

REVIEW OF MEMBERS' LEGAL ADVICE SCHEME

Executive summary

1. This paper outlines the current arrangements for legal advice to Members arising out of their role in Parliamentary or constituency matters. The provision of this legal advice was brought in-house in 2009 when the previous insurance scheme came up for renewal. The current scheme which was published in January 2010 is administered by the Solicitor's Office working in partnership with the Human Resources Office as necessary and with the option to call on a panel of specialist legal advisers from the private sector.
2. It was agreed that after the scheme had been in place for a period of time, then it would be brought back to the SPCB with an update on the kind of requests which had been dealt with under the scheme and with options for changes arising from that experience.
3. A copy of the current scheme is at Annex A

Issues and Options

4. The external insurance scheme which applied pre 2009 was felt to be too narrow in the range of matters on which Members could obtain advice. Advice on employment matters was provided by the Human Resources Office, however at that time no legal advice was provided to individual Members other than under the policy. The policy covered all HR related matters. It did not however cover pre-employment disputes, wider contract issues, leases, privilege or defamation allegations. Bringing the service in-house has allowed legal advice, taking full account of the role of Members within the parliamentary context, to be given in the areas outlined above and thereby improving support to Members. It has also allowed Solicitor's Office to give legal advice, through the Human Resources Office, on employment law matters related to Members.
5. It was anticipated that because of concerns over volumes of requests that the advice might need to be provided by outside panel solicitors. That has not proved to be the case in non-employment matters. These requests have been absorbed within Solicitor's office resources.
6. There have been a small number of employment tribunal cases where Solicitors Office has advised on a case up to the stage it was clearly heading for tribunal and has then instructed an outside panel solicitor.
7. In addition, following the 2011 Election, the Solicitor's Office and Human Resources Office have dealt with a significant volume of requests for

advice, in connection with individual employment issues, such as redundancy, restructuring of Members offices and office pools.

Additional Issues

8. When the SPCB agreed the current scheme it was agreed it would be for the provision of “defensive” legal advice. Within those parameters the Solicitor’s Office has endeavoured to take a flexible approach, in consultation with the Chief Executive, to ensure that requests can, if possible, be accommodated. Areas covered include issues with Members’ leases, particularly arising from the election changes. It was more financially efficient to provide that advice in house. SPCB might wish to consider adding this specific additional matter to the scheme.

9. The Solicitor’s Office has also been contacted for assistance by a former Member over an issue which arose with during their time as a Member and threatened to continue post-election, questioning the former member’s actings. Although no legal advice was needed in that instance SPCB might wish to consider extending the terms of the scheme to cover such hopefully rare eventualities in the future.

Resource Implications

10. The scheme places additional duties on Solicitor’s Office staff but this has been absorbed without the need for extra resourcing. Most of the issues which have arisen under the scheme have been dealt with in-house and the financial costs of this are not calculated separately from the day to day running costs of the office.

11. Those issues sent out to an external panel adviser have been fully funded from within the existing Solicitor’s Office budget for specialist external legal advice. In 2009/10 £2,947 of fees were incurred under the scheme and in 2010/11 £5,670.

12. However in this financial year two issues brought to the Solicitor’s Office under the scheme were high profile employment disputes which ended in the tribunal. Fees to date this year under the scheme have amounted to £12k. A further case remains to be dealt with.

Governance issues

13. There are no governance issues.

Publication Scheme

14. This paper will be published in line with the Parliament’s Publication Scheme.

Decision

15. SPCB is invited to consider:

- whether the scheme should continue in its current format
- should the scheme be extended to cover additional areas.

SOLICITOR'S OFFICE

21 March 2012

HOW TO ACCESS LEGAL AND OTHER ADVICE: A BRIEF GUIDE FOR MEMBERS

Introduction

As a result of feedback received from the latest Members' Needs Survey, the SPCB has agreed new arrangements for Members to obtain legal services in relation to employment and other legal issues arising out of your role as a Member in both parliamentary and constituency matters.

The new arrangements will be managed internally by the Office of the Solicitor to the Scottish Parliament (referred to in this guide as "the Solicitor's Office"). Under these arrangements, the Solicitor's Office may appoint external solicitors experienced in the relevant area of the law to provide you with legal advice, taking full account of your role within the parliamentary context.

Guidance on accessing Legal Advice

The guidance covers:

- accessing employment law advice
- accessing other general legal advice
- how to request legal advice under the legal services scheme
- what is not covered by the legal services scheme

How to go about asking for Legal Advice

If you need employment law advice please, contact your HR Adviser on (0131) 348 6500 or e-mail at HumanResources@scottish.parliament.uk. Further information can be found in the guide for accessing employment law advice.

If you need more general legal advice, please contact the Solicitor's Office Support Team on (0131) 348 6653 or e-mail at lynda.towers@scottish.parliament.uk. Further information can be found in the guide for accessing other general legal advice.

General Enquiries

In the first instance, please direct any queries regarding these arrangements to the Solicitor's Office Support Team on (0131) 348 6653.

Further Information

We would welcome feedback from Members on the usefulness of this guidance and on the new arrangements for accessing legal advice in general, and if there are any other topics you would like to see covered by the

guidance. This document is a guide only, but staff from the Solicitor's Office would be happy to talk it through with Members or groups of Members if they would find it helpful. If so, please contact Lynda Towers on (0131) 348 6649.

Office of the Solicitor to the Scottish Parliament

January 2010

LEGAL ADVICE

A. Guide for accessing employment law advice

A1. What support can I access from the Human Resources Office (HR) on employment matters?

If you need help or guidance on employment related matters, please contact your HR Adviser. If the issue is particularly complex, your HR Adviser will liaise with Solicitor's Office on your behalf and will assist you in producing the appropriate written documentation.

In order to ensure that you qualify for legal advice, the SPCB strongly advises you to follow your HR Adviser's advice and guidance and to comply with your statutory obligations as an employer.

A2. How do I contact my HR Adviser?

You can contact your HR Adviser on (0131) 348 6500 or by e-mail at HumanResources@scottish.parliament.uk

A3. Can I access legal advice on employment law from the Office of the Solicitor to the Scottish Parliament directly?

Your HR Adviser will be able to provide you with advice on most employment related matters and disputes and will assist you in managing issues at a low level to avoid escalation of any difficulties.

If you do need legal advice, the legal advice arrangements have been designed to ensure that you receive the best possible support in managing your employment matter. Your HR Adviser will, on your behalf, liaise with the Solicitor's Office, tailoring your request to ensure that you are provided with the most appropriate legal advice in relation to your particular circumstances.

A4. Who will meet the costs of legal advice on employment related matters?

The SPCB will meet the costs of legal advice and representation, provided that you have consulted your HR Adviser at the earliest opportunity and followed his or her guidance and advice. The Solicitor's Office, in consultation with your HR Adviser and other appropriate officials, will determine whether your request for legal advice falls within the legal advice arrangements (see section D below for circumstances where legal advice cannot be covered).

If your request falls within the legal advice arrangements, Solicitor's Office may deal with the issue themselves, but normally will appoint an external solicitor who will represent you at all stages of the case. The SPCB will indemnify you in respect of awards (including awards for legal costs) made to ex employees by a tribunal or as part of a negotiated settlement. If the Solicitor's Office determines that your request for advice should not be met, you can ask for the decision to be reviewed by the SPCB. The SPCB's decision will be final.

A5. I have an insurance claim covered by the old arrangements provided by DAS Legal Expenses Insurance Co Ltd (DAS Insurance). Will I still be covered?

Yes. All employment related issues raised with DAS Insurance will continue to be honoured. To assist you to resolve your employment matter, your HR Adviser will continue to liaise with DAS Insurance on your behalf.

B. Guide for accessing other general legal advice

B1. What else do the legal advice arrangements cover?

Under the arrangements, you will be able to seek legal advice to defend claims and threats of legal action made against you in the performance of your parliamentary and representative duties. This would include advice on matters such as actions for damages, breach of confidence, defamation or contractual matters for provision of goods and services to offices. (Members may find the table attached at Annex A useful in showing a comparison to the services in place for Members at the House of Commons, National Assembly for Wales and the Dáil Éireann)

B2. How do I obtain general legal advice on the matters outlined in this section?

Please contact the Solicitor's Office Support Team on (0131) 348 6653.

B3. Can I obtain legal advice on the requirement to register my interests under the Code of Conduct?

Subject to the limitations set out in section D, you can obtain advice on registration from the Clerks to the Standards, Procedures and Public Appointments Committee who may decide to ask for legal advice. In the context of any conduct complaint the Committee would give due weight to the fact advice had been sought from the Clerks, whether or not this also covered legal advice. Further information can be found at 1.1.2 of Volume 2 of the Code of Conduct.

You may wish to refer to the Statement of Intent issued by the Convener of the SPPA committee that sets out in more detail the approach the Committee would generally take where a member had sought and acted on the Standards clerks' advice when registering an interest.

Members may also wish to note that the Standards Commissioner will work with Solicitor's Office to resolve any potential differences in the legal interpretation of the Code.

B4. Can I obtain legal advice on other parts of the Code of Conduct, schemes, services and policies of the SPCB?

Staff in the Chamber, Allowances and other appropriate Offices will continue to be the most appropriate place to go for advice in the first instance. For advice and general enquiries on the registration of interests and the Code of Conduct please contact the Standards, Procedures and Public Appointments Committee Clerks on 0131 348 5179.

For advice on the Reimbursement of Members' Expenses Scheme please contact the Allowances Office on 0131 348 6659. If the parliamentary official you contact in the first place cannot answer your question without legal advice, they will seek legal advice from the Solicitor's Office on your behalf.

C. Guidance on how to request legal advice under the legal services scheme

C1. What is the role of the Solicitor's Office?

If your request is for general legal advice (see B1 above) you should approach the Solicitor's Office direct. If your request is on a standards, expenses or other SPCB matter, the official you have contacted will approach Solicitor's Office on your behalf if legal advice is required. In both cases, the Solicitor's Office will:

- where applicable, provide you or the official dealing with your request with professional advice to ensure that the request for legal advice is framed appropriately;
- advise you whether your request falls within the legal advice arrangements;
- where they agree to seek advice externally, advise you of the name and contact details of the externally appointed solicitor who will be dealing with your case; and
- liaise with the externally appointed solicitor to ensure that their advice is tailored to your requirements and delivered within your timescale (see C2 below).

C2. Do I need to put my request in writing?

Yes. The initial contact can be by phone or face to face, but you will normally be asked to follow up your request in writing in hard copy or electronically either direct to Solicitor's Office or, if applicable, to the official you have approached with your particular matter. To enable Solicitor's Office to provide the best advice, your written request should:

- contain a brief statement setting out the issue on which advice is being sought and whether it is an employment or general issue;
- be accompanied by any relevant documents as electronic attachments or hard copies, as appropriate;
- set out the timescale within which you require the advice; and
- include the details as to how you wish to be contacted.

C3. How will my request be assessed by the Solicitor's Office?

Your request will be assessed against the provisions of the legal services scheme, and its limitations as set out in section D. Where the Solicitor's Office does not agree that your request or any part of it should be supported by the SPCB, they will contact you and explain the reason for refusing it. If you are not satisfied with their decision, you can ask the SPCB to review the decision. The SPCB's decision will be final.

C4. What will happen next?

If your request is covered by the legal advice arrangements, Solicitor's Office will appoint an external solicitor who will contact you directly. They may ask for further information or seek one or more meetings with you to clarify issues before providing advice. The amount of your time needed will naturally be dependent on the complexity of the case.

Solicitor's Office will handle the externally appointed solicitor's fee. To ensure that public funds are kept under control, the SPCB has agreed that in some cases a limit may need to be placed on the amount it is prepared to fund initially.

C5. Are there any occasions where I will be charged for general legal advice?

Where you are entitled to legal advice under these arrangements it will not be charged for whether it is provided by Solicitor's Office or an outside firm.

D. What is not covered by the legal advice services scheme

D1. In what circumstances might I not be covered by the legal advice arrangements?

There are certain situations which the legal advice arrangements cannot cover. These will include:

- in relation to Section 1.1.2 of Volume of the Code of Conduct:
- where a matter is subject to any current investigation by the procurator fiscal in relation to your requirement to register your financial interests or unpaid advocacy; or

- where a matter is subject to inquiries by the Parliamentary Standards Commissioner, the Standards, Procedures and Public Appointments Committee or the Electoral Commission;
- advice on the drafting of legislative amendments. Parliamentary clerks will continue to provide that advice;
- advice or assistance with personal matters unrelated to your role as a Member;
- where the SPCB determines that the SPCB or the Parliament has a potential conflict of interest with you in relation to the subject matter of the advice;
- advice and costs related to raising court proceedings;
- advice on any dispute between Members.

In relation to any request for legal advice, where there is any doubt as to whether a Member should receive legal advice under these arrangements, the SPCB will take the final view.

Annex A

Summary of Insurance Provisions in Place for Members

| Insurance Cover | The Scottish Parliament* | House of Commons | National Assembly for Wales | Dáil | Notes |
|--------------------------------|--------------------------|------------------|-----------------------------|------|--|
| Employment Indemnity | ✓ | ✓ | ✓ | ✗ | |
| Employers and Public Liability | ✓ | ✓ | ✓ | ✓ | Indemnifies Members against claims arising from injury or death. |
| Personal Accident | ✓ | ✓ | ✓ | ✓ | |
| Travel Insurance | ✓ | ✓ | ✓ | N/K | |
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|---------------------------------------|---|---|---|---|---|
| Negligence and Professional Indemnity | ✓ | ✓ | ✓ | ✗ | Includes negligence by MP staff |
| Defamation (Libel and slander) | ✓ | ✓ | ✓ | ✗ | The policy does not provide a legal advice facility - only with a right to indemnity in the event of a claim. |
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*Provided directly by the Scottish Parliament rather than through a third party insurer.