



Law Society
of Scotland

Report

Annual update on the Quality Assurance Scheme for Civil Legal Aid

December 2010



Introduction

This report provides details of the statistics, issues and findings from the Civil Quality Assurance Scheme of the current cycle (fourth cycle) so far which commenced in August 2017 and will run for 5 years.

Since 2003, the Law Society of Scotland has been responsible for the quality assurance of civil legal assistance provided by solicitors through the legal aid scheme. All firms registered to provide civil legal assistance are subject to the peer review process operated by the Society. The statutory basis for the quality assurance scheme is set out in Section C3 of The Law Society of Scotland Practice Rules 2011.

The Civil Legal Aid Quality Assurance Sub-Committee

The Civil Legal Aid Quality Assurance Sub-Committee is a specialist committee, in that it manages the Civil Legal Quality Assurance Scheme which is a tripartite agreement between the Scottish Government, The Scottish Legal Aid Board (SLAB) and the Society. The sub-committee consists of five solicitors in practice with current or recent experience of undertaking civil legal assistance work for clients, two of whom will have been nominated by SLAB. There are also five non-solicitors, one of whom is nominated by SLAB. The chair of the sub-committee is a practising solicitor nominated by the Law Society. All of the sub-committee members, its chair and vice-chair are formally appointed by the Regulatory Committee on the recommendation of the sub-committee.

The work of the sub-committee is supported by Hannah Sayers, Quality Assurance Administrator who acts as the secretary to the sub-committee, managing the peer review process and all sub-committee business. Professor Alan Paterson OBE, Director of the Centre for Professional Legal Studies at the University of Strathclyde, on whose research the Scots peer review programme is based, attends the sub-committee as the professional adviser to the Law Society and SLAB on peer review.

The sub-committee has consisted of the following members over the fourth cycle of reviews to date.

Name of Member	Solicitor/Non-Solicitor
Clair McLachlan (Convener)	Solicitor
Marie-Louise Fox (Vice-Convener)	Solicitor (SLAB rep)
Fiona Mundy	Solicitor
Lesley Robb	Solicitor
Jennifer Laughland	Solicitor (SLAB rep)
Norman Gourlay	Non-Solicitor
Graeme Hill	Non-Solicitor (SLAB rep)
Ann Hill	Non-Solicitor (from Apr 2018)
Aaliya Seyal	Non-Solicitor (from Apr 2018)
Grant Horsburgh	Non-Solicitor (from May 2019)
Chris Reddick	Non-Solicitor (ended Dec 2018)

Peer Reviewers

All peer reviewers are solicitors who have current or recent (within the last year) experience in providing civil legal assistance. They are asked to peer review in areas of practice where they have suitable experience, although they need not be a specialist in these areas. Reviewers are not permitted to assess any firm with whom they might be in competition or with whom they have a connection. Accordingly, they are usually allocated to firms which are geographically remote with them and are instructed to raise any potential conflicts of interest with the Quality Assurance Administrator.

The peer reviewers meet on an annual basis to discuss issues arising from peer review and receive feedback on the statistical outcomes of peer reviews from the QAC's professional adviser on peer review. This assists with consistency of marking which is important for the fairness of the process to all firms. Consistency is further assisted by double marking approximately 25% of firms.

The peer reviewers conducting reviews have consisted of the following solicitors over the fourth cycle of reviews to date.

Name	Firm
Kenneth Bonnington	Cartys
Paul Brown	Brown & Co
Fiona Carey	Brophy Carey & Co
Lynne Collingham	TC Young
Fiona Cook	Cook, Stevenson & Co
Kevin Duffy	Ruthven, Keenan, Pollock & Co
David Forbes	Walker Laird
Morag Fraser	Fraser Shepherd
Gordon Ghee	Nellany & Co
Lynn Herbert	Lynn Herbert & Co
Grant Knight	TC Young (ended Feb 2019)
Fraser Latta	Latta Law Limited
Morag Macintosh	MacLeod & MacCallum
Charles McGinley	Gray & Co
Richard Mill	Mill and Millard
Iain Nicol	Balfour & Manson (ended Dec 2018)
Mark Thorley	Thorley Stevenson
Pauline Ward	Neill Clerk & Murray

Peer Review Criteria

Rule C3 of The Law Society of Scotland Practice Rules 2011 requires all practitioners to comply with the guidelines published by the Society in providing civil legal assistance. These guidelines are set out in the form of the Peer Review Criteria. The Society has published a detailed **Peer Review Manual** on its website to assist solicitors in fulfilling the requirements of quality assurance.

All criteria will be applied by the peer reviewer where relevant to the file being reviewed and the file will be scored against each of the criteria according to the following marking scale.

1. Below requirements
2. Meets requirements
3. Exceeds requirements
- C. Cannot Assess/Not Enough Information
- N/A Not Applicable

An additional mark will also be given for the file as a whole, with 1 indicating very poor performance up to 5 being excellent performance.

The Current Peer Review Criteria are as follows:¹

1. How effective were the solicitor's initial fact and information gathering skills, including the identification of any additional information required and the taking of steps necessary to obtain it?
2. Was the client given accurate and appropriate advice regarding
 - a) the potential case, including whether it is stateable;
 - b) the client's eligibility for advice and assistance, especially if the client is not admitted, and whether the advice and assistance Mandate (Declaration) is properly signed and dated by both the solicitor and client;
 - c) legal aid more generally, including the application of regulation 18 and advice and assistance, including possible clawback and the impact of legal aid on expenses?
3. Is there evidence on file or in a letter to the client of:-
 - a) An appropriate terms of engagement letter, where applicable;
 - b) a note of agreed actions;
 - c) a request to the client for further information to be obtained from the client, where required; and
 - d) an assessment as to whether any urgent steps were required/appropriate?
4. Did the solicitor take appropriate steps to carry out further investigation to progress matters for the client within a reasonable timescale?
5. Did the solicitor communicate appropriately with others, and where appropriate, pursue settlement or agreement on relevant issues?
6. Did the solicitor give appropriate advice to the client, where relevant, on alternative options, such as litigation and mediation?
7. Has the solicitor
 - a) identified the need for appropriate experts, other reports or counsel
 - b) applied for sanction / increase(s) in authorised expenditure in accordance with the guidelines, and if granted, instructed / obtained the appropriate experts / Counsel / reports?
8. Is there evidence of adequate preparation for each diet, debate or proof, to include (as appropriate) the list of witnesses, productions and list of authorities as appropriate to the facts of the case?
9. a) After the initial meeting(s), did the solicitor make use of, and provide accurate and appropriate advice to the client on, legal aid and advice and assistance, and is the legal aid Mandate (Declaration) properly signed and dated by both the solicitor and the client, all in accordance with the relevant guidelines;
b) After the initial meeting(s), did the solicitor give accurate and appropriate legal advice to the client?
10. Did the solicitor take steps identified/agreed with the client, within a reasonable timescale given the circumstances of the case?

¹ Further details as to the Criteria and how they are interpreted can be found in the Peer Review Manual.

11. Did the solicitor keep the client informed of progress / advised as to next steps / further procedure and provide accurate and appropriate advice, including following the receipt of substantive correspondence (including offers / proposals from the opponent?)

12. Where an offer/proposal is made, is there evidence of accurate and appropriate advice having been given to the client on the terms of the offer/proposal, its reasonableness and the consequences for the client of acceptance/rejection, including the potential impact of expenses/clawback?

13. a) Has the solicitor taken appropriate steps to close the file and communicate that to the client?
b) Where judgment joint minute or extra-judicial terms of settlement are issued, has the solicitor advised the client as to the judgment, joint minute or extra-judicial terms of settlement are including advice on expenses, property recovered and preserved, diligence on decree, prospects of appeal?

14. Has the account been submitted to SLAB in accordance with guidelines and necessary and appropriate steps been taken in relation to recovery of expenses / handling of property recovered and preserved?

15. Has the solicitor taken all reasonable steps to address any issues relating to age, disability, gender, race, religion or belief and sexual orientation which arose in the course of the case?

Statistics from the Current Cycle (August 2017 to 31 March 2019)

Committee decisions

Peer reviewers prepare a report for the QAC outlining the recommended marking given for each file reviewed for an individual firm including comments on good practice and areas for improvement. The QAC then makes their decision based on the information provided from the peer reviewer(s).

The QAC may pass a firm with one of four grades: Distinction, Good pass, Straightforward pass or Marginal pass. The last grade entails that the firm will be reviewed again within the next 12-18 months. Alternatively the QAC may ask a firm for comments on a particular issue outlined in a report before passing a firm or coming to a decision of whether a further review should be instructed.

If QAC concludes that a firm should fail its *routine* review, the QAC may decide to schedule an immediate *extended* review where a firm fails its review very badly or may decide that a period of approximately six to nine months is required for the firm to rectify issues before a further review, being a *deferred extended* review. A *special* review can be instructed where the QAC have been alerted to a particular concern in the firm's civil legal assistance procedures. A *final* review is instructed where the QAC considers the outcome of a further review is unsatisfactory

The following statistics have been gathered from QAC decisions for the current cycle:

No. of passes	161
No. of matters continued for comments from firm	48
No. of <i>extended</i> reviews instructed	7
No. of <i>deferred extended</i> reviews instructed	15
No. of <i>special</i> reviews instructed	1
No. of <i>final</i> reviews instructed	3

*Note: As at 1 April 2019 there are 559 firms on the civil register

Areas of Good Practice

From the peer reviewer's reports the data collected indicates the areas of review criteria where solicitors are excelling. These are as follows:

- Initial fact and information gathering skills – **311 (8%)** files received an above average score
- Further investigation to progress matters for the client within a reasonable timescale – **337 (8.5%)** files received an above average score
- Communication with others - **331 (8%)** files received an above average score
- Accurate and appropriate legal advice to the client – **319 (8%)** files received an above average score
- Client kept informed – **282 (7%)** files received an above average score

*stats based on a total of 3956 files

*percentage calculated on approx. value

Areas for Improvement

From the peer reviewer's reports the data collected indicates the areas of review criteria where there are areas of improvement for solicitors. These are as follows:

- Fully completed and signed legal aid/advice and assistance declaration – **184 (4.5%)** files received a fail mark

For the purposes of Quality Assurance, individual files will fail the quality assurance criteria if there is:

- a blank, signed declaration
- a completed, unsigned declaration – by both applicant and solicitor

SLAB's full guidance regarding legal aid mandates can be found on [their website](#).

- Appropriate terms of engagement letter on files – **217 (5.5%)** files received a fail mark

The most common deficiencies identified by peer reviewers with firms' terms of engagement letters is the lack of information provided to a client regarding complaints to the SLCC.

The Law Society of Scotland's guidance provides that Terms of Engagement letters should include the following information:

In addition to advising clients about the existence of the Client Relations Manager in the firm, the terms of business letter should signpost clients to the SLCC, as the single gateway for receipt of all legal complaints, if they remain dissatisfied with how their complaint has been dealt with by the firm. The letter should set out contact details for the SLCC, including the telephone number, address and email address. A link to the SLCC's website which contains information about how to make a complaint, including an online complaint form would also be helpful.

Peer reviewers will mark this review criteria down if the full information for the SLCC is not provided in a firm's terms of engagement letter. The Society's full guidance on terms of engagement letters can be found in the [Rules and Guidance section of the website](#).

*stats based on a total of 3956 files

*percentage calculated on approx. value

Overall File Marks

From the peer reviewer’s reports the following statistics are found for the overall marking of a file. It should be noted that although the typical overall marking of files is 1-5, reviewers award a 2.5 mark to show the marginal failing of a file and award a 3.5 mark to show an above average passing of a file.

Overall Score of File	No. of files	%of files
1	47	1%
2	270	7%
2.5	35	1%
3	2887	73%
3.5	98	2%
4	585	15%
5	34	1%

*stats based on a total of 3956 files
 *percentage calculated on approx. value

The statistics show that the great majority of files pass review with an average score of 3. It is also good to see that 15% of files are excelling and only 8% of files are failing review overall.

Statistics from previous cycles

Committee Decision	3 rd Cycle (2011-2017)	2 nd Cycle (2008-2010)	1 st Cycle (2005-2007)
Continued for comments	303 (45%)	188 (31%)	94 (14%)
Extended/Deferred Extended Reviews	59 (9%)	37 (6%)	42 (6%)
Special Reviews	3 (0.5%)	3 (0.5%)	11 (2%)
Final Reviews	14 (2%)	10 (2%)	18 (3%)

From looking at the statistics over the previous cycles, the most noticeable change is the increase in the number of firms being asked to comment on particular issues. The purpose of the Quality Assurance Scheme is continued improvement rather than excluding practitioners from operating the legal aid scheme and so if issues are identified by reviewers that have been previously identified in previous cycle reviews, the QAC will ask the firm to comment on this. The firm is expected to rectify such issues and in some cases provide an undertaking that the issue identified will not be repeated in future. The QAC works to maintain and improve the quality of service and legal work provided by solicitors using legal aid and so require explanation and confirmation from firms before they will update the firm’s compliance certificate.

Civil Quality Assurance Support Service

The Civil Quality Assurance Support Scheme commenced at the start of the 4th cycle. Firms failing their *routine* review are referred to the support service where they may request the use of a mentor. The mentor is intended to help with the improvement of procedures for firms who have failed their *routine* or subsequent reviews and help with the preparation leading up to a further review. This service is strictly confidential.

The mentors are solicitors who have previously obtained a merit or distinction pass in their own review and have agreed to offer confidential advice or support to help solicitors achieve better

results in a further review going forward. The focus of the service is providing support and encouraging improvements in administrative tasks.

Good practice for firms when preparing files for review

When a firm is selected for a *routine* review a list of files is sent to the Compliance Manager of the firm. The following guidelines should aid solicitors when preparing their files for review and avoid negative comments/markings from a reviewer. It should be noted that a peer reviewer can only assess each file on the basis of the information contained on the file.

- If there are multiple files for the same matter, send all of these.
- Ensure a copy of all standard letters sent to clients are placed on the file before sending for review.
- Print copies of all legal aid online applications, correspondence and decisions and place on the file.
- Ensure file notes are legible if handwritten and provide evidence to the reviewer that the criteria have been met.
- There is no obligation on firms to keep a copy of the account on a file, however the presence of a copy of the account can be of assistance to the review in evidencing that certain criteria have been fulfilled.
- Ensure fully completed and signed legal aid declarations are placed on each file. Incomplete or defective declarations are not only costly to the firm but are a significant ground for failing files at the current time.
- If there are both advice and assistance and legal aid files for the same matter, send both for review.
- If files are not available for review, alert the Administrator promptly to obtain replacement file details, incomplete sets of files should not be sent without consulting the Administrator.

Electronic Files

The current policy provides that all files requested for review are in hard copy or printed out by the firm so that a full paper file is available for review. The Society however understands that many firms now work electronically and so printing out a file may not be economical and could be time consuming. If a firm wishes to provide a file in electronic format, they should contact the QA Administrator to seek approval. The QA Administrator will then liaise with the peer reviewer as to whether they are happy to accept the file electronically.

If providing a file electronically, firms should make sure that documents are well organised, in a logical order, and complete and provide a suitable format to enable the reviewer to consider the full file. If a file is sent in electronic format and the peer reviewer experiences any issues, the firm will then be asked to provide a hard copy file so the review can be carried out.

The Society and the QAC realise that electronic files are becoming more common and so they are committed to producing guidelines and policy that firms may follow when providing files for review in electronic format. This is something that is currently being worked on.

For further information please contact Hannah Sayers at HannahSayers@lawscot.org.uk