

**STATUTORY REGISTRATION SCHEME FOR ALL PROVIDERS  
OF PUBLICLY FUNDED LEGAL SERVICES  
IN NORTHERN IRELAND  
CODE OF PRACTICE**

**Annex A: Solicitors**

**Annex B: Barristers**

**Annex C: Audit & Compliance Framework**

**Annex D: Fee Charging Methodology**

## Part 1: Introduction

- 1.1 This document sets out the Code of Practice (hereafter the “Code”) for Solicitors and Barristers, both in firms and voluntary sector organisations, providing publicly funded criminal and civil legal services. It has been prepared by the Department of Justice (hereafter “the Department”) in exercise of the powers conferred by Article 36 of the Access to Justice (Northern Ireland) Order 2003 and Articles 36(3)(b) and 36B of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981; and The Access to Justice (Registration) Regulations (Northern Ireland) 2017; and The Criminal Legal Aid (Registration) Rules (Northern Ireland) 2017.
- 1.2 Solicitors, firms of solicitors, and barristers shall operate in accordance with the relevant Instruments governing Legal Aid. Practitioners must recognise and adhere to the Regulatory Bodies’ Panels and any other Code or standards published by them or the Legal Services Agency Northern Ireland (hereafter “the Agency”) in the future.
- 1.3 The Agency will monitor compliance with the Code and will require corrective action in cases of non-compliance. Solicitors, firms and barristers that fail to comply with the Code risk being sanctioned or de-register from the Registration Scheme.
- 1.4 Every solicitor, firm of solicitors, or barrister wishing to provide publicly funded criminal and civil legal services in Northern Ireland must be registered with the Department’s Registration Scheme established and maintained by the Agency under The Access to Justice (Registration) Regulations (Northern Ireland) 2017, and The Criminal Legal Aid (Registration) Rules (Northern Ireland) 2017 (hereinafter referred to as the ‘Registration legislation’). To be entered and retained on the Register, firms, solicitors and barristers must conform to the terms of this Code.

### **Solicitors**

- 1.5 Unless otherwise stated, all further references in this Code to “solicitors” shall apply equally to sole practitioners, including any solicitors who act only as an agent for other solicitors. References to “firms” shall also apply equally to sole practitioners and voluntary sector organisations. For the avoidance of doubt, voluntary sector organisation means a non-profit organisation operating under a waiver from the Law Society Northern Ireland under Article 28 (ii)(e) of the Solicitors (Northern Ireland) Order 1976 as amended by the Solicitors (Amendment) (Northern Ireland) Order 1989.

- 1.6 The specific conditions for Registration for solicitors and firms are defined in Part Two of Annex A of this Code.
- 1.7 Any functions in relation to the provision of publicly funded criminal and civil legal services delegated to non-qualified competent and responsible employees of the firm shall be under the immediate supervision of the nominated solicitor which must be evidenced.
- 1.8 This Code sets out the standards required by the Agency in relation to the provision of publicly funded criminal and civil legal services. The Agency requires that:
- firms and individual solicitors act in accordance with the standards of professional conduct defined in Part Three of Annex A of this Code;
  - services provided by firms and solicitors and materials submitted to the Agency be of the standard defined in Part Four of Annex A of this Code;
  - firms operate systems of management and administration that meet the requirements of Part Five of Annex A of this Code.

### **Barristers**

- 1.9 Unless otherwise stated, all references in this Code to “barristers” shall apply to an individual who has been called to the Bar of Northern Ireland and has not subsequently been disbarred and is a ‘practising barrister’ who is either a barrister in independent practice who has a current Practising Certificate or an employed barrister who has a current Practising Certificate and undertakes publicly funded criminal and civil legal services.
- 1.10 The specific conditions for Registration for barristers are defined in Part Two of Annex B of this Code.
- 1.11 This Code sets out the standards required by the Agency in relation to the provision of publicly funded criminal and civil legal services. The Agency requires that:
- barristers act in accordance with the standards of professional conduct defined in Part Three of Annex B of this Code;
  - services provided by barristers and materials submitted to the Agency be of the standard defined in Part Four of Annex B of this Code;
  - barristers operate systems of management and administration that meet the requirements of Part Five of Annex B of this Code.

## **Definitions**

***Criminal Legal Aid*** means free legal aid in criminal proceedings under Part III of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981;

***Criminal Appeals*** means appeals funded by way of Criminal Defence Services under the Access to Justice (Northern Ireland) Order 2003

***Civil Legal Services*** has the meaning given by Article 10 of the Access to Justice (Northern Ireland) Order 2003

## SOLICITORS

### Part 2: Conditions for Registration for Solicitors

#### 2.1 APPLICATIONS AND CHANGES

- 2.1.1 Both solicitors and firms wishing to provide publicly funded criminal and civil legal services in Northern Ireland are required to register under the Registration Scheme. Applications for registration must be made in the format determined by the Agency and satisfy the conditions set down in this Code.
- 2.1.2 A solicitor or firm will be required to pay any prescribed fee as set by the Agency.
- 2.1.3 A solicitor or firm must notify the Agency of any material changes to any information or documentation which has been provided to the Agency, at any time, relevant to that solicitor's or firm's registration.

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

- 2.2.1 A registered solicitor will not be eligible to provide publicly funded criminal and civil legal services unless working for a registered firm.
- 2.2.2 Individual solicitors applying for registration must disclose if they have previously been restricted or de-registered from the Scheme.
- 2.2.3 A solicitor shall at all times be in possession of a valid Practising Certificate which does not have a restriction preventing the provision of publicly funded criminal and civil legal services. Any limitation must be notified to the Agency.
- 2.2.4 A solicitor shall inform the Compliance Manager of the possibility of fraud and / or unethical behaviour by personnel and / or third parties in receipt of publicly funded criminal and civil legal services and / or registered to provide publicly funded criminal and civil legal services.

#### 2.3 COMPLIANCE WITH THE CODE OF PRACTICE

- 2.3.1 A solicitor applying for registration in the format required by the Agency shall declare that they will comply with the terms of this Code.

#### 2.4 ATTENDANCE AT COURSES

- 2.4.1 A solicitor applying for registration shall attend or present, in the current practising year of application, one or more courses relevant to the provision of publicly funded criminal and civil legal services. These

courses shall amount to three or more hours' duration in total, and must be pre-accredited by the Agency.

- 2.4.2 For the avoidance of doubt, preparation time for providing any accredited course shall be considered in addition to the actual duration of the course.

## **2.5 RECORDS OF COURSE ATTENDANCE**

- 2.5.1 Subject to paragraph 3.3.3, a solicitor applying for registration shall maintain a record of accredited courses attended or presented relevant to the provision of publicly funded criminal and civil legal services. A copy of the solicitor's record of Continuing Professional Development (CPD) required by the Law Society of Northern Ireland shall be supplied in support of the application.

## **2.6 MAINTENANCE OF RECORDS**

- 2.6.1 A firm applying for registration shall maintain records as described in Part Five of this Code.

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

- 2.7.1 A firm must be registered before any solicitor employed by the firm may be registered in relation to their connection with that particular firm.
- 2.7.2 Applications by firms to be registered must be presented in the format approved by the Agency.
- 2.7.3 Firms applying for registration must disclose if they, or any individual to be included within that firm, have previously been restricted or de-registered from the Scheme.
- 2.7.4 The Agency may refuse the application of any firm or individual solicitor if not satisfied that the applicant is capable of discharging its responsibilities under the Scheme.
- 2.7.5 Firms will be required to provide evidence of compliance with the basic entry requirements for registration that the following procedures are in place:
1. Policy regarding standards for professional conduct;
  2. Procedure for personal work and time recording, where appropriate;
  3. Procedure for case recording;
  4. Description of system of financial recording;
  5. Procedure for training and sample training record;
  6. Procedure for supervision of staff;
  7. Procedure for document control;

8. Procedure for case review;
9. Procedure for client reporting; and
10. Procedure for complaints.

2.7.6 In addition to this, at registration, voluntary sector organisations will be required to provide evidence to the Agency of any waiver issued by the Law Society of Northern Ireland.

2.7.7 Firms wishing to claim VAT will be required to provide a valid VAT registration certificate.

## **2.8 COMPLIANCE WITH THE CODE OF PRACTICE**

2.8.1 A firm applying for registration shall certify that it complies with the terms of this Code and will be required to complete a self-assessment and re-certify on an annual basis.

## **2.9 NOMINATION OF COMPLIANCE MANAGER**

2.9.1 Subject to paragraph 2.9.3 below, a firm shall nominate a Manager, known as a “Compliance Manager”, to be the Agency’s point of contact within that firm. The nomination and that, if applicable, of the firm’s nominated deputy Compliance Manager, shall be made as part of the firm’s application for registration. The holder of this role must be a registered solicitor and should have a firm understanding of legal aid. Any subsequent changes shall be notified to the Agency.

2.9.2 The Agency may refuse the nomination(s) if not satisfied that the nominee (s) is capable of discharging the responsibilities in 2.9.4.

2.9.3 A sole practitioner shall not be required to nominate a Compliance Manager. Where the words “Compliance Manager” are used, they will apply to any sole practitioner.

2.9.4 Responsibilities of the Compliance Manager shall include:

1. making the application for the nominating firm to be registered and associating the solicitors connected to that firm, and informing the Agency of any changes, including changes to employees;
2. ensuring that all the firm’s registered solicitors hold current Practising Certificates and that they act in accordance with any conditions or limitations specified;
3. disclosing if the firm, or any individual to be included within the registration application, holds a limited Practising Certificate or have previously been restricted or de-registered from the Scheme;
4. certifying that the firm and its staff comply with this Code when the application is made;

5. completing the annual compliance self-assessment;
6. notifying the Agency within five working days, or as soon as reasonably practicable, of any changes within the firm relevant either to registration or compliance with this Code;
7. liaising with the Agency on any issue related to this Code;
8. receiving and handling enquiries from the Agency regarding suspected non-compliance with this Code, whether on the part of the firm or any individual solicitor within it;
9. ensuring that necessary action is taken in the event of any non-compliance with this Code;
10. informing the Agency of the possibility of fraud and / or unethical behaviour by personnel and / or third parties in receipt of publicly funded criminal and civil legal services and / or registered to provide publicly funded criminal and civil legal services; and
11. informing the Agency if an investigation of same is undertaken by the firm and the outcome of the investigation.



## Part 3: Standards of Professional Conduct for Solicitors

**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 in accordance with any relevant practice rules and codes of conduct issued by the Law Society of Northern Ireland for guidance in assessing whether a solicitor's conduct meets the standard required of a member of the profession. A solicitor is an officer of the Court and as such has obligations and duties to the Court. A solicitor also has statutory obligations in relation to legally aided matters.

3.1.1 A solicitor shall comply with all Instruments governing the provision of Legal Aid in Northern Ireland.

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

3.2.1 A firm shall be responsible for establishing, maintaining and enforcing a declared policy for that firm relating to standards of professional conduct. Embodied in this policy must be the standards of professional conduct described in this part of the Code.

3.2.2 The Compliance Manager is responsible for ensuring that this policy is communicated to all legally qualified and non-legally qualified staff within the firm who are providing or assisting in providing publicly funded criminal and civil legal services.

3.2.3 An individual solicitor is responsible for familiarising themselves with, and adhering to, the firm's declared policy towards standards of professional conduct.

3.2.4 An individual solicitor is responsible for advising any instructed barrister if any of the firm's declared policy falls outside the general template agreed with the Law Society.

3.2.5 Appropriate corrective action and/or disciplinary action shall be taken by the firm when breaches of standards are identified. Any breach identified is to be reported to the Agency immediately.

3.2.6 The policy must stipulate that solicitors must not discriminate on grounds of persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation, between men and women generally, between persons with a disability and persons without and between persons with dependents and persons without in their professional dealings with clients, employees or other solicitors.

3.2.7 A firm must be alive to the possibility of fraud and unethical behaviour by personnel and by third parties in respect of legal aid cases or by those registered to provide publicly funded criminal and civil legal

services, must not tolerate it and must have procedures to identify, address and counter it.

- 3.2.8 All suspicion of fraud involving a legal aid case must be reported to the Agency immediately.
- 3.2.9 Any suspected fraud involving a registered supplier should be reported to the Agency immediately.

### **3.3 KNOWLEDGE AND EXPERIENCE**

- 3.3.1 A solicitor shall ensure that they have and that they deploy the relevant knowledge and experience necessary for each case accepted by them.
- 3.3.2 A solicitor shall attend courses relevant to the provision of publicly funded criminal and civil legal services in each current year of application. These courses shall be pre-accredited by the Agency and shall amount to three or more hours' duration in total. Time spent in preparation for attending any course will not be considered in addition to the actual duration of the course.
- 3.3.3 The Agency reserves the right to determine that, where a solicitor provides evidence of not having an opportunity to attend sufficient relevant courses within the period of twelve months preceding the application for registration (for example on first registration, or if newly qualified), they must undertake to do so within the remaining period of registration.
- 3.3.4 For the avoidance of doubt, time spent in preparation for the purpose of delivering accredited courses will be considered in addition to the actual duration of the course.

### **3.4 INDUCEMENTS**

- 3.4.1 No solicitor or other member of a firm's staff shall offer to any person any inducement to become or remain a client, such inducement involving the transfer, or promise to transfer, to any person of any consideration, financial or otherwise; nor shall they make a legal aid application, or application for advice and assistance, on the basis of any such inducement or in response to any direct or indirect proposal which would involve the transfer of any financial or other consideration to any person.
- 3.4.2 No solicitor or other member of a firm's staff shall accept instructions from any person whom they know to have received any consideration from a third party to become a client of the firm.
- 3.4.3 No expenses shall be paid to any person for travelling to or attendance at court, other than a witness summoned to give evidence

who is entitled to travel and subsistence at the levels set by the Agency.

- 3.4.4 If travel costs are incurred for any witness, these will have to be fully justified in the claim.

### **3.5 RESOURCES**

- 3.5.1 A firm or solicitor shall have appropriate resources available, including time and technical and administrative support, to ensure that proper attention can be given to each individual case.

### **3.6 CO-OPERATION**

- 3.6.1 A firm or solicitor, as appropriate, shall co-operate with the Agency in answering any relevant questions about the firm's or solicitor's applications, claims for payment, compliance with this Code or performance on behalf of assisted parties (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 Agency shall be allowed access to the firm or solicitor's premises and records to assess compliance with this Code. Responses to any requests for information shall be made within the time specified.

- 3.6.2 In routine audits the Agency will seek to arrange an audit of files either by the files being forwarded to the Agency by the firm or by appointment to access the premises, equipment, documents, information and/or data in relation to the case file only.

- 3.6.3 As part of the Agency's assurance and risk analysis to ensure consistency in the reviewing of files, a selection of closed files will be retained for a period in order to quality assure the review i.e. another reviewer will independently review the files to ascertain whether there is consistency with the reviews carried out. In addition, if it is necessary to select files which relate to ongoing cases the Agency will retain a copy of the file, and return the original to the supplier. This copy will be retained and reviewed in the same manner as closed files.

### **3.7 TRANSFER OF SOLICITOR: CIVIL LEGAL SERVICES AUTHORITY REQUIRED**

- 3.7.1 No person shall be given advice and assistance for the same matter by more than one solicitor without the prior authority of the Agency. Such authority may be given on such terms and conditions as the Agency may in its discretion see fit to impose.

3.7.2 A firm or solicitor shall ensure that all requests for the transfer of papers relating to the assisted person are completed and executed in the form approved by the Agency.

3.7.3 The completed form shall include a declaration to the effect that there are no material facts which ought to be disclosed to the Agency that would affect the granting of publicly funded civil legal services and that there is no reason why an existing certificate should not remain in force.

### **3.8 CONSULTATION WITH CLIENTS AT LIBERTY**

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

3.8.2 In exceptional circumstances a solicitor may consult with an assisted party at a location other than those referred to above, for example, where an assisted party is unable to attend the solicitor's office due to illness, infirmity or age, at the home of the client or a hospital.

### **3.9 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 value for money. Where witnesses are summoned to appear, the solicitor must be able to justify their presence and show that they have taken reasonable steps to ascertain what their evidence is.

3.9.2 A solicitor must ensure that an expert witness is properly briefed and obtains all relevant information.

### **3.10 PROFESSIONAL & EXPERT WITNESS FEES & WITNESS EXPENSES**

3.10.1 A solicitor shall submit a report on case to the Agency after the conclusion of a matter or a case in accordance with the relevant Instruments governing Legal Aid. These should include fees for professional and expert witnesses and claims of expenses of witnesses suffering loss of earnings as a result of being summoned to give evidence. The appropriate justification for such expenses, in the form of original vouchers/claim forms etc., must be submitted to the Agency.

3.10.2 The provisions of 3.10.1 above shall apply to revocations and discharges of civil legal aid certificates.

3.10.3 A solicitor shall pay witnesses for their necessary expenses or fees without delay and certainly no later than 10 working days from the date of payment of the relevant claim by the Agency.

3.10.4 A solicitor, before instructing a barrister, shall ensure that the barrister is registered by the Agency to provide publicly funded criminal and civil legal services in Northern Ireland.

## Part 4: Standards of Service for Solicitors

### 4.1 SECTION A: STANDARD OF PROFESSIONAL SERVICE

- 4.1.1 Solicitors registered under this Code will be expected to deliver a standard of professional service which can be expected of solicitors displaying professional competence.
- 4.1.2 In particular, without prejudice to the generality of the preceding paragraph, solicitors will be expected:

#### Initial Advice

1. to create a file with a unique identifier;
2. to set out their understanding of the objectives in relation to the work to be done for the assisted party;
3. to give the a clear statement of the issues involved, based on the first interview and the options available to the assisted party;
4. to set out the steps to be taken and record the level of communication agreed between the solicitor and the assisted party as necessary to keep the assisted party informed of progress;

#### Engagement

5. to explain their responsibilities to the assisted party and their responsibilities to ensure the case progresses;
6. to explain any limitations or conditions resulting from any relationship with a third party (for example, an insurance company or other funder) which may affect the service the solicitor provides;
7. at the outset and on a regular basis throughout the case to consider and record the continued financial eligibility entitlement to funding (where applicable) from the Agency;
8. at the outset and on a regular basis throughout the case to address the prospects of success in the application (where applicable) and provide enough detail about the case and its background to allow the Agency to examine this issue carefully;
9. not to proceed without the knowledge and protection that the assisted party is covered by publicly funded civil legal services unless the assisted party has recorded the informed consent to proceed, which must be included in the letter of engagement, where the assisted party qualifies for publicly funded civil legal services;
10. to provide the assisted party in writing with the identity of the person or persons in the firm who will principally have day-to-day management of the file and provide publicly funded

- criminal and civil legal services on behalf of the assisted party and with the name of the supervising partner, if appropriate;
11. to provide to the assisted party in writing the identity of the person who the assisted party should contact if the assisted party becomes concerned with the manner in which work is being carried out;
  12. to provide an assurance that in the event of a change of personnel, that the assisted party will be notified immediately;

### **Progression of Case**

13. to ensure that the assisted party is given sound, timely, comprehensive and well informed advice and information and is kept informed as to the progress of their case;
14. where an offer/proposal is made, to evidence the advice given to the assisted party on the terms of the offer/proposal, its reasonableness and the consequences for the assisted party of acceptance/rejection, including the potential impact of the Statutory Charge or any additional costs arising if additional representation is requested; the solicitor will inform the Agency of the offer/proposal;
15. to have such meetings with the assisted party as are necessary for the proper conduct of their case;
16. to take only such action as may reasonably be expected to be necessary for the preparation of the assisted party's case;
17. to make such investigations as may reasonably be expected to be necessary for the preparation of the assisted party's case, including identifying the need for experts or other reports, correctly identifying the expertise required, and obtaining approval in accordance with Agency guidelines;
18. to immediately inform the Agency of any information which would affect the merits or financial eligibility for criminal legal aid and/or civil legal services as granted;

### **Measurement of Expectation**

19. to handle cases promptly and expeditiously, and with due regard to value for money;

### **Contributions**

20. where the assisted party qualifies for publicly funded criminal and civil legal services, to provide the assisted party with information about the level of contributions, if any, the assisted party will have to make and when these will be required;
21. where the assisted party qualifies for publicly funded criminal and civil legal services, to advise of the factors which will affect contributions;

### **Statutory Charge**

22. where the assisted party qualifies for civil legal services, to provide an explanation of the Statutory Charge;
23. to advise the assisted party on the operation of the Statutory Charge and their ongoing exposure to the charge, if engaged;

### **Instruction of Barrister**

24. to ensure that the barrister is registered with the Agency to provide publicly funded criminal and civil legal services;
25. to ensure that the barrister is advised if any of the firm's declared policy falls outside the general template agreed with the Law Society;
26. where a barrister is instructed, to advise the Agency of the name and unique reference number of that barrister at the earliest opportunity;
27. where a barrister is instructed, to advise the barrister to quote the Agency's unique reference number on all records and correspondence;
28. to provide the barrister with detailed instructions of the case including any limitations to the legal aid certificate;

### **Court Attendance**

29. to provide competent and responsible representation at any hearing for an assisted party;
30. to avoid unnecessary disruption of or delay to court business;
31. to summon all witnesses in good time for any hearing at which those witnesses are to give evidence;

### **Submission of Bills**

32. to lodge an accurate and complete claim for payment within the time specified and on a form approved by the Agency, containing all the information required for assessment, and respond fully and within the time specified to further information required to assist the Agency in its functions;

### **Complaints**

33. to have a written complaints procedure which should be provided to the assisted party as soon as the assisted party has indicated concern about the manner in which work is being carried out;
34. to maintain a complaints register which shall record the history of all written complaints made to the solicitor by assisted parties including details of how those complaints were resolved;



35. to ensure that all staff in the solicitor's office, whether professional or support staff, are fully aware of the in-house complaints procedure and have authority to give a copy of those procedures to any assisted party who expresses concern about the manner in which the case is being handled to that member of staff, whether verbally or in writing;

### **Instruments governing Legal Aid and Literature**

36. to provide and ensure that the assisted party understands any relevant available literature published by the Agency relating to their obligations under any of the Schemes; and
37. to comply with the Instruments governing Legal Aid in Northern Ireland.

## **4.2 MONITORING OF PERFORMANCE**

- 4.2.1 The Agency will monitor the standard of service provided by solicitors, as defined in this Part. Solicitors will be required to supply to the Agency any information which it considers necessary for the purposes of monitoring this performance.
- 4.2.2 In addition, solicitors shall give assisted parties copies of any questionnaire issued by the Agency for the purpose of measuring assisted party satisfaction, with a request that the completed questionnaires be returned direct to the Agency by the assisted party. The Agency reserves the right to contact the assisted party directly for the purpose of this part.
- 4.2.3 The Agency will maintain records of applications and claims for payment submitted or information provided by firms or solicitors which fail to meet the requirements of this Part.
- 4.2.4 Where the firm or solicitor is deemed by the Agency not to have met the requirements after a routine audit, the firm or solicitor will be subject to further audit and may be subject any sanctions deemed appropriate by the Administrator.

## **4.3 SECTION B: CIVIL LEGAL SERVICES VALIDITY OF APPLICATIONS**

- 4.3.1 Applications for, and in connection with, publicly funded civil legal services shall comply with the requirements in each of the sections below.

### **4.3.2 Accurate**

- 4.3.2.1 Every effort should be made to provide full and accurate details of the assisted party, any person applying on behalf of the assisted party, any co-defendant and the case particulars to enable the Agency to

identify the assisted party and any previous applications for publicly funded criminal and civil legal services made by the assisted party.

### **4.3.3 Complete**

4.3.3.1 Applications for publicly funded civil legal services shall be in the form required by the Agency and all information requested by the Agency shall be supplied. Information pertaining to changes to details supplied in the application, for example a change of address of the assisted party, must be provided to the Agency as soon as possible. If the information requested is not available the Agency should be informed as to the reason(s). Where appropriate, applications should be accompanied by supporting information and documentation.

4.3.3.2 A solicitor shall not sign or ask an assisted party to sign a blank form or a form which is incomplete. The assisted party should insert the date of their signature on the form.

4.3.3.3 For advice and assistance, a solicitor shall not sign or ask an assisted party to sign any application for advice and assistance which is incomplete in respect of the following information:

- the financial details on which the solicitor has assessed the assisted party's disposable income and capital;
- the subject matter on which advice is given;
- whether the assisted party has received advice and assistance on the matter from another solicitor.

### **4.3.4 Time Limits**

4.3.4.1 Applications shall be submitted in accordance with the time limits specified in the Instruments governing Legal Aid. Where this allows discretion to the Agency, and the application seeks to take advantage of this, it shall be supported by appropriate information.

## **4.4 SECTION C: VALIDITY OF CLAIMS FOR PAYMENT (REPORT ON CASE)**

4.4.1 The Compliance Manager will be responsible for ensuring that the appropriate solicitor authorises the claim for payment being submitted to the Agency, irrespective of by whom they were prepared. Firms shall also be responsible for ensuring that claims for payment submitted by any of its sub-offices comply with the requirements of this Code.

4.4.2 Claims and relevant documentation presented to the Agency in connection with publicly funded criminal and civil legal services shall conform to the requirements in each of the sections below.

#### **4.4.3 Accurate**

4.4.3.1 Claims for payment shall be clearly, accurately and logically presented in a form approved by the Agency which enables the Agency to assess them.

#### **4.4.4 Complete**

4.4.4.1 Claims for payment shall be accompanied by such documents and information as the Agency has given notice to the firm or solicitor that it requires to see. All entries contained in a report on case shall be supported by entries on the file or by appropriate vouchers.

4.4.4.2 A copy of the claim for payment shall be retained on the assisted party's file.

#### **4.4.5 Time Limits**

4.4.5.1 Claims for payment shall be submitted to the Agency within the time limits specified in the Instruments governing Legal Aid.

#### **4.4.6 Appropriate**

4.4.6.1 All entries in a claim for payment shall be for work actually and necessarily done with due regard to value for money.

4.4.6.2 The entries should form a proper charge against the Legal Aid Fund and be charged at the correct rate (including charges for expert witnesses as approved in the terms of engagement).

4.4.6.3 Responses to any queries raised by the Agency in relation to claims for payment submitted shall be within the time limit specified.

4.4.6.4 A firm or solicitor shall pay any disbursements without delay and certainly no later than **10 working days** from the date of receipt of the relevant payment by the Agency.

### **4.5 SECTION D: RELATIONSHIP WITH THE AGENCY**

4.5.1 It is the responsibility of firms and individual solicitors to submit applications, claims for payment and supporting documentation to the Agency in a clearly legible, preferably typed or printed form which meets the requirements of this Section. Detailed examples of how to meet these requirements are contained in Appendix 1 of this Code.

4.5.2 In communication with the Agency, solicitors are expected to provide adequate and timely information to enable the Agency's enquiries or requests to be dealt with properly, efficiently and courteously.

4.5.3 Solicitors shall notify the Agency as soon as possible before any anticipated material change, of which the solicitor is aware, which will or might affect them. At a minimum, solicitors must notify the Agency within five working days of any material change of the following:

1. the closure or planned closure of an office;
2. any decision on the solicitor's part to cease to undertake publicly funded criminal and civil legal services;
3. any change of firm status;
4. any change in the identity of key personnel;
5. any change to practising status of solicitor;
6. any creation of a partnership;
7. any sale, merger, acquisition or transfer of, or by you; and
8. VAT registration.

4.5.4 Solicitors shall notify the Agency of the possibility of fraud and / or unethical behaviour by personnel and/or third parties in receipt of publicly funded criminal and civil legal services or registered to provide criminal and civil legal services.

## Part 5: Systems of Management and Administration for Solicitors

**5.1** A firm shall establish and maintain a documented system of management and administration as a means of ensuring and demonstrating that the requirements of this Code are consistently met. The system shall be detailed in manuals or handbooks etc. and shall include, as appropriate, policies, procedures and instructions. The system shall be implemented effectively by all registered solicitors who are providing publicly funded criminal and civil legal services and non-legally qualified staff within the firm assisting in providing publicly funded criminal and civil legal services.

### **5.2 PERSONAL WORK AND TIME RECORDING**

**5.2.1** A chronological record shall be maintained of activities undertaken by each individual providing publicly funded criminal and civil legal services. The record will show the actual times involved, in such activities as:

1. advocacy;
2. attendance in court with barrister;
3. personal attendance on clients or witnesses;
4. travel;
5. waiting;
6. preparation;
7. non-routine telephone calls; and
8. any other work chargeable on a time basis.

The record should also show:

9. letters sent and received, e-mails, routine telephone calls;
10. mileage; and
11. outlay.

#### **For each activity the record should show:**

1. date;
2. solicitor's name;
3. name of assisted party or witness;
4. a unique case reference identifier to link to any relevant case files i.e. related criminal charges / certificates, co-accused etc.;
5. detail of work done;
6. start and finish times and duration of work done (except correspondence); and
7. where travel time is being charged, the departure point and destination should be noted, and where waiting time is being charged, the locus should be identified.

5.2.2 Procedures shall state where and in what manner this record is held, for example, personal files, computer systems, diaries etc. Records shall be maintained and accessible for at least six years from the date of the last payment.

### **5.3 CASE RECORDING**

5.3.1 All case files shall be maintained containing records to demonstrate the work done. Such records must include the following details:

1. date;
2. name and status of person performing work, including where a barrister has been instructed;
3. detail of work done;
4. start and finish times and duration of work done; and
5. financial transactions.

5.3.2 Procedures shall state where and in what manner these records are held, for example, case files, computer systems, diaries etc. Records of all assisted parties shall be maintained separately and accessible for at least six years from the date of the last payment of the relevant account by the Agency.

### **5.4 FINANCIAL TRANSACTION RECORDING**

5.4.1 Records of all financial transactions with, or on behalf of, all assisted parties shall be maintained separately and accessible by the Agency for at least six years from the date of the final payment.

### **5.5 TRAINING**

5.5.1 Procedures shall be in place to ensure that all staff, as defined in paragraph 5.1 of this Code, are suitably equipped for the work they do in terms of education, training and/or experience. Such procedures shall ensure that any training and education needs are identified and reviewed annually with the staff concerned and that training is appropriately given. Training and education records shall be maintained for all such staff.

### **5.6 SUPERVISION OF STAFF**

5.6.1 Adequate supervision procedures shall be in place to 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.

5.6.2 Where work is delegated by the nominated solicitor to non-legally qualified staff, other registered solicitors or barristers within, or agents

outside the firm, it should be under the direct supervision of the nominated solicitor who shall maintain responsibility for the standard of work and shall ensure that it is completed in a satisfactory manner and evidence of same shall be demonstrated.

## **5.7 DOCUMENT CONTROL**

5.7.1 The firm shall operate a procedure for document control which ensures that the latest issue of pertinent documents is available for use. Documents shall include:

1. The Registration Scheme Code of Practice;
2. The Law Society of Northern Ireland Legislation and Regulations;
3. The Code of Conduct for the Bar of Northern Ireland;
4. Legal aid and advice and assistance application forms;
5. Key Card for advice and assistance;
6. Taxation Guidelines;
7. Manuals and handbooks etc. which detail the firm's system of management and administration; and
8. Instruments governing Legal Aid.

5.7.2 The procedure shall define how and by whom any changes to the firm's policies or procedures are to be made, ensuring that changes are reviewed by the relevant partners, the documentation involved is updated and new copies are distributed as necessary.

5.7.3 The firm shall maintain up to date files containing:

1. circulars from the Agency; and
2. other relevant Agency publications.

## **5.8 INFORMATION RECEIVED FROM THE AGENCY**

5.8.1 On receipt of information from the Agency the firm must ensure that:

1. such documents as are described in paragraphs 5.7.1 and 5.7.3 of this Code are circulated to the appropriate staff; and
2. guidelines issued by the Agency are reviewed by the firm and the appropriate action is incorporated into the firm's management and administration system.

## **5.9 CASE AUDIT**

5.9.1 The firm shall operate a documented procedure to ensure that all cases are conducted efficiently, effectively and in accordance with this Code. To ensure that action is taken as and when required for the proper conduct of cases in accordance with Part Four, Section A of this Code, the procedure shall:

1. provide for an effective diary and file-checking system; and
2. provide for the effective coordination of all staff, as defined in paragraph 5.1 above.

5.9.2 The procedure shall also provide for the audit of a cross-section of active and concluded cases to determine continued compliance with this Code by solicitors in the conduct of these cases.

## **5.10 CLIENT REPORTING**

5.10.1 The firm shall have a procedure in place to ensure that:

1. the assisted party's instructions are recorded including the detail of any changes to instructions;
2. the assisted party is given timely and accurate information, including information about the consequences of any decision they are being invited to take, and is kept adequately informed of progress;
3. at the conclusion of a case, the outcome is reported in a timely manner to the Agency and the assisted party and any further action the assisted party is required to take is explained to them;
4. original documents and other property held by the solicitor or firm and belonging to the assisted party are returned to the assisted party at the conclusion of the case to which they relate;
5. the assisted party is advised whether the matter should be reviewed in future, and if so, when; and
6. appropriate records should be maintained to demonstrate all of the above.

## **5.11 COMPLAINTS**

5.11.1 A firm shall have a procedure in place to ensure that appropriate action is taken to deal with any problems which are identified. Such problems may include:

1. complaints to the solicitor by assisted parties;
2. complaints to the Agency;
3. Notices of Non-Compliance received from the Agency;
4. failures of the firm's system of management and administration; and
5. fraud.

5.11.2 The firm must have a written complaints procedure and maintain a complaints register for inspection by the Agency.

5.11.3 The written complaints procedure should provide as a minimum that:



- there is a designated person or competent body to handle complaints about the firm;
- all assisted party complaints should be made in writing and maintained separately by the firm;
- an acknowledgement of the complaint will be sent within 7 days;
- a written response will be sent to the assisted party within a reasonable time, usually within the next 28 days;
- in criminal legal aid and/or civil legal services the assisted party may complain within six months of the conclusion of the business, or within six months of discovery of the difficulty, whichever is the later;
- in publicly funded criminal and civil legal services cases, in the event of the assisted party being dissatisfied with the in-house investigation, they must complain to the Law Society and the Agency within six months of conclusion of the in-house procedure;
- the register should record at a minimum, the date the complaint was made, the name and address of the assisted party, the date the complaint was dealt with and the outcome.

5.11.4 After identification of any problem, the firm shall ensure that:

- remedial action is taken on the specific problem raised;
- appropriate long term action is taken to prevent, as far as is possible, a recurrence of the problem; such action will be appropriate to the severity of the problem;
- timely responses are made to the complainant; and
- a report on the remedial action is forwarded to the Agency.

5.11.5 If an assisted party makes a written complaint to the Agency about the conduct of a solicitor, a copy of this complaint shall be forwarded to the Compliance Manager to be investigated. The Agency shall consider the outcome of the complaint investigation in accordance with the Registration Scheme Complaints Procedure and also in accordance with the terms and conditions contained herein. The regulatory body may also be invited to investigate the complaint.

5.11.6 Procedures shall be in place to ensure that all identified problems are recorded, that appropriate action is taken and that records of such complaints are maintained.

## Appendix 1 to the Code of Practice for Solicitors

### **EXAMPLES RELATING TO THE SUBMISSION OF MATERIALS TO THE AGENCY**

This Appendix gives more detailed examples of how the requirements of Part Four, Section B of the Code should be met. The examples are not exhaustive but, where given, they must be followed.

#### **Civil Legal Services Validity of Applications**

Applications for, and in connection with, publicly funded civil legal services shall conform to the requirements of each of the sections below, in that they must be:

##### **1. Accurate**

Every effort should be made to provide full and accurate details of the assisted party, any person applying on behalf of the assisted party, any co-defendant and the case particulars to enable the Agency to identify the assisted party and any previous application(s) made by the assisted party.

##### *Examples:*

- The assisted party's National Insurance Number should be correctly stated.
- The assisted party's name and designation should be correctly and precisely stated and show all forenames, previous names, maiden names and aliases and name at date of birth, if different.
- The name and designation of any person applying on behalf of the assisted party should be correctly and precisely stated and show all forenames.
- The assisted party's address and date of birth should be correctly stated.
- The names and designation of any co-defendant should be correctly stated.
- ICOS Court reference number should be correctly stated (where applicable)
- The court details should be accurately stated.
- Case details should be clearly described.
- Forms should not be submitted in which the assisted party's or the solicitor's signature is omitted or altered without appropriate authentication or in which the date of any signature is left blank or altered.
- Where any factor is adduced in support of an application, full information should be supplied.
- Where a factor does not apply, this should be stated.
- The overuse of stock phrases should be avoided, for example, "good case" or "prima facie case".

## **2. Complete**

Applications shall be in the form required by the Agency and all information requested by the Agency shall be supplied. The only exception is:

- where any form refers to information “if known”.

If any other question is inapplicable, this must be clearly stated. On no account should a form be submitted with the response boxes left blank. Where appropriate, applications should be accompanied by supporting information and documentation.

*Examples:*

- applications may be supported by wage slips, civil bills, reference numbers of previous applications, previous requests for increases in authorised expenditure, opinions of barrister etc.

## **3. Appropriate**

Applications shall be necessary and properly directed towards the appropriate form of legal assistance as provided in the Instruments governing Legal Aid.

*Example:*

- Solicitors should appreciate what the limits for Advice & Assistance are and use them properly as described in the Regulations and the “Key Card”.

### **Validity of Claims for Payment (Report on Case)**

The solicitor is responsible for authorising the claim being submitted for payment to the Agency, irrespective of by whom they were prepared. Firms shall also be responsible for ensuring that claims submitted by any of its offices comply with the requirements of this Code. Reports on case and relative documentation presented to the Agency shall conform to the requirements in each of the sections below in that they must be:

#### **1. Accurate**

Claims shall be clearly, accurately and logically presented in a form approved by the Agency which enables the Agency to assess them.

*Examples:*

- The report on case should contain the correct practitioner code and clearly identify any agents employed and show their status.
- Entries should consist of appropriately detailed narrative to explain the work done.
- Charges should be correct in accordance with the fees applicable.
- Any arithmetical calculations should be correct.

## **2. Complete**

Claims shall be accompanied by such documents and information as the Agency has given notice to the firm or solicitor that it requires to see. All entries contained in reports on case shall be supported by entries on the file or by appropriate vouchers.

### *Examples:*

- Claims for outlays should be submitted in conjunction with the claim and be accompanied by appropriate vouchers.
- If requested by the Agency, detailed file notes should be made available.
- A detailed explanation of the benefits of a locus visit should be given to justify why this was necessary. Any relevant sketches or photographs should be included.
- Waiting time and court time should be correctly and accurately apportioned and should be charged to the relevant case.
- ICOS Court reference number should be correctly stated (where applicable).

## BARRISTERS

### Part 2: Conditions for Registration for Barristers

#### 2.1 APPLICATIONS AND CHANGES

- 2.1.1 All barristers wishing to provide publicly funded criminal and civil legal services in Northern Ireland are required to register under the Registration Scheme. Applications for registration must be made in the format determined by the Agency and satisfy the conditions set down in this Code.
- 2.1.2 A barrister will be required to pay any prescribed fee as set by the Agency.
- 2.1.3 A barrister must notify the Agency of any material changes to any information or documentation which has been provided to the Agency, at any time, relevant to that barrister's registration (including the date of call to Queen's Counsel).

#### 2.2 CONDITIONS FOR INDIVIDUAL BARRISTERS

- 2.2.1 A barrister applying for registration shall forward a copy of his current Practising Certificate to the Agency and sign a declaration confirming that he has satisfied all the requirements laid down by the Bar Council of Northern Ireland under Section 6<sup>1</sup> of the Bar Council's Code of Conduct.
- 2.2.2 A barrister applying for registration must disclose all details if they have previously been restricted or de-registered from the Scheme.
- 2.2.3 A barrister shall at all times be in possession of a valid Practising Certificate which does not have a restriction preventing the provision of publicly funded criminal and civil legal services. Any limitation must be notified to the Agency.
- 2.2.4 The Agency may refuse the application of any barrister if not satisfied that they are capable of discharging their responsibilities under the Scheme.
- 2.2.5 A barrister shall inform the Agency of the possibility of fraud and / or unethical behaviour by personnel and / or third parties in receipt of

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<sup>1</sup> Section 6 of the Bar of NI Code of Conduct entitled 'Practising Certificates and Subscriptions to the Bar Library'

publicly funded criminal and civil legal services or registered to provide publicly funded criminal and civil legal services.

- 2.2.6 A barrister wishing to claim VAT will be required to provide a valid VAT registration certificate.

### **2.3 COMPLIANCE WITH THE CODE OF PRACTICE**

- 2.3.1 A barrister applying for registration shall certify that they comply with the terms of this Code, and will be required to complete a self-assessment and re-certify on an annual basis.

- 2.3.2 A barrister applying for registration shall certify that they have access to email facilities and must have IT software that is compatible with the Agency in order to ensure the effective and efficient administration of the Scheme.

### **2.4 ATTENDANCE AT COURSES**

- 2.4.1 A barrister applying for registration shall attend or present, in the current practising year of application, the requisite number of Continuing Professional Development (CPD) points as specified by the CPD Committee of the Bar Council of Northern Ireland, or undertake to do so in the year of Registration.

- 2.4.2 A barrister applying for registration shall attend or present, in the current practising year of application, one or more courses relevant to the provision of publicly funded criminal and civil legal services. These courses shall amount to at least one hour's duration in total, and must be pre-accredited by the Agency.

- 2.4.3 Time spent in preparation for attending any course shall not be considered in addition to the actual duration of the course. For the avoidance of doubt, time spent in preparation for the purpose of presenting accredited courses will be considered in addition to the actual duration of the course.

### **2.5 RECORDS OF COURSE ATTENDANCE**

- 2.5.1 A barrister applying for registration shall maintain a record of accredited courses attended or presented relevant to the provision of publicly funded criminal and civil legal services. A copy of the barrister's record of CPD required by the Bar Council of Northern Ireland shall be supplied in support of the application.

### **2.6 MAINTENANCE OF RECORDS**

- 2.6.1 A barrister applying for registration shall maintain records as described in Part five of this Code.

## Part 3: Standards of Professional Conduct for Barristers

3.1. A barrister shall act independently, honestly and in accordance with the standards of ethics and conduct defined in the Code and in any relevant practice rules and codes of conduct issued by the Bar Council of Northern Ireland for guidance in assessing whether a barrister's conduct meets the standard required of a member of the profession. A barrister is an officer of the Court and as such has obligations and duties to the Court. A barrister also has statutory obligations in relation to legally aided matters.

3.1.1 A barrister shall comply with all Instruments governing the provision of Legal Aid in Northern Ireland.

### **3.2 PROFESSIONAL CONDUCT**

3.2.1 A barrister shall be responsible for maintaining standards of professional conduct.

3.2.2 An individual barrister is responsible for familiarising themselves with their instructing solicitor's declared policy towards Standards of Professional Conduct<sup>2</sup>.

3.2.3 Appropriate corrective action shall be taken by the barrister when breaches of the instructing solicitor's standards are identified. Any breach identified is to be reported to the Agency immediately.

3.2.4 Barristers must not discriminate on grounds of persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation, between men and women generally, between persons with a disability and persons without and between persons with dependents and persons without in their professional dealings with assisted parties or fellow barristers.

3.2.5 A barrister must be alive to the possibility of fraud and unethical behaviour by third parties, in respect of legal aid cases or by those registered to provide publicly funded criminal and civil legal services, must not tolerate it and must inform the Agency immediately.

### **3.3 KNOWLEDGE AND EXPERIENCE**

3.3.1 A barrister shall ensure that he has and that he deploys the relevant knowledge and experience necessary for each case which is accepted by them.

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<sup>2</sup> See Solicitors' Code of Practice Part A: Part 3: Standards of Professional Conduct (3.2.1)

- 3.3.2 A barrister shall attend courses for the requisite number of CPD points as specified by the CPD Committee of the Bar Council of Northern Ireland in each one year term and of those at least one hour must be relevant to the provision of publicly funded criminal and civil legal services as accredited by the Agency. Time spent in preparation for attending any course will not be considered in addition to the actual duration of the course. For the avoidance of doubt, time spent in preparation for the purpose of presenting accredited courses will be considered in addition to the actual duration of the course.
- 3.3.3 The Agency reserves the right to determine that where a barrister has provided evidence of having not had an opportunity to attend sufficient relevant courses within the period of twelve months preceding the application for registration (for example on first registration, or if newly qualified), whether they must undertake to do so within the remaining period of registration.
- 3.3.4 A barrister shall at all times be in possession of a valid Practising Certificate and must advise the Agency if any conditions have been imposed for a specified period on him by the Disciplinary Committee of the Bar Council of Northern Ireland.

### **3.4 INDUCEMENTS**

- 3.4.1 No barrister shall offer to any person any inducement to become or remain a client, such inducement involving the transfer, or promise to transfer, to any person of any consideration, financial or otherwise; nor shall they direct a legal aid application, on the basis of any such inducement or in response to any direct or indirect proposal which would involve the transfer of any financial or other consideration to any person.
- 3.4.2 No barrister shall accept instructions from any person whom they know to have received any consideration from a third party to become a client.

### **3.5 CO-OPERATION**

- 3.5.1 A barrister shall co-operate with the Agency in answering any relevant questions about barrister's claims for payment, compliance with this Code or performance on behalf of the assisted party (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 Agency shall be allowed access to the barrister's records at a location to be agreed to assess compliance with this Code. Responses to any relevant requests for information shall be made within the time specified.



- 3.5.2 In routine audits the Agency will seek to arrange an audit of barristers work from solicitor's files being forwarded to the Agency by the firm or by appointment to access their premises, equipment, documents, information and/or data in relation to the case file only.
- 3.5.3 As part of the Agency's assurance and risk analysis to ensure consistency in the reviewing of files, a selection of closed files will be retained for a period in order to quality assure the review i.e. another reviewer will independently review the files to ascertain whether there is consistency with the reviews carried out. In addition, if it is necessary to select files which relate to ongoing cases the Agency will retain a copy of the file, and return the original to the supplier. This copy will be retained and reviewed in the same manner as closed files.

**4.1 STANDARD OF PROFESSIONAL SERVICE**

4.1.1 Barristers registered under this Code will be expected to deliver a standard of professional service which can be expected of barristers displaying professional competence.

4.1.2 In particular, without prejudice to the generality of the preceding paragraph, barristers will be expected to adhere to the Code of Conduct issued by the Bar Council of Northern Ireland.<sup>3</sup>

**4.2 MEASUREMENT OF EXPECTATION**

4.2.1 Registered barristers will be expected to handle publicly funded criminal and civil legal services cases promptly and expeditiously, and with due regard for value for money.

4.2.2 Registered barristers will normally be expected to furnish draft pleadings, opinions and other documents within a period of six weeks of being briefed / requested to do so. In exceptional circumstances where this is not possible, the reasons should be clearly evidenced for consideration.

**4.3 COURT ATTENDANCE**

4.3.1 Registered barristers will provide competent and responsible representation at any hearing for the assisted person.

4.3.2 Registered barristers will avoid unnecessary disruption of or delay to court business.

**4.4 SUBMISSION OF BILLS**

4.4.1 Registered barristers will lodge an accurate and complete claim for payment, either through their instructing solicitor or to the Agency, where appropriate, in the Agency's standard form, containing all the information required for assessment; and will respond fully and within the time specified to further information required to assist the Agency in its functions.

**4.5 INSTRUMENTS GOVERNING LEGAL AID**

4.5.1 Registered barristers will comply with all Instruments governing the provision of Legal Aid in Northern Ireland.

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<sup>3</sup> [http://www.barofni.com/assets/files/Code\\_of\\_Conduct.pdf](http://www.barofni.com/assets/files/Code_of_Conduct.pdf)

## **4.6 MONITORING OF PERFORMANCE**

- 4.6.1 The Agency will monitor the standard of service provided by barristers, as defined in this Part. Barristers will be required to supply to the Agency any information which it considers necessary for the purposes of monitoring this performance.
- 4.6.2 Records relating to barristers' work will be monitored primarily through audits of their instructing solicitor's records. Where the case is still live it may be appropriate to obtain the information directly from the barrister.
- 4.6.3 In addition, solicitors / barristers shall give assisted parties copies of any questionnaire issued by the Agency for the purpose of measuring assisted party satisfaction, with a request that the completed questionnaires be returned direct to the Agency by the assisted party. These may include questions regarding the service delivered by barristers. The Agency may contact the assisted party directly for the purpose of this part.<sup>4</sup>
- 4.6.4 The Agency will maintain records of claims for payment submitted or information provided by barristers who fail to meet the requirements of this Part.
- 4.6.5 Where the barrister is deemed by the Agency not to have met the requirements after a solicitor's routine audit, the barrister may be subject to further audit, and be required to provide such further information as the Agency deems necessary which may include access to their diary.

## **4.7 VALIDITY OF CLAIMS FOR PAYMENT**

- 4.7.1 Claims and relevant documentation presented in connection with publicly funded criminal and civil legal services shall conform to the requirements in each of the sections below.

### **4.7.2 Accurate**

- 4.7.2.1 Claims for payment shall be clearly, accurately and logically presented in a form / format approved by the Agency which enables the Agency to assess them.

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<sup>4</sup> See Solicitor's Code of Practice Part A: Part 4: Standards of Service 4.2 Monitoring of Service (4.2.2)

### **4.7.3 Complete**

4.7.3.1 Claims for payment shall be accompanied by such documents and information as the Agency has given notice that it requires to be produced.

### **4.7.4 Time Limits**

4.7.4.1 Claims for payment shall be submitted within the time limits specified in the Instruments governing Legal Aid.

### **4.7.5 Appropriate**

4.7.5.1 All entries in a claim for payment shall be for work actually and necessarily done with due regard to value for money.

4.7.5.2 The entries should form a proper charge against the Legal Aid Fund and be charged at the correct rate.

4.7.5.3 Responses to any queries raised by the Agency in relation to claims for payment submitted shall be within the time limit specified.

**5.1 I.T. FACILITIES**

5.1.1.1 A barrister applying for registration shall have access to email facilities and must have IT software that is compatible with the Agency in order to ensure the effective and efficient administration of the Registration Scheme.

**5.2 CASE RECORDING**

5.2.1 Every barrister who has been registered to provide publicly funded criminal and civil legal services shall quote the Agency's allocated unique identifier on all records and correspondence.

5.2.2 All cases and records shall be maintained and accessible to demonstrate work done and time spent on every aspect of each case. Such records shall include the following details:

1. Date;
2. Name of instructing solicitor;
3. Name of barrister performing work;
4. Detail of work done; and
5. Start and finish times and duration of work done (where work is chargeable on time).

5.2.3 In order to avoid any uncertainty or lack of clarity in relation to the extent of the services which the Agency has authorised, a barrister shall satisfy themselves in relation to the extent of the services authorised.

5.2.4 This authority shall be determined by reference to a relevant legal aid certificate, and/or any amendments thereto, or written authority.

5.2.5 A copy of this authority shall accompany the instructions to the barrister and, if this is not done, the barrister shall request a copy of same prior to providing any services.

5.2.6 The Agency will be responsible for fees, costs or expenses incurred where they have been approved in writing in advance. The Agency will not be responsible for any fees, costs or expenses in the absence of such prior approval.

### **5.3 FINANCIAL TRANSACTION RECORDING**

- 5.3.1 Every barrister shall state where and in what manner these records are held, for example, case files, computer systems, diaries etc. Legal aid records shall be maintained separately and accessible for at least six years from the date of the last date of final payment of the relevant account by the Agency.

### **5.4 INFORMATION RECEIVED FROM AGENCY**

- 5.4.1 On receipt of information from the Agency, registered barristers must ensure that the information is reviewed and any appropriate action is incorporated into their administration system.

### **5.5 CASE AUDIT**

- 5.5.1 Registered barristers shall operate an effective diary and file checking system, and shall provide access of same to the Agency for audit purposes when requested.

### **5.6 COMPLAINTS**

- 5.6.1 If an assisted party makes a written complaint to the Agency about the conduct of a barrister a copy of this complaint shall be forwarded to the barrister for their observations. The Agency shall consider the complaint in accordance with the Registration Scheme complaints procedure and also in accordance with the terms and conditions contained herein. The regulatory body may also be invited to investigate the complaint.
- 5.6.2 Registered barristers should also be aware of the Guidance Notes for Complaints process issued by the Bar Council of Northern Ireland.

## **AUDIT AND COMPLIANCE FRAMEWORK**

### **TO BE READ IN CONJUNCTION WITH Annexes A and B of CODE OF PRACTICE FOR SOLICITORS AND BARRISTERS**

**This Audit and Compliance Framework details operational processes to support The Access to Justice (Registration) Regulations (Northern Ireland) 2017 and The Criminal Legal Aid (Registration) Rules (Northern Ireland) 2017 – hereinafter referred to as ‘Registration legislation’.**

**The Agency will monitor the standard of service provided by all registered publicly funded legal service suppliers through this audit and compliance framework. Compliance Managers<sup>5</sup> and Barristers will be required to supply to the Agency any information which it considers necessary for the purposes of monitoring this performance.**

**A Grade 7 within the Agency will be appointed as Scheme Administrator.**

**Requests to review sanction decisions can be made to the Scheme Panel.**

**The term ‘supplier’ shall refer to a registered firm, registered voluntary sector organisation, individual solicitor or barrister throughout this document.**

**The audit and compliance framework will be conducted with full adherence to both legal professional privilege and the Data Protection Act 1998.**

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<sup>5</sup> The Compliance Manager will be accountable for the firm’s compliance with the Scheme and as such must be a registered solicitor.

## **1. FILE AUDIT PROCESS**

- 1.1. Files for review will be selected randomly by the Agency, but in a manner which will provide a representative cross-section of the files held by a supplier. Information relating to, and provided by, barristers will be monitored primarily through audits of their instructing solicitor's records but may be supplemented on occasion by the Agency seeking further documentation from barristers directly.
  - 1.1.1 However, where the Agency has specific concerns over a case, which it has not been possible to resolve through the normal processes, it will ask the supplier for the file in respect of that case to be included in the sample for review.
  - 1.1.2 Where 1.1.2 applies, any such file requested shall be in addition to the randomly selected files.
  - 1.1.3 Where possible both legal aid and advice and assistance files will be reviewed, for example, where a civil legal aid reference number is selected the associated advice and assistance file will be included and vice versa.
  - 1.1.4 The files chosen will generally be from records held by the Agency – paid cases will be selected from payments (interim or full bill) processed since the last audit.
  - 1.1.5 A proportionate number of randomly selected files per firm will be reviewed. This arrangement will be kept under review by the Agency and this will be developed to ensure that the sample in the future includes a proportionate number of files for all registered solicitors in that firm.
  - 1.1.6 The barrister associated with the selected files will be reviewed on a continuous basis. As each solicitor's file is audited, findings will be collated for any barrister involved until an acceptable sample size has been reached on which conclusions can be reported for that individual.
  - 1.1.7 The final decision about when each supplier is to be reviewed shall lie with the Agency's Scheme Administrator (the Administrator) and subject to paragraph 1.1.1 which of the supplier's files are to be reviewed.
  - 1.1.8 Details about files to be reviewed shall be communicated by the Administrator to the supplier in a sufficiently detailed manner to allow the easy identification of the files in question.
  - 1.1.9 The Agency's Compliance Auditors will conduct their compliance audits on dates and times agreed with the Compliance Manager. This



may be at the firm's premises or the compliance auditors may ask for the files to be delivered to the Administrator.

- 1.1.10 Subject to paragraph 1.1.9, should an unannounced visit be necessary, it will not be possible for the Agency to provide prior notice.
- 1.1.11 The Agency reserves the right to remain flexible in the timing or venue of the audits.
- 1.1.12 When allocating a compliance auditor, the Administrator shall take into account all known relevant matters. Auditors will be placed under an obligation to disclose any reason why it may be inappropriate that they audit a particular supplier or file. Any supplier may make representations to the Administrator regarding the suitability of any compliance auditor to carry out an audit of the supplier.
- 1.1.13 Where a Compliance Manager objects to a particular compliance auditor, any representations, to include the reason(s) for the objection, must be sent to the Administrator within five working days of the visit having been notified to the supplier.
- 1.1.14 The Administrator may determine that, in the event of such a declaration of interest or representation, the audit is to be carried out by another compliance auditor. Equally, they may determine that there are no grounds for change and communicate this accordingly.
- 1.1.15 Where the supplier does not make the files available by the date specified, the compliance auditor shall report this to the Administrator who may fail the review of that supplier. All attempts will be made to ensure that any issues will be resolved prior to the production of the final report.
- 1.1.16 The Administrator shall provide the supplier with the completed audit report within 28 days of the completion of the audit. The Compliance Manager will have 28 days from the date of receipt of report to comment on the findings.
- 1.1.17 Where the compliance auditor has minor concerns only, these shall be drawn to the attention of the supplier by letter which shall include recommendations thought appropriate to resolve such concerns.

## 1.2 ASSURANCE RATING

1.2.1 In line with the Registration Scheme Audit and Compliance Framework, the compliance verification visit will focus on gathering evidence in respect of the requirements in the Code.

1.2.2 The audit will be conducted in accordance with the 'Public Sector Internal Audit Standards' (PSIAS) and will include an examination of transactions processed in accordance with the supplier's system of internal control. The aim of the compliance visit is to determine a level of assurance from the suppliers of publicly funded legal services against the requirements of the Code. The levels of assurance will be provided as follows:

**Satisfactory:** Overall there is satisfactory evidence that the supplier is complying with the Code of Practice. While there may be some residual risk identified this should not significantly impact on the supplier's continued registration to provide publicly funded legal services.

**Limited:** There are significant weaknesses [evidenced that the supplier is not in compliance with] the Code of Practice. If the supplier continues to not comply with the Code, this could lead to the supplier being de-registered from providing publicly funded legal services.

**Unacceptable:** There is very clear evidence of failure to comply with the Code of Practice. There is a real and substantial risk that an appropriate service is not being delivered. Urgent action will be required as the findings may lead to the de-registration of the Supplier.

### 1.3 RECOMMENDATION PRIORITIES

1.3.1 In line with the levels of assurance, a number of recommendation priorities may also be made and numbered as follows:

Priority	
1	Failure to implement the recommendation may be an indication that the supplier is fundamentally failing to adhere to the Regulations/Code of Practice. This could lead to a final audit being invoked or immediate suspension or de-registration of the supplier from the Scheme. This could also have a significant impact on the audit opinion of the legal aid fund.
2	Failure to implement the recommendation could result in further evidence of significant non-compliance with the Code of Practice and could lead to further audits being conducted, or sanctions and conditions being imposed by the Department.
3	Failure to implement the recommendation could raise further concerns in relation to the suppliers' compliance with the Code of Practice. This could lead to a warning being issued by the Department.

1.3.2 Where recommendations to achieve compliance are made, the supplier will be asked to respond in writing within 28 days to identify what steps have been, or will be, taken to act upon such recommendations arising from these concerns, or explain why no steps are considered to be necessary. Depending on the priority of the recommendations, the Administrator may stipulate the period within which these must be addressed. If the supplier responds indicating that steps will be taken, the supplier will also set out the timetable for the implementation of these actions, which should be completed within any period stipulated, but no more than three months from the date of the supplier's response. The response shall be brought to the attention of the compliance auditor to agree the actions and review upon completion, or at the next audit, whether the necessary action has been taken. If any shortcomings are identified in a subsequent audit; the compliance auditor may take this into account in their overall assessment of the supplier at that audit.

## **1.4 INTERPRETATION**

- 1.4.1 For the purpose of the assurance ratings within this framework, a pass is considered to be Satisfactory as defined above (but may still include recommendations with a timescale for implementation). A failed audit is considered as Limited or Unacceptable (which will include recommendations with a timescale for implementation).

## **2.1 ROUTINE AUDIT**

- 2.1.1 The audit of the selected files, as described at 1.1., (the Routine Audit) will normally be conducted within the firm's premises. The Administrator may, however, request that the audit is conducted within the Agency's premises. If the Agency needs to review additional files in respect of a barrister, see para 1.1.6, it is anticipated that the additional files will be reviewed in the Agency's premises.
- 2.1.2 The Administrator shall make the necessary arrangements.
- 2.1.3 The Administrator shall issue the completed written report to the Compliance Manager / barrister within 28 days of audit visit. The Compliance Manager / barrister will have 28 days from the date of receipt of completed final report to comment on the findings.
- 2.1.4 The Administrator will consider the findings of the compliance auditor. Where the Administrator does not agree with the assurance ratings or recommendations within the report the Administrator shall record their reason for that decision.
- 2.1.5 Where the circumstances at 2.1.4 arise, the Administrator may decide to:
1. amend the assurance rating, recommendations or priorities;
  2. order the files to be quality assured (reviewed by different compliance auditors), or
  3. order an extended or special audit.
- 2.1.6 Where a supplier is deemed to have passed the routine audit it will be issued with a Compliance Certificate and its compliance record noted accordingly. The supplier may be part of a cross-cutting review at any time.
- 2.1.7 Fraud is taken very seriously and the Agency has a duty to investigate all suspicious, suspected or detected fraudulent activities. While it is not the role of the Registration Scheme compliance auditors to undertake investigations regarding fraud, they will pass information

identified during the course of an audit or notified to them, to officials within the Agency to investigate thoroughly.

- 2.1.8 When the Agency is in a position to inform those who are being investigated it will do so. If appropriate to do so, they will also be advised if, as a result of the investigation, the matter has been referred to the Registration Scheme Administrator for consideration of their continued provision of publicly funded legal services (see 3.2).

## **2.2 EXTENDED AUDIT**

- 2.2.1 Where the Administrator orders an extended audit, a further audit across selected or all categories of work undertaken by the supplier will be arranged. The Compliance Manager / barrister will be informed in writing and arrangements will be made for the extended audit to be carried out as soon as practicable. Extended audits will involve at least two compliance auditors.

- 2.2.2 The consent of the supplier to conduct such an audit at the firm's premises is not required. If the extended audit is in respect of a barrister the Administrator may have to contact a number of firms.

- 2.2.3 The Administrator shall issue the completed written report to the Compliance Manager / barrister within 28 days. The Compliance Manager / barrister will have 28 days from the date of receipt of completed final report to comment on the findings.

- 2.2.4 Where, following an extended audit, the compliance auditors' report indicates an overall failure to meet requirements, the supplier may be permitted to continue to provide publicly funded legal services pending the outcome of the final or special audit which will be arranged by the Administrator.

- 2.2.5 The Administrator will consider the findings of the compliance auditor. Where the Administrator does not agree with the assurance ratings or recommendations within the report the Administrator shall record their reason for that decision.

- 2.2.6 Where the circumstances at 2.2.5 arise, the Administrator may decide to:

1. amend the assurance rating, recommendations or priorities;
2. order the files to be quality assured (reviewed by different compliance auditors), or
3. order a final or special audit.

2.2.7 Where a supplier is deemed to have passed the extended audit, it will be issued with a Compliance Certificate and its compliance record noted accordingly. The supplier may be part of a cross-cutting review or special audit at any time.

## **2.3 FINAL AUDIT**

2.3.1 Where the Administrator determines that a supplier shall be subject to a final audit the Administrator shall advise the Compliance Manager / barrister and make the appropriate arrangements. The supplier will be advised of the costs of this audit and that they will be required to pay these costs. The cost to be charged will be determined by the Agency, but shall not exceed the actual cost to the Agency.

2.3.2 Where a supplier does not agree to pay, or subsequently fails to pay, such costs of the final audit, that supplier will be de-registered.

2.3.3 A final audit must be carried out not more than six months from the date of the supplier being notified that they are to undergo such an audit - thereby allowing the supplier time to remedy the issues identified.

2.3.4 In the period before the final audit, support and guidance will be available to the supplier to assist in addressing the issues and problems arising from the routine and extended audits.

2.3.5 Two or more compliance auditors will carry out the audit. Although they can audit any file they are likely to concentrate on files not previously reviewed including live files opened since the extended audit, looking for signs of progress and steps taken to remedy deficiencies previously identified.

2.3.6 The Administrator will consider the findings of the compliance auditors. Where the Administrator does not agree with the assurance ratings or recommendations within the report the Administrator shall record their reason for that decision.

2.3.7 The Administrator shall provide the supplier with the completed written report.

2.3.8 Where a supplier is deemed to have passed a final audit it will be issued with a Compliance Certificate and its compliance record noted accordingly. The supplier may however be part of a cross-cutting review or special audit at any time.

2.3.9 The sanctions for a failed (final) audit are detailed in section 3.

## **2.4 SPECIAL AUDIT**

- 2.4.1 The Administrator, either on their own volition or on the basis of a request and/or information received, will have the power to instruct a special audit of a supplier at any time. Reasons for conducting a special audit may be notified in advance. The reasons for conducting the special audit will not be notified in advance, if this is considered necessary in the circumstances which gave rise to the audit.
- 2.4.2 Where the Administrator instructs a special audit the consent of the supplier to conduct such an audit is not required. This audit will normally be conducted at the supplier's premises. If the special audit is in respect of a barrister the Administrator may have to contact a number of firms.
- 2.4.3 The compliance auditor(s) shall provide their written report with findings to the supplier and the Administrator.
- 2.4.4 The Administrator will consider the findings of the compliance auditor. Where the Administrator does not agree with the assurance ratings or recommendations within the report the Administrator shall record their reason for that decision.
- 2.4.5 Where the circumstances at 2.4.4 arise, the Administrator may decide to order the files to be quality assured (audited by a different compliance auditor).
- 2.4.6 Where a supplier is deemed to have passed a special audit a Compliance Certificate will be issued, and its compliance record noted accordingly.
- 2.4.7 The supplier may be part of a cross-cutting audit at any time.
- 2.4.8 The sanctions for a failed audit are detailed in section 3.

## **3. SANCTIONS**

- 3.1 The Agency may impose sanctions available as set out in the Registration legislation.

These include:

- Refusal of Application for Registration (R 8)
- Suspension of registration (R 14)
- Warnings (R 15)
- Conditions and restrictions (R 16)
- De- registration (R 17)
- Excluding Directions (R 18)

- 3.1.1 Any terms affecting a supplier's practising certificate issued by their Regulatory Body will automatically apply to their registration on the Scheme to provide publicly funded legal services.
- 3.1.2 Where the Agency is not satisfied that an application for registration meets the statutory requirements, it shall refuse the application and notify the applicant of the reasons for this decision and of their right to request a review of the decision.
- 3.1.3 At registration, all applicants must certify that they will comply with the Code of Practice. Following each audit where compliance has found to be less than satisfactory, a draft report will be issued to the Compliance Manager or barrister concerned giving them an opportunity to comment before the report is finalised. The final report issued will detail the findings and assurance rating, and set out recommendations and priorities of what is required in order to evidence compliance.
- 3.1.4 The Agency may also at its discretion issue a Warning to the supplier advising of further sanctions which may be imposed should they fail to rectify the matters identified in the report.
- 3.1.5 The Agency reserves the right to refuse any future application for registration if not satisfied that the applicant is capable of discharging the responsibilities under the Scheme, or where the application is made within any period of an Excluding direction.

## **3.2 DETECTED IRREGULARITY**

- 3.2.1 Where, in the course of any audit, a compliance auditor identifies circumstances which fall within the scope of fraud, they shall inform the Administrator. The investigation of fraud or suspected fraud will be the responsibility of the individuals appointed by the Department.
- 3.2.2 Where fraud has been detected or is suspected, the Agency will notify the appropriate authorities without delay and take action as necessary to protect legal aid funds (the Fund). The Agency will also, at an appropriate point, notify the Law Society of Northern Ireland or Bar of Northern Ireland as the case may be.
- 3.2.3 In protecting the Fund the Agency may impose such sanctions as it deems appropriate to withhold payment, limit, suspend, or withdraw any supplier from providing publicly funded legal services, as described in rules and regulations 14, 16, 17 or 18 of the Registration legislation.
- 3.2.4 Within 28 days of receipt of notification under rule or regulation 14, 16, 17 or 18 a supplier may request that the Agency reviews the decision and may include representations supporting the request for review.



### **3.3 FAILED FINAL AUDIT**

- 3.3.1 Where, following a final audit, the report indicates an overall failure to meet requirements, and consideration is being given to failing the supplier, the Compliance Manager (and individual solicitor or barrister, if applicable) will be informed in writing and may make written representations, on the findings within the report, and the sanctions to be considered.
- 3.3.2 The Scheme Administrator shall consider the report completed by the compliance auditor(s), and any written representations received from the Compliance Manager / barrister, before determining the appropriate sanction.
- 3.3.3 The sanction recommended by the Scheme Administrator will be subject to internal quality assurance by a Director within the Legal Services Agency.
- 3.3.4 The sanction decision will be notified in writing to the supplier giving them 28 days within which they may request a review of that decision in accordance with the Registration legislation.
- 3.3.5 If the decision is to de-register for an overall failure, the firm's / solicitor's / barrister's Registration Certificate (as applicable) will be withdrawn and their details will be removed from the published Register.
- 3.3.6 Where the firm / solicitor / barrister is to be de-registered (which may be accompanied by Excluding Directions), or where the decision is to suspend registration or impose conditions or restrictions, the Administrator shall inform the appropriate regulatory bodies forthwith in writing of the decision. Where a supplier is de-registered, any legal aid certificates outstanding must be referred to another registered provider.

### **3.4. REVIEW PANEL**

- 3.4.1 Where, in accordance with the Registration legislation, the supplier requests a review of the Agency's decision to sanction within the 28 days period, the Administrator will convene the Review Panel and invite the supplier to make written or oral representations.
- 3.4.2 The panel will consist of the following membership:
- a senior officer within the Agency (at Director level or above) who has not been previously involved in the decision making process regarding the supplier in question;
  - a senior officer of the Department (at Senior Civil Service level); and

- a senior officer within the Government Legal Services Department (at Senior Civil Service level).
- 3.4.3 Other Government officials with specific expertise relevant to the issue at hand, for example accountancy or fraud, may be asked to provide advice to the Panel as necessary.
- 3.4.4 The Panel shall consider each report and any written or oral representations, and decide whether to affirm, amend or substitute the decision of the Administrator.
- 3.4.5 The Panel's decision, together with reasons for this decision, will be notified to the supplier following review.
- 3.4.6 The decision of this Panel will be final.
- 3.4.7 Where the supplier is sanctioned, the Administrator shall inform the appropriate regulatory bodies in writing of the decision.
- 3.4.8 If the Panel decides to ratify the recommendation for an overall failure, the supplier's Registration Certificate will be withdrawn and their details will be removed from the published Register.
- 3.4.9 Where a Registration Certificate is withdrawn, the Administrator shall inform the appropriate regulatory bodies in writing of the decision and any legal aid certificates outstanding will be referred to another registered supplier (if not already transferred at 3.3.6).

#### **4. MAINTAINING THE REGISTER**

- 4.1 A Register of suppliers registered to provide publicly funded legal services shall be maintained by the Agency ("the Register").
- 4.2 The Register shall be published and publicly available. The Register shall be updated to include the firm name, solicitors' names within that firm, the barrister name and the date and result of last compliance audit, together with such other information as is considered appropriate to publish.
- 4.3 Following the initial registration phase, a supplier's registration shall run for a maximum of twelve months from the date of re-registration.

## FEE CHARGING METHODOLOGY

### 1. Requirement for Full Cost Recovery

- 1.1 Managing Public Money Northern Ireland (MPMNI) Chapter 6<sup>6</sup> deals with fees, charges and levies, and details specific rules about how the charge for access to public goods or services should be determined. It clearly states the requirement for full cost recovery therefore, the Registration Scheme must be self-financing.
- 1.2 To ensure the Scheme remains compliant with the MPMNI guidelines the Agency has provided Year 1 costings necessary to enable the Scheme to be implemented and deliver the necessary audits going forward.
- 1.3 The costs include the staff team, running costs and overheads directly attributable to the Scheme, as shown in the table at 1.4 below, and will be reviewed in advance of each registration period to ensure these are still valid and up-to-date.
- 1.4 Table showing Full Costs of Scheme to be recovered:

Cost Centre	Annual Cost (£)	One-Off Cost (£)	Total Year 1 Cost (£)
Salary	514,529	0	514,529
General Overheads	109,630	0	109,630
Professional Memberships	1,555	0	1,555
Training Costs	4,200	0	4,200
IT Costs	22,508	1,044	23,552
Travel Costs	9,358	0	9,358
Subsistence Costs	757	0	757
Transactional Costs	11,280	18	11,299
Cost of Capital	23,584	37	23,621
<b>Total</b>	<b>697,401</b>	<b>1,099</b>	<b>698,500</b>

<sup>6</sup> <https://www.finance-ni.gov.uk/publications/managing-public-money-ni-chapter-6-and-associated-annexes>

1.5 It should be noted that the actual costs in any given year may fluctuate and therefore the estimate above provides for a fully staffed team of 12 staff operating at full capacity in delivering audits over a 12 month period.

## 2. Assumptions

2.1 Registration will normally last for 12 months and the current proposal is that providers will (re-)register in June each year.

2.2 All providers will be informed in April of the registration fee for the incoming year.

2.3 The fee will be paid at the point of registration each year and, when the Agency's digitalisation platform is fully operational, will be based on the total legal aid payments in the preceding financial year.

2.4 For an initial period the costs will be based on the most recently available financial information which is likely to be the total payments of the financial year two years prior, for example, to register in September 2017, the fee will be based on the 2015/16 payments.

2.5 The information used to develop the Fee relates to net **profits costs only**; disbursements and VAT have been excluded.

2.6 The audit and compliance resource and fees are based on volume of suppliers within each payment range expected to apply for Registration for the year; this should be more accurate following the initial registration phase.

2.7 It is possible that if more than the estimated suppliers register the Department may re-coup more than is required to cover the actual annual costs; the Department has discussed this scenario with the DoF and steps will be taken to even out any surplus of deficit across financial years.

### **3. Fee Calculation Methodology**

- 3.1 The methodology to recover the annual Scheme costs introduces fees across a number of bands based on income brackets. The structure is split across 16 bands which range from payments below £10,000 to payments over £2million per annum; these bands reflect the current, and historic, levels of legal aid expenditure.
- 3.2 For each band, a fee will be calculated based on the midpoint of that band, and will apply to each supplier falling within boundaries of that band.
- 3.3 The fee to achieve full cost recovery is calculated using a percentage which is derived by multiplying the expected supplier uptake in each band by the mid-point of the expenditure range in that band and taken as a proportion of the full costs to be recovered.
- 3.4 This percentage figure is then applied to the mid-point of each band to calculate the fee applicable to all suppliers falling within that band.
- 3.5 The fee will change each year as the percentage rate to be applied will be dependent on the overall total profit costs paid in any given year, the costs to be recovered and the assumptions, and experience, of uptake of suppliers registering to the Scheme.
- 3.6 Table 2 below shows the full range of fees using net payments from 2015/16 financial year. As can be seen from these tables the percentage to be recovered would be in the region of 1%.
- 3.7 When the digital transformation project is complete suppliers will be informed how much they have received in legal aid payments at the beginning of April each year and also indicate the fee to be paid if the supplier chooses to register for the incoming year.

**Combined Solicitor firm and Counsel Registration fee illustrations,  
2013/14 to 2015/16**

	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
<b>Chargeable rate</b>	1.00%	0.90%	1.06%
<b>Fee Band</b>			
Less than £10,000	£50	£45	£53
£10,000 to £15,000	£125	£113	£133
£15,000 to £25,000	£200	£180	£212
£25,000 to £50,000	£375	£338	£398
£50,000 to £75,000	£625	£563	£663
£75,000 to £100,000	£875	£788	£928
£100,000 to £150,000	£1,250	£1,125	£1,325
£150,000 to £250,000	£2,000	£1,800	£2,120
£250,000 to £500,000	£3,250	£2,925	£3,445
£500,000 to £750,000	£6,250	£5,625	£6,625
£750,000 to £1,000,000	£8,750	£7,875	£9,275
£1,000,000 to 1,250,000	£11,250	£10,125	£11,925
£1,250,000 to £1,500,000	£13,750	£12,375	£14,575
£1,500,000 to £1,750,000	£16,250	£14,625	£17,225
£1,750,000 to £2,000,000	£18,750	£16,875	£19,875
£2,000,000 and over	£20,000	£18,000	£21,200
<b>Total estimate recovered from Registration Fee</b>	<b>£698,388</b>	<b>£702,108</b>	<b>£701,019</b>