

## Guidance related to Rule C3: Peer Review Criteria Guidance

This guidance is issued by the Council of the Law Society of Scotland in terms of Rule C3 of the Law Society of Scotland Practice Rules 2011, in order to set out the standards expected of solicitors and practice units in relation to the carrying out of civil legal assistance work. In providing civil legal assistance, solicitors are required to comply with these guidelines.

The purpose of peer review of selected files is to review the quality of the work carried out on behalf of the client and the Scottish Legal Aid Board, based on the evidence contained within the file. It is therefore necessary for solicitors to manage their files so that they are sufficiently well organised for the peer reviewer to be able to read them, and so that there is sufficient evidence on each file to enable the peer reviewer to satisfy him/herself that the criteria have been met. Where files have been held electronically, it is necessary for them to be printed for submission for peer review.

The Society has published a detailed Peer Review Manual to assist solicitors in fulfilling the requirements of civil quality assurance. It is a comprehensive guide to the civil quality assurance scheme, covering the process of peer review, the requirements of the scheme and themes arising from previous cycles of reviews.

What follows is an outline of the criteria to be applied by the peer reviewer in civil and in legal assistance cases, with additional explanation where relevant, and an indication of the scoring system to be applied.

All criteria will be applied by the peer reviewer where relevant to the file being reviewed; not all criteria will apply to every file. The file will be scored against each of the criteria below according to the following marking scale.

1. **Below requirements**
2. **Meets requirements**
3. **Exceeds requirements.**

The standard to be applied is that of the reasonable competence to be expected of a solicitor of ordinary skills.

When considering the advice given or actions taken in the course of a case, there will be circumstances in which differing interpretations might legitimately be taken by solicitors applying their professional judgement: the reviewer should not attempt to second-guess the acting solicitor. Professional judgement should only be called into question where, in the reviewer's opinion, no reasonable solicitor would have conducted the case in the way demonstrated by the contents of the file.

In addition to the three point scale, two other marks are available for particular criteria:

- C Cannot Assess / Not Enough Information**
- N/A Not Applicable**

An additional score should also be given for the file as a whole, based on a five-point scale (with 1 indicating very poor performance and 5 excellent performance).

The criteria follow a broad chronology to ensure proper consideration is given to key aspects of the case. In addition, criteria 9 to 13 should be applied to the case as a whole.

Guidance on the application of individual criteria is provided as required below each criterion.

Several criteria use the terms accurate and/or appropriate:

- in determining whether advice is accurate, the reviewer should consider whether it is *factually* and *legally* acceptable, bearing in mind the test in *Hunter v Hanley*;
- in considering whether it is appropriate, the reviewer should have regard to the circumstances of the case and the level of information available to the solicitor and take into account ethical, practical, tactical and legal considerations.

## CRITERIA FOR CIVIL LEGAL ASSISTANCE CASES

### *Initial meeting(s)*

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?

**1 2 3 C N/A**

2. Was the client given accurate and appropriate advice regarding

a) the potential case, including whether it is stateable;

**1 2 3 C N/A**

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; and

**1 2 3 C N/A**

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?

**1 2 3 C N/A**

**For the avoidance of doubt, where relevant to the case in question, general guidance should be given on the question of clawback.**

3. Is there evidence on file or in a letter to the client of:-

a) An appropriate terms of engagement letter, where applicable;

**1 2 3 C N/A**

**There are some situations where letters of engagement are not required e.g. if the case began before 1<sup>st</sup> August 2005, if the client regularly instructs the solicitor in the same type**

**of business, if there is no practical opportunity for the solicitor to send one - as will usually be the case in minimum fee cases and where the client is a child under 12.**

b) a note of agreed actions;

**1 2 3 C N/A**

c) a request to the client for further information to be obtained from the client, where required; and

**1 2 3 C N/A**

d) an assessment as to whether any urgent steps were required/appropriate?

**1 2 3 C N/A**

*Continuing Work*

4. Did the solicitor take appropriate steps to carry out further investigation to progress matters for the client within a reasonable timescale?

**1 2 3 C N/A**

5. Did the solicitor communicate appropriately with others, and where appropriate, pursue settlement or agreement on relevant issues?

**1 2 3 C N/A**

6. Did the solicitor give appropriate advice to the client, where relevant, on alternative options, such as litigation and mediation?

**1 2 3 C N/A**

7. Has the solicitor

a) identified the need for appropriate experts, other reports or counsel

**1 2 3 C N/A**

b) applied for sanction / increase(s) in authorised expenditure in accordance with the guidelines, and if granted, instructed / obtained the appropriate experts / Counsel / reports?

**1 2 3 C N/A**

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?

**1 2 3 C N/A**

*Throughout the case*

**Having considered the specific aspects of the case set out in the preceding criteria, the reviewer should apply criteria 9 to 13 to the case as a whole, covering activity carried out under both advice and assistance and civil legal aid where relevant.**

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; and

**1 2 3 C N/A**

**This assessment should include: consideration of relevant changes in circumstances that may impact on eligibility for legal aid (merits and means); timeous application for increases in authorised expenditure or for sanction for experts/counsel/ unusual work; preparation and submission of application for civil legal aid (including the initial application, provision of any additional information required and review of refusal/reassessment of means if appropriate); submission of accurate and appropriate staged reports to SLAB.**

b) After the initial meeting(s), did the solicitor give accurate and appropriate legal advice to the client?

**1 2 3 C N/A**

**Matters not relating to legal aid, to prevent duplicate marking with criteria 2.**

10. Did the solicitor take steps identified/agreed with the client, within a reasonable timescale given the circumstances of the case?

**1 2 3 C N/A**

**The timescale within which the solicitor would be expected to act will vary with the circumstances of the case. However, in assessing criterion 10, the reviewer should also have regard to issues such as the need for work to be carried out under special urgency, for example, where there is a danger that the action will become time-barred.**

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?)

**1 2 3 C N/A**

**Substantive should be interpreted to include any significant correspondence that might have a bearing on the solicitor's advice to the client or the progress of the case. For the avoidance of doubt, this would include copy pleadings, any offers/proposals received from the opponent, or responses to any offers/proposals made by the acting solicitor.**

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?

**1 2 3 C N/A**

*Conclusion of the case*

**13.** a) Has the solicitor taken appropriate steps to close the file and communicate that to the client?

**1 2 3 C N/A**

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?

**1 2 3 C N/A**

**For the avoidance of doubt, it would not be considered adequate in explaining expenses / property recovered and preserved for the solicitor to provide the client with a copy of the relevant Scottish Legal Aid Board leaflet.**

**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?

**1 2 3 C N/A**

**In assessing this criteria, reviewers should check that any accounting to the client and any fee charged to the client has been dealt with appropriately.**

**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?

**The Civil Legal Aid Quality Assurance Committee considered that the quality assurance scheme will help to ensure an adequate standard of work by civil solicitors, and help satisfy the Committee that cases are properly taken on and that the client has not been disadvantaged because of any of the above characteristics. In addressing this, the reviewer should consider language difficulties, access difficulties and cultural issues.**

**Overall mark for file            1            2            3            4            5**

**Having considered each of the individual criteria, including those applicable to throughout the case, the reviewer should allocate an additional mark for the file as a whole.**

**Comments on file/case overall**

The reviewer should provide brief comments on the case. These should focus on any criteria on which a score of 1 is provided. If applicable, the reviewer should explain why a "fail" score has been given and suggest areas for improvement and ways in which these might be achieved. These comments will provide an initial indication to the firm/solicitor involved as to any particular issues that require to be addressed. Where any high scores are given, these should also be drawn to the solicitor's/firm's attention.