

A COMMENTARY ON THE QUALITY ASSURANCE PEER REVIEW SCHEME

From 1st July this year firms who have registered with the Scottish Legal Aid Board (the Board) to provide Civil and Children's Legal Assistance are subject to administrative review by the Board and peer review by the Law Society, administered through its Quality Assurance Committee (QAC).

A flowchart has been prepared showing the sequence of the main stages in the review process and this commentary provides an explanation of the Scheme and how it will operate.

Routine Reviews

All practice units (or firms) will be reviewed within a three-year cycle and the peer review will normally be carried out shortly after the Board has carried out a review of the firms compliance with the Law Society's administrative requirements for registration for provision of Civil and Children's Legal Aid. The Board will supply the QAC with details of firms which can be reviewed (it is the QAC which determines those to be reviewed) along with details of randomly selected files, five for each practitioner providing Civil or Children's Legal Assistance in the firm. The Board may in addition identify files to be reviewed in specific cases in which concerns have arisen, either with the Board or the Law Society.

The Administrator of the QAC will allocate reviewers (from the panel of appointed and trained reviewers) to carry out the review. Reviewers are under an obligation to disclose any reason (such as conflict of interest, involvement in a case) why they should not carry out a review of any particular file or firm; and if a firm has any concern about the suitability of any particular reviewer reviewing that firm or an individual file or files it can make representations to the QAC by writing to the Administrator no later than one week before the date on which the files are due to be delivered to the reviewer. If the representations are accepted, the file or files will be allocated to another or other reviewers.

The Administrator will write to the firm informing it of the date by which the files have to be delivered to the reviewer, the files selected for review and the allocated reviewer(s). The firm will send the files direct to the reviewer(s). In the early months of routine reviews the files will all be sent to the Law Society offices as the reviews are to be conducted there to ensure consistency in reviewing practices.

While routine reviews will normally be undertaken outwith the firm's premises, the firm may request the review be carried out 'on-site' with the additional cost of that being borne by the firm itself. Requests for on-site reviews should be sent to the Administrator who will then make the necessary arrangements for the review to take place on-site.

If any file selected for review is not available (for example, because it is needed for a court appearance), the firm should inform the Administrator immediately and, if the explanation is acceptable, a substitute file will be selected in its place, although the QAC may also have a file which is not available reviewed at a later date.

Files will be reviewed in accordance with the guidance, criteria and marking scheme published by the Law Society (which can be found on its website). Where more than one reviewer is involved each will work independently of the other. A proportion of files will be 'double-marked', that is, marked by two reviewers independently: this is designed as a check on consistency and accuracy of marking.

After review, the files will be returned to the firm as soon as practicable and the reviewer will then report to the QAC in written form.

Where a firm is deemed to have passed the routine review it will be notified in writing and its compliance record noted accordingly. The firm will not be the subject of another routine review until the next three-year cycle.

Any minor issues arising from the review will be drawn to the attention of the firm in writing and the firm may be asked to respond identifying such steps that are to be taken to address matters. These concerns will be brought to the attention of the reviewer(s) at the next routine review to ensure that they have been remedied.

Extended Review

Where a firm is deemed to have failed its routine review it then becomes the subject of an extended review. The firm will be informed in writing and arrangements will be made for the extended review to be carried out as soon as practicable and for the firm to be informed of the allocated reviewers. As before, the firm may make representations against a particular reviewer being allocated.

Extended reviews will be carried out at the firm's premises, at the expense of the Law Society and will involve at least two reviewers. The reviewers at an extended review can review any Civil or Children's Legal Aid file held by the firm and will apply the same criteria and marking scheme as before.

Where a firm is deemed to have passed the extended review, it will be informed in writing and its compliance record noted accordingly. The firm will not normally be the subject of further review until the next three-year cycle. As with routine reviews, minor issues arising from the reviews may be taken up with the firm and followed up at the next routine review.

Where consideration is being given to failing a firm after extended review, the firm will be informed in writing and may make written representations to the QAC for further consideration.

If a firm is deemed to have failed an extended review, its compliance record will be noted and the firm will then undergo a final review.

Final Review

A final review must be carried out not less than six and not more than twelve months from the date of the firm being notified that it has to undergo such a final review.

It is for the firm to contact the Administrator within six months of notification to request that the final review be carried out.

In the period before the final review, support and guidance will be available to the firm to assist in addressing the issues and problems arising from the routine and extended reviews.

The final review will be carried out at the premises of the firm and at its expense. Two or more reviewers will carry out the review and while they can review any Civil or Children's Legal Assistance file they are likely to concentrate on files previously reviewed, or new files opened, since the extended review, looking for signs of progress and steps taken to remedy deficiencies previously identified.

Once completed the reviewers will report to the QAC, which if it decides the firm has passed, will inform the firm in writing. If consideration is being given to failing the firm, the firm will be informed in writing and may make written representations.

In the event of failure either after an extended or final review a firm is entitled to appeal to the Court of Session within twenty-one days from the date of such a decision.

Special Reviews

In exceptional circumstances, the QAC may instruct a special review be carried out at any time. These will be undertaken at the Law Society's expense at the firm's premises and will follow the procedure of an extended or final review.

If a firm passes a special review it will not be subject to another routine review until the next three-year cycle but may in exceptional circumstances, be the subject of another special review at any time.

If a firm fails a special review it will be subject to either an extended review or a final review depending on the stage that has been reached in the process, and may pending final review, be subject to further special review.

The review process is new and will develop and evolve and the profession will be kept up to date on changes.

Further Information

The Scheme is governed by the SOLICITORS (SCOTLAND) (CIVIL LEGAL AID AND ADVICE AND ASSISTANCE) PRACTICE RULES 2003 (As Amended). A copy of these Rules as amended on 25 June 2004 was recently circulated to the profession (and can be found via the Legal Aid link on the Law Society website, www.lawscot.org.uk).

Further information on the Scheme is set out in the Memorandum of Understanding between the Law Society and the Board (which can be found on the websites of both the Law Society and the Board, www.slab.org.uk).

The guidance, criteria and marking scheme information is available on the Law Society website.

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