



Section 25b Legal Aid (Scotland) Act 1986

[DRAFT] CODE OF PRACTICE FOR CRIMINAL LEGAL ASSISTANCE

Table of Contents

Part A - Introduction	4
Section 1 Introduction, Principles, and Definitions	4
Introduction	4
Principles underlying the Code of Practice	5
Definitions	6
Part B - The Providers of Criminal Legal Assistance	7
Section 2 Registration	7
Applications for registration - Conditions for firms	7
Compliance Partner	7
Applications for registration - Conditions for solicitors	8
Section 3 Skills, knowledge, experience and competence	8
Solicitors Delivering Criminal Legal Assistance	9
Non-Solicitor staff	10
Equipment infrastructure & resources	10
Systems which allow for efficient interaction with key bodies in the justice sector, COPFS, the Courts and SLAB	10
Section 4 Standards of conduct and service	10
Standard of professional service - General	11
Criminal Legal Assistance	13
Quality assurance policy	14
Protection of vulnerable groups	15
Discrimination and equalities	15
Data protection	15
Standard of professional service - Formation of the solicitor/client relationship	16
Relationship & cooperation with SLAB	16
Relationships and cooperation with third parties	18
Targets	18
Section 5 Systems for management & administration	18
Personal work and time recording	19
Case recording	20
Financial transaction recording	22

Case review.....	22
Supervision of solicitors and staff	23
Corrective action	23
Part C - The Provision of Criminal Legal Assistance	24
Section 6 General aspects and processes	24
Letters of engagement.....	24
Applications for, and relating to, legal assistance.....	24
Contributions	25
Accounts: Preparation, responsibility for submission and accuracy.....	25
Section 7 Particular aspects and processes	27
Duty criminal legal assistance	27
Non-duty police station work	31
Mandates/transfers/different solicitors acting at different stages	31
Meetings with clients.....	32
Witnesses	32
Experts, outlays, witness fees and expenses	33
Instruction of representation in the superior courts	34
Conflicts of interest/acting for more than one accused	34
Complex and costly case planning	35
Section 8 Monitoring & compliance by SLAB	35

Part A - Introduction

Section 1 Introduction, Principles, and Definitions

Introduction

- 1.1 This Code describes the standards of conduct and service required of solicitors who provide or propose to provide publicly funded criminal legal assistance. It is an important part of a wider framework of legislation, practice rules, standards, procedures and court rules that registered solicitors must follow. Together this framework ensures and promotes adequate protection for the interests of clients, the courts, the wider justice system and the Scottish Legal Aid Fund.
- 1.2 The Code aims to both set and raise awareness of the standards required of solicitors delivering criminal legal assistance. In doing so, it shapes and promotes the availability to the people of Scotland of sustainable, cost-effective and quality assured criminal legal assistance.
- 1.3 SLAB maintains and publishes a register of solicitors eligible to provide criminal legal assistance and the firms with which they are connected, called the Criminal Legal Assistance Register (“the register”). Those appearing on the register have committed to abide by the standards set out in the Code.
- 1.4 While the Code offers some detail on the approach to be taken to the delivery of criminal legal assistance, the essence of the Code is an obligation on registered solicitors to do a good job to the appropriate standard as otherwise described in this Code and to be in a position to demonstrate that they have done so, including through appropriate record keeping, and on registered firms to put in place the structures, processes and facilities within which its solicitors will be able to do so.
- 1.5 Key components of the delivery of criminal legal assistance reflected in the Code are:
 - By electing to participate in the delivery of criminal legal assistance, solicitors are choosing to provide an essential and valuable publicly-funded service, and as one paid for by the public purse they must accept necessary associated criteria, conditions and constraints
 - Solicitors and staff must have, maintain and demonstrate appropriate knowledge, skills and competencies in the provision of criminal legal assistance
 - Solicitors and staff must work to certain required standards specified by the Code or otherwise applicable to solicitors and their staff
 - Firms must establish proper systems for management and administration which will be communicated and adhered to by all solicitors and other staff involved in the provision of criminal legal assistance
 - Solicitors and staff are subject to monitoring and compliance processes, with which they will co-operate in full

- Unless specifically otherwise provided, the Code applies in all contexts of the delivery of criminal legal assistance by solicitors, including the exercise of extended rights of audience by a solicitor.

The standards provided by this Code with which solicitors and firms are required to comply are comprised of:

- Principles underlying the Code
- Specific Code provisions or rules

Indicators of Code compliance and explanatory comments

Beyond these core Code provisions, the Code also offers indicators of Code compliance and comments. The status of the indicators is that they illustrate how solicitors and firms can comply, and demonstrate ongoing compliance, with the Code. Solicitors and firms are free to choose other approaches if otherwise in compliance with the Code. A solicitor or firm departing from the indicators may however face difficulty establishing compliance with the Code in the event of an issue arising in relation to suspected or apparent non-compliance. Separately, a failure to follow the indicators which, had they been followed, would have achieved Code compliance, may be referred to in any procedures relating to registration or exclusion. It is for these various reasons that adherence to the indicators is strongly recommended. Additionally SLAB may separately publish guidance from time to time.

Summary of the Code contents

- **The Code Principles** are detailed at 1.6 below
- **Specific Code provisions** are set out in the numbered sections of Parts B and C of the Code
- **Indicators of Compliance and comments** are set out in italics in boxed sections directly after specific Code provisions. SLAB may also publish further guidance separately from time to time.

Principles underlying the Code of Practice

1.6 The following principles underlie the Code. By providing criminal legal assistance solicitors confirm that they accept and will apply these principles in their criminal legal assistance practice, and that failure so to do may constitute a breach of the Code.

Solicitors delivering criminal legal assistance must:-

- display high standards of professionalism and act independently, honestly, ethically and with integrity both directly in relation to the delivery of criminal legal assistance and otherwise.
- provide a proper standard of service to their clients and act in a way consistent with the best interests of their clients, their duties as officers of the court and as providers of a publicly-funded service.

- comply with their regulatory obligations, engaging with SLAB in the exercise of any of its functions, and with other agencies within the justice sector in an open, timely and co-operative manner.
- ensure that publicly-funded services are delivered with due regard to economy and that costs incurred are for work and expenses that are actually, necessarily, reasonably and appropriately undertaken or incurred in pursuance of competent and appropriate representation.
- treat all those with whom they come into contact in the course of providing criminal legal assistance with respect, dignity and courtesy. This includes clients, witnesses, staff of other firms and those employed by criminal justice agencies, including Police Scotland, SCTS, COPFS and SLAB.

Definitions

1.7 The following definitions apply in the Code:

Criminal legal assistance	Criminal advice and assistance, criminal ABWOR and/or criminal legal aid
Duty criminal legal assistance	Criminal legal assistance provided at police stations, courts or otherwise in accordance with arrangements made by SLAB under the Criminal Legal Assistance (Duty Solicitors)(Scotland) Regulations 2011 (hereafter “the 2011 Regulations”) or otherwise
Duty solicitor	a solicitor (see below) who, in respect of a particular date or period, or otherwise as required, is by virtue of inclusion in arrangements made by SLAB, in a position to provide duty criminal legal assistance
Firm	includes, as the context requires, a firm of solicitors, an incorporated practice, a licensed legal services provider, a sole solicitor, the Public Defence Solicitors’ Office, Solicitor Contact Line, or a law centre or other practice unit; and which firm may either be a firm registered by SLAB as a firm with which registered solicitors are connected, or a firm in course of applying for such registration
Fund	means the Scottish Legal Aid Fund
Manager	includes, as the context requires, partner, manager, director, principal or other person authorised by a firm or practice unit to manage, direct and supervise the provision of criminal legal assistance
Register	the register established and maintained by SLAB under section 25A of the Legal Aid (Scotland) Act 1986 otherwise known as the Criminal Legal Assistance Register.

Solicitor

a solicitor holding a valid Scottish practising certificate and registered in terms of Section 25A(3A) of the Act or in course of applying for such registration, unless otherwise stated. This includes trainee solicitors and solicitors otherwise subject to practising certificate restrictions to the extent that such solicitors are in a position to provide criminal legal assistance.

Part B - The Providers of Criminal Legal Assistance

Section 2 Registration

- Applications for registration - conditions for firms
- Compliance manager
- Applications for registration - conditions for Solicitors

Applications for registration - Conditions for firms

2.1 A firm applying for registration must satisfy SLAB that

- it complies with the terms of the Code
- it has in place all measures, requirements and provisions required by the Code
- any criminal legal assistance delivered by the firm or solicitors connected with it will be in accordance with the Code.

Compliance Partner

2.2.1 A firm must nominate a compliance manager. The responsibilities of the compliance manager include:

- making the application for the nominating firm to be registered and informing SLAB of any changes
- certifying that the firm and its staff comply with the Code when the application is made
- monitoring and ensuring ongoing compliance
- notifying SLAB as soon as reasonably practicable of any changes within the firm relevant either to registration or compliance with the Code
- liaising with SLAB on any issue related to the Code
- receiving and handling enquiries from SLAB regarding suspected non-compliance with the Code, whether on the part of the firm or any individual solicitor within it
- responding timeously and fully to all correspondence and communications with SLAB
- ensuring all records are maintained, retained and accessible as set out in section 4 of the Code
- ensuring that there is an effective firm-level system of monitoring and supervision of account preparation and submission by solicitors

- ensuring that necessary corrective and remedial action is taken in the event of any non-compliance.

2.2.2 The compliance manager must:

- be a manager or someone of equivalent ownership status within the practice unit e.g. a sole practitioner or a director of a limited liability company
- be a solicitor, but need not be registered to provide criminal legal assistance
- be familiar enough with the terms of the Code to be able to discharge the responsibilities of compliance manager.
- accept the nomination as compliance manager and by doing so accept the responsibilities of compliance manager set out in the Code.

2.2.3 The nomination of the compliance manager (and the compliance manager's acceptance of the nomination) must be provided to SLAB as part of the firm's application for registration or at any time where the firm seeks to change compliance manager. SLAB must be notified of any proposed change of compliance manager at least 28 days before the proposed change.

2.2.4 SLAB may reject or review the nomination of a particular compliance manager, and in such circumstances will provide reasons for doing so. Where SLAB rejects or reviews a nomination the firm must provide an alternative nomination.

Applications for registration - Conditions for solicitors

A solicitor applying for registration must:

- confirm that they understand, agree and both comply and commit to continued compliance with the Code as it applies to the types of criminal legal assistance the solicitor provides
- meet the requirements at paragraphs 3.3 to 3.5 below regarding attendance at relevant courses
- provide an individual email address that meets the requirements at paragraph 3.11 below
- be connected to a firm that is already registered or has applied for registration
- not otherwise be unqualified to provide criminal legal assistance.

Section 3 Skills, knowledge, experience and competence

- *Solicitors delivering criminal legal assistance*
- *Non-solicitor staff*
- *Equipment infrastructure & resources*
- Systems which allow for efficient interaction with key bodies in the justice sector, COPFS, the courts and SLAB

Solicitors Delivering Criminal Legal Assistance

- 3.1 A solicitor must know and comply in practice with all legal, ethical and professional obligations of a solicitor providing or intending to provide criminal legal assistance, including the solicitor's duties to the client, as an officer of the court and under the Code.
- 3.2 A solicitor's practice must reflect an up to date knowledge and understanding of the law, procedures and relevant legal aid legislation, regulations, guidance and guidelines, including taxation guidelines, the Code, legal aid online terms and conditions of use and the firm's own system of management and administration.
- 3.3 A solicitor must have and deploy the knowledge, experience, competence and resources necessary and appropriate for the proper conduct of each case which is taken on. Where a solicitor does not have the knowledge, experience, competence or other resources necessary and appropriate for a case, the solicitor should not take that case on and should refer the client to another solicitor.
- 3.4 When applying for registration, a solicitor (other than a second year trainee who has held a criminal law and practice "seat" for a period of not less than three months as part of their traineeship prior to the date of application) must confirm that they have attended or conducted¹ one or more courses relevant to the provision of criminal legal assistance in the twelve months prior to application. These courses must amount to fifteen or more hour's duration in total and may include a course or courses in criminal law, evidence and pleading, legal aid or professional ethics.
- 3.5 If the solicitor has not attended or conducted sufficient relevant courses in the twelve months prior to application, they must undertake to do so in the six months following the solicitor's registration.
- 3.6 Once registered, a solicitor must attend or conduct a minimum of five hours of relevant courses in each practising certificate year.
- 3.7 Once registered, if a solicitor conducts fewer than twelve cases in any practising certificate year, they must attend or conduct a minimum of 15 hours of relevant courses in the following practising certificate year.
- 3.8 A solicitor must keep a record of relevant courses attended by him. A solicitor can meet this requirement by highlighting the relevant courses on the record of their Continuing Professional Development required by the Law Society of Scotland.

¹ For the avoidance of doubt, preparation time for any course will not be considered in addition to the actual duration of the course

Non-Solicitor staff

- 3.9 A firm must ensure that all staff are adequately trained, skilled and resourced to undertake their duties and are familiar with and adhere to SLAB procedures and requirements, Legal Aid On-line, the Act and regulations, and guidance as appropriate.

Equipment infrastructure & resources

- 3.10 A firm must have appropriate equipment and resources available, including sufficient time and technical and administrative support, to ensure that proper and sufficient attention and care can be given to each individual case.

Systems which allow for efficient interaction with key bodies in the justice sector, COPFS, the Courts and SLAB

- 3.11 SLAB, the Crown Office and Procurator Fiscal Service, the Scottish Court and Tribunal Service and Police Scotland are moving towards the submission and transfer of information electronically. In light of this, firms must be able to demonstrate that their solicitors and other staff are competent and in the effective use of information and communications technology, including
- completing online forms
 - accessing email, including secure email
 - downloading and securely storing information
 - utilising video communications.
- 3.12 Solicitors must have an individual email account and
- ensure that SLAB has an up to date address for that account
 - regularly access and note, respond to or action as appropriate all relevant requests, material or information issued by SLAB to the solicitor at that email address.

Section 4 Standards of conduct and service

- Standard of professional service - general casework
- Criminal Legal Assistance
 - Obligations and requirements
 - Remuneration
- Quality assurance policy
- Protection of vulnerable groups
- Discrimination and equalities
- Data protection
- Standard of professional service - Formation of the solicitor/client relationship
- Relationship and cooperation with SLAB
- Relationships and cooperation with third parties
- Targets

Standard of professional service - General

- 4.1.1 A solicitor must prepare and conduct work to the standard of a reasonably competent solicitor by carrying out professionally, promptly and expeditiously all work that is actually, necessarily and reasonably undertaken with due regard to economy.
- 4.1.2 In particular a solicitor must, as the circumstances of each case requires and without prejudice to their other obligations and responsibilities:
- (a) Take and record instructions from their client on the plea to be tendered initially and any subsequent changes.
 - (b) Ensure clients are given accurate, appropriate, well informed and complete advice and explanations at all times to enable them to make informed decisions. Where appropriate and practicable, advice should be provided to the client in writing²
 - (c) Timeously advise the client of the client's rights and obligations in relation to the availability and operation of criminal legal assistance and take appropriate and effective steps to grant or apply for the appropriate form of criminal legal assistance, consistent with the client's instructions and position and the requirements set out in this Code.
 - (d) Advise the client of the steps that can be taken by the client in order to assist the efficient and effective conduct of the matter.
 - (e) Keep the client well informed of the progress of the case, including advising the client of the stages through which a matter progresses and the opportunity and advantages a stage might provide to resolve matters.
 - (f) Advise the client at the first reasonable opportunity and throughout the case about relevant aspects of sentencing and the application of Section 196 of the Criminal Procedure (Scotland) Act 1995 in relation to early pleas of guilty.
 - (g) Advise the client as to any special conditions of bail and the consequences of any breach.
 - (h) Communicate effectively with the client, using language that is understandable and appropriate to the age, gender and capacity of the client.
 - (i) Engage with the client and others by meeting, video link or audio communication as appropriate in the circumstances and as necessary for the proper conduct of the case, avoiding and not instigating meetings, etc. that do not or cannot reasonably be anticipated to advance the case in some significant respect.

² There may be some circumstances where it will not be practicable such as where there are issues of literacy or comprehension, the client's mental health is a factor, there is not sufficient time to provide advice in writing due to guilty pleas and quick progression through the court process or there is no known address for the client.

- (j) Take advantage of facilities offered by, or available from, or actively engage with the prosecution to discuss and facilitate the efficient progress of cases, including as appropriate the agreement of evidence.
- (k) Avoid unnecessary travel, for example by the use of local agents, video conferencing or other video or audio media. Travel in the case must be demonstrably justifiable from the case content and must be correctly apportioned with other cases.
- (l) Have regard to any arrangements that require to be made for communicating with non-English speakers, including as set out in The Right to Interpretation and Translation in Criminal Proceedings Regulations (Scotland) 2014 and the Code of Practice for Working with Interpreters and the Provision of Translations.
- (m) Obtain where available relevant disclosure from the prosecution, consider it as appropriate and discuss it with the client.
- (n) Take details for, and frame, such precognitions as may reasonably be expected to be necessary for the preparation and conduct of the client's case.
- (o) Cite all witnesses required for the defence in good time for any diet of trial at which those witnesses are to be led in evidence.
- (p) Identify and instruct in good time necessary experts, subject to requirement to obtain sanction.
- (q) Provide (or otherwise arrange) in any case in which the solicitor is instructed, competent and responsible representation at any diet of the court at which representation for the client is required and not cause unnecessary disruption of or delay to court business. This includes the situation where a client appears from custody on a warrant granted in the case previously.
- (r) Advise the client as to the outcome of the matter, including any sentence, the implications thereof, whether any appeal should be considered and any further action the client is required to take.
- (s) Check that original documents and other property held by the solicitor or firm belonging to the client are returned at the conclusion of the case to which they relate.
- (t) Refrain from withdrawing from acting without just cause. Where a solicitor does withdraw immediate notice should be given to the client, the court and SLAB. Notification to SLAB should specify the reasons for withdrawal.

Criminal Legal Assistance

Obligations and requirements

- 4.2.1 A solicitor must ensure that all information relevant to the making of an application is recorded, evidence of financial verification is obtained and copies of relevant documentation such as payslips and bank statements are taken, retained as appropriate and provided to SLAB when requested, or as required.
- 4.2.2 A solicitor must have full regard to the regulatory framework for criminal legal assistance, take proactive steps to comply with obligations incumbent on the solicitor in relation to supply of information, changes of circumstances and abuse of legal aid, and encourage and assist clients in compliance with obligations incumbent on persons in receipt of criminal legal assistance.

Remuneration

- 4.2.3 By electing to provide criminal legal assistance, solicitors accept that remuneration will be in accordance with prevailing fee structures and rates provided in the relevant regulations.
- 4.2.4 By electing to provide criminal legal assistance, solicitors understand and accept that the fees payable overall in any given case, whether charged on a detailed basis or otherwise, include remuneration for any components of work in relation to which there might otherwise be an apparent absence of specific fee provision.
- 4.2.5 If a solicitor is not prepared to undertake all necessary work for a client in a case on the ground that they consider the remuneration payable in the case (or any part of the case) is unacceptable, they must not accept instructions to act in the case under criminal legal assistance.
- 4.2.6 If after accepting instructions unforeseen developments lead a solicitor to consider that the remuneration payable is or will be unacceptable to the point of being unwilling to undertake all necessary work, and where the case does not meet the criteria for exceptional case status, a solicitor must withdraw from acting. Where it has been determined to be in the interests of justice that the client be represented, a failure to withdraw legally precludes any other solicitor from acting and may seriously prejudice the interests of the client in the proceedings.
- 4.2.7 Where a solicitor withdraws in the circumstances described in paragraph 4.2.5 and has concerns that the client may not themselves be able to secure alternative representation, or do so in an appropriate timescale, the solicitor must still withdraw but must immediately notify SLAB so that SLAB can make appropriate arrangements.

Quality assurance policy

- 4.3.1 A firm must establish, communicate to all staff and enforce a quality assurance policy which sets out
- its standards of professional conduct
 - a statement of the firm's scope of work
 - its procedures for internal quality assurance, including supervision arrangements
 - the quality standards which apply to
 - onward referral
 - agency relationships
 - the instruction of experts
 - the instruction of counsel or solicitors with extended rights of audience.
- 4.3.2 An individual solicitor will be familiar with, and adhere to, the firm's quality assurance policy.
- 4.3.3 The quality assurance policy must be made available to SLAB on request.

Indicators of compliance

- (a) *The letter of engagement issued by the firm to each client advises of the existence of the quality assurance policy, and makes provision for a copy to be made available to the client on request.*
- (b) *The quality assurance policy incorporates a statement of the firm's scope of work. It includes a description of the types of case, if any, the firm will not undertake whether for reason of capacity, resources, competence, availability or otherwise. A firm only accepts instructions for cases within its stated scope of work.*
- (c) *The quality assurance policy sets out the firm's arrangements for referring clients to another firm which will act in cases that fall outside the firm's own stated scope of work. If the solicitors in a firm do not have the expertise to conduct complex fraud cases in the sheriff court, nor sheriff court cases which involve child witnesses, their quality policy makes clear both that fact and the process for referral of such cases.*
- (d) *Appropriate corrective action and/or disciplinary action is taken by the firm when breaches of the quality assurance policy are identified, all as provided for at 5.7.1.*

Protection of vulnerable groups

- 4.4 Each firm must consider which, if any solicitors or other staff of the firm require PVG or enhanced disclosure and make appropriate arrangements. Regard must be had to relevant child protection and vulnerable adult protection requirements when instructing experts and others to have contact with a client, or witnesses.

Discrimination and equalities

- 4.5 Solicitors must not discriminate unlawfully on grounds of any protected characteristic under the Equality Act 2010 in their professional dealings with clients, other staff, other lawyers or others involved in respect of criminal legal assistance and the justice system

Indicators of compliance

- (a) A firm makes reasonable adjustments to respond to clients with particular needs to ensure access, including but not limited to physical access.*
- (b) A firm on an ongoing basis takes steps to review all aspects of service delivery to ensure it does not discriminate unlawfully on grounds of any protected characteristic under the Equality Act 2010 or allow such discrimination by its managers, employees in their professional dealings with clients, other employees, other lawyers or others involved in respect of criminal legal assistance and the justice system.*
- (c) Where, in relation to a firm, there are any significant changes to criminal legal assistance service delivery an equalities impact assessment is carried out as part of the planning process, and due regard is given to emerging issues in the ensuing changes.*
- (d) A solicitor asks each new client if they wish to provide equalities information to accompany their criminal legal assistance application, and if the client so wishes, the solicitor facilitates the provision of that information to SLAB to assist SLAB in its function of collating comprehensive information about the equalities characteristics of clients accessing to criminal legal assistance.*

Data protection

- 4.6 A firm must be registered as a Data Controller with the Information Commissioner's Office. All personal data should be appropriately encrypted and any transfer of data should meet the requirements of the Data Protection Act 1998.

Standard of professional service - Formation of the solicitor/client relationship

- 4.7 A solicitor must apply due skill and competence and good professional practice, and otherwise act in accordance with this Code, in all steps taken in relation to (a) establishing whether a solicitor client relationship is appropriately formed and (b) where it is, the formation of that relationship.

Indicators of compliance

- (a) A solicitor by accepting instructions and providing advice establishes a solicitor/client relationship. Formation of the relationship, advice given, and instructions received is recorded on the case file for that client's case.*
- (b) Unless with due regard to proper and effective case management the circumstances otherwise require, a solicitor maintains a separate case file for, and only for, each distinct matter in which the solicitor is instructed for a client and for which criminal legal assistance is provided.*
- (c) A solicitor does not accept instructions to act for a client and establish a solicitor/client relationship with that client in respect of any given case unless and until:*
- the client has been provided with an Information for Applicants leaflet, unless impracticable*
 - the solicitor has advised the prospective client of the actual or the likely level of any contribution payable in respect of advice and assistance or ABWOR relevant to the case.*

Relationship & cooperation with SLAB

- 4.8 As reflected in the principles underlying the Code solicitors and firms must engage with SLAB in the exercise of any of its functions or otherwise, in an open, timely and co-operative manner. Necessary information and supporting material required by applications and requests must be timeously submitted in an effective and efficient manner.

Indicators of compliance

- (a) A solicitor co-operates with SLAB in responding to requests for information and answering any questions about the firm's or solicitor's applications, legal assistance accounts, compliance with the Code or performance on behalf of clients (including questions relating to the measurement of that performance).*

Any documentation is made available on request and, if requested, authorised officers of SLAB are allowed access to the firm's or solicitor's premises (including, as accords, off-site storage) and records. Responses to any requests for information are made timeously and in writing, preferably by electronic means.

- (b) A solicitor submits applications (whether initial applications, sanction applications, or otherwise), accounts and supporting documentation to SLAB to a standard and in a format that meets SLAB's requirements.*
- (c) A solicitor monitors on an on-going basis the status of applications and accounts in relation to which they are the nominated solicitor either using their own records or via the Legal Aid Online system. This occurs whether or not within the firm the solicitor has passed or delegated handling of all or part of the casework to another solicitor.*
- (d) A solicitor consults (and as appropriate applies) the Criminal Legal Assistance Handbook and/or updates issued to the profession prior to raising any direct queries with SLAB so as not to make unnecessary enquiries or requests in circumstances where sufficient guidance is readily available in the Handbook.*
- (e) A solicitor in all interactions with SLAB assists in the efficient and effective discharge of SLAB's functions and refrains from any steps which cause additional or unnecessary administration or over use of SLAB staff resources. This includes avoiding, where possible, late submission of applications and requests for additional expenditure, incomplete applications, or applications unsupported by required documentation.*
- (f) In communication with SLAB, a solicitor provides adequate and timeous information to enable their enquiries or requests to be dealt with properly and efficiently.*

Relationships and cooperation with third parties

4.9 A solicitor must when dealing with clients, members of the Judiciary, other members of the profession, witnesses, police, social workers, court staff and others, conduct themselves in a courteous and professional manner in order to foster and not impede good working relationships

Indicators of compliance

- (a) A solicitor is punctual for court, meetings and Police Station attendances.*
- (b) A solicitor makes effort to ensure that prison visits are arranged and scheduled to avoid abortive visits such as where the client can reasonably be anticipated to be unavailable, has been transferred, is at court or has been released. Where available, video links should be used rather than face to face visits, unless there is good reason not to do so.*
- (c) A solicitor provides a timely and meaningful reply to all third party communications - correspondence, emails, telephone inquiries etc. -and reply promptly to all urgent matters. Communications are by the most cost-effective means, and digital communications and media are used and promoted where efficient and effective.*

Targets

4.10 No firm, manager or solicitor shall set targets for solicitors or staff which either directly or indirectly relate to the delivery of criminal legal assistance unless there are adequate controls and measures in place to demonstrate that the pursuit of those targets does not facilitate, require, encourage, permit or achieve any abuse or improper or unreasonable practices in relation to the provision of or the accounting for criminal legal assistance, or otherwise damage or negatively impact on the provision of the service or create unnecessary cost to the legal aid fund.

Section 5 Systems for management & administration

- *Personal work and time recording*
- *Case recording*
- *Financial transaction recording*
- *Case review*
- *Supervision of solicitors and staff*
- *Corrective Action*

Personal work and time recording

- 5.1.1 Subject to paragraph 5.1.2 a solicitor must accurately record time undertaking criminal legal assistance. A solicitor must ensure that charges are not duplicated or double claimed. A solicitor (including a solicitor exercising extended rights of audience) shall create and maintain a chronological record contemporaneously or timeously of all activities undertaken when providing criminal legal assistance. The record (hereafter “timesheet”) will show:
- date
 - solicitor’s name
 - name of client (also including name of instructing firm where exercising extended rights of audience on instructions).
 - identifier to link to the relevant case file
 - detail of work done
 - start and finish times³
- 5.1.2 In fixed payment cases (those to which the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 apply), a chronological time record shall be required only for work in relation to:
- attendance at court
 - attendance at prison, police station or other place of detention
 - travel - where an outlay is chargeable
- 5.1.3 All entries properly or appropriately apportioned or allocated between or amongst two or more matters or clients should be recorded on both timesheets and case file notes.
- 5.1.4 Retrospective amendments to timesheets must be marked as such and must include an explanation as to why the relevant entry was not made contemporaneously or timeously. Furthermore any original supporting contemporaneous evidence, such as notes or daybooks, in relation to the information used to carry out any retrospective amendment of a timesheet should be preserved for the period detailed at 5.1.5 below. Such material need not be preserved for timesheet entries which are contemporaneous or timeous. For the avoidance of doubt, an entry (whether fresh or corrective) made to a timesheet neither contemporaneously nor timeously is a retrospective amendment.
- 5.1.5 For the purposes of Section 5 of this Code “timeously” means as soon as reasonably practicable for a competent solicitor acting with due diligence and with a proper and effective system of administration.
- 5.1.6 Timesheets must be maintained, retained and accessible for a period of three years. The responsibility for the retention of completed timesheets for the period of three years lies jointly and severally with the individual solicitor to whom the timesheet relates and the compliance manager of the firm with whom a solicitor was or is connected in respect of all and any given criminal legal assistance work carried out while

³ Where criminal legal assistance activity is paid by a fixed or block fee the start and finish times of the total activities undertaken can be recorded against the client and file identifier.

connected with the firm. Accordingly a solicitor must, timeously upon completion, lodge with, or otherwise make available to, the compliance manager of the firm with which the solicitor is connected, either the original or copies of the solicitor's timesheets, with the solicitor, as they require, retaining a personal copy. For the avoidance of doubt these responsibilities subsist beyond the termination of any connection between solicitor and firm.

- 5.1.7 Timesheets must be submitted to SLAB by a solicitor, or by a firm in respect of a solicitor connected or formerly connected to the firm, within three working days of a request by SLAB or such other period as SLAB agrees. Either individual solicitors (to whom timesheets relate) or firms or both may be called upon at any time during the three year retention period to produce timesheets to SLAB in accordance with this paragraph.
- 5.1.8 Where a solicitor's connection with a registered firm ends, the solicitor, and separately the firm, must not take or cause to be taken, any step which precludes or prevents either solicitor or firm from compliance with foregoing obligations to retain and exhibit timesheets during the retention period.

Case recording

- 5.2.1 A solicitor shall maintain client files in good and logical order to the standard and effect that were another solicitor to assume conduct of the case they could clearly and easily establish
- all client instructions and advice given
 - the stage the case has reached
 - the outcome of court diets or any negotiations
 - the status of legal assistance funding
 - any other relevant matter.
- 5.2.2 A solicitor must ensure that comprehensive file notes are timeously made of all conversations (including telephone, texts or emails), meetings, other time spent on relevant work, consultations and court attendances.
- 5.2.3 Paragraph 5.1.4 (and 5.1.5) above relating to retrospective amendment of timesheets shall apply equally to file notes and is here held as repeated with the necessary substitution of "file notes" for "timesheet".
- 5.2.4 The name of the person undertaking any work on the file must be recorded on file notes, including their status as well as start and finish times of all activities.
- 5.2.5 Narrative in file notes in respect of activities chargeable on a time basis must be sufficient to substantiate the time expended and consequently the charge made.
- 5.2.6 A solicitor will ensure that files and records are maintained, retained and be readily accessible for a period of not less than three years from date of payment of the relevant account by SLAB.

- 5.2.7 Where files are maintained electronically, they should be capable of production in hard copy where reasonably required by SLAB or a third party. This will include where a file is requested as part of SLAB's monitoring of compliance, including peer review, or to support SLAB's assessment of any associated account. A hard copy will also be required upon transfer of agency, or in respect of the statutory or regulatory functions of the Scottish Legal Complaints Commission and Law Society of Scotland. For the avoidance of doubt, a solicitor is not entitled to seek payment of any costs associated with conversion of electronic files to hard copy for any of these purposes.
- 5.2.8 Where notification is given specifying the requirement for a file or files to be made available to SLAB for the purposes of Account Assessment, Compliance, Peer Review or Investigations, files or file content will not be altered, removed or added to before the file is provided to SLAB. This provision does not affect printing or extraction of material or other intromission with files for any proper purpose, such as appropriate preparation for peer review in accordance with guidance, which does not alter or inappropriately augment or diminish original file content or other records.

Indicators of compliance

- (a) *Files are properly maintained by the solicitor, in hard copy or electronically, and in logical and chronological order. All records such as court minutes, file notes, telephone calls etc., are dated, typed, printed or if handwritten, legible, and relevant for this matter for each client.*
- (b) *All file notes in respect of activities chargeable on a time basis are consistent with correlating entries on the solicitor's timesheet, and vice versa*
- (c) *In respect of travel, attendance notes record the starting point of any journey, the destination, whether it was a return trip, the time taken and the mileage.*
- (d) *In respect of co-accused or linked matters a solicitor ensures that there is no duplication of work between matters, particularly if the other case is being dealt with by another solicitor within the same practice, and that case records reflect the position.*
- (e) *A solicitor takes care to ensure that file notes in respect of protracted, lengthy and uninterrupted periods of time, for example, perusal, viewing, waiting time or lengthy journeys, sets out the purpose of the work, any resultant benefit or output, and any outcomes of the specific work.*

- (f) *Where work carried out is properly apportioned or allocated across several files or clients, sufficient narrative of the total and the allocation/apportionment is recorded in each file.*
- (g) *A solicitor ensures that all correspondence is timeously filed in logical order, all communications concerning the grant of legal assistance, court documents and documents from the client are filed systematically and in a manner that that permits easy access and retrieval by any person appropriately accessing the file, including, as accords, SLAB staff.*
- (h) *All documents, letters, statements, precognitions etc., chargeable on the basis of numbers of pages or sheets includes and disclose the word count.*
- (i) *At the conclusion of a case a solicitor ensures all appropriate steps are taken to complete the matter, the client is advised in writing, all documents held in the case file returned etc., and the Account of Expenses is promptly submitted for payment.*

Financial transaction recording

- 5.3.1 A solicitor must ensure the proper, accurate and timeous recording of all financial transactions with, or on behalf of, all criminal legal assistance clients and must ensure records are accessible, up to date and complete. Such financial transactions, including solicitor-collectable contributions received from clients, payments from SLAB and payments made on behalf of the client, must be noted in the relevant case file or in a ledger sheet maintained for and cross referenced to each case. These records must be maintained, retained and be accessible for a period of three years from date of payment of the relevant account by SLAB.
- 5.3.2 Where the solicitor is responsible for collection of contributions, they must ensure that the payment and receipt procedures adopted provide both the solicitor and the client with a sufficient record of dates and amounts of payments made, and the case (by reference to the LARN or otherwise) to which any payment relates.

Case review

- 5.4 A firm must have, operate and be in a position to evidence the operation of an effective system for reviewing current cases to ensure all necessary steps are being taken and any scheduling conflicts are avoided. A solicitor must engage fully with the review system, and undertake review work timeously in accordance therewith.

Supervision of solicitors and staff

- 5.5.1 A firm, through the managers and those with responsibility for supervision and management, must adequately supervise all staff whether qualified or unqualified to ensure all work is carried out in accordance with the Code.
- 5.5.2 A solicitor has personal responsibility for criminal legal assistance in their name and must adequately supervise any person undertaking work on their behalf to ensure that the work is in compliance with the standards set out at section 4.1.2 and 4.1.2.
- 5.5.3 Where circumstances require instruction of a local or other agent, only another registered solicitor can be instructed to undertake Criminal Legal Assistance.

Corrective action

- 5.6.1 The firm, and solicitors connected with the firm as appropriate, must take effective corrective action to deal with any issue constituting non-compliance with the Code identified by the firm, SLAB or another third party.
- 5.6.2 To be effective, corrective action must both remedy the specific issue identified and prevent recurrence, as far as possible.
- 5.6.3 The firm must have procedures in place to ensure that all identified issues are recorded, that appropriate corrective action is taken and that records of such corrective action are maintained.
- 5.6.4 The firm's procedure relating to, and all records in respect of, corrective action must be made available to SLAB on request.

Part C - The Provision of Criminal Legal Assistance

Section 6 General aspects and processes

- *Letters of engagement*
- *Applications for, and relating to, criminal legal assistance*
- *Contributions*
- *Accounts, preparation, responsibility for submission and accuracy*

Letters of engagement

6.1.1 A letter of engagement must be issued to the client containing all relevant information as required by this Code and any other appropriate or relevant professional guidance. Without prejudice to this generality the letter must provide a clear record of the details as defined by this section of the Code. It should also include:

- name of solicitor handling the case
- contact details for solicitor
- type(s) of criminal legal assistance applied for

6.1.2 Without prejudice to the other requirements of this Code, the letter of engagement the firm issues to a client must, clearly and in plain language, (a) advise of the requirement of the firm and its solicitors to comply with the Code and (b) provide, and refer to, the internet address of SLAB, currently www.slab.org.uk as a means by which the client may obtain further details about the Code.

Applications for, and relating to, legal assistance

6.2 A solicitor is responsible for all applications for criminal legal assistance, and all ancillary matters in connection with those applications, submitted in his or her name whether work in connection with applications is delegated by the solicitor or it is undertaken personally. The solicitor must ensure that these conform to the requirements which are established by SLAB, and generally in accordance with good practice.

Indicators of compliance

- (a) *A solicitor provides full and accurate details of the applicant, any person applying on behalf of the applicant, any co-accused and the case particulars are provided in the form required by SLAB.*
- (b) *A solicitor ensures that all applications for criminal legal assistance are complete and in the form required by SLAB. Applications should be accompanied by sufficient supporting information and documentation and in all respects conform to the published requirements of SLAB.*
- (c) *A solicitor ensures that all solicitor grants, and all applications to SLAB, in respect of criminal legal assistance are in respect of the appropriate form of legal aid for the context and otherwise competent and conform to the Act and regulations,*

and are submitted in accordance with the time limits specified in the regulations.

- (d) A solicitor provides that the correct subject matter, category code and court type on every application or notification to ensure the correct fee is generated. Any amendment to the status of an application, or any resultant grant, that may result in a change in fee must be done prior to the submission of an account.*
- (e) A solicitor ensures that applications are submitted in good time to enable SLAB to assess them.*
- (f) A solicitor takes steps to monitor the rate of refusal, continuation for more information and rejections of applications in their name by SLAB and identify whether changes and improvements to the solicitor's practice and approach would reduce or avoid ongoing issues.*
- (g) A solicitor when completing applications for criminal legal assistance and addressing the tests for legal assistance, adheres to the Criminal Legal Assistance Handbook or direction in periodic updates to the profession.*
- (h) A solicitor does not make repeated requests for sanction in identical terms and without further information or other explanation in circumstances where the solicitor is aware and has been previously told a request on the material provided will not be granted.*

Contributions

- 6.3 A solicitor must ensure that the client is advised of, and agrees to, the quantification (or where precise quantification is not possible at that stage, an estimated quantification) of any contribution payable in respect of criminal advice and assistance or criminal ABWOR, prior to accepting instructions, as well as the timescales or instalments or other arrangements the solicitor proposes for payment of such contribution, and any enforcement or steps which the solicitor would take in the event of delay or failure to make payment in accordance with those arrangements.

Accounts: Preparation, responsibility for submission and accuracy

- 6.4.1 A solicitor is personally responsible for the content and presentation of any fee claim or account for, and in connection with, criminal legal assistance in the solicitor's name. This responsibility is borne by the solicitor whether the solicitor is directly involved in submission of accounts, the work is delegated within the firm or is delegated to an external law accountant.

- 6.4.2 Any account or claim for payment must adhere to fees regulations, including notes on the operation of the regulations (where applicable), the Criminal Legal Assistance Handbook and Board guidance to the profession.
- 6.4.3 An account or claim must be clearly, accurately and logically presented in a form which enables SLAB easily to assess it.
- 6.4.4 All accounts and entries on an account must form a proper charge against the Fund and be charged at the correct rate (including charges for expert witnesses) and reflect work actually, necessarily and reasonably done with due regard to economy.
- 6.4.5 Account entries relating to work chargeable on the basis of time expended must record the start and finish time of the work item, the name or initials of the person undertaking the work and whether they are qualified or unqualified and be accompanied by narrative sufficient to substantiate the time expended and consequently the charge made.

Indicators of compliance

- (a) *The initial submission of the account or claim is accompanied by such documents and information as SLAB has given notice that it requires to see as per the Criminal Legal Assistance Handbook. SLAB is subsequently furnished timeously with such further material as SLAB reasonably requires for the purposes of assessment of the account.*
- (b) *A solicitor ensures that financial eligibility has been assessed and verified within the time limits for the submission of the account.*
- (c) *Where offers are made in settlement of accounts, or abatements are proposed to them, a solicitor responds within the time limits set by SLAB and in any event no later than 56 working days from the date of receipt of the offer letter.*
- (d) *Given that SLAB may not make payment in respect of any claim for work done by a solicitor to establish financial eligibility or costs in relation to the collection of the contribution whether by way of staff time, meetings, phone calls or correspondence, a solicitor does not seek to render or include charges or seek payment from SLAB for any such work.*
- (e) *Where preparation of accounts or fee claims is delegated by a solicitor to other persons, the solicitor ensures that there are adequate mechanisms, procedures and authorisations in place, and that these are effectively operated, monitored and supervised by the solicitor, to ensure accounts for cases in which*

that solicitor is the nominated solicitor are properly framed and submitted in accordance with the Code.

(f) A solicitor checks payments received from SLAB in respect of cases where they are nominated solicitor. Where there has been a perceived or actual overpayment, the solicitor contacts SLAB as soon as possible. Where there has been an overpayment by SLAB, including any overpayment of a subsequently transfer-adjusted share of a fixed payment, the solicitor will notify SLAB, and make prompt and appropriate arrangements for the reimbursement to SLAB of any overpayment.

Section 7 Particular aspects and processes

- *Duty criminal legal assistance*
 - *General Court & Police Station Duty Requirements*
 - *Police Station Advice*
 - *Court Duty*
- *Non- duty police station work*
- *Mandates/Transfers*
- *Meeting with clients*
- *Witnesses*
- *Experts, outlays, witness fees and expenses*
- *Instruction of representation in the superior courts*
- *Conflicts of interest/acting for more than one accused*
- *Complex and costly case planning*

Duty criminal legal assistance

- 7.1.1 Duty scheme arrangements are made by SLAB and provide for the administration and operation of duty criminal legal assistance, including admission to the schemes and allocation of time periods on the schemes.
- 7.1.2 The provisions in this section of the Code are in addition to the provisions of the Code generally applying to the delivery of criminal legal assistance.
- 7.1.3 Non-compliance with this section of the Code relating to duty criminal legal assistance may lead to exclusion of a solicitor from duty criminal legal assistance arrangements, or preclude future inclusion. This may or may not also affect a solicitor's on-going inclusion on the criminal legal assistance register depending on the circumstances.

General court & police station duty requirements

- 7.1.4 Subject to paragraphs 7.1.6 and 7.1.7 below, a duty solicitor must carry out the relevant duties timeously, effectively and efficiently, and in a manner which facilitates the proper, effective and timeous performance of duties and responsibilities of justice system agencies.
- 7.1.5 A firm with which any duty solicitor has a connection must be organised and resourced, or have in place arrangements through which resource can be called upon or to which matters can be referred, so as to ensure effective supply of such services as are reasonably required to carry out properly the role of duty solicitor as set out in this section. A firm is required to maintain a written plan detailing internal and any alternative arrangements, and to make this plan available to SLAB upon request.
- 7.1.6 During the period for which they are named as the court duty solicitor, if a solicitor is unable personally to carry out relevant duties allocated to them, it is the responsibility of that solicitor, timeously:
- (a) to arrange for any other registered duty solicitor connected to their firm (whether directly as a manager or employee, or via some other formal and documented arrangement between the firm and the connected solicitor) to undertake the work, failing which
 - (b) to arrange with the alternative duty solicitor designated by SLAB on the relevant plan to undertake the work, failing which
 - (c) to arrange with another solicitor on the relevant plan to undertake the work, as acting alternative duty solicitor.
- 7.1.7 During the period for which they are named as the police station duty solicitor, if a solicitor is unable personally to carry out relevant duties allocated to them, it is the responsibility of that solicitor timeously
- (a) to arrange for any other registered duty solicitor connected to their firm (whether directly as a manager or employee, or via some other formal and documented arrangement between the firm and the connected solicitor) to undertake the work, failing which
 - (b) to arrange for another registered solicitor on the relevant police station duty scheme to undertake the work, as acting alternative duty solicitor.
- 7.1.8 Where an arrangement is made under 7.1.7, the original duty solicitor must inform the SCL of the change of duty solicitor.
- 7.1.9 A firm or solicitor that makes excessive use of the fall-back provisions at 7.1.6 (b) or (c) or 7.1.7(b) may be deemed to be in breach of its or their obligations under 7.1.4 and 7.1.5 respectively
- 7.1.10 A duty solicitor must take such steps as are necessary to enable SLAB to make effective telephone contact with them at any time during the period of duty allocated to that solicitor.

Indicators of compliance

During any period of duty a duty solicitor will either

- (a) use a voicemail or other system that allows recording and retrieval of messages, in which event a duty solicitor using such a system monitors messages received and to respond timeously to any such messages, or*
- (b) uses a system that provides advice as to the contact details for an arranged alternative duty solicitor who has agreed to be available in that duty period*

- 7.1.11 Duty solicitors, other than in relation to case by case or day by day alternative arrangements envisaged at 7.1.6 and 7.1.7, will not, whether alone or in liaison with other solicitor(s), vary published duty plans. Any proposed variation to duty plans requires to be made to and approved by SLAB and will be published by SLAB in the form of an amended plan.
- 7.1.12 Duty solicitors must comply with any special arrangements made by SLAB to facilitate the operation of the duty schemes, the courts and police station advice.
- 7.1.13 When undertaking duty work, a duty solicitor shall maintain a record of the work, including:
- (a) all client instructions and advice given
 - (b) the outcome of court diet or any negotiations

Police station advice

- 7.1.14 Subject to 7.1.16, where a police station duty solicitor is contacted by the SCL with the referral of a request for a personal attendance at a police station in relation to a person in police custody, the police station duty solicitor must (subject to any alternative arrangements made in accordance with 7.1.7) attend in person.
- 7.1.15 Personal attendance is not required where the solicitor, after speaking by telephone with the person in custody, establishes to his satisfaction and after providing advice, that the person in custody no longer requires personal attendance under reference to any factors that had been brought to the solicitor's attention in the initial referral from the SCL. In these circumstances, and as soon as practicable, the solicitor must inform SLAB of the fact that the request for personal attendance was countermanded and the reasoning behind it.

- 7.1.16 Where a police station duty solicitor receives a referral of work from the SCL, they must upon conclusion of their involvement report the outcome and such related information to SLAB as SLAB requires and in the form that SLAB from time to time specifies.
- 7.1.17 Where attending in person at a police station, a solicitor should attend no later than one hour after receiving the call. The response time for the solicitor may be extended where there are circumstances beyond control such as the remoteness of the police station or an unanticipated delay, for example, due to traffic, weather conditions, or otherwise as arranged with the investigating officer, or SCL.
- 7.1.18 Where a police station duty solicitor is contacted by the SCL with the referral of a request for telephone advice, the solicitor should provide telephone advice without undue delay.
- 7.1.19 When providing advice to a client at a police station, a solicitor must, as the circumstances of each case requires and without prejudice to their other obligations and responsibilities:
- (a) Check the Letter of Rights has been given to their client and that they understand the caution and right to silence.
 - (b) Advise the client about the information the Police have given about the alleged offence and take and record instructions from the client on their position.
 - (c) Advise the client about the interview environment and procedure
 - (d) Keep a record of the information provided by the police, the police interview and outcome.

The foregoing is subject to the assumption that the facilities for confidential interview between solicitor and client are adequate, and in the event that this is not the case, a solicitor must raise the issue with appropriate police officer and take all reasonable steps to be able to use appropriate facilities for client interview.

- 7.1.20 Without prejudice to the other provisions of this Code in relation to the maintenance of records, records of work undertaken in connection with police station advice, and any subsequent work in relation to investigative liberation or release on undertaking must be maintained timeously, adequately and legibly in order that in the event an urgent mandate to deliver papers to another solicitor is received, a solicitor in a position to implement the mandate as soon as possible. Reference is made to paragraph 7.3.3 below.

Court duty

7.1.20 When a court duty solicitor acts for an individual in custody whose case is being prosecuted under solemn or summary procedure, in circumstances where it appears the client's instruction of the duty solicitor arises as a consequence of the non-availability of a nominated solicitor, the solicitor should clarify and establish with the client which solicitor the client wishes to instruct for any further procedure beyond the duty appearance. Where the duty solicitor is not instructed to act further in the case, they should as soon as is practicable forward the case papers to the nominated solicitor.

Non-duty police station work

7.2.1 A firm and/or the solicitors connected therewith who choose to provide advice to their own clients in a police station must comply with the same duties as the police station duty solicitor at paragraphs 7.1.4, 7.1.5, 7.1.11, 7.1.14 to 7.1.19.

7.2.2 A solicitor must, where requested by a client in terms of s44 of the Criminal Justice (Scotland) Act 2016, make arrangements to provide a consultation, to a client arrested on a warrant relating to a case in respect of which the solicitor has granted ABWOR or criminal legal aid has been granted in the name of that solicitor.

7.2.3 Failure to respond to a request to provide advice in the circumstances set out in section 7.1.2 may be regarded as a breach of the Code, unless the solicitor has, in accordance with arrangements made by SLAB, notified the SCL in advance that they are unavailable to provide such advice and authorised the SCL to do so instead.

Mandates/transfers/different solicitors acting at different stages

7.3.1 A solicitor or firm must facilitate the effective and efficient transfer of all criminal legal assistance matters by ensuring that the transfer of papers and legal aid (or fixed payment ABWOR) relating to a criminal matter are completed and executed by the client in the form agreed by SLAB and the Law Society of Scotland. This must include the place and date of signing and a full explanation of why the transfer has been sought and provide sufficient information for SLAB to consider the request.

7.3.2 Both the incoming and outgoing solicitor must co-operate in facilitating the established process for transferring a grant of criminal legal assistance. The incoming solicitor must send the transfer notification to the outgoing solicitor within 12 hours of meeting the client by either email or fax and retain evidence of the successful transmission of the mandate.

7.3.3 A client may, after instructing a solicitor under criminal legal assistance in relation to certain work, choose to instruct another solicitor in relation to other work in the same case in circumstances which do not involve transfer of criminal legal assistance. The circumstances may require urgent delivery of papers to enable to incoming solicitor properly to conduct the case, and a prior solicitor receiving notification of a mandate to deliver papers in such circumstances must do so urgently. Similarly if transfer of criminal legal assistance is required, and the transfer is also reasonably required as a

matter of urgency to protect the interests of the client, the outgoing solicitor must facilitate this.

Meetings with clients

- 7.4.1 Solicitors may choose to operate from shared chambers, home offices or traditional offices. Regardless, solicitors must ensure that facilities are available to enable them to take instructions, review evidence and provide advice in a setting away from court and in circumstances which afford the client the opportunity to speak confidentially. This might, depending on the circumstances, include face to face meeting in an office or a meeting room, or secure video conferencing, telephone call, or other video or audio media, but for all such work the method and media adopted should be cost effective under regard to the requirements at the time.
- 7.4.2 A solicitor or trainee solicitor, (or unqualified member of staff under the supervision and directed by a solicitor) must only visit a client in custody where they have been instructed to do so by the client or there is a substantial need to do so at that time in relation to an ongoing case in which the solicitor is acting, which need is not otherwise reasonably met by other means. With the exception of a business card and relevant legal documents (where appropriate) no items should be given or sent to a person in custody.

Indicators of compliance

- (a) *A solicitor, in general, consults in person with clients who are at liberty only at a solicitor's office, a court or a designated consulting room. In exceptional circumstances a solicitor may consult with a client at a location 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.*
- (b) *A solicitor seeking to meet a client in custody has in his or her possession the form of identification provided by the Law Society of Scotland and exhibits it upon request.*

Witnesses

- 7.5.1 When establishing necessary evidence in a case under reference to the client's position and instructions, a solicitor must take all reasonable steps to do so with due regard to economy. Thereafter, only relevant witnesses reasonably assessed by the solicitor in their professional judgement as being necessarily and appropriately called should be

cited to appear for the defence. The solicitor must be able to justify their citation and have a record of all reasonable steps taken to establish the anticipated evidence of such witnesses.

- 7.5.2 A solicitor must use reasonable endeavours to minimize inconvenience to witnesses, to reduce expense incurred by witnesses, and to keep witnesses informed as to arrangements, changes thereto, and such other scheduling information as would be of assistance to the witness.

Experts, outlays, witness fees and expenses

- 7.6.1 Expert or professional witnesses, and other outlays should be instructed only where necessary. When seeking to instruct an expert or professional, no instructions should be given until the solicitor has taken reasonable steps to satisfy himself that the expert or professional has appropriate credentials and is suitably qualified to provide the service sought. A solicitor must have full regard to all Board guidance on applications for sanction and incurring outlays.
- 7.6.2 Where possible, appropriate and cost effective, efforts must be made (i) to agree the evidence of expert or professional witnesses or (ii) jointly instruct same. Similarly, any other outlay susceptible to instruction on a joint basis should be so instructed.
- 7.6.3 A solicitor will pay the necessary expenses or fees of witnesses and other outlays generally in the case without delay and certainly no later than the date five working days after the date of payment of the relevant account/amount by SLAB.

Indicators of compliance

Accounts of expenses lodged after case-conclusion include any claim for reimbursement/payment of fees and allowable outlays for professional and expert witnesses and claims of expenses of witnesses suffering loss of earnings as a result of being cited to give evidence for the defence in court. The appropriate justification for such expenses, in the form of vouchers/claim forms etc., is submitted to SLAB and, in respect of experts/professionals include a breakdown of fees, travel and outlays etc.

Instruction of representation in the superior courts

- 7.7.1 In cases where representation requires to be by an advocate or solicitor with extended rights of audience, the instructing solicitor must act in accordance with any professional or procedural rules, including sending any formal notification, in relation to the client's rights in relation to the selection of pleader. The advice given and the client's instructions received, including efforts made to give effect to the client's preferences, must be recorded in a file note and letter to the client.
- 7.7.2 In addition, where a client instructs a solicitor in a case in which criminal legal assistance has been granted and sanction for senior counsel is available either automatically or granted after application, the instructing solicitor must act in accordance with any professional or procedural rules, including sending any formal notification, in relation to the client's right to be represented by a pleader holding the rank and dignity of Queen's Counsel. The advice given and the client's instructions received, including efforts made to give effect to the client's preferences, must be recorded in a file note and letter to the client.

Conflicts of interest/acting for more than one accused

- 7.8 A solicitor must decline to accept instructions or request a transfer in any matter where the solicitor has a conflict or potential conflict of interest.

Indicators of compliance

- (a) *When acting for more than one co-accused, a solicitor takes particular care to ensure consideration is given to the duties owed to each client and any potential conflicts, and, if any doubt that there may be conflicting duties, the solicitor declines to accept the matter or have the second and subsequent clients seek separate independent representation*
- (b) *When representing co-accused, a solicitor does not incur any unnecessary costs, avoid duplication and undertake work with due regard to economy.*
- (c) *Where co-accused are represented by one or more solicitors within a firm, the solicitor or solicitors involved and the compliance manager ensures effective coordination of work across the co-accused cases and ensure no unnecessary costs or duplication of work and that all work is actually, necessary and reasonably undertaken and done with due regard to economy.*

Complex and costly case planning

- 7.9 Solicitors and firms must ensure that cases are approached in the most cost-effective manner consistent with competent and appropriate representation. Particular care and planning is required in complex and costly cases to ensure that this overarching principle is effectively applied throughout. When representing clients in complex and costly cases, particularly when counsel has been instructed and the case is proceeding to trial, a solicitor must establish, maintain and amend as necessary a structured and demonstrable plan for the preparation and perusal of productions. The plan must be submitted to SLAB if requested, and along with any request for sanction in relation to work or items of unusual or significant expenditure in the case referred to or relating to work covered by the plan. In consultation with counsel, the plan must include a process of determining priority items depending on their relevance to the client, task allocation to avoid either duplication of work or the perusal of material that is irrelevant, unnecessary or otherwise cannot be justified.

Section 8 Monitoring & compliance by SLAB

- 8.1 SLAB will monitor solicitors' and firms' compliance with the Code. Solicitors and firms must co-operate with SLAB, and facilitate timeously the supply to SLAB of any information and/or material which it requests for the purposes of monitoring compliance. This requirement includes making files or other documents and material relevant to the monitoring of compliance available for review by SLAB staff or by peer reviewers appointed by SLAB, either by sending the material as and when requested or providing access to that material at the firm's premises.