

Summary of the draft Children's Legal Assistance Code of Practice



Introduction

The Children's Hearings (Scotland) Act 2011 (the 2011 Act) makes major changes to the operation of children's hearings and to the bodies responsible for their administration and management. It also makes significant changes to the legal aid provisions and this update addresses those aspects of the 2011 Act.

Under the current arrangements no form of legal aid or advice and assistance including ABWOR) is available to enable a solicitor or counsel to represent a child or any relevant person at a children's hearing. The 2011 Act changes that and introduces a Registration scheme and a Code of practice and an associated scheme for quality assurance for solicitors who are paid under the children's legal assistance scheme.

Code of Practice for Children's Legal Assistance

Both solicitors and firms wanting to provide children's legal assistance require to be registered with the Board and comply with the Code.

The Code enables the Board to monitor the quality of children's legal assistance work carried out in Scotland and the sums spent on this work by the Board.

A firm does not need to submit written procedures for registration, the 10 administrative requirements established by the Law Society of Scotland are incorporated within Part 5 of the Code. There is no requirement for Time Recording for Children's Legal Assistance

As registration by the firm and all connected solicitors is required draft registration documents are included with this consultation.

The Code was drafted in a manner to enable solicitors' to ensure effective participation by both the Child and other relevant persons and enable subscription to the ethos of the Children's Hearing system.

There are four substantive sections:

Part Two: Conditions for Registration

This section outlines the registration requirements for individual solicitors and firms wishing to provide children's legal assistance work. This section highlights pre registration requirements but recognises that solicitors may need time to fulfil these and allows for these to be achieved over six months.

The section also introduces the concept of a Compliance Partner and details his/her responsibilities:

- Make the application for registration
- Certify the firm's initial and continuing compliance with the code
- Notify the Board of changes
- Liaise with the Board regarding the code
- Deal with enquiries relating to possible non-compliance
- Ensure corrective action where non-compliance established

The Compliance Partner need not be registered for Children's Legal Assistance.

Part Three: Standards of Professional Conduct

This section codifies, under a variety of heads, accepted standards of conduct in relation to the provision of children's legal assistance. These closely echo and expand upon the Law Society of Scotland's rules. However as this is monitored and maintained by the Board not the Society there are additional aspects within this section that are specifically outlined

The subjects covered are:

- Policy for standards of professional conduct
- Knowledge and experience
- Resources
- Co-operation
- Consultation with Adults and Children
- Consultation with clients at liberty
- Witnesses
- Witness expenses, professional and expert witness fees.
- Mandates

Part Four: Standard of Service

This section outlines what the Board expects as a standard of service to be provided by firms and solicitors. Paragraph 4.2.2 details what normally is to be expected in the course of representing a client, whether adult or child and incorporates the key themes of the existing Quality Assurance Scheme for Civil Legal Assistance which includes children legal assistance.

Subsequent paragraphs deal with the solicitor's or firm's relationship and communication with the Board and the validity of applications, work that needs Board prior approval and accounts submitted to the Board. These latter sections are divided into factors such as competent, appropriate, accurate; completeness and timeous.

Part Five: System of Management

This section describes how it is expected that firms already organise and maintain their files and manage their cases. This section incorporates the Law Society's 10 administrative requirements.

There is no need for a firm to submit written procedures to the Board and there is no requirement for Time Recording.