary for the purpose of monitoring performance. The Board may also assess the standard of professional service and general compliance with this Code by such means as it thinks fit, including for example interviewing the nominated solicitor, analysing solicitors' applications, accounts, case files by appropriately qualified persons and assessing advocacy and representation skills. Where such assessment extends to the application of a solicitor's professional judgement, it will be carried out by solicitors experienced in the provision of children's legal assistance. Such solicitors will be drawn from a panel appointed and remunerated by the Board.

### **4.2 SECTION A: STANDARD OF PROFESSIONAL SERVICE**

4.2.1 Solicitors and firms registered under this Code of Practice shall deliver a standard of professional service which can be expected of solicitors displaying ordinary professional competence.

4.2.2 In particular, without prejudice to the generality of the preceding paragraph, solicitors and firms of solicitors will, by demonstrable file content, be expected for example :

1. to take and record instructions from their clients as to their position in relation to the children's legal assistance matter, note any agreed actions and any subsequent changes. To maintain sufficient records of advice given and action taken on these instructions and to act in accordance with those instructions insofar as to do so would be consistent with solicitors' professional and ethical responsibilities.
2. to be able to recognise the capacity of a child to give instructions
3. to identify and obtain salient details, gather sufficient facts and information about the case, including the identification of any additional information required, taking the necessary steps to obtain it and taking advantage of facilities offered by, or available from, the Children's Reporter including timeous communication and negotiation with the Reporter where appropriate
4. to provide accurate and appropriate advice to the client regarding the relevant sections of the Children's Hearings (Scotland) Act 2011, eligibility for Children's Legal Assistance and the implications of the acceptance or non-acceptance of grounds of referral where appropriate
5. to take appropriate steps to carry out further investigation and communicate appropriately with others in order to progress matters for the client within a reasonable timescale

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<sup>6</sup> All references in this Part and Part Five to files, records, documentation, ledgers etc shall be taken to apply to either computerised or physical formats which meets the requirements of these Parts.

6. to ensure that clients are given sound, timely, comprehensive and well-informed advice and information at all times throughout the case and are kept informed as to the progress of their case including the date, time and place of any children's panel hearing or associated court proceedings
7. to have only such meetings with clients and others that are necessary for the proper conduct of their cases
8. to give the client accurate and appropriate legal advice throughout, taking steps agreed with the client within statutory or reasonable timescales
9. to provide competent and responsible representation at any children's panel hearing and any associated diet of the court at which representation for the client is required
10. to make such investigations as may reasonably be expected to be necessary for the adequate preparation of the client's case
11. to identify the need to instruct experts, Counsel and where required seek appropriate timeous sanction/increase requests in authorised expenditure in accordance with the Children's Legal Assistance Handbook and guidelines used by the Board.
12. in proofs to seek a provisional list of witnesses from the children's reporter as soon as possible, undertake necessary and reasonable preparation and take only such precognitions as may reasonably be expected to be necessary for the proper preparation of the client's case in accordance with Board guidelines
13. to cite all witnesses for associated children's court proceedings as required for the client in good time for any court diet at which those witnesses are to be led in evidence and in doing so consider whether it is appropriate and economical to consider this being done by Video link
14. to avoid being unprepared or otherwise impede or cause unnecessary disruption of or delay to the children's panel hearing process and associated children's court proceedings under Part 10 and Part 15 of the 2011 Act
15. to keep the client informed of progress, advised of any next steps, further procedure throughout the case, including the final outcome
16. to advise the client as to the court judgement or panel decision and any further procedure to follow
17. to handle cases promptly and expeditiously, and with due regard to economy.
18. to lodge an accurate and complete account in a form approved by the Board, containing all the information required for assessment, and respond fully and timeously to further information required to assist the Board in its functions.

### **4.3 SECTION B: RELATIONSHIP WITH THE BOARD**

- 4.3.1 It is the responsibility of firms and individual solicitors to submit intimations, applications, accounts and supporting documentation to the Board in the electronic format prescribed by the Board unless the Board, in special circumstances, agrees to accept transmission by other means.
- 4.3.2 In communication with the Board, solicitors are expected to provide adequate and timeous information to enable their enquiries or requests to be dealt with properly and efficiently. In doing so solicitors and other staff will conduct themselves in a professional manner and all times demonstrate respect and civility in communication with Board staff.
- 4.3.3 The provisions in this Section relating to accounts shall not apply to solicitors employed by the Board.

### **4.4 VALIDITY OF APPLICATIONS**

- 4.4.1 Applications for, and in connection with, children's legal assistance, including work requiring Board prior approval shall conform to the requirements in each of the sections below.
- 4.4.2 Competent and Appropriate**
- 4.4.2.1 Applications shall be necessary and properly directed towards the appropriate form of children legal assistance as provided in the legislation and associated Regulations, for example if your client seeks to appeal to the sheriff against a children panel decision then an application for children's legal aid (as apposed to Assistance by way of Representation) would require to be made.
- 4.4.2.2 Applications made by a solicitor acting directly for a child or children shall only be made where the solicitor has satisfied themselves that the child or children in question has or have sufficient capacity to directly instruct that solicitor.
- 4.4.2.3 Where a solicitor represents an adult in respect of more than one child where panel or court proceedings will be conjoined, held simultaneously or concurrently then only one application shall be made to the Board on behalf of their adult client. In such circumstances, separate applications in respect of each child should not be submitted unless this has been agreed with the Board in advance.
- 4.4.2.4 If a solicitor, or indeed a Curator ad Litem or Safeguarder represents more than one child then separate applications shall be made in respect of each child.
- 4.4.2.5 Applications for or in connection with children's legal assistance should follow the guidance issued by the Board in the Children's Legal Assistance Handbook, in periodic mail-shots &/or correspondence from the Board to the profession. If for any reason such guidance is not being observed, this fact should be brought to the Board's attention in a covering letter which should set out why the solicitor feels such guidance should not apply in the particular circumstances of the case.

#### **4.4.3 Accurate**

- 4.4.3.1 Every effort should be made to provide full and accurate details of the applicant, any person applying on behalf of the applicant and the case particulars to enable the Board to identify the applicant and any previous application for children's legal assistance. In respect of work requiring prior Board approval, every effort should be made to provide accurate and relevant information in support of the request for Sanction.

#### **4.4.4 Complete**

- 4.4.4.1 Applications shall be made online and in the electronic format prescribed by the Board unless the Board, in special circumstances, agrees to accept an application by other means. All information required and requested by the Board shall be supplied timeously to enable the staff to make well-informed decisions. When making an application for Children's Legal Assistance a solicitor will comply with the requirements as stated in the Children's Legal Assistance Handbook and/or any other guidance issued by the Board from time to time.

Where the information is not known, inapplicable or unavailable, the reason for this should be stated. Where appropriate, applications should be accompanied by supporting information and documentation. A solicitor shall not sign or ask a client to sign a blank online mandate form or an online mandate form which is incomplete in respect of the client's full name, address, or date of birth. The client should insert the date of his signature on the online mandate form.

- 4.4.4.2 For advice and assistance, a solicitor shall not sign or ask a client to sign any advice and assistance online mandate form which is incomplete in respect of the following information:

- the financial details on which the solicitor has assessed the client's disposable income and capital, the subject matter on which advice is granted and whether the client has received advice and assistance on the matter from another solicitor.

- 4.4.4.3 In all children's legal assistance applications made to the Board a solicitor shall not sign or ask a client or representative acting on behalf of the client to sign any online mandate form which is incomplete in respect of the information required to satisfy the Board compliance with the financial and merits tests laid down in the Act and/or associated regulations.

#### **4.4.5 Timeous and in accordance with guidance**

- 4.4.5.1 Applications shall be submitted timeously and to allow the Board sufficient and reasonable time to properly consider the application and, if necessary, continue it for further information. Applications must not be routinely submitted immediately prior to or within very close proximity of the date when the case is next calling unless on cause shown.

- 4.4.5.2 Applications for or in connection with children's legal assistance should follow the guidance issued by the Board in the Children's Legal Assistance Handbook, or in periodic mailshots issued to the profession. If for any reason such guidance is not being observed, this fact should be brought to the Board's attention when submitting the application and the solicitor should set out why he/she feels such guidance should not apply in the particular circumstances of the case.

## **4.5 VALIDITY OF ACCOUNTS**

4.5.1 The nominated solicitor is responsible for authorising the account being submitted for payment to the Board irrespective of by whom it was prepared.

4.5.2 Accounts and relative documentation presented to the Board in connection with children's legal assistance shall conform to the requirements in each of the sections.

### **4.5.3 Accurate**

4.5.3.1 All accounts and claims for payment shall be submitted online and in the electronic format prescribed by the Board unless the Board, in special circumstances, agrees to accept an account by other means in which case it still requires to be in a format prescribed by the Board.

### **4.5.4 Complete**

4.5.4.1 Accounts shall contain such information and be accompanied by such documents relating to the provision of children's legal assistance as the Board has advised registered firms that it requires. All entries contained in accounts shall be supported by entries in the file or by appropriate vouchers.

### **4.5.5 Appropriate**

4.5.5.1 Fee charges in accounts shall represent reasonable remuneration for work actually, necessarily and reasonably done, and any charges for outlays in accounts shall represent reasonable remuneration for outlays actually, necessarily and reasonably incurred for conducting the proceedings in a proper manner, as between solicitor and client, third party paying.

For Advice and Assistance in a children's matter including Assistance by Way of Representation, the charges which may be included in an account are fees for work actually, necessarily and reasonably done and outlays actually, necessarily and reasonably incurred due regard being had to economy in connection with the matter on which children's legal assistance was given.

4.5.5.2 The entries should form a proper charge against the Legal Aid Fund and be charged at the rates which apply from time to time as set out in the Fees Regulations (including chargeable outlays). They should also conform to guidelines published in the Board's Taxation Guidelines, Legal Assistance Handbook, Advice and Assistance Accounts Guidance or as set out from time to time in periodic mailshots to registered solicitors and firms.

4.5.5.3 Where items of work carried out or outlays incurred are attributable to more than one case, an appropriately apportioned claim in respect of such work or outlays shall be charged to each children's legal assistance case. Under no circumstances should the same work or outlays be charged in full in more than one children's legal assistance account. In calculating the apportionment between cases, any non-children's legal assistance cases to which the work or outlays are partially attributable should also be taken into account: the total claim should not be apportioned between the children's legal assistance cases to the exclusion of any non-children's legal assistance case(s).

- 4.5.5.4 Where the work or time being charged in an account to the Board includes for example visit or visits to secure accommodation, a young people's centre, a young offender's institution, or a prison, some of which is covered by another type of legal aid, by a fixed payment or by private fee, the solicitor should present with his account a section showing the number and identity of the individuals seen during such a visit or visits and the calculation of the apportionment applied to the account. The total claim should not be apportioned between the children's legal assistance cases to the exclusion of any non-children's legal assistance case(s).

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## **5 PART FIVE: SYSTEM OF MANAGEMENT AND ADMINISTRATION**

**5.1** A firm shall establish and maintain as a means of ensuring and demonstrating that the requirements of this Code of Practice are consistently met. The system shall be effectively implemented by all legally qualified and non-legally qualified staff within the firm who are giving or assisting in giving children's legal assistance. This includes anyone involved in the administration of or accounting for children's legal assistance.

### **5.2 CASE FILES**

**5.2.1** Case files shall be maintained in a manner to demonstrate good quality record keeping in respect of all work done, instructions received and advice given to the client.

All Case records and file notes will include the name of each client, solicitor and detail the activity(ies) undertaken, include the date as well as the start and finish times. The case file notes will include details of any travel including the location of any meeting or hearing, and names of the relevant attendees. File notes shall record the matters discussed at any meeting, hearing or telephone conversation.

At each stage of the case there will be evidence of what advice has been given to the client, what instructions were taken and what action was agreed with the client. All case notes need to be legible, comprehensive, correspond in length and detail to the time recorded as having been spent with the client. Copies of all correspondence sent/received or documents produced on behalf of the client will be kept on file.

At the conclusion of a case, there should be a record of the outcome and of what was explained to the client about any further action the client is required to take.

### **5.3 FILE MAINTAINANCE**

**5.3.1** Case files shall be opened for each new matter, referenced by client name and the subject matter and recorded in a central location.

The file is to be maintained chronologically and if removed from the office then a record will be kept as to the whereabouts. The on-going status of the case file will be maintained by the nominated solicitor responsible for the same.

All incoming mail in relation to the file shall be viewed by an appropriate member of staff and actioned or delegated to an appropriate person for actioning as soon as practice. All outgoing mail should be checked and issued by an appropriate qualified member of staff. Electronic files will be made available in paper format should this be required for Peer Review purposes.

At such time as the work has been completed the file will be marked for closure and a record shall be kept that the file has been closed and that payment has been received. Any original documents and other property held by the solicitor or firm belonging to the client will be returned to them at the conclusion of the case to which they relate.

All Records and files are required to be retained and be available for a period as specified by the Law Society of Scotland.

#### **5.4 FILE REVIEW**

- 5.4.1 The firm shall operate procedure to ensure that all children's legal assistance cases are conducted timeously, effectively and in accordance with this Code of Practice.

To ensure that action is taken as and when required for the proper conduct of cases in accordance with Part Four of this Code, the procedure shall provide for an effective diary and file-checking system to ensure all requirements are being fulfilled.

The procedure shall also provide for the review of a cross-section of active and concluded children's legal assistance cases to determine continued compliance with this Code by solicitors in the conduct of these cases and that a record is maintained to demonstrate that this is being done.

#### **5.5 COMMUNICATION WITH THE SCOTTISH LEGAL AID BOARD**

- 5.5.1 The solicitor will be responsible for ensuring all documents, paperwork, accounts or electronic communications submitted to the Board are in order and are in a manner specified by the Board that consistently satisfies Parts 4.3, 4.4 & 4.5 of this Code of Practice.

#### **5.6 TRAINING & SUPERVISION OF STAFF**

- 5.6.1 All solicitors will be familiar with and demonstrate a working knowledge of the contents of Child Law, legislation and associated regulations, documents specified in 5.7 of the Code and at all times adhere to Board guidance.

The nominated solicitor shall be responsible for ensuring all staff assisting with a case are adequately trained.

- 5.6.2 Adequate supervision procedures shall be in place which will enable the firm to satisfy itself that work carried out by individual solicitors is in accordance with the provisions of Parts Three and Four of this Code. The level of supervision required will be dependent upon the complexity of the work and the individual solicitor's knowledge and experience.

- 5.6.3 Where children's legal assistance work is delegated by the solicitor to non-legally qualified staff or other registered solicitors within or outwith the firm, the nominated solicitor shall maintain responsibility for the standard of work and shall ensure that it is completed in a satisfactory manner. This does not detract from the responsibility of the solicitor to whom the case has been delegated to adhere fully to the requirements of this Code.

#### **5.7 DOCUMENT CONTROL**

- 5.7.1 The firm shall ensure that the latest issue of pertinent documents is accessible for use either electronically and/or otherwise.

All solicitors will demonstrate a working knowledge and familiarity of all key documents that shall include:

- The Code of Practice in relation to children's legal assistance
- Statutes, Regulations and Rules of Court applying to children's legal assistance
- the Children's Legal Assistance Handbook, incorporating the Legal Aid (Scotland) Act 1986, as amended
- Equality Act 2010
- relevant circular letters, guidelines and/or mailshots issued by the Board
- keycard for Advice and Assistance
- standards of conduct, standards of service and child protection and representation principles for children's lawyers published by the Law Society of Scotland.
- Quality Assurance Requirements
- Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland published by the Scottish Government.
- Any appropriate letters, guidance, mail-shots, manuals and handbooks issued by the Scottish Children's Reporters Administration and/or Children's Hearings Scotland regarding the Children's Hearing system.

All solicitors submitting Accounts or equivalents will be adhere to the

- **TAXATION GUIDELINES, CHILDREN LEGAL ASSISTANCE HANDBOOK.**

## **5.8 CORRECTIVE ACTION**

- 5.8.1 The firm shall ensure that appropriate action is taken to deal with any concerns which are identified. Such concerns may include, complaints to the solicitor by clients, the Law Society, the Scottish Legal Complaints Commission or any other relevant body, including the Board in respect of a Children Legal Assistance matter.
- 5.8.2 The firm will take any timely and appropriate action in respect of concerns identified by solicitors who are not adhering to this Code of Practice.
- 5.8.3 After identification of such a concern, the firm shall ensure that remedial action is taken on the specific concern raised and appropriate long term action is taken to prevent, as far as is possible, a recurrence of the concern; such action will be appropriate to the severity of the concern.
- 5.8.4 Procedures shall be in place to ensure that all identified concerns are recorded (electronically and/or otherwise) that appropriate action is taken where necessary and that records of such corrective action are maintained.