

The number of peer reviews completed and considered by the CQAC are shown in the table below.

	During the period 1.12.2017 to 31.5.18
Number of Routine Reviews with decisions taken by the Committee	55

Breakdown of CQAC decisions

	During the period 1.12.2017 to 31.5.18
Routine Reviews passed by the Committee	
- Reviews - Pass 5: Excellent	0
- Reviews - Pass 4: competent plus	26
- Reviews - Pass 3+: competent *	8
- Reviews - Pass 3: competent	15
* Pass 3+ is given where good work is shown but where the mark doesn't quite make a Pass 4	
- Reviews - marginal pass	3
Routine Reviews failed by the Committee	
- Deferred extended review	1
- Immediate extended review	2
- Immediate special review	0

Of the reviews considered by the Committee, 94.5% passed during the period 1 December 2017 to 31 May 2018. A further 5.5% of reviews failed. Routine reviews which are passed are not normally considered again within the current six year cycle. Reviews which are considered to be marginal passes will be reviewed again well within the period of the cycle; usually within two years.

Where a review fails, the Committee has the option to carry out a deferred extended review, usually after six to nine months after the decision of the review is intimated to the solicitor. This is to give the solicitor a reasonable period of time to put in place improvements to address the issues highlighted in the failed review. However, if serious issues are identified, then the extended review can be carried out immediately. In other cases, a special review can be carried out if issues are identified which need to be given immediate consideration, but the solicitor is not advised what these issues might be.

Of the three reviews which were failed during the period 1 December 2017 to 31 May 2018, one of the solicitors was a sole practitioner and two were in larger firms.

Overall picture

Most clients are receiving a good service, but the peer review process also highlights the range of practice standards amongst practitioners; the gap between those achieving a rating of competent plus and those failing or passing marginally is wide.

The Committee is keen at this early stage in the 6 year cycle to share with firms and practitioners both good and bad practices noted in the reviews carried out to date. This will give confidence to those who recognise their own good practices and allows others to learn. This, in turn, improves the publicly funded service provided to clients.

Areas of good practice identified in the peer reviews

In the peer reviewers' reports, the following issues were highlighted by them as areas of good practice:

Communications

- Clients kept advised of all relevant procedural steps
- Good and timeous letters sent to clients
- Good explanations of legal processes sent to clients
- Good Terms of Business and letters of engagement

File Keeping

- Good recording of work done on files
- Well prepared, managed and tidy files
- Clear evidence of reminder systems within files
- Clients instructions clearly noted in files
- Files properly monitored
- Full and informative attendance notes

Legal work

- Good and regular contact with the SCRA
- Evidence of meetings with clients going over the case
- Evidence of clear submissions on behalf of the client given at hearings
- Good advice given on likely outcomes and expectations

Legal Assistance issues

- Timeous legal assistance applications submitted to SLAB
- Well prepared accounts submitted to SLAB

Individual Files rated as excellent

The scoring system for each of the files reviewed as part of the Routine Review is on a 1 to 5 basis with 1 being very poor and 5 being excellent. There were a number of individual files marked as excellent during our first six month period and the reviewers gave the following comments on some of these files:

“I was very impressed with the work carried out, the recording of advice, the investigations made, the fact that at a hearing the solicitor persuaded the sheriff to reinstate the applicant's contact after this was reduced to nil at a Panel, the efforts made on behalf of what was clearly a vulnerable client and generally my impression was that the work on this file was of such quality to merit a mark of 5.”

“all work undertaken very quickly and solicitor managed unusually to represent client a CPO matter before Sheriff due to efforts and this continued until almost 9pm at night.”

“in a timescale of less than 24 hours agents took instructions, got LAA and ABWOR, considered a complex, disturbing SW report , travelled to Aberdeen and secured a great result - speaks for itself.”

“well maintained file managed entirely appropriately with robust advice tendered and a great result achieved.”

Areas identified in reviews where improvement is needed

In the peer reviewers' reports, the following issues were highlighted by them as areas where improvement was needed:

Communications

- No letters on file advising clients of dates of hearings (court and panel).
- No details of initial discussions with clients and advice tendered.
- No terms of engagement letter or note that this had been sent to the applicant.

File Keeping

- Files disorganised.
- Advice to client not fully recorded and therefore not clear in the file
- No details on file of client's position and desired outcome
- File notes were not legible making it difficult for peer reviewer to properly assess

Legal Work

- No advice given on whether there were legitimate grounds for appeal

Legal Assistance Issues

- Significant delays in applying for children's legal assistance
- Online Declaration forms not fully completed or missing from the file
- Declaration forms being signed by the solicitor on behalf of a client when client not present
- Online Declaration forms signed by the applicant but contain no information
- Online Declaration forms not signed by solicitor
- No details of the applicant's financial circumstances
- No information to show how the applicant's financial circumstances have been verified

The following are some specific quotes by peer reviewers from some actual reviews highlighting the areas where improvement is needed:

‘Handwritten notes on the files were not legible. Advice to clients not fully recorded and had to be inferred. Would be good practice to have typed file notes and fully record advice given.’

'TOE letters not consistently retained on file, attendance notes difficult to read, some files are untidy.'
'Files failed due to lack of online declarations, incomplete or the wrong online declaration completed.'
'Files were not well organised with papers not in date order, some missing file notes on others, often from the initial meeting.'
'At least two files have correspondence from other unrelated clients within them being used as scrap paper, this could give rise to a confidentiality issue.'
'No financial information in the files.'
'Overall lack of recording and legal advice tendered, lengthy attendances with clients without clarification as to what is being instructed, lack of TOE letters, standard of legal aid work overall is inadequate.'

Online Declarations (previously referred to as 'Mandates')

The issue of missing, incomplete or wrong Declarations being used was by far the main issue identified in reviews undertaken to date.

Declarations signed by the nominated solicitor for the applicant

The children's legal assistance regulations make no provision for any circumstances where the nominated solicitor can sign on the applicant's or their representative's behalf. We understand that sometimes it may be difficult to obtain the applicant's signature at the outset of the case, particularly if telephone instructions have been given or where a client resides some distance away. However, you must always obtain the applicant's signature on the declaration. Most solicitors do this by sending the declaration to the applicant or asking them to sign it when they next see them.

How reviewers assess incomplete declarations

Peer Review Criteria 3 asks: Did the solicitor obtain and retain a completed, signed Legal Aid Online Declaration for the advice and assistance, ABWOR or legal aid application? Individual files will automatically fail criteria 3 if there is:

- No declaration form on the file at all; or
- A blank, signed online declaration form; or
- A completed, unsigned form - by both applicant and solicitor.

Where the online declaration form is signed, but it is incomplete, the peer reviewers use their discretion and assess whether the online declaration form is sufficiently complete for a proper assessment and children's legal assistance grant to have been made. The material pieces of information required to seek and provide children's legal assistance are whether the applicant and the subject matter are properly identified, whether the declaration form shows sufficient information to fully assess eligibility and whether the assessment has been properly made and recorded by the solicitor.

Where there is no form present, the peer reviewers use their discretion and may fail the individual criterion but not necessarily the whole file where this is an isolated incident. However, where it appears that the solicitor has no online declaration forms in all or the majority of files reviewed, then the peer reviewer may fail the review.

Financial Verification

Another common issue for reviewers is the lack of the evidence to show that the applicant was financially eligible to receive legal assistance. For quality assurance checking purposes, your files must clearly show that you took reasonable steps to determine your client's financial eligibility. Files need to contain either copies of the financial verification seen by the nominated solicitor, or a note detailing the reasons why the nominated solicitor believed that their client was financially eligible. The Online Declaration form showing the applicant's financial circumstances is not a suitable form of evidence.

The Legal Assistance Handbook sets out our guidance on financial verification at Part 2, Chapter 3.

No Capital - Advice and Assistance

When you tell us about the grant of legal aid in Legal Aid Online, we ask you tell us what evidence you have seen of capital. The option "client has signed online declaration" is being incorrectly selected in situations where it is clear from the details provided on the online declaration that the applicant has a bank, building society, credit union or post office account. This option should only be used where you have satisfied yourself that it is reasonable to assess that they have no bank account and no capital.

Passported Benefit

The DWP link can verify that the applicant is in receipt of a passported benefit (Income Support, Income-Based Jobseekers Allowance, Income-Based Employment Support Allowance or Universal Credit). However, you should be satisfied that the applicant is in receipt of the passport benefit before granting A&A. If the DWP inform us that a passport benefit is being paid or there is no trace of the applicant, you will then need to seek clarification and evidence of income direct from the applicant; otherwise you will not be paid for the work you undertake.

Your case file should show how you determined your client to be financially eligible and what evidence you were given. Some solicitors take copies of the bank statements etc and keep those as part of the case record.

What happens if a solicitor has insufficient files to be reviewed?

In the reviews carried out to date we have found that some solicitors registered to provide children's legal assistance do not actually perform much or any children's legal assistance work on a regular basis. Many of these solicitors do not have any grants of children's legal assistance in their name so we cannot identify any files for peer review. In some of these cases, we are able to conduct reviews based on files where they have undertaken work, although the nominated solicitor is another solicitor in the firm. However, there are still a number of solicitors who do not routinely carry out any children's work, but who retain their CLAR registration in case they need to provide cover for other children's solicitors in the firm or they may be located in a remote area where this kind of work rare.

The Criminal QAC is consulting on this issue and the Children's QAC will consider the outcome and adopt a similar approach to that decided upon.

Other issues to note when files are requested for a routine review

- *Status of files selected for review*

We do not normally conduct reviews on current files or files for cases which are still ongoing. Therefore, we select files from our systems based on cases where an account has been received, which normally indicates that a case has been completed. However, should a case selected still be live, please let us know so that substitute files can be selected.

- *Letters of Engagement*

If it is not your normal practice to include or keep paper copy letters of engagement in your files, please provide a paper copy for the reviewer and insert the letter sent on that file for the peer reviewer to consider. If this is not possible, please ensure that a note is provided as to why not to avoid unnecessary delays in assessment of the files or fails of that criteria.

- *Linked Files*

If one of the files selected for review is linked to another file which has not been selected, you may think that this file may be of use to the reviewer. If this is the case, then this linked file should be included as well to assist the peer reviewer in obtaining the true picture. We appreciate that in children's cases there is often a number of files for one client due to the different assistance types being required for different stages of the proceeding and that a client can be in receipt of more than one type of children's legal assistance at any one time. It may be, in this situation, that some information is contained in one file and not the other but this is a difficult assumption for a peer reviewer to make.

- *Electronic Files*

Many firms use a Case Management System where documents are stored electronically rather than in hard copy. It is not practicable for security reasons for reviewers to have access to your systems, therefore if you do store papers electronically you will need to print off any relevant correspondence or papers that you think will be required so that the reviewer can carry out an informed review on the files selected and be able to assess the case based on the set criteria.

Further information

If you would like further information please contact:

- Ann Forbes-Partington - Operations Delivery Assistant Manager, Tel - 0131 240 2072, forbesan@slab.org.uk
- Tracy Brown - Children's QA Co-ordinator, Tel - 0131 240 1945, browntr@slab.org.uk